

MULAFFER AND ANOTHER

v.

M. B. DISSANAYAKE

COURT OF APPEAL
ATUKORALE, J AND TAMBIAH J
C. A. APPLICATION 2000 79
SEPTEMBER 29, 1981.

Mandamus – s. 47 of Customs Ordinance - bill of entry - Rules for Interpretation of the Sri Lanka Customs Import Tariff – Does footwear include parts of footwear ?

In the tariff headings a clear distinction is made between footwear and parts of footwear. Hence no occasion arises to call in aid Rule 2(a) of the Rules for Interpretation of the Sri Lanka Customs Import Tariff. The petitioners (importers) had correctly categorised the imported consignment under the heading dealing with parts of footwear and given the correct particulars in the bill of entry. Hence to insist that the goods are correctly classifiable under the heading of footwear so as to attract a heavier duty would amount to a refusal to perform a public duty and mandamus will lie.

Case referred to

- (1) *Wijeyesekera and Co. Ltd. v. The Principal Collector of Customs (1951)*
53 N. L. R. 329

Application for writ of Mandamus

P. Nagendra for petitioners
S. W. B. Waduqodapitiya, Deputy Solicitor General with
N. Y. Casie Chetty State Counsel for respondent

October 30, 1981

Cur Adv. vult

TAMBIAH, J.

The petitioners carry on business in partnership in Colombo, as an exporter and importer of goods under the name of "Marshall Exports and Imports". The respondent is the Principal Collector of Customs.

In the month of October, 1978, the petitioners placed an order with Messrs. Zee Trading Company of Singapore for 4,800 pairs of plastic soles and 4,800 pairs of plastic straps. The said goods were shipped by Messrs Zee Trading Company on the vessel "Singhe Fortune" which arrived at the Colombo Harbour on 8th December, 1978.

Section 47 of the Customs Ordinance requires an importer to deliver to the Collector a bill of entry setting out, *inter alia*, the quantity, value and the description of goods. He must also pay any duties and dues which may be payable upon the goods mentioned in such entry. The bill of entry when signed by the Collector, or person authorised by him, and transmitted to the proper officer, shall be the warrant to him for the examination and delivery of such goods.

The import duties payable on footwear and parts of footwear imported into this Country are set out in Chapter 64 of Gazette No. 298/7 of 6th January, 1978. The duty payable on "Footwear with outer soles and uppers of rubber or artificial plastic material" is 100% or Rs. 50/- per pair, whichever is higher (Heading No. 64.01); on "Parts of footwear (including uppers, in soles and screw-on heels) of any material except metal," the duty payable is 100% of the value of the goods (Heading No. 64.05).

The Bills of Entry were framed by the petitioners on the basis that the goods imported by them came under Heading No. 64.05 and the duty payable was set out as Rs. 34,057/59. The Customs authorities however took a different view. A letter dated 13th June, 1979 (annexure "X2") signed on behalf of the respondent was sent to the petitioner. It states —

"With reference to the above mentioned importation, I have to inform you that these goods are correctly classifiable under B. T. N. No. 64.01 dutiable at Rs. 50/- per pair. The total duty payable on this consignment is Rs. 240,000/-. According to the two bills of entry only a sum of Rs. 34,057/59 has been entered by you in column 10 of the said entries.

You are hereby requested to take necessary action to pay the correct duty of Rs. 240,000/-, in respect of this consignment.

If you fail to pay the correct duty of Rs. 240,000/- within one month of the receipt of this letter, further action will be taken to deal with this consignment under the provisions of the Customs Ordinance."

The 1st petitioner thereupon interviewed the respondent with his Counsel and thereafter wrote the letter "X3" of 28.6.79 requesting the respondent to refer the matter to the Attorney-General for his opinion, since a similar matter was pending before him, for his decision. As no reply was received, the 1st petitioner finally wrote the letter "X4" dated 7.11.79 wherein he stated —

"I understand however that I can only clear the goods specified above, only on payment of a duty of Rs. 240,000/- as set out in your letter of 13.6.79, and not the duty of Rs. 34,057/59, which I state is the duty due.

I have no alternative therefore but to take legal action to enforce my rights to clear the goods on payment of the duty of Rs. 34,057/59."

The Gazette contains "Rules for the interpretation of the Sri Lanka Customs Import Tariff". Rule 1 States –

"The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions."

Rule 2(a) states –

"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), imported un-assembled or disassembled."

It is the learned Deputy Solicitor-General's contention that by virtue of the 2nd limb of Rule 2 (a), the article Footwear in Heading No. 64.01 includes a reference to that article imported in a complete or finished form and also imported in an unassembled form. In short footwear includes parts of footwear and therefore attracts the higher rate of duty.

If Rule 2 (a) stood alone, I would have agreed with his contention, but regard must be had to Rule 1 which states that for legal purposes, classification shall be determined according to the terms of the headings etc. and, provided such headings do not otherwise require, according to the following provisions.

Chapter 64 is headed "Footwear, Gaiters and the like; Parts of such articles." Heading No. 64.01 refers to the complete or finished article Footwear; so do Heading Nos. 64.02,

64.03 and 64.04. Heading No. 64.05 refers to Parts of Footwear. Thus a clear distinction is made in the Headings between footwear and parts of footwear. The interpretation Rule 2 (a) by which the term footwear shall be construed to include "parts of footwear" becomes applicable only if the headings "do not otherwise require." The Tariff Headings require that a distinction be drawn between footwear and parts of footwear and hence the occasion for applying Rule 2(a) does not arise. I agree with the submission of learned counsel for the petitioner that if the tariff headings only referred to footwear and made no mention of parts of footwear, then by reason of Rule 2(a), footwear could have been interpreted to include parts of footwear. It seems to me therefore that the imported goods have to be classified under Heading No. 64.05 and dutiable at 100% of the value of the goods. The respondent has wrongly insisted that the petitioners pay a duty of Rs. 50/- per pair, under Heading No. 64.01.

In *Wijeyesekera & Co. Ltd. v. The Principal Collector of Customs* the Company was an exporter of coconut oil and other commodities. In regard to a consignment of oil in October, 1950, the Company was compelled by the Customs authorities to submit a bill of entry in contravention of the provisions of s. 59 of the Customs Ordinance (now s. 57). The section requires the exporter to submit a bill of entry setting out various particulars, including an accurate specification of the quantity, quality and value of such goods. The exporter was also required to pay the duties and dues which may be payable of the goods mentioned in such entry. Upon payment the bill of entry is signed by the Collector and the goods are passed for shipment. Where for technical reasons, it is difficult to assure that the quantity shipped will correspond with the quantity intended to be shipped, an alternative procedure was available to the exporter in terms of the rules passed under the Ordinance. In such an event, pending the ascertainment of the exact quantity, the exporter may deposit a sum of money which the Customs authorities assess as more than sufficient to cover the duty payable on the consignment. Thereafter, the true quantity shipped is measured, and a correct bill of entry prepared and signed. The exporter is entitled to recover any excess duty paid. The Company was required to deposit, in terms of the rule, a sum which was 25% in excess of the estimated duty, and at the same time was called upon to prepare and sign in advance a bill of entry on the assumption that the quantity passed for shipment would exceed by 25% the quantity of the intended cargo. The Company signed the bill of entry, under protest.

Gratiaen J. observed (p. 332) -

“Admittedly, the respondent is charged with a public duty under section 59 of the Customs Ordinance to accept in proper form a bill of entry tendered by an exporter and containing true particulars as to the quantity, value, etc., of the intended consignment. It necessarily follows that to insist upon the bill of entry being incorrectly filled up in such a manner that, upon the face of the document, the exporter would be liable to pay a heavier export duty than was justly due, would amount to a refusal to perform a public duty. In that event, a mandamus would clearly lie.”

In the present case, in the bills of entry, the petitioners have correctly categorised the imported consignment under Heading No. 64.05. For the respondent to insist that the goods are correctly classifiable under Heading No. 64.01 and that the petitioners should pay the heavier import duty, “would amount to a refusal to perform a public duty”. The petitioners are entitled to a Mandamus to compel the respondent to accept the duty payable in terms of Heading No. 64.05 and to permit them to clear the goods on payment of the said duty.

The Application is allowed. The respondent will pay to the petitioners Rs. 525/- as costs.

Atukorale, J. I agree

Mandamus issued.