A. Kumar Vs. Union of India

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Court : Delhi

Decided On : Aug-26-1982

Reported in : ILR1982Delhi1008

Judge : Milap Chandra Jain, J.

Acts : Customs Tariff Act, 1975; Provisional Collection of Taxes Act, 1931; Customs Tariff (Amendment) Act, 1982; Income-Tax Act - Sections 132A; Contempt of Courts Act - Sections 11 and 12; Customs Act, 1962 - Sections 15 and 59; Constitution of India - Articles 19(1), 226, 265 and 300A;

Appeal No. : C. Ms 2737, 2907 and 2908 of 1982 in Civil Writ No. 1812 of 1982

Appellant : A. Kumar

Respondent : Union of India

Judgement :

1. The petitioner, the sole proprietor A. Kumar of the Indian Steel Corporation, 19 Sombhudass Street, Madras, purchased 17 licenses issued to various parties for the import of 'All seconds/second grade/defective/cuttings/circles of all grade of alloy/steel (including stainless/heat resisting steels/high speed steels) to any specification/analysis in coated/uncoated condition in any form/section/size/category.' He negotiated the supply with Sammisa & Co., of Korea. The sale contract was confirmed on 21-1-1982. He opened letters of credit in favor of the supplier for the total value of US $ 200100, on 5-2-1982 with the

Laxmi Vilas Bank Ltd., Madras. The supplier prepared invoices on 15-2-1982. The Bill of Lading was prepared and 249.400 M.T. of stainless steel circles defective were shipped on 26-2-1982. The goods arrived at the Madras port on 27-4-1982. The Bill of Entry was given on 11-5-1982 to the Collector of Customs for assessment of duty. It is alleged that at the time the order was placed with the foreign firm or entered the territorial waters, according to the Customs Tariff Act, 1975 the duty chargeable for coils for re-rolling bars (including bright bars), rods, wire rods, strips, sheets and plates of stainless steel was 300% while in respect of other forms of alloy steel, the duty was 45%.

2. On 15-4-1982 the Customs Tariff (Amendment) Bill, 1982 was introduced in the Lok Sabha by which the said rates of duty were leveled to 300% for all types of alloy steel and high carbon steel w.e.f. 15-4-1982 but in case of circles, angles, shapes and sections of stainless steel, the duty for the period from 1-1-1981 to 15-4-1982 was reduced to 220% ad valorem plus 10% auxiliary duty vide Clause 3 of the Bill. The Bill also contained a declaration under the Provisional Collection of Taxes Act, 1931 according to which the tax was livable with effect from 16-4-1982 The Government of India issued a notification on 16-4-1982 and flashed messages to give effect to these provisions. The Bill was passed and came into force with effect from 11-5-1982.

3. The petitioner refused to pay the duty at the rate of 230% and contended that the duty payable by him was only 45% and that too on the value of the goods shown in the invoices excluding the landing charges. But the Customs authorities did not agree to these contentions and refused to clear the goods. Thereupon, the petitioner filed this writ petition on 14-6-1982 during the vacation praying that (1) the Customs Tariff (Amendment) Bill No. 50 of 1982 and the Customs Tariff (Amendment) Act No. 40 of 1982 and the notification dated 16-4-1982, and the Provisional Collection of Taxes Act, 1931 and the Form of Bill of Entry which including the landing charges in assessable value be declared as ultra virus and unconstitutional and vocative of Article 19(1)(g)(6), 265 and 300A; (2) directions be issued to the respondents to release the goods on payment of duty equal to 45% of invoice value and (3) direction to issue detention certificate by the respondents to the Madras Port Trust authorities for clearance of the goods without any

charges of demurrage.

4. Along with the writ petition, an interim order was prayed for by C.M.A. No. 2737/82. The Hon'ble vacation Judge G. C. Jain, on 16-6-1982 while issuing rule, also directed ex parte that the respondents will allow the petitioner to clear 249.400 M.T of defective stainless steel circles arrived at Madras Port on 27-4-1982 as per S. S. Venire by paying full amount of admitted duty in cash on the invoice value and on executing a bond for the full amount of the disputed duty on furnishing a bank guarantee from the nationalised bank for the 50% of the disputed duty. The respondents were further directed to issue a detention certificate on the petitioner's furnishing bank guarantee in respect of the claim of the authorities concerned, if any, regarding demurrage ground rent/detention charges.

5. On 19-6-1982, the Director of Inspection (Income-Tax) Madras issued an order under Section 132A of the Income-Tax Act.

6. On 26-6-1982, the petitioner moved an application No. C.C.P. 105/82 under Sections 11 and 12 of the Contempt of Courts Act that the order was served on the respondents in Delhi on 18-6-1982 and in Madras on 22-6-1982 and yet neither the bills of entry were entered nor were the goods released. Notice of this petition was issued for 2-7-1982. On 29-6-1982, news of the contempt petition was published in the papers. It was also alleged that a letter ante dated 28-6-1982 was issued by the Customs on 29-6-1982 that no one had approached them with the duty and the guarantee as directed by this Court. On 1-7-1982 the duty and the requisite bonds were submitted but were not accepted by the Customs. It was on 1-7-1982 that the Customs sent a letter giving the calculations of duty on the valuation at the rate of $ 2650 per M.T.

7. On 5-7-1982 an application C.M. No. 2907/82 was made that the Customs authorities concerned be directed to deliver the goods to the Income-tax Department.

8. On 6-7-1982 the respondents applied for cancellation/modification of the interim order, vide C.M. No. 2908/82. In that application Hon'ble G. C. Jain, J. directed on

7-7-1982 that the goods be cleared on the condition that the same are kept in a bonded warehouse. It is alleged that the Customs did not allow the bonding of goods on a mere bond as required by Section 59 of the Customs Act. At the time of arguments this proposal was repeated by Mr. Wadhwa so that demurrage may not mount up but the petitioner did not seem to agree or insist upon it.

9. I directed that the matter may be posted before Hon'ble G. C. Jain, J. as it was earlier handled by him. He returned it. I was told that about 200 and odd petitions involving more or less similar points were pending before D.B. in which similar orders were passed and confirmed after hearing the respondents. I then placed the matter for orders of the Chief Justice that this case may also be dealt with by the D.B. but the learned Chief Justice sent the case back to me with the direction (in pencil in margin) that I may deal with it or refer the case to the D.B. I do not think that there is any difficulty in deciding the matter and I need not make a reference.

10. Before I proceed to decide the matter, I must make two observations, (i) that the order of 16-6-1982 sought to be confirmed stood vacated after the lapse of 15 days after the application for its revocation was made on 6-7-1982 and in any case I will have to make a fresh order as is proper and permissible in these proceedings vide Clause (3) of Article 226 of the Constitution; and (ii) that the stay of recovery should not be exercised in a routine manner in matter of taxation and revenue laws. The rule of precedence or propriety cannot be invoked in such interim measures. The party must show that it has a strong prima facie case and that if stay is not granted the writ petition will be frustrated, vide Income-Tax Officer v. M. K. Md. Kunhi, AIR 1969 SC 430. I am doing this in answer to the submission that while recovery of duty has been stayed in nearly 200 application and goods cleared by the petitioner alone had the misfortune of being singled out and opposed because he had the audacity to move a contempt petition.

11. I have heard arguments and could not but examine the facts rather in detail. The case of the respondents in the first instance is that subsequent enquiries made by the Customs and the Income-Tax authorities revealed that the person A. Kumar, who opened the account with the Bank and applied for a letter of credit

was not the petitioner A. Kumar but in fact he was one Anil Kumar, son of Ram Gopal Didwania, brother of Vinod Kumar while the writ petition was filed by one Ashok Kumar, son of Prahlad Rai who now claims to be the son of the sister of Vinod Kumar. The Bank account which was opened in the name of Indian Steel Corporation was introduced by Vinod Kumar. The Income-Tax authorities also got suspicious upon receiving information that Vinod Kumar has been importing stainless steel worth crores of rupees in different names over several years and escaped income tax and wealth tax and made an order under Section 132A of the Income-Tax Act directing the Assistant Collector not to release the goods. Rather, the goods be handed over to the Income-Tax authorities. thereforee, the first question that naturally calls for consideration is the identity of the petitioner because on that depends the very locus standi of the petitioner. The letter written by the Manager Mr. Gopalkrishnan, dated 10-2-1982 to the Chief Officer, Advances Department, A.O. Madras, in connection with the Indian Steel Corporation LC/TC/10/82 for Rs. 6,65,500/- US $ 71,940/-, and his statement to the Income-Tax Department show that he knew that the Indian Steel Corporation, is a proprietorship concern of Anil Kumar, brother of Vinod Kumar; that after obtaining permission from the General Manager, he opened the letter of credit on 7-2-1982 for the above said value with nil margin; that the party approached him for enhancing the value of the credit by 19.5 Lacs; and he recommended the same as the past performance of account operated by his brother Vinod Kumar was satisfactory and he felt that the same kind of operations will be continued here also. From this letter it is as clear as it could be that Anil Kumar was the proprietor of M/s. Indian Steel Corporation, but upon enquiry Anil Kumar denied to have any connection with the said Firm. There were two accounts in the Bank, one in the name of Anil Kumar and the other in the name of A. Kumar, Current Account No. 784 opened by Anil Kumar was of Indian Steel Products Private Ltd., while the other Account No. 825 of Indian Steel Corporation was opened in the name of A. Kumar introduced by Vinod Kumar. Upon comparison of the specimen signatures available in the Bank the Deputy General Manager certified that A. Kumar, proprietor of Indian Steel Corporation and Anil Kumar, Director of Indian Steel Products Private limited, are two different individuals and there has been some misconception transmitted into some of their records, because of the similarity in

names. He has not categorically stated that A. Kumar who opened the Account No. 825 of the Indian Steel Corporation and the Letter of Credit was Ashok Kumar, the petitioner. The Manager has now sent an affidavit that the two are different persons and that the L/C account was of the petitioner and not of Anil Kumar. Doubts still persist because the residence of all the three persons namely Vinod Kumar, Anil Kumar and A. Kumar, is the same, i.e. 19 Sombhudass Street, Madras. Pavan Kumar, another brother of Vinod Kumar is the lessee of the premises and A. Kumar is his licensee. This further complicated the issue because the premises are purely commercial premises and not residential. Moreover, long before the letter of credit was opened, Vinod Kumar signed the indent for Indian Steel Corporation on 2-2-1982 with Apex International local agents of the Korean supplier. It also contained some erasures but the Forensic Science Laboratory has been able to decipher the original as 'Ramgopal' who is the father of Vinod Kumar. The Explanationn that Vinod Kumar signed on instructions from the petitioner only strengthens the suspicion surrounding the names. I had a mind to call the Manager and examine him here but then I held my hands because this is not the stage of a detailed inquiry which will be undertaken by the Revenue and perhaps at the time of hearing of the writ petition. I need not pursue the matter further at this stage and in spite of my grave doubts about the identity of the petitioner, I, for the purpose of the present problem, proceed on the presumption that the goods have been imported by the petitioner.

12. According to Section 15 of the Customs Act, 1962, which faces no challenge in this petition, the rate of duty is livable at the rate in force on the date on which a bill of entry is presented to the Collector of Customs. In this case, the goods arrived on 27-4-1982 and the bill was presented on 11-5-1982. The Customs Tariff (Amendment) Bill was presented to Parliament on 15-4-1982 and though it was enacted on 11-5-1982, it came into force with effect from 16-4-1982 in view of the Provisional Collection of Taxes Act, 1931. Now, even if we are for a moment agreed that the virus of the latter Act are under fire, at any rate the Amendment Act came into force on 11-5-1982 and the bill of entry was presented on 11-5-1982. The petitioner, thereforee, is bound to pay customs duty at the rate of 230% ad valorem. This is in spite of the position that unless declared otherwise, Acts are within the legislative ambit. It is urged that the Amendment Act is unconstitutional

because all laws with permissible retrospectivity must conform to the provisions of Articles 14, 19, 265 and 300A of the Constitution. But there is nothing inherently unreasonable in giving retrospective effect to an enactment the object of which is to prevent a loss of revenue to the State which would otherwise occur : Motibhai Lalloobhai & Co. v. Union of India and Another, : AIR1957 All84 . In Kunnathat Thathunni Mooni Nair etc. v. State of Kerala and Another, : [1961]3SCR77 it was observed that if the legislature has classified the property for purposes of different rates of taxation, then Article 14 will not be infringed if there is a rational basis for classification. What the Legislature has done by the Amendment Act is to remove that classification so as to avoid any attack on the ground of unequal categorisation. A taxing statute is not open to challenge merely on the ground that the tax is harsh or excessive : Hari Krishna Bhargav v. Union of India and Another, AIR 1968 S.C. 619. Prima facie I do not find anything unreasonable or not in public interest in the retrospective imposition or classification of the rates of duty so as to violate any provision, of the Constitution. My attention was drawn to a D.B. decision of this Court, M/s. Jain Shudh Vanaspati Ltd. and Another v. Union of India and Another, : AIR1979 Delhi122 , that the doctrine of promissory estoppel will deny the State the power to change the policy or modify the administrative action if on the basis of any representation made by it earlier, a citizen may have acted to his prejudice. It is urged that when the goods were indented, or loaded, the petitioner was under the assurance that the duty livable by him will be only 45% which cannot be increased to his disadvantage. It is also said that the duty is unreasonable. Prima facie, I am unable to see how the rate of duty of 220% is unreasonable. As regards estoppel, I have only to refer to M/s. Jitram Shiv Kumar and Another v. State of Haryana and Another, : [1980]3SCR689 , and say that no estoppel can bind the Parliament. Secondly, the State or Government gave no assurance of any such kind as claimed, nor could it give any, nor if given, could be allowed to be implemented, if it runs counter to the Customs Tariff Act, as it stood before its impugned amendment. No document was shown to me to show that the Government has at any time held out a promise express or implied that the duty will be or could be less than what is specified in Chapter 73.15 of the Schedule I to the Customs Tariff Act. 1975. Promissory estoppel must first be a promise that is a proposal accepted by the petitioner - that is willingness to do or abstain from doing

anything, second the petitioner must have altered his position to his prejudice on the basis of the promise. It is only then that the Government can be asked to charge a reduced rate of levy. How has the petitioner altered his position to his disadvantage on the basis of the specified duties The Government has not apart from whether it could or could not do so, issued any clarification of Heading 73.15 of the Tariff. What is involved is not promissory estoppel but what he thought was the interpretation of Heading No. 73.15 in the Schedule I of the Customs Tariff Act. Clause 2 of Chapter 73 appears to lay down that the forms and duties mentioned against headings 73.06 to 73.13 apply to all types of iron and steel but will not apply to alloy steel or high carbon steel. thereforee, it became necessary to exclude alloy or high carbon steel from those headings because a different rate of duty was being prescribed for it. The relevant entry under which stainless steel is covered is 73.15 which prior to its amendment stood as follows :

Heading Sub-heading No. & description

Rate of duty No. of article

Standard referential area 73.15 Alloy steel and high carbon steel

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in the forms mentioned in Heading Nos. 73.06/07 to 73.14 :

(1) Not elsewhere specified 60%

(2) Coils for re-rolling bars (including bright bars), rods,

wire rods, strips, sheets and plates of

300%' stainless steel

Stainless steel as the wide definition of alloy steel given in Clause (d) shows is one kind of alloy steel. The duty on stainless steel in forms of coils for re-rolling bars

(including bright bars) rods, wire rods, strips, sheets and plates is 300%, but if it was other type of alloy steel and in other forms mentioned in Heading Nos. 73.06 to 73.14, then the duty was 60% or with rebate 45%. Now, the circles are covered by the definition of sheets and plates (Heading 73.13) given in Clause (n) because they are nothing but sheets cut into non-rectangular shape. To get out of this coverage, it was urged with reference to some dictionary that non-rectangular does not mean non-angular or circular which has no angle. I must confess to my lexicographical and geometrical ignorance to appreciate this difference. In my innocent opinion, non-rectangular shape will include circular shape and square shape, until some expert evidence makes me revise it. As a matter of fact the Schedule I, entries in relation to Heading No. 73.15 had to be amended in the manner it was done retrospectively because the difference in duty between the two sub-heading of Heading No. 73.15 was so large that attempts were made by some importers to manipulate the description or the form of the articles in such a way as to claim a lower duty in the case of stainless steel sheets imported in the guise of 'folded angles' and 'circles'. In both the cases, the Customs authorities took the view that goods were nothing but sheets attracting the higher of the two rates of duty. With a view to make the intention clear and to present abuses, Heading 73.15 was amended in so far as it related to angles, shapes, sections and circles of stainless steel w.e.f. 1-1-1981 to ensure that effective rates of duty on such articles are the same as those applicable from time to time to stainless steel sheets : Objects and Reasons of the Amendment Bill.

13. The next submission made in this regard is that assuming that circles are sheets, there is a well known distinction between defectives and prime quality forms of stainless steel and sub-heading (2) of Heading 73.15 refers to prime steel while the defective steel will be covered by sub-heading (1) that is in a form not elsewhere specified. I am unable to subscribe to such a suggestion. I wonder that it would even remotely be spelt out from any provision of the Act. The Act refuses to make any such distinction and no one neither the Revenue nor the Court can be permitted to do so. Simply because import of defectives is permitted, it does not mean that it will carry a rate of customs duty different from the rate of prime quality metal. If this is done, it is an infringement of the statute. The law only distinguishes between forms and shapes of the material defined with precision and detail and

nowhere between defective and prime.

14. The position that emerges is that if the duty cannot exceed the one livable before 1982 amendment, then the goods in question must be charged with 300% duty, but since the Revenue and rightly so, demands only 230% (duty 220% + auxiliary duty 10%), the petitioner is prima facie liable to pay duty at that rate ad interim before the goods can be cleared.

15. Now the next question relates to the value of the goods. The Customs Act, Sections 14 and 15, prescribe the methods of determination of value. The combined effect of these sections is that the value is the price at which the goods in question are on the date the bill of entry is presented ordinarily sold or offered for sale for delivery at the time and place of importation, in the course of international trade. The Customs have valued the goods at $ 2650 per M.T. on the basis of several invoices of the same suppliers and one or two of the Japanese producers. These rates vary from $ 2050 to $ 2650 per M.T. and are for prime quality steel. It is true that the Salem steel plant analysed a few samples out of the five consignments and reported that the goods in question were of prime quality. But, if the invoices of the Samissa & Co. are to be relied upon, then it is difficult at this stage to discard the statement in the invoices respecting the petitioner that the goods were defectives and were valued at a lesser price. But the petitioner himself agreed to sell the goods at Rs. 15,000/- P.M.T. on 15-3-1982 which is exclusive of increased rate of taxes. I, thereforee, fix the value at Rs. 15,000/- per M.T. provisionally.

16. It was also urged by the respondents that since the goods were of a value far higher than the value of the license, there has been a breach of license and the goods are liable to confiscation under the Customs Act and Import Control Order. They are subject to adjudication and cannot be permitted to be realised. I do not think this should stand in the way of the petitioner at this stage, because it is the valuation that he is so seriously contesting. The Customs have not yet confiscated the goods.

17. The last hurdle is the order under Section 132A of the Income Tax Act by the Income Tax Department. A Writ Petition No. 2689 of 1982 against that order has

been dismissed. Yet, the possible amount of income-tax can be safeguarded by a proper guarantee. It will not be reasonable to hold the goods for that reason.

18. I, thereforee, direct that pending decision of the writ petition, the respondents shall notwithstanding the order of 19-6-1982 under Section 132A of the Income-Tax Act, allow the petitioner to carry the goods in question on the following conditions :-

(1) Upon levy of customs duty at 230% on the value computed at the rate of Rs. 15,000/- per M.T. out of which, -

(i) the amount calculated on invoice value shall be paid in cash; and

(ii) for the rest an un-conditional bank guarantee from a nationalised bank shall be furnished.

(2) The petitioner shall also furnish guarantee for an amount equal to 10% of the invoice value of the goods payable to the Director of Inspection (Investigation) Department of Income-Tax from a nationalised bank.

(3) The petitioner and/or the Bank shall keep inventories and records including the names and addresses of the parties to whom the said goods are sold. The petitioner shall furnish the same to respondent No. 3.

(4) The petitioner shall furnish a similar bank guarantee in respect of the claim of the authorities concerned, if any, regarding demurrage/ground rent/detention charges before detention certificate is issued.

19. The C.Ms. 2737, 2907 and 2908 of 1982 shall stand disposed of accordingly.