Prakash Cotton Mills (P) Ltd vs B. Sen & Ors on 25 January, 1979

Equivalent citations: 1979 AIR 675, 1979 SCR (2)1147, AIR 1979 SUPREME COURT 675, 1979 TAX. L. R. 2438, (1979) ELT 241, 1979 UJ (SC) 290, (1979) 2 SCR 1142 (SC), 1979 2 SCR 1142, (1979) 2 SCJ 23, 1979 (2) SCC 174

Author: P.N. Shingal

Bench: P.N. Shingal, D.A. Desai

PETITIONER:
PRAKASH COTTON MILLS (P) LTD.

Vs.

RESPONDENT:
B. SEN & ORS.

DATE OF JUDGMENT25/01/1979

BENCH:
SHINGAL, P.N.
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SHINGAL, P.N.
DESAI, D.A.

CITATION:
1979 AIR 675 1979 SCR (2)1147
1979 SCC (2) 174

ACT:
Customs Act, 1962 (52 of 1962) Ss. 14 & 15-Scope of-Goods imported and stored in warehouse-Section amended increasing the rate of duty-Levy of duty whether should be on the basis when goods were warehoused or when cleared.

HEADNOTE:
As a result of devaluation of Indian Currency in June, 1966, Ss. 14 & 15 of the Customs Act were amended by the Customs (Amendment) Ordinance, 1966-which was later replaced by an Act-with effect from July 7, 1966. Section 15(1) provides that the rate of duty, rate of exchange and tariff valuation applicable to any imported goods shall be the rate and valuation in force..... (b) in the case of goods cleared from a warehouse under s. 68, on the date on which

the goods were actually removed from the warehouse.

The appellant stored on December 22, 1965 in the Customs warehouse, goods imported by him under a licence, and cleared them on various dates between September 1, 1966 and February 20, 1967. Under protest, they paid customs duty at the enhanced rates in accordance with the amended provisions. Later, they claimed rebate alleging that since the consignments had been received, stored and assessed to duty much before the promulgation of the Ordinance, they were liable to pay duty at the rate prevailing on the date of ware housing.

Their appeals and revision were unsuccessful.

In appeal to this Court it was contended that the material change in s. 15 being only the substitution of the words "the rate of duty, rate of exchange" for the words "the rate of duty" the customs authorities were not entitled to take into account the new rate of exchange at the appreciated value of currency in respect of the consignments stored in the warehouse prior to the coming into force of the Ordinance.

Dismissing the appeal,

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HELD: The customs authorities were right in taking the view that the rate of duty applicable to the imported goods should be determined according to the law prevalent on the date they were actually removed from the warehouse. Section 15(1)(b) clearly requires that the rate of duty, rate of exchange and tariff valuation applicable to any imported goods shall be the rate and valuation in force on the date on which goods are actually removed from the warehouse. Under s. 49 an importer may apply to the Assistant Collector of Customs for permission to store the imported goods in a warehouse pending their clearance and he may be permitted to do so; and s. 68 provides that an importer of any warehoused goods may clear them if the import duty leviable on them has been paid. That is why clause (b) of sub-section (1) of s. 15 makes a reference to s. 68. [1146D, 1145H-1146C]

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In the instant case the goods were removed from the warehouse after the Ordinance came into force on July 7, 1966. [1146D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1992- 1997 and 2219 of 1969.

Appeals by Special Leave from order dated 16-1-69 and 19-3-69 of the Govt. of India, Min. of Finance Dept. of Revenue in Orders Nos. 8637-8642/68 and 1408/69.

Y. S. Chitale, J. B. Dadachanji and D. N. Misra for the Appellant in all appeals.

S. Markandeya and Girish Chandra for the Respondents in all the appeals.

The Judgment of the Court was delivered by SHINGHAL J. These appeals by special leave arise out of an order of the Central Government dated January 16, 1969 by which six revisional applications of the appellants were dismissed, and a similar order dated March 19, 1969, in the remaining case. As the basic facts and the law governing them are quite similar, it will be sufficient to deal with the common point in controversy before us on the basis of the admitted facts, and to dispose of the appeals together.

The appellants obtainted licences for the import of 102 cases of 3,000 Kgs. of nylon yarn. The yarn was shipped to Bombay on the basis of a letter of credit in favour of the foreign suppliers. When the shipment arrived, the appellants received the bill of lading and other documents of title from the bankers on or about August 23, 1965, and paid for the same. They lodged the bill of entry the same day, and it has been claimed that the goods were assessed for duty by the customs authorities at a certain figure. The appellants stored the goods in the warehouse on December 22, 1965. They cleared 32 cases for "home" consumption on May 10, 1966, and there is no controversy in regard to it. The currency was devalued on June 6, 1966, and the Customs (Amendment) Ordinance, 1966, was promulgated on July 7, 1966, by which sections 14 and 15 of the Customs Act, hereinafter referred to as the Act, were amended. The Ordinance was replaced by the Customs (Amendment) Act, 1966. The appellants cleared 12 cases of the aforesaid consignment on or about September 1, 1966. Another 12 cases were cleared on October 10, 1966, and 46 cases were cleared in two lots on or about December 30, 1966 and February 20, 1967. Their grievance was that the cases were allowed to be cleared on payment of "enchanced" duty according to the amended provisions of the Act. They paid the duty under protest and applied for refund of the excess payment on the ground that the amended law was not applicable as the consignments had been received, stored and assessed to duty before the promulgation of the Ordinance. The applications of the appellants for refund were rejected by the customs authorities, and their appeals were dismissed by the Appellate Collector of Customs on the ground that the amended sections 14 and 15 of the Act were applicable to the consignments in question. The appellants filed revision applications before the Central Government, but they were dismissed by the aforesaid common impugned order dated January 16, 1969. They have therefore approached this Court for a redress of their grievance.

The facts relating to Civil Appeal No. 2219 of 1969, are quite similar, except that the consignment in that case was of 63 cases of nylon yarn, which were stored in the warehouse on December 14, 1965, and were cleared on May 25, 1967. In that case also the appellants paid the duty under the provisions of the amended sections under protest, and unsuccessfully applied for refund of the socalled excess duty. They failed in their appeals to the Appellate Collector of Customs and their application for revision was rejected by the Central Government on March 19, 1969.

It will thus appear that the controversy in these two sets of cases relates to the short question whether the customs authorities were justified in applying the rate of duty (to the imported goods in question) according to the rate prevalent on the date of their actual removal from the warehouse.

It will be recalled that the Customs (Amendment) Ordinance, 1966, was promulgated and came into force on July 7, 1966, and was replaced by the Customs (Amendment) Act, 1966. The amendments in question were by way of substitution of sections 14 and 15 of the Act by the new sections. It has been argued by Mr. Chitale for the appellants that the material change was that made in subsection (1) of section 15 of the Act by substituting the words "The rate of duty, rate of exchange" for the words "The rate of duty". He has therefore argued that the customs authorities were not entitled to take the new "rate of exchange", at the depreciated value of the currency, into consideration in respect of the consignments in question as they had been shipped to Bombay and stored in the warehouse before the amended section 15 came into force. The learned counsel tried to argue that the orders of assessment of the customs duty were also made before the amendment Ordinance was promulgated on July 7, 1966, but he did not pursue that line of argument because he was not in a position to produce the so-called assessment orders. But, as we shall show, even if it were assumed that any such order or orders had been made before July 7, 1966, that could not possibly affect the correct rate of duty applicable to the imported goods.

A reference to sections 14 and 15 of the Act will show that while section 14 deals with the valuation of goods for purposes of assessment, it is section 15 which specifies the date for determination of the rate of duty and tariff valuation of imported goods. The amended section reads as follows,-

> "15(1) The rate of duty, rate of exchange and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,-
>
> (a) in the case of goods entered for home consumption under section 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 section 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:
>
> 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.
>
> (2) The provisions of this section shall not apply to baggage and goods imported by post. (3) For the purposes of section 14 and this section-
>
> (a) "rate of exchange" means the rate of exchange determined by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;
>
> (b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1947."

It is thus the clear requirement of clause (b) of sub- section (1) of section 15 of the Act that the rate of duty, rate of exchange and tariff valuation applicable to any imported goods shall be the rate and valuation in force on the date on which the warehoused goods are actually removed from the warehouse. A cross- reference to section 49 of the Act shows that an importer may apply to the Assistant Collector of Customs for permission to store the imported goods in a warehouse pending their clearance, and he may be permitted to do so. The other relevant provision is that contained in section 68 of the Act which provides that the importer of any warehoused goods may clear them for "home consumption" if, inter alia, the import duty leviable on them has been paid. That is why clause (b) of sub-section (1) of section 15 of the Act makes a reference to section 68. It is therefore quite clear that the rate of duty, rate of exchange and tariff valuation shall be those in force on the date of actual removal of the warehoused goods from the warehouse. As it is not in dispute before us that the goods, which are the subject matter of the appeals before us, were removed from the warehouse after the amending Ordinance had come into force on July 7, 1966, the customs authorities and the Central Government were quite right in taking the view that the rate of duty applicable to the imported goods had to be determined according to the law which was prevalent on the date they were actually removed from the warehouse, namely, the amended sections 14 and 15 of the Act. There is therefore no force in the argument that the requirement of the amended section 15 should have been ignored simply because the goods were imported before it came into force, or that their bills of lading or bills of entry were lodged before that date.

As we find no force in these appeals, they are dismissed with costs.

N.V.K. Appeals dismissed.