IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10333 OF 2023

Kuloday Plastomers Pvt. Ltd.,
Through Shri. Ramswaroop Gupta ...Petitioner

Versus

The Union of India,
Through Its Secretary,
Ministry of Finance & Ors. ...Respondents

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Mr. Abhishek Rastogi for the Petitioner.

Mr. Jitendra B. Mishra a/w. Mr. Ashutosh Mishra and Mr. Rupesh Dubey for the Respondents.

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CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

DATE : 28th AUGUST, 2023.

P.C.

. We have heard Mr. Rastogi, learned counsel for the Petitioner on this petition. At the outset, we need to note the prayers as made in this petition, which reads thus:-

> *"a) Issue a writ, order, or direction in the nature of Mandamus, or any other appropriate writ, order, or direction quashing and setting aside the impugned Show Cause Notice dated 01.10.2019 (Exhibit A) issued by the Respondent No.3 being illegal and without authority of law;*
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> *b) Issue a writ, order, or direction in the nature of Declaration, or any other appropriate writ, order or direction reading down Section 97 of the Finance Act, 2022 inasmuch as it retroactively validates actions of Respondent No.3 to issue the impugned Show Cause Notice dated 01.10.2019 (Exhibit A);*

c) Issue a writ, order, or direction in the nature of Declaration, or any other appropriate writ, order, or direction reading down or declaring Notification No.40/2012 dated 02.05.2012 (Exhibit B) and Notification No.17/2002 – Customs (NT) dated 07.03.2002 (Exhibit C) to be illegal and invalid, insofar the conjoint reading of the said Notifications thereof empowers Respondent No.3 to issue the impugned Show Cause Notice dated 01.10.2019 (Exhibit A);

d) Issue a writ, order, or direction staying the implementation, operation and execution of the impugned Show Cause Notice dated 01.10.2019 (Exhibit A) and proceedings emanating therefrom, pending disposal of the present writ petition;

e) Issue a writ, order, or direction restraining the Respondents from passing final orders in relation to the impugned Show Cause Notice dated 01.10.2019 (Exhibit A), pending disposal of the present writ petition;

f) Grant ex-parte ad-interim relief in terms of prayer clause (d) and/or (c) above, or any other ex-parte ad-interim relief as this Hon'ble Court may deem fit, proper, just, and/or necessary in the interest of complete justice; and

g) Grant such further or other reliefs as this Hon'ble Court may deem fit, proper, just, and/or necessary in the interest of complete justice."

2. Mr. Rastogi would submit that the designated officer would not have any jurisdiction to issue the show cause notice considering the decision of the Supreme Court in the case of **Canon India Pvt. Ltd. Vs. Commissioner of Customs**[1]. He would submit referring to prayer clauses (b) and (c) that the powers under Section 97 of the Finance Act cannot be exercised, so as to retroactively validate actions of Respondent No.3 in issuing the impugned show cause notice, which is dated 1st October 2019.

1 2021 SCC Online SC 200

3. Mr. Mishra, learned counsel for the Respondents-Revenue would submit that what is primarily challenged is the show cause notice dated 1st October 2019 on the ground that the issue in regard to the legality of its issuance is covered by the decision of the Supreme Court in the case of **Canon India Pvt. Ltd. Vs. Commissioner of Customs (supra)**. It is his submission that the officer adjudicating the show cause notice would certainly take into consideration such legal position and pass appropriate orders.

4. After hearing learned counsel for the parties, we are of the opinion that the Petitioner needs to canvas such legal position as asserted in the present proceedings before the adjudicating officer, who as fairly pointed out by Mr. Mishra, would certainly take into consideration all such contentions including law laid down by the Supreme Court in the case of **Canon India Pvt. Ltd. Vs. Commissioner of Customs (supra)** and pass appropriate orders on the show cause notice.

5. We may also observe that insofar as the legal contentions as raised by the Petitioner in regard to the interpretation Section 97 of the Finance Act is concerned, as to whether any authority/power is vested with the designated officer to issue show cause notice, can also be gone into in the

adjudication of the proceedings of the show cause notice. We keep open all contentions of the Petitioner on all the prayers and more particularly including on prayer clauses (b) and (c).

6. The petition is accordingly disposed of directing the Respondents to adjudicate the show cause notice as expeditiously as possible and in any event within a period of three months from today. As the show cause notice is issued about four years back and there cannot be any further delay on such adjudication.

7. All contentions of the Petitioner are expressly kept open, to be agitated in the adjudication of the show cause notice. No order as to costs.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**