IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1816 OF 2021

Patanjali Foods Ltd.)
having its registered office at)
Ruchi House, Survey No.169,)
Royal Palms, Aarey Colony,)
Goregaon (East))
Mumbai 400065) ..Petitioner

Versus

1 Union of India)
To be served through Secretary,)
Ministry of Finance)
Department of Revenue,)
North Block, New Delhi 110001)

2 Commissioner of Customs (imports)
In the office of Commissioner of)
Customs (Imports))
Jawaharlal Nehru Custom House,)
Nhava Sheva, JNPT, Tal – Urang,)
Dist. Raigad, Maharashtra)

3 Deputy Commissioner of)
Customs (Gr. I))
Jawaharlal Nehru Custom House,)
Nhava Sheva, JNPT, Tal – Urang,)
Dist. Raigad, Maharashtra) ..Respondents

Mr. Rajesh Rawal a/w Mr. H. R. Shetty i/b H. R. Shetty and Associates for Petitioner.
Mr. Jitendra B Mishra i/b Mr/ Ram Ochani for Respondents.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 28th JUNE 2024

ORAL JUDGMENT (PER K. R. SHRIRAM J.) :

1 Rule. Rule made returnable forthwith and heard finally.

2 Petitioner had entered into four contracts with one Just Oil & Grain Pte. Ltd., Singapore, for import of 12,250 Mts of Crude Palm Oil of Edible Grade in Bulk (the said goods). The four contracts were dated 31st March 2021, 5th April 2021, 5th April 2021 and 16th April 2021 for 6000 Mts, 2500 Mts, 1500 Mts and 2250 Mts. respectively. The quantity actually supplied by the exporter was 12,127.577 Mts and was covered under fourteen Bills of Lading all dated 24th April 2021 per vessel MT Horizon V.04/21 (the said vessel). The said vessel arrived at port of Nhava Sheva on 10th May 2021. The quantity of 12,127.577 Mts was covered by three Invoices all dated 26th April 2021. Petitioner had filed Warehouse Bill of Entry dated 7th May 2021 for the entire quantity of 12,127.577 Mts and subsequently filed various Ex-Bond Bills of Entry all dated 13th May 2021 under the provisions of Section 68 of the Customs Act, 1962 (the Act) seeking clearance of the said goods for home consumption.

3 The dispute in the petition is restricted to 3465.024 Mts out of the total quantity of 12,127.577 Mts. Out of this 3465.024 Mts, 1485.010 Mts pertained to contract dated 5th April 2021 which was for 2475.016 Mts and 1980.014 Mts pertained to contract dated 16th April 2021 which was for 2227.515 Mts.

4 Petitioner had filed two Ex-Bond Bills of Entry being Bill of Entry Nos. 3939144 and 3938613 both dated 13th May 2021 for 1485.010 Mts under Section 68 of the Act, seeking clearance of the same for home consumption.

Petitioner also filed another two Ex-Bond Bills of Entry viz. Bill of Entry Nos. 3939169 and 3938622 both dated 13th May 2021 for the aforesaid quantity of 1980.014 Mts under Section 68 of the Act seeking clearance for home consumption.

5 It is petitioner's case that 'Tariff Value' in regard to the said goods was fixed at USD 1163 Per Metric Tone (PMT) vide Notification No.45/2021-Customs (N.T.) dated 30th April 2021 issued under Section 14(2) of the Act. As noted earlier, petitioner had filed four Ex-Bond Bills of Entry under Section 68 of the Act, seeking clearance of 3465.024 Mts for home consumption and in view of tariff value having been fixed for the said goods at USD 1163 PMT, for duty purpose, petitioner valued the goods in the four Bills of Entry referred earlier at USD 1163 PMT.

6 It is petitioner's case that the said goods merit classification under the Customs Tariff Heading 15111000 of the Customs Tariff Act and duty structure in regard thereto is Basic Customs Duty @ 15% plus Agriculture and Infrastructure Development Cess @17.5% plus Social Welfare Surcharges @ 10% plus IGST@ 5%. Accordingly Petitioner had filed the said four Ex-Bond Bills of Entry claiming classification and duty structure as referred earlier, under Section 68 of the Act, seeking clearance of 3465.024 MTs of the said goods for home consumption.

7 The said four Ex-Bond Bills of Entry as regards 3465.024 Mts were self assessed on 13th May 2021 as under:

(i) Ex-Bond Bill of Entry No. 3938613 (for 495.004 Mts) dated 13.5.2021 was assessed at 20:17 Hours. Further Ex-Bond Bill of Entry No. 3939144 dated 13.5.2021 (for 990.006 Mts) was assessed at 20:56 Hours.

Total demand payable as per the aforesaid duty structure was assessed to the tune of Rs.3,66,10,082/- in regard to Ex-Bond Bill of Entry No. 3939144 dated 13th May 2021, which was paid vide receipt dated 3rd June 2021. Further, total demand payable as per the aforesaid duty structure was assessed to the tune of Rs.1,83,05,078/- in regard to Ex-Bond Bill of Entry No. 3938613 dated 13th May 2021, which was paid vide receipt dated 8th June 2021.

(ii) Ex-Bond Bill of Entry No.3938622 (for 990.007 Mts) dated 13th May 2021 was assessed at 20:15 Hours. Further Ex-Bond Bill of Entry No.3939169 dated 13.5.2021 (for 990.007 Mts) was assessed at 20:59 Hours.

Total demand payable as per the aforesaid duty structure was assessed to the tune of Rs.3,66,10,119/- in regard to Ex-Bond Bill of Entry No. 3939169 dated 13th May 2021, which was paid vide receipt dated 4th June 2021. Further, total demand payable as per the aforesaid duty structure was assessed to the tune of Rs.3,66,10,119/- in regard to Ex-Bond Bill of Entry No. 3938622 dated 13th May 2021, which was paid vide receipt dated 7th June 2021.

8 On 13th May 2021 at 21:24:11 hours Notification No.47/2021-

Customs (N.T.) dated 13th May 2021 was e-Gazetted, having been digitally signed on 13th May 2021 at 21:24:11 hours, whereby tariff value of the said goods was increased from USD 1163 PMT to USD 1219 PMT. In view of the said Notification, the department sought to re-assess the said four Ex-Bond Bills of Entry while demanding duty on the enhanced tariff value of USD 1219 PMT. Petitioner pointed out to the department that requirements of Section 15 of the Act namely, the filing an assessment of the said four Ex-Bond Bills of Entry were fulfilled before the said Notification was e-Gazetted and since conditions of Section 15 of the Act stood determined prior to e-Gazette of Notification, the enhanced tariff value cannot be made applicable to the Ex-Bond Bills of Entry. It is petitioner's case that respondents did not pay any heed to the aforesaid submissions of petitioner and the department re-assessed the said four Ex-Bond Bills of Entry while demanding duty on enhanced tariff value @ USD 1219 PMT.

9 It is petitioner's case that Ex-Bond Bill of Entry No.3939144 dated 13th May 2021 was re-assessed on 4th June 2021; Ex- Bond Bill of Entry No. 3938613 dated 13th May 2021 was re-assessed on 9th June 2021; Ex-Bond Bill of Entry No. 3939169 dated 13th May 2021 was re- assessed on 7th June 2021 and Ex-Bond Bill of Entry No. 3938622 dated 13th May 2021 was re-assessed on 8th June 2021.

10 It is petitioner's case that the said re-assessment of the said four Ex-Bond Bills of Entry lead to payment of additional basic customs duty,

agriculture and infrastructure development cess, social welfare surcharge and IGST in total to the tune of Rs.61,69,890/-, which amounts were paid by petitioner under 'Protest' details of which are as follows:

(a) In regard to subject Ex-Bond Bill of Entry No. 3939144 dated 13th May 2021 additional demand was made to the tune of Rs.17,62,824/- which was paid vide receipt dated 5th June 2021.

(b) In regard to subject Ex-Bond Bill of Entry No. 3938613 dated 13th May 2021 additional demand was made to the tune of Rs.8,81,414/ which was paid vide receipt dated 9th June 2021.

(c) In regard to subject Ex-Bond Bill of Entry No. 3939169 dated 13th May 2021 additional demand was made to the tune of Rs.17,62,826/- which was paid vide receipt dated 7th June 2021 and

(d) In regard to subject Ex-Bond Bill of Entry No. 3938622 13th May 2021 additional demand was made to the tune of Rs.17,62,826/- which was paid vide receipt dated 9th June 2021.

11 Since petitioner's request is not accepted by the department, petitioner had no option but to move this court by way of this writ petition.

12 Mr. Rawal submitted that petitioner is only pressing for prayer clauses (b), (c) and (d), which read as under:

> *"(b) In alternate subject to what is stated above, issue a writ of mandamus or any other appropriate writ, order or direction that the Notification No. 47/2021-Customs (N.T.) dated 13.5.2021 is effective and operational from 21:24:11 Hour of 13.5.2021 only and not prior thereto and that the same is not applicable in the facts of the instant*

case;

(c) Issue a writ of certiorari or any other appropriate writ, order or direction quashing the re-assessment of the subject Ex-Bond Bills of Entry Nos. 3939144, 3938613, 3939169 and 3938622 all dated 13.5.2021 done by the Respondents while asking the Petitioner to pay duty on higher tariff value for clearance of the subject goods, as stated above;

(d) Issue a writ of mandamus or any other appropriate writ, order or direction while directing the Respondents, its officials, agents, servants etc. to pay and place at the disposal of the Petitioner an amount of Rs.61,69,890/- paid by the Petitioner with interest @12% p.a. from the date of deposit till the date of payment as consequence of grant of aforesaid prayers by this Hon'ble Court;"

13 Mr. Rawal submitted that the issue in the petition as to when the said Notification is stated to have come into force and what is the rate payable, has been considered in a similar matter by the Apex Court in ***Union of India & Ors. Vs. M/s G.S. Chatha Rice Mills & Anr.***[1] Mr. Rawal submitted that the Apex Court in *Chatha Rice Mills* (Supra) has held that the rate in force would be the rate that was in force on the date and time of presentation and in this case since self assessed bills of entry were already presented before the enhanced rate came into force, the rate payable would be USD 1163 PMT. Mr. Rawal submitted that the said Notification would apply only to bills of entry presented after 21:24:11 hours on 13th May 2021 and since petitioner's four Ex-Bond Bills of Entry were presented even before 21:00 hours, the Notification would not apply to petitioner's case.

14 Mr. Mishra for revenue in fairness accepted the proposition laid down by the Apex Court in *Chatha Rice Mills* (Supra). Mr. Mishra, as an officer of

1 2020 SCC Online SC 770

the court, accepts that the department is trying to distinguish *Chatha Rice Mills* (Supra). Mr. Mishra also reiterated whatever is stated in the affidavit in reply but his main thrust is that petitioner has an alternate remedy and should be told to file appeal against reassessment order. This submission of Mr. Mishra has to be rejected. Under Section 17 of the Act, sub Section (1) provides for an importer to self assess duty, if any, leviable on such goods. Sub Section (4) of Section 17 of the Act empowers the proper officer, if he finds on verification, examination or testing of the goods or otherwise that the self assessment is not done correctly, to reassess the duty leviable on such goods. Sub Section (5) of Section 17 of the Act provides that where the proper officer finds during the reassessment that it was contrary to the self assessment done by importer, except where the importer confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking order on the reassessment within 15 days from the date of reassessment of the bill of entry. Admittedly, in this case, no such speaking order has been passed. Therefore, even if we decide to direct petitioner to file the appeal, petitioner will not even know the ground on which the reassessment was made and how the reassessment was contrary to the self assessment done by petitioner. Petitioner, in fact, has approached this court purely on the basis of the bill of entry which was passed by the proper officer. Mr. Mishra fairly accepts the proposition of law laid down by the Apex Court in *M/s G. S. Chatha Rice Mills* (Supra), which simplifies our

task. The Apex Court as submitted by Mr. Rawal, has held that in terms of provisions of Section 15(1)(a) which would be the same as regards Section 15(1)(b), time and date of presentation of the bill of entry shall determined the rate and duty of tariff value. The court held that once the bill of entry is deemed to have been presented in terms of Regulation 4(2) of Electronic Integrated Declaration and paperless Processing, Regulations, 2018 (the said Regulations), the rate and value in force stands crystalised under Section 15(1)(b) of the Act. In the present case, the customs authorities have sought to exercise power of reassessment on the grounds of the subsequent Notification enhancing the rate of duty. The fact is that self assessment was carried out on the basis of the rate of duty which prevailed at the time of presentation of the bill of entry. It is rather strange that in the affidavit in reply the stand taken is that Section 15 does not make any reference to time and hence, irrespective of the point of time when the Notification has been published in the e-gazette, the rate of the duty leviable on imported goods cleared is the rate prevailing on the date of presentation of bills of entry. This is notwithstanding the fact that this very same argument has been rejected by the Apex Court in *M/s G. S. Chatha Rice Mills* (Supra).

15 The relevant paragraphs of *M/s G. S. Chatha Rice Mills (Supra)* are reproduced hereinbelow:

> *"41 The Regulations of 2018 have made provisions for submission of a declaration and generation of the bill of entry in an electronic form on*

the automated platform provided by the Central Board of Indirect Taxes and Customs. Sub-regulation (2) of Regulation 4 embodies a legal fiction. Regulation 4(2) stipulates that the bill of entry is deemed to have been filed and selfassessment completed when after the entry of the electronic integrated declaration on the customs automated system (or by data entry through a service centre) a bill of entry number is generated by the Indian Customs Electronic Data Interchange ("EDI") System. The self-assessed copy of the bill of entry may be electronically transmitted to the authorized person under the deeming fiction which is created by Regulation 4(2). Hence, the bill of entry is deemed to be filed and the self-assessment completed when the requirements of Regulation 4(2) are fulfilled namely by the (i) entry of the declaration on the customs automated system; and (ii) generation of a bill of entry number by the EDI system. Following this, the self-assessed copy of the bill of entry is electronically transmitted to the authorized person.

42 In terms of the provisions of Section 15(1)(a), in the case of goods which are entered for home consumption under Section 46, the date of presentation of the bill of entry determines the rate of duty and tariff valuation. Under Section 47(2)(a), the importer is obliged to pay the import duty on the date of the presentation of the bill of entry in the case of self-assessment. Regulation 4(2) of the Regulations of 2018 categorically stipulates when the presentation of the bill of entry is complete. Once the bill of entry is deemed to have been presented in terms of Regulation 4(2) the rate and valuation in force stand crystalized under Section 15(1)(a). Section 17(4) confers a power of re-assessment on the proper officer where it is found on verification, examination or testing of the goods or otherwise- that the self-assessment has not been done correctly. In the present case the customs authorities sought to exercise the power of re-assessment on the ground of the subsequent notification enhancing the rate of duty. The fact of the matter is that self-assessment was carried out on the basis of the rate of duty which prevailed at the time of the presentation of the bill of entry. This is not and cannot be a matter of dispute. Notification 5/2019, which introduced a new tariff entry – 980 60 000 - in the First schedule to the Customs Tariff Act covering all goods originating in or exported from the Islamic Republic of Pakistan, was not in force at the time when the self-assessment was carried out.

43 Under Section 15(1)(a) the rate of duty is the rate in force on the date of the presentation of a bill of entry where the goods are entered for home consumption under Section 46. The submission of the learned ASG is that the expression "on the date" is adopted by the legislature in clauses (a) and (b) and in the proviso to Section 15(1). He urged that Section 15(1) has no reference to time but only to the date of the presentation of the bill of entry and once a notification was issued on 16 February 2019 enhancing the rate of duty, that is the duty 'in force' on the date of presentation. Section 15(1)(a) uses two expressions (i) the rate and valuation "in force"; and (ii) "on the date" of the presentation of the bill of entry for home consumption under Section 46. The provisions of Section 15(1)(a) have to be read in

conjunction with the provisions of Section 46 which are referred to in the former provision. Section 46 has incorporated a regime which encompasses the submission of the bill of entry for home consumption or warehousing in an electronic format, on the customs automated system in the manner which is prescribed. The Regulations of 2018 stipulate the manner in which the bill of entry has to be presented. The deeming fiction in Regulation 4(2) specifies when presentation of the bill of entry and 'selfassessment' are complete. The rate of duty stands crystallized under Section 15(1)(a) once the deeming fiction under Regulation 4(2) comes into existence. The regulations have to be read together with the statutory provisions contained in Section 15(1)(a) and Section 46, while determining the rate of duty.

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63 Mr Natraj, on behalf of the Union, submitted that Parliament has employed the phrase "on the date" without making a reference to time. Hence, he submitted that irrespective of the time of the publication or uploading of the notification under the Customs Tariff Act in the e-Gazette, the legislature has by a legal fiction, enacted that the rate of duty on imported goods will be the rate that is prevalent on the date of the presentation of the bill of entry for home consumption. He submitted that two different rates of duty cannot be applicable on the same day. Hence, according to the submission, once a notification is issued under the Customs Tariff Act, it will be a notification in force on that date and apply with effect from the commencement of that date.

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65 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.

66 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.

67 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 selfassessment 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 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."*

Admittedly, in this case four Ex-Bond Bills of Entry have been presented before the said Notification came into force. One bill of entry was self assessed on 13th May 2021 at 20:17:07 hours, the second was self assessed at 20:56:11 hours, the third was self assessed at 20:15:09 hours and the fourth was self assessed at 20:59:08 hours, whereas, the Notification was e-gazetted on 13th May 2021 at 21:24:11 hours.

Therefore, the rate of duty that will be applicable will be USD 1163 PMT, which was in force when the four Ex-Bond Bills of Entry were presented. Reassessment orders referred to in paragraph 9 above are hereby quashed and set aside.

16 Mr. Mishra also submitted that petitioner had not even filed a refund application and refund application ought to be filed within one year as provided under Section 27 of the Act. The Apex Court in ***ITC Ltd. Vs. Commissioner of Central Excise, Kolkata IV***[2] relied upon by Mr. Mishra, has observed that the second proviso to section 27 makes it clear that limitation of 1 year shall not apply where any duty or interest has been paid under protest. At the same time, in *ITC Ltd.* (Supra) the Apex Court in paragraph 37 held that under Section 27(2)(a) it is incumbent upon the applicant to

2 (2019) 17 Supreme Court Cases 46

satisfy that the amount of duty or interest of which refund has been claimed, had not been passed by him to any other person, the provision aims at preventing unjust enrichment.

17 In these circumstances, we allow the petition in terms of prayer clauses (b) and (c) as quoted above.

18 Since the reassessment has been quashed and it has been held that the said Notification will not apply to the facts of the present case, petitioner may file an application for refund to the proper officer, who shall consider the refund application and dispose the same in accordance with law within 12 weeks of the application being made. Mr. Rawal states that the refund application will be filed within 8 weeks from today. Statement accepted. Before passing any order a personal hearing shall be given to petitioner, notice whereof shall be communicated atleast seven working days in advance.

19 Petition disposed.

(JITENDRA JAIN, J.) (K. R. SHRIRAM, J.)