IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5400 OF 2016

M/s. USMS SAFFRON CO. INC., ... Petitioners

Vs

1. The Union of India & Anr. ... Respondents

Mr. V.Sridharan, senior counsel with Mr. Prakash Shah and Mr. Jas Sanghvi i/b PDS Legal for the Petitioner.

Mr. Anil C. Singh, Addl. Solicitor General with Mr. Pradeep S. Jetly and Mr. Y.N. Momaya for the Respondents.

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

TUESDAY, 6TH SEPTEMBER, 2016

P.C. :

1 This petition under Article 226 of the Constitution of India challenges a show cause notice.

2 The prayer in the writ petition is to quash and set aside the impugned show cause notice dated 5th February, 2016, issued by the second respondent and all proceedings in

furtherance thereof.

3 Mr. Sridharan, learned senior counsel appearing for the petitioner would submit that the petitioner was compelled to approach this Court for both respondents are exercising powers under the Customs Act. During the course of their business, the petitioners purchased a duty free import authorisation issued to various exporters of "Assorted Confectionery and Biscuits". These authorisations are duly transferred in favour of the petitioner by the Regional Authority in the office of the Director General of Foreign Trade (for short "DGFT").

4 The petitioners imported, in the course of their business, and without payment of duty, saffron. This is on the strength of this transferred authorisation. They lodged 90 bills of entry, particulars of which are set out in Annexure-A. These bills of entry were either provisionally assessed or finally assessed and reliance is placed upon certain appellate orders.

5 Now, the matter stands concluded by the order-in-appeal

and which order in appeal was unsuccessfully challenged in this Court. The subject show cause notice is issued and to deny the exemption granted in respect of saffron. That saffron was imported on the footing that a duty-free import authorisation issued to Laxmi International was the subject matter of an order-in-original dated 28th October, 2014. The show cause notice proceeds on the footing that the Commissioner of Customs denied this benefit and demanded customs duty. On an appeal filed against this order-in-original, the Central Excise and Service Tax Appellate Tribunal passed a final order dated 20th March, 2015. That final order sets aside this order-in-original. Thereupon the Revenue approached this Court, but the Revenue's appeal was also dismissed by an order, copy of which is at Annexure-M. The petitioners heavily rely upon the order dated 15th February, 2016, passed by this Court.

6 It is stated that this order is challenged before the Hon'ble Supreme Court of India by the Revenue and that is how the Revenue would urge that they are empowered to issue a show cause notice.

7 However, Mr. Sridharan would submit that any matter concluded by the order passed by the Tribunal and which, in turn, is upheld by his Court, would mean the Revenue is permitted to go against the basic tenet of law. That being that an order passed by the jurisdictional High Court binds the Revenue and it cannot act contrary to it. A show cause notice completely founded on the matters and covered by this judgment of this Court is thus *ex-facie* without jurisdiction and not maintainable in law. It should be quashed and set aside.

8 The affidavit-in-reply that is filed by the Revenue, on the other hand, would demonstrate, according to Mr. Singh, learned Additional Solicitor General, that the show cause notice is not only founded on the matters covered by the judgment as erroneously contended. The show cause notice refers to several acts of omission and commission. This writ petition is not maintainable simply because the petitioners have multiple remedies in the event a final order in the show cause notice is adverse to the petitioners. Secondly, the show cause notice was taken up for adjudication. Letters were addressed by the petitioners on 29th April, 2016, and 11th April, 2016,

requesting for an adjournment. The two letters requesting for adjournment were duly taken on record and the matter was fixed on 4th May, 2016. However, the petitioners advocate submitted his letter that on account of the pendency of this writ petition, the petitioners do not wish to proceed with the show cause notice and the adjudication thereof be deferred and postponed. Further, a request of a similar nature was made in the two letters. Reference is made to the same in paragraph 2 of the affidavit-in-reply at page 217. Then the petitioners adopted delaying tactics and requested for cross-examination of the Director General of Foreign Trade and Customs officers. The petitioners were informed that the documents requested are not being relied upon in the show cause notice. In respect of the cross-examination of certain officers, the petitioners were informed that their names and designation had not been furnished. Therefore, the show cause notice and the proceedings in pursuance thereof were adjourned.

9 The Revenue has relied upon the copies of the show cause notice addressed to several entities. Then, it is submitted that the first petitioner filed appeal for early hearing and

application for stay, *inter alia*, impugning therein a letter of 12th May, 2016, addressed by the Revenue officials which does nothing but informs the petitioners that their demand as made for cross-examination and submission of documents is vague and cannot be accepted. The department filed its reply to this stay application and appeal and the Tribunal on 23rd May, 2016, passed an order of status quo and directed that the same shall be maintained until further orders of the Tribunal. All this, according to the learned Additional Solicitor General, results in delay in adjudication of the show cause notice issued way back in February, 2016.

10 We have noted these contentions, but we wish to clarify at the outset that we are not inclined to express any opinion thereon. These are matters pertaining to the merits of the show cause notice and we do not deem it fit and proper to observe anything in relation thereto and at this stage. While it is true that proceedings from this Court's judgment and order, copy of which is Annexure-M dated 15th February, 2016, are pending in the Hon'ble Supreme Court of India, bearing in mind that the Revenue desires to adjudicate and take the show cause

notice dated 5th February, 2016, to its logical end and conclusion, keeping all the contentions of the petitioners to the contrary intact, we called upon the learned Additional Solicitor General to take instructions as to whether the Revenue is ready and agreeable to grant the request of the petitioners for cross-examination of such officials of the department who have endorsed the bills of entry at the relevant time. The learned Additional Solicitor General, on instructions, states that the Revenue is agreeable to do so. The petitioners must furnish the details of the bills of entry which have been endorsed by the officers on a given date and time and their designation and thereupon the Revenue would agree to make them available for cross-examination by the petitioners' representative during the course of adjudication of the show cause notice.

11 We accept this statement made by the learned Additional Solicitor General as an undertaking to this Court. We permit the petitioners to furnish the details of these officials who have endorsed the concerned and relevant bills of entry within two weeks as stated by them. On receipt of such a request in writing with the above details, the Adjudicating Officer shall

direct the concerned officials to make themselves available for cross-examination by the petitioners subject, of course, to the petitioners' legal rights and contentions being intact. The petitioners are free to participate in the proceedings without prejudice to their rights and contentions on the point of jurisdiction of the Adjudicating Officer to issue the show cause notice and the maintainability of the adjudication proceedings themselves.

12 We clarify that we have not expressed any opinion on the rival contentions nor on the respective stands and taken by the parties before us. We also clarify that while we dispose of the writ petition on this aspect alone, we shall not be taken to have expressed any opinion on the rival contentions about the principle of law pressed into service by Mr. Sridharan.

13 In the light of the order and the broad arrangement above, the appeal before the Central Excise and Service Tax Appellate Tribunal filed by the petitioner does not survive and should be formally disposed of by the Tribunal.

14 The writ petition, accordingly, stands disposed of.

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