

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

CUSTOMS APPEAL NO. 51072 OF 2020

(Arising out of Order-in-Appeal No. CCA/Customs/D-I/Import/NCH/150-152/2020-21 dated 18/06/2020 passed by the Commissioner of Customs (Appeals) New Delhi)

Principal Commissioner of Customs

ACC (Import) Commissionerate
New Customs House,
New Delhi-110037

...Appellant

VERSUS

M/s M. D. Overseas Limited

43, Babar Road, Bangali Market
New Delhi-110001

...Respondent

APPEARANCE:

Shri Sunil Kumar, Authorized Representative of the Department
Shri Kishore Kunal, Advocate for the Respondent

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO MEMBER (TECHNICAL)**

**Date of Hearing: July 28, 2021
Date of Decision: August 13, 2021**

FINAL ORDER NO. 51727/2021

JUSTICE DILIP GUPTA:

The order dated 18.06.2020 passed by the Commissioner of Customs (Appeals)¹, by which the Appeal filed by M/s M.D. Overseas Ltd.² was allowed and the assessment order passed on the three Bills of Entry was set aside with a further direction for re-assessment with respect to the rate of Basic Customs Duty applicable on 05.07.2019, has been assailed by the Principal Commissioner of Customs in this Appeal.

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- 1. the Commissioner (Appeals)**
 - 2. the respondent**

2. It transpires that by a Notification dated 06.07.2019, the Basic Customs Duty on Gold Dore Bars was increased from 9.35 per cent to 11.85 per cent and this was to take effect from the midnight of July 5/6, 2019.

3. The respondent claims that it imported four consignments of Gold Dore Bars and in relation to these four consignments filed four Bills of Entry with relevant supporting documents through ICEGATE³ portal on 05.07.2019. However, only one Bill of Entry number was generated corresponding to Job Code No. 626, but numbers for the three Bills of Entry with respect to Job Code Nos. 629, 630 and 631 were not generated.

4. The respondent, therefore, wrote a letter dated 08.07.2019 to the Commissioner of Customs (Import) for immediate processing of the three pending Bills of Entry and for release of the three consignments. This letter was followed by another letter dated 11.07.2019. The respondent also informed the Commissioner that it had received a communication from ICEGATE service manager that the three Bills of Entry could not be processed due to a technical glitch in their system and that the ICEGATE had requested the respondent to re-file the same. The respondent, therefore, pointed out that when there was a fault at the end of ICEGATE, it should not be asked to re-file the Bills of Entry. Subsequently, the respondent also received a response from the ICEGATE portal on 12.07.2019 stating that due to budget activity, the pending Bills of Entries could not be processed on 05.07.2019 after 5 pm and the respondent should re-file the same.

3. customs automated system

The respondent also submitted a letter dated 15.07.2019 to the Commissioner (Imports) that any direction to re-file the Bills of Entry would not only be incorrect but would also cause severe financial prejudice to the respondent since the Basic Customs Duty had increased in the meantime. A request was, therefore, made to process the pending Bills of Entry filed on 05.07.2019. This letter was followed by a letter dated 19.07.2019. As no response was received, the respondent claims that it filed the Bills of Entry again on 20.07.2019 and Bills of Entry numbers were generated on that date. The respondent also paid Basic Customs Duty at the increased rate of 11.85 per cent.

5. However, as the respondent did not receive any reply to the letters dated 08.08.2019 and 29.08.2019, the respondent filed a statutory appeal before the Commissioner (Appeals). The Commissioner (Appeals), by the impugned order dated 18.06.2020, allowed the appeals and set aside the assessment of the three Bills of Entry with a direction to re-assess the same at the Basic Customs Duty applicable on 05.07.2019.

6. This appeal has, accordingly, been filed by the Principal Commissioner of Customs to assail the aforesaid order dated 18.06.2020 passed by the Commissioner (Appeals).

7. It is necessary to note the 'Brief Facts of the Case', as have been stated by the Department in the Memo of Appeal, and they are as follows:-

"The Importer regularly imports Gold Dore Bars on a regular basis for manufacture and the export of the manufactured Gold Articles and Gold Jewellery. The assessee imported four

consignments of Gold Dore Bars classifiable under CTH-71081200 from foreign suppliers on the basis of invoices and other import documents issued by the overseas suppliers. **The Importer presented requisite data on 05.07.2019 through the ICEGATE portal for generation of Bills of Entry and in terms of the regular practice Job Codes were also created evidencing the presentation of the requisite data for filing of Bills of Entry.**

XXXXXXXXXXXXXXXXXXXX

2.1 The Importer submitted the complete set of documents with respect to all the four consignments on 05.07.2019 through ICEGATE. However, Bill of Entry number was generated only for one consignment at Serial No. 1 above, the rest of the Bills of Entry were not generated on 05.07.2019 and were kept pending. The Importer wrote a letter date 08.07.2019 to the Commissioner of Customs (Imports) requesting for immediate release of the said 3 consignments. **The Importer on an enquiry from ICEGATE understood that the Bills of Entry were not generated on 05.07.2019 due to some technical error** and addressed another letter dated 11.07.2019 to the Commissioner (Imports) that the documents and Bills of Entry presented on 05.07.2019, being complete in all respects, ought to be generated, assessed and the consignments ought to be released on an immediate basis.

2.2 The Importer received an email on 12.07.2019 from ICEGATE portal stating that the Bills of Entry were not processed due to Budget activity on 05.07.2019 and the Importer was required to re-file the said Bills of Entry again. On 15.07.2019, the Importer addressed a letter before the Commissioner of Customs (Imports) stating that once admittedly the entire documentation filed on 05.07.2019 was complete and the non-processing of the Bills of Entry was due to technical error at the end of ICEGATE, the Importer should not be put to financial prejudice. Accordingly, it was requested that the Bills of Entry presented on 05.07.2019 ought to be assessed and the consignments ought to be released to the Importer.

2.3 As the clearance of goods was getting delayed indefinitely, the Importer re-filed the Bills of Entry on 19.07.2019 and 20.07.2019, and was made to pay BCD at the increased rate as applicable on 19.07.2019/ 20.07.2019. Left with no choice the Importer addressed a letter dated 19.07.2019 wherein, while giving the background and circumstances in which the Importer was getting the goods cleared, the Importer submitted that the direction of filing Bills of Entry in the current date was completely illegal and arbitrary and was imposing additional unwarranted liabilities on the Importer. Having cleared goods, the Importer sought reasons from the Commissioner for assessment at higher rate and not considering their request. XXXXXXXXXXXX."

(emphasis supplied)

8. Shri Sunil Kumar, learned Authorized Representative appearing for the Department made the following submissions:-

- (i) The respondent failed to co-relate the impugned job numbers claimed in the Impugned Order with the Bills of Entry numbers generated subsequently on re-filing;
- (ii) The respondent did not file the requisite details/documents in the portal on 05.07.2019;
- (iii) Being a regular importer, the respondent should have been aware about the Budget Day procedure. Further, despite display on the portal that the website would be closed from 1700 hours on 05.07.2019 for up-dation of budgetary changes, the respondent submitted the requisite data around 1700 hours to take benefit of lesser rate of duty;
- (iv) The judgments relied upon by the Commissioner (Appeals) are not applicable to facts and circumstances of the instant case;
- (v) In terms of the Bill of Entry (Electronic Integrated Declaration and paperless) Regulation 2018⁴, a declaration submitted by the importer should be accepted and a unique number should be generated. In the instant case, neither the declaration was accepted nor the unique number i.e. Bill of Entry number was generated. Moreover, the importer did not present the supporting documents i.e. commercial invoices, packing list and license etc at the time of filing Bills of Entry on 05.07.2019; and

4. **2018 Regulations**

(vi) In support of his submissions, learned Authorized Representative placed reliance upon the following decision:

(i) **Union of India vs. G.S. Chatha Rice Mills⁵.**

9. Shri Kishore Kunal, learned Counsel appearing for the respondent made the following submissions:-

(i) A bare perusal of the Appeal discloses that there is no dispute to the factual position that the four Bills of Entry with relevant documents were presented in the ICEGATE portal on 05.07.2019 and job numbers were created on the portal as an acknowledgment of such presentation. Once this factual position is undisputed in the Appeal, the four Bills of Entry have necessarily to be assessed as per the rate of duty existing as on the date of presentation i.e. on 05.07.2019;

(ii) In terms of section 15 of the Customs Act, 1962⁶, it is the date of presentation of the Bills of Entry which is the relevant date for the purpose of ascertaining and applying the rate of duty to be applied on the imported goods. In the facts of the present case, neither at any earlier stage of the present proceedings nor in the Appeal filed before this Tribunal, it has been stated by the Department that the Bills of Entry with supporting document were not presented in the EDI system on 05.07.2019;

5. 2020 (374) E.L.T. 289 (S.C.)
6. the Customs Act

- (iii) The sole basis of the Appeal appears to be an erroneous presumption that the Bills of Entry were not presented with all the relevant supporting documents and the same were only provided later on 20.07.2019;
- (iv) Without admitting that all the documents were not submitted at stage of presentation of the Bills of Entry on 05.07.2019, even then the rate of duty applicable on the initial date of filing of the Bills of Entry would still be applicable on the subject imports. In this regard reliance has been placed on a judgment of the Madras High Court in **Vijaya Industrial Products v/s Union Of India**⁷ and of the Tribunal in **National Synthetics v/s CC, Tuticorin**⁸; and
- (v) The present Appeal has been filed entirely based on inconsistent and incorrect assertions which are contrary to the records of the present case. These are:-
- (a) Non-correlation of Job Numbers;
 - (b) Non-uploading of complete documentation;
 - (c) Deliberate delay in filing of Bills of Entries;
 - (d) Waiver of delay penalty; and
 - (e) No technical reason or ICEGATE fault.

10. The submissions advanced by the learned Authorized Representative of the Department and the learned Counsel appearing for the respondent have been considered.

7. 1995 (76) E.L.T. 531 (Mad.)

8. 2019 (235) E.L.T. 157 (Tri.- Chennai)

11. To appreciate the submissions, it will be necessary to first examine the provisions of the 2018 Regulations.

12. Regulation 2 contains the definition clauses. Sub-clauses (c), (d), (e) and (g) of Regulation 2 are reproduced below:

"2. Definitions:-

(1) In these regulations, unless the context otherwise requires,-

(a) *****

(b) *****

(c) "bill of entry" means electronic integrated declaration accepted and a unique number generated and assigned to that particular bill of entry by the Indian Customs Electronic Data Interchange System, and includes its electronic records or print-outs;

Explanation – For the purposes of this clause, the electronic record shall have the meaning assigned to it as in the Information Technology Act, 2000 (21 of 2000);

(d) "electronic integrated declaration" means particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System;

(e) "ICEGATE" means the customs automated system of Central Board of Indirect Taxes and Customs;

(f) *****

(g) "supporting documents" means the documents in the electronic form or otherwise, which are relevant to the assessment of the imported goods under sections 17 and 46 of the Act."

13. Regulation 3 requires the authorised person to enter the electronic integrated declaration and the supporting documents on the Customs Automated System. Regulation 4(1) requires the authorised person to file the Bill of Entry before the end of the next day following the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station. Regulation 4(2) provides that the Bill of Entry shall be deemed to have been filed and self-assessment completed when after entry of the electronic integrated declaration, a

Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration and the self-assessed copy of the Bill of Entry may be electronically transmitted to the authorised person. Regulation 3 and Regulation 4(1) and (2) are reproduced below:

"3. The authorised person shall enter the electronic integrated declaration and the supporting documents himself by affixing his digital signature and enter them on the Customs Automated System and he may also get the electronic integrated declaration made on the customs automated system along with the supporting documents by availing the services at the service centre.

Explanation.- For the purposes of this regulation, the words "digital signature" shall have the meaning assigned to it in the Information Technology Act, 2000 (21 of 2000);

4. (1) The authorised person shall file the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

(2) The bill of entry shall be deemed to have been filed and self-assessment completed when after entry of the electronic integrated declaration on the customs automated system or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration and the self-assessed copy of the Bill of Entry may be electronically transmitted to the authorised person or printed out at the service centre."

14. The factual position that would emerge after considering the facts stated by the respondent, the facts stated by the Department in the Memo of the Appeal and the findings recorded by the Commissioner (Appeals) are needs to stated.

15. The respondent has stated:

- (i) It had filed four Bills of Entry with the relevant supporting documents on 05.07.2019 through the ICEGATE portal for the four consignments of Gold Dore Bars that it imported.

TRU issued a Circular dated 05.07.2019 that there would be a change in the rate of Basic Customs Duty from 06.07.2019 (00.00Hrs). A Notification dated 06.07.2019 was consequently issued for increasing the Basic Customs Duty from 9.35 per cent to 11.85 per cent w.e.f. midnight of 05/06.07.2019 According to the respondent, only one Bill of Entry number, corresponding to Job Code No. 626, was generated but with respect to Job Code Nos. 629, 630 and 631 Bills of Entry numbers were not generated;

(ii) It, therefore, made a representation to the Commissioner of Customs (Imports) on 08.07.2019 and also raised this issue with ICEGATE service manager. It received an e-mail from ICEGATE portal mentioning that the three Bills of Entry could not be generated on account of a technical error at its end and, therefore, asked the respondent to re-file the Bills of Entry;

(iii) The respondent, thereafter wrote a letter dated 11.07.2019 to the Commissioner of Customs (Imports) mentioning that when the non-generation of numbers for the three Bills of Entry was on account of some technical glitch in the ICEGATE system, the respondent should not be asked to re-file the same. The respondent also received a letter dated 12.07.2019 from the ICEGATE service manager mentioning therein that due to budget activity on

05.07.2019, the files could not be processed after 5 pm and so the respondent should re-file the Bills of Entry;

(iv) The respondent, thereafter submitted a letter dated 15.07.2019 to the Commissioner of Customs (Imports) pointing out that the direction to re-file the three Bills of Entry would not only be incorrect but would also cause severe financial prejudice to the respondent since the Basic Customs Duty had increased in the meantime w.e.f. 05.07.2019; and

(v) Since no response was received, the respondent filed the Bills of Entry again on 20.07.2019. The three Bills of Entry numbers were generated on that date and the respondent also paid Basic Customs Duty at the increased rate of 11.85 per cent.

16. In the Memo of Appeal, the appellant has stated:

(i) The importer presented the requisite data on 05.07.2019 with regard to the four consignments of Gold Dore Bars through ICEGATE portal for generation of Bills of Entry and in terms of regular practice, Job Codes were also created evidencing the presentation of the requisite data for the Bills of Entry. However, Bill of Entry number was generated only for one consignment and the remaining three Bills of Entry numbers were not generated on 05.07.2019 and were kept pending;

- (ii) The importer wrote a letter on 08.07.2019 to the Commissioner of Customs (Imports) requesting for immediate release of these three consignments;
- (iii) The importer, from an enquiry from ICEGATE, understood that the three Bills of Entry numbers were not generated on 05.07.2019 due to some technical error at the end of ICEGATE and sent a letter dated 11.07.2019 to the Commissioner (Imports) stating that since the documents and the Bills of Entry were presented on 05.07.2019, they should be processed;
- (iv) The importer received an e-mail on 12.07.2019 from ICEGATE portal that the three Bills of Entry were not processed after 5 PM due to budget activity on 05.07.2019 and so the importer should re-file the said Bills of Entry;
- (v) The importer wrote a letter dated 15.07.2019 to the Commissioner of Customs (Imports) stating that since the entire documentation filed on 05.07.2019 was complete in all respects and non-processing of the three Bills of Entry was at the end of the ICEGATE, the importer should not be put to financial prejudice;
- (vi) The importer re-filed the Bills of Entry on 19.07.2019/20.07.2019 and paid the increased Basic Customs Duty; and
- (vii) The importer thereafter sent letter dated 19.07.2019 to the Commissioner (Imports) stating that the direction to

resubmit the Bills of Entry was not only illegal but it had resulted in additional liability on the importer.

17. Thus, it can safely be said from the statements made by the respondent and the appellant that the respondent/importer had presented the Bills of Entry with requisite data on 05.07.2019 on the ICEGATE portal for generation of the Bills of Entry numbers, but only one Bill of Entry number was generated on that date. The remaining three Bills of Entry numbers could not be generated due to some technical glitch at the end of ICEGATE portal and also because of the fact that the Bills of Entry could not be processed after 5 pm on 05.07.2019 due to budget activity. The respondent, therefore, re-filed the Bills of Entry and the Job Code Nos. 629, 630 and 631 were processed by the Department on 19.07.2019 and 20.07.2019 and three Bills of Entry numbers were generated. It is not the case of the Department, as set out in "Brief Facts of the Case" in the Memo of Appeal, that incomplete documents were submitted by the respondent on 05.07.2019 as a result of where three Bills of Entry numbers could not be generated on that date.

18. It is in the light of the aforesaid factual position that the findings recorded by the Commissioner (Appeals) need to be appreciated. The relevant portions of the findings are reproduced:

"It is further noted that this office sought comments/ views of the jurisdictional Commissionerate on the Appeal Memo and additional submissions vide letters dated 05.02.2020, 25.02.2020 and 04.03.2020. However, no response has been received. Evidently the Respondent Commissionerate has nothing to say and I proceed to decide the Appeal as per available records. It is seen that the Appellant presented requisite data for Bills of Entry on the basis of documents as per details below on 05.02.2017.

S. No.	Supplier	AWB/date	IGM No.	Invoice No./date	Job No. & time date of Print	Documents upload s confirmati on DRN No. date & Time	Bill of Entry No. & date of Final clearance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Seasif Pacific LLC	72403410293 03.07.2019	1655484/19 05.07.19	1.7-19 26.06.19	626 dated 05.07.19		3947409 05.07.19
2.	Ocean Elite Limited	02022769935 03.07.2019	1655550/19 05.07.19	OEDB2019- 20/001 02.07.19	629 16:56:57 Dated 05.07.19	201907050 0023350 July 05,19 04:52 PM	4148112 20.07.19
3.	Mercantil Fortuna Nueva EIRL	07428234544 01.07.2019	1654834/19 04.07.19	23 01.07.19	630 16:36:27 Dated 05.07.19	201907050 00065330 July 05, 19 04.32 PM	4136846 19.07.19
4.	Corporacion Del Centro	72403410212 28.06.2019	1654846/19 04.07.19	F002- 0000042 26.06.19	631 16:29:51 Dated 05.07.19	201907050 0021666 July 05,19 04:25 PM	4154067 20.07.19

From the above I find that the Appellant had filed requisite details/documents for the imports of their shipments in ICEGATE on 05.07.2019 and Job was created as per time and details mentioned in column (6). The requisite documents were also uploaded as per details in columns 7. The fact that this data as was submitted to ICEGATE gets confirmed from email dated 12.07.2019 from ICEGATE service manager informing that due to budget activity, files were not processed after 05:00 PM on 05.07.2019 and they should re-file the same. In fact, the fact that these details had been submitted to ICEGATE portal has not been disputed by the Respondent. Further out of four consignments, bill of entry no. got generated for one consignment and assessment was done as per BCD rate applicable on 05.07.2019 while for rest three consignments, assessment remained pending.

5.3 It is also noticed that the Appellant also wrote letters to the Commissionerate Customs, ACC Import on 08.07.2019, 11.07.2019, 15.07.2019 stating that Bills of Entry have been duly presented on 05.07.2019 along with all the supporting documents and that non processing of the same at the end of ICEGATE due to their own system glitches cannot be made the basis for the Appellant to file the same again. However, no response was given and the Appellant had to submit the requisite data again on 19.07.2020 / 20.07.2020 leading to generate of bill of entry numbers. On that date and assessment at rates prevailing on that date which was higher than rate applicable on 05.07.2019.

5.4 I also note from the records that B.E. No. 4148112 dated 20.07.2019 correspond to Job no. 629 dated 05.07.2019, B.E. No. 4136846 dated 19.07.2019 correspond to Job no. 630 dated 05.07.2019 and B.E. No. 4154067 dated 20.07.2019 correspond to Job no. 631 dated 05.07.2019 as the MAWB, invoice numbers and IGM numbers correspond to each other."

(emphasis supplied)

19. In view of the conclusions drawn above from the statements made by the appellant and the respondent, no fault can be found in the finding recorded by the Commissioner (Appeals) that the respondent had presented the four Bills of Entry with the requisite data for generation of numbers for the four of Bills of Entry on 05.07.2019 and though one Bill of Entry number was generated on 05.07.2019, but the remaining three Bills of Entry numbers could not be generated because of some technical glitch at the ICEGATE ported and the fact that due to budget activity the files were not processed after 5 pm on 05.07.2019. The Commissioner (Appeals) has also meticulously compared the Bills of Entries numbers generated on 19/20.07.2019 with the corresponding Job Numbers.

20. The issue, therefore, that arises for consideration is that should the importer be required to pay Basic Customs Duty applicable on 05.07.2019, which is the date on which the respondent submitted the Bills of Entry with the requisite data for generation of numbers for the four Bills of Entry or it should be 19/20.07.2019, on which date the three Bills of Entry numbers were generated by the ICEGATE portal. This issue has assumed significance because it was with effect from the midnight of 05.07.2019 that the rate of Basic Customs Duty had increased.

21. According to the respondent, in view of the provisions of section 15 of Customs Act, it is the date of presentation of the Bills of Entry that is relevant for the purpose of ascertaining and applying the rate of duty on the impugned goods.

22. Section 15 of the Customs Act is, therefore, reproduced below:

"15. Date for determination of rate of duty and tariff valuation of imported goods. – (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

- (a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;
- (b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;
- (c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be

(2) The provisions of this section shall not apply to baggage and goods imported by post."

23. The submission of the appellant is that the declaration submitted by the respondent on 05.07.2019 was not complete and hence, in view of the definition of 'Bill of Entry' under regulation 2 (1) (c) read with regulation 2 (1)(g) of the 2018 Regulation, there is no deemed completion as three Bills of Entry numbers were not generated on 05.07.2019.

24. As noticed above, this contention of the appellant that the supporting documents had not been filed by the importer on 05.07.2019 and were subsequently provided on 20.07.2019 has been found to be factually incorrect. The importer had submitted the four Bills of Entry with all the supporting documents on 05.07.2019 and it is only because of the fault of the Department that three Bills of Entry numbers could not be generated on that day. Once this presumption drawn by the Department is found not to be correct, the submission of

the respondent that the Basic Customs Duty as applicable on 05.07.2019 was required to be paid by the appellant needs to be accepted.

25. In this connection reference needs to be made to the judgment of the Madras High Court in **Vijaya Industrial Products (P) Ltd. vs. Union of India**⁹. The High Court, in view of the provisions of sections 15 and 46 of the Customs Act, held that presentation of the Bill of Entry in the prescribed form would suffice to confer a right on the importer to have the tariff valuation and the rate of duty in force on the date of presentation of such Bill of Entry. The relevant portion of the judgment is reproduced below:

"7. As for the difference in the rate of exchange applied to the case on hand as prevailing on 1-7-1994, the same has been objected to relying upon Sections 14, 15 and 46 of the Act. Section 14 which provides for valuation of goods for purpose of assessment of duty under the Act stipulates in proviso to sub-section (1) of Section 14 of the Act that price shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under Section 46, or a shipping bill or bill of export, as the case may be, is presented under Section 50. Section 46 of the Act provides that the importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a Bill of Entry for home consumption or warehousing in the prescribed form. The other provisions of the Act stipulate the procedure to be followed or complied with in the matter of such presentation of the Bill of Entry and the fact that the Bill of Entry is to be made "in the prescribed form" and that too for the purpose of making entry for the home consumption or warehousing cannot be completely lost sight of. Section 15 of the Act which stipulates about the date for determination of rate of duty and tariff valuation provides that the rate or duty and tariff valuation applicable to any imported goods shall be the rate and valuation in force, in the case of goods entered for home consumption under Section 46, on the date on which a Bill of Entry in respect of such goods is presented under that Section. **A combined reading of the above provisions would, in my view, lead to an inescapable conclusion that the presentation of the Bill of Entry in the prescribed form and not in any different format or in any other ordinary manner, would**

9 1995 (76) E.L.T. 531 (Mad.)

suffice to confer a right on the importer to have the tariff valuation and rate of duty, as in force on the date of presenting such a Bill of Entry under Section 46 assessed and determined with reference to the date of such presentation and not as on any subsequent or future date. The stipulation in Section 46 pertaining to the presentation of the Bill of Entry is confined to it being merely in the prescribed form and not necessarily with all and every one or the particulars and particularly complete in all respects and more so with accuracy of the information given.

The mere fact that anyone information in the prescribed form is not furnished or any defective or incorrect information is furnishes, for any reason whatsoever, is no disentitling or disqualifying factor to outright reject or condemn the Bill of Entry presented otherwise in the prescribed form or to treat the same as one not presented on the actual date of its presentation as such. In this case, indisputably the importer's Code number alone has not been given and I am of the view that the lapse or omission in this regard will not in any manner detract the Bill of Entry presented, the credibility of it being the Bill of Entry presented in the prescribed form or the fact that it has been for all purposes of the Act presented on 30-6-1994. The fact that the information relating to the Importer's Code number was furnished only on the next date will not, in my view, make the Bill of Entry one presented on the next day only. The plea on behalf of the petitioner that if the department could not act upon a Bill of Entry presented with any deficit information, it should be considered as though it has not been presented at all in the prescribed form on the date of its actual presentation, is too wide a plea or proposition which cannot be countenanced, having regard to the object and purpose of the filing of the Bill of Entry as also the specific provisions contained in Sections 14 and 15 to which a reference has already been made. If only the object or the intention of the Legislature was such, as is sought to be projected for the respondents, the provisions contained in Sections 14 and 15 of the Act would have been altogether different and be otherwise referable to the date on which action could be taken, unlike the actual stipulation contained in these provisions which have reference and relation to only the actual date of presentation of the Bill of Entry in the prescribed form. In this case, as noticed earlier, the mere absence of detail or omission in furnishing the Importer's Code number alone is no ground to treat the said Bill of Entry really presented on 30-6-1994 as one not presented in the prescribed form on the said date of its factual and actual presentation. Consequently, the application of the exchange rates prevailing as on 1-7-1994 to the case on hand is contrary to law and wholly unsustainable and the same is liable to be rejected to this extent. The order of the second respondent in this regard deserves to be and it is hereby set aside."

(emphasis supplied)

26. Learned Authorized Representative of the Department has, however, placed reliance on a decision of the Supreme Court in

Chatha Rice Mills to contend that a Bill of Entry shall be deemed to have been filed when after entry of declaration on the ICEGATE (Customs Automated Systems), a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration, but since Bill of Entry numbers were not generated with respect to three consignments on 05.07.2019, the legal fiction of presentation of Bill of Entry cannot be applicable.

27. **Chatha Rice Mills** dealt with an issue as to whether the **date** of presentation or **time** of presentation would decide the rate of duty. The Supreme Court held that it is the **time** of presentation which would be relevant and the increased rate of duty would not be applicable if the document was presented before the Notification with regard to the increased rate of duty was uploaded on the e-Gazette. The relevant portions of the judgment are reproduced below:

"2. A terrorist attack took place at Pulwama on 14 February, 2019. **On 16 February, 2019, the Union Government issued a notification under Section 8A of the Customs Tariff Act, 1975. The notification introduced a tariff entry by which all goods originating in or exported from the Islamic Republic of Pakistan were subjected to an enhanced customs duty of 200%. The precise time at which the notification was uploaded on the e-Gazette was 20:46:58 hours Customs authorities at the land customs station at Attari sought to enforce the enhanced rate of duty on Importers who had already presented bills of entry for home consumption before the enhanced rate was notified, in the e-Gazette.** Their action led to a challenge before the High Court of Punjab and Haryana. The consignments of import covered a diverse range of goods, ranging from dry dates to cement.

3. On 26 August, 2019, a Division Bench of the High Court of Punjab and Haryana allowed a batch of writ petitions under Article 226 of the Constitution [2019 (368) E.L.T. A351 (P & H)]. The High Court held that since importers, who had imported goods from Pakistan, had presented their bills of entry and completed the process of "self-assessment" before the notification enhancing the rate of duty to 200 per cent was issued and uploaded, the

enhanced rate of duty was not attracted. The High Court held that the importers were liable to pay the duty applicable at the time when the bills of entry for home consumption were filed under Section 46 of the Customs Act, 1962. The Union or India was ordered to release the goods within seven days on the payment of duty 'as declared and assessed without applying the notification enhancing the rate of duty on goods originating in Pakistan.

22. xxxxxxx

Hence, the bill of entry is deemed to be filed and the self-assessment completed when the requirements of Regulation 4(2) are fulfilled namely by the (i) entry or the declaration on the customs automated system; and (ii) generation of a bill of entry number by the EDI system. Following this, the self-assessed copy of the bill of entry is electronically transmitted to the authorized person

24. Under Section 15(1)(a) the rate of duty is the rate in force on the date of the presentation at a bill of entry where the goods are entered for home consumption under Section 46. The submission of the Learned ASG is that the expression "on the date" is adopted by the legislature in clauses (a) and (b) and in the proviso to Section 15(1). He urged that Section 15(1) has no reference to time but only to the date of the presentation of the bill of entry and once a notification was issued on 16 February, 2019 enhancing the rate of duty, that is the duty 'in force' on the date of presentation. Section 15(1)(a) uses two expressions (i) the rate and valuation "in force"; and (ii) "on the date" of the presentation of the bill of entry for home consumption under Section 46. **The provisions of Section 15(1)(a) have to be read in conjunction with the provisions of Section 46 which are referred to in the former provision. Section 46 has incorporated a regime which encompasses the submission of the bill of entry for home consumption or warehousing in an electronic format, on the customs automated system in the manner which is prescribed. The Regulations of 2018 stipulate the manner in which the bill of entry has to be presented. The deeming fiction in Regulation 4(2) specifies when presentation of the bill of entry and 'self- assessment' are complete. The rate of duty stands crystallized under Section 15(1)(a) once the deeming fiction under Regulation 4(2) comes into existence. The regulations have to be read together with the statutory provisions contained in Section 15(1)(a) and Section 46, while determining the rate of duty."**

50. In the above context, it is to be noted that the rate of customs duty is determined on the date on which the bill of entry for home consumption is presented (Section 15). The presentation of the bill of entry has to be made electronically (Section 46 read with the 2018 Regulations). The presentation is required to be made on the customs automated system. The provisions in the Customs Act for

the electronic presentation of the bill of entry for home consumption and for self-assessment have to be read in the context of Section 13 of the Information Technology Act which recognizes "the dispatch of an electronic record" and "the time of receipt of an electronic record". The legal regime envisaging the electronic presentation of records, such as the presentation of a bill of entry, has been imparted precision as a result of the enabling framework of the Information Technology Act under which these records are maintained. **The presentation of the bill of entry under Section 46 is made electronically and is captured with time stamps in terms of the requirements of the Information Technology Act read with Rule 5(1) of the Information Technology (Electronic Service Delivery) Rules 2011.**

58. With the change in the manner of publishing gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance. Notification No. 5/2019, which is akin to the exercise of delegated legislative power, under the emergency power to notify and revise tariff duty under Section 8A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of the electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the Notification No. 5/2019 applies to bills of entry presented for home consumption after the notification was uploaded in the e-Gazette at 20:46:58 hours on 16 February, 2019.

(emphasis supplied)

28. It is, therefore, clear that the dispute that had arisen before the Supreme Court in **Chatha Rice Mills** was not about non-generation of Bills of Entry numbers, which is the issue in the present case. This judgment would, therefore, not come to the aid of the respondent.

29. The above discussion leads to the inevitable conclusion that the respondent had submitted all the four Bills of Entry with the relevant documents on 05.07.2019 before 5 PM and the respondent cannot be blamed if for three consignments, Bills of Entry numbers were not

generated because of some fault with the ICEGATE portal of the appellant on which the respondent was required to enter the Electronic Integrated Declaration and the supporting documents. The rate of Basic Customs Duty as applicable on 05.07.2019 would, therefore, be applicable and not the Basic Customs Duty as applicable on 20.07.2019, on which date the respondent had resubmitted the Bills of Entry with documents in view of the instructions issued by the Department. There is, therefore, no error in the order passed by the Commissioner (Appeals) requiring the Department to re-assess the three Bills of Entry with respect to the rate of Basic Customs Duty applicable on 05.07.2019.

30. Thus, for the reasons stated above, the order passed by the Commissioner (Appeals) does not call for any interference in this appeal. The appeal is, accordingly, dismissed.

(Order pronounced on **13.08.2021**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)