IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

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THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP Nos.15393 to 15395 of 2001

WP No.15393 of 2001

M/s.Ruchi Worldwide Ltd.
through its Authorised Signatory,
P.N.Prabhakar : Petitioner

versus

1.The Union of India,
rep. By its Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi 110001

2.The Commissioner of Customs (Sea Port)
Customs House,
33,Rajaji Salai, Chennai

3.The Deputy Commissioner of Customs (Group 1, 2)
Custom House,
33,Rajaji Salai, Chennai : Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that the notification

No.36/2001 Cus.(N.T) Dated 3.8.2001 issued by the 1st respondent herein as null and void, arbitrary, illegal, unconstitutional and discriminatory insofar as it relates to the goods of the petitioner covered by the Bill of Entry No.023823 dated 2.8.2001.

WP Nos.15394 & 15395 of 2001

M/s.General Foods Ltd.,
through its Authorised Signatory
A.Prasad : Petitioner

versus

1.The Union of India,
rep. By its Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi 110001

2.The Commissioner of Customs (Sea Port)
Customs House,
33, Rajaji Salai, Chennai

3.The Deputy Commissioner of Customs (Group 1, 2)
Custom House,
33, Rajaji Salai, Chennai : Respondents

Prayer: WP No.15394 of 2001 filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that the notification No.36/2001 Cus.(N.T) Dated 3.8.2001 issued by the 1st respondent herein as null and void, arbitrary, illegal, unconstitutional and discriminatory insofar as it relates to the goods of the petitioner covered by the Bill of Entry No.023821 dated 3.8.2001.

WP No.15395 of 2001 filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that the notification No.36/2001 Cus.(N.T) Dated 3.8.2001 issued by the 1st respondent herein as null and void, arbitrary, illegal, unconstitutional and discriminatory insofar as it relates to the goods of the petitioner covered by the Bill of Entry No.023862 dated 3.8.2001.

For Petitioners	:	Mr.S.Murugappan
For Respondents	:	Mr.H.Siddharth, Junior Standing Counsel, for Mr.A.P.Srinivas Senior Standing Counsel

COMMON ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.S.Murugappan, learned counsel for the petitioners and Mr.H.Siddharth, learned Junior Standing Counsel, for the respondents.

2. The petitioners assail notification No.36/2001 Cus.(N.T) dated August 3, 2001 issued by the first respondent, on the ground that the same is arbitrary, illegal, unconstitutional and discriminatory.

3. The learned counsel for the petitioners does not press his challenge with regard to the constitutional validity of Notification No.36/2001, dated August 3, 2001. The learned counsel however submits that though the said notification was published on August 3, 2001 in the Official Gazette, it was made available for sale only on August 6, 2001. It is only on August 6, 2001, persons got knowledge of the impugned notification being issued. August 4 and 5, 2001 were holidays. Therefore, the petitioners and/or other persons could not get the knowledge of the notification.

4. Learned counsel for the petitioners, to buttress his submission that the date of making available for sale of the notification and the date the notification is made known to the people at large would be the relevant date, relies upon Section 25 of the Customs Act, 1962 (for short, 'the Act'). It is submitted that prior to 2016, sub-Section 4 of Section 25 of the Act mandated that (a) every notification shall 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.

5. In the present case, as the said notification was offered for sale only on August 6, 2001, that ought to be the relevant date. To substantiate his submission, the learned counsel relies on the judgment of the Apex Court in the case of ***Union of India vs. Param Industries Ltd [2015 (321) ELT 192 (SC)]*** and the judgment of Karnataka High Court in the case of ***Union of India vs. Ruchi Soya Industries Ltd. [2021(377) ELT 659 (Kar.)]***. The learned counsel further submits that the bill in the present case was prepared and issued on August 2, 2021 and the vessel arrived on August 5, 2021. The impugned notification issued under Section 14 of the Act, fixing the tariff was offered for sale on August 6, 2021. As such, the petitioners would not be governed by the impugned notification.

6. The learned counsel for the respondents submits that Section 14 of the Act does not mandate that it is only after the notification is offered for sale, it would come into effect. Section 14(2) of the Act provides that the Board by notification in the Official Gazette, may fix tariff for any class of imported goods and the same would come into effect from the date it is published in the Official Gazette.

7. The learned counsel relies on the judgments of the Apex Court in the cases of (i) ***Union of India vs. Ganesh Das Bhojraj [2000(116) ELT 431 (SC)]***; (ii) ***Union of India and ors. vs. G.S.Chatha Rice Mills and Anr. [2020 SCC Online SC 770].*** It is further submitted that the judgment of the Karnataka High Court in the case of ***Ruchi Soya Industries Ltd.*** relies on the over-ruled judgment in the case of ***Param Industries Ltd.*** and the judgment of the three Judges Bench in the case of ***G.S.Chatha Rice Mills*** was not brought to the notice of the Karnataka High Court.

8. We have considered the submissions made by the parties.

9. Though the constitutional validity of the notification is assailed in the writ petitions, submissions in that regard are not made and the said challenge is not pressed.

10. The contention of the learned counsel for the petitioners is that the impugned notification though was published in the Official Gazette on August 3, 2021, would not be operative on the said date, as the same was offered for sale and was made known to the people

only on August 6, 2021.

11. Reliance is placed on Section 25(2) of the Act of 1962 as it existed then.

12. Section 25 of the Act deals with exemptions; whereas Section 14 of the Act deals with fixation of the tariff. We cannot import the analogy of Section 25 into Section 14 of the Act. Section 14 nowhere mandates requirement of placing the said notification after having published in the Official Gazette, for sale. The publication in the Official Gazette is a constructive notice to the whole world.

13. Section 14 of the Act does not provide for any other mode for publication. It also does not give a date as to when it would be operative. Sub-Section (2) of Section 14 provides that notwithstanding anything contained in sub-Section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export 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.

14. The Apex Court in ***Ganesh Das Bhojraj*** observed that it is the established practice that the publication in the Official Gazette, that is, Gazette of India is the ordinary method of bringing a rule or subordinate legislation 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 since years and there is no other mode prescribed in the present statute.

15. The Apex Court in the case of ***G.S.Chatha Rice Mills*** observed that the decision of the Court in ***Param Industries Ltd*** was on the interpretation of Section 14(2) of the Customs Act. However, prima facie, this decision appears to be contrary to the principles previously elucidated by the Apex Court in the context of the Customs Act. It was further observed that ***Param Industries Ltd*** inasmuch as it imposed an additional requirement, “offering for sale” outside of the prescribed statutory scheme under Section 14(2) of the Customs

Act, appears to be contrary to the pre-existing principles.

16. In light of the above, the writ petitions do not merit consideration. The writ petitions as such are dismissed. There shall be no order as to costs.

(S.V.G., CJ.) **(D.B.C., J.)**
14.03.2024

Index : Yes/No
Neutral Citation : Yes/No
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