

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.11887 of 2019 (O&M)

& Connected Bunch

Date of decision:26.08.2019

M/s Rasrasna Food Pvt. Ltd.

.....Petitioner.

Versus

The Union of India & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present:- Mr. Saurabh Kapoor Advocate &
Mr. Rishabh Kapoor, Advocate for the Petitioner(s)
**(CWP Nos.11887, 12551, 14394, 17580, 17591, 17615,
17618, 18225, 18227, 18300, 18337, 18348, 18349,
18405, 18414, 18414, 18419, 18460, 18462 & 18464 of
2019(19 cases).**

Mr. Jagmohan Bansal, Advocate for the Petitioner(s)
**(CWP Nos.15357, 15359, 15473, 15478, 15518, 15548,
15813 & 15913 of 2019 (08 cases).**

Mr. Saurabh Goel, Senior Standing Counsel,
S/Sh. Sanjeeva Kumar Uppal, Abhinav Singh and
Himanshu Garg, Advocates for respondent os.1 to 3-
UOI/CBIC **(CWP Nos.11887,15357, 15359, 15518,
15548, 14394, 15913, 18225, 18227, 18300, 18337,
18348, 18349, 18405, 18414, 18419, 18460, 18462 &**

18464 of 2019 (19 cases).

Mr. Sunish Bindlish, Senior Standing Counsel, Indirect Taxation for respondent nos.1 to 3-UOI (**CWP Nos.12551, 15473, 15478, 15813, 17580, 17591, 17615 & 17618 of 2019 (08 cases).**)

Mr. Paul S. Saini, Advocate & Mr. Manhar S. Saini, Advocate for respondent no.4-Central Warehousing Corporation.

JASWANT SINGH, J.

1. This common order shall dispose of 27 (twenty seven) writ petitions*(as detailed in the foot note) Involving similar facts and identical legal issues; the prayer is for declaration that Notification No. 5/2019-Customs dated 16.02.2019 is *ultra vires* the Constitution of India as well Customs Tariff Act, 1975. The Petitioners are further seeking clearance/release of their goods, imported/originating from Pakistan and detained at the customs station Attari Border, on payment of duty applicable on the date/time of filing of Bill of Entry; and further stay of auction proceedings during the pendency of present petitions.

2. The Petitioners (in all cases) being importers in their ordinary course of trade, imported goods from Pakistan. It is not in

dispute that the imported goods (in all cases) entered India through Attari Border, Amritsar during the course of day before 6.00 pm on 16.02.2019 and petitioners (in all cases) filed Bills of Entry as required under Section 46 of the Customs Act, 1962, before the closing of working hours, seeking clearance of goods for home consumption. The Petitioners declared value, description etc. and self assessed duty liability by levying custom duty @ 5% along with IGST @ 18%, unless exempted, in terms of the Notifications in force and filed respective Bills of entry in EDI System. The declaration was subject to verification by department who did not dispute declaration and generated duty payment TR-6 challans.

It is averred that 16.02.2019 was a Saturday and the custom office was closed after 6.00 pm (1800 hrs) and was to open only on Monday i.e. 18.02.2019. It is not in dispute that few of the petitioners paid duty online through TR-6 Challans on 16.02.2019 itself and in case of few other petitioners duty payment process was in progress, however, prior to clearance of goods, on account of Pulwama Terrorist Attack, Central Government vide impugned Notification No. 5/2019 dated 16.02.2019 (Supra) issued at 20:46:58 Hrs (8.46 pm), as reflected in the E-gazette, increased the rate of

duty to 200% even though various products were even completely exempt from Customs Duty.

3. It is claimed that the Ministry of Finance, Department of Revenue having issued a Notification No.05/2019-CUS. dated 16.02.2019 wherein First Schedule (hereinafter refers to as the said Schedule) to the Customs Tariff Act, 1975 was amended by exercising powers under sub section (1) of Section 8 A of the Customs Tariff Act, inserting a new tariff item and entries in the said Schedule by classifying all goods originating in or exported from the Islamic Republic of Pakistan under CTH 9806 0000 and prescribing standard rate of duty as 200% and Nil rate of duty for preferential areas. However, at 20:46:58 Hrs. on the same date i.e. 16.02.2019, 200% duty was imposed on the said goods vide above referred Notification (**P-7**). The respondents refused to release the goods on the basis of Bill of Entry which already stood assessed @ 5% rate of custom duty and @18% IGST. The said Bill(s) of Entry were recalled and **re-assessed** by levying customs duty @ 200% and IGST 28%, thus the total duty amounts were enhanced to the extent of 40 times.

In the background of facts noticed above, the petitioners are challenging, the validity and legality of the Notification dated

16.02.2019 and also the decision of the respondents to levy duty at the enhanced rate, *inter alia* on the following grounds :-

- (i) the respondent did not challenge the assessment by filing an appeal under Section 129D;
- (ii) the action of the respondents in recalling/reviewing the original assessment was arbitrary, illegal without jurisdiction and unjustified;
- (iii) Notification dated 16.02.2019 (P-4) could not be applied retrospectively and having been issued at 20:46 Hrs. on 16.02.2019 would come into force and effect only on the next date i.e. 17.02.2019 as the earlier Notification dated 31.12.2012 was holding the field until 20:46 Hrs on 16.02.2019.
- (iv) Implementation of the Notification dated 16.02.2019 shall be on a subsequent date as held by Hon'ble the Supreme Court in **M/s Param Industries Vs. Commissioner of Customs 2015(321) ELT 192 (SC)**;

4. Mr. Jagmohan Bansal and Mr. Saurabh Kapoor, counsel for the petitioners contended that petitioners admittedly filed Bill of entry during working hours on 16.02.2019 and impugned notification was issued at 8:45 PM and object of said notification was to discourage import from Pakistan. The Petitioners placed order prior to 16.02.2019 and imported goods entered the Indian Territory on

16.02.2019. At the time of filing of Bill of Entry, goods were fully or partially exempt from Basic Customs Duty, however IGST @ 18% was payable whereas by impugned notification the Basic Customs duty @ 200% was imposed. The exporter (from Pakistan) had already supplied goods and received consideration. The object of notification is to discourage import from Pakistan and not to penalize Indian importers who placed order and imported goods relying upon policy applicable upto 16.02.2019. In support of their arguments, Ld. Counsels relied upon judgment of Karnataka High Court in the case of **Param Industries Ltd. Versus Union of India 2002 (150) ELT 3 (Kar.)** which has been upheld by Hon'ble Supreme Court; **Adma Agro India Pvt. Ltd. Through Sampada Narang Vs. Union of India 2019-TIOL-1232-HC-AHM-CUS.**

It was contended that respondent without any objection accepted self assessment and generated duty payment challan. As per Section 17(4) of the Customs Act re-assessment could be made prior to acceptance of self assessment, therefore, assessment stood completed on the basis of old rates and respondent had no authority to apply new rate of duty which came into force after duty hours i.e. at 8:45 PM.

It was also contended that Government on account of Pulwama attack initiated harsh economic action against Pakistan which included prohibition on import of goods from Pakistan. In the backdrop of intention of Government, levy of duty @ 200% amounts to prohibition of goods by way of delegated legislation and Hon'ble Supreme Court in the case of **DGFT versus Kanak Exports 2015 (326) E.L.T. 26 (S.C.)** has held that delegated legislation or executive instructions cannot be made applicable from retrospective effect. The application of impugned notification to goods in question would amount to prohibition of goods with retrospective effect because orders were placed prior to 16.02.2019 and goods entered into India on 16.02.2019.

5. Counsels for the Respondent contended that as per Section 15 of the Customs Act, 1962 the relevant date for rate of duty is date of presentation of bill of entry and amended rate of duty came into force w.e.f. 16.2.2019 therefore, Petitioners are liable to pay duty at amended rate of duty and not old rate of duty. The Notification was published in the official gazette on the same day i.e. 16.02.2019 thus it came into force w.e.f. 16.02.2019. Accordingly bill of entry was amended by way of re-assessment as provided under Section 17 (4)

of the Act.

In support of their arguments, Ld. Counsel cited judgment of Karnataka High Court in the case of **Ruchi Soya Industries Ltd. Vs UOI, 2012 (281) ELT 406 (Kar)** and Calcutta High Court in the case of **Ruchi Soya Industries Ltd Vs UOI, 2017 (359) ELT 201 (Cal)**.

6. Before adverting to issue involved and contentions of both sides, it would be appropriate to look into relevant provisions of Customs Tariff Act, 1975 and Customs Act, 1962, which read as under:

Customs Tariff Act, 1975

SECTION 8A. Emergency power of Central Government to increase

import duties.- (1) Where in respect of any article included in the First Schedule, the Central Government is satisfied that the import duty leviable thereon under section 12 of the Customs Act, 1962 (52 of 1962) should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary:

Provided that the Central Government shall not issue any notification

under this sub-section for substituting the rate of import duty in respect of

any article as specified by an earlier notification issued under this sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (2).

(2) The provisions of sub-sections (3) and (4) of section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7.

SECTION 11A Power of Central Government to amend First

Schedule.- (1) Where the Central Government is satisfied that it is necessary so to do in the public interest, it may, by notification in the Official Gazette, amend and First Schedule:

Provided that such amendment shall not alter or affect in any manner the rates specified in that Schedule in respect of goods at which duties of customs shall be leviable on the goods under the Customs Act, 1962 (52 of 1962).

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such

modification or annulment shall be without prejudice to the validity of anything previously done under the notification.

Customs Act, 1962

SECTION 12 Dutiable goods- (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

SECTION 15 Date for determination of rate of duty and tariff valuation of imported goods.- (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,-

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

(2) The provisions of this section shall not apply to baggage and goods imported by post.

SECTION 17. Assessment of duty. — (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the self-assessment of goods and for this purpose, examine or test any imported goods or exported goods or such part thereof as may be necessary:

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(6) Where reassessment has not been done or a speaking order has not been passed on reassessment, the proper officer may audit the assessment of the duty of the imported goods or export goods at his office or at the

premises of the importer or exporter as may be expedient, in such manner as may be prescribed.

Explanation. — For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

SECTION 46. Entry of goods on importation. —

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing :

Provided that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely :—

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(2) The importer shall pay the import duty -

- (a) on the date of presentation of the bill of entry in the case of self-assessment; or
- (b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
- (c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf,

and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Provided further that where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section:

Provided also that if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

SECTION 47. Clearance of goods for home consumption. —

(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption :

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria :

Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

- (2) The importer shall pay the import duty -
- (a) on the date of presentation of the bill of entry in the case of self-assessment; or
 - (b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
 - (c) in the case of deferred payment under the proviso to sub-

section (1), from such due date as may be specified by rules made in this behalf,

and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Provided further that where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section:

Provided also that if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

Emphasis supplied

7. From perusal of above quoted Sections, it is evident that an importer is required to file a bill of entry as per the provisions of Section 46 of the Customs Act, 1962 at the time of arrival of goods, which can also be filed prior to entry inward of vehicle carrying goods. If bill of entry is filed prior to date of entry of a vehicle, the date of entry of vehicle in India is relevant date for the determination of tariff value and rate of duty as per the provisions of Section 15 of the

Customs Act, 1962. An importer has to make self assessment regarding the duty, if any, leviable on such goods, which is subject to verification by Customs Officers who may reject self assessment and reassess the bill of entry as per the provisions of Section 17 of the Customs Act, 1962. For the purpose of determination of rate of duty, twin conditions are required, namely, vehicle carrying goods must have entered into India and bill of entry must be filed. The Proper Officer then permits the clearance of goods on being satisfied under Section 47 of the Customs Act, 1962 that importer has paid duty and other charges payable under the Act.

8. Although the Petitioners have challenged *vires* of Notification No. 5/2019 (supra), however, counsel for the Petitioners at the time of arguments do not press their challenge to impugned notification and confine their prayer for release of goods on payment of duty applicable at the time of filing of bill of entry coupled with the entry of imported goods within the territory of India at the Attari Border in view of the provisions of Section 15 of the Customs Act, 1962.

9. The conceded position as emerging from record of all the present cases and contentions of the learned Counsel is that the

Petitioners (importers) relying upon policy of Government of India applicable upto 16.02.2019 placed orders upon Pakistan based exporters, who dispatched goods on or before 16.02.2019. The goods entered into India and the bill of entries was/were filed prior to issue of said notification and in case of few Petitioners even challan was generated by the respondent-Department and they deposited duty leviable prior to issue of notification, however release of imported goods was pending.

10. Having heard arguments of both the counsels and scrutinized record of the case, we are of the opinion that intent and purport of impugned notification was to discourage import from Pakistan and not to penalize Indian importers. All the Petitioners presented bill of entry on 16.02.2019 during working hours and duty liability was assessed on the same day because goods were presented alongwith bill of entry. There is no writ petition where bill of entry was filed prior to entry inward of vehicle carrying imported goods.

11. As per above quoted Section 15, the rate of duty is applicable as on the date of presentation of bill of entry which can be presented even prior to arrival of goods. As per proviso to Sub-

Section (1), the date of entry inward or arrival of vehicle is relevant date if bill of entry is filed in advance. The inevitable conclusion is that both elements i.e. entry of goods and presentation of bill of entry are equally important for determination, *inter alia*, of rate of duty.

Applying principles/requirement of presentation of bill of entry and entry inward of vehicle in view of the provisions of the Section 15 of the Customs Act, 1962 on the present case, following different situations/categories arise:

- i) Bill of Entry is presented on or before 16.02.2019 even though goods have not arrived.
- ii) Goods arrived on or before 16.02.2019 but bill of entry is not presented on 16.02.2019.
- iii) Goods arrived on or before 16.02.2019 and bill of entry is presented on or before 16.02.2019.

In case where bill of entry has been presented on or before 16.02.2019 but vehicle has not arrived by the said date, amended rate of duty would be applicable. In case goods have arrived on or before 16.02.2019 but bill of entry has not been presented by the said date, the amended rate of duty would be applicable, however, in case bill of entry has been presented on or before 16.02.2019 and vehicle also has arrived on or before

16.02.2019 (as concededly is the position in all the writ petitions), the

amended rate which came into force at 8:45 PM cannot be applied.

12. The Petitioners presented bills of entry on 16.02.2019 which were duly assessed on the same day. As per Section 46 of the Act, the bill of entry is presented electronically on the customs automated system. The Petitioners presented bill of entry electronically on the customs automated system. At the time of presentation of bill of entry, the Notification No. 5/2019 (Supra) was not in existence and it came into force at 8:45 PM of 16.02.2019. At the time of presentation of bill of entry, Notification (Supra) was not in existence and goods had already entered into India. It means twin conditions of presentation of bill of entry and arrival of vehicle stood complied with prior to issue of said Notification. The bill of entry was presented electronically and all customs formalities stood completed prior to 8:45 PM, meaning thereby that the event of determination of the rate of duty stood completed. Even, if the goods were not cleared by the proper officer in terms of the power under Section 47 of the Customs Act, 1962, in our considered opinion, would have no effect on the rate of duty applicable on fulfilling of the twin conditions provided for in Section 15 of the 1962 Act, moreso, in the electronically generated record of the department. The Hon'ble High

Court of Karnataka in the case of **Param Industries Ltd. versus Union of India** 2002 (150) E.L.T. 3 (Kar.) has dealt with somewhat similar situation and held that higher Tariff Value would not be applicable because Notification was published in official gazette after normal working hours. The Hon'ble Supreme Court vide order dated 05.05.2015 reported as **Union of India Vs. Param Industries Ltd. 2015(321) E.L.T. 192 (S.C.)** has upheld the view of the Karnataka High Court while dismissing the appeal filed by Union of India.

The judgments cited by counsel for the Respondents do not demolish the case of the petitioners and advance the case of the department/Revenue as in none of the cases the Court has considered the question of change of rate during late hours on the same date, hence are distinguishable on facts. The facts of the present case are similar to the facts of the case in **Param Industries (Supra)**, which makes out a case in favour of the petitioners.

13. That on account of peculiar and emergent situation, the impugned notification was issued whereby items even subjected to nil rate of duty are subjected to 200% rate of duty. The said rate cannot be called as simple increase in rate of duty. We agree with contention of the Counsel for the petitioners that 200% rate of duty

actually amounts to prohibition of import of goods from Pakistan.

Such a notification cannot be retrospective or applied retrospectively.

Hon'ble Supreme Court in the case of **Kanak Exports (Supra)** has already held that delegated legislation cannot be made applicable from retrospective effect.

In all the present cases/writ petitions, the Petitioners placed import orders prior to 16.02.2019 and received goods in India on or before 16.02.2019, admittedly before the impugned Notification was issued/uploaded at 8.45 PM on 16.02.2019 after the working hours. If the impugned notification is made applicable to them, it would amount to retrospective application which is not permissible in law.

14. We thus in view of the above and agreeing with the judgment of Karnataka High Court in case of **Param Industries Pvt. Ltd. (Supra)**, duly upheld by the Hon'ble Supreme Court; and without going into *vires* of impugned notification, hold that all the Petitioners would be liable to pay duty as was applicable at the time of filing of bill of entry coupled with the fact of the imported goods having entered territory of India on 16.02.2019 prior to the issuance of the impugned notification. The Respondent shall release goods

within seven days on payment of duty as declared and assessed, if not already paid, ignoring the impugned Notification No. 5/2019 (Supra).

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

August 26th, 2019
joshi/Vinay

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No

- * 1. CWP No.11887 of 2019(O&M)
M/s Rasrasna Foods Pvt. Ltd. Vs. Union of India & Ors.
2. CWP No.15813 of 2019(O&M)
Fibre Shakti Cement Vs. Union of India & Ors.
3. CWP No.15359 of 2019O&M)
AAR BEE Impex Vs. Union of India & Ors.
4. CWP No.15548 of 2019 (O&M)
Devansh Overseas Vs. Union of India & Ors.
5. CWP No.15473 of 2019(O&M)
Shree Chaitanya Overseas Vs. Union of India & Ors.
6. CWP No.15478 of 2019(O&M)
Anish Exim Vs. Union of India & Ors.
7. CWP No.15518 of 2019(O&M)
Jeet Traders Vs. Vs. Union of India & Ors.

8. CWP No.15357 of 2019(O&M)
Ganpati International Vs. Union of India & Ors.
9. CWP No.15913 of 2019(O&M)
AAY VEE Exports Vs. Union of India & Ors.
10. CWP No.18414 of 2019(O&M)
M/s Dewandas Mahesh Kumar Vs. Union of India & Ors.
11. CWP No.18419 of 2019(O&M)
M/s DNK Impex Pvt. Ltd. Vs. Union of India & Ors.
12. CWP No.18460 of 2019(O&M)
M/s GS Chatha Rice Mills Vs. Union of India & Ors.
13. CWP No.18462 of 2019(O&M)
M/s Jai Shanker Traders Vs. Union of India & Ors.
14. CWP No.12551 of 2019(O&M)
M/s A Kumar & Company Vs. Union of India & Ors.
15. CWP No.14394 of 2019(O&M)
M/s International Traders Vs. Union of India & Ors.
16. CWP No.17591 of 2019(O&M)
M/s Shri Amar Nath Traders Vs. Union of India & Ors.
17. CWP No.18337 of 2019(O&M)
M/s Bhavesh Trading Complany Vs. Union of India & Ors.
18. CWP No.18348 of 2019(O&M)
M/s Bhavesh Trading Company Vs. Union of India & Ors.
19. CWP No.18349 of 2019(O&M)
M/s Manish Trading Company Vs. Union of India & Ors.
20. CWP No.17580 of 2019(O&M)
M/s Shri Amar Nath Traders Vs. Union of India & Ors.

21. CWP No.18405 of 2019(O&M)
M/s Neha Enterprises Vs. Union of India & Ors.
22. CWP No.17615 of 2019(O&M)
M/s Shri Amar Nath Traders Vs. Union of India & Ors.
23. CWP No.17618 of 2019(O&M)
M/s Bal Gopal Traders Vs. Union of India & Ors.
24. CWP No.18225 of 2019(O&M)
M/s Soojal International Vs. Union of India & Ors.
25. CWP No.18300 of 2019
M/s Bhavesh Trading Company Vs. Union of India & Ors.
26. CWP No.18227 of 2019(O&M)
M/s Soojal International Vs. Union of India & Ors.
27. CWP No.18464 of 2019(O&M)
M/s G.S. Chatha Rice Mills Vs. Union of India & Ors.