

Union of India and Others

Vs

Bangalore Wire Rod Mill and Others

Civil Appeals Nos. 431-32 of 1993

(B. P. Jeevan Reddy, S. Saghir Ahmed JJ)

19.03.1996

JUDGMENT

B. P. JEEVAN REDDY, J.

1. Leave granted in special leave petitions.

2. The respondent M/s. Bangalore Wire Rod Mill imported a "high reversible mill" in the year 1982. On 11-11-1982, he warehoused the said goods without paying duty as contemplated by Sections 58 and 59 of the Customs Act, 1962 (the Act). On 7-3-1985, the authorities issued a notice to the respondent to clear the goods from the warehouse within fifteen days of the said notice after paying duty due thereon. The respondent, however, did not clear the goods until 9-9-1988 on which day he paid a duty of Rs. 1.40 crores and interest of Rs. 81.49 lakhs as demanded by the authorities. Having cleared the goods, the respondent filed a writ petition in the Karnataka High Court contending that levy of interest from 11-11-1983 up to the date of clearance of the goods from the warehouse and that too treating the rate of duty as ninety per cent is contrary to law and unsustainable. It asked for refund of excess amount of interest collected from it. Its case was that the initial warehousing period was for three years and, therefore, the interest, if at all, should be charged only for the period after the expiry of the said three years' period. The writ petition was heard and disposed of by a learned Single Judge against whose decision both the respondent and the Union of India filed writ appeals. The Division Bench of the Karnataka High Court disposed of the writ appeals with the following directions :

"(a) The respondents are directed to recompute the amount of interest payable by the petitioner at the prescribed rate with effect from 22-3-1985 up to 9-9-1988 on the basis of the amount of customs duty which the petitioner would have been liable to pay to the Central Government at the rate, which was prevailing during the different periods between 22-3-1985 to 9-9-1988;

(b) After computing the total amount of interest payable for the entire period as directed above, the respondents shall refund the balance of the amount of interest collected from the petitioner."

3. The judgment of the Division Bench is being questioned both by the Union of India and by the importer in these appeals.

4. For a proper appreciation of the questions arising herein, it is necessary to state a few more facts : on the date of warehousing the goods, the rate of customs duty chargeable on the imported goods

was forty per cent ad valorem. The rate of duty was being raised from time to time and on 9-9-1988, the date on which the goods were cleared from the warehouse, the rate of duty was ninety per cent. The Act, as in force at the relevant time, permitted an importer either to clear the goods immediately on their import or to warehouse them without paying the duty. The warehousing of the goods without paying the duty was, however, subject to certain conditions specified in Section 59. Sub-section (1) of Section 59, which alone is relevant for our purposes, read thus at the relevant time :

"59. Warehousing bond. - (1) The importer of any dutiable goods which have been entered for warehousing and assessed to duty under Section 17 or Section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods :

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

(b) 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 this 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; and

(c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods."

5. A reading of Section 59(1) shows that an importer who seeks to have the imported goods warehoused has to first have the goods assessed under Section 17 or Section 18, as the case may be, and then execute a bond binding himself to pay double the amount of duty assessed on the said goods and undertaking "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 this 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". Clause (a) of sub-section (1) of Section 61, as obtaining on the date of warehousing of the said goods, [it is not disputed before us that the imported goods represent "consumable stores" within the meaning of Section 61(1)(a)] prescribed a period of three years beyond which the imported goods could not be warehoused. On 13-5-1983, however, this clause was amended and the period of three years was reduced to one year. Sub-section (2) of Section 61 (as inserted by Act 11 of 1983) read as follows :

"61. (2) Where any warehoused goods remain in a warehouse beyond the period of one year or three months specified in clause (a) or clause (b) of sub-section (1) by reason of the extension of the aforesaid period or otherwise, interest at such rate, not exceeding eighteen per cent per annum as is for the time being fixed by the Board, shall be payable on the amount of duty on the warehoused goods for the period from the expiry of the period of one year or, as the case may be, three months, till the date of the clearance of the goods from the warehouse :

Provided that the Board may, if it considers it necessary so to do in the public interest, waive, by special order and under circumstances of an exceptional nature to be specified in such order, to whole or part of any interest payable under this sub-section in respect of any warehoused goods."

6. We have referred to sub-section (2) of Section 61 for the reason that it was relied upon by the

appellant before us, though, in our opinion, it is not really relevant herein as we shall point out presently.

7. In this case, the respondent did execute a bond as contemplated by Section 59(1) while warehousing the goods on 11-11-1982. Though the period of three years prescribed in Section 61(1)(a) was reduced to one year by an Amendment Act with effect from 13-5-1983, neither the respondent cleared the goods nor the authorities issued a demand notice within one year from 13-5-1983. Only on 7-3-1985, did the authorities issue a notice to the respondent calling upon him to clear the goods on paying the appropriate duty. Now, according to the Act, the duty payable would be the duty in force on the date of clearance from the warehouse and not the date in force on the date of import or on the date of warehousing. For one or the other reason, the respondent did not clear the goods immediately but cleared them on 9-9-1988. He paid the duty at the rate of ninety per cent and that aspect is no longer in issue herein. While clearing the goods, the authorities demanded and collected interest on the said amount of duty for the period commencing from 11-11-1982 to 9-9-1988. It is this aspect which alone is in dispute between the parties in these appeals. The Division Bench of the High Court has held that the interest is chargeable only for the period 22-3-1985 (on expiry of fifteen days from the date of notice dated 7-3-1985) to 9-9-1988. The Division Bench has further directed that interest shall be calculated taking the rate of duty in force from time to time during the said period. The State has preferred these appeals contending that (1) it is entitled to interest from 11-11-1982 and (2) the interest should be charged calculating the duty @ ninety per cent for the entire period 11-11-1982 to 9-9-1988.

8. We do not think that the claim of the appellant is sustainable in law. The language of Section 59(1)(b), as it stood at the relevant time, is clear and unambiguous. It says that the importer shall have to execute a bond undertaking inter alia to pay interest from the date specified in the notice of demand. We have already extracted clause (b) in full hereinbefore. The liability to pay interest arises only after the expiry of the period prescribed in the notice of demand. It has been held by the High Court that the present matter is not governed by Section 61(2), as it stood at the relevant time, but by Section 59(1) alone. Indeed, it is submitted that when the respondent applied for extension of time of warehousing under Section 61(2), the Government told it that the said provision had no application and hence, time cannot be extended thereunder. Once that is so, we must go by what Section 59(1) says. According to it, the duty became due on issuing the notice of demand. The notice prescribed fifteen days for payment. Interest is chargeable only thereafter as held by the High Court, which, in our opinion, is a reasonable way of understanding the provision. Secondly, we see no justification or legal basis for the appellants' plea that the interest must be paid taking the rate of the duty at ninety per cent for the said entire period. As a matter of fact, the rate of duty on the said goods was not ninety per cent throughout the period 22-3-1985 to 9-9-1988. It was varying. The High Court's direction, therefore, to take the actual rate in force from time to time is a reasonable one. We are, therefore, of the opinion that the judgment of the High Court does not call for any interference. The appeals are accordingly dismissed.

9. No costs.