IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9983 OF 2017

RSWM Ltd. .. Petitioners

v/s.

The Union of India & Ors. ..Respondents

Mr. V. Sridharan, Senior Cousnel with Mr. Prakash Shah, Jas Sanghavi, Akhilesh Kangasia i/b PDS Legal for the petitioners
Mr. Pradeep S. Jetly a/w Mr. Anand Singh for the respondents

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.

DATED : 29th OCTOBER, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 27th March, 2017 passed by the Additional Director General of Foreign Trade. By the impugned order dated 27th March, 2017, the petitioners' application dated 20th January, 2017 for duty credit scrips @ 2% of the incremental growth done in exports during the period 1st April, 2013 to 31st March, 2014 stood rejected.

2. Mr. Sridharan, learned Counsel appearing in support of the petition points out that the issue urged in this petition stands concluded in favour of the petitioners by the decisions of this Court in ***JSW Steel***

Ltd. Vs. Union of India, 334 ELT 222; ***Welspun Global Brands Ltd. & Ors. Vs. Union of India & Ors.*** (Writ Petition No.2157 of 2016) decided on 12th June, 2017; ***UPL Ltd. Vs. Union of India*** (Writ Petition No.6472 of 2017) decided on 27th June, 2017 and ***Ihsedu Agrochem Pvt. Ltd. Vs. Union of India*** (Writ Petition No.2548 of 2016) decided on 7th March, 2016. Thus, the petition be allowed.

3. Mr. Jetly, learned Counsel appearing for the respondent Revenue opposes grant of relief on the ground that so far as JSW Steel Ltd. (supra) is concerned, it dealt with the incentive scheme as provided in Notification No.44/(RE-2013)/2009-2014 dated 25th September, 2013. This petition deals with the scheme for incentive benefit under Notification No.43/(RE-2013) 2009-14 dated 25th September, 2013. In the above view, he submits that no relief should be granted to the petitioners.

4. We find that this Court in *Welspun Global Brands Ltd.* (supra) and UPL Ltd. (supra), in fact records in its order that the respondents are refusing to give the benefit of incentives as claimed by the petitioners under Notification No.43 (RE-2013) 2009-14 dated 25th September, 2013. Identical to this case. This Court after considering the

submissions made on behalf of the Revenue came to the conclusion in both the above cases that the benefit of Notification No.43/ (RE-2013)/2009-14 dated 25th September, 2013 is available to the petitioners therein, as the issue stands concluded by the earlier decision of this Court in *JSW Steel Ltd.* (supra). We specifically asked the respondents whether the order in *Welspun Global Brands Ltd.* (supra) and *UPL Ltd.* (supra) has been challenged by them before the Apex Court and the result of the same. However, the respondents are not in a position to respond to our query. It thus, appears that the respondents have accepted the decision of *Welspun Global Brands Ltd.* (Supra) and *UPL Ltd.* (supra). In any case, in the absence of respondents obtaining a stay of the order passed in *Welspun Global Brands Ltd.* (supra) and *UPL Ltd.* (supra) they are binding upon all the authorities within the State. This as held by the Supreme Court in ***East India Commercial Co. Ltd. Vs. Commissioner of Customs, 13 ELT 1342.***

5. In view of the fact that the issue stands concluded in favour of the petitioners by the decision of this Court in *Welspun Global Brands Ltd.* (supra) and *UPL Ltd.* (supra), the petitioners are entitled to the relief sought for by them in this petition.

6. Therefore, the order dated 27th March, 2017 passed by the Additional Director General of Foreign Trade is quashed and set aside. The respondents are directed to allow the petitioner's application dated 20th January, 2017 within a period of nine weeks from today.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**