

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

W.P.Nos.19303 AND 20536 OF 2001

Between:

-
WP. No.19303 of 2001:

Agarwal Industries Ltd.

.... Petitioner

Vs.

Union of India and another.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 21.06.2016.

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

1. Whether Reporters of Local newspapers may
be allowed to see the Judgments?
2. Whether the copies of judgment may be marked
to Law Reports/Journals Yes
3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? Yes

JUSTICE RAMESH RANGANA1

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
* THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ WRIT PETITION Nos. 19303 AND 20536 OF 2001

% Dated 21-06-2016

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W.P.No. 19303 of 2001:

Agarwal Industries Ltd

.... Petitioner

Vs.

\$ Union of India and another.

.... Respondents

! Counsel for petitioner: Sri G.L. Rawal, Learned Senior Counsel,
Sri Y. Srinivasa Reddy and Sri G. Anandam.

^ Counsel for respondents: Sri P.S.P. Suresh Kumar, Learned
Standing Counsel for Central Excise

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> HEAD NOTE:

? Citations:

- 1) [1] 2015 (321) E.L.T. 192 (S.C.)
- 2) (Judgment in W.P. No.18440 of 2001 and batch dated 20.02.2013)
- 3) 2002 (150) E.L.T. 3 (Kar.)
- 4) (1994) 5 SCC 198
- 5) (2000) 9 SCC 461
- 6) (2014) 16 SCC 623
- 7) (2014) 6 SCC 514
- 8) (1994) 1 An .W.R.450 (FB)
- 9) (2003) 5 SCC 448
- 10) (2001) 2 SCC 247
- 11) (1993) 3 SCC 288
- 12) (1987) 1 SCC 658
- 13) (1998) 97 E.L.T. 388 (SC)
- 14) (1989) 2 SCC 754
- 15) (2002) 4 SCC 638
- 16) AIR 1970 SC 1002
- 17) AIR 1965 SC 1887
- 18) (2002) 4 SCC 234
- 19) (2004) 5 SCC 568
- 20) (2012) 10 SCC 1
- 21) (1984) 2 SCC 324
- 22) (1972) 1 All ER 801
- 23) (1984) 2 SCC 402
- 24) (1995) 1 SCC 259
- 25) (1993) 3 SCC 29
- 26) (2001) 2 SCC 186

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

W.P.Nos.19303 AND 20536 OF 2001

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

W.P. No.19303 of 2001 is filed seeking a writ of mandamus to declare that Notification No.36/2001-Cus(NT) dated 03.08.2001 is valid and enforceable only on and from 07.08.2001 when the gazette was made available to the public; and that the subsequent Circular No.46/2001 dated 10.08.2001, issued by the first respondent clarifying that the notification dated 03.08.2001 came into effect on and from 03.08.2001 when it was issued for publication in the gazette, is *ultra vires* Section 14(2) of the Customs Act. W.P. No.20536 of 2001 is filed seeking a writ of certiorari to quash Notification No.36/2001 dated 03.08.2001 and to declare the order of assessment, passed on the strength of the tariff value fixed by the said notification, as arbitrary and illegal.

It would suffice, for the disposal of both the Writ Petitions, if the facts in W.P. No.20536 of 2001 are noted. The petitioner in W.P. No.20536 of 2001 carries on business in the import of edible oils including RBD Palmolein oil. They imported 1009.234 metric tonnes of RBD Palmolein oil of edible grade in bulk at 248 U.S. dollars per metric tonne. A bill of entry for home consumption was filed on 03.08.2001 for the import of these goods. By Notification No.36/2001 dated 03.08.2001, the Central Board of Excise and Customs, Ministry of Finance, Government of India, and in the exercise of the powers conferred on them under Section 14(2) of the Customs Act, fixed the tariff value of RBD Palmolein oil at 372 U.S. dollars per metric tonne. On their being called upon to pay the differential customs duty (difference between 372 U.S. dollars per metric tonne prescribed under Notification No.36/2001 dated 03.08.2001 and the invoice value of 248 U.S. dollars per metric tonne), the petitioner invoked the jurisdiction of this Court contending, among others, that Notification No.36/2001 dated 03.08.2001 came into force only from 07.08.2001; as the bill of entry for home consumption was filed earlier on 03.08.2001, they were not liable to pay customs duty at the tariff value, fixed under Notification No.36/2001, of 372 U.S. dollars per metric tonne; and they had rightly paid customs duty on the invoice value of 248 U.S. dollars per metric tonne.

Sri G.L. Rawal, Learned Senior Counsel appearing on behalf of the

petitioner, would submit, placing reliance on the judgment of the Supreme Court in **Union of India v. Param Industries Ltd**^[1], that Notification No.36 of 2001 came into force only with effect from 07.08.2001 and, consequently, the tariff value prescribed under the said notification cannot be applied retrospectively on the goods imported earlier on 03.08.2001; as the very same notification has been held by the Supreme Court to have come into force on or after 06.08.2001, the respondents cannot apply the tariff value prescribed under Notification No.36 of 2001 to goods imported on 03.08.2001; reliance placed on behalf of the respondents, on the Division Bench judgment of this Court in **M/s. K.G.F. Cotton Pvt. Ltd v. Union of India**^[2], is misplaced; the judgment of the Karnataka High Court in **Param Industries Ltd v. Union of India**^[3] was affirmed by the Supreme Court in **Param Industries Ltd**¹ it is evident, from the facts noted in **Param Industries Ltd**³, that Notification No.36/2001 could only have been published in the Gazette of India on or after 06.08.2001; and, since the bill of entry for home consumption is dated 03.08.2001, the tariff value of RBD Palmolein oil, as prescribed in Notification No.36/2001, should not have been applied to this earlier import of RBD Palmolein oil.

On the other hand Sri P.S.P. Suresh Kumar, Learned Standing Counsel for Central Excise, would submit that the Gazette of India notification bears 03.08.2001 as the date on which it was published in the Official Gazette; the said notification must, therefore, be held to have come into force on 03.08.2001 itself; Section 25 of the Customs Act, on which reliance has been erroneously placed both by the Karnataka High Court and the Supreme Court in **Param Industries Ltd**¹, relates to exemptions; the power conferred on the Central Board of Excise and Customs ("CBEC" for short) to prescribe the tariff value of imported goods is under Section 14(2) of the Customs Act; unlike Section 25, which makes a notification issued thereunder effective from the date on which it is made available for sale to the public, Section 14(2) merely stipulates that the notification issued by the CBEC must be published in the Gazette; the date referred to in the Gazette notification must be presumed to be the date of publication; as the tariff notification was published in the Gazette on 03.08.2001, the tariff value

mentioned therein is the value on which customs duty is required to be paid, and not the invoice value; reliance cannot be placed on internal correspondence of the department in this regard; the law declared by the Supreme Court in **Param Industries Ltd**¹ is *per incuriam* as it is contrary to the law declared in the earlier judgments of the Supreme Court in **M/s. Pankaj Jain Agencies v. Union of India**^[4] and **Union of India v. Ganesh Das Bhojraj**^[5]; and, in view of the law declared by the Supreme Court in **Sundeep Kumar Bafna v. State of Maharashtra**^[6] and **M.S. Sandhu v. State of Punjab**^[7], this Court is bound to follow the aforesaid earlier judgments of the Supreme Court and not the judgment in **Param Industries Ltd**¹. Learned Standing Counsel would also submit that the Division bench of this Court, in **M/s. K.G.F. Cotton Pvt. Ltd**², considered the Division bench judgment of the Karnataka High Court in **Param Industries Ltd**³, and differed therefrom to hold that Notification No.36 of 2001 came into force from 03.08.2001 and not on or after 06.08.2001; and the judgment of the co-ordinate bench, in **M/s. K.G.F. Cotton Pvt. Ltd**², is binding on this Court.

At the outset it is necessary to note that Notification No.36/2001 dated 03.08.2001 was issued by the CBEC fixing the tariff value of the imported goods i.e. R.B.D. Palmolein oil at 372 U.S. dollars per metric tonne. But for the tariff value being fixed, the invoice value of the said goods ie 248 U.S. dollars per metric tonne would have formed the basis for levy of customs duty. The question which must be examined is whether Notification No.36/2001 dated 03.08.2001 would apply to the subject goods, i.e., R.B.D. Palmolein oil which was imported by the petitioner on 03.08.2001 as is evident from the bill of entry for home consumption dated 03.08.2001. If the said notification is held applicable, the respondents must be held to be justified in levying customs duty on the tariff value of R.B.D. Palmolein oil at 372 U.S. dollars per metric tonne. If, however, the said notification is held inapplicable in determining the value of the subject goods imported on 03.08.2001, the petitioner must then be held to be justified in paying customs duty on the invoice value of R.B.D. Palmolein oil i.e. at 248 U.S. dollars per metric tonne.

The very same question arose for consideration in **Param Industries**

Ltd³, wherein a Division bench of the Karnataka High Court observed:-

".....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.

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.....

.....So the notification is liable to be set aside. **We are constrained to hold that contrary is proved and presumption of publication on 3-8-2001 is not available to the respondents in this case and notification dated 3-8-2001 did not acquire the elements of operativeness and enforceability on 3-8-2001** and hence additional duty imposed by notification could not be levied on 3-8-2001 and hence petitioners are entitled to succeed on this ground.....” (emphasis supplied)

It does appear, from the facts noted by the Division bench of the Karnataka High Court in **Param Industries Ltd³**, that Notification No.36 of 2001, forwarded to the Cochin Excise Office by way of a Fax message, contained the endorsement “to be published in Gazette”; the Fax message was received at the Cochin Excise office at 11.44 p.m. on 03.08.2001; as 04/05-08-2001 were public holidays i.e. Saturday and Sunday, the said notification could only have been published on or after Monday i.e 06.08.2001; the said notification was made available for sale to the public on 06.08.2001, as was evident from the clarification issued by the Assistant Controller (Business), Government of India, Department of Publication, Delhi vide his letter dated 10.09.2001; and Notification No.36/2001, though dated 03.08.2001, was in fact published only on 06.08.2001.

A Division Bench of this Court, in **M/s. K.G.F. Cotton Pvt. Ltd²**, differed from the judgment of the Karnataka High Court in **Param Industries Ltd³**, and held:-

“.....The Karnataka High Court in *Param Industries Ltd* (2 supra) dealt with the same notification and held that the notification was not published on 03.08.2001; that it was published on 06.08.2001 as per the letter dated 10.09.2001 of the Assistant Controller (Business), Government of India, Department of Publication, New Delhi referred to above; that 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 and that failure to do so will not make the notification effective from the date of its issue for publication. **However, we are informed that Civil Appeal No.7801-7811 of 2004 were filed in the Supreme Court against the said decision of the Karnataka High Court and the Appeals are pending before the Supreme Court.....**” (emphasis

supplied)

While dissenting from the decision of the Karnataka High Court in **Param Industries Ltd³**, the Division Bench of this Court, in **M/s. K.G.F. Cotton Pvt. Ltd²**, relying on Sections 35, 38 and 81 of the Indian Evidence Act, held that the Court is required to presume the contents of the Official Gazette as genuine; and, as the Gazette recorded that its contents were published on 03.08.2001, Notification No.36/2001 must be presumed to have come into force on 03.08.2001. Section 35 of the Indian Evidence Act relates to the relevance of public records made in performance of an official duty. Section 38 relates to the relevance of statements as to any law contained in law books and Section 81 relates to the presumption as to Gazettes and other documents. The contents of the Gazette are admissible in evidence, 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 Evidence Act unless the contrary is proved. (**Ganesh Das Bhojraj⁵; M/s. K.G.F. Cotton Pvt. Ltd²**). It is thus evident that, notwithstanding the presumption regarding the genuineness of the contents of the Gazette, it is open to the Court to hold, on the basis of the material on record, that the Gazette was in fact published not on the date reflected therein, but on some other date.

The judgment of the Karnataka High Court, in **Param Industries Ltd³**, was affirmed in **Param Industries Ltd¹** and, on this question, the Supreme Court held:-

“.....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.....**” (emphasis supplied).

While none of the facts, noted by the Karnataka High Court in **Param Industries Ltd³**, was considered by the Division Bench of this Court in **M/s. K.G.F. Cotton Pvt. Ltd²**, and the said judgment was dissented from on the

ground that the appeal preferred thereagainst was pending before the Supreme Court, the fact remains that the Supreme Court in **Param Industries Ltd¹**, while referring to the facts noted by the Division Bench of the Karnataka High Court which does appear to show that Notification No.36 of 2001 could not have been published on 03.08.2001, opined that it was not necessary to go into this issue at all. As the Supreme Court did not examine this issue in **Param Industries Ltd¹**, the question which necessitates examination is whether this Court can follow the judgement of the Division Bench of the Karnataka High Court in **Param Industries Ltd³**, and take a view different from that of the Division Bench of this Court in **M/s. K.G.F. Cotton Pvt. Ltd²**.

It is necessary, in this context, to bear in mind that a Division Bench is bound by the judgment of another Division Bench and a Full Bench of the same High Court. They cannot differ from the earlier judgment of co-ordinate jurisdiction merely because they hold a different view as certainty and uniformity in the administration of justice are of paramount importance.

(**Commissioner of Income Tax v. M/s B.R. Constructions**^[8]). An earlier decision may seem to be incorrect to a bench of coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier, but it would not be a reason to say that the decision was rendered per incuriam and is liable to be ignored. The earlier judgment may seem to be incorrect, yet it will have binding effect on the latter bench of co-ordinate jurisdiction. The easy course of saying that the earlier decision was rendered per incuriam is not permissible and the matter can be resolved only in two ways — either for the earlier decision to be followed or to refer the matter to a larger Bench. (**State of Bihar v. Kalika Kuer**^[9]).

When a Division Bench disagrees with another bench of co-ordinate jurisdiction, whether on the basis of “***different arguments***” or otherwise, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law.

Judicial decorum, no less than legal propriety, forms the basis of judicial procedure and it must be respected at all costs. (**Vijay Laxmi Sadho (Dr) v. Jagdish**^[10]). If the earlier judgment is erroneous, or adherence to the rule of precedents results in manifest injustice, differing from the earlier judgment is permissible. (**B.R. Constructions**⁸). When a Division bench is disinclined to follow the earlier binding decisions of an other Division bench of the High Court, the proper course is to refer the matter to a Full Bench for its decision. (**State of W.B. v. Falguni Dutta**^[11]).

Even if the view expressed by the Division Bench of the Karnataka High Court in **Param Industries Ltd**³ were to commend acceptance, and not the contrary view expressed by a co-ordinate bench of this Court in **M/s. K.G.F. Cotton Pvt. Ltd**², we can only differ therefrom and refer the matter to a Full Bench. For reasons detailed hereinafter, it is wholly unnecessary for us to adopt this course of action.

Section 25 of the Customs Act confers power to grant exemption from duty and under sub-section (1) thereof, 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 leviable thereon. Section 25(4) stipulates that every notification, issued under sub-section (1), shall, (a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette; (b) 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. Section 25(5) stipulates that notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force. It is because of Section 25(4) and (5) that an exemption notification, issued under Section 25(1), would come into force from the date on which it is offered for sale by the Directorate of Publicity and Public

Relations, and not earlier from the date of its publication in the Official Gazette.

As is evident from the observations of the Division Bench of the Karnataka High Court in **Param Industries Ltd³**, (extracted earlier in this judgment), Sections 25(4) & (5) of the Customs Act was relied upon to hold that Notification No.36/2001 came into force only on 06.08.2001 when it was offered for sale to the general public, and not 03.08.2001 notified in the Gazette as the date of publication of the said notification. This judgment of the Division Bench of the Karnataka High Court was upheld by the Supreme Court, in **Param Industries Ltd¹**, holding that:-

“....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.

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 v. The State of Rajasthan' [: 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. Sargent 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.

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.....” (emphasis supplied).

In **M/s. K.G.F. Cotton Pvt. Ltd²**, a Division bench of this Court observed:-

“.....Sub-section (2) of S.14 of the Act empower the Board to fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, by notification in the Official Gazette and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

In contrast, S.25(1) empowers the Central Government to grant exemption of goods from duty and sub-section (4) thereof states that such notification will come into force on the date of its issue by the Central Government for publication in the Official Gazette and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.

In view of the fact that there is no requirement in S.14 that, to be effective, a notification issued under the said provision, should also be offered for sale, we are unable to accept the contention of the counsel for the petitioners that duty cannot be

demanded on the basis of a notification, till it is made available to the general public by being offered for sale.”

Relying on the Division Bench judgment of this Court in **M/s. K.G.F. Cotton Pvt. Ltd**², Sri P.S.P. Suresh Kumar, Learned Standing Counsel for Central Excise, would submit, not without justification, that, unlike Section 25 of the Customs Act which stipulates that an exemption notification shall come into force on the date on which it is offered for sale, there is no such prescription in Section 14(2) thereof and, consequently, Notification No.36/2001, issued in exercise of the power conferred by Section 14(2), must be held to have come into force on the date on which it is notified in the Official Gazette ie 03.08.2001. Learned Standing Counsel would also submit that a statutory notification comes into force on the date it is notified in the Official Gazette; the judgment of the Supreme Court in **Param Industries Ltd**¹ is per incuriam as it was rendered in ignorance of two earlier Division Bench judgments of the Supreme Court in **M/s. Pankaj Jain Agencies**⁴ and **Ganesh Das Bhojraj**⁵; and this Court is bound by the earlier judgments of the Supreme Court, and not the latter judgment in **Param Industries Ltd**¹.

As the Division Bench of this Court, in **M/s. K.G.F. Cotton Pvt. Ltd**², has relied on Section 14(2) of the Customs Act to hold that Notification No.36/2001 came into force on 03.08.2001, and that Section 25 is inapplicable, it is necessary to refer to Section 14 of the Customs Act, 1962 which relates to valuation of goods. Sub-section (1) of Section 14 stipulates that, for the purposes of the Customs Tariff Act, 1975 or any law for the time being in force, the value of the imported goods shall be the transaction value of such goods that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf. In terms of Section 14(1) the invoice value of the goods is required to be taken as the basis for levy of customs duty. Section 14(2), however, stipulates that notwithstanding anything contained in sub-section (1), if the Board (“CBEC”) is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix the tariff value for any class of imported goods, having regard to

the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. In view of the non-obstante clause in Section 14(2) the value of the imported goods, for the purpose of levy of customs duty, shall be the tariff value fixed by way of a notification issued by the CBEC, and not the invoice value of the goods.

While Section 25 confers power on the Central Government to grant exemption from customs duty, Section 14(2) confers power on the CBEC to fix the tariff value of any class of imported goods by way of a notification in the Official Gazette. Unlike Section 25(4) & (5) of the Customs Act which prescribe that an exemption notification shall come into force on the date it is made available for sale to the general public, Section 14(2) thereof stipulates that the notification issued thereunder should be published in the Official Gazette. We find considerable force in the submissions of Sri P.S.P.Suresh Kumar, Learned Standing Counsel for Central Excise, that Section 25, which relates to grant of exemption, has no application to Notification No.36 of 2001 whereby the tariff value for import of R.B.D. Palmolein oil was fixed, as the said notification is not referable to Section 25 but to Section 14(2) of the Customs Act.

The law makes a distinction between an Act of Legislature which comes into force on the date it receives the assent of the President or the Governor, and subordinate legislation which requires publication in some recognised way. (**M/s. Pankaj Jain Agencies**⁴). Even where the parent statute does not prescribe the mode of publication, a notification will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. (**M/s. Pankaj Jain Agencies**⁴; **B.K. Srinivasan v. State of Karnataka**^[12]). Publication in the Official Gazette, i.e., Gazette of India, is the ordinary method of bringing a rule or subordinate legislation or a statutory notification to the notice of the persons concerned. 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. It is the usual mode followed where there is no other mode prescribed under the Statute. (**Ganesh Das**

Bhojraj⁵).

After referring to **Collector of Central Excise v. New Tobacco Co.**^[13], **M/s. Pankaj Jain Agencies**⁴, and **Ganesh Das Bhojraj**⁵ the Division Bench of this Court, in **M/s. K.G.F. Cotton Pvt. Ltd**², opined:

“.....Before this Court, the counsel for the respondents has produced an attested copy of the Gazette of India No.549 dated 03.08.2001 showing that the notification No.36/2001-CUS(NT) issued by the Central Board of Excise and Customs was published on 03.08.2001.....

.....The above two cases were considered by a 3 Judge bench of the Supreme Court in **Ganesh Das Bhoj Raj** (3 supra). The Supreme Court overruled **New Tobacco Co.** (1 supra) and approved the decision in **Pankaj Jain Agencies** (4 supra). It held that for bringing a notification u/s.25 of the Act into operation, the only requirement of the section is its publication in the Official Gazette and no further publication is contemplated; that 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; that gazette is admissible being the official record evidencing public affairs and the Court is required to presume its contents as genuine u/s.35 and 38 r/w S.81 of the Evidence Act, 1872 unless the contrary is proved. It held that the original copy of the notification dated 04.02.1987 published in the Gazette on the said date was produced before it and therefore it rejected the contention that the notification dated 04.02.1987 was not published in the Gazette on the same day.

In the present case, the attested copy of the Gazette of India dated 03.08.2001 containing publication of the notification No.36/2001-CUS(NT) dated 03.08.2001 is produced before us. It is also asserted in the counter affidavit that the said notification was published in the Gazette of India on 03.08.2001 itself. Being the official record evidencing public affairs, the Gazette is admissible and the Court is required to presume its contents as genuine u/s.35 and 38 r/w S.81 of the Evidence Act, 1872. No satisfactory evidence is produced by the petitioners to rebut the said presumption. In view of the decision of the Supreme Court in **Ganesh Das Bhoj Raj** (3 supra), we respectfully dissent from the decision of the Karnataka High Court in **Param Industries Ltd** (2 supra), and hold that the said notification was published on 03.08.2001. We reject the contention of the petitioners that it was not published on 03.08.2001 and was not made available for sale till 06.08.2001.....” (emphasis supplied)

While the Division Bench of this Court, in **M/s. K.G.F. Cotton Pvt. Ltd**², took note of the distinction between Section 25(4) & (5) on the one hand and Section 14(2) of the Customs Act on the other, the Division bench of the Karnataka High Court, in **Param Industries Ltd**³, did not. The fact, however, remains that the judgment of the Karnataka High Court in **Param Industries Ltd**³, has been affirmed by the Supreme Court in **Param Industries Ltd**¹, and Notification No.36/2001 dated 03.08.2001 has been held to have come into force only on or after 06.08.2001, and not on 03.08.2001. As Section 14(2) prescribes the mode of publication, of a notification issued thereunder, to be made in the Official Gazette, the submission of Sri P.S.P. Suresh Kumar, Learned Standing Counsel, that Notification No.36/2001 came into force on 03.08.2001 when it was published in the Official Gazette and not on 06.08.2001 when it was offered for sale to the general public, cannot be said to be devoid of merit.

In examining the question whether this Court, relying on the earlier Division Bench judgments of the Supreme Court in **M/s. Pankaj Jain Agencies**⁴ and **Ganesh Das Bhojraj**⁵, can hold that Notification No.36/2001 came into force on the date of its publication in the Official Gazette on 03.08.2001, ignoring the latter Division Bench judgment of the Supreme Court, in **Param Industries Ltd**¹, that it came into force only on 06.08.2001 when it was offered for sale to the general public, it must be borne in mind that there is no constitutional or statutory prescription on the effect of the law pronounced by a Division Bench, in relation to a case raising the same point subsequently before a Division Bench of the same or smaller number of Judges, and the point is governed entirely by the practice of Courts in India, sanctified by repeated affirmation for over a century. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that this Rule has been evolved, in order to promote consistency and certainty in the development of the law, and its contemporary status that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. (**Sundeep Kumar Bafna**⁶; **Union of India v. Raghubir Singh**^[14]).

In **Sundeep Kumar Bafna**⁶ the Supreme Court observed that it was often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar; and the inviolable recourse was to apply the earliest view as the succeeding ones would fall in the category of *per incuriam*.

While the earlier Division bench judgments of the Supreme Court on a question of law may be required to be followed by the High Court, and not a latter Division bench judgment of the Supreme Court which did not notice the earlier Division bench judgments of the Supreme Court, it must be borne in mind that the very same issue which arose for consideration of the Supreme Court in **Param Industries Ltd**¹, in relation to the very same notification (Notification No.36/2001), arises for consideration in these Writ Petitions also. The questions which, therefore, necessitate examination is whether it is open to the High Court, to take a view different from that of the Supreme Court, to hold that the said notification came into force only on

03.08.2001, and not thereafter on or after 06.08.2001? Would such an exercise not amount to the High Court sitting in judgment over the order of the Supreme Court in **Param Industries Ltd**¹? Can this Court hold that the Division Bench judgment of the Supreme Court in **Param Industries Ltd**¹ is per incuriam as it was rendered in ignorance of the earlier Division Bench judgments of the Supreme Court in **M/s. Pankaj Jain Agencies**⁴ and **Ganesh Das Bhojraj**⁵? Is it open to the High Court to hold, on the material on record, that Notification No.36/2001 came into force on 03.08.2001 itself, and thereby negate the decision of the Supreme Court in **Param Industries Ltd**¹ that the said Notification No.36/2001 came into force on or after 06.08.2001?

In our opinion it is impermissible for the High Court to hold that Notification No.36/2001 came into force on 03.08.2001 for the reason that it was published in the Official Gazette on that day, as that would fall foul of the judgment of the Supreme Court, in **Param Industries Ltd**¹, wherein the very same Customs Notification No.36/2001 was held to have come into force on or after 06.08.2001, and not on the date of its publication as reflected in the Gazette as 03.08.2001. Article 141 of the Constitution stipulates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. (**Director of Settlements v. M.R.Appa Rao**^[15]). The law which is binding under Article 141 would, therefore, extend to all observations on the points raised and decided by the Court in a given case. The decision, in a judgment of the Supreme Court, cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (**Ballabhadras Mathurdas Lakhani v. Municipal Committee, Malkapur**^[16]).

The decisions of the Supreme Court are of significance not merely because they constitute an adjudication of the rights of the parties and resolve the disputes between them, but also because, in doing so, they embody a declaration of law operating as a binding principle in future cases. The law declared by the Supreme Court binds all Courts in India

(**Rajeswar Prasad Misra v. State of W.B.**^[17]). On the law having been declared by the Supreme Court, it is the duty of the High Court, whatever be its view, to act in accordance with Article 141 of the Constitution of India and to apply the law laid down by the Supreme Court. Judicial discipline to abide by the declaration of law, of the Supreme Court, cannot be forsaken by any Court, be it even the highest Court in a State, oblivious of Article 141 of the Constitution of India. (**Chandra Prakash v. State of U.P.**^[18]; **State of Orissa v. Dhaniram Luhar**^[19]).

Black's Law Dictionary defines a "**decision**" as "**a determination arrived at after consideration of facts and, in legal context, law**"; and an "**opinion**" as the statement by a Judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based. A '**Decision**' is not necessarily synonymous with '**opinion**'. A decision of the Court is its judgment; the opinion is the reasons given for that judgment, or the expression of the views of the Judge. In the case of a decision, the appellate structure is exhausted after a pronouncement by the Supreme Court. The only option left to the parties is of review or curative jurisdiction. (**Natural Resources Allocation, In re, Special Reference No. 1 of 2012**^[20]). As the Union of India has exhausted the appellate structure on the question as to when Customs Notification No.36/2001 came into force, (their appeal having been rejected by the Supreme Court in **Param Industries Ltd**¹), the High Court is bound to follow the said decision, and hold that Customs Notification No.36/2001 came into force on or after 06.08.2001, and not earlier on 03.08.2001.

Judicial discipline requires, and decorum known to law warrants, that appellate directions should be followed. In the hierarchical system of courts which exists in this country it is necessary for each lower tier to accept loyally the decisions of the higher tiers. The judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted. (**Kausalya Devi Bogra v. Land Acquisition Officer**^[21]; **Cassell & Co. Ltd v. Broome**^[22]). A judgment of the High Court which

refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (**Narinder Singh v. Surjit Singh**^[23]; **Kausalya Devi Bogra**²¹; **M.R. Apparao**¹⁵).

The singular Constitutional role of the Supreme Court under the Constitution, and correspondingly of the assisting role of all authorities - civil or judicial in the territory of India - towards it, mandates the High Court, which is one such judicial authority covered under Article 144 of the Constitution, to act in aid of the Supreme Court. The order of the Supreme Court is a judicial order, and is otherwise enforceable throughout the territory of India under Article 142 of the Constitution. The High Court is bound to come in aid of the Supreme Court in having its order worked out. While the High Court is independent, and is a co-equal institution, the Constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of the Supreme Court which are binding on all Courts within the territory of India. (**Spencer & Co. Ltd v. Vishwadarshan Distributors (P) Ltd**^[24]; **Bayer India Ltd v. State of Maharashtra**^[25]; **E.S.P. Rajaram v. Union of India**^[26]).

As the Supreme Court, in **Param Industries Ltd**¹, has held that Notification No.36/2001 came into force on or after 06.08.2001, the action of the respondents in applying the tariff value prescribed therein, for the earlier import of R.B.D. Palmolein oil on 03.08.2001, is illegal. Customs duty on R.B.D. Palmolein oil, imported on 03.08.2001, could only have been levied on its invoice value, and not on the tariff value prescribed subsequently in Notification No.36/2001 dated 03.08.2001. Both the Writ Petitions are allowed. However, in the circumstances, without costs. The miscellaneous petitions pending, if any, in these Writ Petitions, are also closed.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 21-06-2016.

Note:
L.R. copy to be marked.
B/O
MRKR/CS

[1] 2015 (321) E.L.T. 192 (S.C.)
[2] (Judgment in W.P. No.18440 of 2001 and batch dated 20.02.2013)
[3] 2002 (150) E.L.T. 3 (Kar.)
[4] (1994) 5 SCC 198
[5] (2000) 9 SCC 461
[6] (2014) 16 SCC 623
[7] (2014) 6 SCC 514
[8] (1994) 1 An .W.R.450 (FB)
[9] (2003) 5 SCC 448
[10] (2001) 2 SCC 247
[11] (1993) 3 SCC 288
[12] (1987) 1 SCC 658
[13] (1998) 97 E.L.T. 388 (SC)
[14] (1989) 2 SCC 754
[15] (2002) 4 SCC 638
[16] AIR 1970 SC 1002
[17] AIR 1965 SC 1887
[18] (2002) 4 SCC 234
[19] (2004) 5 SCC 568
[20] (2012) 10 SCC 1
[21] (1984) 2 SCC 324
[22] (1972) 1 All ER 801
[23] (1984)2 SCC 402
[24] (1995) 1 SCC 259
[25] (1993) 3 SCC 29
[26] (2001) 2 SCC 186