(1983) 03 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2613 of 1982

Oswal Woollen Mills Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 22-03-1983

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 14, 157

Citation : (1985) 4 ECC 267 : (1985) 5 ECR 532 : (1984) 18 ELT 235

Hon'ble Judges : S.S. Sandhawalia, C.J;S.S. Sodhi, J

Bench : Division Bench

Advocate : Laxmi Grover and H.S. Sawhney, for the Appellant; H.S. Brar, for the Respondent

Judgement

S.S. Sodhi, J.—The matter whether landing charges could be included in the assessable value of a consignment imported into India for computing the customs duty payable thereon, was the main ground which led to the admission to hearing of this bunch of 17 Writ Petitions including the above one and besides this Civil Writ 4144 of 1982 (C.L.Jain Hosiery Mills Ltd. v. Union of India and Ors.), Civil Writ 1839 of 1982(Sanjeev Woollen Mills and onother v. Union of India and Ors.), Civil Writ 3738of 1982 (Vardhman Spinning and General Mills Ltd. v. Union of India and Ors.),Civil Writ 2256 of 1982 (Monika India v. Union of India and Ors.), Civil Writ 2529 of 1982 (Punjab Processors (P) Limited v. Union of India and Ors.), Civil Writ 2858 of 1982 (Oswal Woollen Mills Ltd. v. Union of India and Ors.), Civi Writ 3072 of 1982 (Punjab Processors Limited v. Union of India and Ors.), Civil Writ 3316 of 1982 (Sriyansh Knitters v. Union of India and Ors.), Civil Writ 3672 of 1982 (Oswal Woollen Mills Limited v. Union of India and Ors.), Civil Writ 3991 of 1982 (Malwa Cotton Spinning Mills Ltd. v. Union of India and Ors.), Civil Writ 4141 of 1982(Dhowan Woollen Mills v. Union of India and Ors.), Civil Writ 4059 of 1982(Oswal Woollen Mills Ltd. v. Union of India and Ors.), Civil Writ 5247of 1982 (Nagesh Hosiery Exports v. Union of India and Ors.), Civil Writ5197 of 1982 (Sandeep Woollen Mills v. Union of India and Ors.), Civil Writ 4830 of 1982 (Oswal Woollen Mills Limited v. Union of India and Ors.) and Civil Writ 5721 of 1982 (Shaktiman Woollen and Hosiery Mills (P) Limited v. Union of India and Ors.). This order shall dispose of all the Writ Petitions referred to above.

2. Illustrative of the issues sought to be raised in these Writ Petitions is the case of the Writ Petition filed by Oswal Woollen Mills Limited.

3. M/s. Oswal Woollen Mills Limited carry on business of importing white synthetic waste (acrylic waste). An order for 128 bales of synthetic waste was placed by this petitioner upon Wattlid Limited of United Kingdom.These goods were shipped to the petitioner on February 5, 1982 and arrivedat the port at Bombay on March 2, 1982. Similarly an order for 102 bales of white synthetic waste (acrylic waste) was placed upon another firm M/s.Michel Fibres Limited of United Kingdom. The foreign suppliers shipped these goods on March 8, 1982 and they arrived at a port of Bombay on April23, 1982. In respect of both these consignments, bills of entry for ware-housing were filed by the petitioner through M/s. Deluxe Shipping Agency.

4. For assessing the customs duty payable on the goods imported, the Customs Authorities included landing charges in the assessable value of the consignment. In addition a demand was also made for duty equal to the excise duty, namely countervailing duty on the goods imported under Item18(iv) of the C.E.T. read with Notification No. 53/72/,-C.E., dated March 17,1972 as amended by Notification No. 53/77-C.E., dated June 18, 1977 and August 12, 1977. The petitioner sought to challenge both the inclusion of landing charges for the assessable value of the goods imported as also the countervailing duty.

5. When these Writ Petitions came up for regular hearing, a preliminary objection was raised by Mr. H.S. Brar, appearing for the Union of India, that the petitioners had not availed of the alternative remedy of appeal as provided to them under the Customs Act and it was therefore, not open to them to seek to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution for seeking the relief claimed. In support of this contention reliance was placed upon the judgment the Division Bench of the HighCourt of Delhi in [Super Traders v. Union of India and Ors., 1982 Excise and Customs Reporter 772-D]. This was againa case relating to the assessment of customs duty on goods imported under the Customs Act. Besides holding that the valuation of goods for the purpose of assessment of customs duty payable thereon u/s 14 of the Customs Act had to be inclusive of landing charges thereon, it was also held that as the petitioners had not availed of the remedy of appeal available to them under the Customs Act, it would be a proper exercise of discretion to dismiss the petition, on this ground namely that the petitioners had not availed of the alternative remedy available to them under the Customs Act. It may be mentioned here that a Division Bench of the High Court of Gujarat too in Prabhat Cotton and Silk Mills Limited v. Union of India, 1982 Excise Law Times, 203 also held that landing charges payable to the port trust authorities on landing were includible in the

assessable value of goods u/s 14 of the Customs Act, 1962.

6. In the face of two judgments referred to above Mr. Laxmi Grover, counsel for the petitioner fairly conceded that he could no longer seek to pursuade this Court that landing charges could not be included in the assess-able value of goods imported for computing customs duty payable thereon. He further conceded that as regards the challenge to the countervailing duty sought to be levied on the goods imported, writ proceedings were not the appropriate remedy, as a determination thereof would necessarily involvean enquiry into disputed questions of fact, too.

7. Mr. Laxmi Grover, however, sought to contend that the remedy of appeal would not be an appropriate alternative remedy in this case as a challenge had also been made to the frm of the bill of entry which had been prescribed by the Central Board of Excise and Customs u/s 157 of the Customs Act. Counsel for the Petitioners could however, not showin what manner this form was illegal or the petitioners were prejudicially effected thereby. In other words, no meaningful challenge could be launched against it. As at present advised all that was required to be incorporated by the petitioners in the bill of entry was merely information regarding the goods imported. Counsel for the petitioners failed to show what illegality attached to such information being required to be given.

8. For the foregoing reasons the petitioners are relegated to the statutory remedy of appeal under the Customs Act. Keeping in view the circumstances of the case, counsel for the respondents very fairly stated that no objection on the ground of limitation in the filing of appeals in these matters by the petitioners shall be raised, if such appeals are filed within one month from today. The Writ Petitions are hereby disposed of accordingly. There will be no order as to costs.