Supreme Court of India
M/S. Pankaj Jain Agencies vs Union Of India And Other on 14 July, 1994
Equivalent citations: 1995 AIR 360, 1994 SCC (5) 198
Author: M Venkatachalliah
Bench: Venkatachalliah, M.N.(Cj)

PETITIONER:
M/S. PANKAJ JAIN AGENCIES

Vs.

RESPONDENT:
UNION OF INDIA AND OTHER

DATE OF JUDGMENT14/07/1994

BENCH:
VENKATACHALLIAH, M.N.(CJ)
BENCH:
VENKATACHALLIAH, M.N.(CJ)
ANAND, A.S. (J)

CITATION:
1995 AIR 360 1994 SCC (5) 198
JT 1994 (5) 64 1994 SCALE (3)316

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by VENKATACHALIAH, C.J.- By this petition under Article 32 of the Constitution of India, M/s Pankaj Jain Agencies, the petitioner, assails the vires of the Notification No. 142/86-Cus. dated 13-2-1986 of the Central Government issued in exercise of powers under Section 25(1) of the Customs Act, 1962, amending the earlier Notification No. 70/85 dated 17-3-1985. These notifications relate to rates of customs duty on the imports of parts, components and sub-assemblies of Ball Bearings and Roller Bearings. The impugned notification specifically relates to 'parts' of Ball and Roller Bearings.

2. The petitioner carries on business of imports of component parts of Ball and Roller Bearings and claims to be the beneficiary by assignment and transfer of certain replenishment licences initially issued in favour of M/s Geo Millers & Co. Pvt. Ltd., New Delhi, against exports made by the said licensee. The licences were transferred to M/s Ashoka Enterprises, New Delhi, which in turn, further transferred the licences in favour of the petitioner.

3. Pursuant thereto, the petitioner claims to have entered into an agreement with M/s Business Birds, Singapore, for the supply of 'cups' of Chinese manufacture and said to be component parts of Ball Bearings. The foreign supplier shipped the goods in three different lots from Singapore to Bombay Port. The first consignment of 8600 pieces was sent from Singapore to Bombay on 5-1-1986 per Steamship HANLIM MARINER. The Ship arrived in Bombay on or about 15-1-1986 and the consignment was cleared by the Revenue charging import duty at the then prevailing rates though, however, on the question of assessable values the Revenue did not accept the invoice-value. The controversy in regard to that particular consignment was as to valuation and not as to the rates of import duty.

4. The two further consignments of 5000 and 13,000 'cups' respectively under invoice dated 2-2-1986 are stated to have arrived at Bombay Port on or about 10-2-1986. The petitioner filed two Bills of Entry for home consumption which were noted on 19-2-1986. The dispute in regard to these two consignments concerned in this writ petition is whether the higher rates indicated by the impugned Notification No. 142/86-Cus. dated 13-2-1986 were attracted. It is to be stated that the rates of duty are statutorily provided under the Customs Tariff Act, 1975 and these notifications under Section 25(1) of the Customs Act, 1962 seek to exempt goods covered by the notification from such part of import duty as may be in excess of what may be specified in the notifications. In that sense the impugned notification, strictly speaking, does not impose or prescribe a rate of duty but has the effect of reducing the extent of the earlier exemption. The petitioner's contention is that the higher rates of duty indicated in the Notification No. `42/86-Cus. dated 13-2-1986 could not be applied to the said two consignments as the impugned notification could not be held to have been duly promulgated or brought into force on the day the import had occurred.

5. Shri Ganesh, learned counsel urged several contentions in support of the challenge to the validity or in the alternative, of the applicability of the impugned Notification No. 142/86-Cus. dated 13-2-1986. The contentions urged at the hearing admit of being noticed and formulated thus: First, that the import was complete even before the impugned notification can be said to have come into force as the impugned notification was not made known to those who were likely to be affected by it as the notification was not available in Bombay till the 19-2- 1986. Secondly, it was urged, that the impugned notification insofar as it prescribed import duty on parts of Ball Bearings, is ultra vires the powers of the Central Government under Section 25(1) of the Customs Act, 1962 as indeed no duty was really contemplated respecting spare parts or components of Ball Bearings under the Customs Tariff Act, 1975. The impugned notification, it is argued, in effect and substance purports to impose a fresh and nascent duty on spare parts or components of Ball Bearings which were not originally brought to charge in the statute and that the impugned notification is not only beyond the powers of the Central Government under Section 25(1) but is also violative of the specific condition in sub-section (3) of Section 25 which requires that the duty shall in no case exceed the "statutory duty". It is said that respecting 'parts' of Ball Bearings there was no "statutory duty" at all. Thirdly, it was urged that the duty imposed constituted an unreasonable restriction on petitioner's fundamental rights under Article 19(1)(g), in that the enhancement brought about by the impugned notification, so far as the present consignments were concerned, was to raise the petitioner's liability from Rs 1,84,341 to Rs 6,42,065.

6. Before assessing the merits of these contentions it is necessary to advert to the relevant statutory provisions relating to the rates of duty on imports of Ball Bearings and Roller Bearings and parts thereof under the Customs Tariff Act, 1975. Chapter 84 deals, amongst other things, with Ball or Roller Bearings. The relevant provisions say: 84.62, Ball, roller or needle roller bearings: (1) Ball and roller 100% plus Rs.100 49 bearings not per bearing elsewhere specified (2) Ball bearings of 200% plus Rs. 100 all types, not exceeding per bearing 60 millimetres bore per bearing diameter (3) Roller bearings, including needle 200% plus Rs 100 roller bearings but excluding adapter per bearing roller bearings, not exceeding 85 millimetres bore diameter Apparently, the goods would, but for the impugned notification, otherwise attract 84.62(2) above.

7. The rigour of this statutory duty was mitigated by exemption Notification No. 70/85-Cus. dated 17-8-1985 exempting the imports from so much of the duty as may be in excess of the rates specified in Column No. 4 of the Table appended to the notification. This notification, however, was further amended by the impugned Notification No. 142/86- Cus. dated 13-2-1986. The impugned notification provides:

"NEW DELHI, the 13th February, 1986 _____ 24th MAGHA, 1907 (SAKA) NOTIFICATION No. 142/86-CUSTOMS G.S.R. 199(E): In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 78-05-Cus. dated 17-3-1985, namely:

In the Table annexed to the said notification, for SI. No. 6 and the entry relating thereto, the following SI. No. and entry shall be substituted, namely:

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(1) (2) (3)

"6. Sub-he- 1 (a) Parts including sub- 150 % ad
heading No. assemblies of bear- valorem plus (3) of ings of description Rs 15 per mentioned in Item
part or sub-

	1(a) of Sl.No 5above	assembly as the case maybe
	(b) Parts including	150 per cent ad

sub-assemblies of bearingsvalorem bearings of description plus Rs.26 per mentions in Item 1(b)of
part or sub-as-

	Sl.No.5 above	sembly as the case may be.
	(c)Parts including sub-assemblies of	150 per cent ad valorem plus

bearings of description Rs.38 per part mentioned in Item or sub-assembly 1(c) of Sl.No.5 above as the case may be

(d) Parts including sub- 150 per cent ad assemblies of bearings volerem plus Rs. of description mentioned 80 per part or in Item 1(d) of Sl.No. sub-assembly as 5 above. the case may be

2. All other goods 150 per cent ad valorem Sd/-

(K.S. VENKATAGIRI) Under Secretary to the Govt. of India"

The impugned notification did not prescribe a rate higher than the statutory duty.

8. The contention of Shri Ganesh that the relevant date with reference to which the rates of customs duty require to be ascertained had already occurred by the time the impugned notification No. 142/86-Cus. came into force is, on the facts of the present case, clearly untenable. Section 25(1) of the Customs Act, 1962 provides:

> "If the Central Government is satisfied that it is necessary in the public interest so to do it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance), as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon."
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> 9. In Bharat Surfactants (Pvt.) Ltd. v. Union of India', this Court held: (SCC pp. 28-29, para 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."
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> (emphasis supplied)
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> 10. In the present case the date with reference to which rates of duty had had to be ascertained was 19-2-1986. The impugned notification dated 13-2-1986 was published in the Gazette on 13-2-1986. There is no infirmity in the impugned notification on this score.

11. But, Shri Ganesh urged that it was not sufficient that a law, regulation, statutory instrument or subordinate legislation is promulgated; and that for their coming into operation it is necessary that they are made known or broadcast in some recognizable way, so that all men may know what it is. But the law recognises the distinction between an Act of the 1 (1989) 4 SCC 21, 28 (1989) 43 ELT 189, 194 Legislature which comes into force on the date it receives the assent of the President or the Governor and subordinate legislation which require publication in some recognised way.

12. It is, however, urged, that is, until the notification was available in Bombay and shown to be so available the statutory rule or instrument would not become operative.

13. This contention has the familiar ring of the dictum of Bailhache, J. in Johnson v.Sargant & SonS referred to with approval by Bose, J. in Harla v. State of Rajasthan 3 who said:

> "Natural Justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence."
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> [See also D.B. Raju v. H.J. Kantharaj4]
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> 14. In Lim Chin Aik v. Reginam5, the Privy Council also observed:
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> "It was said on the respondent's part that the order made by the minister under the powers conferred by Section 9 of the Ordinance was an instance of the exercise of delegated legislation and therefore that the order, once made, became part of the law of Singapore of which ignorance could provide no excuse on a charge of contravention of the section. Their Lordships are unable to accept this contention. In their Lordships' opinion, even if the making of the order by the minister be regarded as an exercise of the legislative as distinct from the executive or administrative function (as they do not concede), the maxim cannot apply to such a case as the present where it appears that there is in the State of Singapore no provision, corresponding, for example, to that contained in Section 3(2) of the English Statutory Instruments Act, 1946, for the publication in any form of an order of the kind made in the present case or any other provision designed to enable a man by appropriate inquiry to find out what 'the law' is."

15. But then in State of Maharashtra v. Mayer Hans George6 Rajagopala Ayyangar, J. referred to the following comment of Prof. C.K. Allen on Johnson v. Sargant & Sons2:

"This was a bold example of judgment-made law.

There was no precedent for it, and indeed a decision, Jones v. Robson', which, though not on all fours, militated strongly against the judge's conclusion, was not cited; nor did the judge attempt to define how and when delegated 2 (1918) 1 KB 101 :87 LJ KB 122: 118 LT 95 3 AIR 1951 SC 467: 1952 Cri LJ 54: 1952 SCR 110 4 (1990) 4 SCC 178, para 14 5 (1963) 1 All ER 223, 226: 1963 AC 160: (1963) 2 WLR 42 (PC) 6 AIR 1965 SC 722, 742: (1965) 1 Cri LJ 641 : (1965) 1 SCR 123 7 (1901) 1 KB 673 : 70 LJ KB 419: 84 LT 230 legislation became known. Both arguments and judgment are very brief. The decision has always been regarded as very doubtful, but it never came under review by a higher court." And observed:

"We see great force in the learned author's comment on the reasoning in Sargant case2. Taking the present case, the question would immediately arise is it to be made known in India or throughout the world, for the argument on behalf of the respondent was that when the respondent left Geneva on November 27 he was not aware of the change in the content of the exemption granted by the Reserve Bank. In a sense the knowledge of the existence or content of a law by an individual would not always be relevant, save on the question of the sentence to be imposed for its violation. It is obvious that for an Indian law to operate and be effective in the territory where it operates, viz., the territory of India it is not necessary that it should either be published or be made known outside the country. Even if, therefore, the view enunciated by Bailhache, J. is taken to be correct, it would be apparent that the test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of everyone who intends to pass through India. It was 'published' and made known in India by publication in the Gazette on the 24th November and the ignorance of it by the respondent who is a foreigner is, in our opinion, wholly irrelevant."

16. Again in B.K. Srinivasan v. State of Kamataka 8 it was observed: (SCC p. 672, para 15) "There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes's `unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. 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." 8 (1987) 1 SCC 658, 672: AIR 1987 SC 1059, 1067

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 case8 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 recognised official channel, namely, the Official Gazette or some other reasonable mode of publication." (emphasis supplied)

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 operations and enforceability. This contention of Shri Ganesh is unacceptable.

19. The second contention is that the impugned notification is violative of the condition in sub-section (3) subject to which above the power to exempt under Section 25 could be exercised. Sub-section (3) of Section 25 of the Customs Act, 1962 says:

> "An exemption under sub-section (1) or sub- section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub- section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty."
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> (Explanation - omitted)

20. It is urged that there was no statutory duty at all on spare parts and components and that, therefore, the impugned notification is not an exercise of the power to exempt but is in itself a source and an independent, substantive, fresh import of spare parts on which no statutory duty obtained earlier. As noticed earlier this contention is devoid of force.

21. Notes under Section 16 provide:

> "2. Subject to Note to this section, Note I to Chapter 84 and Note 1 to Chapter 85, parts of machines not being parts of the articles described in Heading No. 84.64 or parts of the following articles falling within Heading No. 85.18/27, namely (i) insulators or insulated electric wire and the like, (ii) carbon articles used for electrical purposes, or
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> (iii) electrical conduit tubing and joints therefore, are to be classified according to the following rules:
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> (a) goods of a kind described in any of the Headings of Chapters 84 and 85 (other than Heading Nos. 84.65 and 85.28) are in all cases to be classified in their respective Headings;
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> (b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines falling within the same Heading (including a machine falling within Heading No. 84.59 or electrical goods and apparatus falling within Heading No. 85.18/27) are to be classified with the machines of that kind.

> However, goods which are equally suitable for use principally with the goods of Heading Nos. 85.13 and 85.15 are to be classified in Heading No. 85.13;
>
> (c) all other parts are to be classified in Heading No. 84.65 or 85.28."
>
> These notes which are part of the tariff provisions read with the tariff indicate that the 'parts' and components of Ball and Roller Bearings are not excluded as contended.

This contention has no substance. As indicated earlier the rates prescribed in the impugned notification do not also exceed the rates of statutory duty. The second contention of Shri Ganesh is not substantial either.

22. The third and the last submission is that the sudden and sharp increase of duty steeply puts up the petitioner's liability from Rs 1,84,341 to Rs 6,42,065 on these consignments and constitutes an unreasonable restriction on the petitioner's fundamental rights under Article 19(1)(g) of the Constitution. A tax, in particular, in the nature of duties of customs is not per se violative of Article 19(1)(g). Mere excessiveness of a tax is not, by itself, violative of Article 19(1)(g). This question cannot be divorced from the nature of the right to import. There is no absolute right much less a fundamental right to import. See: Deputy Assistant Iron and Steel Controller v. L. Manickchand, Proprietor, Katrella Metal Corpn., Madras9 and Andhra Industrial Works v. Chief Controller of Imports... ; J. Fernandes & Co. v. Deputy Chief Controller of Imports and Exports". That apart, no factual foundations are laid to demonstrate how this impost has had the effect of destroying the petitioner's right to carry on a trade or business. This contention also has no merit.

23. In the result, none of the contentions so strenuously urged by Shri Ganesh deserves to succeed. The writ petition is dismissed with costs.

9 (1972) 3 SCC 324: AIR 1972 SC 935 10 (1974) 2 SCC 348: AIR 1974 SC 1539 11 (1975) 1 SCC 716: AIR 1975 SC 1208