

Union of India and ors. Vs. Shri Ramniwas Chaudhury

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Court : Kolkata

Decided On : Aug-27-1982

Reported in : 1983LC608D(Calcutta),1987(30)ELT118(Cal)

Judge : Morari Mohan Dutt and ;Monoj Kumar Mukherjee, JJ.

Acts : [Customs Act, 1962](#) - Sections 15(1), 46, 46(1), 68, 128(1) and 131(3);
;Indian Tariff Act, 1934; ;Sea Customs Act, 1878 - Sections 23; ;[Constitution of India](#) - Article 134A

Appeal No. : F.M.A.T. No. 2052 of 1982

Appellant : Union of India and ors.

Respondent : Shri Ramniwas Chaudhury

Advocate for Def. : Somnath Chatterjee, ;R.N. Das and ;F.M. Rezack, Advs.

Advocate for Pet/Ap. : N.C. Chakraborty, ;R.N. Das and ;Mihir Chakraborty, Advs.

Judgement :

Morari Mohan Dutt, J.

1. The Customs Authorities and the Union of India have filed an appeal against two interlocutory orders dated June 21, 1982 and July 12, 1982 passed by a

learned Single Judge of this Court. The said two interlocutory orders have been passed by the learned Judge in the Rule Nisi issued on the writ petition of Ramniwas Choudhury, carrying on business under the trade name of Choudhury Shipbreaking Co. By the first order, the learned Judge restrained the Central Government from proceeding with a revision case suo moto started by it against the petitioner under Section 131(3) of the [Customs Act, 1962](#) and, by the second order, the learned Judge directed the Customs Authorities to refund to the petitioner a sum of Rs. 35,98,428/- plus Rs. 2,91,000/- upon furnishing a bank guarantee for the aggregate of the said amounts. It may be stated at the outset that the said sum of Rs. 2,91,000/- is included within the said sum of Rs. 35,98,428/- which has been admittedly paid by the petitioner on account of customs duty for a vessel, and the petitioner claimed a refund of the said sum contending inter alia that no customs duty was payable. The direction of the learned Judge as given in the said order dated July 12, 1982 for the refund of the sum of Rs. 2,91,000/- over and above the said sum of Rs 35,98,428/- is, obviously, a mistake.

2. In the appeal, the respondents have filed an application praying for stay of operation of the said orders of the learned Judge. When the application for stay was taken up for hearing, it was prayed by the learned Counsel for both parties that as the principal point involved in the Rule Nisi and also in the appeal and the application relates to the interpretation of an exemption notification issued by the Central Government, which will be referred to by us presently, the Rule Nisi might be disposed of and such disposal would mean the disposal of the appeal and the application. As prayed for by the learned Counsel, we treated the Rule Nisi as on day's list and heard the same. As the appeal was not on the list, we also treated the same as on day's list.

3. Under item No. 76(1) of schedule to the Indian Tariff Act, 1934, as amended in 1949, customs duty was leviable on ail ships, boats and vessels imported into India either for the purpose of navigation or for breaking up. On October 11, 1958, the Central Government issued the following notification

'G.S.R. 930 - In exercise of the powers conferred by Section 23 of the Sea Customs Act, 1878 (8 of 1978) as in force in India and as applied to the State of Pandicherry, the Central Government hereby exempts ocean-going vessels imported into India or the State of Pandicherry, other than vessels imported to be broken up, from the whole of the duty of customs leviable thereon :

Provided that any such vessel if subsequently broken up shall be chargeable with the duty which would be payable on her if she were imported to be broken up.'

4. One Ratnakar Shipping Company Limited purchased an ocean going vessel named MV ERINGTON COURT at 2,75,000 in 1963 and imported the same into India. In view of the said exemption notification dated October 11, 1958, as the said vessel was an ocean going vessel, no customs duty was levied thereon. After her importation into India, the vessel changed hands and was ultimately purchased by POOMPAHAR SHIPPING CORPORATION as an ocean going vessel and she was renamed by the said Corporation as MV TAMIL PERIYAR. Since its importation into India in 1963, the vessel had been used as an ocean going vessel for about 18 years. On December 30, 1980, POOMPAHAR SHIPPING CORPORATION, the owner of the vessel proposed to sell the same to the METAL SCRAP TRADE CORPORATION, hereinafter referred to as MSTC, inasmuch as she lost her seaworthiness. MSTC invited tenders for the sale of the vessel. The petitioner submitted his tender for the purchase of the vessel and his tender being the highest it was accepted by MSTC and it sold the vessel to him at Rs. 58,21,285/-. On January 6, 1981 the release order for the vessel was issued by MSTC in favour of the petitioner on his undertaking to pay customs duty and all taxes and other charges. A certificate dated February 4, 1981 was also issued by MSTC to the petitioner certifying the purchase of the vessel by him and authorising him to clear the vessel on payment of all duties, taxes, charges etc. The petitioner submitted a Bill of Entry to the Assistant Collector of Customs, Netaji Subhas Docks, Calcutta, for appraisement of customs duty. In his letter dated February 3, 1981 to the Assistant Collector of Customs, Netaji Subhash Dock, the petitioner referred to the said Bill of Entry and requested him to grant permission to start the dismantling of the vessel and undertook that nothing would be taken away from the dismantling site till the vessel had been cleared on full payment of customs

duty. The Bill of Entry that was filed by the petitioner was noted by the said Assistant Collector of Customs to have been submitted on February 5, 1981. It appears that another Bill of Entry was submitted by the petitioner to the proper officer under Section 46(1) of the [Customs Act, 1962](#) on April 25, 1981.

5. A dispute arose between the parties as to the date of noting of the Bill of Entry inasmuch as the rate of customs duty to be levied depended on the date of such noting. According to the petitioner, as the Bill of Entry was noted on February 5, 1981, the pre-budget rate of customs duty as in force on that date was to be levied. On the other hand, according to the Customs Authorities, the Bill of Entry that was noted on February 5, 1981 was incomplete and was not filed before the proper officer within the meaning of Section 46(1) of the [Customs Act, 1962](#), and that the Bill of Entry that was noted to have been filed on April 25, 1981, containing all the particulars and having been submitted to the proper Officer, the rate of Customs duty (post budget rate) that was in force on that date should be levied. The customs duty computed at the post-budget rate made the petitioner liable to pay a further sum of Rs. 2,91,000/-. The petitioner's representation that the date of noting of the Bill of Entry should be accepted as February 5, 1981 was rejected by the Assistant Collector of Customs by his order dated May 22, 1981 holding that the date of noting should be April 25, 1981. Against the said order, the petitioner preferred an appeal to the Appellate Collector of Customs under Section 128(1) of the [Customs Act, 1962](#). In the appeal, it was contended by the petitioner that no duty was leviable on the vessel and that, in any event, the Bill of Entry should be considered to have been presented on February 5, 1981 and, accordingly, the, rate of duty, as on that date would apply. The appellate Collector of Customs by his order dated February 2, 1982 allowed the appeal in part. It was held by him that the Bill of Entry should be noted to have been filed on February 5, 19'81 and not on April 25, 1981, and that the rate of duty that was in force on February 5, 1981 (pre-budget rate) was leviable. In other words, the additional sum of Rs. 2,91,000/- which the petitioner was not paid on account of customs duty on the basis of post-budget rate was held not to be leviable. It may be stated here that during the pendency of the said appeal before the Appellate Collector of Customs, on June 4, 1981, the petitioner deposited the customs duty of Rs. 33,07,420/-plus the said additional sum of Rs. 2,91,000/- that is, a total sum of Rs. 35,98,420.70

for the removal of the dismantled vessel. The other contention of the petitioner that no duty was leviable was overruled by the Appellate Collector of Customs.

6. The petitioner, being aggrieved by the said order of the Appellate Collector of Customs, moved the writ petition and obtained the Rule Nisi. After the Rule Nisi was issued, the Central Government suo moto started a revisional proceeding in exercise of its power under Section 131(3) of the [Customs Act, 1962](#) against the said order of the Appellate Collector of Customs holding that the said additional sum of Rs. 2,91,000/- was not leviable. As stated already, by the said interlocutory order dated June 21, 1982 the learned Judge restrained the Central Government from proceeding with the said revision case and by the other interlocutory order dated July 12, 1981 the learned Judge directed the Customs Authorities to refund to the petitioner the sum of Rs. 35,98,428/- plus the said additional sum of Rs. 2,91,000/- upon furnishing Bank guarantee. The order for the refund of the latter sum was made through mistake as noticed earlier.

7. Mr. Somnath Chatterjee, learned Counsel appearing on behalf of the petitioner has advanced three contentions, namely (1) that on a proper interpretation of the said exemption notification dated October 11, 1958, it should be held that no customs duty is leviable; (2) that in case it is held to be leviable, such duty should be levied at the rate that was in force on the date of importation of the vessel in 1963, and (3) that in any event the rate of customs duty that was in force on February 5, 1981, that is, the date of noting of the Bill of Entry, should be applicable in calculating the duty payable by the petitioner.

8. We have already set out the said exemption notification dated October 11, 1958. The first part of the said notification clearly exempts ocean going vessel from the payment of customs duty leviable thereon. The proviso, however, puts a limitation to such exemption. If any ocean going vessel after its importation is subsequently broken up at any time either because it has lost her seaworthiness or for any other reason, the vessel becomes chargeable with customs duty that would be payable on her if she were imported to be broken up. The proviso, in our opinion, refers to the ocean going vessel that was imported, which is apparent from the words 'such vessel' in the proviso. It seems to us that the object of

exemption from duty was to encourage importation of ocean going vessels as there was dearth of such vessels in the country. Importers of ocean going vessels were offered an incentive in the nature of exemption from duty. This was also the contention of the petitioner in his petition of appeal dated October 13, 1981 filed before the Appellate Collector of Customs. Such exemption, however, is not absolute for all times, for, under the proviso, if the vessel is subsequently broken up it would be chargeable with duty if she were imported to be broken up. In other words, , as contended by Mr. Chakraborty, learned Counsel appearing on behalf of the respondents that so long as the vessel is used as an ocean-going vessel the duty leviable thereon would not be levied but if, subsequently, she is broken up, she would be chargeable with duty as would be payable if she were imported for breaking up. We are unable to accept the contention made on behalf of the petitioner that as the vessel was not imported for breaking up, no duty is leviable thereon. If it is intended that an ocean- going vessel would be exempted from duty for all times to come, there would not have been any necessity for the proviso. The proviso unmistakably refers to an ocean going vessel subsequently broken up. The absolute exemption from duty in the first part of the notification has been curtailed by the proviso. In other words, the period of exemption from duty has been limited to the point of breaking up of the vessel.

9. In the circumstances, we do not find any substance in the first contention of the petitioner.

10. The second contention relates to the rate of duty. It is contended on behalf of the petitioner that the rate of duty that was in force on the date of importation of the vessel into India in 1963 will be applicable. On the other hand, it is contended on behalf of the respondents that the relevant date for the application of the rate of duty is the date when the Bill of Entry was noted under Section 46(1) of the Customs Act and that date is April 25, 1981. In this connection, it may be noticed that although the statement of particulars that was filed by the petitioner has been characterised as 'Bill of Entry' it is, undoubtedly, a misnomer. A Bill of Entry is required to be filed under the Customs Act at the time' of importation of goods into India. Indeed, a Bill of Entry was filed when the vessel was first imported into India in 1963. After such importation, there is no question of filing any Bill of Entry. with

regard to the vessel. It is not understandable why the Customs Authorities have treated the statement¹ of particulars that was filed by the petitioner as the Bill of Entry. Section 15(1) of the Customs act, 1962 provides as follows :

'15. Rate for determination of rate of duty and tariff valuation of imported goods.
(1). The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force :-

(a) in the case of goods entered for home consumption under Section 46, on the date on which a bill of entry in respect of such goods is presented under that Section;

(b) in the case of goods, cleared from a warehouse under Section 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.'

Section 15(1) read with Section 46 of the Customs Act makes it abundantly clear that the statement of particulars that was filed by the petitioner has been misdescribed as 'Bill of Entry' by the Customs Authorities. The date of noting of the Bill of Entry - whether it is February 5, 1981 or April 25, 1981 is quite immaterial for the purpose of calculation of the Customs duty. We are also unable to accept the contention of Mr. Chakraborty for the respondents that Clause (c) of Section 15(1) will be applicable enabling the Customs Authorities to calculate the duty payable on the vessel at the rate that was in force on the date of payment of duty. Under the proviso, the duty is payable on the vessel which would be payable on her if she were imported for breaking up. The date of importation of the vessel is, therefore, very much relevant. The proviso, in our opinion, refers to the date of importation of the vessel for the purpose of calculation of the customs duty which is apparent from the expression 'which would be payable on her if she were imported to be broken up'. If the vessel has been imported into India in 1963 for

the purpose of breaking up, she would have been chargeable with duty that was prevalent on that date. The proviso refers to the payment of such duty that was in force on the date of importation of the vessel, the vessel was, undoubtedly, imported in 1963 and, accordingly, the duty that was leviable on the vessel if she were imported for breaking up would be levied. Any other interpretation of the proviso is not possible.

11. In view of our finding that the rate of duty which was in force on the date of importation of the vessel in 1963, treating the same as being imported for breaking up, will be applicable to the vessel concerned, it is not necessary for us to decide the third contention made on behalf of the petitioner.

For the reasons aforesaid, we make the Rule absolute to the extent that the Customs Authorities are directed to refund to the petitioner out of the amount paid by him the amount which is in excess of the amount of duty calculated at the rate prevalent in 1963, that is to say, on the date of importation of the vessel into India. The impugned order of the Appellate Collector of Customs is quashed. Let appropriate writs in regard to the above be issued.

12. No order need be made in the appeal and the application for interim order which shall be deemed to have been disposed of by this judgment.

13. Mr. Mihir Chakraborty, learned Advocate on record for the respondents in the writ petition, prays for certificate for appeal to the Supreme Court under Article 134A of the [Constitution of India](#). In our opinion, no substantial question of law of general importance is involved in the Rule Nisi. In the circumstances, the oral prayer for a certificate is disallowed.