

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 11183 of 2016- DB

(Arising Out of OIO-MCH/PR/COMMR/PVR/34/2015-16 dated 29.02.2016 passed by Commissioner of Central Excise, Customs And Service Tax-Mundra)

M/s Pmc Projects I P Ltd

Amdc, Nr Shantigram, Nr, Vaishnodevi Circle,
S G Highway, Ahmedabad-Gujarat

.....Appellant

VERSUS

C.C. – Mundra

Office of The Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

.....Respondent

WITH

Customs Appeal No. 11557 of 2018- DB

(Arising Out of OIO-MCH/PR/COMMR/PVR/34/2015-16 dated 03.03.2016 passed by Commissioner of Central Excise, Customs And Service Tax-Mundra)

Velji P Sons

Deepak Complex, 2nd Floor, Plot No. 315, Ward-12b
Gandhidham-Gujarat

.....Appellant

VERSUS

C.C. – Mundra

Office of The Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

.....Respondent

APPEARANCE:

Shri J. C. Patel, Ms. Shamita Patel and Shri Amit Laddha, Advocates for the Appellant

Shri M.G Rayka, Additional Commissioner (Authorised Representative) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

FINAL ORDER NO. 11050-11051 /2024

DATE OF HEARING: 04.04.2024

DATE OF DECISION: 15.05.2024

RAMESH NAIR

The issue involved in the present case is that whether the appeal is liable to pay safeguard duty on electrical insulators of glass which is imposed by Notification No. 5/2012-Cus (Safeguard) dated 20.12.2012, or otherwise.

2. Shri J.C. Patel, learned counsel, with Ms. Shamita Patel and Shri Amit Laddha, advocates appearing on behalf of the appellant, at the outset, submits that in the present case, the goods on which safeguard duty was demanded were imported under bill of entry No. 8823356 dated 20.12.2012 and in respect of this import, the entry inward date is 24.12.2012. Though the notification is dated 20.12.2012 but the same was undisputedly published in the Official Gazette on 24.02.2013, therefore the relevant date of entry inwards of the goods covered under bill of entry dated 20.12.2012, the notification had not come into effect, therefore, the safeguard duty is not applicable in the present import. He submits that even though the Notificaiton issued at a particular date but the notification would be effective only after it is published in the Official Gazette. He placed reliance on the following judgments:

- UOI vs G S Chatha Rice Mills 2020 (374) ELT 289 (SC)
- Adani Wilmar Ltd. 2023 (2) CENTAX 325 (Guj.)
- Adani Wimar Ltd. 2023 (384) ELT 321 (Tri. Bang.)
- Faqir Chand Vinod Kumar 2023 (386) ELT 117 (Tri. Mum)
- Param Industries Ltd. 2002 (150) ELT 3 (kar.)
- M.D. Overseas Ltd. 2017 (353) ELT 12 (Guj.)
- Jindal Industries 2002 (145) ELT 508 (Del.)
- Kundan Rice Mills 2017 (352) ELT 184 (Tri. Del.)

3. Shri M.G. Rayka, learned Additional Commissioner (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the safeguard duty was imposed under Section 8C of Customs Tariff Act, 1975 which reads as under:

“SECTION 8C. Power of Central Government to impose transitional product specific safeguard duty on imports from the People's Republic of China (1) Notwithstanding anything contained in section 8B, if the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India, from the People's Republic of China, in such increased quantities and under such conditions so as to cause or threatening to cause market disruption to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article:

Provided that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from the People's Republic of China into India, from payment of the **whole or part of the safeguard duty** leviable thereon.

(2) The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause market disruption to a domestic industry:

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause market disruption to a domestic industry, it shall refund the duty so collected:

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

(3) Notwithstanding anything contained in sub-sections (1) and (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation. - For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings respectively assigned to them in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944).

(4) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(5) The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition:

"[**Provided** that if the Central Government is of the opinion that such article continues to be imported into India from the People's Republic of China so as to cause or threatening to cause market disruption to domestic industry, the Central Government may, notwithstanding the measures taken by the domestic industry towards adjustment to such market disruption or any threat arising thereof, if considers necessary that such duty should continue, extend the period of imposition of such safe guard duty for a period not beyond the period of ten years from the date on which the safeguard duty was first imposed.]

[(5A) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.]

(6) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of market disruption or causes of threat of market disruption in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

(7) For the purposes of this section, -

(a) "domestic industry" means the producers -

(i) as a whole of a like article or a directly competitive article in India; or

(ii) whose collective output of a like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(b) "market disruption" shall be caused whenever imports of a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry;

(c) "threat of market disruption" means a clear and imminent danger of market disruption.

(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.]”

From the above Section 8C it can be seen that the safeguard duty can be imposed by a Notification in the Official Gazette. In the present case, though the notification was given a date of 20.12.2012 whereas the same was published in the official gazette on 24.02.2013. The report of publication is scanned below:

S. No.	Ministry / Organization	Department	Office	Subject	Issue Date	Publish Date	Gazette ID
1.	MINISTRY OF FINANCE	DEPARTMENT OF REVENUE	NOT AVAILABLE	THE CENTRAL GOVT. AFTER CONSIDERING THE AFORESAID FINDINGS OF THE DIRECTOR GENERAL (SAFEGUARD), HEREBY IMPOSE ON THE GOODS OF DESCRIPTION SPECIFIED IN COLUMN 3 OF THE TABLE BELOW FALLING UNDER SUB-HEADING OF THE FIRST SCHEDULE TO THE SAID CUSTOMS TARIFF ACT AS SPECIFIED IN THE CORRESPONDING ENTRY IN COLUMN 2.	20-DEC-2012	24-FEB-2013	NOT AVAILABLE (37156)

From the above publication in Gazette, it can be seen that the Notification No. 05/2012-Cus dated 20.12.2012 was published in the Official Gazette on 24.02.2013, whereas the bill of entry was filed on 20.12.2012 and the entry inward dated was 24.12.2012 i.e. much

before date of publication of Notification in the Official Gazette, therefore, the Notification by which the safeguard duty was imposed, did not come into effect on 24.12.2012, therefore, on that date on the clearance of goods no safeguard duty can be demanded. The identical issue has been considered in various judgments cited by the learned counsel for the appellant.

The Hon'ble Supreme Court in the case of *GS Chatha Rice Mills (supra)* considering the issue of effect of notification date passed the following order:

"154. Reliance placed on the judgments *Video Electronics Pvt. Ltds and Another v. State of Punjab and Another*; [1990 (3) SCC 87], *Tamil Nadu Electricity Board and Another v. Status Spinning Mills Limited and Another*; [2008 (7) SCC 353] of this Court, taking the view that the Schedule to an act is a part of the act and therefore an amendment to the Schedule by virtue of such a notification is an amendment to the Act itself and therefore, the notification issued under Section 8A of the Tariff Act partakes the character of legislation, is clearly untenable, if it is intended to convey that the notification issued under Section 8A of the Tariff Act is made by the legislature itself. By its very nature, delegated legislation is legislative in character but if it is to be a Central Act within the meaning of Section 5 of General Clauses Act, it must be made by the legislature. Delegated legislation which is called administrative legislation in England, is exercise of legislative power by the executive. It is to be further noticed the fact that the notification issued under Section 8A is in the exercise of its legislative power or that it may have to be read in the same manner as if it is a part of the Act, will not detract the Court from ascertaining as to who is the author of the exercise of the legislative power, namely, whether it is an exercise of power by the legislature or by its delegate. Upon answer to the question, namely, that the author of the legislative effort is the executive, the question would necessarily arise as to whether there is publication. In the scheme of the Customs Act, the Tariff Act and the 2018 Regulations, the time at which the notification under Section 8A is published would indeed have relevance as already found."

Identical issue has been considered by Hon'ble Gujarat High Court in the case of *Adani Wilmar Ltd. (supra)* wherein court has made the following observation:

"15. The Notification could not be said to have been published without declaration form or digital signature certificate. Only after the declaration form and documents are signed digitally that they can be uploaded for e-publishing which has been done on 6-3-2018 at 19:15 hours. Therefore, the effective date of Notification in terms of Section 25(4) of the Act is the date of its publication in Official Gazette in e-mode on 6-3-2018 and the Notification, therefore, cannot be said to have come into force on 1-3-2018 and enhanced rate of duty by way of Notification No. 29/2018-CUS dated 1-3-2018 surely would not be, therefore, applicable. The petitioner would be entitled to pay only 40% of the duty which was applicable at the time of presenting the bills of entry for home consumption and not 54% under section 17(4) of the Act."

The similar issue was considered by the Bangalore Bench of this Tribunal in the case of Adani Wilmar Ltd. (Supra), wherein following has been observed:

"27.Thus, in view of the aforesaid decisions of the High Courts, the Commissioner (Appeals) was not justified in holding that the duty would be payable on the imported goods at the rates specified in the exemption notification dated 1-3-2018, even though the entry inwards was granted to the vessel on 5-3-2018 and the said exemption notification dated 1-3-2018 was published in the Official Gazette only on 6-3-2018, after it was digitally signed. The exemption notification came into effect only on 6-3-2018, on which date it was published in the Official Gazette after it was digitally signed for e-publication. The Commissioner (Appeals), was also not justified in distinguishing the cases cited by the appellant only for the reason that an amendment had been made in Section 25(4) of the Customs Act in 2016."

The issue of date of effect of notification has been considered by Mumbai Bench of this Tribunal in the case of Faqir Chand (supra) wherein following has been observed:

"10.We are, therefore, of the considered view that both the notifications issued under Section 25 of the Customs Act and Section 8A of the Customs Tariff Act stand on similar footings for being delegated legislation for not being an Act or Regulation as has defined in the General Clauses Act, for which fraction of time could have been ignored and Section 5(3) of the General Clauses Act, 1897 would not be applied to these notifications, as otherwise contrary is expressed by way of insertion of deeming provisions in Regulation 4(2) of Regulation 2018, and in enabling provision of Section 46 of the Customs Act, while Sections 15(1)(a), 17, 46(1) and 47(2)(a) constitute one composite scheme, as has been held in the *G.S. Chatha Rice Mills* case relevant extract of which is already reproduced in the preceding Paragraph 7.36, referred above that should be read with Section 8 of the Information Technology Act, 2000 concerning the effect of notifications issued in e-gazette vis-a-vis. Section 13 of the Information Technology Act that prescribes time and place of dispatch and receipt of Electrics record as well as publication of e-gazette under Section 8 of the Information Technology Act, 2000.

11.Now coming to the second ground of rejection, as referred in Para 6(b) above, it could be said that in both Section 8A of the Customs Traffic Act and Section 25 of the Customs Act, it has been clearly stipulated that *such notification can only be made through official gazette* for which while reproducing the relevant sections, we have purposefully underlined these words : "by notification in the official gazette". In this context also since the effectiveness of the implementation of such notification is considered in *G.S. Chatha Rice Mills* case with reference to Section 8A, the same would also apply to Section 25(1) of the Customs Act, as both are delegated legislations and not enactment of the Parliament. The distinction available in Section 25 at clause 4 is held by Learned Commissioner (Appeals) to have been taken for the purpose of determination of the applicability of the notification *i.e.* coming into force of the notification to the date on which *it was issued by the Central Government for publication in the official gazette*. In other words, to him, notification may not be published in official gazette but date of issue of it by the Central Government to the publication division of the gazette of India would govern its applicability. In this context we are not in agreement with the Commissioner (Appeals) for two reasons. First, in *Ruchi Soya* case as referred above the concurrent view of both the High Courts of Andhra Pradesh & High Court of Madras found approval of the

Hon'ble Supreme Court in *G.S. Chatha Rice Mills* case, as noted in Para 9 of this order and second, but nevertheless, significant reason for non-acceptance of the views of Commissioner (Appeals) is that Section 25 clause 1 starts with the wordings that the Central Government if satisfied and found it necessary in the public interest can exempt certain conditions for clearance of goods *by notification in the official gazette* in respect of notified goods of specified description from whole or part of Customs duty leviable, therefore, *notification in the official gazette is the only way through which Central Government can exempt notified goods from levy of Customs duty and the same can never be done otherwise like preparing an office note and made effective upon being dispatched for publication in the official gazette*, apart from the fact that sub-section (4) prescribing for coming into force of such notification to the date of its issue is conditional/subjected to "*provisions otherwise provided*" and since such provision is expressly provided in Section 25(1), Section 25(4) can't operate/applied in exclusion of provision contained in Section 25(1) prescribing publication of notification in the official gazette as a pre-condition for exemption of duty or its withdrawal as has been case here.

12.It is, worth-mentioning here, that without making any observation as to the legality of the re-assessment of duty, after goods were finally assessed at 'nil' rate of duty, prior to issue of Notification No. 93/2017-Cus. under Section 25 of the Customs Act lifting the exemption on "Desi Chick Peas" the Commissioner (Appeals) had confirmed the adjudication order whereby 30% Customs duty was imposed on reassessment. On this aspect he had completely ignored the findings of the Hon'ble Supreme Court in *G.S. Chatha Rice Mills* case wherein both Hon'ble Dr. D.Y. Chandrachud, J. as he then was and Hon'ble K.M. Joseph, J. in separate concurring judgments, have clearly noted that re-assessment under Section 17 of the Customs Act was impermissible for the reasons that self-assessment was completed on the basis of rate of duty which was in force on the date and at the time of presentation of the bill of entry for home consumption as the applicable rate of duty was crystalized at the time and on the date of presentation of bill of entry in terms of provision of Section 15 read with Regulation 4(2) of Regulation, 2018, in which case Section 17(4) could not have been exercised since this is not a case where there was incorrect self-assessment of duty (Para 67). Hon'ble Justice K.M. Joseph further added that the expression "otherwise" in Section 17(4) will not come to the rescue of the Department in the fact of the instant case and will not empower the proper Officer to alter the rate of duty which was prevalent at the time of self-assessment and the same would be plainly impermissible being illegal (Para 149). We, therefore, hold that re-assessment of duty post completion of self-assessment and out of charge order, on the basis of Notification No. 93/2017-Cus. published subsequent to such completion of assessment, is contrary to the provision of law as has been interpreted by the Hon'ble Supreme Court in *G.S. Chatha Rice Mills* case. Hence the order.

THE ORDER

13.The appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai-II *vide* Order-in-Appeal No. 858 (Gr.I& IA)/2021(JNCH)/Appeals, dated 20-10-2021 is hereby set aside with consequential reliefs including refund of duty paid upon re-assessment with applicable interest, to be complied by the Respondent-Department within three months of receipt of this order."

The Hon'ble Karnataka High Court also dealing with the issue about the effect of the date of Notification in case of Param Industries (supra), observed as under:

"12.In the facts of the given case, it is clearly averred in the petitions that notification dated 3-8-2001 was not gazetted on the same day. 4th and 5th were public holidays and hence notification must have been published in the Gazette only after 6-8-2001 and petitioners' have also produced

copy of fax message received at Cochin Excise Office which was received at 11:44 p.m. on 3-8-2001 and at that time notification was yet to be published in the Gazette as copy contains endorsement "to be published in Gazette". In the statement of objections filed by respondents it is stated that notification was issued on 3-8-2001 and published on the same day in Gazette of India and displayed on notice board of Department of Publications as admitted in the petition. The petitioners have not admitted publication of notification in Gazette on 3-8-2001 and it is specifically averred that publication in the Gazette was subsequent to 6-8-2001. Further, the petitioners have produced copy of letter dated 1-2-1990 written by Government of India, Ministry of Finance, Department of Revenue (Annexure 'E' in W.P. No. 34758/2001) addressed to the Director, Directorate of Publication, Government of India which shows that as per directions issued by earlier letter dated 12-8-1985, it was meant to restrict issuing of letters to the private parties intimating them about the date of actual publication in the Gazette as it was causing practical difficulties and was giving rise to disputes regarding validity of notification from the date of issue. Hence petitioners are unable to produce documents showing exact date of publication and it is stated that it is for the respondents to show by producing relevant records that notification was published in the Gazette on 3-8-2001 itself. It is also to be seen that in response to a clarification sought by the petitioners, the Assistant Controller (Business), Government of India, Department of Publication, Delhi vide his letter dated 10-9-2001 has informed the petitioners that issue No. 548 of the Official Gazette was made available for public sale on 6-8-2001 as per the records of the department. The issue number of the customs Notification No. 36/2001-Cus. (N.T.), dated 3-8-2001 being 549, it is clearly established that the said Notification was made available for public sale on or after 6-8-2001, and therefore, the question of publication of the notification dated 3-8-2001 on the same day does not arise. It is also to be seen that on the basis of Bill of Entry for Home Consumption assessment was completed. Under the circumstances, no inference can be drawn that the notification dated 3-8-2001 was gazetted on the same day itself. It is also to be seen that the Parliament has added sub-sections (4) and (5) to Section 25 of the Customs Act by Act No. 25 of 1998 w.e.f. 1-6-1998, prescribing that unless otherwise provided, every notification issued under Section 25(1) shall come into force on the date of its issue by the Central Government for publication in Official Gazette with the further stipulation that such notification shall also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. This clearly shows the intention of the Legislature that a notification is to be effective from the date when it is issued by the Central Government for publication in the Official Gazette. The same analogy will apply to the instant case. As per the intention of the Legislature and the order of the Supreme Court a Notification can be said to be made on the same day only if it is published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. Failure to do so could not make a notification effective from the date of its issue for publication. This provision added w.e.f. 1-6-1998 also shows that the date of publication in the Official Gazette and the date of its issue for publication in the Official Gazette can be different. In the present case the said notification was published in the Official Gazette on 6-8-2001 and not before 6-8-2001 and was offered for sale not before 6-8-2001. Therefore even as per the judgment of the Hon'ble Supreme Court, the said Notification is to be effective w.e.f. 6-8-2001. The learned Central Government Standing Counsel has not been able to show that it was published on 3-8-2001 and they also offered this notification for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi as per the Amendment. For our satisfaction, we granted time to the Central Government Standing Counsel to place the records. It is true that Gazette notification is admissible being the official record evidencing public affairs and the Court is required to presume its contents as genuine under Sections 35 and 38 read with Section 81 of the Evidence Act unless contrary is proved. Despite directions the respondents have not chosen to produce the records to show that averment made in the writ petitions is false and that notification was published on 3-8-2001 itself. It is clear from the averments made in the affidavit dated 30-8-2002 and Annexure R1 produced along with the affidavit that Annexure R1 is not the Gazette notification, it is only a letter addressed to the Manager, Government of

India Press, Mayapuri, New Delhi to publish the notification dated 3-8-2001 and no records have been produced to show the exact date on which notification was published in the Gazette. Annexure R1 would only reveal that the notification was forwarded to the Manager, Government of India Press to publish the same in the Official Gazette and there is no record further to show that pursuant to the said letter Gazette notification was published on 3-8-2001 itself. But on a perusal, it is clear from Annexure R1 that the date 6-8-2001 has been overwritten as 3-8-2001 and that apart in the letter sent to the Government of India Press on 3-8-2001 the said overwriting has not been attested or explained in the affidavit. Be that as it may. What is produced is the xerox copy of the letter and therefore the said letter is not helpful to show that it was published in the Gazette on 3-8-2001 itself in the Gazette on the same day and on the other hand it would help the petitioners' contention."

The above decision of Hon'ble Karnataka High Court has been affirmed to the extent that the effect of Notification needs to be given from the date of publication and sale of notification. The relevant para of the Hon'ble Supreme Court judgment is as under:

"3. What we find is that the High Court has stated that for bringing the notification into force and make it effective, two conditions are mandatory, viz., (1) Notification should be duly published in the official gazette, (2) it should be offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. In the present case, admittedly, second condition was not satisfied inasmuch as it was offered for sale only on 6-8-2001, as it was published on 3-8-2001 in late evening hours and 4/5-8-2001 were holidays.

4. We are in agreement with the aforesaid view taken by the High Court which is in conformity with the law laid down by this court in '*Harla v. The State of Rajasthan*' [1952 (1) SCR 110] wherein this court formulated the aforesaid principle in the following manner :-

"The principle underlying this question has been judicially considered in England. For example, on a somewhat lower plane, it was held in *Johnson v. Sargant* that an Order of the Food Controller under the Beans, Peas and Pulse (Requisition) Order, 1917 does not become operative until it is made known to the public, and the difference between an Order of that kind and an Act of the British Parliament is stressed. The difference is obvious. Acts of the British Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Royal Proclamations and Orders of a Food Controller and so forth. There must therefore be promulgation and publication in their cases. The mode of publication can vary; what is a good method in our country may not necessarily be the best in another. But reasonable publication of some sort there must be."

5. These appeals therefore, are liable to fail only on the aforesaid ground and are dismissed accordingly.

Civil Appeal Nos. 1808/2013, 1809/2013, 1810/2013, 1811/2013, 1812/2013, 1813/2013, 9661/2014
Civil Appeal No. 4875/2015 (@ SLP (C) No. 17415/2013),
Civil Appeal No. 4876/2015 (@ SLP (C) No. 23141/2013)

6. Leave granted.

7. On the facts of these appeals as well, we find that though the notification may have been published on the date when the goods were

cleared, it was not offered for sale by the concerned Board, which event took place much thereafter. Therefore, it was not justified and lawful on the part of the Department to claim the differential amount of duty on the basis of said notification. These appeals are, accordingly, allowed only on this ground and it is not necessary to go into other issues at all.”

From the above judgment, it can be seen that various courts and Tribunal has taken a consistent view that the date of effect of Notification shall be from the date of publication of the Notification in the Official Gazette and not merely from the date of Notification. In the present case, it is admitted fact that the publication of the Notification was made on 24.02.2013 whereas the entry inward of the import goods was allowed on 24.12.2012, therefore on that date the Notification had not come into force, accordingly on the import in the present case, the safeguard duty under Notification No. 5/2012-Cus dated 20.12.2012 cannot be demanded. Accordingly, the impugned order is set aside and appeal is allowed. Since the entire duty demand is not sustainable as discussed above, penalty on the co-appellant M/s Velji P Sons which is consequential to the demand of duty will also not sustain. Accordingly, the impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 15.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha