

(1991) 08 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 2584 of 1981

Surat Art Silk Cloth Mfrs. Association

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-08-1991

Acts Referred:

Central Excise Rules, 1944 — Rule 9A
Customs Act, 1962 — Section 15, 58

Citation : (1993) 42 ECC 41 : (1993) ECR 495 : (1992) 60 ELT 82

Hon'ble Judges : S.B. Majumdar, J;A.N. Divecha, J

Bench : Division Bench

Advocate : S.L. Nanavati, for the Appellant; B.B. Naik, for the Respondent

Judgement

A.N. Divecha, J.—What is challenged in this petition presumably under Article 226 of the Constitution of India is the levy of additional duty in the sum of Rs. 7,25,097.89 ps. on synthetic yarn imported in India by the petitioners prior to 4th October 1978 and deposited by them in their private bonded warehouse. The petitioners have claimed refund thereof seeking declaration that such synthetic yarn was not liable to such additional duty.

2. It may be proper to look at certain facts for the purpose of resolving the controversies involved in this petition : The first petitioner claims to be an Association registered as a Company under the Companies Act, 1956. It claims to have about 1,500 small weavers of art-silk cloth as its members. It claims to cater to the needs of raw materials required for its member units. The second petitioner claims to be its Chairman and vitally connected and interested in the affairs of the first petitioner. Under the Import Trade Control Policy, the Central Government has allowed associations of weavers to import man-made synthetic yarn from outside India on behalf of actual users, namely member weaving units of the first petitioner. Accordingly, the petitioners claim to have been importing synthetic yarn and man-made continuous filament yarn from outside India after following customs procedures and on payment of duty leviable thereon. The

petitioners claim to have also been granted a licence for a private bonded warehouse at Surat u/s 58 of the Customs Act, 1962 ("the Customs Act" for brief). They deposit their imported yarn without payment of duty therein and clear piecemeal consignments for consumption as and when required on payment of duty in accordance with the procedures laid down in the Customs Act. On 3rd October 1978, the President of India promulgated one Ordinance bearing the title of "The Additional Duties of Excise (Textiles and Textile Articles) Ordinance, 1978" ("the Ordinance" for brief) to provide for the levy and collection of additional duties of excise on certain textiles and textile articles. It came in force on 4th October 1978. Later on, the Ordinance was replaced by an enactment bearing the title of "The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978" ("the AD Excise Act" for brief) on 6th December 1978 and it was deemed to have come in force on 4th October 1978. It provides for a new levy of additional duty of excise equal to ten per cent of the total amount of Central excise duty chargeable on nine textile commodities enumerated therein. The petitioners had imported from Japan and other countries and warehoused synthetic filament yarn prior to 4th October 1978. According to the petitioners, this material imported by them was lying in their customs bonded warehouse in fully manufactured and packed condition prior to 4th October 1978. The petitioners were, however, required to pay the additional duty levied by the AD Excise Act at the time of clearance of their required goods from their private bonded warehouse though according to them such goods were not liable to such additional duty. The petitioners, however, paid such additional duty, under protest at the time of clearance of their such goods from their private bonded warehouse. They have, therefore, challenged, by means of this petition, the action of the customs authorities in levying and collecting the additional duty on their goods imported from Japan and other countries and warehoused in their private bonded warehouse prior to 4th October 1978 at the time of their clearance therefrom. They have also prayed for the refund thereof in this petition.

3. The question whether or not such additional duty can be collected in terms of its levy under the AD Excise Act at the time of clearance of warehoused goods is no longer res integra. A Division Bench of this Court consisting of A. P. Ravani and J. N. Bhatt, JJ., was faced with an identical question in Special Civil Applications Nos. 848 and 849 of 1981. By its common judgment on 3rd May 1991 in the aforesaid two writ petitions, the Division Bench has upheld the collection of such additional duty which has been imposed by the AD Excise Act at the time of clearance of warehoused goods, relying on two rulings of the Supreme Court in the case of *Prakash Cotton Mills (P) Ltd. v. B. Sen*, reported in AIR 1979 SC 1675 1979 (4) E.L.T. (J 241) (SC) and in the case of *Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others*, . Such levy has been held to be additional customs duty and the collection thereof from the petitioners in that case was found to be in accordance with law.

4. The aforesaid Division Bench ruling of this Court in Special Civil Applications Nos. 848 and 849 of 1981 decided on 3rd May 1991 is binding to us. We are in

respectful agreement therewith in toto. It is on all fours applicable in the present case. The levy and collection of the additional duty imposed by the AD Excise Act in this case will have to be held just and proper and in accordance with law. Any challenge thereto will have to be turned down.

5. Shri Nanavati for the petitioners has however submitted that the principle of law enunciated in the aforesaid ruling of the Division Bench of this Court in Special Civil Applications Nos. 848 and 849 of 1981 decided on 3rd May 1991 requires reconsideration by this Court in view of the Full Bench ruling of the Bombay High Court in the case of Apar Private Ltd. and others Vs. Union of India and others, and a recent Division Bench ruling of the Bombay High Court in the case of Century Spinning and Manufacturing Co. Ltd. Vs. Union of India, Shri Nanavati has, therefore, prayed that the matter may be referred to a larger Bench for reconsideration of the aforesaid Division Bench ruling of this Court in Special Civil Applications Nos. 848 and 849 of 1981 decided on 3rd May 1991.

6. In the Full Bench ruling of the Bombay High Court in the case of Apar Private Ltd. (supra), the question involved was whether or not customs duty could be collected on the goods imported prior to withdrawal of some exemption notification at the time of clearance thereof from the bonded warehouse. The Full Bench of the Bombay High Court has dealt with that question in the light of various rulings including those of the Supreme Court and has held that such goods could not be chargeable to customs duty at the time of their clearance from the bonded warehouse if they enjoyed exemption therefrom at the time of their import into India. The rescission or withdrawal of such exemption after the date of their import would not make the goods chargeable to such duty even if Section 15 of the Customs Act is resorted to for the purpose. According to the Full Bench of the Bombay High Court in the case of Apar Private Ltd. (supra), Section 15 of the Customs Act would be applicable when the rate of customs duty has been revised upwards. In the course of its discussion, in para 51 (at pp. 679-680) of the ruling in the case of Apar Private Ltd. (supra), a reference is made to the ruling of the Supreme Court in the case of Prakash Cotton Mills (P) Ltd. (supra). It was distinguished on the ground that, in the aforesaid ruling of the Supreme Court in the case of Prakash Cotton Miss (P) Ltd. (supra), what was involved was the change in the rate of duty after the goods were imported, and as such Section 15 of the Customs Act was found applicable in that case. According to the Full Bench of the Bombay High Court, in the case before it, no such change of duty was involved and what was sought to be done was to charge customs duty at the time of clearance of the warehoused goods on withdrawal of the exemption during the period the goods remained in the bonded warehouse, and as such Section 15 of the Customs Act was not applicable in the case before it.

7. We are unable to agree with the view taken by the Full Bench of the Bombay High Court in its aforesaid ruling in the case of Apar Private Ltd. (supra). We think that Section 15 of the Customs Act would govern both the situations,

namely; the situation of upwards revising the rate of duty after the goods are imported but before their clearance and also the situation of new impost of duty after the goods are imported but before their clearance. Even when there is an upward revision in the rate of duty, the effect is some additional impost of duty. For example, if the duty at the time of import of the concerned goods was "X" and at the time of clearance thereof from the bonded warehouse was "X+1" on account of its upward revision during the intervening period, it cannot be gainsaid that there would be additional impost of "+1" in the duty chargeable on the concerned goods. The Full Bench of the Bombay High Court in its ruling in the case of Apar Private Ltd. (supra) has accepted the position that, in view of Section 15 of the Customs Act, the imported goods would be chargeable to the higher rate of duty at the time of clearance thereof from the bonded warehouse on account of its upward revision during their deposit therein after their import. If that be the position, we find no difficulty in extending that principle to imposition of the additional or new duty or before clearance withdrawal of the exemption enjoyed by the goods at the time of their import. Section 15 of the Customs Act would govern this situation also in view of the aforesaid ruling of the Supreme Court in the case of Prakash Cotton Mills (P) Ltd. (supra). With respect, the ratio of the aforesaid ruling of the Supreme Court in the case of Prakash Cotton Mills (P) Ltd. (supra) has been understated by the Full Bench of the Bombay High Court in its ruling in the case of Apar Private Ltd. (supra). We think that the ratio of the aforesaid ruling of the Supreme Court in the case of Prakash Cotton Mills (P) Ltd. (supra) has been interpreted by the Full Bench of the Bombay High Court in a pedantic manner as if it were a statutory provision. With respect we are therefore, unable to agree with the Full Bench ruling of the Bombay High Court in the case of Apar Private Ltd. (supra), so far as it lays down that Section 15 of the Customs Act would not be applicable when the exemption enjoyed by the imported goods at the time of their import is withdrawn before their clearance from the bonded warehouse.

8. The view of the Full Bench of the Bombay High Court in its aforesaid ruling in the case of Apar Private Ltd. (supra) appears to have been based on the overemphasised fact that the taxable event under the Customs Act would occur at the time of import of the dutiable goods and not at the time of their clearance from the bonded warehouse. In its view, if the imported goods had not been chargeable to customs duty at the time of their import, they would not be liable to duty at the time of clearance by subsequent impost of such duty. It is true that the taxable event with respect to customs duty does occur at the time of import of dutiable goods. Its collection at the time of clearance from the bonded warehouse is for the convenience of administration. The recovery of duty according to the date of clearance would not make the clearance to be the taxable event for customs duty. We are fortified in our view by the ruling of the Supreme Court in the case of Wallace Flour Mills Co. Ltd. Vs. Collector of Central Excise, Bombay, Division III, pertaining to excise duty. In that case, the concerned goods enjoyed exemption from excise duty at the time of their

manufacture. The exemption came to be withdrawn at the time of their removal. The action of recovery of duty at the time of removal of those goods was challenged. In that context, it has been held :-

"It is well settled by the scheme of Central Excises and Salt Act and clarified by several decisions that even though the taxable event is manufacture or production of excisable article, the duty can be levied and collected at a later stage for administrative convenience. The scheme of the Excise Act read with relevant rules particularly Excise Rule 9A reveals that the taxable event is the manufacture and the payment of duty is related to the date of removal of such article from the factory. Therefore, when the goods were unconditionally exempted from duty on the date of manufacture but were dutiable on the date of their removal they would be liable to duty because on the basis of Rule 9A of the Central Excise Rules, 1944, the Excise Authorities are within competence to apply the rates prevalent on the date of removal."

By analogy, if this principle is applied to customs duty, withdrawal of exemption from customs duty enjoyed by the imported goods at the time of import before their clearance from the bonded warehouse would not make the date of clearance to be the taxable event for customs duty. In that view of the matter the aforesaid Full Bench ruling of the Bombay High Court in the case of Apar Private Ltd. (supra) would run counter to the principle of law enunciated by the Supreme Court in its aforesaid ruling in the case of Wallace Flour Mills Company Ltd. (supra). That is one more reason why we are disinclined to follow the aforesaid Full Bench ruling of the Bombay High Court in the case of Apar Private Ltd. (supra).

9. What would be the effect of impost of additional excise duty on the goods already manufactured but not removed was a question before the Division Bench of this Court dealing with Special Civil Application No. 2887 of 1980 decided on 29th April 1991. In that case, the question was required to be examined in the light of the Ordinance and the AD Excise Act involved in this petition. It has been held therein that the rate of duty prevalent on the date of removal would govern the situation and not that on the date of manufacture. That conclusion is reached by the Division Bench of this Court in its aforesaid ruling after examining the case law on the point including the aforesaid ruling of the Supreme Court in the case of Wallace Flour Mills Company Ltd. (supra). We are in respectful agreement with the reasoning given therein and the conclusion reached on the basis thereof. It is in consonance with the principle of law enunciated by the Supreme Court in its aforesaid ruling in the case of Wallace Flour Mills Company Ltd. (supra). We are inclined to follow the aforesaid Division Bench rulings of our High Court in Special Civil Applications Nos. 848 and 849 of 1981 decided on 3rd May 1991 and in Special Civil Application No. 2887 of 1980 decided on 29th April 1991 in preference over the aforesaid Full Bench ruling of the Bombay High Court in the case of Apar Private Ltd. (supra). In any case, the Division Bench rulings of this Court should be considered as binding to this Division Bench unless we differ

from the view taken by the earlier Division Bench and decide to refer the matter to a larger Bench. As aforesaid, we are in respectful agreement with the reasoning contained in the aforesaid two rulings of the Division Bench of this Court. In that case, we should like to follow them rather than following the Full Bench ruling of the Bombay High Court in the case of Apar Private Ltd. (supra), which has only a persuasive, and not binding, value.

10. In view of our aforesaid discussion, it would not be necessary for us to dilate upon the Division Bench ruling of the Bombay High Court in the case of Century Spinning and Manufacturing Company Ltd. (supra). With respect, we are disinclined to agree with the view taken therein for the very same reasons which we have given for not agreeing with the view taken by the Full Bench of the Bombay High Court in its ruling in the case of Apar Private Limited (supra). Besides, with respect, we may observe that the aforesaid Division Bench ruling of the Bombay High Court in the case of Century Spinning and Manufacturing Company Ltd. (supra) has not taken into consideration the effect of Section 15 of the Customs Act as also the principle of law enunciated by the Supreme Court in the case of Prakash Cotton Mills (P) Ltd. (supra). Again, it can be said to be running counter to the ruling of the Supreme Court in the case of Wallace Flour Mills Co. Ltd. (supra).

11. In the result, this petition fails and is here by rejected with no order as to costs on the facts and in the circumstances of the case. Rule is accordingly discharged.