

(1988) 04 BOM CK 0006

Bombay High Court

Case No: Writ Petition No. 2559 of 1982

Chemical Corporation of India

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: April 25, 1988

Acts Referred:

- Customs Act, 1962 - Section 15, 46

Citation: (1991) 34 ECR 380 : (1988) 36 ELT 289

Hon'ble Judges: R.A. Jahagirdar, J

Bench: Single Bench

Judgement

1. The petitioner is a sole proprietary firm and had contracted to import with a company in South Korea 100 metric tonnes of PVC Resin which fell under the heading 39.01/06. The petitioner opened a letter of credit and 10 bills of lading were received. On or about 11th October 1982 the vessel known as M.V. "Styrax" entered the territorial waters of India. On the same day the petitioner filed 10 bills of entry for home consumption. It has been also mentioned in paragraph 4A, which was inserted by way of amendment after obtaining the leave of the Court, that the said vessel was granted entry inwards on 18th October 1982. Before the discharge of the goods could take place, the import duty on PVC Resin was raised from 100% to 150% on 5th of November 1982. However for import from South Korea the duty was raised from 50% to 75%. The petitioner was called upon to pay the duty at the said increased rate. This has been challenged by the petitioner in this petition under Article 226 of the Constitution of India.

2. Mr. Parsurampururia, the learned Advocate, appears for the petitioner while none appears for the respondents. After narrating the facts, which I have summarised above, Mr. Parsurampururia pointed out that u/s 15 of the Customs Act, the rate of duty and tariff valuation applicable to any imported goods shall be the rate and valuation in force, in the case of goods entered for home consumption, on the date on which the bill of entry in respect of such goods is presented u/s 46. In the instant

case, the bill of entry was presented on 11th of October 1982. Mr. Parsurampururia, however, does not contend that this is the date for determining the rate of duty because the proviso says 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. Mr. Parsurampururia, therefore, contends that on the facts which have been stated in paragraph 4A of the petition, the rate of duty and tariff valuation in the instant case should be the one in force on 18th October 1982, by which date no increase in the duty had been made on the goods involved in this case, namely PVC Resin.

3. Though none appears for the respondents, Mr. Parsurampururia was fair enough to point out that there is an affidavit-in-reply of one Sunil Uke on behalf of the respondents. That affidavit in reply is dated 19th of February 1987. The said Sunil Uke was at that time working as the Assistant Collector of Customs. As usual, the original affidavit, which ought to be in the record of this Court, is missing. The Associate is unable to lay his hands upon the same. However, I have relied, for the sake of the disposal of this petition, on a copy of the said affidavit given to me for my perusal by Mr. Parsurampururia.

4. In this affidavit it has been denied on behalf of the respondents that the entry inwards of the vessel was given on 18th October 1982. Nothing has been mentioned in the affidavit-in-reply as to why the averment made by the petitioner in paragraph 4A should be disbelieved. Nothing has also been stated as to on what material this denial is based. Unfortunately, as already mentioned by me above, nobody appears for the respondents to point out the material on the basis of which the said averment has been made in the affidavit-in-reply.

5. On the other hand, Mr. Parsurampururia has produced for my perusal the issue dated 2nd November 1982 of the Daily Shipping Times in which it is stated that the vessel M.V. "Styrax", which has come from Korea, was in port for import discharge. Obviously, therefore, this was much before 5th November 1982 because the said issue of Daily Shipping Times is dated 2nd November 1982.

6. In view of the above, the petition must succeed. Rule is made absolute in terms of prayer clauses (a) and (aa), except the interest part of the latter prayer. The amount shall be refunded to the petitioner within eight weeks from today. If this is not done, then the respondents will be liable to pay interest at the rate of 15% per annum after the expiry of eight weeks from today.

7. There will be no order as to costs.