Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 09/09/2026

(1990) 11 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No''s. 1240, 1241, 1242 and 2316 of 1978

Jasraj Jethamal APPELLANT

Vs

Assistant Collector of Customs RESPONDENT

Date of Decision : 23-11-1990

Acts Referred:

Constitution of India, 1950 — Article 19(1), 265, 31
Customs Act, 1962 — Section 12, 16, 16(1), 25, 25(1)

Citation : (1994) 74 ELT 819

Hon'ble Judges : M.S. Parikh, J;M.B. Shah, J

Bench : Division Bench

Advocate : P.J. Bhatt, for Jivanlal G. Shah, for the Appellant; H.M. Bhagat and Bharat B. Naik, for the Respondent

Final Decision : Dismissed

Judgement

M.B. Shah, J.—In these petitions, the question which requires determination is whether export duty leviable under the Notification issued on 26th June 1973 and published in Extraordinary Gazette dated 26th June 1973 could be levied on goods in respect of which shipping bills had been submitted on the same day, i.e. 26th June 1973, which were verified by the Customs Authorities and were cleared for transport on that day.

2. It is an admitted fact that the Central Government, in exercise of its powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962, has issued a Notification, whereby for "raw wool", 25% ad valorem export duty was fixed. It is the case of the petitioners in these petitions that shipping bills were presented before the proper Officer on 26th June 1973 and as no export duty was payable on the export of goods covered by the shipping bills, the concerned Officer accepted the same and the goods were allowed clearance by him for export. Thereafter, the Assistant Collector of Customs had issued notices demanding export duty in regard to the bills of raw wool which were exported by the shipping bills dated 26th June 1973. In these petitions, it has been contended

that as the shipping bills were presented on 26th June 1973, no export duty was required to be paid by the petitioners.

3. In our view, the submission is without any substance in view of Section 16 of the Customs Act, which, at the relevant time, was as under :-

"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."

Therefore, as per this Section, for determination of rate of duty and tariff valuation, the material date would be either (1) the date on which the shipping bill or bill of export in respect of such goods is presented as per Section 50 of the Customs Act or (2) as per proviso if the shipping bill has been presented before the entry outwards of the vessel by which goods are to be exported on the date of such entry outwards. In the present case, it is the case of the petitioners that the snipping bills were presented on 26th June 1973 and from 26th June 1973, export duty at the rate of 25% ad valorem was required to be paid. So, even if the date of entry outwards of the vessel is a subsequent event, the petitioner would be required to pay export duty. In view of the aforesaid Section 16(1) of the Customs Act, the relevant date for fixing the rate of duty in tariff valuation is the date of either the date on which a shipping bill or bill of export is presented or the date of entry outwards of the vessel by which the goods are exported.

The petitioners were required to pay the export duty as it is an admitted fact that the Notification levying the export duty was published in the Extraordinary Gazette, dated 26th June 1973.

4. Further, this issue is decided in the case of Gangadhar Narsingdas Agarwal Vs. P.S. Thrivikraman and Another, . The Court considered the provisions of Sections 16 39 50 and 51 of the Customs Act and held that 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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jasraj-jethamal-appellant-hash-…

the order made u/s 38 of the Act, by which the proper Officer grants permission for entry outwards to such vessel.

5. In these petitions, a contention has been raised that the order of recovery is violative of the Constitutional provisions contained in Articles 19(1)g) 31 and 265. In our view, levy of export duty as provided u/s 12 of the Customs Act or grant of exemption u/s 25 cannot be said to be in any way violative of the aforesaid Articles. Nor can it be held that the Notification levying the export duty should be published in advance.

6. Hence, there is no substance in these petitions and they are dismissed. Rule discharged with costs. Interim relief stands vacated.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jasraj-jethamal-appellant-hash-…