

**Conic Electronics P. Ltd. Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT

**Decided On :** Aug-13-1998

**Reported in :** (1999)(80)LC365Tri(Bang.)alore

**Judge :** S Peeran, A T V.K.

**Appellant :** Conic Electronics P. Ltd.

**Respondent :** Cce

**Judgement :**

1. This is an appeal against the Order-in-Appeal No. 348/88(B) dated 30.11.1988. The short point of dispute is whether the Notification No.236/87 dated 12.10.1987 is effective from that date or from the date on which it is published in the official Gazette and put on sale to the public.

2. Heard the learned advocate Shri G. Sampath for the appellants and the learned D.R. Smt. Aruna Gupta for the revenue.

Even though the notification is dated 12.10.1987, actually, it was made known to the public and in particular to the appellant when it was reproduced in the local news paper Deccan Herald - the issue date 15. 10. 1987.

As per the ratio decisions contained in the undermentioned cases, the effective date of the Notification would be the date on which the official gazette in which it is published is put on sale to the public. He cited as follows: In this case it is held that the exemption notification having the effect of enhancing the earlier effective rate

of duty - comes into force from the date on which copies of the official gazette containing it are made available to the public of a place where normally such a notification is made available.

Notification enhancing rate of duty applicable only from the date of its publication in the Gazette and release of the Gazette for public sale.

It is held in this case that the effective date of a Notification is neither the date of notification or the date of its printing nor the date of gazette but the date when the official gazette first put on sale to the public.

Mere printing of Notification in the official Gazette not amount to notification unless made available for circulation.

It is held in this case, that withdrawal of concession could be enforced only from the date from which it is known to the public and till then benefit of earlier notification will continue to operate.

In these cases also it is held that effective date of a notification is from the date on which it is put on sale.

The Hon'ble Tribunal also had laid down the same ratio in the under mentioned cases.

It is also held in (ii) above that the burden of proof is on the department to show the date of publication.

The Hon'ble Tribunal in the case of Gulab Impex Enterprises - has held that in the case of public-notice, date of publication in Gazette-is immaterial when not known to the public on that date and such notice would take effect only from the date it is made known to the public.

In the instant case, the appellant learnt the withdrawal of exemption only on 15.10.1987 on seeing the public notice in the Deccan Herald. In fact, the Notification was communicated to the trade by the Collector under his Trade Notice No. 198/97 dated 26.10.1987. The appellant sought for information from the Controller of Publication, Civil Wing, New Delhi regarding the date of publication

and put on sale and he intimated to the appellant that the practice of informing the date of availability of the Gazette has been discontinued. In fact, the appellant has also filed a sworn affidavit to the effect in the appeal. This evidently proves that the department is hiding the actual date of availability of the Gazette to the public to overcome with judicial pronouncements on the issue.

The Hon'ble Supreme Court in the recent decision in the under mentioned cases, has held that the effective date of Notification is from the date the said Notification is put on sale to the public.

Ganvare Nylons Ltd. - ; CCE v. New Tobacco Co.

In these cases the Hon'ble Supreme Court has held that if publication is through a Gazette, a mere printing of it in the Gazette would not be enough and unless the Gazette containing the Notification is made available to the public, the notification cannot be said to have been duly published. It was therefore, submitted that the duty demanded from 12.10.1987 to 14.10.1987, is illegal and prayed that the impugned order may be set aside in toto with consequential relief in the interest of justice.

3A. Heard the learned D.R., who reiterates the impugned Order-in-Appeal and submits that the burden to show the date on which the Gazette of India concerned was put for sale is on the appellants and since the appellants have not been able to provide the date of sale, therefore, it would be the date on which the Gazette was published, it would be applicable for the purposes of effectiveness of this Notification.

4. We have carefully considered the arguments on both sides as well as the records of the case. The learned Collector (Appeals) has in the impugned order, rejected the present appellant's appeal on the ground that though they had relied on the judgment of Madras High Court (cited supra ), they did not produce any evidence of the date on which the said Gazette was put on sale. Therefore, in the absence of such evidence, the notification would be applicable from the date on

which issued i.e. 12.10.1987. We find that there are a plethora of decisions as cited by the learned advocate and particularly the decision of the Hon'ble Supreme Court in the case of Ganvare Nylons Ltd. (cited supra) as well as in the case of CCE v. New Tobacco Co. as , wherein it is clearly held that the date of effect of any Notification will not be the date of the Notification but the date on which the said Gazette in which it was published was put on sale to the public. In view of this, it is clear that the law in this respect is now settled and this matter is no longer res Integra. The only other issue to be decided is on whom the burden lies for leading evidence to the effect as to on what date the Gazette was made available to the public. While the impugned order holds that the said burden lies on the appellant, the learned advocate submits that: (a) that the Controller of Publication, Government of India, New Delhi had replied to them that the practice of informing the date of availability of the Gazette had been discontinued.

(b) that as is held in the case of Haryana Plywood Industries , the burden of proof is on the 28. We have considered the submissions of both the sides. We hold that a gazette notification does not become effective on the date on which it is printed unless it is made available to the public on the same date. It is not the date indicated on the Gazette notification but the actual date on which it is made public is important to determine the date on which the new notification comes into force.

In this connection our attention has been rightly drawn to the judgment of the Hon'ble Rajasthan High Court in the case of Jagjit Singh v. State of Rajasthan AIR 1968 Raj. 24 and the order of the Tribunal in the case of Salem Co-operative Sugar Mills Ltd., . In the instant case the goods had been admittedly assessed and cleared on payment of duty before 13.10.1986, the date on which the Notification No. 439/86-Cus., dated 6.10.1986 was published. Hence the demand of the amount in question was not justified and the appellants were not liable to pay the additional sum. In view of this position the order of the authorities below is set aside and the appeal is accepted.

Further in para 26 of the said decision, it is recorded that the learned SDR submitted copies of the letters from the Department of Publication in Ministry of Urban Development, which gave the date on which the said Gazette was made

available for sale to public.

Therefore, we find that when the demand has been raised by the department the burden of proving that the Notification had come into force to sustain that the demand also vested on the department and it would not be fair to shift it on the appellant. However, no such burden has been discharged by the department in this case. On the other hand, the appellant tried to obtain the said date from the Controller of Publication, New Delhi, but their response as contained in the appellant's affidavit is that the practice of informing the date is since discontinued. In view of this impasse, there is no other go but to accept the contention of the appellant that they came to know of the said Notification and its effects vide a report dated 15th October, 1987 in view of the news item in the local newspaper Deccan Herald, which evidence is on record. Under these circumstances, there is no other option but to extend the benefit of doubt and balance of convenience in this case to the assessee.

5. In view of the aforesaid findings, the impugned order is liable to be set aside. We, therefore, order that the impugned order is set aside and the appeal succeeds with consequential relief, if any.

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