

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 3

Customs Appeal No. 52541 of 2018

(Arising out of Order-in-Appeal No. CC(A)CUS/D-II/ICD/TKD/Import/853/2017 dated 28.06.2018 passed by The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037)

M/s Mita India Pvt. Ltd.

Plot No. 21/2, Site-II,
Loni Road, Mohan Nagar,
Ghaziabad (U.P.)

..... Appellant

VERSUS

Commissioner, Customs

New Customs House, Near IGI Airport,
New Delhi-110037

.....Respondent

APPEARANCE:

Shri R.K. Philips and Shri Apoorva Philips, Advocates for the Appellant

Shri Rakesh Kumar, Authorized Representative of the Respondent

CORAM:

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50423/2023

DATE OF HEARING: 21.02.2023

DATE OF DECISION: 03.04.2023

BINU TAMTA

The issue for our consideration in the present appeal pertains to levy of safeguard duty in terms of notification No. 02/2014-Customs dated 13.08.2014, issued under the provisions of section 8B (1) of the Customs Tariff Act, 1975 (referred to as CTA) read with Rule 12, 14 and 17 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (hereinafter referred to as the Rules).

2. The appellant, M/s Mita India imported two shipments of 'Seamless Steel Tubes' from Hong Kong. The Bills of Entry No. 6459749 dated 18.08.2014 and 6690337 dated 08.09.2014 were presented for clearance of the goods in question for home consumption after depositing the customs duty on the assessable value of Rs.55,99,484/-. The goods cleared vide bill of entry no. 6459749 dated 18.08.2014 were shipped on 17.07.2014 and the goods covered under Bill of Entry No. 6690337 dated 08.09.2014 were shipped on 07.08.2014 from the country of origin. The Director General of Audit on scrutiny of the data noticed that the safeguard duty was not levied on import of Seamless Steel Tubes. On the basis of the audit objection, Show Cause Notice dated 25.11.2014 was issued for short levy of duty of Rs. 11,19,896/- towards safeguard duty.

3. The levy of safeguard duty under the show Cause Notice was affirmed by the Assistant Commissioner vide Order-in-original dated 20.07.2015. On appeal being filed by the appellant, the issuance of show cause notice was held to be valid and the findings for levy of safeguard Duty was confirmed by the Commissioner of Customs (Appeals) as per OIA dated 18.09.2017. Hence the present appeal has been filed before this Tribunal.

4. We have heard the learned Counsel for the appellant and also the authorized representative for the revenue and perused the records of the case.

5. The appellant has reiterated the submissions on the validity of the issuance of the Show Cause Notice and on merits have challenged the levy of safeguard duty under the notification on various grounds. The authorized representative has contested the appeal and requested for upholding the orders of the lower authorities and affirm the safeguard duty.

6. We shall now deal with the specific contentions of the appellant and also the submissions of the revenue.

7. The first contention of the appellant is to the issuance of the show cause notice on the ground that once the bill of entry is finalized, the proper course was to challenge the assessment by way of an appeal and in support thereof have relied on the decision of the Apex Court in **Flock India Pvt. Ltd. 2000 (120) ELT 285** and also in the case of **ITC Ltd. Vs. C.C. Ex 2019 (368) ELT 216**. The ratio of the decisions cited by the appellant are not applicable in the facts of the present case as Section 28 of the Customs Act, clearly provides that any duty not levied or not paid or has short levied or short paid can be demanded by issuing a show cause notice to the person chargeable with duty. Here the goods were cleared without charging the safeguard duty and on the basis of audit scrutiny, amount of Rs.11,19,896/- was found to be short levied so the department rightly exercised its power under section 28 of the Customs Act, calling upon the appellant to explain as to why safeguard duty be not recovered from him. The decision in **Flock India supra**, was followed by the Apex Court in **Priya Blue**

Industries Ltd Vs Commissioner of Customs (Preventive) 2004 (172)ELT 145, which was then followed by this Tribunal in **Orion International Ltd Vs Commissioner of Customs, New Delhi 2005(188)ELT 193** and also in **Evershine Customs (C & F) Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, 2021 (8) TMI 906-CESTAT New Delhi**, the common principle which runs through these decisions is that once an order of assessment is passed the duty would be payable as per that order unless the said assessment order is reviewed under section 28 or is modified in an appeal. The duty collected under that order cannot be refunded to an assessee on the ground of having been wrongly charged or collected. The relevant para in the case of **Evershine** is quoted herein below:

"27. However, if duty is not levied, short levied, not paid, short paid or erroneously refunded such duty can be demanded under section 28 by issuing a show cause notice. There is no need to assail the original assessment order in this case. In other words, if there is excess payment due to assessment, the claimant of refund will have to first challenge the assessment but if there is short payment, short levy, etc., a demand can be raised without first challenging the assessment. "

So we do not find any fault in the present case in taking recourse by issuing the show cause notice under section 28 of the Customs Act calling upon the appellant to pay the safeguard duty not levied.

8. Before advertng to the issue on merits on the applicability of the safeguard duty in the present case, it would be relevant to set out certain provisions of the CTA governing the levy of Safeguard Duty:-

"Section 8B - Power of Central Government to apply safeguard measures.

(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantity and under such conditions so as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, apply such safeguard measures on that article, as it deems appropriate.

(2) The safeguard measures referred to in sub-section (1) shall include imposition of safeguard duty, application of tariff-rate quota or such other measure, as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry:

Provided that no such measure shall be applied on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent. or where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with less than three per cent. import share taken together, does not exceed nine per cent. of the total imports of that article into India:

Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

(3) Where tariff-rate quota is used as a safeguard measure, the Central Government shall not fix such quota lower than the average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.

(4) The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.

(5) The Central Government may, pending the determination under sub-section (1), apply provisional safeguard measures under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the safeguard duty so collected:

Provided further that any provisional safeguard measure shall not remain in force for more than two hundred days from the date on which it was applied.

(6) Notwithstanding anything contained in the foregoing sub-sections, a notification issued under sub-section (1) or any safeguard measures applied under sub-sections (2), (3), (4) and (5), shall not apply to articles imported by a hundred per

cent. export-oriented undertaking or a unit in a special economic zone, unless,-

(i) it is specifically made applicable in such notification or to such undertaking or unit: or

(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation.- For the purposes of this sub-section,-

(a) the expression "hundred per cent. export-oriented undertaking" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to subsection (1) of section 3 of the Central Excise Act, 1944(1 of 1944.);

(b) the expression "special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005. (28 of 2005).

(7) The safeguard duty imposed under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(8) The safeguard measures applied under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such application:

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard measures should continue to be applied, it may extend the period of such application:

Provided further that in no case the safeguard measures shall continue to be applied beyond a period of ten years from the date on which such measures were first applied.

(9) The provisions of the Customs Act, 1962 (52 of 1962). and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(10) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing power, such rules may provide for,-

(i) the manner in which articles liable for safeguard measures may be identified;

(ii) the manner in which the causes of serious injury or causes of threat of serious injury in relation to identified article may be determined;

(iii) the manner of assessment and collection of safeguard duty;

(iv) the manner in which tariff-rate quota on identified article may be allocated among supplying countries;

(v) the manner of implementing tariff-rate quota as a safeguard measure;

(vi) any other safeguard measure and the manner of its application.

(11) For the purposes of this section,-

(a) "developing country" means a country notified by the Central Government in the Official Gazette;

(b) "domestic industry" means the producers,-

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(d) "threat of serious injury" means a clear and imminent danger of serious injury.

(12) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total 5 period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification."

9. The Central Government, in exercise of its power thereunder, issued the Notification No. 02/2014-Customs dated 13.08.2014:-

Government of India

Ministry of Finance

(Department of Revenue)

Notification No. 02 /2014-Customs (SG)

New Delhi, the 13th August, 2014

G.S.R.(E). - Whereas, in the matter of import of Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) whether hot finished or cold

drawn or cold rolled, of external diameter not exceeding 273.1 mm (Outer Diameter) with the tolerance as specified under relevant standards (hereinafter referred to as Seamless Pipes and Tubes), falling under tariff items 73041910, 73041920, 73041990, 73042310, 73042390, 73042910, 73042990, 73043111, 73043119, 73043121, 73043129, 73043131, 73043139, 73043911, 73043919, 73043921, 73043929, 73043931, 73043939, 73045110, 73045120, 73045130, 73045910, 73045920, 73045930 and 73049000 of the First Schedule to the Customs Tariff Act 1975 (51 of 1975 (hereinafter referred to as the Customs Tariff Act), the Director General (Safeguard), in his final findings, published vide number G.S.R. 180 (E), dated the 11th March, 2014, in the Gazette of India.

Extraordinary, Part II Section 3, Sub-section (i) dated the 11th March, 2014, has come to the conclusion that increased imports of Seamless Pipes and Tubes into India has caused serious injury to the domestic producers of Seamless Pipes and Tubes, necessitating the imposition of safeguard duty on imports of Seamless Pipes and Tubes into India, and accordingly has recommended the imposition of safeguard duty on imports of the Seamless Pipes and Tubes into India

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 8B of the Customs Tariff Act, read with rules 12.14 and 17 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, the Central Government after considering the said findings of the Director General (Safeguard), hereby imposes on Seamless Pipes and Tubes falling under aforesaid tariff items to the Customs Tariff Act, when imported into India, a safeguard duty at the following rate, namely-

- (a) twenty per cent. ad valorem when imported during the period from 13th August, 2014 to 12th August, 2015 (both days inclusive);
- (b) ten per cent. ad valorem when imported during the period from 13th August, 2015 to 12th August, 2016 (both days inclusive); and
- (c) five per cent, ad valorem when imported during the period from 13th August, 2016 to 12th February, 2017.

2. Nothing contained in this notification shall apply to imports of Seamless Pipes and Tubes from countries notified as developing countries under clause (a) of sub-section (6) of section 8B of the Customs Tariff Act, other than the People's Republic of China.

Note: For the purpose of this notification, Seamless Pipes and Tubes does not include-

- (i) Seamless alloy-steel pipes, tubes and hollow profiles of specification ASTM A213/ASME SA 213 and ASTM A335 /ASME SA 335 or equivalent BIS/DIN/BS/EN or any other equivalent specifications;
- (ii) Non API and Patented Premium Joints/Premium Connections/Premium Threaded Tubes and Pipes of grades Q-125, 13CR, L-80, P110, C-90, C-95, T-90 and T-95;
- (iii) A 13 Chromium (13CR) Grades Tubes and Pipes not included in item (ii) above; and
- (iv) Drill Collars.

10. We shall now consider the submission of the appellant that the safeguard duty which is imposed by the impugned notification has been issued under the CTA, 1975 and therefore the provisions of the Customs Act shall not be applicable in the present case and, therefore, the analogy under section 15 of the Customs Act for computing the rate of duty and Tariff Valuation of imported goods shall be the date on which the bill of entry is presented for home consumption under section 46 of the Customs Act, also cannot apply. The provisions of section 8B of CTA is a self contained code and have an inbuilt provision of sub section (9) of section 8B from the very inception and it lays down in absolute clear terms that the date for determination of the rate of duty, the provisions of the Customs Act and the rules and regulations made thereunder shall be applicable, in so far as may be, to the duty chargeable under this section. It is a settled principle of law that when the words employed in the statute are plain, simple and unambiguous they do not require any external interpretation. The argument of the learned Counsel for the appellant is contrary to the specific provisions of the Act and are therefore not sustainable. We are supported by the decision of the West Zonal Bench of the Tribunal in the case of **Kopran Ltd., Vs Commissioner of Customs (E) - Nhava Sheva, 2019(370)ELT 1014**. Referring to the provisions of section 2(15) and section 12 of the Customs Act, the Tribunal held:

"5.7 Section 2(15) of the Customs Act, 1962 reads "duty" means a duty of customs leviable under this Act, and section 12 of the Act reads "(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of Customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975) or any other law for the

time being in force on goods imported into, or exported from, India." Thus plain reading of Section 2(15) and Section 12 makes it evident that the duty of Customs include all the duties that are levied under the Custom Tariff Act 1975."

11. The next submission of the appellant is that the goods were shipped from the country of origin on 17.07.2014 and 07.08.2014, against the two Bills of Entry which were well before the impugned notification was issued on 13.08.2014. In support of their argument they relied on the definition of 'imported goods' under sub section (25) of section 2 of the Customs Act, to mean any goods brought into India from a place outside India and also on the term 'India' as defined in sub-section (27) of section 2 of the Customs Act to say that it includes territorial waters of India. Further, the appellant fortified its argument by saying that duty under section 12 is levied on goods being imported into India which includes the territorial waters of India and therefore the goods attain the character of imported goods upon entering territorial waters of India which in the present case is much prior to the date of notification. On this aspect, the appellant have relied on several judgments, such as:

1. M.S. Shawhney, Asstt. Collector of Customs and Another v/s Sylvania and Laxman Limited 1987 (30) ELT 126 (Bom.)
2. Jain Shudh Vanaspati Limited v/s S.R. Patankar, Assistant Collector of Customs , Bombay and others 1988 ELT 77 (Bom)
3. National Textile Corporation v/s Collector of Customs, Bombay 1987 (32) ELT 80 (Tri.)
4. Commissioner of Customs, Chennai v/s Suja Rubber Industries 2002 (142) ELT 586 (Tri-Chn.)

12. We have already discussed the issue of applicability of the provisions of the Customs Act to the levy of Safeguard Duty under Section 8B of the CTA. We now refer to the provisions of Section 15 of the Customs Act:-

“ **SECTION 15. 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 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.”

13. The provisions of Section 15 over the period has been the subject matter of interpretation by various Courts where it has been held that relevant date for determination of rate of duty in case the goods entered for home consumption under section 46 is the date on which the bill of entry is presented and in the case of goods cleared from a warehouse under section 68, the date on which the goods are actually removed from the warehouse. It has been repeatedly held that the date when the ship entered the territorial waters is not relevant for the purpose of section 15 (1), **Dhiraj Lal Vohra Vs. Union of India 1993 (66) ELT 551**. The argument of the learned

Counsel for the appellant in this regard is untenable and needs to be rejected.

14. We may now refer to the case law on the subject i.e. interpretation of the term 'relevant date'. The validity of section 15 (1) has been upheld by the Constitution Bench of the Supreme Court in **M. Jahangir Bhatusha 1989 (42) ELT 344.**

15. Reference is made to the decision of the Apex Court in **Prakash Cotton Mills (P) Ltd., Vs B. Sen, 1979 (4) ELT 241,** wherein with regard to the date of determination of rate of duty of warehoused goods, it has been observed:

"4. It is thus the clear requirement of clause (b) of sub-section (1) of section 15 of the Act that the rate of duty, rate of exchange and tariff valuation applicable to any imported goods shall be the rate and valuation in force on the date on which the warehoused goods are actually removed from the warehouse. A cross-reference to section 49 of the Act shows that an importer may apply to the Assistant Collector of Customs for permission to store the imported goods in a warehouse pending their clearance, and he may be permitted to do so. The other relevant provision is that contained in section 68 of the Act which provides that the importer of any warehoused goods may clear them for "home consumption" if, inter alia, the import duty leviable on them has been paid. That is why clause (b) of sub-section (1) of section 15 of the Act makes a reference to section 68. It is therefore quite clear that the rate of duty, rate of exchange and tariff valuation shall be those in force on the date of actual removal of the warehoused goods from the warehouse. As it is not in dispute before us that the goods, which are the subject matter of the appeals before us, were removed from the warehouse after the amending Ordinance had come into force on July 7, 1966, the customs authorities and the Central Government were quite right in taking the view that the rate of duty applicable to the imported goods had to be determined according to the law which was prevalent on the date they were actually removed from the warehouse, namely, the amended sections 14 and 15 of the Act. There is therefore no force in the argument that the requirement of the amended section 15 should have been ignored simply because the goods were imported before it came into force, or that their bills of lading or bills of entry were lodged before that date."

16. Similarly, in **Gangadhar Narsinghdas Agarwal v/s P.S. Thrivikraman and Another 1983 (13) E.L.T. 1491 (S.C.)**, the Constitution Bench of the Supreme Court again reiterated the principle that the relevant date for determination of rate of duty and tariff valuation for export goods is the date of presentation of the shipping bill as provided in section 16 of the Customs Act but where it is presented before the date of entry outwards of the vessel the relevant date would be the date of entry outwards under the proviso to that section and not the date when the vessel arrived or the date of entry outwards whichever is later.

17. The Constitution Bench of the Supreme Court in **Bharat Surfactants Private Ltd., Vs Union of India 1989 (43) E.L.T. 189 (S.C.)** affirmed the view of the Madras High Court in the case of M/s **Omega Insulated Cable Company (India) Ltd.**, which held that the date of entry inward for the purpose of Section 15 (1)(a) and the proviso thereto is the date when the entry is made in the customs register and not the actual entry of the vessel inwards. The challenge to the validity of Section 15 of the Customs Act, that it is ultra virus and confers arbitrary discretion on the customs authorities in the matter of determining the date of inward entry was rejected.

18. The Apex Court in **Union of India Vs Apar Private Limited, 1999 (112) E.L.T 3 (S.C.)** overruled the decision of the Bombay High Court in **Shawhney Vs Sylvania & Laxman, 77 Bom L.R. 380** which held that the goods which were exempt from

payment of tax on the day when they entered the territorial waters no customs duty was payable. The Court referring to the decisions in **Bharat Surfactants and Dhiraj Lal Vohra** took the view that what is relevant is the date on which the bill of entry in respect of goods is presented under section 46 and in the case of goods which are warehoused the relevant date would be the date on which the goods are actually removed from the warehouse.

19. We would like to refer some of the decisions of the Tribunal on the issue of 'relevant date' in terms of section 15 of the Customs Act. The Larger Bench of this Tribunal in **Collector of Customs, Bombay Vs New India Industries, Bombay, 1985 (21) ELT 159**, took note of the earlier decision of the Larger Bench of the Tribunal in the case of **Bayer (India) Ltd 1984 (16) ELT 375** which took the view that it is futile to contend that the vital relevant date for determination of duty is the time when the goods entered the territorial waters of India. The decision of the Delhi High Court in **Jain Shudh Vanaspati 1983 ELT 1688**, Madras High Court in **M. Jamal & Co. Vs Union of India 1981 ECR 14D** and Kerala High Court in **Aluminum Industries Ltd Vs. Union of India 1984 (16) ELT 183**, were relied on as it has been categorically held therein that levy is not confined only to the import of the goods but extends to assessment and that the relevant date is the presentation of the bill of entry or removal of the goods from the warehouse. Further, referring to the decisions of the Supreme Court in **Prakash Cotton Mills (Supra), Gangadhar Narsinghdas**

Agrawal (Supra), and also the decision of the Bombay High Court in **Synthetics & Chemicals Ltd., 1981 ELT 414** accepting that the date of import in the sense of entering the territorial waters of India has no relevance for determining the rate of duty which must be worked out under section 15, the Tribunal observed that the Collector of Customs, Bombay was wrong in holding that the goods which were not liable to duty when imported could not be subject to duty by procedure under Section 15 of the Customs Act.

20. Having referred to the case law on the subject, we are of the view that reliance placed by the appellant on the judgments are not applicable in the facts of the present case. The judgment in **Suja Rubber Industries** (supra) is clearly distinguishable by virtue of sub-section (9) of section 8B of CTA. On similar analogy the judgment of the Apex Court in the case of **Sneh Enterprises 2004 (178) ELT 764** is also not applicable as the Court took note of the introduction of subsection (8) of section 9A by virtue of the Finance Act, 2004 making the provisions of the Customs Act applicable in respect of anti dumping duty.

21. The principle of law is that the rate of Duty applicable to imported goods is to be as per section 15 of the Act, irrespective of the entry of the goods in the territorial waters of India.

22. Much emphasis has been laid by the appellant on the point that the notification which was issued on 13.08.2014 was published in the official gazette on 25.08.2014 (as per the information received under RTI) whereas the bill of entry was

presented prior in time on 18.08.2014 and hence the Notification is not applicable, particularly with the reference to rule 14 of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Rule 14 reads as under:-

“ **Rule 14.** Date of commencement of duty.- (1) The Safeguard duty levied under rule 10 or rule 12 shall take effect from the date of publication of the notification, in the Official Gazette imposing such duty.

(2) Notwithstanding anything contained (2) in sub-rule (1), where a provisional duty has been levied and where the Director General has recorded a finding that increased imports have caused or threaten to cause serious injury to domestic industry, it shall be specified in the notification under sub-rule (1) that such safeguard duty shall take effect from the date of levy of provisional duty.”

23. We agree that Rule 14 of the Safeguard Rules provides that the date of imposition of safeguard duty shall be the date only after publication of the Notification in the official gazette and therefore the safeguard duty shall not be applicable in the case of goods cleared vide Bill of Entry No. 6459749 dated 18.08.2014 as the same is prior to the publication of the Notification. It is a settled principle of law that a notification comes into force from the date of its publication in the official gazette. In view of the reasoning above, we are not inclined to accept the submissions of the revenue that rule 14 being subordinate legislation cannot take precedence over the statutory provisions for the simple reason that the notification being subordinate legislation cannot go contrary either to the Act or the Rules. We would like to refer to the decision in **Union of India and Ors. Vs M/s GS Chatha, Rice Mills and Anr 2020 (374) ELT 289**, where the Apex Court was faced with a situation where the notification was uploaded in the e-gazette at a specific time and

date which was later in point of time when the bill of entry was presented on the Customs automated EDI system. The contention of the Union of India that the date on which the notification was issued, will govern the rate applicable to all bills of entry, including those which were presented before the enhanced rate was notified, was rejected, saying that it misses the significance of the expression "in force" which has been employed in the prefatory of section 15(1). Indeed the following paragraphs of the said judgment are sufficient to clarify the issue in hand:-

"43. The above analysis is based on a textual reading of the two definitions – those of a "Central Act" and "Regulation". The precedent on the subject confirms the analysis. This Court has held that the mere fact that a piece of delegated legislation has been issued in exercise of a legislatively conferred power does not bring the delegated legislation within the ambit of the phrase "Central Act" as defined in Section 3(7) of the General Clauses Act.

46. Notification 05/2019 was issued by the Central Government under the delegated authority to increase emergency tariff duties under Section 8A of the Customs Tariff Act, 1975. The notification has been issued in pursuance of a statutory power. The notification has the effect of enhancing the rate of duty prescribed in the First Schedule to the Customs Tariff Act. That does not, transform the notification which has been issued in pursuance of a statutory authority into a 'Central Act'.

58. 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. Notification 5/2019, which is akin to the exercise of delegated legislative power, under the emergency power to notify and revise tariff duty under Section 8A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of the electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the Notification 5/2019 applies to bills of entry presented for home consumption after the notification was uploaded in the e-Gazette at 20:46:58 hours on 16 February 2019."

24. We need to refer the latest decision dated 03.02.2023 in the case of **Adani Wilmar Ltd., vs. Commissioner of Cus., Bangalore** in Customs Appeal No. 20277/2020 where the Bill of

Entry was presented on 01.03.2018 and the Notification under section 25 of the Customs Act was also issued on 01.03.2018 but the same was digitally signed & e-gazetted on 06.03.2018. The Tribunal Regional Bench, Bangalore, taking note of the decision of the Gujarat High Court in **Adani Wilmar Ltd.**, Civil Miscellaneous Application No. 8058/2019 dated 11.11.2022 in **Ruchi Soya Industries Ltd., -2020-TIOL-1501-HC-AHM-CUS** also the decision of the A.P. High Court in **Ruchi Soya Industries Ltd., -2019 SCC ONLINE AP 151** & the decision of the Supreme Court in **Union of India vs. G.S. Chatha Rice Mills** (supra) concluded that the exemption notification came into effect only on 06.03.2018, on which date it was published in the official gazette. The law enunciated by the Supreme Court, the various High Courts & also by this Tribunal is clear that a notification comes into effect only from the date on which it is published.

25. However, we cannot ignore that the intention of the Government was to implement the notification forthwith, which is discernible from the contents of the Notification where it specifically provides that the goods imported during the period from 13.08.2014 to 12.08.2014 (both days inclusive) shall be imposed safeguard duty. This is further fortified by the fact that the notification was sent for publication at the same time. The reason for implementing the notification immediately on the same day was the underlying object for introducing the safeguard duty and the purpose which it sought to achieve, i.e. to safeguard the interest of the domestic

industry. This is evident from the notification when it says that the Director General (Safeguard) in his final findings has come to the conclusion that increase in imports of Seamless Pipes and Tubes into India has caused serious injury to the domestic producers of Seamless Pipes and Tubes necessitating the imposition of safeguard duty on import of these goods into India. For the reasons best known, the publication of the Notification was delayed leading to an anomalous situation prejudicially affecting the interest of the manufacturers in India. We would like to refer the decision of the Constitution Bench of the Supreme Court in the case **Hyderabad Industries Ltd Vs Union of India 1999 (108) E.L.T. 321 (S.C.)** taking into account the object of levy of additional duty as per the charging section under CTA by considering the notes to clauses to the Custom Tariff Bill, 1975 which provided for the levy of additional duty on imported articles so as to counter balance the excise duty levied on the like article made indigenously or on the indigenous raw materials or ingredients which go into the making of the like indigenous articles was to safeguard the interest of the manufacturers in India.

26. We, therefore conclude:

- (i) The notice under section 28 of the Customs Act, 1962 have been validly issued by the Department for the non-levy of safeguard duty.
- (ii) That in terms of sub-section 9 of section 8B of CTA, the provisions of Customs Act are applicable to the safeguard duty chargeable under the section, including those relating to the

date of determination of rate of duty, assessment, non-levy, short-levy, refunds, interests, appeals, offences and penalties.

- (iii) Therefore, the rate of duty and tariff valuation of imported goods shall be determined under section 15(1) of the Customs Act, 1962 in the following manner:-
- a. Where goods are cleared for home consumption under section 46, the rate of duty shall be as on the date on which the Bill of Entry is presented.
 - b. Where goods are cleared from the warehouse under section 68, the date "the goods are actually removed from the warehouse" substituted by the Finance Act, 2003 w.e.f. 14.05.2003 to read as, "a bill of entry for home consumption in respect of such goods is presented under that sections".
- (iv) The relevant date for determining rate of duty is not with reference to the entry of the vessel into the territorial waters in India before the presentation of the Bill of Entry. Therefore, to say that the goods were shipped from the country of origin prior to the issuance of the Notification on 13.08.2014 and, therefore, the safeguard duty is not applicable, is clearly untenable. .
- (v) The Notification No. 02/2014-Customs dated 13.08.2014 has been validly issued under section 8B of CTA, read with Rule 12, 14 and 17 of the Rules, imposing the safeguard duty on Seamless Steel Tubes.
- (vi) That Rule 14 of the Rules provides that safeguard duty levied under Rule 10 or 12 shall be effective from the date of publication in the official gazette.
- (vii) In the present case, the notification in question, though issued on 13.08.2014 was published in the official gazette on 25.08.2014. In terms thereof:-

- a. Bill of Entry No. 6459749 dated 18.08.2014 having been presented for clearance of goods though after the issuance of the Notification in question but before it was published so as to be effective and, therefore, the Notification imposing the safeguard duty shall not be applicable to the said Bill of Entry.
- b. Bill of Entry No. 6690337 dated 08.09.2014 having been presented after the Notification in question was published on 25.08.2014 and, therefore, the same was effective on that date. The appellant is liable to pay the safeguard duty in respect of the Bill of Entry No. 6690337 dated 08.09.2014.

27. The Appeal is partly allowed in terms of our conclusion above.

(Order pronounced on 3rd April, 2023).

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(BINU TAMTA)
MEMBER (JUDICIAL)