

**impex Vs. Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-15-1986

**Reported in :** (1987)(14)ECC441

**Appellant :** impex

**Respondent :** Collector of Customs

**Advocate for Pet/Ap. :** Shri. P.G. Gokhale

**Judgement :**

1. These appeals belonging to the same appellants raise similar issues and are disposed of by this common order.
2. The question for decision in Appeal No. 148/83-C is whether goods entering the territorial waters of India at the time when they were exempt from Customs duty (and not additional duty) become chargeable to customs duty if at the time of their removal from warehouse the exemption from customs duty be withdrawn and the question for decision in the other two appeals is whether goods in respect of which Bills of Entry were presented after issue of Notification 205-Cus/80 dated 16-10-80 by which exemption from customs duty granted under Notification 66 Cus dated 15-3-79 as amended and which was to have remained in force till 31-3-81 was withdrawn and the period curtailed to 16-10-80, would be governed for purposes of customs duty by the earlier Notification 66-Cus dated 16-3-79 or She superseding notification 205/Cus/80 dated 16-10-80.

3. With respect to Appeal No. 148/83-C a consignment of PVC Resin ex.

S.S. Bucuresti entered the territorial waters of India on 13-10-80. The Bill of Entry was presented by the appellants in the Customs House on 23-10-80 and cleared on payment of duty on 25-10-80. In the other two appeals the appellants do not claim that the consignment of the same goods entered the territorial waters before 16-10-80. The Bills of Entry with respect to these consignments were presented in the Customs House on 28-10-80 i.e. after Notification 20.5/Cus/80 dated 16-10-80 making such goods chargeable to 40% customs duty ad valorem had come into force. With respect to all the three consignments the customs authorities held that the rate of customs duty applicable would be as under Notification 20.5/Cus/80 dated 16-10-80 i.e. as on the date of the clearance of the goods and not as under Notification 66/Cus dated 15-3-79 as amended before its supersession on 16-10-80. Having failed before the lower authorities the appellants filed Revision Application to the Govt. of India with respect to the later two matters (Appeal No.344/82-C and Supplementary Appeal No. 0/2044/86-0) and after constitution of this Tribunal on appeal to the Tribunal (Appeal No.148/83-C). The Revision Application is also now the two appeals before us.

4. For ease of reference and proper appreciation the two notifications 66/Cus dated, 15-3-79 as amended by 178/Cus dated 29-8-79 and 37/Cus dated 25-3-80 before its supersession by notification 205/Cus/80 dated 16-10-80 are reproduced below :- " In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of Notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 145-Customs dated the 27th July, 1980.

The Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts polyvinyl chloride resins, falling within Chapter 39 of the, First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from the whole of the duty of customs leviable thereon which is Specified in the said First Schedule.

The Notification shall be in force upto and inclusive of the 31st March, 1981. " " In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs

Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 66-Customs, dated 15th March, 1979, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts polyvinyl chloride resins, falling within Chapter 39 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule as is in excess of forty per cent ad valorem. " 5. Shri P.G. Gokhale, learned counsel for the appellants in Appeal No.148/83-C submitted that the source of power for levying duties of customs flows from Section 12 of the Customs Act, 1962 (hereinafter referred to as the Act) but he emphasised that this power is, in itself subject "to other provisions of the Act. He drew attention to Section 25 of the Act and submitted that this section empowers the Central Government, on requisite conditions being fulfilled, to exempt either; absolutely or subject to conditions goods from whole or any part of duty of customs leviable thereon. He submitted that by Notification 66/Cus/79, dated 15-3-79 as amended PVC Resin was exempted from whole of the duty of customs leviable thereon. This notification was to have remained in force till 31-3-81. This exemption notification' was superseded on 16-10-80 by notification 205/Cus/80 with the result that the period of exemption available under the notification 66/Cus/79 was curtailed from 31-3-81 to 16-10-80. He further submitted that as the goods were totally exempt from duty of customs under notification issued under Section 25 of the Act, there was no question of rate of duty being applicable to imported goods as spelt out in Section 15 of the Act. His further submission was that any argument that total exemption is also nil rate of duty is a fallacy and could not be pressed in aid to invoke Section 15 where goods had entered the territorial waters of India at a time when they were fully exempt from duty of customs. For this argument Shri Gokhale relied on a Full Bench decision of the Bombay High Court in Apar Private Ltd. and Ors. v. Union of India and Ors. 1985(22) ELT 644 and on Everett (I) Pvt. Ltd. v. Assistant Collector of Customs 1986(8) ECR 366 (Calcutta). In all the appeals he also contended that there is promissory estoppel against Union of India and the Central Government could not have issued notification 205/Cus/80 dated 16-10-80 when notification 66/Cus dated 15-3-79 as amended was to have remained in force till 31-3-81.

Questioned, however, by the Bench whether the relief of promissory estoppel could be granted by the Tribunal disregarding notification 205/Cus/80 dated 16-10-80, Shri Gokhale agreed that this was not the proper forum where plea for such a relief could be agitated.

6. Shri Sundar Rajan, the learned JDR stoutly controverting Shri Gokhale's submissions about Appeal No. 148/83-C submitted that Tribunal in Bayer (India) Limited v. Collector of Customs, Bombay 1984(16) ELT 375 (Trib.) had not followed the Full Bench Bombay High Court decision in Apar Private Limited case in view of the Supreme Court decision in Khandelwal Metal and Engineering Works and Anr. 1985(20) ELT 222 (S.C.). He submitted that as admittedly the goods were not exempt from additional duty which is also customs duty, Section 15 of the Act would be attracted to this appeal. About Everett (I) Pvt. Ltd. case he submitted that this case was not directly relevant for the present appeal though it did hold that import takes place when the goods enter territorial waters of India. He argued that when Section 12 of the Act talks of "except as otherwise provided in this Act" one cannot ignore Section 13 providing for duty of pilfered goods, 20, duty on re-importation of goods and Section 23 remission of duty on lost, destroyed or abandoned goods. Relying on 1983 ELT 1688 (Del.) and 1984(17) ELT 97(A.P.), he submitted that these two decisions of two High Courts dealt with the same notification and held that Central Government could curtail the period of exemption by notification 205/Cus/80 dated 16-10-80 and there was no question of promissory estoppel involved in such a case. He also submitted that there is no concept of basic customs duty in law. Both customs duty and additional duty are specified in Customs Tariff Act, 1975 and the distinction between the two ordinarily sought to be made suffers from legal inexactitude.

7. Taking up first Appeal No. 344/82-C with Supplementary Appeal, No.C/2044/86-C, in these appeals it is not shown or suggested that the goods imported entered the territorial waters of India before notification 205/Cus/.80 dated 16.10.80 had come into force. Thus, on the date the goods relating to these appeals when Bills of Entry in respect of them were presented or they were cleared from warehouse the notification was in force. It is not open to the Tribunal to ignore the notification or to strike down the same. Shri Gokhale himself agreed that plea of promissory

estoppel could not be available before the Tribunal thought it may be available before Courts. Added to this we have to direct decisions with respect to this very notification in Jain Shudh Vanaspati Ltd. and Anr. v. Union of India and Ors. (1983 ELT 1688) and Feno Plast Pvt. Ltd. and Anr. v. Union of India and Anr.

1984(17) ELT 97 (A.P.). Therefore, these appeals had to be straightway dismissed.

8. Taking up Appeal No. 148/83-C where goods entered territorial waters of India on 13.10.80 before notification 205/Cus/80 dated 16.10.80 had come into force and Shri Gokhale's argument that as on the date goods imported entered territorial waters of India were fully exempt from duty of customs there could be no question of applicability of section 15 of the Act as to rate of duty applicable to imported goods being governed by this section and his reliance for the purpose on Bombay High Court decision in Apar Private Ltd. case 1985 (22) ELT 644(Bom), it might be stated that the Tribunal in Bayer (India) Ltd. v. Collector of Customs, Bombay, 1984 (16) ELT 375 (Trib.) taking into consideration Supreme Court decision in Khandelwal Metal & Engineering Works case 1985 (20) ELT 222 (S.C.) holding additional duty mentioned in section 3(1) of the Customs Tariff Act, 1975 partakes of the same character as the customs duty and is not countervailing duty, held that the decision of the Supreme Court would have to be preferred to the distinction made by the Bombay High Court between basic customs duty and additional duty and the 'consequences of exemption flowing therefrom. The finding of the Bombay High Court in answer to the third question before it available at page 689 of ELT was distinguished by the Tribunal in para 7 of its order in view of the decision of the Supreme Court in Khandelwal's case (supra) and the Supreme. Court decision was preferred to distinction made by the Hon'ble High Court of Bombay between basic customs duty and additional duty and consequences flowing therefrom to exemption in respect of these duties. The Tribunal held that if the goods imported were not wholly exempt both from basic customs duty and additional duty, duty liability would have to be worked out with reference to the date the goods were cleared from the warehouse.

9. Shri Gokhale, learned Advocate for the appellants no doubt .argued.

that Khandelwal case was not relevant for decision of this point in controversy but the Tribunal has taken a decision on the lines stated.

Shri Gokhale has failed to convince us that we should depart from this decision or revise the same. In this appeal admittedly goods though exempt from basic customs duty were chargeable to additional duty.

Therefore, following Tribunal decision in Bayer (India) Ltd. case (supra) the appellants would appear to have no case even with respect to this appeal.

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