(1989) 07 CAL CK 0020

In the Calcutta High Court

Case No : C.R. No. 4039 (W) of 1979

Maharaja Shree Umaid Mills Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 07-07-1989

Acts Referred:

Customs Act, 1962 — Section 12, 12(1), 15(1), 25, 25(1)
Customs Tariff Act, 1975 — Section 3

Citation : (1992) 61 ELT 183

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : R.N. Bajoria, S.K. Bagaria, P.K. Jhunjhunweala and Rajiv Khaitan, for the Appellant;Sardar Amjad Ali, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterjee, J.—This Rule was issued on 2-5-1979 on the writ petitioners challenging and/or praying, inter alia, for an appropriate writ of mandamus commanding the respondents to forthwith recall, cancel and withdraw and/or rescind the purported orders demanding any duty in respect of the 457 bales of viscose staple fibre imported by the petitioner No. 1 per vessel M.V. Ayuthia, on the ground that Section 12(1) of the Customs Act, 1962 which is the only charging section provides that duties are levied inter alia on goods imported into India. The taxable event is the import of the goods into India, i.e., bringing into India from a place outside India. The chargeability to duty depends on whether or not there was any duty at the point of the time when the subject goods were imported into India. It is also stated that in the instant case, the import of the goods was complete in any event on December 29,1978 when the vessel carrying the goods arrived at the "Sandheads" which is admittedly within India and/or the territorial waters of India and as such the import of the goods was complete prior to December 31, 1978 when the exemption Notification No. 388/F No. 355/105/76-Cus., dated August 2,1976 was operative. Accordingly, according to the petitioner, the respondents have no right, authority or jurisdiction to demand any duty under the said Act and/or under the Customs Tariff Act, 1975 in respect of the said imported goods.

2. It is stated in detail that the petitioner No. 1 Maharaja Shree Umaid Mills Limited in the usual course of its business placed an order for import of the goods with the overseas suppliers. Pursuant to the said order, 457 bales, weight about 1,00.408 kgs. of the goods were shipped to and/or on account of the petitioner No. 1 per vessel M. V. Ayuthia from Austria. The said bales were covered by a bill of lading. In anticipation of the arrival of the said vessel, petitioner No. 1 on or about 5th November, 1978 presented a bill of entry for home consumption for clearance of the goods, 457 bales of viscose staple fibre. On November 17,1978 the respondents-Customs classified the said goods as duty-free and made such endorsement on the said bill of entry. Thereafter, on December 29,1978 the said vessel M.V. Ayuthia arrived at the "sandheads" within the territorial waters of India, and on or about 5th January, 1978, (1979?) the Central Government issued 3 (three) different notifications all dated January 5,1979, bearing Nos. 6/79-Cus., (sic) u/s 25(1) of the Customs Act. By Notification No. 8/79-Cus. thereof, exemption was granted to the petitioners on the import of the goods from so much of the portion of the additional duty leviable thereon u/s 3 of the Customs Tariff Act, 1975 as is in excess of Rs. 1.32 per kilogram. By the other two notifications as aforesaid, exemption was granted from the whole of the duty of customs and auxiliary duty on the said goods, as alleged in the writ petition. The respondents-Customs authorities however, are, according to the petitioners, claiming that the said goods have become leviable to the duty of customs as also additional duty as according to them, the said goods are not entitled to exemption in terms of the said notification dated August 2,1976. Being aggrieved, the petitioners have come up to the Court and obtained the instant Rule with ad interim order in terms of prayers (f) and (g) of the writ-petition permitting the petitioners to submit bank guarantee to the satisfaction of the Registrar, High Court, Appellate Side for the amount of Rs. 75,000/-.

3. The Rule is contested by the respondents-customs authorities.

4. Mr, Bajoria, learned Advocate for the writ petitioners has mainly argued that the steps taken by the Customs Authorities are not warranted in law, the impugned orders have been passed without jurisdiction on the facts and circumstances as disclosed in the writ petition. In support of such contention, Mr. Bajoria, learned Advocate has drawn Court''s attention to a decision reported in Indian Rayon Corporation Limited Vs. Union of India (UOI) and Others, wherein the Division Bench of this court found that the excise duty being a tax levied for manufacture or production of goods the material time for liability of excise duty u/s 3 will be the date of manufacture or production of goods. If at the time of manufacture/production of goods those were not subject to duty, a duty imposed later cannot be levied on such goods because this would result in a tax being imposed either on storage of goods or on movement of goods on their clearances.

5. Mr. Bajoria, has also referred to a decision reported in Indian Rayon

Corporation and etc. Vs. Collector of Customs, wherein a Single Bench of this court found that it is true that the goods acquired the character of imported goods as soon as they enter the Indian territorial waters but they do not cease to be "imported goods" immediately thereafter and continue to be so till they are cleared. It was further held therein that Section 12 does not limit operation only to the point of time when the goods acquire the character of imported goods, but remains operative so long the goods retain their character of imported goods and thus it would be too narrow a view to accept that chargeability once fixed cannot be altered thereafter even in public interest while the goods still retain the character of imported goods. The Customs Act does not contain any such provision restricting the operation of Section 25 at any time after the entry of goods into the territorial waters or after the goods acquire the character of imported goods till those are cleared for home consumption. In the aforesaid decision, the learned court interpreted the provisions of Sections 25, 25(1), 15(1) and 15(l)(a) of the Customs Act in their proper perspectives and held that those sections were applicable in that particular case.

6. Mr. Bajoria, learned Advocate has also referred to another decision reported in Madhusudan Mills Limited Vs. Union of India and others, A Single Bench of Bombay High Court therein found that the vessel carrying the goods entered the territorial waters of India on 19-12-1978 and the steamer entered, however, inwards on 1st January, 1979. Notification exempting payment was in force till 31st December, 1978 and as per decision reported in Apar Private Ltd. and others Vs. Union of India and others, the. goods being wholly exempt from duty as against being partially exempt, when the goods entered into the territorial waters, cannot be submitted to duty even if the exemption notification is withdrawn or modified before the Bill of Entry is present or the goods are cleared for home consumption as the case may be.

7. Mr. Amjad Ali, learned Advocate for the respondents-Customs Authorities has drawn the Court''s attention to various sections of the Customs Act, 1962 particularly to Sections 12, 15 and 25 of the Act and has submitted that at the material point of time the petitioner was asked to give payment of duty and hence, the allegations made by the petitioners have no basis.

8. After considering all the submissions of the respective parties and the materials on records, this court with great anxiety has considered the provisions of Sections 12,15 and 25 of the Customs Act, 1962 and looking to the aspect of the importation of the goods, into India and within the territorial waters of India, and finds that the petitioners, at the material point of time, are liable to pay the duty for the imported goods. Regard being had to the materials on records, this Court finds that on the relevant date, the petitioners cannot avoid the payment of duty and/or additional duty in the manner sought to be claimed by the petitioners, and as sought to be imposed by the Customs Authorities. This Court, after consideration of all the materials on record, does not find any merit in the writ petition.

9. Accordingly, the writ petition is dismissed and the Rule is discharged. There will be no order as to costs. Interim order, if still subsisting, is vacated.

10. As prayed for, let there be stay of operation of this order for two weeks from date.