

Garware Nylons Ltd.

Vs

Collector of Customs & Central Excise, Pune

Civil Appeal No. 296 of 1992

(Sujata V. Manohar, S. Saghir Ahmed JJ)

04.03.1998

ORDER

1. The appellant-Company had imported pure tarethalic act (PTA). After import the goods were warehoused in a customs-bonded warehouse. The appellant effected certain clearances in the month of October and paid customs basic duty @ 100% and auxiliary duty @ 40% and claimed exemption from payment of additional duty on the basis of Notification No. 102/77/Cus. dated 1-7-1977 read with Notification No. 35/83/Cus. dated 1-3-1983. By notification dated 30-9-1985, the customs basic duty was enhanced from 100% to 150% with effect from 30-9-1985.

2. The question is whether the enhanced rate of duty on the basis of the notification dated 30-9-1985 was applicable in respect of goods which were cleared from the warehouse during the period from 30-9-1985 till 31-10-1985. The case of the appellant-Company is that the notification dated 30-9-1985 came into effect only from 1-11-1985 since it was made available to the public for sale on that date. Reliance has been placed on the letter dated 2-1-1986 from the Assistant Collector (Periodicals), Ministry of Works and Housing, Department of Publication, Civil Lines, Delhi which reads as follows :

"With reference to your Letter No. GN/85/10 Misc. dated 8-10-1985 regarding the date of availability of Gazette of India Extraordinary Part II Section 3 sub-section (i) dated 30-9-1985 No. 439. I write to inform you that the above-mentioned Gazette was made available for public sale on 1-11-1985 as per record of this Department."

The Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"), by judgment dated 30-9-1991, has held that even though on the basis of the aforesaid letter dated 2-1-1986, the notification dated 30-9-1985 became available for the public on 1-11-1985 but since the appellant-Company had written the letter dated 8-10-1985 seeking information regarding the date of availability of the Gazette containing the said notification, the appellant-Company was aware of the notification on 8-10-1985 and, therefore, the said notification regarding enhancement of duty was effective from 8-10-1985. The Tribunal has held that the appellant-Company could only get the benefit of the rate of duty under these earlier notifications up to 7-10-1985 and that with effect from 8-10-1985 the appellant-Company was liable to pay the differential duty on the notification dated 30-9-1985.

3. Shri Ramesh Singh, the learned counsel appearing for the appellant-Company, has submitted that in view of the letter dated 2-1-1986 from the Assistant Collector (Periodicals) stating that the Gazette was made available for public for sale on 1-11-1985, the effective date of the notification dated 30-9-1985 has to be treated as 1-11-1985 and the said notification should have been made

applicable only with effect from 1-11-1985. Reliance has been placed by the learned counsel on the recent judgment of this Court in CCE v. New Tobacco Co. [(1998) 8 SCC 250 : (1998) 1 Scale 58] wherein it has been laid down :

"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 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."

4. In view of the law laid down in the said decision, the notification dated 30-9-1985 can be said to have been duly published when it is made known to the public. In the present case, the letter from the Assistant Collector (Periodicals) dated 2-1-1986 indicates that copy of the Gazette containing the notification dated 30-9-1985, after printing, became available for public sale only on 1-11-1985. It must, therefore, be held that the effective date of the notification dated 30-9-1985 was 1-11-1985.

5. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside and it is directed that the appellant-Company is liable to pay differential duty with effect from 1-11-1985. If any application is made for refund of the excess duty, if any, paid by the appellant-Company, the same shall be dealt with in accordance with law. No order as to costs.