
(1992) 09 BOM CK 0037
In the Bombay High Court
Case No : Writ Petition No. 966 of 1982

Shashikant Panachand Gorakhia

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-09-1992

Acts Referred:

Customs Act, 1962 — Section 143, 157, 18

Citation : (1993) 65 ELT 15

Hon'ble Judges : S.P. Kurdukar, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri D.H. Mehta, for the Appellant; Shri V.G. Rege, for the Respondent

Judgement

A.V. Savant, J.—The short question raised in this Petition is whether the stainless steel circles imported by the petitioner fall under Item 73.15(1) of the Central Customs Tariff Act, 1975, attracting lesser customs duty as contended by the petitioner or whether the said stainless steel circles fall under Item 73.15(2) of the said Tariff Act attracting higher customs duty. The relevant period of import is February 1982. There is no controversy before us that by virtue of the amending Act No. 15 of 1982, which was enacted on 11th day of May 1982 but was retrospectively brought into operation with effect from 1st of January 1981, the imported goods would fall under item 73.15(2) of the said Tariff Act. It appears that the Delhi High Court had an occasion to consider the identical question in a series of matters starting with the case of Super Traders v. Union of India, being Civil Writ Petition No. 2131 of 1982 decided on 23rd of September, 1982 which decision has been reported in 1983 E.L.T. 258. This decision in Super Trader's case was followed by the Delhi High Court in the case of M/s. A. Parmananddas. However, M/s. A. Parmananddas carried the matter in appeal to the Supreme Court and special leave having been granted, Civil Appeals Nos. 1254 and 1255 of 1988 filed by M/s. A. Parmananddas were entertained by the Supreme Court. However, on January 4, 1989, the Supreme Court has dismissed the said Civil Appeals Nos. 1254 and 1255 of 1988 filed by M/s. A. Parmananddas and has

held that in view of the fact that Amending Act 15 of 1982 was brought into operation with effect from 1st of January 1981, it would be clear that the goods imported thereafter would fall under Item 73.15(2) of the Central Customs Tariff Act, 1975, In the result, the Supreme Court has upheld the decision of the Delhi High Court in the case of M/s. A. Parmananddas.

2. Having heard Shri Mehta for the petitioner and Shri Rege for the respondents, there is no controversy before us that the goods imported in the present case were identical with the goods that were imported in M/s. A. Parmananddas's case and that in this case also the goods have been imported after 1st of January 1981. Hence, in view of the order passed by the Supreme Court on January 4, 1989 in Civil Appeals No. 1254 and 1255 of 1988 dismissing the appeals filed by M/s. A. Parmananddas, it would follow that the goods imported viz. stainless steel circles would be liable to higher customs duty since the said goods would be classified under Item 73.15(2) of the Central Customs Tariff Act, 1978.

3. In fairness to Shri Mehta, however, it may be pointed out that he invited our attention to a report appearing in 1991 (55) E.L.T. 142 in the following words :

"DEFECTIVE STAINLESS STEEL CIRCLES/SHEETS

The Supreme Court Bench comprising Justice S. Ranganathan and Justice N. D. Ojha on 18.2.1991 granted Special Leave to appeal in SLP (Civil) No. 3339/82 filed by Kays International against the judgment and order dated 23.8.1982 passed by the Delhi High Court in Civil W.P. No. 1905 of 1982.

The High Court by its impugned judgment had dismissed the writ petition of the petitioner. The main judgment of the High Court was delivered in the case of Super Traders v. Union of India, being Civil Writ Petition No. 2131 of 1982.

REPRESENTED BY : Shri P. H. Parekh and Miss Sunita Sharma, Advocates, for the Petitioner."

From the above report, on which reliance is placed by Shri Mehta, it appears that on 18th of February 1991, the Supreme Court has granted special leave to appeal in SLP (Civil) No. 3339/83 filed by Kays International against the judgment and order dated 23rd of September 1982 passed by the Delhi High Court in Civil Appeal No. 1905 of 1982. It appears, according to Shri Mehta, that in all these three cases of (i) Super Traders, (ii) M/s. A. Parmananddas and (iii) Kays International, the Delhi High Court has taken the view that the goods imported were to be classified under item 73.15 (2). It further appears from what the learned counsel mentioned before us that there was no appeal in the case of Super Traders. The appeal in the case of M/s. A. Parmananddas has been dismissed on January 4, 1989 as indicated above. In this view of the matter, we are inclined to follow the Supreme Court order in Civil Appeals Nos. 1254 and 1255 of 1988 in the case of M/s. A. Parmananddas which holds the field as on today and hold that stainless steel circles imported by the petitioner after the 1st of January 1981 would be classifiable under Item 73.15(2) of the Central

Customs Tariff Act, 1975.

4. Shri Mehta wanted to advance arguments on the merits of the matter, particularly in regard to the retrospective operation of the Amending Act No. 15 of 1982 which has been brought into force with effect from 1st of January 1981. However, in view of the decision of the Supreme Court referred to above, we have not permitted Shri Mehta to address us on the merits of the matter. In this view of the matter, the petition is liable to be dismissed. The rule in the petition is, therefore, discharged with costs quantified as below.

5. However, when we come to the passing of the final order, we are presented with a very shocking state of affairs which needs to be commented upon and enquired into. Under the interim order passed by this Court on 5th of May 1982, rule was issued and was made returnable on 11th of January 1983. Interim relief in terms of prayers (f) and (g) was granted on the following terms :

"(a) Upon the petitioner paying the Customs duty at the rate of 45% of the assessable value.

(b) Upon the petitioner herein furnished Bank Guarantee of any nationalised Bank or in the alternative of the Schedule Bank in favour of the Respondents to the extent of disputed amount of duty. The petitioner undertakes to this Hon"ble Court to keep the said Bank Guarantee alive till 8 weeks after the disposal of the petition.

(b) Upon the petitioner executing the bond for the entire disputed amount of duty."

6. It would be evident from the above interim order that the petitioner was directed to furnish Bank Guarantee of a nationalised Bank in favour of the respondents to the extent of the disputed amount of duty and the petitioner has undertaken to this Court to keep the said Bank Guarantee alive till 8 weeks after the disposal of the petition. The further condition was that the petitioner was to execute personal bond for the entire amount of the disputed duty. On a query to the counsel appearing for both the parties, it now transpires that initially, Bank Guarantees of the Bank of Cochin Limited were furnished and the amounts covered by the said Bank Guarantees (as many as 7 in number) would total up to Rs. 1,48,31,050/-. There is no dispute before us that the Bank guarantees have not been renewed after October 1982 and a statement has been filed by Shri Rege before us today showing that though the petitioner was called upon to renew the Bank guarantees on or before 18th or 19th of October 1982 he did nothing. There is no controversy before us that none of the 7 Bank guarantees which were initially furnished pursuant to the interim order dated 5th of May 1982 is alive today. Despite the petitioner having undertaken to this Court to keep the Bank guarantees alive till 8 weeks after the disposal of the petition as provided in sub- clause (b) of the interim order reproduced above and despite the fact that the petitioner was called upon in the month of October 1982 to renew the Bank guarantees, the petitioner has not cared to honour the

undertaking given by him to this Court. What disturbs us more is the indifference of the staff in the office of the 2nd respondent in not bothering to bring the matter to the notice of this court in time from October 1982 till this date, that is to say during the last 10 years. No steps have been taken by the respondents for protecting the interests of the revenue which are of quite a substantial amount as mentioned above. Be that as it may, the fact remains that there is no subsisting valid Bank guarantee as of today and the Bank guarantees furnished for Rs. 1,48,31,050/- have expired in or around October 1982. In view of this prima facie breach of the undertaking on the part of the petitioner, it is for the respondents to initiate such proceedings as are open to them in accordance with law.

7. There is yet another aspect of the matter which needs to be emphasised. Under sub-clause (c) of the interim order quoted above, the petitioner was called upon to execute personal bond for the entire disputed amount of duty. u/s 18 of the Customs Act, 1962, a provisional assessment of duty can be made and while making such a provisional assessment, the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed. u/s 143 of the Customs Act, 1962, the Assistant Collector has got the power to allow import or export on execution of bond in such amount with such security or surety and subject to such conditions as may be specified in the bond. Sub-section (1) of Section 143 of the Act contemplates that the Assistant Collector of Customs may, notwithstanding anything contained in the Act, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Collector of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond. In exercise of the powers conferred by Section 157 of the Customs Act, 1962, read with section 18 of the said Act, the Central Board of Revenue has made the regulation called the "Customs (Provisional Duty Assessment) Regulations, 1963. Rule 2 deals with conditions for allowing provisional assessment and contemplates executing a bond in an amount equal to the difference between the duty that may be finally assessed and the provisional duty and for further deposits to be made as per the direction of the proper officer. Regulation 3 deals with the terms of the bond. Regulation 4 reads as under :

"4. Surety or security of the bond. - The proper officer may require that the bond to be executed under these regulations may be with such surety or security, or both, as he deems fit."

Our attention has been invited by Shri Rege to the personal bonds executed by the petitioner. They appear to be a stereo-type bonds but, unfortunately, they

are not supported by any surety or security. A perusal of sub-section (1) of Section 143 as also the Customs (Provisional Duty Assessment) Regulations, 1963 would make it clear that the bond contemplated is with such surety or security as the Assistant Collector of Customs may approve. In a given case, he can insist on both, surety and security, if he deems it fit. Strangely, in the present case, the personal bond is not supported by any surety or security whatsoever. The position, therefore, is that under the interim order dated May 5, 1982, the entire goods have been cleared. The 7 Bank guarantees for an amount of Rs. 1,48,31,050/- have expired about 10 years ago in October 1982. No steps have been taken to obtain renewal of the said Bank guarantees in time, nor was any attempt made to approach this Court for proper action in that behalf. The personal bonds which have been obtained from the petitioner are bonds simplicitor which are not backed either by any surety or security. We hope that the 2nd respondent Collector of Customs will look into this mess, if not a fraud, and fix the responsibility on the erring staff forthwith. We further hope that there is no recurrence of such conduct which seriously jeopardises the interests of the Revenue to the tune of crores of rupees. Today itself we have a series of matters where the position is identical with the position obtaining here.

8. In view of the above, as indicated earlier we discharge the rule in the Writ Petition. The respondents will be entitled to recover the entire amount of duty payable by the petitioner. Since, admittedly, the Bank guarantees are not subsisting, the petitioner is directed to pay the entire amount in respect of the goods imported and covered by the Bank guarantees within a period of four weeks from today. If, however, the petitioner fails to pay the said amount within four weeks as mentioned above, the respondents shall be entitled to recover the said amount with interest at the rate of 15% per annum on the entire amount from the date of clearance of goods till the date of payment.

9. We make it clear that this order will not prejudice the rights of the respondents to adopt such proceedings against the petitioner, in respect of breach of the undertaking to keep the Bank guarantees alive, as may be open to them. We make it clear that if it so transpires that any Bank guarantee is valid and subsisting as of this date, the respondents will undoubtedly be entitled to encash the said Bank guarantee. The petitioner will pay the costs of the respondents quantified at Rs. 2500/-. A copy of this Judgment shall be forwarded by the Registry to the 2nd respondent Collector of Customs forthwith.

10. This order will also govern Writ Petitions Nos. 812, 813, 814, 815, 989, 994, 1577 and 778 of 1982.