



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.23333 of 2017

and

W.M.P. (MD) Nos. 19622 to 19624 of 2017

M/s.Lakshmi Dall Mill,
Represented by its Proprietor,
Shri.P.S.Shanmugam,
20A, Ganesh Nagar, Gorikadu,
Suramangalam Main Road,
Salem - 636 009.

.. Petitioner

Vs.

The Assistant Commissioner of Customs (Group I),
Customs House,
New Harbour Estate,
Tuticorin - 628 004.

.. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the assessment made in bill of entry no.3911352, dated 08.11.2017 and quash the same and further direct the respondent to re-assess the bill of entry no.3911352 dated 08.11.2017 after extending the benefit of Sl.No.20 of notification no.50/2017-Customs dated 30.06.2017 as it stood on 07.11.2017 within a time bound manner.

For petitioner

: Mr.D.Derrick Sam

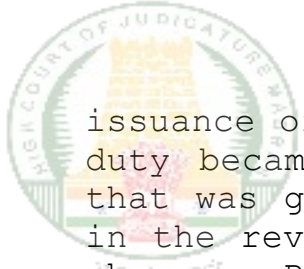
For respondent

: Mr.R.Aravindhan

O R D E R

The petitioner imported "Yellow Peas" from Russia in which invoice was raised on 06.10.2017. It was meant for home consumption. The shipment was made on 06.10.2017 and the vessel carrying the goods was granted entry inwards permission on 07.11.2017. The petitioner fed the details into the Indian Customs EDI system, Custom House, Harbour Estate, Tuticorin for generating the bill of entry for home consumption on 07.11.2017. But, due to error in the system, there was negative acknowledgment and the bill of entry number was generated only on 08.11.2017.

2. Normally this delay could not have made any difference. In the present case, the basic customs duty leviable on yellow peas as on 07.11.2017 was covered by Notification No.50/17 dated 30.06.2017. The duty was nil. But, on account of the



issuance of Notification No.84/17 on 08.11.2017, the basic customs duty became 50%. As a result even though in the bill of entry that was generated initially showed the basic custom duty as nil, in the revised bill of entry, the basic customs duty leviable was shown as Rs.22,91,886/-. For the petitioner, it is not "peanuts" but one causing substantial financial burden. Therefore, the petitioner wanted the respondent to re-assess the bill of entry by applying Notification No.50/17 dated 30.06.2017 and permit clearance of the goods for home consumption. Since the said request was not acted upon, the petitioner had to invoke the writ jurisdiction of this Court. The petitioner highlighted the fact that the goods are perishable in nature and that therefore the matter cannot brook any delay.

3.Considering the urgency of the matter, this Court directed the respondent to file their response. The respondent also duly filed the counter affidavit.

4.Heard Mr.G.Derrick Sam, learned counsel appearing for the petitioner and Mr.R.Aravindhan, learned standing counsel for the respondent.

5.The learned standing counsel primarily relied on Section 15 of the Customs Act, 1962. Section 15 reads as under:

"15.Date 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 a bill of entry for home consumption in respect of such goods is presented under that section;

(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 or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

(2)The provisions of this section shall not apply to baggage and goods imported by post."

<https://hcservices.ecourts.gov.in/hcservices/>

6.The learned standing counsel for the respondent placing reliance on the decisions of the Hon'ble Supreme Court reported in

(1989) 4 SCC 21 (Bharath Surfactants (P) Ltd v. Union of India) and 1993 Supp (3) SCC 453 (Dhiraj Lal H. Vohra v. Union of India), he would strongly contend that equitable considerations are out of place while deciding issues relating to fiscal levies. It may be that the import was done on 07.11.2017 and that the imported furnished the relevant particulars on the same date. But the fact remains that for whatever reason the bill of entry got generated only on 08.11.2017. Therefore, the notification that was in force on 08.11.2017 alone must be applied in this case. The standing counsel sought dismissal of the writ petition.

7.The question that arises for determination is what is the date on which the bill of entry in this case was presented by the petitioner under Section 46 of the Act. Section 46 of the Customs Act underwent an amendment vide Act 8 of 2011. The importer of any goods, other than goods intended for transit or transshipment, shall make entry there of by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form. The proviso to Section 46(1) states that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner. As per Section 46(3), A bill of entry under sub-section (1) may be presented at any time after the delivery of the import manifest or import report, as the case may be.

8.Every statute has what is known as dictionary clause. The definitions are set out for the key terms used in the statute. But every such Section opens with the following phrase :

"2.Definitions. - In this Act, unless the context otherwise requires,-".

In other words, the meaning that is to be attached even to an expression which has been specifically defined in the definitional clause would depend on the context. The expressions "presented"/ "presenting" occurring in Section 15 as well as Section 46 of the Customs Act, 1962 have not been defined in Section 2 of the Act. The case laws cited by the learned standing counsel are prior to the year 2011 when electronic presentation of the bill of entry was not contemplated.

9.E-governance is the imperative of the current times. At the same time, even as we are in the transition era, teething troubles are bound to be there. The Government will have to issue suitable directions to enable the citizens to tide over the same. The remedial and ameliorative measures ought to be put in place. That is why the Central Board of Excise and Customs issued Instruction No.12/2017-Custom dated 31.08.2017 clarifying that if importers have not been able to file bill of entry for clearance of imported goods within stipulated time period because of technical problems related to ICEGATE connectivity, server etc.



the importer should not be penalised for delay happening due to any system related fault. The entire circular deserves to be extracted verbatim :

Instruction No. 12/2017-Customs

WEB COPY

F.No.450/10/2017-Cus IV
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise and Customs)

New Delhi, dated the 31st August. 2017

To

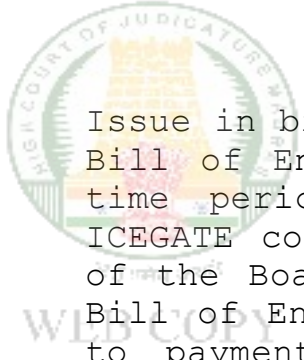
All Principal Chief Commissioner/Chief Commissioner of Customs /
Custom
(Preventive),
All Principal Chief Commissioner/Chief Commissioner of Central
Tax, Central Excise
& Customs
All Director General,
All Principal Commissioner/Commissioner of Customs / Customs
(Preventive),
All Principal Commissioned Commissioner of Central Tax Central
Excise & Customs

Sir /Madam,

Subject: Clarification on difficulties related to recent
amendments in Customs Act, 1962 -reg.

Kind reference is drawn to Notification No.26/2017-Customs (N.T.) and Notification No.27/2017-Customs (NT.) dated 31.03.2017, amending Bill of Entry (Electronic Integrated Declaration) Regulations, 2011 and Bill of Entry (Forms) Regulations, 1976 respectively to prescribe late charges for delayed presentation of Bill of Entry. The said notifications have been issued consequent upon the amendments brought in section 46 of the Customs Act, 1962, vide Finance Act, 2017. Attention is also invited to Circular No.12/2017- Customs dated 31.03.2017, providing clarification with regard to amendments introduced in section 46 and 47 of the Customs Act, 1962 vide Finance Act, 2017.

2.With regard to the above provisions, Board has received representations regarding difficulties being faced in implementation of the above stated provisions when there are problems encountered due to instability of ICEGATE.



Issue in brief: Many a times, importers have not been able to file Bill of Entry for clearance of imported goods within stipulated time period because of certain technical problems related to ICEGATE connectivity, server etc. It is also brought to notice of the Board that there are instances when, even after filing a Bill of Entry within the prescribed time period, it is subjected to payment of charges for late filing as its number is not generated within the free period, prescribed under section 46 of the Customs Act, 1962.

3. Board has examined the issue and accordingly following clarification is given.

Board is of the view that importer should not be penalised for delay happening due to any system related fault. In this regard, section 46 of the Customs Act, 1962 provides that payment of charges for late presentation of the Bill of Entry is subject to existence of sufficient cause to the satisfaction of proper officer. The proper officer in this regard is Additional or Joint Commissioner of Customs, as provided in Notification No. 40/2012-Cus(NT.) dated 02.05.2012. The jurisdictional Additional/Joint Commissioners of Customs are advised to judiciously exercise power conferred on them to ensure that the trade and stakeholders particularly the diplomatic community are not put to undue hardship and necessary relief, as applicable, may be provided to the importers in bona-fide cases. Jurisdictional Chief Commissioners are requested to identify cases where reasons for late filing of Bill of Entry are not attributable to the importers and issue suitable standing orders so that proper officers can exercise powers in the interest of ease of doing business.

4. All Chief Commissioners of Customs/Customs and Central Excise are requested to issue suitable standing order, in view of the foregoing decisions taken by the Board.

5. Difficulty, if any, in implementation of the above directions may be brought to the notice of the Board.

Yours faithfully

(Zubair Riaz)
Director (Customs)

10. In the present case also even though the importer had filed all the relevant particulars on 07.11.2017 itself, it was on account of the system related fault, the bill of entry got generated on 08.11.2017. The approach set out in the aforesaid <https://hccs.court.gov.pk/hccs/Notices/12/2017-Customs> dated 31.08.2017 deserves to be adopted in the present case also. There is a maxim "Actus curiae neminem gravabit". It means that nobody should suffer for the



wrong done by a quasi-judicial body. The aforesaid instruction is also an analogous application of the same principle. In the law of contracts also, no party is expected to do an act impossible in itself.

11. In the typed set of papers, the petitioner has enclosed the print out which indicates that on 07.11.2017 at about 11.32 hrs the details were fed but the status was shown as "negative acknowledgment received with error". Though in the counter there is a formal denial of the petitioner's claim, there is no reference to the material enclosed by the writ petitioner in the typed set of papers. That is why the learned standing counsel in all fairness did not contest the claim of the writ petitioner that they had filed the relevant particulars on 07.11.2017 itself. The petitioner did not file the bill of entry through any Internet cafe or from his computer. He was physically present inside the customs house premises of the respondent. Whatever happened was due to the technical problems in the system maintained by the respondent the writ petitioner cannot be made to suffer for the same. The respondent department cannot take advantage of their own wrong. When the writ petitioner is not at fault and the system maintained by the respondent alone was responsible for a belated generation of bill of entry, this Court has to necessarily hold that the writ petitioner had presented the bill of entry on 07.11.2017 itself.

12. Therefore, in the light of Section 15 of the Customs Act, 1962, the rate of duty applicable to the import in question will be the one that obtained on 07.11.2017. Since the Notification No.84 of 2017 was issued only on 08.11.2017, the writ petitioner's case will not be governed by the same. This Court therefore quashes the impugned bill and directs the respondent to re-assess the bill of entry by applying Notification No.50 of 2017, dated 30.06.2017. The learned counsel for the petitioner expressed his difficulty that he is paying demurrage charges. The goods are perishable in nature. The respondent is directed to carry out re-assessment within a period of one week from the date of receipt of a copy of this order and release the goods immediately thereafter.

13. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/



To

The Assistant Commissioner of Customs (Group I),
Customs House,
New Harbour Estate,
Tuticorin - 628 004.

+1cc to M/S.R.Aravindhan, Advocate SR.No. 41896

+1cc to M/S.Hari Radhakrishnan, Advocate SR.No. 41214

W.P (MD) No.23333 of 2017
and

W.M.P. (MD) Nos. 19622 to 19624 of 2017
09.01.2018

SKM

JM/RSK/SAR 3/17.01.2018/7P/4C