

**(1987) 06 MAD CK 0005**

**In the Madras High Court**

**Case No :** Writ Petitions No"s. 2138, 2243, 2310, 2350, 2368, 2381, 2382, 2403 to 2407, 2420, 2431, 2494 and 2518 to 2521 of 1987

Chetankumar and Co. and Others

APPELLANT

Vs

The Collector of Customs and Others

RESPONDENT

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**Date of Decision :** 25-06-1987

**Acts Referred:**

Customs Act, 1962 — Section 12(1), 2(23)

**Citation :** (1988) 14 ECR 296

**Hon'ble Judges :** Nainarsundaram, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Nainarsundaram, J.—The petitioners imported pulses. There was an earlier Notification No. 129/76 totally exempting the pulses from duty

under the Customs Act 52 of 1962, hereinafter referred to as "the Act". By Notification No. 40/87 bearing dated 4.2.1987, the earlier

Notification granting exemption was rescinded and duty under the Act to the tune of 25% ad valorem was imposed. According to the petitioners

this Notification was printed and published only on 17/18th February, 1987 and as such it came into effect only on that date. We can take it that

the vessels through which the imports took place entered the territorial waters of this Country on various dates anterior to 17/18th February, 1987.

The bills of entry in respect of imports made by the petitioners were admittedly lodged after 17/18th February, 1987. The petitioners want total

exemption of duty under the Act for the pulses imported by them on two-fold basis. One is, the Notification No. 40/87 became effective only on

and from 17/18th February, 1987 which according to them was the date of

printing and publication. The other is, the vessels having entered the territorial waters of this Country anterior to the above date, the import must be deemed to have taken place on the various dates of entry by the respective vessels and the old Notification No. 129/76 totally exempting the pulses from duty under the Act must govern and the petitioners cannot be mulcted with the liability to pay any duty under the Act. The petitioners are before this Court seeking relief for total exemption of duty on the aforesaid basis.

2. In my view, there is no need to go into the first basis on which the cases of the petitioners are built, namely, as to whether the Notification No.

40/87 became effective only on 17/18th February, 1987. Of course there is a pronouncement of this Court in *Asia Tobacco Company v. Union of*

*India* 1984 181 ELT 152 : 1985 ECR 1637 where it has been opined that the Notification under the Central Excise Rules 1944 would take effect

only from the date when the Official Gazette containing the Notification is circulated and put on sale to the public. Assuming that Notification No.

40/87 became effective only on 17/18th February, 1987, the petitioners have to convince this Court that it is the date of entry of the vessel in the

territorial waters of this Country that is decisive for the purpose of imposition of duty under the Act and not the date when the bill of entry was

lodged. This alone would enable them to succeed in their attempts to have the pulses imported by them totally exonerated from duty under the Act.

3. The petitioners' contention in this behalf cannot be accepted in view of the pronouncements of two Benches of this Court. In *M. Jamal*

*Company Vs. Union of India and Others*, . *V. Ramaswami and David Annoussamy JJ*, held that the chargeability of duty under the Act arises only

when the goods are imported into the territory of India when they get mixed up with the masses of India and not when they enter the territorial

waters of India and therefore the chargeability takes place only at the time of the unloading of the goods. The dictum of the Bench in the above

pronouncement has been accepted and followed by the subsequent Bench consisting of *M.N. Chandurkar, C.J.*, and *Venkataswami, J.*, in *Lucas*

*Tvs, Madras Vs. Assistant Collector of Customs, Madras and Others*, .

4. Learned Counsel for the petitioners would place reliance on a pronouncement of a Full Bench of the High Court of Bombay in *Apar Private*

Ltd. and others Vs. Union of India and others, ; a pronouncement of a single judge of this Court in Sundaram Textiles Ltd., Madurai Vs. Assistant

Collector of Customs, Madras and Another, and a pronouncement of a single Judge of the High Court of Calcutta in Everett (I) Pvt. Ltd. Vs.

Assistant Collector of Customs, . Their persuasion in this behalf is futile because I am bound by the pronouncements of the Benches of this Court

and even otherwise my own assessment of the provisions of the Act leaves me with no other alternative but to adopt and follow the view of the

Benches of this Court. Section 12(1) of the Act speaks about levy of duties of customs at such rates as may be specified under the Customs Tariff

Act, 1975 or any other law for the time being in force on goods imported into or exported from India. "Import" has been defined u/s 2 (23) of the

Act as follows:

Imports", with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

India has been defined u/s 2(27) of the Act as follows:

India", includes the territorial waters of India.

Unless the goods are imported into India, the question of levy of duty under the Act would not arise. By virtue of the goods getting imported into

India, the liability to bear the burden of duty under the Act arises. But it is only Section 15 which speaks about the rate of duty applicable to

imported goods. Section 12 itself lays down that duties of custom shall be levied at such rates as may be specified under the Customs Tariff Act,

1975 or any other law for the time being in force. If there is no specification of rates, certainly there is no question of imposition of duty under the

Act. The specification of duty becomes relevant and assumes significance by virtue of Section 15 of the Act. Section 15 lays down that the

imported goods shall suffer the duty at the rate in force with regard to the goods imported for home consumption on the date on which the bill of

entry in respect of such goods is presented u/s 46 of the Act. On the facts of the case we need not trouble ourselves with regard to other clauses in

Section 15(1) of the Act. Hence, when there are no rates specified and in force on the date of filing of the bill of entry, there is no possibility of the

imported goods suffering a duty. Conversely, when on the date of filing of the bill of entry, there are rates specified and are in force, certainly the

imported goods must bear the duty at such rates. The decisive date for chargeability is the date of the filing of the bill of entry. Hence, with respect,

I have to agree with the view expressed by the two Benches of this Court that the chargeability arises only when the imported goods get mixed up

with the mass of India and the chargeability takes place at the time of unloading of the goods. It is only in that context the date of lodging of the bill

of entry is relevant. In this view, I am not able to sustain the case of the petitioners that the date of entry of the vessel into the territorial waters of

this country should be taken as decisive for the purpose of chargeability of the duty under the Act.

5. I heard also a plea of promissory estoppel put forth by the learned Counsel for the petitioners on the ground that there was a promise held out

that the pulses would be totally exempted from duty under the Act as per the Notification No. 129/76 and acting upon this promise only, the

imports were made and the promise cannot be given a go-by to the prejudice of the petitioners before the pulses actually got imported. This line of

submission was not pursued further in view of the pronouncement of the Bench in M. Jamal Company Vs. Union of India and Others, and hence I

do not feel obliged to deal with this contention. For the above reasons, these writ petitions are dismissed. No costs. At this stage, learned Counsel

for the petitioners prays that the petitioners should be granted sufficient time to pay the duty under the Act on the pulses imported by them. I find

that pending the Writ Petitions, the imported pulses have been cleared on the petitioners' furnishing bank guarantees. The petitioners will have six

months' time from today to pay the requisite duty on the pulses imported by them provided they keep alive the bank guarantees furnished.