
(1982) 09 BOM CK 0015
In the Bombay High Court

Devpal Dhir

APPELLANT

Vs

B.V. Kumar and another

RESPONDENT

Date of Decision : 20-09-1982

Acts Referred:

Customs Act, 1962 — Section 15(1), 17(1), 17(2), 30(1), 31(1)

Citation : (1989) 19 ECC 214 : (1987) 32 ELT 459

Hon'ble Judges : V.S. Kotwal, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—This is an appeal preferred against the judgment dated September 20, 1982 delivered by Mr. Justice Bharucha dismissing Writ Petition filed by the appellant seeking a writ of mandamus for quashing and setting aside the order dated February 26, 1979 passed by the Collector of Customs (Appeals) Bombay, declining to grant refund to the appellant. Few facts which are not in dispute and which gave rise to the filing of the petition under Article 226 of the Constitution of India are as follows :

2. The appellant imported three consignments of Australian Greecy Wool by s. s. 'Staraat Lagos'. The vessel entered Indian territorial waters on June 10, 1977 and the appellant presented bills of entry to the Customs authorities on June 13, 1977. The import general manifest was filed by the Agent of ship owners on June 16, 1977. The Customs duty payable upon the imported goods was at the rate of 45% ad valorem on the date when the ship entered the territorial waters. The rate was increased 75% ad valorem at mid - night of June 17 and 18, 1977. Though import general manifest was filed on June 16, 1977 as contemplated u/s 30(1) of the Customs Act, 1962, entry inwards was granted to the vessel by the Customs authorities u/s 31(1) of the Customs Act only on June 20, 1977. Even before the grant of entry inward, the Customs Officer had assessed the duty on the basis of bills of entries filed by the appellant and passed an order levying duty at the rate of 45% ad valorem on June 15, 1977. The Customs Officer revised the duty on June 23, 1977 to the rate of 75% ad valorem.

3. The appellant paid extra duty as demanded by the Customs authorities and cleared the imported goods. The appellant thereafter filed refund applications for a sum of Rs. 2,74,877.40 on December 6, 1977. The appellant claimed that the imported goods were liable to duty as was prevalent on the date the imported goods crossed Indian territorial waters. The claim was rejected by the Assistant Collector by order dated March 6, 1978 and the appeal preferred by the appellant before the Collector also ended in dismissal by order dated February 26, 1979. The appellant authority took the view that the assessment is complete when the duty is assessed and realised. The appellant thereupon preferred Miscellaneous Petition No. 1042 of 1979 in this Court under Article 226 of the Constitution of India and the learned Single Judge by the impugned judgment dismissed it holding that the Customs authorities could not have completed the assessment prior to the date of grant of entry inward and, therefore, the endorsements made on the bills of entries on June 15, 1977 are of no consequence. The learned Judge also felt that the appellant cannot secure relief under Article 226 of the Constitution as the justice was not on the side of the appellant. The judgment of the learned Single Judge is under challenge.

4. Mrs. Mody, learned counsel appearing on behalf of the appellant, submitted that the assessment was complete on June 15, 1977 when the endorsement was made by the Customs Officer on the bills of entries in exercise of powers u/s 17(2) of the Customs Act. It was urged by the learned counsel that it is not permissible for the Customs Officer to reopen the assessment as there was no power to review the completed assessment and power is conferred u/s 129 of the Act only on the higher authorities to review assessment by adopting suo moto proceedings. There cannot be any doubt as to the accuracy of the submission made by the learned counsel, but the question which requires determination in the present case is whether the Customs Officer had any authority to complete the assessment on June 15, 1977. To determine the question whether the Customs Officer was authorised to assess the imported goods on June 15, 1977, it is necessary to make reference to some of the provisions of the act. Section 46(1) of the Act provides that the importer of any goods shall make entry thereof by presenting to the proper officer, a bill of entry for home consumption in a prescribed form. Section 17(1) provides that after the importer has entered the imported goods u/s 46 of the act, then the Customs authorities shall examine and test whether the goods imported are properly described in the bills of entries. Sub - section (2) of Section 17 requires the proper Officer after examination and test to pass the order of assessment. It is permissible under the provisions of the Act for the importer to present the bills of entries at any time after the goods entered the Indian territorial waters. Section 30 of the Act requires that the person - in - charge of the conveyance carrying imported goods shall, within twenty - four hours after arrival thereof at a customs station, deliver to the proper officer an import manifest and on such manifesting, proper officer has to grant entry inward.

Section 15(1) of the Act provides that the rate of duty applicable to any imported

goods shall be the rate and valuation in force 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 the Section. The proviso to Section 15(1) is important and is hereafter set out : "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."

It is, therefore, obvious that though the importers have been given facility to present the bill of entries even before the entry inwards is granted u/s 31(1) of the Act, the bill of entries shall be deemed to have been presented only on the date of such entry inwards. Thus proviso of Section 15(1) of the Act is relevant because the rate of duty in the case of goods imported for home consumption is to be ascertained with reference to the date on which a bill of entry is presented. It is, therefore, obvious that even though the importer presents the bill of entry prior to the date of grant of entry inwards, the bill of entry would be deemed to have been presented only on the date of entry inwards. It is, therefore, clear that the rate of duty has to be ascertained and assessed with reference to the date of entry inwards.

In the present case, the appellant presented the bills of entries on June 13, 1977 and the entry inwards was granted on June 20, 1977 and, therefore, in accordance with the proviso to Section 15(1) of the act, the bills of entries shall be deemed to have been presented on June 20, 1977 and that being the relevant date for the purpose of ascertaining the rate of duty payable on the imported goods, it is not in dispute that on June 20, 1977, the rate of duty prevalent was 75% ad valorem. In this background, it is necessary to examine whether the Customs Officer has authority or jurisdiction to complete the assessment on June 15, 1977 i.e. long before the grant of entry inwards. In our judgment, in view of the provisions of sections 15 and 31, the right of the Customs Officer to pass order of assessment can arise only after the date of grant of entry inwards. The Customs Officer is authorised to complete the assessment after inspection of the imported goods and by testing them, if necessary, u/s 17(1) and (2) of the Act. It is undoubtedly true that the Customs officer may not avail of this right to inspect and test the imported goods but combine reading of Sections 15 and 16 leaves no manner of doubt that there is a prohibition restraining the Customs Officer to complete the assessment before the date of grant of entry inwards. Mrs. Mody invited our attention to sub - section (4) of Section 17 of the Act and submitted that it is open for the Customs Officer to avail of the opportunity to inspect and test the imported goods even after completion of the assessment. The submission overlooks that sub - section (4) of Section 17 of the Act is only an enabling power and the right has been conferred to inspect of goods even though at the initial stage the Customs Officer had not availed of the opportunity. In our judgment, it is not possible to read the provisions of sub - section (4) of Section 17 of the Act as to authorise the Customs Officer to complete assessment even prior to a date of grant of entry inwards. The Customs Officer

had no jurisdiction to assess the bills of entries prior to the date of entry inwards and, therefore, the endorsement made by the Customs Officer on the bills of entries presented by the appellant on June 15, 1977 cannot be treated as the completed assessment. The endorsement of the Customs Officer has to be totally ignored as the same was made without any authority.

5. Mrs. Mody then submitted that Section 31(1) of the Act casts a duty on the proper officer to grant inwards to the vessel and it should be construed that this duty must be carried out forthwith on presentation of import general manifest by the person in charge of the conveyance. It is not possible to hold that it is the duty of the proper officer to grant entry inwards forthwith. The grant of entry inwards depends upon the availability of the berthing accommodation and it is common knowledge that due to heavy congestion in the port, it is not possible to grant entry inwards forthwith on presentation of the import manifest. The vessel has to wait for days together and grant of entry inwards depends upon the availability of accommodation. In our judgment, the mere fact that the proper officer is unable to grant entry inwards forthwith would make no difference to the liability of the importer to pay customs duty in accordance with the provisions of Section 15(1) of the Act.

6. Mrs. Mody finally submitted that the Customs authorities are guilty of discrimination and referred to paragraph 9(f) of the petition in this connection. It is claimed by the learned counsel that the Customs authorities accepted the date of filing of the import general manifest as the date of entry inwards and referred to bill of entry No. 4495, dated July 21, 1977. We enquired from the learned counsel as to whether in the case referred to by the appellant, there was any difference in the duty payable on the date of filing of the import general manifest and the date of grant of entry inwards, and the learned counsel very fairly stated that it is not possible to claim so. It is, therefore, obvious that the complaint of the discrimination is devoid of any merit. Even otherwise, the mere fact that the illegality has been committed by the Customs authorities in one case cannot confer right upon the appellant to insist that such illegality should be perpetuated in all the cases. In our judgment, the learned Single Judge was right in dismissing the petition and the appeal must fail.

7. Accordingly, appeal is dismissed with costs.