

\$~6, 13 & 14

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

Date of decision: 16.08.2018

+ W.P.(C) 9898/2017 & CM 40338/2017, 43024/2017

PRIYANKA INDIA PRIVATE LIMITED & ORS..... Petitioners

Through : Mr Alok Yadav, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through : Mr Gigi C.George, Senior Standing
Counsel for R-1.

Mr Sanjeev Narula, Senior Standing
Counsel for R-2 & 3.

+ W.P.(C) 10314/2017 & CM 42055/2017

SUNDER IMPEX PVT. LTD & ORS. Petitioners

Through : Mr Abhas Mishra and Ms Seema
Singh, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through : Mr Kirtiman Singh, CGSC with
Mr Waize Ali Noor, Advocate for
R-1.

Mr Harpreet Singh, Advocate for R-2.

+ **W.P.(C) 454/2018 & CM 1946/2018**

MAGPPIE INTERNATIONAL LTD. & ORS. Petitioners

Through : Mr Prashant Srivastava, Ms Malabika
Sarkar and Mr Deepak Mahajan,
Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through : Mr Kirtiman Singh, CGSC with
Mr Waize Ali Noor, Advocate for R-
1.
Mr Harpreet Singh, Advocate for R-2.

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA**

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

%

1. The petitioners challenge an order/letter of 24.10.2017 issued by the respondents (hereafter referred to as the '*Customs Authorities*') which had rejected the request for conversion of Bills of Entry for Home Consumption to Bills of Entry for Warehousing and further, directions to permit clearance of the goods in terms of the Notification No.18/2015-cus dated 01.04.2015, as amended by Notification No.79/2017-cus dated 13.10.2017 are sought.

2. The petitioners relied upon Section 18(1)(a) of the Customs Act, 1962 and sought provision of assessment of its goods. Accordingly, orders were made on 16.11.2017. By this Court's order of 27.11.2017, the goods were permitted to be released on condition of the petitioners furnishing an undertaking-cum-bond to the respondents – Customs Authority, but without payment of countervailing duties.

3. Learned counsel relied upon the decision of the Supreme Court in the case of *Government of India versus Indian Tobacco Association*, 2005 (187) ELT 162, to say that if a subsequent notification subsists, the levy or any part thereof dealt with by previous notification, the latter notification ought to be read as effective from the previous date of the earlier notification. It is thus urged that Notification No.79/2017-cus issued on 13.10.2017 is said to have applied in respect of the imports that were subject-matter of the Bills of Entry involved in the present case.

4. It is pointed out that in certain similar situations, this Court had occasion to dispose of the petitions under Article 226 of the Constitution of India that primarily concerned the levy of IGST in the light of Circulars and Press Release dated 13.10.2017, which had amended or rather brought into force certain exemption notifications on the subject. In one such proceedings this Court had in *Jindal Dychem Industries (P) Limited versus Union of India & Others*, W.P.(C) 8677/2017 decided on 16.04.2018, stated as follows:-

“The petitioner’s grievance is with respect to the respondents’ refusal to grant it the facility of exemption from payment of customs levy for the goods imported solely for the purpose of fulfilling export obligations. The petitioner was issued advance authorisations under the extant Foreign Trade Policy 2015-20. The petitioner contends that the prevailing exemptions under the custom notifications, could not have been denied merely on the premise of the introduction of a new levy under the Goods and Service Tax with effect from 01.07.2017.

This Court had while entertaining these proceedings made an interim order on 11.10.2017 in the following terms :

“1. Notice. Mr. Sanjeev Narula, the learned CGSC, accepts notice for the Respondents. He has placed before the Court a Press Release issued by the Ministry of Finance dated 6th October 2017 setting out the relief package announced for exporters by the Goods and Service Tax Council (‘GST Council’) at its 22nd Meeting held on 6th October 2017. Inter alia, the following relief measures announced were announced:-

“a. Within the next 4 days i.e. by 10.10.2017 the held-up refund of IGST paid on goods exported outside India in July would begin to be paid. The August backlog would get cleared from 18.10.2017 and refunds for subsequent months would be handled expeditiously. Other refunds of IGST paid on supplies to SEZs and of inputs taxes on exports under Bond/LUT, shall be processed from 18.10.2017 onwards. For this, the Council agreed to

suitably empower Central and State GST officers so that exporters get refunds from one authority only. Related matters of settlement of funds are being resolved.

b. To prevent cash blockage of exporters due to upfront payment of GST on inputs etc. the Council approved two proposals, one for immediate relief and the other for providing long term support to exporters. Immediate relief is being given by extending the Advance Authorization (AA) / Export Promotion Capital Goods (EPCG) / 100% EOU schemes to sourcing inputs etc. from abroad as well as domestic suppliers. Holders of AA / EPCG and EOUs would be treated as deemed exports under Section 147 of CGST/SGST Act and refund of tax paid on such supplies given to the supplier.”

2. *Mr. Narula states that the formal notification incorporating the above relief measures was to be issued within four days thereafter. He states that in all probability the notification will be issued in the immediate future.*

3. *Mr. Handoo, the learned counsel appearing for the Petitioner, states that notwithstanding the above relief measures announced by the GST Council on 6th October 2017, the situation on the ground remains the same. He has produced before the Court a copy of an e-challan showing payment of IGST to the tune of Rs. 58,58,345/- by the Petitioner in respect of Bill of Entry dated 10th October 2017 for import of gold bars from Abu Dhabi. He submits that the Petitioner was not permitted to clear the goods*

without such payment and that the Petitioner's protest to the authorities was to no avail.

4. *The Court directs the Petitioner to place the above facts on an affidavit to be filed not later than 3 days from today with an advance copy to Mr. Narula, who will seek instructions thereon before the next date of hearing.*

5. *In the meanwhile, it is directed that, in view of the aforementioned press release dated 6th October 2017, which prima facie makes no distinction as regards the Advance Authorisations (AA) issued prior to or after 1st July 2017, the Petitioner will not hereafter be required to pay IGST in respect of the imports of gold bars made by it Petitioner in terms of the AAs issued to it.*

6. *The above interim relief is granted subject to the Petitioner furnishing to the Respondent authorities a letter of undertaking that the clearance of the imported goods in terms of the AA will be subject to the final result of the present petition. Further, the goods imported would be subject to verification by the Customs Department in accordance with law.*

7. *List on 28th November 2017.*

8. *Order Dasti under the signature of the Court Master"*

In the meanwhile apparently on 13.10.2017, pursuant to a press release/notice dated 06.10.2017, the respondent extended the benefit of exemption notifications, hitherto prevailing to levies under the Integrated Goods and Service Tax (IGST). That

levy was not the subject of the amended custom notifications, issued on 29.06.2017.

It is apparent from these facts that the imports which are the subject matter of the present writ petition were in fact made after the introduction of GST Regime. The petitioner is the beneficiary of an advance license issued on 17.07.2017. At that point of time, the exemption notifications (issued on 29.06.2017) were not in existence. The exemption of IGST, was not in force, on that date; the customs notification (of 29.06.2017) was amended only on 13.10.2017. In these circumstances, this Court is of the opinion that since the benefit of exemption in fact existed at that point of time, the most appropriate course would be for the respondent authorities to verify whether as a matter of fact the petitioner in fact fulfilled the export obligations pursuant to the advance license of 18.07.2017. If it did, there is no need for any further action. However, if it did not, then the appropriate and necessary assessment in accordance with law may be resorted to. The respondent shall ensure that further proceedings towards verification and any consequential order shall be completed within four months from today with advance notice and proper opportunity to the petitioner.

The writ petition is disposed of in the above terms. The pending application also stands disposed of.”

5. This Court also notes that on 12.12.2017, the Central Board of Excise & Customs (CBEC) has issued instructions or a Circular

with respect to the refund claims in respect of countervailing duties as drawback duties.

6. In the light of these above discussions, the respondents are directed to proceed to consider whether the petitioners fulfil their export obligations, and pass appropriate orders, if necessary, at the earliest.

7. All rights and contentions of the parties are kept open.

8. The Writ Petitions are disposed of. All pending applications also stand disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 16, 2018

‘Sn’