Supreme Court of India
The Collector Of Customs, ... vs G. Dass And Co. And Ors. on 9 February, 1966
Equivalent citations: AIR 1966 SC 1577, 1983 (13) ELT 1511 SC
Author: R Bachawat
Bench: K S Rao, M Hidayatullah, R Bachawat
JUDGMENT R.S. Bachawat, J.

1. G. Dass and Co., the contesting respondents, imported two consignments of betelnuts into the Port of Calcutta by the vessel "S. S. Eastern Queen". On April 26, 1955, they presented the bills of entry for the consignments to the proper officer of Customs. The Customs Officer retained the bills of entry after noting on them the words "before entry". On April 27, the importing vessel obtained the order for inward entry. Before April 30, the rate of import duty on betelnuts was one rupee per lb., on April 80, the rate was reduced to 12 annas per lb. After April 30, the vessel discharged her cargo and landed the two consignments of betelnuts. On May 7, the Sea Customs (Amendment) Act, 1955 (Act XXI of 1955) was passed amending Sections 37, 86 and other sections of the parent Act. The contesting respondents paid duty at the rate of one rupee per lb. On clearing the goods, they claimed refund of part of the money paid alleging that they were liable to pay duty at the rate of 12 annas per lb. only. Their applications for refund were rejected by the Assistant Collector of Customs. Their appeals to the Collector of Customs and revision petitions to the Ministry of Finance were also dismissed. Thereupon, they filed writ petitions before the Calcutta High Court asking for the issue of appropriate writs directing the refund of the excess duty paid. D. N. Sinha, J. dismissed the writ petitions. On appeal, a Division Bench of the High Court set aside the order of D. N. Sinha, J., and allowed the writ petitions. The customs authorities now appeal to this Court on certificates granted by the High Court. The only question in issue before us is at what rate the import duty was chargeable on the goods.

2. The appeals were argued in the Courts below and before us on the footing that the rate of duty applicable to the goods must be determined by reference to the Sea Customs Act (VIII of 1878), as it stood before its amendment by Act XXI of 1955, and we must decide the appeals on that footing. The decision of the appeals turns on the construction of the unamended Sections 37 and 86. It is a matter of accident that the rate of import duty was decreased instead of being increased on April 30, 1955. The relevant sections should receive the same interpretation whether the rate of duty be increased or decreased. Neither a strict nor a liberal construction is called for, we should give the sections a fair construction.

3. The unamended Section 86 permitted the delivery of a bill of entry to the Customs Collector by the owner of the goods "on the landing thereof from the importing ship". The Collector could not accept the bill of entry before the landing of the goods. Until the landing, there could be no delivery of the bill of entry to the Collector. Where, as in this case, the bill of entry was submitted to the Collector before the landing and kept by him in his custody, it would be treated as delivered to him on the date of the landing. This is because the bill of entry could be delivered to the Collector under the section on the landing of the goods and not earlier. If the consignment covered by the bill of entry consisted of several packages and the landing was spread over several days, the date of the landing of the last package would be the date of the landing, and this date would be deemed to be

the date of the delivery of the bill of entry to the Collector.

4. The unamended Section 37 provided that the rate of duty applicable to any imported goods would be the rate in force "on the date on which the bill of entry thereof is delivered to the Customs Collector under Section 86." The Explanation to the unamended Section 37 provided that "a bill of entry shall, for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs." The Explanation created the fiction that the presentation to the proper officer of Customs would be deemed to be delivery to the Customs Collector; but the fiction went no further. The bill of entry could be delivered under Section 86 upon and not before the landing of the goods. Therefore, in a case where a bill of entry was presented to the proper officer of Customs before the landing of the goods and was kept by the officer, the date of the landing of the goods must be deemed to be the date of delivery of the bill of entry to the Customs Collector within the meaning of Section 37, and the rate of duty chargeable on the imported goods must be the rate in force on that date.

5. Condition No. 2 of the relevant bills of entry provided that for the purposes of Section 37 they would be deemed to be delivered on the date on which the order for inward entry would be passed. This condition could not override the provisions of Sections 37 and 86. Under those sections, no date earlier than the date of the landing of the goods could be treated as the date of delivery of the bill of entry to the Customs Collector. The rate of duty leviable on the imported goods must be determined with reference to Sections 37 and 86 and not by reference to condition No. 2 of the bill of entry. Under the Sea Customs Act, 1878, as it stood before the amendment, the contesting respondents were, therefore, liable to pay duty at the rate in force on or after April 30, 1955, i.e., at the rate of 12 annas per lb. only.

6. Sections 37 and 86 of the Sea Customs Act were amended by Act XXI of 1955. Under the amended Section 86, the bill of entry may be delivered to the Customs Collector after the delivery of the manifest by the master of the importing vessel, and under Explanation (b) to the amended Section 37, a bill of entry delivered in anticipation of the arrival of the vessel will be deemed to be delivered on the date on which the order for inward entry is passed. It might be suggested that the landing of the goods was completed on May 7, 1955 and, therefore, the bills of entry were not effectively delivered while the unamended Act was in force, and consequently, the rate of duty should be determined by reference to the amended Act, and by Explanation (b) to the amended Section 37, the rate of duty chargeable on the goods would be the rate in force on April 27, 1955, the date on which the order for inward entry of the importing vessel was passed. But we are of the opinion that the appeals must be decided on the footing that the rate of duty chargeable on the goods should be determined by reference to the provisions of the unamended Act. The case was argued in the Courts below and in this Court on that footing alone. Even if the appellant were to raise this new point, we would not be inclined to entertain it. Moreover, though the respondents had alleged that the goods were landed on or about May 7, 1955, this allegation was not admitted by the appellant, and D. N. Sinha, J., recorded the finding that the landing of the goods was completed before May 7, 1955, that is to say, before the amending Act XXI of 1955 came into force. Furthermore, the amending Act is not retrospective, and it would seem that Explanation (b) to the amended Section 37 would not apply to a bill of entry presented before the amending Act in anticipation of the arrival of the

importing vessel.

7. We have, therefore, come to the conclusion that the contesting respondents were liable to pay the reduced duty of 12 annas per lb., and they are entitled to the refund of the excess duty paid by them.

8. One of the questions mooted before the High Court was whether the High Court in its writ jurisdiction under Article 226 of the Constitution had power to pass an order of refund of money. The High Court answered the question in the affirmative. The correctness of this finding was not challenged before us.

9. The appeals are dismissed. The appellants must pay the costs of the contesting respondents, G. Dass and Co.

In C. A. No. 664 of 1963.

M. Hidayatullah, J.

10. This is an appeal by certificate against the judgment of toe High Court at Calcutta, July 14, 1961. By the judgment under appeal a Divisional Bench consisting of the Chief Justice and Mr. Justice G. K. Mitter, reversing the decision of Mr. Justice D. N. Sinha, granted a petition under Article 226 of the Constitution filed by the respondent G. Dass and Company and ordered the Union of India to refund to the Company a sum of Rs. 5,661-1-3 as excess amount of import duty.

11. G. Dass and Company imported split betelnuts from Singapore, by S. S. "Eastern Queen" under Bill of Lading No. 37 dated April 12, 1955. Before the vessel berthed a Bill of Entry for consumption was presented to the Collector of Customs on April 26, 1955 and was marked as "before Entry". Duty at the rate of Re. 1 per lb. was paid on the consignment. The vessel entered under order, dated April 27, 1955 and the cargo was discharged after April 30, 1955 and the consignment of betelnuts was landed on or about May 7, 1955. On April 30, 1955 a notification was issued reducing the duty to Re. 0-12-0 per lb. On May 7, 1955 the Sea Customs Act, 1878 (8 of 1878) was amended by the Sea Customs (Amendment) Act, 1955 (Act 21 of 1955). The Company applied for refund of excess duty at the rate of Re. 0-4-0 per lb. but the claim was rejected by the Assistant Collector of Customs who held that the rate applicable was the rate in force on April 27, 1955 when the duty was actually paid. An appeal to the Collector of Customs and a revision filed before the Government of India failed. The Company then applied for a mandamus under Article 226 of the Constitution. The petition was dismissed by Mr. Justice Sinha on March 7, 1958 but, by the order under appeal, the decision of Mr. Justice Sinha was set aside and the Division Bench issued a writ as stated above.

12. In this appeal the Collector of Customs assails the order of the Division Bench on two grounds only; the first is that the Calcutta High Court had no jurisdiction to issue a writ to the Government of India because the order passed by the Collector of Customs merged in the order of the Government of India made at New Delhi and the order of the Government of India could not be challenged by a petition filed in Calcutta. This case arose before the amendment of Article 226. Although this point was taken in the Return it does not appear to have been argued at any stage in the High Court,

because neither Mr. Justice Sinha nor the Division Bench considered it. If this point had been taken it would have been noticed at the very forefront of the two orders. As the learned counsel could not state that the point was urged, we did not permit it to be raised.

13. The second ground on which the order is challenged is that the interpretation of the relevant provisions of the Sea Customs Act by the Division Bench is erroneous and that the better view was expressed by the learned single Judge. To appreciate the point in controversy I shall refer to the provisions of the Sea Customs Act as they were before the amendment in May, 1955 and thereafter.

14. We are concerned with two sections, namely, Sections 37 and 86, but before attempting to construe them I shall refer to some other provisions of the Act which lay down the time when Bill of Lading entry must be presented and entry inward into port can be made. Section 53 of the Act provides that the Chief Customs authority may, by notification in the official gazette, fix a place in any river or port beyond which no vessel arriving shall pass until a manifest has been delivered to the pilot, officer of Customs or other person duly authorized to receive the same. Section 57 next provides that no vessel arriving in any customs-port shall be allowed to break bulk until this manifest has been delivered and a copy of such manifest together with an application for entry of such vessel inwards has been presented by the master to the Customs Collector and an order has been given thereon for such entry. These two provisions show that a vessel cannot pass the prescribed point until the manifest is delivered and an order for the entry of the vessel inwards is obtained. We may now turn to Sections 86, 87 and 89 which deal with the assessment of dutiable goods and clearance of the goods on payment of the duty. Section 86, as it originally stood, read as follows:

"86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home consumption or warehousing by delivering to the Customs Collector a bill of entry thereof in duplicate in such form and containing such particulars in addition to the particulars specified in Section 29, as may, from time to time, be prescribed by the Chief Customs Officer.

The particulars of such entry shall correspond with the particulars given to the same goods in the manifest of the ship."

This section shows that the owner is required to make entry of the goods imported for home consumption by delivering to the Customs Collector a Bill of Entry on the landing of the goods from the importing ship. Sections 87 and 89 then lay down that on delivery of such Bills the duty shall be assessed and on payment of the duty goods may be cleared for home consumption. So far the matter appears to be simple but we have also to take into consideration Section 37 of the Act. As that section originally stood, it read as follows:

"37. The rate of duty and the tariff-valuation (if any ) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill of entry thereof is delivered to the Customs Collector under Section 86.

Explanation: A Bill of entry for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs."

(Provisos omitted).

15. The difference in the High Court has arisen because of the Explanation to Section 37 which says that a Bill of Entry shall be deemed to be delivered when it is first presented to the proper officer of Customs. Taken by itself this Explanation would show in this case, that the Bill of Entry was presented on April 26, 1955. Read with Section 86 a different meaning appears. Section 86 shows that the Bill of Entry can only be prepared on the landing of the goods from the importing ship and this seems to suggest that the Explanation refers to a period of time after the goods have been landed. Duty at the rate of Re. 1 per lb. in this case was rightly levied if the Bill of Entry is deemed to be delivered on April 26, 1955 under the Explanation to Section 37. In this connection we may refer to a condition which at that time was included in the Bill of Entry. That condition is No. 2 in the Bill of Entry for consumption filed on April 26, 1955, which read:

"This bill of entry is presented under and subject to Collector's notice, dated 24th November, 1902, and for the purpose of Section 37, Sea Customs Act, it is expressly agreed that it shall be deemed to be delivered on the date on which the order for inward entry is passed and this bill of entry in fact be so deemed to be delivered.' This seems to prescribe that the date of delivery was not the actual date, that is to say, the 26th of April, but the date on which the order for entry inwards was passed, that is to say, April 27. Mr. Justice Sinha observed that this made no difference to the case because whether import duty is calculated as on April 26 or as on April 27, the old rate would be applicable and the order of the Assistant Collector of Customs was right in the circumstances of this case. The Divisional Bench, on the other hand, held that the Explanation to Section 37 did not apply to the case because under Section 37 the rate of duty applicable to any goods imported would be the rate in force on the date on which the bill of entry thereof is delivered under Section 86, that is, on the landing of the goods as stated in Section 86. Therefore, the rate applicable must be the rate in force on the date the goods were landed. There is nothing to show when this consignment was landed. The petition stated that the consignment was landed on or about May 7, 1955. This was not specifically denied and another date suggested. Mr. Justice D. N. Sinha stated, in narrating the facts, that the consignment was landed before the 7th but I do not find any support for this observation.

16. The Explanation and Section 86 between them cause some difficulty and lead to confusion. This was perhaps sought to be remedied by including another deeming provision in the Bill of Entry which ran somewhat counter to the fiction created by Section 37. The statute created a fiction under which the first presentation of the bill of entry was the crucial date. Section 86 said that the bill of entry must be prepared on the landing of the goods. The condition in the bill of entry for consumption created a fiction under which the crucial date was the date on which the order for entry inward was made. It is obvious that these two dates might not be the same, and in fact they are not so here, and a question might well have arisen which was to prevail. Fortunately, it has not arisen because the duty on the 26th and 27th April was the same and by the recent amendments of Section 37 and Section 86 the need for Clause 2 in the bill of entry for consumption has disappeared. Sections 37 and 86 now read:

"37. The rate of duty and the tariff-valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill of entry thereof is delivered to the Customs Collector under Section 86:

Provided. * * *

Explanation.--A bill of entry shall, for the purposes of this section, be deemed to be d

(a) when it is first presented to the proper officer of Customs; or

(b) where it is delivered in anticipation of the arrival of the importing vessel, on the

"86. Entry for home consumption or warehousing.

The owner of any goods shall, after the delivery of the manifest by the master of the vessel in which they are imported, make entry of the goods for home consumption or warehousing by delivering to the Customs Collector a bill of entry thereof with such particulars, in addition to the particulars specified in Section 29, as may, from time to time, be prescribed by the "Chief Customs Officer.

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship."

As the vessel cannot now pass the prescribed point till the manifest is delivered and the bill of entry can only be handed after the manifest is delivered the delivery of the manifest and not the landing of the goods is the crucial fact. Under the new explanation to Section 37 the earliest date will be the date of the order of the entry inwards and thereafter the date on which the bill of entry is actually first presented. The need for the second clause in the bill of entry disappears.

17. I shall now attempt to construe Sections 37 and 86 as they were prior to these amendments. There are two fundamental facts which must be borne in mind when construing them. The first is that an explanation must be accepted according to its own terms. An explanation seeks to explain a particular proposition, and it stands to reason that explaining the explanation by referring to other provisions may not be open. The explanation which is added to Section 37, is intended to explain that section, and this leads to the second fundamental fact, namely, that the explanation lays down the exact point of time when the bill of entry can be taken to be delivered "for the purposes of the section". The purpose of the section is that duty is calculated at the rate in force when the bill of entry is delivered under Section 86. Section 86 does not lay down that the bill of entry may be delivered only after the goods are landed. The owner of the goods must make entry in the bill of entry of goods for home consumption or warehousing on the landing of the goods, and hand over the bill of entry in duplicate to the Customs Collector. In other words, the bill of entry must, in any event, be handed in when the goods are landed. That is the normal mode of doing the act. The

practice, however, appears to have grown to prepare such bills of entry in advance of the landing of goods and to clear the claim for import duty betimes so as to make the goods ready for clearance. To make the date certain for purpose of calculation of duty it was provided that the first presentation to the proper officer of Customs would be the crucial date for levy of duty and determination of the rate thereof. The reference to Section 86 in Section 37 does not reappoint a different date for the purpose of calculation of duty. The presentation of bill of entry will still be the decisive date whether it is presented before the landing of the goods or after they are landed. To hold otherwise would mean that the explanation cannot function at all unless the bill of entry is presented after the goods have landed. This would lead to the result that there would be no point of time by reference to which duty can be calculated in a case such as this. To assume that the bill of entry was presented after the goods were landed would be to go against both law and fact. The bill of entry was first presented on the 26th April and the order for entry inwards was 27th April under the explanation to Section 37, as it originally stood, the crucial date for calculation of duty would be the 26th. Under Clause 2 of the bill of entry it would be the 27th. The rate applicable would be Re. 1 per lb.

18. If the original Section 86 is intended to alter the date from the 26th (under the original explanation to Section 37) to a date after the landing of the goods we get into this difficulty. Are we to take the crucial date to be 30th April (when the landing began) or the 7th May (when the landing was completed), or any of the intermediate dates P On May 7, the amendments to Section 37 explanation and Section 86 became law and they take one back to the 27th as the crucial date. Are the goods landed from the 30th to the 6th subject to the duty at the rate of Re. 1 per lb. and those landed on the 7th at Re. 0-12-0 per lb., or is the whole consignment subject to the higher or the lower rate ? I can see no answer to these questions.

19. To avoid such an impossible result the explanation must be read and construed on its own terms and must not be made a new explanation with the aid of Section 86. As the bill of entry was presented on the 26th April, 1955, it could either be treated as presented on that date under the Explanation to Section 37 or on the 27th April 1955 under Clause 2 in the bill of entry for home consumption if it could be held applicable, a point I do not decide. But it could not be held to have been presented on any of the dates from April 30 to May 7 during which the goods were landed because there is no provision under which another date can be fixed either actually or even fictionally once the bill of entry is presented and the fiction in the explanation to Section 37 applies. It may be contended that under my construction of the sections the bill of entry may be presented at any time--say six months before. The short answer to that is that the bill of entry is intimately connected with the Master's manifest and before the passing of the Prior Entry Manifest Order, 1957 (7th September 1957 C. B. R. Notification No. 200-Cus) under the new S. 54A the manifest could not be delivered in anticipation of the arrival of the vessel. That order reads:

"1. Short title: * * *

2. Conditions governing delivery of manifest in anticipation of arrival of vessel:

(1) No manifest under Section 54A of the Sea Customs Act, 1878 (8 of 1878), shall be al

(2) Every manifest delivered under the said Section 54A shall give the probable date of

(a) the master's authority appointing him as the agent;

(b) two copies of the store list signed by the master; and

(c) such other document as may be determined by the Customs Collector."

The recent changes enable the manifest to be delivered not more than 15 days earlier and the new explanation to Section 37 makes the delivery of the bill of entry or the date of the orders for the entry of the vessel the crucial dates--and the new Section 86 which allows the bill of entry to be presented after the manifest is again overborne by the explanation in much the same Way as the reference to the un-loading of the goods in the former Section 86.

20. On the whole I am satisfied that the duty leviable was that in force on the 26th or 27th April 1955, that is to say, Re. 1 per pound. The Division Bench was, therefore, in error in reversing the decision of D. N. Sinha, J. I would allow the appeal but in the circumstances of the case I would order the parties to bear their own costs here and below.

In C. A. No. 665 of 1963.

M. Hidayatullah, J.

The facts and law involved in this appeal being the same as in Civil Appeal No. 664 of 1963, for the reasons stated in my judgment in Civil Appeal No. 664 of 1963, I would allow this appeal but in the circumstances of the case I would order the parties to bear their own costs here and below.

ORDER

22. In accordance with the majority judgments, the appeals are dismissed.

23. The appellants must pay the costs of the contesting respondents, G. Dass and Co.