Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Misc. Application (EH) No. 10838 of 2019
(On behalf of Applicant)
in
Customs Appeal No.13945 of 2013
(Arising out of OIA-582-2013-CUS-COMMR-A—KDL dated 23/08/2013 passed by Commissioner of CUSTOMS-KANDLA)

Ruchi Soya Industries Ltd ....**Appellant**
301, Mahakosh House, 7/5, South Tukoganj,
Nath Mandir Road,
Indore, Madhya Pradesh

VERSUS

C.C.-Kandla ....**Respondent**
Custom House,
Near Balaji Temple, Kandala, Gujarat

APPEARANCE:
Shri Rajesh Rawal (Adv.) for the Appellant
Shri Sanjiv Kinker, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10432 /2020

DATE OF HEARING: 31.01.2020
DATE OF DECISION: 10.02 .2020

RAMESH NAIR

The brief facts of the case are that the appellant had imported 1166.011 Mts of Crude Palm Oil (CTH 15111000) for which Nine different Bills of Entry all dated 1.8.2003 were filed under DEPB and claimed benefit of 65% concessional rate of duty under Notification No. 21/2002-Cus dated 01.03.2002. The said notification was amended vide Notification No. 67/2003 dated 30.04.2003 whereby the duty rate was specified @ 70%. Accordingly, AC, Customs, Kandla denied the benefit of Notification No. 21/2002 as amended by 67/2003. In terms of Notification No. 120/2003 dated 01.08.2003 which was disputed by the appellant on the ground that the said notification was not published on the day when they filed the Bill of Entry. The Adjudicating Authority referred to Office Memorandum No. 336/4/2003-TRU dated 09.10.2003 issued by Ministry of Finance which revealed that the actual date of publication of Notification No. 120/2003(supra) as 01.08.2003 and by relying upon the judgment of Hon'ble Supreme Court in the case of GANESH DAS RAJ BHOJRAJ – 2000 (116) ELT 431 (SC), wherein it was held that notification issued under section 25 of the Customs Act, would come into operation as soon as it is published in the Gazette of India that is the date of publication of Gazette and no further publication is contemplated, Ordered final assessment directing the appellants to pay differential duty of Rs. 42,24,000/-. Being aggrieved by the said Order-In-Original, appellant filed appeal before Commissioner (Appeals) which came to be dismissed and the Order passed by the Adjudicating Authority was maintained. Therefore, the present appeal.

2. Shri Rajesh Rawal, Learned Counsel appearing on behalf of the appellant submits that the Adjudicating Authority as well as Commissioner (Appeals) decided the matter on the basis of unamended section 25 (4) and judgment of Hon'ble Supreme Court in the case of UNION OF INDIA VS. GANESH DAS BHOJRAJ- 2000 (116) ELT 431 (SC). He submits that contrary to the judgment of Hon'ble Supreme Court in the case of GANESH DAS BHOJRAJ, after considering the same the Hon'ble Karnataka High Court in the case of M/S. PARAM INDUSTRIES LTD. VS. UNION OF INDIA- 2002 (150) E.L.T.3 (Kar) clearly held that the notification comes into effect on the day it is published and offered for sale. He submits that the information gathered regarding the date of Offer for Sale of the notification, it was revealed that though the Notification No. 120/2003-Cus was published on 01.08.2003 but the same was put on sale to the general public on 04.08.2003. This has been replied vide Letter dated 7th August, 2015 in reply to RTI query. It is his submission that as per the amended Section 25 (4)(a)(b) coupled with Karnataka High Court in the case of M/S. PARAM INDUSTRIES LTD. it was clear that the effect of Notification is from 4.8.2003 and not from 1.8.2003. He submits that the decision of the Hon'ble Supreme Court in the case of GANESH DAS BHOJRAJ is not applicable in the facts of the present case for the reason that at the relevant date amended section 25(4) was in force, dealing with the same judgment of PARAM INDUSTRIES LTD (supra) was given. This decision of Hon'ble Karnataka High Court has been affirmed by the Hon'ble Supreme Court reported at UNION OF INDIA VS. PARAM INDUSTRIES LTD. -2015 (321) E.L.T. 192 (S.C.)

2.1 He further submits that on the identical issue the Hon'ble Gujarat High Court in the case of M.D. OVERSEAS LTD. VS. UNION OF INDIA 2017 (353) E.L.T. 12 (Guj.), after considering the judgment of PARAM INDUSTRIES LTD. given by Karnataka High Court and affirmed by Hon'ble Supreme Court and also discussing the ratio of GANESH DAS BHOJRAJ(supra) held that as per section 25 (4)(a)(b) of Customs Act, 1962, the date of coming into force of notification is when notification issued, is published and offered for sale. This judgment has been affirmed by the Hon'ble Supreme Court by dismissing the petition for SLP filed by the revenue reported at UNION OF INDIA VS. M.D. OVERSEAS LTD.- 2017 (356) E.L.T. A136 (S.C.). In view of the settled legal position he prays for setting aside the impugned order.

3. Shri Sanjiv Kinker, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We heard both the sides and perused the records. The issue to be decided is whether the Notification No. 120/2003 dated 01.08.2003 is effective from the date of publication i.e. 01.08.2003 as proposed by the revenue or from the date of offer for sale of the said notification i.e. 04.08.2003 as claimed by the appellant. In this regard, relevant section 25(4)(a)(b) is reproduced below, which is prevalent at the relevant time :-

> ***"Section 25***
>
> ***(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 nd Public Relations of the Board, New Delhi"*

4.1 From the above section, particularly from clause (b) it is clear that the notification shall come into force when the notification is issued, published in the Official Gazette and also offered for sale. Therefore, all the three event are necessary i.e. notification should be issued, published in the Official Gazette of Central Government and offered for sale, that means the date on which the notification is offered for sale shall be the relevant effective date of notification, even though, the date of issue of notification and publication is prior to the date of offer for sale. As regard the factual position, on the above dates the appellant have obtained a reply under RTI which is reproduced below:-

4

GOVERNMENT OF INDIA
DEPARTMENT OF PUBLICATION
CIVIL LINES, DELHI 110054
Website: www.deptpub.gov.in
Email: acop-dep@nic.in (&) pub.dep@nic.in
TEL. : 23817823 23819689 Fax: 23817846

File No. O&M/19104/2015 Dated: 7th August, 2015

To
Shri Pawan Awasthi
LIG-171, 2nd Floor
Rose Apartment, Sec-18-B
Dwarka, New Delhi 110078

Sub: Information under RTI Act, 2005

Ref: Your letters dated 09.07.2015 and 04.08.2015 received in this Department on 10.07.2015, 06.08.2015 respectively.

Sir,

With reference to the above, it is informed that the copies of Gazette of India, no. GSR 622(E), Serial No. 365 and bearing GI No. 2195 dated 01.08.2003 (Friday) were received on 01.08.2003 at 12:00 midnight at Kitab Mahal Sale Counter of this Department from Govt. of India Press, Mayapuri, Ring Road, New Delhi vide Delivery Challan No. 57721 dated 01.08.2003 and put on sale to the general public at 9:30 AM on 04.08.2003 (Monday).

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.

Yours faithfully,

Sd/-
(G.D. Pandey)
Central Public Information Officer

4.2 From the above reply the date on which the notification was put on sale to general public is 04.08.2003. To ascertain whether this reply is relevant to the notification No. 120/2003-Cus dated 01.08.2003 the gazetted notification is reproduced below:-

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 3—उप-खण्ड (i)
PART II—Section 3—Sub-section (i)
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 365] नई दिल्ली, शुक्रवार, अगस्त 1, 2003/श्रावण 10, 1925
No. 365] NEW DELHI, FRIDAY, AUGUST 1, 2003/SRAVANA 10, 1925

वित्त मंत्रालय

(राजस्व विभाग)

अधिसूचना

नई दिल्ली, 1 अगस्त, 2003

सं. 120/2003-सीमाशुल्क

सा.का.नि. 622 (अ).—केन्द्रीय सरकार, सीमाशुल्क अधिनियम, 1962 (1962 का 52) की धारा 25 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह समाधान हो जाने पर कि ऐसा करना लोकहित में आवश्यक है, भारत सरकार के वित्त मंत्रालय (राजस्व विभाग), की अधिसूचना सं. 21/2002-सीमाशुल्क, तारीख 1 मार्च, 2002 में निम्नलिखित और संशोधन करती है, अर्थात:—

उक्त अधिसूचना में, सारणी में,—

(क) क्रम सं. 34 के सामने, स्तंभ (3) की प्रविष्टि के स्थान पर निम्नलिखित प्रतिस्थापित किया जायेगा, अर्थात:—

'खाद्य श्रेणी का कच्चा पाम तेल और उसका अंश, खुला या प्रपुंज रूप में जिसकी तेजाब मूल्य 2 प्रतिशत, या ज्यादा और कुल केरोटिनाइड (वीटा केरोटिन) 500 से 2500 मिली ग्राम प्रति किलो हो।

स्पष्टीकरण: इस छूट के प्रयोजन के लिए, "खाद्य श्रेणी का कच्चा पाम तेल और उसका अंश" से अभिप्राय है कि वो अवाष्पसील वनस्पति तेल, द्रव या ठोस, जो कि दबाव से प्राप्त किया गया हो और जो कि निथारने, सेन्ट्रीफिकेशन या छानने के अलावा किसी भी प्रक्रिया से न गुजरा हो परंतु तेल को ठोस कणों से अलग करने के लिए सिर्फ यांत्रिक शक्ति जैसा कि गुरूत्वाकर्षण, दबाव या सेन्ट्रीफ्यूगल शक्ति का प्रयोग किया गया हो। सोखने वाली छानक प्रक्रिया, अंशों में अलगाना या कोई ऐसी भौतिक या रसायनिक प्रक्रिया निषेधित है। अगर कोई तेल एक्सट्रेक्शन प्रक्रिया से प्राप्त किया गया है तो वह कच्चा तेल माना जायेगा जब तक कि इसी तरह के दबाव से प्राप्त किए गए तेल की तुलना में इसके रंग, गंध या स्वाद में कोई भी बदलाव न आया हो';

(ख) क्रम सं. 434 के सामने, स्तंभ (3) की प्रविष्टि के स्थान पर प्रविष्टि "1511 90" प्रतिस्थापित की जायेगी।

[फा. सं. 345/11/2001-टीआरयू]

गंगा सिंह कार्की, अवर सचिव

टिप्पण:—मूल अधिसूचना सं. 21/2002-केन्द्रीय उत्पाद शुल्क, तारीख 1 मार्च, 2002 [सा. का. नि. 118 (अ), तारीख 1 मार्च, 2002] द्वारा भारत के राजपत्र, असाधारण द्वारा प्रकाशित की गई थी, और उसमें अंतिम संशोधन अधिसूचना सं. 118/2003-केन्द्रीय उत्पाद शुल्क, तारीख 29 जुलाई, 2003 [सा. का. नि. 611 (अ) तारीख 29 जुलाई, 2003] द्वारा किया गया था।

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 1st August, 2003

No. 120/2003-CUSTOMS

G.S.R. 622 (E).— In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002, namely :—

In the said notification, in the Table,

(A) against S.No.34, for the entry in column (3), the following entry shall be substituted, namely :—

'Crude palm oil and its fractions, of edible grade, having an acid value of 2%, or more and total carotenoid (as beta carotene) in the range of 500-2500mg/kg, in loose or bulk form.

Explanation.—For the purposes of this exemption, "Crude palm oil and its fractions" means fixed vegetable oils, fluid or solid, obtained by pressure, if they have undergone no processing other than decantation, centrifugation or filtration, provided that, in order to separate the oils from solid particles only mechanical force, such as gravity, pressure or centrifugal force, has been employed, excluding any absorption filtering process, fractionalization or any other physical or chemical process. If obtained by extraction an oil shall continue to be considered as "crude", provided it has undergone no change in colour, odour or taste when compared with corresponding oil obtained by pressure';

(B) against S.No.434, for the entry in column (2), the entry "1511 90" shall be substituted.

[F.No. 345/11/2001-TRU]

G.S. KARKI, Under Secy.

Note:— The principal notification No. 21/2002-Customs dated the 1st March, 2002, was published in the Gazette of India, Extraordinary, vide [G.S.R.118 (E), dated the 1st March, 2002] and was last amended by notification No. 118/2003-Customs, dated the 29th July, 2003 [G.S.R. 611 (E), dated the 29th July, 2003].

अधिसूचना

नई दिल्ली, 1 अगस्त, 2003

सं. 121/2003-सीमाशुल्क

सा.का.नि. 623 (अ).—केन्द्रीय सरकार, सीमाशुल्क अधिनियम, 1962 (1962 का 52) की धारा 25 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह समाधान हो जाने पर कि ऐसा करना लोकहित में आवश्यक है, कि सीमाशुल्क टैरिफ अधिनियम, 1975 (1975 का 51) की पहली अनुसूची में आने वाले सभी उपकरण और उपभोग्य नमूने जो कि रसायनिक हथियार निषेध संगठन की निरक्षण टीम द्वारा आयात किए गए हों, को उस पर उद्ग्रहणीय पूर्ण सीमाशुल्क से छूट प्रदान करती है जो उक्त प्रथम अनुसूची में विनिर्दिष्ट है और उक्त सीमाशुल्क टैरिफ अधिनियम की धारा 3 के अधीन उस पर उद्ग्रहणीय अतिरिक्त शुल्क है। छूट निम्नलिखित शर्तों के अधीन है, अर्थात:—

(क) आयातक राष्ट्रीय प्राधिकरण, रसायनिक हथियार समझौता में संयुक्त सचिव या उप सचिव का प्रमाणपत्र और उनके द्वारा यथाविधि प्रमाणित सूची प्रस्तुत करेगा कि यह उपकरण और उपभोग्य नमूने रसायनिक हथियार समझौते के अनुसार किए जाने वाले निरीक्षण या प्रमाणन करने हेतु आवश्यक हैं; और

(ख) राष्ट्रीय प्राधिकरण, रसायनिक हथियार समझौता में संयुक्त सचिव या उप सचिव, यथास्थिति, सीमाशुल्क उपायुक्त या सहायक सीमाशुल्क आयुक्त को यह वचनबंध प्रस्तुत करेगा कि उक्त उपकरण उनके आयात होने के छः महीने अथवा सीमाशुल्क आयुक्त द्वारा अनुमोदित समय के भीतर निर्यात कर दिए जायेंगे तथा उपभोग्य नमूने उदेशित कार्य के लिए आवश्यक हैं और उनका हिसाब रखा जायेगा।

[फा. सं. 354/73/2003-टीआरयू]

गंगा सिंह कार्की, अवर सचिव

4.3 From the perusal of the above Gazetted Notification it is clear that the reply is in respect of Notification No. 120/2003-Cus dated 01.08.2003 GSR 622 (E), Serial no. 365 and bearing GI No. 2195 dated 01.08.2003. With the above documents it is clear that the Notification No. 120/2003-Cus though issued on 01.08.2003 and published on 01.08.2003 but offered for sale only on 04.08.2003. Therefore, the same came into effect on 04.08.2003, whereas the Bills of Entry were filed on 01.08.2003 therefore, the benefit of unamended Notification No. 21/2002-Cus dated 1st March, 2002 was available to the appellant. The Adjudicating Authority as well as the First

Appellate Authority have decided the matter solely on the basis of Hon'ble Supreme Court judgment in the case of GANESH DAS BHOJRAJ (supra).

5. On careful reading of the said judgment, we find that the said judgment is not in reference of amended section 25(4)(a)(b) of Customs Act, 1962. We observe that despite pointing out this legal position to both the Lower Authorities they have brushed aside even the judgment of Karnataka High Court in the case of M/S. PARAM INDUSTRIES LTD. which has considered the judgment of GANESH DAS BHOJRAJ, therefore, both the Lower Authorities have not followed the judicial discipline. The decision of Karnataka High Court was subsequently upheld by the Hon'ble Supreme Court as cited (supra). On the identical issue the jurisdictional Gujarat High Court in the case of M/S. M.D. OVERSEAS LTD. also taken the same view as was taken by the Karnataka High Court and Supreme Court in the case of M/s. Param Industries Ltd. This judgment of M/s. M.D. Overseas Ltd. was also upheld by the Hon'ble Supreme Court.

6. In view of the above discussed facts coupled with the settled legal position in the judgment of M/S. PARAM INDUSTRIES LTD.(supra) and M/s. M.D. Overseas Ltd. (supra), the impugned order is not sustainable hence, the same is set aside, appeal is allowed.

(Pronounced in the open court 10.2.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul