

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.07.2020

Delivered on : 14.07.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.21207 of 2018

M/s.Ruchi Soya Industries Limited,
rep. by its Authorised representative
R.Venkatraman,
Having its Registered Office at
Ruchi House,
Survey No.169, Royal Palms,
Aarey Colony, Goregaon (East),
Mumbai - 400 065. ... Petitioner

-vs-

- 1.Union of India,
rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 110 001.
- 2.Commissioner of Customs (Imports),
In the office of Commissioner of Customs (Imports),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.
- 3.Deputy Commissioner of Customs (Group 7H),
In the office of Commissioner of Customs (Imports),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issue of Writ of Declaration declaring Section 25(4)
of the Customs Act, 1962 as amended by the Finance Act, 2016 as
arbitrary, illegal, ultra vires and unconstitutional and strike
down the same accordingly, and consequently declare the

Notification No.29/2018-Cus dated 01.03.2018 being illegal, arbitrary, ultra vires and infringing the fundamental rights of the petitioner to trade and otherwise bad in law.

For Petitioner : Mr.Rajesh Rawal
for M/s.V.Pushpa
For Respondents : Mr.V.Sundareswaran

ORDER

THE CHIEF JUSTICE

The petitioner, a public limited company, has challenged the Notification issued by the respondent Customs Department dated 1.3.2018 under Section 25 of the Customs Act, 1962 on several grounds that relate to the transaction of import of Crude Vegetable Oils in bulk by the petitioner company for manufacture of Soya Food products. The petitioner company entered into a contract on 15.1.2018 with its foreign supplier in Malaysia for purchase of Edible Palm Oil in bulk that was to be shipped from the port at Indonesia to be delivered at Chennai in India.

2. The dispute is with regard to payment of customs duty and Integrated Goods and Service Tax (IGST) for clearance of the subject goods, which the respondent department claimed on the strength of the notification dated 1.3.2018.

3. It is the contention of the petitioner that the said notification dated 1.3.2018 was updated on 2.3.2018 and came to be published in the Official Gazette on 6.3.2018. The petitioner contends that the customs duty, as was applicable, had already been paid along with the IGST on 1.3.2018 and 5.3.2018 respectively and, therefore, the enhanced amount realised from the petitioner is unlawful.

4. The petitioner has come up with a case that if the notification was published only on 6.3.2018, the same cannot have any application on the transaction of the petitioner carried out prior to the said date, and the respondents cannot compel the petitioner to pay any enhanced rate of duty. The respondents, however, reassessed the customs duty on the petitioner and raised an additional demand, which the petitioner deposited under protest, including the differential IGST amount. It is only on payment of the same that the imported goods were released to the petitioner. In effect, the contention is that the enhancement of duty to the extent of 54% as against 40% earlier could not be imposed on the petitioner and to that extent the notification dated 1.3.2018 could not have been applied, for which an appropriate declaration be issued as

prayed for.

5. After the petition had been filed, the petitioner came up with a plea that this issue, as has been raised in the present proceedings relating to the date of publication of an electronic copy of a gazette, has already been settled by the Delhi High Court in the Division Bench judgment dated 15.10.2019 in the case of M.D.Overseas Ltd. v. Union of India and other connected matters [MANU/DE/4624/2019].

6. It has further been submitted that the present petitioner had raised the same issue before the Andhra Pradesh High Court in Ruchi Soya Industries Ltd. v. Union of India and others [MANU/AP/0325/2019] seeking a declaration to the same effect as involved herein and for refund of the amount deposited under protest, which petition was allowed on 28.9.2019 and a copy of the judgment has been placed before the Court.

7. The present writ petition was entertained and the following order passed on 11.11.2019:

"The learned counsel for the petitioner states, on the basis of the instructions received, that similar issue has been answered by the Andhra Pradesh High Court and she seeks time to place the judgment before this Court on the next date of hearing.
Put up on 26.11.2019."

8. The respondents were again called upon to assist the Court and the following order came to be passed on 26.11.2019:

"The challenge raised in this Writ Petition is to the vires of Sub Section (4) of Section 25 of the Customs Act, 1962 as amended by the Finance Act, 2018 on the ground that it runs counter to the letter and intent of the provisions of Section 25(1) of the Customs Act, 1962 and therefore, the same should be declared as ultra-vires. The contention is that the provisions of Section 25(1) of the Customs Act requires the issuance of notification with regard to grant of exemption or otherwise in public interest by notification in the Official Gazette. Sec.25(1) of the Customs Act is quoted hereunder for ready reference:

25. Power to grant exemption from duty:

"(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as

may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon".

Whereas, Sub-Section (4) of Section 25, while declaring the date of enforcement of such notification, prescribes that it shall come into force on the date of its issuance by the Central Government for publication in the Official Gazette. Sub-Section (4) of Section 25 is quoted hereunder for ready reference:

"Sec.25(4):Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette".

2. The argument is that Sub-Section (4), even though speaks about the same notification that is to be issued under Sub-Section (1) to be notified in the Official Gazette, defines the date of enforcement as the date of issue itself meaning thereby that its enforceability is dependent upon the date of issuance and not the date of its publication in the Official Gazette.

3. The contention of the petitioner is that unless the notification is published in the Official Gazette by any mode, it will not come to the knowledge of the assessee for whose benefit an exemption may be granted or to whose prejudice an exemption may be withdrawn.

4. The argument therefore is that if the notification is prepared, which remains canopied without being published, can such non-publication be treated as arbitrary inasmuch as the very issuance of such notification is either for the benefit of exemption or for withdrawing an exemption that may be prejudicial to the assessee. This leverage granted to the Central Government for enforcing a notification even without publishing it runs counter to the intention expressed in Section 25(1) of the Act, which is the charging section enabling the Central Government to extend or withdraw the exemption in public interest by notifying in the Official Gazette.

5. To this may be added, as a tool of interpretation, the provisions of Section 3(39) of

the General Clauses Act, 1897, which defines "Official Gazette" or "Gazette" as the Gazette of India or the Official Gazette or a State and the provisions of Section 3(19-A) of the General Clauses Act, 1891, as adopted in this State under the Tamil Nadu General Clauses Act, 1897, which defines "notification" as a notification published in the Official Gazette".

6. Thus, in order to give a form of impetus including the enforceability, the source and mode of knowledge to the assessee or to the public at large has to be by a defined method which is by publication in the Official Gazette. The submission therefore is that if any notification has to be by way of Gazette, then, publication thereof is an answer without which the publication would be incomplete and would not amount to knowledge either to the affected person or the public at large.

7. The question therefore raised is that this power which inheres in the Central Government to withhold a publication and at the same time to enforce it from the date of issuance without any such mode of knowledge either to the assessee or to the public at large amounts to arbitrary retention of power by the Central Government or by not only violating the provisions of the aforesaid but also violating Article 14 and also consequently Article 19(1)(g) of the Constitution of India.

8. To substantiate the aforesaid submission, learned counsel for the petitioner has relied on the Division Bench Judgment of High Court of Andhra Pradesh in W.P.Nos.4533 and 4534 of 2019 dated 28.09.2019, filed by the present petitioner itself. It is therefore contended that the aforesaid ratio of the judgment, whereby, the said provision occurring in Section 25(4) of the Act to be declared as arbitrary and inconsistent to Section 25(1) of the Customs Act, should be adopted and the same relief be extended in the present writ petition.

9. Learned counsel for the respondents / Union of India and its authorities prays that there are other dimensions to the aforesaid arguments and therefore, in order to dissuade the Bench from accepting the ratio of the High Court of Andhra Pradesh, the learned counsel may be granted some time to assist the Court on the arguments so advanced.

List on 16.12.2019."

9. When the matter was again taken up, the following order came to be passed on 5.3.2020:

"We have heard learned counsel for the petitioner and learned counsel for the respondents. We have passed the following order after having heard learned counsel for the parties on 26.11.2019:-

(Already quoted above)

2. Today, learned counsel for the respondents has again sought time on the ground that there is a likelihood of Special Leave Petition being filed before the Apex Court against the Judgment of Andhra Pradesh High Court.

3. Learned counsel for the petitioner submits that almost a similar, if not identical, situation arose, where the legal issue of publication being identical, was dealt with by the Delhi High Court and the Division Bench vide judgment dated 15.10.2019 in W.P.(C) Nos.7838 of 2017 etc., batch categorically explained as to in what manner should an E-publication of a gazette be considered to be valid and operative. Paragraph Nos.25 to 34 of the above judgment cited at the bar is extracted hereunder:-

"25. In order to buttress their submissions that the impugned Notification Nos. 24 and 25, dated 25th August, 2017 were published in the Official Gazettee "electronically" only on 28th August, 2017, the petitioners have filed, with the writ petitions, electronic copies of the Gazette where, at the close of the notification, the following endorsement appears: "Rakesh Sukul: Digitally signed by Rakesh Sukul Date 2017.08.28 22:47:05+5"30" "

26. The petitioners have also filed, with the writ petition, a purported screenshot of the website of the Ministry of Commerce on 25th August, 2017, which does not reflect the aforesaid two Notification Nos. 24 and 25.

27. Mr. Manik Dogra, learned CGSC for Respondent No. 1, however, contends that, as per his instructions - sans, however, any supporting material - the impugned notifications had, in fact, been uploaded on the website of the DGFT on 25th August, 2017 itself.

28. We do not think so.

29. In any event, however, as the notifications would become enforceable only from the date of their publication in the Official Gazette, the aspect of whether they were, or were not, uploaded on the website of the DGFT on 25th August, 2017, loses its significance.

30. Section 8 of the Information Act, 2000 (hereinafter referred to as "the IT Act") reads thus:

"8. Publication of rule, regulation, etc., in Electronic Gazette.-

Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette: Provided that where any rule, regulation, order, bylaw, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form."

31. In terms of the Section 8 of the IT Act, the following Office Memorandum (OM) was issued by the PSP Division in the Ministry of Urban Development on 30th September, 2015:

"No. O-17022/1/2015-PSP-I

Government of India

Ministry of Urban Development
(PSP Division)

Nirman Bhawan, New Delhi

Dated: 30th
September, 2015

OFFICE MEMORANDUM

Subject: E-publishing of Government of India
Gazette Notification Discontinuing of
the practice of physical printing.

In compliance with the provisions of Section 8 of the Information Technology Act, 2000, it has been decided in consultation with Department of Legal Affairs to switch over to exclusive e-publishing of the Government of India Gazette Notification on its official website with effect from 01.10.2015 and to do

away with the physical printing of Gazette Notification. The date of publishing shall be the date of epublication on official website by way of electronic gazette in respect of Gazette Notifications. The Gazette Notification can be accessed and downloaded/printed from the official eGazette website i.e. www.egazette.nic.in free of cost.

All the Ministries and Departments are requested to give wide publicity to bring this to the notice of all attached & subordinate offices, PSU, etc., as well as various stakeholders including all private users. This issues with the approval of competent authority. Sd/- (Kailash Choudhary) Under Secretary to the Govt. of India" (Emphasis supplied)

32. The endorsement on the electronic copy of the Gazette, whereby the impugned Notification Nos. 24 and 25, dated 25th August, 2017, were notified, seen in juxtaposition with Section 8 of the IT Act, and of the OM dated 30th September, 2015 supra, of the Ministry of Urban Development, makes it clear that the impugned Notification Nos. 24 and 25, dated 25th August, 2017 were, in fact, electronically published in the Official Gazette only at or after 10:47 p.m. on 28th August, 2017.

33. It has been conclusively held, by the Supreme Court, in a catena of decisions - including *Harla v. State of Rajasthan*², *B.K. Srinivasan v. State of Karnataka*³ and *U.O.I. v. Param Industries*⁴ that, notifications would come into force on their publication in the Official Gazette, i.e. in the present case, with effect from the date and time when they were electronically printed in the Gazette, which was at or after 10:47 p.m. on 28th August, 2017.

34. The imports of the gold coins by the petitioners in these writ petitions took place prior thereto."

4. Having gone through the pleadings, we hardly find any distinction to draw on the legal issues so advanced. It is stated by the learned counsel for the respondents that the petitioner has already made

the payments pursuant to the imposition, which, learned counsel for the petitioner contends that was clearly under protest.

5. There is hardly any dispute on facts and the legal issue which has to be resolved. Granting indulgence of time has already consumed almost four months in spite of the fact there are two decisions of two High Courts answering the same. Therefore, we, prima facie, do not find any reason to differ from the same.

6. In the aforesaid background, we direct the respondents to proceed in the matter and either take steps to refund the amount which the petitioner has paid under protest keeping in view the judgments cited at the bar, bereft of the impugned Notification herein, or show cause by filing a counter affidavit within three weeks from today.

7. In the event, no counter affidavit is filed nor any information tendered with regard to filing of Special Leave Petition, this Court will proceed further to pass final orders. List the matter on 01.04.2020."

The Court had made it clear to the respondents to take a final call in the matter as it has been delayed for more than 4/5 months in spite of the fact that the petitioner had cited judgments in its favour entitling it to receive refund of the enhanced amount of duty paid, which had been incorrectly realized by the respondents.

10. The matter was again listed on 5.6.2020, when we passed the following order:

"A prayer has been made by learned counsel for the respondents that even though time had been granted by this Court on 05.03.2020, on account of intervening spread of the Corona Virus, appropriate instructions with regard to filing of any Special Leave Petition have not yet been received.

2.The learned counsel can be granted this indulgence on account of the restricted functioning of the Courts including the Hon'ble Apex Court, but, in view of the fact that considerable time has elapsed, it would be appropriate that the respondents may obtain their instructions positively by the first week of July, 2020.

List on 07.07.2020."

11. Today, again the learned counsel for the Union of India and respondents 2 and 3 sought an adjournment on the ground that the respondents are in the process of filing an appeal before the Supreme Court against the judgment of the Andhra Pradesh High Court in Ruchi Soya Industries Ltd. (supra) and, therefore, this Court should desist from passing any order. The learned counsel has not been able to produce any material whatsoever to establish that an appeal has been moved before the Apex Court.

12. We may put on record that the respondents had earlier filed a common counter affidavit disputing the claim of the petitioner. This counter affidavit was however filed in December, 2018, much before the judgments of the Delhi High Court and the Andhra Pradesh High Court came into existence. Rejoinder to the said counter affidavit had also been filed, which is on record.

13. Learned counsel for the Union of India contended that the plea raised by the petitioner is not tenable, in as much as the publication will date back from the date on which it was uploaded in the website and, therefore, that having been done on 1.3.2018, the petitioner cannot claim any such benefit.

14. Learned counsel for the Union of India further submits that no ground at all has been made out for seeking a declaration as sought for and, hence, the writ petition deserves to be dismissed.

15. Confronted with the aforesaid two decisions of the Delhi High Court and the Andhra Pradesh High Court, we wanted the learned counsel for the respondents to throw light on the issues raised so as to enable us to take a different view, but the learned counsel for the respondents failed to convince us to opine otherwise against the logic and the reasoning given by the two High Courts in the judgments referred to by the learned counsel for the petitioner, with which we find ourselves in complete agreement with.

16. On the issue of the date of publication, the Delhi High Court in M.D.Overseas Ltd. (supra) while dealing with a similar notification held that the notification would come into effect from the date and time when it was electronically printed in the gazette and mere uploading on the website would have no significance. Paragraphs (24) to (33) of the said judgment are extracted herein under:

"24. It is averred, in the writ petition, that the above Notifications and Public Notice were published, in the Official Gazette, only on 28th

August, 2017. The petitioners would seek to contend that the impugned Notification Nos. 24/2015-2020 and 25/2015-2020, both dated 25th August, 2017, became effective only consequent on their publication in the Official Gazette. The gold coins in questions having been imported prior thereto, inasmuch as they had left the country of dispatch on 25th August, 2017, Notification Nos. 24 and 25, both dated 25th August, 2017 and Public Notice No. 20, also dated 25th August, 2017, having been published in the Official Gazette three days thereafter, on 28th August, 2017, could not apply to them.

25. In order to buttress their submissions that the impugned Notification Nos. 24 and 25, dated 25th August, 2017 were published in the Official Gazette "electronically" only on 28th August, 2017, the petitioners have filed, with the writ petitions, electronic copies of the Gazette where, at the close of the notification, the following endorsement appears:
"Rakesh Sukul : Digitally signed by Rakesh Sukul
Date 28-8-2017 22:47:05+5'30"

26. The petitioners have also filed, with the writ petition, a purported screenshot of the website of the Ministry of Commerce on 25th August, 2017, which does not reflect the aforesaid two Notification Nos. 24 and 25.

27. Mr. Manik Dogra, Learned CGSC for Respondent No. 1, however, contends that, as per his instructions - sans, however, any supporting material - the impugned notifications had, in fact, been uploaded on the website of the DGFT on 25th August, 2017 itself.

28. We do not think so.

29. In any event, however, as the notifications would become enforceable only from the date of their publication in the Official Gazette, the aspect of whether they were, or were not, uploaded on the website of the DGFT on 25th August, 2017, loses its significance.

30. Section 8 of the Information Technology Act, 2000 (hereinafter referred to as "the IT Act") reads thus:

"8. Publication of rule, regulation, etc., in Electronic Gazette. - Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:

Provided that where any rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form."

31. In terms of the Section 8 of the IT Act, the following Office Memorandum (OM) was issued by the PSP Division in the Ministry of Urban Development on 30th September, 2015:

"No. O-17022/1/2015-PSP-I
Government of India
Ministry of Urban Development
(PSP Division)

Nirman Bhawan, New Delhi
Dated : 30th September, 2015

OFFICE MEMORANDUM

Subject: E-publishing of Government of India Gazette Notification Discontinuing of the practice of physical printing.

In compliance with the provisions of Section 8 of the Information Technology Act, 2000, it has been decided in consultation with Department of Legal Affairs to switch over to exclusive e-publishing of the Government of India Gazette Notification on its official website with effect from 1-10-2015 and to do away with the physical printing of Gazette Notification. The date of publishing shall be the date of e-publication on official website by way of electronic gazette in respect of Gazette Notifications. The Gazette Notification can be

accessed and downloaded/printed from the official e-Gazette website i.e. www.egazette.nic.in free of cost.

All the Ministries and Departments are requested to give wide publicity to bring this to the notice of all attached & subordinate offices, PSU, etc., as well as various stakeholders including all private users.

This issues with the approval of competent authority.

Sd./-
(Kailash Choudhary)
Under Secretary to the Govt. of India"
(Emphasis supplied)

32. The endorsement on the electronic copy of the Gazette, whereby the impugned Notification Nos. 24 and 25, dated 25th August, 2017, were notified, seen in juxtaposition with Section 8 of the IT Act, and of the OM dated 30th September, 2015 supra, of the Ministry of Urban Development, makes it clear that the impugned Notification Nos. 24 and 25, dated 25th August, 2017 were, in fact, electronically published in the Official Gazette only at or after 10:47 p.m. on 28th August, 2017.

33. It has been conclusively held, by the Supreme Court, in a catena of decisions - including *Harla v. State of Rajasthan* 1952 (1) SCR 110, *B.K. Srinivasan v. State of Karnataka*, AIR 1987 SC 1059 and *U.O.I, v. Param Industries* (2016) 16 SCC 692 that, notifications would come into force on their publication in the Official Gazette, i.e. in the present case, with effect from the date and time when they were electronically printed in the Gazette, which was at or after 10:47 p.m. on 28th August, 2017."

17. The reasoning given by the Division Bench of the Delhi High Court in *M.D.Overseas Ltd.* (supra) does not appear to be suffering from any legal infirmity, nor any material or argument has been placed before us to take a different view in the matter. We, therefore, accept the contention of the learned counsel for the petitioner on this count.

18. We find that the aforesaid issue relating to publication

has also been answered in favour of petitioner and not only this, the contention with regard to the amendment has also been answered in detail by the Division Bench of the Andhra Pradesh High Court in Ruchi Soya Industries Ltd. (supra). The findings recorded in the said judgment are extracted herein under:

"76. In view of the law declared by the Courts with regard to interpretation of taxing statutes, it is clear that when the amended provision or any provision of the statute creates serious inconvenience, serious absurdity, confusion or friction, contradiction and conflict between its various provisions, the same is illegal and amendment of sub-section (4) of Section 25 giving effect to the notification from the date of its issue for publication in the Gazette is an arbitrary exercise of power by the Legislature and it is totally contrary to the purport of sub-section (1) and sub-section (2-A) of Section 25 of the Act, which mandates publication of notification in the Official Gazette. Therefore, to avoid inconvenience, serious absurdity, confusion or friction, contradiction and conflict between various provisions, amended provision of sub-section (4) of Section 25 which is enacted by arbitrary exercise of power by the Legislature, is liable to be struck down.

77. The notification was published on 6.3.2018 which is impugned in these writ petitions, published electronically on 6.3.2018. In view of the decision taken by the Government of India in terms of Section 8 of the Income Tax Act, to avoid physical printing of Gazette notification to publish the same exclusively by electronic mode, so as to attribute knowledge to the public at large. The notification was signed by Rakesh Sukul on 6.3.2018 at 19:15:13 + 05'30'. When notification needs to be signed digitally and only when the notification was uploaded and published in the Official Gazette, the same is made available for public. Perhaps, to avoid such contingency to give effect to the notification on the date of publication, the Government of India amended sub-section (4) of Section 25 of Customs Act, 1962. But, sub-section (1) and sub-section (2-A) of Section 25 were not suitably amended and they remained as it is. Therefore, sub-sections (1), (2-A) and (4) of Section 25 are running contra to one another, creating confusion in the minds of public at large, atleast to the person who is dealing with

the department. Thus, it is evident from the record that the notification was not signed at least by the competent authority on the date of presentation of ex-bond bill of entry before the competent authority for release of imported goods for human consumption in accordance with Section 15(1)(b) read with Section 68 of the Customs Act for clearance of the goods for human consumption and the relevant date for determination of the duty is the date of presentation of ex-bond bills of entry for release of the goods which is explicit from Section 15(1)(b) of the Act. But the respondents collected the customs duty initially @ 30%, but later by the time of release, customs duty was enhanced @ 44% and demanded the variation of 14%.

78. As discussed above, sub-section (4) of Section 25 created absurdity, confusion and friction. The very collection of customs duty @ 44% on the imported goods belonging to these petitioners prior to the publication of notification in electronic mode is an illegality. Therefore, the petitioners are entitled to claim refund of the amount paid in excess of 30% of the original rate of customs duty as on the date of presentation of ex-bond bills of entry for clearance of import goods for human consumption. Therefore, the respondents are liable to repay the excess amount which they collected from the petitioners beyond 30% of customs duty.

79. One of the contentions raised by the learned Counsel for the respondents, when a remedy by way of appeal under Sections 128 and 129(A) of the Customs Act is available, the petitioner is disentitled to claim relief under Article 226 of the Constitution of India. But, the said contention cannot be accepted for the simple reason that the appellate authority or Tribunal cannot declare any provision in the statute as illegal or arbitrary. Therefore, we find no force in the argument of the learned Counsel for the respondents and the same is rejected.

80. In view of our foregoing discussion, Section 25 (4) of the Customs Act is declared as arbitrary and contrary to Section 25(1) and (2-A) of the Customs Act, 1962 and that the respondents are liable to repay the amount collected from the petitioners for clearance of imported goods for home consumption beyond the original rate prevailing on the date of

prior to date of publication of notification i.e., Rs. 2,88,16,200/- with interest paid by the petitioner from the date of deposit till the date of payment.

81. In the result, writ petitions are allowed."

19. The aforesaid reasons squarely apply, to which no plausible answer could be given by the learned counsel for the respondents.

20. The issues already having been raised and decided, we have not been able to gather any other different reason to keep this matter pending, and adopting the reasoning given by the Andhra Pradesh High Court in Ruchi Soya Industries Ltd. (supra), we allow the writ petition on the same terms and direct the respondents to refund the entire excess amount paid by the petitioner as enhanced duty under protest, including the IGST amount, within a period of two months from today.

The writ petition is, accordingly, allowed. No costs.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

sasi

To:

- 1.The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 110 001.
- 2.The Commissioner of Customs (Imports),
In the office of Commissioner of Customs (Imports),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.
- 3.The Deputy Commissioner of Customs (Group 7H),
In the office of Commissioner of Customs (Imports),
Customs House,
No.60, Rajaji Salai, Chennai - 600 001.

W.P.No.21207 of 2018

A.SK(03/08/2020)