

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

REGIONAL BENCH

**Customs Appeal No. 87088 of 2021**

(Arising out of Order-in-Appeal No. 858 (Gr.I & IA)/2021(JNCH)/Appeals dated 20.10.2021 passed by the Commissioner of Customs (Appeals), Mumbai-II.)

**M/s. Faqir Chand Vinod Kumar & Co.** .....Appellant  
**4094/95 Naya Bazar,  
Delhi – 110 006.**

*VERSUS*

**Commissioner of Customs, Nhava Sheva-I** .....Respondent  
**JNPT, Customs House,  
Nhava Sheva, Raigad,  
Maharashtra – 400 707**

**APPEARANCE:**

Shri Anil Balani, Advocate for the Appellant

Shri Sydney D'Silva, Addl. Commissioner, Authorised Representative for  
the Respondent

CORAM:

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**  
**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 85672/2023**

Date of Hearing: 27.01.2023  
Date of Decision: 03.05.2023

**PER: DR. SUVENDU KUMAR PATI**

Short issue involved in this appeal is the determination of effective date and time of implementation of Notification No. 93/2017-Cus. dated 21.12.2017 enhancing Customs duty to Rs.38,88,860/- on "Desi Chick Peas" with 30% rate of duty on bill of entry No. 4152457 dated 25.11.2017 that was assessed at 'nil' rate of duty available earlier *vide* exemption Notification No. 50/2017-Cus. dated 30.06.2017 before the enhancement being gazetted

which was made applicable to Appellant post assessment of bill of entry, at the prevailing 'nil' rate of duty as well as out of charge order was passed.

2. Facts of the case, in a nutshell, is that Appellant-importer filed bill of Entry No. 4152457 dated 25.11.2017 for clearance of 239.02 MTs. of "Desi Chick Peas" imported from Singapore with a declare assessable value of Rs.1,25,85,308/- and claimed 'nil' rate of duty in terms of Notification No. 50/2017-Cus. referred above. Arrival of the vessel in the port was reported to be on 21.12.2017, on which date the bill of entry was assessed at 'nil' rate and out of charge order was issued at 4:51 p.m. On the same day, Government of India published Notification No. 93/2017-Cus. at 22.45 hours revising the rate of duty of the goods in question to 30% from 'nil' rate of duty granted under Notification No. 50/2017-Cus., in exercise of the power conferred on it under Section 25 of the Customs Act, 1962. Taking support of provision of Section 15(1)(b), Section 25(4) of the Customs Act, the bill of entry was re-assessed under Section 17(4) of the Customs Act and Appellant was asked to pay the duty at 30% of the assessable value by the Original Authority vide his order dated 28.11.2019 Appellant's unsuccessful attempt before the Commissioner of Customs (Appeals), Mumbai-II has brought the dispute to this forum.

3. We have heard the matter at length from both the sides and perused the case record. Undisputed facts, as admitted by the adversaries, are as follows:-

(a) Bill of entry was already assessed at 'nil' rate of duty in the course of the day of arrival of the vessel in the port on 21.12.2017 and out of charged order had been granted to the Appellant at 4:41 P.M. on the same day.

(b) Notification No. 93/2017-Cus issued under Section 25 of the Customs Act, 1962 was gazetted at 22:45 hrs. on the same day i.e. on 21.12.2017.

(c) Section 15 of the Customs Act, 1962 clause-I proviso is applicable in the case of Appellant and the same indicates that even if, in cases where bill of entry has been presented before the date of entry of vessel inward or 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.

(d) Appellant's Counsel Mr. Anil Balani placed his reliance on the recent full Bench judgement of the Hon'ble Supreme Court passed in the case of *Union of India Vs. G. S Chatha Rice Mills* reported in 2020 (374) ELT 289 (SC) to substantiate his stand and the same fact is noted by the Commissioner (Appeals) in his order, but decision did not go with the *ratio* of the judgment, as he had distinguished it and finally held it to be not applicable.

4. The only disputed fact, therefore, is that the Commissioner (Appeals) did not agree that the ratio of the judgment of *G. S Chatha Rice Mills* case would determine the issue before him concerning

enforceability of the notification, its effective date and time of applicability enhancing the rate of duty and distinguished the same on the ground that the said order was passed in respect of notification issued under Section 8A(i) of the Customs Act, 1962 wherein it was held that such notification can take effect only prospectively whereas the present Notification No. 93/2017-Cus. was issued under Section 25(1) of the Customs Act and, was published vide G.S.R.1533(E) on dated 21.12.2017 for which its effective date of implementation would be from the beginning of date 21.12.2017 and, therefore, he noticed no error in the order passed by Original Adjudicating Authority.

5. This being the facts on record, discussion in this case is to be kept confined only to the effective date and time of enforceability of the notification. In this connection, it is noteworthy to highlight the important principles laid by the Hon'ble Supreme Court in the judgment of *G. S Chatha Rice Mills* and thereafter its application to the facts of the present appeal is to be examined.

6. Before going into detail of the principles laid down in the judgment, it is imperative to have a look at the findings of the Commissioner (Appeals) who had rejected the Appellant's plea on the following grounds-

(a) Learned Commissioner (Appeals) had placed his reliance on relevant portions of Section 15 of the Customs Act, 1962 that reads as hereunder:-

*"Section 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) .....*

*(c) .....*

*[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.]"*

to justify that rate of duty and valuation in force on the day goods entered for home consumption is material irrespective of the fact that the notification was gazetted at late hour of a particular day.

(b) He had also referred Clause 1 & Clause 4 of Section 25 of the Customs Act, 1962 as reproduced below:-

*"25 in the Customs Act, 1962*

*Section 25 - Power to grant exemption from duty:—*

*(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.*

*(2) .....*

- (3) .....
- (4) *Every notification issued under sub-section (1) or sub-section (2A)] shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette. to justify that the said notification came into force on the date it was issued by the Central Government for publication in the official gazette.”*  
*(underline to emphasis)*

to say that Section 25 Clause (4) would apply on the date of issue of notification by the Central Government for publication and that would be the effective date of its implementation.

(c) Then he distinguished the judgment of the Hon'ble Supreme Court passed in the case of *G. S. Chatha Rice Mills* to say that notification issued under Section 8A of the Customs Traffic Act, 1975 was dealt in the said judgment while this notification is issued under sub-Section 25 of the Customs Act and sub-Section 12 of Section 3 of the Customs Traffic Act, 1975, for which generality of expression found therein was not intended to be exposition of the whole law and therefore, the principle would not apply to the case on hand.

7. Now coming to the *ratio* of the judgment it is required to be discussed here as to if the same would apply to the case in hand or not. The first point for consideration here is that if Section 15 of the Customs Act 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. In our considered view, paragraph 35 & 36 of the judgment in *G.S. Chatha Rice Mills*

contains the answer to this query that formed the first ground of rejection of the appeal in the order of the Commissioner (Appeals).

Referring to the submissions of the learned 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 here is that Commissioner (Appeals)' finding on application of Section 15(1) is confined only to the date of notification is erroneous when it related to the notification issued by the Central Government.

8. Before going to the second ground of rejection by the Commissioner (Appeals) as referred in para (b) it would bring more clarity in bringing the third ground for discussion with reference to the judgment of *G.S. Chatha Rice Mills* concerning the standing of

the notification issued under Section 8A of the Customs Traffic Act or under Section 3 of the Customs Traffic Act read with Section 25 of the Customs Act. In this connection, it would be better if Section 8A of the Customs Traffic Act is reproduced below and the same is compared with the relevant text of the Customs Section 25(1)&(4) as has already been noted above.

*"8A. Emergency Power of Central Government to increase import duties. - Where in respect of any article included in the First Schedule, the Central Government is satisfied that the import duty leviable thereon under section 12 of the Customs Act, 1962 (52 of 1962) should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary :  
Provided that the Central Government shall not issue any notification under this subsection for substituting the rate of import duty in respect of any article as specified by an earlier notification issued under this sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (2).*

*(2) The provisions of sub-sections (3) and (4) of Section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of Section 7."*

*(emphasis supplied)*

9. After going through both the provisions it can only be stated that by virtue of the those provisions the legislation had empowered the Central Government to vary the Customs duty, to its satisfaction,

when circumstance so demands and while Section 8A of the Customs Traffic Act prescribes or increase of import duties, Section 25 prescribes for exemption from application of import duties, on certain articles, when it is expedient to do so on public interest or to meet the circumstances. Apart from these thin line distinction, what remains in common is the “standing of the Central Government” to enter into the legislative domain through a delegated authority, vested on it by the Parliament and it is in respect of this position/standing of the Central Government’s law making power that is being dealt by the Hon'ble Supreme Court in *G.S. Chatha Rice Mills* judgment, which can be summarized as here under:

(a) It was held that Section 5(3) of the General Clauses Act, 1897 that prescribes that Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement, unless the contrary is expressed, is not applicable to the notifications issued by the Central Government as they are neither ‘Central Act’ as per definition contained in Section 3(7) of the General Clauses Act nor ‘Regulations’ as defined in Section 3(50) of the said act and being delegated legislation it can’t have respective effect. In this context, we consider it proper to reproduce relevant portion of the judgment of the Hon’ble Madras High Court dealt in similar situation in *Ruchi Soya Industries Vs. Union of India* (W.P. No. 21207 of 2018), decided on 14.07.2020, that placed reliance on the decision of the Andhra Pradesh High Court in W.P. No. 4533 & 4534 of 2019 decided on 28.09.2019 and

has also been accepted by the Hon'ble Supreme Court as well as reproduced at para 58 of *G.S. Chatha Rice Mills* judgment. It reads:

*"58. With the change in the manner of publishing gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance. Notification No. 5/2019, which is akin to the exercise of delegated legislative power, under the emergency power to notify and revise tariff duty under Section 8A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of the electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the Notification No. 5/2019 applies to bills of entry presented for home consumption after the notification was uploaded in the e-Gazette at 20:46:58 hours on 16 February, 2019."*

10. We are, therefore, of the considered view that both the notifications issued under Section 25 of the Customs Act and Section 8A of the Customs Tariff Act stand on similar footings for being delegated legislation for not being an Act or Regulation as has defined in the General Clauses Act, for which fraction of time could have been ignored and Section 5(3) of the General Clauses Act, 1897 would not be applied to these notifications, as otherwise contrary is expressed by way of insertion of deeming provisions in Regulation 4(2) of Regulation 2018, and in enabling provision of Section 46 of the Customs Act, while Section 15(1)(a), 17 Section 46(1) and 47(2)(a) constitute one composite scheme, as has been held in the *G.S. Chatha Rice Mills* case relevant extract of which is already reproduced in the preceding paragraph 7.36, referred above that

should be read with Section 8 of the Information Technology Act, 2000 concerning the effect of notifications issued in e-gazette *vis.-a-vis.* Section 13 of the Information Technology Act that prescribes time and place of dispatch and receipt of Electrics record as well as publication of e-gazette under Section 8 of the Information Technology Act, 2000.

11. Now coming to the second ground of rejection, as referred in para 6(b) above, it could be said that in both Section 8A of the Customs Traffic Act and Section 25 of the Customs Act, it has been clearly stipulated that such notification can only be made through official gazette for which while reproducing the relevant sections, we have purposefully underlined these words: "by notification in the official gazette". In this context also since the effectiveness of the implementation of such notification is considered in *G.S. Chatha Rice Mills* case with reference to Section 8A, the same would also apply to section 25(1) of the Customs Act, as both are delegated legislations and not enactment of the Parliament. The distinction available in Section 25 at Clause 4 is held by learned Commissioner (Appeals) to have been taken for the purpose of determination of the applicability of the notification i.e. coming into force of the notification to the date on which it was issued by the Central Government for publication in the official gazette. In other words, to him, notification may not be published in official gazette but date of issue of it by the Central Government to the publication division of the gazette of India would govern its applicability. In this context we are not in agreement with

the Commissioner (Appeals) for two reasons. First, in Ruchi Soya case as referred above the concurrent view of both the High Courts of Andhra Pradesh & High Court of Madras found approval of the Hon'ble Supreme Court in *G.S. Chatha Rice Mills* case, as noted in para 9 of this order and second, but never the less, significant reason for non-acceptance of the views of Commissioner (Appeals) is that Section 25 Clause 1 starts with the wordings that the Central Government if satisfied and found it necessary in the public interest can exempt certain conditions for clearance of goods by notification in the official gazette in respect of notified goods of specified description from whole or part of Customs duty leviable, therefore, notification in the official gazette is the only way through which Central Government can exempt notified goods from levy of Customs duty and the same can never be done otherwise like preparing an office note and made effective upon being dispatched for publication in the official gazette, apart from the fact that sub-Section 4 prescribing for coming into force of such notification to the date of its issue is conditional/subjected to "provisions otherwise provided" and since such provision is expressively provided in Section 25(1), Section 25(4) can't operate/applied in exclusion of provision contained in Section 25(1) prescribing publication of notification in the official gazette as a pre-condition for exemption of duty or its withdrawal as has been case here.

12. It is, worth-mentioning here, that without making any observation as to the legality of the re-assessment of duty, after

goods were finally assessed at 'nil' rate of duty, prior to issue of Notification No. 93/2017-Cus. under Section 25 of the Customs Act lifting the exemption on "Desi Chick Peas" the Commissioner (Appeals) had confirmed the adjudication order whereby 30% Customs duty was imposed on reassessment. On this aspect he had completely ignored the findings of the Hon'ble Supreme Court in G.S. Chatha Rice Mills case wherein both Hon'ble Dr. D.Y. Chandrachud.J. as he then was and Hon'ble K.M. Joseph.J in separate concurring judgments, have clearly noted that re-assessment under Section 17 of the Customs Act was impermissible for the reasons that self-assessment was completed on the basis of rate of duty which was in force on the date and at the time of presentation of the bill of entry for home consumption as the applicable rate of duty was crystallized at the time and on the date of presentation of bill of entry in terms of provision of Section 15 read with Regulation 4(2) of Regulation, 2018, in which case Section 17(4) could not have been exercised since this is not a case where there was incorrect self-assessment of duty (para 67). Hon'ble Justice K.M. Joseph further added that the expression "otherwise" in section 17(4) will not come to the rescue of the Department in the fact of the instant case and will not empower the proper Officer to alter the rate of duty which was prevalent at the time of self-assessment and the same would be plainly impermissible being illegal (para 149). We, therefore, hold that re-assessment of duty post completion of self-assessment and out of charge order, on the basis of Notification No. 93/2017-Cus. published subsequent to such completion of assessment, is contrary to the provision of law as

has been interpreted by the Hon'ble Supreme Court in G.S. Chatha Rice Mills case. Hence the order.

THE ORDER

13. The appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai-II vide Order-in-Appeal No. 858 (Gr.I & IA)/2021(JNCH)/Appeals dated 20.10.2021 is hereby set aside with consequential reliefs including refund of duty paid upon re-assessment with applicable interest, to be complied by the Respondent-Department within three months of receipt of this order.

(Order pronounced in the open court on 03.05.2023)

**(Dr. Suwendu Kumar Pati)**  
**Member (Judicial)**

**(Sanjiv Srivastava)**  
**Member (Technical)**

*Prasad*