

(1972) 03 SC CK 0041

In the Supreme Court Of India

Case No : Civil Appeal No. 2137 of 1968

Gangadhar Narsingdas Agarwal

APPELLANT

Vs

P.S. Thrivikraman and Another

RESPONDENT

Date of Decision : 16-03-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 16, 16(1), 2(16), 2(34), 28
Sea Customs Act, 1878 — Section 137, 38, 61
Tariff Act, 1934 — Section 4

Citation : AIR 1973 SC 350 : (1972) 1 CTR 371 : (1983) 13 ELT 1491 : (1972) 3 SCC 475 : (1972) 3 SCR 874

Hon'ble Judges : S. M. Sikri, C.J; M. Hameedullah Beg, J; D. G. Palekar, J; A. N. Ray, J; A. N. Grover, J

Bench : Full Bench

Advocate : Soli Sorabji, P.C. Bhartari, B.D. Bharucha, J.B. Dadachanji and Ravinder Narain, for the Appellant; Jagdish Swarup, Solicitor-General of India, Govind Das and B.D. Sharma, for the Respondent

Final Decision : Allowed

Judgement

A.N. Ray, J.—This is an appeal by certificate from the judgment dated 5 April, 1968 of the Court of the Judicial Commissioner, Goa, Daman and Diu at Panaji.

2. The appellant challenged the levy of export duty of Rs. 98044 on 9804.40 metric tonnes of iron ore shipped on S.S. 'Ardenode' on 3 August, 1966 at the rate of Rs. 10 per metric tonne.

3. The appellant on 26 July, 1966 filed shipping bill in triplicate before the Joint Chief Controller of Imports and Exports Panaji, Goa for the purpose of obtaining export licence in respect of 10,160 metric tonnes of iron ore. On 28 July, 1966 export licence was granted to the appellant. On 30 July, 1966 M/s. Hiralal and Co. agents of the vessel S.S. 'Ardenode' made an application to the Assistant Collector of Customs, Marmagoa for the grant of entry outwards to the said

vessel to load iron ore. On 30 July, 1966 the Assistant Collector of Customs, Marmagoa made an order granting entry outwards to the said vessel S.S. Ardenode and also gave permission to ship cargo on board the said vessel.

4. On 1 August, 1966 the appellant presented to the Customs authorities u/s 50 of the Customs Act, 1962, (hereinafter called the Act), shipping bills in triplicate, dated 26 July, 1966. The appellant in accordance with the provisions of Section 50 of the Act at the foot of the shipping bill subscribed to a declaration as to the truth of the contents of the shipping bills. On 1 August, 1966 the Customs authorities made these entries on the shipping bill 'rotation No. 730 Sd/1 August, 1966' 'Let export after examination if necessary Sd/-1 August, 1966' and 'E.F.-No. 3/1/8/1966'. The abbreviation 'E.F.' means Export Fee. On 2 August, 1966 the Customs authorities made further endorsements on the shipping bill. These endorsements were 'PI as usual and checked, des'; 'Inspected the lot-2-barges-checked des'; and Pd in full'.

5. On 2 August, 1966 there was a notification issued by the Ministry of Commerce in exercise of powers conferred by Section 4A of the Indian Tariff Act, 1934 amending the second schedule to the Tariff Act. The relevant item in the said schedule introduced by way of amendment is 28 and the name of the article is lumpy iron ore and the rate of duty is Rs. 10 per tonne.

6. The S.S. Ardenode arrived at Marmagoa at 23.20 hours on 2 August, 1966. The vessel arrived at Marmagoa Inner Harbour on 3 August, 1966 at 07.50 hours. The vessel commenced loading the cargo on 3 August, 1966.

7. The Customs authorities on 28 January 1967 issued a notice to the appellant notifying that the goods actually shipped by the appellant were subject to export duty at the rate of Rs. 10 per metric tonne and the custom duty amounting to Rs. 98044 which was not levied in respect of the consignment was due from the appellant and the appellant was called upon in accordance with Section 28 of the Act as to why the amount should not be recovered from the appellant.

8. The appellant contended before the Customs authorities that the shipping bill was presented to the Customs authorities and the entry outwards to the ship S.S. Ardenode was given prior to 2 August, 1966 when no duty was payable in respect of the export of the goods in question. The appellant, therefore, contended that the notification u/s 4A of the Tariff Act 1934 was not applicable to the consignment and no duty was payable in respect of the export of the goods having regard to the provisions of Section 16 of the Customs Act. It may also be stated that the appellant impeached the vires of the notification.

9. The Customs authorities on 19 April, 1967 held that by virtue of the provisions of Section 16(1) of the Act the shipping bill shall be deemed to have been presented at the earliest on 3 August, 1966 when the vessel in question arrived. The export duty was levied with effect from 2 August, 1966. The Customs authorities therefore held that the appellant was liable to pay the export duty.

10. The appellant impeached the order of the Customs authorities under Article 226 of the Constitution in the Court of the Judicial Commissioner, Goa, Daman and Diu, Panaji. The Judicial Commissioner upheld the order of the Customs authorities.

11. The entire controversy in the present appeal is whether shipment and export of iron ore by the appellant became liable to the said duty introduced on 2 August, 1966.

12. The relevant provisions for the purpose of the present appeal are to be found in Section 16 which deals with date for determination of rate of duty and tariff valuation of export goods and Sections 39, 50 and 51 which deal with loading of export goods on vessel and clearance of goods for exportation.

13. Section 16 is as follows:

16(1). The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force

(a) in the case of goods entered for export u/s 50, on the date on which a shipping bill or a bill of export in respect of such goods is presented under that section;

(b) in the case of any other goods, on the date of payment of duty;

Provided that if the shipping bill has been presented before the date of entry outwards of the vessel by which the goods are to be exported, the shipping bill shall be deemed to have been presented on the date of such entry outwards.

(2) The provisions of this section shall not apply to baggage and goods exported by post.

14. The appellant contended that the shipping bill was presented on 1 August, 1966 and the order of the Customs authorities for entry outwards to the vessel was also given on 1 August, 1966, and, therefore, the export in the present case was not liable to payment of duty imposed on 2 August, 1966. The Customs authorities on the other hand contended that the vessel arrived at Marmagoa on 3 August, 1966 and the vessel commenced loading on 3 August, 1966, and, therefore, the shipping bill which had been presented before the date of entry outwards 'shall be deemed to be presented at the earliest on 3 August, 1966 when the vessel in question arrived'.

15. The shipping bill under the Customs Act means a shipping bill referred to in Section 50 of the Act. Section 50 is as follows:

50(1). The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

(2) The exporter of any goods, while presenting a shipping bill or bill of export,

shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

In the present case, it is common case that the shipping bill was presented to the Customs authorities on 1 August, 1966 and the Customs authorities made several endorsements on the shipping bill, on the same day. These endorsements permitted export after examination, if necessary. The further endorsements on the shipping bill on 2 August, 1966 indicated that the shipment was inspected, checked and payment in full was made.

16. Section 51 of the Act is as follows:

Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon, and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of goods for exportation.

In the present case, the Customs authorities made endorsement on the shipping bill on 1 August, 1966 permitting export after examination, if necessary. The shipping bill described the goods as 'free goods'. Export licence was also granted on that shipping bill. Sections 50 and 51 of the Act deal with entry of goods for exportation and clearance of goods for exportation. The word 'entry' is defined in section 2(16) of the Act in relation to goods exported in a vessel to mean an entry made in a shipping bill.

17. Entry outwards of a vessel is dealt with in Section 39 of the Act. Section 39 is as follows:

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

Proper officer mentioned in Section 39 of the Act is defined in Section 2(34) of the Act in relation to any functions to be performed under this Act to mean the officer of customs who is assigned those functions by the Board or the Collector of Customs. Section 39 contemplates an order by the proper officer granting entry outwards to such vessel. In the present case, the agents of the ship made an application 30 July, 1966 for entry outwards of the vessel. The Assistant Collector of Customs, Marmagoa granted permission on 30 July, 1966 to ship cargo on board the vessel. u/s 39 of the Act loading of goods is not permissible until an order is made granting entry outwards to the vessel. In the present case, the Customs authorities on 30 July, 1966 made an order granting entry outwards to the vessel.

18. u/s 16 of the Act the date of presentation of a shipping bill is the relevant date for determination of rate of duty and tariff valuation applicable to export goods. Under the proviso to Section 16 of the Act however there is a fictional date for determination of such duty. The fiction is introduced by providing for the date of entry outwards of the vessel to be relevant date in case where the

shipping bill has been presented before the date of entry outwards, of the vessel. The date of entry outwards of the vessel is the order made u/s 39 of the Act.

19. Section 38 of the Sea Customs Act, 1878 was the counter-part of Section 16 of the Customs Act, 1962. Section 61 of the Sea Customs Act, 1878 was the counter-part of Section 39 of the Customs Act, 1962. u/s 38 of the 1878 Act the rate of duty was the rate in force when the shipping bill was delivered u/s 137 of the 1878 Act. Section 137 of the 1878 Act provided for clearance of goods for shipment by delivery of shipping bill, payment of duties and the passing of the shipping bill by the Customs authorities. Section 38 of the 1878 Act had two provisos. Under the first proviso to that old section where the shipment was permitted without a shipping bill, or in anticipation of the delivery of a shipping bill, the rate of duty was to be the rate in force at the time when the shipment of goods commenced. Under the second proviso to Section 38 of the 1878 Act where the shipping bill was in anticipation of the arrival of any vessel or before an order was given for entry outwards of the vessel the shipping bill must be deemed to have been delivered on the date on which that vessel arrived or entry outwards was given whichever was later. Under the provisions of Section 38 of the 1878 Act the Customs authorities had power to apply the rate in force on the date of the arrival of the vessel. u/s 16 of the 1962 Act it is not permissible to do so. The statute does not contain such a provision. Section 16 of the 1962 Act speaks of the fictional date only in relation to the order of date of entry outwards of the vessel. In the present case, the order of entry outwards of the vessel was made prior to 2 August, 1966. Therefore, the Customs authorities in the impugned order acted without jurisdiction in imposing duty on the export by holding that the date of entry outwards of the vessel was the date "when the vessel arrived".

20. For the foregoing reasons the appellant is entitled to an order cancelling the notice dated 28 January, 1967 by which the Customs authorities demanded duty from the appellant. The order of the Judicial Commissioner is set aside. There will be a writ setting aside the notice dated 28 January, 1967 and an order for bearing the respondents from taking any steps or proceedings pursuant to the notice dated 28 January, 1967. There will also be an order quashing the order of the Assistant Collector of Customs dated 19 April, 1967 which gave effect to the notice and held the appellant liable to pay the export duty. The appeal is allowed.

21. In the facts and circumstances of the case each party will pay and bear their own costs.