(1987) 07 MAD CK 0023

In the Madras High Court

Case No : Writ Petition No''s. 1554, 1555, 1767, 1773, 1774, 1819, 1875, 2059, 2060, 2200, 2241, 2383 and 2384 of 1987

Faquir Chand Vinoth Kumar APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-07-1987

Acts Referred:

Citation : (1990) 25 ECC 397 : (1989) 25 ECR 483 : (1989) 44 ELT 451

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : P.S. Raman, N.S. Nandakumar, V. Ramajagadeesan, Irwin Aaron, V.R. Gopalan and N. Inbarajan, for the Appellant; P. Narasimhan, Senior Central Govt. Standing Counsel, for the Respondent

Judgement

1. The petitioners imported pulses. Earlier there was a Customs Notification No. 129/76 - whereunder the pulses imported had the benefit of total

exemption from the customs duty. There has come a Customs Notification No. 40/87 bearing date 4-2-1987, which rescinded the earlier Customs

Notification No. 129/76 and imposed a customs duty ad valorem 255 on pulses imported. The petitioners want to claim exemption for the pulses

imported by them under the cover of Customs Notification No. 129/76 on the following ground. Customs Notification No. 40/87 was printed,

published and made available to the public only on 18-2-1987, and hence it became effective only on and from that date and the bills of entry with

regard to the pulses imported by the petitioners having had been filed anterior to such printing, publication and circulation, Customs Notification

No. 40/87 cannot be applied to the pulses imported by the petitioners and they must have the benefit of the total exemption under the earlier

Customs Notification No. 129/76. There is a communication from the government of India Press, New Delhi, dated 21-2-1987 addressed to the

Assistant Director (TRU), Ministry of Finance, Department of Revenue, New Delhi. A copy of this communication is disclosed in the typed set

field on behalf of the respondents. The body of the said communication reads as follows :-

Please refer to your D.O. Letter No. S 22/87-TRU (CUS), dated 20th Feb. 87 addressed to Shri S. K. Ganguli, Assistant Manager (Tech) of

this Press regarding information of Printing of Notification No. 40/87-Customs dated 4-2-1987. G.S.R. No. 81 E was delivered to the Messenger

on the same day i.e. 4-2-1987 for immediate use as per the standing instructions.

In this connection, I am to inform you that the said Notification has been printed on 16-2-1987 vide our Job No. 1568/GI/86 and was made

available to Kitab Mahal on 18-2-1987. It was on account of our preoccupation with the printing of documents relating to Budget.

This communication settles the issue with regard to the date of printing and the date of circulation of the Customs Notification No. 40/87; the first

being 16-2-1987 and the second being 18-2-1987. There is no dispute that the bills of entry in respect of the pulses imported by the petitioners

were field anterior to 18-2-1987. As to when a Notification issued pursuant to statutory powers became effective, I had occasion to deal with the

question with reference to a Notification issued under the Central Excise Rules, 1944 in Asia Tobacco Company Ltd. Vs. Union of India and

Others, and this is what has been observed there :

It would be a mockery of the rule to state that it would suffice the purpose of the notification if the notification is merely printed in the Official

Gazette, without making the same available for circulation to the public or putting it on sale to the public. The communication from the Department

of Publication, Government of India, dated 23-4-1983, as per extract made above, leaves no room for doubt that the Official Gazette containing

the Withdrawal Notification was placed on sale for public only on 8-12-1982 without a proper notification in the sence, without putting the public

on notice of the same, it is not possible to enforce the withdrawal of the exemption earlier accorded. It is not a case of printing (may be anterior to the publishing) and realising to the public, the notification on the same date which the Official Gazette bears. Neither the date of the notification nor

the date of printing, nor the date of the Gazette counts for ''notification'' within the meaning of the rule, but only the date when the public gets

notified in the sense, the concerned Gazette is made available to the public. The date of release of the publication is the decisive date to make the

notification effective. Printing the Official Gazette and stacking them without releasing to the public would not amount to notification at all.

If the above ratio is to be applied to the facts of the present cases, the petitioner could not be brought within the mischief of the Customs

Notification No. 40/87 and the pulses imported by them will have the benefit of the exemption under the earlier Customs Notification No 129/76

which alone prevailed at the relevant point of time. Thus the petitioners have to succeed in these writ petitions. Accordingly, these writ petitions are

allowed. No cost. The petitioners had other grounds to urge and since they have succeeded on the above point, the other grounds were not

pursued.

2. I find that the petitioners pending the writ petitions were obliged to furnish Bank Guarantees for the purpose of clearing the pulses imported by

them. Now the petitioners have succeeded, the Bank guarantees furnished by them will stand cancelled.

