2 SCOB [2015] HCD 73

HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION N0. 8068 of 2005

PHP Steels Mills Limited
... Petitioner

-Versus-

The Commissioner, Customs Bond Commissionerate, Police Station- Double Mooring, Chittagong & others.
.... Respondents

Mr. Abdulla M. Hasan, Advocate
With
Mr. Ramjan Ali Sikder, Advocate
…… for the petitioner.
Mrs. Israt Jahan, D.A.G
Mrs. Nurun Nahar, A.A.G
.........for the Respondents.

Heard and Judgment on: 07.09.2015.

Present:
Mr. Justice Sheikh Hassan Arif
And
Mr. Justice J.N. Deb Choudhury.

The question whether a statute operate retrospectively, or prospectively only, in one of legislative intent. In determining such intent, courts observe a strict rule of construction against a retrospective operation, and indulge in the presumption that the legislature intended statutes, or amendments thereof, enacted by it, to operate prospectively only and not retroactively. However, a contrary determination will be made where the intention of the legislature to make the statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown by necessary implication or terms which permit no other meaning to be annexed to them, and which preclude all question in regard thereto, and leave no reasonable doubt thereof. ...(Para 13)

JUDGMENT

J.N. Deb Choudhury, J :

1. Rule Nisi has been issued calling upon the respondents to show cause as to why the impugned actions of the respondents in not making final assessment of Hot Rolled Sheet in Coil imported under Letter of Credit No. 5645043505 dated 14.02.2005 (Annexure-A) and warehoused under the in-bond Bills of Entry being No. C-141257, C-141259, C-141263 and C-141260 all dated 23.05.2005 (Annexure- F to F-3) and withholding assessment of the said imported goods should not be declared to have been passed without lawful authority and why the respondents should not be directed to make final assessment of the petitioner's imported goods at the rate of 6% pursuant to SRO No. 248 dated 16.08.2005 and return the bank guarantee Nos. 11/2005, 12/2005, 13/2005 and 14/2005 representing 7.5% of the Customs Duty already furnished by the petitioner and received by the respondents within a specific period of time and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. Relevant facts for disposal of the Rules, in brief, are that, the petitioner engaged in the business of manufacturing C.R. Coil from its imported raw material Hot Rolled Steel Sheet Coil. In course of its business, the petitioner company opened a letter of credit being LC No. 5645-043505 dated 14.02.2005 to import 5000 metric ton of its raw materials, Hot Rolled Steel Sheet in Coil from korea for an amount of US$ 3,420,000.00. The said imported goods arrived at Chittagong under Commercial Invoices No. ISB 5A3537K01, ISB5A3537K02, ISB5A3537K03, ISB5A3537K04 all dated 25.04.2005 and the related Bill of Lading being registration No. KZGN 001 to KZGN 004 dated 01.05.2005. The petitioner company was granted bonded warehouse facility in accordance with the provisions of the Customs Act. The petitioner imported the huge quantity of raw materials for its

factory so that the petitioner may ex-bond and release such quantity of goods as and when required for its factory and also pay the import duty thereon. At the time of in-bond of the imported goods, the statutory rate of import duty was at 7.5% as stated in the First Schedule of the Customs Act. The petitioner company submitted all the shipping documents including the in-bond Bills of Entry No. C-141257, C-141259, C-141263 and C-141260 all dated 23.05.2005 and the Customs authorities provisionally assessed Customs Duty representing 7.5% of the Import Duty. Thereafter the petitioner company furnished a bank guarantee Nos. 11/2005, 12/2005, 13/2005 and 14/2005 for an amount of Tk. 1,15,39,252.12, 1,17,60,416.43, 1,15,60,256.18 and 1,14,66,388.38 respectively and in-bonded its imported raw materials. The respondent No. 5, Ministry of Finance, by publishing a Gazette Notification being S.R.O No. 248-Ain/2005/2086/Shulka dated 16.08.2005 reduced the rate of customs duty from 7.5% to 6% for the imported goods. Thus the present rate of customs duty for the imported goods is 6% which is applicable for the petitioner's imported goods. It has been further stated that the amendment made in section 3 of the Finance Act, 2005 which came into force from 1st July, 2005 has no manner of application for the petitioner's imported goods. It has also been stated that in continuation of manufacturing process, required imported raw materials and thus for release/removal of imported goods from the in-bond warehouse. But the customs authorities refused to assess and release the said imported in-bond goods and orally informed that the in-bond imported goods of the petitioner would be assessed on the basis of 7.5% referring to the provisions of section 3 of the Finance Act, 2005.

3. Being aggrieved, the petitioner has come to this Court and obtained the Rule Nisi along with an interim order to release the said goods on payment of customs duty at the rate of 6% in Cash (pursuant to S.R.O No. 248 dated 16.08.2005) and furnishing a fresh bank guarantee on the difference between invoice value and the valued fixed by S.R.O. No. 248 dated 16.08.2005.

4. No affidavit-in-opposition has been filed on behalf of the respondents.

5. Mr. Abdullah M. Hasan, the learned advocate for the petitioner takes us through the writ petition and annexures thereto and submits that the petitioner imported the stated goods and in-bonded the same on 23.05.2005 long before passing the Finance Act, 2005, which came into force from 1st July, 2005 and as such the amendment of the provisions of section 30 of the Customs Act would not apply on the imported goods already in-bonded of the respective petitioners in compliance of the provisions of the Customs Act. Mr. Hasan further submits that vide Circular being S.R.O. No. 248-Ain/2005/2086/Shulko, which was issued pursuant to section 19 of the Customs Act and reduced the rate of import duty from 7.5% to 6% shall apply for the imported goods of the respective petitioners as on the date on which the goods will actually be removed from the warehouse. In view of such position Mr. Hasan finally submits that the action of the respondents in not making final assessment of the stated goods pursuant to S.R.O No. 248 dated 16.08.2005 are liable to be declared to have been taken without any lawful authorities and are of no legal effect and accordingly prays for making the Rule absolute.

6. Mrs. Israt Jahan, the learned Deputy Attorney General on behalf of the respondents submits that the writ petition involves disputed question of fact which cannot be decided by the court and the writ petition is not maintainable as there is alternative remedy and accordingly, prays for discharging the Rule.

7. We have heard the learned advocate for the petitioner and the learned Deputy Attorney General for the respondents and perused the writ petition along with the annexures, and other materials on record.

8. The points has to be decided, whether the amendment of clause (b) to section 30 of the Customs Act vide the Finance Act, 2005 and the reduced duty as per S.R.O. No. 248 dated 16.08.2005 are applicable to the petitioner's imported goods.

9. For better understanding we like to quote the relevant section 30 of the Customs Act before its' amendment as under:

> "30. **Date for determination of rate of duty and tariff value of imported goods**- The rate of duty and tariff value, if any, applicable to any imported goods, shall be the rate of duty and tariff value in force:
>
> (a) In the case of goods cleared for home consumption under section 79, on the date a bill of entry is presented under that section and the bill of entry number is allocated thereto.
>
> (b) In the case of goods cleared from a warehouse for home consumption under section 104, on the date on which the goods are actually removed from the warehouse; and
>
> (c) In the case of any other goods, on the date of payment of duty: Provided that if a bill of entry is presented in anticipation of arrival of a conveyance by which the goods are imported, the relevant date for the purpose of this section shall be the date on which the manifest of the conveyance is delivered after its arrival."

10. By section 3 of the Finance Act, 2005 clause (b) to section 30 of the Customs Act has been amended in the following term:

"on which the goods are actually removed from the warehouse" শব্দগুলির পরিবর্তে "a bill of entry was presented under section 79 and the bill of entry number was allocated thereto" fËaØq¡¢fa হইবে।"

11. From a plain reading of clause (b) to section 30 of the Customs Act before its amendment shows that the Customs duty is applicable for the imported goods of the petitioner was the date on which the goods actually removed from the warehouse. Had it been so that no amendment made to clause (b) to section 30 of the Customs Act, the petitioners have to pay the prevailing Customs duty on the date, when the goods are actually removed from the warehouse. Now the question is whether the amendment of clause (b) to section 30 of the Customs Act would be applicable to the petitioners' imported goods? Admittedly the petitioner after import of the goods submitted bill of entry before the amendment of clause (b) to section 30 of the Customs Act came into force. It is the consistent view of our Apex Court that until specific intention expressed in the amendment made giving its retrospective effect the said amendment shall be always prospective in its force. In the case of Registrar D.U. Vs. Dr. Sajjad Hossain, reported in 1 BLD (AD) 348 Their Lordships held that, *"If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only"*. In the decision of Assessing Officer, Narayanganj Range and others vs. Burmah Eastern Limited, 1 BLD (AD) 450 their Lordships also held that, "*ordinarily a statutory provision is prospective in its operation and retrospective effect cannot be given, unless such effect is given to it in the Statute itself, either expressly or by necessary implication."*

12. In the case of Motiur Rahman and others Vs. Chowdhury Md. Mahfuzul Islam and others, 55 DLR (AD) 104, our Apex Court also held that, "*The general rule of law being, that unless there is a clear indication from the wording of the statute it is not to receive a construction retrospective in effect. The cardinal principle of construction is that every statute is prima facie prospective unless it is expressly, or by necessary implication, given a retrospective effect."*

13. The question whether a statute operate retrospectively, or prospectively only, in one of legislative intent. In determining such intent, courts observe a strict rule of construction against a retrospective operation, and indulge in the presumption that the legislature intended statutes, or amendments thereof, enacted by it, to operate prospectively only and not retroactively. However, a contrary determination will be made where the intention of the legislature to make the statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown by necessary implication or terms which permit no other meaning to be annexed to them, and which preclude all question in regard thereto, and leave no reasonable doubt thereof.

14. In Maxwell on the interpretation of Statutes, 12th Edn. The statement of law in this regard is stated thus:

"*Perhaps no rule of construction is more firmly established than thus-that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. The rule has, in fact, two aspects, for it, "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.*"

15. In Garikapati Veeraya v. N. Subbiah Choudhury, AIR 1957 SC 540 it has been held that;
"*The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.*"

16. In view of the above verdicts, observations and decisions, we are of the view that the amendment made regarding clause (b) to section 30 of the Customs Act, 1969 vide Finance Act, 2005 will be deemed to have application prospectively and cannot take away the right as has already exist with the petitioner in respect of imported goods; that is the amendment will not apply in assessing duties or taxes of the petitioner's imported goods. Moreover, the Finance Act, 2005, clearly stated that the same would come into force from 1st July, 2005.

17. Considering the facts and section 30 of the Customs Act, 1969 along with the amendment made by the Finance Act, 2005 this Court is of the view that the said amendment is not applicable to the imported goods of the petitioners, as the petitioner's imported goods were in-bonded on 23.05.2005.

18. Now the second question is whether the petitioner will get the benefit of S.R.O No. 248 dated 16.08.2005 (annexure-F to the writ petition). Had it been so that no amendment taken place, the petitioner have to pay prevailing Customs duties as per section 30 of the Customs Act, 1969 when the goods are actually removed from warehouse. In that view of the matter the S.R.O No. 248 dated 16.08.2005 would be applicable in the instant case for paying the Customs duty of the imported goods as amended clause (b) to section 30 of Customs Act has no manner of application so far the imported goods of the petitioner is concern. So, we are of the view that the petitioner will get the benefit of S.R.O No. 248 dated 16.08.2005.

19. Accordingly, we find substance in the arguments of the learned advocate for the petitioner and do not find substance in the arguments of the learned Deputy Attorney General for the respondents.

20. Similar view has also been taken by this Court in Writ Petition No. 7231 of 2005, Writ Petition No. 7394 of 2005 and Writ Petition No. 7395 of 2005.

21. In the result, the Rule is made absolute without any order as to costs.

22. The impugned action of the respondents in not making final assessment of the imported goods of the petitioner under in-bond Bills of Entry No. C-141257, C-141259, C-141263 and C-141260 all dated 23.05.2005 as per S.R.O. No. 248 dated 16.08.2005 are hereby declared to have been done without lawful authority and are of no legal effect.

23. The Customs authority is hereby directed to make final assessment of the petitioners' imported goods under in-bond Bills of Entry No. C-141257, C-141259, C-141263 and C-141260 all dated 23.05.2005 as per S.R.O. No. 248 dated 16.08.2005 and to return the bank guarantee as furnished by the petitioners on the difference value being 1.5% pursuant to the ad-interim order passed by this Court, within 30 (thirty) days from the date of receipt of this order.

24. Communicate the judgment to the respondent no.1 at once.