

SUPREME COURT OF INDIA

Granules India Ltd.

Vs.

Union of India

C.A.No.593-594 of 2020

(Navin Sinha and Krishna Murari,JJ.,)

23.02.2020

JUDGMENT

Navin Sinha,J.,

SLP(Civil)No.30371-30372 of 2017

1. Leave granted.
2. The appellant is aggrieved by orders dated 07.12.2016 and 14.06.2017, rejecting the writ petition as also the review application arising from the same.
3. The appellant, during the year 1993 imported 96 tons of the chemical “Acetic Anhydride” under three Bills of Entry bearing nos. 290, 291 and 300 dated 01.12.1993, 01.12.1993 and 14.12.1993 through the Inland Water Container Depot (ICD), Hyderabad under the Advance Licence Scheme. It claimed clearance of the consignment free of import duty in terms of Customs Notification nos. 203/1992, 204/1992, both dated 19.05.1992. The notification contained a scheme permitting import without payment of customs duty subject to fulfilment of certain norms and conditions. The Notification nos. 203/1992 and 204/1992 were amended by a Notification no. 183/1993 dated 25.11.1993, by which the subject imports became liable for duty, the exemption having been withdrawn. The Notification dated 25.11.1993 was further amended by another clarificatory Notification no. 105/1994 dated 18.03.1994 permitting the import of the chemical without customs duty subject to certain terms and conditions. The clarificatory notification was necessitated to obviate the difficulties faced by the importers like the appellant, who had imported the chemical under the advance licence issued by the Director General of Foreign Trade prior to the amendment Notification no. 183/1993 dated 25.11.1993.
4. The appellant was allowed to clear the consignments under the aforesaid three Bills of Entry without payment of duty. Subsequently the respondents issued show cause notice under Section 28 (1) of the Customs Act, 1962 with regard to the same consignments as

having been imported after 25.11.1993. The appellant made a representation on 20.11.1997 seeking exemption. It was considered favourably in respect of three other consignments under Bill of Entry No.312 dated 12.09.1993, Bill of Entry No.28 dated 10.02.1994 and Bill of Entry No.27 dated 09.02.1994. The entire consignments were imported under the same advance licence. In pursuance of the show cause notice the appellant was held liable to duty by order dated 12.2.1998 with regard to the consignments under three Bills of Entry bearing nos.290, 291 and 300 dated 01.12.1993, 01.12.1993 and 14.12.1993 respectively though these were also under the same advance licence. The respondents while considering the reply to the show cause notice and fixing liability for payment of customs duty did not make any reference to their notification dated 18.03.1994. The Commissioner (Appeals) on the same reasoning rejected the appeal leading to the institution of the writ application.

5. Dismissing the writ application, the High Court opined that no mandamus for exemption could be issued. The consignments were admittedly imported after 25.11.1993 and before the clarificatory notification dated 18.03.1994. Thus, there was no arbitrariness on part of the respondent. The appellant preferred a review application inter alia relying upon a Division Bench order of the Andhra Pradesh High Court in *Shri Krishna Pharmaceuticals Limited vs. Union of India*¹. Rejecting the plea, the High Court opined that since the appellant did not produce the clarificatory notification along with the writ petition and neither were the respondents aware of the clarificatory notification the appellant was not entitled to any relief.

6. Shri B. Adinarayana Rao, learned senior counsel appearing on behalf of the appellant, submitted that denial of exemption to the consignment actually imported after 25.11.1993 under the advance licence obtained prior to 19.05.1992 notwithstanding the clarificatory notification dated 18.03.1994 holding the appellant liable for customs duty is completely unsustainable. Special Leave Petition (Civil) No.14288 of 2004 (CC No.5418/2004) preferred against the order in *Shri Krishna Pharmaceuticals Limited* (supra) was dismissed. The mere failure to enclose a copy of the notification could not be a ground for denial of relief. Denial of exemption in the facts and circumstances of the case in view of the statutory notifications were per se arbitrary.

7. Learned counsel appearing for the State supported the order of the High Court and urged that the consignments having been imported after withdrawal of the exemption and before issuance of the clarificatory notification was justified.

8. We have considered the submissions on behalf of the parties and are of the considered opinion that the order of the High Court is completely unsustainable. The entire consignment was imported under one advance licence issued to the petitioner prior to 19.05.1992. The fortuitous circumstance that part of the consignment was actually imported prior to 25.11.1993 and the rest subsequent thereto is hardly relevant in view of the clarificatory notification dated 18.03.1994 that the exemption would continue to apply subject to fulfilment of the specified terms and conditions. It is not the case of the respondents that the consignments imported subsequently did not meet the terms and

conditions of the exemption. In *Shri Krishna Pharmaceuticals Limited (supra)*, the High Court observed as follows:

“7. ...Obviously, the petitioner had the facility of exemption from payment of the customs duty under the scheme known as Advance License Scheme, but the same was banned through notification dated 25.11.1993 and later through another clarificatory notification the same was extended by Notification dated 18.3.1994. Thus, since the Government itself has clarified by its second notification providing exemption, we are inclined to hold that the petitioner shall be entitled to be exemption for all the three consignments as long as the three consignments are imported under the Advance License scheme. Moreover, it is not the case of the respondents that these three consignments are not covered under the Advance License scheme.”

9. It is unfortunate that the High Court failed to follow its own orders in a similar matter. The High Court further gravely erred in holding that the authorities of the State were also unaware of the clarificatory notification and neither did the appellant bring it on record. The State is the largest litigant as often noted. It stands in a category apart having a solemn and constitutional duty to assist the court in dispensation of justice. The State cannot behave like a private litigant and rely on abstract theories of the burden of proof. The State acts through its officer who are given powers in trust. If the trust so reposed is betrayed, whether by casualness or negligence, will the State still be liable for such misdemeanor by its officers betraying the trust so reposed in them or will the officers be individually answerable. In our considered opinion it is absolutely no defence of the State authorities to contend that they were not aware of their own notification dated 18.09.1994. The onus heavily rests on them and a casual statement generating litigation by State apathy cannot be approved.

10. We can do no better than quote the following extract from *National Insurance Co. Ltd. vs. Jugal Kishore*², observing as follows: -

“10. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in a claim petition that its liability is not in

excess of the statutory liability it should file a copy of the insurance policy along with its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.”

11. The impugned orders are therefore held to be unsustainable and are set aside. The appeals are allowed.

Judgment Referred.

¹(2004) 173 ELT 014

²(1988) 1 SCC 0626