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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 11631 of 2017- DB

(Arising out of OIA-KDL-CUSTM-000-APP-028-030-17-18 dated 04/07/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Patanjali Foods Limited **........Appellant**
Survey No.217/2, Village-mithi Rohar,
Gandhidham,
Kutch, Gujarat

VERSUS

C.C.E & S.T.-Silvasa **......Respondent**
Commissioner Central Excise,
Customs & Service Tax, Silvassa, 4th floor,
Adarsh Dham Building, Vapi Daman Road Vapi
Opp. Old Town Police Station
Vapi, Gujarat

APPEARANCE:
Shri S J Vyas Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

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

Final Order No.12829/2023

DATE OF HEARING: 11.12.2023
DATE OF DECISION: 22.12.2023

RAMESH NAIR

The issue involved in the present case is that whether the Notification No. 46/2015-Cus dated 17.09.2015 is effective from the date of notification i.e. 17.09.2015 or the date when it was offered for sale i.e. 21.09.2015.

2. Shri Rajesh Raval, Learned Counsel appearing on behalf of the appellant submits that the department’s contention is that the notification is effective on the date of publication thereof in the official gazette. In the present case, the Notification was issued on 17.09.2015, therefore, as per the department, this date is effective date of the Notification.

2.1 He submits that during the relevant period un-amended sub-section 4 of section 25 of the Customs Act provides that the effect of the notification will come into force not only by publishing the notification in the official gazette but also when the notification is offered for sale on the date of issue by the director of publicity and public relations of the board New Delhi.

2.2 He submits that on the information obtained under RTI, it is undisputed that the notification was offered for sale only on 21.09.2015. Therefore, in terms of Section 25(4)(b) the effective date of Notification is 21.09.2015 and relevant date for payment of duty is 18.09.2015, when entry inward was allowed. Accordingly, on the date of duty payable the notification was not in force. Hence, the increase of 5% duty is not applicable in the clearance under bills of entry dated 12.05.2015.

2.3 He submits that this issue has been considered in the appellant's own case by this Tribunal, in the case of Ruchi Soya Industries Ltd Vs. Commissioner of Customs Kandla 2020 (373) ELT 113 (Tri.-Ahm.). He submits that this Tribunal in the said judgment has considered various High Court's and Supreme Court's judgments and also Ministry of Finance clarification under office memorandum No. 336/4/2003-TRU dated 09.10 2003. Accordingly, in view of the judgment in the appellant's own case, in the present case also, the effective date of Notification has to be taken as as 21.09.2015 and not 17.09.2015.

3. Shri A. K Samota, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that there is no dispute in the fact that though the Notification No. 46/2015-CUS was issued on 17.09.2015 but the same was offered for sale on 21.09.2015. In this regard, we scanned below the relevant RTI information:

32

By speed post

GOVERNMENT OF INDIA
DEPARTMENT OF PUBLICATION
CIVIL LINES, DELHI – 110 054.
Website: **www.deptpub.gov.in**
Email: **acop-dep@nic.in** (&) **pub.dep@nic.in**
TEL.: 2381 7823 /2381 9689 Fax: 2381 7846.

File No. O&M/19152/2015 Dated: 12th Oct., 2015

To
Shri Pawan Awasthi,
LIG-171, 2nd Floor,
Rose Apartment, Sec-18-B,
Dwarka, New Delhi- 110 078.

Sub:- Information under RTI Act, 2005.

Ref:- Your RTI application dated 19.09.2015 received in this Department on 21.09.2015.

Sir,

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.

Yours faithfully,

(G.D. Pandey)
Central Public Information Officer.

33

GOVERNMENT OF INDIA PRESS
RING ROAD, MAYAPURI, NEW DELHI-110064

No. A-43013/336/RTI/2015/Estt.I/487 Dated : 30.10.2015

To

Sh. Pawan Awasthi,
LIG-171, 2nd Floor,
Rose Apartment, Sec-18-B,
Dwarka, New Delhi-78.

Subject : **Seeking Information under RTI Act, 2005.**

Reference : **Your RTI application dated 12.10.2015 recieved in this Press on 15.10.15.**

Sir,

With reference to your RTI application dated 12.10.15, it is stated the information asked in the RTI is point wise furnished below:-

1. The Date and time of Printing the Gazette notification published in the Gazette of India, Extra Ordinary Part II Section 3 Sub Section (ii) containing No. 46/2015-customs dt 17.09.2015 as per the records of Govt. of India Press, Mayapuri, New Delhi is 17.09.2015 (AN). The copy of the record book for that day is enclosed for further information.

2. The Printed Gazette was despatched from the Govt. of India Press, Mayapuri, New Delhi for sale on 21.09.2015.

If you are not satisfied with this reply you may file an appeal to Ist Appellate Authority, Directorate of Printing, "B"Wing, Nirman Bhawan, New Delhi-110108.

Encl as above (2 pages)

Yours faithfully,

(Karan Singh)
CPIO/Officer-in-Charge

4.1 From the above letter dated 12th October, 2015 given by CPIO, it is clear that the Notification No. 46/2015-CUS was put on sale to the general public on 21.09.2015. The relevant provision regarding issuance of notification is provided under Section 25 (4) which is reproduced below:

> ***"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 and Public Relations of the Board, New Delhi"*

4.2 Considering the above legal provision, this Tribunal has taken a view that the notification shall come into effect only when the notification is offered for sale. Therefore, considering the said judgment, in the present case since notification was offered for sale on 21.09.2015 i.e. a date when the Notification No. 46/2015-Cus came into force. The decision in the appellant's own case cited above is directly applicable in the facts of the present case. The relevant order portion is reproduced below:

> *"4. We heard both the sides and perused the records. The issue to be decided is whether the Notification No. 120/2003, dated 1-8-2003 is effective from the date of publication i.e. 1-8-2003 as proposed by the revenue or from the date of offer for sale of the said notification i.e. 4-8-2003 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 :-

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 9-7-2015 and 4-8-2015 received in this Department on 10-7-2015, 6-8-2015 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 1-8-2003 (Friday) were received on 1-8-2003 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 1-8-2003 and put on sale to the general public at 9:30 AM on 4-8-2003 (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 4-8-2003. To ascertain whether this reply is relevant to the Notification No. 120/2003-Cus., dated 1-8-2003 the gazetted notification is reproduced below :-

रजिस्ट्री सं॰ डी॰ एल॰-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 (बीटा केरोटिन) 500 से 2500 मिली ग्राम प्रति किलो हो।

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].

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।

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 1-8-2003, GSR 622(E), Serial No. 365 and bearing GI No. 2195, dated 1-8-2003. With the above documents it is clear that the Notification No. 120/2003-Cus., though issued on 1-8-2003 and published on 1-8-2003 but offered for sale only on 4-8-2003. Therefore, the same came into effect on 4-8-2003, whereas the Bills of Entry were filed on 1-8-2003 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."

4.3 In view of the above observation and the case law in the appellant's own case on the identical issue and law point in the present case the notification is effective from 21.09.2015 therefore, the appellant are not required to pay 5% increase in duty. Accordingly, the appellant are eligible for re-assessment of bills of entry on the basis of un-amendment Notification No. 46/2015-CUS at the rate of 7.5% duty.

5. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief.

(Pronounced in the open court on 22.12.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha