BHARAT SURFACTANTS (PVT.) LTD. & ANR. A

v.

UNION OF INDIA & ANR.

MAY 17, 1989

[R.S. PATHAK, CJ., SABYASACHI MUKHARJI, B
S. NATARAJAN, M.N. VENKATACHALIAH AND
S. RANGANATHAN, JJ.]

Customs Act, 1962—Sections 15, 16, 46 and 56—Rate of duty and Tariff valuation—Determination of—Date of presentation of Bill of Entry—Relevance of—'Date of entry inwards of vessel'—Date recorded in Customs register. C

By way of writ petition under Article 32 of the Constitution the petitioners sought relief against the imposition of customs duty at 150 per cent on their import of edible oils into India. Pursuant to the contract entered into by the petitioners with foreign sellers for the supply of D **edible oils the consignment of edible oils was sent by the ocean going vessel M.V. Kotta Ratu. The vessel approached Bombay and made its "prior entry" on 4 July, 1981. It actually arrived and registered on 11 July, 1981. As the port authorities at Bombay were unable to allot a berth to the vessel, the vessel left for Karachi for unloading other cargo intended for that port. The vessel returned on 23 July 1981 and waited** E **for berth. On August 4, 1981 she was allowed to berth in Princess Docks 'C' shed and the Customs authorities made the "final entry" on that date.**

Customs authorities are stated to have imposed duty on the import of edible oil at the rate of 150 per cent on the footing that the F **import was made on 31 July, 1981, the date of "Inward Entry". The case of the petitioners was that the rate of duty leviable on the imports should be that ruling on 11 July, 1981, when the vessel actually arrived and registered in the Port Bombay and that but for the fact that berth was not available the vessel would have discharged its cargo at Bombay and would have been liable to pay customs duty at the rate of 12.5%** G **which was the ruling rate on that date i.e., 11 July, 1981. The petitioners contended that the rate should not have been more than 42.5% because that was the rate of customs duty ruling on 23 July, 1981 when the vessel entered the port of Bombay.**

The Court rejecting the claim of petitioners, H

A **HELD: The rate of duty and tariff valuation has to be determined in accordance with S. 15(1) of the Customs Act. Under s. 15(1)(a), the rate and valuation is the rate and valuation in force on the date on which the Bill of Entry is presented u/s 46. According to the proviso, however, if the Bill of Entry has been presented before the entry inwards of the vessel by which the goods are imported, the Bill of Entry**
B **shall be deemed to have been presented on the date of such entry inwards. [373B-C]**

The date on which a Bill Entry is presented under S. 46 is, in the case of goods entered for home consumption, the date relevant for determining the rate of duty and tariff valuation. Where the Bill of Entry is presented before the date of Entry Inwards of the Vessel, the
C **Bill of Entry is deemed to have been presented on the date of such Entry Inwards. [375B]**

The amendment made in S. 16 of the Act appears to have been made by way of clarification and does not detract from the conclusion
D **that "the date of entry inwards of the vessel" is the date recorded as such in the Customs register. [375F]**

In the present case, "the date of inwards entry" is mentioned as 31st July, 1981. In the absence of anything else, it may be taken that the entry was recorded on that date itself. Accordingly, the rate of import
E **duty and the tariff valuation shall be that in force on 31st July 1981. The contention of the petitioners that the rate of import duty and tariff valuation will be that ruling on July 11, 1981 cannot be sustained and is rejected. [375G]**

(1)*Shawney* **v.** *M/s. Sylvania & Laxman Ltd.*, **77 Bom. L.R. 380;**
F **(2)** *Apar Private Ltd. & Ors.* **v.** *Union of India & Ors.*, **185 (1985) 22 E.L.T. 644; (3)** *Jain Shudh Vanaspati Ltd.* **v.** *S.R. Patankar, Asstt. Collector of Customs, Bombay & Ors.*, **[1988] 33 E.L.T. 77; (4)** *M/s. Omega Insulated Cable Co., (India) Ltd.* **v.** *The Collector of Customs, Madras,* **approved. Writ Appeal No. 537 of 1969 decided by the Hon'ble Kailasam and Paul, JJ. on 9 July, 1975, referred to.**

G

ORIGINAL JURISDICTION: Writ Petition No. 3130 of 1981.

(Under Article 32 of the Constitution of India).

Soli J. Sorabjee, Harish N. Salve, K.K. Patel, Ujwal Rana, Rajiv
H Dutta and K.K. Mohan for the Petitioners.

K. Parasaran, Attorney General, B. Datta, Additional Solicitor General, Kuldip Singh, Additional Solicitor General, Ms. A. Subhashini, C.V. Subba Rao, Mrs. Sushma Suri, A. Subba Rao, A.K. Srivastava and P.P. Singh for the Respondents.

The Judgment of the Court was delivered by

PATHAK, CJ. By this writ petition under Art. 32 of the Constitution the petitioners seek relief against the imposition of customs duty at 150 per cent on their import of edible oils into India.

The petitioners entered into a contract with foreign sellers for the supply of edible oils. The consignment of edible oils was sent by the ocean going vessel M.V. Kotta Ratu. The vessel approached Bombay and made its "prior entry" on 4 July, 1981. It actually arrived and registered in the Port of Bombay on 11 July, 1981. The petitioners say that the Port authorities at Bombay were unable to allot a berth to the vessel, and as she was under heavy pressure from the parties whose goods she was carrying she left Bombay for Karachi for unloading other cargo intended for that port. It is alleged that the vessel set out on its return journey from Karachi and arrived in the Port of Bombay on 23 July, 1981 and waited for a berth. On 4 August, 1981 she was allowed to berth in Princess Docks 'C' Shed and the Customs Authorities made the "final entry" on that date. The petitioners point out that when the vessel made its original journey to Bombay and was waiting in the waters of the Port the petitioners presented the Bill of Entry to the Customs authorities on 9 July, 1981, that the Bill of Entry was accepted by the Import Department and an order was passed by the Customs Officer on the Bill of Entry on 18 July, 1981 directing the examination of the consignment.

It is stated that the Customs authorities have imposed customs duty on the import of the edible oils effected by the petitioners at the rate of 150 per cent on the footing that the import was made on 31 July, 1981, the date of "Inward Entry". The case of the petitioners is that the rate of duty leviable on the import should be that ruling on 11 July, 1981, when the vessel actually arrived and registered in the Port of Bombay, and that but for the fact that a berth was not available the vessel would have discharged its cargo at Bombay, and would not [illegible] left that Port and proceeded to Karachi to return to Bombay towards the end of July, 1981. Alternatively, the case of the petitioners is that if it be found that the rate of customs duty attracted by the import effected by the petitioners is 150 per cent the levy is unconstitutional

A and void as a violation of Art. 14 of the Constitution inasmuch as customs duty at 5 per cent only was levied on the State Trading Corporation on similar imports of edible oils made by it as an importer. The petitioners have also challenged the validity of s. 15 of the Customs Act, 1961 under which the rate of duty and tariff valuation is determined.

B

To resolve the issue between the parties it is necessary to ascertain the effective date with reference to which customs duty becomes payable on imports into India. Section 15(1) of the Customs Act, 1962 provides:

> C "(1) The rate of duty 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 under section 46, on the date on which a bill
> D of entry in respect of such goods is presented under that section;
>
> (b) in the case of goods cleared from a warehouse under section 68, on the date on which the goods are actually removed from the warehouse;
>
> E
>
> (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
> F goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards."

The rate of duty and tariff valuation applicable to the imported goods is governed by cl. (a) of s. 15(1). In the case of goods entered for home consumption under s. 46, it is the date on which the Bill of Entry
G in respect of such goods is presented under that section. S. 46 provides that the importer of any goods shall make entry thereof by presenting to the proper officer a Bill of Entry for home consumption in the prescribed form, and it is further provided that a Bill of Entry may be presented at any time after delivery of the Import Manifest or an Import report. The Bill of Entry may be presented even before the
H delivery of such Manifest if the vessel by which the goods have been

shipped for importation into India is expected to arrive within a week from the date of such presentation. Section 47 empowers the proper officer, on being satisfied that the goods entered for home consumption are not prohibited goods and that the importers had paid the import duty assessed thereon as well as charges in respect of the same, to make an order permitting clearance of the goods for home consumption.

According to the petitioners, the cargo of edible oil could not be unloaded in Bombay during the original entry of the ship into the Port for want of an available berth, and it is for no fault of the petitioners that the vessel had to proceed to Karachi for unloading other cargo. Section 15, the petitioners contend, is arbitrary and vague and therefore unconstitutional because it provides no definite standard or norm for determining the rate of duty and tariff valuation and does not take into account situation which are uncertain and beyond the control of an importer. The petitioners contend that the rate of customs duty chargeable on the import of goods in India is the rate in force on the date when the vessel carrying the goods enters the territorial waters of India. The petitioners point out that s. 12(1) declares that customs duty will be levied at the rates in force on goods imported into India, and the expression 'India', they urge, is defined by s. 2(27) as including the 'territorial waters of India'. In other words, the petitioners contend that when the vessel entered the territorial waters on 11 July, 1981 the rate of customs duty at 12.5 per cent ruling on that date was the rate which was attracted to the import. In any event, the petitioners contend, the rate should not have been more than 42.5 per cent because that was the rate of customs duty ruling on 23 July, 1981 when the vessel entered the port of Bombay. To preserve the validity of s. 15 the petitioners urge, we must read the expression "the date of entry inwards" in the proviso to s. 15(1) as the date on which the vessel enters the territorial waters of India. Learned counsel for the petitioners says that if this interpretation cannot reasonably be given to the provisions of s. 15(1) then it becomes necessary to question the constitutional validity of s. 15 on the ground that the terms of that section are vague and arbitrary, and therefore no recourse can be had to s. 15(1).

Considerable reliance has been placed by the petitioner on *Shawney* v. *M/s. Sylvania and Laxman Ltd.*, 77 Bom. L.R. 380 in support of the submission that the taxable event occurs when the vessel enters the territorial waters of India and it is that date which should determine the rate at which import duty can be levied. It is desirable,

A we think, to appreciate what was said in that case. The Bombay High Court held there that the date on which the vessel enteres the territorial waters is the relevant date for determining whether the import of goods carried by it falls within the scope of the Customs Act. If the import of the goods is exempt from the operation of the Act on that date, the learned Judges said, the provisions of s. 15 of the Act will not B come into play, and therefore the import will be free from duty. A distinction was made between a case where the import of goods stands exempted on the date when the vessel enters the territorial waters of India and a case where the import falls within the operation of the Act on that date but the duty is rated at nil or at a certain figure. The distinction was discussed by a Full Bench of the Bombay High Court in C *Apar Private Ltd. and Others* v. *Union of India and others,* [1985] 22 E.L.T. 644 where Madhava Reddy, C.J., speaking for the Court, observed:

> "If the goods were wholly exempt from basic customs duty leviable under the Customs Act, when they entered the D territorial waters of India, no basic duty of customs would be leviable thereon even if such exemption were withdrawn under Section 25(1) of the Customs Act before the goods are released for home consumption. .... Only if the goods were chargeable to some basic customs duty under E the Customs Act, when they entered the territorial waters of India, than the rates in force at the time when the bill of entry is presented or at the time when the goods are sought to be cleared for home consumption, as the case may be, would be applicable and the basic duty would be quantified and demanded at those rates."

F

And in *Jain Shudh Vanaspati Limited* v. *S.R. Patankar, Asstt. Collector of Customs, Bombay and Others,* [1988] 33 E.L.T. 77 the Bombay High Court proceeded on the basis that where the imported goods were totally exempt from payment of customs duty on the date when the vessel entered the territorial waters of India, the taxable G event was not postponed to the date when the goods were cleared for human consumption.

In the present case, there is no dispute that on the date when the vessel first entered the territorial waters of India by July, 1981 the rate of customs duty was 12.5% on the import of the goods in question and H thereafter when the vessel returned from Karachi and entered the

territorial waters of India the rate of duty was 42.5%. A

We express no opinion on the soundness of the view taken by the Bombay High Court in the cases mentioned above; it is sufficient to point out that on the facts they afford no assistance to the petitioners.

The rate of duty and tariff valuation has to be determined in B accordance with s. 15(1) of the Customs Act. Under s. 15(1)(a), the rate and valuation is the rate and valuation in force on the date on which the Bill of Entry is presented under s. 46. According to the proviso, however, if the Bill of Entry has been presented before the 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 C entry inwards. In the present case the Bill of Entry was presented on 9 July, 1981. What is "the date of entry inwards" of the vessel? We may refer to the detailed procedure in this matter set forth in the counter-affidavit of Shri R.S. Siddhu, then under Secretary to the Government of India.

D

Before the arrival of the vessel the Master of the vessel or his Agent informs the Port authorities and the Customs authorities of the probable date of arrival of the vessel. This information is technically known as presentation of the Import General Manifest. In this Manifest the Master intimates the details with regard to the cargo carried by the vessel. In the instant case the Manifest was conveyed by E the Steamer Agent on 6 July, 1981 by his letter No. IM/394/81/1116. Admittedly this intimation or presentation of the Manifest on 6 July, 1981 was prior to the arrival of the vessel. The presentation of the Manifest can be effected either before the arrival of the vessel or after its arrival in the usual course. In the forwarding letter dated 6 July, 1981 mentioned above, the Shipping Agent informed the authorities F that the ship would be arriving at Bombay 12 July, 1981. According to the normal procedure, if the intimation or presentation of the Manifest is made on the arrival of the vessel it is accompanied by an application for Entry Inward within 24 hours of arrival. In the instant case since the vessel was to arrive later there was no application accompanying the letter dated 6 July, 1981. The vessel arrived on 11 July, 1981. On G receipt of the Manifest a "prior entry" is made in the Register, which is called the Register of Inward/Outward Entry of vessels. Upon the recording of the "prior entry" a rotation number is given and conveyed to the Shipping Agent or the Master of the vessel. In the instant case the "prior entry" or rotation number allotted was 743/PE. The Customs authorities display daily, on receipt of the Import General H

A Manifests, the details of the vessels on a notice board for the information of importers. On noticing the arrival or expected arrival of the vessel from the Import General Manifest the importer or his clearing agent files his Bill of Entry. In this case the Bill of Entry was filed on 9 July, 1981. An entry with regard to presentation of the Bill of Entry is made in the Import General Manifest against the entry with regard to B the consignment belonging to the importer.

The procedure thereafter is as follows.

A vessel on arrival in the territorial waters has to await the allotment of a berth by the Port Trust. The Port Trust authorities, on receipt of information about the arrival of a ship, allot a berth, if it is C available, for the discharge of the cargo. In the instant case, since no berth was available, the vessel left for Karachi to discharge the cargo meant for that Port. The vessel arrived at Bombay on 23 July, 1981. Before its arrival, the Steamer Agent had presented a supplementary Manifest on 18 July, 1981 under cover of his letter No. IM/394/81/ D 1223. The "prior entry" made earlier in the Register of Inward Entry remained the same and the rotation number also continued to remain the same. Against the rotation No. 743 in column No. 3 of the Register of Inward Entry the date of the arrival of the vessel was indicated as 23 July, 1981, and in column No. 2 the date of Inward Entry was mentioned as 31 July, 1981. On 30 July, 1981 the Master of the vessel E had made a declaration certifying that the vessel could discharge its cargo on 31 July, 1981, and it is on this basis that the Customs authorities granted the Entry Inward to the vessel for the purposes of discharging its cargo.

It is urged on behalf of the petitioners that the import of the F goods must be deemed to have taken place on 11 July, 1981, when the ship originally arrived in Bombay Port and registered itself. The rate of customs duty prevailing on that date was 12.5 per cent, and that, learned counsel contends, should be the rate applicable to the edible oil consignment under s. 15 of the Act. The circumstance that the vessel was unable to secure a berth in the Port of Bombay compelled it G to proceed to Karachi to discharge the cargo pertaining to that Port, and but for the non-availability of the berth she would not have undertaken that voyage but would have continued in Bombay and discharged the edible oil consignment there. The customs duty which could have been levied then would have been 12.5 per cent. It is pointed out that the vessel was unable to do so for no fault of the H petitioners and a reasonable construction must be given to s. 15 taking

into account the particular circumstances of the case, so that the vessel must be deemed to have made the "Entry Inwards" on 11 July, 1981. We do not find it possible to accept this submission. The provisions of s. 15 are clear in themselves. The date on which a Bill of Entry is presented under s. 46 is, in the case of goods entered for home consumption, the date relevant for determining the rate of duty and tariff valuation. Where the Bill of Entry is presented before the date of Entry Inwards of the vessel, the Bill of Entry is deemed to have been presented on the date of such Entry Inwards.

In *M/s. Omega Insulated Cable Co., (India) Limited* v. *The Collector of Customs, Madras,* Writ Appeal No. 537 of 1969 decided by the Hon'ble Kailasam and Paul, JJ. on 9 July, 1975 the Madras High Court addressed itself to the question whether the words in s. 15(1)(a) of the Act, viz. "date of entry inwards of the vessel by which the goods are imported" mean "the actual entry of the vessel inwards or the date of entry in the register kept by the department permitting the entry inwards of the vessel." The learned Judges examined the corresponding provisions of the earlier statute and after comparing the provisions of s. 15 with those of s. 16 of the Customs Act, 1962, and the amendments made from time to time, held that the date of entry inward for the purpose of s. 15(1)(a) and the proviso thereto is the date when the entry is made in the Customs register.

We have considered the matter carefully and given due heed to the submissions of learned counsel for the petitioners founded, *inter alia,* on the provisions of the Sea Customs Act and the amendment made in s. 16 of the Customs Act and we are of opinion that the view taken by the Madras High Court in *M/s. Omega Insulated Cable Co. Ltd.,* (supra) represents the correct view. The amendment made in s. 16 of the Act appears to have been made by way of clarification and, in our opinion, does not detract from the conclusion that "the date of entry inwards of the vessel" is the date recorded as such in the Customs register. In the present case, "the date of inwards entry" is mentioned as 31 July, 1981. In the absence of anything else, we may take it that the entry was recorded on the date itself. Accordingly, the rate of import duty and the tariff valuation shall be that in force on 31 July, 1981. The contention of the petitioners that the rate of import duty and tariff valuation will be that ruling on 11 July, 1981 cannot be sustained and is rejected.

As to the question whether s. 15 of the Customs Act is *ultra vires* on the ground that arbitrary discretion has been conferred on the

customs authorities in the matter of determining the date of inward entry, it seems to us that having regard to the procedure detailed above there is no scope for the submission that the provision is invalid. An entire series of consecutive acts makes up the procedure, and it is reasonable to presume that each step in the series is completed on time. In that view of the matter, the challenge to the validity of s. 15 must fail. It is true that an amendment has been made in s. 16 in the case of the export of goods, and the rate of duty and tariff valuation applicable to export goods are now specifically referable to "the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation", and it is apparent that no such amendment has been made in the provisions of s. 15. The omission, it seems to us, is of no consequence when the procedure outlined above is being followed regularly and consistently. There is nothing before us to show that in following the procedure the Customs authorities act arbitrarily.

Accordingly, we are of opinion that the claim made by the petitioners must be rejected.

Finally, there remains the contention of the petitioners that the differential treatment meted out to the petitioners by the imposition of a rate of 150 per cent constitutes a violation of Article 14 of the Constitution on the ground that the rate applied to corresponding imports by the State Trading Corporation is 5 per cent only. This point has already been considered by us, and the contention has been rejected, in our judgment in *M. Jhangir Bhatusha etc.* v. *Union of India & Ors. etc.*, [1989] 3 SCR 356 pronounced today.

The Writ Petition is dismissed with costs.

R.N.J. Petition dismissed.