

(2011) 01 SHI CK 0055
In the High Court Of Himachal Pradesh
Case No : CWP No. 5 of 2011

Satya Metals and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 265, 300A

Citation : (2011) 01 SHI CK 0055

Hon'ble Judges : Kurian Joseph, C.J;V.K. Ahuja, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The writ petition is filed with the following prayers:

(a) Issue a writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction, quashing the impugned letter dated 24.09.2010 issued by the Respondent No. 3 withdrawing the letter dated 06.04.2009.

(b) Issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction, calling for the records and quashing the impugned show cause notice dated 17.09.2009.

(c) Issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction, calling for the records and quashing the impugned detention memo and the supurdnama both dated 22.12.2010.

(d) Declare the impugned Show Cause Notice dated 17.09.2009 as illegal, arbitrary and violative of Article 14, Article 19(1)(g), 265 and 300A of the Constitution of India.

(e) Issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ order or direction.

(i) directing the Respondents to allow the benefit of exemption under Notification 50/2003-CE and allow DTA clearances from the Petitioner's Units after allowing

the said exemption;

(ii) directing the Respondents 4 not to demand differential excise duty and other demands specified in the impugned Show Cause Notice dated 17.09.2009 from the Petitioners.

(iii) directing the Respondent No. 4 and its officers to release the goods detained by them by virtue of the impugned detention memo and the supurdanama both dated 22.12.2010.

(f) Issue a writ of Prohibition or a writ in the nature of Prohibition or any other appropriate writ, order or direction restraining the Respondents No. 1 to 5, their subordinates, servants and agents from in any manner whatsoever raising demands or from taking coercive action for enforcing such demands against the Petitioner No. 1 with respect to the goods manufactured by the Petitioner cleared to the DTA by availing the exemption under Notification 50/2003-CE.

2. According to the Petitioners, they set up a unit in Himachal Pradesh based on Annexures P-5 and P-7, clarifications issued by the third Respondent, Directorate General of Export Promotion. Having set up the unit, it is submitted that the eligible exemption, as per Annexures P-5 and P-7, has been withdrawn. We find that the Petitioners had already been issued a show cause notice, Annexure P-21 by the fourth Respondent. According to the Petitioners, Directorate General of Export Promotion having withdrawn the benefits as per Annexure P-22, dated 24.09.2010, which, according to the Petitioners, has been communicated to them only on 7.12.2010. There is no point in submitting their explanation to the Commissioner since Commissioner is bound by the clarification issued by the Directorate General of Export Promotion. Why the Petitioners did not approach the Directorate General of Export Promotion is not clear. It is submitted that the Directorate General of Export Promotion may not entertain a representation. We do not think that the Petitioners are prevented from making a representation before the Directorate General of Export Promotion for appropriate clarification. Therefore, without expressing any opinion as to the merits of the contentions taken by the Petitioners, this writ petition is disposed of as follows:

In the event of Petitioners making an appropriate representation before the third Respondent within a period of 2 weeks from today, the same shall be duly considered by the third Respondent. In case, the Petitioners request for an opportunity for hearing, the same shall also be granted. Thereafter, the third Respondent shall pass a considerate order adverting to the submissions made in the representation within another two months. We make it clear that in the nature of the order we have passed, as above, we have not adverted to the contentions taken by the Petitioners before us and all those contentions are left open. We also make it clear that it will be open to the Petitioners to move the Directorate General of Export Promotion for appropriate interim arrangement in the meanwhile, in which case appropriate orders in that regard be also passed during the pendency of the matter before the Directorate General of Export

Promotion.

3. All the pending application(s), if any also stand disposed of.