IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

And

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

<u>Writ Petition No.33958 of 2017</u>

Between:

M/s. Ambica Chemical Product Industries Limited,
Having its Registered Office at 22-8-6, Shankar
Towers, Power Peta, Eluru, West Godavari District,
Represented by its Director Sri Alapati Vajra Ambica
Prasad

… Petitioner

Vs.

The Commissioner of Central Excise and Service
Tax, Government of India, Central Revenue Building,
Kanavari Thota, Guntur and 2 others

.. Respondents

For Petitioner : Mr. L. Ravichander, Senior Counsel

For Respondents : Mr. K. Lakshman, Asst. Solicitor General

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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ORDER: ***(V. Ramasubramanian, J)***

The petitioner has come up with the above writ petition challenging the summons issued under Section 14 of the Central Excise Act, 1944.

2. Heard Mr. L. Ravichander, learned senior counsel appearing for the petitioner.

3. By the summons issued under Section 14 of the Act, all that the 3rd respondent has done, is to call upon the petitioner to appear before him on a particular date, along with certain records listed out in the schedule to the summons and to give evidence, in connection with an investigation. Therefore, it is too premature on the part of the petitioner to have come up with the above writ petition.

4. The main thrust of the argument of the learned senior counsel for the petitioner is that when an order of adjudication was passed on 22-04-2016, the petitioner came up with a writ petition in W.P.No.16473 of 2016 and this Court granted an interim order of protection. Therefore, the learned senior counsel contends that when the writ petition is pending, raising a contention that the product of the petitioner is not liable for payment of excise duty, it is not open to the 3rd respondent to issue summons.

5. But we do not agree. The reasons as to why summons have been issued, will be known only after the petitioner appears

before the summoning authority. In the writ petition already filed by the petitioner, an order of adjudication was in place. Therefore, what was demanded from the petitioner and what was the defence of the petitioner, are all known, enabling this Court to entertain a writ petition in that case.

6. But, in the case on hand, the proceedings impugned, are only summons. We cannot presume that the summons have been issued in respect of a matter already covered in the writ petition filed by the petitioner. Therefore, the said contention is to be rejected.

7. Relying upon the Notification bearing No.13/2015-Central Excise, dated 01-03-2015, it is contended by the learned senior counsel for the petitioner that the product manufactured by the petitioner has now been wholly exempt from payment of excise duty. Therefore, the learned senior counsel contended that the 3rd respondent lacks jurisdiction to issue the summons.

8. But we do not agree. An exemption notification presupposes that up to the date of the exemption notification, the product was excisable. Therefore, the jurisdiction of the 3rd respondent, emanated from the provisions of the Central Excise Act, 1944. If the Act did not apply, the question of granting exemption under Section 5 A of the Act would not have arisen.

9. Though we are conscious of the fact that the exemption is with respect to the finished products, we have highlighted the above to show that the 3rd respondent had jurisdiction, at least till 01-03-2015 under the Central Excise Act. On the question of jurisdiction, it is trite to point out that the beneficiary of an exemption notification

cannot question the jurisdiction, since the benefit itself flows out of the exemption notification.

Therefore, the writ petition is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

Date: 12-10-2017

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