

Supreme Court of India

Khattar Enterprises (P) Ltd. vs Collector Of Customs, Calcutta on 23 July, 1997

Equivalent citations: 1997 (94) ELT 454 SC, (1997) 11 SCC 654

Bench: S Agrawal, G Nanavati

ORDER

1. The question that falls for consideration in this appeal relates to the applicability of the Notifications No. 439/86 and No. 440/86, dated October 6, 1986 whereby partial exemption admissible in respect of basic customs duty and auxiliary customs duty on wood and articles of wood falling under Heading No. 40.08 of the Customs Tariff under Notifications No. 62-Cus., dated March 17, 1985 and No. 311/86-Cus., dated May 13, 1986 was withdrawn. The facts, briefly stated are as follows :

The appellant imported 89 crates of "rough peeled wood" from Malaysia by Vessel MV Clipper at the port of Calcutta. On October 9, 1986, the appellant presented a Bill of Entry for warehousing the said goods which was accordingly noted in the Import Department on October 9, 1986. On October 23, 1986, at the request of the appellant the said Bill of Entry was re-noted as a Home Consumption Bill by the Assistant Collector. Prior to that the Notifications dated October 6, 1986 withdrawing the partial exemption from duty that was admissible under the Notifications dated March 17, 1985 and May 13, 1986 had been issued. The appellant paid duty on the basis that the exemption was not available. Subsequently he applied for refund of the said duty on the ground that the Notifications dated October 6, 1986 were inoperative on October 9, 1986 when the Bill of Entry was originally submitted. The Assistant Collector of Customs, by his order dated January 23, 1987, rejected the said claim for refund made by the appellant. On appeal the Collector of Customs affirmed the order of the Assistant Collector and held that the appellant was not entitled to refund in view of the Notifications dated October 6, 1986. The Collector rejected the contention urged on behalf of the appellant that the Notifications dated October 6, 1986 was not applicable since the vessel containing the goods had entered the Indian waters on October 3, 1986 on the ground that the Bill of Entry was presented on October 9, 1986. In the appeal before the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as the Tribunal') the appellant urged that Notifications dated October 6, 1986 came into operation on October 13, 1986, the date on which the copy of the Gazette in which the said Notifications were published was made available for sale to the public by the impugned judgment dated December 16, 1991, the Tribunal, has accepted the said contention and has held that the Notifications dated October 6, 1986 should be treated to have come into operation on October 13, 1986. The Tribunal was, however, of the view even on that basis the appellant could not succeed because the Bill of Entry as regard home consumption was submitted on October 23, 1986, after the Notifications October 6, 1986 came into operation. The Tribunal, therefore, rejected the appeal of the appellant. Hence this appeal.

2. The learned Counsel for the appellant has submitted that the Tribunal was in error in proceeding on the basis that the Bill of Entry for Home Consumption was submitted on October 23, 1986, because the original Bill of Entry for the purpose of warehousing the goods had been submitted on October 9, 1986 and on October 23, 1986 the said Bill of Entry was substituted for home consumption and as a result of the said substitution the Bill of Entry that was submitted on October

23, 1986 should be treated to have been submitted for home consumption on October 9, 1986 and since the Tribunal has found that the Notifications dated October 6, 1986 came into operation on October 13, 1986, the appellant is entitled to refund of the customs duty paid on the basis of the Notifications dated October 6, 1986. The learned Counsel has placed reliance on Sub-section (5) of Section 46 of the Customs Act, 1962 which reads as under :

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 warehousing or vice versa.

3. The submission is that once the substitution is allowed then the substituted Bill of Entry has to be treated as operative from the date of the filing of the original Bill of Entry. We find it difficult to accept this contention of the learned Counsel. As per Sub-section (1) of Section 15 of the Customs Act, 1962 the rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, in the case of goods entered for home consumption under Section 46, on the date on which the Bill of Entry in respect of such goods is presented under that Section [Clause (a)] and in case of goods cleared from a warehouse under Section 68, on the date on which the goods are actually removed from the warehouse [Clause (b)]. These provisions show that in respect of goods entered for home consumption the relevant date for the purpose of ascertaining the rate of duty is the date on which the Bill of Entry in respect of such goods was presented under Section 46. In the present case the original Bill of Entry that was submitted by the appellant on October 9, 1986 was for warehousing. The said Bill of Entry was treated as for home consumption only on October 23, 1986 by the Assistant Collector. This does not mean that the Bill of Entry for the goods for home consumption has to be treated to have been presented on October 9, 1986. Since the Bill of Entry was noted as for home consumption on October 23, 1986 it has to be as presented for that purpose on October 23, 1986. The duty was, therefore, payable on the basis of the rates in force on October 23, 1986. The Tribunal has, therefore, rightly held Notifications dated October 6, 1986 were applicable and the appellant was not entitled to refund of duty. We, therefore, do not find any merit in this appeal. In the circumstances we do not consider it necessary to go into the correctness of the view of the Tribunal that the Notifications dated October 6, 1986 did not come into operation till October 13, 1986 when the copy of the Gazette in which the said Notifications were published was made available for sale to the public.

4. The appeal is accordingly dismissed. No order as to costs.