

UNION OF INDIA AND ORS. ETC.

v.

M/S. BANGALORE WIRE RED MILLS ETC.

MARCH 19, 1996

[B.P. JEEVAN REDDY AND S. SAGHIR AHMAD, JJ.]

Customs Act, 1962 :

Ss.59(1)(b),61(1)(b), 61(2)—Import of items falling within "Consumable stores"—Warehousing of—Importer executing a bond in terms of s.59(1)—Liability of importer to pay duty and interest thereon—Held, duty to be paid at the rate prevalent on date of clearance—Interest chargeable only after the expiry of period mentioned in notice on the amount computed according to the rates of duty in force from time to time.

The respondent in C.A. No. 431/93 imported a 'high reversible mill', an item covered under "consumable stores" within the meaning of s.61(1)(a) of the Customs Act, 1962, in the year 1982 and warehoused the same on 11.11.1982 without paying any duty thereon. However, the respondent executed a bond in terms of s.59(1). On 7.3.1985, a notice was issued to the respondent to clear the goods within 15 days after paying the duty. On the date of warehousing the rate of customs duty chargeable was 40% *ad valorem*. This rate was increased from time to time and on 9.9.1988, when the respondent cleared the goods, the rate of duty was 90%. The respondents paid the duty at 90% amounting to Rs. 1.40 crores and interest thereon amounting to Rs. 81.49 lakhs as demanded by the authorities, and, after clearing the goods, filed a writ petition challenging the levy of duty at the rate of 90% as also the interest thereon from 11.11.1982 up to the date of clearance. The case of the respondent was that the initial warehousing period was three years and the interest would start running only thereafter. The Single Judge disposed of the writ petition. Both the importer as also the Government filed appeals before the Division Bench of the High Court, which directed the Customs authorities to recompute the amount of interest from 22.3.1985 to 9.9.1988 on the amount of Customs duty prevailing from time to time during the aforesaid period. Aggrieved, the Government as also the importer filed the appeals.

Dismissing the appeals, this Court

HELD : 1. In view of the provisions of the Customs Act, 1962, the duty would be payable at the rate in force on the date of clearance from the warehouse and not at the rate in force on the date of import or on the date of warehousing. Though the period of three years for warehousing the goods prescribed in s.61(1)(a) of the Act, was reduced to one year by an amendment in the Act with effect from May 13, 1983, neither the respondent cleared the goods nor authorities issued the demand notice within one year from May 13, 1983. The respondents cleared the goods only on 9.9.1988, and as such the duty was rightly imposed on and paid by the respondents at the rate of ninety per cent. [661-A; 660-G-H; 661-B]

2.1. There is no justification or legal basis for the appellants to demand the interest taking the rate of the duty at ninety per cent for the entire period from the date of warehousing the goods till its clearance. The language of Section 59(1)(b) of the Act, as it stood at the relevant time, clearly and unambiguously says that the importer shall have to execute a bond undertaking *inter alia* to pay interest from the date specified in the notice of demand. The liability to pay interest arises only after the expiry of the period prescribed in the notice of demand. Accordingly, the duty became due on issuing the notice of demand. The notice prescribed fifteen days for payment. Interest is chargeable only thereafter as rightly held by the High Court. [661-H; E-G]

2.2. Further, the rate of duty on the goods was not ninety percent throughout the period from March 22, 1985 to September 9, 1988. It was varying. The High Court's directions therefore, to take the actual rate in force from time to time is a reasonable one. [661-H; 662-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 431-32 of 1993.

From the Judgment and Order dated 10.4.92 of the Karnataka High Court in W.A. No. 1275/91 & 2419/91.

WITH

Civil Appeal Nos. 4601-02 of 1996.

From the Judgment and Order dated 10.4.92 of the Karnataka High Court in W.P. Nos. 1275/91 and 2649 of 1991.

N.K. Bajpai, S.D. Sharma (Rajiv Nanda) for T. Sridharan for the Appellants.

Joseph Vellapally and Ms. Indu Malhotra for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted in Special Leave Petitions.

The respondent-M/s. Bangalore Wire Rod Mill imported a 'high reversible mill' in the year 1982. On November 11, 1982, he warehoused the said goods without paying duty as contemplated by Sections 58 and 59 of the Customs Act, 1962 (the Act). On March 7, 1985, the authorities issued a notice to the respondent to clear the goods from the warehouse within fifteen days of the said notice after paying duty due thereon. The respondent, however, did not clear the goods until September 9, 1988 on which day he paid a duty of R. 1.40 crores and interest of Rs. 81.49 lakhs as demanded by the authorities. Having cleared the goods, the respondent filed a writ petition in the Karnataka High Court contending that levy of interest from November 11, 1983 upto the date of clearance of the goods from the warehouse and that too treating the rate of duty as ninety percent is contrary to law and unsustainable. It asked for refund of excess amount of interest collected from it. Its case was that the initial warehousing period was for three years and, therefore, the interest, if at all, should be charged only for the period after the expiry of the said three years' period. The writ petition was heard and disposed of by a learned Single Judge against whose decision both the respondent and the Union of India filed writ appeals. The Division Bench of the Karnataka High Court disposed of the writ appeals with the following directions :

"(a) The respondents are directed to re-compute the amount of interest payable by the petitioner at the prescribed rate with effect from 22.3.1985 upto 9.9.1988 on the basis of the amount of customs duty which the petitioner would have been liable to pay to the Central Government at the rate, which was prevailing during the different periods between 22.3.1985 to 9.9.1988;

(b) After computing the total amount of interest payable for the entire period as directed above, the respondents shall refund the balance of the amount of interest collected from the petitioner."

The judgment of the Division Bench is being questioned both by the Union of India and by the importer in these appeals.

For a proper appreciation of the questions arising herein, it is necessary to state a few more facts: on the date of warehousing the goods, the rate of customs duty chargeable on the imported goods was forty percent *ad valorem*. The rate of duty was being raised from time to time and on September 9, 1988, the date on which the goods were cleared from the warehouse, the rate of duty was ninety percent. The Act, as in force at the relevant time, permitted an importer either to clear the goods immediately on their import or to warehouse them without paying the duty. The warehousing of the goods without paying the duty was, however, subject to certain conditions specified in Section 59. Sub-section (1) of Section 59, which alone is relevant for our purposes, read thus at the relevant time :

"59. *Warehousing bond* - (1) The importer of any dutiable goods which have been entered for warehousing and assessed to duty under Section 17 or Section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods;

(a) to observe all the provisions of this Act and the Rules and Regulations in respect of such goods;

(b) to pay on or before a date specified in a notice of demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at the rate of six per cent per annum or such other rate as is for the time being fixed by the Board; and

(c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods."

A reading of Section 59(1) shows that an importer who seeks to have the imported goods warehoused has to first have the goods assessed under Section 17 or section 18, as the case may be, and then execute a bond binding himself to pay double the amount of duty assessed on the said goods and undertaking "to pay on or before a date specified in a notice of demand all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so

specified at the rate of six per cent per annum or such other rate as is for the time being fixed by the Board". Clause (a) of sub-section (1) of Section 61, as obtaining on the date of warehousing of the said goods, [it is not disputed before us that the imported goods represent "consumable stores" within the meaning of Section 61(1)(a)] prescribed a period of three years beyond which the imported goods could not be warehoused. On May 13, 1983 however, this clause was amended and the period of three years was reduced to one year. Sub-section (2) of Section 61 (as inserted by Act 11 of 1983) read as follows :

"(2) Where any warehoused goods remain in a warehouse beyond the period of one year or three months specified in clause (a) or clause (b) of sub-section (1) by reason of the aforesaid period or otherwise, interest at such rate, not exceeding eighteen percent per annum as is for the time being fixed by the Board shall be payable on the amount of duty on the warehoused goods for the period from the expiry of the period of one year or as the case may be, three months, till the date of the clearance of the goods from the warehouse.

Provided that the board may, if it considers it necessary so to do in the public interest, by special order and under circumstances of an exceptional nature to be specified in such order, to whole or part of any interest payable under this sub-section in respect of any warehoused goods."

We have referred to sub-section (2) of Section 61 for the reason that it was relied upon by the appellant before us, though, in our opinion, it is not really relevant herein as we shall point out presently.

In this case, the respondent did execute a bond as contemplated by Section 59(1) while warehousing the goods on November 11, 1982. Though the period of three years prescribed in Section 61(1)(a) was reduced to one year by an Amendment Act with effect from May 13, 1983, neither the respondent cleared the goods nor the authorities issued a demand notice within one year from May 13, 1983. Only on March 7, 1985, did the authorities issued a notice to the respondent calling upon him to clear the goods on paying the appropriate duty. Now, according to the Act, the duty

payable would be the duty in force on the date of clearance from the warehouse and not the date in force on the date of import or on the date of warehousing. For one or the other reason, the respondent did not clear the goods immediately but cleared them only on September 9, 1988. He paid the duty at the rate of ninety percent and that aspect is no longer in issue herein. While clearing the goods, the authorities demanded and collected interest on the said amount of duty for the period commencing from November 11, 1982 to September 9, 1988. It is this aspect which alone is in dispute between the parties in these appeals. The Division Bench of the High Court has held that the interest is chargeable only for the period March 22, 1985 (on expiry of fifteen days from the date of notice dated March 7, 1985) to September 9, 1988. The Division Bench has further directed that interest shall be calculated taking the rate of duty in force from time to time during the said period. The State has preferred these appeals contending that (1) it is entitled to interest from November 11, 1982 and (2) the interest should be charged calculating the duty @ ninety percent for the entire period November 11, 1982 to September 9, 1988.

We do not think that the claim of the appellant is sustainable in law. The language of Section 59(1)(b), as it stood at the relevant time, is clear and unambiguous. It says that the importer shall have to execute a bond undertaking *inter alia* to pay interest from the date specified in the notice of demand. We have already extracted clause (b) in full hereinbefore. The liability to pay interest arises only after the expiry of the period prescribed in the notice of demand. It has been held by the High Court that the present matter is not governed by Section 61(2), as it stood at the relevant time but by Section 59(1) alone. Indeed, it is submitted that when the respondent applied for extension of time of warehousing under Section 61(2), the government told it that the said provision had no application and hence, time cannot be extended thereunder. Once that is so, we must go by what Section 59(1) says. According to it, the duty became due on issuing the notice of demand. The notice prescribed fifteen days for Payment. Interest is chargeable only thereafter as held by the High Court, which, in our opinion, is a reasonable way of understanding the provision. Secondly, we see no justification or legal basis for the appellants' plea that the interest must be paid taking the rate of the duty at ninety percent for the said entire period. As a matter of fact, the rate of duty on the said goods was not

ninety percent throughout the period March 22, 1985 to September 9, 1988. It was varying. The High Court's direction, therefore, to take the actual rate in force from time to time is a reasonable one. We are, therefore, of the opinion that the judgment of the High Court does not call for any interference. The appeals are accordingly dismissed.

No costs.

Appeals dismissed.