IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7577 OF 2019

Bhagyalaxmi Dairy Farms Pvt. Ltd. ... Petitioner
V/s.
Union of India and Ors. ... Respondents

Dr. Sujay Kantawala a/w. Mr. Brijesh Pathak, Ms. Poorva Patil and Mr. Sujit Sahoo for the Petitioner.

Mr. Pradeep S. Jetly a/w. Mr. J.B. Mishra for the Respondents.

CORAM : M.S. SANKLECHA AND
S.C. GUPTE, JJ.
DATED : 25th July 2019.

P.C. :

1. Mr. Kantawala, the learned counsel appearing in support of this petition is seeking leave to amend by adding Additional Commissioner of Customs, Nhava Sheva, IV as Respondent No. 4 to this Petition. The Respondent has no objections to the amendment being allowed. Amendment to be carried out forthwith. Re-verification dispensed with. Amendment also to be carried out on the copies of the petition served upon the respondents.

2. This Petition under Article 226 of Constitution of India challenges the order dated 17th January 2018 (issued on 18th January, 2018) passed by the Respondent No.4- Additional Commissioner of Customs, NS-IV under the Customs Act, 1962 (the Act). The

impugned order dated 17th January 2018 has held that the Petitioner has committed breach of notification no. 97/2004-Cus dated 17.09.2004 resulting in demand of Rs. 19,21,771/- alongwith applicable interest in terms of conditions of Bond executed, consequent penalty and also confiscation of the imported capital good valued at Rs. 1.88 Crores being allowed redemption on payment of the fine of Rs. 50 lakhs.

3. The grievance of the Petitioner is that the impugned order was never received by the Petitioner till the filing of this Petition. Copy of the impugned order was received by the Petitioner only after filing of this petition. In fact, the impugned order was annexed to the Petition only after the Court allowed an application for amendment on receipt of the impugned order dated 17th January, 2018 in Court. The Petitioner had filed this petition on the basis of alert notice being served on the Petitioner when it came to know that the impugned order has been passed against them, leading to the filing of this petition. It is the case of the Petitioner that no show cause notice/demand notice or any notice for personal hearing preceding the impugned order dated 17th January 2018 was ever served upon the petitioner. Therefore, the petitioner was not able to satisfy the authorities under the Act that all the conditions of Notification dated 97/2004 dated 17th September 2004 had been complied with, thus nor warranting any demand or penal action.

4. Mr. Jetly does not dispute the aforesaid facts as pointed

out by the Petitioner.

5. In view of the admitted factual position, it is clear that the impugned order dated 17th January 2018 has been passed in breach of natural justice. No notice raising the demand nor any hearing before passing the impugned order has been given to the petitioner. Therefore, we set aside the impugned order dated 17th January 2018. The issue raised in show cause notice dated 28th August 2017 regarding eligibility to the benefit of the Notification No. 97/2004 dated 17th September 2004 is restored to the Respondent No.4 - Additional Commissioner of Customs, NS-IV for a fresh disposal in accordance with law. It is made clear that before adjudicating upon show cause notice dated 28th August 2017, a copy of the same would be served upon the Petitioner and thereafter, adequate notice would be given fixing personal hearing to the Petitioner. Only thereafter, the adjudication upon show cause notice dated 28th August 2017 will take place.

6. Therefore, Petition allowed in above terms.

7. Needless to state that as the impugned order dated 18th January 2018 has been quashed and set aside, the consequent alert notice has also become infructuous.

(S.C. GUPTE, J) **(M.S. SANKLECHA, J)**