(1998) 08 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 1815 and 1836 of 1995

Simplex Castings Limited APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 21-08-1998

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

Citation : (1998) 5 ALD 544 : (1998) 5 ALT 453 : (1999) 63 ECC 26 : (1998) 104 ELT 318

Hon'ble Judges : Y.V. Narayana, J;Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. J.P. Sanghi, for the Appellant; Mr. B. Adinarayana Rao SC for Central Government, for the Respondent

Judgement

Motilal B. Naik, J.—In these two writ petitions, a writ of mandamus is sought declaring the notification No.286 of 90 Customs, dated 15-12-1990 issued by the first respondent is prospective in operation and not retrospective, a further declaration that the provisions u/s 15(i)(b) of the Customs Act, 1962 are ultra-vires of the Constitution and a consequential direction declaring that the ex-bond clearance for home consumption bill assessed by the second respondent increasing the auxiliary duty from 5% to 25% is illegal are also sought.

2. Though the petitioners in these two writ petitions are different, but as the notification No.286 of 90 Customs, dated 15-12-1990 and the action of the respondents in increasing the auxiliary duty from 5% to 25% are assailed in both these writ petitions, they are being disposed of by this common order.

3. Petitioner in Writ Petition No. 1815 of 1995 is a Public Limited Company having its works at Urla Industrial Estate, Raipur. Under its import licence, it imported 1880 M.Ts of iron waste and scrap for consumption at its factory from Humberg, Czechoslovakia. The bill of entry for warehousing for home consumption was submitted on 14-8-1990 by the petitioner to the second respondent through its clearing agents M/s Sharat Chatterjee and Company

(VSP) Private Limited. The goods arrived at Visakhapatnam Port and were assessed by the Customs authorities at Rs.67,28,206/-. The goods were ware-housed on 6-9-1990 upto 4-12-1990/- initially and extended upto 5-1-1991 for non-availability of railway wagons. Petitioner states that the basic custom duty and auxiliary duty was assessed at 20% and 5% on the assessable value of the goods and the total duty was assessed at Rs.28,66,452/-.

4. Petitioner complained that when a bill of entry for ex-bond clearance for home consumption for clearing the goods from the ware-house on payment of custom duty and ware-house charges was presented on 31-12-1990 through its clearing agent, the customs authorities reassessed the bill of entry for ex-bond clearance at 20% basic duty and 25% auxiliary duty instead of 5% auxiliary duty in accordance with the notification dated 286 of 90 which was issued on 15-12-1990 whereby increasing the auxiliary duty from 5% to 25%. Petitioner therefore, contends that the operation of impugned notification is only prospective and not retrospective in effect and the action of the respondents in taking recourse to the provisions u/s 15(i)(b) of the Customs Act, 1962 in unwarranted and the provisions u/s 15(i)(b) of the Act be declared as ultra vires the Constitution of India and sought the relief as indicated above.

5. Petitioner in Writ Petition No.1836 of 1995 is also a public limited Company having its works at Urkura, Raipur and under the contract with Transkta, Czechoslovakia, petitioner Company imported 13125 MT of waste and scrap for re-melting as raw-material, which was arrived on 17-8-1990, a bill of entry for warehousing was submitted and the goods were warehoused on 17-8-1990. As per the bill of lading, the customs authorities assessed the auxiliary duty of 5% on this consignment. Petitioner took delivery of 7235 MTs of goods before the date of issuance of the impugned notification i.e., 15-12-1990 by paying 5% auxiliary duty and the remaining 765 MTs of goods were lying in the warehouse on that date.

6. Petitioner also imported different quantities of goods from USA West Germany and United Kingdom on different dates and on presentation of the bills of entry for warehousing, these goods were ware-housed and auxiliary duty at 5% on the goods value was assessed. Petitioner, however, lifted some goods from the ware-house before 15-12-1990 i.e. the date on which the impugned notification came into force by paying the auxiliary duty at 5% on the value of the goods. As on 15-12-1990. some quantity of goods were lying in the ware-house as petitioner claims that the said goods could not be lifted on account of on non-availability of transport facilities. When the goods are sought to be lifted after 15-12-1990, the respondents demanded payment of 25% auxiliary duty in terms of the impugned notification, which according to the petitioner, is unwarranted and sought the relief as indicated above.

7. Sri J.P. Sanghi, learned Counsel representing the petitioners in both the writ petitions has contended that the impugned notification dated 15-12-1990 increasing the auxiliary duty from 5% to 25% is only prospective in operation

and cannot be retrospective. Counsel further contends that the goods in question have been arrived and bonded in the ware-house much before 15-12-1990 i.e. the date of issuance of the notification and were also assessed at 5% auxiliary duty u/s 17 of the Customs Act and simply because the goods were lying in the ware-house as on 15-12-1990 the respondents cannot again re-assess the goods and impose the enhanced auxiliary duty at 25%. Petitioners it is contended, have submitted the bills of entry for home consumption u/s 46 of the Act before 15-12-1990 and therefore, the rate of auxiliary duty to be levied on the value of the goods is only at 5% irrespective of the date on which they were actually lifted. Learned Counsel also contended that the provisions u/s 15(i)(a) of the Act alone would apply to the facts of the case and not the provisions u/s 15(i)(b) of the Act and pleaded to declare the impugned notification dated 15-12-1990 will only have prospective effect. He further pleaded that the provisions u/s 15(i)(b) of the Customs Act be declared as ultra-vires to the Constitution as they are repugnant to the provisions u/s 15(i)(a) of the Act. Learned Counsel, therefore, submitted that the imposition of 25% auxiliary duty as against the 5% on the goods which were sought to be lifted by the petitioners from the ware-house on or after 15-12-1990 is unwarranted and illegal. In support of his varied contentions, learned Counsel has drawn our attention to the decisions reported in Bharat Surfactants (Private) Ltd. and Another Vs. Union of India (UOI) and Another, , Deputy Commissioner of Commercial Taxes, Madras Vs. Caltex (India) Ltd., Madras, , The Assistant Collector of Customs and Others Vs. Dutex Clock Company, and in Amber Woollen Mills Vs. Collector of Customs, Delhi, .

8. On the contrary Sri B. Adinarayana Rao, learned senior Standing Counsel for the respondents has taken us to the various forms to be filed before the customs authorities on the arrival of the consignment of goods in India, by the importers. According to the learned Standing Counsel, Form No.22 has to be filled in showing the Bill of Entry for home consumption, Form No.23 has to be filled in showing the bill of entry for warehousing and Form No.24 has to be filled in showing the bill of entry for ex-bond clearance for home consumption. Counsel contended that the petitioners have only filled in Form No.23 which is only intended for the purpose of warehousing and they have not filled up Form No.22 which is intended for the bill of entry for home consumption. Accordingly, their goods were warehoused. When the petitioners submitted Form No.24 bill of entry for ex-bond clearance for home consumption to life the goods after 15-12-1990, as the impugned notification has already come into force by then from 15-12-1990, increased auxiliary duty at 25% has been levied as provided u/s 15(i)(b) of the Customs Act which postulates that the date for determination of rate of duty and tariff valuation for imported goods, in the case of goods cleared from a warehouse u/s 68, is the date on which the goods are actually removed from the warehouse. Learned Standing Counsel submits that though the second respondent has assessed the goods and imposed the auxiliary duty at a particular rate, that assessment is made only u/s 18 of the Act which is a provisional assessment at the request of the petitioners and it is not a final

assessment. Under these circumstances, learned Standing Counsel justified the collection of auxiliary duty as per the impugned notification whereby the auxiliary duty is increased from 5% to 25% with effect from 15-12-1990. In support of his contentions, learned Standing Counsel has cited an unreported decision of a Division Bench of this Court (Writ Petition No.680 of 1991, dated 22-2-1991) in M/s. Vinayak Steels Limited, Diamond Complex Hyderabad v. the Govt. of India and a decision of the Supreme Court reported in Khattar Enterprises (P) Ltd. Vs. Collector of Customs, Calcutta, .

9. We have heard both the Counsel at length.

10. The point which arises for our consideration is whether the second respondent is justified in collecting the auxiliary duty as per the impugned notification dated 15-12-1990 issued by the first respondent?

11. For proper appreciation of the issues involved in these writ petitions, it is necessary to extract the provisions of Section 15 of the Customs Act, 1962.

Section -15: Date for determination of rate of duty and tariff valuation of imported goods:

(i) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force.

(a) in the case of goods entered for home consumption u/s 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse u/s 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty :

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this Section shall not . apply to baggage and goods imported by post.

12. As seen from the provision under clause (a) of sub-section (i) of Section 15 of the Act, where a bill of entry for home consumption is filed, the rate of duty and tariff valuation would be the same as on the date of filing of such bill u/s 46 of the Act. However, in cases where the goods are kept in a ware-house, they have to be cleared from the warehouse u/s 68 of the Customs Act and in terms of clause (b) of sub-section (i) of Section 15, the date relevant for determination of rate of duty is the date on which goods are actually removed from the warehouse.

13. Admittedly, both the petitioners have sought warehousing facility for storing their goods and accordingly they filled in Form No.23 which is only intended for the purpose of warehousing their goods. The goods were assessed and auxiliary

duty at 5% was levied on such goods which were lifted before 15-12-1990. It is also not disputed that the petitioner in WP No.1836 of 1995 has lifted part of his goods before 15-12-1990 by paying the auxiliary duty at 5% as was in force at that time. The difficulty arose when the goods which were warehoused were sought to be lifted after the revised duty came into force with effect from 15-12-1990 as per the impugned notification.

14. Counsel for the petitioners contends that though all the goods which arc warehoused have already been assessed and the auxiliary duty of 5% has been imposed and some of the goods were also lifted by the petitioner in WP No. 1836 of 1995 by paving 5% auxiliary duty, the respondents cannot again reassess the remaining goods in the warehouse, which were not lifted on account of non-availability of transport facilities, at 25% in the guise of the impugned notification.

15. The above contention of the learned Counsel for the petitioners cannot be accepted. As already discussed above, in terms of the provisions contemplated u/s 15(i)(b) of the Act, when goods arc warehoused, they have to be cleared from the warehouse u/s 68 of the Customs Act and as per clause (b) for sub-section (1) of Section 15, the date relevant for determination of rate of duty is the date on which goods are actually removed from the warehouse. The impugned notification issued by the first respondent lias come into force with effect from 15-12-1990, whereby the auxiliary duty has been increased from 5% to 25%. Admittedly, goods of the petitioners were lying in the warehouse as on 15-12-1990 on which date the impugned notification is in operation. As the date relevant for determination of the rate of duty is the date on which goods are actually removed from the warehouse as provided u/s 15(i)(b) of the Act and as the petitioners have sought to remove their goods from the warehouse only after 5-12-1990 i.e. after the impugned notification came into operation, the respondents are, therefore, justified in seeking the enhanced auxiliary duty at 25%.

16. A Division Bench of this Court in an unreported decision in Writ Petition No.680 of 1991 dated 22-2-1991, has examined the validity of the impugned notification No. 286 of 90-Customs, dated 15-12-1990 and has categorically held that when the bill of entry is presented for home consumption and in case of goods cleared from a warehouse, the date for determination of rate of duty and tariff valuation of imported goods is the date on which the goods are actually removed from the warehouse. This view has also been reiterated by a decision of the Supreme Court cited Khattar Enterprises (P) Ltd. Vs. Collector of Customs, Calcutta, .

17. Tliough the learned Counsel for the petitioners raised a dispute as to the provisions u/s 15(i)(b) of the Act are ultra vires to the Constitution, no substantial arguments are advanced to contend on that proposition before us. We are, therefore, not inclined to advert on this aspect.

18. The only submission made before us is that the collection of revised auxiliary duty with effect from 15-12-1990 shall have only prospective effect and it cannot have retrospective effect. We do not think this view of the learned Counsel is justified. Collection and imposition of tariffs are the collective wisdom of the Legislature. Quite often rates are revised by way of notifications issued by the competent authorities who have the authority to do so. At times, the tariff rate is brought down and at times, it is increased. This variation in the system of tariff is often found by the Courts. However, this being the jurisdiction of the Legislature, we do not think, the revision of tariff in normal circumstances shall fall for consideration before the Courts. Legislature has sufficient powers to bring about changes in the tariff rates as and when the occasion demands. However, if the Legislature brings a legislation which is in the nature of affecting the interests of the public at large and has far reaching adverse repurcussions, Courts could declare such a piece of legislation as null and void. However, the impugned notification has been brought out only with a view to increase the auxiliary duty from 5% to 25%, which in any way cannot be said to be unlawful. Therefore, the impugned notification does not suffer from any infirmity.

19. Coming to the submission of the learned Counsel that the impugned notification is only prospective in nature and cannot have retrospective effect, on a careful perusal of the impugned notification, the revised rate of auxiliary duty shall come into force with effect from the date of the said notification i.e., from 15-12-1990. The said submission of the learned Counsel is untenable since nowhere in the notification it was stated that it would come into force with retrospective effect.

20. Though the learned Counsel for the petitioners has cited various decisions (supra), though the ratio laid down in those decisions is not disputed, but they are not applicable to the facts and circumstances of the present case and as such they cannot lend any assistance to the learned Counsel.

21. On an overall appreciation of the submissions of the Counsel for the petitioners in the light of the provisions of the Customs Act, 1962 and also in view of the decision of the Supreme Court cited Khattar Enterprises (P) Ltd. Vs. Collector of Customs, Calcutta, , and the unreported decision of this Court, as indicated above, we are inclined to hold that the respondents are justified in seeking to levy the auxiliary duty at 25% with effect from 15-12-1990 through the impugned notification.

22. We do not find any merits in these writ petitions and they are accordingly dismissed, but in the circumstances, without costs.

