IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 40141 of 2019

(Arising out of Order-in-Original No. 12/2018 dated 15.10.2018 passed by Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

M/s. Shadiram and Sons Private Limited **...Appellant**
No. 19, South Raja Street,
Tuticorin - 628 001.

Versus

Commissioner of Customs **...Respondent**
Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

With

Customs Appeal No. 40142 of 2019

(Arising out of Order-in-Original No. 12/2018 dated 15.10.2018 passed by Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

Shri Sandeep Kumar Mohan, Director **...Appellant**
M/s. Shadiram and Sons Private Limited,
No. 19, South Raja Street,
Tuticorin - 628 001.

Versus

Commissioner of Customs **...Respondent**
Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

And

Customs Appeal No. 40143 of 2019

(Arising out of Order-in-Original No. 12/2018 dated 15.10.2018 passed by Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

M/s. Hari & Co. **...Appellant**
Customs Broker,
4/29E, Madurai Bye Pass Road,
Tuticorin – 628 006.

Versus

Commissioner of Customs **...Respondent**
Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

APPEARANCE:

For the Appellants : Shri N. Viswanathan, Advocate

For the Respondent : Shri R. Rajaraman, Assistant Commissioner / A.R.

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 27.06.2023
DATE OF DECISION : 15.09.2023

FINAL ORDER Nos.40826-40828/ 2023

Order : Per MR. VASA SESHAGIRI RAO

All these three appeals involve the same issue and as such being taken up together for disposal by this common order.

2.1 Brief facts are that the main appellant M/s. Shadiram and Sons Private Limited are engaged in the import and sale of agricultural produce through various ports in India and in the course of their business imported 29852.865 MTs of Yellow Peas by MV Riva Wind through the port of Tuticorin. The IGM dated 04.11.2017 for the subject vessel was reportedly filed with the Superintendent of Customs (IG) Tuticorin Customs on 06.11.2017 along with the form prescribed under Section 31 of the Customs Act, 1962 in which the said officer passed orders under Section 31(1) of the Act granting permission to the master of the vessel to enter inwards and to unload the cargo. In terms of Customs procedures specified imported goods can be unloaded only when there is an order given by the proper officer granting entry inwards to such vessel and according to Section 30(2), granting entry inwards is possible only where an import manifest has been delivered.

2.2 The Customs broker *viz.,* M/s. Hari and Co. representing the importer filed two Bills of Entry on 06.11.2017 through EDI claiming nil duty exemption for the peas imported in terms of Notification No. 50/2017-Cus dated 30.06.2017, which generated the numbers bearing No. 3876581 and 3876588 on the same date indicating that the same have been filed and self-assessed in terms of regulation 4 of the Bill of Entry (EID) Regulations, 2011.

2.3 The subject vessel had anchored at the port at 20.24 hours of 07.11.2017. The contention of the Department is that the Inspector of Customs had boarded the vessel at 10:00 hours in order to the complete arrival formalities and granted entry inwards at 12:00/12.50 hours on 08.11.2017. The appellant importer has raised a dispute on the fact of the date of inward entry as 06.11.2017 and not on 07.11.2017 on the basis of public notice dated 25.11.2016 of Nhava Sheva Customs.

2.4 An amending Notification No. 84/17 dated 08.11.2017 was issued by the Central Government to amend the exemption granted on peas from nil to 50%. An application made under the RTI Act, CBEC had categorically clarified that amending notification comes into effect only from the date and time of issue i.e., after 22.15 hours of 08.11.2017 which is much later to the admitted date and time of the entry inwards of the MV Riva Wind into the Tuticorin Port. The appellant has submitted that the proper officer of Customs instead of admitting the correct position of law had granted out of charge order for the subject goods self-assessed through EDI on 14.11.2017 and this order which was passed in terms of Section 47 of the Act *ibid* has not been revised in terms of Section 129 D of the Customs Act, 1962 and thus attained finality.

2.5 On the basis of Intelligence, the DRI, Tuticorin has ordered for stopping the unloading and seized the entire cargo on the ground that the appellant had not paid duty on the goods in terms of Notification No. 84/2017 dated 08.11.2017 which has imposed 50% duty on the import of peas. The cargo that was unloaded and kept in the port warehouse and also new SRS go down was also seized. The seized goods were released provisionally on execution of a bond with bank guarantee equal to 7.5% of duty liability in compliance with the order of the Hon'ble CESTAT, Chennai. The appellant importer had submitted a bond for a sum of Rs.59,15,70,344 with bank guarantee for a sum of Rs.2.30 crores.

3.1 After completing the investigations, the Show Cause Notice dated 31.05.2018 was issued on the ground as to why:-

i. the exemption from the payment of Customs duty claimed on the import of goods described as "Ukranian origin Yellow Peas in bulk new crop 2017" dated 31.05.2018 under Sl. No. 20 of the Notification No. 50/2017-Cus dated 30.06.2017 should not be denied as 'Peas' was excluded from Sl. No. 20 of the Notification No. 50/2017-Cus. dated 30.06.2017 *by* amending Notification No. 84/2017-Cus. dated 08.11.2017

ii. the date of Entry Inwards for the vessel MV Riva Wind entered by the proper officer in the EDI system after completing the boarding formalities at anchorage on 08.11.2017 should not be taken into account as the date for assessment of the Customs duty as per the Notification No. 84/2017-Customs dated 08.11.2017 read with proviso to the Section 15(1) of the Customs Act, 1962.

iii. the imported goods not be confiscated and penalty imposed apart from the demand of differential duty of Rs.39,88,50,918/- under Section 28(4) of the Customs Act, 1962.

iv. the Differential Duty should not be demanded along with interest by applying Notification No. 84/2017-Cus dated 08.11.2017 on the goods imported., and,

v. the penalty should not be imposed on them under Section 112 and 114A of the Customs Act, 1962 on account of collusion with an intention to evade Customs Duty and by rendering the subject goods liable for confiscation in respect of Bills of Entry filed.

3.2 After due process of adjudication, the Commissioner of Customs, Tuticorin have ordered denying the exemption from the payment of basic Customs duty claimed by the appellant on the import of yellow peas in bulk under Sl.No. 20 of the Notification No. 50/2017-Cus dated 30.06.2011 as 'Peas' was excluded from Sl.No. 20 of the Notification No. 50/2017-Cus dated 30.06.2017 by amending Notification No. 84/2017-Cus dated 08.11.2017. He has held that the date of port entry inwards i.e., 08.11.2017 for the vessel MV Riva Wind as entered by the proper officer in EDI system after the boarding formalities at anchorage on 08.11.2017 is the actual date of entry inwards and it has to be taken into consideration as the date for assessment of the Customs duty as per Notification No. 84/2017-Cus dated 08.11.2017 read with proviso to the Section 15 of the Customs Act, 1962. He has further ordered for confiscation of the goods imported by the appellants *vide* two Bills of Entry but gave an option to redeem the same on payment of fine of Rs.5 crores under Section 125 of the Customs Act, 1962. He has confirmed the differential duty of Rs.39.88 crores by applying the rate of duty at 50% in terms of Notification No. 84/2017-Cus dated 08.11.2017 on the goods imported under Section 28(10) of the Customs Act, 1962 along with interest. Further, a penalty of Rs.39.8 crores was imposed on the appellants under Section 114A of the Customs Act, 1962. Further, a penalty of Rs.2,00,000/- was imposed on Shri. Sandeep Kumar Mohan, Director, M/s. Shadiram and Sons Private Limited, Tuticorin and a penalty of Rs.1 crore was imposed on Mr. Hari & Co., Customs Broker, Tuticorin under Section 112(a) of the Customs Act on the ground that the importer intentionally had not brought the change of rate of duty by Notification No. 84/2017-Cus dated 08.11.2017 to the knowledge of the Department with the illegal cooperation of customs broker and also for rendering the imported goods liable for confiscation under Section 111 of the Customs Act, 1962. Hence, the main appellant *viz.,* M/s. Shadiram and Sons Pvt. Ltd., Shri Sandeep Kumar Mohan, the Director of the importing firm and M/s. Hari & Co. who was the Customs broker have filed these appeals.

3.3 The lower adjudicating authority has held the date of entry inwards as 08.11.2017 and is the date for determination of applicable rate of duty. Replying to the appellants' contention that the effect of the Notification No. 84/2017-Cus dated 08.11.2017 starts from the time at which the said Notification is e-gazetted. He has observed that the above Notification was issued under Section 25 of the Customs Act, 1962 and for taking effect of the Notification issued under Section 25, Section 25(4) stipulates that every notification issued under Sub-section (1) or Sub-section (2A) shall, unless otherwise provided, comes into force on the date of issuance of notification only is the criteria not the time, in as much as, time is not specified in the law. He has recorded a finding that the noticees have traversed beyond the scope of the cardinal principles of the statute for their own pecuniary benefits and held that the Notification No. 84/2017 dated 08.11.2017 takes effect form 00:00 hours of dated 08.11.2017.

3.4 It has been further held therein that the said Bills of Entry were filed on 06.11.2017 (before the date of entry inwards). On the said date (i.e., 06.11.2017) the vessel was not in the port limit and thereby, no chance of giving entry inwards by the officers. Whereas, noticees have claimed dated 06.11.2017 as the date of entry inwards for the subject vessel on the strength of endorsement made by the Superintendent (IG) on the agents letter dated 06.11.2017 filed for delivering import manifest. Whereas the fact is different that the vessel is in the port limit only on 07.11.2017 thereafter on 08.11.2017, the proper officer after inspection, granted entry inwards and the same was duly entered in the system at 12.50 hours on 08.11.2017.

4. The Ld. Advocate Shri N. Viswanathan representing the appellants has submitted that the time of publication of the Notification in the e-gazette will have application in the determination of the rate of duty and value. In support of his contention, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Union of India Vs. G.S. Chatha Rice Mills [2020 (374) ELT 289 (SC)].* He has also argued regarding invocation of provisions of Section 28(4) of the Customs Act, 1962, against the seizure and confiscation and imposition of penalties. During the hearing before the Tribunal, the Ld. Advocate has submitted that in the case of *Ruchi Soya Industries Ltd. Vs. Union of India [2022(382) ELT 333 (Cal.)],* by the Hon'ble High Court of Calcutta and in the case of *M/s. Faqir*

Chand Vinod Kumar & Co. Vs. Commissioner of Customs, Nhava Sheva-I [F.O. No. 85672/2023] by the CESTAT, Mumbai have allowed the appeals of the importers following the decision rendered by the Hon'ble Supreme Court in the case of G.S. Chatha Rice Mills (*supra)* which has to be treated as law of the land under article 142 of the Constitution of India.

5. The Ld. Authorised Representative Shri R. Rajaraman representing the Department has affirmed the findings of the Commissioner of Customs Order-in-Original No. 12/2018 dated 15.10.2018. He has submitted that amending Notification No. 84/17-Cus dated 08.11.2017 has imposed 50% duty on peas imported as this Notification was issued under Section 25 of the Customs Act, 1962 takes effect from 00.00 hours of 08.11.2017 in terms of Section 25(4) which stipulates that every notification issued under Sub-Section (1) or Sub-Section (2A) shall, unless otherwise provided, comes into force on the date of its issue by the Central Government for publication in the e-Gazette. He has argued that for payment of duty or availing any exemption, the date of issuance of Notification is the only criteria and not the time in as much as the time is not specified in the above said legal provisions. He has drawn our attention to the Ld. adjudicating authority's reliance on the decision by the Hon'ble CESTAT, New Delhi in the case of *Bharat Oxygen and Acetylene Co. Vs. Union of India [2001 (135) ELT 53 (Del.)]* wherein it was held that relevant date for rate of duty is the date of clearance of goods and not when ship enters into territorial waters in India and as such the Notification No. 84/2017-Cus dated 08.11.2017 is applicable for the impugned imported goods. Though the importer and the clearing agent were aware of the change in the rate of duty covering the impugned goods both have failed to bring to the knowledge of the Department and attempted to clear the goods in much time after the Notification No. 84/17-Cus dated 08.11.2017 came into effect and so duty demanded is legal and fine and penalties are rightly imposed.

6. We have considered the submissions made by both sides and also gone through the records, documents, etc., as available in these appeals.

7.1 The following date lines are important for deciding the issue in this appeal as submitted by the Ld. Advocate for the appellant:-

S. No.	Date	Particulars
1	30.06.2017	Notification No. 50/2017 Customs providing full exemption on the import of peas
2	06.11.2017	Filing of Import General Manifest with Customs, Tuticorin, for vessel M.V. Riva Wind along with form of entry inwards filed by the streamer agent Hari & Co., and admitted by the Superintendent of Customs (IG) and orders passed by him granting permission to the master of the impugned vessel to enter inwards and to unload the cargo in terms of Section 31 (1) of the Customs Act, 1962.
3	06.11.2017	Copy of pre-arrival Bills of Entry bearing Nos. 3876581 and 3876588 through EDI for the quantity of 29853 MTs of Ukrainian origin yellow peas *vide* contract dated 19.10.2017 and covered by Invoice Nos. JK/20180254-58 dated 19.10.2017 of JK International P Ltd., Australia.
4	07.11.2017	Document showing arrival of vessel "Riva Wind" at the Tuticorin port at 20:24 Hrs.
5	08.11.2017	Declaration for filing IGM filed with Inspector of Customs. Grant of entry inward and unloading of cargo at 12:50 PM/08.11.2017.
6	-	Copy of extracts of registers maintained by the Customs containing details of boarding etc.,.
7	08.11.2017	Bill of Entry assessed at 12:50 Hrs. on 08.11.2017 through EDI with Nil duty assessment.
8	08.11.2017	Issue of amending Notification No. 84/2017-Customs at 22:30 Hrs.
9	14.11.2017	Vessel berthed at the allotted berth and started discharge of the cargo
10	14.11.2017	Out of charge order issued by the proper officer

7.2 The substantive issue that is involved in the main appeal is the determination of effective date and time of implementation of amending Notification No. 84/2007-Cus dated 08.11.2017 imposing Customs duty of 50% on import of Ukrainian Origin Yellow Peas covered by the Bills of Entry Nos. 3876581 and 3876588 dated 06.11.2017 which were originally assessed at nil rate of duty *vide* exemption Notification No. 50/2017-Cus dated 30.06.2017.

7.3 Undisputed facts which have been admitted by both sides are as follows:-

i. Both the Bills of Entry were self-assessed and RMS facilitated on prior entry basis and grant of entry inwards was at 12:50 hours on 08.11.2017 through EDI.
ii. Amending Notification No. 84/2017-Cus dated 08.11.2017 was E-Gazetted at 22:15 hours by the proper officer.

7.4 As per proviso to Section 15(1) of Customs Act, 1962 where the Bill of Entry has been presented before the date of entry inwards of the vessel or the arrival of aircraft or vehicle carrying imported goods, the Bill of Entry shall be deemed to have been presented on the date of such entry inwards.

7.5 In this case, the Bills of Entry were filed before granting of entry inwards and it is the stand of the Department that rate of duty and valuation in force on the date, the Bill of Entry filed for home consumption is material irrespective of the fact that the notification was gazetted at late hour of that particular day.

7.6 We find that the Ld. Advocate has submitted that the findings recorded by the lower adjudicating authority interpreting provisions of Section 25(4) of the Customs Act, 1962 holding that the date of issue of the Notification is the criteria and not the time of its publication is totally contrary to the judgment of the Hon'ble Supreme Court in the case of *Union of India Vs. G.S. Chatha Rice Mills [2020 (374) ELT 289 (SC)]* wherein it was held that the time of publication in the e-gazette will have application in the determination of the rate of duty and value. There is no dispute in respect of these impugned imported goods as to the date of entry of the MV Riva Wind as 12:50 hours on 08.11.2017 and the publication of Notification No. 84/2017 dated 08.11.2017 only at 22:15 hours. The copy of the amending Notification is extracted for ready reference to evidence the time of its publication in e-gazette:-

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 8th November, 2017

No. 84/2017-Customs

G.S.R. 1376(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 amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 785(E), dated the 30th June, 2017, namely:—

In the said notification, in the Table,—

(i) against serial number 20, for the entry in column (3), the entry "Pulses except Peas (Pisum sativum) and Tur" shall be substituted;

(ii) after serial number 20 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:—

(1)	(2)	(3)	(4)	(5)	(6)
"20A	0713 10 00	Peas (Pisum sativum)	50%	-	-";

(iii) against serial number 37, for the entry in column (4), the entry "20%" shall be substituted.

[F. No. 354/68/2006-TRU]

MOHIT TEWARI, Under Secy.

Note : The principal notification No. 50/2017-Customs, dated the 30th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 785(E), dated the 30th June, 2017 and last amended vide notification No. 77/2017-Customs, dated the 13th October, 2017, published *vide* number G.S.R. 1298(E), dated the 13th October, 2017.

RAKESH SUKUL Digitally signed by RAKESH SUKUL Date: 2017.11.08 22:15:38 +05'30'

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7.7 Now, coming to the ratio of the above Hon'ble Apex Court decision in the case of UOI Vs. G.S. Chatha Rice Mills *Supra,* it is required to be discussed here as to whether the same would apply to the facts of the case in hand. The first point for consideration is that if Section 15 of the Customs Act, 1962 would have reference only to the date for determination of rate of duty and valuation of imported goods and it does not make any reference to time either latently or patently. Paragraphs 35 and 36 of the judgment in *G.S. Chatha Rice Mills* *(supra*) contain the answer to this query. Referring to the submissions of the Ld. ASG, it was said:-

> ***"35.*** *Mr. Natraj is textually right when he emphasizes that Section 15(1) contains a reference to date and not time. But there are two responses to his line of approaching the issue. First, the legislature does not always say everything on the subject. When it enacts a law, every conceivable eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense. Second, regulatory governance is evolving in India as new technology replaces old and outmoded ways of functioning. The virtual world of electronic filings was not on the horizon when Parliament enacted the Customs Act in 1962. Yet the Parliament has responded to the rapid changes which have been brought about by the adoption of technology in governance. In the provisions of Section 17 and Section 46, the impact of ICT-based governance has been recognized by the legislature in providing for the presentation of bills of entry in the electronic form on the customs automated EDI system. Precision, transparency and seamless administration are key features of a system which adopts technology in pursuit of efficiency. As we will explore in greater detail later in this judgment, technology has enabled both administrators and citizens to know precisely when an electronic record is uploaded. The considerations which Parliament had in its view in providing for crucial amendments to the statutory scheme by moving from manual to electronic forms of governance in the assessment of duties must not be ignored. Tax administration must leave behind the culture of an age in which the assessment of duty was wrought with delays, discretion, doubt and sometimes, the dubious. The interpretation of the court must aid in establishing a system which ensures certainty for citizens, ease of application and efficiency of administration.*
>
> ***36.*** *It is with these principles of interpretation in mind that we must evaluate the submission which was urged by Mr. Nataraj, on behalf of the Union, that upon the issuance of a notification enhancing the rate of duty under Section 8A of the Customs Tariff Act, 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. The submission cannot be accepted for several reasons. For one thing, it misses the significance of the expression "in force' which has been employed in the prefatory part of Section 15(1). A notification under Section 8A(1) of the Customs Tariff Act, even though it has the effect of amending the First Schedule, takes effect prospectively. Section 8A does not confer upon the notification an operation anterior to its making. In the language of the law, its operation is prospective. To accept the submission of the ASG would mean that the notification under Section 8A would have effect prior to its making, something which Parliament has not incorporated by language or intent. If, as we hold, the notification operates for the future beginning with the point of its adoption, it cannot operate to displace the rate of duty which is applicable when a bill of entry is presented for home consumption under Section 46.*
>
> *The submission of the Union cannot be accepted in view of the provisions contained in Section 46 for the presentation of a bill of entry for home consumption in an electronic form on the customs automated system. While making that provision, specifically by means of an amendment by Act 8 of 2011 and later by the Finance Act of 2018, Parliament used the expression "in such form and manner as may be prescribed." Regulation 4(2) of the Regulations of 2018 provides when the bill of entry shall be deemed to have been filed and self-assessment completed. The legal fiction which has been embodied in Regulation 4(2) emanates from the enabling provisions of Section 46. The provisions of Sections 15(1)(a), 17, 46(1) and 47(2)(a) constitute one composite scheme. As a result of the modalities prescribed for the electronic presentation of the bill of entry and self-assessment after the entry of the electronic declaration on the customs automated system, a*

> *bill of entry number is generated by the EDI system for the declaration. Regulation 4(2) provides for a deeming fiction in regard to the filing of the bill of entry and the completion of self-assessment. In the context of these specific provisions, it would do violence to the overall scheme of the statute to interpret the language of Section 15(1)(a) in the manner in which it is sought to be interpreted by the ASG. The submission of the ASG, simply put, is that because Notification No. 5/2019 was issued on 16 February, 2019, the court must regardless of the time at which it was uploaded on the e-Gazette treat it as being in existence with effect from midnight or 0000 hours on 16 February, 2019. The consequence of this interpretation would be to do violence to the language of Section 8A(1) of the Customs Tariff Act, and to disregard the meaning, intent and purpose underlying the adoption of provisions in the Customs Act in regard to the electronic filing of the bill of entry and the completion of self-assessment."*

After reproduction of these two paragraphs from G.S. Chatha Rice Mills Judgment, the one line conclusion that can be drawn there from is that Commissioner's findings on application of Section 15(1) is confined only to the date of notification is erroneous as to the applicability of any Notification issued is effective from the time it is published in the official gazette.

7.8 We find that the same issue was raised in the case of *Ruchi Soya Industries Ltd. Vs. Union of India [2022(382) ELT 333 (Cal.)],* the Hon'ble High Court of Calcutta has framed the main legal issues as follows:-

> **"2.** This writ petition has been filed by the petitioner being aggrieved by the action of the respondents customs authorities concerned charging enhanced rate of duty on the consignments in question on the basis of the impugned Notification No. 103/2020-Customs (N.T.), dated 29th October, 2020 effective and operational from 23:18:25 hrs. of 2020 by applying the same retrospectively and making prayer for quashing the impugned reassessment of bills of entry in question on the basis of which petitioner was asked to pay duty of higher tariff value for clearance of the goods in question.
>
> **3.** Main legal issues involve in this writ petition are as hereunder, -
>
> (i) Whether as per Section 15 of the Customs Act, 1962, for determination of the rate of duty and valuation of imported goods, in the case of goods in question which entered for home consumption under Section 46 of the Customs Act, only the date on which the bills of entry in respect of the goods is presented is the only criteria or the time of presenting the bill of entry on said date is also an essential criteria for determination of rate of duty?
>
> (ii) Whether action of the respondents customs authority concerned was legally justified in charging the enhanced rate of duty on the goods in question on the basis of the impugned Notification No. 103/2020-Customs (N.T.), dated 29-10-2020 which was e-gazetted and digitally signed on 29-10-2020 at 23:18:25 hrs. whereby Tariff Value of the subject goods was

enhanced from USD 755 MT to USD 782 MT while it is an admitted position substantiated by record that bills of entry relating to goods in question were already self-assessed on 23-10-2020 and 26-10-2020 at the prevailing rate of duty and Entry inward was granted to the vessel in question carrying the subject goods on 29-10-2020 at 11:00 hrs. which is the time prior to the time of coming into effect the aforesaid E-Gazette Notification dated 29-10-2020 at 23:18:25 hrs.?

(iii) Whether on the facts and in the circumstances of the case and in view of Section 15 read with Section 46 of the Customs Act, 1962 and in view of the law laid down by the Hon'ble Supreme Court in the case of *Union of India & Ors.* v. *G.S. Chatha Rice Mills & Anr.* reported in 2020 SCC OnLine SC 770 = 2020 (374) E.L.T. 289 (S.C.), charging at enhanced rate of duty on the goods in question on the basis of the aforesaid E-Gazette Notification dated 29-10-2020 by giving retrospective effect to it, is arbitrary, illegal and contrary to law?

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16. Before coming to the conclusion in this matter I would like to refer some provisions of Customs Act, 1962 which are relevant to this case and are quoted hereunder :

> **"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 or the vehicle 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."
>
> **"17. Assessment of duty.** - (1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods.
>
> (2) The proper officer may verify the entries made under Section 46 or Section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary :
>
> PROVIDED that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.
>
> (3) For the purpose of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document and furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

xx xx xx"

"46. Entry of goods on importation. - (1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.

xx xx xx

(3) The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) prescribing the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

PROVIDED that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival :

PROVIDED FURTHER that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India :

xx xx xx"

"47. Clearance of goods for home consumption. - (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption :

PROVIDED that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria :

PROVIDED FURTHER that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(2) The importer shall pay the import duty -

(a) on the date of presentation of the bill of entry in the case of self-assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment;"

"68. Clearance of warehoused goods for home consumption. - Any warehoused goods may be cleared from the warehouse for home consumption, if -

(a) bill of entry for home consumption in respect of such goods has presented in the prescribed form;

(b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer :
PROVIDED that the order referred to in Clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria :

xx xx xx"

8.1 Consequently, applying the ratio of the decision rendered by the Hon'ble Supreme Court in the case of G.S. Chatha Rice Mills *(supra)* and by the Hon'ble High Court of Calcutta in the case of Ruchi Soya Industries Ltd. *(supra)*, we hold that the Notification No. 84/2017-Cus dated 08.11.2017 comes into effect only from 22:15 hours on 08.11.2017. On considering the facts in the instant appeal that these Bills of Entry were filed on prior entry basis and the date and time of entry inwards being 12:50 hours on 08.11.2017, we hold that the order of the Commissioner of Customs *vide* Order-in-Original No. 12/2018 dated 15.10.2018 confirming demand of duty and interest, confiscation of the impugned imported peas and imposition of fine and penalty cannot sustain and so, requires to be set aside. Thus, we order accordingly.

8.2 As the duty demand and interest are set aside, confiscation of the imported goods and imposition of fine and penalty would not survive in respect of the main appellant *viz.,* M/s. Shadiram and Sons Private Limited , Shri Sandeep Kumar Mohan (Director) and M/s. Hari & Co. (Customs Broker) and are so set aside being not maintainable.

9. The appeals are allowed with consequential relief.

(Order pronounced in open court on 15.09.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)

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