

Chemifine Vs. Union of India

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Court : Mumbai

Decided On : Mar-09-1994

Reported in : 1994LC368(Bombay); 1994(72)ELT15(Bom)

Judge : M.L. Pendse and ;P.S. Patankar, JJ.

Appeal No. : Writ Petition No. 1835 of 1984

Appellant : Chemifine

Respondent : Union of India

Advocate for Def. : Shri L.S. Vyas, Adv.

Advocate for Pet/Ap. : Shri D.H. Mehta and ;Shri N.M. Shah, Adv.

Judgement :

M.L. Pendse, J.

1. The issue raised in the petition is concluded by judgment reported in : 1985(22)ELT644(Bom) Apar Pvt. Ltd. & Others v. Union of India. In view of the judgment, the petitioners are not entitled to any relief.

2. Mr. Mehta, learned counsel appearing on behalf of the petitioners, submitted that the concluded contract to import the consignment was entered into on June 11, 1984 and the letter of credit was opened on July 11, 1984. The consignment

arrived by Air on August 18, 1984 and the Bill of Entry for home consumption was filed. Prior to this date, the notification dated August 10, 1984 was published in the Government Gazette. The learned counsel submitted that the notification which provides for payment of duty at the higher rate has no application to the import of the consignment of the petitioners because the petitioners has no notice of the said notification, since it was not made public. Mr. Mehta did not dispute that the notification was published in the Government Gazette and the Bills of Entry were filed only one week thereafter, and consequently, the liability to pay the duty is in accordance with the rate prescribed by the notification. The sole contention of the learned counsel was that the notification cannot be attracted unless it was made public. In support of submission, reliance was placed on decision of the Single Judge reported in : 1990(50)ELT342(Bom) Swati Chemicals v. Collector of Customs. Mr. Mehta submitted that the learned Single Judge held that the notification in issue was not properly published and therefore the applicability of the notification by the Department cannot be sustained. It is not possible to accept the submission of the learned counsel.

3. The publication of the notification in the Government Gazette results into notice of the contents to the general public and it is not permissible to claim that inspite of publication in the Government Gazette, the importers had no notice of the same. In a vast country like India the only mode of publication of Government orders which have financial implications is by publication in the Government Gazette. Section 81 of the Indian Evidence Act provides that the Court shall presume the genuineness of every document purporting to be the official document. The issuance of a notification in the Government Gazette is in the eye of law either notice or imputed knowledge of its contents to the citizens in general. Reliance on the decision of the Punjab and Haryana High Court reported in Kashmiri Lal and Others v. State of Punjab and Another by Mr. Vyas, learned counsel appearing for the Department, is very appropriate. We are unable to share the view taken by the learned Single Judge of this Court in the case of Swati Chemicals. The learned Single Judge drew support from the decision of Single Judge of the Madras High Court which is reported in : [1985]155ITR568(Mad) . We are also unable to accept the view taken by the learned Single Judge of the Madras High Court. In our judgment, the effect of the notification comes into play as soon as it is published in

the Government Gazette. Consequently, the contention of Mr. Mehta is required to be turned down.

4. Accordingly, petition fails and rule is discharged. The respondents will be at liberty to enforce the Bank guarantee furnished pursuant to the interim order dated September 3, 1984 to the extent of aggregate customs duty of 70% ad valorem i.e. with the benefit of Notification No. 228/83-Cus., dated August 16, 1983, being Exhibit 'I' to the petition. The petitioners shall pay the interest on a differential amount in terms of the interim order dated September 3, 1984. In the circumstances of the case, there will be no order as to costs.

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