



W.A.Nos. 1186 & 1187 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

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CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A. Nos. 1186 & 1187 of 2012

The Assistant Commissioner of Customs
(APPS) Group 7 by Assistant Commissioner,
Customs House,
Chennai – 600 001.

..Appellant in
both appeals

Vs.

1. M/s. Waterbase Limited,
rep. by its General Manager
P.K. Ramachandran,
Having office at 78, Cathedral Road,
Chennai – 600 086.

2. Union of India,
rep. by Secretary to Govt. Of India,
Ministry of Finance,
New Delhi.

..Respondents
in both appeals

Prayer: Writ Appeals filed under Clause 15 of Letters Patent against
the order dated 30.06.2008 passed in W.P. Nos. 19287/1996 and
5128/1997.

For Appellant :: Mr.Rajnish Pathiyil



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W.A.Nos. 1186 & 1187 of 2012

Senior Panel Counsel
in both appeals

For Respondents :: Mr. Vikram Ramakrishnan
for R1 in both appeals
R2 – not ready in notice

JUDGMENT

(Delivered by Dr. ANITA SUMANTH..J)

The Customs Department challenges the order passed by the Writ Court on 30.06.2008 allowing the writ petition filed by the 1st respondent herein (R1/writ petitioner).

2. R1 is engaged in the business of aquaculture and manages 19 hatcheries and farms where it processes prawns for export. It imports raw materials including feed for the prawns. A 100% Export Oriented Unit (EOU) had been set up pursuant to the letter of intent issued by the Ministry of Industry dated 06.09.1988 and approval dated 04.03.1992.

3. The 100% EOU was granted approval for the manufacture of processed prawns from the integrated farm including hatchery, feed mill and processing unit subject to certain conditions, including that the prawns processed shall be exported. A factory was set up in Nellore and the writ petitioner commenced production in June/July of 1993.

4. Notification 13 of 1981 dated 21.02.1981 extends exemption



from import duty in the event of import of articles into India for the purpose of manufacture of articles for export out of the country by 100% EOUs holding an approval from the Board of Approval. The exemption was omnibus and covered goods of the following description (i) Capital goods (ii) Raw materials and (iii) Components. On 27.12.1993, a specific exemption was granted under Notification 188/93-Cus in relation to goods imported for use in an integrated aquaculture farm and export of farm products by 100% EOUs.

5. On 27.12.1993, Notification 183/93-Cus was issued amending various notifications extending general exemptions, including Notification 13 dated 09.02.1981. It provided for the insertion of a clause after (2) in Notification 13 of – Cus /81 dated 09.02.1981, as clause (3) that stated that '*nothing contained in this notification shall apply to goods imported by an aquaculture unit.*'

6. At first blush, it may appear that the ambit/scope of exemption granted under Notification 13 dated 21.12.1993 stood curtailed since the description of the goods in the table in the notification encompassed various goods but excluded raw materials. This is how the parties appear to have understood the Notification as well.

7. The rigour of the reversal of exemption under Notification



dated 27.12.1993 continued till 08.12.1994 when Notification 196/94-Cus dated 08.12.1994 was issued, restoring the grant of exemption on various goods including raw materials for feed and feed for aquaculture units.

Clause (9) of the aforesaid notification reads thus:

'(9) (i) the Notification No.188-Customs/93, dated the 27th December, 1993, of the government of India in the Ministry of Finance, Department of Revenue is hereby rescinded.

(ii)Notwithstanding such rescission, anything done or action taken under the notification so rescinded shall be deemed to have been done or taken under the corresponding provisions of this notification.'

8. The goods in respect of which the exemption was restored are as follows and feed and Raw materials are found in serial numbers (8) and (9) below:

THE TABLE

<i>Sl. No.</i>	<i>Description of Goods</i>
1.	<i>Capital Goods including plant and machinery for packaging, conveyor belts and accessories, spares and consumables including lubricants therefor for spawning Hatchery, Aqua Farm, Processing Plant, Chilling unit (cold storage) and Feed plant.</i>
2.	<i>Material handling equipments, namely, fork-lifts, over-head cranes, mobile cranes, crawler cranes, hoists and stackers and spares, consumables including lubricants therefor.</i>
3.	<i>Captive power plant including power generating sets as approved by the Board of Approvals and accessories.</i>
4.	<i>Tools, jigs, gauges, Fixtures, Moulds, Dyes, Instruments and accessories.</i>
5.	<i>Cold room apparels</i>
6.	<i>Chemicals for water treatment, Zeolite, Teaseed powder/cake, waste digesters, pesticides, fungicides, veterinary medicines including vaccines, office equipments as permissible for import by 100% EOUs.</i>
8.	<i>Feed for prawns/fish and other aquatic animals including Artemis (Brain</i>



Shrimp eggs) and other Hatchery feeds.

9. *Raw materials for feeds for aquatic animals, namely, meals of fish and other aquatic invertibrates like squid/prawns in liquid, powder or other forms, fish lipid oil, squid oil, veterinary grade premix of vitamins/minerals, not suitable for human consumption sea weed powder, kalp Meal, Molasses, yeast, choline chloride, Antioxidants excluding Vitamins, Licithin, Di-calcium Phosphate and Calcium Lactate which are capable of use in other than Veterinary application. Preservatives, pre-mix taste makers, battering materials, special cooking medium, bread crumbs/powder.*

Packaging materials all sorts.

9. The writ petitioner was thus enjoying the exemption in respect of feed and raw materials from 09.2.1981 onwards which exemption, all parties believed, stood interrupted for a period of 342 days between 27.12.1993 and 08.12.1994 by virtue of the rescinding of the exemption for aquaculture farms under notification dated 27.12.1993. The imports made by the petitioner during the period of 342 days were released on the strength of a bond executed along with bank guarantees for 20% of the import value.

10. As the Customs Department believed that the exemption did not operate not for the period between 27.12.1993 and 08.12.1994, it sought to invoke the bank guarantees furnished by the petitioner challenging which W.P. No. 19287 of 1996 was filed seeking a mandamus directing the Assistant Commissioner of Customs not to invoke 51 bank guarantees furnished in respect of the imports between the period 04.02.1994 and 21.12.1994.



11. The affidavit filed in support of W.P. No. 19287 of 1996, reveals that the Customs Department had invoked 12 bank guarantees. Some more bank guarantees were invoked by the Department pending the writ petition, compelling the writ petitioner to institute W.P. No. 5128 of 1997 seeking refund of a sum of Rs.11,42,191/- recovered by the Customs Authorities by invocation of bank guarantees.

12. It is only at the stage of writ petition that the parties appear to have come alive to the existence of Notification 188/93-Cus dated 27.12.1993. That notification extends an exemption to 100% EOUs for the import of specified goods for use in an integrated aquaculture farm and export of farm products. Inter alia, the list of specified goods is set out in a Table. Though the description of the goods in the Table do not include raw materials, the body of the notification, in clause (3), identified raw materials specifically and extended exemption thereto.

13. In the interest of clarity, the relevant portions of Notification 188/93-Cus dated 27.12.1993 are extracted below:

'Notification: 188/93-Cus. Dated 27.12.1993

Exemption to specified goods imported for use in an integrated aquaculture farm and export of farm products by 100% EOU

In exercise of the powers ...



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...
(5) notwithstanding anything contained in this notification the exemption contained herewith shall also apply to those goods which on importation into India are used for the purposes of production of aquaculture products within hundred per cent Export-Oriented Undertakings approved by the said Board of Approvals for hundred per cent Export-Oriented Undertakings and such products (including rejects, waste and scrap material arising in the course of production) even if not exported out of India, are allowed to be sold in India, under and in accordance with the Export and Import Policy, April, 1992 – March 1997, published under the Ministry of Commerce Public Notice No.1 – ITC(PN)/92-97, dated the 31st March, 1992, as amended from time to time, and in such quantity and subject to such other limitations and conditions as may be specified in this behalf by the Development Commissioner, on payment of duty of excise leviable on such articles under section 3 of the Central Excises and Salt Act, 1944 (1 of 1944);

(6) the Collector of Customs may, subject to such conditions as may be prescribed by him, allow a unit to re-export the goods.

Sl. No.	Description of goods
(1)	(2)
1.	Capital goods
2.	Material handling equipments, namely, fork-lifts, over-head cranes, mobile cranes, crawler cranes, hoists and stackers
3.	Spares of capital goods and material handling equipments, namely, fork-lifts, over-head cranes, mobile cranes, crawler cranes, hoists and stackers.
4.	Office equipments, as permissible for import by the 100 per cent export-oriented units
5.	Captive power plants
6.	Tools, Jigs, Gauges, Fixtures, Moulds, Dies, instruments and accessories.
[Notification No.188/93-Cus. Dated 27-12-1993]	

14. The counter filed by the Customs Department before the



Writ Court defended the invocation of bank guarantees based upon their concurrent reading of notifications 13/1981, 189/1993 and 196/1994. It is thus clear that the authorities have blissfully lost sight of Notification 188/1993.

15. After hearing the parties, the Writ Court has allowed the writ petitions by order dated 30.06.2008 noticing, and rightly, that Notification No. 188/1993 had maintained the grant of exemption during the entirety of the interregnum to prawn feed and raw materials. The relevant portion of the impugned order is extracted below:

'11. The contention raised by the learned counsel is well-founded. Even though in the counter affidavit dated 21.10.2002 filed by the respondents, it is stated that Notification No.196 of 1994 is not retrospective, that argument is not correct because the purpose of the said notification is to rescind the 1993 Notification. Even otherwise, paragraph 5 of the 1994 Notification provides for a non-obstante clause by which the raw materials are liable for

exemption by the said Notification. An harmonious reading of all the Notifications will show that the petitioners are entitled for exemption for the period in question.'

16. That apart, Notification No.196/1994 itself facilitates the continuance of the exemption throughout the intervening period between 27.12.1993 and 08.12.1994. Sub-clause (i) of clause (9) of the aforesaid notification not only rescinds Notification 188/93-Cus dated 27.12.1993



which withdrew the exemption, but sub-clause (ii) of clause (9) *states that notwithstanding such rescission, anything done or action taken under the notification so rescinded shall be deemed to have been done or taken under the corresponding provisions of this notification.*

17. Thus, the impact of sub-clauses (i) and (ii) of Clause (9) is a seamless continuance of the exemption granted under Notification No.13/1981 dated 21.12.1993, all the way till 08.12.1994 including the 342 days when there was the impression created of an interruption to the grant of exemption. In reality, the simultaneous issuance of Notification 188/93-Cus dated 27.12.1993 ensured that there was no interruption. Thus, and in addition to the reasoning of the writ court, we also find support in sub-clauses (i) and (ii) of clause (9) of Notification No. 196/1994 to the availability/continuance of the exemption.

18. Mr. Rajnish Pathiyil, learned Senior Panel Counsel for the appellant has drawn our attention to, and relies upon Section 159A of Customs Act, 1962 which deals with the effect of amendments of Rules, Regulations, Notifications or Orders. Section 159A reads as follows:

'159A. [Effect of amendments, etc. of rules, regulations, notifications or orders.

Where any rule, regulation, notification or order made or issued under this Act or any notification or order issued under such rule or regulation, is



amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not-

- (a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or*
- (b) affect the previous operation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or*
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or*
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or*
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, regulation, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.'*

19. Section 159A states that amendments to rules, regulations, notifications or orders would come into effect, only in situations where there is no contra intention available. In the present case, clause (9) of Notification No. 196/1994 clearly reveals such different intention by



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stating expressly that the benefit of earlier notifications will continue for the interim period. Thus, Section 159A has no application to the facts of the present case.

20. In the light of the discussion as aforesaid, the order of the Writ Court is confirmed and the writ appeals are dismissed. No costs.

[A.S.M., J] [G.A.M., J]
15.10.2024

Index:Yes/No

Neutral Citation:Yes/No

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To

The Assistant Commissioner of Customs

(APPS) Group 7 by Assistant Commissioner,
Customs House, Chennai – 600 001.

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

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