

**Devpal Dhir Vs. B.V. Kumar, Collector of Customs (Appeals) and Another**

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**Court :** Mumbai

**Decided On :** Sep-20-1982

**Reported in :** 1983(12)ELT796(Bom)

**Judge :** S.P. Bharucha, J.

**Acts :** Customs Act; Bombay Tenancy and Agricultural Lands Act - Sections 17 and 31

**Appeal No. :** Misc. Petition No. 1042 of 1979

**Appellant :** Devpal Dhir

**Respondent :** B.V. Kumar, Collector of Customs (Appeals) and Another

**Advocate for Def. :** Mr. Dhanuka

**Advocate for Pet/Ap. :** Mr. Chinoy

**Judgement :**

1. The petitioner imported into India three consignments for Australian Greecy Wool by S. S. 'Staraar Lagos'. The vessel entered Indian territorial waters on 10th June, 1977. On 13th June, 1977 three bills of entry were presented on behalf of the Petitioner showing customs duty upon the said goods payable at 45%. On 15th June 1977, it is the case of the Petitioner, the assessment of duty was completed and duty was assessed at 45%. On 16th June 1977 the vessel's import general

manifest was lodged with the Customs authorities. The duty upon the said goods was increased with effect from midnight of 17th/18th June 1977 to 75%. On 20th June 1977 the ship was granted entry inward. On 23rd June 1977 the Customs authorities, in the case of the Petitioner, revised the assessment and raised the duty payable to 75%. Between 25th June 1977 to 6th July 1977 the Petitioner paid the amounts of duty assessed at 75%. On 6th December 1977 the Petitioner made three applications for refund of duty paid in excess of 45%. On 6th March 1978 the refund applications were rejected. On 30th May 1978 appeals were filed and on 26th February 1979 by a consolidated order the Appellate Collector dismissed the three appeals.

2. Mr. Chinoy, Learned Counsel for the Petitioner, submitted that the assessment of the duty was completed on 15th June 1977 and was assessed at 45%. The assessment having been completed the same authority could not review his previous decision and raise the duty to 75%. Mr. Chinoy submitted that there was no power to so review under the Customs Act. He relied upon the judgment of the Supreme Court in *Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar and another* - : [1965]2SCR328 . This was a case under the Bombay Tenancy and Agricultural Lands Act. The Mahalkari allowed applications for possession filed by a landlord. No appeal was filed against the order. The tenants applied for revision of the order. The Collector called for the record but, before the arrival of the record, dismissed the applications for revision. Subsequently, the Collector reversed the Mahalkari's order. The Supreme Court held that the Order under Section 76A passed by the Collector was quasi-judicial and final and, in the absence of any power of review, the Collector could not subsequently reconsider his previous decision and held that there were grounds for annulling or reversing the Mahalkari's order. Mr. Chinoy also placed reliance upon other judgments of the Supreme Court to the same effect. Mr. Chinoy submitted that the ground given by the appellate authority, namely, that the assessment was not complete under the procedure under section 17 of the Act, was not valid. In Mr. Chinoy's submission, nothing done down the rate of duty and quantifying the duty was always the only thing done in completing the assessment.

3. It was pointed out by Mr. Dhanuka, learned counsel for the respondents, that no assessment of duty could have been completed on 15th June 1977 for the vessel's import general manifest was not filed till 16th June 1977 and the vessel was not granted entry inwards till 20th June 1977. In his submission noting down of the rate and quantification of duty payable upon the bills of entry did not, in the circumstances, complete the assessment of duty. In any event, the submitted, assuming that the assessment was completed, on 16th June 1977, it was clearly the wrong thing to do and the Court should not permit the petitioner to invoke Article 226 of the Constitution to uphold such a wrong act and so escape the levy of duty which it would otherwise have been bound to pay.

4. As I see it, there can be no doubt that on 15th June 1977 the Customs Officer did note upon the bills of entry the rate and quantum of duty and he initialled and dated the entry. In view, however, of the fact that the import general manifest had not been filed on that day and the vessel had not been granted entry inward, the assessment ought not to have been so completed. I do not think that the Petitioner should be allowed to invoke Article 226 in a case such as this to uphold a palpably wrong act and thereby get away with the payment of less duty than would otherwise have been payable.

5. It was contended by Mr. Chinoy that it was incumbent upon the Customs authorities to grant the vessel entry inward as soon as the import general manifest was submitted to them on 16th June, 1977. It was submitted that power conferred in this regard by Section 31 of the Act was a power coupled with an obligation. It was submitted that since the Customs authorities had not carried out that statutory obligation it was not open to them to take advantage of their own wrong and claim a higher duty by reason of the entry inwards having been granted on a later date. The import general manifest was submitted on 16th June 1977. The ship was granted entry inward on 20th June, 1977. What, therefore, is urged is that it was incumbent upon the Customs authorities to grant entry inwards within the period of 4 days, I am not inclined to read into the Act the obligation to grant entry inwards within this period.

6. It was submitted by Mr. Chinoy that the impugned order in appeal assumed the date of entry inward to be that day on which the vessel came alongside and found a berthing place and prepared herself for discharge of cargo for home consumption. It was said that this was an arbitrary formula to adopt. I am not shown any alternative formula by reason of which I can say that the Customs authorities understanding of the phrase entry inward is incorrect.

7. Having regard to what is discussed above, the Petition is dismissed. There shall, however, be no order as to costs, Rule discharged.

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