

(1990) 08 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 4104 of 1985

Thungabhadra Fibres Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-08-1990

Acts Referred:

Customs Act, 1962 — Section 12, 15, 25, 45, 57

Citation : (1990) ECR 598 : (1991) 52 ELT 357 : (1991) 2 ILR (Ker) 621

Hon'ble Judges : Thomas, J

Bench : Single Bench

Advocate : V.P. Mohan Kumar, for the Appellant; K. Prabhakaran, for the Respondent

Judgement

Thomas, J.—The Collector of Customs demands payment of interest on the duty amount for certain goods which have been warehoused, even though duty for those goods was subsequently withdrawn by the Government. The Collector does not allow the petitioner to remove the goods from the warehouse until payment of interest on the duty amount which was payable earlier. The importer, who is called upon to pay the interest, has filed this Original Petition in challenge of the aforesaid demand made by the Collector of Customs.

2. Petitioner-Company is engaged in manufacture of a product which is one of the constituents for making textile goods. "Wood pulp" is necessary for manufacture of that product. So, the petitioner imported wood pulp America from abroad. As the imported goods arrived at Cochin Port, petitioner for his own reasons did not pay the duty. However, the Customs officials had to keep the goods in the warehouse. Petitioner executed bonds under S. 59 of the Customs Act, 1962 (for short "the Act") binding himself to pay all duties together with interest on or before the date specified in a notice of demand and to remove the goods from the warehouse for home consumption. One bond was executed on 7-3-1984 and the other was executed on 14-9-1984. Petitioner did not apply for extension of the warehousing period. However, the goods remained in the

warehouse as they were not removed. A notification was issued on 17-3-1985 by which wood pulp was totally exempted from duty. Petitioner then approached the customs officers for clearance of the goods. But the Collector of Customs insisted that the petitioner should pay interest on the total amount of duty which was levied first, although no duty can now be collected in view of the exemption order. The customs officials refused permission to clear the goods without payment of interest accrued on the erstwhile duty, although the goods have ceased to be dutiable goods. Petitioner filed this Original Petition for a direction to the Collector of Customs to release the goods covered by the bonds.

3. In the counter affidavit filed by the Collector of Customs, he contended, inter alia, that inasmuch as the goods were dutiable goods till 17-3-1985, the importer has liability to pay interest thereon, though of course at the time of clearance he has no liability to pay the duty. The reasoning is that warehouse is not a place where imported goods can be deposited by the importer and cleared by him at his own convenience.

4. The question appeared to be simple at the first blush. But answer to the question cannot be given without examining some of the provisions of the Act.

5. S. 12 of the Act empowers levy of duty on goods imported into India. S. 15 provides that the rate of duty applicable to any imported goods shall be the rate in force, in the case of goods cleared from a warehouse, on the date on which the goods are actually removed from the warehouse. S. 68 says that the importer of any warehoused interest and other charges payable thereon have been paid.

6. In *Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others*, the Supreme Court, after analysing S. 15 of the Act has held that the rate of duty shall be the rate and the warehouse. "The requirement of the amended S. 15 could not be 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". Therefore the crucial date for payment of duty on goods is the date of removal of the goods from the warehouse. On the day of such removal, if the goods are not chargeable to duty, there is difficulty to make him bear the interest on a sum which was the duty on such goods before clearance from warehouse.

7. S. 25 of the Act confers power on the Central Government to exempt certain goods from duty through notification if the Central Government is satisfied that it is necessary in public interest so to do. In exercise of the said power, the Central Government totally exempted wood pulp from duty by notification dated 17-3-1985. S. 45 of the Act says that imported goods unloaded in a customs area shall remain in the custody of customs officials until they are cleared for home consumption or are warehoused. A public warehouse is intended for deposit of dutiable goods" without payment of duty. This is the purport of S. 57 of the Act. A bond has to be executed by an importer in respect of goods which are warehoused, as per S. 59 of the Act. The said provisions imposes obligation

on the importer to execute a bond binding himself in a sum equal to twice the amount of duty assessed on such goods, to observe all the provisions of the Act and the Rule and regulations in respect of such goods and to pay on or before a date specified in a notice of demand all duties, rent and charges claimable on account of such goods under the Act together with interest on the same from the date so specified at the rate of six per cent per annum or such other rate as is for the time being fixed by the Board". When a bond envisaged in S. 59 is executed, the customs officer has power to permit the deposit of goods in the warehouse without payment of duty.

8. A reading of the relevant provisions of the Act would show that the liability to pay interest cannot be delinked or divorced from the liability to pay duty. Both are conjunctive and must go together. The words "together with interest" in S. 59(b) are sufficient to indicate that the interest is linked with duty. In other words, an importer has no liability to pay interest is an adjunct to a debt or liability. It has no separate existence. It is one of the incidents of a debt which in the absence of the latter has no sanction for enforcement. The importer's liability to pay duty is at the time of clearance of the goods from a warehouse. He has no obligation to pay duty as long as goods remained in the warehouse. When goods are exempted from duty before they are removed from the warehouse, the natural as well as legal corollary is that none can be mulcted with the burden to pay interest on a non-existing duty.

I, therefore, direct the second respondent to release the goods covered by Ext. P3 series without insisting on payment of interest on the duty which prevailed prior to 17-3-1985.

Original Petition is disposed of in the above terms.