
(1989) 11 CAL CK 0019
In the Calcutta High Court
Case No : Writ Petition No. 1691 of 1983

Nody Bros.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-11-1989

Acts Referred:

Citation : (1990) 48 ELT 514

Hon'ble Judges : Baboo Lall Jain, J

Bench : Single Bench

Judgement

Baboo Lall Jain, J.—The only point that has been urged before me is that there has been an increase in the Customs duty after the writ petitioner No. 1 entered into the contract for importation of the goods and before the same were actually imported and the bill of entry was filed. The writ petitioner drew my attention to the judgment of the Division Bench of the Delhi High Court in a case reported in Super Traders and another Vs. Union of India and others, In the said case the Delhi High Court, inter alia, held that the Government or the Legislature cannot be compelled to refrain from making any changes, during the financial year, in the matter of Import or Export, because it could be trespassing on the legislature and the administrative field, if Court were to hold that a rate of duty or tax was immutable for any particular period. In the said case the Delhi High Court inter alia held as follows :

"22. Another argument against the alleged unreasonableness of the Amended Act sought to be urged was by saying that by the retrospectivity many of the settled contracts of the parties have been unsettled, in as much they had been led to believe that the rate of duty was the lower one under 73.15(1) and because of the amendment, excessive burden is being put on him which amounts to unreasonable restriction. In this connection we must dispel the oft repeated suggestion as if there is any estoppel against the Government or the legislature to change the rate of duty of custom or excise during the course of a financial year. The whole stress of this argument seems to be as if during the financial

year, the rate of duty of excise or custom or the list of goods which can be imported or exported as indicated either in the Import Policy or in the Schedule is immutable and that it is not permissible for the Government or the legislature to revise its policy or rates of duty during the year or in such a manner as to affect existing contracts, which had been entered into prior to the announcement of changed policy. These arguments amount to pleading promissory estoppel against the legislature which is impermissible in law. (See *Jit Ram Shiv Kumar v. State of Haryana* AIR 1960 SC 1285). These arguments proceed on misunderstanding of the role and importance of Import and Export Policies of a State. In the matter of import and export no party can claim any vested right to compel the Government or the legislature to refrain from making any changes during the financial year. This is because the position of foreign exchange varies so much and the requirement and the considerations of national economy are so urgent that it would be trespassing on the legislative and the Administrative field if Courts were to hold that a rate of duty or tax was immutable for any particular period. As a practical measure there would always be some parties whose contracts are outstanding. If the spacious argument was carried to its logical end then no change could be made in the rates because some one or the other may always be affected. And if this argument was countenanced then the Government or legislature could be held to ransom by parties entering into long term contracts at the existing rates of duty and then insisting that no change be made in those rates till all the contracts are executed, which may take years for completion. To take an illustration if A enters into a contract with B to import goods for the next five years of item falling under 73.15(2), at present the duty payable is 300%. But could with any sense of rationality be it urged that if the government tomorrow was of the opinion that it was expedient in the interest of trade and economy to raise the rate of duty under 73.15(2) from 300% to 350%, it would have no power to do so, on the untenable ground that it will affect the existing contracts entered into by various parties. This argument, if accepted, will make a mockery of the whole import-export legislation. We must not forget that as to what duty is to be imposed are matters of administrative policy with which the Courts have no concern for the simple reason that they do not have the expertise nor possess all relevant information. At any point of time the Government may well take a view that considering the foreign exchange situation particular goods may be banned notwithstanding that the parties may have entered into various contracts. All private commitments must be and are subject to over-all power of the legislature or the executive to frame any legislation. Policy changes required in the interest of public do not get held up to suit the private convenience of the various business interests. Foreign exchange resources of a country are its great assets. The Government may take a view that if imports are to be permitted because of the exigencies of situation they should bear particular rate so that at least State Revenues are increased. So even if stainless steel circle was not included in the sheet under the original sub-heading 73.15(2) the Government may well take the view that since scarce foreign exchange is being permitted to be utilised, the imports should at least

earn good State Revenue and if for that purpose also it had increased the duty, its action could not be said to be unreasonable. "Policies of imports or exports are fashioned not only with reference to internal or international trade but also on monetary policy, the development of agriculture and industries and even on the political policies of the country but rival theories and views may be held on such policies. If the Government decides an economic policy that import or export should be by a selected channel or through selected agencies the court would proceed on the assumption that the decision is in the interest of the general public unless the contrary is shown ...(para 16)."

In the said judgment of Delhi High Court, various other points were also involved which are not relevant so far as the instant case is concerned.

2. Mr. Bose appearing on behalf of the Collector of Customs relied on a judgment of the Divisional Bench of this Court in Appeal No. 216 of 1983, Matter No. 724 of 1983 = Collector of Customs Vs. Shree Hanuman Steel Traders, being the judgment dated February 9, 1988 wherein the Division Bench held as follows :

"...The change in rate was made prior to importation. Whether the agreement was entered into on the basis of rate prevailing at the time of agreement is immaterial. It is the "Customs Duty", that is a duty on importation. Thereafter, the date of importation is important and not the date of agreement pursuant to which such importation is made. Therefore, the date of importation is the relevant date for ascertaining the duty to be paid. Admittedly, on the date of importation, new increased duty has come into force in the present case. Therefore, the writ petitioners are bound to pay duty at the increased rate.

There is no question of equitable estoppel herein. The duty is on importation. Merely because on the basis of the existing rate an agreement is entered into and between the date of agreement and the date of importation the rate of duty is changed, this is no ground for applicability of the principle of equitable estoppel. In the case of Revenue no such principle can be applied on such basis.

There is no question of any representation by the Revenue and there cannot be any question of any one acting on the basis of such representation to its detriment. There is no merit in this petition. Accordingly, the appeal is allowed."

3. In my opinion, the ratio of the said Division Bench judgment applies to the instant case where it has been argued that a Government cannot enforce the increase in the duty which has taken place after the date of fee agreement for import and before actual importation of the goods. I also respectfully agree with the observations made by the Delhi High Court.

4. It has been submitted on behalf of the writ petitioner that an appeal has been preferred from the judgment of the Delhi High Court to the Supreme Court of India and that a stay has been granted in the said matter. It was submitted that the appeal is still pending. No paper or document has however been placed before me in support of the said submissions. In any event, so far as the case

before this Court is concerned there is no question of any stay and there is no impediment in the way of this Court from disposing of the matter on merits.

5. Furthermore, Mr. Bose appearing for the Customs Department relied on a judgment of the Supreme Court reported in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, wherein the Supreme Court held as follows:

"The doctrine of promissory estoppel cannot be applied in the teeth of an obligation or liability imposed by law. Promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the exercise of legislative power. The legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppels"

6. Pursuant to the order made by this Court in the above Writ Petition the writ petitioners had obtained delivery of the goods against furnishing of two Bank Guarantees being Bank Guarantee No. 10/83 dated 30th April, 1983 for a sum of Rs. 4,47,992.18 furnished through the Hindusthan Commercial Bank Limited and the other Bank Guarantee bearing No. 23/84 dated 13th January, 1984 for a sum of Rs. 4,36,865.77 furnished through the same bank Hindusthan Commercial Bank Limited, Manicktala Branch, Calcutta, which has since been amalgamated with the Punjab National Bank.

7. Since I have held that there are no merits in this application, the writ petitioners, who obtained the interim orders and obtained the delivery of the goods pursuant to the interim orders passed in this writ petition were and are liable to pay the entire amount of balance duty to the Customs Department after taking into account the admitted duties which were paid. The writ petitioners are also liable to compensate the losses and damages that have been suffered by the revenue, by virtue of the said interim order. It is by virtue of the interim order obtained by the writ petitioners that the realisation of the revenue has been held up for about six years. The writ petitioners were and are liable to pay the said amount of duty on the date when the same was payable which must be prior to the release of the goods. It was only by virtue of the interim order made in this writ petition that the revenue authorities could not realise the said dues, at or about the time the same were due or payable. The realisation of the said revenue has been held up, since the interim order made in this writ petition and until the vacating of the said interim order. In law a person obtaining interim injunction is liable for the damages suffered thereby, if the same is ultimately held by Court to be wrongful. In this case I have already held that the petitioner is not entitled to any relief or order and as such in my opinion the petitioner is liable to compensate the revenue authorities for the damages suffered by them due to the said interim order which continued till date. Such damages are equal to the loss of the use of such money during the period concerned which is equal to the interest on the said amount. Interest can fairly be said to be the measure for damages suffered due to non-realisation of money for a given period. I

consider the rate of 12% as a reasonable rate, when the banks are charging far more than that in respect of commercial loans.

8. The writ petitioners, therefore, in my opinion are also liable to pay reasonable interest upon the total amount of the Bank Guarantees, at the rate of 12% per annum on and from the date of the said interim order until the date of this order. The writ petitioners are, therefore, directed to pay the amounts of the said Bank Guarantees along with interest at the rate of 12% per annum calculated on and from the date of the interim order until the date of this order to the Collector of Customs within a period of 8 weeks from today. In default of such payment, the Collector of Customs will be entitled to execute this order and realise the amount from the writ petitioners.

9. It has been pointed out to me that the Bank has not yet paid the amount of the Bank Guarantees though the Bank was directed to do so on earlier occasion by this Court. If at all any amount is received from the Bank, the writ petitioners will be entitled to credit for the amount received and collected by the Collector of Customs from the Bank. However the obligation of the bank to pay the amount of the bank guarantee is not to be affected by this order in any manner whatsoever.

10. This Order will not prejudice the rights of the Collector of Customs to realise the amount of the Bank Guarantees, from the bank concerned.

11. In that view of the matter I am of the opinion that there is no substance in the writ application and the same is liable to and is hereby dismissed. The Rule is, therefore, discharged.

12. Stay applied for is declined.

13. All parties to act on a signed copy of the minutes of the operative portion of this order on usual undertaking.