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UNION OF INDIA AND ORS.

v.

C. KRISHNA REDDY

DECEMBER 18, 2003

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[S. RAJENDRA BABU AND G.P. MATHUR, JJ.]

Customs Act, 1962—Grant of Reward to informers—Guidelines dated 30.3.1985—Amended Guidelines dated 30.3.1989—Proceedings initiated for evasion of customs duty on information of respondent—Respondent claimed Rs. 1,71,43,272 as reward, however, Rs. 10 Lakh sanctioned by department—Writ petition filed in High Court—Single Judge directed additional payment of Rs. 25 Lakhs to respondent and consider payment of balance amount—Division Bench modified order and directed payment of Rs. 10 Lakhs instead of Rs. 25 Lakhs—On appeal Held, decision on entitlement of reward, which is **ex-gratia** *in nature, subject to guidelines and absolute discretion of competent authority—Department alone can weigh and examine usefulness of given information—No one can claim reward as a matter of right—Central Excise and Salt Act, 1944—Gold Control Act—Foreign Exchange Regulation Act.*

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Constitution of India—Article 226—Writ of Mandamus—Maintainability of writ for grant of reward—held, grant of reward cannot be claimed as a matter of right as it is purely **ex-gratia** *payment—No statutory duty imposed upon officer concerned and no failure to discharge statutory obligation—Hence Writ not maintainable.*

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The Department of Customs and Central Excise initiated proceedings for evasion of Customs duty amounting to approximately Rs. 3 Crores on the basis of information given by the respondent. A duty of Rs. 3.37 Crores apart from redemption fine of Rs. 3.80 Crores and penalty of Rs. 1.55 Crores was levied. However, the department could only realise Rs. 2 Lakhs towards the same due to various constraints. The respondent claimed Rs. 1,71,43,272 by way of reward and the department sanctioned only Rs. 10 Lakhs. Respondent filed a writ petition in the High Court claiming the balance amount. Single Judge

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directed the department to pay an additional sum of Rs. 25 Lakhs and consider payment of the balance amount. In writ appeal Division Bench modified the order directing payment of Rs. 10 Lakhs instead of Rs. 25 Lakhs, and if not made within the time granted it would amount to revival of the order of the Single Judge. Hence these appeals. A B

Appellants contended that guidelines regarding payment of award dated 30.3.1985 stood amended since 30.3.1989; that since the matter was decided subsequent to the amendment, guidelines as amended on 30.3.1989 would apply; and that as the reward is purely on *ex-gratia* payment subject to guidelines and discretion of the competent authority, no writ of *mandamus* would be maintainable. C

Respondents contended that they have uniformly followed guidelines as on 30.3.1985 and there is no reason to depart from the same; and that revised guidelines dated 30.3.1989 cannot be given retrospective operation. D

Allowing the appeal filed by the Union of India and dismissing the appeal filed by the informant, the Court E

HELD : 1. The scheme or the policy of the Government of India dated 30.3.1985 shows that the authority competent to grant the reward, while taking a decision regarding the entitlement of the person concerned has to keep many factors in his mind like specificity and accuracy of the information, the risk and trouble undertaken, the F extent and nature of the help rendered by the informer, whether information gives clues of the persons involved in smuggling or their associates, the difficulty in securing the information, the risk involved for the government servants in working out the case and whether apart from seizure of contraband goods, the owners/orgnisers/financiers/ G racketeers have been apprehended. The scheme further mentions that reward is an *ex-gratia* payment and subject to the guidelines and granted on the absolute discretion of the authority competent and further that no one can claim the reward as a matter of right. High Court in writ jurisdiction cannot examine or weigh the various factors H

A **which have to be taken into consideration while deciding a claim regarding grant of reward. These are matters exclusively within the domain of the authorities of the Department as they alone can weigh and examine the usefulness or otherwise of the information given by the informer. If the grant of reward cannot be claimed as a matter of**
B **right it is not understandable as to how a writ of *mandamus* can be issued commanding the Government to give a particular amount by way of reward. [1093-H; 1094-A-B-C-D]**

2. The view that the revised guidelines would not apply is
C **patently erroneous both on the fact situation of the case and also as a principle of law. It is a matter of record that respondent made a claim for grant of reward for the first time after the Collector of Customs passed the final order on 5.3.1993, when the revised guidelines were in force. [1093-D-E]**

D *Union of India* **v.** *R. Padmanabhan,* **(2003) JT 7 SC 196, relied on.**

3. Writ of *Mandamus* can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation.
E **The chief function of the writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. In order that a *mandamus* may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a**
F **legal duty and the aggrieved party has a legal right under the statute to enforce its performance. [1094-F-G]**

Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. **v.** *Sipahi Singh,* **AIR (1977) SC 2149;** *Lekhraj Satnam Dass Lalvani* **v.** *Deputy*
G *Custodian-cum-Managing Officer,* **AIR (1966) SC 334 and** *Dr. Umakant Saran* **v.** *State of Bihar,* **AIR (1973) SC 964, relied on.**

4. By the very nature of things no one has a legal right to claim a reward. The scheme itself shows that it is purely an *ex-gratia* payment
H **subject to guidelines and may be granted on the absolute discretion of**

the competent authority and cannot be claimed by anyone as a matter of right. High Court committed manifest error of law in issuing a Writ of *Mandamus* directing the appellant to pay the amount to the respondent. Single Judge issued a writ that apart from Rs. 10 lakhs which had already been paid a further amount of Rs. 5 lakhs should be paid within four weeks and the appellant was further directed to determine entitlement of balance amount of the reward and pay the same within three months. Division Bench partly modified the order and issued directions for payment of Rs. 5 lakhs within three weeks on receipt of the copy of the order and a further sum of Rs. 5 lakhs within three weeks, thereafter and further directing that in case of non-compliance within the stipulated time, it will have to pay the rest of the amount as per the previous orders. There is no justification for passing these kind of peremptory orders. [1095-A-B-C-D-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7127 of 1999.

From the Judgment and Order dated 22.9.99 of the Madras High Court in W.A. No. 1431 of 1998.

WITH

C.A. No. 877 of 2000.

N.K. Bajpai, Ms. Vibha Datta Makhija and B.K. Prasad for the Appellants.

Mr. K. Amareswari, S. Sadasiva Reddy, Ms. S. Usha Reddy, D.N. Mehta, R.C. Mishra and Dr. Meera Agarwal for the Respondent.

The Judgment of the Court was delivered by

G.P. MATHUR, J. : 1. This appeal by special leave has been preferred by Union of India against the judgment and order dated 22.9.1999 of a Division Bench of Madras High Court in a writ appeal whereby the order passed by a learned Single Judge on 22.9.1998 directing

A payment of Rs. 25 lakhs in addition to the sum of Rs. 10 lakhs already paid by way of reward for giving information to custom authorities was partly modified.

2. The respondent C. Krishna Reddy filed a writ petition in the High B Court of Madras claiming an amount of Rs. 1;71,43,272 by way of reward for having given information to the concerned officers of the Department of Customs and Central Excise. The case set up in the writ petition, in brief, was that M/s. Sanjeevani Fodder Products Pvt. Ltd., (hereinafter referred as 'Sanjeevani') and M/s. FOMETA India Machines Pvt. Ltd., (hereinafter C referred as 'FOMETA') had evaded Customs duty amounting to approximately Rs. 3 crores by contravening the conditions of *ad hoc* exemption Order No. 103/87 dated 30.3.1987 as amended. M/s. Sanjeevani had got the said exemption order from the Government of India exempting 50 Fodder Production Units to be imported by them subject to the condition D that they would donate these machines to Bharat Krishak Samaj (BKS) within 15 days from their clearance and BKS would use them only for demonstration purposes and would not sell, transfer or dispose of these machines for a period of five years. M/s. Sanjeevani had imported and cleared these machines through the Port of Madras free of duty in terms of the said exemption order. Though M/s. Sanjeevani had produced E documents before the Customs authorities showing donation of these machines to BKS but the same remained in their control and possession at their own sites and also at the site of M/s. FOMETA and were being utilised for commercial production of fodder and hence both the conditions of the *ad hoc* exemption Order were contravened. The exemption Order F was for 50 machines but actually 56 machines had been imported and 5 out of them had been sold to some Government Departments. The case of writ petitioner (respondent herein) further was that on the basis of the information furnished by him and inquiries made by the authorities of the Department they came to know that M/s. Sanjeevani had started selling the G Fodder Production Units. After the import of the machines in CKD condition, M/s. Sanjeevani got the Fodder Production Units assembled at Gummidipoondi at the work place of M/s. FOMETA and thereafter 12 units were installed in Bolaram, 12 in Bulandshahir, 12 in Bagru and the balance 14 FPUs were to be stationed at Jaisalmer. Some of the units were H operational as per the investigation. The Department thereafter issued a

show cause notice dated 12.2.1990 and proceedings were initiated for confiscation of the goods. The case was adjudicated by Collector of Customs (Judicial) Madras who passed an order on 5.3.1993 directing for confiscation of the goods with an option for redemption of the same on payment of fine and a penalty of Rs. 50 lakhs was imposed upon M/s. FOMETA and personal penalty was imposed upon some Directors of the company. After the decision of the Commissioner of Customs (Madras) the writ petitioner sent a letter dated 15.4.1993 to the Deputy Director, Directorate of Revenue Intelligence, Madras, to sanction him the reward keeping in view the duty, fine and penalty levied in the case. The Department sanctioned an amount of Rs. 5 lakhs on 6.11.1993 as an advance reward which was paid to him and thereafter another sum of Rs. 5 lakhs was sanctioned on 26.4.1995 and in this manner he received only Rs. 10 lakhs. The writ petition was accordingly filed claiming the balance amount of reward in terms of the guidelines issued by the Department.

3. Counter-affidavit on behalf of the respondent was filed by Shri R. Mohan Doss, Assistant Director in the Directorate of Revenue, Intelligence, Madras wherein it is stated that on the basis of the information received, investigation was done and it was found that M/s. Sanjeevani and M/s. FOMETA had evaded customs duty amounting to Rs. 3 crores by contravening the conditions of *ad hoc* examination order No. 103/87 dated 30.3.1987. The details of the manner of import, misutilisation of the machines, contravention of the exemption order, the proceedings initiated by the Collector of Customs and the orders passed by him have also been given. It is averred in para 7 and 10.7 of the counter affidavit that only one party namely, Indian Grass Land and Fodder Research Institute, Jhansi, deposited the redemption fine of Rs. 2 lakhs in respect of one confiscated unit but in respect of remaining 55 units nobody came forward to clear the same on payment of redemption fine and duty and the penalty amounts could not be recovered from the persons concerned. The seized articles could not be auctioned as M/s. Sanjeevani had taken loans against the Fodder Production Units from financial institutions and such financial institutions have also claimed the units which had been hypothecated to them. Even though no duty, fine or penalty could be realised from the persons concerned but an amount of Rs.

A 10 lakhs was sanctioned and disbursed to the writ petitioner by way of reward.

4. The is important to note that in the counter-affidavit, it is nowhere admitted that the department conducted the investigation in the matter of B import of machines and availing of exemption notification by M/s. Sanjeevani and M/s. FOMETA only on the basis of information furnished by the Writ Petitioner. Therefore, the main ground for claiming the reward had not been admitted. The writ petitioner did not substantiate his claim in any manner that it was only on the basis of the information supplied C by him that the proceedings had been commenced by the Department which ultimately led to passing of an order of confiscation, fine and penalty.

5. The learned Single Judge proceeded on the footing that admittedly D the writ petitioner gave the information with regard to contravention made by M/s. Sanjeevani and M/s. FOMETTA and thereafter Units were seized, adjudication proceedings were initiated and finally a duty of Rs. 3.37 crores apart from redemption fine of Rs. 3.80 crores and penalty of Rs. 1.55 crores was levied and consequently the writ petitioner is entitled for a reward of E 20 per cent of the total amount. The learned Judge further held that when the writ petitioner passed on the information on a reasonable hope and expectation that he will get the award, the principle of legitimate expectation would come into play and he was entitled to the award. The plea of Union of India that writ petitioner was not entitled to claim the reward as a matter of right since the orders issued by Government in this regard F are merely guidelines and do not have any force of law was not accepted. The learned Judge also brushed aside the contention of the appellant that in spite of best efforts the Department had not been able to realise any amount and till such realisation was made it was not possible to give any amount by way of reward. The learned Judge went on to hold that taking G in to consideration the fact that the writ petitioner had been paid a sum of Rs. 10 lakhs, he should be paid an additional sum of Rs. 25 lakhs within four weeks from the date of receipt of the order. The Department was further directed to determine his entitlement of the reward in respect of the balance amount and pass an order with regard to disbursement of the same H within three months.

6. The Union of India preferred a writ appeal against the decision of learned Single Judge wherein it was submitted that as per the guidelines which had been modified on 30.3.1989 the reward can be granted only after the issue had been finally adjudicated and the amount had been realised. The Division Bench, however, held that the amount of the reward had to be paid in accordance with the guidelines as they stood before the amendment and the amended guidelines cannot be given any retrospective operation. Taking the view that the amount directed to be paid by the learned Single Judge was on the higher side, it was directed that department should pay a sum of Rs. 5 lakhs within three weeks from the date of the receipt of the order and a further sum of Rs. 5 lakhs within three weeks thereafter. In the event the Department failed to pay the aforesaid amount within the time granted, it would pay the whole amount as per the order of the learned Single Judge.

7. Learned counsel for the appellant Union of India has submitted that the guidelines issued on 30.3.1985 regarding payment of award had been amended on 30.3.1989 and since the present case the Collector of Customs had decided the matter subsequently on 5.3.1993, it is the amended guidelines which would be applicable and the payment had to be made in accordance with the said guidelines. Learned counsel has also submitted that reward is purely an *ex-gratia* payment, which subject to the guidelines, may be granted on the discretion of the competent authority and a decision regarding claim of amount is to be taken upon consideration of evidence after giving due regard to many factors and, therefore, no Writ of Mandamus can be issued by the Court to direct payment of a quantified amount by way of reward. Learned counsel for the respondent, on the other hand, has submitted that the policy dated 30.3.1985 having been uniformally followed by the Government in making payment of the reward to informers, there was no reason to depart from the same and the revised guidelines dated 30.3.1989 cannot be given any retrospective operation. Learned counsel has further submitted that having regard to the facts and circumstances of the case, the order passed by the High Court was perfectly correct and calls for no interference.

8. In order to examine the question whether the respondent had any legal right to claim the amount by way of reward as a matter of right, it

A is necessary to take note of the relevant provisions of the guidelines issued by the Government of India on 30.3.1985 regarding the policy, procedure and orders in respect of grant of rewards to informers and Government servants in case of seizure made and evasion of duty etc. detected under the provisions of the Customs Act, Central Excise and Salt Act, 1962, Gold
B Control Act and Foreign Exchange Regulation Act. Paras 4 and 4.1 of the guidelines read as under :

> "4. REWARD SHOULD NOT BE GRANTED AS A MATTER OF ROUTINE
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> 4.1. Reward is purely an *ex-gratia* payment which subject to the guidelines, may be granted on the absolute discretion of the authority competent to grant rewards and cannot be claimed by anyone as a matter of right. In determining the reward
> D which may be granted, the authority competent to grant reward will keep in mind the specificity and accuracy of the information, the risk and trouble undertaken, the extent and nature of the help rendered by the informer, whether information gives clues to persons involved in smuggling, or their associates, etc.; the risk involved for the government
> E servants in working out the case, the difficulty in securing the information, the extent to which the vigilance of the staff led to the seizure, special initiative, efforts and ingenuity displayed, etc. and whether, besides the seizure of contraband goods, the owners/organisers/
> F financiers/racketeers as well as the carriers have been apprehended or not."

9. para 8 of the guidelines provides that all cases of grant of reward shall be examined and approved by a Committee of three senior officers
G and in case of grant of reward in excess of Rs. twenty lakh to an informer it has to be approved by a Committee consisting of the Head of Department, Director Preventive Operations and Additional Collector/Deputy Director Enforcement/Deputy Director, Anti Evasion/DRI. The aforesaid guidelines were reviewed and the existing reward policy was modified on 30.3.1989
H and the same reads as under :

"The issue whether final reward should be given only after actual realisation of Central Excise duty, penalty, fine even if appeal/ revision proceeding has concluded resulting in confiscation and/ or confirmation of demand has also been under-consideration of the Government. Keeping in view all aspects of the matter, it has been decided that final reward should be paid only after actual realisation of the Central Excise Duty/Customs Duty, penalty, fine etc. Para 6.3 of reward rules dated 30.3.85 stands amended accordingly."

10. The learned Single Judge and also Division Bench of the High Court have held that the reward has to be paid in accordance with the policy or guidelines issued on 30.3.1985 and the subsequent modification of the policy done by the Government of India on 30.3.1989 will not govern the situation as the same was not retrospective in operation.

11. In our opinion, the view taken by the High Court that the revised guidelines would not apply is patently erroneous both on the fact situation of the case and also as a principle of law. The respondent has himself averred in para 14 of the writ petition that the Collector of Customs, Madras decided the case by his order dated 5.3.1993 and thereafter he started contacting the officers of the Department for payment of the reward. He, therefore, made a claim for grant of reward for the first time in 1993. In *Union of India* v. *R. Padmanabhan,* (2003) JT 7 SC 196 exactly same question was examined and it was held that being *ex-gratia* no right accrues to any sum as such till it is determined and awarded and, in such cases, normally it should not only be in terms of the guidelines and policy, in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the scheme itself. It was also held that the question of any vested rights accrued being protected from any subsequent amendments would not arise in such a case and, therefore, the guidelines as are in force on the date of consideration will really be applicable and relevant.

12. The scheme or the policy of the Government of India dated 30.3.1985 shows that the authority competent to grant the reward, while taking a decision regarding the entitlement of the person concerned has to

keep many factors in his mind like specificity and accuracy of the information, the risk and trouble undertaken, the extent and nature of the help rendered by the informer, whether information gives clues of the persons involved in smuggling or their associates, the difficulty in securing the information, the risk involved for the government servants in working out the case and whether apart from seizure of contraband goods, the owners/organisers/financiers/racketeers have been apprehended. The scheme further mentions that reward is an *ex-gratia* payment and subject to the guidelines and may be granted on the absolute discretion of the authority competent and further that no one can claim the reward as a matter of right. The High Court in writ jurisdiction cannot examine or weigh the various factors which have to be taken into consideration while deciding a claim regarding grant of reward. These are matters exclusively within the domain of the authorities of the Department as they alone can weigh and examine the usefulness or otherwise of the information given by the informer. In the writ petition filed by the respondent, no details had been given on the relevant issues. If the grant of reward cannot be claimed as a matter of right it is not understandable as to how a Writ of *Mandamus* can be issued commanding the Government to give a particular amount by way of reward. Though this specific plea was taken in paras 18 and 21 of the counter affidavit, yet neither the learned Single Judge nor the Division Bench adverted to this aspect of the matter.

13. It is well settled by a catena of decisions of this Court that a Writ of *Mandamas* can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of the writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. Therefore, in order that a *mandamus* may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. (See *Bihar Eastern Gangetic Fishermen Co-operative Society Ltd.* v. *Sipahi Singh,* AIR (1977) SC 2149 para 15; *Lekharj Satram Dass Lalvani* v. *Deputy Custodian-cum-Managing Officer,* AIR (1966) SC 334 and *Dr. Umakant Saran* v. *State of Bihar,* AIR (1973) SC 964.

14. By the very nature of things no one has a legal right to claim a reward. The Scheme itself shows that it is purely an *ex-gratia* payment subject to guidelines and may be granted on the absolute discretion of the competent authority and cannot be claimed by anyone as a matter of right. In such circumstances the High Court committed manifest error of law in issuing a Writ of *Mandamus* directing the appellant to pay the amount to the respondent. The Department had already sanctioned Rs. 10 lakhs to the respondent before filing of the writ petition. In para 21(e) of the counter-affidavit it is averred that except for a single amount of Rs. 2 lakhs towards redemption fine no other amount either by way of custom duty, penalty or redemption fine had been realised by the Department. The imported machinery could not be confiscated or auctioned as the same had been hypothecated to financial institutions from whom the importers had taken loan. In view of the amended policy the entitlement of the respondent, if any, could be a small amount as the Department had been able to realize only Rs. 2 lakhs. This is not a case where some large scale smuggling operations had been brought to light or the identity of some hard core smugglers had been revealed as a result of the information given by the respondent. Yet the learned Single Judge of the High Court issued a writ that apart from Rs. 10 lakhs which had already been paid a further amount of Rs. 25 lakhs be paid to the respondent within four weeks and the appellant was further directed to determine the respondent's entitlement of balance amount of the reward and pay the same within three months. The Division Bench in appeal only partly modified the order and issued directions for payment of Rs. 5 lakhs within three weeks on the receipt of the copy of the order and a further sum of Rs. 5 lakhs within three weeks thereafter. It was further directed that in case the department failed to comply with the aforesaid direction within the stipulated time, it will have to pay the rest of the amount as per the orders of the learned Single Judge. We do not find any justification for passing these kind of peremptory orders. It is not a case of any hardship having been caused like delay in making payment of compensation to victims of an accident or to an agriculturist whose land may have been acquired depriving him of his only source of livelihood. On merits also we are clearly of the opinion that the orders passed by the High Court are not only wholly unwarranted but are also without any legal basis and are consequently liable to be set aside.

A 15. The writ petitioner C. Krishna Reddy has also filed an appeal by special leave challenging the judgment and order dated 22.9.1999 of the Division Bench of the High Court passed in the Writ Appeal. Since we have held that the writ petitioner is not entitled to any further amount, the appeal preferred by him is liable to be dismissed.

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16. In the result CA No. 7127 of 1999 filed by Union of India is allowed and the judgment and order dated 22.9.1998 of the learned Single Judge and 22.9.1999 of the Division Bench of the High Court are set aside and the writ petition filed by the respondent is dismissed. C.A. No. 877 C of 2000 filed by C. Krishna Reddy is also dismissed.

A.Q. C.A. No. 7127/1999 allowed.
C.A. No. 877/2000 dismissed.