(1995) 01 MP CK 0067

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 226 of 1991

Simplex Castings Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226(2)
Customs Act, 1962 — Section 15, 15(1), 7, 8

Citation : (1996) 81 ELT 45 : (1995) JLJ 268 : (1995) 40 MPLJ 717 : (1995) MPLJ 717

Hon'ble Judges : U.L. Bhatt, C.J;Ramesh Surajmal Garg, J

Bench : Division Bench

Advocate : J.P. Sanghi, for the Appellant; N.C. Jain and J. Nair, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.

Petitioners are Public Limited Companies having their plants or factories in Raipur of Madhya Pradesh State. They seek declaration that provisions of Section 15(1)(b) of the Customs Act, 1962 (for short ''the Act'') "and the notifications dated 15-12-1990 are constitutionally invalid, writ of certiorari quashing the demand of auxiliary duty at the increased rate of 25% under the notifications and seek to command respondents to charge auxiliary duty at the rate of 5% only as existed prior to 15-12-1990. On behalf of the respondents, returns have been filed.

The petitioners import scrap materials from abroad. The goods reach India and are off-loaded at Vishakhapatnam Port. The Act contemplates two broad categories of goods which enter India. First category of goods are those which are imported for purposes of transit or transhipment for which no duty or auxiliary duty is payable. Second category are of goods not intended for transit or transhipment. The latter category of goods is again categorised into two sub-categories in regard to which separate kinds of bills of entry are to be presented to the proper officer. One is bill of entry for "home consumption" and the other is bill of entry for "ware-housing". Different forms are prescribed for the purposes. The petitioners presented bills of entry for "ware-housing". The goods were kept in the bonded ware-house.

Petitioners got release of part of the goods before 15-12-1990, paying excise duty and also auxiliary duty prevalent at the relevant time. The auxiliary duty payable was 5%. The controversy relates to the interpretation of Section 46 and application of Section 15(1)(b) of the Customs Act. u/s 15(1)(a), in case goods enter for "home consumption" u/s 46, the rate of duty shall be as on the date on which the bill of entry in respect of the goods is presented under that section. u/s 15(1)(b), in case of goods cleared from a warehouse u/s 68, the rate of duty shall be as on the date on which the goods are actually removed from the ware-house. In the present case, the petitioners sought to remove the remaining goods from warehouse after 15-12-1990. Therefore, demand was made for payment of enhanced auxiliary duty. According to the petitioners, import of scrap was made for the purpose of processing and manufacture in the factories in Raipur and hence the goods were imported for "home consumption" and, therefore, Section 15(1)(a) would apply. Alternatively, it is contended that in case Section 15(1)(b) is held to be applicable, provision is unconstitutional.

When these cases came before us yesterday, learned counsel for respondents submitted that the respondents desire to raise two preliminary objections. One relates to lack of territorial jurisdiction and the other relates to the existence of an effective alternative remedy. The petitions having been admitted, effective interim orders having been passed, petitioners having made available-bank guarantees in accordance with the directions of this Court and the goods having been cleared, we do not think the writ petitions deserve to be dismissed on account of existence of alternative remedy.

A dispute in relation to interpretation of the provisions of the Customs Act, 1962 and the application of the provisions thereof to the facts of the case arises in these cases. It is, no doubt, true that the petitioners are Public Limited Companies with registered offices in Raipur in Madhya Pradesh. It may be, as suggested, that orders for supplies of materials were sent by the petitioners from Raipur by post to the parties abroad and the petitioners may have sent the price also by cheque or draft or by other means from Raipur and the petitioners intend to use the goods for processing or manufacture in their factories at Raipur. The question is whether on account of these facts, it can be said that any part of cause of action for the writ petitioners arose in Raipur within the territorial jurisdiction of this Court as contemplated in Article 226(2) of the Constitution of India.

Article 226(2) of the Constitution reads thus :

"The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or persons may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

If any part of the cause of action for these petitions arose within the State of M.P., undoubtedly this Court has territorial jurisdiction to issue appropriate writs.

The factors referred to by the learned counsel for the petitioners, namely, the fact that the order was sent by post from Raipur, the price despatched from Raipur, the goods received were to be brought to Raipur and consumed in the factories at Raipur may be relevant in considering the cause of action in any action regarding breach of contract arising from the transactions in relation to these goods between the petitioners herein and the suppliers from abroad. These cases are not between the petitioners and the contractors abroad or in relation to the contract between them or for breach of such contract. These cases relate to the liability for payment of auxiliary duty u/s 15 of the Act. The goods sent by sea enter India through one of the ports appointed u/s 7(a) of the Act. They have to be landed at landing places approved u/s 8 of the Act. They may be taken delivery on payment of custom duty and auxiliary duty or may be caused to be entered in bonded warehouses on presentation of proper bill of entry. Warehouse stations are to be declared u/s 9 of the Act. The dispute relates to the rates of auxiliary duty payable in regard to import of goods into India which enter the country through Vishakhaptanam Port. The exigibility of the tax and the liability for payment are unrelated to the contract between the petitioners on the one hand and their suppliers abroad on the other, or the ultimate use to which the goods imported are put or the ultimate destination of the goods. We arc, therefore, unable to agree with the submission of the petitioners that a part of cause of action for these cases arose at Raipur within the jurisdiction of this Court. The entire cause of action arose at Vishakhapatnam Port which is wholly outside the territorial jurisdiction of this Court.

It is pointed out by learned counsel for the petitioners that this court has jurisdiction to decide the dispute regarding constitutionality of Section 15(1)(b) of the Act. The Court is called upon to adjudicate the constitutionality of this provision only in case it is found that the particular provision would apply to the cases. The main contention of the petitioners is that Section 15(1)(b) is not attracted and auxiliary duly to be paid is one stipulated u/s 15(1)(a) of the Act. A decision on this disputed question is necessary before the Court is called upon to decide the constitutionality of this provision and such decision is in relation to a cause of action which is wholly outside the territorial jurisdiction of this Court. Further, the vires of a statutory provision can be decided only in the setting of the facts admitted or proved and cannot be decided in the air. Since this court has no jurisdiction to decide question of applicability or otherwise of Section 15(1)(b) to the instant case, we cannot also decide the challenge against the constitutionality of the provisions of Section 15(1)(b) in this case.

In the result, we dismiss the writ petitions on the ground that this Court cannot grant appropriate relief as the cause of action arose wholly outside its territorial jurisdiction. No orders as to costs. Refund security, if any, deposited.

