IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3372 OF 2020

Kelvion India P Ltd. .....Petitioner

Vs.

Union of India and Ors. .....Respondents

Mr. Sriram Sridharan for petitioner.
Mrs. Shehnaz Bharucha a/w. Ms. Priyanka Chavan for respondent nos.1 to 3.
Mr. Pradeep Jetly, Senior Advocate a/w. Mr. J.B. Mishra and Mr. Ram Ochani for respondent no.4.

CORAM : K. R. SHRIRAM &
A. S. DOCTOR, JJ.
DATED : 3rd OCTOBER 2022

P.C. :

1 Petitioner is engaged in the manufacture and marketing of different types of heat exchangers and related components and held IEC No.0305023543. Petitioner manufactures its goods in India and supplies the same to the domestic as well as international markets. During the manufacturing activities, petitioner utilised various inputs which were to be used in the process and the same were imported from outside India.

2 Petitioner obtained an Advance Authorization vide License No.03105510853 dated 9th March 2009 issued by the Additional Director General of Foreign Trade – respondent no.3. Petitioner was required to fulfill an export obligation amounting to Rs.4,25,80,000/- equivalent to Euros 667,398.45 at the then prevailing rate of interest for the deemed export of plate heat exchanger to Bharat Heavy Electrical Limited (BHEL).

Petitioner imported various items to be used in the manufacture of the products on a duty free basis in terms of exemption notification issued by the Central Government exempting from payment of customs duty, additional duty, safeguard duty and anti-dumping duty. In order to comply with its export obligations as mentioned in the Advance Authorization, petitioner had made deemed export of plate heat exchangers and mandatory spares totally amounting to Rs.4,25,79,994/- during the period of export obligation mentioned in the Advance Authorization. Petitioner also procured certificate of payment issued by BHEL in Form 1-C evidencing the supply of materials against seven out of nine invoices. It is petitioner's case that due to reasons beyond their control they were unable to submit the remaining two invoices that were covered under Form 1-C dated 17th June 2014.

3 Due to this, i.e., on the inadvertent missing out of the two invoices, in export obligation discharge, petitioner was required to pay customs duty to the tune of Rs.18,62,119/- alongwith interest of Rs.16,46,639/- in compliance with the deficiency letter issued by respondent no.3. The fact that payment has been made is not disputed. After sometime, petitioner traced the concerned two invoices and, therefore, petitioner approached respondent no.3 and informed him of the inadvertent error. Petitioner, therefore, made a request to issue fresh redemption certificate so that the customs duty and interest paid on the two

missed invoices could be refunded to petitioner. This request was rejected. The rejection letter reads as under :

> *Ref. No. : Adv. Authorisation No.0310510853 DT. 9.3.09.*
>
> *Sir/Madam,*
>
> *Your case had been regularized and redeemed after payment of Customs Duty and Interest on excess import made against this license. You have submitted two invoices, D/0000012/08-09 and D/0000011/08-09 and Consumption certificate from Excise post redemption. Had these invoices and Consumption certificate been submitted earlier, there would not have been any excess import and hence, no duty or interest would have been required to be paid.*
>
> *However, as this stage it is no possible to process your request since redemption/regularization letter has already been issued.*

4 Since petitioner had correctly discharged its export obligations, petitioner filed a refund claim before the Assistant Commissioner of Customs, DEEC Section, Mumbai. Petitioner was advised by the Customs Department to obtain a clarification from respondent no.3 including the two remaining invoices. When petitioner sought clarification from respondent no.3, respondent no.3 by its letter dated 23rd August 2016 clarified that due to the non-reversal of redemption in the computer system respondent no.3 was unable to account for the two invoices and, therefore, the request of petitioner was turned down. Respondent no.3 again stated that had petitioner only submitted those two invoices, the same would have been considered and there would not have been any requirement to pay customs duty. Petitioner made further representations but petitioner's request was rejected by the Customs Authorities and the final rejection was

by an order dated 7th January 2017. Against the said order, petitioner filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) by an order dated 29th June 2018, while rejecting the request of petitioner, observed that petitioner was at liberty to make a fresh representation to respondent no.3 for reconsideration of the two invoices and if respondent no.3 issued a fresh Export Obligation Discharge Certificate (EODC), the Customs would consider petitioner's case afresh on merits. Petitioner thereafter, applied to Policy Relaxation Committee (PRC) of DGFT to consider petitioner's case. Petitioner's application was rejected with an unreasoned order as mentioned in an email dated 18th March 2019, which is impugned in the petition.

5 The decision of the PRC reads as under :

> *Decision : The Committee after examining the case in detail, deliberated on the request and decided to reject the case as the same was found to be without any merit.*

6 We have to note that respondent no.3 in his letter to petitioner in effect admits that petitioner had complied with the export obligation because in the letter dated 19th January 2015 respondent no.3 states "*Had these invoices and Consumption certificate been submitted earlier, there would not have been any excess import and hence, no duty or interest would have been required to be paid*" . Respondent no.3 in another letter dated 23rd August 2016 also admits that had petitioner submitted the two invoices earlier, the office of DGFT would have processed the same for

redemption and there would not have been any liability to pay custom duty plus interest. The only reason why it was rejected was due to non-reversal of redemption in the computer system.

7 Therefore, the indisputable position is petitioner has fulfilled its export obligations and, therefore, respondent no.3 should have issued the discharge certificate. It is rather strange that a genuine case has been rejected by respondent no.3 only because the computer system in his office would not permit reversal of redemption. We also find that the PRC also has rejected petitioner's application without giving any reason more so when respondent no.3 itself has admitted that petitioner has fulfilled the export obligations but missed the bus because it did not submit the documents earlier.

8 In the circumstances, we hereby quash and set aside the rejection order dated 18th March 2019 of the PRC and direct respondent no.3 to issue to petitioner export obligation discharge certificate within four weeks of receiving a copy of this order.

9 Petitioner shall submit EODC to respondent no.4, who shall grant refund together with accumulated interest, if any, within four weeks of receiving an application from petitioner.

10 Petition disposed.

11 In view of the above, Mr. Sridharan states that he shall apply, within four weeks from today, for withdrawal of the appeal that petitioner

has filed in CESTAT, Mumbai, in which the order dated 29th June 2018 passed by the Commissioner of Customs (Appeals) has been impugned. Statement accepted.

(A. S. DOCTOR, J.) **(K. R. SHRIRAM, J.)**