

GAHC010166452023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case :No WP(C)/5302/2018

BAMBOO INDUSTRIES ASSOCIATION OF INDIA AND ANR.
A REGISTERED SOCIETY REGISTERED UNDER THE SOCIETIES
REGISTRATION ACT
BEARING REGISTRATION NO.KAM (M)/263/B/499 BEFORE THE REGISTRAR
KAMRUP ASSAM
REP. BY ITS GENERAL SECRETARY
SRI MRINAAL SHARMA HAVING ITS REGISTERED OFFICE AT R.G. BARUAH
GUWAHATI- 781024 ASSAM

2: SRI RAJIB GOSWAMI
PRESENT OF BAMBOO INDUSTRIES ASSOCIATION OF INDIA
R/O HOUSE NO. 23
K. K. BHATTA ROAD CHENIKUTHI GUWAHATI- 781003.
VERSUS

THE UNION OF INDIA AND 10 ORS.
REP. BY SECRETARY TO THE MINISTRY OF SCIENCE AND TECHNOLOGY
DEPARTMENT OF SCIENCE AND TECHNOLOGY
TECHNOLOGY BHAWAN

NEW MEHRULI ROAD

NEW DELHI-110016.

2:THE NITI AAYOG
(NATIONAL INSTITUTE FOR TRANSFORMING INDIA) GOVT. OF INDIA
REP. BY VICE CHAIRMAN
YOJANA BHAWAN SANCHAT MARG NEW DELHI-110001.

3:THE MINISTRY OF SCIENCE AND TECHNOLOGY

REP. BY THE SECRETARY
DEPARTMENT OF SCIENCE AND TECHNOLOGY (DST)
TECHNOLOGY BHAWAN

MEHRULI ROAD

NEW DELHI- 110016.

4:THE MINISTRY OF AGRICULTURE AND FARMER WELFARE
REP. BY THE SECRETARY
DEPARTMENT OF AGRICULTURE AND CO-OPERATION
KRISHI BHAWAN
RAJENDRA PRASAD ROAD NEW DELHI- 110001.

5:THE MINISTRY OF INDUSTRY AND COMMERCE
REP. BY THE SECRETARY
THE GOVT. OF INDIA
DEPARTMENT OF INDUSTRY AND COMMERCE
UDYOG BHAWAN
NEW DELHI- 110107.

6:THE TECHNOLOGY INFORMATION FORECASTING AND ASSESSMENT
COUNCIL (TIFAC)

A SOCIETY REGISTERED UNDER THE SOCIETIES REGISTRATION ACT
1860 HAVING ITS REGISTERED OFFICE AT 'A' WING
VISHWAKARMA BHAWAN

SAHID JEET SINGH MARG
NEW DELHI- 110016
REP. BY THE EXECUTIVE DIRECTOR
FINANCE AND ADMINISTRATION.

7:NATIONAL MISSION ON BAMBOO APPLICATION (NMBA)
SECOND FLOOR
VISHWAKARMA BHAWAN
SAHID JEET SINGH MARG

NEW DELHI- 110016
REP. BY MISSION DIRECTOR.

8:THE NATIONAL BAMBOO MISSION (NBM)
UNDER MINISTRY AGRICULTURE
GOVT. OF INDIA
REP. BY ITS NATIONAL MISSION DIRECTOR
(UNDER NATIONAL MISSION FOR SUSTAINABLE AGRICULTURE (NMSA)
DEPARTMENT OF AGRICULTURE
MINISTRY OF AGRICULTURE
GOVT. OF INDIA
KRISHI BHAWAN
NEW DELHI- 110001.

9:THE NORTH EAST CENTRE FOR TECHNOLOGY

APPLICATION AND REACH (NECTAR)

A SOCIETY REGISTERED UNDER SOCIETIES REGISTRATION ACT

1860 HAVING ITS REGISTERED OFFICE AT MEGHALAYA STATE HOUSING
FINANCING CO-OPERATIVE SOCIETY COMPLEX

UPPER NON GRIM HILLS (BEHIND BETHANY HOSPITAL) SHILLONG 793003

REP. BY DIRECTOR GENERAL

MR. BALDEV SINGH RAWAT

IAS (RETIRED)

10:THE DEPARTMENT OF REVENUE

UNDER THE MINISTRY OF FINANCE REP. BY THE SECRETARY

DEPARTMENT OF REVENUE

MINISTRY OF FINANCE

GOVT. OF INDIA

128-A/NORTH BLOG

NEW DELHI-110001.

11:THE STATE OF ASSAM

REP. BY ITS CHIEF SECRETARY TO THE GOVT. OF ASSAM

DISPUR

GUWAHATI- 781006

ASSAM.

Advocate for : MR. K N CHOUDHURY

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 10 ORS.

With Case No. : WP(C)/2315/2018

RHINO BAMBOO INDUSTRY AND ANR.

A COMPANY WITHIN THE MEANING OF THE COMPANIES ACT 1956 HAVING
ITS REGISTERED OFFICE AT R.G. BARUAH GUWAHATI- 781024

ASSAM

REP. BY ITS MANAGING DIRECTION SRI RAJIB GOSWAMI.

2: RAJIB GOSWAMI

S/O LT. LAKSHMI PRASAD GOSWAMI

MANAGING DIRECTOR

RHINO BAMBOO INDUSTRY

R/O 23 K.K. BHATTA ROAD

CHENIKUTHI

GUWAHATI - 781003.
VERSUS

THE UNION OF INDIA AND 10 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVT. OF INDIA
128-A/NORTH BLOCK NEW DELHI- 110001.

2:THE MINISTRY OF SCIENCE AND TECHNOLOGY
REP. BY THE SECRETARY
DEPARTMENT OF SCIENCE AND TECHNOLOGY
TECHNOLOGY BHAWAN
MEHRULI ROAD
NEW DELHI- 110016.

3:MINISTRY COMMERCE AND INDUSTRY
REP. BY THE SECRETARY
DEPARTMENT OF COMMERCE
UDYOG BHAWAN
NEW DELHI- 110107.

4:DIRECTOR GENERAL OF FOREIGN TRADE (DGFT)
REP. BY THE DIRECTOR GENERAL
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF COMMERCE
UDYOG BHAWAN
H-WING GATE NO. 2 MAULANA AZAD ROAD
NEW DELHI- 110011.

5:THE DEPARTMENT OF REVENUE
UNDER THE MINISTRY OF FINANCE
REP. BY THE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
GOVT. OF INDIA

128-A/NORTH BLOCK
NEW DELHI- 110001.

6:THE ASSISTANT COMMISSIONER OF CUSTOMS
GUWAHATI CUSTOMS DIVISION
DEPARTMENT OF CUSTOMS AND CENTRAL EXCISE
5TH FLOOR
CUSTOMS HOUSE
NILOMONI PHUKAN PATH
CHRISTIAN BASTI
GUWAHATI - 781005.

7:NATIONAL MISSION ON BAMBOO APPLICATION (NMBA)

SECOND FLOOR
VISHWAKARMA BHAWAN
SAHID JEET SINGH MARG
NEW DELHI- 110016
REP. BY MISSION DIRECTOR.

8:THE NORTH EAST CENTRE FOR TECHNOLOGY

APPLICATION AND REACH (NECTAR)
A SOCIETY REGISTERED UNDER SOCIETIES REGISTRATION ACT
1860 HAVING ITS FINANCING CO-OPERATIVE SOCIETY COMPLEX
UPPER NON GRIM HILLS (BEHIND BETHANY HOSPITAL) SHILLONG -
793003 FORMERLY KNOWN AS NATIONAL MISSION ON BAMBOO
APPLICATION (NMBA) REP. BY DIRECTOR GENERAL.

9:THE NATIONAL BAMBOO MISSION (NBM)
UNDER MINISTRY AGRICULTURE
GOVT. OF INDIA
REPRESENTED BY ITS NATIONAL MISSION DIRECTOR
KRISHI BHAWNA
NEW DELHI- 110001.

10:THE MINISTRY OF AGRICULTURE AND FARMER WELFARE
REP. BY THE SECRETARY
DEPARTMENT OF AGRICULTURE AND CO-OPERATION
KRISHI BHAWAN
RAJENDRA PRASAD ROAD
NEW DELHI- 110001.

11:KOSONS FOREST PRODUCT PVT.LTD.
EPIP AMINGAON
GUWAHATI - 781031
REP. BY SRI GAUTAM KOTHARI
DIRECTOR

KOSONS FOREST PRODUCT PVT. LTD.

Advocate for : MR. K N CHOUDHURY
SENIOR ADVOCATE
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 10 ORS.

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

01.08.2024

1. Heard Mr. K. N. Choudhury, learned Senior Counsel assisted by Ms. S. Chakravarty, learned counsel for the petitioners. Also heard Mr. S. C. Keyal, learned Standing Counsel for the Customs Department.
2. As agreed to by the learned counsel for the parties, these matters are taken up together for final disposal, more particularly, in view of the prayer made by the learned counsel for the petitioner to relegate the matters to the competent authority to decide the grievances raised by them by filing representation which was forwarded by the Commissioner of Excise with a comment that such representation is having merit.
3. The petitioner No. 1 in WP(C)/5302/2018 is the Bamboo Industries Association of India, a society registered under the Societies Registration Act, 1860, and the petitioner No. 2 is the President of the said Association. They have approached this Court being aggrieved by the present state of affairs concerning the bamboo industry, which is primarily North East centric as well as lack of proper Central Government attention and assistance to the industry. One of the many grievances of the petitioners is that instead of providing financial assistance to the industrial units, particularly those located in the North-Eastern Region in the form of grants, assistance has been provided in the form of returnable TDA i.e. Technical Developmental Assistance. According to them, this has resulted in difficult financial conditions for the bamboo industrial units located in the North Eastern Region. The petitioner association claims that the situation has been further compounded by the respondents taking recourse to recovery proceedings.

4. The petitioner in WP(C)/2315/2018 is also a member of the Association. The present writ petition is filed raising an issue that they are entitled to waiver of export obligation and duty-saved amount for import of bamboo processing machines under the Export Promotion Capital Goods Scheme.
5. The fact of the case of the petitioners, in nutshell, is that the petitioner is an industrial unit manufacturing bamboo products mainly bamboo blinds. The Director of the petitioner company i.e. petitioner No. 2 was selected to participate in a training course for bamboo production and processing technology sponsored by UNIDO.
6. The Union Government to support the development of industries formulated certain schemes including, a scheme called Technology Development Assistance (TDA). Taking assistance under such scheme and after obtaining EPCG license for producing export quality bamboo products, the industrial unit under petitioner No. 1 was set up.
7. According to the petitioner, there was an unequivocal promise that the Union would enable the petitioners to establish the manufacturing unit by way of making available technical knowhow and other assistance. However, according to the petitioner, such benefits, based on which the petitioner started the industry, was withdrawn resulting in the altered position of the petitioner having a detrimental affect which resulted in the near closure of the industry. According to the petitioner, in the meantime, the Customs Department initiated recovery of customs duties and were contemplating coercive measures for recovery against the petitioners, despite waiver of export obligations having been taken at various levels of the Union and the State Government, which is still under process.
8. In the aforesaid backdrop, the writ petition was filed and this Court under its order dated 18.04.2018 issued notice to the respondents and pending return of

such notice, the respondent authorities were restrained from taking any coercive action against the petitioners and the said interim order still is continuing.

9. In the meantime, according to the petitioner, a policy of grant of waiver under the Scheme namely "Sob Ka Biswas" (Legacy dispute resolution) was issued on 07.02.2019 and the petitioners claim that the bamboo industries are entitled for benefit under such scheme and therefore settlement should be made by the authorities taking note of the peculiar circumstances of the case.
10. While not disputing the availability of such a scheme, Mr. S. C. Keyal, learned Standing Counsel for the Custom Department submits that the benefits of such a scheme cannot be granted at this stage as the period within which such benefits were to be granted had already expired.
11. At this stage, Mr. K. N. Choudhury, learned Senior Counsel for the petitioners submits that at different levels, recommendations were made for waiver of custom duties, however, no determination has yet been made. According to the learned counsel, even if, it is assumed that the period under "Sob Ka Biswas" is over, the Union of India is not powerless to consider the case of the petitioners in terms of the recommendation made by different authorities, more particularly in the background fact of the present case and different policy decision of Union for economic upliftment of North East India.
12. It is seen from the record that the facts so far relating to the establishment of the industry and beneficial scheme made available are not disputed by the respondents.
13. Chapter-V of the Export Promotion Capital Goods Scheme formulated under Foreign Trade Policy, 2018-2020, in paragraph 5.1. deals with the EPCG Scheme. The said scheme allows the import of capital goods for pre-production, production and post- production including CKD/SKD thereof, as well as computer

software systems, at 5% custom duty subject to an export obligation equivalent to 8 times duty-saved. The petitioners industry obtained benefit under this scheme. However, it is discernible from the communication dated 14.02.2012 issued by Chief Commissioner, Central Excise and Customs, Shillong zone, which is a forwarding letter, by which the said Commissioner communicated to the Chairman, Central Board of Excise & Customs, North Block, New Delhi, suggest that according to the said Commissioner the claim of the petitioners for waiver of export obligation and duty-saved amount for bamboo processing machines imported under EPCG Scheme by bamboo Entrepreneurs from North Eastern Region is having merit.

14. A perusal of the said communication reveals that said request was made by the Commissioner of Central Excise and Customs, Shillong Zone, on the basis of representation which highlighted the reasons for the failure of this industry to achieve the required export benchmark under the scheme. The reason cited are as follows:

- I. As the last 5-6 years bamboo industry has started growing in countries like India, Vietnam and Thailand etc., it has posed a threat to China, the largest bamboo products manufacturer in the world and to arrest such growth beyond China, China had started reducing the selling price of bamboo products drastically to create an entry barrier of bamboo industries product of other under country like India and with an object to maintain their monopoly in the international market.
- II. As good and efficient bamboo processing machines are not available, the entrepreneurs are to import the same under the EPGC scheme. However, considering the Chinese hegemony, the bamboo industries are finding it difficult to export finished products from India and fulfillment of export obligations had become a major difficulty for them.

III. There is an enormous scope of bamboo-based industries in the North Eastern Region, so there is a need for extending special concessions to this sector so that they can compete in the international market.

IV. Therefore, waiver of export obligation and duty saved amount for the import of bamboo processing machines under EPGC scheme as prayed for by the Federation of Bamboo Industries of Assam be granted.

15. According to the petitioners, such determination is still pending consideration inasmuch as the then Minister of State (Independent Charge) Commerce and Industries, gave an assurance by her communication dated 17.05.2016, to the then, Minister of State, (Independent Charge), Ministry of Youth Affairs and Sports, Union of India that such issues are being examined and necessary action will be taken, however, nothing has been done till date. Therefore, according to Mr. Choudhury, learned Senior Counsel, at this stage, if their representations are considered taking note of the peculiar circumstances, and a reasoned order is passed, they shall have no grievance at this stage, subject to the determination that may be made by the competent authority in this regard.

16. Mr. S. C. Keyal, learned Standing Counsel for the Customs Department, submits that, there will be no difficulty in considering the case of the petitioners as per law and existing policy decision therefore, in that line, the writ petitions can be disposed of.

17. In the peculiar factual backdrop and also in the backdrop of the nature of prayer, made at this stage, and the consensus arrived at, this Court is also of the opinion that, at least the petitioners have been able to make out a case for consideration of their case for waiver and therefore, without commenting on merit of the claim of the petitioners including the claim that the respondents that actions are hit by the principle of promissory estoppels, the present writ petitions

stands disposed with a direction to the competent authority in the Customs Department to consider the claim of the petitioners and to pass a speaking order within a period of eight weeks from the date of receipt of a certified copy of this order. It is further provided that till such determination is made, the interim order passed earlier on 18.04.2018, restraining the respondents from taking any coercive action against the petitioner shall remain operative.

18. While parting with this record, it is made clear that as this Court has not entered into the merit of claim of the petitioners as well as the counterclaim of the respondents, the petitioners shall be at liberty to raise all the issues that has been raised in these petitions in any future litigation that may arise touching the issue.
19. With the aforesaid, both the writ petitions stands disposed of. Parties to bear their own cost.

JUDGE

Comparing Assistant