IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5997 of 2019

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1. M/s Jai Gurudev Agencies Estate Road Forbeshganj 854318, P.S. Forbesganj, District- Araria through its Proprietor/Authorized Signatory.
2. Hemant Kumar Kachhwal (H.K. Kachhwal), through its Proprietor/Authorized Signatory M/S Jai Gurudev Agencies, Estate Road Forbeshganj P.S. Forbesganj, District- Araria.

... ... Petitioner/s

Versus

1. The Government of India through the Ministry of Finance Department of Revenue (Central Board of Excise and Customs) New Delhi.
2. The Commissioner Customs (P), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna- 800001
3. The Joint Commissioner(Prev.) Office of the Commissioner of Customs (Preventive) , Central Revenue Building, Birchand Patel Path, Patna- 80000
4. The Deputy/ Assistant Commissioner, Land Customs Station, Jogbani Araria, Bihar- 854328.
5. The Superintendent (ARC) Office of the Deputy/ Assistant Commissioner, Land Customs Station, Jogbani, Araria, Bihar- 854328.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagnnath Singh, Adv.

For the Respondent/s : Mr. Anshuman Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 30-07-2019

Heard Mr. Jagannath Singh, learned counsel for the petitioner and Mr. Anshuman Singh, learned counsel for the respondent authorities.

The petitioner while questioning the show cause notice dated 03.04.2017, a copy of which is impugned at Annexure-1 to the writ petition also questions the order dated

22.09.2017 passed by the Commissioner, Customs(P), Patna bearing memo No.3253 dated 25.09.2017 whereby a demand towards differential duty of customs to the tune of Rs. 84,91,437/- has been raised and which relates to the transaction in between the period 21.07.2015 to 15.09.2015.

A rather short argument had been advanced by Mr. Singh, learned counsel for the petitioner to question the exercise in making reference to a notification of the Government of India in its Ministry of Finance, Department of Revenue (Central Board of Excise and Customs) dated 04.04.2018, a copy of which is at Annexure-6 to the writ petition whereby an exemption towards levy of additional excise duty, which had earlier been withdrawn, was restored with effect from 17.07.2015 to 15.12.2016. According to Mr. Jagnnath Singh, learned counsel for the petitioner, since the demand towards additional excise duty relates to the period 21.07.2015 to 15.09.2015 which is within the exemption granted under the Notification dated 04.04.2018, the entire exercise would be rendered illegal.

It is bearing note of such submission that this Court by order dated 23.04.2019 required the respondents to file their counter affidavit which has since been filed and Mr. Singh placing reliance on the stand taken by the respondents at paragraphs 8 and 9 to the counter affidavit submits that even though a plea of alternative remedy is being raised by the respondent but they do admit that the exemption was restored towards payment of additional excise duty by the Notification dated 04.04.2018 which would cover the period in question.

Per contra, it is the argument of Mr. Anshuman Singh, that even if the petitioner would have reasons to support his prayer in view of the notification dated 04.04.2018 that the exercise had attained finality, this could well be raised before the appellate authority as per Section 129A of the Customs Act. While raising such preliminary objection it is the submission of Mr. Anshuman Singh, that since at the relevant time when the exercise has initiated, it is the Notification No. 34/2015-CE dated 17.7.2015 which was in operation, even on merits the petitioner would have no claim.

We have heard learned counsel for the parties and we have perused the records and we are satisfied to record that the writ petition has to succeed. For the purpose we are persuaded to reproduce paragraphs 8 and 9 of the counter affidavit which runs under:

> "8.That it is submitted that, subsequently, the Notification no. 30/2018-Customs(NT) dated

04.04.2018 (Annexure-6) once again restored the exemption benefits from payment of additional customs duty to the Petitioners but by then not only Show Cause Notice (Annexure-1) had already been issued but it had also been adjudicated by the Commissioner of Customs, Patna (Annexure-3) in which the demand to pay Rs.84,91,337/- as additional customs duty plus interest thereon along with penalty of Rs. 10,000/- were confirmed.

9. That this Hon'ble Court may appropriate that an adjudicating authority who has confirmed demand under provisions of the Customs Act, 1962 cannot on his own rescind the order passed by himself or herself. As per Section 129A any person aggrieved by an order passed by the Commissioner of Customs as adjudicating authority shall be appealable before the Appellate Tribunal."

Mr. Anshuman Singh, while raising a plea of alternative remedy has relied upon the notification dated 17.7.2015 to question the claim on merits but in our opinion the very intent of the Notification dated 04.04.2018 to make it retrospective with effect from 17.7.2015 would impliedly supersede the notification so relied upon by Mr. Singh, learned counsel for the Department. In so far as the plea of alternative remedy is concerned, it is long settled that availability of alternative remedy is not an absolute bar for invoking a writ jurisdiction and where the fact speak for themselves and the plea advanced by the petitioner stands supported by the Department vide notification at Annexure-6, certainly, the department cannot be allowed to hide behind such technicalities of alternative remedy.

For the reasons so discussed, we reject the opposition to allow the claim advanced by the petitioner and consequently allow the writ petition to quash the entire exercise including the show cause notice dated 03.04.2017 impugned at Annexure-1 together with the order dated 22.09.2017 passed by the Commissioner, Patna impugned at Annexure-3.

The writ petition is allowed.

(Jyoti Saran, J)

(Partha Sarthy, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.08.2019
Transmission Date	NA