
(1998) 11 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 1021 of 1997

Bipin M. Pujara

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision : 19-11-1998

Acts Referred:

Customs Act, 1962 — Section 25(3)

Citation : (1999) 63 ECC 261 : (1999) 107 ELT 298 : (2003) 133 STC 123

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Pranah Kr. Dutta, Biswajit Mukherjee and Atish Dipankar Rey, for the Appellant; Ramesh Chowdhury, for the Respondent

Final Decision : Allowed

Judgement

1. The question involved in this application is the date from which a notification issued in a Gazette comes into effect.

2. The basic fact of the matter, which is admitted, is as follows:

602 and 900 pieces of spherical roller bearing over 60 mm diameter of Russian origin were shipped from Dubai on August 20, 1996. A shipping manifest was filed by the owner of the shipping, Marine Containers Service India Pvt. Ltd., after the same was handed over to them by shipping company Natvar Parikh Industries Limited. The two bills bearing entry Nos. 0711 and 0732 were filed by the clearing agent on September 10, 1996 and presented before the concerned appraiser for assessment on September 11, 1996. On September 11, 1996 the vessel Tiger Creek in which the aforementioned assignment was being transhipped obtained permission at about 16.25 hrs. At 5.30 P.M. the Finance Bill No. 2 of 1996 was presented wherein a proposal was made to raise customs duty on ball or roller bearing from 25 per cent + 2 per cent C.V. 15 per cent to 10 per cent + Rs. 80/- per kg. and C.V. 15 per cent.

On September 12, 1996 the berthing of the said vessel took place. The

respondents assessed the customs duty payable in respect of the aforementioned two shipments to Rs. 18,33,723 and Rs. 6,94,147 respectively in place of the earlier rate Rs. 2,41,575.53 and Rs. 2,01,132.79. It appears that the petitioner sent a letter on March 17, 1997 to the Supervising Officer, Government of India asking, inter alia, as to when the said notification was published in the Gazette of India and on what date the said Gazette was made available from its counter for sale to the public. The petitioner in reply to his aforementioned enquiry received a letter dated April 28, 1997 from the Supervising Officer, Government of India wherein it was revealed that the Gazette bearing No. 289 published in Part II, Section 3(1), dated September 11, 1996 were received in the depot on January 16, 1997 and were placed on sale on the same date. It is not in dispute that the customs duty would be assessed in terms of the prevailing duty.

3. It is also not in dispute that the subject-matter of duty is covered by Section 25(3) of the Customs Act, 1962. Mr. Dutta, learned counsel appearing on behalf of the petitioner has raised a short question in support of this application. The learned counsel submits that keeping in view the fact that the aforementioned Gazette was made available for sale only on January 16, 1997, the respondents erred in assessing the customs duty payable on such shipments to such consignment in terms of the Notification dated September 11, 1996. In support of his aforementioned contention strong reliance has been placed on the cases of *State of Madhya Pradesh v. Ram Ragubir Prasad Agarwal* reported in , *Collector of Central Excise Vs. New Tobacco Co. Etc. Etc.*, and *Garware Nylons Ltd. Vs. Collector of Customs and Central Excise, Pune*, .

4. The learned counsel submits that the respondents were bound to assess the customs duty in the manner laid down under the statute and in support of his aforementioned contention reliance has been placed in the case of *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, .

5. Mr. Chowdhury, on the other hand, submits that the assessing officer had to prepare the bill in view of the fact that the customs duty payable on the consignment aforementioned by the petitioner was to be levied at the rate prevalent on date viz., in terms of the Gazette Notification dated September 11, 1996. The learned counsel submits that publication of the Gazette would mean the date on which the Gazette is printed and in support of his aforementioned contention reliance has been placed in the case of *I.T.C. Limited Vs. Collector of Central Excise, Bombay*, and in the case of *M/s. Pankaj Jain Agencies Vs. Union of India and others*, .

6. It is not disputed by any of the parties that the rate of duty payable on the consignment and/or the exemption granted thereupon must be published in the Gazette of India in terms of the provisions of the Customs Act, 1962. The only question which arises for consideration is as to from which date the said duty shall come into force.

7. As noticed hereinbefore the learned counsel have relied upon several decisions

of the apex Court in support of their respective contention.

8. In *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, the apex Court while considering the question from which date the subordinate legislation comes into force held that

"15. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the official gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient".

Publication of such subordinate legislation therefore is essential.

9. In *State of Madhya Pradesh v. Ram Ragubir Prasad Agarwal* . Apex Court while considering the matter relating to publication of syllabi laid emphasis on the need of publication in the following terms :

"24. Necessarily publication is important and we should insist that the State Government should not dismiss it as a ritual of little moment. As we have earlier indicated, but may repeat for emphasis that there is an object in publishing the syllabi and this public purpose will be stultified to the prejudice of the school-going community if the syllabi are not made known to the public generally. Only when they come to know about the syllabi prescribed, representatives in the educational field or in the public sector may be able to tell the State Government what type of text-books are available, what kinds of books will make for excellence in teaching and what manner of material will promote the interest of the students in the subjects of study."

10. The question involved in this application again came up for consideration before the apex Court in *Collector of Central Excise Vs. New Tobacco Co. Etc. Etc.*, wherein Nanavati, J., upon taking into consideration various earlier decisions, inter alia, quoted the following passage with the approval from the decision of the apex Court in *Harla v. State of Rajasthan* reported in 1952 SCR 110 which is as follows :

"5..... Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is ; or at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representative have no access and of which they can normally know nothing can nevertheless affect their lives, liberty and property by the mere passing of resolution without anything more is abhorrent to civilised man. It shocks his

conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential."

11. Upon considering the other decisions of the apex Court including B.K. Srinivasan and Others Vs. State of Karnataka and Others, and other decisions of different High Courts and the Supreme Court, it was held that-

"12. We hold that a Central excise notification can be said to have been published, except when it is provided otherwise, when it is so issued as to make it known to the public. It would be a proper publication if it is published in such a manner that persons can, if they are so interested, acquaint themselves with its contents. If publication is through a gazette then mere printing of it in the Gazette would not be enough. Unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published."

12. The same view has been reiterated by the apex Court in Garware Nylons Ltd. Vs. Collector of Customs and Central Excise, Pune, . Interestingly, in that case also like the present one a letter was issued by the Assistant Collector (Periodicals), Ministry of Works and Housing, Department of Publication, Civil Lines, Delhi which reads thus :

"With reference to your letter No. GN/85/10 Misc. dated 8-10-1985 regarding the date of availability of Gazette of India Extraordinary, Part II, Section 3, Sub-section (I), dated 30-9-1985, No. 439. I write to inform you that the above mentioned Gazette was made available for public sale on November 1, 1985 as per record of this Department."

13. Upon taking into consideration of the aforementioned communication and the decision in Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., the apex Court laid down the law that a notification cannot be said to have been duly published while it is made known to the public and in that case the letter from the Assistant Collector intimating that a copy of the Gazette communication/ Notification dated September 30, 1985 after printed became available for sale only on November 1, 1985, the effective date of such notification would be on November 1, 1985 and not the date of the printing of the notification, viz., September 30, 1985.

14. In the aforementioned background I may now consider the decision of the apex Court relied on by Mr. Choudhury in M/s. Pankaj Jain Agencies Vs. Union of India and others, . It does not appear that any question was raised, in that case as regards the date of publication. It appears that the learned counsel appearing on behalf of the parties were remiss in bringing to the court's notice that the date of printing of the notification need not necessarily be the date of publication thereof. In fact in that case there was nothing to show as was the case in B.K. Srinivasan and Others Vs. State of Karnataka and Others, that the actual date when the Gazette notification was made available to the public for sale was

published was other than the date when it was printed. It is only in that situation the apex Court although took into consideration the decision in B.K. Srinivasan and Others Vs. State of Karnataka and Others, observed that as mode of publication prescribed by Section 25(3) had been complied with as was the case of B.K. Srinivasan and Others Vs. State of Karnataka and Others, and rejected the contention that notwithstanding the publication in the Official Gazette there was yet a failure to make the law known and that therefore the notification did not clear the elements of operativeness and enforceability. It may be noticed that in the aforementioned decision the issue before the apex Court was the vires of a Notification No. 142/86-Cus, dated February 13, 1986.

15. The aforementioned decision was followed by the apex Court in I.T.C. Limited Vs. Collector of Central Excise, Bombay, by issuing an order (apparently by disposing of the application at the admission stage) upon following M/s. Pankaj Jain Agencies Vs. Union of India and others, . Neither any argument was advanced nor any reason had been assigned as to whether the date on which the law comes into force is the date of publication of the Gazette namely when the same is offered for sale to the citizens who would be affected thereby and not the date when the Gazette is printed.

16. The decisions of the apex Court as referred to hereinbefore in the opinion of this Court, in no uncertain terms state that before a person is made known of his liability under the Act, the same must be published by the modes prescribed therein as indicated hereinbefore publication of such law was considered to be an essential part of the principles of natural justice. Although ignorance of law, as is well-known, is no excuse but in view of the aforementioned decisions of the apex Court it must be held that the executive must make all reasonable efforts to make the law known to the public.

17. In the affidavit-in-opposition, no statement has been made as was sought to be contended by Mr. Chowdhury that the aforementioned Gazette dated September 11, 1996, might have been offered to the public for sale at Delhi at a much earlier date.

18. Had such a case been made out, the court could have considered the same. It is also not the case of the respondents that on September 12, 1996, the assessing officer was in possession of a Gazette published on September 11, 1996. Only because they might have received a copy of the said notification although the same was yet to be gazetted and/or published by itself did not empower the respondents to make assessment on the basis of such new notification. For the aforementioned reasons, in my opinion, the decisions relied upon by Mr. Dutt having laid down the law clearly has to be followed by this Court.

19. It is now a well-settled principle of law that each and every decision of the apex Court cannot be followed without considering the factual background and/or the argument advanced before it.

20. In Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, , the apex Court held as under :

"It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates--(i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts ; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved or assumed to be proved since the generality of the expressions which may be found there, is not intended to be exposition of whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.

Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and, therefore, judges are to employ an intelligent technique in the use of precedents."

21. The said decision has recently been followed by a learned Judge of the Patna High Court in Union of India (UOI) Vs. Kashinath Mahto and Others etc., .

22. Yet again, a Division Bench of this Court in Jaya Sen Vs. Sujit Kr. Sarkar, , of which I was a member, inter alia, held as under :

"It is now well-known that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well-known that even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. See Quinn v. Leathem (1900-1903) AER (Rep) 1, Krishena Kumar and Others Vs. Union of India and others, , Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , The Regional Manager and Another Vs. Pawan Kumar Dubey, and Municipal Corporation of Delhi Vs. Gurnam Kaur, .

28. It is also a settled law that a decision is not an authority on a point which was not argued. See Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut, ."

23. As indicated hereinbefore, the questions raised in this application were not raised before the apex Court in I.T.C. Limited 1996 (86) ELT 805 and M/s. Pankaj

Jain Agencies Vs. Union of India and others, and in this view of the matter this Court is bound to follow the decisions wherein the apex Court had relied on the law after considering the rival contentions on the point at issue.

24. For the reasons aforementioned, this application is allowed and the respondents are directed to release the subject goods, namely 602 pieces and 900 pieces of spherical roller bearings covered under Bills of Entry Nos. 0732 and 0711 respectively by reassessing the bills of entry being annexure "A" to the petition in terms of the previously prevailing rate of duty ; the earlier rate of duty being Notification No. 36/96, dated July 23, 1996. It is made clear that such an order of release should be passed at an early date, preferably within two weeks from the date of receipt of the signed copy of the minutes of the operative part of the order.

25. Department is directed to deliver xerox certified copy of the judgment to the parties on priority basis.

26. All parties concerned are to act on a signed copy of the minutes of the operative part of the order on the usual undertakings.