IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9551 OF 2015

Malu Paper Mills } Petitioner
versus
Union of India and Ors. } Respondents

Mr. Vikram Nankani – Senior Advocate with Mr. Prakash Shah and Mr. Sushant Murthy i/b. M/s. PDS Legal for the Petitioner.

Mr. Pradeep S. Jetly with Ms. Neeta Masurkar and Mr. P. S. Gujar for Respondent No. 1 to 4.

Mr. Pradeep S. Jetly with Mr. Jitendra B. Mishra for Respondent No. 5.

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

DATED :- NOVEMBER 23, 2015

P.C. :-

By this Petition under Article 226 of the Constitution of India, the Petitioner is seeking a Writ of Certiorari or any other appropriate Writ, order or direction to quash and set aside the letter dated 31st August, 2015 and three deficiency letters, two dated 9th April, 2015 and one dated 17th April, 2015 issued by Respondent No. 4.

2) The parties to this Petition and particularly the Party Respondents are Union of India, Deputy Commissioner of Customs, Nhava Sheva – IV, the Commissioner of Customs at Nhava Sheva and Nagpur and the Joint Director General of Foreign Trade.

3) The Petitioner states that it is engaged, *inter alia*, in the manufacture and export of newsprint/kraft papers, writing and printing papers etc. and has set up a paper mill at Nagpur. The Petitioner has stated that it has referred to a policy styled as Foreign Trade Policy, 2009-14 formulated and announced in terms of the power under section 5 of the Foreign Trade Development and Regulation Act, 1992. That policy contains Chapter V. In that Chapter, there is a scheme known as Export Promotion Capital Goods Scheme (for short "EPCG Scheme"), under which, capital goods could be imported at a concessional rate of customs duty, subject to an export obligation to be fulfilled by the importer on FOB basis equivalent to eight times the duty saved on the goods imported over a period of eight years reckoned from the date of the issue of the import licence.

4) We do not refer to this policy in further details, as the case of the Petitioner is that in order to meet its objectives, a

Notification under section 25(1) of the Customs Act, 1962 being Notification No. 97 of 2004 dated 17th September, 2004 was issued, whereby, exemption has been granted to import capital goods at concessional rates of customs duty under the EPCG Scheme. The five licences obtained by the Petitioner, for import of plant and machinery for setting up of paper mill at Nagpur with a condition to export newsprint, kraft paper, writing and printing paper, enabled it to avail exemption. The details of the licences are set out in para 8 and it has been stated that for availing the benefit of concessional rate of duty under Customs Notification No. 97 of 2004, the Petitioner furnished bank guarantees in favour of Respondent No. 2, the details of which are set out in Annexures E1 to E4. The licences' copies are at Annexure 'D' to the Petition collectively.

5) The Petitioner points out the financial and other difficulties and which did not enable it to fulfill the export obligation. It relies upon certain corporate debt restructuring package. The Petitioner then relies upon the amendment to Chapter V of the Foreign Trade Policy and submits that it would be in a position to apply for extension to fulfill the export obligation. That is how and on obtaining the certificate styled as Export Obligation Discharge Certificate that the Petitioner can

avail of the concession in payment of customs duty. It is in these circumstances and stating that though the Customs have not issued a corresponding Notification, yet, the export promotion guarantee scheme in terms of Chapter V of the Foreign Trade Policy, 2009-14 enables the Petitioner to seek extension that the extension has been sought, but before any decision thereon could be taken, the Customs have invoked the bank guarantees by addressing a letter to the concerned banks. That is how the Petitioner approached this Court.

6) An Affidavit in reply has been filed to this Petition, based on which, certain draft amendments have been proposed by the Petitioner. The draft of these amendments was handed over to Mr. Jetly in Court. Mr. Jetly has submitted that subject to just exceptions, the amendments could be granted. Accordingly, we permit the Petition to be amended in terms of the draft. The amendments to be carried out within a period of one week from today.

7) The affidavit in reply of the Deputy Director General of Foreign Trade states that while it is true that the Petitioner had availed of the EPCG Scheme and the extension would not be allowed till corresponding Customs Notification is issued in this regard and that is how the deficiency letters have been issued,

yet, in para 7 at page 152 of the paper book, this is what is stated:-

> "7. I say that new Foreign Trade Policy 2015-20 has also been issued vide Notification No. 01/2015-20 dated 1st April, 2015 wherein also this facility of export obligation period extension under Corporate Debt Restructuring (CDR) scheme has not been allowed and therefore the request for export obligation period extension under Corporate Debt Restructuring (CDR) in three EPCG authorisations mentioned in para No. 2 above cannot be accepted. I say that the Petitioners have the option to get the export obligation period extension under the provisions of para 5.11 of Hand Book of Procedures (2009-14)."

8) Mr. Nankani, learned Senior Counsel appearing for the Petitioner, on instructions, states that keeping the larger controversy alive and without prejudice to the rights and contentions of the Petitioner, it would exercise the option to get the export obligation period extension under the provisions of para 5.11 of the Handbook of Procedure, 2009-14.

9) The Petitioner would also, till such time as its application/request is considered in terms of this para, submit and furnish fresh bank guarantees in the sum demanded by the Customs and which bank guarantees would be kept alive till the Petitioner obtains the Export Obligation Discharge Certificate from the competent authority.

10) Having heard both sides on this limited request, we are of the view that the Writ Petition can be disposed of in terms

of the statements and undertakings of the Petitioner. We find that if the Petitioner is approaching for exercising an option as propounded and placed before us by the Director General of Foreign Trade itself, then, the request to enable them to avail of the same on the terms proposed by Mr. Nankani can be accepted. Meaning thereby, while granting liberty to the Petitioner to avail of the option in terms of para 5.11 of the Handbook of Procedure, 2009-14, we accept the undertakings of the Petitioner that it would furnish fresh bank guarantees in the sum demanded by the Customs in terms of the document/communication dated 31st August, 2015 addressed to the Chief Manager of State Bank of India, Industrial Finance Branch, 5 Sai Complex, Bharat Nagar, Nagpur and keep these bank guarantees alive till it obtains the Export Obligation Discharge Certificate within the extended time. The Petitioner would submit these bank guarantees for verification and scrutiny. Needless to clarify that the exporter would obtain the Export Obligation Discharge Certificate and submit the same to the Customs/Competent Commissionerate and avail of such benefits as are permissible in law.

11) The Writ Petition is disposed of in these terms. We clarify that we have not examined the rival contentions on the larger controversy and they are kept open to be decided in

appropriate case. We further direct that the Demand Drafts shall be returned to Respondent No. 6 by the Commissioner of Customs at Nhava Sheva on the Petitioner's furnishing bank guarantees as above.

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