IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1152 OF 2021

Alkyl Amines Chemicals Limited ... **Petitioner**
Versus
The Union of India & Ors. ... **Respondents**

Mr. Akhilesh Kangsia i/b. Sriram Sridharan, Advocate for the Petitioner.

Mr. P. S. Jetly, Senior Advocate a/w. Mr. J. B. Mishra, Advocate for the Respondents.

CORAM: S.V. GANGAPURWALA & VINAY JOSHI, JJ.

RESERVED ON : APRIL 11, 2022
PRONOUNCED ON : JUNE 17, 2022

P.C.

1. The petitioner has filed the instant writ petition for declaration and striking down the word "excisable' in the phrase "used in the manufacture of excisable goods" appearing in Column No.3 of Sr. No.107 of the Notification No.50/20170-Cus. dated 30th June 2017 as violative of Article 14 of the Constitution. Petitioner also seeks declaration that the Denatured Ethyl Alcohol imported by the petitioner effective from 01/07/2017 is eligible for partial exemption from payment of BCD Sr.No.107 of Notification No.50/2017-Cus. dated 30th June 2017 even when not used for manufacture of excisable goods falling under 4th Schedule to the Central Excise Act, 1944. The petitioner is also challenging the eligibility and validity of

forcible collection of Rs.2.5 Crores by respondent No.3 without show cause notice and adjudication and without following due process of law.

2. The learned Advocate for the petitioner argued the matter for interim orders i.e. seeking refund of Rs.2.5 Crores and not on other issues as the same are to be decided finally.

3. According to the learned Counsel for the petitioner, the petitioner on 10th February 2021 was forced to pay Rs.2.5 Crores. The said payment is not voluntary. The learned Counsel submits that the panchanama dated 9th February 2021 clearly evidences threat of seizure of imported stock. The seizure of imported stock would have resulted in stopping of ongoing production and further loss/ damage to the plant and machinery. In view of such threat of seizure, the payment of Rs.2.5 Crores was required to be made. The same amounts to payment under coercion. The learned Advocate further submits that the internal communication exchanged between the officials of the petitioner on 10th February 2021 apprising the petitioner's management of the events that transpired during the search/visit of the respondent Nos.2 and 3 and constant pressure for making payment of differential customs duty even without issuing show cause notice is sufficient to infer the act of coercion. The respondent Nos.2 and 3 in their affidavits-in-reply have not rebutted the averments and the communications relied by the petitioner in the affidavit. This itself is telltale proof that internal email communication correctly recorded the events that actually

took place on 9th and 10th February 2021. The draft letter dated 10th February 2021 addressed to respondent Nos.2 and 3 stating inability and displeasure while making payment of Rs.2.5 Crores prior to issuance of show cause notice and also stating not to consider the payment as acceptance of the liability also proves that the payment is not voluntary but because of the force employed. The petitioner submitted the draft letter dated 10th February 2021 to the respondents at the time of making payment of Rs.2.5 Crores. However, the same was not accepted by them. On the contrary, the respondents forced the petitioner to modify the letter which suits their version. This modified letter is only relied by the respondents. The fact that the demand draft of Rs.2.5 Crores along with modified version of the letter dated 10th February 2021 was submitted late in night around 10.00 p.m. on 10th February 2021 itself shows that there was no willingness of the petitioner to make the payment. The learned Counsel submits that these facts are not denied by the respondents in their affidavits-in-reply. The pleadings of the petitioner with regard to the force and coercion in paragraph 42 to 46 are not denied. The averments in the petition that internal communication through emails and the draft letter so also the panchanama are clear proof of the respondents employing coercion and the payment of Rs.2.5 Crores made under coercion. The respondents are not entitled to recover the amount from the petitioner without adjudication. In the present petition even show cause notice was not issued to the petitioner.

4. The learned Counsel submits that the petitioner is entitled for refund of the said amount during pendency of the present writ petition. The learned Counsel for the petitioner relies on the following judgment :

1. ***Neelkamal Realtors Versus Union of India.***[1]
2. ***Union of India Versus Bund1 Technologies.***[2]
3. ***Dabur India Versus State of U.P.***[3]
4. ***Vodafone Esssar Limited Versus Union of India.***[4]
5. ***Cleartrip Versus Union of India.***[5]
6. ***MakeMyTrip India Private Limited Versus Union of India.***[6]

5. Mr. Jetly, learned Senior Advocate for the respondents submits that the payment has been made by the petitioner voluntarily. No coercion was exerted by the respondents upon the petitioner. The petitioner wrote a letter dated 10th February 2021 to the respondent No.3 thereby accepting the issue raised by the officers and signaling their intent to pay the unpaid amount of customs duty on the basis of their own ascertainment of such duty. The petitioner also requested the respondents to consider the payment towards differential duty liabilities and submitted that it will make payment of differential duty liability in due course and on 10th February 2021 a demand draft of Rs.2,50,000/- was sent as a token of cooperation. The petitioner as per the advice of consultant wrote an email on the same day stating that they wanted to contest the demand on merit. Even in the email the petitioner has no where suggested coercion by the DRI. There was no

1 2019 (31) GSTL 53.
2 2022 (3) TMI 625.
3 1990(4) SCC 113.
4 2009 (237) ELT 35 (Bom.).
5 2016 (42) STR 948, Para.16.
6 2016 (44) STR 481 (Del.) Paras.106-114.

arrest, no seizure of goods, nor any demand to arrest or seize the goods were made by officer. There was no physical abuse. There was absolutely no employment of coercion.

6. The learned Senior Advocate submits that during the course of investigation, the person chargeable with duty can take a view whether to discharge the short paid/not paid amount. The law permits the person chargeable with duty to pay such duty on the basis of his own ascertainment of the said duty. The learned Counsel submits that under Section 28 of the Customs Act, a person chargeable with the duty may make a payment of the duty on the basis of his own ascertainment of his duty before service of notice under Clause (a) of sub-section (1) of Section 28. The petitioner has not been able to make out a case of threat or coercion and the amount deposited by the petitioner is on their own ascertainment and voluntarily. There is no direct or circumstantial evidence to even prima facie prove the allegation of the petitioner.

7. The learned Senior Advocate for respondents relied on the following judgments.

1. ***Suresh Kumar P. P. Versus Dy. Director, Directorate General of GST Intelligence (DGGI), Thiruvananthapuram.***[7]
2. ***Suresh Kumar P. P. Versus Dy. Director, Directorate General of GST Intelligence (DGGI), Thiruvananthapuram.***[8]
3. ***Bhumi Associate Versus Union of India.***[9]
4. ***Yasho Industries Ltd. Versus Union of India.***[10]
5. ***Nino Chaks (P) Ltd. Versus Commissioner of Customs (General).***[11]

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7 2020 (4) G.S.T.L. 17 (Ker.).
8 2021 (50) G.S.T.L. J73 (S.C.).
9 2021 (46) G.S.T.L. 36 (Guj.).
10 2021 (54) G.S.T.L. 19 (Guj.).
11 2020 (371) E.L.T. 701 (Del.).

8. We have considered the submissions.

9. Coercion is committing or threatening to commit any act forbidden by the Indian Penal Code or detaining or threatening to detain, to the prejudice of any person whatever, the property of another.

10. Coercion has to be pleaded and proved. Respondents' officials had visited the premises of the petitioner during the investigation. The larger issue is involved in the writ petition. The petitioner has challenged the Notification which the petitioner claims that the partial exemption under Sr.No.107 of Notification No.50/2017-Cus. dated 30th June 2017 r/w. Concessional Rate of Duty Rules , 2017 is available for Denatured Ethyl Alcohol used for manufacture of Ethyl Amine.

11. The law permits payment of amount on the basis of own ascertainment of duty during the investigation and prior to the service of notice. The question is payment made by the petitioner of Rs.2.5 Crores is voluntary or involuntary.

12. For concluding the existence of coercion greater degree of proof would be required. It is trite that the respondents cannot employ coercion during investigation. The question is whether the payment is made under coercion. The payment of Rs.2.5 Crores is supported by the letter of the petitioner. The letter is issued by the petitioner to the respondents along with payment. The covering letter presented with the payment of Rs.2.5 Crores as made by the petitioner to the respondent consequent to the search

proceedings on 9th February 2021 suggests that the petitioner accepts the issue raised by the officers of the DRI and as a token of cooperation on ongoing investigation, the petitioner submits the demand draft of Rs.2.5 Crores and requested the respondents to consider the said payment towards differential duty liabilities. The said letter also further goes on to state that it will make payment of remaining differential duty liability in due course. The contents of the said letter do not dispel exercise of duress or coercion. One of the internal email communications between the officers of the petitioner suggests directing an employee to prepare a demand draft of Rs.2.5 Crores. The said email is 2.40 p.m. on 10th February 2021,whereas one email at 7.42 a.m. on February 10, 2021 suggests that the consultant has advised not to pay the duty. The draft letter prepared by the petitioner is not forwarded to the respondents wherein the petitioner wish to contest the issue on merit.

13. At this interlocutory stage, it will be difficult to conclude about the exercise of coercion. In view of that, we are not inclined to consider the request of the petitioner for refund of the amount at this interim stage. The said relief can be considered at the time of final disposal of the petition. The pleadings are complete. The deposit of Rs.2.5 Crores would be subject to final outcome of the petition.

(VINAY JOSHI, J.) **(S.V. GANGAPURWALA, J.)**

RAJU DATTATRAYA GAIKWAD

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