

**(1990) 09 BOM CK 0079**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 858 of 1984**

The Baroda Rayon Corp.

APPELLANT

Vs

Union of India

RESPONDENT

---

**Date of Decision :** 12-09-1990

**Acts Referred:**

Customs Act, 1962 — Section 14, 15, 27, 27(5), 46

**Citation :** (1991) 52 ELT 35

**Hon'ble Judges :** S.M. Daud, J

**Bench :** Single Bench

**Advocate :** Sh. Manoj Sanklecha, instructed by Matubhai Jamietram and Madan, for the Appellant; Shri J.P. Deodhar, for the Respondent

---

## Judgement

1. This petition takes exception to the rejection of petitioner No. 1's claim for refunds of excess paid towards duty of customs.

2. Petitioner No. 1 is engaged in the manufacture of rayon and rayon products. Several items required for its plant and machinery had been imported by the said petitioner prior to July 1978. The imported articles were liable to customs duty chargeable under the Act. Sections 14 and 15 of the Customs Act, 1962 (Act) have been amended from time to time in a never-ending struggle between the taxman and the importer to get the better of each other. Section 14 deals with fixing the value of the goods for the assessment of the duty of customs. Section 15 prescribes as to what shall be the date for determination of rate of duty. The net effect of the pre and post 1-7-1978 position in regard to the sections vis-a-vis the controversy arising in this petition may be stated thus : While the pre 1-7-1978 rate had to be fixed with reference to the rate of exchange in regard to in-bonded goods as on the date on which the goods were ex-bonded or removed from the warehouse, the post 1-7-1978 based it on the rate of exchange as in the date on which the bill of entry is presented u/s 46.

3. In regard to the consignments figuring in this petition, the imports and inbonding were made prior to 1-7-1978. They were however cleared after that

date. Petitioner 1 paid duty calculated at the rate of exchange prevailing on the dates of ex-bonding. Initially the applications sought a refund of Rs. 24,841.20 ps. as paid in excess because of a mistake. Subsequently the amount due and refundable was estimated at Rs. 1,60,439.73 ps. Respondent 2 rejected the applications by invoking the bar of limitation vide Section 27 of the Act. The appeals to respondent 3 not having fared any better, petitioners moved this Court under Article 226 of the Constitution.

4. Petitioners contend that the retention of the sum paid in excess of that due was an act violative of the law. They had applied for refunds as soon as they discovered the mistake made by them. The second set of applications sent by them were not fresh applications but a measure to amend the first set which as based on an error. Section 27 did not apply and in any case retention of money not due to respondent 1 was a violation of the law. Mr. Deodhar representing respondents raises three defences to support the impugned refusal. First is the reliance placed upon sub-section (5) of Section 27 of the Act. Second, learned Counsel submits is the application of Section 59 and not Section 46 to the instant case. Last is the contention that the amendments relied upon were prospective and not retrospective.

5. The reliance placed upon sub-section (5) of Section 27 is not of any assistance to the respondents. Whatever the constraints upon authorities functioning under the Act vis-a-vis Section 27 thereof, a writ Court is under an obligation to see that money collected without the authority of law is refunded. If any authority be necessary for this proposition, it is at 1983 E.L.T. 2106 (Bom).

6. The last ground raised by Mr. Deodhar is again covered by the authority of *Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others*, . There it was held that it was not the date of importation but the event chargeable to duty which governed the applicability of rate of duty, rate of exchange and tariff valuation. This was a case under the pre-amended Section 15 of the Act and its ratio will apply to this case also.

7. Mr. Deodhar submits that an importer warehousing his goods does not effect a clearance by presentation of the Bill of Entry. That according to learned Counsel takes place when there is ex-bonding. The petitioners' Counsel replies and rightly so by pointing to Section 46(1) which requires presentation of a Bill of Entry whether the importer wants to effect a clearance or warehousing. And the rate of exchange is that prevailing on the date of presentation of a Bill of Entry. This is the effect of the post 1-7-1978 amendment and thus viewed petitioners are entitled to the relief claimed.

8. Having negated the contentions raised by Mr. Deodhar what now remains is the correctness of the view taken by respondents 2 and 3 about the second set of applications being fresh applications. Petitioners contend that they were in the nature of applications to amend a mistake made in the first set. They were that and correction sought related back to the date on which the first sets were

presented. This was the proper aspect of the matter and it was an error to construe them as fresh applications.

9. In the result the petition succeeds. Orders of respondents 2 and 3 are hereby quashed. Respondent 1 to refund unto the petitioners a sum of Rs. 1,60,439.12 ps. together with interest " 6% p. a. from date of petition until payment Rule in these terms made absolute with no order for costs.