IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10499 OF 2023

Dhananjay Desai ... Petitioner

Versus

Union of India, through its Secretary, Ministry of Finance, Department of Revenue & Ors. ... Respondents

WITH

WRIT PETITION NO. 10500 OF 2023

Maulik K. Bhagat ... Petitioner

Versus

Union of India, through its Secretary, Ministry of Finance & Ors. ... Respondents

WITH

WRIT PETITION NO. 10503 OF 2023

Astish G. Gharat ... Petitioner

Versus

Union of India, through its Secretary, Ministry of Finance, Department of Revenue & Ors. ... Respondents

WITH

WRIT PETITION NO. 10505 OF 2023

Sharad Bodke ... Petitioner

Versus

Union of India, through its Secretary, Ministry of Finance, Department of Revenue & Ors. ... Respondents

Mr. Pratik Karande i/b. Mr. Aditya Talpade for the petitioners.
Mr. Jitendra Mishra a/w. Ms. Sangeeta Yadav and Mr. Ashutosh Mishra for respondent no. 3.
Mr. Advait M. Sethna a/w. Mr. Dhananjay Deshmukh , Mr. Sandeep Raman for respondent nos. 1 and 2.

CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATED: 4 September, 2023

P.C.

1. We have heard learned counsel for the parties.

2. The prayers as made in these four petitions are identical. It would be appropriate that we note the prayers in the first petition (Writ Petition No. 10499 of 2023), which reads thus:

> *"a) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction calling for the record and proceedings in the impugned show cause notice issued bearing F. No. DRI?MZU/B/INT-166/2017/1909 dated 18.05.2020 issued by respondent no. 3 without jurisdiction and all other records pertaining thereof and after considering the validity, legality and propriety thereof, be pleased to quash and/or set aside the impugned show cause notice as illegal, non-est, null and void ab initio, being without jurisdiction, unconstitutional and arbitrary in nature;*
>
> *b) That this Hon'ble Court may be pleased to issue a writ, order or direction in the nature of mandamus or any other appropriate writ thereby declaring that respondent no. 3 did not have jurisdiction to issue the impugned show cause notice bearing F No. DRI/MZU/B/INT-166/2017/1909 dated 18.05.2020 issued by respondent no. 3;*
>
> *c) That this Hon'ble Court may be pleased to grant the interim/ad interim relief, pending final disposal the instant petition, this Hon'ble Court be pleased to stay adjudication proceedings of the impugned show cause notice issued bearing F No. DRI/MZU/B/INT-266/2017/1909 dated 18.05.2020 issued by respondent no. 3 without jurisdiction.*

3. On behalf of the respondents, Mr. Mishra as also Mr. Sethna drawn our attention to the order dated 28 August, 2023 passed in Writ Petition No. 10333 of 2023 in *Kuloday Plastomers Pvt. Ltd. through Shri Ramswaroop Gupta vs. The Union of India & Ors.,* wherein similar issues were raised wherein adjudication of the show cause notice was pending. In disposing of the said petition, we have taken a view that all contentions as urged in the writ petition including the contentions on the applicability of the decision of the Supreme Court in ***Canon India Pvt. Ltd. vs. Commissioner of Customs***[1] needs to be canvassed before the Adjudicating Officer. We had accordingly disposed of the proceedings in terms of the following relevant observations:

> *"1. 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;*
> >
> > *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 Notifcation No.40/2012 dated 02.05.2012 (Exhibit B) and Notifcation No.17/2002 – Customs (NT) dated 07.03.2002 (Exhibit C) to be illegal and invalid, insofar the conjoint reading of the said Notifcations 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 fnal orders in relation to the impugned Show Cause Notice dated 01.10.2019 (Exhibit A), pending disposal of the present writ petition;*

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> *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 Customs1 . 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.

3. Mr. Mishra, learned counsel for the RespondentsRevenue 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. 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.

6. 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."

4. We are of the opinion that these petitions be accordingly disposed of in similar terms by 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 was issued about three years back and there cannot be any further delay on such adjudication. All contentions of the petitioners are expressly kept open to be agitated in the adjudication of the show cause notice.

5. We may also clarify that in the present proceedings there are no issues which are raised under Section 97 of the Finance Act, which was one of the issues in the order passed on 28 August, 2023 in case of ***Kuloday Plastomers Pvt. Ltd. vs. The Union of India.***

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

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