

Jain Brothers and Another

Vs

Union of India and Others

Writ Petition (C) No. 5308 of 1983

(B. N. Kirpal, M. Srinivasan JJ)

21.07.1999

ORDER

1. The challenge in this writ petition is to the provisions of Section 3 of the Customs Tariff Act, 1975.
2. The petitioners are engaged in the business of import of automobile spare parts. They are liable to pay customs duty as levied under Section 12 of the Customs Act, 1962 which provides that the customs duty will be levied at such rates as may be specified under the Customs Tariff Act, 1975.
3. The Customs Tariff Act, 1975 (hereinafter referred to as "the Act") provides for levy of additional duty under Section 3 which section reads as follows :

"3. Levy of additional duty equal to excise duty. - (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

Explanation. - In this section, the expression 'the excise duty for the time being leviable on a like article if produced or manufactured in India' means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(2) For the purposes of calculating under this section the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in Section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of -

(i) the value of the imported article determined under sub-section (1) of the said Section 14 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(ii) any duty of customs chargeable on that article under Section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but not including the duty referred to in sub-section (1).

(3) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or not] such additional duty as would counterbalance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

(4) In making any rules for the purposes of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.

(5) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(6) The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."

4. The grievance of the petitioners is that insofar as sub-section (2) of Section 3 provides for inclusion of customs duty in calculating the value of the imported article for the purposes of levy under the said section is concerned, the same is unconstitutional and ultra vires.

5. Shri Dholakia, learned Senior Counsel for the petitioners contended that Section 3(1) is the charging section. Section 3(2) is really the machinery section which has been created for giving effect to the charging section. He submits that any loading of value to the goods imported is not permissible and in effect the machinery provision of Section 3(2) travelled beyond the charging provision and hence Section 3(2) is ultra vires Section 3(1). Learned Senior Counsel relied on the decision of this Court in *Hyderabad Industries Ltd. v. Union of India* ((1999) 5 SCC 15 : (1999) 108 ELT 321) in support of his contention that Section 3(1) is the charging section.

6. At the outset, we may mention that in *Hyderabad Industries* ((1999) 5 SCC 15 : (1999) 108 ELT 321) this Court was not concerned with the interpretation of Section 3(2). What arose for consideration was the interpretation of Section 3(1). Nevertheless in the course of considering the same, the Court took note of notes to clauses of the Customs Tariff Bill, 1975 and observed (at SCC pp. 25-26, para 15) that the levy under Section 3 was

"with a view to levy additional duty on an imported article so as to counterbalance the excise duty leviable on the like article indigenously made. In other words, Section 3 of the Customs Tariff Act has been enacted to provide for a level playing

field to the present or future manufacturers of the like articles in India".

7. As we read Section 3, we find that it is one composite section dealing with different aspects of the levy of tax. While sub-section (1) of Section 3 deals with the rate at which the duty is leviable on the value of the imported article, sub-section (2) provides that in calculating the value of the imported article what are the ingredients which have to be taken into consideration for arriving at the said value. Sub-clause (ii) states that any duty of customs chargeable on the article under Section 12 of the Customs Act, 1962 and any sum chargeable on that article under any law for the time being in force as an addition to and in the same manner as the duty of customs, shall be included in determining the value of the imported article. It is not necessary to refer to other sub-sections but it is clear from the aforesaid that both the sub-sections are different limbs of the charging section.

8. We do not see in the present case any impediment in the legislature providing for the manner in which the value of an article should be calculated for the purposes of determining the rate of tax which can be imposed. The customs duty which is required to be taken into consideration for the purposes of levying additional duty would normally form part of the value of the imported article on which the additional duty is to be imposed. In a sense sub-section (2) of Section 3 makes clear what is implicit in sub-section (1) of Section 3, namely, the value of the imported article would include the customs duty payable thereon. In commercial parlance, the value of an imported article may include customs duty and this is what has been made clear and accepted in sub-section (2) of Section 3. We, therefore, do not see any conflict between the two sub-sections and it is not possible to accept the contention that sub-section (2) has gone beyond the provisions of sub-section (1).

9. Learned Senior Counsel for the petitioners drew our attention to the decisions in *J.K. Synthetics Ltd. v. CTO* ((1994) 4 SCC 276 : (1994) 94 STC 422) and *Union of India v. Bombay Tyre International Ltd.* ((1983) 4 SCC 210 : 1983 SCC (Tax) 315 : AIR 1984 SC 420) but in our opinion these decisions are of no relevance in the present case.

10. For the aforesaid reasons, we do not see any merit in this writ petition. The same is dismissed with costs.