

The Commissioner of Customs and Central Excise Vs. the Official Liquidator, High Court and Millenium Pulp and Concentrates (i) Ltd., (Formerly Anubhav Agro Tech Ltd.,) (In Liquidation) Rep. by the Official Liquidator

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Court : Chennai

Decided On : Feb-27-2007

Reported in : [2007]139CompCas591(Mad); (2008)1CompLJ181(Mad)

Judge : K. Raviraja Pandian, J.

Acts : Customs Act; Companies Act; Company Court Rules - Rule 9

Appeal No. : W.P. No. 7115 of 2007 and M.P.Nos. 1 and 2 of 2007

Appellant : The Commissioner of Customs and Central Excise

Respondent : The Official Liquidator, High Court and Millenium Pulp and Concentrates (i) Ltd., (Formerly Anubhav

Advocate for Pet/Ap. : T.S. Sivagnanam, SCGSC

Disposition : Petition dismissed

Judgement :

ORDER

K. Raviraja Pandian, J.

1. The above writ petition is filed for issuance of writ of certiorarified mandamus to call for the records relating to the Sale Notice dated 18.10.2006 published by the first respondent in Daily Newspaper dated 29.10.2006 and quash the same and forbear the first respondent from in any way permitting the removal of the goods in private banded warehouse (i.e.) plant and machinery etc., without settlement of the Customs Duty, Central Excise duty and interest payable by the second respondent.

2. Learned Counsel for the petitioner relied on the Division Bench judgment of the Andhra Pradesh High Court in the case of Union of India v. Ugam Agro Tech Limited made in W.P. No. 23601 of 2006 dated 23.11.2006.

3. The case of the petitioner is that the second respondent a Company in liquidation imported capital goods by availing duty exemption granted in favour of 100% export oriented unit under the scheme without payment of any customs duty by bonding the goods to the Department. If the export obligations are not fulfilled, the second respondent company have to pay the duty components as well as other consequential levy under the Customs Act. The Company went into liquidation and the Company Court passed an order on 21.2.2003 winding up the Company and appointed Official Liquidator as the liquidator of the Company and the Official Liquidator took charge of all the properties and affairs of the said Company under the provisions of the Companies Act. Subsequently, the claim for Customs Duty in a sum of Rs. 3,03,29,901/-, interest of Rs. 4,12,55,259/- and Central Excise Duty of Rs. 5,24,837/- and interest of Rs. 5,88,814/ confirmed by order dated 8.12.2003 was made by the petitioner before the Official Liquidator in Form 66. It is the further case of the petitioner that the Official Liquidator proposed to sell the goods, which were imported duty free and bonded with the Department by sale notice dated 18.10.2006 and as such the sale has been completed on 4.11.2006. The goods mentioned in the sale notice included the bonded goods. While making the claim in respect of the above amounts, the petitioner has also requested the Official Liquidator to incorporate in the sale notice that the removal of the goods is subject to payment of duty components as quantified by the

petitioner as the goods are bonded goods. That has not been done. Hence the present writ petition with the prayer as stated above.

4. As already stated, reliance has been made by the learned Counsel appearing for the petitioner on the Division Bench Judgment of the Andhra Pradesh High Court in the case of Union Of India v. Sugam Agro Tech Limited made in W.P. No. 23601 of 2006 dated 23.11.2006 and also the decision in Commissioner of Central Excise, Pondicherry v. Indian Bank : 2006(198)ELT334(Mad) ; based on the judgments in Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. : [2001]247ITR165(SC) and State of Bikaner & Jaipur v. National Iron and Steel Rolling Corporation and Ors. : [1995]212ITR428(SC) which are all rendered in respect of crown debts.

5. I heard the learned Counsel for the petitioner and perused the materials on record.

6. There is no dispute that the second respondent Company has been wound up by the order of the Company Court of this Court and the Official Liquidator has been appointed under the provisions of the Companies Act and he has taken over the affairs of the Company and is getting direction periodically from the Company Court. The properties of the wound up company were sold and rightly the petitioner has made a claim before the Official Liquidator. The only complaint of the petitioner against the Official Liquidator is that while effecting the sale the Official Liquidator has not made endorsement in the sale notice as requested by the Department that the removal of the goods is subject to the payment of duty components as stated in the earlier paragraph which the Official Liquidator failed to incorporate in the sale notice. For that purpose, I am of the view that the writ petition cannot be maintained. The Company Court Rules gives wide powers to the Company Court to pass any orders in furtherance of justice and taking into consideration of the charge created over the properties, which were directed to be sold by the Official Liquidator under the direction of the Company Court. The request which is now made in this writ petition can very well be made before the Company court by the petitioner and appropriate direction can be obtained from the Company Court. No precedent is required that after an winding up order is

passed and after the appointment of the Official Liquidator, the entire affairs of the Company has come to the hands of the Official Liquidator controlled by the Company Court. Rule 9 of the Company (Court) Rules provides as follows:

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

7. For the foregoing reasons, the writ petition is dismissed with the observation that if the petitioner is so advised they can make recourse before the Company Court for whatever relief the petitioner is seeking for. Consequently the connected M.Ps are also dismissed. No costs.

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