

(2002) 06 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 25534 and 25535 of 1999 and 13888 of 2000

Sri Krishna Pharmaceuticals Limited

APPELLANT

Vs

Commissioner of Customs and Central Excise (Appeals),
Hyderabad and Others

RESPONDENT

Date of Decision : 06-06-2002

Acts Referred:

Constitution of India, 1950 — Article 14
Customs Act, 1962 — Section 25(1), 25(2)

Citation : (2002) 4 ALD 101 : (2002) 5 ALT 292 : (2002) 84 ECC 394

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : Aravind P. Datar, for M.V.S. Suresh Kumar, for the Appellant; Aravind P. Datar, SSC for Central Government, for the Respondent

Judgement

S.R. Nayak, J.—The common questions that arise for decision in these writ petitions are whether the petitioner is entitled to seek exemption from payment of duty in respect of two consignments of Acetic Anhydride covered by Bill of Entry No. 293, dated 3-12-1993 and Bill of Entry No. 305, dated 18-12-1993 and whether the refusal of Union of India (for short "UOI") in not granting exemption in respect of the aforementioned two consignments and granting exemption only in respect of the consignment covered by Bill of Entry No. 314, dated 31-12-1993 tantamounts to an invidious discrimination being arbitrary and violative of Article 14 of the Constitution and, therefore, these writ petitions were clubbed and heard together and they are being disposed of by this common judgment.

2. The background facts leading to the filing of the writ petition be noted first and they are as follows: The petitioner in all these writ petitions viz., Sri Krishna Pharmaceuticals Limited is engaged in the manufacture of pharmaceutical products and makes substantial exports. The petitioner was granted Quantity Based Advance Licence (QABAL). Under the Export Import Policy 1992-97, Chapter VII contained the Duty Exemption Scheme permitting value based and

quantity based licenses. Under these licences, duty free imports of raw materials, components, spares etc., were permissible. Under the Duty Exemption Scheme, the application for licence was based on a detailed procedure. The application had to be scrutinized by the Director-General of Foreign Trade (DGFT) and licence was granted only for specific items. On the basis of the licence granted to the petitioner under the Duty Exemption Scheme, the petitioner, was entitled to import items mentioned in the licence duty free under Notification No. 204/92-Cus, dated 19-5-1992. Accordingly, the petitioner on the basis of the licences granted to it, imported the following consignments of Acetic Anhydride during December, 1993.

Sl.No.	Date	Bill of Entry	Quantity	Duty Amount
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1.	3-12-1993	293	17114kgs	5.53.391/-
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2.	18-12-1993	305	36000 Kgs	11,64.078/-
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3.	31-12-1993	314	34228 Kgs	
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The said imports were routed through M/s Colour Chem Limited, Bombay, India from their supplier, namely, M/s. Hoechst Celanese Chemical Group Inc., Texas, USA. Firm orders for the import were placed on the supplier in the month of June/ July, 1993 on the said Colour Chem Limited, Bombay, India. The petitioner executed Irrevocable Letters of Credit dated 19-6-1993 and 1-10-1993 in favour of M/s. Hoechst Celanese Chemical Group Inc., Texas, USA. On the date when the petitioner had placed order for the supply of Acetic Anhydride, it had an Advance Licence from the DGFT in terms of the Export Import Policy. Of the three consignments, initially, the first two consignments were cleared without payment of duty on 3rd and 18th December, 1993 respectively. However, at the time of import of 3rd consignment dated 31-12-1993, the imports were not permitted on the ground that Acetic Anhydride was not eligible for the benefit of the licence because of amendments made to Notification No. 204/92. In the meanwhile, the Assistant Commissioner of Customs, Inland Container Depot, Sanathnagar, Hyderabad, issued demand notice Nos. 4/94 and 5/94, dated 20-1-1994 directing the petitioner to pay duty to the tune of Rs. 5,53,391/- and 11,64,078/- u/s 28(1) of the Customs Act, 1962 (for short "the Act"). The petitioner being aggrieved by those two demand notices filed two appeals before the Commissioner of Customs and Central Excise (Appeals), Hyderabad. During the pendency of the appeals before the Commissioner, the Assistant Commissioner of Customs, Inland Container Depot, Sanathnagar, Hyderabad, issued a common detention order directing the petitioner to pay a sum of Rs. 17,17,459/-. The petitioner represented to the department that it had approached the UOI for grant of ad hoc exemption u/s 25(2) of the Act and the matter was pending before the UOI. Despite this, as the Assistant Commissioner of Customs, Inland Container Depot and the Commissioner of Customs and Central Excise, Hyderabad, threatened to take coercive steps, the petitioner filed WP No. 7017 of 1998 in this Court. This Court by its order dated 26-3-1998

disposed of the writ petition by directing the petitioner to work out the remedies provided under the Act and while doing so, the court restrained the department from taking coercive measures to recover the duty till further orders and that the detention order dated 6-3-1998 was also kept in abeyance. The Court also directed the petitioner not to alienate any asset except the stock-in-trade. In the meanwhile, the Assistant Commissioner of Customs, Inland Container Depot had confirmed the demands by his order dated 29-11-1997 on the ground that the Exemption Order did not cover the first two consignments. The petitioner being aggrieved by the said order of the Assistant Commissioner of Customs, Inland Container Depot, preferred two appeals to the Commissioner of Customs and Central Excise (Appeals) and they were dismissed on 4-3-1999 on the ground that the exemption order dated 17-8-1994 issued by the UOf did not cover the earlier two consignments. Further appeals were preferred by the petitioner before the customs, Excise Gold Control (Appellate) Tribunal (CEGAT) raising issues regarding clarificatory nature of the notifications, applicability of the principles of promissory estoppel, legitimate expectation, etc., The Tribunal (CEGAT) felt that those issues raised by the petitioners in the appeals could be considered only by the High Court and according to the petitioner, the Tribunal directed it to file a Memo in that regard and accordingly the petitioner filed a Memo to withdraw the appeals reserving liberty to file writ petitions before this Court. That Memo filed by the petitioner was disposed of by order dated 6-9-1999 giving liberty to the petitioner to file writ petitions before this Court. Accordingly, WP No. 25534 of 1999 and 25535 of 1999 were filed by the petitioner against the orders in appeal passed by the Commissioner of Customs and Central Excise (Appeals). Writ Petition No. 25534 of 1999 was filed by the petitioner with respect to Bill of Entry No. 305, dated 18-12-1993 and WP No. 25535 of 1999 was filed with regard to Bill of Entry No. 293, dated 3-12-1993. When the above writ petitions were pending, it was stated before the Court on 23-12-1999 on behalf of the petitioner that after the adjudication order was received demanding the duty, representations were made to grant exemption in respect of the earlier two consignments covered by Bill of Entry No. 293, dated 3-12-1993 and Bill of Entry No. 305, dated 18-12-1993, but the UOI did not pass any order on those representations. Under those circumstances, this Court by its order dated 23-12-1999 directed the Government of India to take appropriate decision on the representation of the petitioner expeditiously preferably within a period of four weeks from the date of receipt of copy a of the order and adjourned the hearing of the writ petitions. Thereafter, the Government of India by its letter dated 26-6-2000 informed the petitioner that the Government of India decided not to include the two consignments imported by the petitioner vide Bills of Entry No. 293, dated 3-12-1993 and No. 305, dated 18-12-1993 in the ad hoc Exemption Order No. 153, dated 17-8-1994. The petitioner being aggrieved by the said letter has filed WP No. 13888 of 2000.

3. We have heard Sri Aravind P. Datar, learned senior Standing Counsel for Central Government. Sri Datar contended that the 1st amendment vide

Notification 183/93-Cus, dated 25-11-1993, had completely banned Acetic Anhydride, but within four months the said prohibition was lifted with regard to actual users (manufacturer of export goods). Therefore, except for the four months period, Acetic Anhydride was always eligible for import by actual users. The learned Counsel submitted that the clear intention of the exemption was only to deny the benefit to importers who were indulging in trading activities and not to the actual users and therefore the subsequent amendments made by Notification No. 105/94, dated 18-3-1994 are only clarificatory. Sri Datar in support of his submission placed reliance on the judgment in *Kashi Conductors Vs. Union of India*, Sri Datar next contended that keeping in mind the principle of permitting imports for actual users and the conditions satisfied in ad hoc Exemption Order No. 153, dated 17-8-1994, the UOI should have granted the Ad hoc Exemption in respect of all the three consignments. Sri Datar submitted that when imports by other parties also made in December, 1993 or February, 1994 were allowed to be cleared at nil rate of duty on the basis of exemption, there was no justification for denying the benefits for the two consignments which had already been cleared. Sri Datar submitted that in the facts and circumstances of the case, the petitioner had a legitimate expectation that it was eligible for exemption in terms of Section 25 of the Act in respect of all the consignments imported in December, 1993, and, therefore, the action of the Government of India in refusing exemption in respect of the first two consignments already imported violated the doctrine of legitimate expectation. In support of his submission, Sri Datar placed reliance on the judgments in *Punjab Communications Limited v. Union of India* (1994) 4 SCC 729, *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, , and *M.P. Oil Extraction and Another Vs. State of M.P. and Others*, . Sri Datar next contended that since the petitioner entered into confirmed contracts and executed Letters of Credit on 19-6-1993 and 31-10-1993 when import of Acetic Anhydride was permissible without restriction and since even the subsequent restrictions imposed by way of amendments are not applicable to actual users, the contracts already made could not be affected by any subsequent change in policy. Sri Datar placed reliance on the decisions of the Supreme Court in *Union of India and others Vs. Kanunga Industries*, , and *Rizwan International Vs. Union of India and another*, . Sri Datar also contended that the fundamental requirement with regard to exemption before the and after the amendment to Section 25 of the Act was that the duty should be leviable on the goods. Sri Datar contended, in the present case, the exemption order is not with respect to a particular consignment, but exemption had been granted to various importers at Hyderabad, Bombay and Baroda who imported Acetic Anhydride between December, 1993 to February, 1994 subject to fulfilment of three conditions viz., (i) Acetic Anhydride should be covered by a value based/quantity based exemption certificate issued by the licensing authority as per Notification No. 204/92; (ii) The exemption certificate/licence must be in respect of value, quantity, description, quality and technical characteristics; and (Hi) Importer complied with all conditions of the Notification as amended vide notification No.

105/94-Cus, dated 18-3-1994 and since the petitioner has satisfied all the above conditions with respect to all the three consignments imported by it during the month of December, 1993, it would be eligible for exemption. Sri Datar also contended that granting exemption for specific imports by a particular importer, and denying exemptions to other consignments to the same importer during the relevant period and granting exemption for various consignments of other importers during the same relevant period would be totally arbitrary, unreasonable and violative of Article 14 of the Constitution, Sri Datar pointed out that the UOI has not stated any reason to refuse exemption in its communication dated 26-6-2000 impugned in WP No. 13888 of 2000 and that it is not a speaking order and it demonstrably reflects non-application of mind on the part of UOI. Sri Datar, lastly contended that if the exemption is denied to the earlier two consignments, it will be completely prejudicial to the economic interest of the petitioner and that the petitioner would never have entered into import contracts if it were to know that it was not entitled to exemption, because, the rate of import duty was exorbitant and domestic Acetic Anhydride was cheaper.

4. Learned senior Standing Counsel for Central Government, on the other hand, contended that right to seek exemption u/s 25 of the Act is not a vested right and the petitioner is not entitled to seek exemption from duty in respect of the first two consignments merely because the third consignment is exempted from duty, as a matter of course or as a matter of right. The learned senior Standing Counsel submitted that the classification made by the UOI on the basis whether consignment is already cleared or is pending clearance is a reasonable classification and that such classification is permissible in law, and, therefore, can be sustained on the touchstone of Article 14 of the Constitution. The learned senior Standing Counsel placing reliance on the judgment of the Supreme Court in *Amber Woollen Mills Vs. Collector of Customs, Delhi*, , contended that what is relevant is what was the law on the date of submission of the Bill of Entry and not the law on the date on which the petitioner entered into contracts with the suppliers. The learned Standing Counsel contended that the amendment brought about vide Notification No. 105/94, dated 18-3-1994 is legislative in character and, therefore, the plea of estoppel advanced by the learned senior Counsel for the petitioner is misconceived. The learned Standing Counsel placing reliance on *Glass Chatons Importers and Users' Association Vs. Union of India (UOI)*, , submitted that the burden of proof that the refusal to exempt is not in the public interest, is on the petitioner and not on the department and the petitioner has failed to discharge that burden. The learned Standing Counsel submitted that the width and scope of discretionary power vested in UOI u/s 25 of the Act is very wide and, therefore, the classification made by the Government of India between the goods already cleared and the goods pending clearance is sound and reasonable. Learned Standing Counsel placing reliance on the judgment of the Delhi High Court in *Mis. Punjab Dairy Development Corporation Ltd. Vs. Union of India and Others*, , contended that simply because the earlier two consignments had gone past the customs barrier without paying duty, it did not mean that the

liability to pay duty had come to an end. The learned Standing Counsel further submitted that Section 25 of the Act does not require giving of reasons by the UOI while rejecting a claim for exemption and therefore nondisclosure of the reasons which weighed with the UOI in passing the impugned order would not vitiate the impugned order. Alternatively, the learned Standing Counsel contested the correctness of the argument of the learned senior Counsel that there was total lack of mind on the part of the UOI in considering the application of the petitioner for exemption and passing the impugned order.

5. Although, as noticed above, many contentions were raised and argued before us by the learned Counsel for the parties, we find that the order of the Government of India impugned in WP No. 13888 of 2000 rejecting the application of the petitioner for grant of exemption from duty cannot be sustained, if not for any other reason but for the reasons viz., (i) that it does not disclose any valid reasons to reject the claim of the petitioners, and (ii) that the impugned order does not reflect the application of mind on the part of the UOI.

Sub-sections (1) and (2) of Section 25 read as follows:

25. Power to grant exemption from duty :--

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, any goods, of strategic or secret nature, or for charitable purpose, on which duty, is leviable."

Under the Act, the goods become imported goods as soon as they enter the territorial waters of India. In others words, when goods from a place outside India are brought to India as defined u/s 2(27) of the Act, i.e., into the territorial waters of India, they become imported goods and such goods continue to be imported goods until cleared for home consumption. The imported goods would be chargeable to customs duty as laid down u/s 12 of the Act. But by virtue of some of the provisions of the Act, duty may not be leviable or remission or abatement of duty may be granted on imported goods either because they are damaged, pilfered or not unloaded. The imported goods are also not chargeable to customs duty if the Central Government chooses to exempt from duty by issuing a notification contemplated u/s 25 of the Act. Section 25 contemplates two kinds of exemptions. Under Sub-section (1), the Government, may exempt absolutely or subject to conditions, goods of any specified description from the whole or any part of duty of customs levilable thereof. A notification u/s 25(1) of the Customs Act exempts goods themselves from the levy of duty u/s 12. Whereas, a notification under Sub-section (2) of Section 25 does not exempt

goods from levy of the tariff. A notification under Sub-section (2) of Section 25 only exempts by special order in each case from payment of duty under circumstances of exemptional nature. While under Sub-section (1) of Section 25, goods themselves are exempt from the levy of duty, under Sub-section (2) of Section 25, goods themselves are not exempted from the levy of duty, and the goods continue to be chargeable to duty but the importer is only exempted from payment of such duty.

6. The power conferred upon the Central Government under Sub-sections (1) and (2) of Section 25 is a statutory discretionary power. Although no importer can seek exemption from levy of duty or payment of duty as a matter of course or as a matter of right, the donee of the power i.e., the Central Government is expected to exercise that statutory discretionary power reasonably, fairly and in the public interest. All the postulates of Article 14 of the Constitution should be read into the power vested in the Central Government u/s 25 of the Act. It was the specific case of the petitioner before the UOI that it has satisfied all the conditions specified in ad hoc Exemption Order No. 153, dated 17-8-1994 in respect of the three consignments and, since the UOI in its discretion thought it fit to grant exemption in respect of consignment covered by Bill of Entry No. 314, dated 31-12-1993, it should also grant exemption in respect of the consignments covered by Bills of Entry No. 293, dated 3-12-1993 and No. 305, dated 18-12-1993. It was also the case of the petitioner, that the petitioner entered into confirmed contracts and executed Letters of Credit on 19-6-1993 and 31-10-1993 when import of Acetic Anhydride was permissible without restriction and since even the subsequent restrictions imposed by way of amendments are not applicable to actual users, the contracts already made by the petitioners for import could not be affected by any subsequent change in policy. It is trite that grant of exemption or refusal to grant exemption has far-reaching financial consequences looking from the angle of the petitioner particularly in the context of the case stated by the petitioner before the UOI. Therefore, it becomes all the more necessary for the UOI to consider the claim of the petitioner objectively, fairly, reasonably and keeping in mind the object of the provisions of Sub-sections (1) and (2) of Section 25 of the Act. In a matter like this, where the exercise of discretionary power conferred upon the UOI u/s 25 has profound economic consequences, the discretion vested in the UOI should be brought-to-bear on facts and circumstances of each case and a just and fair decision is taken. The Bland Committee in Australia in its interim report at para (9), page 5 describes the discretionary powers in the following words:

"Discretions may, as well, depend on the existence of a series of pre-conditions being established to the satisfaction of the person having the power. These pre-conditions may relate to readily ascertainable facts, or have elements that raise intricate questions of law, embrace very vague considerations such as whether an applicant for a pension is of good character and deserving of a pension or raise questions calling for extremely delicate judgments such as whether a woman has been deserted without just cause. Entitlements to some benefits may

be specifically excluded, unless the person with the discretion thinks it would be unfair for this to happen. There are powers to admit or accept and to refuse or reject claims; powers to grant less than the maximum or a prescribed benefit; powers to determine degrees of disablement; powers to select beneficiaries for benefits; powers to seize and forfeit goods; powers to exempt persons from statutory obligations; powers to remit and make rebates; powers to authorize what is otherwise explicitly prohibited by legislation; powers whose exercise can advance or prejudice a career, a livelihood or a cherished ambition; and there are powers whose exercise may impinge deeply on property rights, with sometimes no redress for the persons affected."

The above statement of the Bland Committee highlights the important role which discretionary powers play in the administrative processes. No doubt, the UOI u/s 25 of the Act has options of granting exemption or refusing exemption. In other words, it has choices. Davis in his Treatise - "Discretionary Justice" says:

"A public officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction."

The object behind the discretionary power conferred upon the UOI, to our mind is for achieving individualization of justice and sparing the importers from the burden of payment of duty if they make out valid grounds for exemption so that the Commerce and Industry in the country flourish to sub-serve the economic interest of the Nation. Davis in the same Treatise further says:

"I think the greatest and most frequent injustice occurs at the discretion end of the scale, where rules principles provide little or no guidance, where emotions of deciding officers may affect what they do, where political or other favouritism may influence decisions, and where the imperfections of human nature are often reflected in the choices made."

Prof. Wade in his Article "Courts and Administrative Process"(1949) 63 LQR 173 has observed:

"Wide discretion there must be in all administrative activity, but it should be discretion defined in terms which can be measured by legal standards lest cases of manifest injustice go unheeded and unpunished."

In these writ petitions, the delegation of the power under Sub-section (2) of Section 25 of the Act in favour of UOI to grant exemption is not questioned. The argument of the learned senior Counsel is that the exercise of the power by the UOI in rejecting the claim of the petitioner for grant of exemption is totally arbitrary and violative of Article 14 of the Constitution. As seen from the provisions of sub-sections (1) and (2) of Section 25, the only condition specified in exercise of the power is that that power should be exercised in the public interest. From the provisions of sub-sections (1) and (2), we do not find any other limitations or restriction on the power conferred upon the UOI. But, at the same time, it is well settled that the statutory discretionary power is required to

be exercised in accordance with the postulates of Article 14 of the Constitution, that is to say, reasonably, fairly and in public interest and in keeping in mind the objective behind the discretionary power. Since the guarantee of equal protection enshrined in Article 14 embraces the realm of "State action", it would extend not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities upon him, but also in the matter of granting privileges. For example, granting licences for entering into any business, inviting tenders for entering into a contract relating to Government business, or issuing quotas, giving jobs. This position is well settled by the binding pronouncements of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, *One facet of Article 14 is that when a statute confers too broad and unregulated discretionary power on an authority, the statute itself may be held void under Article 14. That is not the question that arises in the present case. The third dimension of the equality clause developed by the Courts over a period of time starting from E.P. Royappa Vs. State of Tamil Nadu and Another*, *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, to cite a few, illegalises the discriminatory or arbitrary action by the administration. Article 14 mandates that the authority entrusted with the discretionary power under the Statute should not act in a discriminatory or arbitrary manner and could not treat equals differently and it should follow the policy or the principle laid down in the statute to regulate its discretion. In other words, Article 14 embodies a guarantee against the administrative/statutory arbitrariness. Therefore any action of the administrative or the statutory authority which may be regarded as arbitrary, discriminatory or unequal, may be challenged under Article 14 of the Constitution. In *Bachan Singh v. Punjab* AIR 1982 SC 1336, *Bhagwati, J*, has emphasized that Rule of Law which permeates the entire fabric of the Constitution of India and indeed forms one of its basic features excludes arbitrariness. The learned Judge has said : "Whenever we find arbitrariness of unreasonableness there is denial of rule of law." Arbitrariness is antithetical to equality. In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, *the Supreme Court has observed:*

"Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equality of protection by law."

Further, in *Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd. and Others*, *the Supreme Court has observed as follows:*

"Our Constitution envisages a society governed by rule of law. Absolute

discretion uncontrolled by guidelines which may permit denial of equality before law is the anti-thesis of rule of law. Absolute discretion not judicially reviewable inheres the pernicious tendency to be arbitrary and is therefore violative of Article 14. Equality before law and absolute discretion to grant or deny benefit of the law are diametrically opposed to each other and cannot co-exist."

The third dimension of Article 14 transcends the classificatory principle. Article 14 after Royappa (supra) is not equated with the principle of classification and by virtue of dynamic and liberal construction placed on its postulates, the scope of Article 14 has become much broader. Therefore, if a law is arbitrary or irrational, it would fall foul of Article 14. Therefore, when an applicant under Article 226 of the Constitution complains that his claim made to a statutory authority has been rejected arbitrarily, and without taking into account the circumstances and the factors germane to the decision-making, it becomes the duty of the Court to see whether the claim of the petitioner has been treated by the statutory authority fairly, reasonably and keeping in mind the statutory objectives or the objects behind the grant of discretionary power. This exercise on the part of the Court could be effective only if the donee of the power in the impugned action states the reasons or factors which weighed with it in reaching a particular decision. In other words, if reasons are not forthcoming in the impugned action, regardless of the fact whether the statute mandates the disclosure of reasons or not, it becomes practically impossible for the reviewing Court to appreciate the validity of the decision. Lord Denning in *Breen v. AEU* [1971] QB 175, has emphasized that the giving of reasons for a decision is one of the fundamentals of good administration. The duty to give reasons is a safeguard against arbitrariness. Compulsion of disclosure of reasons guarantees consideration at the hands of the donee of the statutory power and it minimizes chances of unconscious infiltration of personal bias or unfairness in the conclusion. The recording of reasons also ensures that the authority applies its mind to the case and enables the reviewing Court to see whether the reasons which impelled the authority to take the decision in question are germane to the content and scope of the power vested in the authority. If the Court finds that the reasons recorded by the authority are totally irrelevant, the exercise of the power becomes void as held in *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, , and *Sudhanshu Sekhar Roy and Others Vs. Regional Transport Authority, Howrah and Others*, . If a statute imposes the requirement of giving reasons for taking a decision and the authority fails to disclose reasons, the statutory duty to record reasons for decision can be enforced through a writ of Mandamus.

7. The order of the Government of India in F.No.605/184/93-DBK, dated 26-6-2000 communicated to the petitioner reads as follows:

"F.NO. 605/184/93-DBK Government of India Ministry of Finance Department of Revenue

Dated 26th June, 2000

To M/s. Shri Krishna Pharmaceutical, Limited C-4, Industrial Area, Uppal, Hyderabad.

Gentlemen,

Sub:- Duty Free Import of Acetic Anhydride against Advance Licence-Regarding.

Please refer to your letter dated 12-5-1994, addressed to the then Commissioner (Drawback) on the above subject.

In this connection, I am directed to inform you that vide ad hoc Exemption Order No. 153, dated 17-8-1994, Central Government had consciously decided to grant exemption from duty to only those consignments which were pending for clearance from Customs. Therefore, only your pending consignment imported vide Bill of Entry No. 314, dated 31-12-1993 had been included therein. Since the other two consignments imported by you vide Bills of Entry No. 293, dated 3-12-1993 and No. 305 dated 18-12-1993 had already been cleared from Customs, it was decided not to include them in the ad hoc Exemption Order No. 153, dated 17-8-1994.

Yours faithfully, Sd/- (Sandeep Ahuja) Under Secretary (DBK)"

As already noticed above, neither Section 25 of the Act nor any other provisions of the Act do insist that the Central Government should disclose reasons either for grant of exemption or refusal to grant exemption, though both sub-sections (1) and (2) of Section 25 of the Act provide that the Central Government may by issuing notification, exempt the imported goods from levy of duty of customs or the payment of duty if it is satisfied that it is necessary in the public interest so to do. Therefore, in order to exercise the discretion vested in the Central Government either way, it becomes necessary for the Central Government to record its satisfaction whether or not it is necessary in the public interest to grant exemption or not. Very conspicuously, the required satisfaction of the Central Government is missing in the impugned order. Added to this, as noticed above, all postulates of Article 14 i.e., fairness, reasonableness, non-arbitrariness should be read into the exercise of the discretionary power vested in the Central Government. While exercising statutory discretionary power, it also becomes necessary for the donee of the power to apply its mind to all relevant considerations and eschew irrelevant considerations. Answers to the questions whether the donee of the power has applied its mind or not or whether the donee of the power has taken into account relevant considerations and/or eschewed irrelevant considerations or not could be found by the Courts only if the reasons are disclosed in the impugned orders. If the reasons are disclosed, it would be possible for the Court to answer the above questions properly and effectively. If no reasons are disclosed, effective judicial review would become rather difficult. It is not to state that reasons, in each and every case, should be disclosed in the order, but, at least the reasons should exist in the records and those reasons should be made, available to the Court when the order is impugned in a judicial review. That is why in order to strengthen their control

over the exercise of discretionary powers, the Courts have taken the position that the authorities should disclose reasons in support of its decisions regardless of the fact whether the statute so mandates or not. In *Padfield v. Minister of Agriculture and Fisheries* [1968] 1 All ER 694, the majority of the Law Lords participating in the decision have clearly taken the position that while there may not be a positive obligation on the concerned decision-making authority to state reasons for its decisions, yet if no reasons are stated, the Court will be entitled to presume that the authority has not good reasons to state for reaching the impugned decision and the Court can then decide the matter accordingly. Lord Pearce has opined, if the Minister gives no reasons for his action, "the Court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intentions." Thus, non-revelation of reasons by the administration for a decision may lead the reviewing Court to infer that there were no reasons to disclose and thus treat the matter accordingly. In our Law, the Courts have gone beyond the *Padfield* (supra) position. The Courts usually insist that when a discretionary order is challenged the reasons for the same ought to be revealed to them even though there may be no legal obligation on the authority to give reasons to the individual concerned. The position regarding disclosure of reasons to the Court is well established now. In *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, , the services of a temporary Government servant were terminated without assigning any reason. The Court emphasized that where the petitioner has made a charge of "unfair discrimination with specificity," or imputed improper motives to the authority, it is "the duty of the authority to dispel that charge by disclosing to the Court that reason or motive which impelled it to take the impugned action. In *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , the Supreme Court quashed a discretionary decision because no reasons were adduced at any stage by the concerned authority for taking the particular action. The Supreme Court said that presumably there were not reasons to give for the decision in question and so quashed the same.

8. In the instant case, in the first place, the reason given by UOI to reject the claim of the petitioner, in our considered opinion, is totally extraneous and irrelevant to the decision-making. Taking decision solely on the basis whether the imported goods are cleared or pending clearance without taking into account the relevant circumstances set out by the petitioner in their representatives/applications and without examining whether such exemption would be in the public interest or not as mandated by the statute, is not the legal way of exercising discretionary power conferred upon the UOI u/s 25 of the Act. We are at a loss to understand, if the 3rd consignment is entitled to exemption, how the 1st and 2nd consignments which are anterior in point of time to the 3rd consignment and which are also similarly circumstanced in every respect are not entitled to exemption. Be that as it may, the impugned order does not reflect any application of mind on the part of the UOI to the facts and circumstances stated by the petitioner in their representations and the financial prejudice that may be

caused to them in the event of refusal to grant exemption. Apart from the reasons stated in the impugned order, no satisfactory materials or office records are placed before us which could satisfy us that the UOI applied its mind to all the relevant facts and circumstances and examined the applications/ representations of the petitioner in the premise of public interest and passed the impugned order though application of mind on the part of the UOI is not reflected in the impugned order. Therefore, we are of the considered opinion that the impugned order of the UOI dated 26-6-2000 suffers not only from vice of non-application of mind but it is also invalid for non-disclosure of reasons. It is a fit case where the UOI should be directed to consider and dispose of the representations/ applications of the petitioner for grant of exemption for payment of duty u/s 25(2) of the Act afresh after taking into account all relevant materials and considerations and keeping in mind the public interest.

9. In the result and for the foregoing reasons, we dispose of these writ petitions with the following directions:

(i) the order of the Government of India, Ministry of Finance, Department of Revenue, bearing F.No.605/184/93 DBK, dated 20-6-2000 is quashed. The Government of India is directed to consider the representations/ applications of the petitioner for grant of exemption from payment of duty in respect of consignments covered by Bill of Entry No. 305, dated 18-12-1993 and Bill of Entry No. 293, dated 3-12-1993 afresh and pass appropriate reasoned order within a period of three months from the date of receipt of a copy of this order after taking into account all the relevant materials and considerations and keeping in mind the public interest.

(ii) The respondents are directed not to take any coercive steps to recover the duty till the Government of India take decision on the representations/ applications of the petitioner as directed above.

(iii) In the facts and circumstances of the case, the parties are directed to bear their own ,costs in these writ petitions.

(iv) All the contentions raised by the parties in these writ petitions which are not dealt with by us in this order, are left open to be agitated by the parties at appropriate stage.