IN THE HIGH COURT OF PUNJAB AND HARYANA AT *CHANDIGARH*

CWP-18463-2019 (O&M)
Date of Decision: 27.10.2022

M/s Shweta International

... Petitioner

V/s.

The Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr. Abhishek Chaudhry, Advocate for
Mr. Saurabh Kapoor, Advocate
for the petitioner.

Mr. Sourabh Goel, Sr. Standing Counsel with
Ms. Samridhi Jain, Advocate
for respondent Nos. 1 to 3.

Mr. Sandeep Verma, Advocate
for respondent No. 4.

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TEJINDER SINGH DHINDSA, J.(Oral)

As per pleadings on record, the petitioner was issued Importer- Exporter Code by the Zonal Director General of Foreign Trade for the import of various items. The petitioner is stated to have imported a consignment of dry dates and ingredients used for manufacture of 'Food Items' from a merchant exporter based in Karachi, Pakistan. The goods entered India on 16.02.2019 through the Land Customs Station Road Cargo, Attari Road, Amritsar, wherein the petitioner filed the checklist Bill of Entry, after making self-assessment and payment of Customs Duty of

Rs. 2,14,534/-. In the late evening hours of 16.02.2019 after sunset, the respondents issued Notification No. 05/2019-Cus. whereby the Customs Duty on the goods imported from Pakistan were subjected to 200% duty.

It is against such brief factual background that the instant writ petition was filed seeking issuance of directions to the respondents to issue Bill of Entry number, in terms of Job No. 3568 dated 16.02.2019 filed vide checklist Bill of Entry. Challenge was also laid to the Notification bearing No. 05/2019-Cus. dated 16.02.2019 (Annexure P-6) on the ground that the same is in contravention to the Notification No. 68/2012-Cus. dated 31.12.2012.

Case projected on behalf of the petitioner was that the impugned Notification dated 16.02.2019 (Annexure P-6) can only be prospective in operation.

During the course of hearing today, counsel for the parties are *ad idem* that a bunch of 27 writ petitions involving similar facts and identical legal issues came to be decided by a Co-ordinate Bench of this Court vide Judgment dated ***26.08.2019*** in ***CWP-11887-2019*** (***M/s Rasrasna Food Pvt. Ltd. vs. The Union of India and others)*** and other connected petitions. In these bunch of petitions, a declaration had been sought that Notification bearing No. 05/2019-Cus. dated 16.02.2019 is *ultra vires* the Constitution of India as well as the Customs Tarrif Act, 1975.

The petitioners therein were 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.

The Co-ordinate Bench took a view that the petitioners in the bunch of 27 writ petitions had placed import orders prior to 16.02.2019 and had received goods in India on or before 16.02.2019 i.e. before the impugned Notification was issued/uploaded at 8.45 p.m. on 16.02.2019 after working hours and as such if the impugned Notification is made applicable, it would amount to retrospective application, which is not permissible in law.

Operative portion of the judgment rendered by the Co-ordinate Bench in ***M/s Rasrasna Food Pvt. Ltd. (supra)*** was in the following terms:-

> *"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.*
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> *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).*"

It also stands conceded before us that the afore-noticed view taken by the Co-ordinate Bench stands affirmed by the Hon'ble Supreme

Court.

We may take note that even though Mr. Sourabh Goel, learned counsel for the respondent-CBIC would concede in principle that the Notification dated 16.02.2019 (Annexure P-6) would not have any retrospective operation, yet an attempt has been made to raise a technical objection to the effect that in the facts and circumstances of the instant writ petition, the Bill of Entry had not been generated on the day in question and as such a feeble attempt has been made to distinguish the judgment rendered by the Co-ordinate Bench in ***M/s Rasrasna Food Pvt. Ltd. (supra).***

We find such objection to be ill-founded. In Paragraphs 7 and 8 of the writ petition, there are specific averments to the effect that the petitioner had filed a checklist Bill of Entry, which was filed by the Clearing House Agent of the petitioner in the online EDI Portal of Customs wherein Job No. 3568 dated 16.02.2019 was allotted, seeking clearance of the goods for home consumption. In support of such assertion, a copy of the checklist copy of Bill of Entry stands appended and placed on record as Annexure P-4. Still further in Paragraph 8 of the writ petition, there is a positive assertion that the goods in question had arrived before 18.00 hours on 15.02.2019 and the IGM (Import General Manifest) was filed on 16.02.2019 and the checklist Bill of Entry having also been filed on 16.02.2019.

In the reply, that has been filed to paragraphs 7 and 8, such factual premise has not been denied.

Under such circumstances, generation of the Bill of Entry would be seen as a mere procedural fallout.

Mr. Sourabh Goel, Advocate is not in a position to controvert that the petitioner has placed the import orders prior to 16.02.2019 and has also received goods on or before 16.02.2019 and in any case prior to issuance of the impugned notification which was uploaded on 16.02.2019 at 8.45 p.m.

In view of above, the writ petition is allowed in terms of judgment dated 26.08.2019 rendered in ***M/s Rasrasna Food Pvt. Ltd. (supra).***

(*TEJINDER SINGH DHINDSA*)
JUDGE

(*DEEPAK MANCHANDA*)
JUDGE

27.10.2022
seema

Whether speaking/reasoned	***Yes***
Whether Reportable	***Yes /No***