(1982) 09 BOM CK 0014

In the Bombay High Court

Case No : Misc. Petition No. 959 of 1979 with Miscellaneous Petitions No''s. 1043, 1981, 2157, 2169 and 2227 of 1979

Krishan Oil Cake Industries — APPELLANT

Vs

S.R. Patankar, Assistant Collector of Customs and others — RESPONDENT

Date of Decision : 20-09-1982

Acts Referred:
Customs Act, 1962 — Section 12, 12(1), 15, 2(15), 25

Citation : (1983) 14 ELT 2153 : (1981) 127 ITR 591

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

Bench : Single Bench

Judgement

1. The facts stated relate to the first mentioned petition in the title. On 1st July 1977 a notification was issued u/s 25 of the Customs Act, 1962, whereby the Govt. of India exempted palmoleine falling within Chapter 15 of the First Schedule to the Customs Tariff Act, 1975, when imported into India, from the whole of the duty of customs leviable thereon specified in the First Schedule. The Petitioners, holding a valid import licence in respect of palmoleine, were shipped 362.932 M. Ts. thereof by the S.S. "Accord". On 18th January 1979 the vessel arrived within Indian territorial waters and its import manifest was registered and numbered. On 29th January 1979 entry inwards was granted to the vessel. On 1st March 1979 a notification was issued u/s 25 of the Customs Act whereunder the Central Government exempted, inter alia, palmoleine from so much of that portion of the duty of customs leviable thereon specified in the First Schedule of the Customs Tariff Act, 1975, as was in excess of 12.5% ad valorem and the whole of the additional duty leviable thereon u/s 3 of the Customs Tariff Act. On 9th March 1979 a bill of entry in respect of the imported palmoleine was filed by the petitioners'' clearing agents. On 27th March 1979 the Customs authorities assessed the said goods to duty under the Customs Act at 12 1/2% ad valorem, which the petitioners paid under protest. On 28th March 1979 the vessel berthed and the said goods were discharged. This petition was filed on 20th April 1979 whereby the validity of the assessment order is - challenged.

2. It was contended by Mr. Chinoy, learned counsel for the petitioners, that the liability to pay duty under the Customs Act arises on the act of importation. This was the taxable event. The import took place when the said goods crossed Indian territorial waters, i.e. on 18th January 1979. On that day the said goods were totally exempt from payment of duty under the Customs Act, and were not chargeable to such duty. The subsequent notification of 1st March 1979 did not alter the position of their non-chargeability.

3. Mr. Chinoy relied upon 2 judgments of Division Benches of this Court. In M. S. Shawhney v. Messrs Sylvania and Laxman Ltd. 77 Bom. L.R. 380, it was held that the combined effect of the words ''import'' and ''India'' in the definition section of the Customs Act was that import took place when the goods were brought into the territorial waters of India. The only charging section in respect of duty under the Customs Act was Section 12(1) thereof. Such chargeability arose by reason of that section. Such chargeability was not to be confused with the quantification of the amount or assessment of duty under the Customs Act. It was impossible to accept the view that the taxable event took place only when the bill of entry was presented or thereafter.

4. In Synthetics and Chemicals Ltd. v. S. C. Coutinho 1981 E.L.T. 414, the ratio of the decision in Sylvania''s case was affirmed. It was held that in order that any duty under the Customs Act should be made payable the primary or basic requirement was that the goods should be chargeable to such duty on the date of importation. Goods which were not liable to duty when imported could not be subjected to duty by the procedure u/s 15 of the Customs Act.

5. It was submitted by Mr. Dhanuka, learned counsel for the respondents, that at the time the said goods entered Indian territorial waters they were, admittedly, chargeable to additional duty. This was a customs duty. The goods had not, therefore, at the time been duty free. That being so, the petitioners were liable to pay duty upon the said goods quantified u/s 15 of the Customs Act. In his submissions, Section 12 covered duties of Customs which included duties under the Customs Tariff Act. Both the Customs Act and the Customs Tariff Act had to be read together and as if they were part of each other. Great stress was placed upon Section 3(6) of the Customs Tariff Act, which reads thus :

S. 3(6) "The provisions of the Customs Act, 1962, and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."

Mr. Dhanuka also placed great stress upon the judgment of my brother Pendse in Misc. Petition No. 559 of 1975 Kirloskar Cumins Ltd. v. The Union of India, decided on 12h September 1979. I shall refer to it in due course.

6. It was also Mr. Dhanuka''s submission that the ratio of the Sylvania and Synthetics judgments was in conflict with three judgments of the Supreme Court (reported in The Central India Spinning and Weaving and Manufacturing

Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, and Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others, He fairly conceded, however, that so far as this Court was concerned he was bound by these Division Bench judgments.

7. The combined effect of the Sylvania and Synthetics judgments is that Section 12 of the Customs Act is the only charging section in respect of duties under the Customs Act. If imported goods are chargeable to duty under the Customs Act, reference must next be made to Section 15 for its quantification. Section 12 mentions duties of customs. Duty is defined by Section 2(15) as being a "duty of customs leviable under this Act".

8. Additional duty is leviable on imported goods by reason of Section 3(1) of the Customs Tariff Act. It reads thus :

S. 3(1) "Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at the percentage of the value of the imported article."

Can it be said the because additional duty is chargeable on the imported goods, the imported goods are chargeable to duty u/s 12 of the Customs Act ? I think not. Since duty under the Customs Act and additional duty are chargeable under different statutes, it cannot, in my view, be good law to hold that because imported goods are chargeable to additional duty they are, ipso facto, chargeable to duty under the Customs Act, u/s 12 thereof.

9. This view is bolstered by reading sub-section (6) of Section 3 of the Customs Tariff Act, upon which Mr. Dhanuka placed reliance. It makes a clear distinction between "duty chargeable under this section", i.e., Section 3 of the Customs Tariff Act, and "duties leviable under that Act", i.e., Customs Act.

10. I now turn to the judgment in Kirloskar''s case. The petitioners therein manufactured diesel engines and utilised imported components. The components imported were liable to duty under the Customs Act at the rate of 50% ad valorem. The duty for import of complete diesel engines under the Customs Act was 27 1/2% ad valorem and countervailing duty was also chargeable u/s 2A of the Indian Tariff Act. (This is now called additional duty u/s 3 of the Customs Tariff Act.) An exemption notification was issued whereby component parts of machinery when imported were exempted from so much of the customs duty leviable thereon under the Indian Tariff Act as was in excess of the rate applicable under the Indian Tariff Act to the machinery when imported complete. The Customs authorities took the view that the expression customs duty used in the notification meant not merely the duty under the Customs Act, referred to in Section 2 of the Indian Tariff Act, but also additional (or countervailing) duty u/s

2A thereof and assessed the petitioners accordingly. The petitioners challenged the validity of that assessment in the writ petition that camp up for hearing before Pendse, J. It was urged that additional duty was really a part of customs duty, both are recovered under the provisions of the Indian Tariff Act and there is a close connection or inter-relationship between the provisions of the two Acts. The learned Judge held that the cumulative effect of the provisions of the Customs Act and the Indian Tariff Act was that both customs duty and additional duty were two branches of taxation on the import of goods. The learned Judge went on to say, "... Mr. Manjrekar is right in his contention that Section 12 provides for levy of duty as provided under the Indian Tariff Act and it is not permissible to split out the duty under Sections 2 and 2A into different categories".

11. There can be no doubt that duty under the Customs Act and the additional duty are customs duties in that they are duties upon goods brought into India from abroad. What the learned Judge was considering was the implication of the notification whereunder exemption was granted from "so much of the customs duty leviable thereon under the Indian Tariff Act..." His observation in the sentence quoted must be read in the context of the question before him. It does not appear to have been there highlighted that duty under the Customs Act was chargeable u/s 12 thereof while additional duty was chargeable under the Tariff Act. The judgment does not then, affect the conclusion that I have come to.

12. I am informed by counsel that this conclusion covers the facts and all the contentions in Misc. Petition No. 1043 of 1979.

13. I am informed by counsel that in Misc. Petitions No. 1981 of 1979, 2157 of 1979, 2169 of 1979 and 2117 of 1979 the facts are similar to those mentioned above but the imported goods therein were not liable to additional duty. The only contention there raised in support of the respondents'' case is the incorrectness of the Sylvania and Synthetics'' Judgments. Mr. Dhanuka has fairly conceded that in this court he is bound by the judgments. It is agreed that my conclusion covers these petitions.

14. I pass the following orders :-

In Misc. Petition No. 959 of 1979 the petition is made absolute in terms of prayers (a) and (b), with costs.

In Misc. Petition No. 1043 of 1979 the petition is made absolute in terms of prayers (a) and (b), with no order as to costs.

In Misc. Petition No. 1981 of 1979 the petition is made absolute in terms of prayers (a), (b) and (c), with no order as to costs.

In Misc. Petition No. 2157 of 1997 the petition is made absolute in terms of prayers (a) and (b), with no order as to costs.

In Misc. Petition No. 2169 of 1979 the petition is made absolute in terms of prayers (a) and (b), with no order as to costs.

In Misc. Petition No. 2117 of 1979 the petition is made absolute in terms of prayers (a), (b) and (c), with no order as to costs.

