IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10232 OF 2015

Sandvik Asia Pvt Ltd ..Petitioner

Vs.

The Union of India and Others ..Respondents

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

Mr. Pradeep S. Jetly i/b Mr. Vinod Joshi,for the Respondent Nos. 1 and 4.

Mr. S. Sasikumar, Joint Director General of Foreign Trade present.

Mr. Chandrakant M. Ram, Foreign Trade Development Officer present.

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

DATE :- **FEBRUARY 6, 2017.**

P. C.:

By this Writ Petition under Article 226 of the Constitution of India, the Petitioner is seeking following two reliefs:-

(a):this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof to quash and set aside diverse communications, as more particularly set out in paragraph 11 hereinabove, issued by the Foreign Trade Development Officer for and on behalf of Respondent No.3 and the purported clarification of PIC in its Meeting held on 4.12.2012;

(b): This Hon'ble Court be pleased to declare that:

(I) the impugned clarification of the Policy Interpretation Committee in its Meeting No. 02/AM 13 held on 04.12.2012 is without jurisdiction, null and void and not binding on the Petitioner and the Respondent.

(ii) the Petitioner is entitle to the deemed export benefit in respect of goods supplied against the invalidation letters issued by the regional office of the Respondent No.2.

2 By prayer clause (c) of the Writ Petition, the

Petitioner is seeking a writ of mandamus or a writ, order or direction in the nature thereof so as to direct the Respondents to forthwith sanction and grant to the Petitioner the deemed export benefit in respect of goods supplied to the holders of EPCG authorization under deemed export and to forthwith grant and refund the terminal excise duty and duty drawback pursuant to certain applications made in that behalf together with interest.

3 The claim of the Petitioner before us is that it is a company carrying on business inter alia of manufacture and export of various types of Rock / Earth Drilling Machinery/ Tools and Taps of High Speed Steel. Respondent Nos.1 and 2 to 5 are the Union of India and functionaries under the Foreign Trade (Development and Regulation) Act, 1992. During the course of its business, the Petitioner supplies the goods namely DTH Buttons Bits and Integral Drill Steel. These are supplied to EPGC licence holders within the meaning of relevant Foreign Trade Policy published by the first Respondent. The invalidation letters give detailed

description of the goods to be supplied against such communication.

4 The grievance of the Petitioner is that during the course of this business and the period under dispute, it supplied these goods to various licence holders who had obtained the invalidation letters from the Regional Office of the Director General of Foreign Trade without payment of CENVAT duty. The procedure is set out in paragraph 8 of the Petition and then it is submitted that there are various claims filed by the Petitioner of such supply against the invalidation letters. Then, the claim is that the actual duty involved in respect of the goods cleared against the invalidation letters, as aforesaid, as deemed export is more than all industry rate of duty drawback. Then, relying upon certain export import policies, it is submitted that the application for terminal excise duty refund and deemed export duty drawback for supply of Drill Rods was filed and clarifications were also submitted. However, without any opportunity of being heard, Respondent No.4 issued communication intimating the

Petitioner that its claim cannot be accepted for there is a direction of Respondent No.3 that the item of supply, namely, Integral Drill Steel is not capital goods. Therefore, the refund of terminal excise duty cannot be granted. On some occasion, the Petitioner was informed that the matter is referred to the Head Quarter and final outcome will be intimated on receipt of the decision of the Head Quarter. That is how the writ Petitioner addressed letters and references of such letters are to be found in paragraphs 15,16,17 and 18 of the Writ Petition.

5 The Petitioner then points out that there was a meeting of the Policy Interpretation Committee and which purported to interpret the relevant Foreign Trade Policy. Relying upon that the claims have been apparently rejected. However, the Petitioner also pointed out that once the invalidation letters are valid and subsisting so also binding, then, the Deputy Director General of Foreign Trade, New Delhi, relying upon the clarifications of the Policy Interpretation Committee dated 4th December, 2012, could

not have advised cancellation of the invalidation letters. He could not have also advised cancellation of EPCG licences themselves.

6 During the course of arguments, Mr. Shah, learned counsel appearing for the Petitioner invited our attention to a copy of the invalidation letter-Annexure-A to the Writ Petition to submit that the same incorporates all the details including the nature of the goods. Once the import item to be supplied by the Indigenous producer contains description of the goods, then these goods are capital in nature and merely because there is a communication from the Deputy General Director of Foreign Trade the invalidation letters / licences cannot be cancelled. In fact they are not cancelled and reliance is placed on merely a communication recommending cancellation of the same. Therefore and coupled with the denial of the principles of natural justice, this Court should quash and set aside the impugned actions and issue the writ as prayed.

7 Mr. Jetly on the other hand has invited our attention to the affidavit in reply which he would submit is fairly detailed and contains the reasons for the steps initiated and taken by the Respondents. The authorization letters have not been cancelled but there is a reference in paragraph 5 (f) of the affidavit in reply at running page 91 that such authorizations should be cancelled.

8 During the course of detailed arguments and even at the stage of dictation of judgment, we indicated to both sides as to why the competent authority, namely, Director General / Joint Direct General of Foreign Trade cannot hear the Petitioner on their application for refund and despite some stand taken and noted during the course of arguments by the Respondents, the matter be considered *denovo* and afresh.

9 Mr. Jetly sought time in the morning session to take instructions but has now informed this Court that the Respondents are not averse to hearing the Petitioner again

and passing a fresh order containing reasons for their conclusion.

10 In view of the statement made by Mr. Jetly on instructions, we proceed on the footing that the Petitioner's application seeking the refund as noted above would be considered irrespective of the stand taken in the affidavit in reply and reiterated before this Court during the course of argument. While doing so, we have no doubt in our mind that the Respondents will not be influenced by the mere recommendations of some authority in the Ministry and which recommends cancellation of the invalidation letters / EPCG licences. It will decide the controversy on the footing that when the concerned dealings and transactions took place, there was an authorization in the form of invalidation letter, there was a communication copy of which is at Annexure-A to the Writ Petition and that the Policy Interpretation Committee issued the clarification later namely, on 4th December, 2012. Whether such clarifications and recommendation as noted above binds the Petitioner and

would also cover the prior deals and transactions, is a specific aspect of the matter and should be considered by the Respondents. They will pass a fresh speaking order after hearing the writ petitioner / their representative and pass an order uninfluenced by any of the statements made in their affidavit in reply and the communications relied upon. However, we clarify that we have not expressed any opinion on the arguments canvassed before us. The Writ Petition is disposed off with these directions.

11 Needless to clarify that the Petitioner can place material before the authority to support its stand that the goods supplied are capital goods and not consumables.

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