

(1980) 03 BOM CK 0015

In the Bombay High Court

Case No : Appeal No. 134 of 1975 in Miscellaneous Petition No. 346 of 1970

Synthetics and Chemicals Ltd.

APPELLANT

Vs

S.C. Coutinho and others

RESPONDENT

Date of Decision : 14-03-1980

Acts Referred:

Customs Act, 1962 — Section 12, 14, 15, 15(1), 25

Citation : (1981) 8 ELT 414

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Judgement

1. This Appeal raises a question relating to the real meaning of section 12 read with section 15 and a Notification issued u/s 25 of the Customs Act, 1962.

2. In order to understand the controversy between the parties, a few facts may be noted. The appellants, who were the petitioners before the learned Singly Judge, had imported 550 Metric Tonnes of a material called "Disproportionated resin acid" (hereinafter called "the acid") from the United States of America as a part of their raw material in the manufacture of rubber products. The ship arrived in the Bombay Port on August 20, 1968. On the same day the Appellants presented a Bill of Entry Form Bond for the warehousing of these goods. After the formalities in that behalf were completed, they were actually warehoused. When these goods were imported the duty chargeable under the provisions of the Customs Act read with the provisions of the Indian Tariff Act, 1934, was 60 per cent for Item No. 87. The Appellants claim that they made representations as also the Trade itself made representations to the Government of India and that resulted in the Government of India issuing an exemption notification u/s 25(1) dated 12th October, 1968, on the acid in question, wherein the duty in excess of 27 1/2 per cent was exempted. In simple language, the 60 per cent duty was reduced to 27 1/2 per cent.

3. After such a notification was issued, the Appellants took delivery and removed from the warehouse the goods between the period from December, 1968 to June

1969 on the various dates. They paid duty at 27 1/2 per cent under the Notification and removed the goods after presenting each time the Bill of Entry for home consumption. After this was done, the Assistant Collector of Customs issued as many as four notices dated 15th January, 1969 (2 notices), dated 6th June 1969, and the fourth one dated 29th August 1969. The notices were replied to and by identical orders dated 27th January 1970, 27th February 1970 and the remaining two dated 28th February 1970, and rejected the representation and imposed a duty at 60 per cent on the basis of the original demand. Being aggrieved by these orders, the Appellants moved the learned Single Judge of this Court by way of writ petition without availing themselves of the Department Appeals. The learned Single Judge came to the conclusion by applying the principle of a Division Bench Judgment of this Court that the exemption Notification was of no assistance to the petitioners-appellants and that they were liable to pay the full duty as levied by the Assistant Collector of Customs. Since the said petition was dismissed, the Appellants have moved this Court by way of Appeal.

4. The only question that arises for our consideration is whether on the facts and circumstances of the case the petitioners-appellants are entitled to the benefit of the exemption Notification u/s 25(1) dated 12th October, 1968. Before that question is answered, it would be appropriate to refer to the relevant provisions of the Customs Act.

5. Section 12 of the charging section. It says that :-

"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, or any other law for the time being in force, on goods imported into, or exported from, India".

There is, therefore, no doubt that except as otherwise provided by this Act the goods will be dutiable as per the rates mentioned in the Indian Tariff Act, 1944.

The next section that must be considered is Section 15 relating to the date for determination of rate of duty and tariff valuation of imported goods. The provisions of this Section need to be carefully noted, as they give certain dates which are relevant for the calculation of the amount of duty payable. Section 15(1), which calls for interpretation, is as follows :-

"The rate of duty, rate of exchange 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".

Before us there is no dispute that the only clause that applies to the goods of the Appellants is clause (b) above. This section lays down that the rate of duty as well as the rate of exchange and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, 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. It is not disputed before us that on the actual entry of these goods a bill of Entry Form Bond was presented after going through the formalities of Section 46 and 59. After the assessment was made a proper Bond was executed and the goods were stored in the warehouse. Once that is done, "the procedure then to be followed is the one laid down in Section 68". Under this section an importer of any warehoused goods may clear them for home-consumption if a Bill of Entry for Home Consumption in respect of such goods has been presented in the prescribed form; the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and an order for clearance of such goods for home consumption has been made by the proper officer. There is also no dispute that all these formalities were undergone and the goods were cleared. The only point of difference is that whereas the duty then paid was 27 1/2 per cent, the Assistant Collector of Customs claimed that this is a short levy and, therefore, 60 per cent is recoverable.

6. It will now be appropriate to look at the Notification which is creating this difference in the points of view between the parties. The Appellants claim exemption in terms of this Notification dated 12th October, 1968, which is as follows :-

"In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts disproportionated resin acid when imported into India for the manufacture of Synthetic rubber from so much of that portion of the duty of Customs leviable thereon which is specified in the First Schedule to the Indian Tariff Act, 1934 (32 of 1934) as is in excess of 27 1/2 per cent as valorem"

This is the Notification under sub-section (1) of section 25. In fact, the Government has been vested with powers of two different types. The provisions of sub-section (2) relating to specific cases are not relevant for our purpose. Exemption has been granted generally for the trade in regard to acid in question under the above Notification. It has also not been doubted on either side that this Notification will be prospective in its operation and not retrospective. How precisely it operates is the only bone of contention.

7. Before we refer to the real meaning of the Notification, let us broadly point out

the scheme of the Act and the time and manner of determining the rate of duty on a particular date. What that relevant date is, one has to look to the provisions of section 15. u/s 15(1)(b), which admittedly applies to the facts of this case, the language is crystal clear. The opening clause of sub-section (1) points out that the rate of duty as well as the rate of exchange applicable to imported goods shall be the rate and valuation in force; and u/s 68 it shall be on the date on which the goods were actually removed from the warehouse. There is no doubt in this case that the goods arrived in the Indian Customs waters and were removed to the warehouse on 20th October, 1966. They were cleared u/s 68 only from and after December, 1968 till June of 1969. The Section clearly tells us that in such a case where the goods are cleared from a warehouse u/s 68, the date on which they were actually removed is the relevant date. December, 1968 onwards are, therefore, the relevant dates on which the goods have been actually removed. As we have pointed out earlier, indisputable the exemption operates under the Notification from and after 12th October, 1968. Prima facie, therefore, these goods are entitled to the benefit of that exemption. This is precisely what the Appellants have been claiming before the learned Single Judge and in Appeal before us. Shri Dhanuka argued before us that the Notification u/s 25 being a subordinate legislation it cannot be retrospective in its effect. That proposition is not being disputed. Shri Dhanuka, however, points out that he would like to lay emphasis upon the point or date of importation, which is the guide for the Court in finding out the relevant date for the chargeability of the goods. According to him, these goods may have been actually cleared from and after December, 1968, though, however, they were imported much before the exemption notification. The language of the notification, according to him, must be given due weight and meaning, and the relevant article is to get benefit under this notification "when imported into India for the manufacture of Synthetics rubber....." According to him, this clause refers to the point of time of importation and this point of time must be after the exemption notification is issued. If there has been an earlier import, this exemption does not cover up such imports as when those goods were imported this exemption was not applicable, but the regular tariff rate of 60 per cent, or the only rate applicable to those goods. We think that there seem to be several difficulties in the way of accepting such an argument. The Appellants rely upon a judgment of the Supreme Court, which in principle deals with another topic covered by Section 15, but the principle of which directly assists us in deciding this case. Apart from the judgment to which we shall presently refer, we think that a plain reading of the notification does not seem to be susceptible of the meaning which Shri Dhanuka wants to attribute to this notification. We may note, merely in incidentally or in passing, the arguments of the Appellants that after consigning the goods to the warehouse, they and several others made representations to the Government of India and these representations bore fruit and the notification was issued. It is also prayed that there is no specific relief. We do not think that a relief as to tax can be decided only on pleadings. That apart, we say this incidentally and not as a guide in deciding the real meaning of the language used

in the notification. Apart from that, the construction of the language of the notification as proposed by Shri Dhanuka will lead to very anomalous situations. Section 15, as we have pointed out, is crystal clear. It permits the goods for the purpose of home consumption to be charged to duty as on the date on which a bill of entry in respect of such goods is presented and in respect of goods being warehoused, on completion of certain formalities as laid down u/s 69, the goods could be removed from the warehouse on payment of duty as on the date of removal and when that is being, the Indian Tariff Act lays down the various items on which the duty is to be calculated. That section also deals with the rate of exchange which is to be allowed as on a particular date. It is on this second aspect viz. the rate of exchange that the judgment of the Supreme Court was required to consider. Here we are called upon to consider the rate that is applicable. If this is so, as a substantive provision of section 15 itself, the argument of Shri dhanuka would create an anomolous situation that the procedure to warehouse the goods and remove them on a specific date will be rendered nugatory or will be of no help to the importer at all. That procedure which fixes a particular date sometimes works adversely to a party who may be required to pay a higher rate. It is a change and it cannot be said that a certain result will always follow in a given situation.

8. If Shri Dhanuka's arguments were to be accepted, then if the goods were actually cleared from December 1968 onwards, the rate to be applied will be as per the Notification dated 12th October, 1968 and not as on the date of clearance, which is a statutory provision and a statutory fixation. What, therefore, must be the real intention of the Government in issuing this Notification ? How shall we consider it so as to harmonise it with the substantive provisions of the Act. In this behalf we find that the meaning of the word "when" used in that expression is causing all this trouble. According to Shri Dhanuka, this word "when" indicates the point of time when the import materialises or when actually imported, as in the present case the 20th of August, 1968. He refers us to the dictionary meaning of the word "when". However, we find that that is only one of the meanings of that word and it all depends upon the context in which the word is used that really shows the real colour and meaning. Though several dictionaries were cited before us, we shall refer to three of them, just to indicate how the more rational meaning serves the real purpose or the object. In Shorter Oxford Dictionary, for instance, one of the meanings undoubtedly is "at what time or on what occasion." The second meaning in which the word is used is to introduce a clause as the object of a verb, or to indicate in what circumstances the following clause is to apply. In Black's Law Dictionary, 5th Edition, an American publication, we find that in the case of will and other documents the word "when" is used to indicate (1) in the event that (2) on condition that (3) in virtue of the circumstances that. The Dictionary further says that it is frequently employed an equivalent to the word "if" in legislative enactments and in common speech. We have then Stround's Judicial Dictionary, where the very first meaning given is that (1) "when" usually creates a condition

precedent (2) where there is a testamentary gift to "if" or "when or "provided" or "in case" or "as soon as" are phrases which are synonymous. There is no doubt, therefore, that the entire clause read a whole is this Exemption Notification uses the word "when" to indicate the purpose of the occasion for import. So read, it means that the acid in question is exempt if it is imported into India for the manufacture of Synthetics rubber. If we, therefore, read the word "if" in place of the word "when", the meaning becomes amply clear. The emphasis if laid on Synthetics rubber it would appear to be more rational. If merely the acid were to be imported even after the 12th October 1968 not for the manufacture of Synthetics rubber but for the manufacture of some other rubber product, it is doubtful whether any exemption under this Notification could be claimed. The emphasis is, therefore, not upon the time of import but upon the use of the material. So read, the notification would be harmonious with the provisions of section 15. It would now mean, as we interpret the notification, that whatsoever the actual time of importation if the application for the removal is being made u/s 15(1)(b) in terms of section 68, the relevant date for calculating the duty would be the date of actual removal. In the circumstances, we have no doubt that the rate prevalent from December, 1968 to June, 1969 would be the only rate at which the duty is to be calculated and levied so far as the disputed goods are concerned.

9. We will at once refer to the judgment of the Supreme Court, which in our view, has laid down the same proposition though in relation to the calculation of the rate of foreign exchange. In the case of Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others, the dispute raised before their Lordships related to the rate of exchange. Section 15(1), as amended by Amending Act No. 20 of 1966, now includes even the rate of exchange. As it now reads, the rate of duty as well as the rate of exchange and the tariff valuation, if any, applicable to any imported goods shall be the rate and valuation in force, and in Clause (b) the rate of exchange prevalent on the date of actual removal from the warehouse. The facts before the Supreme Court show that the removal was u/s 15(1)(b) in terms of section 68. On the date of removal of goods the rupee had devalued and the Customs duty in terms of the devalued rupees naturally increased. The importer did not want to pay that higher amount in terms of rupee and, therefore, pleaded that the goods having been already imported into India earlier when they were already chargeable to duty, that rate should prevail and not the subsequent rate. This argument was expressly negatived by the Supreme Court and Their Lordships laid down that it was pretty clear that Clause (b) of sub-section (1) of section 15 contemplates the rate of duty and rate of exchange and tariff valuation applicable to any imported goods should be the rate of and valuation in force on the date on which the warehoused goods were actually removed from the warehouse, after the Amending Ordinance had come into force viz. on 7th July, 1966, as such the Customs authorities and the Central Government were quite right in taking the view that the rate of duty applicable to the imported goods had to be determined according to the law which was prevalent on the

date they were actually removed from the warehouse, namely, the amended sections 14 and 15 of the Act. There is therefore no force in the argument that the requirement of the amended section 15 should have been ignored simply because the goods were imported before it came into force, or that their bills of lading or bills of entry were lodged before that date.

10. It may be that the Supreme Court was discussing the question of rate of exchange. However, this Judgment would directly apply in view of the fact that same date has been mentioned u/s 15(1)(b) for either the rate of duty, the rate of exchange or the tariff valuation, if any. We think that the question is already concluded by the Supreme Court.

11. At this juncture we must take notice of a Division Bench Judgment of this Court, which is being interpreted in a certain manner and relief being given or refused in some of the judgments made by the Learned Single Judge of this Court. Shri Dhanuka also relies upon this judgment for developing one limb of his argument. We shall briefly cite what that judgment decides and in what circumstances. By a notification dated September 3, 1966, the Government of India, Ministry of Finance, Department of Revenue and Insurance, in exercise of powers conferred by Section 25(1) of the Customs Act, 1962, granted exemption to glass tubes used in the manufacture of fluorescent lamps from customs duty leviable under the First Schedule to the Indian Tariff Act, 1934. This exemption was to continue for a specific period and was to be and inclusive of 31st March 1967. The goods in question were imported on March 29, 1967, and after the formalities of the Bill of Entry Form Bonds etc., were completed, they were warehoused. Subsequently they were cleared on June 6, 1967. On that date the Assistant Collector of Customs claimed duty saying that under the provisions of Section 15(1)(b) the actual date of clearance being relevant, the goods were leviable with the appropriate duty. Against such an order a Write Petition was taken to the Court, which succeeded and the Department carried an Appeal to the Division Bench. What the Division Bench pointed out and with respect properly, was that in the facts and circumstances of that case the primary investigation must relate to the chargeability of goods on the date of importation. The actual importation here had been 29th March, 1967 when there was total exemption from any duty so far as the fluorescent lamp tubes or glass tubes were concerned. The argument which is very logically presented is that in order to work out the rate of duty on any particular date, the basic requirement is that the goods are dutiable in the first instance. In other words, there must be chargeability to duty on the date of importation. Section 12 is the only charging section, which says that subject to the provisions of this Act, viz. the Customs Act, the rate of duty will be those mentioned in the Indian Tariff Act, 1934. Since the Tariff Act is subject to the provisions of the Customs Act, one has to read the Notification u/s 25(1) as on the date of actual importation, viz. 29th March, 1967. On that date there was total exemption, which means that the glass tubes in question were not dutiable goods at all on March 29, 1967, when actually imported. If that is so, can we apply the subsequent rate which is now prevalent

after the 1st April, 1967 to those goods. The learned Judges pointed out that this cannot be done. The goods which were not liable to pay duty at all when imported cannot be subjected to the duty by the procedure to be adopted u/s 15 for clearance. Shri Dhanuka argues before us that we should clearly point out the meaning in which the judgment should be understood and employed, as conflicting view are being taken on the basis of the same judgment, whether the exemption is total or partial. We do not wish to further improve the judgment which lays down a very clear proposition. In order that any commodity should be made to any duty, the primary or basic requirement, according to us, is that on the date of importation it must be chargeable to duty. The primary fact to be remembered is that if on the date of importation there was total exemption, which means that the Entry was not there, then they were not liable to pay any duty whatever on imports. Even if the operation of the Notification ceases and a certain rate contemplated by the Indian Tariff Act becomes operative, it shall have no relevance to those imports for which initially there was total exemption.

12. There may be other cases where on the date of importation the goods are liable to duty. It must mean that they are chargeable to duty. At what rate must they be actually taxed on the date of removal ? As an illustration, suppose a Notification exempts certain goods from payment of a part of duty or whereby the duty payable is reduced to 27 1/2 per cent. If such a Notification comes to be withdrawn or ceases to have operation on the date on which the goods are actually removed from the warehouse, what would be the effect ? Should these goods pay 27 1/2% or 60%, which is the normal tariff rate. We have to answer in favour of determination of the rate of 60 per cent the reason being that the goods were not totally exempt. Once they are chargeable to duty on importation - the rate being irrelevant - the rate prevalent on the date of actual clearance will apply u/s 15(1)(b). Whether it is rate of duty or rate of exchange, the relevant date in the one contained in Section 15(a)(b). If the goods change their value in the meanwhile, the third position contemplated by Section 15(1) will operate viz. the tariff valuation. These are, therefore, the three facets of the same valuation, viz., the rate of duty, the tariff valuation and the rate of exchange. For the sake of tariff valuation a specified date has been given to us, that is, a fixed date for the purpose of making these calculations. However, where there is no chargeability on the date of importation, the goods are not liable to duty even though they become so liable, as the exemption may come to an end. That is what precisely was held by the Division Bench decision in the case of *M. S. Shawney v. M/s. Sylavania and Laxman Ltd.*, 77 Bombay L.R. 880. Where there is initial chargeability, whether as per rates under the Tariff Act or the reduced rate under an exemption Notification u/s 25 of the Customs Act, the Division Bench judgment or its principle does not apply. Only when there is no chargeability at importation or total exemption at importation, the said judgment and its principle would apply. We think that this is the only manner in which that judgment be understood and implemented in its operation when differing facts are presented before the Court.

13. We, therefore, allow the appeal, set aside the judgment and order of the learned Single Judge in the petition filed by the Appellants and quash the orders of the Assistant Collector of Customs dated 27th January, 1970, 27th February, 1970 and two other orders dated 28th February, 1970 Ex. H (Coll.) to the petition. We further direct that the Appellants are at liberty to withdraw all the moneys deposited by them, including the original deposit, and such interest as may have accrued upon them. The Respondents will pay the costs of the Appellants. The Appellants will be at liberty to withdraw the deposit for costs made by them. The Respondents will pay the costs of the Appeals in this Court as well as the costs of the petition in the Court below. We quantify the costs for the trial Court as well as for the Appellate Court at a round figure of Rs. 1,500/- in all.

14. Prothonotary to act on the Minutes of the Order.