(1993) 03 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 1376 of 1991

Plastika Industries APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:
Customs Act, 1962 — Section 14, 17, 36, 46, 50

Citation : (1993) 42 ECC 147 : (1993) 47 ECR 168 : (1994) 70 ELT 221

Hon'ble Judges : V.A. Mohta, J;S.M. Jhunjhunwala, J

Bench : Division Bench

Advocate : Mr. S.N. Kantawala and Mr. N.R. Kantawala, instructed by M/s Kantawala and Co., Mr. Prashant Parasurampuria, Mr. Kamal Parasurampuria and Mr. B.R. Mishra, Mr. V.S. Nankani, instructed by Mr. N.N. Gavankar, Mr. Jerry Lewis, Mr. I.P. Bagaria, Mr. N.N. Gavankar, Mr. L.U. Balani and Mr. H.R. Shetty, Mr. Milind Vasudeo, instructed by Gagrat and Co., Mr. V.N. Despande and Mr. C.R. Patel and Mr. H.C. Daruwalla, instructed by Messrs.Crawford Bayley and Co, for the Appellant; Shri Liladhar Vyas and Shri K.C. Sidhwa, for the Respondent

Judgement

V.A. Mohta, J.—In this batch of petitions, a common question is involved and hence their disposal by this judgment. Question is whether the administrative decision dated 1-4-1991 cancelling the Bills of Entry (which were noted on holidays as per public notice dated 19-3-1991) is valid ?

2. By a public notice dated 28-12-1990 issued by the Customs House, it was notified that certain sections dealing with clearance of imported cargo would function in the normal way also on Saturdays. By a second public notice dated 15-3-1991, few more holidays were also declared as normal working days. By a third public notice dated 19-3-1991 it was notified that nothing of the Bills of Entry would be carried out by the Import Department even on those days. On the basis of the above three public notices, several importers, like the Petitioners, presented Bills of Entry for noting u/s 46 of the Customs Act and got noted those Bills for Warehousing and home consumption even on those declared working days. u/s 14 of the Act, valuation of the goods for the purposes of

assessment of customs duty would be on the basis of the value declared and as per proviso to the said section, the said value shall be calculated with reference to the rate of Exchange as in force on the date of presentation of the Bills of noting u/s 46.

3. On 1-4-1990, the following administrative decision was notified to the public :

"Attention of Importers/Custom House Agents and others concerned is invited to Public Notice No. 39 dated 19-3-1991, according to which Import Department of the Custom House was also to function on Saturdays/Sundays and holidays falling on 23rd, 24th, 29th, 30th and 31st March, 1991 so as to enable Importers/ Custom House Agents to make payment of Custom duty on these holidays in respect of their consignments to be cleared.

However, it has been noticed that many Bs/E were presented for noting on these holidays, but were not presented for assessment and payment of Customs duty.

In case of such Bills of Entry noted on the above holidays, but where Customs duty has not been paid on these holidays, i.e. prior to 31st March, 1991, the concerned Importers/Clearing Agents are hereby required to present such Bills of Entry in the Import Department for cancellation and to file fresh Bills of Entry for clearance of imported goods. All those Bills of Entry which were noted under the above facility where customs duty has not been paid before 31st March, 1991, are deemed to have been cancelled."

4. The intended and the actual result of the above administrative decision was to apply new rates of Exchange which was made applicable from 1-4-1991 even to the Bills entered before that date on holidays and where no customs duty was actually paid before that date.

5. It may be mentioned that rate of Exchange before 1-4-1991 was U.S. $ 5.4750 = Rs. 100, i.e. each U.S. $ was equivalent to Rs. 18.25 and as per the new Exchange ratio, it was equivalent to Rs. 19.62.

6. Having heard parties, we are satisfied that for variety of reasons, the impugned administrative decision dated 1-4-1991 cannot stand legal scrutiny. The first and foremost reason is that by administrative decision, the statutory consequence flowing from Section 14 cannot be undone however laudable the object may be. In this connection, certain other provisions of the Act may also be noticed. Section 17 deals with assessment of duty. The scheme of the Act is that on importation of the goods, Bills of Entry are to be presented u/s 46 for home consumption or warehousing u/s 50. After that, the Bills are to be examined and duty payable assessed as per Section 85. Section 68 provides for clearance of Warehouse goods for home consumption. Section 36 deals with restrictions on unloading and loading the goods on holidays.

7. Secondly, in the three public notices declaring certain holidays as working days, the consequences contemplated by the impugned order were neither contemplated, nor notified to the public. As a result, the Respondents would be

estopped from bringing about such a drastic result specially at a point of time when the importer had lost even a chance to present the Bills on normal working days, which was not very difficult for him to do since such days were many. There is nothing special about the three public notices by which all that was notified was that was notified was that certain departments would transact their usual business even on certain holidays, the obvious object being to cope up with the year ending rush.

8. There are enough circumstances to hold that the facility of presenting the Bills of entry for noting on holidays, was not restricted only to cases where the Customs duty was paid in cash. Undisputed position is that the facility was provided and was availed of even for Bills of Entry for Warehousing where there is no question of payment till the goods are cleared for consumption which is always at a later point of time.

9. Uncontroverted allegations are that the impugned decision has been applied only in cases of U.S. Currency and has not been applied to the D.M. currency because the change in the Exchange rate in that currency was favourable to the Revenue.

10. It is pertinent to note that similar decision taken by the Air Cargo Customs was withdrawn by notice dated 9-4-1991 clarifying that it has been decided that the assessment of duty payable should be continued to be done as per original notice.

11. Learned Counsel for the Respondents contended that the Customs Department was not obliged to keep its various departments open on holidays. This submission is correct, but therefore "what ?". Holidays were declared working days in public interest keeping the expected year ending heavy rush of work. That was purely an administrative decision which could not nullify the effect of the statutory provisions. Added factors contributing to the illegality are its retrospective effect and failure to notify such conditions and/or effect well in time. Importers could present Bills even on normal working days and certainly could have done so if these days were not declared normal working days. Legal effect of Section 14 cannot be made to differ administratively merely on the basis of the dates of presentation of the Bills being normal working days or declared normal working days. Such decision would be clearly arbitrary. Classification made on that basis has no nexus with the purpose of the public notices and hence also it is discriminatory and hence violative of Article 14.

12. Under the circumstances, these petitions are allowed and the impugned administrative decision dated 1-4-1991 is quashed and set aside.

13. By different ad-interim orders passed by this Court, the goods have been ordered to be cleared in some cases on the basis of the Bonds; in some cases on the basis of Bank Guarantees and in some cases on the basis of actual payment of differential duty. We direct that the Bonds as well as Bank Guarantees shall stand cancelled. We further direct that the amounts of differential duty paid, shall

be refunded to be concerned Petitioners with interest at the rate of 12 per cent per annum from the date of payment till refund, within a period of eight weeks from today.

14. Rule made absolute in the above terms in each of the petitions.

15. No order as to Costs.

16. Certified copy expedited.