Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1044 OF 2019

Vedanta Limited,
an existing company within the
meaning of Companies Act, 1956,
having its office at Sesa Ghor, 20,
EDC Complex, Patto, Panaji, Goa,
India, through its authorized signatory,
Benicio Menezes, s/o. Louis
Menezes, 48 years age, married,
r/o. Colvale, Bardez, Goa. .... Petitioner.

Versus.

1) Union of India,
through the Secretary,
Department of Revenue,
Ministry of Finance, Government of India
North Block, New Delhi – 110 001,

2) Assistant Commissioner of Customs,
Customs House, Mormagoa,
Goa 403 803.

3) Commissioner of Customs,
Customs House,
Marmagoa, Goa 403 803.

4) Directorate of Revenue Intelligence
New Delhi, D Block, IP Bhavan,
IP Estate, New Delhi – 110 002. ..... Respondents.

Mr. Rafiq Dada, with Mr. R. G. Ramani, Senior Advocates, with Mr. Gopal Mundhra and Mr. P. Kakodkar, Advocates for the Petitioner.

Ms. Asha Desai, Senior Central Government Standing Counsel for the Respondents.

Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.

Date : 13h February, 2020.

<u>ORAL JUDGMENT :</u> (Per M.S. SONAK, J.)

Heard Mr. Rafiq Dada, with Mr. R. G. Ramani, learned Senior Advocates, with Mr. Gopal Mundhra and Mr. P. Kakodkar, Advocates for the Petitioner and Ms. Asha Desai, learned Standing Counsel for the Respondents.

2. Rule. Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties.

3. The Petitioner, by instituting this Petition, seeks the following reliefs :

> *"(a) This Hon'ble Court be pleased to issue a suitable Writ, order or direction in the nature of certiorari or any other Writ, order or directions and call for the records of the Impugned Alert Circular 2/2009 dated 15.04.2019 issued by the Respondent No.4 and after going through the legality, validity and propriety of the Impugned Alert Circular No.02/2009 dated 15.04.2019, be pleased to quash the same;*
>
> *(b) This Hon'ble Court be pleased to issue a suitable Writ, order or direction in the nature of certiorari or any other Writ, order or directions and call for the records of the Impugned letter bearing no.B-222/SB-1425525-1548077/-*

appg./5429 dated 23.09.2019 issued by the Respondent No.2 and after going through the legality, validity and propriety of the Impugned Order dated 23.09.2019, be pleased to quash and set aside the same;

(c) This Hon'ble Court be pleased to issue a Writ of mandamus, or a Writ in the nature of mandamus, or any other appropriate Writ, order or directions, directing the Respondents by their servants, agents and subordinates to grant the exemption from Export duty on iron ore where the Fe content (when computed on WMT basis) is less than 58%, without any further delay and within a reasonable timeframe, as deemed fit by this Hon'ble Court;

(d) Pending the hearing and final disposal of this Petition, this Hon'ble Court may be pleased to restrain the Respondents from recovery of demand raised in the impugned Order dated 23.09.2019 be stayed.

(e) For interim reliefs in terms of prayer clauses (a), (b) and (c) above.

(f) For ad-interim reliefs in terms of prayer clauses (a), (b) and (c) above.

(g) For costs of this Petition and orders thereon."

4. Mr. Dada, the learned Senior Advocate for the Petitioner submits that the impugned letter dated 23.9.2019, which demanded duty from the Petitioner, makes specific reference and relies upon the general Alert Circular No.02/2019 dated 15/4/2019, issued by the Directorate of Revenue Intelligence (DRI). He submits that despite

the request, copy of such general alert Certificate No.2/2019 was never furnished to the Petitioners. He submits that in all probabilities, the alert Circular No.2/2019 contains instructions requiring the adjudicating authority to decide the matter in a particular manner. He submits that the adjudicating authority, being a quasi-judicial authority, no such instructions can be issued to it by any authority and, in any case, the adjudicating authority must not rely upon any such instructions. Mr. Dada submits that no personal hearing was afforded to the Petitioner, even though the same was requested before issuance of the impugned letter dated 23.09.2019. Mr. Dada submits that this is a clear case of violation of the principles of natural justice and fair play and, therefore, the impugned letter dated 23.9.2019 may be interfered with, without requiring the Petitioner to avail of any alternate remedy that may be available under the provisions of the Customs Act, 1962.

5. Ms. Asha Desai, learned Standing Counsel for the Respondents refers to para 2 of the Affidavit-in-reply filed by Shri B. Ajay Kumar, Assistant Commissioner of Customs, which reads as follows :

> *"2. I say that with reference to para 3 of the impugned Alert Circular 01/2019 dated 15/04/2019 issued by the respondent no.4 is an internal communication and administrative nature. The final assessment Order dated 23/09/2019 issued by the respondent no.2 erroneously refers to the alert circular. Further, the petitioner had*

requested for personal hearing which also appears from the order that it was not given. Therefore, if the matter is remanded back on hearing the petitioner the matter will be adjudicated on merits without reference to alert circular."

6. Ms. Desai submits that without prejudice, if the impugned letter dated 23rd September, 2019, is set aside and the matter is remanded to the adjudicating authority for afresh adjudication, after afford of personal hearing to the Petitioner, then, the adjudicating authority will adjudicate the matter on its own merits, without reference to the alert Circular No.2/2019. She submits that since it is not proposed to rely upon the alert Circular No.2/2019, no directions be issued for furnish of the copy of such alert circular to the Petitioner, since, the alert circular, in any case, is an internal communication of administrative nature.

7. Since, it is conceded in the affidavit filed by the Assistant Commissioner of Customs that the matter can be remanded to the adjudicating authority, we set aside the impugned letter dated 23rd September, 2019 and remand the matter to the concerned adjudicating authority for fresh decision in accordance with law and on its own merits, without referring to or relying upon the alert Circular No.2/2019.

8. Mr. Dada, however, submits that the Respondents should be directed to furnish a copy of the alert Circular No.2/2019, without

which, the Petitioner will not even be in a position to know whether the adjudicating authority has relied upon the same or been influenced by the same. Now that it is stated in the affidavit filed by the Assistant Commissioner of Customs that the adjudicating authority will not refer to the alert Circular No.2/2019, but the matter will be adjudicated on its own merits, the apprehensions expressed on behalf of the Petitioner are addressed at least, to some extent. However, since the adjudicating authority in the impugned letter dated 23/09/2019 had not only referred to the alert Circular No.2/2019, but also quoted a significant passage from the same, we really do not understand the basis of the Respondents resisting to share this alert Circular No.2/2019 with the Petitioner. If the alert Circular No.2/2019 is shared with the Petitioner, it will enable the Petitioners to file their response in effective manner and even comment upon the possibility of such circular influencing the decision making process. Ultimately, the issue of adjudication will have to be decided by the adjudicating authority on its own merits, without reference to or relying upon the alert Circular No.2/2019, as has been made clear in the affidavit filed by the Assistant Commissioner of Customs.

9. Accordingly, we direct the Respondents to furnish a copy of the alert Circular No.2/2019 to the Petitioner, within 7 days from today. The Petitioners are granted 7 days time to file an additional

response to the show cause notice issued to them and in the context of the alert Circular No.2/2019. The adjudicating authority, on remand, to dispose of the show cause notice issued to the Petitioner afresh and on its own merits, without referring to and relying upon the alert Circular No.2/2019. The adjudicating authority to afford a personal hearing to the Petitioner before disposing of the show cause notice, as aforesaid.

10. In view of the above, the order now made by us and without prejudice to the rights and contentions of the Petitioner, Mr. Dada, learned Senior Advocate for the Petitioner states that the challenge to the alert Circular No.2/2019 is not being pressed for the present.

11. Rule in this Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

12. All concerned to act on the basis of an authenticated copy of this Order.

Smt. M.S. Jawalkar, J. ***M.S. Sonak, J.***