

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

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WRIT PETITION NO.3788 OF 2021

Parekh Industries Ltd.

...Petitioner

Versus

The Union Of India & Ors.

...Respondents

Mr. Prakash Shah a/w. Mr. Suyog Bhawe i/by M/s. PDS Legal for the Petitioner.

Mr. Jitendra Mishra a/w Ms. Sangeeta Yadav for the Respondent Nos.1, 4 and 5.

Mr. J. B. Mishra a/w. Mr. Ram Ochani for Respondent Nos.3, 6 and 7.

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

DATE : 27th JUNE, 2023.

P.C.

1. We have heard Mr. Shah, learned counsel for the Petitioner, Mr. Jitendra Mishra, learned counsel for Respondent Nos.1, 4 and 5 and Mr. J. B. Mishra, learned counsel for Respondent Nos.3, 6 and 7.

2. The Petitioner has approached this Court praying for the following reliefs:-

“(a) This Hon’ble court be pleased to issue a Writ of Certiorari or any other appropriate Writ, order or direction calling for the records of the present case and after going through the legality and validity thereof be pleased to quash and set aside the impugned the order for seizure of:

- i. *Export consignment of Potassium Gold Cyanide (“PGC”) of 50 KG each of Shipping Bills No.2962080 and No.2961738, both dated 07.07.2021, totally valued at US \$ 4,334,400.00 (Equivalent to INR 31,90,11,840/-) at Air Cargo (Export) Complex, Mumbai; and*
 - ii. *Export related precious metals (i.e. Gold Bars, Strips, and Dust) valued at Rs.6,84,60,695/- and chemicals thereof worth Rs.4,35,70,249/- [Totally worth Rs.11,20,30,944/-] at the Petitioner’s factory premises in Mumbai on 10.07.2021.*
- b. *This Hon’ble Court be pleased to issue writ of Mandamus or a writ of the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing the Respondents, their subordinate servants and agents:*
- (i) *To release the aforesaid seized export goods and export related stock of goods;*
 - (ii) *To remove an alert for 100% examination of export consignment for the Petitioner from the Indian Customs EDI System (ACES);*
 - (iii) *To remove suspension of IGST Refund totally amounting to Rs.11,21,81,858/- for the months of April 2021 and June 2021; and*
 - (iv) *To register MEIS (mechandise Exports from India Scheme) Duty Credit Scrip issued by the DGFT totally amounting to Rs.4,38,54,848/- with the Mumbai Air Cargo Customs.*

(c) *That pending the hearing and final disposal of the above Petition, this Hon'ble Court be pleased to, by an interim order and injunction of this Hon'ble Court:*

(i) *Direct the Respondents to release the impugned goods seized and grant waiver of execution of Bond/security in the interim, which would be subject to outcome of this writ petition, or to pass any other Order(s) as this Hon'ble Court may deem fit in the given facts and circumstances of the present case."*

3. This petition was filed on 14th December 2021, after which the Petitioner came to be issued two show cause notices, one show cause notice dated 1st July 2022 (Exhibit-H, page 185A-1 to 185A-150) and the second show cause notice dated 5th July 2022 (Exhibit-I, page 185A-151 to 185A-266). The show cause notices are pending adjudication.

4. Mr. Shah has also drawn our attention to an order dated 29th March 2022 passed by the Coordinate Bench of this Court is concerned. One of the Petitioner's relief which was for release of the seized export goods and export related stock of goods, in such regard, the Division Bench directed that the Petitioner shall make an application for provisional release of the goods and if such application is made, the same shall be decided within 10 days by the concern Authority from the date of the said application.

5. Mr. Shah has submitted that accordingly, such an application was made and an order was passed on such application, which is now challenged by the Petitioner and the subject matter is pending appeal before the Tribunal.

6. It is on such backdrop, the proceedings are before us. Admittedly, the two show cause notices as referred by us are pending adjudication. Mr. Shah would submit that the immediate concern of the Petitioner is in regard to prayer clauses b(iii) and b(iv) of the petition, which is in relation to the Petitioner's claim, which according to the Petitioner falls outside the said show cause notices. It is Mr. Shah's submission that such claim of the Petitioner is required to be decided by the Respondents independent of the adjudication of show cause notices.

7. Insofar as the above factual position is concerned, Mr. Mishra would not dispute the same that the show cause notices are yet to be adjudicated. Insofar as the Petitioner's contention in regard to prayer clauses b(iii) and b(iv) are concerned, Mr. Mishra would submit that it would be appropriate that the Petitioner makes a representation/application to the concern Authority, so that the claim of the Petitioner in that regard can be decided.

8. Mr. Mishra would submit that in these circumstances, as the issues are pending consideration of the department, the reliefs as prayed for in the petition are not to be considered at this stage, as the petition according to him itself is premature.

9. We have heard learned counsel for the parties. We have also perused the record. In the facts and circumstances of the present case, we are of the clear opinion that the concerned Authorities need to adjudicate the show cause notices dated 1st July 2022 and dated 5th July 2022, as expeditiously as possible and in accordance with law.

10. Insofar as the reliefs as prayed for in terms of prayer clauses b(iii) and b(iv) are concerned, we are of the opinion that it is appropriate that the claim of the Petitioner is decided by the concerned Authorities for refund of duty (IGST) and for registration of the duty credit scrips, as expeditiously as possible and in any event within a period of three months from today.

11. The proceedings arising from the provisional release are already pending before the Tribunal as noted above, and as the present proceedings are pending, the said appeal was not being heard as informed by Mr.Shah. We accordingly request the Tribunal to take up the appeal and decide the same as expeditiously as possible and within a period of three months

from today.

12. All contentions of the parties in regard to the pending proceedings before the department are expressly kept open.

13. Petition is disposed of in the above terms. No costs.

14. Parties to act on an authenticated copy of this order.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]