(1996) 08 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 1994 of 1990

Kotak and Co. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:
Customs Act, 1962 — Section 46

Citation : (1997) 92 ELT 480

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

Bench : Division Bench

Advocate : Shri P.A. Savant, instructed by Gujarat and Co, for the Appellant; Shri M.I. Sethna and V.G. Rege, for the Respondent

Judgement

P.S. Patankar, J.—The Petitioners imported American Whole Green Peas from a seller from Seattle. The Bills of Entry in that respect were filed on 6th October, 1988. Under Notification No. 129/76 the Customs Duty payable was 10%. However, by Notification No. 286/88 the said Notification was amended and the duty on pulses was increased from 10% to 35%.

2. It is the case of the Petitioners that the Notification No. 129/76 is applicable and they were liable to pay 10% customs duty only. However, they were charged wrongly according to the amended Notification No. 286/88. According to the Petitioners the vessel arrived at Bombay on 1st October, 1988 and docked on 2nd October, 1988 and hence they were liable to pay 10% duty only under Notification No. 129/76. Therefore, they filed Refund application on 28th June, 1989 claiming refund of Rs. 1,67,547/- alleging that the said amount was wrongfully recovered from them. The said application came to be rejected by the Respondent No. 2 on the ground that the date of presentation of Bill of Entry dated 6th October, 1988 was material and on that basis 35% of the customs duty was correctly charged. He rejected the contention that entry of the goods in the territorial waters on 2nd October, 1988 was material and, therefore, it was held that the Petitioners were liable to pay 35% customs duty and not 10%. The

Petitioners have challenged the said order passed by the Respondent No. 3, dated 19th July, 1989 in this Petition and claimed refund of Rs. 1,67,547/-

3. There is no dispute that the amended Notification No. 286/88 came to be published in Part II, Section 3, Sub-section (i) of the Gazette of India on 3-10-1988. The only question is what date is to be taken into consideration for the application of the said Notification No. 286/88. According to the learned Counsel for the Petitioners the date to be taken into consideration is the date when the goods arrived at Bombay and not the date of presentation of the Bill of entry i.e. 6th October, 1988. It is not possible to accept this contention of the learned Counsel for the Petitioners that the material date for the purpose of calculation of the customs duty is the date of presentation of the Bill of Entry. In this case, the Bill of Entry was presented on 6th October, 1988. On the said date the Notification No. 286/88 was operative as it was already published on 3rd October, 1988. Section 15(1)(a) of Customs Act, 1962 is as follows :-

"15. Date of determination of rate of duty and tariff valuation of imported goods. - (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and 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."

There is no dispute that the goods in this case have entered for home consumption and hence in this case presentation of Bill of Entry is the date for determining the rate of duty payable.

Therefore, the Customs duty, which was charged according to the said Notification No. 286/88, was correct and it was correctly decided.

4. In the result, the Rule is discharged. No order as to costs.

