IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6128 of 2019

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1. Brano Infocom (P) Limited C-1049 Sushant Lok- 1, Gurgaon 122002 (Hariyana), registered Office at Estate Sultan Pokhar, P.O. and P.S.- Forbesganj, District- Araria through its Director/Authorized Signatory.
2. Hemant Kumar Kachhwal (H.K. Kachhwal), Proppprietor/Authorized Signatory, Brane Inocom (P) Limited C-1049 Sushant Lok-1, Gurgaon 122002 (Hariyana), registered office at Estate Road, Sultan Pokhar, P.O., 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 Customs), New Delhi.
2. The Commissioner Customs(P), 5th Floor, Central Revenue Building, Virchand Patel Path, Patna- 800001.
3. The Joint Commissioner (Prev). Office of the Commissioner of Customs(Preventive) Central Revenue Building, Birchand Patel Path, Patna- 800001.
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, Jobgani, Araria, Bihar- 854328.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jagnnath Singh, Adv.
For the Respondent/s	:	Mr.Satya Prakashtripathy, 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 petitioners and Mr. Anshuman Singh, learned counsel for the respondent authorities.

The petitioners while questioning the show cause notice dated 08.02.2017, a copy of which is impugned at Annexure-1 to the writ petition also question the order dated 11.10.2017 passed by the Commissioner, Customs(P), Patna bearing memo No.9885 dated 18.10.2017 whereby a demand towards differential duty of customs to the tune of Rs. 2,12,88,557/- has been raised and which relates to the transaction in between the period 01.07.2016 to 15.12.2016.

A rather short argument had been advanced by Mr. Singh, learned counsel for the petitioners 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 petitioners, since the demand towards additional excise duty relates to the period 01.07.2016 to 15.12.2016 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 respondents 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 petitioners would have reasons to support their 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 petitioners 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 because the respondents neither contest the import of the Notification dated 4.4.2018 in restoring the exemptions for the period 17.7.2015 to 15.12.2016 nor do they contest that the period in question falls within the period of exemption so restored. The objection raised in the counter affidavit filed is that the Commissioner cannot rescind his order and that the issue can be raised in appeal.

Mr. Anshuman Singh, while raising a plea of alternative remedy has aslo 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 restore the exemption with retrospective 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 petitioners 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 petitioners and consequently allow the writ petition to quash the entire exercise including the show cause notice dated 08.02.2017 impugned at Annexure-1 together with the order dated 11.10.2017 passed by the Commissioner, Patna impugned at Annexure-2.

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