(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)

THURSDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO

:PRESENT:
THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE A.V. RAVINDRA BABU

WRIT PETITION NO: 31099 OF 2022

Between:

1. Sarala Foods Private Limited, D.No.37-2-14, Flat-B, Vijayasindhu Residency, Market Street Kakinada, E.G.Dist, Represented by its Authorized signatory, A.Ganeswara Rao
2. Sri Seetaramanjaneya Sortex, D.No. 1-361, Yanam Road, Uppalanka, Kakinada, East Godavari District Represented by its Authorised Signatory, A.Ganeswara Rao
3. OM Agro, 37-2-14, Flat - B,Vijaya Sindhu Residency, Market Street, Kakinda, East Godavari District Represented by its Authorised Signatory, A.Ganeswara Rao.

...Petitioners

AND

1. Union of India, Represented by the Secretary, Department of Revenue, Ministry of Finance, New Delhi-1100 001.
2. The Deputy Commissioner of Customs, Customs House, Kakinada, East Godavari District, Andhra Pradesh.

...Respondents

WHEREAS the Petitioners above named through their Advocate Sri Challa Gunaranjan presented this Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of the writ of MANDAMUS declaring the action of the 2nd Respondent in demanding the petitioners to pay export duty of 20% on their Consignments which have been given .Let Export. Orders purportedly on account of the Notification No. 49/2022 - Customs dated 08.09.2022 issued by the 1st respondent as being arbitrary, illegal, unjust, without jurisdiction, contrary to provisions of the Customs Act, 1964 and violative of the fundamental rights of the Petitioners guaranteed under Articles 14 and 19(1)(g) of the Constitution of India.

AND WHEREAS the High Court upon perusing the petition and affidavit filed herein and upon hearing the arguments of Sri Challa Gunaranjan, Advocate for the Petitioners and of Sri N. Harinath, Asst. Solicitor General for Respondent No.1 and Sri Suresh Kumar Routhu, Standing Counsel for Respondent No.2, directed issue of notice to the Respondents herein to show cause as to why this WRIT PETITION should not be admitted.

You viz:

1. The Secretary, Union of India, the Department of Revenue, Ministry of Finance, New Delhi-1100 001.
2. The Deputy Commissioner of Customs, Customs House, Kakinada, East Godavari District, Andhra Pradesh.

are be and hereby directed to show cause either appearing in person or through an Advocate, as to why in the circumstances set out in the petition and the affidavit filed therewith (copy enclosed) this WRIT PETITION should not be admitted, on or before 15.11.2022, on which date the case stands posted for hearing.

IA NO: 1 OF 2022

Petition under Section 151 CPC 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 2nd Respondent to permit the petitioners to export the consignments with have been given "Let Export" Orders prior to the Notification No.49/2022-Customes dated 08.09.2022 coming into force, pending disposal of WP No.31099 of 2022, on the file of the High Court.

The Court made the following;
ORDER:

"Notice before admission.

Sri Suresh Kumar Routhu, learned Standing Counsel for Customs, takes notice on behalf of the 2nd respondent while Sri N. Harinath, learned Deputy Solicitor General, takes notice on behalf of the 1st respondent.

Sri Challa Gunaranjan, learned counsel for the petitioners, would submit that the Notification dated 08.09.2022, which came into effect from 09.09.2022, imposes 20% duty on export of Semi-milled or wholly-milled rice. According to him, the rice, which is to be exported, reached Kakinada Port much prior to the date of Notification and process of loading has also commenced. According to him, the shipping bills, as well as letter of export order, came to be issued much prior to the date on which Notification referred to above came to be issued. He further submits that if no interim order is passed, there is every possibility of ship leaving the Port and if that is done, the petitioners will be put to irreparable loss. He further submits that Section 16(1) of the Customs Act, 1962 postulates '*rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force*'.

That being the position, he would contend that the duty rate prevailing as on the date of issuance of shipping bill or export order issued under

Section 50, should be taken into consideration as the date for imposing duty, if any.

Sri Suresh Kumar Routhu, learned Standing Counsel for Customs, would submit that since the issue raised in the Writ Petition requires adjudication at length, the interest of the respondents be protected. In other words, his argument appears to be that there should be some security for the goods exported without paying 20% export duty.

To this, Sri Challa Gunaranjan, learned counsel for the petitioners, submits that the case on hand is squarely covered by the Judgment of the Hon'ble Supreme Court in *Gangadhar Narsingdas Agarwal v. P.S. Thrivikraman and others* (AIR 1973 SC 350) and as such, the question of paying duty would not arise.

We do not intend to go into the question whether the petitioners are liable to payment of export duty, at this stage.

Having regard to the facts and circumstances of the case, we direct the 2nd respondent to permit the Port authorities to load Semi-milled or wholly-milled rice belonging to the petitioners, in respect of which shipping bills are issued, prior to the date of Notification, subject to petitioners furnishing bank guarantee for 40% of the export duty within a period of one (1) week from today. The charges, if any, shall be paid by the petitioners, in case of default in furnishing bank guarantee, the Port authorities are at liberty to proceed further with regard to the stock loaded in the ship in accordance with law.

Post the matter on 15.11.2022.

Meanwhile, counters, if any shall be filed."

Sd/- M. PADMALATHA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

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To,

1. The Secretary, Union of India, Department of Revenue, Ministry of Finance, New Delhi-1100 001.
2. The Deputy Commissioner of Customs, Customs House, Kakinada, East Godavari District, Andhra Pradesh. **(1 & 2 by RPAD**- along with a copy of petition and Affidavit)
3. One CC to Sri. Challa Gunaranjan, Advocate [OPUC]
4. One CC to Sri. Suresh Kumar Routhu, Standing counsel [OPUC]
5. Two spare copies.

MSB

HIGH COURT

CPK,J & AVRB,J

DATED:22/09/2022

ORDER

POST THE MATTER ON 15.11.2022

NOTICE BEFORE ADMISSION

WP.No.31099 of 2022

INTERIM DIRECTION