

(1987) 04 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No's. 2951, 2952, 3467 and 3469 of 1987

C. Selvakumar

APPELLANT

Vs

Assistant Collector of Customs

RESPONDENT

Date of Decision : 03-04-1987

Acts Referred:

Customs Act, 1962 — Section 15, 15(1), 2(3), 25, 25(1)

Citation : (1989) 42 ELT 207

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Advocate : V.M. Lenin, for the Appellant;

Judgement

1. All these writ petitions are filed for writ of mandamus, for bearing the respondents from levying and collecting customs duty on the goods

imported by the petitioners in pursuance of the Customs Notifications No. 40 of 1987, dated 4-2-1987, and directing the respondents to release

the goods.

2. In all the four writ petitions, the facts are similar and the points raised are the same. For the sake of convenience of narration and discussion. I

shall take up W.P. No. 2951 of 1987 first.

3. W.P. No. 2951 of 1987 : The writ petitioner is an importer of pulses for domestic consumption. In accordance with the import policy of the

Government of India as published for the period April 1985 to March 1988, all eligible importers are required to register their contracts with the

National Agricultural Co-operative Marketing Federation of India (NAFED). In keeping with this, the petitioner had also registered his name and

for the past over two years, the petitioner had been importing pulses.

4. Under Chapter VII of the First Schedule to the Customs Tariff Act, 1975, the following entry is found :

Heading Sub-heading Number and Rate of Duty Duration

No. Description of Articles Standard Preferential when rates
areas of duty

(1) (2) (3) (4) (5)

07.01/ Vegetables fresh dried 100% 90%

deby" drafted or evaporated
provisionally preserved,
but not specially prepared
for immediate consumption
direct leguminour vege-tables
including pulses, shelled or
unshelled, roots and tubers with
high starch content; sagopith

By Notification No. 129, dated 2-8-1976, exemption was granted from payment of duty on pulses. However, by notification No. 40 of 1987, dated 4-2-1987, the Government of India amended the same as follows :

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being

satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in

the Department of Revenue and Banking, No. 129/76-Customs, dated the 2nd Aug., 1976 namely :

In the said notification for the words ""from the whole of the duty of customs leviable thereon which is specified in the said First Schedule"". The

words ""from payment of so much of that portion of the duty of customs which is specified in the said First Schedule as in excess of twenty-five per

cent. ad valorem shall be substituted.

The petitioner has imported 153 M.T. of Dun Peas (Australia Farm) from Portland (Australia to Tuticorin) by vessel M.V. KOGGEG RACH T.

When the goods arrived at the port on 3-3-1987, inasmuch as the Customs authorities, acting on the basis of this notification, sought to assess the

petitioner to customs duty and on his refusal to pay the customs duty clearance of goods had been denied to him, it has become necessary for the

petitioner to file the writ petition.

5. Mr. V. M. Lenin, learned Counsel for the petitioner, urges before me that it was on the basis of Notification No. 129, dated 2-8-1976, which

existed at the time of the petitioner placing orders that the import has been made and that notification would govern the rights of the parties. If really

there is to be a denial of that exemption, proper notice ought to be given as laid down in *Clements v. County of Devon Insurance Committee*,

(1918) 1 KB 101. Even with regard to reckoning of limitation, normally it is only from the date of knowledge. Insofar as the petitioner herein did

not have knowledge of the impugned Notification No. 40 of 1987, it cannot be said that he is liable for customs duty. In support of this learned

Counsel relies on *R. H. C. Raj Singh v. Dy. Land Aco. Officer*, (1962) 2 M.L.J. 10 . Therefore if any step adverse to the interests of the citizen is

sought to be taken, it could be only after notice.

6. In any event, extending this to Tamil Nadu alone violates Article 14 of the Constitution of India because it has been laid down in *Excise*

Commissioner Uttar Pradesh Allahabad and Others Vs. Prem Jeet Singh Gujral and Others, that such a discrimination will be violate of the equality

clause.

7. At any rate, lastly it is urged that the word "import" which occurs at various places cannot be constructed, in a manner against the citizen who,

acting upon a particular notification of exemption, placed orders and committed himself and therefore, as laid down in *Stock v. Frank Jones*

(*Tipton*) Ltd. (1978) 1 All. ER 948 , if an anomaly is sought to be prevented, it must be in favour of the petitioner. The moment the goods are

exported from Australia, customs duty is attracted and therefore, it is that date which is relevant.

8. The question that arises for my consideration in this case is what exactly is the

relevant date for the purposes of attracting customs duty.

9. For this, I need only to refer to Section 2(3) of the Customs Act, 1962. That defines "import" as follows :

Import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India"".

Then, with regard to the date for determination of rate of duty and tariff valuation of imported goods, it is Section 15(1)(a) which will be relevant

and that is extracted as below :

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

(a) in the case of goods entered for home consumption u/s 46, on the date on which a bill of entry in respect of such goods is presented under that section"".

What had happened in this case was, by exercise of the power u/s 25, an earlier notification had come to be issued exempting the import of pulses

at 100 per cent. ad valorem from customs duty. But under the present notification what is sought to be done is, the exemption will be as in excess

of 25 per cent. ad valorem. Therefore, once there is a power to grant exemption, that can be absolute or that can be partial or that can be subject

to certain conditions. No importer can claim absolute exemption as of right. The normal position is, every import attracts duty under the Customs

Tariff Act unless otherwise exempt. That is why it is always stated that there is no right of exemption as such. In order to fall within the scope of

exemption, one has to qualify himself within the four corners of the notification of exemption. Now, in this case, as the facts disclose, the goods had

arrived at the Tuticorin Port only on 3-3-1987. Notification No. 40 of 1987 came into force on 4-2-1987. At this stage, it requires on my part to

mention that there are certain other cases in which the controversy is whether it came into force on 4-2-1987 itself, the date of notification, or on

17-2-1987 when alone, according to the petitioner therein, it came to be published in the gazette. But that controversy does not arise in this case

because, admittedly, the goods arrived only on 3-3-1987. It is, only then the bill of entry could be presented. It is this date which is relevant u/s 15.

As a matter of fact, under identical circumstances, I held in K. Jamal Co. v. Union of India 1981 ELT 162 that the relevant date for the import of

goods was the date of presentation of the bill of entry and not the date when the ship arrived in the territorial waters of India. The ratio of that

decision squarely applies here. The same view had come to be taken in *M. Jamal Company Vs. Union of India and Others*, by a Division Bench of

this Court. It held, -

Chargeability to customs duty does not start when the goods are in the "territorial waters" of India but only when they get mixed up with the mass of India.

It requires to be noted that the Division Bench also rejected the connection of promissory estoppel in the following words :-

The "promissory estoppel" as the name itself would suggest that a promise, in whatever form, it may be, is an essential element. In the present

case, no promise whatsoever was made by the Govt. to keep the exemption granted by Notification No. 129/77, dated 1-7-1977 alive indefinitely

and upto a certain point of time. Therefore, exemption could be at any point of time put to an end. If that notification is contracted with another

notification in respect of the same product bearing No. 390/76, dated 2-8-1976 in which it is specially stated that the notification would be in force

upto and inclusive of 31-3-1977 any person affected by such withdrawal could plead promissory estoppel if notification was withdrawn before the

expiry of that duration. It is not so in the present case. Further, the Notification itself being u/s 25 of the Act is only to the effect suspending

temporarily the Collection of Customs duty. Such an exemption is by its very nature susceptible of being revoked or modified or subject to

conditions at any point of time unless there is an indication to the contrary in the notification itself. At any rate no justifiable prejudice was caused to

the appellants in the absence of any promise by the Govt., to keep the total exemption alive all the time. Further in this case, there was not only

absence of promise but the Government was acting in discharge of their function under the law therefore, the doctrine of estoppel would not be

available to the Appellants.

A similar view had come to be expressed in *Jain Shudh Vanaspathi Ltd. and Another v. Union of India and others* 1983 ELT 1688 Del. by the

High Court of Delhi. It was held therein that the rate of customs duty cannot be calculated at the point of time when ship enters the territorial

waters of India but at the point of time when the goods are to be loaded from the ship so that thereafter they form part of the mass of the goods in

the country of consumption. Again it was held therein that a notification of exemption issued u/s 25(1) of the Customs Act is a legislative order and

estoppel cannot be pleaded against the operation of the statute. Finally, I may refer to the ruling of the Supreme Court in Collector of Customs,

Calcutta and Another v. G. Dass & Co. and Others 1988 ELT 1511 (S.C.) wherein it has been categorically laid down that the presentation of bill

of entry would be decisive date for the levy of duty whether it is presented before the landing of the goods or after the goods are landed.

10. Thus the authorities are unanimous that it is the date on which the bill of entry is presented that is relevant. If the law is such, I am unable to

accept the arguments of Mr. Lenin that there must be proper notice. In my consideration view, the publication in the gazette would itself constitute

proper evidence u/s 81 of the evidence Act. Nor again am I able to accept the arguments that there is any violation of Article 14 in this case. The

decision in Excise Commissioner Uttar Pradesh Allahabad and Others Vs. Prem Jeet Singh Gujral and Others, has no application to the facts of

this case because as pointed out earlier the grant of exemption is a legislative Act and there can be no estoppel and the question of public interest

cannot arise in such cases as laid down in Jain Shudh Vanaspathi Ltd. and Another v. Union of India and Others 1983 ELT 1688 (Del.) .

11. Then again, in Jain Shudh Vanaspathi Ltd. and Another v. Union of India and Others 1983 ELT 1688 (Del). it has been held :

The power to issue a notification u/s 25(1) of the Customs Act is not in any way violating the mandate of Parliament because the power to issue a

notification u/s 25(1) is a delegation of the legislative power given to the Central Government and in any case, where placed before the Parliament.

Therefore, if the same Central Government which initiated notification and amended it subsequently u/s 25(1) *ibid*, it cannot be said that the Central

Government cannot modify the total exemption or partial exemption.

In matter of policy decisions concerning international trade and commerce, the decision taken by the authorities concerned must be accepted

without demur and court should not be expected to launch into the desirability, the economic wisdom, the soundness of immonestarists policies

which are necessarily involved when such decisions are taken by the Central Government being beyond the keen of Judicial scrutiny and field in the absence of any constitutional infirmity.

What duty is to be imposed are matters of administrative policy with which the courts have no concern for the simple reason that they do not have the expertise nor possess all relevant information".

Therefore, there is no question of anomaly for the petitioner to invoke *Stock v. Frank Jones (Tipton) Ltd.* (1978) 1 All. ER 948.

12. Thus, looked at from a new point of view, I find that the writ petition carries no merit.

13. W.P. Nos. 2952, 3467 and 3469 of 1987 : As already stated, these writ petitions raise the same points as W.P. No. 2951 of 1987. The bill

of entry in respect of W.P. No. 2952 of 1987 was presented on 3-3-1987. The bill of entry concerned with W.P. No. 3467 of 1987, was,

admittedly presented after 17-2-1987. As for W.P. No. 3469 of 1987, the bill of entry was presented on 27-3-1987. Applying the principles laid

down in W.P. No. 2951 of 1987, I see no merit in these writ petitions also.

14. In the result, all the four writ petitions are dismissed. No costs.