(1993) 03 CAL CK 0065

In the Calcutta High Court

Case No : C.O. No. 10973 (W) of 1990

Sanjoy Chandrani APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-03-1993

Acts Referred:
Customs Act, 1962 — Section 15, 15(1), 17, 18, 2(43)

Citation : (1996) 85 ELT 25

Hon'ble Judges : Tarun Chaterjee, J

Bench : Single Bench

Advocate : B. Roy Chowdhury and V.N. Dwivedi, Susanta Kundu, for the Appellant;

Judgement

Tarun Chaterjee, J.—A short question of law that arises for decision in this writ application is whether the writ petitioner is liable to pay interest u/s 61(2) of the Customs Act, 1962 for the periods prior to the actual physical warehousing of consignments of goods imported by the writ petitioner. The writ petitioner placed an order for 1G00 great gross of snap fasteners iron made, size VT 7 of Japanese origin with M/s. Caesar Industries Limited, Hong Kong. The said foreign supplier shipped three consignments packed in 120, 100 and 100 cartons respectively out of the total quantity of 1000 great gross. The said three consignments arrived in the port of Calcutta between 10th of July, 1989 and 17th of August, 1989. Between 1st of October, 1989 and 24th of October, 1989, the writ petitioner through his clearing agent filed three separate bills of entry for warehousing in respect of the aforesaid three consignments. On 20th of October, 1989 and 26th of October, 1989 the said bills of entry were duly assessed by the Assistant Collector of Customs u/s 47 of the Customs Act. The duty payable by the petitioner for the aforesaid three consignments were assessed in the said bills of entry.

2. According to the writ petitioner, on 3-11-1989 the Import Bond Department of the Customs Authorities endorsed the bond numbers. Representations were

made on behalf of the writ petitioner to the Assistant Collector of Customs stating therein that due to financial difficulties, the petitioner had not been able to return (sic retire?) the documents in respect of the aforesaid three consignments. The writ petitioner further represented before the Assistant Collector of Customs that the three consignments should be warehoused on the grounds stated in the said representation. The customs authorities illegally refused to warehouse the said goods on the ground that three months had already elapsed since 3rd of November, 1989 when the bond numbers were endorsed on the said bills of entry by the Import Bond Department of the Customs House. The writ petitioner, therefore, ought to have cleared the goods from the [dock] by filing ''X'' Bond bills of entry. It is not in dispute that since the arrival of the said goods at the dock, they were lying in the dock and were never physically warehoused till a direction was made by this Court on this writ application.

3. In the facts and circumstances stated hereinabove, the present writ application had been moved by the writ petitioner for a direction upon the customs authority to warehouse the said three consignments under Sec. 59 of the Customs Act and also for an order that the writ petitioners were not liable to pay any interest prior to the actual physical warehousing of the aforesaid three consignments. A further prayer was also made by the writ petitioner that a direction be given to the customs authority to allow warehousing of the three consignments u/s 59 of the Customs Act at the cost of the writ petitioner without any payment of interest prior to expiry of 90 days from the date of actual physical warehousing of the goods imported. Before deciding the question of law raised in this writ application as referred to hereinabove, I must mention one more fact in this connection. K.M. Yusuf, J. (as His Lordship then was) on 14th September, 1990 allowed the writ petitioners to remove the said three consignments at their own cost subject to payment of all the charges in respect of the goods imported . By the said order the writ petitioner was, therefore, allowed to remove the goods on payment of duty and all other charges which included payment of interest charged by the authorities for not removing the goods in question. By an order dated 18th of December, 1991,I directed that the writ petitioner was entitled to release the aforesaid three consignments, if the writ petitioner deposited or paid all duty and other charges payable by the writ petitioner to the customs authority for removing the goods in question and also if he deposited a further sum of Rs. 1,00,000/-with the Collector of Customs as interest without prejudice to the rights and contentions of the parties in the writ petition. I have made it clear in the said order that in the event it is found by this Court at the time of disposal of this writ application that the writ petitioner is liable to pay interest as charged by the customs authorities, or any other amount that may be fixed as interest from them in excess of the aforesaid amount of Rs. 1,00,000/-, the writ petitioner shall pay or deposit with the customs authority the said excess amount within the time that may be fixed by this Court. The Learned Advocate who appeared on behalf of the customs authority also gave an

undertaking to this Court that the amount deposited or any amount that may be directed by this Court to be refunded at the time of Final disposal of the writ petition on account of interest would be refunded to the writ petitioner. I am informed that in terms of this order and on deposit of the amount as aforesaid the writ petitioners have already taken delivery of the aforesaid three consignments from the customs authorities. Therefore, the only question that remains to be decided in this writ petition is whether "the interest" is payable by the writ petitioner in terms of Section 61(2) of the Customs Act. For a proper decision on this question, it is necessary to deal with some of the relevant provisions of the Customs Act.

4. Section 2(43) of the Act defines "warehouse". "Warehouse" means a public warehouse appointed u/s 57 of the Act or a private warehouse licensed u/s 58 of the Act.

5. Section 2(44) of the Act defines "warehoused goods". "Warehoused goods" means goods deposited in a warehouse.

(Emphasis added).

6. Section 57 of the Act deals with appointment of public warehouses, and it says that at any warehousing station, the Assistant Collector of Customs may appoint public warehouses wherein dutiable goods may be deposited.

(Emphasis added).

7. Section 58 of the Act deals with licensing of private warehouses. Section 58(1) says that at any warehousing station the Assistant Collector of Customs may license private warehouses wherein dutiable goods imported by or on behalf of the licensee or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited, without payment of duty.

(Emphasis added).

8. Section 59 of the Act deals with warehousing bond. It says that the importer of any goods specified in clause (a) of Sub-section (1) of Section 61 which have been entered for warehousing and assessed to duty u/s 17 or 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods.

9. Section 61 of the Act deals with the period for which goods may remain warehoused. It would be better if Section 61 of the Act is reproduced in its entirely. Section 61 of the Act runs as follows :

"Section 61. Period for which goods may remain warehoused. - (1)

Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed, -

(a) In case of -

(i) non-consumable stores; or

(ii) goods intended for supply to a foreign diplomatic mission; or

(iii) goods intended for use in any manufacturing process or other operations in accordance with the provisions of Section 65; or

(iv) goods intended for use in any hundred percent, export-oriented undertaking; or

(v) goods which the Central Government may, if it is satisfied that it is necessary or expedient so to do, by notification in the Official Gazette, specify for the purposes of this clause, till the expiry of one year:

(2) Where any warehoused goods, specified in clause (a) of Sub-section (1), remain in a warehouse beyond a period of one year, by reason of extension of the aforesaid period or otherwise, interest at such rate as specified in Section 47 shall be payable on the amount of duty on the warehoused goods for the period from the expiry of the period of one year till the date of clearance of the goods from the warehouse."

(Emphasis added).

10. From a plain reading of the aforesaid provisions of the Act, it appears to me that the writ petitioner is not liable to pay any interest, as claimed by the customs authorities u/s 61(2) of the Act. The word "warehoused goods" used in Section 61(1) of the Act has been clearly defined in Section 2(44) of the Act which says that it means goods deposited in a warehouse. Section 61(1) of the Act says that any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed till expiry of one year. Section 61(2) of the Act, therefore clearly contemplates payment of interest only in cases where the goods have been physically warehoused and have remained physically in such warehouse. Section 61(2) of the Act also clearly says that the period for which interest is payable by an importer is to be calculated from the expiry of the period of one year till the date of clearance of the goods from the warehouse. The words "till the date of clearance of the goods from the warehouse" used in Section 61(2) of the Act have, in my view special significance. The "clearance of the goods" must mean that the goods must be physically cleared from the warehouse. Therefore, when the goods have not been physically deposited in a warehouse, the question of clearance of such goods from the warehouse does not arise at all. Apart from that the words "warehoused goods" and "may be removed" as used in Section 61 of the Act would also clearly show that the legislature intended that an importer shall be held responsible for payment of interest u/s 61(2) of the Act in case of physical or actual warehousing of the goods imported. Therefore, from a plain reading of Section 61 read with Section 2(44) of the Act and other relevant provisions of the Act as noted [sic] it is evident that interest is payable by an importer if the goods are physically warehoused. That means, the interest can be charged only if the

goods are physically deposited in a warehouse. In this connection, Section 15 of the Act, may also be considered. Section 15 of the Act provides date for determination of rate of duty and tariff valuation of imported goods. Section 15(1)(b) of the Act clearly says that in the case of goods cleared from a warehouse u/s 68, on the date of which the goods are actually removed from the warehouse. Therefore, from a plain reading of Section 15 of the Act, it is also evident that question of actual removal of the goods from the warehouse is the criterion for determination of rate of duty and tariff valuation of imported goods. Until and unless goods are physically deposited in the warehouse, question of actual removal from the warehouse cannot arise at all. In this view of the matter also, in my view, the question of charging interest on imported goods, u/s 61(2) of the Act comes into play only when the goods are actually and/or physically deposited in a warehouse. In this case, admittedly, the goods were not actually or physically warehoused until an order was passed by this Court directing the goods to be deposited in a warehouse. Therefore, I am of the view that the petitioner is not liable to pay any interest during the period when the goods were actually lying in the dock and not kept deposited in a warehouse. In this case, it is admitted that the goods were not physically warehoused till March, 1991 in the bonded ware- house when on the basis of an order of this Court the goods were warehoused. Accordingly, the writ petitioner is not liable to pay interest u/s 61(2) of the Act for the period when the goods were not physically warehoused.

11. Mr. Kundu, appearing on behalf of the customs authorities, contended that by endorsing bond numbers in the bills of entry of the goods, it should be deemed that they were in fact warehoused. In my view, this submission of Mr. Kundu has no substance. We cannot introduce the concept of deeming provision while determining the question of payment of interest u/s 61(2) of the Act which clearly says that such interest would be payable only in cases of warehoused goods. From a plain reading of the aforesaid provisions of the Act, particularly, the definition of the "warehoused goods" in Section 2(44) of the Act and in view of my discussions made hereinabove, in my view, the intention of the legislature is clear that in Section 61(2) of the Act only goods which are physically warehoused and have been kept deposited in a warehouse for more than a year are liable to be charged with interest. Apart from that when the intention of the legislature is clear by the language used by it in different sections of the Act, there was no question of applying deeming provision which would have the effect of extending the meaning of a definition.

12. That being the position, I am of the view that the writ petitioner is not liable to pay any interest in terms of Section 61(2) of the Customs Act. Therefore, the amount of Rs. 1,00,000/- which had been directed to be deposited by the writ petitioners with the customs authority should be refunded, if it has been deposited in terms of my earlier order.

13. Accordingly, I direct the concerned respondent to refund the sum of Rs. 1,00,000/- deposited by the writ petitioner in terms of my order, dated 18th of

Dec, 1991 within two months from the date of communication of this order.

14. The writ petition is thus disposed of.

15. There will be no order as to costs.

