

(1993) 08 MAD CK 0080

In the Madras High Court

Case No : Writ Petition No's. 8177 of 1982 and 4103 of 1983

Shriram Fibres Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 14, 4
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 12, 14, 46, 50
Major Port Trusts Act, 1963 — Section 42

Citation : (1994) 45 ECC 122 : (1994) 69 ELT 4

Hon'ble Judges : Thangamani, J;Srinivasan, J

Bench : Division Bench

Advocate : Mr. Habibullah Badhshah, for the Appellant; Mr. C.A. Sundaram, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Srinivasan, J.—The question that arises for consideration is whether the customs duty is leviable on landing charges as forming part of the price or value of the goods within the meaning of Section 14 of the Customs Act, 1962. This matter has arisen under the Customs Act, 1962 before it underwent amendments in 1988. The relevant Rules applicable are Customs Valuation Rules, 1963.

2. The short facts relevant for the purposes of this case are as follows :

M/s. Shriram Fibres Limited, who is the petitioner in both the writ petitions imported several items including caprolactum. In W.P. No. 4103 of 1983 it imported a consignment of 2000 bags of caprolactum and the bill of entry dated 26-9-1981 was filed. The Assistant Collector of Customs fixed the national landing charges at a percentage of .6% and arrived at the landing charges at Rs. 4,762.74. He levied customs duty at the rate of 25% and c.v. duty at the rate of 28.5% plus 5% working out to Rs. 2,972.25. The actual landing charges were Rs. 1,216.51. The duty was paid and the goods were cleared but a claim for refund was made on 2-12-1982 before the Assistant Collector of Customs. Two

grounds were urged viz., that the duty was not chargeable on the landing charges at all and the entire amount was refundable and alternatively even if duty was payable on landing charges there was no jurisdiction to levy on a notional basis and it should be done only on the basis of actual landing charges incurred. The Assistant Commissioner by his order dated 18-1-1983 accepted the second contention and directed a refund of Rs. 2,212.35. Thus it was held that the petitioner was liable to pay a sum of Rs. 759.18 by way of customs duty on landing charges.

3. In the other writ petition No. 8177 of 1982 the petitioner imported 4,000 bags of caprolactum and filed the bill of entry on 20-1-1981. The landing charges were worked out at Rs. 5,761.97 whereas the actual landing charges was Rs. 2,214.02. On a similar application for refund, the Assistant Commissioner granted a refund of Rs. 4,255.47 leaving a balance of Rs. 1,506.50. These amounts, which are in dispute in both the cases are not much but the question has a larger implication and it will be a recurring charge. Hence the petitioners are fighting the matter. Against the orders of the Assistant Collector, appeals were filed by the petitioner before the Collector of Customs in both the cases and they were rejected. Hence the petitioners are before this Court under Article 226 of the Constitution of India.

4. Section 12 of the Customs Act provides for levy of customs duty at such rates as may be specified under Customs Tariff Act, 1975 (Act 51 of 1975) or any other law for the time being in force on goods imported into and exported from India. The crucial words in this section are "imported into or exported from India". Section 14(1) reads thus :

"For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be -

(a) the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale :

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented u/s 46, or a shipping bill or bill of export, as the case may be, is presented u/s 50;

(b) where such price is not ascertainable, the nearest ascertainable equivalent thereof determined in accordance with the rules made in this behalf".

5. It is the contention of learned counsel for the petitioner that u/s 12 the duty is leviable only on goods imported into India and the value of the goods must be fixed u/s 14 at the time and place of importation and, therefore, the landing

charges which, according to him, form part of post-importation expenses cannot be the subject matter of levy of customs duty. It is contended by learned counsel that the importation into India takes place when the ship enters the territorial waters and not when the goods are unloaded from the ship in the harbour. Secondly it is argued that even if the unloading point is considered to be the place of importation, the landing charges cannot form part of the price or value of the goods as contemplated by Section 14 of the Act. It is submitted that under the Customs Valuation Rules, 1963, there was no provision for including the landing charges as part of the price at the place of importation. Reliance is placed upon the following words in Section 14(1)(a) :

"the price at which such or like goods are ordinarily sold, or offered for sale.... in the course of international trade"

"and the price is the sole consideration for the sale or offer for sale".

It is contended that the expression "in the course of international trade" is the most crucial part of the section and when goods are imported from foreign shores the price at which foreign trader sells it to the importer is the relevant price and that should be taken as the price for the purpose of levying customs duty u/s 14. It is contended that the foreign trader could not have contemplated inclusion of landing charges in the price. Reliance is placed on the rules under Customs Valuation Rules of 1963 which contained the method of determination of the value of the imported goods. It is submitted that under the said Rules, if the actual value was not ascertainable, the value for which the goods would be offered in the international market to other importers should be considered. The landing charges would differ from port to port and naturally the exporter cannot think of including the landing charges in the price of the goods.

6. In so far as the first contention of the learned counsel is concerned, there are number of judgments of various High Courts taking the view that the place of importation is not the territorial waters but the port. In Prabhat Cotton and Silk Mills Ltd. Vs. Union of India, a similar contention was considered and answered as follows :

"The first answer to this argument is that as per Section 12(1) duties of customs are levied on goods imported into or exported from India and the expression "India" in so far as Section 12 is concerned refers to the Indian landmass and not the Indian territorial waters. This becomes evident on a true reading of Section 12(1) which reads as under :-

"12. Dutiable goods. - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Indian Tariff Act, 1934 (32 of 1934), or any other law for the time being in force, on goods imported into, or exported from, India".

What requires to be underlined is a reference to "goods imported into, or exported from, India". Surely the expression "goods exported from India" cannot

mean goods exported from the territorial waters of India. It cannot mean goods exported from the hypothetical line drawn on the boundary of the Indian territorial waters. It is susceptible to only one interpretation viz., the goods exported from the "landmass" of India. Once this view is taken in the context of exportation from India, the expression "imported into" which forms a part of the expression "imported into or exported from India cannot carry any other meaning; the expression India must mean landmass of India whether it is in the context of "exportation from India" or "importation into India" of goods within the meaning of dutiable goods in the context of Section 12(1) of the Act. To construe the expression "goods exported from India" to mean "goods exported from the landmass of India on the one hand and to interpret the expression following on its heels the goods imported into India" to mean goods imported into territorial waters of India and not the landmass of India would introduce an anachronism and so incongruity. Section 12 must, therefore, be read in a consistent manner so that the same meaning can be assigned to the expression "India" when it is used in the context of exportation of goods from India as also when it is used in the next breath in the context of importation of goods into India. We have, therefore, no hesitation in holding that Section 12 refers to exportation from, or importation into, of goods with reference to the landmass of India and not with reference to the territorial waters of India. Once we reach this conclusion the main plank of the submission urged on behalf of the petitioners must collapse. In paragraph 6 of the petition (Special Civil Application No. 1640/81) the argument has been structured in the following manner :

"The petitioner says that the duty which is imposed under the Customs Act is a tax charged on the entry of the goods into India. The petitioner states that taxable event occurs at the time when the goods enter into Indian territorial waters and the duty becomes leviable at that stage".

The basis of the argument that the landing charges cannot be included in the assessable value is the premise that the taxable event occurs when the vessel carrying the goods for importation enters in the territorial waters of India. If the very basis of premise assumed by the petitioners is fallacious, the entire structure of the argument must fall to the ground. Landing charges of course cannot be included if the valuation of the goods were to be made as at the point of time when the ship enters territorial waters. In that event the goods must be valued on the "where and when basis" at the point of time of entry into territorial waters. Since the goods are being valued at the point of time when they are still on the ship, the question of including landing charges in the assessable value cannot arise. For the reasons indicated by us a short while ago, we are of the opinion that the valuation of the goods has to be made not at the point of time or place when the ship carrying the goods for importation enters the waters but it has to be made at the point of time when the goods are landed on the landmass of India. If the goods are valued as and when they are landed on the landmass, the petitioners cannot succeed. The goods have to be valued not when they are in the ship and not when they are being unloaded from the ship or are

suspended in the air on the hook or the unloading crane. They are to be valued at the point of time when they are landed on the landmass of India both from the time point of view as well as the place point of view. We may take a quick look backwards and recall the discussion made in the context of the analysis of Section 14 of the Customs Act pertaining to valuation of goods for the purposes of assessment. As per the analysis made by us, the price of the goods has to be determined (1) on the basis of the price at which ordinarily such goods are offered for sale, (2) such price is required to be determined with reference to the time and place of importation of goods (i.e., when they are unloaded on the landmass of India), (3) the price must be the price at which the goods are ordinarily sold or offered for sale in accordance with the international trade, and (4) the price must be genuine price between a commercial buyer unrelated to each other. Such being the position, proposition Nos. (2) & (3) must be called into aid for the purpose of determination of assessable value of the goods. And the goods will have to be valued at the point of time of being unloaded on the landmass of India and at the place where they are unloaded. Since the landing charges have to be paid to the Port authorities as soon as the goods are landed, and the sale can take place only after they are landed, the price at which the goods are sold or offered for sale would of necessity include the landing charges payable before the transaction of sale is effected. An argument as regards the post- importation charges was advanced in the Privy Council in AIR 1938 15 (Privy Council) The Privy Council has expressed the opinion :

"That the Legislature intended to exclude post-importation expenses need not be doubted but it had to do this in a practicable manner without undue refinement, and it must be taken to have regarded the phrase which it employed as sufficient for the purpose if taken in a reasonable sense".

If this principle were to be applied, the only manner in which the interpretation can be made in the reasonable sense or common sense manner is to apply the test of valuation of goods after they are unloaded on the Port on payment of landing charges incidental to the unloading of the goods on the wharf. In the said decision the phrase "at the place of importation" came up for consideration and an argument was urged as to whether the valuation had to be made on the ex-ship basis. This argument was negatived by the Privy Council. Ultimately, the learned Counsel for the importer could not even contend that the valuation should be on the ex-ship basis but suggested that it should be on ex-wharf basis and that in any case place of importation would not extend beyond the limits of the Port. It was in that context that the Privy Council made the aforesaid observation. We have, therefore, no hesitation in reaching the conclusion that the inclusion of landing charges in the assessable value cannot be regarded as inclusion of post-importation charges and that introduction of such undue refinement is not called for. Then interpreted in a sensible and commonsense manner the view which commands to us appears to be the correct view. It is further contended that landing charges cannot be included in determining the assessable value of the imported goods for the purpose of computation of the

customs duty. And that is how the provisions have been construed for more than 40 years. That is the interpretation which has prevailed in all quarters, namely, the revenue, the importer, the exporter and all concerned. All transactions have been made on this basis for all these years. We have already brought into focus innumerable complications which would arise if this construction which has come to be accepted by all concerned for such a long time is thrown overboard and a new and revolutionary construction which unsettles every settled position is accepted on the basis of a fancy or disingenuous argument. There is authority for the proposition that a different interpretation should not be placed on the words of a provision which disturbs the course of construction which has continued unchallenged for a considerable length of time and has acquired the sanction of the continued decisions over a very long period [see *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*,]. No doubt the proposition is adverted to in the context of sanction of continued decisions over a long period. So also no doubt the Supreme Court came to the conclusion that the said principle was not attracted in the case before the Court because the interpretation in question had not been acquiesced in for a long time. All the same this principle can be extended to a situation like the present one as well where sanctity which has found acceptance by all concerned over such a long time without making any one unhappy (let alone considerations regarding desirability for pragmatism and undesirability for undue refinement and other weighty factors outlined earlier). We have therefore, no hesitation in repelling the contention urged on behalf of the petitioners in this behalf".

7. The Delhi High Court gave a similar ruling in *Super Traders and another Vs. Union of India and others*, . The Court observed in para 27 at page 276 as follows :

"Thus import is extricably associated with goods being brought into India so as to form a part of the mass of goods in the country. The only way the goods imported by the petitioner can become a part of mass of goods inside the country can be after they have been off- loaded from the ship and brought to the port. But before that situation can be achieved landing charges will have to be incurred so that the goods could be brought to the Port. That is why when valuation of the goods for the purpose of assessment is to be calculated u/s 14 of the Customs Act it will have to be at a value inclusive of landing charges. We are, therefore, satisfied that the Customs authorities are justified in including the landing charges in the assessable value of the goods imported into India for the purpose of computation of the customs duty. The plea, therefore, fails".

In *B.S. Kamath and Co. and Ors Vs. Union of India and Others*,] the Karnataka High Court has expressed the same view. In *Govind Ram Aggarwal Vs. Collector of Customs and Others*, the Calcutta High Court has also expressed a similar view.

8. Learned counsel for the petitioner submits that the matter is pending before

the Supreme Court of India and the decision of the other High Courts cannot be considered to be final. According to him, the decisions proceeded on an erroneous reasoning and the point of import must be taken to be only the territorial waters. We find that the judgments referred to above are based on proper reasoning and there is no reason whatever for us to differ from the same. We hold that the place of importation is the landmass and not the territorial waters.

9. Learned counsel then submitted that in all those cases the second contention of his has not been considered. According to him, those cases turn only on the question whether the place of importation is the territorial waters or the port. They have not considered whether landing charges could form part of the price as contemplated by Section 14 of the Act. In answer to this contention learned counsel for the respondents submits that the price of goods cannot be divorced from the place of importation. He submits that Section 14 itself contains the necessary indications. He points out that the section should be read in the manner in which the Gujarat High Court read it in *Prabhat Cotton and Silk Mills Ltd. Vs. Union of India*, . He invites our attention to para 9 of the said judgment. The relevant part of the paragraph reads thus :

"Thus, for the purposes of charging of customs duties in connection with the import of goods the value of such goods is required to be computed in accordance with Section 14(1)(a). The anatomy of Section 14 reveals that the value has to be determined in the following manner :

- (1) The price at which goods are ordinarily sold or offered for sale.
- (2) Such price is required to be determined with reference to the "time" of importation of goods, as also with reference to the "place" of importation of goods.
- (3) The price at which the goods are ordinarily sold or offered for sale in accordance with the international trade.
- (4) Such price is to be determined in the course of a transaction where the seller and buyer have no interest in the business of each other (i.e., genuine price between two businessmen and not a price which is more or less than the genuine price, the difference in price being on account of the fact that buyer and seller are interested in the business of each other) and the price is sole consideration for the same.
- (5) In case the price cannot be determined in accordance with Section 14(1)(a) in the aforesaid manner, the price has to be determined as per Section 14(1)(b) on the basis of the nearest ascertainable equivalent thereof determined in accordance with the rules made in that behalf".

With respect we agree.

10. If the section is analysed in this manner it is clear that the price at which the

goods are ordinarily sold or offered for sale is to be determined with reference to the time of importation of goods as also the place of importation of goods. If the contention of learned counsel for the petitioner is accepted, there is no necessity at all for the legislature to use such a complicated language for fixing the measure of the duty. The legislature could well have said that the valuation should be the transaction value of the goods. Since the legislature has not used that expression it is clear that the legislature intended that besides the price at which the exporter offers the goods, something more should be added for the purpose of levy of customs duty. The mere fact that the expression "in the course of the international trade" is used, does not alter the situation.

11. In this connection, learned counsel for the respondents refers to the judgment of the Supreme Court in *Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others*, . This is a case which arose under Central Excises and Salt Act. The court considered the measure of excise duty u/s 4 of the said Act. The relevant part of Section 4 of the Central Excise Act as extracted in the judgment reads thus :

"The new Section 4 provides :-

4. Valuation of excisable goods for purposes of charging of duty of excise. - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section be deemed to be -

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale".

Rejecting a similar contention put forward by the parties before it with regard to levy of excise duty the Court observed :

"We think we have shown sufficiently that while the levy is on the manufacture or production of goods, the stage of collection need not in point of time synchronise with the completion of the manufacturing process. While the levy in our country has the status of a constitutional concept, the point of collection is located where the statute declares it will be. We shall return to this later when it is necessary to consider a submission in regard to the effect of transactions to or through "related persons".

Again the Court pointed out :

"that when enacting a measure to serve as a standard for assessing the levy the Legislature need not contour it along lines which spell out the character of the levy itself. Viewed from this standpoint, it is not possible to accept the contention that because the levy of excise is a levy on goods manufactured or produced the value of an excisable article must be limited to the manufacturing cost plus the manufacturing profit. We are of opinion that a broader based standard of

reference may be adopted for the purpose of determining the measure of the levy. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. In our opinion, the original Section 4 and the new Section 4 of the Central Excises and Salt Act satisfy this test".

12. We are unable to accept the contention of learned counsel for the petitioner that Section 4 of the Central Excise Act will stand on an entirely different footing from Section 14 of the Customs Act. The language is almost the same and the principle applicable will also be the same. In the case before the Supreme Court the question was, whether any expenditure incurred after the manufacture of the goods could be included for calculating the price of the goods. In the present case the question is, whether the expenditure which will be incurred immediately after the actual landing of the goods in the port can be included. The principles laid down by the Supreme Court in the above case will certainly apply to the present case.

13. It is also rightly pointed out by learned counsel for the respondents that delivery takes place in the case of an import of goods by sea only at the wharf. The actual delivery is not given to the importer from the ship directly. The goods are landed and the Port Authorities take charge of the goods. They remove it to the wharf and only there the importer takes delivery. Reference is made to Section 42 of the Major Port Trusts Act. The Board of Trustees of the Port Trust are empowered to undertake several services one of them being receiving and delivering, transporting and booking and dispatching goods originating in the vessels.

14. Learned counsel for the respondents draws our attention to the expression "for delivery" found in Section 14(1)(a). He submits that the value of goods must be fixed at the price at which the goods are sold "for delivery" at the time and place of importation. It is, therefore, contended by him that the relevant point of time is the time of delivery and in every case of import by the time the goods are delivered to the importer the landing charges would have been incurred and that would certainly form part of the price of the goods. 15. The matter can be viewed in a different manner also. When a foreign trader exports goods to a local importer, the former quotes the price of the goods and leaves it to the local importer to pay the landing charges. But so far as the local importer is concerned, the value of the goods is not only the price quoted by the foreign trader but also the landing charges incurred by him, which would be the cost of the import of the goods. That is at the time of delivery of goods to the importer the value of the goods would be the price quoted in the transaction plus the expenditure incurred by the importer before taking delivery.

16. In this connection, learned counsel for the respondents draws our attention to the ruling of the Privy Council in AIR 1938 15 (Privy Council) . Section 30 of the Sea Customs Act 8 of 1978 was considered by the Privy Council. The section runs in the following terms :

"For the purpose of this Act the real value shall be deemed to be : (a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof; or (b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid".

The contention was that the wholesale cash price of the motor cars in question should have been assessed under clause (b) of Section 30 and in any event the appellants' price to their distributors was attributable to the work done or services rendered after the importation of the goods and such part of it should be deducted. It is also contended that they were liable only to pay duty on "ex-ship price". Rejecting this contention the Judicial Committee said :

"If the facts of the present case and the terms of Cl. (a) be placed side by side for comparison, several points of exact agreement become clear. The appellants' price to their distributors is a wholesale price within the meaning of the section as declared in 59 I A 258 (*Vacuum Oil Co. v. Secretary of State*). It is a cash price : payment was made before delivery and delivery was within a few days of the arrival of the goods. The only discount has been deducted. It is not now contended that the cars were sold at the time (September or October 1983) when the distributors made known their requirements to the appellants. The cars were invoiced a few days before arrival of the ship and the price became fixed then and not before. The sales were therefore sales at the time of importation in every reasonable sense. The question whether the price which they fetched relates to a sale "at the place of importation" gave rise to a difference of opinion between the Indian Courts. The trial judge was much influenced by what Lord Blanesburgh in the case already cited had said as to the price being "relieved of the loading representing post-importation expenses". He held that only a sale "ex ship" satisfies the exact requirements of Cl. (a). On the other hand, both judges of the Appellate Bench held that a sale at Bombay with delivery f.o.r. Bombay complied fully with a reasonable interpretation of the clause. Their Lordships are in agreement with the Appellate Bench. It is difficult to suppose that if the Legislature had intended anything so precise as "ex ship", it would have used the more general phrase "at the place of importation". The phrase "f.o.r. at the main ports of entry" - quoted from the appellants' price lists - comes within the meaning of the statutory phrase. This is the force given to the words "at the place of importation" by Macleod C.J., and Shah, J. in 47 Bom 174 (*Vacuum Oil Co. v. Secretary of State*). Before the Board the appellants' learned Counsel did not contend for "ex ship" but suggested that "ex wharf" might not be too narrow and that in any case "place of importation" would not extend beyond the limits of the port. That the cartage charges should be analysed so as to eliminate the proportionate cost of the journey from the boundary of the port to the railway station in Bombay, is not in their Lordships' view necessitated by the phrase

"place of importation", still less could they regard it as a reasonable ground for holding that the sales in the present case were not within the terms of Clause (a). That the legislature intended to exclude post-importation expenses need not be doubted, but it had to do this in a practicable manner without undue refinement, and it must be taken to have regarded the phrase which it employed as sufficient for the purpose if taken in a reasonable sense."

17. Learned Counsel for the petitioner also placed reliance on the proviso to Section 14(1)(a) of the Customs Act in which a reference is made to the rate of exchange as in force on the date of the bill of entry is presented u/s 46. It is argued that there cannot be any question of rate of exchange for landing charges as they are levied only locally. Hence it is contended that the section contemplates only the transaction value and price quoted by the foreign exporter and not the notional price fixed by the Authorities including the landing charges. We are unable to accept this contention. In so far as Section 14(1)(a) is concerned, it refers to the value of goods and a fiction is introduced by the section. By such fiction the value of the goods shall be deemed to be the price as mentioned in Clause (a). That price would undoubtedly include the price quoted by the appellant/exporter and such other charges which in law can be included as part of the price. For the purpose of ascertaining the equivalent of the price quoted by the foreign exporter which may be in terms of foreign currency, the legislature had necessarily to say that the rate of exchange shall be as that in force on the date on which the bill of entry is presented, u/s 46. That does not mean that the section contemplates only the transaction value as the value of the goods. If that is so, there is no necessity for introducing a legal fiction in the section.

18. In the result, we are unable to accept the contention urged by learned counsel for the petitioner and reject the same. Consequently the writ petitions fail and they are dismissed. There will be no order as to costs.