IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2015

CORAM

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.15635 of 2001

M/s.Foods, Fats and Fertilisers Ltd.,
rep. By its Vice-President
A.S.Raghavan ... Petitioner

Vs.

The Deputy Commissioner of
Customs, Custom House,
Customs Division, Nagapattinam,
Tamil Nadu. ... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned demand letter C.No.VIII/6/01/2001 dated 09.08.2001 of the respondent and quash the same and further direct the respondent not to apply the Tariff value introduced vide Notification No.36/2001-Cus (NT) dated 03.08.2001 for the consignment of Bills of Entry Nos.6,7,8 all dated 03.08.2001 and No.9 dated 04.08.2001 filed by the petitioner.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.K.Ravi Ananda Padmanabhan, SCGSC

ORDER

This writ petition has been filed for the issuance of a certiorarified mandamus to call for the records of the impugned demand letter C.No.VIII/6/01/2001 dated 09.08.2001 of the respondent, quash the same and further direct the respondent not to apply the Tariff value introduced vide Notification No.36/2001-Cus (NT) dated 03.08.2001 for the consignment of Bills of Entry Nos.6, 7 and 8 dated 03.08.2001 and No.9 dated 04.08.2001 filed by the petitioner.

2.Heard the learned counsel for both sides.

3.The petitioner totally imported 3350.925 metric tons of RBD Palmolein edible oil on 03.08.2001 and 04.08.2001 and thereafter filed the bills of entry for warehousing as No.01/2001 dated 09.07.2001 and No.10/12 dated 26.07.2001 before the Customs authorities at Nagapattinam. The Deputy Commissioner assessed the goods on the basis of the value declared in terms of Section 14(1) of the Customs Act. In the meanwhile, on 03.08.2001, the Department of Revenue, Ministry of Finance issued a Notification No.36/2001-CUS (NT), by which, the value of US$ 372 per metric ton was fixed for RBD Palmolein edible oil under Section 14(2) of the Customs Act. After correcting the values assessed, the Deputy Commissioner asked the petitioner to pay the differential duty of Rs.1,13,11,872/-. The petitioner paid the same under protest.

4.Admittedly, in the present case, the crux of the issue is the impugned Notification dated 03.08.2001 was notified in the official gazette to the public only on 06.08.2001, therefore, it cannot be retrospectively applied to the goods imported on 03.08.2001 and 04.08.2001. A Division Bench of High Court of Karnataka dealt with the very same Notification in Param Industries Ltd., Vs. Union of India (2002 (150) E.L.T. 3 (Kar.) and settled the issue. The relevant portion of the said decision reads as under:

> "11. In the instant case, the point for determination is as to whether the Notification No. 36/2001-CUS (N.T.), dated 3-8-2001 was published in the Official Gazette on 3-8-2001 itself, as contended by the Revenue Authorities or was it notified on 6-8-2001 or thereafter, as stated by the petitioners and further whether the notification has been issued within the terms and after meeting the requirements of Section 14(2) of the Customs Act.
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> 12. In the facts of the given case, it is clearly averred in the petitions that notification dated 3-8-2001 was not gazetted on the same day. 4th and 5th were public holidays and hence notification must have been published in the Gazette only after 6-8-2001 and petitioners' Counsels have also produced copy of fax message received at Cochin Excise Office which was received at 11:44 p.m. on 3-8-2001 and at that time notification was yet to be published in the Gazette as copy contains endorsement "to be published in Gazette". In the statement of objections filed by respondents it is stated that notification was issued on 3-

8-2001 and published on the same day in Gazette of India and displayed on notice board of Department of Publication as admitted in the petition. The petitioners have not admitted publication of notification in Gazette on 3-8-2001 and it is specifically averred that publication in the Gazette was subsequent to 6-8-2001. Further, the petitioners have produced copy of letter dated 1-2-1990 written by Government of India, Ministry of Finance, Department of Revenue (Annexure-E in W.P. No. 34758 of 2001) addressed to the Director, Directorate of Publication, Government of India which shows that as per directions issued by earlier letter dated 12-8-1985, it was meant to restrict issuing of letters to the private parties intimating them about the date of actual publication in the Gazette as it was causing practical difficulties and was giving rise to disputes regarding validity of notification from the date of issue. Hence, petitioners are unable to produce documents showing exact date of publication and it is stated that it is for the respondents to show by producing relevant records that notification was published in the Gazette on 3-8-2001 itself. It is also to be seen that in response to a clarification sought by the petitioners, the Assistant Controller (Business), Government of India, Department of Publication, Delhi vide his letter dated 10-9-2001 has informed the petitioners that Issue No. 548 of the Official Gazette was made available for public sale on 6-8-2001 as per the records of the department. The issue number of the Customs Notification No. 36/2001-CUS (N.T.), dated 3-8-2001 being 549, it is clearly established that the said notification was made available for public sale on or after 6-8-2001, and therefore, the question of publication of the notification dated 3-8-2001 on the same day does not arise. It is also to be seen that on the basis of bill of entry for home consumption assessment was completed. Under the circumstances, no inference can be drawn that the notification dated 3-8-2001 was gazetted on the same day itself. It is also to be seen that the Parliament has added Sub-sections (4) and (5) to Section 25 of the Customs Act by Act 25 of 1998 with effect from 1-6-1998, prescribing that unless otherwise provided, every notification issued under Section 25(1) comes into force on the date of its issue by the Central Government for publication in Official Gazette with the further stipulation that such notification shall 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. This clearly shows the intention of the legislature that a notification is to be effective from the date when it is issued by the Central Government for publication in the Official Gazette. The same analogy will apply to the instant case. As per the intention of the legislature and the order of the Supreme Court a notification can be said to be made on the same day only if 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. Failure to do so could not make a notification effective from the date of its issue for publication. This provision added with effect from 1-6-1998 also shows that the date of publication in the Official Gazette and the date of its issue for publication in the Official Gazette can be different. In the present case the said notification was published in the Official Gazette on 6-8-2001 and not before 6-8-2001 and was offered for sale not before 6-8-2001. Therefore, even as per the judgment of the Hon'ble Supreme Court, the said notification is to be effective with effect from 6-8-2001. The learned Central Government Standing Counsel has not been able to show that it was published on 3-8-2001 and they also offered this notification for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi as per the Amendment. For our satisfaction, we granted time to the Central Government Standing Counsel to place the records. It is true that Gazette notification is admissible being the official record evidencing public affairs and the Court is required to presume its contents as genuine under Sections 35 and 38 read with Section 81 of the Indian Evidence Act unless contrary is proved. Despite directions the respondents have not chosen to produce the records to show that averment made in the writ petitions is false and that notification was published on 3-8-2001 itself. It is clear from the averments made in the affidavit dated 30-8-2002 and Annexure-R1 produced along with the affidavit that Annexure-R1 is not the Gazette notification, it is only a letter addressed to the Manager, Government of India Press, Mayapuri, New Delhi to publish the notification dated 3-8-2001 and no records have been produced to show the exact date on which notification was published in the Gazette. Annexure-R1 would only reveal that the notification was forwarded to the Manager, Government of India Press to publish the same in the Official Gazette and there is no record further to show that pursuant to the said letter

Gazette notification was published on 3-8-2001 itself. But on a perusal, it is clear from Annexure-R1 that the date 6-8-2001 has been overwritten as 3-8-2001 and that apart in the letter sent to the Government of India Press on 3-8-2001 the said overwriting has not been attested or explained in the affidavit. Be that as it may. What is produced is the Xerox copy of the letter and therefore the said letter is not helpful to show that it was published in the Gazette on 3-8-2001 itself in the Gazette on the same day and on the other hand it would help the petitioners' contention."

5.In the light of the above, as the issue was once and for all decided holding that the impugned Notification dated 03.08.2001 was notified in the official gazette to the public only on 06.08.2001, the duty becomes payable only from the date it is notified in the official gazette, hence, the impugned demand letter C.No.VIII/6/01/2001 dated 09.08.2001 is set aside and the writ petition shall stand allowed. It is needless to mention that the petitioner is entitled to refund of the duty paid under protest i.e. Rs.1,09,11,275/-. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Customs,
Custom House,
Customs Division, Nagapattinam,
Tamil Nadu.

+1cc to Mr.K.Ravi Ananda Padmanabhan, Advocate, S.R.No.27147
+1cc to M/s.S.S.Radhakrishnan Advocate, S.R.No.27246

W.P.No.15635 of 2001

VSN(CO)
CA(07/08/2015)