(2003) 11 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21530 of 2002

Shri Krishna Pharmaceuticals Limited APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 27-11-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 173 ELT 14

Hon'ble Judges : Motilal B. Naik, J;Dalava Subramanyam, J

Bench : Division Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; T. Suryakaran Reddy, SC for CG, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—Petitioner seeks to declare the communication F. No. 605/124/2000-DBK dated 2-9-2002 issued by the Ministry of Finance, Department of Revenue, Government of India as contrary to the common orders of this Court dated 6-6-2002 in W.P. No. 25534 of 1999 and batch and consequently direct the 1st Respondent to grant exemption to the imported Acetic Anhydride and pass such other orders as the Court deems fit and proper in the circumstances of the case.

2. The controversy in this writ petition is with regard to the non-extending of benefits to the imports covered under Advance License scheme. According to the counsel for the petitioner that the petitioner was importing Acetic Anhydride and using it in the manufacture of final goods and exporting the said goods. Since the petitioner was covered under the Advance License scheme, the imports were exempted from payment of customs duty. While, so the Government of India issued Notification dated 25-11-1993 in Notification No. 183/93-Cus . withdrawing the exemption which was available to the petitioner in so far as payment of customs duty. Later, vide clarificatory Notification No. 105/94-Cus ., dated 18-3-1994, it was clarified by the respondents that the transactions

covered under Advance License Scheme are not effected. While clearing for home consumption, the department permitted the clearance of the consignments dated 3-12-1993 and 18-12-1993 vide Bill of Entry 293 and 305 respectively but detained the third consignment dated 31-12-1993 vide Bill of Entry 314, but however, after clarificatory notification the said consignment was also cleared. Thereafter, the 4th respondent issued two demand notices dated 20-1-1994 directing the petitioner to pay Rs. 5,53,391/- and 11,64,078/- towards customs duty u/s 28 of the Customs Act. Aggrieved by the said demand notices, two appeals were filed before the Appellate Commissioner. As detention order was passed by the 4th respondent, the petitioner filed a writ petition and obtained interim orders dated 26-3-1998 against the Customs Department. During the pendency of the appeals the petitioner made correspondence with the 1st respondent with regard to the exemption to the three consignments, but exemption was granted to the third consignment alone omitting the first two consignments, which should have been granted exemption automatically. In the meanwhile, the Appellate Commissioner confirmed the demand notices issued by the 4th respondent by his order dated 4-3-1999, which was carried in further appeals before CEGAT. During the hearing before the CEGAT, the counsel for the petitioner submitted that the later notification dated 18-3-1994 was clarificatory in nature and that the petitioner was entitled to relief on grounds of legitimate expectation and promissory estoppel, the Tribunal seems to have held that the matter could be decided by the High Court under Article 226 of the Constitution of India and accordingly the appeals were permitted to withdrawn with liberty to challenge the orders before the High Court. Consequently, two Writ Petitions 25534 of 1999 and 25535 of 1999 were filed in this Court. Pending the writ petitions, the 1st respondent issued a letter dated 26-6-2000 intimating the petitioner that exemption will not be granted for the first two consignments. Aggrieved by the said intimation, another writ petition in W.P. No. 13888 of 2000 was filed. All these three writ petitions fell for consideration before the Division Bench of this Court and the Division Bench by a common order dated 20-6-2002 set aside the order of the 1st respondent and directed the respondents to pass a detailed order giving reasons. The respondents by communication dated 2-9-2002 rejected the request of granting exemption in respect of the two consignments. This communication of the 1st Respondent dated 2-9-2002 is challenged in this writ petition.

3. Sri M.V.S. Suresh Kumar, learned Senior Counsel appearing on behalf of the petitioner primarily contended that the petitioner is holder of an Advance License for duty free imports of raw materials to be used in the exported goods and that as a result of Notification No. 183 of 1993, dated 25-11-1993, the exemption which was available to the petitioner was withdrawn. It is further contended that the said withdrawal was questioned before the appropriate authorities and ultimately writ petition was also filed, but however, the respondents issued a clarification vide Notification No. 105 of 1994 dated 18-3-1994 clarifying that the transactions covered under Advance License are not effected and that the

consignment relating to Bill of Entry 293 and 305 dated 3-12-1993 and 18-12-1993 respectively were allowed to be cleared without payment of customs duty as per the Advance License Scheme, but however, the clearance for the third consignment dated 31-12-1993 was denied and that as the petitioner made representations to the appropriate Ministry the third consignment was also exempted. It is further contended that as the department communicated a demand notice to levy customs duty on two consignments dated 3-12-1993 and 18-12-1993, W.P. Nos. 25534 of 1999 and 25535 of 1999 were filed and that another order which was passed by the respondents on 26-6-2000 was also questioned in W.P. No. 13888 of 2000 in this Hon''ble and this Court after hearing all the three writ petitions together directed the respondent to pass appropriate orders. It is further submitted that the respondent passed the order impugned in this writ petition, but no reasons were given. As such, it is contended that the respondents have not acted as per the directions of the High Court and therefore seeks appropriate directions from this Court.

4. We have heard Sri T. Suryakaran Reddy, Learned Standing Counsel for the respondents. According to the learned Counsel, as per the policy the respondents were justified in not clearing the consignment. According to him though the third consignment was released on the basis of clearance granted by the Ministry, the steps taken by the respondents in so far as the consignments 1 and 2 are concerned are justified. It is also submitted that under the Scheme of the Act, powers are available to the Customs authorities u/s 25 of the Customs Act and therefore, the action of the respondents is in tune with the Customs Act and no interference is called for.

5. There are two things which have to be examined by us. First whether the order passed by the respondents, impugned in this writ petition, is passed in accordance with the directions issued by this Court while disposing of the three writ petitions by a common order, the Secondly whether this Court should again directed the respondents to consider the case of the petitioner and pass an elaborate order. As far as the first aspect is concerned, it has been noticed by us that though a detailed order was passed by the Division Bench of this Court directing the respondents to pass an appropriate order, the impugned order passed by the Respondents only reflects that the petitioner is not eligible for the relief. We do not see any reason as to why the respondents have not given any details and discussed elaborately as to how the petitioner is not eligible for such a relief. Coming to the second aspect is concerned, i.e. again remanding the matter to the respondents with a direction to pass appropriate order in tune with the directives issued by this Court while disposing of the batch of the writ petitions on earlier occasion, since we have noticed that the earlier directions have not been followed by the respondent, we are of the view that sending the matter again to the concerned authorities, who have not even applied their mind on this aspect would be a futile exercise.

6. Now the question is what relief the petitioner is entitled from this Court. As

noticed by us, the petitioner had the concessions right through as it had the facility of Advance License under Quantity Board Duty Exemption Scheme and that the said scheme was in operation from 1992. As a result of such scheme, the raw material which is imported by the petitioner is used in the finished goods which are to be exported without subjecting them to payment of customs duty. But, however, the respondents banned the import of Acetic Anhydride. Later through Notification dated 18-3-1994 it was clarified that those who are covered under the Advance License scheme, they shall not be effected by the ban imposed through Notification dated 25-11-1993. Thus it is clear that though initially the petitioner was entitled to claim the exemption, such exemption was later withdrawn, but however it was clarified again within a period of four months. It is also noticed by us that out of the three consignments received by the petitioner, two consignments were initially cleared without insisting payment of customs duty but the third consignment dated 31-12-1993 was not cleared but later that was also exempted from payment of customs duty. But, the respondents again created problems with regard to the two consignments and thus the petitioner was constrained to file the writ petition. As indicated by us, the Division Bench of this Court earlier directed the respondents to pass appropriate orders on merits. As recorded by us, the order impugned now in the writ petition is neither clarificatory nor contained any reasons but it was passed in a routine manner. 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.

7. In that view of the matter, as indicated by us, remanding the matter again and again to the respondents would not serve any useful purpose and it would be a futile exercise. Since we have held that the writ petition is entitled to the benefits which are being extended to him under the Advance License Scheme, the respondent are directed to extend the exemptions for the consignments under Bill of Entry 293, dated 3-12-1993, 305, dated 18-12-1993. We desire, this exercise shall be completed within a period of 10 weeks from the date of receipt of a copy of this order.

8. The writ petition is accordingly allowed. No order as to costs.