
(1967) 07 MAD CK 0018

In the Madras High Court

Case No : Writ Appeal No's. 185 and 186 of 1965

Scindia Steam Navigation Co., Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-07-1967

Acts Referred:

Sea Customs Act, 1878 — Section 20

Citation : AIR 1968 Mad 289

Hon'ble Judges : M. Anantanarayanan, C.J.; Natesan, J

Bench : Division Bench

Judgement

M. Anantanarayanan, C.J.—The Scindia Steam Navigation Co. Ltd., is the appellants in these related writ appeals. They arise from

proceedings respectively for the issue of a writ of certiorari and a consequential writ of mandamus, seeking of quash the order of the

Superintendent of Central Excise, enforcing a particular levy, and to restrain the authorities to forbear from collection. The proceedings were

dismissed by Srinivasan, J. The facts are fully set forth in the affidavit of the Assistant Manager of the appellant firm, and the judgment of the learned

Judge. The essential facts are as follows:--

2. It appears, that certain coastal vessels of the appellant firm, called from a port or ports in India, touching the port of Colombo (Ceylon) en route

and finally entered Tuticorin harbour. It is not in dispute that, in addition to the oil which these vessels held, in their containers when they set sail,

which would of course, be oil taken from an Indian port or ports on which duty had been paid, these vessels bunkered a certain quantity of oil at

Colombo port. When these vessels came into Tuticorin Harbour, the Customs authorities demanded customs duty under S. 20 of the Sea Customs

Act 8 of 1878, to which we shall refer later, on the quantity of oil bunkered at Colombo, without allowing any deduction for oil that might have

been consumed by the concerned vessel, during the voyage from Colombo to Tuticorin.

The appellant firm protested against this levy, since the quantity consumed between Colombo and Tuticorin was perfectly ascertainable, and

claimed a deduction therefore. The correspondence before us proves, without any doubt that the Central Board of Revenue accepted this

contention, in the first instance, and restricted the customs duty to the balance remaining, after deducting the oil consumed between Colombo and

Tuticorin from the quantity of oil bunkered at Colombo. By a letter dated 25-1-1962, the Under-Secretary to the Central Board of Revenue told

the appellant firm that necessary instructions had been issued to the Customs authorities in this matter. The demand was revised, and the appellant

firm paid the import duty on the balance.

3. But, subsequently, the Superintendent of Central Excise (3rd respondent) changed his attitude altogether. He communicated a decision that the

import duty had to be collected "'on the entire quantity of oil bunkered at the intermediate foreign port'". He added that in view of this decision, the

question of deducting the quantity of oil fuel towards the voyage consumption of the vessel from the total quantity of the bunkers lifted at Colombo

does not arise'". There was a subsequent communication to the same effect, and all representations of the appellant firm to the Central Board of

Revenue were of no avail. The question argued before us, as before the learned Judge, is the legality of the present levies. In this context, we might

dispose of at the outset itself, an argument that, having originally decided to accept the contention of the appellant firm, the Board of Revenue or

the Customs authorities should not have gone back on that decision. This matter is covered by S. 39(1) of the Sea Customs Act, which may be

extracted and set for the hereunder:--

1. When customs duties or charges have not been levied or have been short-levied through inadvertence, error, collusion or misconstruction on the

part of the officers of Customs, or through misstatement as to real value, quantity or description on the part of the owner, or when any such duty or

charge, after having been levied, has been owing to any such cause, erroneously

refunded, the person chargeable with the duty or charge which has not been levied or which has been so short-levied, or to whom such refund has erroneously been made shall pay the duty or charge or the deficiency or repay the amount paid to him in excess, on a notice of demand being issued to him within three months from the relevant date as defined in sub-sec. (2); and the Customs Collector may refuse to pass any goods belonging to such person until the said duties or charges or the said deficiency or excess be paid or repaid.

4. Under those circumstances, if the levies are lawful, and the notice of demand, on the revised basis, has been issued with three months of the relevant date, and this is not in controversy in the present case, the Departmental authorities could well plead that the duties were earlier "short-levied through inadvertence, error or misconstruction on the part of the officers of Customs". This need not detain us further.

5. The learned Judge (Srinivasan J.) dismissed the writ petitions on the following reasoning. He quoted a passage from the counter affidavit filed by the respondents, in which the averments were that there could be no inference that the oil which could be taken as consumed for the trip from Colombo to Tuticorin, was necessarily consumed from the oil bunkered at Colombo "and not from the stock which the vessel held prior to reaching Colombo". The passage proceeds to point out that the oil bunkered at Colombo was intended to supplement the existing stock, and had not been kept as a separate stock. After stating this, and discussing another aspect of the law relating to Sec. 20, which has not been now pressed in the appeals, the learned Judge made the following analysis taking an example to reinforce his point.

To take an example, we shall assume that the ship left an Indian port with 100 tons of oil on board. It touched Colombo and takes on 50 tons of oil there. The Customs authorities purport to levy duty on the 50 tons bunkered at Colombo. But when the ship returned to the Indian port, she was probably carrying a quantity much larger than this quantity of 50 tons. If we assume that the voyage from the Indian port to Colombo consumed 10 tons of oil, a total of 20 tons would have been expended in the round voyage. The ship would therefore have on board at the time of her entry into the Indian port a quantity of 130 tons of oil. To my mind, the

customs authorities can under the provisions of Sec. 20 of the Act levy an import duty on the entire quantity of oil of 130 tons. Unless the respondents can point to any provision of law which entitles them to ignore the 100 tons of oil which the ship had on board when she left the Indian port, I can see no warrant for their ignoring that quantity for the purpose of levying duty. That quantity was also imported into India from the foreign port in the strict sense of the term. Whether it was or it was not bunkered at the foreign port seems to me, to be beside the point.

Naturally, in this view of the law, the learned Judge felt that the Customs authorities were actually entitled to make a larger levy, than the levies made in the present instances; he declined to quash them on this ground.

6. Unfortunately for this view, there can be no doubt at all that it is not legally sustainable, because of a separate provision of law, which

apparently, was not brought to the notice of the learned Judge in the course of the proceedings. Mr. Govind Swaminathan for the respondents is

unable to show how the view of the learned Judge could be sustained, in the light of the working of S. 20 itself, read with Sec. 2(4) of the Indian

Tariff Act 32 of 1934, which was in force at the relevant period. It was this latter provision, which appears to have escaped notice during the

hearing of the writ petitions. However, in order to make the matter crystal clear, we shall set forth the relevant parts of the Sea Customs Act VIII

of 1878 as well as the Indian Tariff Act 32 of 1934.

7. Section 3(g) of the Sea Customs Act defines "'coasting vessel'" such as the vessels, concerned in the present instances, in the following words:--

"Coasting vessel denotes any vessel proceeding from one customs port to another customs port, whether touching at any intermediate foreign port

or not, or proceeding from or to a customs port to or from a place declared to be a port under Sec. 12.

Section 20 of the Sea Customs Act, to which reference has already been made, is to the following effect:--

1. Except as hereinafter provided, customs duties shall be levied at such rates as may be prescribed by or under any law for the time being in

force, on (a) goods imported or exported by sea into or from any customs port or to any foreign port; (b) opium, salt or salted fish imported by

sea from any customs port into any other customs port; (c) goods brought from

any foreign port to any customs port, and without payment of duty, there transhipped for, or thence carried to, and imported at, any other customs port; and (d) goods brought in bond from one customs port to another.

2. The provisions of sub-sec. (1) shall apply in respect of all goods belonging to the Government of a State and used for the purposes of a trade or business of any kind carried on by, or on behalf of, that Government, or of any operations connected with such trade or business as they apply in respect of goods not belonging to any Government.

Explanation--In this sub-section "State" does not include a Union Society territory.

It is important to note that S. 20 specifically states that customs duties are liable to be levied ""at such rates as may be prescribed by or under any law for the time being in force"". That law is not to be found in S. 20 itself, but this terminology implies, and necessarily implies, that Sec. 20 must be read subject to Sec. 2(4) of the Act 32 of 1934, which was in force. Sec 2(1) states that ""there shall be levied and collected in every port to which this Act applies, the duties specified in the First and Second Schedules"". Section 2(4) is to the following effect:

Nothing in this Act shall authorise the levy of customs duties on any article carried from one customs port (in India) to another such port except salt, opium and spirit.

Again, reference should be made to the Customs Act (Act 52 of 1962) which in the section of definitions defines ""import"" in Sec. 2(23) as follows:

"Import with its grammatical variations and cognate expressions, means bringing into Indian from a place outside India.

We have already seen that under S. 20(1)(a), duties are leviable on goods imported from any foreign port. Obviously as Sec. 2(4) of the Act 32 of

1934 necessarily governs Sec. 20, no duty is leviable on the oil in the holds of the ship, which the ship contained, before it touched Colombo port,

nor is any duty leviable on any quantity of this oil which is still in the holds of the ship, when the ship enters Tuticorin harbour. For this reason, the

example given by the learned Judge (Srinivasan J.) is not correct, and this is indisputably the true position of law. The only oil which is dutiable is

the oil bunkered at Colombo, and if that oil had been kept separately and intact

certainly the entire quantity of it is liable to duty at Tuticorin harbour. Again, if that oil had been kept separately, and a part of it had been consumed as fuel on the voyage from Colombo to Tuticorin only the balance of it is liable to duty. These propositions would appear to be established beyond doubt, as necessary corollaries to the relevant provisions of law.

8. But what happens when the oil bunkered at Colombo is mixed up with the duty-paid oil, which is already on board, and some quantity of this total stock of oil is consumed en route between Colombo and Tuticorin? Faced with this difficulty, Mr. Govind Swaminathan for respondents has argued that Sec. 21 of the Sea Customs Act has been enacted to meet this problem, and that, by the application of Section 21, there is a legal presumption that the entire quantity of oil in the holds of the ship, when the ship enters Tuticorin harbour, is oil which is liable to duty. Even if oil on which duty had been paid is part of this stock, Sec. 21 enables the Customs authorities to ignore this, and to treat the entire stock as liable to duty, because some oil bunkered at Colombo necessarily forms part of this stock.

In this view, the conclusion arrived at by the learned Judge (Srinivasan J.) is correct, though on a different basis of reasoning. Nor merely are the Customs authorities not liable to make any deduction from the oil consumed en route, between Colombo and Tuticorin, but, actually the total stock of oil in the holds of the ship at Tuticorin harbour will be liable to duty. This argument, obviously, will defeat the appellant firm altogether, if it is sustainable. As it depends entirely on an interpretation of Section 21, we immediately proceed to set forth that section below:

Except as otherwise specifically provided by any law for the time being in force, goods whereof any article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty.

9. We have carefully considered the true interpretation of Sec. 21, in the light of the terminology employed by the Legislature. We are of the view that this section cannot at all be invoked, where there is no question of "a part

or ingredient" of goods of certain character, recognisable as such, but there is only the question of the total quantity of the goods, whether duty had been paid on some quantum of this stock, or otherwise. In other words oil cannot form "a part or ingredient" of more oil, nor can some quantity of oil be regarded, properly, as composing a part of a larger quantity of oil. Clearly S. 21 has no application whatever to that kind of instance. As Mr. Joshi for the appellant firm has rightly contended, in our view. Sec. 21 embodies the principle that where "a part or ingredient" of an article is liable to duty, though the entire article was such may not be liable, the goods may be taxed as if they had been entirely composed of such dutiable article. If more than one ingredient enters into the goods concerned, then the goods are liable to be taxed "as if they were entirely composed of the article charged with the highest rate of duty".

10. We are satisfied on a careful consideration that the interpretation urged by Mr. Swaminathan was not the intendment of the Legislature, and that the words "part or ingredient" cannot possibly be construed as quantity of a quantity, which is the construction that Mr. Swaminathan would urge. The effective word is "ingredient" and obviously, the more common word "part" has to be construed ejusdem generis. Our attention has been drawn to the rather extensive treatment of the word "ingredient" in Murray's English dictionary Volume 5. The definition most relevant to the present context, runs as follows:--

Something that enters into the formation of a compound or mixture, a component part, constituent element.

In another context, the significance is stressed as "a component part or element". There are certain literary references exemplifying the use of the word, and an interesting one is a passage from Butler's Hudibras 1-ii 21; "Some fierce deed doing man composed of many ingredient valours".

11. We are clear that the use of the word implies that there is to be some material thing, which enters into the composition of some other material substance, and which is liable to duty. In that case, though the total substance may have this as only one ingredient nevertheless, it is taxable as though the ingredient forms the whole. Similarly, if there are several such ingredients, the highest rate of duty leviable for any such ingredient, can be levied on the total substance. This makes a very clear distinction between the

character of the ingredient, and the character of the total substance

Sec. 21 cannot possibly apply to a case where there is no question of "a part or ingredient" whatever; where it merely happens that the duty paid

liquid had been mixed up with some quantity of liquid which is liable to duty. In such a case, it is merely a question of ascertaining what is the

quantity of liquid to duty, and of levying the tax upon it.

12. In this case, we have precise data about the quantity of oil bunkered at Colombo, which is liable to duty. But, since this was mixed up with the

oil which was already duty-paid, and some determinate quantity of oil was consumed between Colombo and Tuticorin, though this entire

determinate quantity could not be deducted from the oil bunkered at Colombo, a proportionate deduction at least has to be made, since all the oil

in the vessel was stocked in a single container. There is really no difficulty about this. The quantity of oil, previously duty paid, when the vessel

entered Colombo is known and ascertainable. Equally we know the quantity of oil bunkered at Colombo, and the quantity consumed en route has

to be divided proportionately between the quantity which was duty paid, and the dutiable quantity taken at Colombo. Deduction can be made only

to the proportionate extent from the quantity taken at Colombo and the balance is dutiable. Levies have to be revised and formulated on this basis.

13. Under those circumstances, it is clear that the levies as they stand, are not sustainable. The appeals are accordingly allowed, and the writs will

issue. The parties will bear their own costs.

Natesan, J.

14. While in entire agreement with my Lord, the Chief Justice, in the judgment just now pronounced, I shall add some words on the interpretation

of Sec. 21 of the Sea Customs Act VIII of 1878, which is relied upon before us as a complete answer to the appeal. On behalf of the Revenue

authorities the contention raised in the counter affidavit was that where the quantity of oil declared at the port of Tuticorin was more than the

quantity of oil bunkered at Colombo, that showed that the vessel had sufficient stock of duty-paid oil and the non-duty-paid oil stored at the

foreign port of Colombo had not gone into consumption between Colombo and Tuticorin. Therefore, it was contended that the entire quantity of

oil bunkered at Colombo should be considered as imported when the vessel

called at the port of Tuticorin. The plea was that the oil that was on board at the time the vessel called at Colombo and the oil taken at Colombo merged into one and that it should be necessarily assumed that the consumption during the voyage from Colombo to Tuticorin was from the quantity which was in the ship prior to her bunkering at Colombo, that is the oil bunkered at Colombo would be consumed only when the duty-paid stock was exhausted.

The learned Judge, Srinivasan J., whose attention was not drawn to Sec. 2(4) of the Indian Tariff Act 32 of 1934, had to rely only on Sec. 20 of the Sea Customs Act 1878 and so went further than the claim of the department to hold that when once a ship, be it a coasting vessel, touched a foreign port before its return to an Indian port, it would be a case of import of the entire goods, goods on board when the ship left the Indian port and good subsequently taken. The learned Judge, therefore, took the view that the authorities appeared to have erred in limiting the demand to the quantity that was bunkered at the foreign port.

15. Sections 20 and 21 are found under Chapter V of the Sea Customs Act VIII of 1878. Section 20 provided for the levy of customs duties at such rates as may be prescribed by or under any law for the time being in force on goods imported or exported by sea into or from any customs port from or to any foreign port and other categories of goods specified in the section. Section 21 of the Act runs thus:--

Except as otherwise expressly provided by any law for the time being in force, goods whereof any article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with the full-duty which would be payable on such goods if they were entirely composed of the articles charged with the highest rate of duty.

The word "goods" is not defined in the Act VII of 1878. By "goods" are ordinarily meant moveable property, tangible articles and things, merchandise and wares. The Customs Act 52 of 1962 defines "goods" as including vessels, aircrafts and vehicles, stores, baggage, currency and negotiable instrument and any other kind of moveable property. If Sec. 21 is applicable to the cases on hand, and that is what is now relied upon

for department then the entire stock of oil in the hold of the ship at Tuticorin harbour will be liable to duty and Srinivasan J.'s conclusion prevails

though on a different basis. But a reading of Sec. 21 of the Act in its true setting, does not permit that interpretation which would be necessary to

make it applicable to the instant case. The Sea Customs Act VIII of 1878 is an Act, as said in its preamble, intended to consolidate and amend the

law relating to the levy of sea customs duties. Section 20 is a provision for raising revenue in a traditional way and Sec. 21 is obviously intended for

the protection and the due realisation of the levy provided for under Sec. 20.

It provides against duty payable on any article escaping its due levy by forming part of or an ingredient of some commodity, which as such may in a

particular case be liable to less duty or may be exempted from duty. By Section 21 the commodity itself as a whole is made liable to duty, as if it

was wholly composed of the article which was liable to duty or higher duty as the case may be and if a commodity was composed of more than

one article, then duty could be levied thereon as if it was entirely composed of that component which bore the highest rate of duty. The section

provides for levy of duty on composite products or commodities made up of more than one material, the end product of a mixture or compounding

of articles, where the end product, compound or mixture is itself a specifically identifiable commodity having an individuality of its own differing from

its components.

It provides for a case where though the components could be analysed, the final commodity could itself be claimed as good having its own

individuality or character for purposes of customs levy. This aspect, that the end product should have an individuality, of its own is brought out

clearly in the section, for instance in the word "'Goods where of any article.....forms ingredient or duty.....payable on such goods if they were

entirely composed of such articles'". The expression "ingredient" conveys the idea very clearly. An ingredient is something that goes into the

formation of some commodity, compound or mixture and the word "'part'" in the phrase "'forms part or ingredient'" would derive its colour from the

surrounding words, and phrases. The goods contemplated under Sec. 21 are those which are made up of more than one article or species of

goods, which could not be separated into their components or divided off into

their constituents without destroying the specific quality or individuality they had acquired as compounded good for example, an extreme case confectionary or cakes made out of sugar, flour and gelatine.

If unintended hardship or anomaly is likely to result by the application of the provisions in in specified cases by law they could be exempted. But

Sec. 21 is manifestly not intended to apply to cases where there is merely a gathering up or storing of the same article. When to ten tons of wheat another ten tons of wheat of the same quality are added no different commodity of goods is produced, it is still wheat and the super-added ten tons are found by just measuring out ten tons from the heap of twenty tons. As stated earlier Secs. 20 and 21 are provisions for raising revenue and have to be interpreted accordingly. When to 100 tons of fuel oil in a ship's hold further ten tons of the same fuel oil is added, to look upon the entirety of the oil in there ship's hold as a composite commodity is to read into Sec. 21 something which ex facie it does not intend to convey. The oil is the same and there can be no difficulty in determining the duty paid and the duty payable oil in the ship's hold. The respective quantities have only to be measured out. There is no question in the context, of the required identity of the goods getting lost in a composite commodity. The goods mixed are of the same kind, their individuality or specifications, if any, is in quantity and is maintained when measured out.

16. Once Sec. 21 is out of the way, the liability would be to pay duty on the quantity of oil bunkered at Colombo, which had been imported into the customs port of Tuticorin. The practical and reasonable way of ascertaining this quantity in view of the consumption of oil is to distribute the consumption proportionately between the oil in the hold when the ship entered Colombo and the oil bunkered at Colombo. There can be no presumption in a case of this kind that only the duty paid oil was drawn out for consumption, nor can it be contended that only the oil taken at Colombo was consumed.

17. As we were delivering these separate but concurring judgments, we noticed that while the appellant was represented by learned counsel, there was no representation for learned Standing Counsel for the Central Government, who had earlier appeared and opposed the appeals. In our view, this is not compliance with the properties nor is it the rendering of due courtesy

to Court. We, hence, express our displeasure with regard to this.

We must add, however, that subsequently, learned counsel on behalf of the learned Standing Counsel appeared before us, and expressed his deep

regret for the absence, which was explained as due to pure inadvertence and some confusion; we have accepted the apology.

18. Appeal allowed.