CUSTOMS DUTY AND COMMON WEALTH GAMES

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Unless a duty exemption is granted by the Government of India, Ministry of Finance in exercise of powers conferred under Section 25(2) of the Customs Act, no such exemption can be allowed to an importer. Statutory liability arising under the provisions of the Customs Act under no circumstances can be the liability of a party who only agrees to assist the importer in obtaining the Customs exemption as held by the Hon'ble High Court of Delhi.
It is a matter of great concern and subjective interpretation that if the IGM and Bill of Lading/Airway Bill can be amended to show the Organising of the Commonwealth Games as an importer, in lieu of the existing contractor or vendor or sub-vendor, as the case may be, would it also not mean that an exemption as contemplated in the Notification No. 13 of 2010 must necessarily follow.

The recently concluded XIXth Commonwealth Games 2010, at Delhi, had been in news for all the wrong reasons. The Organising Committee Commonwealth Games 2010 Delhi (OC CWG Delhi 2010), a registered society under the Societies Registration Act, 1860 which was entrusted with the organising and hosting of the XIX Commonwealth Games to the Indian Olympic Association (IOA) faced a lot of brickbats initially. The spectacle, however, ended on bright note and with a pat on the back for the organising committee. A variety of goods such as sports goods, sports equipment, fitness equipments, clothing, spares, accessories, ammunition for shooting, Furniture and fixtures/fittings, power generation and distribution systems, air conditioning equipment etc. were imported for the promotion and holding of event. Everybody seems to be happy and overwhelmed at the conclusion of the games, other than a class of importers who apparently feel that they are facing the wrong end of the barrel. This class of importers particularly, the suppliers, contractors, vendors and sub-vendors of the Organising Committee of the Games, are of the view that they are entitled to the various duty exemptions granted under various notifications of the customs and that the same are being denied to them without any just cause. In order

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to appreciate the existing law and the notifications and circulars issued in regard to various imports made for the Commonwealth games let us examine and critically evaluate the scenario.

Section 25 of the Customs Act, 1962 provides that 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 as may be specified in the notification, goods of any specified description from the whole or any part of the duty of customs leviable thereon. Since the Commonwealth games were a matter of national pride and a matter considered to be in the public interest, the Central Government brought about a notification exempting import of certain goods by a certain class of persons subject to fulfillment of various conditions. Notification No. 13/2010-Customs dated 19th February, 2010 granted exemptions on various goods in the following words "In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (2) of the Table below and falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for the purpose of organising the Common Wealth Games, 2010(hereinafter, referred as Games), from the whole of the duty of customs leviable thereon which is specified in the said First Schedule and from the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, subject to the conditions specified in the corresponding entry in column (3) of the said Table". This exemption was granted to imports made by the Organising Committee of the Common Wealth Games, 2010, National sports federations in relation to Games, 2010 subject to the condition, amongst others, that the importer, at the time of clearance of the goods, furnishes an undertaking that all such goods shall be consumed or re-exported within three months from the conclusion of the Games or shall be handed over to the Sports Authority of India or Delhi Development Authority or Government of National Capital Territory of Delhi. The suppliers, contractors, vendors and sub-vendors of the Organising Committee of the Games holding the view that they were also entitled to the benefit of exemption notification claimed the same from the Customs. The Customs, however, interpreted the notification as otherwise, and brought about a clarificatory circular. Vide Circular No 26 of 2010, 9th August, 2010, the Central Board of Excise and Customs (CBEC) addressed the confusion as to who is an eligible importer as per

Notification No. 13/2010-Customs dated 19th February, 2010. It was observed by CBEC that a doubt has been raised as to whether suppliers/contractors/vendors/sub-vendors of OC is eligible for the benefit under the said notification. In this connection, CBEC clarified that suppliers/contractors/vendors etc. appointed by the OC, CWG would not be eligible for the benefit under the said notification. However, subsequent to this clarifactory circular one more circular was issued by CBEC, in less than a week's time. Now, vide Circular No. 28/2010-Cus. dated 13th August, 2010, CBEC observed that references had been received from the Organizing Committee Commonwealth Games, 2010 Delhi (OC, CWG) regarding difficulties faced by importers other than the importers specified in the Notification No. 13/2010-Cus. dated 19th February, 2010 as they are not covered under the scope of the said Notification. It was observed that as a result a large number of consignments were pending clearance at different ports in the country causing delay in smooth organisation of the game. In view of the difficulties it was directed that Organising Committee Commonwealth games (OC CWG) or Prasar Bharti, as the case may be, will apply to Customs for NOC/Permission to amend the import documents viz. IGM and Bill of Lading/Airway Bill to include itself as the importer in place of the contractors/vendors/sub-vendors. This circular may well have been appreciated even by the lawyer community, as it appears to create or adds to an already existing ambiguity. It is a matter of great concern and subjective interpretation that if the IGM and Bill of Lading/Airway Bill can be amended to show the OC CWG as an importer in lieu of the existing contractor or vendor, or sub-vendor, as the case may be, would it now also not mean that an exemption as contemplated in the Notification No. 13 of 2010 must also necessarily follow. Subsequently, one more Notification was brought about to amend the existing Notification No. 13 of 2010. Vide Notification No. 84 of 2010 dated 27th August, 2010, the third column of the erstwhile notification was amended to include the following "in column (3), in condition (a), after the words and figures" Common Wealth Games, 2010, "the words and figures" suppliers or contractors or vendors or sub-vendors of the Organising Committee of the Common Wealth Games, 2010 or "shall be inserted". This amended necessitated the issuance of one more clarificatory circular. Vide Circular No.: 31/2010-Cus., the Central Board of Excise and Customs, now clarified that suppliers/contractors/vendors or sub-vendors of OC, CWG, the Prasar Bharti or of the broadcasting right holders will also be eligible for benefit of the said Notification i.e. Notification No. 13/2010-Cus. dated 19th February, 2010, as amended by Notification No. 84/2010-Cus. dated 27th August, 2010.

The present scenario raises a few fundamental questions. Whether the contractors/vendors/sub-vendors who had imported the goods prior to the amended Notification No. 84/2010-Cus. would, rather should, also be entitled to exemption benefit? If, at the time of making the impugned imports, the importers entertained the belief, on account of the conduct, representations, acts or omissions of the Organizing Committee of the Commonwealth Games or even otherwise, that the imports would be duty free or exempted, then would the government be bound to extend those duty benefits to the importers And Whether, hypothetically speaking, if it is found that the OC–CWG represented to the importers that the imports would be exempted from duty, could the OC –CWG be fastened with the liability to pay for the dues of the importers? In "*World Tel Inc. & Anr* v. *Union of India & Anr.*[1]" a question arose as to whether the Customs duty was to be borne by the Doordarshan, on whose representations, goods were alleged to have been imported, temporarily, by World Tel Inc. It was alleged that Doordarshan and World Tel had entered into a memorandum of understanding for coverage of the Challengers Cup Cricket Tournament and that all necessary Government permissions, clearances and required permission for uplink of the programme were agreed to be arranged for World Tel by Doordarshan. The Hon'ble High Court of Delhi held that the agreement between the parties is clear and unambiguous. Doordarshan's obligation was to persuade the Customs Authorities to release the equipments but were unsuccessful and accordingly advised the petitioner to take such course of action as they thought fit. As per the agreement signed between parties for coverage of the Challengers Cup, Doordarshan had agreed that all necessary Government permits and clearances and required permissions for the uplink of the program will be arranged for the petitioner. In the circumstances Doordarshan was not liable to pay any Customs duty on the import of equipment by World Tel. The petitioner cannot thus claim any refund of Customs duty from Doordarshan. The Court further held that since the respondents are not liable under the provisions of Customs Act to pay the Customs duty in question, any assurance given by them in respect of any matter pertaining to Customs duty cannot amount to an undertaking or contract between the parties. Unless the exemption is granted by the Government of India, Ministry of Finance in exercise of powers conferred under Section 25(2) of the Customs Act, no such exemption can be allowed to the petitioner. Statutory liability arising under the provisions of the Customs Act under no circumstances can be the liability of Doordarshan, who had only agreed to assist the petitioner in obtaining the Customs

[1] MANU/DE/0166/1999: 77 (1999) DLT 127

exemption. An extension of the said view may probably protect the interests of the Organizing Committee even if it had made similar representations to the importers. A bare perusal of the Notification No. 13/2010-cus. would lead to a *prima facie* view that since contractors/vendors/sub-vendors etc. were not included in the list of eligible importers therefore no exemption benefit could be availed by them. But the matter did not end there as a notification, by way of amendment, was issued to extend the benefit to this class of importers. Even prior to amendment a clarificatory Circular No. 28/2010-Customs was issued. This series of events may eventually boil down to determining the intent of the Government in issuing the notifications in order to ascertain as to whether the exemption benefit could be extended to the aforesaid class of importers during the relevant period. In this regard one is reminded of the observation of *Lord Watson in Salomon* v. *Salomon and Cat* (as also quoted in *Hansraj Gordhandas* v. *H.H. Dave, Assistant Collector of Central Excise & Customs, Surat & Ors.*[2]) "Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication". In *Padmasundara Rao and Ors.* v. *State of Tamil Nadu and Ors.*,[3] it was quoted that it is well-settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. Considering, however, that in the present case there were ambiguities and the same even necessitated issuance of clarificatory circulars, the benefit may be granted to the importers. At this stage, a question may still arise, to many, as to whether, after the amended having being brought about in the Notification No. 13/2010 by Notification No. 84/2010, would, the benefit not be deemed to be naturally extended to the said importers, for even the period prior to Notification No. 84/2010. In this regard an observation quoted by the Hon'ble Judges of the Supreme Court of India in *Shakti Tubes Ltd.* v. *State of*

[2] MANU/SC/0265/1968: AIR 1970 SC 755
[3] MANU/SC/0182/2002: AIR 2002 SC 1334

Bihar and Ors.,[4] comes to rescue. "It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. The aforesaid rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only" "*nova constitutio futuris formam imponere debet non praeteritis*, a new law ought to regulate what is to follow, not the past."

There is yet, another alternative provided in the Customs Act, 1962 itself. Since most of the contractors, vendors, sub-vendors etc. intend to take back the imported goods back to their native places, they could still claim a refund of the duty by way of Duty Drawbacks. Interestingly, even in the case of claiming duty exemptions under the Notification No. 13/2010-cus. the importers were required to comply with the condition of re-exporting the goods within three months from the conclusion of the Games or hand over the goods to the Sports Authority of India or Delhi Development Authority or Government of National Capital Territory of Delhi. Section 74, Chapter X, of the Customs Act, 1962 allows for drawback on re-export of duty-paid goods. When any goods which have been imported into India and upon which any duty has been paid on importation are entitled for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under Section 51 then 98 per cent, of such duty, except as otherwise provided, can be paid re-paid as duty drawback. If the exemptions are not granted then the contractors or suppliers or vendors or sub-vendors could at least stake a claim under Section 74. However, where matters of national pride and image of the country are concerned there should be no room for ambiguity. All aspects should be clarified at the earliest, by the concerned departments of the Government, so as to remove ambiguities and prevent the image of the country being tarnished.

[4] MANU/SC/1149/2009: 2009 (8) UJ 3673 (SC): (2009) 7 SCC 673