
(2001) 09 MAD CK 0051

In the Madras High Court

Case No : Writ Miscellaneous Petition No's. 21619, 22829 to 22831 and 23897 of 2001 in Writ Petition No's. 14563 and 15393 to 15395 of 2001

Ruchi Worldwide Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 129B, 14(2), 15, 15(1), 46

Citation : (2002) 141 ELT 18

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : Sudhir Gupta and K. Jayachandran, for the Appellant; V.T. Gopalan, SCGSC, S. Udayakumar, ACGSC and T.S. Sivagnanam, for the Respondent

Judgement

D. Murugesan, J.—The petitioners in W.P. Nos. 15393 to 15395 of 2001 have sought for a writ of declaration declaring the Notification

No. 36/2001-Cus. (N.T.), dated 3-8-2001 issued by the 1st respondent as null and void, arbitrary, illegal and unconstitutional. The petitioners

have also filed W.M.P. Nos. 22829 to 22831 of 2001 for interim directions directing the respondents 2 and 3 to release the goods covered by Bill

of Entry Nos. 023823 and 023831, dated 2-8-2001 and Bill of Entry No. 023862, dated 3-8-2001 respectively. The writ petitions had been

admitted on 27-8-2001 and notices had been ordered in all the W.M.Ps.

2. Mr. Sudhir Gupta, learned Counsel appearing for the petitioners in W.P. Nos. 15393 to 15395 of 2001 in support of the directions sought for

in the writ miscellaneous petitions submitted that the petitioners in W.M.P. Nos. 22829 and 22830 of 2001 submitted their bill of entries for home

consumption on 2-8-2001 and the same was assessed for payment of duty. In so far as the petitioner in W.M.P. No. 22831 of 2001, the petitioner submitted the bill of entry for home consumption on 3-8-2001 and when the petitioners sought to remove the goods on payment of duty assessed as per bill of entries, the respondents placing reliance on the impugned Government Order insisted the petitioners to pay the differential duty as per the impugned notification. According to the learned Counsel for the petitioners, the said notification was issued u/s 14(2) of the Customs Act, 1962 (hereinafter called as "the Act"). The said section specifically provides that such notification shall be published in the Official Gazette. The impugned notification has not been published in the Official Gazette on 3-8-2001. When there was no publication of the notification in the Official Gazette as contemplated u/s 14(2) of "the Act", the said notification cannot be put against the petitioners for the purpose of payment of differential duty than the one assessed under the bill of entries filed prior to the notification. The learned Counsel submitted that as per Section 25(1) of "the Act", the Central Government may by notification in the Official Gazette, exempt generally either absolutely or subject to certain conditions any specified description of goods from the whole or any part of duty of customs leviable thereon. u/s 25(4) of "the Act", every notification issued under Sub-section (1) shall unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette and also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. Hence, the notification will come into effect only when it is published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. In this case, the notification was not published on 3-8-2001 and was not made available for sale. The notification was published only on 6-8-2001. Much prior to the said date, the petitioners have filed their Bill of Entries and the duties have been assessed and therefore the notification which came into force on 6-8-2001 cannot be put against the petitioners. Hence, the petitioners are entitled to release the goods on the basis of payment of duty levied as per the Bill of Entries submitted by the petitioners on 2-8-2001 and 3-8-2001 respectively.

3. Mr. V.T. Gopalan, learned Additional Solicitor General on the other hand submitted that the notification was in fact published on 3-8-2001. The

learned Counsel further submitted that as per Section 14(2) of "the Act", the notification shall be published in the Official Gazette. He also referred

to Section 25 of "the Act" and submitted that Sub-section (4) of Section 25 of "the Act" was inserted by amendment by Finance (No. 2) Act,

1998 with effect from 1-8-1998. Prior to the said amendment both the provisions of Section 14(2) and Section 25(1) were identical. The date of

coming into force of the notification issued u/s 25 of "the Act" came up for consideration before the Supreme Court in the judgment reported in

Union of India and Others Vs. M/s. Ganesh Das Bhojraj, and the Supreme Court has held that the date of the Gazette is the date of publication of

the notification. Therefore, the learned Additional Solicitor General submitted that for all practical purposes, the impugned notification came into

force on 3-8-2001. Hence, the judgment of the Supreme Court equally applies to the notification issued and published u/s 14(2) of "the Act" also.

Insofar as the date which has to be taken into consideration for the purpose of imposing of duty, the learned Addl. Solicitor General referred to the

proviso to Section 15 of "the Act". As per the said proviso, if a bill of entry has been presented before the date of entry inwards of the vessel by

which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards. Admittedly, in all the

three petitions the entry inwards was only on 5-8-2001 much after the impugned notification came into force on 3-8-2001. The learned Additional

Solicitor General submitted that prima facie there is a case in favour of the respondents and therefore he opposed the interim directions sought for

in the writ miscellaneous petitions.

4. The petitioner in W.P. No. 14563 of 2001 has filed the writ petition for issuance of a writ of mandamus directing the 3rd respondent therein to

permit clearance of the imported RBD Palmolein (Edible Grade) covered under Bill of Lading Nos. BLW/AIP-16A, 16B, 191A to 191F, dated

12/13-7-2001 shipped per "M.T. Daugava" V-09/10 on payment of the assessed Customs Duty as per the Bills of Entry filed and assessed during

20-7-2001 to 26-7-2001. The writ petition was admitted on 10-8-2001. The petitioner has also filed W.M.P. No. 21619 of 2001 seeking for

interim directions of similar in nature as prayed for in the writ petition. While admitting the writ petition, the learned Judge has directed the 3rd

respondent to release the goods covered by Bill of Entry Nos. 015846, dated 25-7-2001, 015859, dated 25-7-2001, 015763, dated 24-7-

2001, 015767, dated 24-7-2001, 015858, dated 25-7-2001, 015857, dated 25-7-2001, 015766, dated 24-7-2001, 015549, dated 20-7-

2001, 015625, dated 23-7-2001 and 015855, dated 25-7-2001 on payment of the assessed value, which is stated to be Rs. 1.7 crore. The

respondents in the writ petition have filed W.M.P. No. 23897 of 2001 seeking to vacate the above interim directions granted on 10-8-2001. In

the affidavit filed in support of the vacate stay petition, the respondents have contended that the bill of entries for warehousing bearing Nos.

022290 and 022291, dated 17-7-2001 were filed by the petitioner for warehousing of the imported goods and the said bill of entries were

assessed accepting the value declared and rates of duty and duty liability was indicated for the purpose of execution of Double Duty Bond u/s 59

of "the Act". It is also stated in the counter affidavit that the petitioner filed 16 Ex. Bond Bills of entries between 20-7-2001 and 25-7-2001 for

clearance of goods from the warehouse and all the 16 bills of entries were assessed between 20-7-2001 and 25-7-2001 and handed over to the

petitioner for payment of duty and clearance of goods. However, the petitioner had paid duty and cleared goods only in respect of 6 Ex. Bonds

Bills of Entries whereas other 10 Bills of Entries Bearing Nos. 015856 dated 25-7-2001, 015859 dated 25-7-2001, 015768 dated 24-7-2001,

015767 dated 24-7-2001, 0157858 dated 25-7-2001, 015857 dated 25-7-2001, 015766 dated 24-7-2001, 015549 dated 20-7-2001,

015625 dated 23-7-2001 and 015855 dated 25-7-2001, the petitioner did not pay the duty and did not clear the goods. In view of the

subsequent notification dated 3-8-2001, the petitioner is entitled to clear the goods subject to payment of the differential duty only as per the

notification. On the above reasonings, the respondents in the writ petition seeks to vacate the interim directions granted by this Court.

5. Mr. K. Jayachandran, learned Counsel for the petitioner submitted that as per Section 15(1) of "the Act", in the case of goods entered for home

consumption u/s 46, the tariff value applicable to the imported goods shall be the date on which the bill of entries in respect of the goods are

presented and in the case of goods cleared from a warehouse u/s 68, on the date when the goods were actually removed from the warehouse. The

said Section 15(1)(a) and (b) came up for consideration before the Supreme Court in the judgment reported in 1999 (109) E.L.T. 12 (D.C.M. v.

Union of India) and the Supreme Court has observed that it is the date of the filing of the bill of entry which determines the rate of duty in Clauses

(a) and (b) of Section 15. In view of the above law laid down by the Supreme Court and in view of the fact that the bill of entries have already

been accepted and the duty was assessed prior to the notification dated 3-8-2001, the petitioner is entitled to remove the goods from the

warehouse by paying only the duty as per the bill of entries presented by the petitioner much prior to the notification.

6. The learned Additional Solicitor General submitted that a reading of Section 15(1)(a) and (b), it is clear that when the bill of entry was presented

for warehousing and it was assessed for the purpose of warehousing and when the subsequent Ex. Bond bill of entries for home consumption are

filed, the duty leviable is with reference to the date on which the goods are actually taken delivery from the warehouse. The learned Additional

Solicitor General in fact relied upon the very same judgment relied upon by the learned Counsel for the petitioner reported in 1999 (109) E.L.T.

12 referred supra wherein the Supreme Court has observed that the actual date to be taken into consideration for the purpose of assessment of

levy of duty, is the date on which the goods are actually removed from the warehouse. In fact, the learned Additional Solicitor General submitted

that whenever the bill of entry is presented for warehousing and the goods are warehoused and if any bill of entry is subsequently filed for home

consumption, the duty has to be assessed only on the date of the removal of the goods. Even though out of 16 bill of entries assessed, the

petitioner has cleared the goods only in respect of 6 bill of entries and has not cleared the goods covered under the remaining 10 bill of entries.

Section 15(1)(a) refers to only where the bill of entry is filed straightaway for home consumption u/s 46 of "the Act". Section 15(1)(b) relates to a

case where the Bill of Entry is filed for a warehouse u/s 68 of "the Act". He also referred to Section 68 of "the Act" to contend that the bill of entry

for warehousing pursuant to the provisions of Section 15(1)(b) should be assessed only on the basis of the actual date of removal of goods. He

also relied upon yet another judgment of the Supreme Court reported in Union of India and others Vs. Apar Private Ltd. and Others, wherein the

Supreme Court has held that the relevant date for determining the actual date of duty liability is the date on which the bill of entry is presented u/s

46 for home consumption and in case of goods which are warehoused, the date on which the goods are actually removed from warehouse.

Therefore, the learned Additional Solicitor General submitted that the directions given by this Court has to be vacated as the petitioner is liable to

pay the differential duty in respect of 10 bill of entries.

7. As per Section 14(1) of "the Act", the impugned notification should be published in the Official Gazette so as to put the notification against the

petitioners for duty liability. Prior to the notification, all the petitioners are entitled to remove the goods on the basis of assessment of duty made in

the respective bill of entries for home consumption. After the impugned notification, and enhanced duty has been imposed and if the notification is

made applicable to the petitioners, the petitioners should pay the differential duty as per the notification. The bone of contention of the learned

Counsel for the petitioners is that the notification did not come into force on 3-8-2001 as the same has been published only on 6-8-2001.

However, the learned Additional Solicitor General produced the copy of the notification published in the Gazette on 3-8-2001. The relevant date

by which a notification comes into force came up for consideration before the Supreme Court in the judgment reported in Union of India and

Others Vs. M/s. Ganesh Das Bhojraj, of the said judgment while considering the provisions of Section 25 prior to the amendment Act 21 of 1998,

the Supreme Court has held that for bringing the notification into operation u/s 25, the only requirement of the section is its publication in the

Official Gazette and no further publication is contemplated. The Supreme Court has also held that it is an established practice that the publication in

the Official Gazette of India (sic is an), "ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned and

individual service of a general notification on every member of the public is not required and the interested person can acquaint himself with the

contents of the notification published in the Gazette." The Supreme Court also approved the similar view taken by the Supreme Court in the earlier

cases reported in M/s. Pankaj Jain Agencies Vs. Union of India and others, and in State of Maharashtra Vs. Hans George, . Therefore, it is to be

held that the notification which has been published on 3-8-2001 should be deemed to have come into effect on and from the date of its notification

in the Gazette namely 3-8-2001.

8. Coming to the facts of the case, the petitioners in W.M.P. Nos. 22829 and 22830 of 2001 have filed their bill of entries for home consumption

on 2-8-2001 and the same have been assessed, which is admittedly prior to the notification. In respect of the petitioner in W.M.P. No. 22831 of

2001, the bill of entry was filed on 3-8-2001 on the date of notification and the bill of entries were filed by the petitioner in W.P. No. 14563 of

2001 prior to the notification. It is to be now seen that in the affidavits filed in support of the petitions, it is the specific case of the petitioners that

the entry inwards was granted only on 5-8-2001. Proviso to Section 15(1) of ""the Act"" relates to such a contingency. According to the said

proviso, if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall

be deemed to have been presented on the date of such entry inwards. The submission of the learned Additional Solicitor General is that by virtue

of the above proviso, the relevant date for assessing the duty payable is the date on which the entry inwards of the vessel which admittedly was on

5-8-2001. Therefore, the relevant date for the assessment of the duty is only on 5-8-2001. When admittedly the date on which the entry inwards

of the vessel was 5-8-2001. If that be so, the petitioners shall in all the three petitions cannot escape the duty as prescribed under the impugned

notification. Prima facie, I find force in the above contentions of the learned Additional Solicitor General and hold that the petitioners are liable to

pay the levy of duty as per the impugned notification to remove the goods.

9. Insofar as the interim directions given by this Court in W.M.P. 21619 of 2001, admittedly, the petitioner has filed 16 Ex. Bond bill of entries u/s

15(1)(b) of ""the Act"" after the petitioner had earlier filed bill of entries for warehousing. Out of 16 bill of entries, the petitioner had admittedly

removed the goods relating to 6 bill of entries. The contention of the learned Counsel for the petitioner is out (sic), that since the petitioner's bill of

entry for home consumption has been already assessed to duty, the petitioner is

entitled to remove the goods on the basis of the payment of duty as assessed by the respondents on the basis of bill of entry and as per Section 47(2) of "the Act" all that the petitioner was liable to pay only the interest if the goods are not cleared on the basis of the bill of entry. While considering the scope of Section 15(1)(a) and (b) the Supreme Court in the judgment reported in 1999 (109) E.L.T. 12 has held that the relevant date for assessment of the duty in respect of the goods already warehoused is the date of actual removal of the goods. As rightly pointed out by the learned Additional Solicitor General that Section 15(1)(a) relates to a bill of entry filed for home consumption u/s 46. The judgment of the Supreme Court relates to Section 15(1)(b) read with Sections 47 and 68 of "the Act". While dealing with such contingency, the Supreme Court has also held that the import duty will be levied at the rate and on the basis of the valuation determined in accordance with the provisions prevailing on the date of clearance of goods from the warehouse for which purpose the importer has to file a fresh bill of entry for home consumption. In view of the above categorical pronouncement, it is to be necessarily held that even though the petitioner has filed bill of entries much prior to the date of notification, since the petitioner has not cleared the goods from the warehouses, before the notification published in the Gazette, the petitioner liable to pay the duty as per the notification dated 3-8-2001 since the relevant date for the assessment of duty is the date on which the goods were actually removed. Therefore, I do not find any justification in continuing the interim direction granted by this Court on 10-8-2001 in W.M.P. No. 21619 of 2001.

10. However, to meet the ends of justice and taking into consideration of balance of convenience, the goods already imported cannot be allowed to lie and the petitioners shall be permitted to remove the goods subject to certain conditions. In view of the above, I issue the following directions in all the writ miscellaneous petitions.

(1) The respondents shall permit each of the petitioners to remove the goods covered in their respective bill of entries subject to the payment of 25% of the differential duty.

(2) The petitioners shall furnish the bank guarantee for the remaining 50% of the differential duty.

(3) For the remaining 25% of differential duty, the petitioners shall furnish the personal bonds.

(4) The petitioners are directed to comply with the conditions 2 and 3 simultaneously along with the condition No. 1 and the respondents shall

release the goods immediately on compliance of all the three conditions.

11. With the above directions, all the writ miscellaneous petitions are ordered accordingly.