(1992) 02 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 276 of 1992

Jindal Strips Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 26-02-1992

Acts Referred:

Customs Act, 1962 — Section 15(1), 59A, 68, 9

Citation : (1992) 60 ELT 203

Hon'ble Judges : V.A. Mohta, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Shri K. Parsurmpuria, for the Appellant; Shri L.S. Vyas, for the Respondent

Judgement

V.A. Mohta, J.—Rule, returnable forthwith. The respondents waive service. Heard parties.

2. The petitioner Company is an importer and actual user of raw materials like H. R. Coils, Work Rolls for manufacturing of Cold Rolled Coils/Strips etc. The Company had entered into confirmed contracts with foreign suppliers for import of the above raw materials and had opened irrevocable Letters of Credit in their favour, prior to 23rd December 1991 from which date Sec. 59A of the Customs Act, 1962 ("the Act") has come into force. Sec. 59A inter alia makes it mandatory to deposit 50% of the assessed duty on the goods to be entered for customs bonded warehousing. The petitioner contends that, that part of the said provision (i) is violative of Articles 19(1)(g) and 265 of the Constitution, and (ii) cannot have retrospective operation and, therefore, will have no application to the goods covered by the contracts finalised before 23rd December 1991.

3. We see no substance in either of these contentions and, therefore, repel them for the reasons that follow.

The imported goods, instead of being straightway cleared for consumption, can by warehoused under the Act. Warehousing is a facility of deferring payment of duty till actual clearance from warehouse is made. Section 9 of the Act empowers the Board to notify certain places as warehouse stations. In those stations, either a public warehouse can be appointed or approved warehouse can be licensed. Warehoused goods can be cleared for home consumption u/s 68 of the Act at any time upon payment of duty on the goods at the rate prevailing on the date of their removal from the warehouse. The above facility which was given almost in blanket form is withdrawn by Section 59A inserted by the Customs (Amendment) Act, 1991.

4. We are unable to locate any fundamental right of the importer like the petitioner to import the goods and to take advantage of payment of duty at a future date depending upon his convenience. Warehousing is a facility for deferring the payment afforded under the Act. Section 59A of the Act has not taken away altogether the said facility. It only imposes certain conditions. The case of the respondents is that 30 years'' experience indicated that this facility was very often misused by the importers by indisciplined warehousing as a result of which public revenue was lost. Based on this experience, in the Legislature has effected change in the policy and placed condition of deposit of 50% of the duty the condition cannot be said to be unreasonable and not in public interest. Quite obviously this provision will expedite realisation of the revenue and ensure prompt payment of duties, by discouraging an in discriminated warehousing.

5. The grievance that section 59A is applied retrospectively is altruistic. The material date for application of Section 59A is the date of order of warehousing and not the date of the contract relating to the goods. It is petitioner''s own case that out of the contracted goods, quantity only to the extent of 5434 MT was shipped per "Vessle Alexandaria", the ship is yet to cross the territorial waters of India and that duty payable on the same will be around Rs. 10.18 crores.

6. Provision relating to chargeable rate of duty remains unaltered. The relevant date is the date of that removal of goods from the warehouse. Section 59A speaks of only deposit and that too to the extent of 50% of the assessed duty. This amount of deposit is ultimately to be adjusted in the actual dues. It is submitted that absence of provision for payment of interest in case of refund of deposit is to be made on final account, makes the provision unreasonable and unconstitutional. Such possibility is very rare. There is no statutory bar against payment of interest in such an eventuality. As and when such unlikely situation arises, demand for the interest can be made with the Department or in the appropriate forums/courts and can in appropriate cases be granted. On the touchstone of absence of such a provision, therefore, the validity of Section 59A cannot be tested.

7. Article 265 cannot be pressed into service in the matter since there is no question of levy or collection of tax. Moreover, validity of provisions of deposit is upheld by us.

8. The learned counsel for the petitioner has invited our attention to the decision

of the Calcutta High Court in Shewbuxrai Onkarmall Vs. Asstt. Collector of Customs and Others, laying down that u/s 15(1)(b) of the Act, duty leviable is at the rate prevailing as on the date of removal of goods from bonded warehouse for home consumption and not when the goods cross the territorial water of the country and hence benefit of exemption notification issued before removal of goods could be given to the importer. We are not faced with such a situation in the matter at hand and hence the ratio of the said decision will have no application.

9. Petition is, therefore, dismissed. Rule is discharged. No costs. Certified copy of the order be furnished expeditiously.

