



**2018-TIOL-638-HC-KAR-CUS**

**IN THE HIGH COURT OF KARNATAKA**

**AT BENGALURU**

**Writ Petition No. 41394/2015 (T-TAR)**

**M/s RUCHI SOYA INDUSTRIES LTD**

**Vs**

**1) UNION OF INDIA  
THROUGH THE SECRETARY  
MINISTRY OF FINANCE  
NORTH BLOCK  
NEW DELHI-110 001**

**2) COMMISSIONER OF CUSTOMS  
IN THE OFFICE OF COMMISSIONER OF CUSTOMS  
NEW CUSTOM HOUSE, PANAMBUR  
MANGALORE-575010**

**3) DEPUTY COMMISSIONER OF CUSTOMS  
IN THE OFFICE OF COMMISSIONER OF CUSTOMS  
OFFICE OF COMMISSIONER OF CUSTOMS  
NEW CUSTOM HOUSE, PANAMBUR  
MANGALORE-575010**

**S Sujatha, J**

**Dated: March 6, 2018**

**Appellant Rep. by:** Sri K Sachindra Karanth, Adv

**Respondent Rep. by:** Sri Jeevan J Neeralavi, Adv

**Cus** - Import of Crude Palm Oil, edible grade - Notfn. 46/2015-Cus dated 17.09.2015 - From the information obtained under RTI Act, 2005 from the Department of Publication, Civil Lines, Delhi, it is clear that the notification was offered for sale to the general public on 21.09.2015 - the second condition of Section 25(4) of the Customs Act, 1962 not having fulfilled, the said notification is not available for the department to enhance the duty from 7.5% to 12.5% - amendment Act 28 of 2016 viz. Finance Act, 2016, amending section 25(4) of the Customs Act, 1962 has come into force with effect from 14.05.2016 and it is not disputed by the Revenue that this amendment is prospective - It is trite law that any amendment to the Statute is prospective unless it is explicitly made retrospective - Such being the position, the provisions of Section 25(4) as it stood prior to 14.05.2016 shall be made applicable to the facts on hand - claim of differential amount of duty is set aside and the Writ Petitions are allowed: High Court [para 8 to 14]

**Petitions allowed**

**Case law cited -**

**UNION OF INDIA V/S. PARAM INDUSTRIES LTD. - [2015-TIOL-140-SC-CUS](#).....Para 5, 12...relied upon**

**UNION OF INDIA V/S. GANESH DAS BHOJRAJ - [2002-TIOL-233-SC-CUS.....Para 6, 13... distinguished](#)****JUDGEMENT**

The petitioner has called in question the legality and correctness of the demands made by the respondents vide Annexures-W, X, Y and Z directing the petitioner to pay higher rate of duty at 12.5% for clearance of the subject goods, interalia seeking for a direction that the said notification No.46/2015-Cus dated 17.09.2015 is not effective and cannot be enforced from 17.09.2015 and the same is not applicable to the goods imported by the petitioner in the facts and circumstances of the case.

2. The petitioner is a Public Limited Company duly registered under the Companies Act. It transpires that the petitioner entered into a contract dated 27.07.2015 with its foreign supplier M/s. Aavanti Industries Private Limited, Singapore for import of 10,000 MTs of Crude Palm Oil of Edible Grade in bulk on the terms and conditions as stated in the contract. Accordingly, the vessel carrying the aforesaid imported goods arrived at Mangalore port on 17.09.2015 around 1600 hours. The petitioner had filed four Bills of Entry bearing Nos. 2619662, 2619678, 2619680 and 2619708 dated 16.09.2015 seeking clearance of the subject goods for home consumption. The subject goods merits classification under Chapter Heading 15111000 of the Customs Tariff Act. Further, it is stated that these goods are covered by Entry 51-II (A) of the notification No.12/2012-Cus dated 17.03.2012 and the petitioner was liable to pay the duty at 7.5%. Accordingly, the petitioner filed the aforesaid four Bills of Entry claiming classification and rate of duty at 7.5%. The same was assessed on 16.09.2015 and the petitioner was required to deposit duty of Rs.2,64,95,907/- in terms of the Bills of Entry and TR-6 challans were generated by EDI Service Centre, Mangalore.

3. It is also not in dispute that the entry inward was granted to the vessel at 22.45 hours on 17.09.2015. It is the grievance of the petitioner that the Department instead of clearing the aforesaid Bills of Entry, recalled the said Bills of Entry and reassessed the same, behind the back of the petitioner, on the alleged basis that the rate of duty on the subject goods has increased by 5% in terms of notification No.46/2015-Cus dated 17.09.2015 and the duty payable is at 12.5% and the petitioner was asked to deposit the duty at the enhanced rate in terms of the Bills of Entry and TR-6 challans generated by EDI Service Centre, Mangalore on 18.09.2015. Aggrieved by the said enhanced demands made by the respondents on 18.09.2015, the petitioner is before this Court.

4. The arguments of the learned counsel for the petitioner are two fold. Firstly, it is contended that no opportunity was provided by the Department while issuing the revised demand enhancing the duty at 12.5% from 7.5%. Secondly, it is argued that the notification No.46/2015-Cus dated 17.09.2015 which prescribes the rate of duty at 12.5% substituting the earlier duty fixed at 7.5% is not applicable to the subject goods.

5. The subject goods were imported on 17.09.2015 at 16 hours before the notification No.46/2015 has come into effect. As such, the notification No.46/2015-Cus dated 17.09.2015, on the basis of which the revised demand was made enhancing the rate of duty was not available for the department to enhance the duty. It is submitted that the notification issued by exercising the powers under Sub-Section (1) of Section 25 of the Customs Act 1952 would come into force only after satisfying two conditions as contemplated under Section 25(4) of the Act namely, (1). Every notification issued under Sub-Section (1) of Section 25 shall be published in the official gazette; and (2) Such notification should 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. Referring to the statement of objections filed by the learned counsel for the respondents, it was submitted that the notification No.46/2015-Cus dated 17.09.2015 was published in the official gazette on 17.09.2015 but the same was not offered for sale on that day. Learned counsel placing reliance on the rejoinder filed by him would point out that in terms of the information received through RTI application from the concerned department, the said notification No.46/2015-Cus dated 17.09.2015 was received in the sale counter of the department from the Government of India Press, Mayapuri, Ring Road, New Delhi on 21.09.2015 at 3.30 p.m., and put on sale to the General Public on 21.09.2015. Thus, it is submitted that the second condition specified under Section 25(4) of the Act was not complied with, as on 17.09.2015. Thus, the said notification No.46/2015-Cus has come into force only on 21.09.2015. As such, the same is not applicable to the subject goods and the rate of duty has to be fixed in terms of the earlier notification at 7.5%. In support of his contention, learned counsel placed reliance on the judgment of Hon'ble Apex Court in the case of *UNION OF INDIA V/S. PARAM INDUSTRIES LTD., reported in 2015 (321) ELT 192 (SC) = [2015-TIOL-140-SC-CUS](#)*.

6. Learned counsel Sri.Jeevan J. Neeralagi appearing for the respondent/department would submit that Section 25(4) of the Act was amended by Finance Act 2016 (28 of 2016) with effect from 14.05.2016 whereby second condition of offering the notification for sale on the date of its issue by the Directorate of Publicity and Public Relation Board, New Delhi has been omitted. The only condition now contemplated under Section 25(4) of the Act is Sub-Section (1) or Sub- Section (2A) shall be published in the official gazette. The notification No.46/2015-Cus dated 17.09.2015 was published in the official gazette on 17.09.2015. Subject goods were imported on 17.09.2015 and as such the said notification No.46/2015-Cus is applicable to the facts of the present case, the same being considered by the Authorities, the rate of duty was assessed and the same was demanded which is in accordance with law. Further, it is submitted that there is no violation of principles of natural justice as contended by the Learned counsel appearing for the petitioner for the reason that what is contemplated under the notification No.46/2015-Cus has been complied. In the facts of the case, considering the tariff rate which is certain and no discretion vested with the Authorities to modify or alter the tariff rate, issuance of notice for enhancement of rate of duty is not required which is wholly based on the notification available during the relevant period. In support of his contention, learned counsel placed reliance on the judgment of the Hon'ble Apex Court in the case of *UNION OF INDIA V/S. GANESH DAS BHOJRAJ reported in 2000 (116) E.L.T 431 (SC) = [2002-TIOL-233-SC-CUS](#)*.

7. I have given my thoughtful consideration to the arguments advanced at the hands of the Learned counsel appearing for the parties and perused the material on record.

8. It is not in dispute that the imported goods in question arrived at Mangalore port on 17.09.2015 at 16 hours. The petitioner had filed four bills of entry and accordingly duty was fixed at the rate of 7.5%. It is later on based on the notification No.46/2015-Cus dated 17.09.2015 the revised demand was issued enhancing the rate of duty from 7.5% to 12.5%. The crucial question would be - Whether the notification No.46/2015-Cus dated 17.09.2015 is applicable to the present facts of the case?

9. Section 25(1) and Section 25(4) of the Act reads thus:

**"25. Power to Grant Exemption from Duty.** - (1) *If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.*

4) *Every notification issued under sub-section (1) or sub-section (2A) shall, -*

*(a) unless otherwise provided, 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."*

10. Thus Section 25(4) was amended by Finance Act No.28 of 2016 with effect from 14.05.2016. The amended provision reads thus:

*"(4) Every notification issued under subsection (1) or sub-section 2(A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette."*

11. A bare reading of these provisions makes it clear that the amended Act 28 of 2016 has come into force with effect from 14.05.2016. It is trite law that any amendment to the Statute is prospective unless it is explicitly made retrospective. It is not disputed by the Revenue that this amendment is prospective. Such being the position, the provisions of Section 25(4) as it stood prior to 14.05.2016 shall be made applicable to the facts on hand. If so, the two conditions contemplated under Section 25(4) of the Act has to be satisfied for the notification issued under Section 25(1) of the Act to come into force. The information placed on record i.e., the letter of the Government of India, Department of Publication Civil Lines, Delhi on the information sought by the petitioner under the RTI Act, 2005 reads thus:

*"With reference to the above, it is informed that the copy of Gazette of India containing notification No.46/2015-customs dated 17.09.2015 was received on 21.09.2015 at 3.30 PM at Kitab Mahal, Sale Counter of this Department from Govt. of India Press, Mayapuri, Ring Road, New Delhi and put on sale to the general public on 21.09.2015.*

*If you are not satisfied with the reply, you may appeal to the First Appellate Authority/Controller of Publications, Department of Publication, Civil Lines, Delhi - 54 within stipulated time limit."*

12. A perusal of this information reveals that the copy of the Gazette of India containing notification No.46/2015-Cus dated 17.09.2015 was received on 21.09.2015 at 3.30 p.m., at Kitab Mahal, Gandhi Marg, New Delhi from the Government of India. It is clear that the notification was offered to sale to the general public on 21.09.2015, the second condition of Section 25(4) not having fulfilled, the said notification is not available for the department to enhance the duty from 7.5% to 12.5%. This view is fortified by the judgment of the Hon'ble Apex Court in the case of PARAM INDUSTRIES LTD supra, whereby the Hon'ble Apex Court while considering the identical issue as observed that two conditions are mandatory for bringing the notification under Section 25(1) of the Act into force and make it effective viz., (1). Notification should be published in the official gazette; and (2). It should be offered for sale on the date of its issue by Directorate of Publicity and Public Relations of the Board, New Delhi. In that case, admittedly second condition was not satisfied in as much as it was offered for sale on 06.08.2001 and was published on 03.08.2001 in late evening hours. In such circumstances, it is held that notification may even though published on the date when the copies were cleared, it was not justified and lawful on the part of the department to claim the differential amount of duty on the basis of the said notification. This judgment is squarely applicable to the facts of the present case.

13. The judgment relied upon by the learned counsel for the Revenue was in a different context where the provisions of law was altogether different, second condition herein, was not required to be satisfied for the notification to become effective. Hence, the said judgment is not applicable to the facts of the present case.

14. For the reasons narrated above, the demand made by the department is not justified. No claim of differential amount of duty can be made on the basis of the notification No.46/2015-Cus dated 17.09.2015, and the same deserves to be set aside.

Hence, the writ petitions are allowed.

The demand made by the respondents at Annexures-W, X, Y and Z are quashed. The petitioner is liable to pay the duty at 7.5% based on the notification No.12/2012-Cus.

No differential amount of duty can be made on the basis of the notification No.46/2015-Cus dated 17.09.2015.

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