

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1901 OF 2019

M/s. Schneider Electric India Pvt. Ltd. .. Petitioner

v/s.

Union of India & Ors. .. Respondents

Mr. Sriram Sridharan for the petitioner

Mr. P.S. Jetly a/w Mr. Devesh Tripathi for the respondents

**CORAM : M.S. SANKLECHA &
S.C. GUPTA, J.J.**

DATED : 23rd JULY, 2019

P.C.

1. At the request of the parties, the petition is being disposed of finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the order dated 7th June, 2017 passed by the respondent no.3 – Deputy Commissioner of Customs and the consequent alert Notice. The impugned order dated 7th June, 2017 denied the benefit of Notification No.47/02 dated 22nd April, 2002 for not having fulfilled the export obligations in respect of the goods imported without payment of duty. The consequent alert Notice prohibited the petitioners from

exporting and / or importing the goods from and into India.

3. The impugned order dated 7th June, 2017 was received by the petitioner only in May, 2019 when the consequent alter Notice was made effective against the petitioners. It is the petitioner's case that they have completely complied with the conditions of the Notification No.47/02 dated 22nd April, 2002 and have obtained necessary redemption and export obligation discharge certificate from the Directorate General of Foreign Trade, which in fact had been communicated to the Adjudicating Authority much prior to the passing of the impugned order. In any case, the basic grievance of the petitioners is that the impugned order was never served upon the petitioners nor was the demand / Show-cause Notice or notices of hearing which preceded the impugned order were ever served upon the petitioner.

4. In the above circumstances, the petitioners pray that the impugned order be set aside and the matter be restored to the respondent no.3 for passing a fresh order after following the principles of natural justice.

5. Mr. Jetly, learned Counsel appearing for the respondents does not dispute the aforesaid position on facts.

6. In the above view, in the facts of this case, no occasion can arise to relegate the petitioner to adopt the alternative remedy of statutory appeal. This as the decision making process leading to the impugned order dated 7th June, 2017 was bad. Therefore, the impugned order dated 7th June, 2017 is set aside. In case, the respondents are desirous of proceeding against the petitioners alleging breach of Notification No.47/02 dated 22nd April, 2002 then they would serve an appropriate Show-Cause / Demand Notice upon the petitioners and pass an order after hearing the petitioners. Needless to state that as the impugned order dated 7th June, 2017 is set aside, the consequent alert notice also does not survive.

7. The petition is allowed in the above terms.

(S.C. GUPTE, J.)

(M.S. SANKLECHA, J.)