IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.9954 of 2020 (O M)
Date of Decision: *October 15, 2020*

M/s Abnashi Leather Store

..... PETITIONER(S)

VERSUS

Union of India & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
HON'BLE MR. JUSTICE SANT PARKASH

. . .

PRESENT: - Mr. Saurabh Kapoor, Advocate, for the petitioner.

Mr. Sourabh Goel, Senior Panel counsel for Union of India.

Mr. Ravi Sharma, Advocate, for respondent No.4.

. . .

Sant Parkash, J

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.

The present petition has been preferred under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari for quashing assessment order passed in Bill of Entry No.2083797 dated 16.02.2019 (Annexure P-6) and Notification No.05/2019-CUS dated 16.02.2019 (Annexure P-5), auction notice dated 24.12.2019 (Annexure P-9), as well as for issuance of a writ in the nature of Mandamus, directing

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respondent No.3 to issue detention memos in terms of Regulation 6(1)(1) of the Handling of Cargo in Customs Area Regulation, 2009 (for short, ‘Regulation’).

The petitioner is a partnership firm having its registered office at Shop No.3, Block S-3, Shoe Market, Sanjay Place, Agra, and engaged in the business of manufacture of Leather Goods and importing ‘leather’ as key ingredient for use in production of Leather Goods for the last more than three decades. Leather is being imported from Pakistan. The petitioner is holding a valid IEC No.0602002371 dated 29.05.2001 (Annexure P-1).

In February 2019, petitioner placed an order for import of one consignment comprising of ‘Bovine Crust Leather’ from its supplier situated in Pakistan. On 16.02.2019, petitioner filed Bill of Entry after entry of goods within the territory of India at the Attari Border, for clearance of the goods imported at the port of Land Customs Station, Attari, Amritsar and made declaration as per documents supplied by the Exporter. However, respondent No.1, vide Notification No.05/2019 enhanced the Customs Duty on all goods imported from Pakistan @ 200%. On 20.02.2019, respondent No.3 re-assessed the Bill of Entry to 200% customs duty as against the original tariff rate as declared in the bill of entry.

Respondent No.4, vide public notice dated 20.03.2019 ordered auction of the material imported vide the aforesaid bill of entry, without serving any notice to the petitioner. Since the goods were not permitted to be cleared at the original rate of duty, petitioner, vide letter dated 14.05.2019 requested for re-export of the goods which was allowed

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vide order dated 10.06.2019. However, it could not be made as Pakistan did not permit to enter any cargo into its territory.

Respondent No.4 again issued notice for auction of the goods vide auction notice dated 24.12.2019. The petitioner, vide letters dated 16.02.2020 requested respondent NO.4 not to initiate auction proceedings and further requested respondent No.2 to permit clearance of the goods since Bill of Entry was filled prior to notification dated 16.02.2019. The respondents neither responded to the communication of petitioner nor permitted the release of goods.

In this backdrop of facts, petitioner has challenged the validity and legality of Notification dated 16.02.2019 as also the reassessment of Bill of Entry dated 16.02.2019 passed by the respondents to levy duty as per the said notification.

We have heard learned counsel for the parties and with their kind assistance, perused the record.

The question for adjudication in the instant petition has already been answered by a Division Bench of this Court, vide judgment dated 26.08.2019 passed in CWP No.11887 of 2019, titled '**M/s Rasrasna Food Pvt. Ltd. Vs. The Union of India & others**', duly confirmed by the Hon'ble Supreme Court vide its decision dated 23.09.2020 rendered in **Civil Appeal Nos.3252 of 2020** titled **Union of India & others vs.M/s Rasrasna Food Pvt. Ltd.**. The relevant part of aforesaid judgment dated 26.08.2019 is reproduced hereunder:-

> "**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

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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.

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

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> 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)."

In view of the aforesaid discussion, the instant writ petition stands allowed and it is held that the petitioners would be liable to pay duty as was applicable at the time of filing/generating of bill of entry on EDI system 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(s) 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

(Sant Parkash)
Judge

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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No

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