

[3438]
IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

FRIDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
AND
THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU

IA No. 1 OF 2023
IN
WP NO: 24034 OF 2023

Between:

Sarveshwar Foods Ltd., Seora Village , Baba Fareed Nagar, Dharap P.O, Bishnah-Kunjiwani Road, Jammu, India -181132, Represented by its Authorized Signatory, Mr. Garikikina Sanjeeva Rao.

...Petitioner
(Petitioner in WP 24034 OF 2023
on the file of High Court)

AND

1. Union of India, Represented by the Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. The Director General of Foreign Trade, Vanijya Bhawan, 'A' Wing, 16 Akbar Road, New Delhi -1100113.
3. The Additional Commissioner of Customs, Kakinada Customs House, Kakinada Port, Kakinada, E.G.Dist.

...Respondents
(Respondents in-do-)

Counsel for the Petitioner: SRI.CHALLA GUNARANJAN

Counsel for the Respondent Nos.1 & 2: SRI.HARINATH N. (DEPUTY SOLICITOR GENERAL OF INDIA)

Counsel for the Respondent No.3: Sri Y.N.Vivekananda, learned Senior Standing Counsel representing Sri Suresh Kumar Routhu, Standing Counsel

Petition under Section 151 CPC is filed praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to direct the Respondents to permit the petitioner to export the 1300 Mts consignment of the Petitioner containing Rice Para-boiled variant with HSN Code 1006 30 10 lying in the Customs Area of the 3rd respondent without reference to the Notification No. 49/2023- Customs dated 25.08.2023 & Notification No. 50/2023- Customs dated 25.08.2023 issued by the 1st Respondent by issuing necessary order, pending disposal of W.P.No.24034 of 2023, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case). The Court made the following:

ORDER:

Registry is directed to print the name of learned Deputy Solicitor General for Respondent Nos.1 and 2. ✓

The petitioner seeks Mandamus to declare the Notification No.49/2023-Customs, dated 25.08.2023 and Notification No.50/2023-Customs, dated 25.08.2023 issued by the 1st respondent, enhancing the export duty against the Rice Para-boiled variant with HSN Code 1006 30 10 to 20% and the action of the 3rd respondent in demanding the export duty of 20% against 1300 Mts consignment of the petitioner lying in the Customs Area within the Kakinada Port Area for export is arbitrary and illegal and consequentially to allow the 1300 Mts consignment of the petitioner containing Rice Para-boiled variant with HSN Code 1006 30 10 lying in Customs Area within the Kakinada Port Area for export without levying any export duty. ✓

In this petition, the petitioner seeks a direction to the respondents to permit the petitioner to export the above consignments of the petitioner without reference to the impugned Notification No.49/2023- Customs, dated 25.08.2023 and Notification No.50/2023- Customs, dated 25.08.2023. ✓

Heard the learned counsel for the petitioner, Sri Challa Gunaranjan and learned Senior Standing Counsel Sri Y.N.Vivekananda, representing the 3rd respondent and learned Deputy Solicitor General, representing the Respondent Nos.1 and 2. ✓

The learned counsel for petitioner referring to Notification No.49/2023-Customs, dated 25.08.2023 and also Notification No.50/2023-Customs, dated 25.08.2023, would submit that the Notification No.49/2023-Customs, dated 25.08.2023 though came into force with immediate effect i.e., 25.05.2023, however, date of duty mentioned therein, in the light of Notification No.50/2023-Customs, would come into force with effect from 16.10.2023 and as

the consignment of the petitioner has already entered into the Customs Area within the Kakinada Port Area, in that view, the petitioner need not pay customs duty as mentioned in Notification No.49/2023-Customs, dated 25.08.2023. Learned counsel would further submit that even assuming that the petitioner is liable to pay 20% duty under notification No.49/2023, since he met with both the exemption qualifications mentioned in notification No.50/2023, on that count also he is not liable to pay duty. He would further submit that since the department contends that he is liable to pay duty, which controversy can be decided during the adjudication of the main writ petition, in the meanwhile petitioner's consignment may be permitted to be exported to the destination and the petitioner is ready to offer suitable security equivalent to the tax component. ✓

Learned Senior Standing Counsel stated that in case the petitioner is permitted to export the consignment, the petitioner may be directed to offer bank guarantee issued by any Nationalized Bank equivalent to the tax value.

In view of the respective submissions, while posting the matter for filing counter after four (04) weeks, in the meanwhile, the petitioner is permitted to export his consignment i.e., Para-boiled rice of 1300 Mts in terms of shipping bills on the condition of petitioner offering a suitable Bank Guarantee issued by any nationalized Bank equivalent to 50% of the tax component and offering personal bond for the remaining 50% of the tax component. On such offering the bank guarantee and personal bond and meeting other statutory requirements, the 3rd respondent shall permit the petitioner to export the aforesaid consignment by revalidating the shipping bills, dated 21.08.2023. ✓

Sd/- M. PRABAKAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

For /

SECTION OFFICER

To,

1. The Secretary, Ministry of Finance, Department of Revenue, Union of India, New Delhi ✓
2. The Director General of Foreign Trade, Vanijya Bhawan, 'A' Wing, 16 Akbar Road, New Delhi -1100113. ✓

3. The Additional Commissioner of Customs, Kakinada Customs House, Kakinada Port, Kakinada, E.G.Dist.(1 to 3 By RPAD)
4. One CC to SRI.CHALLA GUNARANJAN Advocate [OPUC]
5. One CC to SRI.HARINATH N. (DEPUTY SOLICITOR GENERAL OF INDIA) Advocate [OPUC]
6. One CC to Sri.Suresh Kumar Routhu, Standing Counsel (OPUC)
7. The Section Officer, Writ (Non-Service) Section, High Court of Andhra Pradesh.
8. The Section Officer, Posting Section, High Court of Andhra Pradesh
9. One spare copy

SRL

HIGH COURT

UDPRJ & AVRBJ

DATED:22/09/2023

NOTE: POST AFTER FOUR WEEKS FOR COUNTERS

ORDER

I.A.No.1 OF 2023

IN

WP.No.24034 of 2023

DIRECTION

