

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10314 OF 2022

M/s. Wiser Foods

... Petitioner

Vs.

The Union of India, Through
The Secretary, Department of Legal Affairs,
Ministry of Law and Justice & Ors.

... Respondents

Mr. Priydarshi Manish, Mr. Ritaj Kacker, Ms. Deepa Premachandran for
Petitioner.

Mr. Jitendra B. Mishra a/w Mr. Dhananjay B. Deshmukh for Respondent
Nos. 2 and 4.

**CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.**

DATED : 29th AUGUST 2022

PC. :

1. It is Petitioner's case that they are purchasers of "Basa Fish Fillets" and they purchased 2,34,890 kilograms from the importers one M/s. Capital Foods. After the goods were purchased, the same were stored at different warehouses/cold storages. The goods were imported between 10th January, 2022 and 12th March, 2022.

2. On or about 8th March, 2022, the officers of the Directorate of Revenue Intelligence (DRI) conducted a search at the business premises of Petitioner and claimed to have recovered certain documents that

incriminated Petitioner. Petitioner was also issued summons dated 8th March, 2022 to appear and show cause regarding the alleged undervaluation of the goods. Petitioner appeared and Petitioner's statement under Section 108 of the Customs Act, 1962 also was recorded. Petitioner, under threat of the alleged action and under protest, had deposited a sum of Rs.1.50 Crores with the Commissioner of Customs, Nhava Sheva. A copy of the receipt issued by the office of the DRI, bank statement of Petitioner and copy of the Demand Draft are also annexed to the Petition. The goods were seized and later an adjudication order dated 25th April, 2022 came to be passed by the Additional Commissioner of Customs who granted provisional release of the seized goods on the following conditions :-

- (i) Payment of differential duty of Rs.59,67,005/- (Rs. Fifty Nine Lakhs Sixty Seven Thousand and Five Only).*
- (ii) Execution of Bond for an amount equal to the assessable value of the seized goods i.e. Rs.3,68,89,474/- (Rs. Three Crore Sixty Eight Lakhs Eighty Nine Thousand Four Hundred Seventy Four only). The condition of the Bond shall inter-alia, contain an undertaking that the importer shall pay the duty, fine and/or penalty as may be adjudged by the Adjudicating Authority, subject to appellate provisions under the Act.*
- (iii) Furnishing of Security deposit/Bank Guarantee of Rs.97,00,000/- (Rs. Ninety seven lakh only) to cover estimated differential duty along-with requisite fine and penalty as per para 2.2 of CBIC Circular No.35/2017 Customs dtd.16.08.2017. The Bank Guarantee should contain a clause*

binding the issuing bank to keep it renewed and valid till final adjudication of the case, or in the event of non-renewal of Bank Guarantee as above, the guarantee amount be credited to the Government account by the bank on its own.”

3. Petitioner filed an Appeal impugning this order. The Appeal also came to be dismissed. Against that order of dismissal, Petitioner has preferred an Appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

4. The Appeal is pending before CESTAT and an Application has been taken out by Petitioner for expeditious hearing. The early hearing of the Application itself, we are informed, is scheduled to be listed on 28th September, 2022.

5. Mr. Priydarshi Manish appearing for Petitioner prays that the goods being perishable, the same may be allowed to be cleared and also CESTAT be directed to hear Petitioner's Appeal expeditiously. Mr. Priydarshi Manish also submitted that a similar matter has been filed before the Delhi High Court by another importer/purchaser and the Delhi High Court had modified conditions fixed by the adjudicating authority.

6. Having heard the learned Counsel, in our view, Petition can be disposed at this stage itself.

Rule. Rule made returnable forthwith by consent.

7. We are inclined to relax the conditions imposed by adjudicating authority in view of Petitioner's statement that Petitioner has deposited a sum of Rs.1.50 Crores with the Directorate of Revenue Intelligence. Mr. Priydarshi Manish states that Petitioner will not apply for the return of money until the Appeal is disposed by CESTAT. Statement accepted.

8. We, therefore, pass the following order :-

- (a) Petitioner shall give a bank guarantee of a nationalised bank/ scheduled bank in the sum of Rs.59,67,005/- towards the differential duty together with interest thereon at the rate of 6% per annum to the satisfaction of the adjudicating authority.

(b) Petitioner shall execute a Bond for the full value/estimated value of the subject goods which is Rs.3,68,89,474/- as per the form prescribed by the concerned Department.

9. Mr. Mishra says that these conditions would meet the requirements of Respondents.

10. Upon Petitioner satisfying the conditions mentioned above, the subject goods would be released forthwith by Respondent-Revenue.

11. As regards Petitioner's other prayer to direct CESTAT to expeditiously dispose Petitioner's Appeal, Petitioner may make such request when Petitioner's early hearing Application is being heard by the CESTAT on 28th September, 2022.

12. Petition disposed. No order as to costs.

13. Issuance of certified copy of this order expedited. All parties to act on the authenticated copy of the order and not insist on certified copy, though certified copy is expedited.

14. We clarify we have not made any observations on the merits of the matter.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)