(1998) 01 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 1087 of 1988

Commodities International — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 28-01-1998

Acts Referred:

Customs Act, 1962 — Section 15(1)

Citation : (1999) 82 ECR 255

Hon'ble Judges : M.B. Shah, C.J;R.J. Kochar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.B. Shah, C.J.—In the present case, the petitioners had placed an order for import of White Peas under the Open General Licence. The said goods were imported from Hong Kong, orders for which were placed by the petitioners in or about August/September, 1988 with the Hong Kong sellers. The said goods were shipped from Hong Kong to Bombay on board the vessel s.s. KAMNIK.

2. The petitioners contended that the said goods arrived in the International waters on or about 26th September, 1988. The import general manifest was presented to the Customs authorities on 14th September, 1988. The bill of entry was filed with the Customs authorities on 26th September, 1988 under Serial No. 068646. The duty was checked for assessment of Customs duty on 27th September, 1988. The petitioners contended that the vessel could not get any entry into the Bombay Port up to 4th October, 1988 though it had arrived in the territorial waters of Bombay at 0400 hours on 26th September, 1998 (sic). The vessel was thereafter docked at 0400 hours on 26th September, 1988. The vessel was granted "entry inwards" on 5th October, 1988.

3. The petitioners further contended that the policy of the respondents before 4th July, 1987 was to encourage import of pulses from foreign countries and the same were exempted from Customs duty and the exemption was granted by a

Notification duly gazetted and bearing No. 129/76 dated 2nd August, 1976. This Notification was amended by the respondents on 4th February, 1997 (sic) wherein, instead of the words "from the whole of duty of Customs leviable thereon which is specified in the First Schedule", the words "from the payment of so much or that portion of the duty of Customs which is specified in the First Schedule as is in excess of 25% ad valorem" was sought to be substituted by the said Notification dated 4th February, 1987. The petitioners contended that the said Notification, though purported to be issued on 4th February 1987, was not published in the Gazette till 18th February, 1987. The petitioners further contended that the said Notification dated 4th February, 1987 was further amended by the respondents by Notification No. 324/87 dated 24th September, 1987 whereby instead of the words "25% ad valorem", the words "10% ad valorem" was substituted. The petitioners further contended that after the said Notification No. 324/87 dated 24th September 1987, the respondents once again increased the Customs duty from 10% to 30% ad valorem by Notification No. 286/88 dated 3rd October, 1988. The said Notification No. 286/88 was not published in Part II, Section 8(i) of the Gazette of India, Extra Ordinary. The petitioners submitted that to the best of their knowledge and after thorough and diligent enquiry made, the petitioners were informed that on the relevant date, immediately succeeding to the said Notification, the same was not published in the Gazette of India. The petitioners contended that import of the said goods took place on 4th October, 1988 when the vessel was docked on 4th October, 1988 at 0830 hours.

4. The respondents have produced a copy of Notification No. 286/88 dated 3rd October, 1988 published in the Extra Ordinary Gazette of India enhancing the rate of duty on pulses from 10% to 35% ad valorem. Admittedly, in the present case, "entry inwards" for the vessel was granted on 5th October, 1988.

5. In our view, the question involved in this petition is covered by the decision of the Supreme Court in the case of M/s. Pankaj Jain Agencies Vs. Union of India and others, . In the said case, the Apex Court has held that the Notification takes effect from the date of its publication in the Official Gazette. The Petitioners are, therefore, liable to pay duty at the enhanced rate of 35% ad valorem. The Court has also referred to the decision in the case of Bharat Surfactants (Private) Ltd. and Another Vs. Union of India (UOI) and Another, . In the said case, the Court has held that the rate of duty and tariff valuation has to be determined in accordance with Section 15(1) of the Customs Act and u/s (a) (sic), the rate and valuation is the rate and valuation in force on the date on which the Bills of Entry are presented u/s 46. In those cases where, prior Bills of Entry are presented, the Bills of Entry are deemed to have been presented on the date of entry inwards granted to the vessel as recorded in the Customs register. Hence, there is no substance in this Petition.

6. This petition is accordingly dismissed. Rule is discharged with no order as to costs.