
(1991) 11 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No"s. 3057,12057,12058,12127,12146,12280 to 12284,12294,12366,12425,12479,12557 to 12559, 12596 to 12599,12670 to 12672,12684,12763,12814,12815,13305,13306,13454,13459,13488, 13489, 13780, 14804, 14817, 15099 and 15627 of 1988

N. Pandia Nadar and Sons

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-11-1991

Acts Referred:

Customs Act, 1962 — Section 15, 25, 46

Citation : (1993) 44 ECC 210

Hon'ble Judges : D. Raju, J

Bench : Single Bench

Judgement

D. Raju, J.—The above batch of cases involve similar and identical questions of law and facts and since submissions were also made by the

counsel appearing on either side in common, they are dealt with together.

2. The various writ petitioners are importers who have imported pulses from foreign countries. Pulses were totally exempt from the payment of

customs duty under customs notification No. 129/76 dated 2.8.1976. Subsequently, it appears that customs notification No. 40/87 was issued

which rescinded the earlier notification dated 2.8.1976 and imposed customs duty at 25% ad valorem on import of pulses. It appears that though

by customs notification No. 324/87 dated 24.9.1987 the duty was reduced to 10% ad valorem, by another customs notification No. 286/88 dated

3.10.1988 the rate of customs duty was again fixed at 35% ad valorem. In these batch of cases, it is admitted by the learned Counsel that

excepting W.P.No. 3057 of 1988 which concerned the applicability of customs

notification No. 40/87 dated 4.2.1987, in all other writ petitions, the concerned notification the applicability of which is put in issue is customs notification No. 286/88 dated 3.10.1988. So far as customs notification No.40/87 dated 4.2.87 is concerned, the Union of India claims that the notification was published in the Gazette dated 16.2.1987 and the copies were released and made available for sale on 18.2.1987. So far as the Customs Notification No. 286/88 dated 3.10.88 is concerned, the Union of India claims that though the same was published in the Gazette on 6.10.1988 and copies of the said Gazette were released and made available for sale on 6.10.1988, the contents of the Notification were published through news media on 4.10.1988 itself and through Newspapers on 5.10.1988.

3. Mr. Irwin Aaron, the learned Counsel appearing on behalf of some of the petitioners made the leading argument and contended that the issue is not conclusively covered by any authoritative pronouncement of the Supreme Court since the Apex Court while deciding the case in *Bharat Surfactants (Private) Ltd. and Another Vs. Union of India (UOI) and Another*, after referring to the two decisions of the Bombay High Court in *Apar Private Ltd. and others Vs. Union of India and others*, and *Jain Shudh Vanaspati Limited Vs. S.R. Patankar, Asstt. Collector of Customs and Others*, made, an observation in para 10 of its judgment to the extent ""we express no opinion on the soundness of the view taken by the Bombay High Court in the cases mentioned above, it is sufficient to point out that on the facts they afford no assistance to the petitioners."" It is seen from the above observation that their Lordships though did not and cannot be said to have overruled the decisions of the Bombay High Court cannot be claimed equally to have affirmed or approved the ratio of those decisions but merely distinguished them factually as not relevant for the consideration of the case before the apex Court. The learned Counsel would further submit that the notification concerned should be considered to [be] applicable only from the date on which the notification was made known to the public by making a copy of the Gazette available for sale to the public and not merely from the date of publication in the Gazette. In support of the said plea, reliance was placed upon the decision of a Division Bench of this Court in *Union of India Vs. Asia Tobacco Co. Ltd.*, . The

learned Counsel appearing for the petitioners in W.P.Nos. 12057 and 12058 of 1988 contended that the respondents in their counter affidavit claim to have released the copies of the Gazette on 6.10.1988 at New Delhi only and there is no information as to their release at Madras and therefore in their cases the notification cannot be applied from 6.10.1988 as against them. Mr. Chandramouli, learned Senior Counsel appearing for some of the writ petitioners contended that even assuming that the notification No. 286/88 dated 3.10.1988 became applicable with effect from 6.10.1988, in respect of cases where the bill of entry was also filed on 6.10.1988 itself, the notification dated 3.10.1988 cannot be applied and enforced against such petitioners who have filed their bill of entry on 6.10.1988. Yet another plea raised in support of the petitioners was that though the goods arrived in India, for operational necessities the ship had to go to Pakistan and then once again came for discharge thereafter and in such cases the rate applicable should be considered with reference to the date when the ship first arrived in the territorial waters of India and not with reference to the subsequent date when it came once again after going to Pakistan. All other learned Counsel adopted the submissions made as above.

4. Mr. K. Jayachandran, learned Counsel for the respondent Union of India disputed the claims of the petitioners contending that (a) in the light of the decision in *M/s. Shah Devchand and Co. and another Vs. Union of India and another*, the rate of customs duty and tariff valuation for imported goods have to be determined in accordance with Section 15(1) of the Customs Act, 1962 and as per Section 15(1)(a) the rate and valuation is the rate and valuation in force on the date on which the bill of entry is presented u/s 46 of the Act. So far as the date of coming into force of a notification is concerned, the learned Counsel contended that the decision of a Division Bench in *The Government of India Rep. by the Secretary to Government, Ministry of Revenue, New Delhi v. Amnachala Nadar* (Writ Appeal, No. 1577 of 1987 dated 16.10.1990) (to which I was a party) holding that the date of publication of the notification in the Official Gazette is the decisive date for consideration and nothing else conclusively decides the issue in favour of the respondents and that the plea to the contrary on behalf of the petitioners has no substance. The

learned Counsel also contended that the notification No. 286/88 dated 3.10.1988 published on 6.10.1988 would apply to even cases in respect of

which the bill of entry was published on that very day and that even the fact that the goods entered earlier into the territorial waters of India but the

ships were diverted to Pakistan and once again came to India for discharge has no relevance whatsoever in the context of the categorical

pronouncement of the Supreme Court in the decisions referred to above.

5. The submissions of the learned Counsel appearing on either side have been carefully considered by me in the light of the relevant provisions of

law as well as the case law produced before me. In my view, except W.P.Nos. 3057 of 1988, 12127 of 1988 and 12281 of 1988 which have to

be allowed all other writ petitions deserve to be rejected.

6. The various notifications in question have been issued by the Government of India in exercise of the powers conferred under Sub-section (1) of

Section 25 of the Customs Act. It could be seen from the provisions of Section 25 that if the Central Government is satisfied that it is necessary in

public interest so to do ""by notification in the official gazette exempt generally either absolutely or subject to such conditions from the whole or any

part of duty of Customs leviable."" So far as the question as to the date for determination for rate of duty and tariff valuation of imported goods is

concerned, the provisions of Section 15 provides the necessary guidelines and principles. As a matter of fact, the issue relating to the same is not

res integra, but is the subject matter of determination by more than one judgment of the Supreme Court of India. In *Bharat Surfactants (Pvt) Ltd.*

case (supra), the Constitution Bench of the apex Court held that the day on which the bill of entry is presented u/s 46 is, in the case of goods

entered for home consumption, the date relevant for determining the rate of duty and tariff valuation and where the Bill of Entry is presented before

the date of entry inwards of the vessel the bill of entry is deemed to have been presented on the date of such entry inwards. The said principle has

been applied and reiterated once again by the apex court in *Shah Devchand & Co.* case (supra). In the said decision once again the apex Court

held that u/s 15(1)(a) the rate and valuation is the rate and valuation in force on the date on which the bill of entry is presented u/s 46. In the light of

such categorical declaration of law, the mere fact that the apex Court did not

specifically overrule the decision in Apar Private Ltd. case (supra), of the Bombay High Court in my view, does not justify the claim on behalf of the petitioners that the point in issue cannot be said to be conclusively covered by an authoritative pronouncement of the Supreme Court. The contention of the petitioners to the contra does not merit my acceptance. The ratio of the apex Court shall alone prevail and be applied in preference to the decisions of the Bombay High Court.

7. The further contentions on behalf of the petitioners that the notification in question can be enforced against the petitioners only from the date when the Gazette was made available for sale and not merely from the date on which it was said to have been published in the Gazette. On behalf of the learned Counsel for the petitioners, the decision of a Division Bench of this Court in Union of India case (supra) was relied upon. The Division Bench sustained the order of the learned single Judge on the reasoning that the learned single Judge was justified in coming to the conclusion that the notification concerned in the said case could be enforced only from the date on which it was made known to the public by making a copy of the Gazette available for sale to the public. The decision in Writ Appeal No. 1577 of 1987 dated 16.10.1990 (supra) to which I was a party and relied upon by the learned Counsel for the Union of India held that Section 25(1) of the Customs Act itself mandates that the publication of the notification must be made in the official Gazette and that, therefore, it is only the publication of the notification in the official gazette which is relevant to be taken into consideration and nothing else. So far as the cases on hand are concerned, even taking into account the dates on which the copies of the gazette, in which the notification was published, was released for sale except the three writ petitions referred to above, no relief could be granted to the petitioners in other cases having regard to the dates of the respective bills of entry filed in these batch of cases. So far as the Gazette copies relating to the notification No. 286/88 dated 3.10.1988 are concerned, apart from the other methods of publicity given as referred to supra, the gazette copies themselves appear to have been released for sale at Kithap Mahal, New Delhi on 6.10.1988 itself. There is no material to the contra to disbelieve this claim made by the respondents. It is not a condition precedent to make the

same available at all places in the country to make them enforceable in all such places. Consequently, the irresistible conclusion that has to follow is

that the notification No. 286/88 dated 3.10.1988 became enforceable in law against every one including the petitioners with effect from 6.10.1988

when it was published and the copies of the gazette were also released for sale to public at the place of its publication. So far as the notification

No. 40/87 is concerned, admittedly the same was published in the gazette on 16.2.1987 and the gazette copies released for sale on 18.2.1987. In

W.P. 3057 of 1988 which only pertains to the notification No. 40/1987 the bill of entry was filed on 5.2.1987 long before even the date of

publication of the notification in the gazette on 16.2.1987. Consequently, the notification No. 40/87 cannot be enforced as against the petitioner in

the said writ petition in respect of the goods imported and covered by bill of entry dated 5.2.1987. The plea that in respect of cases where the bill

of entry has been filed on 6.10.1988 itself when the notification was published in the gazette and released for sale, the notification No. 286/88

cannot be applied and that the earlier notification only has to be applied, has no rhyme or reason. Having regard to the fact that notification No.

286/88 became enforceable against every one in law with effect from 6.10.1988 and the rates prescribed therein have become enforceable from

the said date, the petitioners who have filed their bill of entry on 6.10.1988 also are liable to duty as specified in the said notification bearing No.

286/88 dated 3.10.1988.

8. The further plea raised that the goods though entered into the territorial waters of India much earlier were to be diverted to Karachi or Ports in

Pakistan and again entered Indian territorial waters subsequently and discharged the goods, in my view, has no relevance or bearing whatsoever,

having regard to the declaration of law by the Supreme Court of India on the scope of Section 15 of the Customs Act, 1962. As a matter of fact,

the case considered by the Constitutional Bench of the Supreme Court in Bharat Surfactants (Pvt) Ltd. case (supra) was one such case and

despite such factual claims made the apex Court held that it is only the date of the bill of entry that really matters.

9. For all the reasons stated above, Writ Petitions 3057, 12127 and 12281 of 1988 shall stand allowed and all other writ petitions shall stand

dismissed, but in circumstances, there will be no order as to costs.

10. In W.P. Nos. 3057, 12127 and 12281 of 1988 the difference in duty, if any, paid under interim orders of this Court shall be refunded to the respective petitioners and the bank guarantees, if any, given shall stand discharged. There is no need to emphasize that in cases where the petitioners have failed, it shall be open to the department to pursue further action to realise the duty due to the Government.