

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT PETITION No.18056 of 2002

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Srihari Prasad, learned counsel representing Mr. K.Jagadishwar Reddy, learned counsel for the petitioner; Mr. B.Mukherjee, learned counsel representing Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent No.1; and Ms. Sapna Reddy, learned counsel for respondent Nos.2 & 3.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has prayed for the following reliefs:

“i) To call for the record of the notification No.60/2002-CUS(NT), dt. 02-09-2002 amending notification No.36/2001-CUS(NT), dt.03-08-2001 and also relating and pertaining to the petitioner's left over goods weighing 4359.175 MTS of crude degummed Soyabean edible oil in bulk awaiting clearance for home

consumption at the port of Kakinada, within the jurisdiction of respondent No.3.

ii) Declare section 14(2) of the Customs Act, 1962 as unconstitutional and invalid and also to quash the notification No.60/2002-CUS(NT), dt. 02-09-2002 amending notification No.36/2001-CUS(NT), dt.03-08-2001 and it be declared that the petitioner's goods being 4359.175 Mts are liable to be cleared on payment of duty to be assessed U/s.14(1) of the Customs Act, 1962 i.e. on the CIF value without any liability of payment of duty in pursuance to notification No.60/2002-CUS(NT), dt. 02-09-2002 allegedly issued Under Section 14(2) of the Customs Act, 1962.

iii) Further directions be issued for clearance of goods weighing 4359.175 MTS for home consumption on payment of duty to be assessed on the declared value without taking into consideration the alleged tariff value so fixed in terms of Customs Notification No.60/2002-CUS(NT), dt. 02-09-2002 and to pass such other appropriate orders and directions this Hon'ble Court may deems fit and proper."

3. Challenge of the petitioner is to the validity of the notification bearing No.60/2002-CUS(NT) dated 02.09.2002 as well as the notification bearing No.36/2001-CUS(NT) dated 03.08.2001.

4. In paragraph 11 of the writ affidavit, it is stated that the present writ petition and W.P.No.20536 of 2001 pertain to the same challenge.

5. On 23.09.2002, this Court had admitted the writ petition and passed an interim order directing the 3rd respondent to release 4359.175 metric tonnes of crude degummed soyabean oil of edible grade in bulk for home consumption in favour of the petitioner on condition that petitioner should deposit 50% of the disputed duty demanded pursuant to the notification No.60/2002-CUS(NT) dated 02.09.2002. However, it was clarified that the above deposit of disputed duty and release of goods would be subject to outcome of the writ petition.

6. We find from the docket proceedings that learned counsel for the petitioner had submitted before the Court that this writ petition should be heard along with Writ Petition No.20536 of 2001. Accepting such submission, this Court had directed the Registry to list the writ petition with W.P.No.20536 of 2001.

7. However, we find that W.P.No.20536 of 2001 was heard along with W.P.No.19303 of 2001.

8. From a perusal of the record, it is seen that W.P.No.20536 of 2001 was filed for quashing notification No.36/2001-CUS(NT) dated 03.08.2001 and also to declare the order of assessment passed on the strength of the tariff value fixed by the said notification as illegal and thereafter to quash the same. By the judgment and order dated 21.06.2016, this Court following the decision of the Supreme Court in **Union of India v. Param Industries Limited**¹ held that notification No.36/2001 came into force on or after 06.08.2001. Therefore, the action of the respondents in applying the tariff value prescribed therein, for the earlier import of R.B.D. Palmolein oil on 03.08.2001 was illegal. Customs duty on R.B.D. Palmolein oil imported on 03.08.2001 could only have been levied on its invoice value and not on the tariff value prescribed subsequently in

¹ 2015 (321) E.L.T.192 (S.C.)

notification No.36/2001 dated 03.08.2001. Accordingly, the writ petitions were allowed.

9. Applying the decision of this Court dated 21.06.2016 passed in W.P.No.20536 of 2001, the present Writ Petition is also allowed. However, there shall be no order as to costs.

10. Miscellaneous applications pending, if any, in this Writ Petition shall stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

Date: 21.12.2022
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