S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7033 OF 2022

M/s. Waaree Energies Ltd. .. Petitioner
Versus
Additional Commissioner of Customs and Anr. .. Respondents
....

. Ms. Lizum Wangbi a/w. Anukul Seth for Petitioner

. Ms. Neeta Masurkar a/w. Ruju R. Thakkar for Respondents

....

CORAM : K. R. SHRIRAM &
MILIND N. JADHAV, JJ.

DATE : JULY 04, 2022.

P.C.:

1. The indisputable fact that arises is that the goods namely 'Solar Module-540W' imported under bill of entry No. 6263788 dated 15.11.2021 were imported without requisite labeling prescribed under the Bureau of Indian Standards Act, 2016 (for short "**BIS Act**").

2. By an order dated 20.12.2021, the Additional Commissioner of Customs, passed an order, to confiscate the goods under Section 111(d) of the Customs Act, 1962 but gave the option to petitioner to redeem the goods under Section 125(1) of the Customs Act, 1962 on payment of redemption fine of Rs.5,00,000/- (Rupees five lakhs only) for the limited purpose of re-export only; in addition to the redemption fine, petitioner was liable to pay charges payable in respect of said goods as per section 125(2) of the Customs Act, 1962

and; imposed a penalty of Rs.5,00,000/- (Rupees five lakhs only) under Section 112(a)(i) of the Customs Act, 1962 on petitioner.

3. Impugning this order, petitioner preferred an appeal before the Commissioner of Customs (Appeal) who by an order dated 22.03.2022, allowed the appeal only to the limited extent that instead of re-exporting the goods, permitted labeling on the basis of the license that petitioner had to fulfill the conditions of BIS provisions. The Commissioner of Customs, (Appeal) has also directed Additional Commissioner of Customs, Nhava Sheva to permit the same. Therefore, in short instead of accepting redemption fine, for purpose of re-export, the Commissioner of Customs (Appeals) directed redemption fine to be accepted, permitted labeling to meet the BIS requirements and consume the imported goods within India.

4. Since 23.03.2022, petitioner has been addressing communication to respondents who conveniently sat over the communications and failed / neglected to comply with the directions given in the order in appeal. Petitioner therefore, approached this court by way of this petition for direction to respondents to comply with the directions given in the order dated 22.03.2022 passed by Commissioner of Customs (Appeals). The petition was affirmed on 03.06.2022 and lodged on 06.06.2022 and copy was served upon respondents, as

stated by Ms.Lizum on 14.06.2022.

5. Respondents have filed an affidavit in reply without disclosing the name of the officer who has filed the affidavit. The affidavit as well as verification states that :-

> *" I, Commissioner of Customs NS-V, designated as Additional Commissioner of Customs having my office at Mumbai, Jawaharlal Nehru Customs House, Nhava Sheva, Raigad, Maharashtra-400707, India, do hereby solemnly affirm and state as under".*

Of course, we find rubber stamp of one D.S.Garbyal, Commissioner of Customs NS-V. Though we initially wanted to reject this affidavit since the affidavit has not been affirmed properly, purely by way of indulgence, we considered the affidavit filed. Page 107 is also missing. We also notice that in page 109, it is stated solemnly affirmed on this 30 day of June 2022 whereas in the verification it is mentioned that solemnly affirmed on this 24 day of June 2022. Therefore, whoever is the person who has affirmed the affidavit has not even bothered to read the affidavit. This is not a trivial technicality. Such improper affirmations are seriously impeaching the integrity of the records and proceedings. It indicates how much seriousness an officer of the level of Commissioner of Customs pays attention to an affidavit they filed in a Court of law. Therefore, we direct the said D.S.Garbyal or whoever the person who has affirmed the said affidavit to present himself or herself before the Court Master tomorrow to re-affirm the affidavit.

6. For the first time, in the affidavit in reply it is mentioned that on 16.06.2022, respondent department has filed an appeal as well as stay application against the order of the Commissioner of Customs (Appeals). Ms. Lizum states that she has not been served a copy of this appeal or the stay application which we find rather strange because respondents had enough time to serve the appeal and stay application.

7. Be that as it may, since the appeal has been filed alongwith the stay application before the Customs Excise and Service Tax Appellate Tribunal (CESTAT), respondents are directed to serve a copy of the appeal and the stay application by tomorrow upon petitioner. If respondents do not obtain a stay within four weeks from today, within one week of expiry of said four weeks, respondents shall strictly and meticulously comply with the directions given in the order dated 22.03.2022 passed by the Commissioner of Customs (Appeals). If our order is not strictly complied with, respondents are put to notice that, this court may even consider, in view of the conduct of the said Mr. D.S.Garbyal who has filed affidavit in reply the way it is noted above, initiating contempt proceedings against respondents.

8. Petition disposed. Liberty to apply.

9. All to act on an authenticated copy of this order.

[MILIND N. JADHAV, J.] **[K. R. SHRIRAM, J.]**

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2022.07.06 14:54:33 +0530