(1991) 02 CAL CK 0002

In the Calcutta High Court

Case No : Matter No. 180 of 1990

Raj Kumar Kedia APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 13-02-1991

Acts Referred:

Citation : (1993) 44 ECR 329 : (1991) 55 ELT 481

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ruma Pal, J.—The question to be determined is when a Notification issued under the Customs Act, 1962 (hereinafter referred to as the Act) becomes effective i.e. whether on the day of its issue or on the date it is printed in the Official Gazette or on the date when the Official Gazette is available for public sale.

2. In this case certain type of pulses was imported by the petitioner from Thailand by ship. The ship reached the Sandheads on 16-2-1987 and arrived at the Calcutta Dock on 17-2-1987. At the time of presentation of the Bills of Entry on 17-2-1987 the Customs Authorities claimed that the said pulses were liable to duty @ 25% by virtue of a Notification bearing No. 40/87-Cus., dated 4-2-1987 (hereinafter referred to as the said Notification). The said Notification amended an earlier Notification bearing No. 129/76-Cus., dated 2-8-1976 by which pulses of the type imported by the petitioner were completely exempted from Customs duty. Upon so being intimated by the Customs Authorities, the petitioner cleared the consignment of said pulses after payment of duty at 25% aggregating to Rs. 2,48,271.71 on 19-2-1987. As the petitioner entertained some doubts regarding the chargeability of the duty such payment of duty was made under protest.

3. Subsequently, the petitioner came to learn that other importers of the pulses had cleared the same without making any payment of duty by virtue of Interim Orders passed by the Calcutta and Bombay High Courts. On 15-5-1987 the

petitioner accordingly made an application to the Assistant Collector of Customs for refund of the amount paid by the petitioner on account of duty. The respondent No. 2 wrote to the petitioner on 1-6-1987 asking for certain documents in connection with the refund claim. Such documents were forwarded by the petitioner. By an order dated 6-7-1987 the respondent No. 2 rejected the claim of the petitioner for refund. The order of rejection was received by the petitioner on 21-7-1987.

4. According to the petitioner no opportunity of being heard was given by the respondent before the order of rejection was passed. The grounds for rejection appeared to be that the petitioner had not produced any evidence that the petitioner had filed any writ petition relating to the consignment in question and secondly that the effective date of the said Notification was 4-2-1987. The order further recorded that the Bill of Entry having been presented on 17-2-1987 was subject to payment of duty in terms of the said notification.

5. According to the petitioner sometime in July 1989, the petitioner for the first time came to learn that the Madras High Court in a Judgment dated 3-7-1987 had found as a matter of fact that the said Notification was printed on 16-2-1987 and made available to the public on 18-2-1987. The Madras High Court''s order further granted relief to importers who had filed their Bills of Entry prior to 18-2-1987 by holding that the said notification became effective only from 18-2-1987 onwards.

6. By a letter dated 11-7-1989 the Shipping Company which dealt with the vessel on which the said consignment of pulses arrived in Calcutta, informed the petitioner that the vessel had arrived at the Sandheads on 16-2-1987 and in the Calcutta Dock on 17-2-1987.

7. The writ petition was moved on 17-2-1990. Directions were obtained by the respondents to file an affidavit on 13-3-1990. No affidavit has been used by the respondents till today. Therefore, the allegations contained in the writ petition must be taken to be uncontroverted.

8. The power to regulate the rate of duty is conferred on the Central Government. Such exercise of power must be "by notification in the Official Gazette". As found by the Madras High Court in the case of Faquir Chand Vinoth Kumar Vs. Union of India, . The date are follows :

"The notification dated 4th February 1987 was delivered to the messenger on 4-2-1987 for immediate use, the notification was printed, however on 16-2-1987 and was made available in Keetab Mahal on 18-2-1987."

9. The Madras High Court relied upon its earlier decision in Asia Tobacco Company Ltd. Vs. Union of India and Others, in which it was held that -

"Neither the date of 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."

10. The point has been considered by A.K. Sengupta, J. in his decision in Mahamed Sayeed Vs. Union of India and others, . In that case the learned Judge has held that mere printing of the Official Gazette containing a public notice cannot and would not amount to an effective publication of the said public notice. Until the Official Gazette containing such notice has been published i.e., made available to the Public by circulation or by putting it on sale to the public, there is no effective public notice in the Official Gazette.

11. In that case the learned Judge was dealing with a situation whether an item of export was banned by public notice. The learned Judge found that until the public notice was made publicly known, the ban could not be enforced.

12. I see no reason for differing with the reasoning of the learned Judge in that case and I hold that the effective date of the said notification must be taken to the 18th February, 1987, i.e. when the Official Gazette was first made available to the public. The Bill of Entry was submitted on 17th February 1987. There is no reason why the petitioner should be visited with payment of duty under the notification which become effective only from the next date.

13. Accordingly the writ application is allowed. The Rule Nisi issued is made absolute. There will be no order as to costs.

14. There will be stay of operation of this judgment and order for one week from date.

