

SUPREME COURT OF INDIA

Kiran Spinning Mills

Vs.

Collector of Customs

(A S Iyer, B Kirpal and R Sethi JJ.)

05.08.1999

ORDER

B.N. KIRPAL, A.P. MISRA AND R.P. SETHI, JJ

1. The short question that arises for consideration relates to the levy of additional duty under Section 3 of the Customs Tariff Act, 1975.
2. The appellants had between 4th of April, 1977 and 20th of September, 1978 imported acrylic polyester fibre. The imported articles were placed in the bonded warehouse after they had landed in India.
3. On 3rd of October, 1978 the Additional Duty of Excise (Textiles and Textile Articles) Ordinance, 1978 was promulgated which came into force w.e.f. 19th October, 1978. In terms of the Ordinance articles were charged with an additional duty to excise equal to 10 per cent of the basic excise duty payable on such articles under the Central Excises and Salt Act, 1944. It is not in dispute the correspondingly under Section 3 of the Customs Tariff Act, 1975 additional duty on such articles which were imported became payable equivalent to the additional excise duty levied under the said Ordinance.
4. The articles which were imported by the appellants were cleared from the bonded warehouse after 4th October, 1978. The Customs Authorities demanded an additional duty at the rate of 10 per cent under the aforesaid Ordinance. The appellants paid the amount demanded under the protest but thereafter filed an application for refund of the amount so paid. After being unsuccessful before the Authorities under the Act and the Tribunal the appellants have come up in appeals in this Court.
5. It is contended by Mr. Ramachandran, learned Counsel appearing on behalf of the appellants that

at the time when the goods were imported into India the Ordinance had not been promulgated and no additional duty of excise was payable on like articles. Therefore, additional duty under Section 3 of the Tariff Act could not be imposed. He also sought to place reliance on a tariff Advise/Circular issued on 3rd of October, 1978 by the Revenue Authorities to the effect that the additional duty of excise would apply and take effect from 4th October, 1978 and it being a new impost the levy would not be attracted on goods in fully manufactured condition and in stock with the manufacturer on the midnight of 3rd and 4th October, 1978. The contention was that at the time when the goods had landed in India additional duty of excise was not payable on a similarly manufactured goods in India even if they were placed in a bonded warehouse in India and, therefore, no additional duty could be charged under the Excise Act similarly under Section 3 of the Tariff Act no additional duty should be charged.

6. Attractive, as the argument is, we are afraid that we do not find any merit in the same. It has now been held by this Court in Hyderabad Industries Ltd. and Anr. v. Union of India and Ors. that for the purpose of levy of additional duty Section 3 of the Tariff Act is a charging section. Section 3 Sub-section (6) makes the provisions of the Customs Act applicable. This would bring into play the provisions of Section 15 of the Customs Act which, inter alia, provides that the rate of duty which will be payable would be on the day when the goods are removed from the bonded warehouse. That apart, this Court has held in Sea Customs Act 1964 (3) SCR 787 at page 803 that in the case of duty of customs the taxable event is the import of goods within the customs barriers. In other words, the taxable event occurs when the customs barrier is crossed. In the case of goods which are in the warehouse the customs barriers would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country. Admittedly this was done after 4th October, 1978. As on that day when the goods were so removed additional duty of excise under the said Ordinance was payable on goods manufactured after 4th October, 1978. We are unable to accept the contention of Mr. Ramachandran that what has to be seen is whether additional duty of excise was payable at the time when the goods landed in India or, as he strenuously contended, they had crossed into the territorial waters. Import being complete, when the goods entered the territorial waters is the contention which has already been rejected by this Court in C.A. Nos. 1257-58 of 1987 Union of India and Ors. v. Apar Private Ltd. and Ors. decided on 22nd July, 1999 . The import would be completed only when the goods are to cross the customs barriers and that is the time when the import duty has to be paid and that is what has been termed by this Court in IN RE : The Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excise Act, 1944 (1964) 3 SCR 787 at page 823 Sea Customs Case as being the taxable event. The taxable event, therefore, being the day of crossing of customs barrier, and not on the date when the goods had landed in India or had entered the territorial waters. We find that on the date of the taxable event the additional duty of excise was leviable under the said Ordinance and, therefore, additional duty under Section 3 of the Tariff Act was rightly demanded from the appellants.

7. For the aforesaid reasons and the reasons stated in Union of India and Ors. v. Apar Private Ltd. and Ors. (CA Nos. 1257-58/87) we do not find any merit in these appeals and the same are dismissed. The parties are to bear their own costs.

Writ Petition (Civil) No. 3973 of 1983

8. This writ petition is dismissed in view of the judgment in Hyderabad Industries Ltd. and Anr. v. Union of India and Ors.

Writ Petition (Civil) No. 821 of 1987

9. This writ petition is dismissed in view of the decision of this Court in Writ Petition (C) No. 5308 of 1983 decided on July 21, Jain Brothers and Anr. v. Union of India and Ors.