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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3418 OF 2014

Filatex India Limited

..Petitioner

-Versus-

The Union of India through the
Secretary, Ministry of Finance,
Department of Revenue & Ors.

..Respondents

.....

Mr. Prakash Shah a/w Durgaprasad Poojari, Jas Sanghavi i/b. PDS Legal
for the Petitioner.

Mr. Pradeep S. Jetly for the Respondent.

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**CORAM: S.C. DHARMADHIKARI
AND
S. P. DESHMUKH, JJ.**

DATE :- 16th FEBRUARY, 2015.

PC.:

This Writ Petition under Article 226 of the Constitution of India
seeks the following reliefs:-

“(a) That this Court be pleased to issue a Writ of Certiorari
or a Writ in the nature of Certiorari under Article 226 of the
Constitution of India, calling for the records pertaining to
the communications (i) F. No.S/6-Gen-410/2013-14 EXP
FSP dated 17.12.2013 and (ii) F. N. S/6-Gen-410/2013-14
EXP FSP dated 05.03.2014 issued by the Assistant
Commissioner of Customs, FSP Cess, JNCH, on behalf of

Respondent No.3 and (ii) F. No.S/6-Gen-410/2013-14 EXP FSP dated 05.03.2014 issued by the Assistant Commissioner of Customs, FSP Cess, JNCH, on behalf of Respondent No.2, and after going into the legality and validity thereof to set aside the same;

(b) That this Court be pleased to issue a Writ Mandamus or Writ in nature of Mandamus or any other appropriate writ, order or direction, directing the Respondents and in particular Respondent Nos.2 and 3 by themselves and their subordinates, officers, servants and agents to forthwith grant the Petitioners the permission for Factory Stuffing of their export goods.”

2] The Petitioners desired a facility where the goods intended for export are stuffed in their own factory at Silvasa. They are cleared for export only after all the formalities and requirements in law are complied with. They need not be cleared out of turn or without any compliance of the above nature including providing inspection and scrutiny of such goods and the related documents.

3] However, the permission for stuffing of the goods at the factory at Silvasa has been denied or not renewed in this case on account of pendency of proceedings under the law applicable to the exports or activities of the Petitioners in relation thereto. Thereupon a show cause

notice, confirmation of demands thereunder that the officers feel that the Petitioner is not deserving of any such permission or if it is granted earlier the same need not be renewed.

4] We are aware that such grievance is and in relation to policy matters cannot be brought before this Court and in exercise of its writ jurisdiction. There are certain well defined limitations on exercise of the powers by this Court in terms of this constitutional provision. Therefore, we do not wish to enter into a controversy of that nature nor we intend to lay down any policy.

5] We only take note the Petitioners complaint that the facility has to be extended despite pendency of legal proceedings against the Petitioners simply because the Range Superintendent and the Assistant Commissioner of Excise Customs at Silvassa had in the past conveyed their no objection to grant of this facility, provided the Petitioners allow the officers access to the containers or the stuffed export goods for supervision by them.

6] The argument of the Petitioner's counsel is that in the teeth of such communications and coming from the officers at the local level, the port Officers deny this facility because of the legal proceedings. It is argued

that there is no complaint of the goods being not accessed or the supervision becoming impossible or difficult if the goods are allowed to be stuffed at the factory.

7] When all this was put to Mr. Jetly he stated on instructions that in the event a fresh application is made by the Petitioners and seeking similar facility, that application would be considered by keeping in mind the conditional no objection from the Range Office and brought on record at page 52 to 56 of the paper book. This stipulation is contained in the letters, inter alia, dated 2nd August, 2013.

8] In the light of this fair concession, and the agreement of the Revenue to consider the applications afresh on their own merits and in accordance with law, without being influenced by earlier rejections, we need not assign any further reasons much less elaborate.

9] We accept these statements made by Mr. Jetly on instructions as undertakings given to this Court. We direct that in the event, fresh application is made, the same shall be dealt with on its own merits in accordance with law but uninfluenced by any prior rejections. While considering these application/s, the adjudicating authority shall duly take note of the communications, copies of which are at page 52 and 56 of the

paper book and the no objection certificate or the additional consent given by the Respondent before us. Let this exercise be carried out within a period of 8 weeks from date of receipt of the fresh application. In the event, the Petitioners desire a personal hearing at the consideration of the application in the peculiar facts and circumstances of this case even that would be granted but we clarify that this shall not be a precedent for any cases of this nature. It is in the light of the continuing facility granted earlier but it being discontinued that we allow the Petitioners an opportunity of personal hearing/oral hearing. Let the competent authority duly take note of all the contentions and peruse all the relevant documents before he passes a speaking order and communicates the same to the Petitioners. We clarify that we have not expressed any opinion on the rival contentions. The Writ Petition is disposed off accordingly.

10] However, we clarify that in the light of this concession and coming from the Revenue, we would expect it not to be influenced by the arguments canvassed in this Court and the stand taken in the affidavit filed in this Writ Petition as well.

(S. P. DESHMUKH, J.)

(S.C. DHARMADHIKARI, J.)