

(1921) 12 BOM CK 0022

Bombay High Court

Case No: None

The Vacuum Oil Company

APPELLANT

Vs

The Secretary of State for India
in Council

RESPONDENT

Date of Decision: Dec. 16, 1921

Acts Referred:

- Sea Customs Act, 1878 - Section 30

Citation: (1923) ILR (Bom) 174

Hon'ble Judges: Shah, J; Norman Macleod, J

Bench: Division Bench

Judgement

Norman Macleod, Kt., C.J.

This is a suit filed by the plaintiffs; against the Secretary of State praying (1) for a declaration that the method of valuation adopted by the Collector of Customs at Bombay in respect of the plaintiffs' Mobil oils imported into India was perverse, wrongful, invalid, illegal and ultra vires; (2) that it might be declared that the sum of Rs. 3,391-2-0 had been perversely, wrongfully and illegally exacted from the plaintiffs by way of customs duty in respect of their said oils and contrary to the provisions of the Sea Customs Act; (3) that it might be declared that in the circumstances Of this case there was no wholesale cash price ascertainable for which the. plaintiffs' Mobil oils were sold or were capable of being sold at the time and place Of importation thereof within the meaning and principle of Section 30(a) of the said Sea Customs Act; (4) that it might be declared that in any event in the circumstances of the case the invoice price returned by the; plaintiffs in the bills of entry In respect of the plaintiffs' said oils was the correct basis on which to assess the customs duty on the plaintiffs' oils under the Sea Customs Act.

2. The suit was dismissed by Mr. Justice Kajiji.

3. The question in appeal is, what is the proper construction of Section 30 of the Sea Customs Act (VIII of 1878).

4. u/s 29 of the Act:

On the importation" into, or exportation from, any customs-port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill of entry or shipping bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill.

In case of doubt, the Customs-collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity or description which it is in his power to furnish. And thereupon such person shall produce such document and furnish such information....

5. Then u/s 30:

For the purposes of this Act the real value shall be deemed to be--

(a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof: or

(b) where such price is not ascertainable, the price at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid.

6. No doubt, from, the prayers of the plaint, it would, -seem that the first argument of the plaintiffs was that there was no wholesale cash price which could be ascertained u/s 30(a) of the Act; but from, the evidence in the case it is perfectly clear that it would be possible to ascertain the wholesale cash price at which Mobil oil could be sold in Bombay, the place of importation, at or about the time of importation. And since the wholesale cash price could be ascertained, it seems perfectly clear that the wholesale cash price was then the real value of the goods.

7. But there is the second argument that the term "wholesale cash price" has another meaning, not the popular meaning; but this meaning, as far as I can gather from the arguments advanced, is the same as "the cost of the goods to the importer" on the basis that the goods should be taken as being sold to the importer at the price which it cost him to lay them down in Bombay. If that is the case, as pointed out by the learned Judge, there would be no necessity for Sub-clause (a) of Section 30 of the Act, as in every case the importer would be entitled to have it

decided that the real value of the goods imported was the cost of the importation to him.

8. It has been pointed out by the learned Advocate-General that it is not always possible to ascertain the wholesale cash price of goods imported, and it is, therefore, necessary in such a case that some provision should be made for ascertaining the real value; and so Sub-clause (6) was added in order that the real value might be ascertained where there is no wholesale cash price. In this case, as I have already pointed out, there is no difficulty whatever in ascertaining the wholesale cash price of Mobil oil sold in Bombay: and, therefore, that is the only test to be adopted for ascertaining the real value of the goods. That is the plain meaning of the section. It is difficult to my mind to see how it can have any other possible meaning, or how the words "wholesale cash price" can possibly be said, as argued by the appellants, to be the equivalent of "the cost to the importer."

9. The judgment of the Court below was right, and the appeal must be dismissed with costs.

Shah, J.

10. I concur. I desire to deal briefly with the two arguments which have been urged on behalf of the appellants, viz., that under Clause (a) of Section 30 of the Sea Customs Act the wholesale cash price is not the price which the importer realises on a wholesale disposal of the goods by him but the price which is Actually paid by him for importing the goods in Bombay. It is farther urged that under Clause (b), where such price is not ascertainable, the real value is the cost at which the goods of the like kind and quality could be delivered at such place, without abatement or deduction except as aforesaid, for the purposes of taxation; and that no different standard could have been intended to be adopted for the purpose of taxing the goods under Clause (a). It is also urged that as a provision for taxing the subject, it must be strictly construed.

11. As regards this last general consideration, there can be no question. No doubt Section 30 must be construed strictly, and if the words are ambiguous or admit of any doubt, the construction in favour of the subject may be adopted. But having regard to the terms of Section 30, both the contentions urged on their behalf must be disallowed.

12. As regards the contention that the wholesale cash price within the meaning of Clause (a) must be the price paid by the imported and not the price realised on the wholesale disposal of the goods at the place and time of importation, I think the expression used clearly indicates that it must mean the wholesale cash price for Which the goods of like kind and quality are sold, or are capable of being sold, at the time and place of importation. Those words clearly indicate that it must be the price which the importers here would be able to realise on a wholesale disposal of the goods by them to any person in Bombay. The expression could not be construed as

meaning the price which they may have paid for the purpose of importing goods to Bombay.

13. As regards Clause (b), in terms it applies where the Wholesale cash price is not ascertainable. Here the wholesale cash price being ascertainable, the clause cannot apply. There is no reason to suppose that the standard adopted, under Clause (b) for taxation would be necessarily adopted as a standard under Clause (a). It may well be, as it appears, to be the case on the language of the section, that the Legislature has adopted one test for cases covered by Clause (a) and is satisfied with the next best test in other cases, to which -the first test cannot be applied. The argument is based on the assumption that the test in both cases must be the same, for which the language used does not afford any warrant.

14. Lastly, it is urged that the Legislature could not have intended to tax the profits, which the importer would make at the time and place of importation; and that the construction adopted by the lower Court involves that result. Here again the answer is that we can only decide on the language used by the Legislature and not upon such a priori considerations as the argument suggests.

15. I think, therefore, that the decision of the trial Court is perfectly right.