IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15622 OF 2022

Namco Industries Private Limited and anr. … Petitioners

V/s.

Union of India and ors. … Respondents

Mr.Kazam Shroff with Mr.Alhan Kayser i/by M/s Jadeja & Satiya, Advocates for the Petitioners.

Ms.Shehnaz V. Bharucha with Mr.Satyaprakash Sharma, Advocates for Respondents No.1 and 2.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 26 APRIL 2023.

P.C.:-

1. On 12 April 2023 following order was passed:-

"Heard the learned Counsel for the parties. Taken for disposal.

2 The Petitioner is seeking a direction to the Respondents to grant refund of Integrated Goods and Service Tax (IGST). As per the statutory scheme, the shipping bills itself are to be construed as Refund Application.

3 The Petitioner has narrated in the Petition the dates on which Petitioner had reminded the Respondents to consider the grant of refund. The learned Counsel for the Petitioner states that as many as 28 reminders were sent including a request to furnish a Deficiency Memo. The learned Counsel submits that none of the communications have been replied to either rejecting the application or by giving reasons or rejecting them. It is in these circumstances that the Petitioner has filed the Writ Petition.

4 We note that a reply affidavit is filed by one Shibi Singh Gaharvar, Deputy Commissioner of Customs, taking various grounds and has opposed the Petitioner's claim. The reply runs into 18 pages. It is surprising that if the Commissioner has all the information and has time to file a 18 page reply, then even a single communication could have been issued to the Petitioner informing all these grounds. We are not shown any communication, nor it is referred to in the reply. That would mean that the adjudication as to whether Petitioner is entitled to refund would take place at the first instance in this Court. Such a position cannot be countenanced. We direct the deponent of this affidavit, Shibi Singh Gaharvar, Deputy Commissioner of Customs, to explain as to why the grounds taken in the affidavit were not communicated to the Petitioner by the next date, failing which the Deputy Commissioner of Customs, will remain present in the Court to explain the position.

5 Stand over to ***26 April 2023****.*

6 We are constrained to pass this order as we are increasingly coming across such conduct on the part of the Respondents' officers which not only is an harassment to the citizens, it amounts to dereliction of *duty and takes substantial amount of judicial time to adjudicate the issues at the first instance."*

2. Pursuant to this order an affidavit is filed by the concerned Commissioner. It places on record an e-mail which only draws the attention of the Petitioners to the circular stating that it would answer the necessary queries. Affidavit also places on record stating communications received by the Petitioners. As to the order upon the representation of the Petitioners, we are not shown any order. We place our disapproval on record which we have pointed in our earlier order for such a conduct.

3. We direct that Respondents will pass an order giving reasons within period of three weeks, and in the facts and circumstances of the case, after giving hearing to the Petitioners. Needlessly to state that if the order is against the Petitioners, the Petitioners would have liberty to challenge the same.

4. The observations made in the affidavit in reply filed shall be treated as *prima facie* observations and the representation would be decided on merits. We also direct that the time limit of three weeks that we have fixed shall be considered as a mandatory direction and we place the responsibility of complying with the same on the concerned Commissioner.

5. Writ Petition is accordingly disposed of.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**