S.R.JOSHI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 708 OF 2024

Isha Exim … Petitioner

Versus

Union of India
& Others …Respondents

Mr. Prakash Shah i/b. Mr. Anash Desai i/b. Pythagoras Legal, for the Petitioner.
Mr. Jitendra Jain with Mr. Ashutosh Mishra and Mr. Rupesh Dubey, for the Respondents.

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.
DATED: 19 JANUARY, 2024

P.C.

We have heard Mr. Shah, the learned Counsel for the Petitioner, and Mr. Mishra, the learned Counsel for the Respondents.

2 This is a second round of proceedings of the Petitioner before this Court. Earlier, the Petitioner had approached this Court in respect of the very bill of entry in question by filing a Writ Petition, being Writ Petition No.10512 of 2023, which came to be disposed of, in which the Petitioner had challenged the Order-in-Original dated 11th November, 2022 passed by the Deputy Commissioner of Customs, Jawaharlal Nehru Port Trust, on the ground that the said Order was in complete defiance of the Order dated 31st March, 2011 passed by the Authority for Advance Ruling (AAR) under Chapter V B of the Customs Act, 1962 (the "Act") and attracting the provisions of Sections 28E to 28M of the Act. This Court had decided the said Writ Petition by a Judgement and Order dated 18th December, 2023

whereby the impugned Order-in-Original dated 11th November, 2022 was quashed and set aside as the same was contrary to the provisions of Section 28 J of the Act and in the teeth of the Order dated 31st March, 2007 pronounced by the AAR, which has been held to be binding on the department.

3 It is the Petitioner's case that, thereafter, it approached the designated officer, praying for clearance of the goods. However, despite the clear directions of this Court, they refused to clear the goods and again agitated the issue of classification which, according to the Petitioner, was concluded not only in terms of the Order passed by the AAR but also by the same being confirmed by this Court by setting aside the contrary view taken by the department in the Order-in-Original. It is in these circumstances that the present proceedings have been filed, praying for the following reliefs:-

> *"(a) That this Hon'ble Court be pleased to issue a writ of mandamus or order or directions in the nature of mandamus or any other writ, directing the Respondent No.3 to:*
>
> > *(i) forthwith allow release of goods imported vide Bill of Entry No.8077228 dated 30.03.2022 on payment of duty applicable under the Chapter heading 21069030 of the Customs Tariff in compliance of the order dated 18.12.2023 passed by this Hon'ble Court (Exhibit E hereto);*
> >
> > *(ii) to issue detention certificate for waiver of detention and all other charges levied (viz. Storage, fumigation etc.) by the custodian on the Petitioner in respect of the goods lying in the custom bonded warehouse from the date of detention till the date of clearance.*
>
> *(b) that pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct Respondent No.3:*
>
> > *(i) to grant unconditional release of the goods imported vide Bill of Entry No.8077228 dated 30.03.2022 on payment of applicable duty under Chapter 21;*

(ii) to issue detention certificate for waiver of detention and all other charges levied (viz. storage, fumigation etc.) by the custodian on the Petitioner in respect of the goods lying in the custom bonded warehouse from the date of detention till the date of clearance.

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

(d) for costs of this Petition and the Orders made thereon, and

(e) for such further and other reliefs as this Hon'ble Court may deem fit in the facts and circumstances of the case."

4 We had heard the proceedings on the earlier occasion. Today, Mr. Mishra, the learned Counsel appearing for the Revenue, contends that he has instructions to submit that the Order dated 18th December, 2023 passed by this Court in Writ Petition No.10512 of 2023 is intended to be challenged by the department by approaching the Supreme Court. He, however, submits that the facts are now verified and the action of the department as assailed in the present proceedings is in respect of the very bills of entry, which were the subject matter of the proceedings before this Court in Writ Petition No.10512 of 2023.

5 Mr. Shah, the learned Counsel appearing for the Petitioner, states that in regard to the issue on classification as raised by the department, in the event, the department succeeds before the Supreme Court in any proposed proceedings, the Petitioner is bound to pay and undertakes to pay any difference in duty. We would also direct the Petitioner to submit an undertaking to this effect to be placed on the record of the present proceedings and furnish a copy of the same to the department on accepting clearance of the goods. We accept such undertakings of the Petitioner.

6 We, accordingly, **dispose of** this **Writ Petition** with directions to the designated officer of the Respondents to take immediate steps to clear the

goods in question, which are the subject matter of the bill of entry no. 8077228 dated 30th March, 2022.

7 All actions in that regard may be taken within a period of ten days from today.

8 Needless to observe that any routine query, apart from what stands concluded, shall be answered by the Petitioner.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI , J.)