CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/20363/2017-DB

[Arising out of Order-in-Original No. BLR-CUSTM-A&ACC-04/15-16 dated 18/03/2016 passed by the Commissioner of Customs, Bangalore]

Indusland Bank Ltd.
Embassy Heights, Unit #101 "B"
Block, #13/2, Magrath Road
Bangalore – 560 025
Karnataka

Appellant(s)

VERSUS

Commissioner of Customs
Bangalore
C.R. Building, Queens Road,
P.B. No. 5400,
Bangalore - 560 001
Karnataka

Respondent(s)

Appearance:

Ms. Asmita Nayak, Advocate	For the Appellant
Mr. Madhup Sharan, Asst. Commr. (AR)	For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P.V. SUBBA RAO, TECHNICAL MEMBER

Final Order No. 20720 / 2019

Date of Hearing: 20/08/2019
Date of Decision: 20/08/2019

Per: S.S GARG

The present appeal is directed against the impugned order dated 18.03.2016 passed by the Principal Commissioner of Customs, Bangalore wherein the Principal Commissioner confirmed the demand of short paid duty of Rs. 1,23,37,546/- (Rupees One Crore Twenty Three Lakhs Thirty Seven Thousand Five Hundred and Forty Six only) under Section 28(4) of the Customs Act along with interest and also imposed equal penalty.

2. Briefly the facts of the present case are that the appellant is a bank and during the course of its business activities, the appellant imported gold. Appellant is a nominated bank/agency, authorized by the RBI to import gold. The appellant imported the gold and filed Bill of Entry No. 9077659 dated 21.01.2013 through their Customs Broker, Global Logistics Services Inc. for import of 200 kgs of gold valued at Rs. 59,98,24,940/- (Rupees Fifty Nine Crore Ninety Eight Lakhs Twenty Four Thousand Nine Hundred and Forty only) and classified the goods under CTH 7108 12 00. The appellant availed the benefit of exemption from Customs duty in terms of Sl. No. 323 of Notification No. 12/2012-Cus. dated 17.03.2012. The Customs duty paid by the appellant was Rs. 2,46,75,092/- (Rupees Two Crore Forty Six Lakhs Seventy Five Thousand and Ninety Two only) @ 4%. The said Bill of Entry was self-assessed by the appellant under Section 17 of the Act. The said Bill of Entry was filed electronically in terms of Section 46 of the Act and was facilitated through the RMS by the system. The goods were out-of-charged on the same day i.e. 21.01.2013. On the same day i.e. 21.01.2013, the rate of duty applicable on the imported goods was enhanced to 6% vide Notification No. 01/2013-Cus. dated 21.01.2013. The said Notification No. 01/2013 was published in the Official Gazette and was made known to the industry at large only post filing of the Bill of Entry. Thereafter on 02.06.2015, the Assistant Commissioner vide his letter directed the appellant to pay the

differential duty alleged to be arising as a result of the rate change under Notification No. 01/2013. The appellant vide their reply dated 06.07.2015 explained to the Assistant Commissioner that they are not liable to pay enhanced rate of duty. Thereafter on 03.12.2015, a show-cause notice was issued to the appellant proposing to demand Customs duty short paid amounting to Rs. 1,23,37,546/- (Rupees One Crore Twenty Three Lakhs Thirty Seven Thousand Five Hundred and Forty Six only) under Section 28(4) of the Act along with interest and penalty. After following the due process, the Principal Commissioner vide the impugned order confirmed the demand along with interest and penalties. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the binding judicial precedent. She further submitted that they have correctly paid the Customs duty. She also submitted that as per Section 15 of the Customs Act, the rate of Customs duty applicable on any import is the rate at the time of filing the Bill of Entry. She further submitted that at the time of filing the Bill of Entry, the applicable rate of Customs duty on the imported goods was 4% since Notification No. 01/2013 enhancing the duty was not published or known to the public or entered into the Electronic Data Interchange (EDI) system of the Customs Department. She further submitted that the demand of differential duty @ 6% under the amended Notification No. 01/2013 dated 21.01.2013 which came to Press on the same day as that of import of goods is legally untenable in view of the provisions stipulated in Section 25(1) of the Customs Act, 1962. She further argued that Notification No. 01/2013-Cus. although was issued on 21.01.2013 was published in the Gazette of India only on 01.02.2013 and was

dispatched to Kitab Mahal for offer to sale to public on 04.02.2013 and as per the mandatory directions provided in Section 25(1) of the Act and non-observance of the said direction, Notification No. 1/2013 would neither come into force nor be operative from 21.01.2013 and therefore the said Notification cannot be made applicable to the goods imported by the appellant which was cleared on 21.01.2013. She also argued that the legal proposition that whether Notification No. 01/2013 is operative from 21.01.2013 or on the date of publication in the Gazette and offered for sale to public, is no longer *res integra* and has been settled by the Hon'ble Apex Court in the following two decisions:

a. *Union of India Vs. M.D. Overseas Ltd. – 2017 (356) E.L.T. A136 (S.C)*
b. *Union of India Vs. Param Industries Ltd. – 2015 (321) E.L.T. 192 (S.C)*

5. On the other hand the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the appellant filed the Bill of Entry on 21.01.2013 and paid the Customs Duty @4% as per the demand by the Customs Department. Further we find that the goods were cleared at 5.40 pm on the same day. We also find that on the same day Notification 01/2013 dated 21.01.2013 was issued enhancing the rate of duty from 4% to 6% but the said Notification was not published in the Gazette of India and in fact it was published on 01.02.2013 and thereafter offered to public for sale on 04.02.2013. Further we note that as per Section 25(1) of the Act, the said Notification would come into force only on 04.02.2013 when it was offered for sale to the public. Further we find that on 21.01.2013 when the goods were cleared, the rate of Customs duty was 4% as per the unamended Notification 12/2012 dated 17.03.2012 and the appellant

has correctly paid the Customs duty on the said goods. Further we note that this issue is no more *res integra* and has been settled by the Hon'ble Apex Court in the two decisions relied upon by the appellant cited supra. We further note that the Hon'ble High Court of Gujarat at Ahmedabad in the case of **M.D Overseas Ltd.** has categorically held in para 18 as under:

> *"18. In our considered opinion, the proposition of law enunciated in the case of Param Industries Limited (supra) will govern the controversy raised in the present petition. The Division Bench of Karnataka High Court and the Apex Court in case of Param Industries Limited (supra) while dealing with issuance of notification issued under Section 14(2) of the Act has considered the provisions of sub-sections (4) and (5) of Section 25 of the Act has observed that for bringing the notification into force and making it effective, two conditions are mandatory, viz., (1) Notification should be duly published in the official gazette, (2) it should be offered for sale on the date of issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. Thus, in wake of the aforesaid observations, the contention raised by the learned counsel for the respondents that the said decision having been rendered in the context of the only provisions of Section 14(2) of the Act will not apply in the present case, is ill-founded. The judgment in case of Ruchi Soya Industries Limited (supra) relied upon by the learned Counsel for the respondent No. 2 cannot come to his rescue as the facts reveal that in the said case the Notification was published and offered for sale on the same date i.e. 17th September, 2015. Further in appeal, the Division Bench of Calcutta High Court vide judgment dated 23-2-2016 passed in M.A.T. No. 260 of 2016, though dismissing the same has observed that issuance of a notification by the Central Government for publication in the official gazette is enough for the notification to come into force but the follow up action is equally necessary which is to be done by Directorate of Publicity and Public Relations. Reliance placed on the judgment rendered by the Andhra Pradesh High Court in the case of Agarwal Industries Limited (supra) is also misconceived since we perceive that the view taken in Param Industries Limited (supra) will govern the present lis."*

6.1. Further we find that this decision of the Hon'ble Gujarat High Court was upheld by the Hon'ble Apex Court by dismissing the appeal of the Revenue which is reported in ***2017 (356) E.L.T. A136***.

Further, we find that the Apex Court in the case of **<u>Param Industries Ltd.</u>** on identical issue has held in para 7 as under:

> *"7. On the facts of these appeals as well, we find that though the notification may have been published on the date when the goods were cleared, it was not offered for sale by the concerned Board, which event took place much thereafter. Therefore, it was not justified and lawful on the part of the Department to claim the differential amount of duty on the basis of said notification. These appeals are, accordingly, allowed only on this ground and it is not necessary to go into other issues at all."*

7. Since the issue is squarely covered in favour of the appellant by the decisions of the Apex Court cited supra, therefore by following the ratio of the said decisions, we are of the considered view that the impugned order is not sustainable in law and therefore the same is set aside by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **20/08/2019**)

(S.S GARG)
JUDICIAL MEMBER

(P.V. SUBBA RAO)
TECHNICAL MEMBER

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