

Amber Woollen Mills

Vs

Collector of Customs, Delhi

Civil Appeals Nos. 2205-06 of 1991 with No. 8358 of 1995

(S. C. Agarwal, S. P. Kurdukar JJ)

26.02.1998

ORDER

1. M/s. Amber Woollen Mills, the appellant herein had imported two consignments of Synthetic Rags from USA by the vessel named "Oriented Minister". The ship carrying the said goods arrived at Bombay Port on 10-2-1987. The goods were meant for transshipment to the Inland Container Depot (in short "ICD") at New Delhi. The goods were transhipped from Bombay to Delhi on 18-2-1987 and they arrived at ICD, New Delhi on a 8-3-1987 and 11-3-1987. On 26-2-1987 the appellant presented the Bills of Entry in respect of the two consignments at ICD, New Delhi. Prior to 1-3-1987, the customs duty payable on the goods so imported was @ 80 per cent. (40 per cent plus 40 per cent auxiliary). By notification No. 56/87-CUS dated 1-3-1987 the duty was reduced to 20% (with no auxiliary duty) with effect from 1-3-1987. In respect of the goods which arrived at ICD, New Delhi on 8-3-1987, the appellant claimed the benefit of reduction in duty under notification dated 1-3-1987. The Additional Collector of Customs, by his order dated 10-2-1989 held that since the Bill of Entry was presented on 26-2-1987, the benefit of the reduced duty under the notification dated 1-3-1987 could not be extended and the appellant was liable to pay the duty which was in force on 26-2-1987. The Additional Collector had also passed an order for confiscation of the goods and for payment of redemption fine of Rs. 17,000 but that part of the order has been set aside by the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"). In respect of the goods which arrived at ICD, New Delhi on 11-3-1987, the appellant had paid the duty @ 80% and an application was submitted for refund of the excess amount on the basis of the notification dated 1-3-1987. The said application for refund was rejected by the Assistant Collector of Customs by order dated 16-3-1989 on the ground that the duty on rags up to 28-2-1987 was 40% plus 40% auxiliary and the same was reduced to 20% plus auxiliary nil with effect from 1-3-1987 and that the claim for refund was not admissible since the Bill of Entry had been presented on 26-2-1987. The said order passed by the Assistant Collector was set aside in appeal by the Collector of Customs (Appeals) by order dated 3-7-1989 on the ground that the cumulative effect of Section 15 read with Section 55 of the Customs Act, 1962 (hereinafter referred to as "the Act") is that in a transshipment case, the date of entry will be the date when the goods are received, off-loaded at the port of destination (in the present case, ICD, New Delhi) and the rate of duty chargeable on the said goods was 20% and not 80% as charged.

2. Two appeals were filed before the Tribunal, one by the appellant against the order of Additional Collector of Customs dated 10-2-1989 and other by Revenue against the order of the Collector, Customs (Appeals) dated 3-7-1989. Both the appeals have been disposed of by the impugned judgment of the Tribunal dated 27-11-1990. The Tribunal has allowed the appeal filed by the Revenue and has set aside the order dated 3-7-1989 passed by the Collector of Customs (Appeals). In the appeal filed by the appellant the order of Additional Collector of Customs dated 10-2-1989

was affirmed by the Tribunal insofar as it relates to the duty being payable @ 80%. It was held that rate of duty prevailing prior to 1-3-1987, i.e. 80%, would be applicable because the Bills of Entry as well as the entry inwards of the vessel were both prior to 1-3-1987. An application for rectification was submitted before the Tribunal by the Collector of Customs. It was disposed of by the Tribunal by order dated 15-12-1991 and the last four lines of para 7 of the order were substituted.

3. Civil Appeals Nos. 2205-06 of 1991 have been filed against the a judgment of the Tribunal dated 27-11-1990 and Civil Appeal No. 8358 of 1985 has been filed against the order dated 5-12-1991.

4. The question which falls for consideration is : What is the date for determination of the rate of duty in respect of the goods imported by the appellant ? Under the Act, the provision with regard to the determination of rate of duty and tariff valuation of imported goods is contained in Section 15. Sub-section (1) of Section 15, as it stood at the relevant time, provides as follows :

"15. (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 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;

(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 goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

5. Section 46(1) requires that the importer of any goods other than the goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a Bill of Entry for home consumption or warehousing in the proper form. In sub-section (1) of Section 31 it is laid down that the master of the vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

6. In the present case as per the Bills of Entry which were presented on 26-2-1987 the goods were imported for home consumption. Therefore, the matter falls under clause (a) of sub-section (1) of Section 15. The proviso to sub-section (1) of Section 15 is not applicable in the present case because it is not the case of the appellant that the Bills of Entry were submitted before the date of entry inwards of the vessel in which the goods were imported. In view of Section 15(1)(a) the date for determination of rate of duty would, therefore, be 26-2-1987, the date on which the Bills of Entry were presented.

7. Shri Sanjeev Ralli, the learned counsel for the appellant, has, however, urged that in the present case the appellant is entitled to the benefit of the reduced rate of duty of 20% for the reason that the goods imported were intended for transshipment to ICD, New Delhi and that the matter is governed by the provisions contained in Sections 54 and 55 of the Act. The submission is that since the goods had to be transhipped at Bombay for ICD, New Delhi, the port of import of the goods was ICD, New Delhi and since the goods arrived at ICD, New Delhi on 8-3-1987 and 11-3-1987, the appellant is entitled to the benefit of the lower rate of duty under notification dated 1-3-1987. We are unable

to accept the said contention of the learned counsel. It is no doubt true that the goods were intended for transshipment to ICD, New Delhi and the provisions regarding transshipment of goods contained in Sections 54 and 55 of the Act would be applicable. But the said provisions do not have any bearing on the date of determination of the rate of duty for which the provision is made in Section 15. Sections 54 and 55 enable transshipment of goods without payment of duty from the port where the goods are unloaded from the vessel for transshipment to the port of destination and provide for payment of duty at the port of destination. In view of these provisions the importer can file the Bill of Entry at the port of destination. But the rate of duty that is payable has to be determined in accordance with Section 15. For the purpose of Section 15(1) the date of entry inwards of the vessel has to be the date on which the vessel in which the goods were brought was granted entry inwards under Section 31. In respect of goods which are intended to be transhipped after being unloaded from the vessel at the port of transshipment the date of entry inwards of the vessel can only be the date on which entry was granted to the vessel from which the goods are to be unloaded for transshipment under Section 31 and there cannot be a different date of entry inwards in respect of the vessel for the goods intended for transshipment. Section 31 applies to all goods whether they are to be unloaded for the purpose of home consumption or warehousing at the place of unloading or they are goods which are to be unloaded for the purpose of transshipment to any other customs port. Since the date of entry inwards is granted to the vessel with reference to entry of vessel at the port of unloading, the fact that the goods were transhipped to ICD, New Delhi and reached ICD, New Delhi on 8-3-1987 and 11-3-1987 has no bearing on the determination of rate of duty and the rate of duty will have to be determined in accordance with Section 15(1)(a) on the basis of the date of presentation of the Bills of Entry or the date of entry inwards of the vessel in view of the proviso to Section 15(1) which provides that where the Bill of Entry was submitted prior to the date of entry inwards of the vessel the Bill of Entry would be deemed to be presented on the date of entry inwards of the vessel.

8. In the present case the date of entry inwards of the vessel as well as the date of presentation of the Bills of Entry were prior to 1-3-1987 when the duty payable on the goods was reduced. The Tribunal has, therefore, rightly held that duty was payable at 80%, the rate that was prevalent prior to the notification dated 1-3-1987, and the benefit of the notification dated 1-3-1987 could not be extended to the appellant. In the circumstances, we do not find any merit in these appeals and the same are accordingly dismissed. But in the circumstances, there will be no order as to costs.