IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. C/50760/2014-[DB]
[Arising out of Order-In-Appeal No. 46-NLB-COMMR-I & G-2013 dated 30.10.2013 passed by CC,(I&G) New Delhi]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B.Ravichandran, Member(Technical)

M/s Kundan Rice Mills Ltd. ...Appellant(s)

Vs.

C.C. New Delhi-I …Respondent(s)

Appearance:
Mr. Bipin Garg for the Appellant
Mr. Amresh Jain(DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member(Technical)

Date of Hearing/Decision:09.02.2017

Final Order No. 50572 /2017

Per B.Ravichandran:

The appeal is against the order dated 30.10.2013 of Commissioner of Customs (Import & General) New Customs House Airport, New Delhi. The appellants have imported Gold Bars liable to Customs duty and filed bill of entry on 21.01.2013 for clearing the said imported item. The goods were assessed, duty was discharged and the consignment was cleared on the same day. The Govt. issued Notification 1/2013-Cus. Dated 21.01.2013 amending the Notification 12/2012-Cus dated 17.03.2012 which had the effect of increasing the basic Customs duty from 4% to 6%. The department proceeded against the importer/ appellant to recover the differential duty of Customs as the amending Notification was effective from 21.01.2013, the date on which the goods were assessed and cleared. The impugned order confirmed the differential demand of Customs duty amounting to Rs. 61,68,773/-.

2. The Ld. Counsel for the appellant submitted that the appellants are not liable to differential duty as the amending Notification dated 21.01.2013 cannot be given effect from that date in terms of Section 25(4) of the Customs Act, 1962. It is his case that the said Notification was published in the Official Gazette only on 04.02.2013 and as such no differential duty arises on the import made on 21.01.2013. In support of his contention the appellant filed affidavit dated 07.02.2017 including the details furnished by Tax Research Unit, Ministry of Finance, Department of Revenue vide their letter dated 21.03.2014 as well as by the Manager Govt. of India Press, New Delhi vide his letter dated 27.08.2014.

3. We have heard both the sides and perused the appeal records.

4. The admitted facts are that the Notification 01/2013 dated 21.01.2013 which had affect on rate of duty, was sent for publication after the office hours of 21.01.2013 and was in fact printed and made available for public only on 04.02.2013. There is no dispute on these facts. The requirement of Section 25(4) of the Customs Act is very clear regarding the publication and offer for sale of Notifications issued by the Govt. In this regard, we refer to the decision of Hon’ble Supreme Court in Param Industries Ltd. 2015 (321) ELT 192 (S.C.). The Hon’ble Supreme Court was examining

the scope of publication and offer for sale of the Notifications issued under Customs Act. The observation of the Hon'ble Supreme Court relevant to the present case is as below.

> "**2.** Suffice is to state that in these proceedings, the respondent has ultimately succeeded inasmuch as this plea has been accepted and the Division Bench of the High Court has concluded that notification issued under Section 14(2) of the Customs Act cannot be held to have come into force with effect from 3-8-2001. There was some dispute as to whether the notification was published on 3-8-2011 itself or it was published on a later date. However, from the record, it gets revealed that the notification was sent for publication after the normal office hours, i.e., much after 5 p.m. on 3-8-2001. It was almost at the midnight, may be few minutes before 12 in the night. Even if it is to be treated as notification having been published on 3-8-2001 itself, i.e., just before the midnight, an issue has arisen as to whether it could be made effective qua the goods which were already cleared during the day time on the basis of earlier notification. However, it is not necessary to go into this issue at all.
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> **3.** What we find is that the High Court has stated that for bringing the notification into force and make 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 its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. In the present case, admittedly, second condition was not satisfied inasmuch as it was offered for sale only on 6-8-2001, as it was published on 3-8-2001 in late evening hours and 4/5-8-2001 were holidays."

5. In the present case, admittedly the Notification was printed, published and offered for public only on 04.02.2013 as such the affect of the Notification cannot be given to any day prior to that date. Accordingly, we hold that demand for differential duty of Customs on appellant as confirmed in the impugned order is not legally sustainable. Accordingly, the same is set aside, the appeal is allowed.

(Dictated and pronounced in open court)

(**B. Ravichandran**)
Member (Technical)

(**S. K. Mohanty**)
Member (Judicial)

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