

**Amtrex Hitachi Vs. Cc**

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

**Decided On :** May-21-2004

**Reported in :** (2004)(116)LC570Tri(Delhi)

**Judge :** K Usha, N T C.N.B.

**Appellant :** Amtrex Hitachi

**Respondent :** Cc

**Judgement :**

1. Common issue arising in these appeals is whether amendment to Section 61(2) made under Section 106 of the Finance Act, 2001 substituting the period of 'six months' by 'thirty days' will have retrospective effect in the sense that it will affect the goods which were warehoused before 1.6.2001. Prior to 1.6.2001, Section 61(2)(ii) of the Customs Act provided that if the warehoused goods specified in Section 61(1)(b) remained in the warehouse beyond a period of six months, interest at the specified rate is applicable for the period from the expiry of six months till the date of payment of duty on the warehoused goods. Under the common order passed by the Commissioner (Appeals) the view taken is that goods which were warehoused prior to 1.6.2001 will also be liable to pay interest from the expiry of thirty days or 1.6.2001, whichever is later. Commissioner has placed reliance on Board's Circular No. 473/12/2001 dated 11.10.2001 and Mumbai Custom House Public Notice No. 118/2001 dated 24.10.2001.

2. Earned Counsel for the appellant submits that the view taken by the Commissioner is directly against the ratio of the decision of the Larger Bench of this Tribunal of Collector of Customs and Central Excise v. J.K. Synthetics Ltd. . In the above decision the Tribunal has occasion to consider the amendment which was brought in Section 61 of the Customs Act, 1962 on 13.5.1983 to provide for reduction in bonding period and paying of interest on overdue consignments. The Larger Bench while holding that amendment has no retrospective effect and therefore cannot apply to goods already stored held as follows: 5. We have heard Smt. Section Baliga, learned SDR and Shri V. Lakshmi Kumaran, learned Advocate. It is an admitted position that the goods were warehoused prior to the amendment of Section 61. The Section was amended on 13.5.1983. Section 61(2) which provides for interest reads as under: Where any warehoused goods remain in a warehouse beyond the period of one year or three months specified in Clause (a) or Clause (b) of subsection (1) by reason of the extension of the aforesaid period or otherwise, interest at such rate, not exceeding eighteen per cent, per annum as is for the time being fixed by the Board, shall be payable on the amount of duty on the warehoused goods for the period from the expiry of the period of one year or, as the case may be, three months, till the date of the clearance of the goods from the warehouse.

Sub-section (2) thus provides for charging of interest in respect of goods which remain warehoused beyond the periods specified in Clauses (a) and (b) of Sub-section 1 Clause (a) deals with non-consumable stores etc. and Clause (b) covers other goods. There is nothing in the amendment to indicate that it is to operate with retrospective effect. Nor is there any saving provision. Therefore, the Section will have to be interpreted in the light of the generally accepted principle of statutory construction that every statute is prima facie prospective unless it is expressly or by necessary implication given retrospective operation. It is also well accepted that every statute which takes away or impairs vested rights acquired under existing laws, or which creates a new obligation or imposes a new duty, must be presumed to be intended not to have retrospective effect. Fiscal legislation imposing liability is governed by the normal presumption of prospectively.

The intention of the legislature also appears to be that interest is payable only in respect of goods remaining in a warehouse beyond that period specified in Sub-section 9(1) by reason of extension of the aforesaid period. Therefore, the law as in force on the date of warehouse would apply to the case i.e. Section 61 prior to its amendment. The respondents would not be liable to pay interest.

3. Earned Counsel brought to our notice a decision of Karnataka High Court in Bangalore Wire Rod Mills v. Union of India where the Revenue had conceded the position that goods which were entered for warehousing prior to the amendment would not be covered by the amended provision. Relevant portion is quoted here-in-below: As can be seen from the language of Section 59, an importer of dutiable goods which have been entered for warehousing and assessed to tax under Sections 17 and 18 of the Act, is required to execute a bond binding himself in a sum equal to twice the amount of duty assessed on such goods. According to Clause (b) of Section 59 he is also required to pay on or before a date specified in a notice of demand, the duties, rents and charges claimable on the goods together with interest on the same from the date so specified, at the rate of 6% per annum or such other rate as is for the time being fixed by the Board. According to Sub-section (1) of Section 61, as it stood prior to its amendment the period during which goods could be left in the warehouse was 3 years in the case of non-consumable stores and in the case of other goods it was 1 year. After its amendment with effect from 13.5.1983 the period of warehousing was reduced to 1 year in respect of non-consumable stores and 3 months in respect of other goods. It is common ground that as far as the present case is concerned, the amended Sub-section (1) of Section 61 is not applicable, for the reason the goods were entered for warehousing prior to the amendment of Sub-section (1) of Section 61.

4. Learned DR would contend that the Commissioner followed the Board's circular issued on 11.10.2001 wherein a different view was taken from the earlier circular issued on 8.9.1983. Under these circumstances the Commissioner's order cannot be treated as unsustainable.

5. We find no merit in the contention taken by the Revenue. The position has been clearly stated in the Larger Bench decision of this Tribunal in Collector of Customs & Central Excise v. J.K. Synthetics Ltd. . On going through the amended Section 61, after the amendment was carried on 1.6.2001, we do not find any change in the language of the statutory provision. If that be so, there is no reason to take a different view from what had been expressed by the Larger Bench.

6. In the light of the above, we hold that the Commissioner was not justified in not following the ratio of the decision of the Tribunal as stated above. We therefore set aside the order impugned and allow the appeals.

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