IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2209 of 2016

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1. Dabur India Limited, A Company Incorporated under the Companies Act, 1956 having its registered office at 8/3, Asaf Ali Road, New Delhi - 110002 through its authorized representative/signatory Sri Rajinder Kumar Sharma Son of Late O.P. Sharma Resident of D - 99, P.O. + P.S. - Vivek Vihar, Delhi.

.... Petitioner/s

Versus

1. The Union of India.
2. Commissioner of Customs, Patna, C.R. Building, 4ht and 5th Floor, Birchand Patel Path, Patna - 800001.
3. Commissioner of Customs (Appeals), Patna, C.R. Building, 2nd Floor, Birchand Patel Path, Patna - 800001.
4. Assistant Commissioner of Customs, Land Customs Station, Indian Border Post, Raxaul.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tanmoy Chakravarty, Adv.
Mr. Brisketu Sharan Pandey, Adv.

For the Respondent/s : Mr. S.D SANJAY (ADDL. SOC. GEN.)
Mrs. Nivedita Nirvikar, Sr. S.C., Customs

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

JUDGMENT AND ORDER
(ORAL)
(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)
Date: 26-02-2016

Aggrieved by the order, dated 23.11.2015, passed by respondent No.3, namely, Commissioner of Customs (Appeals), Patna, in Appeal No.140/995/Pat/Cus/Appeal/2015, this writ petition has been filed, under Article 226 of the Constitution of India, seeking, in substance, issuance of a writ of *Certiorari* setting aside and quashing the order, dated 23.11.2015, aforementioned.

Heard Mr. Tanmoy Chakravarty, learned Counsel, appearing on behalf of the petitioner, and Mrs. Nivedita Nirvikar, learned Senior Standing Counsel for the Department of Customs.

The material facts and various stages, which have led to the making of this writ petition, may, in brief, be set out as follows:-

With the grievance that the authorities of Land Customs Station, Indian Border Post, Raxaul, have not been allowing the petitioner to avail the benefit under Notification No.01/2011-CE, dated 1.3.2011, the writ petitioner filed a writ petition under Article 226 of the Constitution of India, seeking issuance of appropriate *writ* commanding the respondents, *inter alia,* to allow the petitioner to avail the benefit. The said writ petition gave rise to C.W.J.C. No.10601 of 2015, which was disposed of on 22.7.2015. The order, dated 22.7.2015, being explicit, is reproduced hereinbelow.

> ***"Heard learned counsel for the petitioner and learned Additional Solicitor General for the Union of India as also learned counsel for the Customs Department.***
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> ***The sum and substance of the grievance of the petitioner is that the respondent authorities of the Land Customs Station, Indian Border Post,***

Raxaul have not been allowing the petitioner to avail of the benefit under notification No.01/2011-CE dated 1.3.2011 and pay duty at the rate of 2% CVD on goods imported through Nepal.

It is submitted by learned counsel for the petitioner that the said issue has already been decided by the Supreme Court in Civil Appeal No.9440 of 2003: M/s. SRF Ltd vs. Commissioner of Customs, Chennai by order dated 26.3.2015.

It is also contended by learned counsel for the petitioner that the petitioner has represented before the Assistant Commissioner of Customs, Raxaul on 22.5.2015 but the same has not yet been disposed of and the petitioner has been compelled to keep on paying CVD at the higher rate of 6 %, though under protest.

It is submitted by learned counsel for the petitioner that after the filing of the said representation a fresh notification has been issued by the Ministry of Finance, by which CVD has been raised to 6%. It is further submitted that at least the petitioner is entitled to avail of the benefit under notification

No.01/2011-CE dated 1.3.2011 and pay duty at the rate of 2% CVD on goods imported through Nepal for the period prior to the fresh notification.

Learned Additional Solicitor General as also learned counsel for the Customs Department submit that the direction may be issued to the Assistant Commissioner to dispose of the representation of the petitioner.

In the said circumstances, let a fresh representation be filed by the petitioner along with a copy of the earlier representation dated 22.5.2015 as also a copy of the order of the Supreme Court within a period of two weeks from today so that it may be disposed of expeditiously.

The writ application is, accordingly, disposed of with the direction to respondent No.4, the Assistant Commissioner of Customs, Land Customs Station, Indian Border Post, Raxaul to consider and dispose of the fresh representation to be filed by the petitioner within a period of four weeks from the date of filing of the said representation."

From the direction, which was issued by the order, dated 22.7.2015, it becomes clear that respondent No.3 herein, namely, Commissioner of Customs (Appeals), Patna, was directed to consider and dispose of afresh the representation, to be filed by the petitioner, within a period of four weeks from the date of filing of the representation. The order, dated 22.7.2015, aforementioned, later on, was modified, at the instance of the respondents, by order, dated 14.9.2015, passed in M.J.C. No. 2136 of 2015. The order, dated 14.9.2015, modifying the earlier order, dated 22.7.2015, reads as follows:-

> ***"Heard learned counsels for the parties.***
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> ***This application has been filed for modification of the order dated 22.07.2015 passed in C.W.J.C. No.10601 of 2015 by which this Court has directed the petitioner to file a representation before the Assistant Commissioner, Customs, Raxaul within a period of two weeks from the date of order. It has also been directed to the Assistant Commissioner, Customs, Raxaul, to consider and dispose of the representation filed by the petitioner within a period of four weeks from the date of filing of the said representation.***
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> ***It is informed by learned counsel for the Customs Department that no matter is pending before the Assistant Commissioner, Customs, Raxaul.***
>
> ***Learned counsel for Opposite Party- Dabur India Limited submits that 674 appeals against the order of the Assistant Commissioner are pending before the Commissioner of Customs (Appeals). He further submits that a direction be given to the Commissioner of***

> ***Customs (Appeals), instead of the Assistant Commissioner, Customs, Raxaul to dispose of the appeals.***
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> ***In view of the aforesaid facts and circumstances, the order dated 22.07.2015 passed in C.W.J.C. No.10601 of 2015 is modified to the extent that the Commissioner of Customs (Appeals), Patna, is directed to dispose of the appeals within two months from the date of receipt/production of a copy of this order in the light of the decision of the Supreme Court in the case of M/s SRF Ltd. –v-Commissioner of Customs, Chennai, passed in Civil Appeal No.9440 of 2003.***
>
> ***The application is, accordingly, disposed of."***

The modified direction, which has, ultimately, been given by the order, dated 14.9.2015 aforementioned is that the Commissioner of Customs (Appeals), Patna, shall, in the light of the decision of the Supreme Court in the case of **M/s SRF Ltd. –v- Commissioner of Customs, Chennai**, passed in **Civil Appeal No.9440 of 2003**, dispose of the appeals, which the writ petitioners had filed, within two months from the date of receipt/production of a copy of the order, dated 14.9.2015.

Respondent No.3, namely, Commissioner of Customs (Appeals), Patna has, however, taking into account the fact that the Union of India has filed a petition, seeking review of the decision of the Supreme Court, in M/s. SRF Ltd. –v-Commissioner of Customs, Chennai, passed in Civil Appeal No.9440 of 2003, dismissed the appeals by the impugned order, dated 23.11.2015, on the ground that since the review petition is pending and the matter is *sub judice*, it would be premature to decide the appeals without a final decision on the issues raised in the Supreme Court in M/s. SRF Ltd. –v-Commissioner of Customs, Chennai, passed in Civil Appeal No.9440 of 2003.

We are constrained to observe that the impugned order, dated 23.11.2015, which the respondent No.3 has passed, is wholly misconceived inasmuch as mere fact of filing of the review petition, in the Supreme Court, seeking review of the Supreme Court decision, in M/s SRF Ltd. –v-Commissioner of Customs, Chennai, passed in Civil Appeal No.9440 of 2003 (supra), could not have been a ground for dismissing the appeals. In fact, this legal position could not be disputed on behalf of the respondents.

In the result and for the foregoing reasons, the order, dated 23.11.2015, passed by respondent No.3, namely, Commissioner of Customs (Appeals), Patna, is hereby set aside and quashed with direction that the appeals shall be taken on board by respondent No.3 and, then, appropriate order, in accordance with law, shall be passed therein.

With the above observations and directions, this application shall stand disposed of.

No order as to costs.

(I. A. Ansari, ACJ)

(Anjana Mishra, J)

K.C.jha/-

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