

(1989) 08 CAL CK 0041**Calcutta High Court****Case No:** C.R. No. 13076 (W) of 1981

Asiatic Oxygen Limited

APPELLANT

Vs

Jt. Secretary, Government of
India and Others

RESPONDENT

Date of Decision: Aug. 9, 1989**Acts Referred:**

- Customs Act, 1962 - Section 157

Citation: (1990) 28 ECR 352**Hon'ble Judges:** Susanta Chatterji, J**Bench:** Single Bench**Judgement**

Susanta Chatterji, J.

The present rule was issued on 18.12.1981 at the instance of the writ petitioner praying, inter alia, for issuance of a writ of Mandamus commanding the respondents to withdraw and/or rescind the notice to show cause dated 14.8.1981 and the order dated 26.9.1981 and all proceedings relating thereto on the ground that all the conditions for assessment under heading No. 84.66 of the Tariff Act were and are satisfied in respect of the import of the gas cylinders. It is stated that the gas cylinders were in fact required for initial setting up of the gas plants of the petitioners and the findings of the respondent No. 1 and the allegations made in the said notice dated 14.8.1981 that the gas cylinders were not required for initial setting up of the gas plants are wholly incorrect and misconceived. It is further stated that the cylinders form an integral part of the plant and machinery required for setting up of the gas plants as the plant cannot produce its rated capacity unless required number of cylinders are available for receiving the compressed gas. It has been claimed that the availability of cylinders for receiving the compressed gas is a definite necessity for operation of the plant and the respondent No. 1 has passed the said order and issued the impugned notice without considering all the aspects and simply because the gas plants in question were commissioned a few years back

it does not and cannot mean that the plants are not at the initial setting up stage and in fact for completion of the setting up of the gas plants the availability of the required number of cylinders is a must and so long as the required number of cylinders are not made available, the setting up of the plant cannot be said to be complete. Dr. Chakraborty appearing for the writ petitioner has argued that the respondents authorities as well as the licensing authorities were fully satisfied that the gas plants in question were only at the initial setting up stage and this is the reason why the said licences were issued to the petitioner for import under the project scheme. According to him, the customs authorities have no right, authority or jurisdiction to go beyond the endorsements made by the licensing authority on the licence in question for project import. The satisfaction of the licensing authority of the Government of India that the goods covered by the licence in question are required for initial setting up of the plant is binding on the customs authorities and the customs authorities have no right, authority or jurisdiction to take a different and inconsistent view or to go beyond the endorsement made on the licence for project import by the licensing authority. The steps taken by the customs authorities to find out whether the licence under the project import should be issued or not cannot be decided by the customs authorities and the issuance of the impugned notice as well as the impugned orders are contrary to and inconsistent with the provisions of law and the petitioner being aggrieved has accordingly come to the writ court to seek relief as prayed for.

2. Mr. Roychoudhury, learned Counsel appearing for the customs authorities has drawn the attention of the court to the heading No. 84.66 of the first Schedule to the Tariff Act which runs as follows:

All items of:

- (a) machinery including prime-movers,
- (b) instruments, apparatus and appliances,
- (c) control gear and transmission equipment,
- (d) auxiliary equipment, as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified:
 - (1) industrial plant,
 - (2) irrigation project,
 - (3) power project,
 - (4) mining project,
 - (5) project for the exploration for oil or other minerals, and

(6) such other projects as the Central Government may, having regard to the economic development of the country, notify in the official gazette in this behalf:

Provided these are imported (where in one or in more than one consignment) against one or more specific contracts which have been registered with the appropriate Customs House in the manner prescribed by Regulations which the Central Board of Excise and Customs may make u/s 157 of the Customs Act, 1962 (52 of 1962) and such contract or contracts has or have been so registered before any order is made by the proper officer of customs, permitting the clearance for home consumption, or deposit in a warehouse of items, components or raw materials:

(ii) All spare parts, other raw materials (including semi-finished material), or consumable stores imported, as a part of a contract or contracts, registered in terms of sub-heading (i), provided the total value of such spare parts, raw materials, and consumable stores does not exceed 10% of the value of the goods covered by subheading (i) and further provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project mentioned in sub-heading (i).

He has also drawn the attention of the court to a decision reported in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, as to the scope of Article 226 of the Constitution of India inasmuch as the judicial review under Article 226 cannot be converted into appeal. It is directed not against the decision, but is confined to the examination of the decision making process. He has tried to argue that in the facts and circumstances of the case the writ court is not sitting in appeal upon each and every decision of the statutory authority. He has reminded the court that unless there is any lack of jurisdiction or in excess of jurisdiction or that there is any manifest injustice the writ court should be slow to interfere with each, and every order of the statutory authority.

3. However, after hearing the learned lawyers appearing for the respective parties, it appears that against the issuance of the impugned show cause notice, the petitioner cannot have any grievance whatsoever. The petitioner cannot be permitted to stall the proceeding for effective adjudication of the matter by not filing a reply. It appears from the record that at the time of issuance of the rule there was an interim order to the extent that the petitioner will file a reply in respect of the notice to show cause, but no action will be taken by the respondents. The matter is pending at that stage. There is no bar for the respondents to adjudicate the matter by giving an opportunity to the petitioner as are available to them. With regard to another aspect of the matter, the order in appeal was considered by the Government in revision. Being aggrieved the petitioner has come to this Court.

4. Having gone through the materials on record as well as the order made in appeal and the order in revision by setting aside the said order and looking to the Tariff

Item, this Court does not find that the steps taken by the respondents in passing the impugned order are not beyond the jurisdiction or in excess of jurisdiction or such steps as are contrary to and/or inconsistent with the provisions of law. Accordingly, within the narrow scope of examining the point of consideration to examine the decision making process, this Court does not find any inherent defect in the instant case. Finding no merit in the writ petition the rule is discharged and all interim orders are vacated.

5. There will be stay of operation of this order for a period of a fortnight as prayed for.