

A M/S. GRANULES INDIA LTD.

V.

UNION OF INDIA AND OTHERS

(Civil Appeal Nos. 593-594 of 2020)

B JANUARY 23, 2020

[NAVIN SINHA AND KRISHNA MURARI, JJ.]

Customs Act, 1962:

Customs duty – Exemption from – Entitlement – Revenue

- C imported consignment under one advance licence issued prior to 19.5.1992 – Part of consignment was imported prior to 25.11.1993 and the rest subsequent thereto – Assessee sought exemption from customs duty in terms of Custom Notifications dated 19.5.1992 – Revenue allowed exemption from customs duty in respect of part of the consignments which were actually imported prior to 25.11.1993 i.e. the date of Notifications whereby the exemption was withdrawn – The exemption claim was rejected in respect to the part of the remaining consignment which was imported after 25.11.1993 without making any reference to clarificatory notification dated 18.3.1994 whereby import of chemical was permitted without customs duty subject to certain terms and conditions – Writ petition of assessee dismissed by High Court – In review petition High Court held that since the assessee did not produce the clarificatory Notification and neither the Revenue/State was aware of that Notification, the assessee was not entitled to any relief – Appeal to Supreme Court – Held: In view of clarificatory Notification the assessee is entitled to the exemption from customs duty – It is absolutely no defence of State Authorities to contend that they were not aware of their own Notification i.e. clarificatory Notification – The onus heavily rests on the State – The State cannot behave like a private litigant and rely on abstract theories of burden of proof.
 - G Allowing the appeals, the Court

G Allowing the appeals, the Court

HELD: 1 The entire consignment was imported under one advance licence issued to the petitioner prior to 19.05.1992. Part of the consignment was actually imported prior to 25.11.1993 and the rest subsequent thereto is hardly relevant in view of the

clarificatory notification dated 18.03.1994 that the exemption would continue to apply subject to fulfilment of the specified terms and conditions. It is not the case of the respondents that the consignments imported subsequently did not meet the terms and conditions of the exemption. [Para 8][1186 A-C]

2. The High Court further gravely erred in holding that the authorities of the State were also unaware of the clarificatory notification and neither did the appellant bring it on record. The State is the largest litigant. It stands in a category apart having a solemn and constitutional duty to assist the court in dispensation of justice. The State cannot behave like a private litigant and rely on abstract theories of the burden of proof. The State acts through its officer who are given powers in trust. If the trust so reposed is betrayed, whether by casualness or negligence, will the State still be liable for such misdemeanor by its officers betraying the trust so reposed in them or will the officers be individually answerable. It is absolutely no defence of the State Authorities to contend that they were not aware of their own notification dated 18.09.1994. The onus heavily rests on them and a casual statement generating litigation by State apathy cannot be approved. [Para 9][1186 E-H; 1187-A]

National Insurance Co. Ltd. v. Jugal Kishore (1988) 1 SCC 626 – relied on.

Shri Krishna Pharmaceuticals Limited v. Union of India (2004) 173 ELT 14 – approved.

Case Law Reference

(2004) 173 ELT 14	approved	Para 8
(1988) 1 SCC 626	relied on	Para 10

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 593-594 of 2020.

From the Judgment and Order dated 14.06.2017 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Review WPMP No. 10198 of 2017 in W.P. No. 8937 of 2001 and order dated 07.12.2016 in Writ Petition No. 8937 of 2001.

A

B

C

D

E

F

G

H

- A B. Adinarayana Rao, Sr. Adv., D. Bharat Kumar, Tadimalla Bhaskar Gowtham, Aman Shukla, Abhijit Sengupta, Advs. for the Appellant.
 Ms. Rukmini Bobde, Ms. Vanshaja Shukla, Ms. Tanisha Samanta, B. Krishna Prasad, Advs. for the Respondents.
- B The Judgment of the Court was delivered by
NAVIN SINHA, J.
1. Leave granted.
 2. The appellant is aggrieved by orders dated 07.12.2016 and 14.06.2017, rejecting the writ petition as also the review application arising from the same.
 3. The appellant, during the year 1993 imported 96 tons of the chemical “Acetic Anhydride” under three Bills of Entry bearing nos. 290, 291 and 300 dated 01.12.1993, 01.12.1993 and 14.12.1993 through

D the Inland Water Container Depot (ICD), Hyderabad under the Advance Licence Scheme. It claimed clearance of the consignment free of import duty in terms of Customs Notification nos. 203/1992, 204/1992, both dated 19.05.1992. The notification contained a scheme permitting import without payment of customs duty subject to fulfilment of certain norms and conditions. The Notification nos. 203/1992 and 204/1992 were amended by a Notification no. 183/1993 dated 25.11.1993, by which the subject imports became liable for duty, the exemption having been withdrawn. The Notification dated 25.11.1993 was further amended by another clarificatory Notification no. 105/1994 dated 18.03.1994 permitting the import of the chemical without customs duty subject to

E certain terms and conditions. The clarificatory notification was necessitated to obviate the difficulties faced by the importers like the appellant, who had imported the chemical under the advance licence issued by the Director General of Foreign Trade prior to the amendment Notification no. 183/1993 dated 25.11.1993.

F 4. The appellant was allowed to clear the consignments under the aforesaid three Bills of Entry without payment of duty. Subsequently the respondents issued show cause notice under Section 28 (1) of the Customs Act, 1962 with regard to the same consignments as having been imported after 25.11.1993. The appellant made a representation on 20.11.1997 seeking exemption. It was considered favourably in respect of three

H

other consignments under Bill of Entry No.312 dated 12.09.1993, Bill of Entry No.28 dated 10.02.1994 and Bill of Entry No.27 dated 09.02.1994. The entire consignments were imported under the same advance licence. In pursuance of the show cause notice the appellant was held liable to duty by order dated 12.2.1998 with regard to the consignments under three Bills of Entry bearing nos.290, 291 and 300 dated 01.12.1993, 01.12.1993 and 14.12.1993 respectively though these were also under the same advance licence. The respondents while considering the reply to the show cause notice and fixing liability for payment of customs duty did not make any reference to their notification dated 18.03.1994. The Commissioner (Appeals) on the same reasoning rejected the appeal leading to the institution of the writ application.

5. Dismissing the writ application, the High Court opined that no mandamus for exemption could be issued. The consignments were admittedly imported after 25.11.1993 and before the clarificatory notification dated 18.03.1994. Thus, there was no arbitrariness on part of the respondent. The appellant preferred a review application *inter alia* relying upon a Division Bench order of the Andhra Pradesh High Court in *Shri Krishna Pharmaceuticals Limited vs. Union of India*, (2004) 173 ELT 14. Rejecting the plea, the High Court opined that since the appellant did not produce the clarificatory notification along with the writ petition and neither were the respondents aware of the clarificatory notification the appellant was not entitled to any relief.

6. Shri B. Adinarayana Rao, learned senior counsel appearing on behalf of the appellant, submitted that denial of exemption to the consignment actually imported after 25.11.1993 under the advance licence obtained prior to 19.05.1992 notwithstanding the clarificatory notification dated 18.03.1994 holding the appellant liable for customs duty is completely unsustainable. Special Leave Petition (Civil) No.14288 of 2004 (CC No.5418/2004) preferred against the order in *Shri Krishna Pharmaceuticals Limited* (supra) was dismissed. The mere failure to enclose a copy of the notification could not be a ground for denial of relief. Denial of exemption in the facts and circumstances of the case in view of the statutory notifications were *per se* arbitrary.

7. Learned counsel appearing for the State supported the order of the High Court and urged that the consignments having been imported after withdrawal of the exemption and before issuance of the clarificatory notification was justified.

- A 8. We have considered the submissions on behalf of the parties and are of the considered opinion that the order of the High Court is completely unsustainable. The entire consignment was imported under one advance licence issued to the petitioner prior to 19.05.1992. The fortuitous circumstance that part of the consignment was actually imported prior to 25.11.1993 and the rest subsequent thereto is hardly relevant in view of the clarificatory notification dated 18.03.1994 that the exemption would continue to apply subject to fulfilment of the specified terms and conditions. It is not the case of the respondents that the consignments imported subsequently did not meet the terms and conditions of the exemption. In *Shri Krishna Pharmaceuticals Limited* (supra), the High Court observed as follows:

- “7. . . . Obviously, the petitioner had the facility of exemption from payment of the customs duty under the scheme known as Advance License Scheme, but the same was banned through notification dated 25.11.1993 and later through another clarificatory notification the same was extended by Notification dated 18.3.1994. Thus, since the Government itself has clarified by its second notification providing exemption, we are inclined to hold that the petitioner shall be entitled to be exemption for all the three consignments as long as the three consignments are imported under the Advance License scheme. Moreover, it is not the case of the respondents that these three consignments are not covered under the Advance License scheme.”

9. It is unfortunate that the High Court failed to follow its own orders in a similar matter. The High Court further gravely erred in holding that the authorities of the State were also unaware of the clarificatory notification and neither did the appellant bring it on record. The State is the largest litigant as often noted. It stands in a category apart having a solemn and constitutional duty to assist the court in dispensation of justice. The State cannot behave like a private litigant and rely on abstract theories of the burden of proof. The State acts through its officer who are given powers in trust. If the trust so reposed is betrayed, whether by casualness or negligence, will the State still be liable for such misdemeanor by its officers betraying the trust so reposed in them or will the officers be individually answerable. In our considered opinion it is absolutely no defence of the State authorities to contend that they were not aware of their own notification dated 18.03.1994. The onus heavily rests on them

H

and a casual statement generating litigation by State apathy cannot be A
approved.

10. We can do no better than quote the following extract from
National Insurance Co. Ltd. vs. Jugal Kishore, (1988) 1 SCC 626,
observing as follows: -

“10. Before parting with the case, we consider it necessary to
refer to the attitude often adopted by the Insurance Companies,
as was adopted even in this case, of not filing a copy of the policy
before the Tribunal and even before the High Court in appeal. In
this connection what is of significance is that the claimants for
compensation under the Act are invariably not possessed of either
the policy or a copy thereof. This Court has consistently emphasised
that it is the duty of the party which is in possession of a document
which would be helpful in doing justice in the cause to produce
the said document and such party should not be permitted to take
shelter behind the abstract doctrine of burden of proof. This duty
is greater in the case of instrumentalities of the State such as the
appellant who are under an obligation to act fairly. In many cases
even the owner of the vehicle for reasons known to him does not
choose to produce the policy or a copy thereof. We accordingly
wish to emphasise that in all such cases where the Insurance
Company concerned wishes to take a defence in a claim petition
that its liability is not in excess of the statutory liability it should file
a copy of the insurance policy along with its defence. Even in the
instant case had it been done so at the appropriate stage necessity
of approaching this Court in civil appeal would in all probability
have been avoided. Filing a copy of the policy, therefore, not only
cuts short avoidable litigation but also helps the court in doing
justice between the parties. The obligation on the part of the State
or its instrumentalities to act fairly can never be over-emphasised.”

11. The impugned orders are therefore held to be unsustainable
and are set aside. The appeals are allowed.