CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20149 of 2018

(Arising out of Order-in-Appeal No. 996/2017 dated 11.12.2017 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. M.D. Overseas Ltd.
Rep. by its Authorized Signatory
Shri K K Ganapathi, Manager,
135, TNR Complex, Avenue Road,
Bangalroe – 560 002.

Appellant(s)

VERSUS

The Commissioner of Customs
Air Port and Air Cargo, Air India,
SATS, Air Freight Terminal Kempe Gowda
International Airport,
Devanahalli,
Bangalore – 560 300.

Respondent(s)

<u>APPEARANCE:</u>

Mr. Satish Sundar, Advocate for the Appellant

Ms. Arpitha. S, Joint Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

<u>Final Order No. 21180 / 2025</u>

DATE OF HEARING: 30.06.2025
DATE OF DECISION: 30.06.2025

PER : R. BHAGYA DEVI

Briefly the facts are that the appellant M/s. M.D. Overseas Ltd., had imported 150 kg of gold bars vide Bill of Entry No. 2289006 dated 31.05.2013 through their Customs Broker M/s. Global Logistic Services Inc. The goods were self-assessed and duty paid at US $ 440 per 10 grams in terms of the Notification No. 12/2012-Cus. dated 17.03.2012 under Sl. No.323. Later, the said Notification was amended vide

Notification No. 57/2013 Cus. dated 31.05.2013 and accordingly the appellant was liable to pay differential duty of Rs.9,73,999/- which was confirmed with applicable interest and various penalties were imposed. Aggrieved by this order, the appellant is in appeal before us.

2. The Learned Counsel submitted that the original Notification based on which duty was paid was amended vide Notification No. 57/2013-Cus. (N.T.) dated 31.05.2013 which was available only at a later date, hence, the question of payment of differential duty does not arise since the goods were cleared on applicable rate of duty at the time of clearance. It is further submitted that in the appellant's own case, the Hon'ble High Court of Gujarat as reported at **2017 (353) ELT 12 (Guj.)** held in favour of the appellant observing that the amended Notification is not applicable for the goods already cleared which was further upheld by the Hon'ble Supreme Court in **2017 (356) ELT A136 (S.C.)**. They have also relied on the decision of the Tribunal in the case of **The Bank of Nova Scotia Vs. Principal Commissioner of Customs, Hyderabad: Final Order No. A/30424/2024 dated 25.11.2024**. It is also submitted that the demand is barred by limitation as the assessment and payment of duty was on 31.05.2013 while the notice was issued only on 04.11.2015, hence, the impugned order needs to be set aside.

3. The learned Authorized Representative on behalf of the Revenue submitted that the impugned Bill of Entry was Risk Management System (RMS) facilitated, assessed duty paid and out-of-charge was given on the same day i.e. 31.05.2013. The Tariff Value adopted was $440 per 10 grams as per Notification No. 12/2012-Cus. dated 17.03.2012. Since, this Notification was amended vide Notification No. 57/2013-Cus (N.T.) dated 31.05.2013 increasing the tariff value to $ 459 per 10 grams, the appellant was liable to pay the differential duty. It is submitted that the reliance placed on various decision by the

appellant are not relevant since in the present case the Notification No. 57/2013-Cus (N.T) dated 31.05.2013 was published in the Gazette on 31.05.2013 and offered for sale by publishing on the Department website on 31.05.2013 itself which is not in dispute. Therefore, the appellant is liable to pay the differential duty.

4. The reliance placed on the decisions in the case of **The Bank of Nova Scotia Vs. Principal Commissioner of Customs, Hyderabad** (supra) is also not relevant since the appellant in this case has not disputed the fact that the Notification was available on the Department's website on 31.05.2013. The Revenue also relied on the decision in the case of ITC Ltd Vs. Collector of Central Excise, Bombay, 1996 (86) ELT 477 (S.C.) wherein the Apex Court held that non-availability of the Gazette on the date of issue of the Notification does not affect the operativeness and enforceability of the Notification, particularly when there was a radio announcement about the change in the Notification.

5. Heard both sides. The admitted facts are that the appellant had filed Bill of Entry dated 31.05.2013 and the Bill of Entry was RMS facilitated, assessed, duty paid and out-of-charge was given on 31.05.2013 itself. At the time of assessment, the tariff value was $440 per 10 grams as per Notification No. 55/2013 dated 21.05.2013. This tariff value was increased from $440 to $459 per 10 grams vide Notification No. 57/2013 dated 31.05.2013 which was not available at the time of assessment. The question therefore is whether the appellant is liable to pay differential duty on the enhanced value. The Hon'ble High Court of Karnataka in the case of **Param Industries Ltd., Vs. Union of India 2002 (150) ELT 3 (Kar.)** in similar set of facts observed as follows:

> "**13.** It is also to be seen that once on the basis of Bill of Entry for Home consumption, the assessment has been made as per the earlier notification dated 1-3-2001, the rate as per the new

notification i.e., notification dated 3-8-2001 is not attracted. Merely on the basis of notifying in Website and showing a letter addressed to the Manager, Government of India Press on 3-8-2001, without actual publication of the Notification in the Gazette, it cannot be presumed that there was proper publication as stated. So far as the Order of the Madras High Court in Writ Misc. Petition Nos. 22829 to 22831/2001 and connected matters is concerned, it is not helpful as it is an interim order. Further, in that case the learned single Judge *prima facie* came to the conclusion that "the relevant date for the assessment of the duty was only 5-8-2001, when admittedly the date on which the entry inwards of the vessel was 5-8-2001". However, in other cases interim order was granted with some conditions. So the notification is liable to be set aside. We are constrained to hold that contrary is proved and presumption of publication on 3-8-2001 is not available to the respondents in this case and notification dated 3-8-2001 did not acquire the elements of operativeness and enforceability on 3-8-2001 and hence additional duty imposed by notification could not be levied on 3-8-2001 and hence petitioners are entitled to succeed on this ground".

6. Similarly, the Hon'ble Supreme Court in the case of **Union of India Versus G.S. Chatha Rice Mills 2020 (374) ELT 289 (S.C.)** observed as follows:

"**154.** Reliance placed on the judgments *Video Electronics Pvt. Ltds and Another* v. *State of Punjab and Another*, [1990 (3) SCC 87], *Tamil Nadu Electricity Board and Another* v. *Status Spinning Mills Limited and Another*, [2008 (7) SCC 353] of this Court, taking the view that the Schedule to an act is a part of the act and therefore an amendment to the Schedule by virtue of such a notification is an amendment to the Act itself and therefore, the notification issued under Section 8A of the Tariff Act partakes the character of legislation, is clearly untenable, if it is intended to convey that the notification issued under Section 8A of the Tariff Act is made by the legislature itself. By its very nature, delegated legislation is legislative in character but if it is to be a Central Act within the meaning of Section 5 of General Clauses Act, it must be made by the legislature. Delegated legislation which is called administrative legislation in England, is exercise of legislative

> power by the executive. It is to be further noticed the fact that the notification issued under Section 8A is in the exercise of its legislative power or that it may have to be read in the same manner as if it is a part of the Act, will not detract the Court from ascertaining as to who is the author of the exercise of the legislative power, namely, whether it is an exercise of power by the legislature or by its delegate. Upon answer to the question, namely, that the author of the legislative effort is the executive, the question would necessarily arise as to whether there is publication. In the scheme of the Customs Act, the Tariff Act and the 2018 Regulations, the time at which the notification under Section 8A is published would indeed have relevance as already found."

7. Following the above judgments, the Tribunal in the case of **The Bank of Nova Scotia Vs. Principal Commissioner of Customs, Hyderabad: Final Order No. A/30324/2024** dated 25.11.2025 held as follows:

> "Therefore, the effective dates would be, relying on ratio of Param Industries, would be date of publishing of these notifications as discussed and thus on both these counts, the amended Notification No. 50/2013 & 57/2013 would not be applicable to Bill of Entries (Bes) filed on 26.05.2013 and 31.05.2013 respectively".

8. In the present case, it is a fact that though the Notification was published in the Gazette on 31.05.2013, it was not available to the appellant at the time of assessment, hence, the question of differential duty on the revised value does not arise. Moreover, at the time of filing the Bill of Entry, the declared value was as per the Notification relevant at that point of time which was assessed and out-of-charge was given, the question of mis-declaration does not arise. The Bill of Entry was assessed on 31.05.2013, the show-cause notice was issued on 22.12.2015, it is also noted by the Original Authority that the system was not updated with the latest Notification and places the responsibility on the appellant even though the Notification was admittedly not available at the point of assessment. In view

of the above, the impugned order fails both on merit and limitation. Appeal is allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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