

IN THE HIGH COURT OF ANDHRA PRADESH

Writ Petition No. 1824 Of 2019

ACME CLEANTECH SOLUTIONS PVT LTD

Vs

**1) UNION OF INDIA
UNDER SECRETARY, MINISTRY OF FINANCE
NORTH BLOCK, NEW DELHI-110001**

**2) DIRECTOR GENERAL (SAFEGUARDS)
DIRECTORATE GENERAL OF TRADE REMEDIES, 4TH FLOOR
JEEVAN TARA BUILDING, PARLIAMENT STREET
NEW DELHI-110001**

**3) DEPUTY COMMISSIONER OF CUSTOMS
KRISHNAPATNAM CUSTOMS HOUSE, KRISHNAPATNAM PORT AREA
MUTHUKUR-524344, ANDHRA PRADESH**

**4) COMMISSIONER OF CUSTOMS
KRISHNAPATNAM CUSTOMS HOUSE, KRISHNAPATNAM PORT AREA
MUTHUKUR -524344, ANDHRA PRADESH**

**5) DIRECTORATE GENERAL OF SYSTEMS AND DATA MANAGEMENT
HOTEL SAMRAT, CHANAKYAPURI
NEW DELHI-110021**

S V Bhatt & M Ganga Rao, JJ

Dated: February 18, 2019

Appellant Rep by: Sri Sujith Ghosh, Adv.

**Respondent Rep by: Sri B Krishna Mohan, Assistant Solicitor General of
india, Mr M V J K Kumar, learned standing counsel**

Cus - Petitioner assails Notification No. **01/2018-Customs (SG) and final findings F.No.22/1/2018-DGTR, dated 16-07-2018 issued by the respondents 1 and 2 respectively as illegal and unconstitutional etc. - They also assail the order issued by respondents 3 to 5 in BOE dated 09-02-2019 imposing safeguard duty pursuant to the impugned notification as illegal etc. - Petitioner also brings to notice that the notifications impugned in the writ petition are subject matter of challenge in the High Court of Gujarat at Ahmedabad and in the High Court of Madras and that conditional interim orders have been passed by the High Courts.**

Held: Having regard to the above circumstances, Bench allows the petitioner to remove goods from the warehouse pursuant to the petitioner depositing 50% of the duty demanded by respondents through BOE, dated 09-02-2019 and providing bond for paying the balance 50% together with the interest in the event the petitioner is not successful in the writ petition - Upon compliance, the respondents are to permit the petitioner to remove

the goods covered by BOE dated 09-02-2019 from the warehouse - If consignments, if any, are received by the petitioner in the interregnum, the petitioner is allowed to remove the goods from the warehouse subject to the very same conditions: High Court

Interim order passed

JUDGEMENT

Heard Mr. Sujit Ghosh, learned counsel for the petitioner, Mr. B. Krishna Mohan, learned Assistant Solicitor General of India for respondents 1, 2 and 5 and for respondents 3 and 4.

The petitioner assails Notification No. 01/2018-Customs (SG), dated 30-07-2018 and final findings F.No.22/1/2018-DGTR, dated 16-07-2018 issued by the respondents 1 and 2 respectively as illegal and unconstitutional etc. The petitioner assails the order issued by respondents 3 to 5 in BOE dated 09-02-2019 imposing safeguard duty pursuant to the impugned notification as illegal etc.

Mr. Sujit Ghosh, for the petitioner contends that the notifications impugned in the writ petition in its entirety are contrary to the International Covenant namely Paris Agreement dated 12-12-2015 and also Article 51 of the Constitution of India. Succinctly stated the factual premise on which the ground of public interest is put forward by him and that the safeguard duty, if imposed, will not make the activity undertaken by the petitioner economically viable thereby resulting in the escalation of cost of power generation through solar renewable energy. Though a few submissions touching upon the obligation of the respondents to act in furtherance of the International Covenant dated 12-12-2015 have been made for the present, we refrain from adverting to these submissions for the respondents pray time for filing counter affidavits.

It is brought to our notice that the notifications impugned in the writ petition are subject matter of challenge in the High Court of Gujarat at Ahmedabad and in the High Court of Madras. The conditional interim orders passed in by the High Courts are brought to our notice. Though some effort has been made to convince this Court to consider passing an interim order on the lines of the order passed by the Gujrat High Court, after taking note of the objections taken by the learned standing counsel, we are of the view that at this stage, we keep in perspective the obligation of the petitioner to pay duty as per the applicable slab and provide bond so that the goods, even if allowed to be removed by the petitioner, the respondents will not suffer injury or loss.

The request of the learned counsel for the respondents to grant time for two weeks to file counter is accepted.

Having regard to the above circumstances and allow the petitioner to remove goods from the warehouse, the petitioner shall deposit 50% of the duty demanded by respondents through BOE, dated 09-02-2019 and

provide bond for paying the balance 50% together with the interest in the event the petitioner is not successful in the writ petition. Upon compliance with the above condition, the respondents permit the petitioner to remove the goods covered by BOE dated 09-02-2019 from the warehouse.

After the order is dictated, it is brought to our notice that yet another consignment is landed at the port and this consignment is subjected to the same tariff as is impugned in the writ petition. The interest of the revenue since is substantially protected by imposing the conditions, it is made clear that the consignments, if any, are received by the petitioner in the interregnum, the petitioner is allowed to remove the goods from the warehouse subject to the very same conditions i.e. 50% of the duty demanded by respondents through BOE, dated 09-02-2019 and provide bond for paying the balance 50% together with the interest in the event the petitioner is not successful in the writ petition, with which the goods now allowed to be removed.