

(2022) 08 CAL CK 0021
In the Calcutta High Court
Case No : Writ Petition No. 1354 Of 2021

M/s. Ruchi Soya Industries Ltd.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 12-08-2022

Acts Referred:

Digital Signature (End entity) Rules 2015 — Section 4(4), 4(7)
Customs Act, 1962 — Section 14(2), 15, 15(1), 15(1)(a), 17, 17(1), 17(4), 46, 46(1), 46(3), 47(2)(a), 85
Customs Tariff Act, 1975 — Section 8A, 8A(1)
Information Technology Act, 2000 — Section 8

Citation : (2022) 08 CAL CK 0021

Hon'ble Judges : Md. Nizamuddin, J

Bench : Single Bench

Advocate : Rajesh Rawal, Prithu Dudhuria, B.P. Banerjee, Abhradip Maity

Final Decision : Disposed Of

Judgement

Md. Nizamuddin, J

Heard learned counsel appearing for the parties.

This Writ Petition has been filed by the petitioner being aggrieved by the action of the respondents customs authorities concerned charging enhanced rate of duty on the consignments in question on the basis of the impugned notification No. 103/2020-Customs (N.T.) dated 29th October, 2020 effective and operational from 23:18:25 hrs of 2020 by applying the same retrospectively and making prayer for quashing the impugned reassessment of bills of entry in question on the basis of which petitioner was asked to pay duty of higher tariff value for clearance of the goods in question.

Main legal issues involve in this Writ Petition are as hereunder,-

(i) Whether as per Section 15 of the Customs Act, 1962, for determination of the rate of duty and valuation of imported goods, in the case of goods in question

which entered for home consumption under Section 46 of the Customs Act, only the date on which the bills of entry in respect of the goods is presented is the only criteria or the time of presenting the bill of entry on said date is also an essential criteria for determination of rate of duty?

(ii) Whether action of the respondents customs authority concerned was legally justified in charging the enhanced rate of duty on the goods in question on the basis of the impugned notification No. 103/2020-Customs (N.T.) dated 29.10.2020 which was e-gazetted and digitally signed on 29.10.2020 at 23:18:25 hrs whereby Tariff Value of the subject goods was enhanced from USD 755MT to USD 782 MT while it is an admitted position substantiated by record that bills of entry relating to goods in question were already self assessed on 23.10.2020 and 26.10.2020 at the prevailing rate of duty and Entry inward was granted to the vessel in question carrying the subject goods on 29.10.2020 at 11:00 hrs which is the time prior to the time of coming into effect the aforesaid E-Gazetted Notification dated 29.10.2020 at 23:18:25 hrs?

(iii) Whether on the facts and in the circumstances of the case and in view of Section 15 read with Section 46 of the Customs Act, 1962 and in view of the law laid down by the Hon'ble Supreme Court in the case of Union of India & Ors. -Vs- G.S. Chatha Rice Mills & Anr. reported in 2020 SCC OnLine SC 770, charging at enhanced rate of duty on the goods in question on the basis of the aforesaid E-Gazette Notification dated 29.10.2020 by giving retrospective effect to it, is arbitrary, illegal and contrary to law?

Relevant facts involved in brief in the instant case as appears from record are as hereunder.

On 14.9.2020, 16.9.2020, 02.10.2020 and 08.10.2020 petitioner entered into four contracts dated 14.9.2020, 16.9.2020, 02.10.2020 and 08.10.2020 with its foreign supplier at Singapore for import of 14000 MTs of Crude Palm Oil of Edible Grade in Bulk. Against the aforesaid contracts aforementioned named foreign supplier supplied 13,084.71 MTs of the subject goods vide vessel MT Tiger Harmony.

The aforesaid subject goods were supplied on 12.10.2020 against Six Invoices (two invoices dated 30.09.2020, one invoice dated 1.10.2020, 02.10.2020, 11.10.2020 and 12.10.2020 respectively). Further, the aforesaid subject goods were shipped against Sixteen Bills of Landing (five Bills of Landing dated 30.9.2020, four Bills of Landing dated 01.10.2020, six Bills of Landing dated 11.10.2020 and one Bill of Landing dated 12.10.2020).

On 15.10.2020 tariff value in regard to the subject goods was fixed at the rate of 755 USD PMT vide notification No. 100/2020-Customs (N.T.) dated 15.10.2020 issued under Section 14 (2) of the Customs Act, 1962.

Petitioner filed seven Bills of Entry under self-assessment for 10084.717 MTs of the subject goods under Section 46 of the Customs Act, 1962 on 21.10.2020 and

22.10.2020, seeking clearance of the said goods for home consumption.

Petitioner paid the assessed Social Welfare Surcharge and IGST on 23.10.2020 and 26.10.2020 vide seven Receipts, five receipts dated 23.10.2020 and two receipts dated 26.10.2020. Petitioner submitted that in total an amount of Rs. 6,11,27,023/- was paid vide aforesaid seven receipts (Social Welfare Surcharge amounting to Rs. 2,12,00,124/- and IGST amounting to Rs. 3,99,26,899/-).

Petitioner contended that vessel carrying the subject goods arrived at Haldia Port on 24.10.2020 but on account of congestion at the port the vessel was unable to secure a berth. It submitted that on account of factors beyond the control of the petitioner and for no fault of the petitioner and since there was heavy congestion at the Haldia port the vessel carrying the subject goods could not secure a berth and Entry Inward was granted to the vessel carrying the subject goods on 29.10.2020 at 11:00 hours and on securing berth, discharge of the subject goods in the shore tank commenced at 13:35 hours on 29.10.2020 and the cargo stood discharged on 21:25 hours on 31.10.2020. It appears from record that on 29.10.2020 at 23:18:25 hours, Notification No.103/2020-Customs (N.T.) dated 29.10.2020 was e-Gazetted, having been digitally signed on 29.10.2020 at 23:18:25 hours, whereby tariff value of the subject goods were increased from USD 755 PMT to USD 782 PMT.

On 02.11.2020, on discharge of the cargo in the shore tank, there was short quantity receipt of 110.51 MTs and the total quantity of cargo that was discharged in the shore tank was 9947.207 MTs. The subject goods/cargo stood discharged in the shore tank on 31.10.2020 which was Saturday and 1st November, 2020 being Sunday, 'Out Turn Report' was prepared on 02.11.2020.

Petitioner submitted that on 04.11.2020 reassessment of the subject bills of entry lead to payment of excess amount to the tune of Rs. 96,60,467/- which amount petitioner is claiming refund. In regard to six subject Bills of Entry Nos. 9265797, 9265801 and 9266091 all dated 21.10.2020 and Bill of Entry Nos. 9272115, 9275141 and 9276627 all dated 22.10.2020, additional basic customs duty was to the tune of Rs. 73,56,538/- and additional social welfare surcharge and IGST to the tune of Rs. 21,21,134/- and in regard to one subject Bill of Entry No. 9277219 dated 22.10.2020, additional basis customs duty was to the tune of Rs. 1,41,884/- and additional social welfare surcharge and IGST to the tune of Rs. 40,909/-. The aforesaid amounts were paid by the petitioner vide seven receipts all dated 4.11.2020.

Petitioner submitted that on 3.11.2020 and 4.11.2020 on account of reassessment of the subject Bills of Entry, it wrote letters to the respondents, which were duly received and acknowledged by them on 3.11.2020 and 4.11.2020 and on 05.11.2020 on realizing the error in calculation of the additional duty amount, petitioner wrote letters dated 05.11.2020 to the respondents, which were duly received and acknowledged by them on 06.11.2020.

Learned Counsel appearing for the petitioner in support of its contention and claim of refund of excess payment of Duty has relied on a decision of the Apex Court in the case of Union of India –Vs- G.S. Chatha Rice Mills reported in 2020 SCC OnLine SC 770.

Learned counsel appearing for the respondents opposing the Writ Petition submits that admittedly there was a self-assessment on the bills of entry on 21.10.2020 and 22.10.2020 as per the then existing rates of tariff but the same was done before the arrival and entry inward of vessel but he could not deny and dispute that both bills of entry and self-assessment were presented and inward entry of the vessel in question of the same was before the impugned notification which was effective and operational from 23:18:25 hrs on 29th October, 2020 when it was officially E-gazetted and digitally signed. He further submits that the self assessment date of the said bills of entry in question should be considered on the date of notification e-gazetted on 29.10.2020 and digitally signed at 23:18:25 hrs and the time of notification is not the considering factor even if self assessment was done and entry inward of the vessel was prior to the time of e-gazetting of the said notification.

Before coming to the conclusion in this matter I would like to refer some provisions of Customs Act, 1962 which are relevant to this case and are quoted hereunder:

“15. Date for determination of rate of duty and tariff valuation of imported goods

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,—

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which [a bill of entry for home consumption in respect of such goods is presented under that section];

(c) in the case of any other goods, on the date of payment of duty:

[Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post.”

“17. Assessment of duty

(1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50, shall, save as otherwise

provided in Section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under Section 46 or Section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

[PROVIDED that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

(3) For the purpose of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document and furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

....."

"46. Entry of goods on importation

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.

.....

(3) The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) prescribing the day on which the aircraft or vessel or carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

[PROVIDED that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

PROVIDED FURTHER that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:]

....."

"47. Clearance of goods for home consumption

(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty,

if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

[PROVIDED that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

PROVIDED FURTHER that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.]

(2) The importer shall pay the import duty-

(a) on the date of presentation of the bill of entry in the case of self-assessment;

or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment;

.....”

“68. Clearance of warehoused goods for home consumption

Any warehoused goods may be cleared from the warehouse for home consumption, if -

(a) bill of entry for home consumption in respect of such goods has presented in the prescribed form;

(b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer:

[PROVIDED that the order referred to in Clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

.....”

Learned counsel appearing for the petitioner in support of his contention for refund of excess rate of tariff collected by the respondents on the goods in question, has relied on a decision of the Hon’ble Supreme Court in the case of Union of India –Vs- G.S. Chatha Rice Mills reported in 2020 SCC OnLine SC 770, relevant Paragraphs of the said Judgment are quoted hereunder:

“11. The batch of petitions before the High Court involved cases of other similarly situated importers. The facts pertaining to the writ petitions, as gleaned from the

judgment of the High Court, are summarized below:

- (i) the goods were imported in the ordinary course of trade from Pakistan;
- (ii) the goods entered Indian territory through the Attari border at Amritsar before 18:00 hours on 16 February 2019;
- (iii) the importers had filed bills of entry under Section 46 of the Customs Act, before the close of working hours, seeking clearance of the goods for home consumption;
- (iv) the value and description of the goods were declared;
- (v) the importers had self-assessed the goods in terms of the prevailing notifications and had filed the bills of entry in the EDI system;
- (vi) the declarations were subject to verification by the customs department which did not dispute them and generated duty payment TR-6 challans;
- (vii) since 16 February 2019 was a Saturday, the customs' office was closed after 18:00 hours and was to open on Monday, 18 February 2019;
- (viii) some of the importers paid the duty online through TR-6 challans on 16 February 2019 while in the case of others, the payment of duty was in progress;
- (ix) Notification 5/2019 was issued at 20:46:58 hours on 16 February 2019 following the Pulwama terrorist attack as a result of which the rate of duty on goods originating in Pakistan was enhanced to 200 per cent irrespective of the fact that some of the products had hitherto been exempt from customs duty; and
- (x) the customs authorities refused to release the goods on the basis of the bills of entry which were self-assessed at the pre-existing rate and proceeded to recall them and re-assess the goods to the enhanced rate of duty applicable under notification 5/2019."

"28. The proviso to Section 15 (1) contemplates a situation where a bill of entry has been presented before the date of the entry inwards of the vessel or the arrival of the aircraft or vehicle through which the goods are imported. Under the proviso to Section 46(3), a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vehicle by which the goods have been shipped for importation into India. Dealing with such a situation, the proviso to Section 15(1) states that if a bill of entry has been presented prior to the date of the entry inwards of the vessel or the arrival of the aircraft or vehicle by which the goods are imported, the bill of entry is deemed to have been presented on the date of the entry inwards or the arrival of the goods. Hence even where the bill of entry has been presented before the date of the entry inwards or the arrival of the aircraft or vehicle, the rate of duty is determined with reference to the date of entry inwards or the arrival of the aircraft or vehicle. This is a consequence of the deeming fiction under the proviso, as a result of which the presentation of the bill of entry, when filed prior

to the arrival of the goods, is deemed to be on the date of the entry inwards or the arrival of the aircraft or vehicle. Hence, implicit in the provisions of Section 15(1) are the dual or (as counsel before the court described them) the twin requirements of (i) the presentation of the bill of entry; and (ii) the entry inwards of the vessel or, as the case may be, the arrival of the aircraft or vehicle."

"33. The amendment of 2011 has made significant legislative changes in the procedure and modalities for assessment of duty under Section 17. Under sub-section 1 of Section 17, the importer entering imported goods under Section 46, has to 'self-assess' duty (except as otherwise envisaged in the provisions of Section 85). Under sub-section (2), the proper officer may verify the entries made under Section 46 and the self-assessment made under sub-section (1) and may examine or test the goods. The selection of goods for verification has to be primarily on the basis of risk evaluation through appropriate selection criteria. Under sub-section (4), where it is found on verification, examination or testing of goods or otherwise that the self-assessment has not been done properly the proper officer is entrusted with a power of re-assessment. Sub-section (5) requires the passing of a speaking order upon re-assessment." "40. Regulation 4 provides as follows:

"4. (1) The authorised person shall file the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

(2) The bill of entry shall be deemed to have been filed and self-assessment completed when after entry of the electronic integrated declaration on the customs automated system or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration and the self-assessed copy of the Bill of Entry may be electronically transmitted to the authorised person or printed out at the service centre.

(3) Where the bill of entry is not filed within the time specified in sub-regulation

(1) and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of"

(emphasis supplied)

"41. The Regulations of 2018 have made provisions for submission of a declaration and generation of the bill of entry in an electronic form on the automated platform provided by the Central Board of Indirect Taxes and Customs. Sub-regulation (2) of Regulation 4 embodies a legal fiction. Regulation 4(2) stipulates that the bill of entry is deemed to have been filed and self-assessment completed when after the entry of the electronic integrated declaration on the customs automated system (or by data entry through a

service centre) a bill of entry number is generated by the Indian Customs Electronic Data Interchange ("EDI") System. The self-assessed copy of the bill of entry may be electronically transmitted to the authorized person under the deeming fiction which is created by Regulation 4(2). Hence, the bill of entry is deemed to be filed and the self-assessment completed when the requirements of Regulation 4(2) are fulfilled namely by the (i) entry of the declaration on the customs automated system; and (ii) generation of a bill of entry number by the EDI system. Following this, the self-assessed copy of the bill of entry is electronically transmitted to the authorized person."

"42. In terms of the provisions of Section 15(1)(a), in the case of goods which are entered for home consumption under Section 46, the date of presentation of the bill of entry determines the rate of duty and tariff valuation. Under Section 47(2)(a), the importer is obliged to pay the import duty on the date of the presentation of the bill of entry in the case of self-assessment. Regulation 4(2) of the Regulations of 2018 categorically stipulates when the presentation of the bill of entry is complete. Once the bill of entry is deemed to have been presented in terms of Regulation 4(2) the rate and valuation in force stand crystalized under Section 15(1)(a). Section 17(4) confers a power of re-assessment on the proper officer where it is found on verification, examination or testing of the goods or otherwise- that the self-assessment has not been done correctly. In the present case the customs authorities sought to exercise the power of re-assessment on the ground of the subsequent notification enhancing the rate of duty. The fact of the matter is that self-assessment was carried out on the basis of the rate of duty which prevailed at the time of the presentation of the bill of entry. This is not and cannot be a matter of dispute. Notification 5/2019, which introduced a new tariff entry – 980 60 000 - in the First schedule to the Customs Tariff Act covering all goods originating in or exported from the Islamic Republic of Pakistan, was not in force at the time when the self-assessment was carried out."

"43. Under Section 15(1)(a) the rate of duty is the rate in force on the date of the presentation of a bill of entry where the goods are entered for home consumption under Section 46. The submission of the learned ASG is that the expression "on the date" is adopted by the legislature in clauses (a) and (b) and in the proviso to Section 15(1). He urged that Section 15(1) has no reference to time but only to the date of the presentation of the bill of entry and once a notification was issued on 16 February 2019 enhancing the rate of duty, that is the duty 'in force' on the date of presentation. Section 15(1)(a) uses two expressions (i) the rate and valuation "in force"; and (ii) "on the date" of the presentation of the bill of entry for home consumption under Section 46. The provisions of Section 15(1)(a) have to be read in conjunction with the provisions of Section 46 which are referred to in the former provision. Section 46 has incorporated a regime which encompasses the submission of the bill of entry for home consumption or warehousing in an electronic format, on the customs automated system in the manner which is prescribed. The Regulations of 2018 stipulate the manner in which the bill of entry has to be presented. The deeming

fiction in Regulation 4(2) specifies when presentation of the bill of entry and 'self-assessment' are complete. The rate of duty stands crystallized under Section 15(1)(a) once the deeming fiction under Regulation 4(2) comes into existence. The regulations have to be read together with the statutory provisions contained in Section 15(1)(a) and Section 46, while determining the rate of duty."

"66. It is with these principles of interpretation in mind that we must evaluate the submission which was urged by Mr Nataraj, on behalf of the Union, that upon the issuance of a notification enhancing the rate of duty under Section 8A of the Customs Tariff Act, the date on which the notification was issued will govern the rate applicable to all bills of entry, including those which were presented before the enhanced rate was notified. The submission cannot be accepted for several reasons. For one thing, it misses the significance of the expression "in force" which has been employed in the prefatory part of Section 15(1). A notification under Section 8A(1) of the Customs Tariff Act, even though it has the effect of amending the First Schedule, takes effect prospectively. Section 8A does not confer upon the notification an operation anterior to its making. In the language of the law, its operation is prospective. To accept the submission of the ASG would mean that the notification under Section 8A would have effect prior to its making, something which Parliament has not incorporated by language or intent. If, as we hold, the notification operates for the future beginning with the point of its adoption, it cannot operate to displace the rate of duty which is applicable when a bill of entry is presented for home consumption under Section 46."

"67. The submission of the Union cannot be accepted in view of the provisions contained in Section 46 for the presentation of a bill of entry for home consumption in an electronic form on the customs automated system. While making that provision, specifically by means of an amendment by Act 8 of 2011 and later by the Finance Act of 2018, Parliament used the expression "in such form and manner as may be prescribed." Regulation 4(2) of the Regulations of 2018 provides when the bill of entry shall be deemed to have been filed and self-assessment completed. The legal fiction which has been embodied in Regulation 4(2) emanates from the enabling provisions of Section 46. The provisions of Sections 15(1)(a), 17, 46(1) and 47(2)(a) constitute one composite scheme. As a result of the modalities prescribed for the electronic presentation of the bill of entry and self-assessment after the entry of the electronic declaration on the customs automated system, a bill of entry number is generated by the EDI system for the declaration. Regulation 4(2) provides for a deeming fiction in regard to the filing of the bill of entry and the completion of self-assessment. In the context of these specific provisions, it would do violence to the overall scheme of the statute to interpret the language of Section 15(1)(a) in the manner in which it is sought to be interpreted by the ASG. The submission of the ASG, simply put, is that because notification 5/2019 was issued on 16 February 2019, the court must regardless of the time at which it was uploaded on the e-Gazette treat it as being in existence with effect from midnight or 0000 hours on 16 February 2019. The consequence of this interpretation would be to do

violence to the language of Section 8A(1) of the Customs Tariff Act, and to disregard the meaning, intent and purpose underlying the adoption of provisions in the Customs Act in regard to the electronic filing of the bill of entry and the completion of self-assessment.”

“95. Digital signatures have contextual information including the date and time built into them. Under the Digital Signature (End entity) Rules 2015, provisions for time stamps for digital signatures are built into the legal regime under Rule 4(4) and, in the context of a long term valid digital signature, in Rule 4(7).”

“100. On 30 September 2015, the Ministry of Urban Development issued an Office Memorandum numbered No. O-17022/1/2015-PSP-I which discontinued the practice of physical printing and replaced it with the electronic gazette. The notification, in relevant part, reads as follows:

“In compliance with the provisions of Section 8 of the Information Technology Act, 2000, it has been decided in consultation with Department of Legal Affairs to switch over to exclusive e-publishing of the Government of India Gazette Notification on its official website with effect from 01.10.2015 and to do away with the physical printing of Gazette Notification. The date of publishing shall be the date of e-publication on official website by way of electronic gazette in respect of Gazette notification.”

(emphasis supplied)

“103. The High Court upheld the Petitioner’s view that the notifications were inapplicable to the petitioners after considering Section 8 of the Information Technology Act, 2000 along with the Office Memorandum dated 30.9.2015. It held:

“32. The endorsement on the electronic copy of the Gazette, whereby the impugned Notification Nos. 24 and 25, dated 25th August, 2017, were notified, seen in juxtaposition with Section 8 of the IT Act, and of the OM dated 30th September, 2015 supra, of the Ministry of Urban Development, makes it clear that the impugned Notification Nos. 24 and 25, dated 25th August, 2017 were, in fact, electronically published in the Official Gazette only at or after 10:47 p.m. on 28th August, 2017.

.....”

“104. Thus, the High Court regarded the time of publication as the relevant marker for determining the enforceability of the notifications. The issue of determining the starting point for the enforceability of a notification in the electronic gazette was considered by the Andhra Pradesh High Court in Ruchi Soya Industries v. Union of India. The petitioner entered into a contract with its foreign supplier on 18 January 2008 for the import of 9,500 Metric Tons of crude oil. The first consignment of 4000 metric tons was shipped by the supplier on 6 February 2018 from Dubai. The petitioner filed two bills of entry for 2000 metric tons of crude oil on 1 March 2018. They were assessed that day and levied with

30% customs duty and 10% social welfare surcharge. On the same date, a notification raised the basic customs duty from 30 to 44%. The petitioner filed four bills of entry for the remaining 2000 tons on 2 March 2018 and argued that the revised rate was not applicable to it because the notification was published in the electronic gazette only on 6 March 2018. The High Court agreed with the petitioner and held that the revised notification would come into force only after it was digitally signed by the competent official and uploaded and published in the official gazette. The relevant excerpt from page 41 of the High Court's judgment is quoted below:

"....The notification was published electronically on 6.3.2018. In view of the decision taken by the Government of India in terms of Section 8 of the Information Technology Act, to avoid physical printing of Gazette notification to publish the same exclusively by electronic mode, so as to attribute knowledge to the public at large. The notification was signed by Rakesh Sukul on 6.3.2018 at 19:15:13 + 05'30'. When notification needs to be signed digitally and only when the notification was uploaded and published in the Official Gazette, the same is made available for public."

"106. With the change in the manner of publishing gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance. Notification 5/2019, which is akin to the exercise of delegated legislative power, under the emergency power to notify and revise tariff duty under Section 8A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of the electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the Notification 5/2019 applies to bills of entry presented for home consumption after the notification was uploaded in the e-Gazette at 20:46:58 hours on 16 February 2019."

"124. In the present case the twin conditions of Section 15 stood determined prior to the issuance of Notification 5/2019 on 16 February 2019 at 20:46:58 hours. The rate of duty was determined by the presentation of the bills of entry for home consumption in the electronic form under Section 46. Self-assessment was on the basis of rate of duty which was in force on the date and at the time of presentation of the bills of entry for home consumption. This could not have been altered in the purported exercise of the power of re-assessment under Section 17 or at the time of the clearance of the goods for home consumption under Section 47. The rate of duty which was applicable was crystallized at the time and on the date of the presentation of the bills of entry in terms of the provisions of Section 15 read with Regulation 4(2) of the Regulations of 2018. The power of re-assessment under Section 17(4) could not have been exercised since this is not a case where there was an incorrect self-assessment of duty. The duty was correctly assessed at the time of self-assessment in terms of the duty which was in force on that date and at the time. The subsequent publication of the notification bearing 5/2019 did not furnish a valid basis for re-assessment."

"208. In the context of the Customs Act, and having regard to the Scheme, which, in the case of import duty, consists of filing of Bill of Entry for home consumption, self-assessment and payment of duty on the basis of the same and the rate being clearly fixed with reference to the particular point of time when the Bill of Entry is presented and there is a deemed presentation and even a deemed assessment, which is otherwise in order, and bearing in mind the principle that Section 8A does not provide power for increase of rate of duty with retrospective effect, the Notification must be treated as having coming into force not before its publication which is at 20:46:58 hrs. on 16.02.2019. This would necessarily mean that the Notification cannot be used to alter the rate of duty on the basis of which, in fact, there was presentation of Bill of Entry several hours ago, the self-assessment was done and what is more, the self-assessment was completed under Regulation 4(2) of the 2018 Regulations. There cannot be re-assessment. The interpretation based on time of publication is in harmony with a view that accords respect for vested rights."

Considering the facts and circumstances of the case as appears from record, submission of the parties, relevant provisions of law and the aforesaid judgment of the Hon'ble Supreme Court in the case of G.S. Chatha Rice Mills & Anr. (supra), I am inclined to allow this Writ Petition by holding as follows:

(i) As per Section 15 of the Customs Act, 1962, for determination of the rate of duty and valuation of imported goods, in the case of goods in question which entered for home consumption under Section 46 of the Customs Act, not only the date on which the bills of entry in respect of the goods is presented is the only criteria rather the time of presenting the bill of entry on the said date is also an essential criteria for determination of rate of duty on the goods in question.

(ii) Action of the respondents customs authority concerned charging at the enhanced rate of duty on the goods in question on the basis of the impugned notification No. 103/2020-Customs (N.T.) dated 29.10.2020 which was e-gazetted and digitally signed on 29.10.2020 at 23:18:25 hrs whereby Tariff Value of the subject goods was enhanced from USD 755MT to USD 782 MT is not justifiable in law since it is an admitted position substantiated by record that bills of entry relating to goods in question were already self assessed on 23.10.2020 and 26.10.2020 at the prevailing rate of duty and Entry inward was granted to the vessel in question carrying the subject goods on 29.10.2020 at 11:00 hrs which is the time prior to the time of coming into effect the aforesaid E-Gazetted Notification dated 29.10.2020 at 23:18:25 hrs.

(iii) On the facts and in the circumstances of the case and in view of Section 15 read with Section 46 of the Customs Act, 1962 and in view of the law laid down by the Hon'ble Supreme Court in the case of Union of India & Ors. -Vs- G.S. Chatha Rice Mills & Anr. reported in 2020 SCC OnLine SC 770, action of the respondents customs authority charging at enhanced rate of duty on the goods in question on the basis of the aforesaid E-Gazette Notification dated 29.10.2020 by giving retrospective effect to it, is arbitrary, illegal and not sustainable in law.

Accordingly the respondents/authorities concerned are directed to refund to the petitioners the excess duty amounting to Rs. 96,60,467/- which was collected by the respondent customs authority on the basis of the aforesaid impugned Notification No. 103/2020-Customs (N.T.) dated 29th October, 2020 at a higher tariff value, within a period of 8 weeks from the date of communication of this order. Petitioner will be at liberty to claim for interest on the aforesaid amount to be refunded in accordance with law.

In view of discussion, observation and direction made hereinabove, this Writ Petition being WPA No. 1354 of 2021 stands disposed of by allowing the same. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.