

A M/S. GAURAV DISTRIBUTORS (P) LTD.
v.
COMMISSIONER OF CUSTOMS, NEW DELHI

AUGUST 11, 2004

B [S.N. VARIAVA AND ARIJIT PASAYAT, JJ.]

C *Customs Act, 1962—Section 20, Proviso—Reimportation of goods exported in bond—Levy of customs duty thereon—Exemption under Proviso to the Section sought—Denied by Courts below—Plea that levy of duty not justified as expression “goods exported in bond” would not cover the goods exported under excise bond as the same refers only to goods exported under customs bond—On appeal, held : Duty rightly levied—The words included the goods exported on excise bond as well as customs bond—In the absence of any restrictive words, the expression must be given its full meaning.*

D *Interpretation of Statutes—If the statute is clear and unambiguous then effect must be given to its words.*

E The goods in question were exported under bonds, and were subsequently purchased by the appellants and re-imported in India in March, 1995. Assistant Commissioner held that as the goods had been exported in bonds, appellants were liable to pay the customs duty at the same rate to which the goods of the like kind and value would be subject. Appellants claimed benefit of the Proviso to Section 20 of Customs Act, 1962. Customs, Excise and Gold (Control) Appellate Tribunal, upheld the decision levying the duty holding that the appellants were not covered by Proviso to Section 20.

F In appeal to this Court, appellant contended that the expression “goods exported in bond” must be restricted to mean goods exported under customs bond and not excise bond.

G Dismissing the appeal, the Court

H HELD : 1. It cannot be said that Section 20 of Customs Act, 1962, as it stood at the time the goods were re-imported only referred to

“goods exported under a customs bond”. Sub-clauses (c)(ii) and (c)(iii) of Proviso to Section 20 indicate that the goods which were exported in bond were locally manufactured, with or without use of the indigenous material. On export of local goods, no customs duty is payable. Thus, at the time of export there would be no customs bond in respect of such goods. Locally manufactured goods would be exported only on an excise bond. Thus, the words “goods exported in bond” in Section 20, as it then stood, clearly included goods exported on an excise bond. If the statute is clear and unambiguous then effect must be given to its words. In the present case as the vires of Section 20 does not arise and the wordings of the Section is clear, the Court is bound to interpret it as it stands. [460-D-G]

2.1. The intention of Legislature was to include goods exported under a customs bond or an excise bond. If the Legislature wanted to restrict these words only to goods exported under a customs bond they would have had to say so specifically. In the absence of any restrictive words the expression must be given its full meaning and must include goods exported either under a customs bond or an excise bond.

[461-B-C]

2.2. Section 20 under consideration came into effect in June 1994 and operated upto 26th May, 1995. The earlier Section clearly included goods exported under an excise bond. When the Legislature was changing the Section, if they wanted to depart from the earlier position they would have had to do so in express words. With effect from 26th May, 1995, Section 20 was again changed. The proviso to Section 20 was omitted. However, by a Notification it was *inter alia* clarified that if goods were “exported in bond” without payment of central excise duty, the amount of the central excise duty, which had not been paid, would have to be paid. As prior and subsequent to Section 20 under consideration the position was that goods exported even under an excise bond were covered, it is not possible to accept the submission that during the relevant period the Legislature had made a departure. [461-D-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8683 of 2001.

From the Judgment and Order dated 24.8.2001 of the Central Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. C/235/2001- H

A B in F.O. No. 422 of 2001-B.

A.K. Ganguli, Vinay Garg and Ms. Deepam Garg for the Appellant.

Anoop Chaudhry, Sanjay Grover, P. Parmeshwaran, Rohit Singh and
B. Krishna Prasad for the Respondents.

B

The Judgment of the Court was delivered by

S.N. VARIAVA, J. : This Appeal is against the Judgment of the
Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) dated
C 24th August, 2001.

Briefly stated the facts are as follows:

One M/s. SKF Bearing (I) Ltd. Bombay had exported under bonds,
D ball bearings, vide Shipping Bill Nos. 481120 dated 22nd August, 1994,
494274 dated 9th November, 1994, 503510 dated 9th December, 1994 and
506157 dated 19th December, 1994. These ball bearings were subse-
quently purchased by the Appellants and re-imported in India vide two
Bills of Entries dated 14th March, 1995. There appears to be no dispute
E that the goods which have been imported are the same which had been
exported by SKF Bearing (I) Ltd. The Appellants claimed benefit of the
proviso Section 20 of the Customs Act, 1962, the relevant portion of which
reads as follows:

"Section 20- Re-importation of goods:— If goods are imported
F into India after exportation therefrom, such goods shall be liable
to duty and be subjected to all the conditions and restrictions, if
any, to which goods of the like kind and value are liable or subject,
on the importation thereof:

Provided that if such importation (other than importation of
G goods exported in bond or of goods produced or manufactured in
a free trade zone) takes place within three years after the
exportation of such goods and it is shown to the satisfaction of
the Assistant Collector of Customs that the goods are the same
H which were exported, the goods may be admitted-

- a) in any case where at the time of exportation of the goods, drawback of any customs or excise duty levied by the Union or both was allowed, on payment of customs duty equal to the amount of such drawback; A
- b) in any case where at the time of exportation of the goods, drawback of any excise duty levied by a State was allowed, on payment of customs duty equal to such excise duty leviable at the time and place of importation of the goods; B
- c) in any other case, without payment of duty: C

Provided further

The Assistant Commissioner of Customs held that as the goods had been exported in bonds the Appellants were liable to pay the custom duty at the same rate to which the goods of the like kind and value would be subject. CEGAT has upheld the decision and held that the Appellants are not covered by the proviso to Section 20 inasmuch as the goods had been exported in bond. D

Mr. Ganguli submitted that Section 20 appears in the Customs Act. He submitted that the Customs Act deals with matters pertaining to custom duty and therefore when the Section uses the words "goods exported in bond" it necessarily refers to goods which were exported under a customs bond. He submitted that goods exported under an excise bond would not be covered by the words "goods exported in bond" in Section 20. He submitted that on principle of interpretation the words "exported in bond" must be restricted to mean goods exported under a customs bond. Mr. Ganguli further submitted that the Proviso to Section 20 refers to excise duty. He submitted that wherever the Legislature wanted to refer to excise duty it specifically said so. He submitted that the Legislature has knowingly not used the words "goods exported in excise bond", as they wanted the Proviso to apply to goods exported under an excise bond. E F G

In support of his submission, he relied upon the Judgment of the High Court of Madras dated 18th March, 1983 in Writ Petition No. 20 of 1979, wherein Section 20 of the Customs Act has been interpreted. At that time, H

A Section 20 reads as follows:

B *"Section 20. Re-importation of goods produced or manufactured in India.—* (1) If goods produced or manufactured in India be imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value not so produced or manufactured are liable or subject, on the importation thereof :

C Provided that if such importation, other than importation of goods produced or manufactured in a free trade zone, takes place within three years after the exportation of such goods and it is shown to the satisfaction of the Assistant Collector of Customs that the goods are the same which were exported, the goods may be admitted—

D a) in any case where at the time of exportation of the goods, drawback of any customs or excise duty levied by the Union or both was allowed, on payment of customs duty equal to the amount of such drawback;

E b) in any case where at the time of exportation of the goods, drawback of any excise duty levied by a State was allowed, on payment of customs duty equal to such excise duty leviable at the time and place of importation of the goods;

F c) in any case where the goods were exported in bond, without payment of –

G (i) the customs duty leviable on the imported materials, if any, used in the manufacture of the goods, or

(ii) the excise duty leviable on the indigenous materials, if any, used in the manufacture of the goods. or

H (iii) the excise duty, if any, leviable on the goods.

on payment of customs duty equal to the aggregate amount of all such duties calculated at the rates prevailing at the time and place of importation of the goods; A

(d) in any other case, without payment of duty.

Provided further that if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by order in each case, extend the aforesaid period of three years for such further period as it may deem fit. B

(2) For the purposes of this section goods shall be deemed to have been produced or manufactured in India, if at least twenty-five per cent of the total cost of production or manufacture of the goods has been incurred in India. C

Explanation 1. - Where in respect of any goods produced or manufactured in a free trade zone, any duty leviable under this sub-section is leviable at different rates, then, such duty shall be leviable at the highest of those rates. D

Explanation 2. - For the purposes of this sub-section, "free trade zone" has the same meaning as in Explanation 2 to sub-section (1) of section 3 of the Central Excises and Salt Act, 1944 (1 of 1944). E

[Emphasis supplied]

The High Court of Madras held that the Customs Act and the Central Excises and Salt Act were different. It held that the Customs Act related to levy and collection of customs duties and the Central Excise Act related to duties of excise and salt. It held that the words "goods exported in bond" occurred in Section 20 of the Customs Act and, therefore, they cannot be given an extended meaning to include an excise bond also. It held that as the Sections appears in the Customs Act the meaning of the expression "in bond" must be confined only to a customs bond. It held that principle of construction of statute required that the words "in a particular statute" should be interpreted and construed only with reference to that statute, unless a different intention is clearly expressed. It held that statutes F
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A imposing pecuniary burdens must be subjected to rules of strict construction and that unless the language of the statute clearly imposes an obligation the language must not be strained in order to tax a particular transaction.

B Mr. Ganguli submitted that this Judgment was upheld by the Division Bench of the Madras High Court and that thereafter this Court dismissed the SLP filed against the Order of the Division Bench.

C At this stage itself it must be mentioned that the dismissal of the SLP against the Order of the Division Bench was on entirely different ground. This Court, whilst dismissing the SLP clarified that the precise connotation of a bond under the Customs Act was not being considered. The SLP was dismissed because the Court was satisfied, on the facts of that case, that excise duty had already been collected and that, therefore, there could be no double taxation.

D The interpretation given by the Madras High Court is clearly erroneous. As has been highlighted above, sub-clause (c)(ii) of the Proviso to Section 20, as it then stood, set out that where goods were exported in bond, excise duty leviable on the indigenous materials, if any, used in the manufacture of the goods had to be paid. It also provided in sub-clause E (c)(iii) that the excise duty, if any, leviable on the goods exported in bond had to be paid. This clearly indicated that the goods which were exported in bond were locally manufactured, with or without use of the indigenous material. On export of local goods, no customs duty is payable. Thus, at F the time of export there would be no customs bond in respect of such goods. Locally manufactured goods would be exported only on an excise bond. Thus, the words "goods exported in bond" in Section 20, as it then stood, clearly included goods exported on an excise bond. We fail to understand how, without reading the words of the Section, the Madras High Court could have on general principles held to the contrary. It is settled G law that if the statute is clear and unambiguous then effect must be given to its words. We, therefore, hold that the above mentioned decision of the Madras High Court is erroneous and stands overruled.

H We are unable to accept the submission of Mr. Ganguli that Section 20, as it stood at the time the goods were re-imported only referred to

“goods exported under a customs bond”. The words used are “goods exported in bond”. It is well known that goods can be exported both under a customs bond as well as an excise bond. If the Legislature intended that only goods exported under a customs bond were to be covered it would have said so specifically. The Legislature had in mind the fact that at the time the goods were exported, the excise duty may not have been paid or that drawback may have been allowed on excise duty. They still used the words “goods exported in bond” without any qualification. This clearly indicates that the intention was to include goods exported under a customs bond or an excise bond. If the Legislature wanted to restrict these words only to goods exported under a customs bond they would have had to say so specifically. In the absence of any restrictive words the expression must be given its full meaning and must include goods exported either under a customs bond or an excise bond.

There is another reason why the interpretation sought to be given cannot be accepted. Section under consideration came into effect in June 1994 and operated upto 26th May, 1995. Prior to that Section 20 was as construed by the Madras High Court. As is set out hereinabove, the earlier Section clearly included goods exported under an excise bond. When the Legislature was changing the Section, if they wanted to depart from the earlier position they would have had to do so in express words. The use of wide words “goods exported in bond” indicates that no departure was being made. It must also be mentioned that with effect from 26th May, 1995, Section 20 was again changed. The proviso to Section 20 was omitted. However, by a Notification it was *inter alia* clarified that if goods were “exported in bond” without payment of central excise duty, the amount of the central excise duty, which had not been paid, would have to be paid. Thus the subsequent Section 20, read with the Notification, also indicates that even though the provision is in the Customs Act the words includes goods exported under an excise bond “goods exported in bond”. As prior and subsequent to Section 20 under consideration the position was that goods exported even under an excise bond were covered, it is not possible to accept the submission that during the relevant period the Legislature had made a departure.

Mr. Ganguli next submitted that the earlier Section 20 clearly provided that in cases of goods exported under an excise bond the customs

- A** duty payable would be equal to the excise duty which had not been paid. He submitted that even by the Notification, for the subsequent period, it has been clarified that on re-importation what would have to be paid is the amount of excise duty which had not been paid. He submitted that, during the period under consideration, it could not have been the intention of the
- B** Legislature that the entire customs duty payable on the like goods be paid. He submitted that the excise duty, which would have been payable, was only Rs. 9,21,627.48, whereas, the customs duty which is payable is Rs. 61,62,848.40. He submitted that such an interpretation would render the Section unreasonable.
- C** Mr. Ganguli further submitted that the interpretation given would also lead to treating similarly situated persons differently. He submitted that goods could be exported under Rule 12 or 13 of the Central Excise Rules. He pointed out that Rule 12 permits parties to take a rebate after first paying the duty. He submits that goods exported under Rule 12 would be re-
- D** imported without payment of any excise duty. He submitted that it has been consistently held that there is no difference between parties, who export either under Rule 12 or 13. He submitted that the interpretation given would lead to unfair discrimination between persons in identical position. He submitted that for this reason also such an interpretation
- E** should not be given.

In these proceedings, the question of vires of Section 20 does not arise. As the wording of the Section is clear, the Court is bound to interpret it as it stands. It is clarified that we are not saying that any discrimination or hardship arises. All that we are saying is that this is not a point which

F arises for consideration in this Appeal.

Under the circumstances, we see no infirmity in the Judgment of CEGAT. We see no reason to interfere. The Appeal stands dismissed. There will be no order as to costs.

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K.K.T.

Appeal dismissed.