

SUPREME COURT OF INDIA

L.M.L. Ltd.

Vs.

Collector of Central Excise, Kanpur

(S Bharucha, N S Hegde and A Pasayat JJ.)

20.03.2002

ORDER

1. There is no merit in these appeals. We set out, briefly, as illustrative, the facts of the appeals filed by M/s. L.M.L. Ltd. in the form of a tabular statement. S.No. Date of Date of Date of Date of Import Bond Warehousing Clearance fr om Warehouse

1. 27.1.1998 17.2.1998 21.2.1998 4.2.1999

2. 3.3.1998 20.3.1998 25.3.1998 19.2,1999

3. 3.2.1998 17.2.1998 21.2.1998 4.2.1999

4. 22.4.1998 5.5.1998 11.5.1998 25.1.1999

5. 3.2.1998 17.2.1998 21.2.1998 4.2.1999

6. 22.4.1998 5.5.1998 11.5.1998 5.1.1999

2. In the course of the assessment of the relevant Bills of entry, the assistant commissioner of central excise added special additional duty at four per cent on the customs duty leviable on the goods. The appeal of the assessee therefrom was dismissed. The tribunal, in further appeal, upheld the addition based on the judgment of this Court in *Kiran Spinning Mills v. Collector of Customs*¹.

3. The contention of the assessee in these appeals against the order of the tribunal is that the judgment in the case of *Kiran Spinning Mills* is in conflict with those in the cases of *Collector of Central Excise, Bombay v. Poly set Corporation*² and *Collector of Central Excise, Jaipur v. J.K. Synthetics*³.

4. In the case of *Kiran Spinning Mills*, a contention similar to that raised before us was raised on behalf of the assessee. It is set out in paragraph 5 of that judgment and repelled in paragraph 6, both of which are set out below and are self-explanatory.

"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 Others* 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* - 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 Others v. Apar Private Ltd. and Others*] decided on 22nd July, 1999⁴. 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 Ro: The Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excise Act, 1944* 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."

5. The point to note is that for the purposes of customs duty, the taxable event occurs on the date on which the goods are cleared from a bonded warehouse for house consumption. It is that date which is relevant for the purposes of the rate of customs duty and any additional duty thereon. In the present cases, on the dates on which the goods were cleared from the bonded warehouses the special additional duty, introduced on 1st June, 1998, was already in existence and the assessee was correctly made liable to pay the same.

6. The judgment in the case of Poly set Corporation deals with the excise Act. Under the Excise Act, the taxable event occurs when the goods are manufactured, but the collection of the duty may be deferred for administrative convenience. It is, therefore, the date of manufacture which is relevant for the purposes of excise duty and any additional duty thereon. That is what has been held in the case of Poly set Corporation. It has no application to these appeals.

7. The judgment in the case of J.K. Synthetics is quite alien to the issue that is before us.

8. Having regard to what has been stated above, the appeals are dismissed, with costs.

¹113 ELT 753

²115 ELT 41

³120 ELT54

⁴JT 1999 (5) SC 160