

24.02.2025
Item Nos.11-17
gd/ssd

MAT/304/2024
UNION OF INDIA
VS
M/S SUKUMAR SOLVENT PRIVATE LIMITED
with
MAT/113/2024
UNION OF INDIA AND ORS.
VS
HOOGHLY AGRO PRODUCTS PRIVATE LIMITED
AND ORS.
with
MAT/129/2024
UNION OF INDIA
VS
PEP AGRO INDUSTRIES PRIVATE LIMITED
with
MAT/134/2024
UNION OF INDIA
VS
PRAGATI AGRI PRODUCTS PRIVATE LIMITED
with
MAT/333/2024
UNION OF INDIA AND ORS.
VS
M/S CHHAJER AGRO PRODUCTS PRIVATE
LIMITED
with
MAT/334/2024
UNION OF INDIA
VS
M/S NALINAKSHA AGRO PRODUCTS PRIVATE
LIMITED
with
MAT/475/2024
UNION OF INDIA AND ORS.
VS
M/S P K AGRI LINK PVT LTD AND ORS.
IA NO: CAN/1/2024

Mr. Ashok Kumar Chakraborty, Id ASGI,
Mr. Souvik Nandi,
Ms. Amrita Pandey
..for the Appellant in
MAT 304 of 2024 and
MAT 334 of 2024.

Mr. Ashok Kumar Chakraborty, Id ASGI,

Mr. Kumar Jyoti Tewari,
 Ms. Amrita Pandey,
 Mr. Aniruddha Tewari
 ..for the Appellant in
 MAT 113 of 2024,
 MAT 129 of 2024 and
 MAT 134 of 2024.

Mr. Ashok Kumar Chakraborty, Id ASGI,
 Mr. Sukumar Bhattacharyya,
 Mr. Tirtha Pati Acharya
 ..for the Appellant in
 MAT 475 of 2024.

Mr. Sagar Bandyopadhyay,
 Mr. Nilotpal Chowdhury,
 Mr. Prabir Bera
 ..for the Respondents.

1. These intra court appeals have been filed by the Union of India challenging the common order passed by the learned Single Bench in a batch of writ petitions in WPA 16008 of 2023, WPA 11313 of 2023, WPA 12115 of 2023, WPA 12117 of 2023, WPA 15037 of 2023, WPA 15042 of 2023, WPA 15047 of 2023 and WPA 24355 of 2023 dated 2nd January, 2024.

2. Since the relief sought for in all the writ petitions are identical, we are referred to the prayer in WPA 15037 of 2023 the writ petitioners therein pray for issuance of a Writ of Mandamus to withdraw, cancel and/or rescind the Gazette Notification dated 25.3.2022. There is also a prayer to direct the appellants to grant the benefits of Gazette Notification dated 9th September, 2021.

3. The learned Additional Solicitor General appearing for the Union of India submitted that the writ

petitions have been disposed of by the learned writ court without affording an opportunity to the appellants to file their affidavit-in-opposition. Furthermore, the direction issued in the writ petition has an All India Impact and Wide Ramifications inasmuch as the learned writ court has held that the Notification dated 25th March, 2022 which was impugned in the writ petition is prospective in operation.

4. In our considered view, to decide as to whether the notification impugned in the writ petition is prospective or retrospective, it goes without saying that the stand of the respondents in the writ petition should have come on record though Mr. Bandyopadhyay, learned advocate appearing for one of the respondents submitted that the notification impugned in the writ petition has not been set aside and it has been held to be prospective in operation.

5. Even assuming that the notification has not been set aside, the order and direction issued by the learned Single Bench holding that the notification is prospective in operation should have been decided after calling for affidavits from the respondents in the writ petition.

6. The learned Additional Solicitor General further submits that the question of maintainability of the writ petition has also to be decided for which an

opportunity to file the affidavit-in-opposition ought to have been granted to the appellants who were the respondents in the writ petition.

7. To consider a notification to be prospective or retrospective, the stand taken by the authority which issued the notification should come on record.

8. The learned advocate appearing for the Union of India in MAT 304 of 2024 submitted that a request was made to the learned writ court to grant an opportunity to file their affidavit-in-opposition but such request was not accepted nor was recorded in the impugned order.

9. Apart from that, the stand of the Commissioner of Customs is also very relevant in the matter since the respondent/writ petitioners have taken a stand that on the date when they have effected the export the Notification dated 9th September, 2021 was in vogue and, therefore, their argument before the learned writ court was that even assuming that the said notification stood rescinded, it cannot be retrospective operation and at best it can be only prospective and doctrine of promissory estoppels would also come to an aid and assistance of the writ petitioners. This issue can be decided only after an affidavit-in-opposition is filed by the respondents in the writ petition who are the appellants before us.

10. Therefore, on this short ground alone we are inclined to set aside the impugned order and remand the matter to the learned Single Bench for a fresh decision after affidavit-in-opposition is filed by the respondents in the writ petition which includes the appellants before us.

11. Accordingly, the appeals are allowed. The order impugned is set aside and the appellants and the Commissioner of Customs are directed to file their affidavit-in-opposition within three weeks from date; reply thereto, if any, within two weeks thereafter.

12. Let the writ petitions be listed after a period of five weeks before the appropriate Bench.

13. The learned advocates for the parties are at liberty to mention before the learned Single Bench for inclusion all the writ petitions for being heard and decided on merits.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)