(1994) 09 SC CK 0143

In the Supreme Court Of India

Case No : Writ Petition (C) No. 3216 of 1982

D.C.M. and Another APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 08-09-1994

Acts Referred:

Citation : (1994) 3 SCC 316 Supp

Hon'ble Judges : S. C. Sen, J;K. S. Paripoornan, J;B.P. Jeevan Reddy, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. This writ petition under Article 32 of the Constitution questions the constitutional validity of Section 15(1(b) of the Customs Act, 1962. S. a 15(1 reads as follows;

"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,- (a) in the case of goods entered for home consumption under Section 46, 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 warehouse under Section 68, on the date 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 petitioner imported certain goods by sea. The ship arrived on 23/2/1982. On 24/2/1984, "Bill of entry for warehousing" was filed on behalf of the petitioner. Accordingly, the imported goods were warehoused. The petitioner got the said goods cleared from the warehouse between 3/3/1982 and 15/4/1982. Applying Section 15(1(b), the custom duty in force on the respective dates of

clearance from the warehouse was levied. It is the said circumstance that has occasioned the attack upon the constitutional validity of the said provision.

3. Section 15 prescribes the date for determination of rate of duty on imported goods. Ss. (1 contains three clauses. According to clause (a), where the goods are entered for home consumption under Section 46, the rate in force on the date of filing of the bill of entry is the relevant date. Clause (b) says that where the goods are cleared from a warehouse under Section 68, the rate of duty shall be the one in force on the date of actual removal from the warehouse, while clause (c) says that in case of goods not covered by clauses (a) and (b), the rate payable shall be the rate in force on the date of payment of duty. In this case, we are concerned with clause (b).

4. Section 46 of the Customs Act provides that a bill of entry may be filed either for home consumption or for warehousing, for which separate forms are prescribed under the Act. Section 47 provides that where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid appropriate import duty, if any, assessed thereon and charges, if any, payable under the Act, he may permit clearance of the goods for home consumption.

5. Section 68 provides for clearance of warehoused goods for home consumption by the importer. It says that where an importer warehouses the imported goods, he can clear them for home consumption by filing a bill of entry for home consumption in respect of such goods in the prescribed form and on payment of the import duty and other charges thereon. In other words, where the initial bill of entry is filed for warehousing and the imported goods are warehoused, a separate bill of entry for home consumption has to be filed when the importer wishes to clear the goods from warehouse for home consumption. It is the date of such clearance for home consumption that is prescribed as the relevant date for determining the rate of duty. We are unable to see how the provision can be characterised as discriminatory.

6. Learned counsel for the petitioner, however, sought to sustain his plea of discrimination on the following reasoning: according to Section 12, custom duty is leviable on goods imported into India, which means that date of import is the date relevant for determining the incidence and rate of duty. Once the goods are landed and are warehoused on the territory of India, the goods are imported into India and it is the date of import that should determine the duty. Prescribing a later date, viz., date of clearance from warehouse is irrelevant for the purpose of entry. Section 15(1(b) providing for such a course is discriminatory and violative of Article 14 inasmuch as the duty may be larger on the date of clearance under Section 68 than on the date of actual import. It is not possible to agree.

7. The first aspect to be noticed is that Section 12 opens with the words "except as otherwise provided in this Act or any other law for the time being in force". Thus, Section 12 is subject to Section 15 among others. Secondly, Section 12

does not purport to prescribe the date with reference to which rate of duty shall be determined. It only says that duties of customs shall be levied at such rate as may be specified under the Customs Tariff Act on goods imported. It is Section 15 that prescribes the date with reference to which the rare of duty and tariff valuation of imported goods shall be determined. A reading of S. 15, 46 and 68 makes it clear that they provide an option to the importer either to file a bill of entry for home consumption straight away (in which case he has to pay the duty determined with reference to that date) or to file a bill of entry for warehousing. In the latter case, the goods are merely warehoused. The import duty will be levied at the rate and on the basis of the valuation determined in accordance with the provisions prevailing on the date of clearance from the warehouse for which purpose the importer has to file a fresh bill of entry for home consumption. In other words, it is the date of filing the bill of entry for home consumption which determines the rate of duty in clauses (a) and (b) of Section 15. Inasmuch as the matter is left to the option of the importer and also because a uniform principle is adopted by the Act, as explained above, we see no room for any legitimate grievance of discrimination. There is also no presumption that rate of duty always goes up. It may also go down, in which case, the importer stands to gain.

8. The writ petition accordingly fails and is dismissed with no order as to costs.

