

(1985) 01 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 848 of 1983

Govind Ram Aggarwal

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

Date of Decision : 21-01-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 12, 14, 15, 15(1), 25
Customs Tariff Act, 1975 — Section 3, 3(1)
Finance Act — Section 44

Citation : (1988) 35 ELT 280

Hon'ble Judges : Padma Khastgir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Padma Khastgir, J.—Govind Ram Agarwalla, the writ petitioner on 18th December, 1982 placed an order for import of 1000 mt. tonnes of Cold Gormed Sections from sheets which was confirmed by the foreign seller. The petitioner opened a letter of credit in with the Bank of Baroda in respect of the said order. The foreign supplier despatched 760.830 mt. tonnes of Cold Formed Sections from sheets as per vessel S.S. Daryalok on 14th of April, 1983. The foreign supplier issued invoices in respect of the said goods on 14th April, 1983. When the said contract was entered into and the shipments were made the duty was leviable on import of Cold Formed Section from sheets galvanized corrugated was 15% per cent ad valorem under the heading 73.13 of the First Schedule to the Tariff Act read with the notifications. Since the goods whereof were of Spanish origin. The Auxiliary duty on the said imports at the time of entering into the contract and at the time of shipment of the goods was at the rate of 20% per cent ad valorem under the provisions of Section 44 of the Finance Act. In addition thereto countervailing duty was leviable u/s 3 of the Tariff Act read with item 26AA of the First Schedule to the Excise Act. By a notification dated 1st of March 1983 the auxiliary duty in respect of Cold Formed Section from sheets

galvanized was enhanced by 5% per cent i.e. from 20% per cent to 25% per cent. By another notification dated 19th May, 1983 the basic duty in respect of galvanized corrugated sheets was enhanced from 30% per cent to 60% per cent. It was the petitioner's case that on 18th of December, 1982 the Central Government made representation to the entire trade industry that the import of the said materials would be entitled to exemption from Auxiliary duty in excess of 20% per cent and countervailing duty in excess of Rs. 850/- plus 10% per cent in metric tonnes. The petitioner Govind Ram Aggarwal acted on the basis of such representation and/or promise of the Govt. of India and entered into the said contract for import of the said materials. By acting on the basis of such representation and/or promises under a bona fide belief and impression that the petitioner would be allowed to clear the goods upon payment of the customs Duty at 15% per cent ad valorem auxiliary duty at 20% per cent ad valorem and countervailing duty at the rate of Rs. 850/- plus 10% per cent per metric tonnes, the petitioner thereby altered its position to its prejudice. The petitioner relying on such representation contracted for importation of the total quantity of 1000 mt. tonnes of Cold Formed Section from sheets galvanized corrugated sheets under the contract dated 18th of December, 1982. But much to his surprise, the Customs Authorities insisted that in respect of the said import covered by the contract dated 18th December, 1982 duties will have to be paid by the petitioner at the increased rates as per the notification dated 1st of March, 1982*, 19th of May, 1983. The Customs Authorities commenced their assessment proceeding on the bills of entry filed by levying the duties at the increased rates. The petitioner contended that the main consideration of levy and collection of customs duty should be the date of importation had started and not the arrival of the goods at the Indian Port and the Customs Authorities are under a bounden duty to make exception of application of enhanced duties and goods when the importers had already entered into firm contracts prior to the issuance of the notification. The petitioners further contended that the duty of clearance of the goods for home consumption or the date of grant of entry to inward vessels could not be the determining factor for the purpose of imposition of customs duties. Apart from that, the petitioner was further aggrieved because landing charges and the charges paid to the Steredors at Ports as also the payments made to the port authorities for the purpose of use of their cranes and winches and other apparatus for the purpose of moving the goods from the wharf are to be paid by the Shipping Company directly to the Port Authorities as that is included in the freight to be charged from the party under C & F contracts. But inspite of that the Customs Authorities insisted on adding a percentage of the value of the goods which ranged around 1% per cent of the value of the goods as loading charges in addition to the C & F value for the purpose of determining assessable value and levying duties of custom. In addition thereto not only the petitioner was required to pay the duty to the customs and landing purpose but to pay the same twice over. The petitioner contended that no customs duty could be levied save and except the valuation at the time of importation. The freight cannot be included as a price of the goods, hence the inclusion of freight element for the

purpose of assessment to the value of the goods imported in arbitrary, illegal and not permissible to be added for the purpose of assessment of the valuation of the goods. The petitioner paid insurance charges amounting to Rs. 9,750 to ensure safe arrival of the goods and for security reasons. Such payment towards insurance should not be treated as part of the price for the purpose of determination of the assessable value. Such insurance charges are independent of the price of the goods. Hence inclusion of the said charges towards valuation of the goods was improper. The inclusion of Rs. 62,000/- towards packing charges according to the petitioner was also erroneous inasmuch as the goods were packed in waste sheet wrappers which were normally used in the trade for packing such goods and those were not strong enough or suitable for any further use. The petitioner contended that he imported goods named Cold Formed Section from sheets felt under Chapter 21 of the Import & Export Policy for the year 1982-83. In Appendix D such goods had been specified and/or permitted and/or imported under the Open General Licence. The petitioner contended that Cold Formed Section from sheets is one of the items which could be imported under Open General Licence. But the Customs Authorities contended that the goods imported by the petitioner cannot be imported under the Open General Licence inasmuch as the goods imported by the petitioner was covered under Item 60 of Appendix VIII inasmuch as the Cold Formed Section were corrugated in form and shape. The import of goods by sea did not commence when the ship carrying the goods entered the territorial waters of India. In paragraph 41 of the petition it was stated that the said vessel "Daryalok" was expected to arrive on 10th June, 1983, hence even before the vessel could arrive at the Port of Calcutta, the petitioner moved this application and obtained an interim order directing the Customs Authorities to allow the clearance of the goods imported by the petitioner upon payment of the rates as indicated in the prayers of the petition.

2. Govind Ram Aggarwal sought for redress in this application on three grounds. First of all it was urged that on the principle of Promissory Estoppel the Customs Authorities should be restrained from realising the enhanced rate. Secondly, the dispute was raised by the petitioner with regard to the classification-made in respect of the goods so imported. Lastly, the petitioner was aggrieved inasmuch as while assessing the valuation of the goods, the Customs Authorities sought to include loading, unloading and/or handling charges as also the insurance and other expenses incurred by the importer. The petitioner contended that the assessment of duties should be made on the valuation of the goods given under the agreement by and between the importers and foreign seller. These goods were agreed to be imported on C.I.F. basis. Under the circumstances, inclusion of the other incidental expenses for the purpose of assessment of the valuation is wrongful.

3. The petitioner, it was contended by the respondents, had attempted to take advantage of the maximum relief granted under the Import & Export Policy. The goods imported by the petitioner were canalised items, hence could not be

cleared under the Open General Licence inasmuch as the said goods fell under Serial No. 60 of Appendix VIII of Import & Export Policy of Govt. of India 1982 to 1983. Galvanized Iron Steel Sheets/Stripes/Coiles plain or corrugated were covered under that item. These goods could only be imported not under the Open General Licence but under specific import Licence. The petitioner was not entitled to import those canalised goods under the Open General Licence. It was only through Steel Authority of India, the Canalising Agency through which such goods could be imported. Any importation of such goods under Open General Licence would amount to unauthorised importation and liable for confiscation under the Customs Act. As per the certificate of origin the goods had been described as prime Galvanized Corrugated Sheets which could only be imported through Steel Authority of India. But in the bills of lading issued by the Scindia Steam Navigation Co. Ltd. goods had been described as prime Galvanized Corrugated Sheets. But the Supplier's invoice wrongly described them as "Prime Cold Formed Section of Sheet Galvanized Corrugated". Hence, there was a discrepancy between what had been stated by the supplier and the goods actually imported. Such certificate had been given to bring the goods under item Appendix to avail the opportunities and facilities of Open General Licence. The Customs Authorities contended that there had been manipulation done to the documents in collusion and connivance between the supplier and the importer. There was no item called Prime Cold Formed Section of Sheet Galvanized Corrugated inasmuch as it combined two irreconcilable words "Sheets & Section" under the same heading. Item 73.13 concerned sheets and plates of iron and steel hot rolled or cold rolled. Hence that item applied to sheets. The petitioner has sought for exemption to the extent of 50% per cent on the basis that the goods fell within the exemption Item No. 13. It is curious that the petitioner had described the goods for the purpose of getting exemption under the Customs Act as Galvanized Corrugated Iron & Steel Sheets, but for the purpose of clearance of the goods under the "Open General Licence of the import policy without the necessity of any specific import licence he had described the goods as Cold Formed Sections with an ulterior motive and thereby tried to get the benefit of both the provisions which the petitioner was not entitled to do Corrugated Sheets cannot be termed as sections. It was the case of the Customs Authorities that the goods so imported fell under Item 60 of Appendix VIII and that being a canalised item except Steel Authority of India no other party could import such goods. The duties leviable in respect of the goods before 8th December, 1982 was different. Subsequently, the rate of duty leviable was changed hence the petitioner could not contend that the goods were liable to be assessed to duty at the rates prevailing at the time of contract with the foreign suppliers inasmuch as Section 15 Sub-section (1) of the Customs Act, 1962 clearly provides under Sub-clause (5) that in case of goods entered for home consumption u/s 46 duty is payable on the date on which the bill of entry in respect of such goods is presented.

4. In the instant case this petition had been moved long prior to the entry of the

goods into the territorial waters of this country. The bills of entry was presented to the Customs Authority on 2nd June, 1983 whereas the notification had been issued enhancing the rates on 1st of March, 1983. The vessel carrying the goods arrived at the Port of Calcutta on the 20th June, 1983 and it was granted entry in ward on that day. Thereafter, the bills of entry was made and the bills of entry had been presented on 20th of June, 1983. Under the circumstances the petitioner was liable to pay additional duty in terms of the notification in respect of the said goods. The petitioner wrongly described the goods in the supplier's invoice from Switzerland to import the goods under the Open General Licence. Item 73.13 apply to sheets and/or plates which had been cut to non-rectangular shape perforated, corrugated etc. But actually the goods imported by the petitioner were not Cold Formed Sections but Cold Formed Sheets which would be corroborated by the manufacturer's certificates. Sections and sheets being two completely different items under two different headings of the Customs tariff, the petitioner could not take advantage of exemption or payment of lesser duty by giving a wrong description of the goods actually imported. In order to get the double advantage of importing the goods and exemption facility of 50% of duty leviable on such goods. For the same goods they were given two descriptions first to import the goods under the Open General Licence and secondly to get the exemption of 50% per cent in respect of the self same goods. The rate of duty prevalent at the date of the contract has no reference in view of specific provision as made by Section 15 Sub-section (1) of the Customs Act. Under the circumstances the petitioner is liable to pay duty at the enhanced rate. For the purpose of Customs Act, entry of vessels in the territorial waters has no relevance. The entry inward means entry into the port for discharge. The vessel arrived at the Port of Calcutta on 20th June, 1983 and it was granted entry inwards on that day only.

5. The duty leviable is governed by Section 12 read with Section 15 Sub-section (1) of the Customs Act. While assessing such valuation, the Customs Authorities were entitled to and/or justified in adding 1% per cent of C.I.F. while computing the assessable value of the goods and can take into consideration of the landing charges paid by the importer in terms of Section 3 Sub-section (1) of the Customs Tariff Act, 1975. The freight could also be included as part of the price of the goods while computing assessable value of the goods for the purpose of calculating the ad_ valorem customs duty thereon. The Customs Authorities follow a uniform procedure and in terms of the various provisions of the Act for the purpose of import and export of the goods. Hence the respondents authorities were justified in including the landing charges, freight, insurance and additional charges while assessing the value for the purpose of collection of customs duty. The goods according to the Customs Authority fell clearly within Appendix D, Serial 60 of the Policy period 1982-83. There was special investigation branch and metal expert had the opportunity of examining the goods and opined that the goods were Prime Galvanized Corrugated Steel Sheets.

6. There could be no estoppel against statute and the sovereign power of the

government of legislate. The Government was at liberty to alter the rate of duty by subsequent amendment made from time to time Furthermore, the petitioner was not entitled to any relief under Article 226 of the Constitution inasmuch as there are equally efficacious alternative legal remedy under the Customs Act and the Customs Authorities had been rested with jurisdiction and power to adjudicate upon the disputed questions of fact. Hence, this Court is of the view that the determination of the goods and under which item of the schedule is attracted fell within the domain of the Customs Authority for determination. From the annexures made to the Affidavit-in-opposition affirmed on behalf of the Customs Authorities by Kishori Mohan Mondal indicated that the goods which had been imported by the petitioner were Prime Galvanized Corrugated Sheets of Spanish Origin. Those documents had been submitted by the petitioner himself before the Customs Authorities including the bill of lading granted by the Scindia Steam Navigation Co. as also the certificate of origin (Mill's Certificate) granted by the foreign seller.

7. In the case reported in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , it was held that the principles of Estoppel was not available against the Government in exercise of legislative, sovereign or executive power. So the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law.

8. So far the fixation of the valuation of the goods is concerned Section 14 of the Customs Act clearly provides that for the purpose of Customs Tariff Act, 1973 or any other law for the time being in force whereunder a duty of custom is chargeable on any goods by reference to their value. The value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale for delivery at the time and place of importation. Such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented. Hence inclusion of freight, insurance charges and other handling charges were not irregular inasmuch as while the petitioner as an importer of the goods would definitely take those into consideration before fixing the price for sale - Section 15 Sub-section (1)(a) provides that the date for determination of the rate of duty and tariff valuation of the imported goods under Sub-section (1)(a) in the case of goods entered for home consumption u/s 46 on the date of which the bill of entry in respect of such goods is presented under that section shall be the rate and valuation in force. Although the contract between the petitioner the foreign supplier was entered on 18th of December, 1982 but the bill of entry was presented on 2nd of June, 1983 and the vessel carrying the goods arrived at the Port of Calcutta on 20th June, 1983. Hence the valuation would be made in respect of the goods so imported by the respondent authorities in accordance with the law as provided in the act itself.

9. In the case reported in 65 I.A.P. 32, Ford Motor Co. India v. The Secretary of State where it was held that the Customs Duty was payable on the real value under the Indian Tariff Act.

10. In the case reported in J.V. Gokal and Co. (Private) Ltd. Vs. The Assistant Collector Sales-tax (Inspection) and Others, , it was held that the course of import of goods to start at a point when the goods crossed the customs barrier of the foreign country and ends at a point in the importing country after the goods crossed the customs barrier.

11. In the case reported in Jasoda Jiban Saha (P.) Ltd. Vs. S.K. Chatterjee and Another, where it was held that the time of importation could not be taken right back to the date of contract.

12. In the case reported in - AIR 1978 S.C.P. 675 Prakash Cotton Mills (P) Ltd. v. B. Sen and Ors., it was held :-

"A reference to Sections 14 and 15 of the Act will show that while Section 14 deals with the valuation of goods for purpose of assessment it is Section 15 which specifies the date for determination of the rate of duty and tariff valuation of imported goods".

13. So far the question of promissory estoppel is concerned in the case reported in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , the doctrine of promissory estoppel had been fully discussed and explained. Since the doctrine of promissory estoppel is an equitable doctrine it must yield when the equity so requires having regard to the facts of the case that it would be inequitable to hold the government to the promise made by it. The Court would not raise an equity in favour of the promisee and enforce the promise against the government, when the question of prejudice of public interest is concerned. The Court would have to balance the public interest, in the Government carrying out the promise, made to a citizen and if the public interest is likely to suffer, then the court would not compel the Government to hold to its promise. But such doctrine of promissory estoppel cannot be applied in the teeth of an obligation or liability imposed by the law. The doctrine of promissory estoppel cannot be invoked to compel the Government to do an act prohibited by law. There can never be promissory estoppel against the exercise of legislative power. Hence when the Customs Authority are bound to act in accordance with the law as laid down in the Customs Act as also the rules framed thereunder and the various notifications issued in that respect, they cannot be compelled to act against such prohibitions. Similarly, in the case reported in 1984 Vol. 1 Excise & Customs Cases Page 1 (F.B.) Delhi High Court had exhaustively dealt with the various cases and held that in taxation matters there are hardly any scope for the exercise of the doctrine of promissory estoppel. The issuance of the statutory notifications u/s 25 of the Customs Act are legislative in the character. Hence the question of application of the doctrine of promissory estoppel did not arise.

14. In the case reported in Birendra Bahadur Pandey Vs. Gramophone Co. of India Ltd. and Others, , it was held :-

"Therefore, it is well settled law that unless the goods were brought into the country for the purpose of use, enjoyment, consumption, sale or distribution and

were incorporated in and got mixed up with the totality of the property in the country they could not be said to have been imported."

15. In the case reported in *The Collector of Customs, Madras Vs. K. Ganga Setty*, where it was held :-

"It is primarily for the Import Control authorities to determine the head or entry in tariff schedule under which any particular commodity fell; but if in doing so, these authorities adopted a Construction which no reasonable person could adopt, i.e. if the construction is perverse, then it is a case in which the court is competent to interfere. In other words, if there were two constructions which any entry could reasonably bear, and one of them which was in favour of Revenue was adopted, the court has no jurisdiction to interfere merely because the other interpretation favourable to the subject appeals to the court as the better one to adopt."

Hence, this Court, is of the view that the petitioner is not entitled to any of the reliefs as prayed for. Under the circumstances, the application is dismissed. Rule discharged and all interim orders vacated.

16. In view of Mr. Subrata Roy Chowdhury submitting that there are 200 identical matters pending before this Court and in view of the fact that due to the interim order passed the respondents Customs Authorities are faced with much difficulty in assessing the goods and in realising Revenue, this Court refuses the prayer for grant of stay made by Mr. Debashish Mitra.

17. The Customs Authorities are granted liberty to encash the bank guarantee.