

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7194 OF 2023

M/s. Bafna Commodities, through its partner ... Petitioner
Ashok Jain s/o. Kalyanmal Jain

Versus

Union of India, through Joint Secretary, ... Respondents
Dept. of Revenue and Ors.

Mr. Shashank Ratnoo a/w. Adeeba Khan i/b. Mr. Mohammed Asim for
the petitioner.

Mr. Jitendra B. Mishra a/w. Mr. Dhananjay Deshmukh for the
respondent.

CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATED: 20 June, 2023

P.C.

1. This petition has been filed praying for following reliefs:

"a) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India ordering and directing the Respondents themselves, their officers, subordinates, servants and agents to refrain from proceeding investigations in connection with import and export of chick-peas by the Petitioner against Advance Authorisation;

b) this Hon'ble Court be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ or order or direction under Article 226 of the Constitution of India restraining the Respondents. themselves, their officers, subordinates, servants and agents from proceeding with the investigation in connection with import and export of chick-peas by the Petitioner against Advance Authorisation and/or forcing the Petitioner to pay amounts towards customs duty without following the due process of law;

c) 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 for calling for the records of the present case and after going

through the legality and validity thereof be pleased to quash and set aside the Impugned Summons dated 27.01.2023.

d) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India ordering and directing the Respondents themselves, their officers, subordinates, servants and agents to refrain from coercing the Petitioners from paying any Customs Duty without issuance of a show cause notice;

e) This Hon'ble Court be pleased to issue a writ of mandamus _or a writ in the nature of mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India directing the Respondents themselves, their officers, subordinates, servants and agents to refund the amount of Rs. 1,00,00,000/already collected at the time of investigation from the Petitioners;

f) That pending the hearing and final disposal of this Petition, that this Hon'ble Court be pleased to

i, restrain the Respondents themselves, their officers, subordinates, servants and agents from proceeding with the investigation in connection with the import and export of chick-peas.;

ii. restrain the Respondents themselves, their officers, subordinates, servants and agents from taking any coercive measures and forcing the Petitioner to pay Customs Duty;

iii. direct the Respondents themselves, their officers, subordinates, servants and agents to refund the amount of Rs. 1,00,00,000/already collected at the time of investigation;

iv. direct the Respondents themselves, their officers, subordinates, servants and agents to unflag the Petitioner's Importer Exporter Code and allow the Petitioner to clear the goods imported and to be exported from India and continue with their business.

i) for ad-interim reliefs in terms of prayer clause (g) above;

j) for costs of this Petition and the Orders made thereon, and

k) for such further and other reliefs as this Hon'ble Court may deem fit in the facts and circumstances of the case.”

2. Learned counsel for the petitioner would submit that the only concern of the petitioner is that the respondent needs to proceed to issue a show-cause notice to the petitioner if at all there is some material to proceed against the petitioner through its partners. It is submitted that number of times, the partners of the petitioner have honoured the summons and have attended the office of respondent no. 2-Commissioner of Customs(NS-11), respondent no. 3- Joint Commissioner of Customs (NS-11) and respondent no. 4 – Senior Intelligence Officer. It is submitted that the petitioner was always ready and willing to cooperate in the investigation.

3. Mr. Mishra, learned counsel for the respondent, on instructions of Mr. Mithlesh Pradhan, Senior Intelligence Officer SIB Navasheva, who is present in the Court, would submit that the partners of the petitioner if required for any further enquiry/investigation would be called by the concerned authority. If that is so, in the facts of the case, the petitioner/its partners be given advance notice.

4. It is Mr. Mishra's contention that although the petitioner through its partners attended the enquiry, however, appropriate cooperation was not coming forth from the petitioners, in disclosing the information/materials. This submission is disputed by the learned counsel for the petitioner.

5. Learned counsel for the petitioner has submitted that the petitioner, through its partners shall cooperate in the investigation/enquiry. The respondent shall, however, take a reasonable approach on the backdrop of the petitioner having already summoned number of times and make an endeavour to conclude the investigation as expeditiously as possible.

6. Mr. Mishra, learned counsel for the respondent has also fairly stated that the respondent would issue a show cause notice to the petitioner within a period of three months from today. We accept the statement made by Mr. Mishra.

7. In the above circumstances, we do not intend to dwell on the rival contentions and/or on the merits of the issue. We accordingly dispose of this petition in the above terms by accepting the statement as made by Mr. Mishra that a show cause notice would be issued to the petitioner/its partners within a period of three months from today. All contentions of the parties on all issues are expressly kept open.

8. Disposed of in the above terms. No costs.

(JITENDRA JAIN, J.)

(G. S. KULKARNI, J.)