IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.391 OF 2024

K. Raj & Co., ..Petitioner
Versus
The Union of India & Ors. ..Respondents

Mr. Prakash Shah a/w Jas Sanghavi i/by PDS Legal, for the Petitioner.
Mr. J. B. Mishra a/w Sangeeta Yadav, for the Respondents.

CORAM : G. S. KULKARNI &
KISHORE C. SANT, JJ.

DATE : 24th JANUARY, 2024

P.C.

1. We have heard Mr. Prakash Shah, learned counsel for the Petitioner and Mr. J. B. Mishra, learned counsel for the Respondents.

2. This Petition under Article 226 of the Constitution of India is filed praying for the following reliefs :-

> "(a) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents, their officers and subordinates to forthwith permit clearance of Ethanol Absolute covered under two Bills of Entry for Ex-Bond bearing Nos.9165548 and 9165550 both dated 11.12.2023 filed by Petitioner for home consumption;

(b) pending the hearing and final disposal of the above Petition, the Respondents be directed by an interim order and injunction of this Hon'ble Court to forthwith direct the Respondents to release Ethanol Absolute covered under two Bills of Entry for Ex-Bond bearing Nos.9165548 and 9165550 both dated 11.12.2023, provisionally, without insisting upon any security and upon acceptance of two bonds for differential duty both dated 14.12.2023, which are already submitted to the Respondents or on any other terms as this Hon'ble Court may deem fit;

(c) ad-interim reliefs in terms of prayer (b) above;"

3. We may at the outset observe that in respect of the grievances as made in the Petition, the Petitioner has approached this Court in the present proceedings for the third time. There were earlier rounds of litigation on imports undertaken by the Petitioner in respect of the entries in question which are described as Ethanol Absolute and subject matter of two bills of entries, details of which are set out in prayer clause (a).

4. Recently, the Petitioner had approached this Court in Writ Petition No.12757 of 2023, which came to be decided by judgment and order dated 4th December, 2023 passed by co-ordinating bench of this Court, of which one of us (G. S. Kulkarni, J.) was a member. The prayer in the said Petition was for provisional release of the goods in respect of the one bill of entry No.7594166 dated 30th August, 2023 in respect of the same materials, Ethanol Alcohol. This Court in its judgment recorded that the Petitioner was engaged in

business of import of Laboratory Chemicals for more than five decades and was importing such materials in bottles of 500 ml from various countries. It was observed that the Ethanol Alcohol has been assessed under Customs Tariff Heading (CTH) 98.02 and customs duty @ 10% was paid by the Petitioner. This Court in terms of the following observations had allowed the said Writ Petition by provisionally releasing goods under bill of entry in question on execution of the bond. The relevant paragraphs are required to be noted, which reads thus :-

> "9. On hearing the parties, we are of the view of the Petitioner would be justified in seeking provisional release of the goods. Admittedly, there is no dispute that the Petitioner has been importing these goods for last many decades and the classification under 98.02 has been accepted by the Respondents. Except the bill of entries which are the subject matter of show cause notice dated 28th July 2022 all the imports are cleared under CTH 98.02. The Petitioner has replied to the said show cause notice, but till today the Respondents have not adjudicated and pass any order. The Petitioner is a regular importer of the said goods and not a fly by night operator. The goods are in the bottles of 500 ml and confirm to the marking requirement as per the chapter 98 of the Customs Tariff Act. The Respondents would not be justified in not permitting provisional release of goods by contending that the goods under consideration are used in vaccine and sanitizer etc. The classification has to be seen at the time of import by the Petitioner and not the use to which it is put by the buyers of the goods from the Petitioner. There is no condition in the Customs Tariff under chapter 98 which imposes such an obligations on the Petitioner. In our view, in the light of these facts, the Respondents are not justified in refusing to release the

goods provisionally.

10. The goods under consideration are not prohibited goods, but the only dispute between the Petitioner and the Respondents relates to classification which as observed above has been permitted to be cleared since last many decades under 98.02 ml by the Respondents. There is substance in the submission made by the Petitioner that there is no explanation for the seizure memo to be posted on 17th October 2023 although dated 6th October 2023, moreso, in the facts of the present case, because the petition was served much before 18th October 2023 and the said seizure was received only after the first date of hearing of the present petition.

11. We therefore, pass following order:

ORDER

(i) The Petitioner is entitled for provisional release goods under bill of entry no.7594166 dated 30th August 2023 on execution of the bond.

(ii) The Respondents are directed to release the goods within a period of 2 weeks from the execution of the bond by the Petitioner to secure the differential duty and consequential amount, if any.

(iii) All contentions of the parties with regard to the classification are kept open to be considered in appropriate proceedings.

(iv) Writ Petition is disposed of in above terms. No order as to costs."

5. The aforesaid orders passed by this Court were accepted by the Respondents and the said goods were cleared on the Petitioner's execution of bond. However, it appears that the release of the said goods under the orders of the Court subsequently faced a

rough weather at the hands of the State Excise Officials and in that regard the Petitioner was again required to approach this Court in the proceedings of Writ Petition No.15875 of 2023. On such proceedings, this Court passed orders dated 19th December, 2023 removing such hurdles which came to be subsequently created. This Court observed that *prima-facie* it appeared that the officials of the State Excise had acted in highhanded manner at the instance of private parties who were the competitors of the Petitioner and which is not impossible. This Court thereby ordered the State Excise Department to forthwith release goods and further directed to conduct inquiry against said officials who have acted in highhanded manner.

6. Be that as it may, in so far as the present proceedings are concerned, they are not of different from the proceedings of Petitioner earlier proceedings which had reached this Court in which the Court had passed the order as noted by us in paragraph 4 of this order.

7. It is submitted that the imports subject matter of two bills of entries are covered by the judgment and order dated 4th November, 2023 passed by this Court on Writ Petition No.12757 of 2023. There is no dispute whatsoever in regard to the classification as accepted by this Court in the adjudication of the earlier Petition while granting provisional release of the goods in question. In fact we are surprised, when a stand is now being taken on behalf of the

department, that all circumstances which were relevant in respect of the earlier adjudication although are present in regard to the import in question, however, the department is now taking a different approach by putting the Petitioner to different terms, namely that such provisional release would be permitted on the Petitioner's furnishing a bank guarantee.

8. In such context, we may observe that our orders passed on Writ Petition No.12757 of 2023 being the Petitioner's own case are binding on the Respondents. Such orders are subsisting, and binding on the department when no stay has been granted to the said orders. In this view of the matter, on similar imports a different yardstick cannot be applied by the department. Moreover, in our opinion, applying different parameters for the same goods would amount to an arbitrary action on the part of the Designated Officer. Apart from this, the approach is patently contrary to the orders passed by this Court in the earlier proceedings filed by the Petitioner. Thus, the Petition needs to succeed on the lines of the earlier Petition allowed by us. We allow the Petition in terms of the following order :-

ORDER

i) The Respondents are directed to forthwith permit clearance of Ethanol Absolute covered under two Bills of Entry for Ex-Bond bearing Nos.9165548 and 9165550 both dated 11.12.2023 filed by Petitioner for home consumption as the

Petitioner has already furnished a bond.

ii) The goods be released within a period of one week from the day a copy of this order is available

9. The Petition stands disposed of in the aforesaid terms. No costs.

[KISHORE C. SANT, J.] **[G. S. KULKARNI, J.]**