

(1982) 09 BOM CK 0017

In the Bombay High Court

Case No : Misc. Petitions No's. 602 and 960 of 1979

Jain Shudh Vanaspati Ltd. and others

APPELLANT

Vs

S.R. Patankar and others

RESPONDENT

Date of Decision : 20-09-1982

Acts Referred:

Customs Act, 1962 — Section 2(18), 2(23), 2(25), 2(27)

Citation : (1983) 13 ELT 923

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. The Petitioners, holders of a valid import licence, imported palm oil in bulk, 1996.6115 mts from Malaysia and 2902-3001 mts from Penang. Both the consignments were shipped to Bombay on M.V. "Dolphin II". The vessel arrived within Indian territorial waters on 27th February 1979. At this time a notification was in force whereunder the Central Government had exempted, inter alia palm oil falling within Chapter XV of the First Schedule to the Customs Tariff Act, 1975, when imported into India, from the whole of the duty of customs leviable thereon. On 28th February 1979 the import general manifest of the vessel was registered, numbered and displayed on the notice board of the Collector of Customs, Bombay. On that day the Petitioners' clearing agents filed with the Customs authorities 6 bills of entry relating to the said goods. The Bombay port trust authorities had on 23rd February 1979 informed the vessel's shipping agents that, in order to secure a berth for the purposes of discharge of cargo, it might have to wait in stream for a period of 65 days from the date of its registration at Bombay. Having regard to this, the vessel left Indian territorial waters and sailed to Karachi for the purposes of unloading cargo there. On and from 1st March 1979, as a result of the Union budget proposals for 1979-80, the levy of import duty at the rate of 12.5% ad valorem on certain specified edible oils, including palm oil, was proposed. On 6th March 1979 the vessel re-entered Indian territorial water and waited its turn to discharge cargo. On 13th March 1979, it is alleged by the petitioners, the customs authorities purported to effect

an amendment upon the notice of registration of the import general manifest of the vessel so that it read "2262/7-3-79". On 13th March 1979 the 1st respondent passed assessment orders upon the 6 bills of entry relating to the said goods levying customs duty thereon at the rate of 12.5% advalorem. This petition, filed on 20th March 1979, challenges the validity of the said assessment orders.

2. It was contended by Mr. A. K. Sen, learned counsel for the petitioners, that the taxable event took place on 27th February 1979 when the vessel first entered Indian territorial waters. He relied for this purpose upon Section 12 of the Customs Act, 1962, and upon the definitions of imported goods and Indian therein. Reliance was placed by him upon the judgments of Division Benches of this Court in *M. S. Shawhney v. Messrs. Sylvania and Laxman Ltd.* 77 Bom. L.R. 380, and in *Synthetics and Chemicals Ltd. v. S. C. Coutinho* 1981 E.L.T. 414. Mr. Sen submitted that when the taxable event took place there was a total exemption from payment of customs duty upon the said goods and, as such, there was no question of payment of any duty even if the exemption was withdrawn when the bills of entry were filed or the vessel was granted entry inward. Mr. Sen submitted that the scheme of the Customs Act showed that once a vessel containing goods entered Indian territorial waters the goods became liable to payment of duty u/s 12, subject only to the exceptions contained inter alia in Sections 13, 20, 21, 22, 23, 25, 53, 54, 57, 60 and 68. Accordingly, in Mr. Sen's submission, the fact that the vessel left Indian territorial waters after 27th February 1979 and re-entered them on 6th March 1979 was irrelevant.

3. It was submitted on behalf of the respondents that the decisions in the *Sylvania* and *Synthetics* cases were not good law in view of the fact that their ratio was contrary to that of certain judgments of the Supreme Court. It is necessary to go into this question in this case.

4. It was the submission of Mr. Dhanuka, learned counsel for the respondents, upon the assumption that these decisions are good law, that the taxable event took place on 6th March 1979 when the vessel re-entered Indian territorial waters. On this occasion the entry of the vessel was followed by the discharge of its cargo. The earlier entry of the vessel into Indian territorial waters was irrelevant and the delivery of the earlier import general manifest was inoperative since the vessel left Indian territorial waters along with the cargo and proceeded to another country. Mr. Dhanuka submitted that if the theory propounded by the Petitioners was assumed to be correct it would mean that the goods were imported into India at the time of their first entry into Indian territorial waters, were exported when the vessel left Indian territorial waters and were re-imported when the vessel re-entered Indian territorial waters. Such an interpretation, he urged, did not advance the Petitioners' case for, even upon this interpretation, duty would have to be paid on reimportation. Mr. Dhanuka emphasised that the entry of the vessel into Indian territorial waters on 6th March 1979 could not be ignored.

5. The real question that falls for determination is whether the respondents were

wrong in treating 7th March 1979 as the date on which the goods were imported. It is well to clarify that in terms of the quantum of duty there is no difference between the two dates, 6th March 1979 and 7th March 1979.

6. Under the provisions of Section 2(23) of the Customs Act, import means bringing into India from a place outside India. u/s 2(25), imported goods mean any goods brought into India from a place outside India but do not include goods which have been cleared for home consumption. u/s 2(27) India includes the territorial waters of India. Import, therefore, means bringing into Indian territorial waters from without. Imported goods mean any goods brought into Indian territorial waters from without. Imported goods ceased to be such when they have been cleared for home consumption.

7. u/s 12, except as otherwise provided in the Customs Act, duties of customs are leviable, at such rates as may be specified under the Customs Tariff Act or any other law for the time being in force, on goods imported into India. In other words, Section 12 makes goods brought into Indian territorial waters chargeable to duty, the duty to be levied at rates specified in the Tariff Act or any other law for the time being in force.

8. In the case of Sylvania this court held that the only charging Section in respect of customs was Section 12(1). Chargeability arose by reason of Section 12(1) when the goods were imported into Indian territorial waters. Chargeability of duty was not to be confused with quantification of the amount or assessment thereof. The rate of duty applicable was the rate in force on the date on which the bill of entry in respect of imported goods was presented. In the case of Synthetics the Judgment in Sylvania was affirmed.

9. In the instant case, the goods were, admittedly, brought into Indian territorial waters from without on 6th March 1979. The goods were, plainly, imported into India on that day. The goods had also been brought into Indian territorial waters on 27th February 1979. They were, by reason thereof, liable to customs duty, as urged on behalf of the Petitioners. But does that mean that they retained their character of imported goods though thereafter taken out of Indian territorial waters and that they were not chargeable to duty under the Customs Act when brought back into Indian territorial waters on 6th March 1979.

10. In my view it does not. The proper construction to place upon the course of events that took place between 27th February 1979 and 6th March 1979 is that the goods were imported into India on 27th February 1979. They were thereafter exported, within the meaning of Section 2(18) of the Customs Act, in that they were taken out of Indian territorial waters and to Karachi, they then lost their character of imported goods. They were imported again into India on 6th March 1979 and acquired the character of imported goods and became liable to customs duty. The entry into Indian territorial waters on 6th March 1979 resulted in the discharge of the goods for home consumption.

11. The entry into Indian territorial waters on 6th March 1979 was, in my view,

rightly taken into account by the Customs authorities for the purpose of determining the chargeability of the goods to customs duty.

12. I am informed by counsel that the facts in Misc. Petition No. 960 of 1979 are similar, that the contentions are identical and that the reasoning aforesaid will apply equally to it.

13. In the result, the two petitions are dismissed with costs. Rule discharged.

14. Mr. C. M. Mehta, on behalf of the Petitioners in the first petition (Misc. Petition No. 602 of 1979), applies for stay of this order for a period of 6 weeks from today. Such stay is granted upon the condition that the bank guarantee given at the interim stage of this Petition shall be kept alive till then.