

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 20277 OF 2020

(Arising out of Order-in-Appeal No. 18/2020 dated 30.01.2020 passed by the Commissioner of Customs (Appeals), Bangalore)

Adani Wilmar Ltd.

Fortune House, Nr. Navrangpura Railway Corssing,
Ahmedabad-380009

...Appellant

versus

Commissioner of Customs Bangalore

BMTC Building, Above BMTC bus stand,
Domlur, Bangalore-560071

...Respondent

APPEARANCE:

Mr. Jitendra Metwani, Advocate for the Appellant

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 11.01.2023

Date of Hearing: 03.02.2023

FINAL ORDER NO. 20010/2023

JUSTICE DILIP GUPTA:

This appeal seeks to assail the order dated 31.01.2020 passed by the Commissioner of Customs (Appeals)¹ by which the speaking order dated 16.04.2019 passed by the Deputy Commissioner (Import) has been upheld and the appeal has been dismissed.

2. The operative part of the order passed by the Deputy Commissioner (Import) is reproduced below:

ORDER

"(i) I hold that the amendment of notification No.29/2018-Cus dated 01.03.2018 giving effect for levy of BCD at the enhanced rate of 54% in respect of

1. the Commissioner (Appeals)

imported goods i.e., RBD Palmolein of Edible Grade falling under Customs Tariff Heading 151190 and covered under Sl. No. 65 of original notification No. 50/2017-Cus dated 30.06.2017 has come into effect from the date of its issue on 01st March 2018;

(ii) I hold that self-assessment of Bills of Entry No.5415756, 5415757 and 5415814, all dated 01.03.2018, made by the importers M/s. Adani Wilmar Limited, Ahmedabad under Section 17(1) of the Customs Act, 1962 in respect of subject goods i.e., 4999.910 MT of RBD Palmolein of Edible Grade imported by them through New Mangalore Port per vessel MT SONGA DAIMOND V.107, by claiming Basic Customs Duty exemption in excess of 54% under Sl. No.65 of original notification No.50/2017-Cus dated 30.06.2017 read with amending notification No.29/2018- Cus dated 01.03.2018 and read with Section 15, Section 25(4), Section 31 and Section 33 of the Customs Act, 1962, and the duty paid by them as detailed at Table 1 are in order.”

3. The Deputy Commissioner (Imports) held that Notification Number 29/2018 Cus dated 01.03.2018² that increased the basic customs duty from 40% to 54% in respect of RBD Palm Oil of Edible Grade³ classifiable under CTH 1511 9090 through three Bills of Entry, each dated 01.03.2018, came into effect from the date of its issue on 01.03.2018 and not on 06.03.2018, on which date the appellant claimed that it was digitally signed and uploaded for publication in the Official Gazette.

4. The appellant is engaged in the manufacture of different types of edible oils, acid oil, soya gum, deo distillates etc. The appellant had imported the goods and the vessel carrying the goods had arrived and tendered 'Notice of Readiness' at Mangalore Anchorage on 02.03.2018 at 14:36 hours and berthed on 05.03.2018 at 11:20

2. the exemption notification
3. the imported goods

hours. The Entry inwards was granted to the vessel on 05.03.2018 at 11:45 hours.

5. The appellant, while filing the three Bills of Entry, had claimed benefit of the Exemption Notification No. 50/2017-Cus dated 30.06.2017 at Serial No. 65 that imposed duty at the @ 40%.

6. It needs to be noted that the principal notification dated 30.06.2017 granted exemption to all goods falling under CTH 1511 90 from payment of customs duty leviable therein under the First Schedule to the Customs Tariff Act, 1975 as in excess of the amount calculated at standard rate specified under the corresponding entry in column (4) of the table. The relevant extract of the unamended principal notification dated 30.06.2017 is reproduced below:

S.No.	Chapter or Heading or subheading or tariff item	Description of goods	Standard rate	Integrated Goods and services	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
65.	1511 90	All goods	15%	-	-

7. Serial No. 65 of the aforementioned Notification was amended by Notification No. 71/2017 dated 11.08.2017 and the rate of duty was increased from 15% to 25%. By a Notification No. 87/2017 dated 17.11.2017, the duty was increased from 25% to 40%. Thereafter, by a Notification No. 29/2018 dated 01.03.2018, the duty was increased from 40% to 54%.

8. The contention of the appellant is that in terms of section 15(1)(a) of the Customs Act, 1962⁴, the rate of duty applicable to the imported goods is the rate in force when the Entry Inwards to the vessel carrying the imported goods was granted on 05.03.2018 and

4. the Customs Act

since the applicable rate of duty in force on 05.03.2018 was 40%, the appellant discharged the said duty. However, as clearance to the imported goods was not allowed on the ground that duty @54% was applicable in terms of the exemption notification, the appellant paid the duty under protest and requested for a speaking order to be passed.

9. According to the appellant, the exemption notification was effective only from 06.03.2018 when it was published in the Gazette after it was digitally signed on 06.03.2018 at 19:15 hours.

10. The appellant has tabulated and summarized the events as under:-

Sr. No.	Date	Particulars
1.	01.03.2018	Bill of Entries filed by the appellant for clearance of RBD Palmolein Edible Grade
2.	02.03.2018	Vessel arrived and tendered 'Notice for Readiness' at Mangalore Anchorage at 14:36 hours
3.	05.03.2018	Vessel was granted inward entry at 11:45 hours
4.	06.03.2018	Notification No. 29/2018 dated 01.03.2018, amending Notification No. 50/2017 was signed and published in the Official Gazette at 19:15 hours

11. The appellant claims that even though the imported goods should have been charged duty at the rate applicable under Notification No. 50/2017 as it stood on 05.03.2018, the Bills of Entry were erroneously re-assessed at a higher rate of duty @ 54% under Notification dated 01.03.2018.

12. This re-assessment order was upheld by the Commissioner (Appeals). The Commissioner (Appeals) stressed upon section 25(4) of the Customs Act and recorded the following findings:

"It is evident that the words are plain and clear to the effect that **the notification comes into force on**

the date of its issue by the Government for publication. In view of this, their argument that the digital signature for uploading the notification was signed only on 6-3-2018 by the person concerned falls flat because the determining the date is the date of issue of notification by Central Government for publication in the Gazette.
 xxxxxxxxxxxx. Accordingly, I hold that the date of issue of notification for publication in the Gazette is 1-3-2018 not 6-3-2018 as contested by the appellant."

(emphasis supplied)

13. It would be seen that the Commissioner (Appeals) held that the relevant date would be the date on which the notification is issued by the Central Government for publication and not the date of signing, which would be a mere procedural aspect. The Commissioner (Appeals) also distinguished the cases cited by the appellant on the ground that the same related to unamended section 25(4) of the Customs Act and post the amendment made in 2016, the concept of effective date was delinked from the date of publication.

14. The issue, therefore, that arises for consideration in this appeal is whether the exemption notification will be effective from 01.03.2018 or from 06.03.2018.

15. Shri Jitendra Metwani, learned counsel for the appellant submitted that the issue involved in this appeal has been settled by the Gujarat High Court in the case of the appellant in **Adani Wilmar Limited vs. Union of India**⁵. Learned Counsel also placed reliance on the judgments of the Andhra Pradesh High Court in **Ruchi Soya Industries Ltd. vs. Union of India**⁶ and the Gujarat High Court in **Ruchi Soya Industries Ltd. Through Authorised Representative**

5. Civil Miscellaneous Application No. 8057 of 2019 decided on 11.11.2022
 6. 2019 SCC Online AP 151

vs. **Union of India and 2 Others**⁷. The submission of learned counsel for the appellant is that even though the notification is dated 01.03.2018, but it was uploaded for publication in the Official Gazette on 06.03.2018 at 19:15 hours after it was digitally signed. Learned counsel also pointed out that the Commissioner (Appeals) erred in distinguishing the cases relied upon by the appellant for the reason that they pertained to the provisions of the unamended section 25(4) of the Customs Act without appreciating that the ratio of the decisions would be applicable even after the amendment was made in section 25(4) of the Customs Act in the year 2016.

16. Shri K.A. Jathin, learned authorised representative appearing for the department, however, supported the impugned order and submitted that the digital signature was made only for the purpose of e-publishing the notification in the Official Gazette and as per section 25(4) of the Customs Act, the notification came into force on 01.03.2018, on which date it was issued. Learned authorised representative pointed out that since the three Bills of Entry were filed on 01.03.2018 before date of entry inwards of the vessel i.e. 05.03.2018, the date for determination of rate of duty is 05.03.2018 in terms of the proviso to section 15(1) of the Customs Act and hence the basic customs duty applicable would be @54%.

17. The submissions advanced by learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

18. Section 25 of the Customs Act deals with power to grant exemption from duty. Sub-section (1) of section 25 provides that if the Central Government is satisfied that is necessary in the public

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interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. Sub-section (4) of section 25 provides that every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.

19. The Government of India, Ministry of Law and Justice in its press release dated 29.10.2015 clarified that the Gazette Notification of Government of India will henceforth be only e-published as they are uploaded. It further provides that the Government of India had decided to switch to exclusive e-publishing of all Gazette Notifications of Government of India with effect from 01.10.2015 and the physical printing and sale of hard copies of the Gazette by the Government of India shall completely cease.

20. The notification is uploaded for publication in the Official Gazette after it is digitally signed. This would be clear from the 'Guide for Submitting Content for e-Publishing'. The Guide reveals that the notification cannot be uploaded for publishing without the document, both in MS Word and PDF formats, is digitally signed using the DSC of the Nodal officer. It is only when the documents are digitally signed that the same can be submitted to the selected Government of India Press for publication of notification. Additionally, guidelines 28, 29, 40, 41 of the Guide for Organization further provide that officers cannot obtain registration for uploading in the e-Gazette portal for the purpose of e-publishing Gazette notification without digitally signing

the declaration form. Thus, a notification cannot be published unless it is digitally signed by the nodal officer.

21. In the present case the notification dated 01.03.2018 was digitally signed on 06.03.2018 at 17:15 hours and before that it could not have been uploaded for publication. Thus, the exemption notification would come into force only on 06.03.2018.

22. This issue was also examined by the Gujarat High Court in the case of the appellant in **Adani Wilmar Limited**. The facts of the case reveal that on 27.02.2018 the vessel arrived with palm edible oils at Mundra anchorage. On 28.02.2018, the entry was granted to the vessel and on 01.03.2018 the petitioner filed the Bill of Entry with regard to the said goods which were assessed to duty at rate of 40% in terms of the Notification No. 50/2017 dated 30.06.2017, as was amended by Notification No. 87/2017 dated 17.11.2017. On 17.03.2018, the Bill of Entry was reassessed to a higher rate of duty at 54%. The Gujarat High Court noted that it was on 06.03.2018 that the Notification No. 29 of 2018 dated 01.03.2018 enhancing the rate of duty from 40% to 54% was digitally signed. The issue, therefore, that arose before the Gujarat High Court was whether the exemption notification dated 01.03.2018 will be effective from 01.03.2018 or 06.03.2018, on which date it was digitally signed. In this connection the Gujarat High Court, after placing reliance upon the decision of the Supreme Court in **Union of India vs. G.S. Chatha Rice Mills**⁸ and also upon the decisions of the Gujarat High Court in **Ruchi Soya Industries** and the Andhra Pradesh High Court in **Ruchi Soya Industries**, observed as follows:

8. 2020 (374) E.L.T. 289 (SC)

"13. This Court needs to remind itself of the extensive way of consideration of the issue of Notification in e-Gazette with the advent of IT Act and particularly, Section 8 of the IT Act. **The Ministry of Urban Development discontinued the practice of physical printing and replaced it with electronic Gazette on 30.09.2015 in compliance with the provision of Section 8 of the IT Act. Thus, it switched over to exclusive e-publishing of the Government of the India Gazette Notification on its official website with effect from 01.10.2015 and has done away with the physical printing of Gazette Notification. The date of publishing shall be the date of e-publication on official website by way of electronic Gazette in respect of Gazette Notification.** Thus the Apex Court has already dealt with the issue "as to whether the shift from the analog to the digital for Gazette notifications has any bearing for ascertaining as to when the same has come into force and whether this switching over to the digital manner of publication has brought about a change in this position has resulted into the Court concluding that the time of publication in digital mode would be the date and time on which it would come into effect."

XXXXXXXXXX

15. **The Notification could not be said to have been published without declaration form or digital signature certificate. Only after the declaration form and documents are signed digitally that they can be uploaded for uploaded for e-publishing which has been done on 06.03.2018 at 19:15 hours. Therefore, the effective date of Notification in terms of Section 25 (4) of the Act is the date of its publication in Official Gazette in e-mode on 06.03.2018 and the Notification, therefore, cannot be said to have come into force on 01.03.2018 and enhanced rate of duty by way of Notification No. 29/2018-CUS dated 01.03.2018 surely would not be, therefore, applicable. The petitioner would be entitled to pay only 40% of the duty which was applicable at the time of presenting the bills of entry for home**

consumption and not 54% under section 17(4) of the Act.”

(emphasis supplied)

23. The aforesaid judgment of the Gujarat High Court specifically dealt with the same exemption notification dated 01.03.2018 and held that since the notification was digitally signed on 06.03.2018 for e-publishing, the effective date of the notification in terms of section 25 (4) of the Customs Act would be the date of its publication in the Official Gazette on 06.03.2018 and so the notification cannot be said to have come into force on 01.03.2018. The High Court, therefore, held that the enhanced rate of duty under the exemption notification was not payable on 01.03.2018.

24. In the present case, it is not in dispute that the entry inwards was granted to the vessel on 05.03.2018 at 11:45 hours. At that time the notification dated 30.06.2017, as amended on 17.11.2017, imposing duty at the rate of 40% was applicable. The exemption notification increasing the duty from 40% to 54% came into effect only on 06.03.2018. The Bills of Entry, therefore, could not have been reassessed at the higher rate of duty @54% under the notification dated 01.03.2018.

25. This issue also arose before the Andhra Pradesh High Court in **Ruchi Soya Industries** in the context of the same exemption notification dated 01.03.2018. The petitioner filed Bills of Entry dated 01.03.2018 claiming classification and rate of duty at the rate of 30% basic customs duty. The department, however, insisted for payment of enhanced rate of duty under the exemption notification dated 01.03.2018. The Andhra Pradesh High Court also held that since the notification dated 01.03.2018 was e-published only on 06.03.2018,

the enhanced rate of customs duty under the notification dated 01.03.2018 could not have been charged. The relevant portion of the judgment is reproduced below:

"77. The notification was published on 06.03.2018 which is impugned in these writ petitions, published electronically on 06.03.2018. In view of the decision taken by the Government of India in terms of Section 8 of the Information Technology Act, to avoid physical printing of gazette notification to publish the same exclusively by electronic mode, so as to attribute knowledge to the public at large. **The notification was signed by Rakesh Sukul on 06.03.2018 at 19: 15: 13 +05'30'. When notification needs to be signed digitally and only when the notification was uploaded and published in the official gazette, the same is made available for public. xxxxxxxxxx.** Thus, it is evident from the record that the notification was not signed at least by the competent authority on the date of presentation of ex-bond bill of entry before the competent authority for release of imported goods for human consumption in accordance with Section 15(1)(b) r/w Section 68 of the Customs Act for clearance of the goods for human consumption and the relevant date for determination of the duty is the date of presentation of ex-bond bills of entry for release of the goods which is explicit from Section 15(1)(b) of the Act."

(emphasis supplied)

26. The view taken by the Andhra Pradesh High Court in **Ruchi Soya Industries** was followed by the Gujarat High Court in **Ruchi Soya Industries** and the Madras High Court in **Ruchi Soya Industries Ltd. vs. Union of India**⁹.

27. Thus, in view of the aforesaid decisions of the High Courts, the Commissioner (Appeals) was not justified in holding that the duty would be payable on the imported goods at the rates specified in the exemption notification dated 01.03.2018, even though the entry

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inwards was granted to the vessel on 05.03.2018 and the said exemption notification dated 01.03.2018 was published in the Official Gazette only on 06.03.2018, after it was digitally signed. The exemption notification came into effect only on 06.03.2018, on which date it was published in the Official Gazette after it was digitally signed for e-publication. The Commissioner (Appeals), was also not justified in distinguishing the cases cited by the appellant only for the reason that an amendment had been made in section 25(4) of the Customs Act in 2016.

28. The order dated 31.01.2020 passed by the Commissioner (Appeals) is, accordingly, set aside and the appeal is allowed. The amount of differential duty deposited by the appellant shall be refunded to the appellant with the applicable rate of interest.

(Order pronounced on **03.02.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C. J. MATHEW)
TECHNICAL MEMBER