

Conic Electronics Pvt. Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Feb-14-1990

Reported in : (1990)(28)LC493Tri(Chennai)

Judge : S Kalyanam

Appellant : Conic Electronics Pvt. Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is an application for waiver of pre-deposit of duty of Rs. 26,400/- levied by the Superintendent of Central Excise, Jayamahall Range, Bangalore while assessing the RT12 returns of the petitioner which was duly confirmed in appeal, under the impugned order of the Collector of Central Excise (Appeals), Madras dated 30.11.1988. Shri Sampath, the learned Counsel for the petitioner submitted that the duty on Black and White Television sets of screen size upto 6 inches was raised under Notification No. 236/87 dated 12.10.1987 and consequent on this the petitioner has been assessed to this differential duty in respect of the goods cleared between 12.10.1987 to 14.10.1987. Shri Sampath, the learned Counsel contended that this Notification was published only on 15.10.1987 according to the information and the belief of the petitioner and in order to ascertain the correct date, the petitioner sought for information with reference to the actual date of publication of the notification in the official gazette and as to the date when the said gazette was made available to the public from the Director of Publications, New Delhi who informed the petitioner that the particulars could be obtained from

the Commissioner (Tax Research), North Block, New Delhi since "he has discontinued the practice of forwarding the date of availability of the Gazette Part II-3(i) for sale to the public". The petitioner, therefore, approached the Commissioner seeking the particulars regarding the date of publication of the notification in the gazette and the date on which the gazette was made available to the public by his communication dated 26.8.1989, 23.10.1989, 11.11.1989 and 24.11.1989. The request of the petitioner and a number of reminders did not receive any reply from the Commissioner (Tax Research), North Block, New Delhi. The petitioner, as directed by the Tribunal, has sworn to an affidavit about the relevant facts. The learned Counsel, therefore, prayed for waiver of pre-deposit pending appeal.

2. Shri Bhatia, the learned SDR submitted that the Collector is not able to furnish him with the precise information with reference to the publication of the notification in the gazette and its availability to the public.

3. We have carefully considered the submissions made before us. Under the Central Excises & Salt Act, 1944 and also on well established legal principles, a notification should not only be published in the official gazette but would take effect only from the date on which the gazette is made available to the public at large. This issue has also been recently decided by the Madras High Court in the case of Asia Tobacco Company Ltd. v. UOI . Same view has been taken by the Bombay High Court in the case of GTC Industries Limited, Bom. and Anr.

v. UOI . The Madras High Court while adverting to the rulings of the Supreme Court has observed in this regard as under: ...The mere printing of the Notification in the Official Gazette without making the same available for circulation and putting it on sale to the public will not amount to 'notification' within the meaning of Rule 8(1) of the Central Excise Rules, 1944. 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 dictionary meaning would be "to take note of, observe, to make known, publish, proclaim, to announce, to give notice to, to inform." Therefore, it would be a mockery of the rule to state that it will take effect from the date of publication in the Official Gazette.

The contention that the petitioners are expected to be aware of the withdrawal notification and the words 'published 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 Rules is not sustainable in law....

4. We, therefore, in the above circumstances, find prima facie force in the plea of the learned Counsel and in this view, grant waiver of pre-deposit of the duty demanded and also grant stay of recovery of the same pending appeal.

5. The appeal being a Special Bench matter, the papers are directed to be transmitted to CEGAT, New Delhi. (Pronounced in the open Court).

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