R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO. 4056 OF 2018

Godrej & Boyce Mfg. Co. Ltd. .. Petitioner

Versus

Union of India & Ors. .. Respondents

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- Mr. Arshad Hidayatullah, Senior Advocate, Ms. Shailaja Kher Hidayatullah a/w Mr. Anupam Dighe i/by India Law Alliance for the Petitioner
- Mr. Pradeep S. Jetly for the Respondents

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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : DECEMBER 6, 2018.

P.C.:

1. The petitioner shall remove all office objections latest by 20.12.2018.

2. The petition is taken up for final disposal with consent of learned counsel for the parties. The petitioner has challenged a communication dated 30.10.2018 as at Exhibit "J" to the petition. Under the said communication, the Dy. Commissioner of Customs has raised a demand of Rs. 71,87,475/- from the petitioner inter alia contending that the petitioner as an importer had not made true and correct declaration and not paid the correct duty. In the portion of this communication, the said Authority conveyed to the petitioner as under :-

> " You are therefore advised to pay the differential duty in the matter with applicable interest within 10 days of receipt of this consultative letter cum demand notice. You are further requested to produce all the import documents viz. copy of bill of entry, Invoice, Packing list, Bill of lading etc. in respect of aforesaid Bills of entry.
>
> You may also avail the benefit of lower penalty in terms of Section 28(5) of the Customs Act, 1962 by early payment of duty and applicable interest thereon along with penalty @ 15%. If the amount of differential duty, interest and penalty is not paid within stipulated period, necessary action shall be initiated under the Customs Act, 1962. "

3. Learned counsel for the petitioner submitted that the imports were cleared by accepting the petitioner's classification of goods and also granting the benefit of exemption notification relied upon by the petitioner. Without any further order being passed, the Authorities are now seeking recovery of dues which have not yet been crystallized. He submitted that no hearing was granted to the petitioner before raising the said demand.

4. Learned counsel for the Department stated that the communication in question is merely in the nature of the fulfilling the requirement of second proviso to Clause (a) of sub-section 1 of Section 28 of the Customs Act, 1962 ("**the Customs Act"** for short).

5. To appreciate this contention of the learned counsel, we may reproduce the relevant provision of Section 28 of the Customs Act which reads as under:-

> 28. **Recovery of [duties not levied or short-levied or short paid] or erroneously refunded** -
>
> (1) Where any [duty has not been levied or not paid or has been short levied or short paid] or erroneously refunded, or any interest payable has not been paid, part paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts :-
>
> (a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been [so levied or paid] or which has been short levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice ;
>
> (b) the person, chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, -

(i) his own ascertainment of such duty; or
(ii) the duty ascertained by the proper officer;

the amount of duty along with the interest payable thereon under Section 28-AA or the amount of interest which has not been so paid or part-paid:
[provided that the proper officer shall not serve such show cause notice, where the amount involved is less that Rupees One hundred]
[provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]

6. Clause (a) to sub-section 1 of Section 28 of the Customs Act envisages a proper officer requiring the assessee to show cause why the duty or the interest which has not been levied or short paid or short levied or erroneously refunded, should not be recovered. The second proviso to said clause, however, provides that before issuing such notice, the proper officer shall hold pre-notice consultation with a person chargeable with duty or interest in such manner as may be prescribed.

7. As noted, the learned counsel for the Department stated that the impugned communication is in the nature of pre-notice consultation. He further stated that if the petitioner does not accept the request of the Authority in said notice and if the Authority wishes to seek recovery, the procedure in terms of Section 28 shall be followed. Needless to say that the petitioner can raise all contentions before the proper office in case such eventuality arises. In that view of the matter and in view of said clarification, no further order is required to be passed in this petition. Petition disposed of.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**