(1991) 10 DEL CK 0016

In the Delhi High Court

Case No : C.W.P. No. 3353 of 1982

Universal Cans and Containers Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 24-10-1991

Acts Referred:

Citation : (1992) 40 ECR 328 : (1993) 64 ELT 23

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : Shri P.K. Ram, for the Appellant; Shri Madan Lokur, for the Respondent

Judgement

D.P. Wadhwa, J.—The only issue involved in this writ petition is whether the exemption notification issued u/s 25 of the Customs Act, 1962 (for short ''the Act'') will take effect from the date of its publication in the Official Gazette, or from the date when it is issued to the general public. Sub-section (1) of Section 25 of the Act, which is relevant for our purpose, is as follows :-

"Power to grant exemption from duty. - (1) If the Central Government is satisfied that it is necessary in the public interest so to do it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance), as may be specified in the notification goods of any specified description from the whole or any part of duty of customs livable thereon."

2. The petitioner, a public limited company, imported certain quantity of aluminium slugs (circles) having 99.7% purity by SS ''Kostrena''. The vessel arrived at Bombay Port on 31 July 1982. Since there was congestion in the Bombay Port, the vessel was not allocated any berth and it left for Cochin Port. It again berthed at Bombay Port on or about 13 August 1982. The petitioner filed its Bill of Entry for home consumption on that day itself. The contention of the petitioner in the writ petition is that duty imposed under Notifications No. 182/82

and No. 189/82 purportedly issued on 31 July 1982 by the first respondent whereby partial exemption from duty in respect of certain goods of aluminium slugs falling under Chapter 76 of the Customs Tariff Act, 1975, available under the Notification No. 260/81-Customs, dated 3 December 1981 and Notification No. 131/82-Customs, dated 11 May 1982 was sought to be withdrawn, is illegal. They say the goods were imported prior to the date of withdrawal of the exemption by impugned notifications. The impugned notifications are both dated 31 July 1982. Petitioners have placed on record a letter from the Controller of Publications, Government of India, Ministry of Works and Housing, Department of Publication, Delhi, that the impugned notifications were published in the Gazette of India Extraordinary Part II, Section 3, sub-section I, dated 31 July 1982, and that Gazette of India was placed on sale for public on 20 August 1982. Petitioners, Therefore, say that on the date when they filed the Bill of Entry on 13 August, 1982 the exemption notification mentioned above was in operation and they were entitled to lower rate of duty in terms of Section 15 of the Act.

3. There is no dispute to the averments made by the petitioners. Respondents have only contended that the Notification No. 260/81-Customs was no longer in existence and had since been withdrawn by Notification No. 188/82-Customs, dated 31 July 1982 and so the standard rate of duty at the rate of 60% ad valorem was chargeable and not at the rate of 22.5% ad valorem in terms of the exemption Notification No. 260/81-Customs, dated 3 December 1981. They have also contended that in relation to that auxiliary duty of 30% was then chargeable under Notification No. 189/82-Customs, dated 31 July 1982 and not 15% as earlier charged as per the exemption Notification No. 341/76-Customs, dated 2 August 1976.

4. When this petition was filed, this Court after notice to show cause as to why rule nisi be not issued and after hearing the respondents, passed the following order on 24 October 1985 :-

"A large number of points were raised in the petition but the only point that survives is whether the exemption notification though dated 31st July 1982 but the Gazette notification which was said to have been made available for sale only on 20th August, 1982, can be said to be operative from the former date. Mr. Desai says that the bill of Entry was filed on 13th August 1982 and the benefit of the Notification dated 3-12-1981 continued to remain available till 20th August, 1985.

Rule D.B. only on this point."

5. On the interim application, this Court had granted relief in terms of prayer (b) read with prayer (a) of the application (C.M. 4833/82). Under these two prayers, the petitioner had sought the following reliefs :-

"(a) direct the Respondents, their subordinate, delegates or servants to forthwith allow the petitioners to clear the said goods [Aluminum slugs (circles)] as declared under Bill of Entry which is annexed to the writ petition and marked

Annexure-G at rates prevalent prior to the issuance of the impugned notifications viz., the rate of customs duty in terms of the Notification No. 260/81 read with Notification No. 341/76 and read with Notification No. 131/82 as it stood prior to its purported amendment on 31-7-1982 upon the petitioners furnishing a bond for the disputed amount of duty supported by Bank Guarantee for 50% of the disputed amount of duty;

(b) pass ad interim ex parte order in terms of prayer (a) hereinabove; and"

6. The bond was to be executed to the satisfaction of the Collector of Customs, Bombay.

7. This interim order made earlier was confirmed on 24 October 1985.

8. The question that arises is : What would be the date of the notification of the Official Gazette which would take effect; whether it is the date on which the Official Gazette is printed or the date when it is issued to the public ? Language of Section 25 of the Act shows that the Central Government is to inform the general public, or the trading community in particular, as to the exemption notification or its withdrawal. That can only be done if the Official Gazette is made available to the general public. The word "notification" in ordinary parlance means the act of notifying or giving notice; notice given in words, or anything which communicates information. Here the notification has to be in writing and has to be published in the Official Gazette. The word "publish", according to the New Webster''s Dictionary of English Language, means "to cause to be printed and offer for sale to the public, as a newspaper, book, magazine, or the like; to make public; to make known to public in general; to promulgate." According to the Concise Oxford Dictionary, the word "publish" means "make generally known; announce formally; promulgate; issue copies of (book, engraving, etc.) for sale to the public; and the word "notification" is the act of notifying which means "make known, announce, reiterate, inform, give notice to."

9. u/s 3(39) of the General Clauses Act, 1897, "Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State. What is Official Gazette and under what authority it is published ? is yet another question. A Gazette is generally understood as an Official Government Journal containing public notices and other prescribed matters. Legal Glossary (1983 Edition) issued by the Legislative Department of the Ministry of Law, Justice and Company Affairs, Government of India, defines Gazette as "an official newspaper containing lists of Government appointments, legal notices, dispatches, etc."

10. We felt considerable difficulty to find out under what authority an Official Gazette is issued. The Official Gazettes Act, 1863 (Act XXXI of 1863) was passed by the Governor-General of India in Council and received the assent of the Governor-General on 16 December 1863, which is as follows :-

"An Act to give effect to the publication of certain orders and other matters in the Gazette of India.

WHEREAS the Governor-General of India in Council has resolved to publish an Official Gazette to be called the Gazette of India containing such orders, notifications, and other matters as the Governor-General of India in Council shall direct to be inserted therein; it is enacted as follows :-

I. When in any Regulation or Act now in operation, or in any Rule having the force of law, it is directed that any order, notification or other matter shall be published in the Official Gazette of any Presidency or place, such order, notification or other matter shall be deemed to be duly published in accordance with the requirements of the law, if it be published either in the Gazette in which it would have appeared but for the passing of this Act, or in the Gazette of India under the directions of the Governor General of India in Council."

11. That is all this Act.

12. Then, Section 3 of the Government of India (Adaptation of Indian Laws) Order, 1937, issue u/s 293 of the Government of India Act, 1935, provided as under :-

"3. The Indian laws mentioned in the Schedule to this Order shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to the adaptations and modifications directed by those Schedules to be made therein or, if it is so directed, shall ceases to have effect."

13. Under the Schedule, it was mentioned that the Official Gazettes Act, 1863, shall cease to have effect. Section 293 of the Government of India Act, 1935, provided as under :-

"293. His Majesty may by Order in Council to be made at any time after the passing of this Act provide that, as from such date as may be specified in the Order, any law in force in British India or in any part of British India shall, until repealed or amended by a competent Legislature or other competent authority have effected subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provisions :

Provided that no such law as aforesaid shall be made applicable to any Federated State by an Order in Council made under this section.

In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, buy-law, rule or regulation having in British India the force of law."

14. Thereafter, under the Repealing Act, 1938 (Act No. I of 1938) the whole of the Official Gazettes Act, 1863, stood repealed. It will be useful to reproduce an abstract from the object of the Repealing Act, 1938 :-

"The Acts now contained in the nine published volumes entitled'' Unrepeated general Acts of the India Legislature'' have recently been subjected to considerable textual modification by the Government of India (Adaptation of Indian Laws) Order, 1937, made in pursuance of Section 293 of the Government of India Act, 1935. The task of issuing a revised edition of these Acts is now being taken in hand, and the present is an appropriate occasion for the repeal of such of the enactments appearing in those volumes as were concerned merely with the making of textual alterations in previously existing Act. The textual alterations so made are incorporated in the parent Act as soon as the amending Act comes into force, and are printed in the text in all subsequent editions, footnotes being usually added to explain the origin of the changes. It has hitherto been the general practice to print the amending Acts themselves in these volumes, although in some cases economy of space is effected by omitting portions of the text of the amending Act and inserting instead of reference to the parent Act where the amendment has already been shown.

Much printing space is occupied and no useful purpose is served by the reproduction in the volumes of the General Acts of amending Acts of the nature referred to, and it is proposed in future not to include them. They are published under their annual Serial number in the volume of Statutes of the year in which they are passed and are easily found there if required.

But the insertion recently of Section 6A in the General Clauses Act, 1897, has abolished all reasons for keeping amending Acts of this nature alive. Notwithstanding the repeal of such Acts amendments made by them continue in existence. Henceforward they may be repealed in the same way that enactments repealing previous Acts are now habitually repealed under cover of Section 6 of the General Clauses Act.

The present Bill contains proposals for the repeal of several hundred enactments, including Acts, Regulations and sections of Acts or Regulations, which were passed to make textual alterations in previous enactments. A few other enactments are included which are either themselves repeals or are enactments the effect of which is spent, such as Excess Profits Duty Act, 1919. These have hitherto been overlooked in the annual Repealing and Amending Acts. Certain Acts which have, by virtue of the Government of India (Adaptation of Indian Laws) Order, 1937 ceased to have effect are now formally repealed.

The Bill does not include for repeal any Act or Regulation passed later than the close of the year 1935; that is to say, no enactment is to be repealed unless it has been in existence for two complete years. During this period publication of the enactment in the volumes of Statutes of the year has been secured, its existence has had ample time to be appreciated, and there has been ample opportunity for any modifications introduced by it in previous Acts to be noted and incorporated in their proper places."

15. We were perplexed as to the effect of repeal of the Official Gazettes Act,

1863. But then we find that this Act only validated certain Official Gazettes and the Official Gazettes are being published under a resolution of the Governor-General of India in Council which resolution is, what we find in the preamble to the said Act. That is the authority for the publication of the Official Gazettes.

16. Directorate of Printing issued an Office Memorandum No. O-17034/1/83-P (III), dated 2 September 1985, incorporating various instructions regarding printing and distribution of the various parts of the Gazettes of India. Gazette of India is published in five different parts and these are further divided into sections and sub-sections except Parts IV and V. The details of these parts are as under. -

PART-I - SECTION 1 - Notifications relating to Non-Statutory Rules, Regulations, Orders and Resolutions issued by the Ministries of the Government of India (other than the Ministry of defense) and by the Supreme Court.

SECTION 2 - Notifications regarding Appointments, Promotions, leave etc. of Government Officers issued by the Ministries of the Government of India (other than the Ministry of defense) and by the Supreme Court.

SECTION 3 - Notifications relating to Resolutions and Non-Statutory Orders issued by the Ministry of defense.

SECTION 4 - Notifications regarding Appointments, Promotions, Leave etc. of Government Officers issued by the Ministry of defense.

PART II SECTION 1 - Acts, Ordinances and Regulations.

SECTION 1A - Authoritative texts in Hindi Language of Acts, Ordinances and Regulations.

SECTION 2 - Bills and Reports of the Select Committee on Bills.

SECTION 3 - Sub-Sec. (i) - General Statutory Rules (including Orders, Bye-laws, etc. of general character) issued by the Ministries of the Government of India, (other than the Ministry of defense) and by Central Authorities (other than the Administration of Union Territories).

SECTION 3 - Sub-Sec. (ii) - Statutory Orders and Notifications issued by the Ministries of the Government of India (other than the Ministry of defense) and by Central Authorities (other than the Administration of Union Territories).

SECTION 3 - Sub-Sec. (iii) - Orders and Notifications issued by the Central authorities (other than the Administration of Union Territories).

SECTION 3A - Authoritative texts in Hindi (other then such texts, published in Section 3 or Section 4 of the Gazette of India) of General Statutory Rules & Statutory Orders (including Bye-laws of a general character) issued by the Ministries of the Government of India (including the Ministry of defense) and by General Authorities (other than Administration of Union Territories).

SECTION 4 - Statutory Rules and Orders issued by the Ministry of defense.

PART III - SECTION 1 - Notifications issued by the High Courts, the Comptroller and Auditor General, Union Public Service Commission, the Indian Government Railways and by Attached and Subordinate Offices of the Government of India.

SECTION 2 - Notifications and Notices issued by the Patent Office, relating to Patents and Designs.

SECTION 3 - Notifications issued by or under the authority of Chief Commissioners.

SECTION 4 - Miscellaneous Notifications including Notifications, Orders, Advertisements and Notices issued by Statutory Bodies.

PART IV - Advertisements and Notices issued by Private Individuals and Private Bodies.

PART V - Supplement showing statistics of Births and Deaths etc. both in English and Hindi.

17. These Gazettes are published weekly, but then Extraordinary issues of Gazettes are also published. The aforesaid Office Memorandum incorporates various instructions regarding publication of Weekly and Extraordinary issues of the Gazettes. Instructions IX, X, XI, and XIV of para (2) of the Office Memorandum are reproduced as under :-

"IX. No matter should be required to be published in a Gazette Extraordinary unless it is of such an urgent nature that it cannot wait until the publication of the next Ordinary Weekly issue of the Gazette.

X. In fixing the date which a Gazette Extraordinary should bear, the time-schedule prescribed should be observed, where for any special reason this is not practicable, the Govt. of India Press should be consulted before fixing the date.

XI. Notifications which are to be published by a definite date.

In the case of notifications etc. which are to be published by a particular date, they should be sent giving sufficient time to the Press concerned with a covering letter indicating therein the date by which the notification should be published. In case the Govt. of India Press does not find it possible to publish them by the stipulated date, the Press will inform in writing the Department concerned accordingly, so that any changes to be made by the Ministry/Department/Office concerned.

Alternatively they can place cyclostyled copies of the Gazette in the Parliament and simultaneously they may send 15 cyclostyled copies of the Gazette to the Kitab Mahal Book Depot of the Department of Publications for sale to the public. A proper record of the dates when an issue of the Gazette of India Extraordinary is printed should be kept in the respective Presses, as sometimes it may be necessary to tender evidence in that regard in courts.

XIV. If the matter to be published is of special public interest and is likely to create a large demand for copies of the Gazettes, the Press should be advised accordingly under intimation to the Controller of Publications, Department of Publications, Civil Lines, Delhi, who will determine the no. of copies to be printed."

18. Para 3 of the Office memorandum prescribes the time schedule for publication of the Weekly and Extraordinary Gazettes. An Extraordinary Gazette which is to be printed in bulk requires 24 hours for publication from the time of the receipt in the press if it is up to two pages of typewritten matter. All these instructions go to show that it is not the date which is printed on the Official Gazette which is relevant, but the date on which the Gazette is made available to the public is that relevant.

19. What is the use of the Official Gazette which is lying in the printing press of the Government of India or any Government Department and is not made known to the public who are to be affected by such a Gazette. We have seen what is meant by the words "notification" and "publication". Principle "ignorance of law is no excuse" cannot be invoked unless that law is made public. It is, Therefore, the date on which the Official Gazette is made available to the public that matters, and not the date on which it is shown to have been printed.

20. We are supported in our view by a decision of the Madras High Court in Asia Tobacco Company Ltd. Vs. Union of India and Others, which was further upheld in appeal by a Division Bench of that Court in Asia Tobacco Company Ltd. Vs. Union of India and Others, Nainar Sundaram, J. relied upon decision of the Supreme Court in State of M. P. v. Ram Raghubir Prasad. During the course of hearing we were informed by Mr. P. K. Ram, learned counsel for the petitioner, that Customs, Excise and Gold (Control) Appellate Tribunal had held in a case that the effect of the exemption notification is the date on which it was made known to the public and not the date of its publication in the Gazette, and that appeal against that order had been dismissed by the Supreme Court on December 21, 1990 (Collector of Customs, Bombay v. M/s. Wire Metal Works, C.A. Nos. 5405-07/1990). In this connection Mr. Ram also referred to 1991 (53) E.L.T. A61 (Tit-Bits portion).

21. u/s 81 of the Indian Evidence Act, 1872, the Court shall presume the genuineness of every document purporting to be in Official Gazette, and read with Section 114 of the said Act and Illustration (e) thereto, the court can presume that the Official Gazette was notified on the date as appearing in the Official Gazette. However, this is only a rebuttable presumption. It can be rebutted by the evidence to the contrary. As noted above, in the present case it has been shown that the Official Gazette was notified on a date after the date appearing on the Gazette.

22. Section 5 of the General Clauses Act, 1897, provides that where any Central Act is not expressed to come into operation on a particular day, then it shall

come into operation on the day on which it receives the assent of the President. This is not applicable in the present case. Here we are concerned with a notification in the Official Gazette.

23. Accordingly, we allow the petition and we hold that exemption Notifications Nos. 260/81-Customs read with 341/76-Customs will be applicable in the present case. The bond furnished by the petitioner is discharged. Rule is made absolute. There will be, however, no order as to costs.