



WA NO. 1776 OF 2016

:1:

2025:KER:53753

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

FRIDAY, THE 18TH DAY OF JULY 2025 / 27TH ASHADHA, 1947

WA NO. 1776 OF 2016

AGAINST THE JUDGMENT DATED 01.10.2015 IN OP NO.25199 OF 2001
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

*[RUCHI INFRASTRUCTURE LIMITED,
WITH ITS REG. OFFICE AT 706
TUSIAN CHAMBERS, 212 NARIMAN POINT,
MUMBAI 400 021, WITH ITS ADMINISTRATIVE OFFICE AT SURYA
APARTMENTS, 5/2, SOUTH TUKOGANJ,
NATHA MANDIR ROAD, INDORE 452 001 REPRESENTED BY ITS
SENIOR MANAGER, BALDEO SURYAWANSHY] [SUBSTITUTED]

*SUBSTITUTED:

[M/S RUCHI SOYA INDUSTRIES LTD.]**
HAVING ITS REGISTERED OFFICE AT RUCHI HOUSE, SURVEY
NO.169, ROYAL PALMS, AAREY COLONY, GOREGAON (EAST),
MUMBAI - 400065 REPRESENTED BY ITS AUTHORISED
SIGNATORY.

(*AS PER ORDER DATED 18.07.2005 IN IA.1 OF 2021 IN
WA1776 OF 2016.)

** APPELLANT NAME IS AMENDED/CHANGED:

M/S PATANJALI FOODS LTD.,
HAVING ITS REGISTERED OFFICE AT RUCHI HOUSE, SURVEY
NO.169, ROYAL PALMS, AAREY COLONY, GOREGAON (EAST),
MUMBAI - 400065 REPRESENTED BY ITS AUTHORISED
SIGNATORY.

(THE NAME OF THE APPELLANT COMPANY "M/S RUCHI SOYA
INDUSTRIES LTD IS AMENDED/CHANGED TO "M/S PATANJALI
FOODS LTD" AS PER ORDER DATED 18.07.2025 IN IA NO.1 OF
2025 IN WA NO.1776 OF 2016)



BY ADVS.SRI. RAJESH RAWAL
SRI.THOMAS P.KURUVILLA

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY IN THE MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE) NORTH BLOCK,NEW DELHI

- 2 COMMISSIONER OF CUSTOMS,
COMMISSIONERATE OF CUSTOMS,COCHIN (KERALA) .

BY ADVS.
SHRI.P.VIJAYAKUMAR, ASG OF INDIA
SRI.SREELAL N. WARRIER, SC,
SMT.O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA
BY ADVS. SRI.VARGHESE JOHN, SC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18.07.2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

This Writ Appeal impugns the judgment dated 01.10.2015 of a learned Single Judge in OP No.25199 of 2001.

2. The brief facts necessary for the disposal of this Writ Appeal are as follows:

The appellant had entered into contracts with suppliers for the supply of RBD Palmolein (Edible Grade). The contracted supplies were shipped under cover of various bills of lading from 04.06.2001 to 14.07.2001. It is not in dispute that the Bills of Entry for warehousing were filed in respect of many consignments, and thereafter, the Bills of Entry for home consumption were also filed for the purposes of clearing the goods for home consumption. The issue raised by the appellant before the writ court was in respect of the tariff value to be adopted while arriving at the duty liability of the appellant at the time of removal of the goods from the warehouse. It would appear that the tariff value in respect of the imported consignment of RBD Palmolein oil (Edible Grade) was fixed at 372 US\$ per MT by a notification dated 03.08.2001, which became effective from 06.08.2001 in view of the judgment of the Supreme Court in **Union of India v. Param Industries Ltd. [2015 (321) E.L.T 192 (S.C.)]**. The respondents demanded a differential duty amount on the basis of the said notification on the balance quantity of the consignment that was covered by Ex-Bond Bills of Entry Nos.2915, 3167, 3199, and 3407 dated 04.07.2001, 20.07.2001, 23.07.2001, and 03.08.2001, respectively. The duty amount in respect of the first three Bills of Entry had been accepted on 06.07.2001,



23.07.2001, and 24.07.2001, respectively, and the duty amount in respect of Bill of Entry 3407 was paid and accepted on 04.08.2001. The respondents, however, refused to release the quantities of 1318.150 MTs and 2540.346 MTs covered by the Ex-Bond Bills of Entries referred above on the contention that, since the notification referred above had come into force with effect from 03.08.2001, differential duty amounts, reckoned based on the tariff value of US\$ 372 per MT, had to be paid in respect of the said consignments at the time of their physical clearance from the warehouse. The respondents pointed out that the appellant had paid duty in respect of the said consignments by taking only the declared value of US\$ 234 per MT, and therefore, there had been a short payment of duty.

3. The stand of the appellant before the writ court was that, on payment of duty on the declared value of the goods as assessed by the proper officer, it had obtained a customs "out of charge order" much prior to 06.08.2001, the date on which the notification No.36/2001-CUS (NT) fixing the tariff value of RBD Palmolein at US\$ 372 came into force. The appellant argued, therefore, that since the customs "out of charge order" had been obtained prior to the date of the notification, the mere fact that the goods that were stored in the warehouse were removed from the warehouse only on a later date was of no significance. The appellant had also relied on the judgment of the Supreme Court in **Priyanka Overseas Pvt. Ltd. v. Union of India [1991 (51) E.L.T 185 (S.C.)]**, and **Commissioner of Customs, Calcutta v. Biecco Lawrie Ltd. [2008 (223) E.L.T 3 (S.C.)]** to support their contention on merits.

4. The learned Single Judge, however, found that there was an



ambiguity regarding the exact date on which the appellant had received the customs “out of charge order” on the basis of which the goods were cleared for home consumption, and therefore, disposed the Writ Petition with the following directions:

“26. In the result, this Original Petition is disposed of declaring that, if the petitioner had obtained 'out of charge' order for home consumption issued by the proper officer in compliance of Section 68 of the Act and the licence of the private warehouse stood cancelled before 06.08.2001, the date of which Ext.P6 notification No.36/2001-CUS (NT) dated 03.08.2001 issued by the 1st respondent came into force, the petitioner cannot be held liable to pay differential duty in respect of the balance quantity of 1318.150 MTs out of Ex-Bond Bills of Entry Nos.2915, 3167 and 3199 dated 04.07.2001, 20.07.2001 and 23.07.2001 respectively, in respect of which duty has been paid on 06.07.2001, 23.07.2001 and 24.07.2001 respectively, and 2540.346 MTs out of Ex-Bond Bill of Entry No.3407 dated 03.08.2001, in respect of which duty has been paid by cash on 04.08.2001.

27. If the petitioner had obtained 'out of charge' order for home consumption issued by the proper officer in compliance of Section 68 of the Act in respect of the balance quantity of the subject consignment and the licence of the private warehouse stood cancelled before 06.08.2001, the 2 respondent shall pass appropriate orders releasing the bank guarantee/bond for the differential duty amount furnished by the petitioner in terms of the orders of this Court dated 22.08.2001 in I.A.No.41099 of 2001 and that dated 24.08.2001 in I.A.No.41323 of 2001, within a period of one month from the date of receipt of a certified copy of this judgment.”

5. When this appeal came up for hearing before us on 26.06.2025, taking note of the fact that the essential dispute between the parties was regarding the date on which the customs “out of charge order” was issued in respect of the consignments concerned, we had requested the learned Standing counsel for the Customs Department to obtain instructions as to the date on which the customs “out of charge order” was given in respect of these consignments. By an affidavit dated 09.07.2025 filed on behalf of the



Commissioner of Customs, Cochin, it is stated as follows:

“4. Pursuant to the hearing held on 26.06.2025, this Hon'ble Court was pleased to direct the respondents to file an affidavit specifically stating whether the Customs 'Out of Charge' order in respect of the subject consignment was issued before 06.08.2001; and if not, to indicate the actual date of such issuance along with the reasons for any delay.

5. Upon a perusal of the records available in the office of the 2nd respondent, it is respectfully submitted that the 'Out of Charge' orders in respect of the consignment in question were issued prior to 06.08.2001. The relevant details are as follows:

Sl. No.	Ex-Bond Bill of Entry No.	Date of Bill of Entry	Date of issuance of Out of Charge Order
1	2915	04/07/01	06/07/01
2	3167	20/07/01	23/07/01
3	3199	23/07/01	24/07/01
4	3407	03/08/01	04/08/01

6. The above dates are also reflected in Ground A of the Review Petition No. 985 of 2015 filed in O.P. No. 25199 of 2001 by the appellant herein, a copy of which has been produced along with I.A No. 2 of 2016 (I.A 1105/2016) dated 30.08.2016 in this Appeal. “

It is apparent from a perusal of the affidavit that the customs “out of charge order” in respect of the consignments covered by the four Ex-Bond Bills of Entry referred above were all issued on dates well prior to the date of coming into force of the tariff value of US\$ 372 per MT. Going by the decision in **Priyanka Overseas Pvt Ltd. (Supra)** as also the decision in **Biecco Lawrie Ltd. (Supra)**, we find that in respect of the goods covered by the warehousing Bill of Entries filed by the appellant at first instance, the relevant date for the payment of duty would have to be the date on which the customs “out of charge order” was passed. The ambiguity noticed by



the learned Single Judge in the impugned judgment is removed once it is admitted by the respondents that the customs “out of charge order” was obtained well before the notification aforementioned came into effect. Further, the decisions of the Supreme Court referred above clearly indicate that once the customs “out of charge orders” were obtained in respect of the goods that were warehoused, the continued warehousing of the goods thereafter had no relevance to the determination of duty payable by the importer, since the subsequent warehousing had to be seen merely as an arrangement by the importer of storing his goods in a private warehouse. The relevant date for payment of import duty being the date on which the goods were cleared for home consumption, it is the date on which the customs “out of charge orders” were issued that would be relevant for the determination of duty in the instant appeal. We, therefore, allow this Writ Appeal by setting aside the judgment of the learned Single Judge, to the extent impugned in this appeal.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

P.M.MANOJ
JUDGE

mns



WA NO. 1776 OF 2016

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2025:KER:53753

APPENDIX OF WA 1776/2016

PETITIONER ANNEXURES

- Annexure A** TRUE COPY OF THE CERTIFICATE OF INCORPORATION PURSUANT TO CHANGE OF NAME DATED 24.06.2022 TO THE ABOVE EFFECT ISSUED FROM THE OFFICE OF REGISTRAR OF COMPANIES, MUMBAI
- ANNEXURE 1** TRUE COPY OF THE R.P.NO.985/15 FILED BEFORE THIS HON'BLE COURT
- ANNEXURE II** TRUE COPY OF THE JUDGMENT DATED 29.07.2016 IN RP NO.985/15 PASSED BY THIS HON'BLE COURT
- ANNEXURE A1** TRUE COPY OF BUSINESS TRANSFER AGREEMENT DATED 7.3.2014