A DHIRAJ LAL H. VOHRA ETC. ETC.

v.

UNION OF INDIA AND ORS.

DECEMBER 9, 1992

B [KULDIP SINGH, V. RAMASWAMI AND K. RAMASWAMY, JJ.]

Customs Act, 1962 : Sections 15(1), 31, 46, 68—Goods imported—Ship arriving and delivering Import Manifest—Goods could not be handled due to strike—Bill of Entry for clearance of goods—Presenting of—Subsequent grant C *of Inward Entry and arrival of ship into the port—Increase in rates of duty in the meantime—Fixing of rate of duty—Relevant date—What is.*

The petitioners placed an order with the Indian Agent of a foreign supplier for supply of ball bearings, and opened letters of credit. The foreign supplier shipped the goods. The ship arrived on February 20, 1989 D **at Madras port and was ready to discharge the cargo, but due to continuous strike the cargo could not be handled. On February 27, 1989 the petitioner presented the bill of entry for clearance of goods for home consumption and it was received in the appraising section on February 28, 1989. The ship arrived into the port and was berthed on March 2, 1989** E **and on the same day entry inward was granted.**

From March 1, 1989 the rate of excise duty was increased and the difference in tariff levy came to Rs.1,80,46,092.64.

The petitioners preferred the present writ petition seeking ap- F **propriate directions that the components/parts of ball bearings imported from the foreign supplier were liable to excise duty prevalent as on February 20, 1989 and to release the goods on payment thereof or in the alternative to declare S. 15(1)(a) of the Customs Act, 1962 *ultra vires* of Articles 14, 19(1)(g), 21,265 and 300A of the Constitution.**

G **It was contended that since the ship had entered into the Indian waters on February 20, 1989 and was ready to discharge the cargo, waiting clearance into the port and due to reasons beyond the control of the petitioners the goods could not be cleared till March 2, 1989 by which date the rate of levy was materially changed, the duty as on February 20, 1989** H **shall be the proper duty. It was also contended that the bill of entry for**

clearance of the goods was presented on Feb. 21, 1989 which was received in the appraising Section on Feb. 28, 1989 and that would be atleast the proper date for determination of the rate of levy. A

Dismissing the writ petitions, this Court

HELD : 1. Granting entry inward on delivery of import manifest and the date of arrival of the vessel into port were admittedly on March 2, 1989 and the Master of the vessel made a declaration that he would discharge the cargo on March 2, 1989. Therefore, the relevant date under section 15(1)(a) of the Customs Act, 1962 is the date on which entry inward after delivery of import manifest was granted to discharge the cargo for the purpose of the levy of customs duty and rate of tariff. The ship entering Indian territorial waters on February 20, 1989 and was ready to discharge the cargo are not relevant for the purpose of Sec.15(1) read with Secs.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 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 duty prevailing as on March 2, 1989. [499-H, 500-A-C] B C D E

2. The rate of duty and tariff valuation on the imported goods covered under sec. 15(1)(a) is the date on which the bill of entry is presented under sec. 46 read with sec. 31 while the rate of duty and tariff valuation in respect of the goods covered under sec. 15(1)(b) is the date on which the goods are actually removed from the warehouse under sec. 68. The manifest intention would, therefore, be clear that there should be a declaration in the prescribed form by the importer of his intention to clear the goods either for home consumption or keep the goods in public warehouse. [500-H, 501-A] F G

3. The validity of S. 15(1) of the Act has already been upheld by this Court and is no longer *res integra.* However, as per this Court's direction dated August 11, 1992 the Respondents may consider the case sympathetically. It is open to the Government to consider the same and pass an appropriate order. [501-H, 502-A] H

A *M. Jahangir Bhatusha etc. etc.* **v.** *Union of India & Ors. etc. etc.,* **[1989] 3 SCR 356, followed.**

4. If the interim directions of the court are taken to be substitute for the statutory operation of the relevant provisions, the interest of the revenue would be prejudicially affected and the fraudulent conduct and acts done in B **furtherance thereof would get legitimacy to avoid payment of duty and tariff prevailing as on either of the dates on which the bill of entry was presented or the goods are actually removed from the warehouse. It would be easy for an importer to have the goods imported, get an order from the court to keep them in private were-housing till either the rate of tariff is reduced or the price of the goods are substantially increased by creating artificial scarcity in** C **the market which would jeopardise the economy of the country. Accordingly the importer cannot be permitted to circumvent the law through judicial process which is otherwise impermissible under the Act. [501-E,G]**

ORIGINAL JURISDICTION : Writ Petition (Civil) No. 392 of 1989.

D (Under Article 32 of the Constitution of India.)

WITH

I.A. No. 3, W.P. (C) Nos. 469-70/89.

E Harish N. Salve and N.D. Garg for the Petitioners.

A. Subba Rao and P. Parmeswaran for the Respondents.

The Judgment of the Court was delivered by

F **K. RAMASWAMY, J.** These Writ Petitions under Art. 32 raise common question of law arising from same set of facts between the same parties though for different consignments. Hence they are disposed of by common judgment. The petitioner seeks writ of mandamus or any appropriate directions that the component/parts of ball bearings imported from foreign supplier M/s. Impex Matel Lucka, Sarszawa (Poland) are G liable to excise duty prevalent as on February 20, 1989 and to release the goods on payment thereof or in the alternative to declare Sec. 15(1)(a) *ultra vires* of Arts.14, 19(1)(g), 21, 265 and 300A of the Constitution. The facts are that the petitioner placed in January-February, 1988 an order with the Indian agent of the foreign supplier M/s. Impex Matel Lucka, Sarszawa, to H supply ball bearings and irrevocable letters of credit were opened on July

13, 1988 for Rs. 13,07,830. The foreign supplier shipped the goods in M/s Stefan Czarniecki under bill of landing No. 9 and invoice No. 06/222/71154 dated December 31, 1988. The ship arrived on February 20, 1989 at Madras port and was ready to discharge the cargo. It delivered the import manifest under No. 116 on the even date but due to continued strike the cargo could not be handled. On February 27, 1989 the petitioner presented the bill of entry *"for clearance of goods for home consumption"* and it was entered at No. 012036 which was received in the appraising section of the group on February 28, 1989. The ship arrived into the port and was berthed on March 2, 1989. The entry inward was granted on March 2, 1989. From March 1, 1989 the rate of excise duty was altered. It was increased at 150% *ad valorem* plus Rs. 300 per piece for certain sizes and for other sizes duty was raised to 150% *ad valorem* plus weight based duty. The result was that pre-tariff duty was Rs. 15,73,611.05 while as per the new tariff levy effective from March 1, 1989, the difference came to Rs. 1,80,46,092.64.

Sri Salve, learned senior counsel for the petitioner contended that since the ship had entered into the Indian waters on February 20, 1989 and was ready to discharge the cargo, waiting clearance into the port and due to reasons beyond the control of the ship or the petitioner the goods could not be cleared until March 2, 1989 by which date the rate of levy was materially changed. As the cargo was ready for discharge from the ship from the Indian territorial waters from February 20, 1989 the duty prevailing as on that date shall be the proper duty. Since the petitioner presented the bill of entry for clearance of the goods for home consumption on February 27, 1989 which was received by the appraising section on February 28 1989, that would be at least the proper date for determination of the rate of levy. We find no force in the contention. Sec. 15 of the Customs Act of 1962 for short 'the Act' prescribes the rate of duty and tariff valuation on imported goods thus:

> "15 (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,-
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> (a) in the case of goods entered for home consumption under Sec. 46, on the date on which a bill of entry in respect of such goods is presented under that section;
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> (b) in the case of goods cleared from a warehouse under

A Sec. 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty:

B Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry *shall be deemed to have been presented on the date of such entry inwards.* Sec. 15(2) is not relevant for the purpose of the case hence omitted.

C "Sec. 31. Imported goods not to be unloaded from vessel until entry inwards granted. -

(1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the D proper officer granting entry inwards to such vessel.

(2) *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 non delivering it.

E

(3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animlas, perishable goods and hazardous goods."

F "Sec. 46. Entry of goods on importation. -

(1) 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 G consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, H the proper officer may, pending the production of such

information, permit him, previous to the entry thereof: A

(a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under Sec. 57 without warehousing the same.

(3) *A bill of entry under sub-section (1) may be presented at any time after the delivery of the import manifest* or import report as the case may be. B

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for waerhousing or *vice versa.*" C

Sub-sections (2) and (4) are omitted as being irrelevant.

D

It is clear from 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 sec. 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 sec. 68, the date on which the goods E 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 Secs. 46 and 31(1) of the Act. Sec. 46(1) provides that the importer of any goods, other than goods F intended for transit or transhipment, 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-s. (3) thereof at any time after delivery of the import manifest. Sec. 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" G to such vessel and no order under sub-s. (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 inward 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 H

A 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 B purpose of Sec. 15.(1) read with Secs. 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 C 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.

It is next contended by Sri Salve that this court by order dated April D 11, 1989 directed to release the goods subject to certain conditions and directed the petitioner to keep them in the petitioner's godown and by further order dated September 12, 1989 this court directed the customs authorities to put lock and key to the godown of the petitioner in which the goods were stored. This court by further order dated May 11, 1992 directed the respondents to release the goods on certain conditions i.e. the E petitioner's paying an amount equal to twice the invoice value of the goods or to furnish bank guarantee for the same. This court by further order dated August 11, 1992 directed the government to consider sympathetically the facts and circumstances of the case and if possible to scale down the duty to a figure bearing a reasonable correlation to the value of the goods F imported and that the representation is still pending consideration. Based on these subsequent events a further contention has been raised that by operation of sub-sec. (5) of Sec. 46 this court could give a proper direction to slash down the rate of duty or may direct to levy the duty prevailing as on the date of the release treating the goods under sec. 15(1)(b) of the Act read with Sec. 68 of the Act. We have given our due consideration but find G it difficult to accede to the contention. It would be clear that the rate of duty and tariff valuation on the imported goods covered under sec. 15(1)(a) is the date on which the bill of entry is presented under sec. 46 read with sec. 31 while the rate of duty and tariff valuation in respect of the goods covered under sec. 15(1)(b) is the date on which the goods are actually H removed from the warehouse under sec. 68. The manifest intention would,

therefore, be clear that there should be a declaration in the prescribed form by the importer of his intention to clear the goods either for home consumption or keep the goods in public warehouse. The purpose of granting interim directions was to relieve the petitioner from payment of needless demurrage which would not be converted as a substitute to statutory compliance of the operation of sec. 15(1)(a) read with sec. 46 or sec. 15(1)(b) read with Sec. 68 of the Act, as the case may be. Once statutory declaration required either under Sec. 15(1)(a) or 15(1)(b) has been made, it is determinative and the due date is the relevant date mentioned in the relevant provision for imposition of customs duty and rate of tariff. In this behalf a contention has been raised by Sri Salve that under Sec. 58 of the Act it is permissible to the Customs Collector to grant licence to a private warehouse wherein the dutiable goods imported by or on behalf of the licensee or any other imported goods in respect of which facilities for deposit in a public warehousing are not available may be deposited without payment of duty. The directions of this court may be treated to be under Sec. 58. The arrangement under sec. 58(1) appears to be to meet certain eventualities. To grant licence to private warehouse is an exception wherein dutiable goods or other imported goods may be kept in deposit. The normal rule is that they shall be kept in public warehouse. If the interim directions of the court are taken to be substitute for the statutory operation of the relevant provisions, the interest of the revenue would be prejudicially effected and the fraudulent conduct and acts done in furtherance thereof would get ligitimacy to avoid payment of duty and tariff prevailing as on either dates on which the bill of entry was presented or the goods are actually removed from the warehouse. It would be easy for an importer to have the goods imported, get an order from the court to keep them in private warehouse till either the rate of tariff is reduced or the price of the goods are substantially increased by creating artifitial scaractiy in the market which would jeopardise the economy of the country. Accordingly we are of the considered opinion that the importer cannot be permitted to circumvent the law through judicial process which is otherwise impermissible under the Act.

Accordingly we find no force in the contention and is rejected. The contention of the petitioner that Sec. 15(1) of the Act is *ultra vires* of the provisions of the constitution is no longer *res integra*. A Constitution Bench of this Court in *M. Jahangir Bhatusha etc. etc.* v. *Union of India & Ors. etc. etc.*, [1989] 3 SCR 356, upheld the validity of Sec. 15(1) and we do not find

A it necessary to once again traverse the contention *de novo*. This court, as seen, by order dated August 11, 1992 directed that the respondent may consider the case sympathetically. It is open to the government to consider the same and pass an appropriate order. Subject to the above observations the writ petitions are dismissed but, however, without costs.

G.N. Petitions dismissed.