IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8768 OF 2023

Chetak Technology Ltd .. Petitioners
Versus
Union of India & Ors. .. Respondents

WITH
WRIT PETITION NO. 8769 OF 2023

Chetak Technology Ltd .. Petitioners
Versus
Union of India & Ors. .. Respondents

Mr. Arshad Hidayatullah, Senior Advocate a/w Mr. Makarant Joshir a/w Shailaja Kher Hidayatullah a/w Anupam Dighe a/w Chandni Tanna a/w Prathamesh Chavan i/b India Law Alliance, for the Petitioner.

Mr. Subir Kumar a/w Ms. Sangita Yadav, for Respondents.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 17th JULY 2023

P.C.:-

1. There is common challenge in both these petitions, namely to an order-in-original dated 23 May 2023, although, in relation to batch of goods subject matter of distinct bills of entry. The prayers in the petitions are that the impugned orders be quashed and set aside.

2. The basic premise on which such prayers are made, is to the effect

that the impugned order(s)-in-original are *ex facie* in violation of the principle of natural justice inasmuch as no show cause notice was issued to the petitioners before passing the impugned orders.

3. The case of the petitioners in both these petitions is that the petitioner is a subsidiary of Bajaj Auto Limited. The petitioner is *inter alia* engaged in the manufacture and sale of Electric Scooters and parts thereof. Earlier on 3 January 2023 petitioners had imported "Lithium Ion Cell" vide various Bills of Entries. The assessment of all these Bills of Entry were finalized after physical examination and analysis of each and every consignment, by the Customs Authorities. However, in respect of a subsequent import, subject matter of both the present proceedings and the Bills of Entries, the details of which are set out in the memo of the petition, the Customs Officer in undertaking inspection of the said goods which were similar to the goods earlier imported, was of the view that the imported goods were not compliant with the Bureau of Indian Standards (BIS). It was observed that the BIS marking / sticker was not found on the imported goods and that a sticker was only pasted on the cartons / packages wherein BIS registration number was mentioned. Thus, the Customs Officer was of the opinion that the petitioners have not complied with paragraph 6 of Public Notice dated No.136/2018 dated 8 October

2018. In this regard there was correspondence between the petitioners and the Customs Officials. The petitioners had approached the concerned Officer who had heard the petitioner's representative. However, before the regular procedure, as known to law, could be set into motion, on the basis of the impressions as formed by the Customs Officer and also considering the representation which the petitioner had made before such Officer, the Additional Commissioner of Customs, Appraising Group- V A, JNCH, NS-V, straight away proceed to pass the impugned Order-in-Original directing confiscation of the goods covered under Bills of Entry in question, however, with an option to redeem the goods for the limited purpose of Re-Export on payment of Redemption of Fine and imposing a penalty.

4. We have heard Mr. Hidayatullah, learned Senior counsel for the petitioners on this petition and Mr. Kumar, learned counsel for the respondents.

5. As noted above, the primary grievance of the petitioners is that such an approach on the part of the Additional Commissioner to pass an order without issuing a show cause notice could not have been adopted by the Additional Commissioner of Customs.

6. It is submitted by Mr. Hidayatullah, learned Senior counsel for the

petitioner that the principles of natural justice would require a show cause notice be issued and after considering any response to the show cause notice and only after an opportunity of a hearing being accorded to the petitioner, such an order, which attracts a civil consequences could have been passed.

7. We find merit in such contentions as urged by Mr. Hidayatullah. The nature of the order is quite drastic. When such an order was to be passed certainly, the law would require strict adherence of the principles of natural justice and by prior issuance of a show cause notice. The petitioner ought to have been put to notice of all the grounds on which the goods would be liable for confiscation and of any other consequential orders which would be attracted.

8. We may observe that in passing the impugned order-in-original Additional Commissioner of Customs has exercised powers of confiscation and has imposed penalty Section 124 of the Customs Act 1962 which mandates issuance of a show cause notice, before confiscation of goods. Such provision stipulates that no order confiscating any goods for imposing any penalty on any person shall be made under Chapter-XV of the Customs Act, unless owners of the goods or such person is given notice in writing with prior approval of the Officer of the Customs not below the

rank of an Assistant Commissioner of Customs, informing the owner or such person, on the ground on which the goods are proposed to be confiscated or penalty imposed. Such person is required to be given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice, against the grounds of confiscation and imposition of penalty mentioned therewith and thereafter of a reasonable opportunity be given to such person. We note Section 124 which reads thus:

> **"124. Issue of show cause notice before confiscation of goods, etc.**
> No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person-
>
> (a) is given a notice in writing with the prior approval of the officer of customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
>
> (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
>
> (c) is given a reasonable opportunity of being heard in the matter:
>
> PROVIDED that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral:
>
> PROVIDED FURTHER that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and such manner as may be prescribed."

9. **In Gajanan Visheshwar Birjur V. Union of India and Others**[1] the Court was dealing with the validity of confiscation of books imported by the petitioner from People's Republic of China. In the context of the authority to confiscate the Supreme Court observed that an order of confiscation affects fundamental rights of the petitioner to carry on his occupation and business referring to the observations of Hegde, J. in *Oudh Sugar Mills Ltd. V. Union of India*, the Supreme Court observed thus:-

> "To the same effect are the observations of Hegde, J. In Ough Sugar Mills Ltd. v. Union of India. The learned Judge said :
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> It must be remembered that right to trade is a guaranteed freedom. That right can be restricted only by law, considered by the Courts as reasonable in the circumstances. Not only the law restricting the freedom should be reasonable, the orders made on the basis of that law should also be reasonable."

10. **In Metal Forgings and Another V. Union of India and Others** [2]in dealing with a case of a demand under Section 11-A of the Central Excise Act, the Court had observed that in the said case show-cause notice as required in law was not issued by the Revenue. The contention of the Revenue was to the effect that since necessary information which was required to given in the show-cause notice was made available to the appellants therein in the form of various letters and orders etc., issuance of

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1 (1994) 5 SCC 550
2 (2003) 2 SCC 36

such demand notice in a specified manner was not required in law. The Supreme Court repelled such contention of the Revenue. While upholding the orders of the Tribunal the Supreme Court has observed that the Tribunal had rightly come to the conclusion that such material could not be treated as show-cause notice, which was inadequately treated as show-cause notice as contemplated under the rules as applicable. It was also observed that issuance of show-cause notice in a particular form is a mandatory requirement of law.

11. Adverting to the above principles of law, we have no manner of doubt that the impugned orders as assailed in the present proceedings deserve to be quashed set aside. We accordingly set aside the impugned orders. Order accordingly.

12. At this stage Mr. Kumar, learned counsel for the respondents would submits that the respondents would intend to issue a show cause notice. If that be so, they are free to take recourse to the appropriate procedure known to law.

13. At this stage Mr.Hidayatullah prays that the petitioners be granted provisional release the goods. We may observe that if law so permits, the petitioners are always at liberty to apply for provisional release of the goods and if such an application is made, the same be decided by the

concerned Customs Authorities in accordance with law.

14. All contentions of the parties are expressly kept open.

15. Writ Petitions are disposed of in the above terms. No costs.

(JITENDRA JAIN, J.) **(G. S. KULKARNI, J.)**