



W.P.(MD).Nos.19235 of 2020 etc. batch.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	16.07.2024
Pronounced on	24.09.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).Nos.19235, 19125, 19132, 19315, 19195, 19202, 19244,
19249, 19529, 19541, 19731 and 19721 of 2020 etc. batch.

and

W.M.P.(MD).Nos.16455, 16454, 16450, 16448, 15994, 15996, 15999,
16000, 16003, 16005, 16270, 16272, 16277, 16278, 16047, 16049,
16045, 16046, 16061, 16062, 16065, 16066, 16067, 16068 of 2020

W.P.(MD).No.19235 of 2020:

M/s Moorthy Traders

Rep.by its Partner Mr.S.Ramamoorthy,

3/1223, Sattur Road,

Virudhunagar – 626 001.

...Petitioner

Vs.

1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004.

2.The Assistant Commissioner
of Customs (Importer-Manifest),
Custom House, New Harbour Estate,
Tuticorin – 628 004.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records pertains to the assessment made in the Bill of Entry No.8657923, dated 31.08.2020, denying the benefit of Existing and Valid Exemption



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Notification No.26/2020, dated 02.06.2020, at the effective rate of 10% (11%) ad valorem and collecting duty at 30% (33%) ad valorem and quash the same as arbitrary and illegal and direct the 2nd respondent to re-assess the Bill of Entry No.8657923, dated 31.08.2020, after extending the Benefit of Exemption Notification No.26/2020, dated 02.06.2020 as it stood on 31.08.2020 and to direct to refund the excess amount paid by the petitioner within the time framed.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

COMMON ORDER

In these batch of Writ Petitions, the respective petitioners have challenged the impugned assessment made by the Proper Officer in respect of the following Bills of Entries filed by the respective petitioners on 31.08.2020:-

Sl. No.	W.P. (MD)No.	Petitioner	Bill of Entry No.	Date
1.	19125/2020	Pushpam Traders	8656418	31.08.2020
2.	19132/2020	Pushpam Traders	8655074	31.08.2020
3.	19135/2020	Pushpam Traders	8656266	31.08.2020
4.	19195/2020	Vasumathy Traders	8656255	31.08.2020
5.	19202/2020	Pushpam Traders	8656937	31.08.2020
6.	19235/2020	Moorthy Traders	8657923	31.08.2020
7.	19244/2020	Moorthy Traders	8657740	31.08.2020



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8.	19249/2020	Moorthy Traders	8658079	31.08.2020
9.	19529/2020	M/s.C.P. Foods	8656700	31.08.2020
10.	19541/2020	M/s.C.P. Foods	8657392	31.08.2020
11.	19721/2020	S.Kumaraguru	8655066	31.08.2020
12.	19731/2020	M/s.O.M.S.P. Columbus and Partners	8654330	31.08.2020

2. The petitioners herein have imported lentils [Mosur] from Canada and U.S.A. As per **Notification No.50/2017-Cus** dated **30.06.2017** as amended by **Notification No.26/2020-Cus** dated **02.06.2020** rate of duty on import of lentil from the Countries other than U.S.A. was reduced to 10%. Imports from the U.S.A. was reduced to 30%.

3. The benefit of this concession was however available for a short period between **02.06.2020** and **31.08.2020**. The Relevant portion of the above **Notification No.26/2020-Cus** dated **02.06.2020**, which inserted **Serial No.21(E)** and **21(F)** together with first proviso to the said Notification read as under:-

"In the said notification,



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(a) in the Table, serial number 21D and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

(1)	(2)	(3)	(4)	(5)	(6)
21E	0713 40 00	Lentils (Mosur)	10%	-	-
21F	0713 40 00	Lentils (Mosur) originating in or exported from United States of America	30%	-	-";

After clause (d), the following clause was inserted, namely:-

"(e) the goods specified against serial numbers 21E and 21F of the said Table after the 31st day of August, 2020."

Provided that nothing contained in this notification shall apply to -the goods specified against S.No.368 of the said Table on or after the 1st day of April, 2002

(a) [***]

(b) [***]

(c) [***]

(d)⁵ [***]

(ii) after the [31st day of December, 2020].:]

Provided further that nothing contained in entries against the serial numbers 21C, 21D, [21E,], 24A, 24B, 26A, 32A, 177, 177B, 249A, 250A, 371A, 371B, 376, [377A and 377AA] of the said table shall apply to goods originating in the United States of America.

⁵ Omitted (w.e.f.2-2-2021) by Notification No.2/2021-Cus., dated 1-2-2021



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[*****]

Explanation.-(I) For the purposes of this notification, the rate specified in column (4) or Column (5) of the said Table is ad valorem rate, unless otherwise specified;

(II) For the removal of doubts,-

(a) “-” appearing in column (4) means basic customs duty leviable on the goods as per the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) read with any other notifications issued under sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), for the time being in force.

(b) “-” appearing in column (5) means Integrated Goods and Services Tax leviable on the goods as per the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with any other notifications issued under the said Act, for the time being in force.

(III) Consequent to the amendments made with effect from 2nd February, 2021 in the entries against S.Nos.292, 430, 431 and 559, the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 shall complete pending action, if any, in respect of imports made earlier therein.”

4. The case of the respective petitioners is that due to congestion in the Tuticorin Port, the vessels could not be berthed on **31.08.2020** and



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that the vessels were allowed to be berthed only on by the following day i.e., on **01.09.2020** at the Tuticorin Port. It is submitted that the Bills of Entry under Section 46 of the Customs Act, 1962 were however filed by the respective petitioners on **31.08.2020** to claim the benefit of the above explanation. It is further submitted that the Import General Manifest (IGM) was also filed by the Captain of the Vessel on **31.08.2020**.

5. It is further submitted that the arrival notice was also issued to the Customs Authorities on **31.08.2020** and therefore, the benefit of exemption under amendment to **Notification No.50/2017-Cus** dated **30.06.2017** vide **Notification No.26/2020-Cus** dated **02.06.2020** ought to have been allowed to the petitioner.

6. The learned counsel for the petitioners would draw the attention to the decision of the Hon'ble Supreme Court in **Union of India and others vs. M/s.G S Chatha Rice Mills and another** rendered on **23.09.2020** in **Civil Appeal No.3249 of 2020**, wherein the majority view was concurred by a separate opinion of Hon'ble Judge **K.M.Joseph, J.**



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7. It is submitted that the benefit of the exemption cannot be denied in the light of the above decision, which had in turn, upheld the decision of the Punjab and Haryana High Court in **C.W.P.No.11887 of 2019 (O & M)** on **26.08.2019** in the case of ***M/s.Rasrasna Food Pvt. Ltd. vs. The Union of India and others.***

8. The said decision dealt with the situation where the rate of tax were changed overnight due to Pulwama Terrorist Attack. Therefore, the Government of India issued **Notification No.5/2019-Cus** dated **16.02.2019** whereby the imports of goods from Pakistan falling under **Chapter Heading 9806 0000** was increased to 200%.

9. A reference was also made to the decision of the Punjab and Haryana High Court in **M/s.Abnashi Leather Store vs. Union of India and others** [Civil Writ Petition No.9954 of 2020 (OM)], decided on 15.10.2020], wherein the views of the Hon'ble Supreme Court were reiterated by the Division Bench of the Punjab and Haryana High Court at Chandigarh in **M/s.Abnashi Leather Store vs. Union of India and others.**



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10. The learned counsel for the petitioners further submits that the definition of “Indian Customs Waters” in **Section 2(28)** of the **Customs Act, 1962**, makes it clear that “Indian Customs Water” means waters extending into the sea up to the limit of Exclusive Economic Zone under **Section 7** of the **Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976)** and includes any bay, gulf, harbour, creek or tidal river.

11. It is further submitted that the definition of “**India**” under **Section 2 (27)** of the **Customs Act, 1962** also includes the “**territorial waters of India**”. It is submitted that once the vessels had arrived in the “Indian Customs Waters”, as defined in **Section 2(28)** of the **Customs Act, 1962**, the import is deemed to be complete and therefore the benefit of **Notification No.50/2017-Cus** dated **30.06.2017** as amended by **Notification No.26/2020-Cus** dated **02.06.2020** was available to the respective petitioners on the date of arrival of the vessels, into the Indian Customs Waters and therefore the benefit of exemption ought not to have been denied.



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12. On the other hand, the learned Senior Standing Counsel for the respondents would submit that these Writ Petitions are devoid of merits. It is submitted that the petitioners have alternate remedy by way of an appeal before the Appellate Commissioner under **Section 128** of the **Customs Act, 1962**.

13. That apart, it is submitted that the law on the subject is also clear. In this connection, the learned Senior Standing Counsel for the respondents would draw attention to **Section 15** of the **Customs Act, 1962**. He would submit that in case 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 were 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. He would draw attention to the *Proviso* to **Section 15(1)** of the **Customs Act, 1962**, which reads as under:-

*“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.**”*



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14. The learned Senior Standing Counsel for the respondents would also draw the attention to the definition of the expression "entry" and in **Section 2 (16)** of the **Customs Act, 1962** "arrival manifest" or "import manifest" or "import report" as defined in **Section 2 (24)** of the **Customs Act, 1962**.

15. The expression “**entry**” and “**arrival manifest**” or “**import manifest**” have been defined in the Customs Act, 1962 as follows:-

Section 2(16) of the Customs Act, 1962	Section 2(24) of the Customs Act, 1962
" entry " in relation to goods, means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under Section 84;	"arrival manifest or import manifest" or "import report" means the manifest or report required to be delivered under Section 30;

16. It is submitted that the definition of “**India**” and “**Indian Customs Waters**” in **Section 2(27)** and **Section 2(28)** of the **Customs Act, 1962** are not relevant, as what is relevant is only the “date of entry inwards” or “arrival of the aircraft”, as the case may be.



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17. The definition of “India” and “Indian Custom Waters”

reads as follows:-

<i>Section 2 (27)</i>	<i>Section 2 (28)</i>
“India” includes the Territorial Waters of India;	"Indian customs waters" means the [waters extending into the sea up to the limit of [Exclusive Economic Zone under section 7] of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976)] and includes any bay, gulf, harbour, creek or tidal river;

18. The learned Senior Standing Counsel would further draw the attention to Section 30 and Section 31 of the Customs Act, 1962.

19. Section 30 and Section 31 of the Customs Act, 1962, reads as under:-

Section 30 of the Customs Act, 1962	Section 31 of the Customs Act, 1962
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30. Delivery of arrival manifest or import manifest or import report.-

- (1) The person-in-charge of -
(i) a vessel; or
(ii) an aircraft; or
(iii) a vehicle,

carrying imported goods or export goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, **shall in the case of a vessel or an aircraft, deliver to the proper officer an arrival manifest or import manifest by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in such form and manner as may be prescribed and if the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees:**

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in

31. Imported goods not to be unloaded from vessel until entry inwards granted.-

(1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

(2) No order under sub-section (1) shall be given until an arrival manifest or import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

(3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.



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20. The learned Senior Standing Counsel would submit that as per **Section 30 of the Customs Act, 1962**, an “**arrival manifest**” or “**import manifest**” has to be presented electronically prior to the arrival of the vessel or the aircraft, as the case may be. However, unloading of the Cargo can be permitted by the Master of the vessel only after an order has been made by proper officer granting “entry inwards” to such vessel in **Section 31 of the Customs Act, 1962**.

21. The learned Senior Standing Counsel would submit that the law on the subject is also very clear and has been recently clarified by a Division Bench of this Court in **W.A.Nos.1552 to 1573 of 2013 Union of India and others vs. M/s.Dindigul Spinners Associations** rendered on **21.01.2022**. A specific reference was made to Issue No.2 in the said decision.

22. In Union of India and others vs. M/s.Dindigul Spinners Associations it was held:-

"(2) Whether it is permissible to treat the impugned notification as not being applicable to



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cotton in transit at the time of issuance of notification and also cotton in respect of which orders have been placed with the foreign exporters prior to the issuance of impugned notification?"

23. Answering the said issue, it is submitted that the Division Bench has also referred to the following decisions:-

- i. **Narayan Govind Gavate vs. State of Maharashtra**, [(1977) 1 SCC 133]
- ii. **State of U.P. vs. Hindustan Aluminium Corpn.**, [(1979) 3 SCC 229]
- iii. **Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupeshkumar Sheth**, [(1984) 4 SCC 27]
- iv. **Corpn. of the City of Bangalore vs. Kesoram Industries and Cotton Mills Ltd.**, [1989 Supp (2) SCC 753]

24. With regard to Presumption of Constitutionality, the Division Bench has relied on the following decisions:-

- i. **St. Johns Teachers Training Institute vs. Regional Director, NCTE**, [(2003) 3 SCC 321]
- ii. **State of T.N. vs. P.Krishnamurthy**, [(2006) 4 SCC 517]. The decision rendered in **State of T.N. vs. P.Krishnamurthy** was followed by the Hon'ble Supreme Court in the following:-
 - a) **Cellular Operators Assn. of India vs. TRAI**, [(2016) 7 SCC 703 : (2016) SCC OnLine SC 486]
 - b) **Global Energy Ltd. vs. Central Electricity Regulatory Commission**, [(2009) 15 SCC 570 : (2009) SCC OnLine SC 1112]



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25. Under these circumstances, it is submitted that the points canvassed by the learned counsel for the petitioners in these Writ Petitions are without any merits and therefore, these Writ Petitions are liable to be dismissed.

26. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Senior Standing Counsel for the respondents.

27. The Hon'ble Supreme Court in **Surfactants (Pvt.) Ltd. and Ors. Vs. Union of India and Ors.** (17.05.1989-SC): MANU/SC/0328/1989, held as under:-

The provisions of Section 15 are clear in themselves. The date on which a Bill of Entry is presented under s. 46 is, in the case of goods entered for home consumption, the date relevant for determining the rate of duty and tariff valuation. Where the Bill of Entry is presented before the date of Entry Inwards of the vessel, the Bill of Entry is deemed to have been presented on the date of such Entry Inwards.

Section 15 of the Customs Act is not ultra vires, as it lays down a procedure and following that procedure cannot be termed arbitrary. "As to the question whether Section 15 of the Customs Act is ultra vires on the ground that arbitrary discretion



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has been conferred on the customs authorities in the matter of determining the date of inward entry, it seems to us that having regard to the procedure there is no scope for the submission that the provision is invalid. An entire series of consecutive acts makes up the procedure, and it is reasonable to presume that each step in the series is completed on time. In that view of the matter, the challenge to the validity of Section 15 must fail.”

28. In Aluminium Industries Vs. Union of India dated 21.03.1988 – KERHC: MANU/KE/0600/1988, the Kerala High Court held as under:-

- i. The rate of duty applicable to any imported goods is that prevailing on the date on which the Bill of Entry is presented under S.46. But. if the Bill of Entry is presented before the date of entry inwards of the vessel, it shall be deemed to have been presented on the date of such entry inwards. It is a facility afforded to the importer and has nothing to do with the rate of duty payable on the import. In cases where the Bill of Entry is presented in advance of the arrival of the vessel, the presentation is fictionally postponed by the proviso to S.15(1) to the date of entry inwards of the vessel. This is for the purpose of computing the duty payable. Full effect has to be given to this fiction. The proviso to S.15(1) ensures uniformity and conforms the duty payable to a sound principle, of relating it to the actual date of import.*



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29. In The Collector of Customs, Calcutta and Ors Vs. G.Dass and Co. and Ors. dated 09.02.1966 -SC: MANU/SC/0316/1996, the Court held as under:-

Relevant date for duty rate and for delivery of Bill of Entry is date of actual landing of goods, even if B/E was delivered earlier to Collector of Customs. "In a case where a bill of entry was presented to the proper Officer of Customs before the landing of the goods and was kept by the Officer, the date of the landing of the goods must be deemed to be the date of delivery of the bill of entry to the Customs Collector within the meaning of Section 37 and the rate of duty chargeable on the imported goods must be the rate in force on that date. Condition No. 2 of the relevant bills of entry provided that for the purposes of Section 37, they would be deemed to be delivered on the date on which the order for inward entry would be passed. This condition could not override the provisions of Sections 37 and 86. Under these sections no date earlier than the date of the landing of the goods could be treated as the date of delivery of the bill of entry to the Customs Collector.

30. In Shah Devchand and Co. and Ors. Vs. Union of India (UOI) and Ors. dated 25.07.1991-SC:MANU/SC/0431/1991, the Court held as under:-

Rate of duty--relevant date for determining rate of duty and tariff valuation [under section 15(1)(a)] is the date of filing the Bill of Entry under section 46 [ratio of SC's earlier judgment in Bharat



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31. In Union of India (UOI) and Ors.Vs. G.S.Chatha Rice Mills and Ors. Dated 23.09.2020-SC:MANU/SC/0714/2020, the Court held as under:-

A perusal of Section 15(1)(a) makes it clear that as far as goods entered for home consumption Under Section 46, the rate of duty is to be the rate of duty in force on the date on which the Bill of Entry in respect of such goods is presented Under Section 46. What is crucial is, however, that only that date is relevant on which he presents the Bill of Entry for home consumption in the form and in the manner, which is prescribed.

32. The Hon'ble Division Bench in W.A.Nos.1552 to 1573 of 2013 in Union of India and Ors. Vs. M/s.Dindigul Spinners Associations dealt with the situation under **Notification No.02/2002-Cus** dated **08.01.2002**, whereby the rate of duty was increased from 5 % to 10 % with effect from **09.01.2002**. The notification was challenged by the petitioners in W.P.No. 750 of 2002. The learned Single Judge had quashed the above **Notification No.02/2002-Cus** dated **08.01.2002** issued by the Central Government under **Section 8 (A) of the Customs Tariff Act, 1975. Section 8 (A) of the Customs Tariff Act, 1975** *inter-alia* provides for increase of import duties



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by the Central Government in exercise of its Emergency Powers. **Section 8**

(A) of the **Customs Tariff Act, 1975** reads as under:-

“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 an 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).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.]

33. The decision of the Hon'ble Division Bench really dealt with *vires* of **Notification No.02/2002-Cus** dated **08.01.2002** issued by the Central Government under **Section 8 (A)** of the **Customs Tariff Act, 1975** which was in force from **08.01.2002** to **08.07.2002**. It really did not deal with a situation covered which is under contemplation in these writ petitions. It was not really concerned with the “date of determination of rate



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of duty” of imported goods, all though it referred to few decisions of the Hon'ble Supreme Court. The Division Bench has summarized the position of law as follows:-

*The Division Bench of this Court in **Union of India Vs. M/s.Dindigul Spinners Association (cited supra)** has clarified the position in Paragraph Nos.11.4 to 11.6 as under:-*

"11.4 The above judgments make it clear that rate of duty is governed by Section 15 of the Customs Act, 1962 and the same shall be the rate in force -

a. In the case of goods entered for home consumption under Section 46 of the Customs Act, 1962 on the date on which bill of entry was presented for home consumption.

*b. In the case of goods cleared from a warehouse under Section 68 of the Customs Act, 1962 the date on which goods are actually removed from warehouse *(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 the duty.

d. 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 on the date of such entry inwards or arrival as the case may be.

11.5 The fact that the goods were in transit or the orders have been placed at the time when a lower rate of duty prevailed, will have no bearing for the rate of duty that would be applicable, shall be the rate of duty prevailing on the dates mentioned in Section 15 of the Customs Act, 1962 as explained by the various decisions referred above.



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11.6 We are thus unable to accept the contention of the respondents that the enhanced rate leviable by the impugned notification should not be made applicable to cotton in transit at the time of issuance of notification and cotton in respect of which orders were placed with foreign exporters prior to the issuance of impugned notification. Accordingly, the second question raised in this batch of appeals, is also answered in favour of the appellants and against the respondents.

[Substituted by Act 32 of 2003, S.106, for "the goods are actually removed from the warehouse" (w.e.f. 14.05.2003)]"*

34. The decision of the Hon'ble Supreme Court in ***Bharat Surfactants Pvt. Ltd. Vs. Union of India (1989) 4 SCC 21 : 1989 (43) E.L.T. 189 (SC)*** indicates that the import manifest was filed by the Steamer Agent on **06.07.1981**. The Hon'ble Supreme Court recorded the normal procedure. When Import General Manifest was filed on **06.07.1981** was prior to the arrival of the vessel. It accompanied by an application for "entry inwards" within twenty-four hours of its arrival of vessel. However, since the vessel had to arrive later, there was no application accompanying the letter enclosing Import General Manifest. The Court observed that the procedure appears normally on noticing the arrival or expected arrival of the vessel from the Import General Manifest, the importer or his clearing agent has to file Bill of Entry. Thus



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Bill of Entry was held on **09.07.1981**. Relevant paragraph of the **Bharat Surfactants Pvt. Ltd. Vs. Union of India (cited supra)** reads as under:-

“10. We express no opinion on the soundness of the view taken by the Bombay High Court in the cases mentioned above; it is sufficient to point out that on the facts they afford no assistance to the petitioners.

11. The rate of duty and tariff valuation has to be determined in accordance with s. 15(1) of the Customs Act. Under s. 15(1)(a), the rate and valuation is the rate and valuation in force on the date on which the Bill of Entry is presented under s. 46. According to the proviso, however, if the Bill of Entry has been presented before the entry in-wards of the vessel by which the goods are imported, the Bill of Entry shall be deemed to have been presented on the date of such entry inwards. In the present case the Bill of Entry was presented on 9 July, 1981. What is "the date of entry inwards" of the vessel? We may refer to the detailed procedure in this matter set forth in the counteraffidavit of Shri R.S. Siddhu, then under Secretary to the Government of India.

"12. Before the arrival of the vessel the Master of the vessel or his Agent informs the port authorities and the customs authorities of the probable date of arrival of the vessel. This information is technically known as presentation of the Import General Manifest. In this Manifest the Master intimates the details with regard to the cargo carried by the vessel. In the instant case the Manifest was conveyed by the Steamer Agent on 6-7-1981 by his letter No. IM/394/81/1116. Admittedly this intimation or presentation of the Manifest on 6-7-1981 was prior to the arrival of the vessel. The presentation of the Manifest can be effected either before the arrival of the vessel or after its arrival in the usual course. In the



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forwarding letter dated 6-7-1981 mentioned above, the Shipping Agent informed the authorities that the ship would be arriving at Bombay on 12-7-1981. According to the normal procedure, if the Manifest on 6-7-1981 was prior to the arrival of the vessel it is accompanied by an application for Entry Inward within twenty-four hours of arrival. In the instant case since the vessel was to arrive later there was no application accompanying the letter dated 6-7-1981. The vessel arrived on 11-7-1981. On receipt of the Manifest a “prior entry” is made in the Register, which is called the Register of Inward/Outward Entry of vessels. Upon the recording of the “prior entry” a rotation number is given and conveyed to the Shipping Agent or the Master of the vessel. In the instant case the “prior entry” or rotation number allotted was 743/PE. The customs authorities display daily, on receipt of the Import General Manifests, the details of the vessels on a notice board for the information of importers. On noticing the arrival or expected arrival of the vessel from the Import General Manifest the importer or his clearing agent files his Bill of Entry. In this case the Bill of Entry was filed on 9-7-1981. An entry with regard to presentation of the Bill of Entry is made in the Import General Manifest against the entry with regard to the consignment belonging to the importer.”

35. The Hon'ble Supreme Court has laid down the position in the following two cases as under:-

(i) Bharat Surfactants (Pvt.) Ltd. vs. Union of India, [(1989) 4 SCC 21 : (1989) 43 E.L.T. 189 (SC)]

“14.It is urged on behalf of the petitioners that the import of the goods must be deemed to have taken place on 11-7-1981, when the ship originally arrived in



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Bombay Port and registered itself. The rate of customs duty prevailing on that date was 12.5 per cent, and that, learned counsel contends, should be the rate applicable to the edible oil consignment under Section 15 of the Act. The circumstance that the vessel was unable to secure a berth in the Port of Bombay compelled it to proceed to Karachi to discharge the cargo pertaining to that Port, and but for the non-availability of the berth she would not have undertaken that voyage but would have continued in Bombay and discharged the edible oil consignment there. The customs duty which could have been levied then would have been 12.5 per cent. It is pointed out that the vessel was unable to do so for no fault of the petitioners and a reasonable construction must be given to Section 15 taking into account the particular circumstances of the case, so that the vessel must be deemed to have made the "Entry Inwards" on 11-7-1981. We do not find it possible to accept this submission. The provisions of Section 15 are clear in themselves. The date on which a Bill of Entry is presented under Section 46 is, in the case of goods entered for home consumption, the date relevant for determining the rate of duty and tariff valuation. Where the Bill of Entry is presented before the date of Entry Inwards of the vessel, the Bill of Entry is deemed to have been presented on the date of such Entry Inwards.

15. In Omega Insulated Cable Co. (India) Ltd. v. Collector of Customs, Madras [Writ Appeal No. 537 of 1969, decided by the Hon'ble Kailasam and Paul, JJ. on 9-7-1975 (Mad HC)] the Madras High Court addressed itself to the question whether the words in Section 15(1) (a) of the Act viz. "date of entry inwards of the vessel by which the goods are imported" mean "the actual entry of the vessel inwards or the date of entry in the register kept by the department permitting the entry inwards of the vessel". The learned Judges examined the corresponding provisions of the earlier statute and after comparing the provisions of Section 15 with those of Section 16 of the



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Customs Act, 1962, and the amendments made from time to time, held that the date of entry inward for the purpose of Section 15(1)(a) and the proviso thereof is the date when the entry is made in the customs register."

16. We have considered the matter carefully and given due heed to the submissions of learned counsel for the petitioners founded, inter alia, on the provisions of the Sea Customs Act and the amendment made in Section 16 of the Customs Act and we are of opinion that the view taken by the Madras High Court in Omega Insulated Cable Co. Ltd. [Writ Appeal No. 537 of 1969, decided by the Hon'ble Kailasam and Paul, JJ. on 9-7-1975 (Mad HC)] represents the correct view. The amendment made in Section 16 of the Act appears to have been made by way of clarification and, in our opinion, does not detract from the conclusion that "the date of entry inwards of the vessel" is the date recorded as such in the customs register. In the present case, "the date of inwards entry" is mentioned as 31-7-1981. In the absence of anything else, we may take it that the entry was recorded on that date itself. Accordingly, the rate of import duty and the tariff valuation shall be that in force on 31-7-1981. The contention of the petitioners that the rate of import duty and tariff valuation will be that ruling on 11-7-1981 cannot be sustained and is rejected.

13. The procedure thereafter is as follows: A vessel on arrival in the territorial waters has to await the allotment of a berth by the Port Trust. The Port Trust authorities, on receipt of information about the arrival of a ship, allot a berth, if it is available, for the discharge of the cargo. In the instant case, since no berth was available, the vessel left for Karachi to discharge the cargo meant for that Port. The vessel arrived at Bombay on 23-7-1981. Before its arrival, the Steamer Agent had presented a supplementary Manifest on 18-7-1981 under cover of his letter No. IM/394/81/1223. The "prior entry" made earlier in the Register of Inward Entry remained



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thereof at any time after delivery of the import manifest. Section 31(1) provides that the master of the vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer "granting entry inwards" to such vessel and no order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it. Granting entry inwards on delivery of import manifest and the date of arrival of the vessel into port admittedly are on March 2, 1989 and the Master of the vessel made a declaration in this behalf that they would discharge the cargo on March 2, 1989 therefore, the relevant date under Section 15(1)(a) is the date on which entry inwards after delivery of import manifest was granted to discharge the cargo for the purpose of the levy of the customs duty and rate of tariff. The contention, therefore that the ship entered Indian territorial waters on February 20, 1989 and was ready to discharge the cargo is not relevant for the purpose of Section 15(1) read with Sections 46 and 31 of the Act. The prior entries regarding presentation of the bill of entry for clearance of the goods on February 27, 1989 and their receipt in the appraising section on February 28, 1989 also are irrelevant. The relevant date to fix the rate of customs duty, therefore, is March 2, 1989. The rate which prevailed as on that date would be the duty to which the goods imported are liable to the impost and the goods would be cleared on its payment in accordance with the rate of levy of customs prevailing as on March 2, 1989."

36. The ratio laid down by the Punjab and Haryana High Court at Chandigarh in *M/s.Rasrasna Food Pvt. Ltd. vs. The Union of India* and others, reads as under:-



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"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



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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



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

37. As per **Section 30 of Customs Act, 1962**, the person-in-charge of a vessel carrying imported goods shall in the case of vessel, deliver to the proper officer, an “**arrival manifest**” or “**import manifest**” by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, in such form and manner as may be prescribed, if the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees irrespective of the delivery of the arrival manifest, electronically before the arrival of the vessel with the Proper Officer.

Section 30 of the Customs Act, 1962 reads as under:-

The person in charge of (i) a vessel; or (ii) an aircraft; or (iii) a vehicle, carrying imported goods [or export goods] or any other person as may be specified by the Central Government, by notification in the Official



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Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer [an [arrival manifest or import manifest] by presenting electronically prior to the arrival] of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in [such form and manner as may be prescribed and if the [arrival manifest or import manifest] or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees:]

Provided that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to deliver [arrival manifest or import manifest] by presenting electronically, allow the same to be delivered in any other manner.]

(2) The person delivering the [arrival manifest or import manifest] or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the [arrival manifest or import manifest] or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented.

38. As per **Section 31** of **Customs Act**, the imported goods can be un-loaded from the vessel only after an order for “entry inwards” has been given by the proper officer granting “entry inwards” to such vessel. Thus,



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only after arrival manifest is filed and after an order has been given by the proper officer granting “**entry inwards**” to such vessel, the imported goods can be allowed to unloaded from a vessel.

39. Section 31 of the Customs Act, 1962 reads as under:-

Imported goods not to be unloaded from vessel until entry inwards granted.—

(1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

(2) No order under sub-section (1) shall be given until an [arrival manifest or import manifest] has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

(3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

40. As per the proviso under **Section 15 (1)** of the **Customs Act, 1962**, where a Bill of Entry has been presented before the “date of entry inwards” of the vessel or arrival of the aircraft or the vehicle by which goods are imported, the Bill of Entry is deemed to have been presented on the date of such “entry inwards” or arrival as the case may be. This



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provision for determination of the rate of duty and for valuation of imported goods.

41. Section 15 of the Customs Act, 1962 reads as under:-

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.



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42. Admittedly, the Bill of Entries was filed in advance on **31.08.2020** after the vessels entered the “Indian Territorial Waters” in accordance with **2nd proviso to Section 46 (3) of the Customs Act, 1962**, it reads as under:-

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:

43. The import manifest was filed on **31.08.2020** in accordance with **Section 30 of the Customs Act, 1962**. It was prior to arrival of the vessel for unloading the cargo imported in it. The vessel reached out skirts of Tuticorin Port on **31.08.2020** after the Port Authorities gave of permission. However, it could not be berthed at the Port for unloading the imported cargo due to traffic congestion at the Port. Ultimately the vessel was allowed to be berthed at the Tuticorin Port only on 01.09.2020.

44. Only after the vessel was berthed at the Tuticorin Port on 01.09.2020, order for “entry inwards” as is contemplated under **Section 31** of the Act was granted. Only after an order for “entry inwards” was granted by the proper officer, the cargo could be discharged from the vessel.



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45. Therefore, even though the vessel had reached “India” and “the Indian Customs Waters” as defined under **Sections 2 (27) and 2 (28) of the Customs Act, 1962** and was anchored outside the Tuticorin Port due to traffic congestion within the port, the petitioner would not be disentitled to the benefit of **Notification No.50/2017-Cus** dated **30.06.2017** as amended vide **Notification No.26/2020-Cus** dated **02.06.2020**, as the said Notification was to remain in force till **31.08.2020** as no order for “entry inwards” was made on 31.08.2020.

46. The proviso to Section 15 of the Customs Act, 1962 makes this position clear. There is no scope for reading down the rigours of proviso to Section 15. The Hon'ble Supreme Court has also held that in taxing, sometimes the provisions may act harshly against an assessee. However, it cannot be helped. Since the issue is squarely covered by the decision of the Hon'ble Supreme Court in **Bharat Surfactants (Pvt.) Ltd. Vs. Union of India**, [(1989) 4 SCC 21 : (1989) 43 E.L.T.189(SC)], the relief sought for cannot be granted.

47. In the light of the above discussion, this writ petition is liable to be dismissed and accordingly dismissed. No costs. Connected



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miscellaneous petitions are closed.

24.09.2024

Index: Yes/ No
Speaking Order/Non-Speaking Order
Neutral Citation Case: Yes/No
nst

To

- 1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004.
- 2.The Assistant Commissioner
of Customs (Importer-Manifest),
Custom House, New Harbour Estate,
Tuticorin – 628 004.



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C.SARAVANAN, J.

nst

Pre-Delivery Order made in
W.P.(MD).Nos.19235 of 2020 etc. batch

24.09.2024