
(2015) 05 SC CK 0077

In the Supreme Court Of India

Case No : Civil Appeal Nos. 7801-7811 of 2004, 1808, 1809, 1810, 1811, 1812, 1813 of 2013, 9661 of 2014, Civil Appeal No. 4875 of 2015 (Arising out of SLP (Civil) No. 17415 of 2013) and Civil Appeal No. 4876 of 2015 (Arising out of SLP (Civil) No. 23141 of 2013)

Union of India and Others

APPELLANT

Vs

Param Industries Ltd. and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Customs Act, 1962 — Section 14(2)

Citation : (2015) 321 ELT 192 : (2015) 51 GST 702

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Senior Advocate, Arijit Prasad, B. Krishna Prasad, M.P. Devanath, Vivek Sharma, Aditya Bhattacharya, Ashwani Kumar, Advocates, Rana Mukherjee, Senior Advocate, Kasturika Kaumudi and Shekhar Kumar, for the Appellant; Vivek K. Tankha, G.L.

Final Decision : Disposed Of

Judgement

Civil Appeal Nos. 7801-7811 of 2004

1. The Respondents herein are engaged in the export and import of various edible oils. They have been importing edible oils in bulks through various ports throughout the country. The Respondent had imported RBD Palmolein which had arrived at the port of destination and the same were cleared after payment of import duty of 85 per cent of its value. This import duty was paid pursuant to the notification which was in existence as on that date. The Respondent had even removed major quantity of the goods under the aforesaid consignment from the warehouse after payment of the duty in the manner aforesaid. However, when it wanted to remove the balance quantity, the same was denied. Thereafter, a notice was received by the Respondent which was issued by the Appellant stating that with effect from 03.08.2001 (incidentally this is the date on which the bill of entry was filed and goods were cleared by the Respondent as aforesaid), the

tariff value in respect of RBD Palmolein had been raised to USD 372 per metric ton and therefore, the Respondent was liable to pay the difference in the tariff which was paid on the basis of earlier notification. The Respondent contested the aforesaid demand raised in the show cause notice by filing reply and contending that the notification which was issued Under Section 14(2) of the Customs Act, raising the import duty had not come into effect from 03.08.2001. The Respondent filed the writ petitions challenging the action of the Appellant in determining the duty.

2. Suffice is to state that in these proceedings, the Respondent has ultimately succeeded inasmuch as this plea has been accepted and the Division Bench of the High Court has concluded that notification issued Under Section 14(2) of the Customs Act cannot be held to have come into force with effect from 03.08.2001. There was some dispute as to whether the notification was published on 03.08.2011 itself or it was published on a later date. However, from the record, it gets revealed that the notification was sent for publication after the normal office hours, i.e., much after 5 p.m. on 03.08.2001. It was almost at the midnight, may be few minutes before 12 in the night. Even if it is to be treated as notification having been published on 03.08.2001 itself, i.e., just before the midnight, an issue has arisen as to whether it could be made effective qua the goods which were already cleared during the day time on the basis of earlier notification. However, it is not necessary to go into this issue at all.

3. What we find is that the High Court has stated that for bringing the notification into force and make it effective, two conditions are mandatory, viz., (1) Notification should be duly published in the official gazette, (2) it should be offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. In the present case, admittedly, second condition was not satisfied inasmuch as it was offered for sale only on 06.08.2001, as it was published on 03.08.2001 in late evening hours and 04/05.08.2001 were holidays.

4. We are in agreement with the aforesaid view taken by the High Court which is in conformity with the law laid down by this Court in *Harla Vs. The State of Rajasthan*, AIR 1951 SC 467 : (1952) 1 SCR 110 wherein this Court formulated the aforesaid principle in the following manner:

The principle underlying this question has been judicially considered in England. For example, on a somewhat lower plane, it was held in *Johnson v. Sargant* that an Order of the Food Controller under the Beans, Peas and Pulse (Requisition) Order, 1917 does not become operative until it is made known to the public, and the difference between an Order of that kind and an Act of the British Parliament is stressed. The difference is obvious. Acts of the British Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Royal Proclamations and Orders of a

Food Controller and so forth. There must therefore be promulgation and publication in their cases. The mode of publication can vary; what is a good method in our country may not necessarily be the best in another. But reasonable publication of some sort there must be.

5. These appeals therefore, are liable to fail only on the aforesaid ground and are dismissed accordingly.

Civil Appeal Nos. 1808/2013, 1809/2013, 1810/2013, 1811/2013, 1812/2013, 1813/2013, 9661/2014

Civil Appeal No. 4875/2015 (@ SLP (C) No. 17415/2013), Civil Appeal No. 4876/2015 (@ SLP (C) No. 23141/2013)

6. Leave granted.

7. On the facts of these appeals as well, we find that though the notification may have been published on the date when the goods were cleared, it was not offered for sale by the concerned Board, which event took place much thereafter. Therefore, it was not justified and lawful on the part of the Department to claim the differential amount of duty on the basis of said notification. These appeals are, accordingly, allowed only on this ground and it is not necessary to go into other issues at all.