
(1967) 01 SC CK 0023

In the Supreme Court Of India

Case No : Civil Appeal No. 1799 of 1967 and writ Petn. No 181 of 1967

Patel India Private Limited

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-01-1967

Acts Referred:

Sea Customs Act, 1878 — Section 40

Citation : AIR 1973 SC 1300

Hon'ble Judges : K. S. Hegde, C.J

Bench : Single Bench

Final Decision : dismissed

Judgement

K.S. Hedge, C.J.

(1) The petitioner herein is private limited company having its office at Homby Road, Bombay. It is the sole distributing agent in India of the products of Messrs Sawyer's Inc. Portland, U. S. A. During the years 1954 to 1956, it imported into India 35 consignments of view master stereoscopes, reels, etc. In the past also it was importing these articles. Prior to 1954 import duties were being levied on those articles on the basis of the price entered in the invoices. The consignments that came to India between the years 1954 to 1956 are detailed in Annexure D when items I an

(2) Both the petitioner as well as the authorities under the Act have proceeded on the basis that the refund claimed is one u/s 40. The first question that falls for decision is whether section 40 is applicable to the facts of the present case. The marginal note to that section reads :-

"NO refund of charges erroneously levied or paid, unless claimed within three months."

If the body of the section had been expressed in consonance with that marginal note, there would have been no difficulty in holding that section 40 is the

governing sections. But it is well established that the marginal note cannot control the language of a provision. In finding out the scope of a provision, we have to look to its language. The provision in question reads :-

"No customs-duties or charges which have been paid, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment. Where duty is provisionally assessed u/s 29B, the period of three months shall be computed from the date of final adjustment of duty. (underlining is mine.)

This section, according to my judgment, applies only to cases where a party claims refund on the ground that he had made excess payment through inadvertence, error or misconstruction. It does not apply to cases where excess levy is made and realised. Section 40 specifically says that the refund "is claimed in consequence of the same having been paid through inadvertence, error or misconstruction". Section 40 has nothing to do with erroneous assessments. It only deals with erroneous payments. If there is a wrong assessment, the remedy of assessee is to go up in appeal u/s 8 of the Act. He cannot have recourse to section 40. This section, in my view, has only a limited application. Hence, I am of the opinion that the authorities under the Act were wrong in thinking that the refund claimed by the petitioner fell within section 40.

(3) The above conclusion of mine is not sufficient to grant the relief prayed for by the petitioner. The impugned assessments were made several years before this writ petition was filed. If the petitioner was aggrieved by those assessments, it should have gone up in appeal u/s 188 of the Act. That was the proper remedy a remedy provided under the Act itself. therefore, the petitioner has no legal right to compel the Government to refund the excess duty collected from it. Technically speaking, the Government will be within its rights in withholding the excess collection made. But I do not think that it would be proper for the Government to do so. It is not-at any rate it should not be-interested in making illegal exactions. therefore, it has a moral duty to return the excess duty collected from an assessee. As observed by Chagla, C.J. in *Firm, Kaluram Sitaram v. The Dominion of India* that the State deals with a citizen, it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act * * as an honest person."

WHILE the citizen has the duty to pay all the 'taxes lawfully due' from him. In its turn the State must be scrupulous in collecting just what is due from the citizen,

(4) The learned counsel for the petitioner argued that in view of the fact that its fundamental right to property has been affected by the excess collections made by the State, despite the fact it had not availed itself of the remedy provided under the Act, and despite the long delay in approaching this Court. This Court should grant him the relief prayed for. It is best to remember that a writ under

Article 226 is not a writ of "must." The facts of this case do not call for the exercise for the extra -ordinary jurisdiction of this Court. In that view, I do not propose to go into the question whether it is competent for this Court to grant the reliefs prayed for by the petitioner on the basis of the established facts. Further, in view of what has been stated earlier, I am sure that the authorities will re examine the petitioners' claims on the basis of justice and not technicalities.

(5) With the above observations, I dismiss this petition. But, in the circumstances of the case, I make no order as to costs.