(1961) 07 CAL CK 0023

In the Calcutta High Court

Case No : Appeal No. 208 of 1958

G. Dass and Company APPELLANT

Vs

D.P. Anand RESPONDENT

Date of Decision : 14-07-1961

Acts Referred:

Sea Customs Act, 1878 — Section 29, 37, 57, 86

Citation : (1962) 2 ILR (Cal) 221

Hon'ble Judges : Bose, C.J;G.K. Mitter, J

Bench : Division Bench

Advocate : E.R. Meyer and T.K. Bose, for the Appellant; G.P. Kar and A.K. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

G.K. Mitter, J.—This appeal from the judgment of Sinha, J. involves the interpretation of two sections of the Sea Customs Act, namely, Sections 37 and 86. The material portion of Section 37 runs as follow:

The rate of duty and the tariff-valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill of entry thereof is delivered to the Customs Collector u/s 86. Explanation.-A Bill of entry shall, for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs.

2. Then Section 86:

The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home consumption or warehousing by delivering to the Customs Collector a bill-of-entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in Section 29, as may, from time to time, be prescribed by the Chief Customs Officer.

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

3. The facts, leading to the making of the application which was ultimately rejected by Sinha, J. are as follows:

The Petitioner Appellant carries on business as an exporter and importer of betelnuts and had imported split betelnuts from Penang under a Bill of Lading, dated April 15, 1955, the consignor being T. N. Sharma Ltd. The goods were loaded on the vessel "S. S. Eastern Queen" which entered the Port of Calcutta on or about April 27, 1955. There is no dispute that on the date when the vessel entered the Port, the rate of duty payable on these goods was Re. 1 per lb. By a Notification of the Government of India, Ministry of Finance (Revenue Division) Notification Custom No. 82, dated the 30th of April, 1955, and published in Pt. II, Section III of the "Government of India Gazette, "Extraordinary," the said duty payable on goods of the above class was reduced to 12 annas per lb.

4. The Steamer commenced discharging her cargo after April 30, 1955, and, according to the Petitioner, the goods were landed on or about May 7, 1905. Under a prevailing practice in the Customs House at Calcutta, the Petitioners were allowed to file a bill-of-entry even before the landing of the goods in order to save demurrage and in order that the goods might be cleared as soon as they were landed. It will be noticed that although u/s 86 mentioned above, the bill-of-entry can be filed only after the landing of the goods, a practice had grown up of allowing such bills-of-entry to be filed before the landing in order to facilitate the clearing of the goods. On April 27, 1955, it was not known that the rate of duty was going to be reduced and, accordingly, duty was assessed and paid by the Petitioner at Re. 1 per lb. After clearing the goods, the Petitioner made an application to the Collector of Customs sometime thereafter for refund of the excess duty paid, calculating the duty leviable at 12 annas per pound. This application for refund was rejected by the Assistant Collector of Customs for Appraisement on March 5, 1956. The Assistant Collector noted in his order that "the ''prior entry'' bill of entry "is deemed to have been delivered on the final entry inwards of "the vessel for the purposes of Section 37, Sea Customs Act. The "vessel entered inwards on April 27, 1955. The reduction in the "rate of duty became effective from 30-4-55. The goods were "correctly assessed to duty on the basis of the rate of Duty in "force on 26-4-55 and no refund is, therefore, due. The claim for "refund of duty is accordingly rejected."

5. The Petitioner preferred an appeal from the said order to the Collector of Customs and the latter Officer by his order, dated April 1, 1957, noted that:

The bill-of-entry covering the subject consignment having been filed under the "prior entry" system the goods have been correctly assessed to duty at the rate prevalent on the date of the final entry of the relative vessel, i.e., on 27-4-55.

6. Accordingly, he saw no reason to interfere with the order passed by the Assistant Collector of Customs for Appraisement and rejected the appeal.

7. An application in revision was preferred by the Petitioner to-the Ministry of Finance (Department of Revenue), New Delhi. By communication, dated July 22, 1957, the Petitioner was informed that the Government of India saw no reason to interfere with the order in appeal passed by the Collector of Customs Calcutta.

8. The Appellant''s petition was affirmed on November 19, 1957. After setting out the facts, the Appellant set forth the grounds of his petition in para 15. They are as follows:

(a) Under the provisions of the Sea Customs Act, 1878, no bill-of-entry in respect of any consignment of goods can be filed prior to the actual landing thereof from the importing vessel. Since your Petitioner''s consignment was landed after the 30th April, 1955, the rate of duty applicable thereto was 12 per lb. in terms of the said notification, dated 30th April, 1955.

(b) The amendment of Section 37 on the basis of which the Respondent No. 2 proceeded in making his order came into force on the 7th May, 1955. Since the said amendment was not made retrospective the amended Section 37 of the said Act did not and could not apply to your Petitioner''s case.

9. An affidavit in opposition was affirmed by the Assistant Controller of Customs for Appraisement on February 3 1958 In para 5 of this affidavit, it was stated that the bill-of-entry in respect of the aforesaid consignment was filed with the Collector of Customs on 26th April, 1955, and it was marked by the Customs Authorities with the rubber stamp (Before Entry) as the said vessel did not enter the Port finally till April 27, 1955. There is no denial of the facts mentioned in the petition but the contentions of the Petitioner are disputed by the deponent Gurcharan Singh Sawhney, the Assistant Collector of Customs for Appraisement. According to this deponent, the bill-of-entry for the purpose of Section 37 should be deemed to be delivered when it was first presented to the proper officer of Customs and having been delivered in this case on April 27, 1955, the duty was properly appraised thereon.

10. The learned Judge was of the view that the point of time when the rate of duty was to be calculated was linked with Section 86 and, according to him, the bill-of-entry for consumption could only be submitted after the goods were landed and if the matter stood there, then undoubtedly the point of time to be considered would be the point of time after the goods were landed. But the learned Judge went on to add that the situation altered under the Explanation given to Section 37 and the deeming provisions contained therein made the time for delivery of bill-of-entry to be taken as the time for the purpose of assessment of duty. With all respect to his Lordship, it appears to me that that is not the proper interpretation to be given to this section. According to Section 86, a bill-of-entry could only be filed after the landing of the goods from the importing ship. The Customs Authorities could, therefore, properly reject any bill-of-entry filed before the landing of the goods and could ignore any bill of entry filed prior to such landing. In order, however, to facilitate the working of clearing the goods

immediately after the landing, they used to allow bills-of-entry to be filed even before landing. Normally, one would not expect the rate of duty to be altered in between the date of filing of the bill-of-entry and that of the landing of the goods. The unexpected, however, had taken place in this case. Section 37, as it stood before the amendment of 1955, provided that the rate of duty was to be calculated on the basis of the bill-of-entry delivered to the Customs-Collector u/s 86. In terms of the explanation to that section the point of time at which delivery was to be considered for the purpose of assessment of rate of duty was the time when it was first presented to the proper officer of Customs. The explanation, however, does not detract from Section 86 as indeed Section 37 is expressly subject to Section 86. Consequently, in order that a bill-of-entry may be considered to be a valid bill-of-entry, it must fulfil the test u/s 86 that is to say, it must be filed on the landing of the goods. If the bill-of-entry be filed before such landing, as already mentioned, if would be optional on the part of the Customs Authorities to reject it; on the other hand, they could keep it and proceed to assess the rate of duty as on force on the date when the goods were landed. In order to legalise the position and to provide for acceptance of bills-of-entry before the landing of goods, both Section 86 and Section 37 of the Act were amended in 1955. Section 86, as amended now runs as follows:

The owner of any goods shall, after the delivery of the manifest by the master of the vessel in which they are imported, make entry of the goods for home consumption or warehousing by delivering to the Customs Collector a bill-of-entry thereof with such number of copies, in such form and containing such particular in addition to the particulars specified in Section 29, as may, from time to time, be prescribed by the Chief Customs Officer.

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

11. It will be noticed that the provision as to the delivery of goods after landing of the goods has been done away with and the section now provides that the bills-of-entry can be delivered as soon as the manifest of the goods is made by the master of the vessel and delivered--a process which might be completed some days before the landing of the goods. Section 37 has likewise been amended by altering the Explanation as follows:

A bill-of-entry shall, for the purposes of this section, be deemed to be delivered.

(a) when it is first presented to the proper officer of Customs; or

(b) where it is delivered in anticipation of the arrival of the importing vessel, on the date on which an order is given u/s 57 for the entry of the vessel inwards.

12. The portion added to the Explanation clearly shows that a bill-of-entry can be delivered in anticipation of the arrival of the importing vessel. Section 37 even after amendment is made subject to Section 86, but, as Section 86 in its turn has already been amended, as noted above, there is now no difficulty in the way

of an importer filing his bill-of-entry in anticipation of the arrival of the vessel.

13. But this, certainly, was not the position at the time when the consignment in question reached Calcutta. Having treated the bill-of-entry submitted by the Petitioner in this case as a proper bill-of-entry and assessed duty thereon and levied the same, it does not lie in the mouth of the Customs Authorities now to turn round and to say that the bill-of-entry was improper and nothing could be done on the said bill-of-entry and no order could be passed on the basis of the said bill-of-entry as a proper bill-of-entry. The question really is whether the Respondents, specially, the first Respondent, was justified in making an order refusing to refund the extra amount of duty paid. His decision that, as the vessel entered inwards on April 27, 1955, the goods were correctly assessed to duty on the basis of the rate of duty in force on April 36, 1955, i.e., the date of submission of the bill-of-entry, cannot be upheld. It must, accordingly, be held that a writ of Mandamus should issue calling upon the Respondents to forbear from giving effect to the said order of March 5, 1956

14. The question remains as to whether it would be proper to make an order for refund of the excess amount of duty levied by the Respondent No. 1. In view of the decisions of the Supreme Court, to which our attention was drawn by the Learned Counsel for the Appellant, we see no difficulty in the way of our doing so. In the latest judgment of the Supreme Court on this point in the case of Universal Imports Agency and Another Vs. The Chief Controller of Imports and Exports and Others, , the Court quashed the orders made by the Respondents and directed them to refund to the Appellants the amounts illegally collected from them. Against the Appellants before the Supreme Court an order had been made by the Respondents confiscating their goods on the ground that they had been imported without licence. Not only was the order of confiscation quashed but the court directed refund of the amounts illegally collected. This case does not stand by itself and Mr. Meyer drew our attention to other cases wherein the Supreme Court had directed possession of immoveable properties to be made to the successful Appellant and the restoration of goods from others. In the case of Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, where the Supreme Court held that the Court of Wards could not continue in possession of the property of the Petitioner, it ordered restoration of the property to him. In the case of Wazir Chand v. State of Himachal Pradesh and Anr. (1954) S.C.A. 1257 where the goods had been seized from the possession of the Appellants by the police in India at the instance of the police of Jammu and Kashmir, the Supreme Court directed the issue of an appropriate writ to restore to the Petitioner the goods seized by the police.

15. In the result, the appeal is allowed, the order and judgment of Sinha, J. are hereby set aside and a writ is directed to issue in the nature of Mandamus calling upon the Respondents, except Respondent No. 5 Union of India, to refund to the Petitioner Appellant the sum of Rs. 5,661-1-3 pies as the excess of import duty paid.

16. The Appellant will have the costs of this appeal. Certified for two counsel.

17. There will be no order against the Union of India.

Bose, C.J.

18. I agree.

