

(1987) 11 CAL CK 0015
In the Calcutta High Court
Case No : C.R. 10470 (W) of 1980

Anantpur Textile Ltd.

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

Date of Decision : 19-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Customs Act, 1962 — Section 15, 15(1), 15(1)(a), 16, 2(24)

Citation : (1988) 15 ECC 280 : (1988) 33 ELT 12

Hon'ble Judges : Sudhir Ranjan Roy, J

Bench : Single Bench

Advocate : Santanu Chakravarty, Mr. N. Mukherjee, for the Appellant; R. N. Das, for the Respondent

Judgement

Sudhir Ranjan Roy, J.—The petitioner, Anantapur Textiles Limited, in a Private Company incorporated under the Companies Act, 1956 having its Registered Office at No. 161, Netaji Subhas Road, Calcutta.

2. The petitioner used to import viscose staple, fibre from foreign countries for blending with cottons and manufacture of yarns for sale in the local as well as foreign markets.

3. The petitioner ordered 695 bales of viscose staple fibre from Austria sometime in the year 1980.

4. The respondent No. 3, the Union of India, issued a Notification No. 119/F No. Bud (Cus)/80, dated June 19, 1980 which contained, an amendment to Notification No. 8/Customs, dated January 5, 1979 in terms of which the duty payable for imported viscose staple fibre was placed at 2.37 per kg, thus revising upwards the duty to Rs.2.57per kg with effect from the midnight of June 18/19, 1980 (Annexure "B").

5. On October 30, 1980 the petitioner paid a sum of Rs. 1,92,877.47 to the respondent No. 1, the Collector of Customs, being all Customs duties in full and

final settlement for Rs.75,040 Kgs. of viscose staple fibre but due to transportation difficulties failed to unload the same.

6. On November 3, 1980 the petitioner came to know that Central Excise Duty on indigenous viscose staple fibre had been scaled down from Rs. 4.80 per kg. to Rs. 8 00 per kg. including special and additional excise levies with effect from November 1, 1980 but counter-vailing duty on imported fibre had been raised from Bs. 2.57 per kg. to Rs. 3.00 per kg. (annexure "D").

7. On November 5, 1980 the Customs House Agent of the petitioner went to receive the goods from the Calcutta Port Trust authorities but the Collector of Customs claimed the balance of Customs duty consequent to the increase in the rate of duty with effect from November 1, 1980.

8. According to the petitioner, the duty having already been paid on October 30, 1980 no duty could be claimed at the increased rate of Rs. 3.00 which came into force from November 1, 1980.

9. However, since the Custom authorities refused to release the goods without payment of duty at the enhanced rate, the petitioner came up before this Court for redress under Article 226 of the Constitution.

10. It appears that there was an interim order to the effect that on furnishing a Bank guarantee for a sum of Rs. 1,30,000 the petitioner would be permitted to have-clearance of the consignment in question and the respondents not having opposed, the interim order so made was extended till the disposal of the Rule.

11. According to the affidavit-in-opposition filed by the respondents, the vessel S. S. Kumrovec carrying the disputed consignment, was allowed entry inwards on 4. 11. 80 at 2.10 P. M. Before this the bill of entry was presented and provisional assessment of duty was made on 24.10.80 and the duty of Rs. 1,92,567.53 p was realised.

12. According to the proviso to Section 15(1) of the Customs Act, if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented On the date of such entry inwards and Section 15(1) (a) provides that in case of goods entered for home consumption u/s 46 the Customs duty would be chargeable at the rate prevailing on the date of the presentation of the bill of entry. And since on 4. 11. 80 when entry inwards was granted to the vessel the rate of Customs duty" had h1veady been increased front Rs. 2.57 per kg. to Rs. 3.00 per kg the petitioner was liable to be Customs duty at the said enhanced rate in view of the provisions of Section 15 of the Customs Act, 1962.

13. The petitioner in its affidavit-in-reply has controverted the averments made by the respondents in their affidavit-in-opposition.

14. In the instant case as it will appear, that it is the proviso to Section 15 of the Customs Act, 1962 which has exposed the petitioner to an additional claim of

Customs duty at the rate of 43 raise per kg. and other consequential charges.

15. Mr. Chakravorty, the learned Counsel for the petitioner has consequently to make an all out attempt to establish that the said proviso not being in conformity with sub-clause (a) of section 15(1) could not be given an operative force.

16. For convenience Section 15 of the Customs Act, 1962 is quoted hereunder:

S. 15. Date, for determination of rate of duty and tariff valuation of imported goods.

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,-

(b) in the case of goods cleared from a warehouse u/s 16, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a ware-house under Section. 68 on the data on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this section shall not apply to baggage and goods imported by post.

17. It may not disputed that the concerned goods in the instant case, namely, the viscose staple fibre, were imported for home consumption. The bill of entry was presented on October 24, 1980 when the. rate of Customs duty was Rs. 2.57 per kg. and on the said basis Customs duty of Rs. 1,92,877.47 P. was realised from the .petitioner, on October 30, 1980. As a matter of fact, u/s 15(1) (a) it is the rate of duty in force on the date of the presentation of the Bill of Entry which should be the rate of duty chargeable in respect of goods imported for home consumption. In the instant case the rate of duty continued to the same from before the date of presentation of the Bill of Entry on October 24, 1980 till the date of payment of duty "on October 30, 1980.

18. However, as ill luck would have it the rate of duty in respect of Viscose Staple Fibre was increased to Rs. 3.00 per kg. from Rs. 2.57 per Kg. with effect from November 1, 1980 and the entry inward to the ship was granted on November 4, 1980.

19. This obviously attracted the proviso which speaks of a fictional date for determination of the rate of duty. According to the proviso the date of presentation of the Bill of Entry u/s 15(1) (a) would be the date of entry inwards of the vessel when such entry takes place after the presentation of the Bill of Entry.

20. Here, the Bill of Entry, as already stated, was presented on 24.10. 1980 and the entry inwards was granted on 4.11.80 when the enhanced rate of Rs. 3.00 per kg. had already come into force.

21. Thus, in view of the Section 15 of the Act as it stands with the proviso, the Customs authorities, cannot prima facie be said to have acted illegally in demanding the enhanced rate of duty from the petitioner. at the rate of Rs. 3.00 per kg.

22. Mr. Chakravarty, the learned Counsel representing the petitioner, attacked the proviso to the section on two-fold grounds. His first contention was that the proviso gives unfettered discretion to the Customs authorities to delay or advance the date of entry inwards to the advantage of the Revenue according to their own choice in the absence of any guidelines in the statute itself. And secondly, it is not at all in conformity with subclause (a) of the section and is totally inconsistent to the said provision since the proviso speaks of a fictional date for determination of the rate of duty when sub-clause (a) of Section 15(1) clearly provides that the date of actual presentation of the Bill of Entry shall be the determining factor.

23. Coming to the first point first, the term "entry inwards" has not been defined, in the Act, but some clue as to its actual import can be had from some of the sections. Specific reference in this connection may be made to Section 31, which is as hereunder:

(1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

(2) No order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

(3) Nothing in this section shall apply to the unloading of baggages accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods,

24. It is clear from the section that unless entry inwards of the vessel is granted the master of the vessel cannot permit unloading of the imported goods. It is further clear that the pre-condition to the granting of entry inwards is the delivery of the import manifest.

25. "Import manifest", incidentally, has been defined in section 2 (24) as follows. "Import manifest" or "import report" means the manifest or report required to be delivered u/s 30.

25 (a.) And Section 30 provides that the import manifest may be delivered either within twenty four hours after arrival of the vessel or even before its arrival.

26. In Black's Law Dictionary (5th edition) "manifest" has been described as "a

written document required to be carried by merchant vessels, containing an account of the cargo, with other particulars for facility of the Customs Officers".

27. And Section 32 of the Act lays down that imported goods should not be unloaded unless mentioned in the import manifest or import report.

28. Reference in this connection may be made to Section 46 of the Act which provides that the importer of goods for home consumption shall make entry thereof, by presenting a bill of entry. However, where such importer is unable to furnish all the particulars of the goods imported, he may be allowed to examine the goods in the presence of an Officer of Customs or to deposit the goods in, a public warehouse,

29. So, mere presentation of the bill of entry without furnishing the particulars of the goods imported either by delivery of the import manifest or after inspection of the goods, is of no avail.

30. Now, so far the bill is concerned, it is open to the importer to present it before entry inwards to the vessel is granted, but the proviso to Section 15 makes it clear that in such a case the date of actual presentation of the bill of entry will not be the relevant date for determination of the rate of duty. It will be the fictional date of granting entry inwards.

31. It thus appears that the rate of duty of goods imported for home consumption cannot be determined u/s 15 unless the goods are ready for unloading on entry inwards being granted. In other words, the pre-conditions for determination of the rate of duty of such goods are delivery of the import manifest containing the particulars of the goods and entry inwards to the vessel being granted on such presentation when the master of the ship can permit unloading of the goods u/s 31.

32. It seems that since the rate of duty of goods imported for home consumption cannot properly be determined without having a clear picture of the particulars of such goods, the proviso to Section 15 had to be introduced since the bill of entry can be presented even before the delivery of the import manifest containing the particulars of the goods.

33. As already seen, granting of entry inwards requires certain formalities to be completed and it is not the case of the petitioner that in the instant case granting of entry inwards of the vessel the unnecessarily delayed even after presentation of the import manifest.

34. Mr. Das, the Learned Counsel representing the respondents, referred me in this connection to the relevant provisions of the Central Manual of the Import Department of the Customs House laying down the departmental guidelines in the matter of granting entry inwards to a vessel.

35. The relevant provisions of Clause 9 of the said Manual are as hereunder:

9. Papers to be presented along with an applicant for entry inwards.

Order to entry inwards will not ordinarily be granted unless the Master or Agent produces the following papers: -

(a) Arrival Report (for country crafts only).

(b) Port Officer's entry certificates.

(c) Light dues report (if any). If light dues receipt is not produced, Steamer, Agents may file a guarantee vide. appendix "P" to produce the same within one month.

(d) (i) Port Clearance from the last port of departure whether Customs or foreign.

(ii) The production of a port clearance from the last port of call is absolutely necessary in the case of vessels arriving from Customs Ports and should not be ignored. In case, it is not produced, an undertaking for its production may be taken from the Steamer Agents.....

36. Clause 10, which is very relevant in this regard, is quoted below in its entirety :

10. There should be the least possible delay in giving inwards or entry outwards as soon as the ship is ready to discharge or load the cargo. u/s 30 of the Customs Act, 1962 a manifest could be delivered prior to the arrival of the Vessel and bills of entry could be filed as soon as such manifest has been delivered. u/s 50 of the Customs Act, 1962, no restriction in regard to time limit for filing of shipping bills has been prescribed. In view of this, there can be no objection for accepting the bills of entry as soon as the manifest is filed in anticipation of the arrival of ship and similarly to accept shipping bills before the vessel arrives, However, the entry inwards or entry outwards need be given only when the vessel is ready to discharge or load cargo.

37. The Clause, as it appears, visualises a situation when both the manifest as well as the bill of entry are filed almost Simultaneously before the arrival of the vessel and in such a case there need not be any delay in the matter of granting entry inwards. As a matter of fact, the Clause clearly provides that there should be the least possible delay in giving entry inwards as soon as the ship is ready to discharge the cargo.

38. Thus, though the proviso to Section 15 itself appears to be without any restrictive guidelines, such guidelines have been clearly laid down in the departmental instructions and in view thereof granting of entry inwards cannot be unnecessarily delayed according to the sweet will of the Customs Authorities.

39. As a matter of fact, in the instant case, as already stated, no complaint has been made by the petitioner at any stage to the effect that granting of the entry inwards has been unnecessarily delayed in spite of all the necessary formalities having been completed in due time.

40. In the above view of the matter, the promise to Section 15 cannot, be said to

be bad on the theoretical assumption that it is liable to be misused to the advantage of the Revenue.

41. In this connection it may not be out of place to mention here that a similar proviso to Section 16 of the Act relating to export goods (as it stood prior to the substitution of the section by the Finance Act of 1986) was given effect to by the supreme Court in Gangadhar Narasingdas v. P. S. Thrivikraman, AIR 1973 SC 850.

42. In support of his next contention that the relevant proviso being inconsistent to the substantive provision of the section is inoperative and bad in law, Mr. Chakravarty referred me to certain decisions of the Supreme Court.

43. In Tahsildar Singh and Another Vs. The State of Uttar Pradesh, , the Supreme Court observed that a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two. But here, as already seen, there is no repugnancy between the two. The proviso merely introduces a fictional date for determination of the rate of duty and the fiction is introduced by providing for the date of entry inwards of the vessel to be the relevant date in case where the Bill of Entry has been presented before the date of such entry inwards and as already seen, it has its own underlying reasons.

44. The other decisions referred to, namely, I.T. Commissioner v. Ajax Products, AIR 1965 SC 1858 and T. Devadasan Vs. The Union of India (UOI) and Another, merely speak about harmonious construction of the proviso and the main enactment.

45. Here, the proviso to Section 15 does neither enlarge the enacting clause nor the scope of the statute. It merely limits, modifies or explains sub-clause (a) to the main Section and restrains its generality by introducing a fictional date. The two provisions are not in any way inconsistent but complimentary to each other in the sense that it is the date of presentation of the bill of entry, either actual or fictional, that remains the guiding factor.

46. Thus, both the contentions raised by Mr. Chakravarty fail.

47. As already seen, when entry inward of the vessel was granted in the instant case on November 4, 1980, the new rate of duty at Rs. 3.00 per kg. had already come into force and, accordingly, the Customs Authorities were quite justified in demanding duty at the said rate from the petitioner in view of Section 15 of the Customs Act, 1962 read with the proviso.

48. The Rule, as such, is discharged and interim order, if any, do stand vacated. The respondents will now be at liberty to realise the difference of duty from the petitioner as claimed by enforcement of the Bank Guarantee or by any other method provided by law.

49. There will be no order for costs.