IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4832 OF 2014

Honeywell Automation India Ltd. ... Petitioners
v/s
Union of India and others ... Respondents

Mr Prakash Shah with Mr Jas Sanghavi i/b M/s PDS Legal for Petitioners.
Mr B.M. Chaterjee, Sr. Cousel with Mrs Neeta Masurkar and Ms Maya Majmudar for Respondent Nos.1 to 4.
Mr Pradeep S. Jetly for Respondent Nos.5 to 7.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

DATE : 28TH SEPTEMBER 2015

***P.C.*:-**

1. By this Petition, diverse reliefs are sought and particularly to quash and set aside a decision of the Policy Interpretation Committee dated 27th December 2011 and a direction to the Respondent No.3 to withdraw or cancel a letter dated 29th September 2012 which is issued in terms of the decision of the Policy Interpretation Committee dated 27th December 2011. Thereafter, a

direction is sought to validate the SFIS scrip availed by the Petitioners and to refund a sum of Rs.89,95,627/- as deposited by the Petitioners alongwith interest.

2. Mr Shah, learned counsel appearing on behalf of the Petitioners has raised several contentions but eventually brought to our notice a Division Bench judgment of this Court to which one of us (S.C. Dharmadhikari J.) was a party in Writ Petition No.33 of 2015 and connected matters decided on 17th August 2015.

3. Mr Shah would submit that there are several aspects of the Scheme – SFIS which have been been duly considered in this case by the Division Bench and pertaining to foreign trade policy of 2009-2014.

4. Some of the provisions of the earlier policy and with which the Petitioners are concerned are identical but in the judgment, the Court has observed and held that any past recovery is unsustainable and therefore, restrained the Director General of Foreign Trade, Ministry of Commerce and other authorities of the Union of India from recovering any sums.

5. Mr Shah would submit that the benefit of all this can be

obtained only if the Director General of Foreign Trade adjudicates and decides a notice to show cause (copy of which has been annexed to this Petition at pages 57 and 68 of the paper book). The show cause notices are dated 27th March 2008 and they are yet not adjudicated by the Competent Authority.

6. Mrs Masurkar, learned counsel appearing on behalf of Respondent Nos.1 to 4 invited our attention to the affidavit of the Deputy Director General of Foreign Trade and submitted that it is the Petitioners themselves who did not desire any adjudication in the show cause notices. They have voluntarily paid the sums and now cannot seek any refund thereof. Further, the issue that has been raised on merits has also been explained in this affidavit. The benefits of any Scheme, much less, in the nature referred above, are not available to the Petitioners. Therefore, Writ Petition has no merit and must be dismissed.

7. After having heard both sides, we are of the view that the only relief that can be granted in this Writ Petition is a direction to the Competent authority to pass an order on the two show cause notices. If the show-cause notices have to be adjudicated and an

order passed in accordance with law thereon, then it is no justification that moneys have been allegedly voluntarily paid and the issue has been closed. The Respondent No.4 relies upon the fact that the petitioners were communicated the decision not to give the benefit in terms of the FSIS. In view of the Policy Interpretation Committee's interpretation dated 21st December 2011, the Respondent No.4 has issued letters both dated 25th April 2008 informing that the audit objections have been closed and regarding the excess credit. This to our mind is a unilateral act and the departmental action of closing the file regarding excess credit is because the Petitioners have paid up certain sums. If the sums are paid up voluntarily or otherwise or whether the sums were at all payable are all matters which must be determined in accordance with law. The show cause notice dated 27th March 2008 shows that the Respondents and particularly the Director General of Foreign Trade claims certain amounts. They have closed the file which without any adjudication order or decision but because of the act of the Petitioners paying certain sums. To our mind, the continued retention of the sums or whether they were at all payable are matters to be decided in accordance with law and based on the allegations in the show cause notice. The Competent Authority cannot avoid the legal responsibility.

8. We would therefore direct the Competent Authority viz. the Joint Director of Foreign Trade, Ministry of Commerce, Union of India to give a personal hearing to the Petitioners on the two show cause notices dated 27th March 2008 and pas a reasoned order thereon as expeditiously as possible and within a period of four months from the date of receipt of copy of this order. We keep open all contentions of the parties and while taking a decision on the show cause notices, the Director General of Foreign Trade should not be influenced by any statement made in the affidavit in reply / rejoinder filed to this Petition. Petition is disposed off.

(B.P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI J.)****

** **CERTIFICATE**
Certified to be a true and correct copy of the original signed Judgment/Order.