

The Assistant Collector of Customs and Others

Vs

Dutex Clock Company

Civil Appeal No. 1093 of 1967

(A. N. Ray, I. D. Dua, M. H. Beg JJ)

05.05.1972

JUDGMENT

DUA, J. -

1. In this appeal with certificate granted by the Calcutta High Court under Article 133(1)(b) of the Constitution the only question requiring determination relates to the point of time at which the rate of duty with respect to the goods imported by the respondent, Dutex Clock Company, from Japan is to be fixed. The respondent, a manufacture of clocks, imported 87 cases of steel strips of Japanese origin for its manufacturing business. Those cases were shipped per steam ship "Narasau Maru", a Japanese vessel which arrived at the Port of Calcutta some time on February 28, 1961. According to the respondent S. S. Narasau Maru began discharging her cargo at about 8.55 p.m. on the same day after completing all customs formalities. All the 87 cases were landed at shed No. 7 C.J. belonging to the Commissioners for the Port of Calcutta and the customs officials assessed the duty on the goods at 10% ad valorem amounting to Rs. 1,934.40 nP. The rate of duty applicable to the goods if imported on February 28, 1961 was 10% of the value but as a result of the Finance Act of 1961 the duty was raised to 50% of the value with effect from March 1, 1961. The assessment made at 10% was cancelled on March 8, 1961 and the duty as calculated at 50% ad valorem. The respondent was accordingly called upon to make an extra payment of Rs. 7,737.60 nP. The respondent paid this amount under protest and received delivery of the full consignment on March 22, 1961. Having failed to get the refund of the excess amount paid under protest the respondent approached the High Court at Calcutta under Article 226 of the Constitution praying inter alia for a suitable writ or direction for quashing the order of assessment, dated March 8, 1961 and the order, dated May 29, 1961, rejecting respondent's claim for refund of the excess payment.

2. A learned single Judge of the Calcutta High Court (B.N. Banerjee, J.) after hearing both sides discharged the rule, holding that under Explanation (b) to Section 37 of the Sea Customs Act 8 of 1878 (hereinafter called the Act), the bill of entry with respect to S. S. Narasau Maru must be deemed to have been delivered on the date of final entry which was made on March 1, 1961 with the result that the duty was correctly assessed at 50% ad valorem under the new tariff rate.

3. On appeal a Division Bench of the Calcutta High Court (G. K. Mitter and B. C. Mitra, JJ.) reversed the decision of the learned single Judge and observed that "the bill of entry filed by the Clearing Agents of which the original was before the court shows that it bore date February 28, 1961 and was also signed by the Officer of Customs on that date". After considering the material on the record, G. K. Mitter, J., who wrote the main judgment, said :

"I find myself unable to agree with the conclusion of the learned trial Judge. The

documents disclosed show that the manifest was delivered on February 20, 1961 and that on the same day the shipping agents made an application for an order for entry inwards of the vessel using the word 'provisional' in connection therewith but submitting the import general manifest in duplicate undertaking to submit store list, master's receipt, etc. within 24 hours after arrival of the steamer in port. The bill of entry was also submitted on February 28, 1961. On the application of the entry inwards of the vessel on February 20, 1961 an order was made on the same date to the effect that the vessel might be entered. Consequently all the formalities necessary for breaking of the bulk were completed on February 28, 1961, and the rate of the duty applicable was that in force when the bill of entry was delivered on February 28, 1961, in terms of the explanation to Section 37. Accordingly, the rate of duty must be the rate which was in force on that date. I find myself unable to accept the contention of the respondents that the bulk was permitted to be broken under a special pass under Section 59."

4. The Division Bench did not accept the present appellants' contention that the bulk was permitted to be broken under a special pass under Section 59. No such case appeared to have been made out before the learned single Judge of the High Court there being no reference to Section 59 in his judgment. The Division Bench, allowing the appeal, made absolute the rule as originally issued by the High Court on the present respondent's writ petition.

5. Before us Shri Dhebar, learned counsel for the appellant, has contended that the bill of entry in the present case must be deemed to have been delivered to the Customs Collector under Section 86 of the Act on March 1, 1961 and not prior to that date with the result that the proper duty payable would be the revised duty at the rate of 50% of the value of the goods imported. The duty leviable on the goods imported could be assessed only after the delivery of such bill of entry as provided by Section 87. We are wholly unable to accept this contention.

6. Sections 37 and 57 of the Act which seem to us to govern the case read :

"37. Alteration of import duty or tariff valuation. - The rate of duty and the tariff-valuation (if any), applicable to any goods imported shall be the rate and valuation in force on the date on which the bill of entry thereof is delivered to the Customs Collector under Section 86 :

Provided that, if such goods are warehoused under this Act, the rate and valuation (if any), applicable thereto shall be the rate and valuation in force on the date of the actual removal of such goods from the warehouse in the case of goods delivered out of a warehouse for home consumption, and in the case of goods delivered out of a warehouse for removal under bond to be re-warehouse where the duty is paid on such goods without their being re-warehoused, the rate and valuation (if any), in force on the date on which duty is paid.

Explanation. - A bill of entry shall, for the purposes of this section, be deemed to be delivered -

(a) when it is first presented to the proper officer of Customs; or

(b) where it is delivered in anticipation of the arrival of the importing vessel, on the date on which an order is given under Section 57 for the entry of the vessel inwards."

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"57. Bulk not to be broken until manifest, etc., delivered, and vessel entered inwards  
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No vessel arriving in any customs port shall be allowed to break bulk until a manifest has been delivered as herein before provided; nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the master to the Customs Collector, and an order has been given thereon for such entry."

7. It is clearly provided in the explanation to Section 37 that a bill of entry is to be deemed to be delivered for the purpose of this section on the date on which an order is given under Section 57 for the entry of the importing vessel inwards where inter alia it is delivered in anticipation of the arrival of the said vessel. It is contended on behalf of the appellant that the bill of entry in the present case was delivered in anticipation of the arrival of S. S. Narasau Maru on February 20, 1961. Now this would only mean that the bill entry should be deemed to be delivered on the date on which the order is given under Section 57 for the entry of the vessel inwards. Under Section 57 no vessel is to be break bulk until a manifest has been delivered; nor until a copy of such manifest together with an application for entry of such vessel inwards is presented by the Master to the Customs Collector and an order thereon for such entry. Bulk, therefore, could not be broken until such an order had been given. In the present case it is not denied that the vessel S. S. Narasau Maru was actually allowed to break bulk before 12 O'clock mid-night on the night between February 28 and March 1, 1961. If that be so, then, unless it is explained by the appellant that all the formalities constituting conditions precedent were not complied with showing by convincing material the reason for such noncompliance, it must be held that the vessel had begun to break bulk in accordance with law. In other words the vessel must be held to have started breaking bulk after the requisite order was given for its entry inward as contemplated by Sections 37 and 57. The order for entry of the vessel inwards having not been produced by the appellant who was expected to produce the same, to justify cancellation of the original assessment made on February 28, 1961 which may appropriately be assumed to have been correctly made, and its replacement by the revised assessment at a higher rate, the Division Bench of the High Court was, in our opinion, right in allowing the appeal and making absolute the Rule as originally issued by that Court. Our attention has not been drawn to any material on the record which would show that the original assessment of duty on the goods at 10% ad valorem was made on an erroneous assumption of facts. The Division Bench relied on Ex. 1-A, which is an entry on the application, dated February 20, 1961, seeking an order for entry inwards for the vessel S. S. Narasau Maru. On that application there is an endorsement permitting the vessel to enter. This would bring the case of the respondent clearly within the terms of Section 37, Explanation (b). There is no material on the record on which we can safely accept the appellant's averment in the affidavit in opposition produced in the High Court that the goods in question "were provisionally assessed on February 28, 1961 at the 'before entry' or 'prior entry' stage at the rate then prevalent". This averment was wrongly accepted by the learned single Judge and rightly rejected by the Division Bench in view of Ex. 1-A. We are also unable to hold as a matter of law that Section 37 and 57 contemplate the making of a final entry inward after the arriving vessel beings to break bulk. The order of the Divisional Bench of the High Court is, in our opinion, fully justified both on facts and in law and the appellant has completely failed to point out any error in that order, justifying its reversal by this Court. The appeal accordingly fails and is dismissed with costs.

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