IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12395 OF 2023

Shaleen Overseas Private Limited .. Petitioner
Versus
Union of India & Ors. .. Respondents

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Mr.Prasannan Namboodiri a/w Mr.Chinmay Bhojane i/by Mr.Tejal Darekar for the petitioner.

Mrs.Shehnaz V. Bharucha a/w Mr.Ashutosh Mishra and Mr.Vikas Salgia for Respondent Nos.1 to 3.

Mr.Jitendra B. Mishra a/w Mr.P.S. Patkar for Respondent No.4.

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CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : 20th October 2023

P.C.

. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for following substantial reliefs :-

> *"(a) That the Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ/order/directions to the Respondents to allow export of Non-basmati rice under Shipping Bill Nos.2465780 dated 14.07.2023 and 2486893 dated 15.07.2023, in view of condition no. (i) and (ii) of the Notification No.29/2023 dated 29.08.2023 read with Notification No.20/2023 dated 20.07.2023 and Trade Notice No.23/2023 dated 18.08.2023 being satisfied in the case of the petitioner."*

2. Brief facts relevant for the present petition are as under :-

(i) On 14th and 15th July 2023, the petitioner filed Shipping Bill Nos.2465780 and 2486893 respectively for export of non-basmati rice.

(ii) On 19th July 2023, the petitioner paid export duty in respect of the above referred two shipping bills.

(iii) On 20th and 21st July 2023, containers under the above referred two Shipping Bills entered Customs area between 16:20 hours and 17:20 hours and 00:000 hours midnight and 01:00 hours respectively.

(iv) On 21st July 2023, the petitioner addressed a letter to the respondents seeking permission to allow export of the consignment under the above referred two shipping bills. However, permission was not granted and therefore, on 22nd July 2023, the petitioner requested respondents to offload the consignment to allow it to be taken back to the town, which request was accepted by the respondents.

(v) On 8th August 2023, the petitioner requested refund of the export duty paid in respect of the above two shipping bills since the respondents did not permit the petitioner to export the consignments.

(vi) On 29th August 2023, the respondents amended export policy of non-basmati rice by amending Notification No.29/2023 dated 29th August 2023. Notification No.29/2023 was amended and the amended notification reads thus :-

> *"i. where Non-basmati rice consignment has been handed over to the Customs before 21:57:01 hours on 20.07.2023 and is registered in Customs system or where Non-basmati rice consignment has entered the Customs Station for exportation before 21:57:01 hours on 20.07.2023 and is registered in the electronic systems of the concerned Custodian of the Customs Station with verifiable evidence of date and*

> *time stamping of these commodities having entered the Customs Station prior to 21:57:01 hours on 20.07.2023. The period of export shall be upto 30.10.2023.*
>
> ***ii. Export duty is paid before 21:57:01 hours on 20.07.2023."***
>
> *(emphasis supplied)*

(vii) In view of the above amendment, the petitioner on 30th August 2023 withdrew request for refund of export duty paid in respect of the above referred two shipping bills and on 1st September 2023, the petitioner requested that in the light of the amended notification, the petitioner be allowed to export consignment under Shipping Bill Nos.2465780 and 2486893.

(viii) On 14th September 2023, the respondents allowed export of another consignment of the petitioners under Shipping Bill No.3935254 which was initially under Shipping Bill No.2487326 dated 15th July 2023 on payment of export duty on 17th July 2023 although the goods were not handed over to the customs for the purpose of export but only export duty was paid before 20th July 2023.

(ix) However, despite the clear clarification as contained in the notification dated 29th August 2023 (supra), the respondents have refused permission to export consignment under Shipping Bill Nos.2465780 and 2486893 and it is on this backdrop, the present petition is filed.

3. The respondents had filed a reply affidavit of Shri S.K.

Shrimali. In the said affidavit, the respondents stated that the petitioner himself had asked for refund of export duty on earlier occasion when permission was not granted and, therefore, the condition specified in the amended notification of payment of export duty is not satisfied by the petitioner . The reply affidavit also states that no vested right is created so as to enable the export of goods . The said affidavit also emphasizes that condition no.3 provides that consignment has been handed over to the customs before notification date and not had been handed over to the customs and since in the instant case, the petitioner had taken back the earlier consignment it cannot be said that consignments were handed over to the customs before the date of the notification . Subsequently, the respondents filed a further clarificatory affidavit to explain as to under what circumstances, they allowed the export of another consignment of the petitioner on 14th September 2023 only on the ground that the export duty was paid even though the consignment was not handed over to the Customs before the notified date. The said affidavit clarified that since the shipping bills are purged after 30 days, exporter was allowed to file fresh shipping bills and, therefore, the goods were cleared for export.

4. Heard learned counsel for the petitioner and learned counsel

for the respondents and with their assistance, we have perused the documents and reply affidavits filed by the respondents.

5. The petitioner has contended that the condition specified in Notification No.20/2023 dated 20th July 2023 as amended by Notification No.29/2023 dated 29th August 2023 are independent of each other and not cumulative. The petitioner submitted that as per amended notification, it had paid export duty before 21:57:01 hours on 20th July 2023 which amounts to satisfaction of one of the conditions and, therefore, the respondents were not justified in refusing permission to export consignment of non-basmati rice. The petitioner submitted that as per amended notification, the period of export is extended upto 30th October 2023 and that the petitioner has complied with all other conditions required for export. Therefore, the petitioner would urge that the relief as prayed for in the petition be granted.

6. Per contra, the respondents submitted that the petitioner had withdrawn the consignment under the aforesaid two Shipping Bills and had requested for refund of export duty paid and, therefore the petitioner was not eligible for export of non-basmati rice. However, the respondents admitted that the export duty has not been refunded till date. The

respondents do not dispute that they had granted permission on 14th September 2023 allowing the export of consignment vide Shipping Bill No.3935254 but sought to contend that in that case, the goods were not taken back and, therefore, the petitioner was permitted to export. Therefore, respondents submitted that the petition be dismissed.

7. The main ground of objection of the respondents in refusing to grant permission to export the consignment relating to the Shipping Bill Nos.2465780 and 2486893 is that the petitioner has not handed over the consignments to the customs on or before 20th July 2023 since on the earlier occasion vide letter dated 22nd July 2023, the petitioner requested for offloading the consignments under the said two shipping bills and the said request was accepted by the respondents. According to the respondents, since the consignments were taken back, it cannot be said that as per the amended notification, the consignment has been handed over to the Customs before 21:57:01 on 20th July 2023 and, therefore, the petitioner is not entitled to export the consignment. In our view, the condition imposed in Notification No.20/2023 as amended by Notification No.29/2023 and clarified by Trade Notice No.23/2023 puts to rest that the conditions specified in the notification are not cumulative but are independent of each other and export is allowed even if one of the

conditions is satisfied. In the instant case, the condition of payment of export duty before 21:57:01 hours on 20th July 2023 has been satisfied since the duty was paid on 19th July 2023. Therefore, the objection raised by the respondents is contrary to their own trade notice. The respondents themselves with respect to export of another consignment vide Shipping Bills No.3935254 permitted the petitioner to export only on the ground that the export duty was paid on 17th July 2023 even though the goods were not handed over to the Customs prior to 20th July 2023. Therefore, even on this account, the objection raised by the respondents is contrary to their own conduct.

8. Whether the conditions specified in the notification is disjunctive or conjuctive has been clarified by the respondents vide Trade Notice No.23/2023 dated 18th August 2023 and relevant paragraphs number 3 and 4 is reproduced :-

> "3. This Directorate has received various representations from stakeholders including Customs Authorities seeking clarification with regard to condition (I), (ii) & (iii) of para-2 of Notification dated 20.07.2023 that whether all the three conditions are independent of each or exporter has to fulfil all the conditions together.
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> 4. In this regard, it is clarified that condition (i), (ii) & (iii) of Para -2 of Notification dated 20.07.2023 are independent of each other and export is allowed in case of completion of **any one of the conditions** of Para- 2 of Notification dated 20.07.2023, by the exporter."

9. Post the said clarification, an amended Notification

No.29/2023 dated 29th August 2023 was issued by amending the original Notification No.20/2023 and the said amended notification is reproduced above. The effect of amended notification read with the earlier notification is that the period of export has now been extended upto 30th October 2023 and new condition is added to be satisfied for being eligible of export is that export duty is paid before 21:57:01 hours on 20th July 2023. Therefore, as of today, there are four conditions and if any one of them is satisfied, the exporter would be eligible to export.

10. In the instant case, there is no dispute that the export duty with respect to shipping bill under consideration has been paid by the petitioner on 19th July 2023 and, therefore, new condition specified in Notification No.29/2023 is satisfied. This read with Trade Notice No.23/2023 which clarifies that each of the conditions is an independent and export is allowed in case of satisfaction of any one of the conditions, the petitioner would be entitled to export the goods as per Notification No.29/2023. Admittedly, the export duty was paid on 19th July 2023 has not been refunded till today.

11. We are therefore of the opinion and it is quite clear that the petitioner became entitled to export the consignment under the

clarificatory notification dated 29th August 2023 when it provided for export on payment of export duty on or before 20th July 2023 which undisputedly has been paid by the petitioner. There appears to be no dispute that the petitioner clearly falls in this category which was added by the clarificatory notification dated 29th August 2023. The respondents themselves have allowed the export of other consignment only on the ground of payment of export duty without goods having been handed over to the Customs and that too under clarificatory notification. Therefore, there cannot be different yardstick to be adopted by the respondents with respect to different shipping bills of the very same petitioner. Hence there can be no question of the petitioner being denied the permission to export the consignment under Shipping Bill Nos.2465780 and 2486893.

12. In view of the above, we pass the following order : -

O R D E R

(i) The respondents are directed to permit the export of non-basmati rice under Shipping Bill Nos.2465780 dated 14.07.2023 and 2486893 dated 15.07.2023 before 30th October 2023.

(ii) Disposed of in the above terms. No costs.

(iii) Parties to act on the authenticated copy of this order.

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