(1980) 08 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 3422 of 1979

M. Jamal Co. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 04-08-1980

Acts Referred:
Customs Act, 1962 — Section 15, 25, 3

Citation : (1981) ECR 14

Hon'ble Judges : Mohan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohan, J.—This writ petition coming on for hearing on this day upon perusing the '' petition and the affidavit filed in support thereof the

order of the High Court dated 10-8-79 and made herein and the counter affidavit filed herein and the records relating to the order in Section

25/1874/79 dated 20-4-1979 on the file of the fourth respondent and comprised in the return of the respondents herein to writ made by the High

Court, and upon hearing the arguments of Mr. T. Chengalvarayan for . M/s. Anand Datgupta and Sagar Advocates for the petitioner and of Mr.

K.N. Balasubramanian Additional Central Government Standing Counsel on behalf of the respondents herein the Court made the following order:

1. 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 the 8th

February 1977, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts palm olein 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 laid First Schedule.

2. Thereafter, on 11-1-1978 the petitioner''s orders were confirmed by the brokers. On 18-2-1979, (here was a shipment of a stated quantity,

which need not concern us. The ship actually arrived on 22-2-1979. On 1-3-1979 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

the first March 1979

10th Phalguana 1900saka.

NOTIFICATION CUSTOMS. GSR. No.

In exercise of the powers conferred by Sub-section 25 of the Customs Act, 1962 (52 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 per cent 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 16-3-1979. He paid the duty -imposed on the same under protest. Afterwards, he claimed a

refund, on the basis of the notification dated 1-3-1979. That was rejected saying:

With effect from 1-3-1979 as per C.N. 42 dated 1-3-1979 Palm Olein is exempted from 12|%. The Bill of entry was admitted only on 13-3-79.

Hence levy of duty at 12|% 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 1-3-1979 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 1-3-1979 cannot

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

sought to be done under the impugned notification dated 1.3.1979. 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 13.3.1979. Therefore, the notification dated 1-3-1979 would fully

apply to this case. 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 1/2 Per cent. It does not speak of levy of duty and, therefore, it is perfectly valid.

5. 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 expression."", 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,

(1) in the case of goods entered to home consumption u/s 46, on the date of 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 68m 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 16-3-1979."" Therefore, the first of the

contentions raised by the learned Counsel for the petitioner fails.

6. With reference to the second contention, I have already extracted the impugned notification. It nowhere purports to levy any duty. It mere y

exempts upto 87 per cent. The logical corollary is that over and above this would be liable to duty. The power to grant exemption u/s 25 may be

absolute or partial. In this case, it is the latter. Therefore, this argument has also to be rejected. In the result, the Writ Petition is dismissed, No

costs.

