

(1993) 07 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6627 of 1992

Indian Acrylics Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-07-1993

Acts Referred:

Customs Act, 1962 — Section 14, 14(1), 14(3), 3, 46
Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 3, 4, 5, 6, 7

Citation : (1993) 68 ELT 772

Hon'ble Judges : V.K. Kapoor, J;A.L. Bahri, J

Bench : Division Bench

Advocate : R.S. Mittal and Ashok Aggarwal, for the Appellant; S.K. Pipat, Senior Standing Counsel and Joginder Sharma, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Bahri, J.—The question involves in this writ petition relates to charging of Customs Duty on import as well as fixing valuation of the imported articles for the purposes of imposition of customs duty. The petitioner-firm imported about 2000 M.T. acrylonitrile from M/s. B.P. Chemicals, U.S.A. The import was made under the import policy which provided payment of the price in U.S. Dollars after purchasing Exim Scrips. Persons who earlier exported goods were granted Exim Scrips, allowing them import of certain goods. Under the policy decision, the petitioner could purchase such Exim Scrips for making payment of imported material. According to the case of the petitioner when he purchased Exim-scrips, he purchased the same at the rate which was higher than otherwise prevalent. However, when the goods arrived in the Indian Port on April 29, 1992, the Customs officials wanted to fix value of the goods imported by applying different rate of exchange as determined by the Central Government u/s 14(3)(a)(i) of the Customs Act. Since there was difference in the exchange rate, the petitioner was made to suffer enormously. The allegation of the petitioner is that under the Import Policy, the Central Government had promised and allowed the petitioner

to import goods and such promise would be fulfilled only when the petitioner received goods by applying same rate of exchange. On notice of motion having been issued, written statement has been filed by the respondents controverting the allegations of the petitioner inter alia asserting that the Central Government issued Notification No. 25/92-Cus.(NT) dated March 27,1992 fixing the conversion rates. When the goods were received at the port on April 29,1992, the aforesaid notification was prevalent and the value of the imported goods was to be determined as per such rates and the customs duty to be charged u/s 3 read with Section 14 of the Customs Act accordingly.

2. Shri R.S. Mittal, Senior Advocate appearing on behalf of the petitioner has argued that different valuation for the imported goods could not be determined by the Customs Authorities for the purposes of charging customs duty. The value has to be fixed as was paid by the petitioner to the foreign sellers. In order to appreciate this argument, brief reference of the provision of the Act is necessary. Section 14 of the Customs Act reads as under :-

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force whereunder a duty of customs 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 or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale : Provided that 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 u/s 46, or a shipping bill or bill of export, as the case may be, is presented u/s 50.

(1A) Subject to the provisions of Sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in Sub-section (1) [or Sub-section (1A)], if the Central Government is satisfied that it is necessary or . expedient so to do it may, by notification in the official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(3) For the purposes of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Central Government, or

(ii) ascertained in such manner as the Central Government may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency.

(b) "Foreign currency" and "Indian currency" have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1973 (46 of 1973).

The Customs Valuation (Determination of Price of Imported Goods) Rules 3 & 4 read as under :-

"3. Determination of the method of valuation. - For the purposes of these rules-

(i) the value of imported goods shall be the transaction value.

(ii) if the value cannot be determined under the provisions of clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules."

"4. Transaction value. -

(1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules."

The relevant date for determining valuation of the imported goods for the purposes of charging duty is the date of entry of goods as provided u/s 46 of the Act and such relevant date in the present case is April 29,1992 which fact is not disputed.

3. At the outset, it may be pointed out that provisions of Customs Act which are subject matter of interpretation in this case have nothing to do with the Import or Export Policy of the Central Government. The contention of the learned counsel for the petitioner is that the Central Government is estopped from withdrawing the concession which was in the form of a promise allowing the petitioner to purchase Exim Scrips and import goods at a particular rate of exchange. There is no question of promissory estoppel arising out of the facts of the present case. The petitioner in fact has imported the goods under the import policy by making payments in U.S. Dollars by making purchase of Exim Scrips. It is immaterial for the purpose of fixation of value of the imported goods for the purpose of charging customs duty. At what rate the petitioner purchased such Exim Scrips or otherwise made payment to the foreign sellers is not material. The value of the imported goods for the purpose of charging customs duty is to be determined under the provision of the Act. Reading of Section 14(1) reproduced above would show that the customs is chargeable On any goods by reference to their value and the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold. Rule 3 of the [Act] further makes it clear that the value of the imported goods would be the transaction value and the transaction as defined in Rule 4 is the value" of the imported goods which was actually paid or payable. Since, in the present case value has already been paid in U.S. Dollars that would be the value determined under the rules and Section 14 referred to above. The controversy is with respect to the interpretation of Section 14(3) of the Act as reproduced above for the purpose of charging customs duty and determining the value of the imported goods what

rate of exchange is to be applied. At this stage, it may further be stated that the actual value paid in U.S. Dollars is already known. Under Sub-section (3) of Section 14 the rate of exchange is to be applied. If it is so determined by the Central Government, Section 14(3)(a)(i) would apply and if it is not so determined then rate is to be ascertained as provided u/s 14(3)(a)(ii) in such manner as the Central Government may direct for the conversion of Indian currency into foreign currency or foreign currency into "Indian currency". These terms are ascribed the meaning as defined under the Foreign Regulation Act. Such rate under the aforesaid Act is fixed by the Reserve Bank of India as stated. The contention of the learned Counsel for the petitioner is that the rate of exchange as fixed by the Central Government u/s 14(3)(a)(i) is arbitrary as the same is different from the rate of exchange as fixed by Reserve Bank of India. Taking the case of the petitioner, it is stated that by applying the rate of exchange as determined by the Central Government u/s 14(3)(a)(i) as per notification (Annexure P4) the value of the articles imported by the petitioner would enormously be increased with the result excessive duty would be charged. Such figure may run into lacs. There is no merit in this contention. By ascertaining the value, it cannot be said that determination of rate of exchange by Central Government u/s 14(3)(a)(i) per se would be arbitrary. The Central Government has to fix the rate of exchange under the provisions of the Customs Act not for one person or for particular item. Such rate of exchange is to be applicable to all and different articles imported. In the absence of any other material brought on the record, it cannot be held that the determination of rate of exchange by the Central Government u/s 14(3)(a)(i) is arbitrary.

4. Learned Counsel for the petitioner has referred to the case of Garments International Pvt. Ltd. and Others Vs. Union of India and Another, in support of his contention that the concession once granted under a promise cannot be withdrawn. The ratio of the decision aforesaid cannot be applied to the case in hand. The Central Government had announced export assistance scheme declaring cash assistance at a particular rate on export of certain material. It was such concession which was retrospectively withdrawn and the matter was considered by the High Court and it was held that the Government should uniformly withdraw the same retrospectively and the action was invalid. In the present case, the Central Government has not withdrawn any concession earlier announced as already stated above in the import policy announced. The petitioner in fact imported the goods on payment of the price on submission of Exim Scrips which might have been purchased by the petitioner from others as already stated above in U.S. Dollars. The value of the articles imported would remain the same. At the time of entry of the goods imported that fresh exercise is to be had for the purposes of fixing the amount of customs duty and the value of the articles imported is to be determined by applying the rate of exchange as determined by the Central Government u/s 14(3)(a)(i) of the Act.

5. For the reasons aforesaid, the judgment of the Full Bench of the Bombay High Court in Tapti Oil Industries and Another etc. Vs. State of Maharashtra and

Others, is not helpful to the petitioner.

6. Finding no merit in the present writ petition, the same is dismissed. Parties to bear their own costs.