

PETITIONER:
PRIYANKA OVERSEAS PVT. LTD. AND ANR.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 15/11/1990

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
SINGH, K.N. (J)

CITATION:
1991 AIR 583 1990 SCR Supl. (3) 138
1991 SCC Supl. (1) 102 JT 1990 (4) 490
1990 SCALE (2) 1028

ACT:
Customs Act, 1962--Sections 26, 60, 68, 112(a)--Palm
Kernel-Import of--Whether permissible--Duty payable--What
is.

HEADNOTE:

The appellant company made a contract on 10.6.87 with the foreign suppliers to import under Open General Licence 35,000 MT of "Palm Kernel". Under the above contract 10681.832 MT of palm kernel was shipped from Nigeria on 26.6.87 and 25.7.87 under different bills of lading. The goods arrived in the territorial waters of India on 2/3rd October, 1987.

Prior to 27.7.1987 import of palm seeds was canalised under the Import Policy for the years 1985-88. On 27.7.1987 the Chief Controller of Imports & Exports issued a Public Notice canalising import of "any other material from which oil can be extracted" also.

As the appellant was apprehending some dispute on the import of palm kernel, it filed a writ petition in the High Court on 28.7.87, and the learned Single Judge passed two interim orders. On appeal against these orders, the Division Bench on 2.12.87 set aside the interim orders with the consent of the parties and expedited the proceedings already initiated under section 124 of the Customs Act, 1962 for confiscation of the goods.

The Collector of Customs by adjudication order passed on 7.12.1987 held that the item "Palm Kernel" was a prohibited item for import except through canalisation by the State Trading Corporation in terms of the Import Policy and, consequently its import without a valid licence was in contravention of the provisions of the Customs Act, 1962 read with the Imports and Exports (Control) Act, 1947. The Collector in these circumstances directed the confiscation of the entire goods but gave an option to the appellant company to redeem the goods on payment of fine of Rs.90 lacs. The Collector also imposed a personal penalty on the appellant.

The customs duty as applicable on the date of the arrival of the

ships, i.e. 2/3rd October, 1987 was 105%. The said customs duty was withdrawn on 4.12.87 and as such there was nil duty on palm kernel, and this position remained upto 28.1.88. The exemption from customs duty was however withdrawn from 29.1.88 as a result of which the earlier duty of 105% came into effect. The customs duty was further increased from 1.3.88 and the new customs duty was at 245%.

The appellant company removed 3935.364 MT of Palm Kernel on 17.12.87 by paying proportionate amount of penalty and nil customs duty. The appellant then filed bills of entry for the remaining 6746.468 MT of Palm Kernel on 28.1.88 but did not deposit the redemption fine.

On merits, the learned Single Judge by his order dated 19.4.88 held that the Palm Kernel was an item different and distinguished from Palm seeds, and the same could be imported under OGL as R was covered under item no. 1, Appendix 4 of the Import Policy. Accordingly, the learned Judge ordered the goods to be cleared on payment of such duties as were leviable on 28.1.88, when the appellant had entered the bill of entry seeking clearance of the goods.

The Division Bench on appeal affirmed the order of the Trial Court in so far as the setting aside of the adjudication order was concerned. The Division Bench however held that the appellant shall be entitled to get delivery of the balance goods on payment of duty at the rate prevailing in October, 1987.

Both the parties preferred appeal before the Court by special leave,

Before the Court it was inter alia contended on behalf of the appellant company that (i) Palm seed and Palm Kernel were two different items as shown in the commercial transactions in the trading community and Palm seeds alone was a canalised item; (ii) a fiscal statute had to be construed strictly and in favour of a citizen especially when the question of imposing fine and penalties was involved, and (iii) the Palm Kernel having been shipped by the foreign seller from Nigeria on or before 27.7.87 the appellant was legally entitled to import the same under the OGL.

It was further contended that the rate of duty of the imported goods, as provided in section 15 of the Customs Act, 1962 shall be the rate and valuation in force, in the case of goods cleared from a warehouse under section 68, on the date on which the goods were actu-

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ally removed from the warehouse, and the Division Bench committed error in holding that the date for actual removal of the goods in the present case shall be considered as 2/3rd October, 1987 when the goods entered the territorial waters of India; that irrespective of the physical removal of the goods from the warehouse, the goods would be deemed to have been actually removed in law on 28.1.88 when the petitioner had filed ex-bond bills of entry seeking clearance of the goods; in the facts and circumstances of this case the term 'actual removal' used in section 15(1)(b) could not mean physical removal as the same was made impossible by the wrongful act of the respondents; and it should be given a meaning in the juristic sense as deemed removal.

On behalf of the Revenue, it was contended that (i) the distinction sought to be made between 'Palm Kernel' and 'Palm Seed' was artificial; (ii) the appellant had clearly understood the Import Policy and was fully aware of the fact that Palm Kernel was a canalised item and still it imported the same under the OGL; (iii) the appellant had let no evidence to show that the 'Palm Kernel' and 'Palm seed' were

considered as two different commodities in the popular sense in commerce or trade. As regards the question of levy of duty, it was contended that in the matter of taxation there was no question of applying any principles of equity or the deeming fiction in construing the provisions of section 15(1)(b) of the Customs Act; even if the appellant had entered the bill of entry on 28.1.88, admittedly the goods were not actually removed on that date and the hiatus if any in actual removal, could not be extended to an artificial date.

In the alternative it was contended that the appellant fully knowing that the rate of duty in October, 1987 when the goods had arrived in India was 105% and even if the deeming provision for removal of the goods was applied for the purpose of section 15(1)(b) of the Customs Act, then the date of actual removal should be 2/3rd October, 1987.

Dismissing the appeal filed by the Revenue and allowing the appeal filed by the appellant company the Court,

HELD: (1) "Palm Kernel" is not included in the item "Palm Seeds", and the two commodities are different as understood in commerce or trade. [155H-156A]

(2) Prior to 27.7.87 'Palm Kernel' was not a canalised item, the High Court rightly held that 'Palm Kernel' was not included within the entry of 'Palm seed'. The Government of India itself realised the dif-

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ference in the two commodities, therefore it amended its previous policy. [156D]

(3) As the Palm Kernel was not a canalised item before 27.7.87, it could have been imported under the OGL before that date. The crucial dates in this regard are 26.6.87 and 25.7.87 when the goods were actually loaded in the Ship and not the date of arrival of the ship in the territorial waters of India. [156F]

(4) Since 'Palm Kernel' was not included within 'Palm seed' the Customs authorities had no legal justification to confiscate or impose redemption fine or penalty. [156E]

(5) Section 15 of the Customs Act provides for determination of rate of duty on imported goods. The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force in the case of goods cleared from a warehouse under section 68, the date on which the goods are actually removed from the warehouse. [158C-D]

(6) One cannot introduce the concept of deeming provision while determining the question of actual removal of the goods from the warehouse. The rate has to be determined on the basis of the date on which goods are actually removed from the warehouse and thereafter the question would be examined as to how the relief is to be moulded in case it is found that the Customs authorities were themselves responsible in preventing the importer of goods from actually removing the goods from the warehouse. [158E-F]

Duni Chand Rataria v. Bhuwarka Brothers, [1955] 1 S.C.R. 1071; M/s. Bharat Surfactants Pvt. Ltd. v. Union of India, [1989] 4 S.C.C. 21; distinguished.

Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh, [1967] 2 S.C.R. 720 referred to.

(7) The statutory principle is that if a party discharges its liability by complying with the requirement of law, and presents papers for clearance of goods, it is obligatory on the Revenue authorities to pass the order immediately thereon. If the Revenue authorities either refuse to pass the order on some erroneous or imaginary grounds or on account of any misconception of law, the

Department cannot take advantage of its own wrong in demanding higher rate of duty from the importer. [162D-E]

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(8) Admittedly, the appellant had done its part of legal duty by presenting bills of entry and complying with section 68(a) of the Act on 28.1.88. But the Customs Officer refused to release the goods on erroneous assumption that the appellant was liable to pay redemption fine and since it had not paid the said amount, the goods were not liable to be released. In the circumstances, the Department cannot be allowed to take advantage of its own wrongful act. [162F-G]

(9) In moulding relief, the Court has always applied principles of equity in order to do complete justice between the parties. The appellant is therefore entitled to the delivery of goods without paying any duty as on 28.1.88 no duty was payable on the goods. [162H, 164E]

JUDGMENT: