

(1991) 11 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No's. 1190 and 1191 of 1983

Bhikamchand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-11-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Customs Act, 1962 — Section 15, 46

Citation : (1993) 43 ECC 36

Hon'ble Judges : Raju, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raju, J.—These two writ petitions filed by the same petitioner involve overlapping questions of law and therefore require to be considered together.

2. W.P. No. 1190 of 1983 has been filed for a writ of declaration that the Customs Tariff (Amendment) Act 1982 (Central Act 15 of 1982) is ultra vires and unconstitutional insofar as the petitioner is concerned.

3. W.P. No. 1191 of 1983 has been filed for the issue of a writ of certiorarified mandamus to call for and quash the assessment order of the 3rd respondent dated 22-12-1982 in bill of entry bearing No. 002327 dated 20-12-1982 and consequently direct the respondents 2 and 3 to release the goods imported by the petitioner, viz., stainless steel circles (defective) under the trade name M/s. Bhikamchand Steel House on payment of import duty of 45%.

4. The petitioner, in the affidavit filed in support of the writ petitions, states that he imported 29.077 metric tonnes of stainless steel circles (defective circles) in 72 drums by Vessel "Button Gwinnett" from New Orleans, U.S.A. The imported item is claimed to fall under 73.15 (2) of the Customs Tariff item for the purposes of import duty. The petitioner also claims that the required licence for the import was granted on 26-3-1982, that he placed an order with the foreign

supplier on 8-4-1982, that the order was confirmed by the supplier on 30-4-1982 and that the copy of bill of entry dated 2-12-1982 made available disclosed that the goods landed on 1-12-1982. While matters stood thus, in the meantime, subsequent to the petitioner entering into the said contract with the foreign supplier, the Customs Tariff (Amendment) Bill, 1982 was introduced in Parliament on 15-4-1982 and so far as item 73.15(1) and (2) are concerned, the standard rate of duty was proposed to be enhanced and fixed at 300% as against the then existing rate of 35%. The said bill ultimately became an Act called Customs Tariff (Amendment) Act, 1982 and the rates of enhanced duty becomes effective from 1-1-1982. The 3rd respondent assessed the duty payable by the petitioner in respect of the imported item in question applying the enhanced rates introduced by the Amendment Act of 1982.

5. Mr. Sundar, learned Counsel appearing for the petitioner vehemently contended that the respondents are estopped from applying the enhanced rates of duty to the imported items in question, since the process of import, according to the learned Counsel, commenced with the local buyer entering into contract with foreign supplier and the import having been made on the basis of the rates of duty prevailing at the time when the order was placed with the foreign supplier, the respondents could not go behind the same and all of a sudden increase the rate. The learned Counsel also submitted that the rate of enhancement was so steep that nowhere in any other place, such a steep enhancement was ever made and that therefore, it is arbitrary and unreasonable. It was also argued that the impugned amendment perpetuates discrimination among the two classes of importers ? those who placed orders earlier but effected import before 15-4-1982 and those who would import thereafter, though orders were placed with the foreign supplier much earlier. This hostile discrimination, according to the learned Counsel, seriously affects the fundamental rights secured to the petitioner to carry on his business.

6. I have carefully considered the submissions of the learned Counsel for the petitioner. There can be no controversy over the fact that having regard to the provisions of the Provisional Collection of Taxes Act, 1931 and the provisions of the Bill introduced in Parliament on 15-4-1982, which culminated into an Act, the Customs Tariff (Amendment) Act, 1982, the increased rate of duty shall have immediate effect. Consequently, the action of the respondents in applying the enhanced rate under the Amendment Act 1982 to the imported items in question is well justified in law. It is only on that ground the petitioners have chosen to challenge the very enactment and consequently its application to the import in question for the various reasons referred to above.

7. The plea of estoppel, in my view, cannot be invoked in the case on hand by the petitioner against the respondents. The existing rates of taxation or any impost for that matter cannot be said to constitute any representation or assurance to any citizen or any other person that there can be or there will be no enhancement or revision of duties in future. The power to tax, including the

fixation of rates, is an essential legislative function and even this Court as well as the Apex Court have repeatedly laid down that there can be no estoppel against the legislature or legislation making bodies or authorities disentitling them to revise the rates of tax from time to time. That apart, the case on hand does not have the required factual basis and that no promise or assurance of any kind having been pleaded or proved to apply the principle of estoppel in considering the claim of the petitioner.

8. The question regarding the rate of increase, be it steeply as in this case, is not a matter with which courts can concern themselves, they being matters of policy and subject to the law made by the competent authority with the only safeguard of the same conforming to the constitutional requirements. The fixation of rate or quantum of tax has been often held to be a matter of legislative policy and that this Court will rarely entertain any challenge to a taxing legislation on the ground of the rates being too high. The submission of the learned Counsel in this regard does not therefore merit my acceptance. So far as the plea based on Article 14 of the Constitution of India is concerned, classification based on the actual import in terms of Section 15(1)(a) of the Customs Act, 1962 is just and reasonable, relevant and rational having regard to the nature of the levy. The Supreme Court has held that the rate and valuation in force on the date on which the bill of entry was presented u/s 46 was one relevant (Vide *M/s. Shah Devchand and Co. and another Vs. Union of India and another*,). There is no discrimination as such among the class of importers who had their imports effected into this country in the matter of levy of customs duty on the basis of the principle contained in Section 15(1)(a) of the Act. The contract for supply with the foreign supplier though has been made prior to the date of introduction of the Bill for enhanced rate of duty, the said fact has no relevance whatsoever so far as the levy in question, which has to be in accordance with the stipulation in Section 15(1)(a) of the Act in view of the decision of the Apex Court referred to supra. The charge or levy of duty is on the event of import at the point to be fixed u/s 15(1)(a) of the Act and, therefore, the activities of the petitioner which precede the criteria fixed u/s 15(1)(a) of the Act can have no relevance in the matter of application to [of?] the rate of duty or the valuation of the goods imported. The rates of duty and tariff valuation applicable to a particular case of import is the one prevailing on the date on which bill of entry is presented u/s 46 in view of Section 15(1)(a) of the Act, and consequently the plea of discrimination, in my view, has no substance and pales into insignificance. It has often been held that tax levied or imposed validly does not constitute infringement of any fundamental right of a citizen including the one secured under Article 19(1)(g) of the Constitution of India and therefore, the challenge on this ground is also of no substance. There is no and in fact there cannot be any challenge to the legislative competency of the Parliament to pass the Amendment Act, 1982 in question, before me at the time of hearing.

9. The challenge to the impugned proceedings and the Amendment Act having thus failed, the writ petitions shall stand dismissed. No costs.