

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12013 OF 2017

Ihsedu Agrochem Pvt. Ltd. ... Petitioner
Vs.
The Union of India & Ors. ... Respondents

WITH
REVIEW PETITION STAMP NO. 33492 OF 2017
IN
WRIT PETITION NO. 2548 OF 2016

Union of India & Ors. ... Petitioners
Vs.
Ihsedu Agrochem Private Limited ... Respondent

WITH
CIVIL APPLICATION NO. 364 OF 2017
IN
REVIEW PETITION STAMP NO. 33492 OF 2017
IN
WRIT PETITION NO. 2548 OF 2016

Union of India & Ors. ... Applicants
Vs.
Ihsedu Agrochem Private Limited ... Respondent

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Mr. Prakash Shah i/b. PDS Legal for the Petitioner in
WP/12013/2017 – Respondent in RPWL/33492/2017 &
CAO/364/2017.

Mr. R. V. Desai, Senior Advocate a/w Mr. Y. R. Mishra &
M.S.Bharadwaj for the Union of India.

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**CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE : DECEMBER 21, 2017.

P.C. :

1. Together with the Writ Petition of the assessee, the Review Petition moved by the respondents is placed before us.
2. The Review Petition is filed seeking a review of the order passed in Writ Petition No. 2548 of 2016 dated 7th March, 2016.
3. We have heard Mr. Desai, learned Senior Counsel appearing in support of this Review Petition and the Civil Application for condonation of delay.
4. The Writ Petition that is on our board, namely Writ Petition No. 12013 of 2017 contains a prayer that the respondents be directed by a writ of mandamus or any other appropriate writ, order or direction to forthwith (i) issue duty credit script (authorization) in terms of paragraphs 3.14.4 and 3.14.5 of the Foreign Trade Policy for the balance amount of Rs.8,82,53,966.88 in compliance of order and judgment dated 07.03.2016 passed by this Hon'ble Court in Writ Petition No. 2548 of 2016; and (ii) pay to the Petitioner interest on Rs.8,82,53,966.88 from the expiry of 8 weeks from 07.03.2016 for failure to issue script within 8 weeks of the date of the order of this Hon'ble Court.
5. When such Petition was placed before us, the respondents stated that they have moved a Review Petition seeking a Review of the judgment and order passed by this Court in Writ Petition No. 2548 of 2016 of this very petitioner.

6. Concededly, this Writ Petition was disposed of by the Court on 7th March, 2016 by the following order:

“1. Having heard both sides and finding that the entire issue in this petition stands concluded by a division bench judgment of this Court in Writ Petition No.1750 of 2015, JSW Limited vs. Union of India & Ors., along with Writ Petition No.2122 of 2015, both decided on 25th January, 2016, this Writ Petition is allowed. Rule which is made returnable forthwith by consent of both sides is, therefore, made absolute in terms of the Division Bench judgment and the direction issued today to comply with this order within a period of eight (8) weeks from today.

2. The Writ Petition, accordingly, stands disposed of.”

7. The Petition seeking the above writ of mandamus was filed on 31st October, 2017 and this Court was informed that the judgment and order dated 7th March 2016, based on which the earlier Petition of the Petitioner was disposed of, has not been challenged in the higher Court.

8. On 5th December, 2017, a Division Bench of this Court was informed that on 29th November, 2017, the Union of India and others have filed this Review Petition and which seeks a review of the above reproduced order.

9. Mr. Desai, learned senior counsel appearing in support of the Civil Application fairly concedes that the Review Petition is time barred, but there is a prayer to condone the delay in filing

the same. We have heard both sides on this Application seeking condonation of delay. We find that the only reason assigned for the delay is that the order dated 7th March, 2016 was made known to both the Departments, and particularly the Department or the Ministry of Commerce & Industry, Government of India, equally, the Director General of Foreign Trade. However, the matter was referred to the Branch Secretariat Ministry of Law & Justice on 27th March, 2017 for advice and followed up with letters of 26th May, 2017 and 12th June, 2017. There was correspondence exchanged with the Branch Secretariat and conferences and discussions were held. It is clear from a perusal of this Civil Application that each of the concerned official was apprised of the order passed by this Court and with a copy forwarded duly to them. They had enough time to take a decision as to whether to seek a review of the order or to take appropriate proceedings. However, despite the knowledge of this order and from 27th April, 2016, nothing has been done save and except seeking advice and writing letters. We do not think that the time that was spent in all this, as stated in the Civil Application, constitutes sufficient cause. These are usual Departmental procedures and for compliance of such procedures, the Department cannot as of routine seek condonation of delay. It is common ground and too well settled that the Government is not a special litigant and time does not stop running insofar as the Government's litigation is concerned. In other words, the Government is not exempt from the law of limitation.

10. On a perusal of this Civil Application, we do not find that the reasons assigned can be termed as sufficient cause. The reason of usual Departmental delays does not constitute sufficient cause and the stand of the Government, therefore, cannot be termed as reasonable. In the circumstances, we cannot condone this enormous delay of 535 days in filing the Review Petition. The Review Petition is therefore dismissed on the ground of delay.

11. So far as Writ Petition No. 12013 of 2017, since it is stated that the Department, after dismissal of this Review Petition, would take steps to comply with the order passed by this Court within the extended time, we concede to the request of Mr. Desai, learned Senior Counsel and grant the Department a final opportunity to comply with the order passed on 7th March, 2016. In the facts and circumstances, we grant two months' time to comply with this order. Stand over to 21st February, 2018. No further extension would be granted.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)