(1989) 07 MAD CK 0018

In the Madras High Court

Case No : Writ Appeal No''s. 1051 to 1053 of 1984

Union of India APPELLANT

Vs

Asia Tobacco Co. Ltd. RESPONDENT

Date of Decision : 10-07-1989

Acts Referred:
Central Excise Rules, 1944 — Rule 8

Citation : (1992) 38 ECC 209 : (1990) 50 ELT 29 : (1992) 196 ITR 318

Hon'ble Judges : S. Ramalingam, J;S. Mohan, J

Bench : Division Bench

Advocate : C. Krishnan, for the Appellant; Habibulla Badsha, for S. Subramaniam, for the Respondent

Judgement

S. Ramalingam, J.—These writ appeals are against the common order made in W. P. Nos. 6048, 6049 and 6050 of 1984.

2. The facts of the case are as follows :- The respondent in the writ appeals, who is the petitioner in the writ petitions and who, for the sake of

uniformity, will hereinafter be referred as to the petitioners manufactures cigarettes on which excise duty is payable. By an exemption Notification

No. 30/79-Central Excise, dated 1-3-1979, made under Rule 8 of the Central Excise Rules, 1944, the Central Government exempted cigarettes

falling under a particular description from so much of the duty of excise leviable thereon, as is in excess of the duty specified in the corresponding

entry in Column (2) of the Notification. The petitioner had the benefit of this exemption Notification and was clearing the manufactured cigarettes

on payment of the concessional excise duty.

3. However, by a Notification No. 284/82-C. E., dated 30-11-1982, hereinafter referred to as the withdrawal Notification, the earlier Notification

No. 30/79-Central Excise, dated 1-3-1979 was rescinded.

4. On a demand being make for payment of full excise duty without any concession for the period between 30-11-1982 and 5-12-1982, the

petitioner paid the amount without prejudice to their rights and contentions. The petitioners pleaded that were not aware of the Notification No.

284/82-C. E., dated 30-11-1982 till 7-19-1982 and, therefore, they are not liable to pay the amount as demanded towards differential duty in a

sum of Rs. 10,04,661/-.

5. The petitioners applied to the Controller of Publications, Department of Publications, Government of India, New Delhi, on 23-4-1983,

requesting information as to the exact date on which the Gazette of India Containing Notification No. 284/82-C. E., dated 30-11-1982 was

actually printed, published and made available to the public. In response thereto, the office of the Controller of Publications, informed the

petitioners that the Gazette of India, Extraordinary, part II, Section III, sub-section (1) dated 30-11-1982 containing GSR Notification No.

284/82, Central Excise, was placed on sale for public on 8-12-1982.

6. Armed with the above letter of the Office of Controller of Publications, the petitioners submitted a representation dated 9-5-1983 to the

Assistant Controller of Central Excise that the Notification No. 284/82 could be made applicable only from the date on which it was made

available to the public by sale viz., on 8-12-1982 and the duty payable by the petitioner for the period from 30-11-1982 to 7-12-1982 should be

based on the earlier Notification viz., Notification No. 30/79-C.E., dated 1-3-1979 under which a concession was available. This request of the

petitioner was declined in the letter of the Assistant Collector of Central Excise dated 19-9-1983. Further representations made by the petitioners

to the hierarchy of departmental authorities were of no avail.

7. It was in these circumstances, the petitioners filed W.P. No. 6048 of 1984 for a writ of mandamus to direct the respondents to refund all

moneys collected in pursuance of Notification No. 284/82-C.E., dated 30.11.1982 for the period from 30.11.1982 to 7.19.1982 on clearances

made during such period. W.P. No. 6049 of 1984 was filed for a writ of declaration declaring that the Notification No. 284/82 will be effective

only from 8.12.1982. The prayer in W.P. No. 6050/84 was for the issue of a writ of certiorari to quash the order dated 22.2.1984 issued by the

second respondent declining the request of the petitioners, as aforesaid.

8. In answer to the above prayers, the respondents in the writ petitions, who are the appellants herein and who will hereinafter be referred to as the

respondents, contended that once the Notification is published in the Gazette of India on one date it should be legally presumed to have been given

publicity on that date itself and would also be deemed to have come into force on the date mentioned in the copy of the Gazette. They pleaded that

the availability of the copy of the Gazette for sale to the public is not material.

9. Learned Judge, on a consideration of the law on the subject, concluded that the Notification issued by the Government, in exercise of powers

under Rule 8, could be enforced only from the date on which it was made known to the public by making the copy of the Gazette available for sale

to the public. In the instant case, there was enough material to hold that the availability of Gazette by way of sale to the public was only on

8.12.1982, as seen from the letter of the Controller of Publications. In this view, the learned Judge allowed all the three writ petitions.

10. In these writ appeals, learned counsel for the respondents reiterated the contentions urged before the learned Judge. He relied upon a

judgment of the Calcutta High Court reported in General Fibre Dealers Ltd. and Another Vs. Union of India (UOI) and Others, . In that case, the

excise duty was enhanced by Notification dated 30.3.1981. Certain goods were cleared from the warehose on 30.3.1981 and, therefore the

Department insisted upon payment of enhanced rate of duty leviable under the Notification dated 30.3.1981 and not concessional rate of duty

admissible prior to 30.3.1981. It was in that context, the Calcutta High Court held that the Notification would not become invalid on the mere

ground that the copy of the Gazette in which it was published, was not made available within a reasonable time. It was further help that publication

of Notification in the Official Gazette was sufficient to make it operative and its availability to the public cannot be made a condition precedent for

the same. This decision of the Calcutta High Court followed the earlier decision of the Gujarat High Court and dissented from the view taken by

the Allahabad High Court. As against this decision there are a large number of decisions taking a contrary view. In several cases, where such a question arose for consideration, the Courts have uniformly and consistently held that the Notification, which has civil consequence would take

effect only when the Notification is made known to the public by making a copy of the Notification printed and published in the Gazette and

available for sale to the public.

11. In G. Narayana Reddy v. State of Andhra Pradesh (1975) 35 STC 319 a Bench of the Andhra Pradesh High Court held that, though the

concerned Notification was printed on 1.12.1966, since it was released to the public only on 12.12.1966, the authorities were restrained from

giving effect to the Notification during the period between 1.12.1966 and 11.12.1966 (both days inclusive), anterior to the release to the public of

the said Notification. Again in Yemnigarur Spinning Mills Ltd. v. State of Andhra Pradesh (1976) 37 STC 314 a Division Bench of the Andhra

Pradesh High Court, when dealing with a case where a Government Order rescinding the exemption u/s 9 of the Andhra Pradesh General Sales

Tax Act, 1957, with effect from 19.4.1971 by Notification dated 18.9.1971, was published in the Andhra Pradesh Gazette on 1.7.1971, held that

the Notification was effective and enforceable only on and from 1.7.1971. Therefore, the conclusion is irresistible that without proper Notification,

viz., without putting the public on notice, it is impossible to enforce withdrawal of exemption earlier granted. Mere printing is not enough. After

printing it must be published and ""publish"" means that it should be made known to the public. The normal method by which the public are made

known is by making the copy of the Gazette, in which the Notification is printed, available for sale to the public. In the instant case, there is

indisputable proof to show that the withdrawal Notification was made available for sale to the public only on 8.12.1982. The result is that the

withdrawal Notification became effective only from that date viz., 8.12.1982.

12. Since the transactions in question were for the period from 30.11.1982 to 5.12.1982, during which period the withdrawal Notification

(Notification No. 284/82-C.E., dated 30.11.1982) was not made known to the public, the petitioners would certainly be entitled to the benefit of

the earlier exemption Notification No. 30/79-C.E., dated 1.3.1979. Consequently, the order made in W.P. No. 6048 of 1984 directing refund of

the moneys collected from the petitioner for the period from 30.11.1982 to

5.12.1982 in enforcement of the withdrawal Notification, ignoring the

earlier exemption Notification is correct. It follows therefrom that the orders made in W.P. Nos. 6049 and 6050 of 1984 cannot also be assailed.

13. In the result, all the appeals fail and they are dismissed. The petitioners (respondents in the writ appeals) would be entitled to costs of Rs.

500/- in each of the writ appeals. The benefit of the interim order made on 3.19.1984 in C.M.P. No. 14576, 14596 and 14597 of 1984 would be

available to the respondent with regard to the refund.

