(1980) 08 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 3422 of 1979

K. Jamal Co. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-08-1980

Acts Referred:

Customs Act, 1962 — Section 15, 2(23), 25, 25(1), 46
Customs Tariff Act, 1975 — Section 15, 2(23), 25

Citation : (1981) 8 ELT 162

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Advocate : T. Chengalvarayan and Sagar, for the Appellant; K.N. Balasubramanian, Addl. Central Government Standing Counsel, for the Respondent

Judgement

S. Mohan, J.—The petitioner is a firm, inter alia, carrying on business of import and sale of different edible oils and other allied products. On

1-7-1977 a public notice was issued by the Collector of Customs, to the following effect -

G.S.R. 463(E). - In exercise of the powers conferred by sub-section (1) of Section (25) of the Customs Act, 1962 (52 of 1962) and in

supersession of the Notification of the Government of India in the Department of Revenue and Banking (Revenue Wing) No. 25 - Customs, dated

8th February 1977, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts palmoleins falling

within Chapter 15 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India from the whole of the duty of

customs leviable thereon which is specified in the said First Schedule.

2. Thereafter, on 11th January, 1978, the petitioner''s orders were confirmed by the brokers. On 18th February, 1979, there was a shipment of a

stated quantity, which need not concern us. The ship actually arrived on 22nd February, 1979. On 1st March, 1979 the following notification came

to be issued :

Government of India

Ministry of Finance (Department of Revenue)

Notification No. 42/F. No. Cus (Bud)/79

New Delhi 1st March, 1979/10th Phalguna 1900 Saka

Notification

Customs

GSR No....In exercise of the powers conferred by section 25 of the Customs Act, 1962 (51 of 1962), the Central Government, being satisfied

that it is necessary in the public interest so to do, hereby exempts the goods specified in the Table annexed hereto and falling under heading No.

15.07 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from (a) so much of that portion of the duty

of customs leviable thereon which is specified in the said First Schedule, as is in excess of 12.5 percent ad valorem and (b) the whole of the

additional duty leviable thereon u/s 3 of the Second mentioned Act.

3. The petitioner submitted the Bill of entry on 13 March, 1979. He paid the duty imposed on the same under protest. Afterwards, he claimed a

refund on the basis of the notification dated 1st July, 1977, which was rejected saying - ''with effect from 1st March, 1979 as per C.N. No. 42

dated 1st March, 1979, Palmolein is exempted from 12-1/2%. The bill of entry was admitted only on 13th March, 1979. Hence levy of duty at

12-1/2% is in order. The claim is, therefore, rejected as inadmissible''. It is under these circumstances, the above order of the Assistant Collector

of Customs is sought to be quashed. As a consequential relief, refund is prayed for.

4. It is now argued before me that because the vires of the notification dated 1st March, 1979, is involved, the writ petitioner has approached this

court directly without exhausting the other remedies of appeal and revision to the Central Board of Revenue. On this basis it is contended (1) u/s

15 of the Customs Act, import would mean when the ship arrives at the territorial waters of India. Therefore, this notification dated 1st March,

1979 cannot have retrospective effect; and (2) the power to grant exemption is u/s 25 of the Act. That cannot be used for the purpose of levying

duty as is sought to be done under the impugned notification dated 1st March, 1979. As against this, learned counsel for the department would

contend, ''Import'' would mean the presentation of the bill, which in this case, was done only on 13th March, 1979. Therefore, the notification

dated 1st March. 1979 would fully apply to this case.

5. The power to grant exemption is contained u/s 25. On a careful reading of the notification, it is seen that the exemption is limited only to 87-1-

12%. It does not speak of levy of duty and, therefore, it is perfectly valid.

6. On a careful consideration of the above, I am of the view that the stand of the respondent is unassailable. The definition of ''Import'' is contained

in section 2(23), stating that ''Import'' with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

''Bringing into India'' obviously would mean the clearance of the goods and Section 15, which reads as under puts the matter beyond doubt :-

15. (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate of valuation in force.

(a) in the case of goods entered for home consumption u/s 46, on the date on which a bill of entry in respect of such goods is presented under that

section;

(b) in the case of goods cleared from a warehouse u/s 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty :

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry

shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this section shall not apply to baggage and goods imported by post.

Therefore, the relevant date is the date of the presentation of the bill of entry, which, in this case is 13th March, 1979. Therefore, the first of the

contentions raised by the learned counsel for the petitioner fails.

7. With reference to the second contention, I have already extracted the impugned notification. It nowhere purports to levy and duty. It merely

exempts upto 87-1/2%. The logical corollary is that over and above this would be liable to duty. The power the grant exemption u/s 25 may be

absolute or partial. In this case, the latter argument has also to be rejected. In the result, the writ petition is dismissed; no costs.

