



In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 14768 of 2024 (O&M)

Reserved On: 12.08.2024
Pronounced On: 22.08.2024

M/s JB Jewels and Metals LLP
... Petitioner(s)

Versus

Union of India and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Sheel Nagu, Chief Justice.
Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Saurabh Kapoor and Ms. Muskan Gupta, Advocates
for the petitioner(s).

Mr. Karan Bhardwaj, Advocate
for respondents No.1 and 2.

Mr. Sourbh Goel, Senior Standing Counsel, CBIC
and Ms. Geetika Sharma, Advocate
for respondents No.3 and 4.

Anil Kshetarpal, J.

1. Brief Facts of the Case

1.1 By filing this writ petition, the petitioner calls in question the correctness of refusal on the part of the respondents to release the goods comprising of gold findings/parts imported on 11.06.2024 by him vide bills of entry No. 3937523 and 3937977. When the goods were imported, the existing import policy, issued by the government under the Foreign Trade (Development and Regulation) Act, 1992, at that time categorized the imported goods as 'Free'. The petitioner imported two consignments of 45

kgs. and 54 kgs., respectively, vide two airway bills generated at 15:50 hours and 16:04 hours on 11.06.2024. The goods were dispatched by air at 17:30 hours whereas at 22:47:26 hours, an e-gazette notification was issued revising the existing import policy by the government. As per the revised policy, the items imported by the petitioner became a part of the 'Restricted' category. The petitioner herein assails the correctness of detention of goods in this writ petition.

1.2 The respondents have filed their respective replies admitting the factual aspect. However, it is claimed that the notification would come into effect from the beginning of the day i.e. 00:00 hours on 11.06.2024.

2. Discussion by the Court

2.1 After having heard the learned counsel representing the parties, this Bench finds merit in the petitioner's case on the following grounds:-

- i) The aforesaid shipment for clearance was booked on 11.06.2024 at 15:50 hours. The goods were dispatched by two airway bills at 17:30 hours on 11.06.2024, whereas the e-gazette notification was published at 22:47:26 hours which was applicable with immediate effect.
- ii) As per para 2.17 (a) of the Handbook of Procedure issued by the DGFT, the date of reckoning of import is decided with reference to the date of shipment/dispatch of goods from supplying country as given in para 11.11 thereof and not the date of arrival of goods at the Indian Port.

2.2 As per the case of the petitioner, which is not denied by the

respondents, the petitioner filed the bills of entry bearing Nos. 3937523 and

3937977 dated 11.06.2024 in respect of the aforesaid two assignments along with the relevant documents before the Custom Authorities at 15:50 hours and 16:04 hours, respectively. The consignment carrying the imported goods in question departed from the Jakarta Airport at Indonesia on 11.06.2024 at 17:05:30 hours (IST) via Singapore Airlines Cargo Flight.

2.3 The Supreme Court in *Union of India and Others v. G.S.Chatha Rice Mills and Another (2021) 2 Supreme Court Cases 209* after analyzing the aforesaid position in the context of enhancement of the rate of import duty issued under the Customs Act, 1962, held that in view of Section 8 of the Information Technology Act, 2000, Section 5(3) of the General Clauses Act, 1897, shall not be applicable to the notifications. The notifications in e-gazettes disclosing the exact time of e-publication will be applicable from the precise time when the gazette is published and not from the beginning of the date on which the notification is published i.e. the time of notification is of essence. It was noticed that with the change in the manner of publishing gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance.

3. Decision

3.1 In view of the foregoing discussion, the present writ petition is allowed and a declaration is issued that notification No. 17/2024-2025 dated 11.06.2024 shall not be applicable to the import of goods made by the petitioner bills of entry bearing No. 3937523 and 3937977, respectively.

3.2 The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

(Sheel Nagu)
Chief Justice

August 22, 2024
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No