

(1995) 06 BOM CK 0064**Bombay High Court****Case No:** Writ Petition No. 7 of 1987

Samar Timber Corporation

APPELLANT

Vs

Asstt. Collector Of Customs,
Bombay

RESPONDENT

Date of Decision: June 23, 1995**Citation:** (1995) 79 ELT 549**Hon'ble Judges:** S.H. Kapadia, J; M.L. Pendse, J**Bench:** Division Bench**Judgement**

M. L. Pendse, Acting C.J.

1. M/s. Universal Products had imported from Singapore a consignment of timber load in the month of October 1986. The Petitioners claim to have purchased the consignment on "High-Seas" basis. On November 5, 1986, the Customs House Agent of the Petitioners prepared a Bill of Entry for home consumption and tendered the same in the Customs office. It is the claim of the Petitioners that the Bill of Entry was returned as the weight of the consignment did not tally with that shown in the Import General Manifest. The Petitioners had taken away the Bill of Entry and lodged it on November 19, 1986. The duty payable on 19th November, 1986 had increased by virtue of notification. The Petitioners claim that the duty should be charged as prevailing on November 5, 1986. The Petitioners approached this Court, seeking clearance of goods on payment of duty which was payable on November 5, 1986. The Petitioners were permitted to clear the goods on payment of duty prevailing on November 5, 1986 and on furnishing of bank guarantee for the disputed amount of duty.

2. Mr. Chandrachud, learned Counsel appearing on behalf of the Petitioners submitted that the Bill of Entry was presented on November 19, 1986 and the claim of the department that it was presented on November 5, 1986 is not correct. The learned Counsel urged that the Bill of Entry was returned as it was not in proper form and therefore, there was no presentation. The contention is devoid of any

merit. On behalf of the Respondents, Mr. Shah has produced the original Cargo Declaration Form and perusal of the same leaves no manner of doubt that not only the Bill of Entry was presented on November 5, 1986 but was also entered in the Cargo Declaration Register. The perusal of the original register indicates that the Bill of Entry was returned to the Petitioners after registration and thereafter, the corrected Bill of Entry was represented on November 19, 1986. It is well settled that the rate of duty payable is on the date when the Bill of Entry is presented. It is not uncommon that the Bills of Entry after presentation are returned to the importer or its agent for correction and after such correction the Bills of Entry are represented. It is impossible to accede to the claim that the relevant date is not the date of presentation but the date of representation. In our judgment, the claim of the Petitioners is devoid of any merit and the petition must fail.

3. Accordingly Rule is discharged with costs. The Respondents are at liberty to enforce the bank guarantee.