



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

WP Nos. 11404 and 10265 of 2011

and M.P.Nos.1 and 2 of 2011

WP.No.11404 of 2011

SMS Lifesciences India Limited,
Represented by its General Manager (Finance)
Mr. N. Rajendra Prasad,
Plot No. 19-111, Road No.71,
Opp. Bharatiya Vidya Bhavan Public School,
Jubilee Hills, Hyderabad-500034 (A.P).
(Petitioner Cause Title Amended Vide Order Dt.
17/06/2021 made in WMP.20187/2020 in
WP.11404/2011)

..Petitioner(s)

Vs

- 1.Director General of Foreign Trade,
DES-V, Udyog Bhavan,
New Delhi-110011.
- 2.Joint Director General of Foreign Trade,
Kendriya Sadan, Sutan Bazaar,
Hyderabad-500095.
- 3.Director of Revenue Intelligence,
Hyderabad Regional Unit,
D.No.6-3-628/9, Reveindra Nagar Colony,
Khairatabad, Hyderabad (A.P.)



4. Commissioner of Customs,
Custom House,
60, Rajaji Salai, Chennai-1.

5. Asst. Commissioner of Customs
(Group-7 DEEC), Custom House,
60, Rajaji Salai, Chennai-1.

6. Superintendent of Central Excise,
Bollaram -III Range,
Hyderabad B-Division,
Hyderabad (A.P.).

..Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, to direct Respondents Nos.1 to 3 to comply with the Modified Rehabilitation Scheme sanctioned by the Board for Industrial and Financial Reconstruction by its Order dated 28/8/2008.

AND

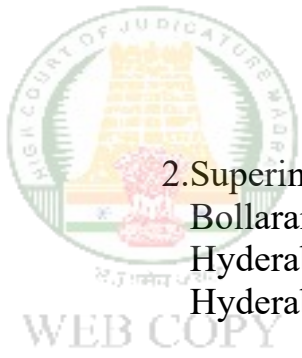
WP.No.10265 of 2011

SMS Lifesciences India Limited,
Represented by its General Manager (Finance)
Mr. N. Rajendra Prasad,
Plot No. 19-111, Road No.71,
Opp. Bharatiya Vidya Bhavan Public School,
Jubilee Hills, Hyderabad-500034 (A.P).
(Petitioner Cause Title Amended Vide Order Dt.
17/06/2021 made in WMP.20188/2020 in
WP.10265/2011)

..Petitioner(s)

Vs

1. The Commissioner of Customs,
Custom House, Rajaji Salai,
Chennai-01.



2. Superintendent of Central Excise,
Bollaram -III Range,
Hyderabad B-Division,
Hyderabad (A.P.).

..Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, to call for the records of the impugned common stay order Nos.684 & 685/2000 dated 9/8/2000 made in E/ST/152, 153/2000 in E/305, 306/2000 passed by Customs, Excise, Service Tax Appellate Tribunal, Chennai (formerly known as Customs, Excise & Gold (Control) Appellate Tribunal) and quash the same in so far As it directs pre-deposit of Rs.60,00,000/- on Plant Organics Ltd. which has since merged with the Petitioner pursuant to Order dated 28/8/2008 of BIFR and restore the appeal to the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Petitioner(s) : Mr.Sriram Panchu, Senior Counsel
for Mr.R.Anish Kumar
(In both WPs)

For Respondent(s) : Mr.K.S.Jeyaganeshan,
Senior Panel Counsel
(for R1 to R3 in WP.11404/2011)

Mr.Santhanaraman,
Senior Standing Counsel
(for R4 to R6 in WP.11404/2011)
(for R1 & R2 in WP.10265/2011)



COMMON ORDER

(Order of the Court was made by Dr.Anita Sumanth J.)

WEB COPY

A common order is passed in the two writ petitions since the facts are intertwined, and common issues arise for adjudication.

2. One, Plant Organics Limited, (hereinafter referred to as 'assessee') had sought and been granted nine Advance Licences (Duty Entitlement Export Certificate - DEEC) for the import of antibiotic chemicals, availing the benefit under Customs Notification No.149/1995 dated 19.09.1995. The benefit was subject to the satisfaction of various conditions, including the fulfilment of export obligations.

3. Upon arrival of the consignments, the Directorate of Revenue Intelligence (DRI) inspected the imports and recorded statements from the agent of the importer, noticing discrepancies in the description of the raw materials imported free of customs duty. Proceedings were initiated by the competent officers of the DRI by way of show cause notices and replies were solicited from the assessee.

4. After consideration of the replies and affording personal hearings, an Order-in-Original came to be passed on 28.03.2000 by the Commissioner of Customs demanding customs duty aggregating to Rs.81,60,861/- (Rs.81.60 lakhs approx.) in terms of the proviso to Section 28(1) of the Customs Act, 1962 (in short 'Act') read with Customs Notification No.149/1995 dated 19.09.1995 along with equal penalty under Section 114(A) and penalty of Rs.10,00,000/-



under Section 112(A) of the Act.

5.The assessee filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT/Tribunal) along with an interim application seeking stay of demand. The application was disposed on 09.08.2000 ordering pre-deposit of a sum of Rs.60,00,000/- including Rs.5,00,000/- already adjusted by the Commissioner under the Order-in-Original, to be paid within a period of three months from the date of that order on condition of which, stay was granted.

6.Admittedly, the assessee did not comply. Instead, it filed a petition before the Tribunal seeking modification of the order dated 09.08.2000. That application came to be dismissed on 24.09.2001, the Tribunal being of the view that it had no power to review its order.

7.As against the order of rejection, writ petitions had been filed in W.P.Nos. 23998 & 23999 of 2001, which came to be disposed on 16.12.2010. The learned Judge rejected the challenge to the orders of the CESTAT dated 24.09.2001, and at that juncture, the assessee had made a request to the Court to permit a challenge to the pre-deposit orders itself.

8. At paragraph 16 of the writ order, the learned Judge desists from expressing any opinion on that plea, but states that it is always open to the assessee to work out its remedy as against that order in a manner known to law. Hence the present writ petitions.

9. The prayer in WP.No.11404 of 2011 is for a mandamus to direct



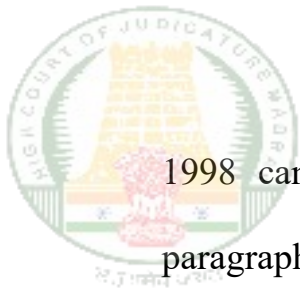
Respondents Nos.1 to 3 to comply with the Modified Rehabilitation Scheme sanctioned by the Board for Industrial and Financial Reconstruction by its Order dated 28.08.2008. The prayer in WP.No.10265 of 2011 is a challenge to the order of the Tribunal dated 09.08.2000 in ordering pre-deposit.

10. Mr.Sriram Panchu, learned Senior Counsel, appearing for Mr.R.Anishkumar, learned counsel for the petitioner would submit that the assessee had, pending W.P.Nos.23998 & 23999 of 2001, amalgamated with an entity by name 'SMS Life Sciences' and hence the present writ petitions have been filed by the aforesaid transferee company (henceforth referred to as petitioner).

11. Learned Senior Counsel would submit that much water has flown under the bridge post the institution of the appeal and stay petition before the Tribunal. In fact, the assessee had become a Sick Industrial Company and had approached the Board for Industrial and Financial Reconstruction (BIFR) in terms of the applicable provisions of the Sick Industrial Companies Act, 1985 (SICA) with a scheme for rehabilitation.

12. A scheme for rehabilitation had been ordered as early as in 2003. Thereafter, the assessee, finding it difficult to achieve rehabilitation in terms of the Scheme that had been framed, sought amalgamation of their company with the present petitioner by the BIFR invoking the power of the BIFR under Section 18(1)(c) of the SICA, and presented a modified scheme for revival.

13. The Modified Rehabilitation Scheme put forth in Case No.133 of



1998 came to be ordered and reference is made to the amalgamation at paragraph 6.1(2) thereof, in the following terms:-

WEB COPY

‘6.1 (2) Merger of M/s POL with M/s SMSPL:

In order to revive the company, M/s POL proposes merger of the company with M/s SMSPL which is in the same line of business for last 20 years. M/s SMSPL has potential to market POL products in domestic and overseas market. M/s SMSPL proposes to merge the entire undertaking of M/s POL by transferring it to M/s SMSPL which will be called “Transferee Company”. The sick company M/s POL will be merged with M/s SMSPL and M/s POL will be called “Transferor Company”. A copy of the merger scheme is at Annexure II.

The cut-off date for the proposed merger is 1.1.2008. M/s SMSPL, the merged entity will discharge all the liabilities of M/s POL. Based on the valuation of the two entities conducted by M.M.Reddy & Co., Chartered Accountants, the swap ratio for the purpose of merger is arrived in the ratio of 1 (one) equity share in M/s SMSPL of Rs.10 each fully paid up for every 50 (fifty) equity shares of M/s POL of Rs.10/- each fully paid up.’

14. The Petitioner would thus agree that with the ordering of the Modified Rehabilitation Scheme, the demand of Rupees 81 lakhs would have to go. However, Mr.Santhanaraman and Mr.K.S.Jeyaganeshan, appearing for the Customs and DRI respectively would argue otherwise. An important feature of the Modified Rehabilitation Scheme dated 28.08.2008, is the inclusion of the phrase ‘to consider’ in the context of dues under certain various revenue enactments.

15. Hence, and since the direction of the Board to the Departments was only ‘to consider’ the demands, the fate of the demands would have to be decided by the competent officers and there was no positive direction to the



authorities to waive the demands of duty, penalty and interest.

16. We have considered the scheme carefully. The relevant paragraphs of the scheme wherein the words 'to consider' have been included are paragraphs 8.4 and 8.5 and we extract the same below:-

“8.4 From Income Tax Department

- 1) *To consider exempting the transferor/amalgamated company from the provisions of Section 41(1) of the Income Tax Act, 1961 in respect of remissions arising out of sacrifices allowed by the Banks and other agencies under the scheme.*
- 2) *To consider exempting the transferor company from the provisions of section 80 read with section 139 of Income Tax Act, 1961.*
- 3) (a) *To grant tax benefits upto 8 years from the date of sanction of this scheme to transferee company under section 72A of the Income Tax Act 1961 to carry forward the unabsorbed business losses without any limitation period including business losses which have lapsed.*

(b) *To consider to grant tax benefits beyond 8 years of sanction of this scheme to transferee company under section 72A of the Income Tax Act 1961 to carry forward the unabsorbed business losses without any limitation period including business losses which have lapsed.*
- 4) *To consider to exempt the transferee company from the provisions of section 41(1) and 43B of the Income Tax Act 1961 in respect of the relief and concessions availed from banks and financial institutions and other agencies under the scheme or otherwise.*
- 5) *To consider to waive all the penalties interest and liquidated damages of the transferor company on the demands crystallized on finalization of the appeals before the Income Tax Appellate Tribunal (ITAT) Hyderabad in respect of disputed demand of Rs.105.42 lakh. The crystallized amount on disposal of appeals pending before ITAT would be repaid in 16 quarterly*



equal installments on interest free basis.

6) *To consider that the liabilities, which are under litigation/appeal, on crystallization, after exercise of all the legal remedies available to the company, shall be paid, over a period of four (4) years, on interest free basis.*

7) *To exempt the company/its directors/ the officers from the penal financial provisions of the Income Tax Act.*

8.5 From Central Excise Department

1) *To consider to waive all penalties, interest and liquidated damages on the demands crystallized on finalization of the appeals pending before A.P. High Court in respect of disputed demand of Rs.38.91 lakh. To also allow the company to pay the crystallized amount, on disposal of appeals pending before AP High Court, in 16 quarterly equal installments, on interest free basis.*

2) *To waive all penalties, interest and liquidated damages imposed on the promoter(s), as already decided by CESTAT.*

3) *The liabilities, which are under litigation/appeal, on crystallization, after exercise of all the legal remedies available to the company, shall be paid, over a period of four (4) years, on interest free basis.*

4) *To exempt the company/its directors/ the officers from the penal provisions of Central Excise Act.'*

(Emphasis by underlining, is by the Court)

17. Per contra, the dues under the Andhra Pradesh General Sales Tax Act are set out at paragraph 8.2 and we do find that the words 'to consider' have been inserted therein. Hence that would be construed as a positive direction. Likewise, the dues relating to the DRI and DGFT have been set out at paragraphs 8.6 and 8.7 and here too, we do not find the usage of the phrase 'to consider'. Paragraphs 8.6 and 8.7 are extracted below:-



8.6 From Directorate of Revenue Intelligence

To waive all penalties, interest and liquidated damages on the demands crystallized on finalization of the appeals pending before Chennai High Court in respect of disputed demand of Rs.81.60 lakh.

8.7 DGFT

- 1) To waive the demand raised by DGFT of Rs.81.60 lakh for fulfilment of export obligations which is on account of non-realization of sale proceeds in respect of the goods exported.*
- 2) To allow the company to consolidate licenses for non-fulfilment of export obligations.*
- 3) To expedite the process of granting waivers and approvals, as recommended by the JDGFT, Hyderabad.*

18. We have perused additional paper book dated 07.01.2026 wherein we find a letter dated 07.08.2009 from the DRI to Customs Department specifically requesting that the proper Customs Commissionerate implead itself in the appeal filed by the Income-Tax Department before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) challenging the Modified Rehabilitation Scheme.

19. Hence, it is very clear that the Customs has been fully cognizant of the matter from the start and have had adequate opportunity to put forth their objections in relation to the Modified Rehabilitation Scheme. The BIFR has consciously used the phrase ‘to consider’ only in regard to Income tax and Central Excise dues, leaving no avenue open for any other interpretation.

20. In fact, the implead petition filed by the Commissioner of Customs specifically refers to the directions under paragraph 8.6 of the Modified



Rehabilitation Scheme. Hence, we are unable to accept the argument of the learned counsel for the respondents to the effect that no positive direction has been issued in respect of the demand of Rs.81.60 lakhs raised under Order-in-Original dated 28.03.2000. This argument is rejected.

21.The second argument specifically put forth by Mr.Santhanaraman is that there is no reference to the customs case anywhere in paragraphs 8.6 or 8.7. Though there is specific reference to the demand of Rs.81.60 lakhs in paragraph 8.7, this is not a demand raised by the DGFT. He would hence submit that the subject matter of Order-in-Original dated 23.08.2000 has been left untouched under the Modified Rehabilitation Scheme.

22.We are unable to accept this argument as well as we believe it is hyper-technical and would go against both the letter and spirit of the rehabilitation ordered by the BIFR. It is true that the demand arises out of an order in original passed by the Customs Commissioner. However, the scheme of the Customs Act provides for investigation to be conducted, and issuance of show cause notice, by the DRI in respect of violations that relate to the DGFT.

23.In the present case, the violation relates to non-fulfilment of export obligations which comes under the ambit of the DGFT, specifically referred to under paragraph 8.7 of Modified Rehabilitation Scheme. Then again, once show cause notice for the violations are issued by DRI, the adjudication is to be completed by the Customs Commissioner who would then pass the Order-in-Original, as in this case.



24.Hence, we are unable to accept the position that merely because the Commissioner (Customs), as an authority, has not been mentioned in paragraphs 8.6 and 8.7 of the BIFR order, that demand is any different from the demand raised under the order in original dated 23.08.2000. In fact, both in paragraphs 8.6 and 8.7 there is reference to the demand of Rs.81.60 lakhs which matches identically with, and is the same as the demand under Order-in-Original dated 28.03.2000. Hence, we reject this argument as well.

25.The third argument put forth by the respondent relates to the directions for consolidation of licences at paragraph 8.7(2) of the Modified Rehabilitation Scheme. Learned counsel state that, as on date, there are only two licences that are available, and two have already been redeemed. This would constitute a question of fact with which we need not concern ourselves seeing as the consolidation of licences would only be necessary to fulfil the direction relating to the waiver of demand.

26.Since we have accepted that the waiver of demand under paragraph 8.7(1) constitutes a positive direction to the Customs Department/DGFT/DRI to enure in favour of the petitioner, there is no need for us to look into the other directions issued by the BIFR.

27.The mandamus as sought for in WP.No.11404 of 2011 is issued. The respondents will take note of the directions under paragraphs 8.6 and 8.7, particularly paragraph 8.7(1) and give effect to the same. In light of WP.No.11404 of 2011 having been allowed, the appeal filed by the petitioner



before the CESTAT becomes superfluous, and as a sequitur, the impugned order would have to go. Necessary orders be passed by the CESTAT to give effect to the directions under this order. These writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

(A.S.M.,J.) (M.S.K.,J.)
07-01-2026

vs

Index: Yes

speaking order

Neutral Citation: Yes

To

- 1.The Director General of Foreign Trade,
DES-V, Udyog Bhavan,
New Delhi-110011.
- 2.The Joint Director General of Foreign Trade,
Kendriya Sadan, Sutan Bazaar,
Hyderabad-500095.
- 3.The Director of Revenue Intelligence,
Hyderabad Regional Unit,
D.No.6-3-628/9, Reveindra Nagar Colony,
Khairatabad, Hyderabad (A.P.)
- 4.The Commissioner of Customs,
Custom House,
60, Rajaji Salai, Chennai-1.
- 5.The Assistant Commissioner of Customs
(Group-7 DEEC), Custom House,
60, Rajaji Salai, Chennai-1.
- 6.The Superintendent of Central Excise,
Bollaram -III Range,
Hyderabad B-Division,
Hyderabad (A.P.).



WEB COPY

WP Nos.11404 & 10265 of 2



**DR.ANITA SUMANTH J.
AND
MUMMINENI SUDHEER KUMAR J.**

VS

**WP Nos.11404 & 10265 of 2011
and MP.Nos.1 & 2 of 2011**

07-01-2026