2020 INSC 561

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No 3249 of 2020
(Arising out of SLP(C) No 3860 of 2020

Union of India & Ors. **…Appellants**

Versus

M/S G S Chatha Rice Mills & Anr. **…Respondents**

W I T H

Civil Appeal No 3250 of 2020
(Arising out of SLP (C) No.3861 of 2020)

W I T H

Civil Appeal No 3250 of 2020
(Arising out of SLP (C) No.3869 of 2020)

W I T H

Civil Appeal No 3252 of 2020
(Arising out of SLP (C) No.3867 of 2020)

W I T H

Civil Appeal No 3253 of 2020
(Arising out of SLP (C) No.3865 of 2020)

W I T H

Civil Appeal No 3262 of 2020
(Arising out of SLP (C) No.5029 of 2020)

W I T H

Civil Appeal No 3265 of 2020
(Arising out of SLP (C) No.7059 of 2020)

W I T H

Civil Appeal No 3267 of 2020
(Arising out of SLP (C) No.6451 of 2020)

W I T H

Civil Appeal No 3269 of 2020
(Arising out of SLP (C) No.7063 of 2020)

W I T H

Civil Appeal No 3270 of 2020
(Arising out of SLP (C) No.7064 of 2020)

W I T H

Civil Appeal No 3271 of 2020
(Arising out of SLP (C) No. 7057 of 2020)

W I T H

Civil Appeal No 3272 of 2020
(Arising out of SLP (C) No.5920 of 2020)

W I T H

Civil Appeal No 3273 of 2020
(Arising out of SLP (C) No.7065 of 2020)

W I T H

Civil Appeal No 3274 of 2020
(Arising out of SLP (C) No.7066 of 2020)

W I T H

Civil Appeal No 3275 of 2020
(Arising out of SLP (C) No.7067 of 2020)

W I T H

Civil Appeal No 3276 of 2020
(Arising out of SLP (C) No.6189 of 2020)

W I T H

Civil Appeal No 3277 of 2020
(Arising out of SLP (C) No.7543 of 2020)

W I T H

Civil Appeal No 3278 of 2020
(Arising out of SLP (C) No.6683 of 2020)

W I T H

Civil Appeal No 3279 of 2020
(Arising out of SLP (C) No.7068 of 2020)

W I T H

Civil Appeal No 3259 of 2020
(Arising out of SLP (C) No.5036 of 2020)

W I T H

Civil Appeal No 3264 of 2020
(Arising out of SLP (C) No.5823 of 2020)

W I T H

Civil Appeal No 3256 of 2020
(Arising out of SLP (C) No.4960 of 2020)

W I T H

Civil Appeal No 3254 of 2020
(Arising out of SLP (C) N0.4959 of 2020)

W I T H

Civil Appeal No 3255 of 2020
(Arising out of SLP (C) No. 4961 of 2020)

W I T H

Civil Appeal No 3260 of 2020
(Arising out of SLP (C) No.5822 of 2020)

W I T H

Civil Appeal No 3257 of 2020
(Arising out of SLP (C) No.5033 of 2020)

W I T H

Civil Appeal No 3258 of 2020
(Arising out of SLP (C) No. 5821 of 2020)

W I T H

Civil Appeal No 3261 of 2020
(Arising out of SLP (C)No. 7058 of 2020)

W I T H

Civil Appeal No 3263 of 2020
(Arising out of SLP (C) No. 5028 of 2020)

W I T H

Civil Appeal No 3266 of 2020
(Arising out of SLP (C) No.7061 of 2020)

AND

W I T H

Civil Appeal No 3268 of 2020
(Arising out of SLP(C) No.7062 of 2020)

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

This judgment has been divided into sections to facilitate analysis. They are:

A The aftermath of Pulwama

B The backdrop

C Petitions before the High Court

D The judgment of the High Court

E Submissions in the appeals

F Determination of the rate under Section 15 of the Customs Act 1962

G Precedent

H Interpreting ‘day’ and ‘date’

I Notification under Section 8A of the Customs Tariff Act

J General Clauses Act

K Information Technology Act, 2000

L Effect of notifications issued in e-gazettes

M Retrospectivity

N Summation

1 Leave granted.

A The aftermath of Pulwama

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. The High Court held that since the 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.[1] The Union of 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.

4 The Union of India is in appeal.

5 The judgment of the High Court is titled as Rasrasna Food Private Limited versus Union of India. Chronologically, the first petition listed before this Court by Special Leave under Article 136 of the Constitution is in the case of G S Chatha Rice Mills. Since the issues of law which have been raised are common to the batch of appeals, they have been heard together.

B The backdrop

6 The First respondent is a partnership firm based in Amritsar which is, *inter alia*, engaged in the import of cement. It imported a consignment of fourteen hundred bags of cement from Pakistan under an invoice dated 1 February 2019. A truck bearing registration number TLV-189 (cargo) crossed the 'zero line' on Saturday, 16 February 2019 under entry number 47195 with a Pakistan Custom's Cargo Manifest bearing the time of 4:31 pm. The goods arrived at the Land Customs Station Road Cargo, Attari Road, Amritsar on the same day and IGM number 366870 was filed in respect of the goods. The truck unloaded its cargo at the Central Warehousing Corporation, ICP, Attari. The arrival of the goods and the filing of the IGM was before 18:00 hours on 16 February 2019. The First respondent filed bill of entry number 2083178 dated 16 February 2019 seeking clearance of the goods for home consumption. The bill of entry was self-

1 "the Customs Act"

assessed at 18:08 hours under the provisions of Section 17(1) of the Customs Act 1962[2] under Customs Tariff Heading 2523910 by levying nil customs duty in terms of notification 68/2012 dated 31 December 2012 (as amended by notification 50/2017- serial 129 dated 30 June 2017) and IGST at 28 percent rate (in terms of notification 1/2017- schedule III serial No. 3). The duty payable was assessed at Rs 73,342/-. Notification 50/2017-Cus (serial No. 129), prescribed a preferential rate of duty on specified goods originating in the Islamic Republic of Pakistan.

On 16 February 2019, notification 5/2019 was issued by the Ministry of Finance in the Department of Revenue, in exercise of powers conferred by sub-section (1) of Section 8A of the Customs Tariff Act 1975.[3] By this notification, a new tariff entry was introduced in Chapter 98 of Section XXI in the following terms:

(1)	(2)	(3)	(4)	(5)
"9806 00 00	All goods originating in or exported from the Islamic Republic of Pakistan	-	200 %	-".

The notification contains a reference to the date (16 February 2019) and time (20:46:58) at which it was uploaded and published in the e-Gazette of the Government of India. Based on the enhancement in the rate of duty brought about by the notification, the customs authorities refused to release the goods which were assessed earlier. The bill of entry was recalled and reassessed on 20

2 "the Customs Act"
3 "the Customs Tariff Act"

February 2019 at 18:14 hours by levying customs duty at 200 per cent and IGST at 28 per cent, enhancing the duty from Rs 73,342/- to 8,10,952/-.

7 Aggrieved by the action of the customs authorities, the first respondent filed a petition under Article 226 for setting aside (i) the assessment of the bill of entry to a duty of 200%; (ii) Notification 5/2019 dated 16 February 2019; and for a direction to CWC to issue a detention memo and the release of the goods.

C Petitions before the High Court

8 The batch of petitions before the High Court involved cases of other similarly situated importers. The facts pertaining to the writ petitions, as gleaned from the judgment of the High Court, are summarized below:

(i) the goods were imported in the ordinary course of trade from Pakistan;
(ii) the goods entered Indian territory through the Attari border at Amritsar before 18:00 hours on 16 February 2019;
(iii) the importers had filed bills of entry under Section 46 of the Customs Act, before the close of working hours, seeking clearance of the goods for home consumption;
(iv) the value and description of the goods were declared;
(v) the importers had self-assessed the goods in terms of the prevailing notifications and had filed the bills of entry in the EDI system;
(vi) the declarations were subject to verification by the customs department which did not dispute them and generated duty payment TR-6 challans;
(vii) since 16 February 2019 was a Saturday, the customs' office was closed after 18:00 hours and was to open on Monday,18 February 2019;
(viii) some of the importers paid the duty online through TR-6 challans on 16 February 2019 while in the case of others, the payment of duty was in progress;

(ix) Notification 5/2019 was issued at 20:46:58 hours on 16 February 2019 following the Pulwama terrorist attack as a result of which the rate of duty on goods originating in Pakistan was enhanced to 200 per cent irrespective of the fact that some of the products had hitherto been exempt from customs duty; and

(x) the customs authorities refused to release the goods on the basis of the bills of entry which were self-assessed at the pre-existing rate and proceeded to recall them and re-assess the goods to the enhanced rate of duty applicable under notification 5/2019.

9 Before the High Court, the submission of the importers was that before notification 5/2019 was issued (at 20:46 hours on 16 February 2019 in order to discourage the import of goods from Pakistan), (i) they had placed orders; (ii) the goods had entered into the territory of India; (iii) the goods were fully or partially exempt from basic customs duties, but subject to IGST at the time of the filing of the bills of entry; (iv) the exporters from Pakistan received payment of the consideration on the basis of which the goods had been supplied; and (v) the object of the notification was to discourage imports from Pakistan and not to penalize Indian importers who had placed orders and had imported goods into

India, *bona fide* relying on the policy which was applicable before the notification was issued in the late hours of the day. On the issues of law, it was urged that after the presentation of the bills of entry for home consumption, self-assessment and duty payment challans had been generated, it was not open to the customs authorities to levy the enhanced rate of duty which came into force later, from 20:46 hours on 16 February 2019. The application of notification 5/2019 would, it was urged, have retrospective effect since the bills of entry for home consumption had been filed electronically on the customs' automated platform before the issuance of the notification and they were self-assessed.

10 On the other hand, the contention of the Union government before the High Court was that under Section 15 of the Customs Act, 1962 the relevant date for determining the rate of duty is the *date* of the presentation of the bill of entry. The submission was that the amended rate of duty under notification 5/2019 came into force on 16 February 2019; hence, the importers were liable to pay duty on the basis of the amended rate. The submission was that the customs authorities were entitled to re-assess the bills of entry under Section 17(4).

D The judgment of the High Court

11 The High Court, after analyzing the provisions of Sections 8A and 11A of the Customs Tariff Act, 1975 and Sections 12, 15, 17, 46 and 47 of the Customs Act,1962 held that:

(i) The relevant date for the determination of duty is the date of the presentation of the bill of entry, which, in the facts of this case, corresponds to the date of the entry of the vehicle carrying the goods into India;

(ii) The bills of entry were presented on 16 February 2019 before the issuance of notification 5/2019;

(iii) The dual requirements of Section 15 namely, the filing of the bill of entry and the entry of the vehicle were fulfilled before the publication of notification 5/2019;

(iv) The amended rate of duty was not applicable;

(v) The absence of customs' clearance under Section 47 had no bearing on the rate applicable;

(vi) Notification 5/2019 having been released after working hours, it would apply from the next day as held in the decision of this Court in **Union of India** vs. **Param Industries Limited**[4]; and

(vii) A notification under Section 8A of the Customs Tariff Act, 1975 cannot apply retrospectively.

4 (2016) 16 SCC 692

12 The Union of India is in appeal.

E Submissions in the appeals

13 Besides making oral submissions, Mr K M Natraj, Additional Solicitor General of India has filed written submissions. His submissions are prefaced with a delineation of the issue which is raised in the appeals, which is:

> "…whether the amendment to the First Schedule of the Customs Tariff Act, 1975 takes effect from the time at which it is uploaded / notified in the gazette or from the first moment of the day / date on which it was issued/ published in the gazette."

The submissions of the ASG are summarized below:

A (i) Under Section 15 of the Customs Act, the date for the determination of the rate of duty and valuation of imported goods, in the case of goods which are entered for home consumption under Section 46, is the date on which the bill of entry in respect of the goods is presented. The expression "on the date" comprehends the entire period of 24 hours, in this case beginning at midnight on 16 February 2019;

(ii) Section 15 does not make any reference to time and hence, irrespective of the point of time when a notification has been uploaded or published in the e-Gazette, the rate of duty leviable on imported goods cleared for home consumption is, by a legal fiction, the rate prevalent on the date of the presentation of the bill of entry;

(iii) Section 15 should be interpreted in light of the rule of literal construction, and the law has to be applied as it is; and

(iv) This case is not about the prospective or retrospective application of the Notification at issue. Rather, it is the simple intent of Parliament to consciously make the date on which the Notification is issued as the date for determination of the rate of duty (as applicable), which this court must uphold.

B (i) Independent of **(A)** above, a notification under Section 8A(1) of the Customs Tariff Act has the effect of amending the First schedule and is a legislative act which dates back to the commencement of the day;

(ii) The schedule is a part of the Act, and hence an amendment to it is an amendment to the Act;

(iii) Sub-section (2) of Section 8A of the Customs Tariff Act applies the provisions of sub-sections (3) and (4) of Section 7 to a notification which is issued under Section 8A(1);

(iv) A notification under Section 8A(1) amending the first schedule has to be placed before each House of Parliament and is subject to its approval and modification; and

(v) An amendment to the schedule, upon the exercise of powers under Section 8A, constitutes an amendment of the Act itself which passes through a process of receiving Parliamentary sanction and is subject to its approval.

C (i) In view of **(B)** above, since the schedule to the Customs Tariff Act is a part of the enactment, the provisions of the General Clauses Act 1897[5] are attracted to an amendment effected under section 8A(1);

(ii) Section 3(7) of the General Clauses Act defines the expression 'Central Act' to mean an Act of Parliament while Section 3(13) defines 'commencement' to mean the day on which an Act or Regulation comes into force;

(iii) Under Section 5(3) of the General Clauses Act, a Central Act or Regulation, unless the contrary is expressed, comes into force immediately on the expiration of the day preceding its commencement; and

(iv) 'Commencement' can only be from a day which takes within its fold the entire period of 24 hours from midnight of the day before the issuance of the notification.

D The twin requirements of Section 15 are fulfilled because

(i) The notification was issued and uploaded in the Gazette on 16 February 2019; and

(ii) The bills of entry for home consumption under Section 46 were presented on 16 February 2019.

This is the substratum of the plea that the rate of duty prescribed by notification 5/2019 is applicable.

14 Opposing the above submissions, Mr PS Narasimha, learned Senior Counsel submitted that

5 "the General Clauses Act"

A (i) The levy of customs duty under Section 12 of the Customs Act is at the rates prescribed under the Customs Tariff Act;

(ii) Under Section 15 of the Customs Act, the rate of duty is the rate prevalent on the date of the presentation of the bill of entry under section 46 of the Customs Act, where goods are cleared for home consumption; and

(iii) The importers fulfilled the twin requirements of the goods having entered on 16 February 2019 and the bill of entry having been filed before 20:46 hours when notification 5/2019 was issued. The bills of entry had to be assessed to customs duty at the rate which was in existence prior to the publication of the notification.

B (i) Notification 5/2019 having been published at 20:46:58 hours on 16 February 2019 it was never updated on the EDI portal;

(ii) Notification 5/2019 would apply only to bills of entry for home consumption presented after 20:46:58 hours on 16 February 2019 or upon amendment in the online EDI portal of ICEGATE;

(iii) A notification issued under the provisions of Section 8A (1) of the Customs Tariff Act cannot have a retrospective character; and

(iv) Subordinate legislation is not retrospective unless the statute under which it has been framed, expressly or by necessary implication, imports retrospectivity. Subordinate legislation cannot always be equated as an ‘Act of legislature’ for the interpretation of ‘Central Act’ as defined by the General Clauses Act.

C (i) Digital India is a new vision and idea into which India is evolving, and we are in a phase of governance in which multiple commercial transactions take place every single day. Rule 5(1) of the Information Technology (Electronic Service Delivery) Rules, 2011 mandates maintenance of timestamps for any governmental electronic records;

(ii) In exercise of the powers conferred by Section 157 read with Sections 46 and 47 of the Customs Act, the Central Board of Indirect Taxes and Customs has passed the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations 2018[6];

(iii) Under Regulation 4(2), the bill of entry is deemed to have been filed and self-assessment completed when, after the entry of the electronic integrated declaration on the customs automated system, a bill of entry is generated by the Indian Customs Electronic Data Interchange System and the self-assessed copy of the bill of entry may be electronically transmitted to the authorized person;

(iv) In terms of the provisions of Section 15(1)(a), where goods are entered for home consumption under Section 46, the rate of duty is the rate in force on the date on which a bill of entry in respect of such goods is presented under Section 46. The Regulations of 2018 have been made pursuant to Section 46 and contain a deeming fiction which prescribes when the presentation of the bill of entry and self-assessment is complete;

6 "the Regulations 2018"

(v) Once the bills of entry were filed and self-assessment was complete, the subsequent issuance of notification 5/2019 at 20:46:58 hours would have no application to the present batch of cases; and

(vi) Bills of entry, once presented, can be re-assessed under Section 17(4) only in instances when 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.

D The purpose of the notification being to discourage the import of goods from Pakistan, it has prospective effect: the object and purpose is not to penalize Indian importers who had completed their imports, presented bills of entry for home consumption and had completed self-assessment in terms of the provisions of the Customs Act and the Regulations, prior to the issuance of the notification.

The submissions which were urged by Mr P S Narasimha have been supported by other learned counsel appearing for the respondents including Mr Devashish Bharuka, Ms Anjana Gusain, Mr Anant Agrawal, Ms Sishti Agarwal, Mr Parmatma Singh and Mr Saurabh Kapoor.

15 The rival submissions are considered below.

F Determination of the rate under Section 15 of the Customs Act 1962

16 Chapter V of the Customs Act provides for the levy of and exemption from customs duties. Section 12(1), which is the charging provision, provides for the levy of duties of customs on goods imported into, or exported from India at the rates specified by the Customs Tariff Act or, in any other law for the time being in force. Section 15(1) is extracted 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.
>
> The provisions of this section shall not apply to baggage and goods imported by post."
>
> (**emphasis supplied**)

17 Section 12 specifies that the rates of duty on goods imported and exported are those which are provided in the Customs Tariff Act or in any other law. Section 12 does not indicate when the duties under those enactments will come into being or force. Section 15 specifies the date with reference to which the rate of duty and tariff valuation of imported goods is determined. Clauses (a), (b) and (c) of sub-section (1) of section 15 contain distinct provisions which apply to:

(i) goods entered for home consumption under Section 46;

(ii) goods cleared from a warehouse under Section 68; and

(iii) other goods.

Where goods are entered for home consumption under Section 46, the rate of duty and tariff valuation is to be the rate and valuation "*in force" "on the date on which"* a bill of entry in respect of such goods is presented under that Section. In relation to the rate of duty, the effect of clause (a) of Section 15(1), is that the rate which is in force on the date on which a bill of entry is presented under Section 46 (in the case of goods entered for home consumption) is applicable to the imported goods. When the duties come into force under the enactments imposing them is dependent on and defined by the terms of the particular enactment.

18 Chapter IX of the Customs Act contains provisions for warehousing. Section 68 which falls under that Chapter stipulates that goods which have been warehoused may be cleared for home consumption if:

a) A bill of entry for home consumption has been presented;
b) Import duty, interest, fine and penalties, as applicable, have been paid; and

c) An order for clearance for home consumption has been made by the proper officer.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

For goods which are cleared from a warehouse under Section 68, clause (b) of Section 15 (1) provides that the rate of duty and valuation are those “in force” “on the date” on which a bill of entry for home consumption is presented under Section 68. In the case of other goods, it is the date of the payment of duty which determines the rate of duty under clause (c) of Section 15(1).

The proviso to Section 15 (1) contemplates a situation where a bill of entry has been presented before the date of the entry inwards of the vessel or the arrival of the aircraft or vehicle through which the goods are imported. Under the proviso to Section 46(3), a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vehicle by which the goods have been shipped for importation into India. Dealing with such a situation, the proviso to Section 15(1) states that if a bill of entry has been presented prior to the date of the entry inwards of the vessel or the arrival of the aircraft or vehicle by which the goods are imported, the bill of entry is deemed to have been presented on the date of the entry inwards or the arrival of the goods. Hence even where the bill of entry has been presented before the date of the entry inwards or the arrival of the aircraft or vehicle, the rate of duty is determined with reference to the date of entry inwards or the arrival of the aircraft or vehicle. This

is a consequence of the deeming fiction under the proviso, as a result of which the presentation of the bill of entry, when filed prior to the arrival of the goods, is deemed to be on the date of the entry inwards or the arrival of the aircraft or vehicle. Hence, implicit in the provisions of Section 15(1) are the dual or (as counsel before the court described them) the twin requirements of (i) the presentation of the bill of entry; and (ii) the entry inwards of the vessel or, as the case may be, the arrival of the aircraft or vehicle.

19 Section 17 provides for the assessment of duty. Section 46 provides for the entry of goods on importation. Both the provisions of Section 17 and Section 46 have undergone legislative changes by Act 8 of 2011 and by the Finance Act of 2018. By Act 8 of 2011, Section 17 was substituted and Section 46 was *amended* to provide for the presentation in the electronic form of a bill of entry for home consumption or warehousing. Section 46 provides as follows:

> "**46. Entry of goods on importation.—(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed: Provided that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner**: Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) 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: Provided that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India: Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [and such other documents relating to the imported goods as may be prescribed].

(4A) The importer who presents a bill of entry shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force……."

(**emphasis supplied**)

Sub-section (1) of Section 46 requires an importer of goods to make an entry by presenting a bill of entry for home consumption or warehousing "**electronically on the customs automated system"** to the proper officer **"in such form and manner as may be prescribed"**. The word 'electronically' was introduced by Act

8 of 2011 with effect from 8 April 2011. The provision for the presentation of the bill of entry on the customs automated system and in 'such form and manner as prescribed' was introduced by the Finance Act of 2018. Under sub-section (3) of Section 46, a bill of entry under sub-section (1) must be presented before the end of the day following the day on which the aircraft, vessel or vehicle carrying the goods arrives at a customs station at which the goods are to be cleared for home consumption or warehousing (holidays being excluded). The first proviso to sub-section (3) enables the presentation of a bill of entry before arrival, at a time not exceeding thirty days prior to the expected arrival of the aircraft, vessel or vehicle by which the goods have been shipped for importation. Under the second proviso if the bill of entry is not presented within the specified time without sufficient cause, the importer is required to pay the charges prescribed for late presentation of the bill of entry.

20 Section 17 makes provisions for the assessment of duty:

> "Assessment of duty.
>
> 17. Assessment of duty --(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
>
> (2) The proper officer may verify [the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
>
> Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.
>
> (3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the

case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods….."

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation.-For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."

(**emphasis supplied**)

Prior to its substitution by Amending Act 8 of 2011, Section 17 contained requirements for (i) examination and testing of goods; and (ii) assessment. Section 17, as it stood prior to substitution, was in the following terms:

"17. Assessment of Duty. –

(1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under, section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the enter relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

(5) Where any assessment done under sub-section *(2)* is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefore under this Act, and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be."

The amendment of 2011 has made significant legislative changes in the procedure and modalities for assessment of duty under Section 17. Under sub-section 1 of Section 17, the importer entering imported goods under Section 46, has to 'self-assess' duty (except as otherwise envisaged in the provisions of Section 85). Under sub-section (2), the proper officer may verify the entries made under Section 46 and the self-assessment made under sub-section (1) and may examine or test the goods. The selection of goods for verification has to be

primarily on the basis of risk evaluation through appropriate selection criteria. Under sub-section (4), where it is found on verification, examination or testing of goods or otherwise that the self-assessment has not been done properly the proper officer is entrusted with a power of re-assessment. Sub-section (5) requires the passing of a speaking order upon re-assessment.

21 Section 47 provides for the clearance of goods for home consumption:

> "Clearance of goods for home consumption.
>
> (1**) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty**, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper **officer may make an order permitting clearance of the goods for home consumption:**
>
> **Provided that such order may also be made electronically through the customs automated system** on the basis or risk evaluation through appropriate selection criteria:
>
> Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.
>
> **(2) The importer shall pay the import duty--**
>
> **(a) on the date of presentation of the bill of entry in the case of self assessment; or**
>
> (b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
>
> (c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf,
>
> and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette……"
>
> (**emphasis supplied**)

Sub-section (2) of Section 47 requires the importer to pay import duty “on the date of presentation of the bill of entry in the case of self-assessment”. Alternatively, where the bill of entry is returned to the importer for the payment of duty in the case of assessment, re-assessment or provisional assessment, the import duty has to be paid within a day, after excluding holidays.

The provisions contained in Section 46 for the entry of goods on importation and those in Section 17 for assessment form part of a composite scheme. Section 46 requires an importer of goods to make an entry in the electronic form of a bill of entry for home consumption or, as the case may be, for warehousing, on the customs automated system. An exception is contained in the proviso to Section 46 (1) for cases where it is not feasible to make an entry in the electronic form on the customs automated system. The bill of entry under sub-section (1) has to be presented not later than the day following the arrival of the goods though it can be presented before the arrival of goods, at a time not exceeding thirty days prior to their expected arrival. In tandem with the provisions of Section 46, Section 17 provides for the self-assessment of duty by the importer.

Section 46(1) stipulates that the bill of entry has to be presented in the form and in the manner ‘prescribed’. The expression ‘prescribed’ is defined in Section 2(32) to mean prescribed by regulations made under the Act. The Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations 2018 have been made in pursuance of the enabling power conferred by Sections 46 and 47 and Section 157 which contains a general power to make regulations.

Section 157(2)(a) was amended by the Finance Act 2018 (Act 13 of 2018) to allow for the power to frame regulations on the form and manner of delivering or presenting *inter alia* a bill of entry. Regulation 2(c) of the 2018 Regulations defines the expression bill of entry in the following terms:

> "(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"

Regulation 2(d) defines the expression electronic integrated declaration:

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

Under Regulation 2(e), "ICEGATE" is the customs automated system of the Central Board of Indirect Taxes and Customs. Regulation 3 requires the authorized person (defined in Regulation 2(b)[7]), which includes the importer, to enter the electronic integrated declaration and supporting documents by affixing a digital signature. Regulation 3 is as follows:

> "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."

Regulation 4 provides as follows

7 2(b) "authorised person" means an importer or a person authorised by him who has a valid licence under the Customs Brokers Licensing Regulations, 2013 or any other regulation dealing with the similar matters and it also includes an employee of the Customs broker who has been issued a photo identity card in Form G under the Customs Brokers Licensing Regulations, 2013 or any other regulation dealing with the similar matters;

> "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.**
> (3) Where the bill of entry is not filed within the time specified in sub-regulation (1) and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of ……"
>
> (**emphasis supplied**)

22 The Regulations of 2018 have made provisions for submission of a declaration and generation of the bill of entry in an electronic form on the automated platform provided by the Central Board of Indirect Taxes and Customs. Sub-regulation (2) of Regulation 4 embodies a legal fiction. Regulation 4(2) stipulates that the bill of entry is deemed to have been filed and self-assessment completed when after the entry of the electronic integrated declaration on the customs automated system (or by data entry through a service centre) a bill of entry number is generated by the Indian Customs Electronic Data Interchange ("**EDI**") System. The self-assessed copy of the bill of entry may be electronically transmitted to the authorized person under the deeming fiction which is created by Regulation 4(2). 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 of 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.

23 In terms of the provisions of Section 15(1)(a), in the case of goods which are entered for home consumption under Section 46, the date of presentation of the bill of entry determines the rate of duty and tariff valuation. Under Section 47(2)(a), the importer is obliged to pay the import duty on the date of the presentation of the bill of entry in the case of self-assessment. Regulation 4(2) of the Regulations of 2018 categorically stipulates when the presentation of the bill of entry is complete. Once the bill of entry is deemed to have been presented in terms of Regulation 4(2) the rate and valuation in force stand crystalized under Section 15(1)(a). Section 17(4) confers a power of re-assessment on the proper officer where it is found on verification, examination or testing of the goods or otherwise- that the self-assessment has not been done correctly. In the present case the customs authorities sought to exercise the power of re-assessment on the ground of the subsequent notification enhancing the rate of duty. The fact of the matter is that self-assessment was carried out on the basis of the rate of duty which prevailed at the time of the presentation of the bill of entry. This is not and cannot be a matter of dispute. Notification 5/2019, which introduced a new tariff entry – 980 60 000 - in the First schedule to the Customs Tariff Act covering all goods originating in or exported from the Islamic Republic of Pakistan, was not in force at the time when the self-assessment was carried out.

24 Under Section 15(1)(a) the rate of duty is the rate in force on the date of the presentation of 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.

G Precedent

25 At this stage it is necessary to analyze the precedent on the subject. In **Bharat Surfactants (Private) Limited** vs. **Union of India**[8] **("Bharat Surfactants")**, customs duty was imposed on the import of edible oil by the petitioners at the rate of 150 per cent on the basis that the import was made on the date of the inward entry, which was 31 July 1981. The vessel arrived and registered in the Port of Bombay on 11 July 1981 but since a berth was not available, the cargo could not be unloaded. The vessel left Bombay and proceeded to Karachi and returned towards the end of July 1981. The rate of customs duty prevailing on 11 July 1981 was 12.5 per cent and the contention of the importer was that but for the fact that the vessel was unable to secure a berth, it would have delivered the cargo. Speaking for a Constitution Bench, Chief Justice R S Pathak rejected the contention of the importer that the import of goods must be deemed to have taken place on 11 July 1981 when the ship originally arrived in Bombay port and registered itself. The Constitution Bench held:

> "14…The provisions of Section 15 are clear in themselves. The date on which a Bill of Entry is presented under Section 46 is, in the case of goods entered for home consumption, the date relevant for determining the rate of duty and tariff valuation. Where the Bill of Entry is presented before the date of Entry Inwards of the vessel, the Bill of Entry is deemed to have been presented on the date of such Entry Inwards."

8 (1989) 4 SCC 21

The Constitution Bench held that the date of entry inwards of the vessel in the Customs' register was mentioned as 31 July 1981 and the rate of import duty and tariff valuation would be that which was in force on that day. The decision in **Bharat Surfactants** was adverted to in the decision of this court in **Priyanka Overseas Pvt. Ltd.** vs. **Union of India**[9]. Justice N M Kasliwal, speaking for the two judge Bench, observed:

> "34…The rate of duty and tariff valuation on the imported goods may be changed from time to time and as such the legislature has clearly expressed its intention under Section 15 as to on what date the rate of duty and tariff valuation is to be determined…
>
> Many contingencies may happen in between the filing of bill of entry and actual removal of the goods from the warehouse for which sometimes the importer of goods may himself be responsible, in some cases the responsibility may lie on the customs authorities and there may also be contingencies beyond the control of both the parties. In any case the intention of the legislature being clear, rate of duty is to be applied, as may be in force on the date of actual removal of goods from the warehouse under Section 15(1)(*b*) of the Customs Act."

The above observations, referring to the date of the actual removal of goods from the warehouse, were made in the context of the provisions of Section 15(1)(b). In a subsequent decision in **Dhiraj Lal H Vohra** vs. **Union of India**[10], Justice K Ramaswamy speaking for a three judge Bench observed:

> "3. It is clear from a bare reading of these relevant provisions that the due date to calculate the rate of duty applicable to any imported goods shall be the rate and valuation in force, in the case of the goods entered for home consumption under Section 46, is the date on which the bill of entry in respect of

9 1991 Supp (1) SCC 102
10 1993 Supp (3) SCC 453

> such goods is presented under that section and in the case of goods cleared from a warehouse under Section 68, the date on which the goods are actually removed from the warehouse. By operation of the proviso if a bill of entry has been presented before the date of entry inwards the bill of entry shall be deemed to have been presented "on the date of such entry inwards" but would be subject to the operation of Sections 46 and 31(1) of the Act."

In that case the ship had arrived at the Port of Madras on 20 February 1989 and was ready to discharge her cargo. Though the import manifest was delivered, the cargo could not be handled as a result of a continuous strike. The bill of entry for clearance of goods for home consumption was presented on 27 February 1989. The ship arrived into the port and was berthed on 2 March 1989 on which date the entry inwards was granted. From 1 March 1989, the rate of duty was increased. The court rejected the contention that since the vessel had entered Indian territorial waters on 20 February 1989 when she was ready to discharge the cargo, the rate of duty must be that which prevailed on that date:

> "3…The contention, therefore that the ship entered Indian territorial waters on February 20, 1989 and was ready to discharge the cargo is not relevant for the purpose of Section 15(1) read with Sections 46 and 31 of the Act. The prior entries regarding presentation of the bill of entry for clearance of the goods on February 27, 1989 and their receipt in the appraising section on February 28, 1989 also are irrelevant. The relevant date to fix the rate of customs duty, therefore, is March 2, 1989. The rate which prevailed as on that date would be the duty to which the goods imported are liable to the impost and the goods would be cleared on its payment in accordance with the rate of levy of customs prevailing as on March 2, 1989."

Another decision of a Bench comprising three learned judges of this Court in **D.C.M.** vs. **Union of India**[11] held as follows:

11 1995 Supp (3) SCC 223

"7…A reading of Sections 15, 46 and 68 makes it clear that they provide an option to the importer either to file a bill of entry for home consumption straight away (in which case he

> has to pay the duty determined with reference to that date) or to file a bill of entry for warehousing. In the latter case, the goods are merely warehoused. The import duty will be levied at the rate and on the basis of the valuation determined in accordance with the provisions prevailing on the date of clearance from the warehouse for which purpose the importer has to file a fresh bill of entry for home consumption. In other words, it is the *date of filing the bill of entry for home consumption* which determines the rate of duty in clauses (*a*) and (*b*) of Section 15. Inasmuch as the matter is left to the option of the importer and also because a uniform principle is adopted by the Act, as explained above, we see no room for any legitimate grievance of discrimination. There is also no presumption that rate of duty always goes up. It may also go down, in which case, the importer stands to gain."

26 The presentation of a bill of entry for home consumption under Section 46 is hence the definitive event with reference to which the customs' duty payable for import is determined. The duty in force on the day when the bill of entry for home consumption is presented is the duty which is applicable under Section 15(1)(a). It is in view of this principle that the entry of the vessel into territorial waters, before the presentation of the bill of entry, has been held not to fix the rate of duty where the rate of duty has undergone a change.

H Interpreting 'day' and 'date'

27 The expressions "day" and "date" have been construed in varying contexts in the precedents of this Court. The underlying feature of the decisions is that the content of those expressions is based on the context. In **Raj Kumar Yadav** vs. **Samir Kumar Mahaseth**[12], the limitation provided by Section 81 of the Representation of the People Act 1951 expired on the 45th day from the date of

12 (2005) 3 SCC 601

the election. Interpreting the provision, Chief Justice R.C. Lahoti while speaking for a three judge Bench of this Court observed :

> "6…The word "day" is not defined in the Act. It shall have to be assigned its ordinary meaning as understood in law. The word "day" as per English calendar begins at midnight and covers a period of 24 hours thereafter, in the absence of there being anything to the contrary in the context."

Hence, in that case the Election Petition could have been presented up to midnight falling between 27 and 28 August 2003. The Court observed that the limitation which was prescribed by the statute could not be curtailed or taken away by the rules of the High Court, governing its procedure.

28 In **New India Assurance Co. Ltd.** vs. **Ram Dayal**[13] **("Ram Dayal")**, a two judge Bench of this Court noted that the insurance policy in respect of the vehicle was up to 31 August 1984 and could be renewed. Instead of renewing the policy, a fresh insurance policy was taken from 28 September 1984, on which date the accident occurred. This Court upheld the view of the Punjab and Haryana High Court, which was supported by earlier decisions of the Madras High Court, Punjab and Haryana High Court and the Allahabad High Court, that the insurance cover commenced from the beginning of the day and concluded that:

> "4… when a policy is taken on a particular date, its effectiveness is from the commencement of the date and, therefore, the High Court, in our opinion, was right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award."

13 (1990) 2 SCC 680

29 On the other hand, in **National Insurance Company Limited** vs. **Geeta Devi**[14], the cover note was issued on 9 June 1989 at 4:40 pm while the accident took place at 11:30 am on the same day. A two judge Bench of this Court distinguished the decision in **Ram Dayal** (supra) and held that when the cover note mentioned the date of issue of the policy as 9 June 1989 and the time as 4:40 pm " it necessarily means that the effective date of issue and time of issue is as mentioned on the cover note." Since the cover note mentioned both the date and time, the Court held that the principle that the insurance cover would date back to midnight of the preceding day would not cover the factual situation.

30 In **Ahmadsahab Abdul Mulla (2) Dead by proposed Lrs.** vs. **Bibijan**[15], the issue before this Court was whether the expression "date" in Article 54 of the Schedule to the Limitation Act (which prescribes the period of limitation for a suit for specific performance) is suggestive of a specific date in the calendar. The court observed:

> "11. The inevitable conclusion is that the expression "date fixed for the performance" is a crystallised notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances."

14 (2010) 15 SCC 670
15 (2009) 5 SCC 462

31 The expression 'date' in Article 54 was held to be suggestive of a specified date in the calendar. In **Pashupati Nath Singh** vs. **Harihar Prasad Singh**[16], a three judge Bench construed the words "on the date fixed for scrutiny" in Section 36(2)(a) of the Representation of the People Act 1951. Interpreting those words, the Court held that the qualification of a candidate must exist from the earliest moment of the day of scrutiny:

> "13. It seems to us that the expression "on the date fixed for scrutiny" in Section 36(2)(*a*) means "on the whole of the day on which the scrutiny of nomination has to take place". In other words, the qualification must exist from the earliest moment of the day of scrutiny. It will be noticed that on this date the Returning Officer has to decide the objections and the objections have to be made by the other candidates after examining the nomination papers and in the light of Section 36(2) of the Act and other provisions. On the date of the scrutiny the other candidates should be in a position to raise all possible objections before the scrutiny of a particular nomination paper starts."

32 A Special Bench of the Madras High Court in **Re Court Fees**[17] dealt with the interesting issue of whether the law disregards fractions of the day. A notification was published in the Fort St. George Gazette on 5 May 1922 by which the table of fees leviable in respect of the institution of suits under Appendix – II of the old rules on the Original side was amended. Instead of a fixed fee of Rs 30, it was provided that Rs 150 was to be levied in all suits where the value of the subject matter did not exceed Rs 10,000/- and in respect of suits of a higher value, Rs 20/- was to be levied for every Rs 5,000/- or part thereof in excess of Rs 10,000/-. The notification stated that "the amendments **do come into force from the date of publication in the Fort St. George Gazette".** The

16 (1968) 2 SCR 812
17 ILR (1923) 46 Mad 685

office hours of the High Court were from 11am to 5pm. The notification reached the High Court at about 5pm, at the close of the office hours. The issue before the Special Bench was whether the rules imposing increased institution fees on suits on the Original side of the High Court would apply the new scale to suits which had already been instituted on that day. Chief Justice Schwabe, on behalf of the majority, held "that the hour of the day at which the Gazette was actually published is a wholly irrelevant consideration". The Chief Justice noted that the use of the expression 'from' may have one of two meanings namely on and after, that is including the named date, or merely after, that is excluding the named date. The Chief Justice took the view that it is necessary to look at the context and the circumstances of each case to arrive at the true construction. Having said this, the Chief Justice outlined the principles in the following extract on page 688:

> "(1) that, if the named date is the beginning of a defined limited period, that, where there is a terminus *ad quem* as well as a terminus a *quo,* then *prima facie* the first day is excluded; (2) that, if the named date is the beginning of an indefinite period then *prima facie* the first day is included. I say *prima facie* because in my view there must be exceptions".

In his view, the expression "from a named date" meant "on and after that day". Hence the date on which the notification was published in the official Gazette was held to apply to all plaints which were filed on 5 May 1922.

Justice Coutts Trotter, arrived at the same conclusion as the Chief Justice, following a different path, which he set out in the following observations, on page 691 :

> "What I conceive to emerge from the decided cases is this: that as the law in general neglects fractions of a day you must either exclude or include the whole of the day with which a given statute or rule or regulation deals. And the exclusion or inclusion, I think, is clearly provided in two other rules. If you are fixing the point of time at which a certain state of things is to be called into existence, that state of things comes into existence at midnight of the day preceding the day at which or on which or from which or from and after which the new state of things begins. In such cases the statue or rule is only concerned in fixing the terminus a *quo* of a new state of law which is enacted to continue indefinitely, in other words, until repealed by a new enactment of the legislature where, in short, you have a terminus a *quo* but no terminus *ad quem.*"

In his view, on page 693:

> "Where a statute fixes only the terminus a *quo* of a state of things, which is envisaged as to last indefinitely, the common law rule obtains that you ought to neglect fractions of a day and the statute or regulation or order takes effect from the first moment of the day on which it is enacted or passed, that is to say, from midnight of the day preceding the day on which it is promulgated: where on the other hand, a statute delimits a period marked both by a terminus a *quo* and a terminus *ad quem*, the former is to be excluded and the latter to be included in the reckoning."

The notification, in this view, fell in the former class and was held to have come into force on the first second of the 5 May, that is to say from midnight of 4 May. Hence all plaints which were filed on 5 May were liable to the enhanced fee.

The tightly reasoned and eloquent dissenting opinion delivered by Justice Kumaraswami Sastri, on the other hand, deserves close attention. The learned Judge noted that if the case were to be decided on the principle that the law disregards fractions of a day, it could mean any one of two things: either that a fraction of a day is to be taken as a whole day or that it is to be excluded

altogether from the calculation. Consequently, “it does not help us to determine in any particular case whether the part is to be left out or kept in”. Justice Kumaraswami Sastri observed that there is no invariable rule that the use of the expression ‘from’ includes the first day. Nor was there any basis in principle in the submission of the Crown that the exclusion of the first day where the word “from” is used is only to be in case where there are two termini. The learned Judge held that rules of equity and good conscience are by the Civil Courts Act to govern cases not governed by the Hindu and Mohammedan Laws. Voicing a powerful dissent, Justice Kumaraswami Sastri observed, on page 704:

> “I do not think that the principles which govern, or the devices which are resorted to, by the Executive for the purpose of raising money by taxation ought to have any weight with us in determining whether the date of publication is to be included or excluded. I do not think the High Court is part of the tax gathering machinery of the Government or has any concern with the consequences to the Government of their decision on the construction of the rule. The rule, I take it, was passed by the Judges of the High Court in the exercise of the powers entrusted to them to control the administration of justice and the fees were raised because in the opinion of the Judges it was just and proper that litigants ought to pay more for the benefits which they derive by resorting to the jurisdiction of the High Court”.

In the view of the learned Judge, the notification having been received in the Registry of the High Court at 5pm at the office closing hour, litigants who had filed plaints before either or they or the office had knowledge of the publication “did what was perfectly valid under the old rules and they presented the plaints with Rs 30 stamp irrespective of the value of their claim”. Looking at it from the citizens’ perspective, the learned Judge observed, on page 704:

> "A person who files a plaint which is properly stamped and which is in order at the time of presentation is entitled to have his plaint admitted on presentation though as a matter of convenience the office receives the plaints and admits them at the end of the day or later on. There seems to me to be very little justice or equity in directing that persons who have done what was perfectly a legal and valid act at the time should pay a Court-fee which is much higher simply because a notification was received at the close of the day making the higher fees chargeable from the date of the notification. It may well be that if those persons had notice that instead of Rs. 30 they had to pay at least Rs 150 and a maximum that would range according to the value of their claim, they might rather have compromised with the other side or might have had resort to other proceedings like arbitration for settling their claims. I can find nothing to justify charging people, who filed their plaints on that day without knowledge of the notification which only reached the High Court at 5 p.m., with the higher fees in respect of plaints filed during the course of the day".

33 Mr Natraj, on behalf of the Union, submitted that Parliament has employed the phrase "on the date" without making a reference to time. Hence, he submitted that irrespective of the time of the publication or uploading of the notification under the Customs Tariff Act in the e-Gazette, the legislature has by a legal fiction, enacted that the rate of duty on imported goods will be the rate that is prevalent on the date of the presentation of the bill of entry for home consumption. He submitted that two different rates of duty cannot be applicable on the same day. Hence, according to the submission, once a notification is issued under the Customs Tariff Act, it will be a notification in force on that date and apply with effect from the commencement of that date.

34 The decisions to which a reference has been made earlier, have construed the expression "day" or, as the case may be, "date" in varying contexts ranging

from the law governing elections, insurance and limitation. A general position in law has not been laid down that is divorced from subject, context and statute. In interpreting the statute, the court is guided by the terms of its provisions, the purpose underlying their adoption and the scheme which emerges from interrelated provisions and the nature of the provision. The court in the present case is interpreting the terms of a fiscal levy. The court here has to construe the scheme and provisions of the Customs Act and their relationship with the provisions of the Customs Tariff Act. The provision which falls for construction is Section 15(1) of which both clauses (a) and (b) use the expression “on the date”. In clause (a), the rate of duty and valuation is the rate and valuation in force on the date on which a bill of entry is presented under Section 46 where goods are entered for home consumption. Under Clause (b), where goods are cleared from a warehouse under Section 68 it is the date on which a bill of entry for home consumption is presented under that Section which is determinative of the rate and valuation.

35 Mr Natraj is textually right when he emphasizes that Section 15 (1) contains a reference to date and not time. But there are two responses to his line of approaching the issue. *First*, the legislature does not always say everything on the subject. When it enacts a law, every conceivable eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense. *Second*, regulatory governance is evolving in India as new technology replaces old and

outmoded ways of functioning. The virtual world of electronic filings was not on the horizon when Parliament enacted the Customs Act in 1962. Yet the Parliament has responded to the rapid changes which have been brought about by the adoption of technology in governance. In the provisions of Section 17 and Section 46, the impact of ICT-based governance has been recognized by the legislature in providing for the presentation of bills of entry in the electronic form on the customs automated EDI system. Precision, transparency and seamless administration are key features of a system which adopts technology in pursuit of efficiency. As we will explore in greater detail later in this judgment, technology has enabled both administrators and citizens to know precisely when an electronic record is uploaded. The considerations which Parliament had in its view in providing for crucial amendments to the statutory scheme by moving from manual to electronic forms of governance in the assessment of duties must not be ignored. Tax administration must leave behind the culture of an age in which the assessment of duty was wrought with delays, discretion, doubt and sometimes, the dubious. The interpretation of the court must aid in establishing a system which ensures certainty for citizens, ease of application and efficiency of administration.

36 It is with these principles of interpretation in mind that we must evaluate the submission which was urged by Mr Nataraj, on behalf of the Union, that upon the issuance of a notification enhancing the rate of duty under Section 8A of the Customs Tariff Act, the date on which the notification was issued will govern the rate applicable to all bills of entry, including those which were presented before

the enhanced rate was notified. The submission cannot be accepted for several reasons. For one thing, it misses the significance of the expression “in force’ which has been employed in the prefatory part of Section 15(1). A notification under Section 8A(1) of the Customs Tariff Act, even though it has the effect of amending the First Schedule, takes effect prospectively. Section 8A does not confer upon the notification an operation anterior to its making. In the language of the law, its operation is prospective. To accept the submission of the ASG would mean that the notification under Section 8A would have effect prior to its making, something which Parliament has not incorporated by language or intent. If, as we hold, the notification operates for the future beginning with the point of its adoption, it cannot operate to displace the rate of duty which is applicable when a bill of entry is presented for home consumption under Section 46.

The submission of the Union cannot be accepted in view of the provisions contained in Section 46 for the presentation of a bill of entry for home consumption in an electronic form on the customs automated system. While making that provision, specifically by means of an amendment by Act 8 of 2011 and later by the Finance Act of 2018, Parliament used the expression “in such form and manner as may be prescribed.” Regulation 4(2) of the Regulations of 2018 provides when the bill of entry shall be deemed to have been filed and self-assessment completed. The legal fiction which has been embodied in Regulation 4(2) emanates from the enabling provisions of Section 46. The provisions of Sections 15(1)(a), 17, 46(1) and 47(2)(a) constitute one composite scheme. As a result of the modalities prescribed for the electronic presentation of the bill of entry and self-assessment after the entry of the electronic declaration on the

customs automated system, a bill of entry number is generated by the EDI system for the declaration. Regulation 4(2) provides for a deeming fiction in regard to the filing of the bill of entry and the completion of self-assessment. In the context of these specific provisions, it would do violence to the overall scheme of the statute to interpret the language of Section 15(1)(a) in the manner in which it is sought to be interpreted by the ASG. The submission of the ASG, simply put, is that because notification 5/2019 was issued on 16 February 2019, the court must regardless of the time at which it was uploaded on the e-Gazette treat it as being in existence with effect from midnight or 0000 hours on 16 February 2019. The consequence of this interpretation would be to do violence to the language of Section 8A(1) of the Customs Tariff Act, and to disregard the meaning, intent and purpose underlying the adoption of provisions in the Customs Act in regard to the electronic filing of the bill of entry and the completion of self-assessment.

I Notification under Section 8A of the Customs Tariff Act

37 The second and alternative limb of the submissions of the ASG postulates that a notification under Section 8A(1) of the Customs Tariff Act is a legislative act. The rates of duty applicable to different categories of goods imported into India are set out in the First schedule to the Customs Tariff Act. A notification under Section 8A(1) amends the First schedule. Hence, the submission is that the schedule being a part of the Act, any amendment made to it by a notification is an amendment to the Act. The ASG relies upon the decisions of this Court in

Video Electronics (P) Ltd vs. **State of Punjab**[18] and **TN Electricity Board** vs. **Status Spinning Mills Limited**[19] in support of the principle that subordinate legislation validly made in pursuance of a legislative provision is to be read as if it is a part of the enactment. Hence, for instance, an exemption granted under a notification made in pursuance of a statutory provision must be construed as if it is contained in the legislation.

38 In order to consider the submission, it is necessary at the outset to advert to the provisions of the Customs Tariff Act. Under Section 8A, an emergency power is vested in the Central Government to increase the import duties leviable on an article included in the First schedule where it is satisfied that circumstances rendering it necessary to take immediate action exist. Section 8A is in the following terms:

> "8A- Emergency Power of Central Government to increase import duties-
>
> **Where in respect of any article included in the First Schedule**, **the Central Government is satisfied that the import duty leviable thereon under section 12 of the Customs Act, 1962 (52 of 1962) should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary**:
>
> Provided that the Central Government shall not issue any notification under this subsection for substituting the rate of import duty in respect of any article as specified by an earlier notification issued under this sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (2).

18 (1990) 3 SCC 87
19 (2008) 7 SCC 353

> **(2) The provisions of sub-sections (3) and (4) of section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7."**
>
> (**emphasis supplied**)

While Section 8A is an emergency power, Section 11A empowers the Central government in public interest to amend the First schedule:

> "(1) Where the Central Government is satisfied that it is necessary so to do in the public interest, it may, by notification in the Official Gazette, amend the First Schedule:
>
> Provided that such amendment shall not alter or affect in any manner the rates specified in that Schedule in respect of goods at which duties of customs shall be leviable on the goods under the Customs Act, 1962 (52 of 1962)."

Sub-section (2) of Section 8A specifies that the provisions of sub-sections (3) and (4) of Section 7 shall apply to a notification which has been issued under sub-section (1) of Section 8A. Sub-sections (3) and (4) of Section 7 are in the following terms:

> "(3) **Every notification under sub-section (2), insofar as it relates to increase of such duty, shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.**

> (4) For the removal of doubts, it is hereby declared that any notification issued under sub-section (2), including any such notification approved or modified under sub-section (3), may be rescinded by the Central Government at any time by notification in the Official Gazette."
>
> (**emphasis supplied**)

Under sub-section (3) of Section 7, the Central government is required to seek the approval of Parliament to a notification within a period of fifteen days of its being laid before the House of the People. Where Parliament is in session, the notification has to be laid before the House as soon as may be after it is issued and, if it is not, then within seven days of the legislature re-assembling. The approval of parliament has to be sought within the specified period. The notification would cease to have effect or take effect with modifications, if Parliament so directs. In the case of a notification which has been issued under Section 11A, sub-section (2) does not require the Central government to seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days from the date on which the notification has been laid before the House of the People. Sub-section (2) of Section 11A merely states that the notification shall either cease to have effect or have effect in a modified form if it is so directed by both the Houses of Parliament.

39 A notification which is issued in terms of the provisions of Sub-section (1) of Section 8A is akin to the exercise of a delegated legislative power. The Central government is empowered to issue a notification enhancing the rate of duty where it is satisfied that immediate action is necessary to increase the rate of customs duty on an article specified in the First schedule. The effect of the

notification is to amend the First schedule to the Customs Tariff Act in respect of the import duty leviable on an article under Section 12 of the Customs Act. In issuing a notification under Sub-section (1) of Section 8A, the Central government exercises power as a delegate of the legislature. The issue now to be considered is whether the notification that was issued by the Central government under Section 8A(1) at 20:46:58 hours on 16 February 2019 took effect commencing from 0000 hours on that day. The ASG relied on the provisions of the General Clauses Act in support of his submission that it did.

J General Clauses Act

40 Section 5(3) of the General Clauses Act 1897 provides thus:

> "(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."

The above provision applies to a "Central Act" or "Regulation". Hence, the above provision makes it abundantly clear that it is only a 'Central Act' or 'Regulation' which comes into operation immediately on the expiration of the day preceding its commencement. The expressions "Central Act" and "Regulation" are defined by the statute. The expression "Central Act" is defined in Section 3(7) in the following terms:

> "(7) "Central Act" shall means an Act of Parliament, and shall include—
>
> (a) an Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution, and

> (b) an Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity;"

The expression "Regulation" is defined in Section 3(50) as follows:

> "(50) "Regulation" shall mean a Regulation made by the President under article 240 of the Constitution and shall include a Regulation made by the President under article 243 thereof and a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935;"

The expression "commencement" is defined in Section 3(13) as follows:

> "(13) "Commencement" used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force."

The definition of the expression "commencement' is also relatable to a "Central Act" or "Regulation".

41 A notification issued by the Central government under sub-section (1) of Section 8A does not fulfill the description of a Regulation under Section 3(50) of the General Clauses Act. The expression is confined to specific species of Regulations. The definition does not extend to all subordinate legislation or to notifications issued by a delegate of the legislature acting in pursuance of a statutory authority.

42 The expression "Central Act" is defined by using the expressions "shall mean" and "shall include". The use of these expressions indicates that the definition is exhaustive. Insofar as is relevant, the expression 'Central Act' is

defined to mean an Act of Parliament. A notification which has been issued under Sub-section (1) of Section 8A of the Customs Tariff Act is not an Act of Parliament. The notification has the effect of amending the First schedule. The Central government as a delegate of the legislature has been entrusted with the authority to issue such a notification. That does not make the notification an Act of Parliament.

43 The above analysis is based on a textual reading of the two definitions – those of a “Central Act” and “Regulation”. The precedent on the subject confirms the analysis. This Court has held that the mere fact that a piece of delegated legislation has been issued in exercise of a legislatively conferred power does not bring the delegated legislation within the ambit of the phrase “Central Act” as defined in Section 3(7) of the General Clauses Act.

44 In **Kolhapur Canesugar Works Ltd.** vs. **Union of India (UOI)**[20], Constitution Bench of this Court had to decide, *inter alia*, if Rules 10 and 10-a of the Central Excise Rules could be considered a ‘Central Act’ as defined in Section 3(7) of the General Clauses Act. This decision of the Court, albeit subsequently questioned for its interpretation of ‘repeal’ through omission [which does not have a bearing on the issue at hand], was not assailed for its interpretation of “Central Act” within the General Clauses Act. Speaking through Justice D.P. Mohapatra, this Court answered the question of whether the aforesaid Rules constituted a 'Central Act' in the negative, in the following terms:

> “32. When the term Central Act or Regulation or Rule is used in that Act reference has to be made to the definition of that

20 AIR 2000 SC 811.

> term in the statute. It is not possible nor permissible to give a meaning to any of the terms different from the definition. It is manifest that each term has a distinct and separate meaning attributed to it for the purpose of the Act. Therefore, when the question to be considered is whether a particular provision of the Act applies in a case then the clear and unambiguous language of that provision has to be given its true meaning and import. The Full Bench has equated a 'rule' with 'statute'. In our considered view this is impermissible in view of the specific provisions in the Act. When the Legislature by clear and unambiguous language has extended the provision of Section 6 to cases of repeal of a 'Central Act' or 'Regulation', it is not possible to apply the provision to a case of repeal of a 'Rule'. The position will not be different even if the rule has been framed by virtue of the power vested under an enactment; it remains a 'rule' and takes its colour from the definition of the term in the Act (General Clauses Act)."

45 In **Securities and Exchange Board of India** vs. **Magnum Equity Services Ltd**[21], a two judge Bench of this Court considered whether the General Clauses Act is applicable to the interpretation of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The Court observed that the Regulations were framed by SEBI in exercise of the powers conferred on it by Section 30 of the SEBI Act, 1992. Section 31 requires the rules and regulations to be laid before Parliament. Justice Vikramajit Sen concluded as follows:

> "12. The main contention raised by the learned Senior Counsel for the appellant is based on the application of the General Clauses Act, 1897 which under Section 13(2) states that plural includes singular. However, before we consider Section 13, we shall have to determine whether the General Clauses Act itself is applicable to the SEBI (Stockbrokers and Sub-Brokers) Regulations, 1992. Section 3 of the General Clauses Act, 1897 states that the said Act is applicable to all Central Acts and Regulations made after the commencement of this Act. Further, the term "Central Act" has been defined under sub-section (7) as an Act of Parliament, which includes (a) an Act of the Dominion Legislature or of the Indian

21 (2015) 16 SCC 721

> Legislature passed before the commencement of the Constitution, and (b) an Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity. The SEBI (Stockbrokers and Sub-Brokers) Regulations, 1992 are issued by SEBI in exercise of the powers conferred on it under Section 30 of the SEBI Act, 1992. Section 31 of the SEBI Act, reproduced below for the facility of reference, provides that the Rules and Regulations are to be laid before Parliament:
>
> > "31. Rules and regulations to be laid before Parliament.— Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation."
>
> 13. Thus in light of the provisions of the SEBI Act, 1992 under which the said Regulations have been issued, the latter do not tantamount to a Central Act as defined Under Sub-section (7) of the definition clause of The General Clauses Act, 1897."

The Regulations framed under the SEBI Act were held not to fall within the definition of a 'Central Act' contained in Section 3(7) of the General Clauses Act.

46 Notification 05/2019 was issued by the Central Government under the delegated authority to increase emergency tariff duties under Section 8A of the Customs Tariff Act, 1975. The notification has been issued in pursuance of a

statutory power. The notification has the effect of enhancing the rate of duty prescribed in the First Schedule to the Customs Tariff Act. That does not, transform the notification which has been issued in pursuance of a statutory authority into a 'Central Act'.

K Information Technology Act, 2000

47 While enacting the Information Technology Act 2000, Parliament envisioned a regime of electronic governance. The legislation recognizes that information technology is a facilitative instrument for creating an efficient framework for e-commerce. Providing the backdrop for Parliamentary intervention, the Statement of Objects and Reasons underlying the enactment of the legislation provides the rationale for the law:

> "New communication systems and digital technology have made dramatic changes in the way we live. A revolution is occurring in the way people transact business. Businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages. It is cheaper, easier to store, retrieve and speedier to communicate. Although people are aware of these advantages, they are reluctant to conduct business or conclude any transaction in the electronic form due to lack of appropriate legal framework. The two principal hurdles which stand in the way of facilitating electronic commerce and electronic government are the requirements as to writing and signature for legal recognition. At present many legal provisions assume the existence of paper based records and documents and records which should bear signatures. The law of evidence is traditionally based upon paper based records and oral testimony. Since electronic commerce eliminates the need for paper-based transactions, hence to facilitate e-commerce, the need for legal changes have become an urgent necessity. International trade through the medium of e-commerce is growing rapidly in the past few years and many countries have switched over from traditional paper based commerce to e-commerce."

48 Parliament recognized the need to bring about suitable amendments to existing legislation to facilitate e-commerce, more so in light of India being a signatory to the United Nations Commission on International Trade Law's Model Law on Electronic Commerce in 1996. It therefore proposed to provide legal recognition of electronic records and digital signatures. This would, as the Statement of Objects and Reasons indicate, "enable the conclusion of contracts and the creation of rights and obligations through the electronic medium". Parliament envisaged the use and acceptance of electronic records and digital signatures in governmental offices and agencies, to facilitate electronic governance and to "make the citizens' interaction with the governmental offices hassle free".

Bearing the legislative number of Act 21 of 2000, the law came into force on 17 October 2000. The long title to the legislation provides that it is:

> "An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872 , the Banker's Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto."

Section 2(t) defines the expression 'electronic record':

> "(t) —electronic record means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche"

Chapter III is devoted specifically to electronic governance. Among its salient provisions are those providing for:

(i) Legal recognition of electronic records (Section 4);
(ii) Legal recognition of electronic signatures (Section 5);
(iii) Use of electronic records and electronic signatures in government and its agencies (Section 6);
(iv) Authorization by government to service providers to set-up, maintain and upgrade computerized facilities (Section 6A); and
(v) Retention of electronic records (Section 7).

Sub-section 1 of Section 6 has a bearing on the issues raised in this case:

> "6. Use of electronic records and electronic signatures in Government and its agencies- (1) Where any law provides for — (a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;
>
> (b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;
>
> (c) the receipt or payment of money in a particular manner, then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government."

Section 6A contemplates that for the "efficient delivery of services to the public through electronic means", government may authorize a service provider to set up, maintain and upgrade computerized facilities and perform other services. Section 7 provides legal support to the retention of records in the electronic form. Where a law requires documents, information or records to be preserved, the requirement is satisfied by preserving them in an electronic form, subject to the fulfillment of conditions. One of the conditions stipulated by Section 7(1)(c) is that

the details which facilitate the identification of the origin, destination, date and time of dispatch or the receipt of the electronic record are available in the electronic record. The date and time of receipt or of the dispatch of an electronic record are crucial from this perspective to the maintenance of an electronic record.

49 In exercise of its rule making power, the Central Government formulated rules for electronic service delivery. Under these rules, called the Information Technology (Electronic Service Delivery) Rules 2011, governmental authorities must maintain time stamps of the creation of electronic records. Rule 5(1) incorporates such a requirement in the following terms:

> "5. Creation of repository of electronically signed electronic records by Government Authorities.-
>
> (1) All authorities that issue any license, permit, certificate, sanction or approval electronically, shall create, archive and maintain a repository of electronically signed electronic records of such licenses, permits, certificates, sanctions or approvals, as the case may be, online with due timestamps of creation of these individual electronic records."

The Rules provide a procedure for making changes in the repository of electronically signed electronic records, in Rule 6. Rule 6(2) indicates that the person authorized to make a change must also electronically sign the change and the time stamps of the original creation and modification of the electronic record. Rule 6(2) reads thus:

> "6. Procedure for making changes in a repository of electronically signed electronic records.-

> (2) Any change effected to any record in a repository of electronically signed electronic records and any addition or deletion of a record from such repository shall be electronically signed by the person who is authorized to make such changes along with the time stamps of original creation and modification times"

Digital signatures have contextual information including the date and time built into them. Under the Digital Signature (End entity) Rules 2015, provisions for time stamps for digital signatures are built into the legal regime under Rule 4(4) and, in the context of a long term valid digital signature, in Rule 4(7).

Section 13 of the Information Technology Act 2000 contains provisions for the time and place of the dispatch and receipt of electronic records. It reads as follows:

> "13. Time and place of dispatch and receipt of electronic record.—
>
> (1) **Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.**
>
> (2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:—
>
> (a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—
>
> (i) receipt occurs at the time when the electronic record enters the designated computer resource; or
>
> (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;
>
> (b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee….."

(**emphasis supplied**)

The dispatch of a record occurs when it enters a computer resource outside the control of the originator. The time of receipt of the electronic record is fixed by the provisions of sub-section 2 of Section 13. When the addressee has designated a computer resource, receipt occurs when the record enters the computer resource so designated. Otherwise, where no computer resource is designated, the receipt of the record is when it is retrieved by the addressee. These provisions have been incorporated in the law to enable the dispatch and receipt of a record in the electronic form to be defined with precision with reference to both- time and place.

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.

L Effect of notifications issued in e-gazettes

51 Section 8 of the Information Technology Act, 2000 creates a legal basis for the publication of laws through e-gazettes. It reads as follows:

> “Section 8 - Publication of rule, regulation, etc., in Electronic Gazette-
>
> Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:
>
> Provided that where any rule, regulation, order, by-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form.”

52 On 30 September 2015, the Ministry of Urban Development issued an Office Memorandum numbered No. O-17022/1/2015-PSP-I which discontinued

the practice of physical printing and replaced it with the electronic gazette. The notification, in relevant part, reads as follows:

> "In compliance with the provisions of Section 8 of the Information Technology Act, 2000, it has been decided in consultation with Department of Legal Affairs to switch over to exclusive e-publishing of the Government of India Gazette Notification on its official website with effect from 01.10.2015 and to do away with the physical printing of Gazette Notification. **The date of publishing shall be the date of e-publication on official website by way of electronic gazette in respect of Gazette notification**."
>
> (emphasis supplied)

53 Thus far, this Court has not had to confront the question as to whether the shift from the analog to the digital for Gazette notifications has any bearing for ascertaining when they come into force. The judgments which dealt with the starting point for the enforceability of notifications were all concerned with circumstances in which such publication took place in the physical gazette. We are now required to determine if the shift to electronic gazettes has brought about a change in this position.

54 The High Courts have begun offering guidance on this score. The Delhi High Court in **M.D. Overseas Industries** vs. **Union of India**[22], dealt with a situation where the Director General of Foreign Trade issued two notifications dated 25 August 2017 restricting the importation of gold, including gold coins. Gold coins could no longer be imported freely and had to be imported in accordance with a public notice issued in that behalf. The petitioners urged that the restrictive regime created by these notifications was inapplicable to them

22 W.P. (C) 7838/2017 decided on 15 October 2019 (Delhi High Court)

because the notifications, they contended, came into force only on 28 August, 2017, when they were published in the official gazette. The gold coins imported by the petitioners, however, were dispatched on 25 August, 2017. Since the notifications came into force three days later, they contended that these were inapplicable to them. The notifications were electronically notified in the gazette.

55 The High Court upheld the Petitioner's view that the notifications were inapplicable to the petitioners after considering Section 8 of the Information Technology Act, 2000 along with the Office Memorandum dated 30.9.2015. It held:

> "32. The endorsement on the electronic copy of the Gazette, whereby the impugned Notification Nos. 24 and 25, dated 25th August, 2017, were notified, seen in juxtaposition with Section 8 of the IT Act, and of the OM dated 30th September, 2015 *supra*, of the Ministry of Urban Development, makes it clear that the impugned Notification Nos. 24 and 25, dated 25th August, 2017 were, in fact, electronically published in the Official Gazette only at or after 10:47 p.m. on 28th August, 2017.
>
> 33. It has been conclusively held, by the Supreme Court, in a catena of decisions - including Harla v. State of Rajasthan [1952 (1) SCR 110], B.K. Srinivasan v. State of Karnataka [AIR 1987 SC 1059] and U.O.I, v. Param Industries [(2016) 16 SCC 692] **that, notifications would come into force on their publication in the Official Gazette, i.e. in the present case, with effect from the date and time when they were electronically printed in the Gazette, which was at or after 10:47 p.m. on 28th August, 2017**."
>
> (**emphasis supplied**)

56 Thus, the High Court regarded the time of publication as the relevant marker for determining the enforceability of the notifications. The issue of determining the starting point for the enforceability of a notification in the electronic gazette was considered by the Andhra Pradesh High Court in **Ruchi**

Soya Industries vs. **Union of India.**[23] The petitioner entered into a contract with its foreign supplier on 18 January 2008 for the import of 9,500 Metric Tons of crude oil. The first consignment of 4000 metric tons was shipped by the supplier on 6 February 2018 from Dubai. The petitioner filed two bills of entry for 2000 metric tons of crude oil on 1 March 2018. They were assessed that day and levied with 30% customs duty and 10% social welfare surcharge. On the same date, a notification raised the basic customs duty from 30 to 44%. The petitioner filed four bills of entry for the remaining 2000 tons on 2 March 2018 and argued that the revised rate was not applicable to it because the notification was published in the electronic gazette only on 6 March 2018. The High Court agreed with the petitioner and held that the revised notification would come into force only after it was digitally signed by the competent official and uploaded and published in the official gazette. The relevant excerpt from page 41 of the High Court's judgment is quoted below:

> "….The notification was …published electronically on 6.3.2018. In view of the decision taken by the Government of India in terms of Section 8 of the…Information Technology Act, to avoid physical printing of Gazette notification to publish the same exclusively by electronic mode, so as to attribute knowledge to the public at large. The notification was signed by Rakesh Sukul on 6.3.2018 at 19:15:13 + 05'30'. When notification needs to be signed digitally and only when the notification was uploaded and published in the Official Gazette, the same is made available for public."

57 The Madras High Court dealt with a similar situation in **Ruchi Soya Industries** vs. **Union of India**[24] and held that the decision of the A.P. High Court

23 W.P. No. 4533 and 4534 of 2019 decided on 28 September 2019 (Andhra Pradesh High Court)
24 W.P. No. 21207 of 2018 decided on 14 July 2020 (Madras High Court).

noted above was applicable to the case before it. As a result, it allowed the writ petition on the same terms and directed the Respondent to refund the enhanced duty collected from the petitioner, along with IGST.

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 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 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.

59 The impugned High Court judgement has relied on the decision of the Karnataka High Court in **Param Industries Ltd.** vs. **Union of India**[25], which was confirmed by the decision of this Court in **Union of India** vs. **Param Industries Limited**[26] **[“Param Industries”]** In that case, the respondents were in the business of importing and exporting edible oil. The respondents imported RBD Palmolein which was cleared after payment of import duty of 85 per cent of its value. The import duty was paid pursuant to a notification which was in existence as on that date. A major quantity of the goods had been removed from the warehouse after the payment of duty. The importer was, however, informed that

25 2002 (150) E.L.T. 3 (Kar)
26 (2016) 16 SCC 692

by a notification dated 3 August 2001 (incidentally this was also the date the bill of entry was filed and goods were cleared) the tariff value had been raised to USD 372 per metric tonne and that the importer was liable to pay the difference in the tariff which was paid on the basis of the earlier notification. The respondent contested the demand on the ground that the notification raising the import duty had not come into effect on 3 August 2001. The Division Bench of the High Court held that the notification was not published on 3 August 2001 and must have been Gazetted only after the following weekend namely on 6 August 2001 or thereafter; the Gazette issued containing notification was offered for sale only starting from 6 August 2001; and that the mere publication of the notification on the website and the issuance of a letter to the Assistant Controller, Government of India (Press) was not sufficient for the notification to be operational and enforceable on 3 August 2001. This Court in appeal observed that according to the High Court two conditions were mandatory for the notification to be brought into force

(i) Due publication in the official Gazette; and

(ii) Offering the notification for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.

This Court noted that, in their case, the second condition was not satisfied as the notification was offered for sale only on 6 August 2001 as it was published in the late evening hours of 3 August 2001 and the next two days were holidays.

60 The decision of this Court in **Param Industries** was on the interpretation of Section 14(2) of the Customs Act. However, *prima facie*, this decision appears to be contrary to the principles previously elucidated by this Court in the context of the Customs Act. In a two judge Bench decision of this Court in **Pankaj Jain Agencies** vs. **Union of India,**[27] **["Pankaj Jain"]** the Court considered the determination of the date when a notification dealing with an exemption would come into force. The mode of publication for such notifications is prescribed separately under Section 25 of the Customs Act. The Court held:

> "17. In the present case indisputably the mode of publication prescribed by Section 25(1) was complied with. The notification was published in the Official Gazette on the 13-2-1986. As to the effect of the publication in the Official Gazette, this Court held [Srinivasan case[(1987) 1 SCC 658, 672 : AIR 1987 SC 1059, 1067] AIR at p. 1067 : SCC pp. 672-73, para 15]:
>
> "Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. **If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognized official channel, namely, the Official Gazette or some other reasonable mode of publication.**"
>
> 18. We, therefore, see no substance in the contention that notwithstanding the publication in the Official Gazette there was yet a failure to make the law known and that, therefore, the notification did not acquire the elements of operativeness and enforceability."
>
> (**emphasis supplied**)

The principles recognized in **Pankaj Jain** were re-iterated and affirmed by a three judge Bench of this Court in **Union of India** vs. **Ganesh Das Bhojraj**[28] which

27 (1994) 5 SCC 198

28 (2000) 9 SCC 461.

dealt with the enforceability of a notification under Section 25, prior to its Amendment by Act 21 of 1998 which inserted Section 25(4) and the requirement of 'offering for sale'. The Court separately noted that the newly introduced requirement of 'offering of sale' had prospective application. However, in the factual scenario concerning a notification governed by the pre-amended act, it upheld the principle that any additional requirement of publication can only be introduced by statute and the Court is bound by the applicable statutory scheme for determining enforceability. It noted:

> **"**11. In our view, as noted above, in Pankaj Jain Agencies case [(1994) 5 SCC 198] the Court directly dealt with a similar contention and after relying upon the decision in the case of Mayer Hans George [AIR 1965 SC 722 : (1965) 1 Cri LJ 641 : (1965) 1 SCR 123] rejected the same. That decision is followed in I.T.C. Ltd. [(1996) 5 SCC 538] and other matters. Hence, it is difficult to agree that the decision in Pankaj Jain Agencies case [(1994) 5 SCC 198] was not helpful in deciding the question dealt with by the Court. **Section 25 of the Customs Act empowers the Central Government to exempt either absolutely or subject to such conditions, from the whole or any part of the duty of customs leviable thereon by a notification in the Official Gazette. The said notification can be modified or cancelled. The method and mode provided for grant of exemption or withdrawal of exemption is issuance of notification in the Official Gazette. For bringing the notification into operation, the only requirement of the section is its publication in the Official Gazette and no further publication is contemplated.** Additional requirement is that under Section 159 such notification is required to be laid before each House of Parliament for a period of thirty days as prescribed therein. **Hence, in our view Mayer Hans George [AIR 1965 SC 722 : (1965) 1 Cri LJ 641 : (1965) 1 SCR 123] which is followed in Pankaj Jain Agencies case [(1994) 5 SCC 198] represents the correct exposition of law and the notification under Section 25 of the Customs Act would come into operation as soon as it is published in the Gazette of India i.e. the date of publication of the Gazette. Apart from the prescribed requirement under Section 25, the usual mode of bringing into operation such notification followed since years in this country is its publication in the Official**

> **Gazette and there is no reason to depart from the same by laying down additional requirement**."
>
> (**emphasis supplied**)

61 **Param Industries**, in as much as it imposed an additional requirement of 'offering for sale', outside of the prescribed statutory scheme under S.14(2) of the Customs Act, 1962, appears to be contrary to pre-existing principles. Having said this, we do not wish to rule on the validity of **Param Industries** or its consequent impact on decisions that have relied on it. In the present judgment it is not necessary to take recourse to the line of reasoning in **Param Industries.** The situation at hand, operates on a landscape which is significantly altered by the regulatory regime in the electronic age where, both – uploading of notifications in the e-gazette and filing of bills of entry- are in the electronic form. As we have previously noted, Notification 5/2019 was uploaded in the e-gazette at a specific time and date and cannot apply to bills of entry which were presented on the customs automated EDI system prior to it, attracting the legal fiction set out in Regulation 4(2) of the 2018 Regulations. Therefore, **Param Industries** does not have any bearing on the case at hand.

M Retrospectivity

62 Section 8A of the Customs Tariff Act confers an emergency power upon the Central government to increase import duties “in respect of any article included in the first schedule”. By the notification dated 16 February 2019, the Union Ministry of Finance in the Department of Revenue introduced a distinct tariff item – 980 60 000 - encompassing “all goods originating in or exported from the Islamic Republic of Pakistan” for which a rate of duty of 200 per cent has been prescribed. The exercise of the power under Section 8A is contingent on the satisfaction of the Central government that (i) the duty on *any article* in the first schedule should be increased; and (ii) that circumstances exist which render it necessary to take immediate action. The Central government in the exercise of this power may by a notification in the official gazette direct an amendment of the schedule to be made “so as to provide for an increase in the import duty leviable *on such article* to such extent as it thinks necessary”. Section 8A does not contain language indicative of a legislative intent to authorize the Central government to relate back the exercise of the power to a period prior to its exercise. The exercise of the power under Section 8A (2) is governed by the prescriptions contained in sub-sections (3) and (4) of Section 7. The conferment of the power has not been made retrospective either expressly or by necessary implication.

63 Section 8A enables the Central government to increase the rate of duty on an article in the first schedule in emergent situations. The notification dated 16 February 2019 adds a new entry altogether. Such an exercise may well be regarded as relatable to the provisions of Section 11A. Section 11A confers a power on the Central Government to amend the First schedule in public interest.

Section 8A on the other hand contemplates an increase in duty *on an article contained in the First schedule*. Notification 5/2019 introduces a new tariff entry to provide for a duty of 200% *on all articles* originating in or exported from Pakistan. However, this aspect of the matter need not be explored further for the reason that neither before the High Court, nor before this Court, was the challenge to the *vires* of the notification pressed during the course of the submissions. The legal position which needs emphasis is that the entrustment of the power to issue a notification enhancing the rate of duty under Section 8A is not accompanied by a statutory entrustment of authority to the Central government to exercise it with retrospective effect. An enhancement of the rate of duty pursuant to the exercise of power under Section 8A can only be prospective.

64 Parliament and the state legislatures are entrusted with the power to enact legislation under Articles 245 and 246 of the Constitution. Parliament and the state legislatures possess the plenary power to enact legislation, with prospective and retrospective effect, subject to due observance of constitutional requirements. A notification issued by the government pursuant to the conferment of statutory power is distinct from an act of the legislature. Administrative notifications, even when they are issued in pursuance of an enabling statutory framework, are subject to the statute. Delegated legislation does not lose its character even when it has the same force and effect as if it is contained in the statute. This is a settled position of law. In a decision which was rendered in 1961 by a Constitution Bench of this Court in **Chief Inspector of Mines** vs. **Lala**

Karam Chand Thapar[29], the principle of law was formulated in the following terms:

> "20. The true position appears to be that the rules and regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act. They continue to be rules subordinate to the Act, and though for certain purposes, including the purpose of construction, they are to be treated as if contained in the Act, their true nature as subordinate rule is not lost…."

In **K I Shepard** vs. **Union of India**[30], a two judge Bench of this Court held that the power to frame a scheme under Section 45 of the Banking Regulation Act 1949 was not legislative in character but an administrative function. This Court observed:

> "9…But is the scheme-making process legislative? Power has been conferred on the RBI in certain situations to take steps for applying to the Central Government for an order of moratorium and during the period of moratorium to propose either reconstruction or amalgamation of the banking company. A scheme for the purposes contemplated has to be framed by RBI and placed before the Central Government for sanction. Power has been vested in the Central Government in terms of what is ordinarily known as a Henry VIII clause for making orders for removal of difficulties. Section 45(11) requires that copies of the schemes as also such orders made by the Central Government are to be placed before both Houses of Parliament. We do not think this requirement makes the exercise in regard to schemes a legislative process."

The above decision was distinguished in **New Bank of India Employees' Union** vs. **Union of India**[31] ["**New Bank of India**"] where the court held that a scheme framed under Section 9 of the Banking Companies (Acquisition and Transfer of

29 AIR 1961 SC 838
30 (1987) 4 SCC 431
31 (1996) 8 SCC 407

Undertakings) Act 1980 stands on a distinct footing of being a legislative and not an administrative function. The court held that the question was not of much relevance in view of its conclusions on the main issues presented for decision. Yet, it considered the question and laid emphasis on the authority entrusted to Parliament to consider, within 30 days, to agree/modify/arrive at any decision with regards to the scheme, *only thereafter* was the scheme was to have effect. These requirements, qualitatively distinguished from a requirement of mere 'laying' under Section 45 of the Banking Regulation Act 1949, were pivotal in the court's view that a scheme under the 1980 Act has a legislative character. Mr Natraj sought to emphasize a similar argument, by placing reliance on the provisions of sub-sections (3) and (4) of Section 7 which are made applicable by reason of sub-section (2) of section 8A. However, in the absence of a *sine qua non* for parliamentary sanction before the notification is enforceable, the decision of *New Bank of India* provides little anchor. For the purpose of the present decision the point which needs emphasis is that in empowering the Central Government to exercise power under Section 8A of the Customs Tariff Act, Parliament has not either expressly or by necessary implication indicated that a notification once issued will have force and effect anterior in time. The provisions of sub-sections (3) and (4) of Section 7 of the Customs Tariff Act bring to bear legislative oversight and supervision over the power which is entrusted to the Central Government under Section 8A. That however does not lead to the inference that a notification under Section 8A has retrospective effect. Plainly, a notification enhancing the rate of duty under Section 8A has prospective effect.

A rule framed by the delegate of the legislature does not have retrospective effect unless the statutory provision under which it is framed allows retrospectivity either by the use of specific words to that effect or by necessary implication. In **Hukum Chand** vs. **Union of India**[32], a three judge Bench of this Court held that:

> "8…The extent and amplitude of the rule-making power would depend upon and be governed by the language of the section. If a particular rule were not to fall within the ambit and purview of the section, the Central Government in such an event would have no power to make that rule. Likewise, if there was nothing in the language of Section 40 to empower the Central Government either expressly or by necessary implication, to make a rule retroactively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule. **The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority and that Court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled."**
>
> **(emphasis supplied)**

65 The distinction between the plenary power which is entrusted to Parliament and the state legislatures to enact legislation with both prospective and retrospective effect, and the power entrusted to a delegate of the legislature to frame subordinate legislation has been maintained in a consistent line of precedent of this Court. In **Regional Transport Officer, Chittoor** vs. **Associated Transport Madras (P)**[33], Justice V.R. Krishna Iyer speaking for a two judge Bench of this Court with his characteristic eloquence observed:

32 (1972) 2 SCC 601
33 (1980) 4 SCC 597

> "4. The legislature has no doubt a plenary power in the matter of enactment of statutes and can itself make retrospective laws subject, of course, to the constitutional limitations. But it is trite law that a delegate cannot exercise the same power unless there is special conferment thereof to be spelled out from the express words of the delegation or by compelling implication. In the present case the power under Section 4(1) does not indicate either alternative….."

The Court held that the fact that the rules had been framed in pursuance of a resolution passed by the legislature or that they have to be placed on the table of the legislative body would not lead to an inference that the legislature had authorized the framing of subordinate legislation with retrospective effect:

> "4…The mere fact that the rules framed had to be placed on the table of the legislature was not enough, in the absence of a wider power in the section, to enable the State Government to make retrospective rules. The whole purpose of laying on the table of the legislature the rules framed by the State Government is different and the effect of any one of the three alternative modes of so placing the rules has been explained by this Court in Hukam Chand v. Union of India [(1972) 2 SCC 601, 606 : (1973) 1 SCR 896, 902]."

This precisely is the principle which applies in construing whether the power which is conferred by Section 8A of the Customs Tariff Act is retrospective. The provisions of sub-sections (3) and (4) of Section 7, which are made applicable by sub-section (2) of Section 8A, are to ensure Parliamentary oversight. But that does not enable the Central Government to exercise the power under section 8A with retrospective effect.

In **Federation of Indian Minerals Industries** vs. **Union of India**[34], a three judge Bench of this Court formulated the principles on the subject. Justice Madan B

34 (2017) 16 SCC 186

Lokur observed that the power to frame subordinate legislation is not retrospective unless it is authorized expressly or by necessary implication by the parent statute. The Court observed:

> "26…The relevant principles are:
>
> (i) The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorises it to do so. [Hukam Chand v. Union of India [Hukam Chand v. Union of India, (1972) 2 SCC 601] and Mahabir Vegetable Oils (P) Ltd. v. State of Haryana [Mahabir Vegetable Oils (P) Ltd. v. State of Haryana, (2006) 3 SCC 620]].
>
> (ii) Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. (Panchi Devi v. State of Rajasthan [Panchi Devi v. State of Rajasthan, (2009) 2 SCC 589 : (2009) 1 SCC (L&S) 408])
>
> (iii) As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen. [Ahmedabad Urban Dev. Authority v. Sharadkumar Jayantikumar Pasawalla [Ahmedabad Urban Dev. Authority v. Sharadkumar Jayantikumar Pasawalla, (1992) 3 SCC 285] and State of Rajasthan v. Basant Agrotech (India) Ltd. [State of Rajasthan v. Basant Agrotech (India) Ltd., (2013) 15 SCC 1]"

The judgment of Justice Dipak Misra (as he then was) speaking for a two judge Bench decision in **State of Rajasthan** vs. **Basant Agrotech (India) Ltd**[35] adopts the same position.

N Summation

66 The imposition of a tax encompasses three stages. The locus classicus on the subject is embodied in the dictum of Lord Dunedin in **Whitney** vs. **Commissioners of Inland Revenue**[36] which has been consistently applied in the decisions of this court. There is, *first*, the declaration of liability which determines "what persons in respect of what property are liable". The *second* is the stage of assessment. Liability, it is well settled, does not depend on assessment since *ex-hypothesi*, that has already been fixed. Assessment particularizes the exact sum which a person is liable to pay. *Third* (and the last) are the methods of recovery if a person who is taxed does not voluntarily pay. (See in this context the decisions of the Federal Court in **Chatturam** v. **CIT, Bihar**[37] and of this Court in **A V Fernandez** vs. **State of Kerala**[38] and **Deputy CTO** vs. **Sha Sukraj Peerajee**[39].

67 In the present case the twin conditions of Section 15 stood determined prior to the issuance of Notification 5/2019 on 16 February 2019 at 20:46:58 hours. The rate of duty was determined by the presentation of the bills of entry for home consumption in the electronic form under Section 46. Self-assessment was on the basis of rate of duty which was in force on the date and at the time of

35 (2013) 15 SCC 1
36 (1926) AC 37 at 52.
37 (1947) FCR 116 at 126
38 1957 SCR 837 at para 39
39 (1967) 3 SCR 661 at para 5

presentation of the bills of entry for home consumption. This could not have been altered in the purported exercise of the power of re-assessment under Section 17 or at the time of the clearance of the goods for home consumption under Section 47. The rate of duty which was applicable was crystallized at the time and on the date of the presentation of the bills of entry in terms of the provisions of Section 15 read with Regulation 4(2) of the Regulations of 2018. The power of re-assessment under Section 17(4) could not have been exercised since this is not a case where there was an incorrect self-assessment of duty. The duty was correctly assessed at the time of self-assessment in terms of the duty which was in force on that date and at the time. The subsequent publication of the notification bearing 5/2019 did not furnish a valid basis for re-assessment.

68 For the above reasons, we have come to the conclusion that there is no merit in the appeals. The appeals shall stand dismissed. There shall be no order as to costs.

69 Pending application(s), if any, stands disposed of.

…….J.
[Dr Dhananjaya Y Chandrachud]

…….J.
[Indu Malhotra]

New Delhi;
September 23, 2020.

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2020
(@ S.L.P.(CIVIL)No. 3860 of 2020)

UNION OF INDIA AND OTHERS ... APPELLANT(S)

VERSUS

M/S. G.S. CHATHA RICE MILLS AND ANOTHER ... RESPONDENT(S)

WITH

CONNECTED MATTERS

J U D G M E N T

K.M. JOSEPH, J.

1. Does a notification under Section 8A of the Customs Tariff Act, 1975 increasing the import duty published late in the evening of 16th Feb 2019, date back to the midnight of the previous day? Does a day include its fractions? While I agree with my esteemed and learned brother in his erudite judgment that the appeals be dismissed, having regard to the questions

involved, I have written the following separate opinion:

2. Following the terror attack at Pulwama on 14.02.2019, the Government of India published a Notification on 16.02.2019 (hereinafter referred to as 'the Notification') purporting to be in exercise of powers under Section 8A(1) of the Customs Tariff Act, 1975 (hereinafter referred to as 'the Tariff Act', for short). By the same, the First Schedule to the Tariff Act, 1975 came to be amended in the following manner:

> **"In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely:-**

(1)	(2)	(3)	(4)	(5)
"9806 00 00	All goods originating in or exported from the Islamic Republic of	-	200%	-".

	Pakistan.			

3. It came to be published in the Gazette at 20:46:58 hrs. on 16.2.2019.

4. On the same day, i.e., on 16.02.2019, the respondents in the Appeals, who were the Writ Petitioners before the High Court, filed Bills of Entry under the Customs Act, 1962 in respect of goods imported from Pakistan. In fact, there was an agreement between India and Pakistan, both being SAARC Countries, under which, duty was to be levied on the imports from Pakistan at concessional rates, in those cases where imports were exigible to any duty at all. The goods which were subject matter of import, had also arrived in the Customs Station and as noticed, during the course of the working hours on 16.02.2019 and well before the time of the Notification hereinbefore adverted to, the Bills of Entry came to be presented. The duty came to be self-assessed by the respondents. It is, thereafter, that taking inspiration from the hefty increase in duty effected under the Notification the Writ Petitioners

came to be faced with reassessment proceedings. It is accordingly that they approached the High Court and filed Writ Petitions wherein the prayer may be noticed in Writ Petition No. 18460 of 2019 as follows:

> **"a) Writ in the nature of certiorari/mandamus or any other appropriate writ for quashing of the assessment order passed in the bill of entry no. 2083178 dated 16.02.2019 (Annexure-P5) being illegal arbitrary, against the principles of natural justice and in violation to the provisions of article 14 & 19 of the Constitution of India and against the provisions of Section 128 & 129 of the Customs Act, 1962;**
>
> **b) Writ in the nature of certiorari/mandamus quashing the notification no. 05/2019-cus dated 16.02.2019 (Annexure-P7) being prospective and in contravention to the Notification no. 50/2017-cus. dated 30.06.2017 granting benefit of customs duty over and above NIL% as well as section 4 & 11 of the Customs Tariff act, 1975,**
>
> **c) Writ in the nature of certiorari/ mandamus directing the Respondent No.3 to issue detention memo in terms of Regulation 6(1)(1) of the Customs Act, 1962 and further directing the Respondent No. 4 to release the goods without demanding any ground rent.**

d) Writ in the nature of certiorari/ mandamus restraining the respondent no.4 for conducting auction of the goods.

5. It is these Writ Petitions which have been allowed by the High Court.

6. The High Court has found that in the Scheme of the Customs Act read with the Tariff Act, the rate of duty is to be determined with reference to two definite indicia, *viz*., the date of presentation of the Bills of Entry and the movement of goods across the border and availability of the same within the Customs Station. Present these two aspects, the law enables the importer to demand that payment of the duty be with reference to the date of presentation of the Bills of Entry. The High Court did not consider the challenge to the Notification on the basis of the stand taken by the respondents and confined its reasoning to the aforesaid aspect which I have indicated. The Court took the view that the Notification which came to be published late in the evening on 16.02.2019 could not alter the destiny of

the Writ Petitioners cases as regards the rate of duty.

7. We have heard Shri K.M. Nataraj, learned Additional Solicitor General, appearing on behalf of the appellants, Shri P.S. Narsimha, learned Senior Counsel, appearing on behalf of the Writ Petitioners.

CONTENTIONS OF THE APPELLANTS

8. Shri K.M. Nataraj, learned Additional Solicitor General would contend that the Notification issued under Section 8A of the Tariff Act following the extraordinary circumstances surrounding the Pulwama terror attack, the rate of duty came to be increased by Notification dated 16.02.2019. The Notification would have effect in respect of all the Bills of Entry which came to be filed/presented on that day. To buttress his submissions, he also sought to draw support from Section 5(3) of the General Clauses Act, 1897. He would point out that the Notification would, therefore, have effect from the expiry of the previous day. That is, it is his contention that

though it is issued late in the evening on 16.02.2019, since the previous day, viz., 15.02.2019 expired at midnight, the Notification must be treated as born and alive from the first tick of time past the midnight of 15.02.2019. He also drew our attention to the Scheme of the Customs Act, 1962 otherwise. With the assistance of Sections 12, 15, 46 and 47, he sought to contend that the High Court fell into error in not recognizing that the preferring of the Bills of the Entry by the respondents, could not detract from the applicability of the increased rate of duty under the Notification.

9. The principal argument of the Union of India is that these cases must be decided based on the provision of Section 15 of the Customs Act. Expatiating the argument of the Union of India Shri K.M. Nataraj, learned counsel for the Union of India-appellant would contend that there is no challenge to the validity of Section 15 of the Customs Act. The said provision must be taken as it is and applied. The result would then be inevitable that the notification in question which no doubt was published

late in the evening on 16.02.2019, fixed the increased rate of duty on all goods imported from Pakistan and it was undoubtedly to have effect from that day onwards. In other words, since Section 15 of the Act contemplates that the rate of duty to be the rate in force during the day, and as the Notification was published on 16.02.2019, the day 16.02.2019 was not to be excluded. It was, in other words, to have operation throughout the day, 16.02.2019. It is contended that there cannot be two rates of duty which are at loggerheads with each other on a single day. The time of the day at which the notification was actually published, would pale into insignificance in answering the question as to whether the said notification which is of the kind involved in this case was to hold sway during the course of the whole day. He urges us to notice that Section 15 of the Customs Act does not allude to the time of the day but only refers to the day. He would further contend that by virtue of the notification, the rate in force within the meaning of Section 15 from the mid night of 15.02.2019 was the rate fixed

under the notification in respect of the goods governed by the same. Any other interpretation would involve rewriting of Section 15 and the amendment of the provision which is plainly impermissible. He also no doubt points that the authorities have rightfully embarked upon reassessment under the Act upon noticing that the goods were assessed with duty at a rate which was not in force, namely, the rates which stood supplanted by the notification issued under Section 8A on 16.02.2019. In this regard he drew inspiration from the provisions of Section 17(4) of the Act. In particular, he pointed out that the expression "otherwise" is capable of encompassing the situation existing in the facts of these cases. He would also point out that the Court may notice that an order has not been passed under Section 47 of the Act permitting clearance of the goods for home consumption. As soon as the factum of the notification having bearing came to light, proceedings for re-assessment were resorted to and no case was made out for the High Court to interfere

with the action of the authorities in purporting to apply the correct rate of duty within the meaning of Section 15 of the Act.

10. *Per contra*, Shri P.S. Narsimha, learned Senior Counsel for the respondent-Writ Petitioners, countered the appellants submissions by pointing out as follows:

> **Under Section 12 of the Customs Act, imports attract customs duty as is fixed under the Tariff Act. Section 15 of the Customs Act, however, determines the date with reference to which the rate of duty as provided in the Tariff Act is to apply. Still further and crucially, this exercise is to be accomplished with reference to the date of presentation of the Bills of Entry as provided in Section 46 of the Customs Act. He would, in fact, submit that under the Customs Act, a perusal of Sections 15 and 16, would show that there are four different situations**

contemplated. Under Section 15, which deals with rate of duty payable on imports, in a case where the Bills of Entry is presented for home consumption under Section 46, the rate of duty is to apply with reference to be date of presentation of the Bills of Entry. In the case where the goods are cleared for being warehoused under Section 68, again the duty is to be paid at the rate with reference to the presentation of the Bills of Entry for home consumption under Section 68. The two other circumstances pertain to exports. In the case of goods entered for export from India, the rate of duty is fixed with reference to the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under Section 51. In any other case, which is the fourth Category, the duty is fixed with reference to the date of payment of duty. He would draw our attention to the Electronic Filing of Bills of Entry

Regulations, 2018. In particular, he would draw our attention to Regulation 4 of the said Regulations. He would point out that Regulation 4, of the said Regulations, makes it clear that once the Bills of Entry is filed electronically and the event takes place, which under law determines the point of time with reference to which the rate of duty is to be imposed, the position is unalterable. He would submit that neither is the rate of duty dependent on the date of payment of duty nor is it based on Entry Inward. An order is contemplated under Section 47 of the Customs Act for clearing the goods, which contemplates payment of duty as a condition precedent for such an order. This is irrelevant. He would submit that in the present-day world of international trade, innumerable transactions take place at different points of time during the course of the day. The Law Giver has not contemplated the reopening of a transaction, which in the

eye of law, is a closed chapter. He would point out that the court must bear in mind that it is dealing with a law which visits a person with a tax. The point of time is transparent and declared through the Scheme of the Customs Act read with the Tariff Act. It would be wholly impermissible to inflict imports which have been visited with the duty in accordance with the law, with the rates of duty, which was not prevalent at the relevant time. The Notification could have only prospective operation. In fact, Shri Kapoor, the learned Counsel, who appeared in the High Court for the Writ Petitioners, pointed out that after the Notification was issued late in the evening, the system did not accept further electronic declaration of Bills of Entry as it was contemplated that such Bills of Entry would attract the higher duty.

11. Mr. P.S. Narsimha, learned Senior Counsel, points out that Customs Act contemplates self-assessment.

He drew our attention to Section 17 in this regard. It is the further case of the writ petitioners that based on the self-assessment, the system generated details which approved of the self-assessment. After the matter stood concluded in terms of the Act, the transaction could not be revisited on the strength of the Notification issued under Section 8A, runs the argument. It is pointed out that the Notification, issued under Section 8A, may be akin to delegated legislation. Even proceeding on the basis that it is delegated legislation, it can have only prospective operation. Section 8A of the Tariff Act, under which the Notification was issued, did not empower the author of the Notification to issue the Notification with retrospective effect. In answer to a query by the Court as to what would have been the effect of the notification which was issued at 10.00a.m. at 16.02.2019, instead of 20:46:58 hrs., at which time, it was in fact issued and if the Bill of Entry is presented after 10.00 a.m., Mr. P.S. Narsimha pointed out that it would be the Notification which was issued on 10.00 a.m., which

would be the Notification in force, and therefore, the increased duty may have been payable. Mr. P.S. Narsimha has also, no doubt, a contention that the Notification issued under Section 8A is illegal for the reason that what is contemplated under Section 8A is the increase of the rate of duty in respect of items which are already included in the first schedule of the Tariff Act whereas a perusal of the Notification would show that a new entry has been made and the rate of duty has been provided therein, *viz.*, the rate of duty of all goods emanating from Islamic Republic of Pakistan was increased to 200 per cent. But this line of argument was not pursued.

12. Both sides referred us exhaustively to case law.

ANALYSIS

13. The Customs Act is a consolidating Act. It is intended, *inter alia*, to deal with the menace of smuggling. It contains various sanctions. It also provides for the levy of Customs duty on import and export. It is a law which provides revenue to the

State. It is also an important tool in the hands of the nation to arrange its economic affairs to make it best suited to the welfare of the people otherwise. Indisputably, the charging Section is Section 12. The taxable event is import into or export of goods from India. Ordinarily, the Tariff Act provides the rates at which duty is imposed on imports and exports. There is no dispute that India and Pakistan being S.A.A.R.C. Countries they were parties to an agreement under which the trade between the countries was subjected only to duty on concessional rates. It is while so, following the unfortunate incident of Pulwama that the Government of India in exercise of its powers under Section 8A of the Tariff Act decided to increase the rate of import duty on all goods in the manner done. The Notification was issued on 16.02.2019. It was published at about 20:46:58 hrs. In the meantime, during the course of the day, the writ petitioners before us who imported goods had filed Bills of Entry electronically. The goods were present in the Customs Station. To be more correct, the Bills were presented and self-assessment was

undertaken. It is thereafter that late in the evening as a bolt from the blue, as it were, the notification came to be issued under Section 8A of the Tariff Act. The questions which arise for the consideration of this Court is articulated as follows:

1. **What is the nature of the Notification? Is it a species of subordinate legislation?**
2. **If it is subordinate legislation, when did it commence? What is the scheme of the Customs Act as regards the rate of duty on imports and the power of assessment? Was the Notification in force on 16.02.2019 so that it would cover all the transactions countenanced by the Bills of Entry which were duly presented during the office hours on 16.02.2019? What constitutes a day under Section 15 of the Customs Act?**
3. **Whether the Notification is covered by Section 5(3) of the General Clauses Act?**

4. Whether the appellants were justified in resorting to re-assessment in these cases?

THE TARIFF ACT AND WHETHER THE NOTIFICATION IS A FORM OF DELEGATED LEGISLATION

14. It is apposite that the working of the Tariff Act is unravelled. The rates of duty under the Customs Act are to be provided as per the entries in the First and Second Schedule. Section 2 of the Tariff Act, reads as follows:

> **"2. Duties specified in the Schedules to be levied. - The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules."**

15. In other words, the rate of duty must be one which is provided by Parliament. It may require an amendment to the Tariff Act to increase or decrease the rate of duty under Section 2. Section 11A contemplates power with the Central Government to amend the First Schedule. It cannot be, in the region of doubt, that the exercise of power under Section 11A would amount to exercise of delegated legislation. Section 11A(2) stipulates the procedure

to be adopted after the Notification is issued. It has to be placed before each House of Parliament and the further procedures are as provided therein, which includes the power to modify the Notification. The *proviso*, however, makes it clear that the exercise of power under Section 11A, to amend the First Schedule, will not involve or amount to an increase in the rates which are specified in the First Schedule in regard to duties of customs leviable under the Customs Act. In other words, barring the rate of customs duty, the contents of the First Schedule can be amended by the Central Government under Section 11A. Resultantly, Section 11A does not confer upon the Central Government, the power to increase the rate of duty under the Customs Act. The rate of duty, in other words, ordinarily falls within the province of Parliament, and it is Parliament alone, which can increase or decrease the rate of duty. However, an exception has been carved out under Section 8A to change the rate of duty under the Schedule to the Tariff Act. It is an emergency power vested with the Central Government. The emergency power vested with

the Central Government is to change the import duty and the change is limited to an increase in the rate of import duty. The condition requisite is, no doubt, that circumstances exist which render it necessary to take immediate action for providing for an increase in the import duty. Section 8A, in fact, does not contemplate the power to amend the First Schedule. The power under Section 8A is confined to any article which is already included in the First Schedule. Undoubtedly, it is the same Authority, *viz*., the Central Government, which stands clothed with the power to amend the First Schedule under Section 11A. The words "circumstances" exists which render it necessary to take immediate action in Section 8A makes it clear that the power to increase the rate of import duty is ordinarily a power to be exercised by the Parliament by a process of amending the First Schedule to the Tariff Act. It is only in emergent circumstances where the delegate of the Legislature, *viz*. the Central Government, considers it necessary to take immediate action that is the process of amending the Act or rather the Schedule to the Act by

the Parliament, would take time, the same is sought to be obviated by taking action under Section 8A. Undoubtedly, the provisions of Sections 7(3) and 7(4) will apply in making of the Notification.

16. On a perusal of the provisions, as noted, it is clear that a Notification issued under Section 8A, increasing the import duty, is a species of delegated legislation. It must be remembered that Article 265 of the Constitution of India declares that no tax shall be levied except by the authority of Law. An increase in the rate of duty cannot obviously be affected by an Executive Order. That is not to say that when the Executive is empowered to increase the rate of duty by way of delegated legislation, it would not fulfill the requirement of Article 265 and there can be no hesitation in holding that it is law within the meaning of Article 13 of the Constitution of India and it is a species of delegated legislation. [See in this regard AIR 1961 SC 21 para 11]

THE SCHEME OF THE CUSTOMS ACT QUA RATE OF DUTY ON IMPORTS AND ASSESSMENT TO DUTY

17. Section 12 is the charging Section. It reads as follows:

> **"12. Dutiable goods.— (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.**
>
> **(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."**

18. Section 15 deals with the date relevant to fix the rate of duty. It reads as follows:

> **"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."

19. In the matter of imports, the rate of duty, which is the sole area of controversy, is to be determined on the basis of the rate of duty which is in force on the day of the presentation of the Bill of Entry. It will be further noticed that an importer may, when

the goods are physically present within the Customs Station in question, file the Bill of Entry for home consumption. Section 46(1) also contemplates the presentation of the Bill of Entry for the goods being warehoused. This ordinarily would occur when the importer may have difficulty in paying the duty on the goods. He may also warehouse the goods when he has not yet found a buyer for his goods or there are any other obstacles in clearing the goods. Cases of goods imported for the purpose of being taken out of the country by way of transshipment or goods intended for transit, are not covered by Section 46 (1). The Bill of Entry under sub-Section (1) is to be presented before the expiry of the day following the day (excluding holidays) on which the aircraft, vessel or vehicle carrying the goods arrives at a Customs Station, at which the goods are to be cleared, either for home consumption or warehousing [See Section 46(3)]. The Second *Proviso* to Section 46(3) provides that if the Bill of Entry is not presented within the time specified and there are no sufficient reasons for such delay, the importer is to

pay charges for late presentation. The importer is also to make a declaration regarding the truth of the contents of the Bill of Entry, and in support of the same, he is to produce the invoice and other documents, as may be prescribed. [See Section 46 (4)]

20. The next procedure contemplated under the Customs Act in regard to an importer entering any imported goods under Section 46 for home consumption is for the importer to carry out self-assessment except in a situation covered by Section 85 [See Section 17(1)]. The proper Officer is to verify the entries in the Bill of Entry entered under Section 46, *inter alia*, and the self-assessment of the goods carried out by the importer. He is clothed with the power to examine or test any imported goods, *inter alia*, for the purpose of such verification. The importer is to furnish any document for verification, as may be necessary towards the carrying out of the verification [See Section 17(3)]. It is thereafter that Section 17(4) empowers the Officer who carries out the verification to re-assess the duty leviable on such goods. The perusal of Section 17(4) would

reveal that such re-assessment can be done, when, on verification, examination or testing of the goods, the officer finds that the self-assessment is not done correctly. Section 17(4) also employs the expression "otherwise" after the words "verification, examination or testing of the goods". It is argued by the learned Additional Solicitor General that the word "otherwise" is attracted in the facts of this case as it is found that the issuance of the Notification on 16.02.2019 *albeit* in the late evening determined the rate of duty in respect of all Bills of Entry which may have been presented during the course of the day and re-assessment was legally permissible as it fell within the wide embrace of the word "otherwise". This question will be answered after examining, considering and answering the question as to when the Notification commenced. It may also be noticed that Section 18(1)(a), which provides that notwithstanding anything contained in the Act but without prejudice to Section 46, that the Officer may carry out provisional assessment. Under Section 18(1)(a) such provisional assessment is

permitted when the importer, *inter alia*, is unable to make the self-assessment under Section 17(1), and what is more, makes a request in writing to the proper Officer for provisional assessment.

21. There are three other circumstances enumerated in clause (b), (c) and (d) of Section 18(1) which entitle the Officer to pass an Order of provisional assessment. In such a case, it is open to the Officer to carry out the final assessment. So also, it is open to the Officer to carry out re-assessment.

22. What is the time at which the importer who presents a Bill of Entry under Section 46 for home consumption is to effect payment of the import duty, when he carries out self-assessment? This question is answered in Section 47(2)(a) which provides that the importer is to pay the import duty on the very day of presentation of the Bill of Entry when the importer carries out self-assessment as is contemplated under Section 17(1) of the Act.

23. Section 47(1) contemplates that where the Officer is satisfied about the goods entered for home

consumption, being not prohibited goods, and the importer has paid the import duty, if any, assessed thereon, and other charges, under the Act, he is to pass an Order permitting clearing of goods for home consumption. It is again to be noted that under Section 47(2)(b), the importer is to pay the duty within one day from the date on which the Bill of Entry is returned to him when there is assessment, re-assessment or provisional assessment. Section 47(1)(c) also contemplates permitting the importer to make deferred payment which is permitted under the Second *Proviso* to Section 47(1).

24. What is the effect of non-payment of the duty within the time specified in Section 47(2)? The answer to this also is contained in Section 47(2) itself as the law mandates that the importer shall pay interest on the duty not paid or short paid till the date of its payment at the rate as provided therein. It is to be noticed that Section 47 is related to goods entered for home consumption. No doubt without payment, an order for clearance of goods would not be passed.

25. Section 28 of the Customs Act provides for recovery of duties not levied, not paid, short levied, short paid or erroneously refunded. Similar provisions are contained in the Central Excise Act as well. It is also noteworthy that Section 2(25) defines the word "imported goods" as meaning the goods brought into India from the place outside India but it does not include the goods which have been cleared for home consumption.

26. A perusal of Section 15(1)(a) makes it clear that as far as goods entered for home consumption under Section 46, the rate of duty is to be the rate of duty in force on the date on which the Bill of Entry in respect of such goods is presented under Section 46. It is not the date on which the goods are ordered to be cleared under Section 47. In fact, the Scheme of the Act, in regard to goods entered for home consumption, is that the importer is to present the Bill of Entry, as contemplated under Section 46, he is to make self- assessment under Section 17(1), he is to make the payment of the duty on the day on which he presents the Bill of Entry under Section

47(2)(a). Should he fail to make the payment on the same day in the case of self- assessment, he becomes liable to pay interest as provided till the date of payment. What is crucial is, however, that only that date is relevant on which he presents the Bill of Entry for home consumption in the form and in the manner, which is prescribed. The word "prescribed" has been defined in Section 2(32) to mean prescribed by Regulations made under the Act. Regulations have been made in regard to presentation of Bill of Entry. Section 46(1) would reveal that the word "electronically" came to be inserted by Act 8 of 2011 w.e.f. 08.04.2011. Immediately following the words "electronically, the words "at the customs automated system", have been inserted by the Finance Act, 2018 w.e.f. 01.04.2018. The words "in such form and manner, as may be prescribed" came to substitute the words "in the prescribed form", by the Finance Act, 2018. No doubt, the First *Proviso* to Section 46(1) empowers the Principal Commissioner of Customs or the Commissioner of Customs to allow the Bill of Entry to

be presented in any other manner, where it is not feasible to make the entry electronically.

27. The Regulations holding the field providing for the form and manner in which the Bill of Entry is to be presented for home consumption under Section 46(1) of the Customs Act are called the Bill of Entry (Electronic Integrated Declaration and paperless Processing) Regulations, 2018 (hereinafter referred to as 'the 2018 Regulations", for short). Regulation 4(2), which is the relevant Regulation, reads as follows:

> **"4(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."**

28. A perusal of the aforesaid Regulation makes it clear that there is not only a deemed presentation of

the Bill of Entry which the law calls into existence, as provided therein but also completion of self-assessment. This deemed presentation and completed self-assessment takes place when the bill of entry number is generated. Once there is a deemed presentation of the Bill of Entry, then, under Section 15(1)(a), the rate of duty, which is in force on such deemed date of presentation, would be the rate which is applicable. This is, no doubt, subject to the further requirement that the goods are physically present in the Customs Station. This is for the reason that under the First *Proviso* to Section 46(3), an importer can present a Bill of Entry in anticipation of the arrival of the goods provided that the presentation of such Bill of Entry is limited to a period not exceeding thirty days prior to the expected arrival. However, in case, where the Bill of Entry is presented under the First *Proviso* to Section 46(3), the rate of duty will be determined with reference to the act of presentation of the Bill of Entry, but such presentation of the Bill of Entry is by a deeming fiction made only from

the date of the entry inwards or of the arrival, as the case may be of the goods.

29. In the facts of these cases, there is no dispute that the imported goods were very much in the Customs Station and the Bills of Entry were presented under Section 46(1) on 16.2.2019. It is clear that the rate of duty, for the purpose of the cases before the Court, is to be determined with reference to the presentation of the Bills of Entry. The law does not take into consideration even the time of payment of the duty which is self-assessed by the importer. This is noted for the reason that the importer, who presents a Bill of Entry under Section 46 and who carries out self-assessment, is duty-bound to pay such duty on the very same date. The consequence of failure is only the liability to pay interest under Section 47 besides disabling him from clearing the goods. It does not postpone the point of time at which the rate of duty is to be determined.

30. Having dwelt upon the Scheme of the Act in regard to goods which are imported into India and which have

been entered under a Bill of India for home consumption, the time is now ripe for ascertaining the impact of the Notification which came to be issued late in the evening on 16.02.2019. The nature of the Notification, which is admittedly issued under Section 8A of the Tariff Act, has been explained earlier. It is a species of delegated legislation. As far as law made by Parliament or the State Legislatures, which are sovereign bodies in their own right, subject, no doubt, to their position, under the Constitution, as expounded by this Court, the law comes into force immediately after the assent is given by the President or the Governor, respectively. A law made by Parliament has effect without any further act on the part of the Executive. This is, no doubt, subject to the intention expressed otherwise in the law so made as to any other date from which it is to have operation. It may also be a case of a conditional legislation where the law is to be brought into force by the Executive.

31. No doubt, there is a distinction between conditional legislation and delegated legislation

(See in this regard, judgment of this court in I.T.C. Bhadrachalam Paperboards and another v. Mandal Revenue Officer and others[40], where the earlier case law has been exhaustively dealt with).

32. A Notification, which is made by the Executive, must indeed be made known. Ordinarily this is made known by being published in the Gazette. In this regard, it is profitable to refer to what this Court laid down in the decision reported in B.K. Srinivasan v. State of Karnataka[41]:

> **"15. … It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly**

40 **(1996) 6 SCC 634**
41 **(1987) 1 SCC 658.**

> **unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient [*Narayana Reddy* v. *State of A.P.*, (1969) 1 Andh WR 77].”**

33. This view came to be endorsed in a case under the Customs Act, which is reported in M/s. Pankaj Jain Agencies v. Union of India and others[42]. Therefore, it is only with the publication effected at 20:46:58 hrs. on 16.02.2019, the Notification issued under Section 8A, increasing the rate of import duty, came into force.

34. While on publication required in law, to make a Notification effective, the decision of this Court, rendered under the Central Excise Act in Collector of Central Excise v. New Tobacco Company and others[43], is noticed. The question, which was considered, was whether a Notification under the Central Excise Act

42 **(1994) 5 SCC 198**
43 **(1998)144 CTR(SC) 618**

became effective from the date on which it was printed in the Government Gazette or from the date it was made available to the public. This Court, elaborately referred to the judgment of the Madras High Court in Asia Tobacco Company Limited v. Union of India and others[44]. Therein, the High Court, *inter alia, held as follows:*

> **"8. …… "The mere printing of the official Gazette containing the relevant notification and without making the same available for circulation and putting it on sale to the public will not amount to the notification within the meaning of r. 8(1) of the Rules. …… It would be a mockery of the rule to state that it would suffice the purpose of the notification if the notification is merely printed in the Official Gazette, without making the same available for circulation to the public or putting it on sale to the public ..... Neither the date of the notification nor the date of printing, nor the date of Gazette counts for notification within the meaning of the rule, but only the date when the public gets notified in the sense, the concerned Gazette is made available to the**

44 **(1985)155 ITR 568 (Mad)**

public. The date of release of the publication is the decisive date to make the notification effective. Printing of the official Gazette and stacking them without releasing to the public would not amount to notification at all ......"

35. Thereafter, this Court went on to hold as follows:

> **"11. We hold that a Central Excise Notification can be said to have been published, except when it is provided otherwise, when it is so issued as to make it known to the public. It would be a proper publication if it is published in such a manner that persons can, if they are so interested, acquaint themselves with its contents. If publication is through a Gazette then mere printing of it in the Gazette would not be enough. Unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published."**

36. It may be noticed that a Bench of three learned Judges came to, however, overrule the Judgment in New Tobacco Company (supra) in the decision reported in Union of India and others v. Ganesh Das Bhojraj[45]. Therein a Notification was issued under Section 25 of the Customs Act on 04.02.1987, amending an earlier

45 **2000 (9) SCC 461**

Notification of the year 1976 by which exemption had been granted and limiting the exemption to the duty in excess of 25 per cent. The Bill of Entry was filed on 05.02.1987. This Court took the view that under Section 25 of the Customs Act, since the Notification dated 04.02.1987 has been published in the Gazette, it had come into force and constituted the rates prevalent on 05.02.1987, when the respondent had filed the Bill of Entry. In fact, the Court noticed the subsequent development in Section 25 of the Customs Act by which sub-Sections (4) and (5) were added to Section 25, which reads as follows:

> **"25. Power to grant exemption from duty.—**
>
> **xxx xxx xxx xxx**
>
> **(4) Every notification issued under sub-section (1) or sub-section (2A) shall, —**
>
> > **(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;**
> >
> > **(b) 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.**

> **(5) Notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force."**

The view in New Tobacco Company (supra) was held to be not good law.

37. It is to be noticed that it is in regard to a Notification issued under Section 25 of the Customs Act that the principles contained in sub-Section (4) and (5) will have effect from the date on which these provisions were brought into force. As far a Notification issued under Section 8A, with which this Court is concerned, it is the principle which has been laid down in Ganesh Das Bhojraj(supra), which will apply.

38. In other words, as far as the Notification issued under Section 8A of the Tariff Act is concerned, the Notification would come into force on the date on

which it is published in the Gazette. The question, however, which arises in this case is, as far as this Court is concerned, *res integra*, *viz*., whether having regard to the time at which it was published, whether Notification would come into force on 16.02.2019, by including the whole of the day or will it operate from the time of its publication, or whether the Notification is to be enforced only after excluding 16.02.2019.

39. The question would pointedly arise whether it was to have effect for the whole of the day, *viz*., 16.02.2019, which means, since the day 16.02.2019 was born, immediately after the midnight on 15.02.2019, does a day mean the first moment after the midnight? If that were the effect, what would be its impact on the Bills of Entry which were electronically presented under Section 46(1) of the Customs Act read with Rule 4(2) of the 2018 Regulations, which have already been referred to above. It is here that it becomes necessary to notice the provisions of Section 9 of the General Clauses Act, 1897.

SECTION 9 OF THE GENERAL CLAUSES ACT, 1897

40. Section 9 of The General Clauses Act, 1897, reads as follows:

> **"9 Commencement and termination of time.**
>
> **(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word from, and, for the purpose of including the last in a series of days or any other period of time, to use the word to.**
>
> **(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."**

41. In this case, there is no dispute that Notification under Section 8A was published in the Gazette. It was published at 20:46:58 hrs. on 16.02.2019. It is to be noticed that we are not dealing with a case, where a period of time, limited by two different *termini*, is present. A Statute may fix a *terminus aquo*. The Statute may be made to last

without indicating when the period is to end, which is the *terminus ad quem*.

42. Section 9 of the General Clauses Act enunciates the principle, that for, excluding the first in a series of days or any other period of time, it suffices to use the word "from". It also provides, likewise, for the devise of using the word "to", for the purpose of including the last in the series of days or other period of time. It is clear from Section 9 that it contemplates a period, or a series of days which is marked by both *terminus aquo* and *terminus ad quem*. Section 9 is expressly intended to apply to a Central Act or Regulation.

43. In this case, we are concerned with the Notification issued under the Statute, and which is a piece of delegated legislation, under which, the rate of import duty has been increased. The increase in the rate of duty is not for any period. In other words, it is not a case where the *terminus ad quem* or a period of time, is fixed for the operation of the increased import duty of goods imported from

Pakistan. In other words, the increased rate of import duty under the Notification is to last indefinitely. The word "indefinite" is intended to mean that it is to bear life till it is increased, reduced or completely done away with, in exercise of powers available under the Customs Act or the Customs Tariff Act (See in this regard Section 25 of the Customs Act and Section 2 of the Tariff Act).

A DAY; A PERIOD OF TIME; FRACTION OF TIME

44. It now becomes necessary to refer to principles enunciated by Courts in diverse situations under different branches of law.

45. I would begin by referring to an off-quoted Judgment rendered by the Master of the Rolls, Sir William Grant in the decision reported in Lester v. Garland[46]. In the said case, there was a bequest of residual interest in favour of 'A' if she gave security not to marry 'B', *inter alia*, within six calendar months, after the death of the Testator.

46 **[1808] 15 Ves. 248**

There was a *proviso* to go over if 'A' refused to give such security. The Testator died on the 12th of January. Security was given by 'A' on the 12th of July. The Testator died on 12th of January between 8 and 9 in the evening. Security was given by 'A' about 9 in the evening on 12th of July. The question, which was considered was whether the date of the death of the Testator was to be included within the six months, within which, 'A' had to give the security, or to be excluded. If the day of the death of the Testator was included, the security given by 'A' would be beyond the period of six months and she would stand divested of the bequest, whereas, if the date of the death of the Testator was excluded, then, 'A' would be entitled to the bequest as the security given by her would be within the period of six months. It would be profitable to notice the relevant part of the discussion by the learned Judge:

> **"It is not necessary to lay down any general rule upon this subject: <u>but upon technical reasoning I rather think, it would be more easy to maintain, that the day of an act done, or an event happening, ought in all cases to be excluded, than that it should in all cases be included.</u>**

Our law rejects fractions of a day more generally than the civil law does. (See the note, 14 *Ves.* 554, where it is admitted in bankrupty.) The effect is to render the day a sort of indivisible point; so that any act, done in the compass of it, is no more referrible to any one, than to any other, portion of it; but the act and the day are co-extensive; and therefore the act cannot properly be said to be passed, until the day is passed. This reasoning was adopted by Lord *Rosslyn* and Lord *Thurlow* in the case before mentioned of *Mercer* v. *Ogilvie*. The ground, on which the judgment of the Court of Session was affirmed by the House of Lords, is correctly stated in the fourth volume of the Dictionary of the Decisions of the Court of Session. In the present case the technical rule forbids us to consider the hour of the testator's death at the time of his death; for that would be making a fraction of a day. The day of the death must therefore be the time of the death; and that time must be past, before the six months can begin to run. The rule, contended for on behalf of the Plaintiffs, has the effect of throwing back the event into a day, upon which it did not happen; considering the testator as dead upon the 11th, instead of the 12th, of *January* ; for it is said, the whole of the 12th is to be computed as one of the days subsequent to his death. There seems to be no alternative but either to take, the actual instant, or the entire day, as the time of his death; and not to begin the computation from the preceding day.

But it is not necessary to lay down any general rule. Whichever way it should be laid down, cases would occur, the reason of which would require exceptions to be

made. Here the reason of the thing requires the exclusion of the day from the period of six months, given to Mrs. *Pointer* to deliberate upon the choice she would make; and upon the whole my opinion is, that she has entered into the security before the expiration of the six months; in sufficient time therefore to fulfil the condition, on which her children were to take."

(Emphasis supplied)

46. In Re. Railways Sleepers Supply Co.[47], an Extraordinary General Meeting of the company passed a Special Resolution on 25.02.1885, for the reduction of the capital of the company. On 11.03.1885, the Resolution passed on the 25.02.1885, was confirmed. On a petition filed, seeking sanction of the Court for the proposed reduction of capital, the question arose whether there was compliance with Section 51 of the Companies Act, 1862. The said provision, *inter alia*, required confirmation of the Resolution at a subsequent General Body Meeting which was held at an interval of not less that fourteen days and not more than one month from the date of the meeting at which the Resolution was first passed.

47 **(1885) 29 Ch.d. 204**

47. Chitty J., in his opinion, referred to Lester v. Garland (supra) and held, *inter alia*, as follows:

> **"… Lord *Mansfield* in his well-known judgment in Pugh v. Duke of Leeds says, "Date does not mean the hour or the minute, but the day of delivery, and in law there is no fraction of a day." The day of the death of the testator, which is equivalent here to the day of the first meeting, was not reckoned by Sir *William Grant* in his well-known decision in Lester v. Garland, where a bond had to be given within six months after the testator's decease. The 51st section states that the subsequent or second meeting is to be held "at an interval of not less than fourteen days or more than a month." The word "at" means after the interval, or at some time after the interval, prescribed by the other part of the section. The word "at" refers grammatically rather to a point of time than a period. ……"**
>
> **"… The interval "of not less than fourteen days" was allowed to give reasonable time for deliberation, and to prevent undue haste or surprise, and to afford to the shareholders who might be present at the first meeting, and also to those who might not think fit or might not be able to attend it, time for reflection and consideration, and to make arrangements to enable them to attend the second…."**
>
> **"…. An interval of not less than fourteen days" is equivalent to saying that fourteen days must intervene or elapse between the two dates…."**
>
> **"… That means fourteen clear days; and as *Littledale* , J., said in Reg. v. Justices of Shropshire, I do not see any distinction**

> **between "fourteen days" and "at least fourteen days." I must come therefore to the conclusion that the resolution is bad. Probably no question has more exercised the minds of Judges in former times than the question as to the proper mode of computing time. Lord *Mansfield's* judgment in Pugh v. Duke of Leeds and Lord *Wensleydale's* judgment in the case of Chambers v. Smith, to which I have already referred, are excellent illustrations of what I have said. …."**

48. In 1895, a case, *viz*., In Re. North[48] arose under the Bankruptcy Act, 1890. The question was whether an act of bankruptcy had been committed by reason of the fact that on an action taken by an execution creditor, and after the seizure of goods of the debtor and subsequent private sale, as permitted by the Court, the Sheriff had held the goods for a period of twenty-one days. Lord Esher M.R., after referring to Lester v. Garland (supra), holds as follows:

> **" …., after a learned examination of the whole subject, laid down what I conceive to be the wholesome view that no general rule exists. …."**

48 **(1895) 2 Q.B. 264**

"… The statute which we have to construe for the purpose of deciding how the period of time mentioned in it is to be computed is a Bankruptcy Act, and enacts a new act of bankruptcy, the commission of which is to be determined by a computation of time. …."

"… If we construe s. 1 of the Act of 1890 according to the ordinary English meaning of the words, it enacts that certain consequences are to happen if the sheriff holds for twenty-one days goods seized by him under an execution: an act of bankruptcy is committed if he holds them for that time. The ordinary meaning of the words is that he must hold them for twenty-one days; but we are told that under a technical rule of construction the section is satisfied if he holds them for twenty days and a part of a day. Which is right? ..."

"… <u>Here the result may be to make a man a bankrupt, which is not a benefit to him, nor necessarily to the whole of his creditors</u>. The bankruptcy law is a law of public social policy, and affects in a very detrimental manner the status of those who are brought under its operation; in old times, indeed, to make a man a bankrupt was to make him a criminal; …"

"… Bankruptcy is the creature of statute, and under a long series of bankruptcy statutes the same practice as to computing time has been followed, though for different purposes or results; the practice is a perfectly well-known one, the rule in bankruptcy being to exclude the first day or part of a day, and to begin the computation of time on the first whole day. …"

"… Again, there is the rule of construction that if a statute, which so affects a man's status as to be in effect a penal enactment, is capable of two constructions, that one should be adopted which is most favourable to the person affected. Applying this rule, the mode of calculating the twenty-one days ought to be in favour of the debtor doing something which would prevent his becoming a bankrupt at all, and we ought to construe this section as meaning that the first day, or part of a day, is to be excluded from the computation, which should begin on the day after the date of the seizure. …"

(Emphasis supplied)

49. A.L. Smith L.J. agreed with Lord Esher M.R. and held, *inter alia*, as follows:

"… But it has been shewn from subsequent cases that there is no such universal rule, and that in the reckoning of time each case must depend on its own circumstances and subject-matter, and for this I need only refer to the judgment of Sir William Grant in Lester v. Garland , to that of Kelly C.B. in Isaacs v. Royal Insurance Co., and of Chitty J. in In re Railway Sleepers Supply Co. To say, therefore, that a rule of law compels us to say that to hold goods for twenty days and a fraction of a day is the same as to hold them for twenty-one days is to say that which is not a fact. …"

50. Rigby L.J. also concurred with Lord Esher M.R. and, in his judgment, held as follows, *inter alia*:

> **"… It was contended before us, and it seems at one time to have been thought to be law, that where a fact or event was mentioned from which a given period of time was to be reckoned, the Court was bound to reckon the portion of the day on which the act was done as though it were a whole day, and to reckon it as the first day of the period. That doctrine underwent a thorough examination in Lester v. Garland, at the hands of Sir W. Grant, who considered the cases in which the first day had been included or excluded, and came to the conclusion (which I think was inevitable) that there was no general rule on the subject. …"**
>
> **"… <u>His classification of the cases shews that where the calculation is in favour of a person, the construction should be adopted which is more favourable to him</u>. In the case of a sheriff, for instance, it is more in his favour to include the day on which the act is done than to exclude it, and on that ground it is included; but where, to take another example, something has to be done which is necessary to complete a title, the first day is excluded, otherwise there would be a cutting down of the time allowed for doing the act. <u>In my opinion, although Sir W. Grant did not put the proposition in so many words, his judgment leads us to the conclusion that the question of whether the day on which the act is done is to be included or excluded must depend on whether it is to the benefit or disadvantage of the person primarily interested.</u> But whether or no the**

proposition is to be put so high, we have here a statute which does not say twenty-one days from taking possession; and it is only to cases where a terminus is mentioned that any such general rule was ever held to apply. The present is an a fortiori case; no terminus is mentioned, and the only question is whether the sheriff held for twenty-one days. …"

(Emphasis supplied)

51. On 05.05.1922, by a Notification in the Fort St. George Gazette Extraordinary, published on a Friday, the Table of Fees under Appendix-II, the old Rules on the Original Side of the Madras High Court, was amended and instead of a fixed fee of Rs.30/- levied under Serial No.1, it was provided that Rs.150/- was to be levied in all the suits where the value of the subject matter does not exceed Rs.10,000/-, *inter alia*. The Notification further recited that the amendments were to come into force from the date of publication in the Fort St. George Gazette. The Gazette Extraordinary reached the High Court at about 05.00 p.m. on 05.05.1922. A Special Bench was constituted to resolve the controversy as to whether the amended Scale of Fees was to apply

from the 5th day of May or after excluding the 5th May. The three learned Judges, In Re: Court Fees[49] proceeded to author three separate Judgments. The majority view is contained in the judgments of the Chief Justice and Justice V.M. Coutts Trotter. In their Judgments, they took the view that the amended Scale of Fees, though as already noted, represented an increase from an earlier Scale of Fees, was to apply even in regard to the suits which came to be instituted before the time of the Notification on 05.05.1922. In the Judgment of the learned Chief Justice, the following discussion is noted:

> **"2. … I approach this matter conscious of the salutary rule that, in all statutes imposing taxation, any real ambiguity must be decided in favour of the subject and against the Grown. I consider that the hour of the day at which the Gazette was actually published is a wholly irrelevant consideration, because on neither view does it make any difference. If the Gazette had been published early in the morning, according to the view of Kumaraswami Sastri, J., the tax will come into operation only the next day. If it had been published late in the night, according to the view of Coutts-Trotter, J., the tax would still be operative from**

49 **AIR 1924 Madras 257**

the time the office opened for the receipt of plaints on that day. I agree that we have nothing to do with the English Common Law except in so far as it may afford some guide as to the proper meaning to be attached to words in the English language. … .

3. … Applying the general rules stated above to this case, the named date must be included unless there is some valid reason why it should not be, and I can find none. It is true that it may have the effect of making persons pay more than they understood they had to pay when they filed their suits; but this seems to me a ground for criticising the method of imposing this tax rather than a ground for interpreting the notice in any particular way; and I think that this argument is more than counterbalanced by the fact that this was a sudden imposition of a tax which in many cases could be avoided if notice was given of it in time for suits to be filed between the time of the publication and of its actually coming into operation. …"

(Emphasis supplied)

52. In the Judgment of V.M. Coutts Trotter J., the learned Judge observes as follows:

"6. … <u>What I conceive to emerge from the decided cases is this: that as the law in general neglects fractions of a day you must either exclude or include the whole of the day with which a given statute or rule or regulation deals. And the exclusion or inclusion, I think, is</u>

clearly provided in two other rules. If you are fixing the point of time at which a certain state of things is to be called into existence, that state of things comes into existence at midnight of the day preceding the day at which or on which or from which or from and after which the new state of things begins. In such cases the statute or rule is only concerned in fixing the terminus o quo of a new state of law which is enacted to continue indefinitely, in other words, until repealed by a new enactment of the legislature where, in short, you have a terminus a quo but no terminus ad quem.

……

…… Where a statute fixes only the terminus a quo of a state of things which is envisaged as to last indefinitely, the common law rule obtains that you ought to neglect fractions of a day and the statute or regulation or order takes effect from the first moment of the day on which it is enacted or passed, that is to say, from midnight of the day preceding the day on which it is promulgated: where, on the other hand, a statute delimits a period marked both by a terminus a quo and a terminus ad quem, the former is to be excluded and the latter to be included in the reckoning. This notification clearly falls within the former class and must be taken to have come into force on the first second of the 5th May, that is to say, from midnight of the 4th May. It follows that the plaints filed on the 5th May are liable to the enhanced fees laid down by the Regulation.

7. A very large part of the argument addressed to us on behalf of those who filed plaints on the 5th May was based on what was called a hardship suffered by

them if our decision should be favourable to the Crown. Increased taxation is always in a sense a hardship to the subject but I cannot see any special hardship imposed upon these particular litigants. If the suits which they filed are not in their opinion worth the expenditure entailed by the increased rate of institution fees, they would doubtless be permitted to ? withdraw them-a suit evaluated at that rate by the person who institutes it, is not likely to be based on a very solid cause of action. ….”

(Emphasis supplied)

53. However, C.V. Kumaraswami Sastri, J., dissented. The learned Judge also referred to Lester v. Garland (supra) and In Re. North (supra) and held as follows:

“21. Applying the law as laid down in the previous cases to the facts of the present case, we have to see whether the 5th of May, 1922, is to be included or excluded. I might, in this connection, state that I do not think that the principles which govern, or the devices which are resorted to, by the Executive for the purpose of raising money by taxation ought to have any weight with us in determining whether the date of publication is to be included or excluded. I do not think the High Court is part of the tax gathering machinery of the Government or has any concern with the consequences to the Government of their decision on the construction of the rule.

The rule, I take it, was passed by the Judges of the High Court in the exercise of the powers entrusted to them to control the administration of justice and the fees were raised because in the opinion of the Judges it was just and proper that litigants ought to pay more for the benefits which they derive by resorting to the jurisdiction of the High Court. The notification expressly states that it is to have effect from the date of publication, the object of the publication being that the public ought to have notice that the fees were being raised so that they might know exactly what they were in for when they resorted to the High Court for justice. The notification, as I have already said, was (as appears from a note of the Deputy Registrar) received in the High Court at 5 p.m., the office closing at 5 p.m. It seems to me that the litigants who filed plaints before they or even the office had knowledge of the publication of the rule did what was perfectly valid under the old rules and they presented the plaints with Rs. 30 stamp irrespective of the value of their claim. A person who files a plaint which is properly stamped and which is in order at the time of presentation is entitled to have his plaint admitted on presentation though as a matter of convenience the office receives the plaints and admits them at the end of the day or later on. There seems to me to be very little justice or equity in directing that persons who have done what was perfectly a legal and valid act at the time should pay a Court-fee which is much higher simply because a notification was received at the close of the day making the higher fees chargeable from the date of the notification. It may well be that if those persons had notice that instead of Rs. 30

they had to pay at least Ra. 150 and a maximum that would range according to the value of their claim, they might rather have compromised with the other side or might have had resort to other proceedings like arbitration for settling their claims. I can find nothing to justify charging people, who filed their plaints on that day without knowledge of the notification which only reached the High Court at 5 p.m., with the higher fees in respect of plaints filed during the course of the day.

22. Having regard to all the facts and circumstances of the present case, I think that, if the law is that there is no hard and fast rule in deciding whether the word "from" is inclusive or exclusive of the date of notification and that each case must depend upon its own circumstances subject-matter, justice and equity demand that the date of the notification ought to be excluded. I would, therefore direct that all the plaints received on the 5th of May, 1922, be stamped with Rs. 30."

(Emphasis supplied)

THE POSITION UNDER THE LAW RELATING TO PREVENTIVE DETENTION

54. A Division Bench of High Court of Delhi had occasion to consider the question again of time of operation in the following circumstances in the decision reported in *Jasbir Singh vs. Union of*

India[50]**. The contentions urged by the detenu included the contention that the detention orders stood vitiated as in contravention of Section 3(3) of the COFEPOSA Act, the grounds of detention was served on the 6th day of the day of Order of detention being served. Section 3(3), *inter alia*, provides for communication to a person of the grounds of detention as soon as may be after detention but ordinarily not later than five days and in an exceptional case and for reasons to be recorded in writing not later than 15 days from the date of detention. The Division Bench, which included Chief Justice M. Jagannadha Rao (as His Lordship then was), took note of judgment of the Madras High Court reported in In Re: Court Fees**[51] under the Court Fee Act and took the view that the word "from" is similar to the word "after", and therefore, the date on which the detention order was served, has to be excluded. In this regard, the Court took the view that the legislature has given clear 5 days to the Government to complete many other formalities before serving the grounds of detention.**

50 **(1995) ILR 2 Delhi 399**
51 **AIR 1924 Madras 257**

This is besides being guided by the use of words 'as soon as may be'.

THE CASES UNDER CONTRACTS OF INSURANCE

55. In the decision reported in *New India Assurance Company Limited vs. Ram Dayal and Others*[52], the vehicle was insured earlier upto 31st August, 1984. Instead of obtaining renewal, a fresh insurance was taken from 28th September, 1984. The accident took place on the very same day, namely, 28th September, 1984. The insurer repudiated its liability as the policy was taken after the accident. The High Court took the view that the policy of insurance became operative from the commencement of the date of insurance, namely, the previous midnight. This Court agreed with the view of the High Court that once a policy is taken on a particular day, its effectiveness is from the commencement of the day. It found the insurer liable. It is necessary only to notice paragraphs 5, 6 and 7:

> **"5. As pointed out in Stroud's judicial Dictionary 'Date' means day, so that**

52 **(1990) 2 SCC 680**

> **where a cover not providing for temporary insurance of a motor car expires 15 days after date of commencement, it runs for the full 15 days after the day on which it was to commence."**
>
> **6. Similarly it has been stated in Stroud that "a bill of exchange, or note, is of the date expressed on its face, not the time when it is actually issued."**

56. The view taken by this Court in regard to the issue of the liability of insurer with reference to the time at which the policy of insurance is taken, may be noticed from the recent judgment which adverted to, not only Ram Dayal (supra) but the Judgment rendered by three-Judge Bench, reported in *Oriental Insurance Company Limited v. Porselvi and Another*[53] and another judgment reported in *Oriental Insurance Company Limited v. Sunita Rathi and Others*[54]. The recent judgment is reported in *National Insurance Company Limited vs. Geeta Devi and Others*[55], I may refer to paragraphs 3 and 4 which adverts to the decisions of this Court distinguishing Ram Dayal

53 **1997 (1) SCC 66**
54 ***1998(1) SCC 365***
55 **2010(15) SCC 670**

(supra). Finally, this Court took the view, there is a cover note mentioning the time as 04:40 p.m. and it was issued after the accident and therefore, the insurer was not liable:

> **"3. The question again came up for consideration in *National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi; (1997) 1 SCC 66.* Reliance was placed on the abovementioned judgments. However, a three-Judge Bench of this Court noted that the Tribunal had recorded, as a fact, that the policy had come into force at 4:00 P.M. whereas the accident had taken place at 11:40 a.m. This Court held that in view of the special contract and in view of the fact that the accident had occurred earlier, the insurance coverage would not enable the claimant to seek recovery from the Insurance Company.**
>
> **4. The question again arose in *Oriental Insurance Co. Ltd. v. Sunita Rathi; (1998) 1 SCC 365*, was relied upon. This court distinguished Ram Dayal case; (1990) 2 SCC 680, was relied upon. This Court distinguished effective date and time of the policy was after the accident, the Insurance Company would not be liable."**

57. After having made a reference to some of the decisions covering different branches of law, the

question to be resolved comes into focus. It is clear that the situation which is presented before us, is not covered by the principle which is embedded in Section 9 of General Clauses Act, 1897. In other words, having regard to the terms of the Notification, which is a form of delegated legislation, by which the Central Government has increased the rate of import duties of goods imported from Pakistan, though the notification is gazetted on 16.02.2018 at 20:46:58 hrs., there is no period for which it is to last as already noticed, and in that sense, it can be argued that there would be no occasion for exclusion of the date on which it was issued.

<u>WHETHER SECTION 5(3) OF THE GENERAL CLAUSES ACT APPLIES TO THE NOTIFICATION</u>?

58. Section 5 (3) reads as follows:

> **"5(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."**

59. The argument of learned Additional Solicitor General is that in terms of Section 5 (3), the notification issued under the Customs Tariff Act will have effect from the expiry of the previous day. That is to say, it will operate from the first tick of time past the mid night of 15.2.2019. In order to appreciate this argument, we must consider definition of the word 'Central Act' and 'Regulation' in the General Clauses Act. Section 3 (7) defines Central Act. It reads as follows:

> **"(7) "Central Act" shall means an Act of Parliament and shall include-**
>
> **(a) an Act of the Dominion legislature or of the Indian Legislature passed before the commencement of the Constitution, and**
>
> **(b) an Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity;"**

60. Section 3 (50) defines 'Regulation'. It reads as follows:

> **"3(50) "Regulation" shall mean a Regulation made by the President under article 240 of the Constitution and shall include a Regulation made by the President under article 243 thereof and a Regulation made by the Central Government under the Government of India**

Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935”

61. **It is quite clear that the notification which is issued is one which is issued under Section 8A of the Tariff Act. The notification is not one which is made by Central Legislature, namely, the Parliament. It therefore is not a Central Law as defined in the Act. We have also noticed the definition of the word ‘Regulation’. The notification is not a regulation as defined in General Clauses Act. There is no merit in the contention of the Union of India that by virtue of Section of 5(3) of the General Clauses Act, the notification must be treated as effective from the point of time immediately after mid night on 15/16 February, 2019.**

THREE POSSBILE VIEWS

62. **There are three possible answers to the questions as to what is to be the meaning of the word ‘day’, in the context of the provisions of Section 15 the Customs Act and the Notification.**

1. **The first way to look at "the day", would be to take it as a fraction of day, *viz.*, 16.02.2019, having its beginning at 20:46:58 hrs. and ending with the midnight on 16.02.2019.**

2. **The second way to look at it is, it would operate only after the midnight of 16.02.2019, and would impact Bills of Entries presented on 17.02.2019 onwards. In other words, it would be an interpretation which would exclude 16th February, 2019.**

3. **The third day to look at it would be as follows – "16.02.2019, would mean the day commencing immediately after the midnight on 15.02.2019, and therefore, it would be the whole of the 24 hours commencing at midnight of 15.02.2019 and would include the period of time during the day during which the respondents had presented the bill of entry".**

63. The question is certainly not free from difficulty. The solution must, however, be found.

On one hand, we are dealing with a Notification by which the appellant has purported to increase the rate of duty to a hefty quantum of 200 per cent, following the incident which took place at Pulwama. Would it be a fair and reasonable to include the whole, the day 16.02.2019, having regard to the effect on the importer of the goods who would have struck the bargain on the basis of rate of duty being what it was prior to the Notification? Could it not be said that based on the contracts for import, the importer would have entered into contracts for sale of goods in India where the price would be fixed with reference to the position obtaining as on the date of contract for import.

64. On the other hand, what we are called upon to decide, is the question of time at which the delegated legislation will take effect. It is true that there is no equity about tax. The fact that there is a sudden increase in the rate of tax, may not render it vulnerable on the score that it violates Fundamental Rights. [See in this regard, the

Judgment of this Court in Pankaj Jain vs. UOI (supra)].

65. If analogy is to be drawn from the majority view of Madras High Court in the matter relating to Court Fees (supra), it can, indeed, be urged that the impact of the increased duty of import cannot by itself decide the question as to the point of time at which the delegated legislation must operate from.

66. Yet another aspect which could not be over-looked is while it is true that in Section 15 of the Customs Act, what is referred to is the rate of duty enforced on the date, the law itself entitles importer to have the goods cleared upon payment of the duty which is accepted as correct in the self-assessment proceedings, following the due presentation of the bill of entry under Section 46 read with Rule 4(2) of the 2018 Regulations. In conjunction with the mandate of charging section contained in Section 12 and Section 15 of the Customs Act which fixes the date according to the rate of duty as the date of presentation of the bill of entries, could it

certainly not be said that the law would abhor the reopening of transactions which have culminated in proceedings which are otherwise impeccably correct and regular. By way of re-assessment can matters concluded in the eye of law be revisited on the basis of a notification which comes much later in the day? There is yet another aspect which must also be borne in mind. The question before us, arises on the basis of notification which is, indeed, a form of delegated legislation which is issued under Section 8A of the Tariff Act. Section 8A of the Tariff Act empowers the Central Government to increase the rate of import duty but the power to issue a notification under Section 8A, is not conferred to increase the rate of import duty with retrospective effect.

67. We may at once notice the counter argument. By ensuring full play for the notification for the whole of the day on which it was issued, the provisions of Section 15 of the Customs Act in the view of Additional Solicitor General, are duly honoured. It is his argument that any other view would involve rewriting of Section 15, as Section 15 contemplates

the rate of duty to be the rate of duty for the day. There cannot be two rates of duty at a given point of time. If the rate of duty, on a proper interpretation of the Notification would hold the field at all points of time during the whole of 16.02.2019 at which the respondents may have presented the Bills of Entry in tune with the prevailing rates of duty which would have been applicable otherwise, it would not detract from the power of authority to reassess on the strength of an instrument like the Notification. What would logically and inexorably follow, in other words, is that the rate of duty applicable during the whole of the day on 16.02.2019 was only the increased rate of duty. This was, therefore, the correct rate of duty at which the importers were to pay the duty. There is no illegality involved in resorting to power enabling reassessment and recovery of the correct duty from the respondents. In other words, there is no retrospectivity involved, runs the argument.

68. There can be no doubt that the principle which appears to have evolved over a period of time is that

generally, the law frowns upon determining a day with reference to its fractions. Undoubtedly, in the case of Central Act or a Regulation, the principle is statutorily incorporated in Section 5(3), that unless a contrary intention appears, it begins its journey in the Statute Book from the first point of time past the stroke of the previous midnight. Section 5(3) does not apply to the notification which is a form of delegated legislation, as found hereinbefore.

69. If the contention of the Union of India is accepted, though the notification is issued late in the evening, the 'day' referred in Section 15 of the Customs Act would commence from the first moment past the midnight of 15.02.2019. The diametrically opposite option would be to exclude the whole of the day on which the notification was issued and the third option is that the day would consist of the hours remaining of the day 16.02.2019 after the time at which the Notification was issued. In other words, under the third option, the time of operation of the notification was 20:46:58 hrs. and continued till midnight of 16.02.2019. It would indeed

constitute a fraction or part of an ordinary day consisting of twenty-four hours.

70. If the argument of Mr. P.S. Narsimha, learned Senior Counsel, is accepted, then, it would have operation from the time at which the Notification is issued. This is because in answer to a query as to what would be the position if the Notification had been issued at 10.00 a.m. on 16.02.2019 and the Bills of Entry were presented after 10.00 a.m., his response was, the importers would have to pay the higher rate of duty under the Notification. Therefore, his argument appears to be that a Notification must come into operation with reference to the point of time of the day when the Notification was issued.

71. The principle that fractions of the day are eschewed from consideration, is not a universal principle which knows no exceptions.

72. Section 48 of the Transfer of Property Act, 1882, reads as follows:

> **“48. Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.”**

73. In an enquiry, as to the priority of title, the fractions of the day, undoubtedly, will assume relevance. In fact, the exact time at which a document is registered, will determine the question of priority, and consequently, of title itself, to the property concerned and it is open to parties to adduce evidence in this regard.

74. Section 47 of the Registration Act, 1908, reads as follows:

> **“47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”**

Here again, the time of the day may become decisive. The recent decisions of this Court in regard to insurance contracts appear to accept the significance of the time of the day. (See para 56 of this judgment).

75. Section 5(1) of General Clauses Act, 1897 reads as follows:-

> **"5. Coming into operation of enactments.— (1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent,—**
>
> **(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and**
>
> **(b) in the case of an Act of Parliament, of the President."**

It must be noticed that law which is made by the legislature is to be treated differently from delegated legislation. A law if made by Parliament including a change in the rate of duty in the Customs-Tariff Act would involve a process which is attended by a certain level of publicity. In this

regard, the words of Bailhache, J. in *Johnson v. Sargant & Sons*[56]; 1917 1 K.B. 101, come to mind:-

> **"While I agree that the rule is that a statute takes effect on the earliest moment of the day on which it is passed or on which it is declared to come into operation, there is about statutes a publicity even before they come into operation which is absent in the case of many Orders such as that with which we are now dealing ; indeed, if certain Orders are to be effective at all, it is essential that they should not be known until they are actually published."**

There is a process and time involved in Parliament which is unlike what happens in the case of a delegated legislation of the sort in particular, projected in these cases, namely, a notification issued by the executive under Section 8A. It is on this basis that the law made by the legislature is taken as known to the public and mere assent of the President would suffice and the need to make any delegated legislation known by publication before it becomes effective is insisted upon. Publication in the case of delegated legislation is based on a rationale. On this rationale even the principle

56 1917 1 K.B. 101

embedded in Section 5 in regard to the law made by the legislature cannot be applied to a notification issued under Section 8A of the Tariff Act.

76. The view taken by Justice Kumaraswami Sastri, in Re: Court Fees (supra), in the context of the increase in the Court Fee, effected under a Notification, which came to the High Court only at about 05.00 p.m., which was around the time when Court closed down, was to exclude the operation of the increased Court Fee *qua* the suits which were filed during the course of the day.

77. At the time, when the Madras High Court considered the question, it may be noticed that the Constitution of India was not in force. The matter has not been approached on an analysis as to the nature of subordinate legislation and the point of time when a subordinate legislation comes into force. The concept of State action, satisfying the requirement of it being fair, as is the mandate of Article 14, could not have been possibly considered by the learned Judges of the Madras High Court. Under

the Customs Act read with the Tariff Act, as noticed, the Scheme provides for an importer, wishing to enter goods for home consumption, to file Bills of Entry, do self-assessment and pay the duty on the same day. If all goes well, which means that the self-assessment is in accordance with the existing law, and the rate of tax is calculated with reference to the rate of duty as stipulated and the amount of duty is paid, and if there is any other amount to be paid, the same is also paid, Section 47 of the Act would oblige the Officer, unless, of course, the goods are prohibited goods, to issue an Order permitting clearing the goods. Though, there is no Order for clearing the goods in these cases under Section 47, the said Order is the culmination of the steps to be undergone by an importer for clearing the goods. Once the self-assessment is correct and the other conditions in Section 47 do not militate against the importer, the goods can be physically cleared, and having regard to the definition of the "imported goods", they cease to be imported goods.

78. In the context of the Customs Act, and having regard to the Scheme, which, in the case of import duty, consists of filing of Bill of Entry for home consumption, self-assessment and payment of duty on the basis of the same and the rate being clearly fixed with reference to the particular point of time when the Bill of Entry is presented and there is a deemed presentation and even a deemed assessment, which is otherwise in order, and bearing in mind the principle that Section 8A does not provide power for increase of rate of duty with retrospective effect, the Notification must be treated as having coming into force not before its publication which is at 20:46:58 hrs. on 16.02.2019. This would necessarily mean that the Notification cannot be used to alter the rate of duty on the basis of which, in fact, there was presentation of Bill of Entry several hours ago, the self-assessment was done and what is more, the self-assessment was completed under Regulation 4(2) of the 2018 Regulations. There cannot be re-assessment. The interpretation based on time of

publication is in harmony with a view that accords respect for vested rights.

TWO INCONSISTENT RATES AT THE SAME POINT OF TIME

79. There is no merit in the submission of the appellants in this regard. Once it is found that the notification upon publication would take effect from the time of its publication then in regard to the bills of entries which stand presented within the meaning of Section 46 of the Customs Act read with 4(2) of the 2018 Regulations, earlier to such publication, the rate of duty in regard to the same would be only the rate of duty which prevailed at the time of the deemed presentation under Regulation 4(2) of the 2018 Regulations.

EFFECT OF THE WORD "OTHERWISE" IN SECTION 17(4) OF THE CUSTOMS ACT, 1962

80. The expression "otherwise" in Section 17(4), will not come to the rescue of the appellants, in the facts of the instant case. While the word "otherwise" may be capable of taking care of situations which are not covered by the preceding expressions, *viz*.,

verification, examination, attesting of the goods, it cannot mean that it will empower the Officer to alter the rate of duty which is prevalent at the time of the self-assessment following the due presentation of the Bill of Entry. If it is otherwise, it will be open to the Department to reopen cases of concluded assessments by virtue of the deemed completion of assessment under Regulation 4(2) without any legal justification. That would be plainly impermissible being illegal. This is not a case where the assessment is assailed on any other ground except by insisting on a rate of duty which is in applicable.

WHETHER THE CASE LAW RELIED UPON BY THE APPELLANTS MILITATE AGAINST THE AFORESAID VIEW

81. The question which arose before the Constitution Bench of this court in *M/s. Bharat Surfactnts (P) Ltd. v. Union of India*[57] may not assist the appellants. The case involved a challenge to Section 15(1)(a) of the customs Act. This court repelled the challenge. More importantly, that was a case where the vessel in which the goods were carried belonging to the petitioners arrived on

57 **1989 (4) SCC 21**

11th July 1981. Berth was not available. By reason of the same it could not discharge its cargo at Bombay. This court took the view that what is relevant is the date on which the Bill of Entry is presented. Therefore, it cannot be treated as authority for the proposition canvassed by the appellants. The decision of this Court in *Priyanka Overseas (P) Ltd. v. Union of India*[58] also will not assist the appellant in persuading this Court to answer the question in favour of the appellant. No doubt, the court has reiterated the principle in Section 15 of the Customs Act and the question actually fell for decision under Section 15 (1)(b) of the Act as it stood prior to its amendment. Section 15 (1)(b) as it stood then contemplated the rate of duty applicable in the case of goods cleared from a warehouse under Section 68 to be rate on the date on which the goods were actually removed from the warehouse. Quite apart from the fact that the said provision has been amended, we are in this case concerned with Section 15(1)(a) and what is more

58 **1991 Suppl.(1) SCC 102**

important, the actual question is the impact of the notification issued under Section 8A and what is the significance of the word "the date". In the decision of this Court in *Dhiraj Lal H. Vohra v. Union of India*[59], the ship arrived at the port on 2.3.1989 and inward entry was also given on the same day. The contention taken by the appellant that the ship had entered the Indian territorial waters on 20.2.1989 and was ready to discharge the cargo was found irrelevant for purposes of Section 15(1) read with Sections 46 and 31 of the Customs Act. This decision also does not assist the Court in deciding the question which squarely falls for decision. The decision of this Court in *D.C.M.Ltd. and Another V. Union of India*[60] involved a challenge to the validity of Section 15(1)(b) of the Customs Act. Following the filing of "Bill of Entry for warehousing" on 24.2.1982, the imported goods were warehoused. The goods were cleared from the warehouse on 3.3.1982 and 15.4.1982. On the basis of Section 15(1)(b) taking note of the dates of clearance from the warehouse,

59 **1993 Supl. (3) SCC 453**
60 **1995 suppl. (3)SCC 223**

the duty was levied. The Court noted that Section 12, the charging section was subject to Section 15 among other sections. An option was given to the importer to either file a Bill of entry for home consumption straight away in which case he has to pay the duty based on the filing of the bill of entry. In the case of bill of entry for warehousing, the date of clearance of the goods determined the rate under section 15(1)(b) as it stood. It does not have any effect qua the facts of the case before this Court except that what determines the date of the rate will be found from Section 15 of the Customs Act.

82. Coming to the decision of this Court in *Raj Kumar Yadav v. Samir Kumar Mahaseth*[61], the facts of the case was that an election petition was presented on 27.8.2003 after the designated judge had retired to his chamber at 4.15 p.m.. The last date of limitation was 27.8.2003. The court inter alia held as follows:

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61 **2005 (3) SCC 601**

> **"6. The limitation provided by Section 81 of the Act expires on the 45th day from the date of election. The word "day" is not defined in the Act. It shall have to be assigned its ordinary meaning as understood in law. The word "day" as per English calendar begins at midnight and covers a period of 24 hours thereafter, in the absence of there being anything to the contrary in the context. (See Ramkisan Onkarmal Agrawal v. State of Maharashtra [AIR 1994 Bom 87 : 1994 Mah LJ 369] , AIR at p. 94, Municipal Council of Cuddalore v. S. Subrahmania Aiyar [16 MLJ 101 : ILR (1906) 29 Mad 326] and P. Ramanatha Aiyar, The Law Lexicon, pp. 470, 471.) Thus, the election petition could have been presented up to the midnight falling between 27-8-2003 and 28-8-2003."**

This Court also found that the High Court should not have allowed the period of limitation to be abridged by the rules. This is besides also finding that the rules were not properly appreciated. It is to be noted that question involved was the period of limitation to file the election petition. The last day was therefore understood in the manner done. The decision of this Court in *Ahmadsahab Abdul Mulla(2) (Dead) By Proposed LRs. vs. Bibijan and others*[62] dealt with the effect of the use of the expression 'date'

62 **2009 (5) SCC 462**

in Article 54 of the schedule to the Limitation Act, 1963. This Court *inter alia* held as follows:

> **"9. According to *Advanced Law Lexicon* by P. Ramanatha Aiyar, 3rd Edn., 2005, the word "date" means as follows:**
>
> **"*Date*.—(*As a noun*) The point of time at which a transaction or event takes place; time given or specified; time in some way ascertained and fixed; *in a deed*, that part of the deed or writing which expresses the day of the month and year in which it was made, (2 Bl. Commn. 304; *Tomlin*). In *Bement & Dougherty* v. *Trenton Locomotive, etc., Co.* [32 NJ Law 513] (NJ Law at p. 515) it is said: 'The primary signification of the word date, is not time in the abstract, nor time taken absolutely but, as its derivation plainly indicates, time given or specified time in some way ascertained and fixed; this is the sense in which the word is commonly used. When we speak of the date of a deed, we do not mean the time when it was actually executed but the time of its execution, as given or stated in the deed itself.'**
>
> **'Where a deed bears no date, or an impossible date, and in the deed reference is made to the "date", that word must be construed "delivery"; but if the deed bears a sensible date, the word "date", occurring in the deed, means the day of the date, and not that of the delivery' (Elph. 123, citing *Styles* v. *Wardle* [(1825) 4 B & C 908 : 107 ER 1297] ; …).**

‘Date’, though sometimes used as the shortened form of ‘day of the date’, is not its synonym; but means the particular time on which an instrument is given, executed, or delivered (*Howard case* [2 Salkeld 625: 91 ER 528: 1 Ld Raym 480: 91 ER 1219] ; *Armitt* v. *Breame* [(1704) 2 Ld Raym 1076: 92 ER 213] and *Pewtress* v. *Annan* [(1841) 9 Dowl 828] , Dowl at pp. 834-35). …

‘The word “date” is much more commonly descriptive of a day than of any smaller division of time’ (per Stormonth Darling, L.O., *Simpson* v. *Marshall* [37 Sc LR 316]

Date means day, so that where a cover note providing for temporary insurance of a motor car expires ‘15 days after date of commencement’ it runs for the full 15 days after the day on which it was to commence (*Cartwright* v. *MacCormack* [(1963) 1 WLR 18 : (1963) 1 All ER 11 (CA)]).”

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11. The inevitable conclusion is that the expression “date fixed for the performance” is a crystallised notion. This is clear from the fact that the second part “time from which period begins to run” refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on “when the plaintiff has notice that performance is refused”. Here again, there is a definite point of time, when

the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

12. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression "date" used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits."

The decision may not assist the appellants in the nature of the question which falls for decision in the appeals before this Court.

83. The decision of this Court reported in *Pashupati Nath Singh vs. Harihar Prasad Singh;*[63] relied upon by the appellant arose under the Representation of People Act, 1951. The petitioner therein was a candidate for the election to the Bihar Legislative Assembly. He filed his nomination paper on 16.1.1967. His nomination paper was rejected. Petitioner challenged the election of the returned

63 **AIR 1968 SC 1064**

candidate, on the ground of illegal rejection of his nomination paper. Section 36 of the Act provides for scrutiny of nomination paper. The objection taken which resulted in the nomination of the petitioner being rejected was that he had not made and subscribed the requisite oath or affirmation in the form which is prescribed. Section 36 uses the words 'the date fixed for scrutiny' It is interpreting the said words in Section 36 (2) (a) that the Court held as follows:

> **"13. It seems to us that the expression "on the date fixed for scrutiny" in Section 36(2)(*a*) means "on the whole of the day on which the scrutiny of nomination has to take place". In other words, the qualification must exist from the earliest moment of the day of scrutiny. It will be noticed that on this date the Returning Officer has to decide the objections and the objections have to be made by the other candidates after examining the nomination papers and in the light of Section 36(2) of the Act and other provisions. On the date of the scrutiny the other candidates should be in a position to raise all possible objections before the scrutiny of a particular nomination paper starts. In a particular case, an objection may be taken to the form of the oath; the form of the oath may have been modified or the oath may not have been sworn before**

the person authorised in this behalf by the Election Commission. It is not necessary under Article 173 that the person authorised by the Election Commission should be the Returning Officer.

14. In *Paynter* v. *James* [(1866-67) LR 2 CP 348] , Bovil, C.J., quoted, with approval, the passage from the judgment of Tindal, C.J., in *Regy* v. *Humphery* [10 Ad & E 335] , in which the following occurs:

"… we hold it therefore to be unnecessary to refer to instances of the legal meaning of the word 'upon' which, in different cases, may undoubtedly either mean *before* the act done to which it relates, or *simultaneously* with the act done, or *after* the act done, according as reason and good sense require the interpretation, with reference to the context and the subject-matter of the enactment."

15. Bovill, C.J., observed that "that is a very clear statement of the various meaning of the word 'on' or 'upon'."

16. In this connection it must also be borne in mind that law disregards, as far as possible, fractions of the day. It would lead to great confusion if it were held that a candidate would be entitled to qualify for being chosen to fill a seat till the very end of the date fixed for scrutiny of nominations. If the learned Counsel for the petitioner is right, the candidate could ask the Returning Officer to wait till 11.55p.m. on the date fixed for

the scrutiny to enable him to take the oath."

Clearly the context and the purpose of the statute guided the court in holding that the law disregards fractions and it must be noted that even then in the said case it was laid down that the fractions of the day are to be disregarded as far as possible.

84. The decision of this Court on *Vikram Singh alias Vicky and Another v. Union of India and Others*[64] is relied upon to contend that the presumption runs that the legislature is well aware of the circumstances and the effect of the words that have been employed by it. In other words, the contention appears to be that since the word 'the date' is used in Section 15, it must be given full effect. As far as the judgment of this Court in *The Government of Andhra Pradesh and Anotheer v. Hindustan Machine Tools Ltd.*[65] is concerned, and the purpose for which it is relied upon, the decision appears to be inapposite in the facts. The contention taken is that it is competent

64 **2015 (9) SCC 502**
65 **1975 (2) SCC 274**

for the legislature to make law retrospectively and as the rate of duty is to be determined as the rate in force on the day Section 15 is determinative. It is one thing to say that the legislature may have the power to make a law with retrospective effect subject to limitations imposed by the Constitution and quite another to contend that delegated legislation would carry retrospective effect irrespective of power to make such a law conferred by the parent enactment on the delegate. More importantly the scheme of the Customs Act and the Tariff Act and the Regulation 4(2) of the 2018 Regulations rule out the tenability of applying the notification in the manner sought by the appellants.

85. Reliance placed on the judgments *Video Electronics Pvt. Ltds and Another vs. State of Punjab and Another;*[66], *Tamil Nadu Electricity Board and Another v. Status Spinning Mills Limited and Another;*[67] of this Court, taking the view that the Schedule to an act is a part of the act and therefore

66 **1990(3)SCC 87**
67 **2008(7) SCC 353**

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.

86. In this view of the matter, the Appeals are found to be without merit and the same will stand dismissed.

……J.
[K. M. JOSEPH]

NEW DELHI:
DATED; SEPTEMBER 23, 2020