HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.S.K. JAISWAL

Writ Petition No.8937 of 2001

Order: (per V.Ramasubramanian, J.)

Aggrieved by the order of the Government of India refusing to grant exemption from payment of *ad hoc* duty, the assessee has come up with the present writ petition.

2. Heard Mr. Challa Gunaranjan, learned counsel for the petitioner-Company and Mr. M.V.J.K. Kumar, learned Senior Standing Counsel for the respondents-Department.

3. The case of the petitioner is that they imported a chemical under 3 Bills of Entry bearing Nos.290, 291 and 300, respectively dated 01-12-1993, 01-12-1993 and 14-12-1993. The imports were made subsequently under a duty free import licence scheme, which was in existence as per the Ex-Im Policy of the Government for the block period 1992 – 1997 and the Notifications of the Customs Department bearing Nos.203/1992 and 204/1992. They were imported under an Advance Licence Scheme and hence the benefit of duty free import.

4. However, the Notifications 203/1992 and 204/1992 were amended by a Notification No.183/1993, dated 25-11-1993, as a result of which the subject goods became liable to be imposed with duty. This Notification dated 25-11-1993 was further amended by another Notification No.105/1994, dated 18-3-1994, permitting the import of the chemical subject to certain conditions.

5. It appears that unaware of the Notifications dated 25-11-1993 and 18-3-1994, the petitioner was permitted to clear the consignments under all the 3 Bills of Entry. But later the respondents woke up and initiated proceedings under Section 28(1) of the Customs Act, 1962.

6. Therefore, the petitioner made a representation dated 20-11-1997 seeking exemption. The request for exemption was considered favourably in respect of 3 other consignments under different Bills of Entry, namely Bill of Entry No.312, dated 29-12-1993, Bill of Entry No.28, dated 10-02-1994 and Bill of Entry No.27, dated 09-02-1994, by Order No.153, dated 17-8-1994.

7. In other words, the very same petitioner was granted exemption in respect of 3 other consignments, but not in respect of 3 consignments which form the subject matter of the present writ petition.

8. Eventually, an order-in-original was passed pursuant to the proceedings initiated under Section 28 of the Customs Act and the order-in-original became the subject matter of an appeal. In the appeal, the petitioner was made to make a pre-deposit. It appears that the petitioner complied with the pre-deposit condition.

9. Simultaneously, during the pendency of the appeal, the petitioner filed a writ petition in W.P.No.6981 of 2000 seeking a direction to the respondents to consider their application for exemption even in respect of the remaining 3 consignments. That writ petition was disposed of with

a direction to the respondents to consider the same and pass orders. Pursuant to the said order, the Government of India issued a communication dated 01-12-2000 rejecting the request for exemption from payment of duty. Challenging the said order, the assessee has come up with the present writ petition.

10. At the outset, it should be pointed out that out of 6 consignments that the petitioner imported purportedly under the Advance Licence Scheme, the respondents have granted exemption in respect of 3 consignments. This itself shows that the respondents have not acted arbitrarily.

11. Generally no Court can issue a *mandamus* directing any authority to grant exemption from the application of any statutory provision. This rule is subject to certain exceptions, including the one available under Article 14 of the Constitution of India. But the question of discrimination in the matter of grant of exemption would apply only between an assessee and another and not between the two sets of consignments of the same assessee. Therefore, the challenge of the petitioner to the refusal of the respondents to grant exemption would not fall within the ambit of Article 14 of the Constitution of India.

12. Even admittedly the goods in question were removed from the Advance Licence Scheme by Notification No.183/1993, dated 25-11-1993. But the 3 consignments in question were imported under Bills of Entry dated 01-12-1993 and 14-12-1993. In other words, the Bills of

Entry are subsequent in point of time to the Amended Notification dated 25-11-1993. Hence the petitioner does not really have any vested right to challenge the grant of exemption.

13. It is true that the 3 other consignments in respect of which the petitioner was granted exemption by the order dated 17-8-1994, were subsequent in point of time even to the 3 consignments now in question. But it does not mean that the refusal to grant exemption can be tested on the touch-stone of arbitrary treatment between one consignment of the same petitioner with another consignment of the very same petitioner.

14. As reflected in the order of exemption in respect of the other 3 consignments, an exemption is to be ordered in public interest. It is not shown as to how the public interest was affected by the refusal of the exemption. Therefore, we see no scope to interfere with the impugned order. Hence, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

M.S.K. JAISWAL, J.

07th December, 2016.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.S.K. JAISWAL

Writ Petition No.8937 of 2001
(per VRS, J.)

07th December, 2016.
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