



Dimensions – 84th Edition

Judgment under GST era

*M/s Union of India & Ors. v. M/s G S Chatha Rice Mills & Anr.*¹

Issue for Consideration

Whether notifications issued by the Government in the e-Gazette become applicable for the entire day, or balance fraction of the day, of its publication, or whether the day of its publication is excluded in terms of section 15 of the Customs Act, 1962 (“the CA”).

Discussion

- In view of the terrorist attack at Pulwama, the Union Government introduced a tariff entry subjecting all goods originating in or exported from the Islamic Republic of Pakistan to an enhanced customs duty of 200%, by a notification no. 5/2019-Customs dated February 16, 2019 (“the Notification”), which was uploaded on the e-Gazette at 20:46:58 hours. The Customs authorities at the land customs station, Attari (“LCS”) sought to enforce the enhanced duty on importers who had already presented a bill of entry (“BOE”) before the enhanced rate was notified.

- Aggrieved by this action, the importers filed Writ Petitions before the Hon’ble High Court of Punjab and Haryana. The Court allowed the Writ Petitions and held that the enhanced rate was not applicable, since the importers had presented their BOEs and completed the self-assessment process before the issuance and upload of the Notification. The Court also held that the importers were liable to pay duty applicable at the time of filing of the BOE for home consumption.
- The Union of India (“UOI”) moved the Hon’ble Supreme Court against the above judgment and submitted as follows:
 - Section 15 of the CA specifies the BOE presentation date as the date for determining the duty rate and value of the imported goods. The phrase “on the date” means the entire period of 24 hours, in this case beginning at midnight on February 16, 2019. Furthermore, section 15 of the CA does not carry any reference to time and therefore the duty rate applicable should be the rate prevalent on the BOE presentation date.
 - The issue does not involve the retrospective or prospective application of the Notification, but the Court must uphold the simple intent of

¹ 2020-VIL-33-SC-CU



Parliament to consciously make the Notification issuance date as the date for determining the rate of duty.

- A notification issued under section 8A(1) of the Customs Tariff Act, 1975 (“the CTA”) amends the First Schedule and dates back to the start of the day.
 - As per section 5(3) of the General Clauses Act (“the GCA”), commencement can only be from a day that takes within its fold the 24-hour period from midnight of the day before the issuance of the notification.
 - The twin requirements under section 15 of the CA are fulfilled because the Notification was issued and uploaded in the e-Gazette on February 16, 2019 and the BOE was also presented on the same date.
- The Respondent submitted as follows:
 - The importers have fulfilled the twin requirements under section 15 of the CA, i.e. the goods entered on February 16, 2019, and the BOE was filed before issuance of the Notification.
 - The Notification was not updated on the EDI portal and would apply to a BOE presented after its upload or amendment in the EDI portal of ICEGATE. A notification issued under section 8A(1) of the CA cannot have a retrospective impact unless the statute expressly, or by necessary implication, imports retrospectivity.
 - A BOE can be re-assessed only in instances where the assessment has not been done correctly upon verification, examination or testing of the goods by the proper officer. None of these circumstances are applicable to the present case.
 - The object of the Notification was to discourage future imports and not to penalize importers who had completed their imports prior to its issuance.
 - After perusing the facts and the legal provisions, the Hon’ble Supreme Court observed as follows:
 - Section 15(1)(a) of the CA specifies that the BOE presentation date should be considered for determining the rate and the tariff valuation. Section 47 (2)(a) mandates the importer to pay duty on the BOE presentation date in the case of self-assessment. The rate and valuation **in force** stand crystallised under section 15(1)(a) of the CA on presentation of a BOE in terms of regulation 4(2) of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 (“BOE Regulations”).
 - In the present case, the Customs authorities sought to exercise the power of re-assessment on the basis of the issue of the Notification. The Court observed that self-assessment was carried out on the basis of the rate that prevailed at the time of the BOE presentation and the Notification was not in force when the self-assessment was carried out.
 - Placing reliance upon various judgments², the Court stated that presentation of BOE is the definitive event for determination of the duty payable, and the duty in force on the day of the presentation should be the duty applicable in terms of section 15(1)(a) of the CA.
 - Section 15(1)(a) and (b) of the CA uses the expression “on the date”. The Court relied on a number of judgments³ to examine the meaning of the expression “day” or “date”. While stating that the UOI is textually correct with respect to their arguments, the Court observed that the legislature does not always say everything on the subject, thereby creating space for creativity and that the regulatory governance is evolving in India as new technology replaces old ways of functioning.
 - Notification issued under section 8A(1) of the CTA takes effect prospectively, even though it has the effect of amending the First Schedule.

² *Bharat Surfactants (Private) Limited v. Union of India* [(1989) 4 SCC 21], *Priyanka Overseas Pvt. Ltd. v. Union of India* [1991 Supp (1) SCC 102], *Dhiraj Lal H Vohra v. Union of India* [1993 Supp (3) SCC 453], *D.C.M. v. Union of India* [1995 Supp (3) SCC 223]

³ *Raj Kumar Yadav v. Samir Kumar Mahaseth* [(2005) 3 SCC 601], *New India Assurance Co. Ltd. vs. Ram Dayal* [(1990) 2 SCC 680], *Re Court Fees* ILR [(1923) 46 Mad 685]



Adopting the interpretation put forth by the UOI, would have effect prior to its making, something which Parliament has not incorporated by language or intent. The provisions of section 15(1)(a), 17, 46(1) and 47(2)(a) constitute one composite scheme.

- Section 8A of the CTA provides an emergency power to the Central Government to increase the import duties leviable on articles included in the First Schedule. On perusing the provisions of the GCA, the Court observed that a notification issued under section 8A(1) does not fulfil the description of a Regulation under section 3(50) of the GCA. The expression is confined to specific species of Regulations.
- The expression 'Central Act' is defined to mean an Act of Parliament. A notification which has been issued under section 8A(1) of the CTA is not an Act of Parliament.
- Perusing the relevant provisions of the Information Technology Act, 2000, and rules thereunder the Court stated that the presentation of a BOE is made electronically and is captured with time stamps.
- The practice of physical printing was replaced with the e-Gazette by an office memorandum⁴. So far, Court has not been confronted with the question as to whether the shift from the analog to the digital for Gazette notifications has any bearing on ascertaining when they come into force. The Court placed reliance upon the case of *Ruchi Soya Industries v. Union of India*⁵ wherein the High Court held that notification would come into force **only after it was digitally signed by the competent official and uploaded and published in the official gazette**. The Court observed that the **Notification cannot operate retrospectively, unless authorised by statute**. Furthermore, in the era of the electronic publication of gazette notifications and electronic filing of BOE, the revised rate of import duty shall apply to BOE

presented for home consumption **after** the Notification was uploaded in the e-Gazette.

- Therefore, a rate enhancement pursuant to the exercise of power under Section 8A of the CTS can only be prospective in nature.

Judgment

The Hon'ble Supreme Court dismissed the Appeals and held that the duty was correctly assessed during self-assessment, satisfying twin conditions under section 15 of the CA prior to the issuance of the notification in the e-gazette. Furthermore, power of reassessment cannot be exercised, not being a case of incorrect self-assessment of duty.

Dhruva Comments:

The judgment critically and in-depth examines the date and time from when a notification shall be considered to be in effect. A law or an amendment comes into effect from the date it is supposed to be in operation, subject to the intention otherwise expressed in the law. The Hon'ble Supreme Court, while bringing out the difference between the procedure of physical printing followed prior to the shift to the e-Gazette, has stated expressly that a notification becomes effective from the date and time on which it was uploaded and published in the e-Gazette.

Going forward, it would be relevant to identify the time of issuance of notifications while assessing duty in terms of section 15 of the CA.

Notifications under GST

Extension of due date for furnishing GSTR-9 / GSTR-9C⁶

The Government has extended the due date for furnishing the annual return (GSTR-9) under section 44 of the CGST Act, 2017 from September 30, 2020 to October 31, 2020. Consequently, the due date for furnishing of GSTR-9C also gets extended up to October 31, 2020.

⁴ No. O-17022/1/2015-PSP-I dated September 30, 2015 issued by the Ministry of Urban Development

⁵ W.P. No. 4533 and 4534 of 2019 decided on September 28, 2019

⁶ Notification no. 69/2020-Central Tax dated September 30, 2020



Dhruva Comments:

Considering the present pandemic situation, it was very much the need of the hour.

Amendment in e-invoicing provisions for B2B supplies

- With effect from October 1, 2020, the provisions of e-invoicing in respect of B2B supplies are applicable to the registered persons having aggregate turnover in a financial year exceeding ₹500 crores, other than SEZ unit, a banking company, NBFC, goods transport agency, supplier of passenger transportation service and cinemas in multiplex screens [as per notification no. 13/2020 - Central Tax dated March 21, 2020 (“the said notification”) as amended up to July 30, 2020]
- The Government has now amended the said notification vide notification no. 70/2020-Central Tax dated September 30, 2020 as follows:
 - The turnover of ₹500 crores should be considered for any preceding financial year from 2017-18 onwards.
 - The e-invoice would now also have to be generated for exports.

Dhruva Comments:

There was a dilemma as to what is to be considered as a financial year for computing aggregate turnover. The same has now been cleared to mean any financial year starting from 2017-18.

Amendment in e-invoicing provisions for B2C supplies

- The Government vide notification no. 14/2020-Central Tax dated March 21, 2020 (“the said notification”), had notified that w.e.f. October 1, 2020, the provisions of e-invoicing in respect of B2C supplies are applicable to the registered persons having an aggregate turnover in a financial year

exceeding ₹500 crores, other than a banking company, NBFC, goods transport agency, supplier of passenger transportation service and cinemas in multiplex screens. Further, such B2C invoices should also have a dynamic Quick Response (QR) code.

- The Government has amended the said notification vide notification no. 71/2020-Central Tax dated September 30, 2020 as follows:
 - The turnover of ₹500 crores should be considered for any preceding financial year from 2017-18 onwards.
 - The said notification should become applicable from December 01, 2020.

Dhruva Comments:

The deferment of e-invoicing provision in respect of B2C invoices would help the industry to prepare their IT systems for inserting QR code.

Amendment in CGST Rules, 2017

- The Government has amended the CGST Rules, 2017 vide notification no. 72/2017-Central Tax dated September 30, 2020 as follows:
 - In rule 46, new clause (r) has been added to state that a tax invoice issued should contain a Quick Reference code, having an embedded Invoice Reference Number (IRN) in it, where an invoice is issued in terms of rule 48(4) of the CGST Rules, 2017 (i.e. e-invoice).
 - In rule 48(4), a new proviso has been added to state that the Commissioner may, on recommendations of the GST council, exempt a person or a class of registered persons from the issue of invoice under rule 48(4) for a specified period subject to the conditions as may be notified.
 - Sub-rule (2) of rule 138A has been substituted to state that the invoice which is issued as per rule 48(4), the Quick Reference (QR) Code which has an embedded Invoice Reference Number (IRN) in it, can be produced



electronically for verification by proper officer in lieu of the physical copy of such tax invoice.

Dhruva Comments:

These amendments were required in order to align the GST law with the requirements of e-invoicing. The notification inadvertently refers QR as Quick Reference code instead of Dynamic Quick Response (QR) code.

Press Release under GST

Relief in implementation of e-invoicing⁷

- It is possible that few taxpayers who are covered by the e-invoicing provisions are not ready to issue e-invoice w.e.f. October 01, 2020. To provide relief, it has been clarified that the invoices issued by such taxpayers during October 2020, without following the requirement of rule 48(4) of the CGST Rules, 2017, shall be deemed to be valid and penalty under section 122 of the CGST Act, 2017 shall be waived for such non-adherence to the provision. This is subject to obtaining the Invoice Reference Number (IRN) for such invoices from the Invoice Reference Portal (IRP) within 30 days of the invoice date.
- Further, such relaxation should not be available for the invoices issued from November 01, 2020 and if the invoice is not issued in accordance with rule 48(4), then the invoice would not be valid and the provisions of the CGST Act, 2017 and CGST Rules, 2017 would apply for the said violation.

⁷ Release ID 1660533 dated September 30, 2020 by PIB Delhi





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