

PETITIONER:  
MADRAS RUBBER FACTORY LTD.

Vs.

RESPONDENT:  
THE UNION OF INDIA & ORS.

DATE OF JUDGMENT 03/12/1975

BENCH:  
UNTWALIA, N.L.  
BENCH:  
UNTWALIA, N.L.  
MATHEW, KUTTYIL KURIEN  
GOSWAMI, P.K.

CITATION:  
1976 AIR 638                      1976 SCR (2) 864  
1976 SCC (2) 255

ACT:  
Customs Act-Section 27(1)-Limitation for refund of claims.

HEADNOTE:  
"V. P. Latex" imported by the appellants was treated as falling under item 87 of the Indian Tariff Act 1934, the custom Authorities and custom duty was charged, in addition to a countervailing duty under item 15A of the Central Excise Tariff, in accordance with the Central Salt & Excise Act 1944. The appellants contending that V.P. Latex is an item of raw-rubber covered only by item 39 of the Indian Tariff Act 1934 preferred refund-claim under section 27(1) of the Customs Act before the Assistant Collector, which was dismissed on the ground of limitation. The appeal under section 128(1)(b) and the Revision failed.

Dismissing the appeals, by special leave the Court.

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HELD: In the instant case, there was nothing to show that duty was paid under protest, general or specific and therefore the claim was not within the period of limitation. The view taken by the authorities on the question of limitation was correct. [867-DE]

Dunlop India Ltd., etc. v. Union of India, [1976] (2) S.C.R., P. 98 referred to.

JUDGMENT:  
CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1565-1569/73.

Appeals by Special Leave from the orders Nos. 4844-4848 of 1972 dated 25th November 1972 of the Central Govt., Ministry of Finance, Govt. of India.

D. V. Patel and K. R. Nambiyar for the Appellant.

G. L. Sanghi and Girish Chander for the Respondents.

The Judgment of the Court was delivered by

UNTWALIA, J. The appellant company in these appeals by special leave is a manufacturer of rubber tyres and tubes. It imports several raw-materials including Pyratex Vinyl Pyridine Latex used in the manufacture of rubber tyres and

tubes. The Customs authorities of the Government of India have been charging custom duty on V. P. Latex under the residuary item 87 of the Indin Tariff Act, 1934 instead of ICT 39-an item meant for charging duty on raw rubber. The custom duty charged under item 87 is much more than the one chargeable under item 39. A countervailing duty under item 15-A of the Central Excise Tariff in accordance with the Central Salt and Excise Act, 1944 is also charged if the article imported is not treated as raw-rubber. On five consignments of V. P. Latex imported by the appellant in the year 1968 custom duty was charged under item 87 by the Appraiser pursuant to his order of assessment. Since he was an officer lower in rank than the Assistant Collector of Customs the appellant filed five applications before the Assistant Collector under section 27 (1) of the Customs

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Act, 1962-hereinafter referred to as the Act, for refund of the excess amount of duty charged. In other words, the appellant took the stand that if a custom duty would have been charged on V. P. Latex under item 39 then the amount would have been less to the extent of Rs. 3,74,879.49 on the five consignments in question. It, therefore, claimed the refund of the said amount, the details of which are as follows:

| Bill No. and date              | Date of claim for refund | Delay       | Amount      |
|--------------------------------|--------------------------|-------------|-------------|
| 1. D. NO. 1644 dated 24-6-1968 | 8-4-69                   | 31/4 Months | 50,305.53   |
| 2. D. No. 1024 dated 18-9-1968 | 27-6-69                  | 3 Months    | 60,339.97   |
| 3. D. No. 1132 dated 21-8-1968 | 8-4-69                   | 2 Months    | 1,61,615.10 |
| 4. D. No. 1931 dated 23-7-1968 | 10-4-69                  | 1 Months    | 50,512.71   |
| 5. D. No. 68 dated 1-6-1968    | 10-4-69                  | 4 Months    | 52,106.18   |
|                                |                          |             | 3,74,879.49 |

Under section 27(1) of the Act the application for refund had to be made before the expiry of six months from the date of payment of duty, the date of payment being the date of the bill in each case. Thus there was a delay varying between 1 month to 4 months in the filing of each of the applications for refund. The Assistant Collector of Customs dismissed the applications on the ground that they were filed out of time. The appeals to the Appellate Collector of Customs filed under section 128(1) (b) of the Act failed. The appellant took the matter in revision to the Central Government under section 131. The revisions were dismissed by the Central Government by their order dated November 29, 1972 stating therein:

"The Govt. of India have carefully considered the reasons advanced by the petitioners for their failure to prefer the claims for refund within the time stipulated under section 27 of the Customs Act, 1962, but see no justification to interfere with the appellate orders. The revision applications are, therefore, rejected."

These appeals were filed from the said order after obtaining special leave of this Court.

Mr. D. V. Patel learned counsel for the appellant submitted that in view of the recent decision of this Court

in Dunlop India Ltd. etc. v. Union of India & Ors. V. P. Latex was chargeable to duty under item 39 only. The applications filed by the appellant for refund of the excess amount have erroneously been dismissed on the ground of having been filed out of time. Counsel submitted that the appellant used to pay custom duty not as and when a particular consignment was received but by making deposits in a running account. Hence no parti-

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cular date of payment could be assigned in respect of a particular consignment. He further submitted that the duty was paid under protest and hence under the proviso to sub-section (1) of section 27, the limitation of six months did not apply. Mr. G. L. Sanghi, learned counsel for the respondents contended that no case of running account had been made before the authorities below and that there was nothing to show that the duty had been paid under protest in relation to any of the five consignments.

It is no doubt true that in view of the decision of this Court mentioned above the custom duty was chargeable on import of V. P. Latex under item 39. The authorities below do not seem to have decided the refund applications of the appellant on merits. They have dismissed them merely on the ground of limitation. The only question, therefore, which falls for determination by us is whether the applications for refund were filed out of time.

Section 27 reads as follows:

"27. (1) Any person claiming refund of any duty, paid by him in pursuance of an order of assessment made by an officer of customs lower in rank than an Assistant Collector of Customs may make an application for refund of such duty to the Assistant Collector of Customs before the expiry of six months from the date of payment of duty:

Provided that the limitation of six months shall not apply where any duty has been paid under protest.

Explanation-Where any duty is paid provisionally under section 18, the period of six months shall be computed from the date of adjustment of duty after the final assessment thereof.

(2) If on receipt of any such application the Assistant Collector, of Customs is satisfied that the whole or any part of the duty paid by the applicant should be refunded to him, he may make an order accordingly.

(3) Where, as a result of any order passed in appeal or revision under this Act, refund of any duty becomes due to any person, the proper officer may refund the amount to such person without his having to make any claim in that behalf.

(4) Save as provided in section 26, no claim for refund of any duty shall be entertained except in accordance with the provisions section.

The appellant's case obviously and admittedly was not covered by sub-section (3) as it had not challenged the order of assessment in any appeal or revision. Nor was it a case where any duty was paid provisionally under section 18. The appellant's case was governed by sub-section (1) of section 27. No case of any running account was set up by the appellant nor was there anything in the records of this case to substantiate it. Custom duty was paid in respect of each of the five consignments on the date of its respective bill. Ultimately this

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position could not be disputed before us. The appellant,

however, contended that the duty was paid always under general protest which covered the cases of these five consignments also. Hence under the proviso to sub-section (1) the limitation of six months does not apply.

Our attention was drawn to several letters in the records of the appeals before us to substantiate the plea of payment under protest, but none of them helps the appellant. We may refer to only two of them. The appellant wrote a letter on February 8, 1968 to the Assistant Collector of Customs, Madras making out a case therein that V. P. Latex was assessable to duty under item 39-ICT. Finally in this letter a protest was made for the assessment of duty under item 87 on V. P. Latex imported by the company in the past. This letter was written before the five consignments in question were imported and duty paid thereon. The protest, therefore, embodied in the letter aforesaid was not in respect of any of these consignments. A letter written on July 15, 1968 was a letter written at a point of time when two out of the five consignments had been imported; but three were imported after the writing of this letter by the appellant to the Asstt. Collector of Customs, Madras. This letter relates to a consignment of 59 drums of V. P. Latex which could not be connected with any of the five consignments in question. Thus there is nothing to show that duty on them was paid under protest, general or specific.

It was lastly contended on behalf of the appellant that in view of the recent decision of this Court, the Govt. should be directed to refund the excess amount of Rs. 3,74,879.49 charged on the five consignments. We are unable to do so because the present appeals arising out of the orders made by the Government of India in proceedings under section 27(1) of the Act have got to fail on the ground that the view taken by the authorities below on the question of limitation could not be shown the incorrect.

In the result the appeals fail and are dismissed. There will be no order as to costs.

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Appeals dismissed.