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

WRIT PETITION NO. 199 OF 2007

Metaplast Exim (India) Pvt. Ltd.
and Anr.

....Petitioners

V/s.

Union of India & Ors.

...Respondents

Mr. Bharat J. Raichandani a/w Mr. Rishabh Jain i/b UBR Legal Advocates for
Petitioners.

Mr. Advait M. Sethna a/w Mr. Sandeep Raman for Respondents.

**CORAM : K.R. SHRIRAM &
MILIND N. JADHAV, JJ.
DATED : 15th JULY, 2022**

P.C. :

1. Mr. Raichandani and Mr. Sethna informed the court that the only point of controversy in this petition is what was the date of commencement of commercial production.

2. Mr. Raichandani submitted that the Appellate Committee constituted by the Ministry of Commerce and Industry, Department of Commerce, in an appeal that petitioner had filed, has certified that the commercial production began only in 2003 and not 2001 as stated by respondent and therefore this order was binding on respondent. Mr. Raichandani further stated that this court, in an order dated 10th June, 2022, in Writ Petition No.2206 of 2005, had recorded the statement of respondent's senior advocate that the Appellate Authority's order has to be

complied with by respondent. Mr. Sethna in fairness agreed but submitted that petitioner had, in its application for allowing the adjustment for DTA sales that was submitted on 12th May 2003, mentioned that date of commencement of production was 31st March 2001 and because of petitioner's own statement, respondent was holding on to that date. Mr. Sethna stated that this stand has been taken in affidavit in reply but no rejoinder has been filed.

3. There is a letter dated 21st February 2006 from petitioner to respondent whereby petitioner has explained that 31st March 2001 was not the date on which it commenced commercial production but it was the date on which the trial production was commenced. In the application filed petitioner says date of commencement of production as 31st March 2001. It does not say commercial production. That has not been denied anywhere. Petitioner has referred to the application and annexed a copy thereof to the petition and also has annexed petitioner's letter dated 2nd February 2006 to the petition to which there has been no reply. In any event after the application dated 12th May 2003 was made by petitioner, the appellate order has been passed on 18th August 2004 accepting petitioner's explanation that 2003-2004 was the first year of commercial production.

4. In the circumstances, in our view respondents are bound by the findings of the appellate authority.

5. In the circumstances, the rule that was granted on 7th March 2007 is made absolute in terms of prayer clause – (c) which reads as under :

(c) Without prejudice to and in the alternative to prayers (a) and (b) above that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, to call for the records of the Petitioner's case and to go into the legality and propriety thereof and to quash and or set aside the Orders of Respondent No.3 dated 17th February 2006 and 23rd March 2006 being Exhibit F and I hereto.

6. Petition disposed.

(MILIND N. JADHAV, J.)

(K.R. SHRIRAM, J.)