

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 17th March, 2015

+ LPA No.147/2015, CMs No.4767/2015 (for stay), 4768/2015 (for exemption) & 4769/2015 (for filing additional documents).

HYDERABAD DUTY FREE RETAIL LIMITED Appellant

Through: Mr. Atul Sharma, Mr. Abhishek Sharma and Mr. Yash Srivastava, Advs.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Akshay Makhija, Mr. Vikas Bhaduria and Mr. Rohitendra Deb, Advs. for R-1&2/UOI.
Mr. Mehmood Pracha and Mr. Rudro Chatterjee, Advs. for R-3.
Mr. Kamal Nijhawan and Mr. Sumit Gaur, Advs. for R-4.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra court appeal impugns the order dated 14th January, 2015 of the learned Single Judge disposing of W.P.(C) No.6693/2014 preferred by the appellant as infructuous, leaving open the question of law raised therein.
2. We have heard the counsel for the appellant, and the counsel for the respondents No.1&2 Union of India (UOI), the counsel for the respondent

No.3 Food Safety and Standards Authority of India (FSSAI) and the counsel for the respondent No.4 Commissioner of Customs, all appearing on advance notice.

3. The appellant claims to be operating Duty Free shops licensed by the Commissioner of Customs at various places. It is the case of the appellant, (i) that it buys various products like alcoholic / non-alcoholic beverages, cosmetic products, confectionaries and food products from international suppliers to make the same available for sale at Duty Free shops at the Airports; (ii) that on 25th July, 2014, it received a consignment consisting of food products particularly chocolates, for sale at its Duty Free shops; (iii) that the shelf life of these products is an average of six months and the said products, if not sold within the shelf time, become unsaleable, to the loss and detriment of the appellant; (iv) however the said consignment was not cleared by the Custom Authorities for the reason that the consignment being of food products, required 'No Objection Certificate' (NOC) from the FSSAI; and, (v) that the FSSAI however refused to give the NOC on the ground that the products do not comply with Regulation 2.7.4 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011. Contending, (a) that the goods subject matter of the said

consignment being not meant for domestic sale but for sale in Duty Free shops, cannot be treated as imported into India; and, (b) that the said goods in fact do not enter the country as the same are sold at Duty Free shops, the petition from which this appeal arises was filed. The writ petition was also accompanied with an application for interim relief for immediate release of the consignment of goods received on 25th July, 2014.

4. The writ petition aforesaid was listed before the learned Single Judge on 14th January, 2015 when the counsels for UOI and the Customs informed that the consignment received by the appellant on 25th July, 2014 and owing to non-clearance of which, the writ petition had been filed, had been cleared. The counsel for the appellant also confirmed the same but contended that the question of law needs to be decided. However, the learned Single Judge, observing as aforesaid that the petition had worked itself out in so far as the appellant was concerned, disposed of the writ petition, leaving the question of law open.

5. The counsel for the appellant has contended that since the appellant is operating the Duty Free shops, it receives such consignments, including of food products from time to time and faces / is likely to face the situation, as had arisen with respect to the consignment received on 25th July, 2014, from

time to time and if the appellant is compelled to file a fresh writ petition on a future date when it again faces the same problem, it will result in delay even then in release of the consignment with the consequent likelihood of the goods subject matter of the consignment being wasted. It is contended that it was for this reason that the learned Single Judge was requested, inspite of the consignment owing to non-clearance of which the writ petition was filed being cleared, to decide the question of law, so that if the contention of the appellant is right, it does not face such situations in future.

6. We tend to agree with the contention of the counsel for the appellant. The cause of action for filing of the writ petition from which this appeal arises was not a stray one vis-a-vis the appellant and considering the trade and business of the appellant, a recurring one. It is common knowledge that some time is taken in engaging advocates, preparing and filing the petition, listing thereof in the Court and in hearing of the petition even qua the interim relief claimed and during all of which time the goods would not be released. It thus cannot be said that the petition had worked itself out in so far as the appellant was concerned, as has been observed by the learned Single Judge. We may also record that the relief claimed by the appellant in the writ petition also was not qua the consignment received by the appellant

on 25th July, 2014. The appellant, in the writ petition had sought, (i) a declaration that the goods sourced by the appellant from the international suppliers and bonded on arrival in India for sale at approved Duty Free shops, whether to outgoing or incoming passengers, against payments in foreign exchange at International Airports in India do not amount to importing the goods into India; (ii) a declaration that the provisions of Section 25 of the Food Safety and Standards Act, 2006 pertaining to import of articles of food into India cannot be applied to such consignments; and, (iii) to restrain FSSAI from applying Food Safety and Standards Act or the Regulations thereunder vis-a-vis the Duty Free shops and to mandate the Customs Authorities to clear the said consignments without insisting on NOC from FSSAI. The writ petition claiming such reliefs could not have been said to have become infructuous, upon one consignment being cleared.

7. The Supreme Court in *Ghaio Mall & Sons Vs. The State Of Delhi* AIR 1959 SC 65 faced with a contention that the order sought to be quashed before it was of grant of a license for the year 1954-55 which had long since expired, the appeal before the Supreme Court had become infructuous, noticing the usual practice that once a license is granted it is automatically renewed from year to year unless the licensee is found to be in breach, held

that it was vitally important for the appellant before it that the Court should consider the validity of the license for 1954-55 for the reason that if such grant was held to be a nullity, it would result in a vacancy and in filling up of which the appellant may be found eligible. It was thus held that the appeal had not become infructuous. The celebrated Advocate H.M. Seervai in his book Constitutional Law of India - A Critical Commentary, Fourth Edition, Volume 2, para 11.241 at page 1117 has authored,

“Petitions challenging the grant of Govt. contracts for 1 year, and the grant of licences and permits for one year or less are not dismissed as infructuous if they are heard after the period of one year. If important questions of law or principle are involved, those questions are decided even if no relief can be granted to the petitioner.”

and at page 1678 in para 16.419 under the Chapter titled ‘Right to Judicial Remedies’ while opining that a writ will not be issued where granting it would be futile, authored,

“It is submitted that a writ petition should not be dismissed as futile in respect of an order passed from time to time (which has expired when the petition is heard) when the power to pass that kind of order is challenged. Thus, if the Police Commr. bans a procession each year during a particular religious festival, and the persons aggrieved dispute his right in law to do so, by a petition promptly filed, the court ought to determine the right on the merits, even if the order imposing the ban has

expired when the petition is heard, for to dismiss the petition would be to deprive citizens of their fundamental rights under circumstances where they would have no other remedy at all, and to give a charter to a public authority to violate fundamental rights with impunity.”

8. Reference in this regard may also be made to ***Sudhir Kumar Barua Vs. State Transport (Appellate) Authority*** AIR 1963 Guwahati 1 (DB) and to ***State of Bihar Vs. Vishnu Sugar Mills Ltd.*** MANU/BH/1659/2010 (DB).

9. It is also the settled position in law that an opposite party to a litigation cannot defeat a *lis* validly brought before the Court by contending that the cause of action had disappeared and thereafter give rise to a fresh cause of action compelling filing of another round. The Supreme Court in ***Gajanan Dattatraya Vs. Sherbanu Hosang Patel*** (1975) 2 SCC 668 rejected the contention that the petition for eviction of a tenant on the ground of subletting under the Rent Control Act had become infructuous upon the subtenant vacating the premises, holding that to accede to such a contention would mean that the landlord would not be able to get any relief against the tenant inspite of unlawful subletting and the tenant can foil the attempt of landlord to obtain possession of the premises on the ground of subletting ever time by getting the subtenant to vacate the premises. To the same effect are the judgments in ***Raghunathi Vs. Raju Ramappa Shetty*** AIR 1991 SC

1040, *Carona Ltd. v. M/s. Parvathy Swaminathan & Sons* (2007) 8 SCC 559 and *Muni Lal Vs. Dulara* 12 (1976) DLT 123.

10. We may notice that the counsels for neither of the respondents could controvert the aforesaid position.

11. Accordingly, the appeal is allowed; the order dated 14th January, 2015 of the learned Single Judge in so far as disposing of the writ petition is set aside. The writ petition is restored to the position as immediately before the order dated 14th January, 2015, to be decided in accordance with law.

12. The parties to appear before the learned Single Judge on 13th April, 2015.

13. The Registry is directed to list the writ petition before the learned Single Judge on the said date.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MARCH 17, 2015

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