Collector of Central Excise

Vs

New tobacco Co. And others

Civil Appeals No. 4569 of 1989

(S. C. Agarwal, G. T. Nanavati JJ)

09.01.1998

JUDGMENT

NANAVATI, J. –

1. In this batch of cases, the question that arises for consideration is whether a Central Excise notification comes into force with effect from the date on which it is printed in the Government Gazette or from the date it is made available to public.

2. To illustrate the circumstances in which this question arises, we will state the facts of Civil Appeal No. 4569 of 1989. The Company involved in this appeal is the New Tobacco Company Limited. It was earlier known as Duncan Tobacco Company. It is engaged in manufacturing cigarettes. Since 1979, it used to pay duty on cigarettes manufactured by it at the rate fixed by Central Excise Notification No. 30/79 C.E. dated 1-3-1979, as amended from time to time. It was rescinded with effect from 30-11-1982 by Notification No. 284/82-C.E. dated 30-11-1982, which prescribed new rates of excise duty. Between 30-11-1982 and 8-12-1982, the Company cleared 79,456 million cigarettes and paid duty thereon at the rate fixed by the notification dated 1-3-1979, as it did not know that a new notification was issued on 30-11-1982. As the Company had paid duty at a lesser rate, a show-cause notice dated 22-12-1982, was issued calling upon the Company to show cause why it should not pay the differential amount between the duty short-paid and the duty which had become payable in terms of the new notification dated 30-11-1982. The Assistant Collector by his order dated 11-4-1983, confirmed the said demand. The order of the Assistant Collector was upheld by the Collector of Central Excise (Appeals) on 4-10-1985. It then appealed to the Customs, Excise and Gold (Control) Appellate Tribunal. The only contention pressed by the Company therein was that the notification dated 30-11-1982 was made available to the public on 8-12-1982 and, therefore, duty at the enhanced rate could be lawfully demanded from it only from 8-12-1982. In support of its contention the Company had produced a letter dated 2-8-1983 obtained by its sister concern M/s National Tobacco Company from the Controller of Publications, Department of Publication, Ministry of Finance, Government of India, which stated that Notification No. 284/82 dated 30-11-1982 was placed for sale to the public on 8-12-1982. The Tribunal relying upon the said letter and the decision of the Bombay High Court in G.T.C. Industries Ltd. v. Union of India [(1988) 33 ELT 83 : (1987) 13 ECR 1161 (Bom)] held that publication as contemplated by Section 38 of the Central Excises and Salt Act, 1944 and Rule 8 of the Central Excise Rules, cannot be equated with mere printing and it is the availability of the printed material to the general public that constitutes the required publication. Taking this view, it further held that the excess recoveries of duty made during the period from 30-11-1982 to 8-12-1982 cannot be retained by the authorities as the Company was not liable to pay duty at the rate fixed by the notification dated 30-11-1982 for the said period. The Collector of Central Excise has, therefore, filed this appeal under Section 35-L(b)

of the Act.

3. It was contended by the learned counsel for the appellants that the only requirement of Section 38 of the Act is that all the rules made and notifications issued under the Act shall be published in the Official Gazette. Thus publication in the Official Gazette is the only statutory requirement. The notification is dated 30-11-1982 and the Gazette in which it was printed also bears the same date, i.e., 30-11-1982 and, therefore, that date should be regarded as the date of its publication. On the other hand, it was contended by the learned counsel for the respondents that publication cannot be equated with mere printing and it is the availability of the printed material to the general public that constitutes publication as required by the statute and the rules of natural justice.

4. Section 38 of the Act provides that all the rules made and notifications issued under the Act shall be published in the Official Gazette. So, the requirement of Section 38 is publication of the rules and the notifications in the Official Gazette. The dictionary meaning of the word "publish" as given in Webster Comprehensive Dictionary, International Edn., is "(1) To make known or announce publicly; promulgate; proclaim. (2) To print and issue to the public. (3) To communicate to a third person". According to the Legal Glossary, published by the Legislative Department, Ministry of Law, Justice and Company Affairs, Government of India in 1992, it means "to make generally accessible or available; to place before or offer to public; to bring before the public for sale or distribution". Thus the word "publish" connotes not only an act of printing but also further action of issuing or making it available to the public. Notification, according to Webster's Third New International Dictionary, inter alia means "1. the act or an instance of notifying : Intimation, Notice; est : the act of giving official notice or information; 2. A written or printed matter that gives notice". The Legal Glossary, referred to above, defines it as "a written or printed matter that gives notice". Even if we go by the dictionary meaning the requirement of publishing the notifications would connote that what is intended to give notice or information to the public can be treated as published only when it is made available to the public so that they can know about it. The requirement of publishing the notifications in the Official Gazette, which is an official journal or a newspaper containing public notices and other prescribed matters, also indicates that the word "publish" in Section 38 should be so interpreted.

5. We will now refer to the decisions to which our attention was drawn by the learned counsel. In Harla v. State of Rajasthan [AIR 1951 SC 467 : 1952 SCR 110] the facts were that a Council of Ministers, appointed to look after the Government and Administration of Jaipur State during the Maharaja's minority, passed a resolution which purported to enact the Jaipur Opium Act and the question which had arisen for consideration of this Court was whether the mere passing of the resolution without promulgation or publication in the Gazette or other means as known to the public was sufficient to make it law. This Court referred to the rule prevailing in this behalf in England that Acts of Parliament become law from the first moment of the day on which they received the Royal assent, but the Royal proclamations only when actually published in the Official Gazette and cited with approval the decision in Johnson v. Sargant & Sons [(1918) 1 KB 101 : 87 LJKB 122) wherein it was held that the order of the Food Controller did not become operative until it was made known to the public. This Court also noticed that "nor is the principle peculiar to England". It was applied to France by the Code Napoleon, the first Article of which states that the laws are executory "by virtue of the promulgation thereof' and that they shall come into effect "from the moment at which their promulgation can have been known". It also pointed out that such a rule has applied in India in, for instance, matters arising under Rule 119 of the Defence of India Rules. It then made an important observation that this rule was only an application of a deeper rule which is founded on natural justice. It has further observed that

> "it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential".

Taking this view this Court held that a resolution of the Council of Ministers in Jaipur State without publication was not sufficient to make the law operative.

6. In State of Maharashtra v. Mayer Hans George [AIR 1965 SC 722 : (1965) 1 SCR 123] what had happened was that a German smuggler left Zurich for Manila by a Swiss plane on 27-11-1962 with 34 kilos of gold. He had not declared it in the manifest for transit. The plane arrived at Bombay on 28-11-1962. The passenger had remained in the plane. The Customs authorities, on search, recovered the gold carried by him on his person. He was prosecuted for importing gold into India in breach of Sections 8(1) and 23(1-A) of the Foreign Exchange Regulation Act and the notification dated 8-11-1962 of the Reserve Bank of India, which was published in the Gazette of India on 24th November. The respondent was convicted by the Magistrate but acquitted by the High Court. One of the contentions raised by him was that a notification being merely subordinate and delegated legislation could be deemed to be in force only when it was brought to the notice of the persons affected by it and that as the same was published in the Gazette only on 24-11-1962 whereas he left Zurich on 27-11-1962, he could not have had knowledge about the restrictions imposed by that notification. This Court rejecting that contention held that the notification was published and made known in India by publication in the Gazette and the ignorance of it by the accused who was a foreigner was wholly irrelevant and made no difference to his liability. Relying upon the decision it was contended by the learned counsel for the respondent that it is the cardinal principle of the criminal jurisprudence that a person should not be convicted for an offence unless the person of persons affected by the prohibition are in a position to observe the law or to promote the observance of the law. The said observation was made by this Court in the context of mens rea being a necessary ingredient of the offence. In that very case this Court has observed that individual service of a general notification on every member of the public is not necessary and all that the subordinate law-making authority can or need do, would be to publish it in such manner that persons can, if they are interested, acquaint themselves with its contents.

7. In State of M.P. v. Shri Ram Ragubir Prasad Agarwal [(1979) 4 SCC 686 : AIR 1979 SC 888] while interpreting the word "publish" in Section 3(2) of M.P. Prathamik, Middle School Tatha Madbyamik Shiksha (Pathya Pustakon Sambandhi Vyavastha) Adhiniyam, this Court observed that : (SCC p. 695, para 21)

> "In our view, the purpose of Section 3 animates the meaning of the expression

> 'publish'. 'Publication' is 'the act of publishing anything; offering it to public notice, or rendering it accessible to public scrutiny ... an advising of the public; a making known of something to them for a purpose'. Logomachic exercises need not detain us because the obvious legislative object is to ensure that when the Board lays down the 'syllabi' it must publish 'the same' so that when the stage of prescribing textbooks according to such syllabi arrives, both the publishers and the State Government and even the educationists among the public may have some precise conception about the relevant syllabi to enable Government to decide upon suitable textbooks from the private market or compiled under Section 5 by the State Government itself. In our view, therefore, 'publication' to the educational world is the connotation of the expression. Even the student and the teaching community may have to know what the relevant syllabus for a subject is, which means wider publicity than minimal communication to the departmental officialdom."

8. Following this judgment the Madras High Court in Asia Tobacco Co. Ltd. v. Union of India [(1984) 18 ELT 152 (Mad)] held that in such cases the effective date is the date of knowledge and not the date of the Official Gazette. The relevant observations made in para 14 of the said judgment are as under :

> "The mere printing of the Official Gazette containing the relevant notification and without making the same available for circulation and putting it on sale to the public will not amount to the 'notification' within the meaning of Rule 8(1) of the Rules. The intendment of the notification in the Official Gazette is that in the case of either grant or withdrawal of exemption the public must come to know of the same. 'Notify' even according to ordinary dictionary meaning would be 'to take note of, observe; to make known, publish, proclaim; to announce; to give notice to; to inform'. It would be a mockery of the rule to state that it would suffice the purpose of the notification if the notification is merely printed in the Official Gazette, without making the same available for circulation to the public or putting it on sale to the public. ... Neither the date of the notification nor the date of printing, nor the date of Gazette counts for 'notification' within the meaning of the rule, but only the date when the public gets notified in the sense, the Gazette concerned is made available to the public. The date of release of the publication is the decisive date to make the notification effective. Printing the Official Gazette and stacking them without releasing to the public would not amount to notification at all. ... The respondents are taking up a stand that the petitioner is expected to be aware of the Withdrawal Notification and that the words 'publish in Official Gazette' and the words 'put up for sale to public' are not synonymous and offering for sale to public is a subsequent step which cannot be imported into the Act, and the respondents are expressing similar stands. They could not be of any avail at all to the respondents to get out of the legal implications flowing from want of due notification, as exemplified above. Printing the notification in the Official Gazette, without making it available for circulation to the public concerned, or placing it for sale to the said public, would certainly not satisfy the idea of notification in the legal sense."

9. The same view was taken by the Bombay High Court in GTC Industries Ltd. v. Union of India [(1988) 33 ELT 83 : (1987) 13 ECR 1161 (Bom)] and by the Delhi High Court in Universal Cans and Containers Ltd. v. Union of India [(1993) 64 ELT 23 (Del)].

10. The following observations made in the case of B. K. Srinivasan v. State of Karnataka [(1987) 1 SCC 658] also support the view that we are taking : (SCC p. 672, para 15)

> "Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes's 'unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must be so made it can be known."

11. Our attention was also drawn to the decisions of this Court in Pankaj Jain Agencies v. Union of India [(1944) 5 SCC 198] and I.T.C. Ltd. v. CCE [(1996) 5 SCC 538] but they are not helpful in deciding the question that arises in these cases.

12. We hold that a Central Excise notification can be said to have been published, except when it is provided otherwise, when it is so issued as to make it known to the public. It would be a proper publication if it is published in such a manner that persons can, if they are so interested, acquaint themselves with its contents. If publication is through a Gazette then mere printing of it in the Gazette would not be enough. Unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published.

13. As the view taken by the Tribunal is correct Civil Appeal No. 4569 of 1989, filed by the Collector of Central Excise, is dismissed with a direction that entitlement of the respondent-Company to the refund shall be determined by the Assistant Collector of Central Excise in accordance with Section 11-B of the Central Excise Act.

14. Civil Appeals Nos. 4513-4514 of 1992 are dismissed.

15. Civil Appeals Nos. 1658-61 of 1994 and Civil Appeals Nos. 7719-21 of 1996 are partly allowed. The impugned judgments and orders passed by the High Court are set aside and the Assistant Collector of Central Excise to whom these cases have been remitted for considering the question of refund in the light of Section 11-B of the Central Excise Act shall decide when the notifications concerned became effective in accordance with the view that we have taken and after giving an opportunity to the respondents to lead evidence in that behalf.

16. Civil Appeal No. 1729 of 1993 is partly allowed. We set aside the order passed by the High Court directing the appellants to refund Rs 35,57,094.74 and remit the matter on this point to the Assistant Collector of Central Excise to decide the entitlement of the respondent for refund in the light of Section 11-B of the Central Excise Act.

17. Civil Appeal No. 3111 of 1993 is dismissed.

18. Civil Appeals Nos. 7684 and 7685 of 1996 and Civil Appeals Nos. 4913-15 of 1993 are allowed. The impugned judgments and orders passed by the High Court are set aside and these matters are remitted to the Assistant Collector of Central Excise for deciding when the notification concerned became effective in accordance with what we have held above and after giving an opportunity to the appellant Company to produce evidence in that behalf and also to decide thereafter the question of refund in accordance with Section 11-B of the Central Excise Act.

19. Civil Appeal No. 10001 of 1995 is dismissed.

20. Civil Appeal No. 5423 of 1993 is partly allowed. The impugned judgment of the Tribunal is set

aside and the case is now remitted to the Tribunal to decide when the notification concerned had become effective after enabling the parties to lead evidence in that behalf and also to decide the other contentions raised by the respondent Company and which were left open, if that becomes necessary.

21. Civil Appeals Nos. 7534-35 of 1995 is dismissed as the demand for differential duty was in respect of the goods cleared on 25-3-1985 only and admittedly the notification in question was not made available on that date till the goods were cleared by the Company.

22. In SLP (C) No. 19566 of 1994 we grant leave and partly allow this appeal. The impugned judgment and order passed by the High Court are set aside and these matters are remitted to the Assistant Collector of Central Excise for deciding when the notification concerned became effective in accordance with what we have held above and after giving an opportunity to the appellant Company to produce evidence in that behalf.

23. We pass no order as to costs in all these appeals.