IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15989 OF 2022

Pernod Ricard India Private Limited … Petitioner

vs.

The Union of India & Anr. … Respondents

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Mr.Dil Jit Singh Ahluwalia with Mr.Raghav Taneja and Mr. Angad Singh Ahluwalia i/b. Vidhii Partners for the Petitioner.
Mr.Jitendra Mishra with Mr.Satyaprakash Sharma and Ms.Manasi Bandwadekar for the Respondents.

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CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.

DATE : 15 FEBRUARY 2023

P.C. :-

We have heard the learned Counsel at length.

2. Having considered the rival contentions, we do not deem it necessary to deal with the same in *extensio* as the proceedings are at the preliminary stage. The Petitioner is yet to file a reply to the show cause notice.

3. The Petitioner approached this Court as the Petitioner's request for supplying certain documents has been rejected by the

impugned letter dated 30 November 2022 issued by Respondent No.2- The Assistant / Deputy Commissioner of Customs.

4. The learned Counsel for the Petitioner contended that the Petitioner has the right to receive the documents, such as price data of the other importers, which is sought to be relied upon by the Respondents and in the earlier round of litigation between the parties wherein such course of action was adopted. As regards the right to receive the documents is concerned, the learned Counsel for the Petitioner has relied upon the order dated 5 December 2003 in Appeal No. C/427/2003-NB (A) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, in the case of *M/s. Seagram Manufacturing Ltd. vs. Commissioner of Customs, Delhi* and also the final order passed on 29 June 2005. Para 6 thereof, which reads thus :

> "*6. The impropriety alleged while proceeding under Rule 6 is that the Commissioner did not disclose or take into consideration the entire data relating to import of 'similar goods' during the period of dispute and that failure has vitiated the finding. This grievance is in view of the provision in the Rule [sub-rule (3) of Rule 5] that "if more than one transaction value is found, the lowest such value shall be used to determine the value of imported goods". The Commissioner rejected the appellant's demand for disclosing full import data on the ground that since Directorate of Revenue Intelligence*

> *(Investigation) had relied on the imports of M/s. United Distillers for the purpose of comparison, he would be going beyond the show cause notice if he took into account other I imports. This stand of the Commissioner is clearly erroneous inasmuch as the relevant Rule specifically stipulates using the lowest transaction value to determine the value of the imported goods. Accordingly, we directed the investigation to disclose particulars of all imports and both sides were heard in relation to the data so disclosed. Both sides have also filed written summaries of their arguments".*

5. The learned Counsel for the Respondents submitted that it is open to the Petitioner to raise such contention as may be available in law and that the authority will deal with the same, and it is not necessary for this Court to adjudicate the rival contentions at present.

6. We note that in the facts of the case of *Seagram Manufacturing Ltd. (supra)* while proceeding under Rule 6 and sub-rule (3) of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the Commissioner had not taken into consideration the entire data or did not give a finding to the effect on the data available. In this circumstance, the tribunal had intervened in the appeal. The present case is at a stage prior.

7. The procedure is now governed by the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, wherein a

detailed methodology is laid down. If the Petitioner files a reply including submissions made in the writ petition, it is expected that the Respondents-authorities will proceed as per the mandate of the Rules of 2007. If there is deviation therefrom to the prejudice of the Petitioner, the Petitioner would have its right open to filing an appeal.

8. Therefore, we leave the contentions of the parties open to be adjudicated in the proceedings pursuant to the show cause notice. It is open to the Petitioner to make a request to the authority that a common reply be permitted to be filed.

9. The learned Counsel for the Petitioner states that adjudication of the show cause notice should be by a reasoned order. We do not find that apprehension is warranted as the authority is expected to pass a reasoned order.

10. The writ petition is accordingly disposed of in the above terms.

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