

Union of India and Others

Vs

Apar Private Ltd. and Others

Civil Appeals Nos. 1257-58 of 1987

(B. N. Kirpal, M. Srinivasan S. R. Babu JJ)

22.07.1999

ORDER

1. The judgment of the Full Bench of the Bombay High Court in *Apar (P) Ltd. v. Union of India* ((1985) 22 ELT 644 (Bom) (FB) is called in question in these appeals by special leave before us. The question which arose for consideration before the Bombay High Court related to the levy of customs duty under the provisions of the Customs Act.
2. The brief facts on which the Bombay High Court proceeded were that when the goods of the respondents entered the territorial waters of India from the foreign country as also on the day they were stored in the bonded warehouse, they were wholly exempt from payment of basic customs duty under a notification issued by the Central Government in exercise of its powers under Section 25(1) of the Customs Act, 1962. When these goods were sought to be removed from the bonded warehouse, the exemption notification had been rescinded and the exemption granted thereunder was withdrawn.
3. The case of the respondents was that on the day when the goods entered the territorial waters, that is the point of time when the taxable event under Section 12 occurred; and as the duty was nil on that day, therefore the question of paying any duty with reference to a subsequent point of time, namely, when the goods were removed from the warehouse did not arise.
4. The Bombay High Court following its earlier decision in *M. S. Shawhney v. Sylvania & Laxman Ltd.* ((1975) 77 Bom LR 380) decided in favour of the respondents and held that as the goods were exempt from payment of tax on the day when they entered the territorial waters no customs duty was payable.
5. In our opinion, this question is no longer *res integra*. At least two decisions of this Court, namely, *Bharat Surfactants (P) Ltd. v. Union of India* ((1989) 4 SCC 21) and *Dhiraj Lal H. Vohra v. Union of India* (1993 Supp (3) SCC 453) were directly concerned with a similar contention that had been raised. Dealing with the same, this Court has in clear terms come to the conclusion that what is relevant is the day on which the bill of entry in respect of the goods is presented under Section 46 and in the case of goods which are warehoused the relevant date would be the date on which the goods are actually removed from the warehouse. It is no doubt true that in *Bharat Surfactants*((1989) 4 SCC 21) this Court did observe that it did not express any opinion with regard to the soundness of the view taken by the Bombay High Court in *Sylvania & Laxman* case ((1975) 77 Bom LR 380) and in the judgment under appeal but, nevertheless, as we read the said judgment,

the conclusion of this Court in *Bharat Surfactants* ((1975) 77 Bom LR 380) was contrary to the view expressed by the Bombay High Court. We do not find that the said decision can in any way be distinguished from the facts of the in *Bharat Surfactants* ((1975) 77 Bom LR 380) present case. Similarly in *Dhiraj Lal* (1993 Supp (3) SCC 453) the contention raised that the ship had entered the territorial waters on 20-2-1989 and that was the relevant date for determining the taxability of the imported goods, was rejected. In this connection, it was observed as follows : (SCC p. 456, para 3)

"3. It is clear from a bare reading of these relevant provisions that the due date to calculate the rate of duty applicable to any imported goods shall be the rate and valuation in force, in the case of the goods entered for home consumption under Section 46, is the date on which the bill of entry in respect of such goods is presented under that section and in the case of goods cleared from a warehouse under Section 68, the date on which the goods are actually removed from the warehouse. By operation of the proviso if a bill of entry has been presented before the date of entry inwards the bill of entry shall be deemed to have been presented 'on the date of such entry inwards' but would be subject to the operation of Sections 46 and 31(1) of the Act. Section 46(1) provides that the importer of any goods, other than 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 prescribed form and it may be presented under sub-section (3) thereof at any time after delivery of the import manifest. Section 31(1) provides 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 and no order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it. Granting entry inwards on delivery of import manifest and the date of arrival of the vessel into port admittedly are on March 2, 1989 and the master of the vessel made a declaration in this behalf that they would discharge the cargo on March 2, 1989 therefore, the relevant date under Section 15(1)(a) is the date on which entry inwards after delivery of import manifest was granted to discharge the cargo for the purpose of the levy of the customs duty and rate of tariff. The contention, therefore, that the ship entered Indian territorial waters on February 20, 1989 and was ready to discharge the cargo is not relevant for the purpose of Section 15(1) read with Sections 46 and 31 of the Act. The prior entries regarding presentation of the bill of entry for clearance of the goods on February 27, 1989 and their receipt in the appraising section on February 28, 1989 also are irrelevant. The relevant date to fix the rate of customs duty, therefore, is March 2, 1989. The rate which prevailed as on that date would be the duty to which the goods imported are liable to the impost and the goods would be cleared on its payment in accordance with the rate of levy of customs prevailing as on March 2, 1989."

6. Following the aforesaid two decisions of this Court, we are of the opinion that the judgment under appeal does not lay down the law correctly' Duty has to be paid with reference to the relevant date as per Section 15 of the Customs Act. We, accordingly, allow these appeals and set aside the judgment of the Bombay High Court, the result of which would be that the writ petitions filed by the respondents in the Bombay High Court would stand dismissed.

7. No order as to costs.