IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9676 OF 2018

Indo Count Industires Ltd. .. Petitioner
v/s.
Union of India & Anr. ..Respondents

Mr. Mukul Rohatgi, Senior Counsel a/w Mr. Vikram Nankani, Senior Counsel a/w Mr. Prakash Shah, Dr. Sujay Kantawala, Mr. Sanjay Agarwal Mr. Jas Sanghavi I/b Prompt Legal for the petitioner
Mr. Pradeep S. Jetly for respondents
Mr. R.R. Khandelwal, Addl. Commissioner of Customs JNCH present in Court.

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.
DATED : 21st SEPTEMBER, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges a Communication dated 20th July, 2018 issued by the respondent no.3 (Deputy Commissioner of Customs). The impugned communication dated 20th July, 2018 issued consequent to Audit done after export of furnishing items (goods) by the petitioner. This Audit *prima facie* indicated that in view misclassification of goods, the benefit of Notification No.24 of 2015 -Cus. would be claimed, resulting in higher benefit in grant of duty free scrips under the Merchandise Exports from India Scheme (MEIS) to be utilized to discharge duty on imports.

2. The undisputed facts are the petitioner has exported furnishing fabrics i.e. pillow cases, bed-sheets etc. and classified the same under Chapter 63 heading 63.07 of the Customs Tariff Act, 1975 (Tariff Act). This classification of goods entitled them to claim benefit of MEIS on imports made by virtue of Notification no.24 of 2015. Thereafter, during the post export audit, it was noticed that the above furnishing fabrics were classifiable under Chapter 63 Heading 63.04 under the Tariff Act. Thus, investigation was commenced and statements of the petitioner's officers were also recorded. We are informed that investigations are still in progress as no show-cause notice has yet been issued. Nevertheless, on 20th July, 2018 the impugned communication was issued which directed the petitioner to pay the benefit obtained under Notification No.24/2015 (MEIS benefit) within 10 days, failing which proceedings for recovery shall be initiated as per the law.

3. The petitioner's grievance is that the impugned communication is without jurisdiction. It is further submitted that in case a show-cause notice is issued, the petitioner would respond appropriately and justify that it is entitled to the classification claimed by it, as also to the benefit

of Notification No.24 of 2015-Cus. It is submitted that the impugned communication dated 20th July, 2018 calls upon the petitioner to pay the amount which is not a result of any adjudication proceedings but a mere ipsi dixit of the Officers of the Revenue. Besides, it threatens to adopt recovery proceedings for recovering the same. It is submitted that the respondents be restrained from pressurizing the petitioner to pay the amount before adjudication of show-cause notice, which may be issued by the respondents. In view of the above, it is prayed that the communication dated 20th July, 2018 be quashed and set aside.

4. Mr. Jetly, learned Counsel appearing for the Revenue on instruction of Mr. R.P. Khandelwal, Additional Commissioner of Customs states that the respondent Revenue will not initiate any proceedings for recovery of Government dues till such time as adjudication order is passed on the show-cause notice which will be issued by the respondents. Thus, the respondents will not give effect to the impugned communication dated 20th July, 2018 till such time as the adjudication order is passed on the show-cause notice to be issued. We accept the statement made on behalf of the respondents. In view of the statement by the respondent Revenue, no interference is called for at this stage.

5. It was also submitted by Mr.Rohatgi, learned Senior Counsel that the respondents are adopting pressure tactics to compel the petitioner to pay amounts even before issuing and adjudicating the show-cause notice, which is yet to be issued. It is submitted that the petitioner has already paid Rs.7.5 crores without prejudice and under protest only in view of pressure tactics adopted by the Revenue out of a total dues of approximately Rs.73 crores. We are not privy to what transpired between the officers of the Revenue and the officers of the petitioner. Therefore, we are unable to comment. In any case, it is made clear that the respondents will not adopt any coercive proceedings for recovery till the passing of the adjudication order on the show-cause notice to be issued. However, this will not restrain the respondents from accepting any payments made by the petitioner in discharge of the likely demand.

6. In view of the statement made on behalf of the respondent Revenue which is accepted, no interference at this stage is warranted. Petition is disposed of in the above terms.

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