IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDITION

WRIT PETITION NO. 1674 OF 2024

Mukul Gupta, aged 28 years
Indian Inhabitant, carrying on business
in the name and style of
Messrs. Adarsh International
as a sole proprietor of Adarsh International
and having its Office at 5492,
Basti Harphool Singh,
Sadar Thana Road, Delhi-11006 … Petitioner

Versus

1.The Union of India
Through the Secretary,
Department of Revenue,
Ministry of Finanace,
Government of India,
New Delhi-110 001.

2. The Commissioner of Customs,
NSPU, Rummaging and Intelligence
Having his office at
New Custom House, Ballard Estate,
Mumbai-400 001.

3. The Assistant Commissioner of
Customs, NSPU, Rummaging and Intelligence,
Having his office at New Custom House, Ballard Estate,
Mumbai-400 001.

4. The Senior Intelligence Officer
NSPU, Rmmaging and Intelligence
Having his office at
New Custom House, Ballard Estate,
Mumbai- 400 001.

5. The Commissioner of Customs
(Import), Group VI, having his office at
JNCH, Nhava Sheva, Uran,
Raigad, Maharashtra – 400 707. …Respondents

Mr. Prakash Shah a/w. Mr. Jas Sanghavi i/b. PDS Legal for the Petitioner.

Mr. Jitendra B. Mishra a/w. Ms. Sangeeta Yadav for Respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 21st FEBRUARY 2024

ORAL JUDGMENT (per Firdosh P. Pooniwalla J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The Petitioner, who is the sole proprietor of Mrs. Adarsh International, has filed the present Petition, under Article 226 of the Constitution of India challenging the legality and validity of the seizure memo dated 28th September 2023 issued by Respondent No.4 in respect of Ethanol Absolute imported by the Petitioner vide Bill of Entry No.7515045, dated 25th August 2023, on the purported belief of mis-classification of the goods, despite an out of charge being ordered by the proper officer by the Customs.

3. The Petitioner is, *inter alia,* engaged in the business of import of laboratory chemicals for the last more than three years and has been registered under Import Export Code No.BQQPG0569R. The Petitioner, for the last more than three years, has been importing Ethanol Absolute having purity (Ethyl Alcohol Content) of 99.9% and above, in bottles of 500 ml, from various countries such as Malaysia and China. The said Ethanol Absolute

carries markings indicating that the same is meant for use solely as Laboratory Chemicals. The Ethanol Absolute imported by the Petitioner costs approximately Rs. 700- per litre and is of High Performance Liquid Chromatography (HPLC), which can only be used in laboratories. The Ethanol Absolute is sold by the Petitioner to institutions such as All India Institute of Medical Sciences, Indian Institution of Technology, Defense Research and Development Organization, Bhabha Atomic Research Center, Diagnostic Centers, Research Laboratories, School Laboratories etc.

4. The said Ethanol Absolute has been assessed by the Respondents as *"Laboratory Chemical"* under Customs Tariff Heading 98.02 (CTH98.02) of the First Schedule to the Customs Tariff Act, 1975, since the past three years. Further, note 3 of Chapter 98 covers all chemicals, organic or inorganic, whether or not chemically defined, imported in packing not exceeding 500 gms or 500 millilitres and which can be identified with reference to the purity, marking or other features to show them to be meant for use solely as laboratory chemicals. Note 1 of Chapter 98 provides that Chapter 98 is to be taken to apply to all goods which satisfy the conditions prescribed in Chapter 98, even though they may covered by a most specific heading elsewhere in the Schedule. The said notes 1 to 3 of Chapter 98 read as under:-

> *"Project import; laboratory chemicals; passengers' baggage, personal importation by air or post; ship stores*

> *Notes:*
>
> *1. This Chapter is to be taken to apply to all goods which satisfy the conditions prescribed therein, even though they may be covered by a more specific heading elsewhere in the schedule.*
>
> *2. Heading 9801 is to be taken to apply to all goods which are imported in accordance with the regulation made under section 157 of the Custom Act, 1962 (52 of 1962) and expressions used in this heading shall have the meaning assigned to them in the said regulations.*
>
> *3. Heading 9802 covers all chemicals, organic or inorganic, whether or not chemically defined, imported in packings not exceeding 500 gms or 500 milliliters and which can be identified with reference to the purity, markings or other features to show them to be meant for use solely as laboratory chemicals.*
>
> *4. ……….”*

5. It is the case of the Petitioner that, since, the Ethanol Absolute imported by the Petitioner is in packing of 500 ml, and, since, by virtue of its purity of 99.9% and markings, it is identified as meant for use solely as laboratory chemical, it satisfies the requirements of Note 3 to Chapter 98, and, therefore, by virtue of Note 1 to Chapter 98, it has to be classified under heading 98.02 in preference to any other Chapter of the Customs Tariff.

6. In August 2023, the Petitioner imported a consignment of Ethanol Absolute and sought clearance thereof by filing Bill of Entry No.7515045 dated 25th August 2023. The said Ethanol Absolute is in bottles of 500 ml. It

also carries the marking indicating that the same is meant to be used solely as a laboratory chemical. The certificate of analysis also shows that the Ethanol Absolute is of 99.99% purity and is of HPLC Grade.

7. Accordingly, the Petitioner assessed the Ethanol Absolute under CTH 98.02 and paid appropriate duty on the same. After due verification and examination of the Ethanol Absolute, including examination regarding the classification of the goods, the proper officer of Customs passed an Order under Section 47 of the Customs Act, 1962 (the Act) permitting the clearance of the goods for home consumption i.e., granted out of charge to the Ethanol Absolute on 5th September 2023.

8. However, before the Petitioner could take delivery of the Ethanol Absolute, the Petitioner received a letter dated 7th September 2023 from Respondent No.3, *inter alia*, informing the Petitioner that the goods were put on hold and the examination of the Ethanol Absolute was scheduled on 8th September 2023 at 10.30 a.m. Further, Respondent No.3 directed the Petitioner to remain present on the said date at the time of examination along with his Customs House Agent and Chemical Expert.

9. However, since it was not possible for the Chemical Expert to remain present on the same date of the examination on such short notice, the Petitioner, by his e-mail dated 8th September 2023, requested Respondent No.3 to reschedule the examination to 12th September 2023.

10. Accordingly, the Ethanol Absolute was examined by the Respondents on 12th September 2023 in the presence of the Petitioner, his Customs House Agent and Chemical Expert. It is the case of the Petitioner that the Ethanol Absolute was found to be of the same description and technical grade as declared by the Petitioner. However, the report obtained by the Respondents has not been provided to the Petitioner till date.

11. Subsequent to the aforementioned examination, by his summons dated 25th September 2023, Respondent No.4 called upon the Petitioner to appear before him on 27th September 2023, at 11.30 am, to give oral evidence and to submit the required documents. Accordingly, on 27th September 2023, the Petitioner appeared before Respondent No.4, gave his oral evidence and submitted the documents in respect of Bills of Entry dated 25th August 2023.

12. Since the Petitioner was incurring huge demurrage and detention charges pending the investigation by the Respondent, the Petitioner, by his letter dated 27th September 2023, requested Respondent no.3 to permit warehousing of the Ethanol Absolute under Section 49 of the Act. By his letter dated 27th September 2023, Respondent No.3 accepted the said request made by the Petitioner and directed the Deputy Commissioner of Customs, Import Docks, M/s Seabirds CFS Ltd. to permit warehousing of the Ethanol Absolute under Section 49 of the Act for a period of 30 days from the issuance of the letter.

13. Subsequently, Respondent No.4, by his seizure memo dated 28th September 2023, has seized the Ethanol Absolute on the belief that the same was classifiable under CTH 22.07, and not under CTH 98.02, and that the Petitioner was evading customs duty.

14. Further, in view of the permission for warehousing granted by Respondent No.3, the Petitioner, by his letter dated 29th September 2023, requested the Deputy Commissioner (Import) to destuff the cargo and keep it in the domestic container. Accordingly, the Ethanol Absolute was warehoused in the bonded warehouse of M/s. Seabird Marine Services Pvt. Ltd. on 9th October 2023 and a space certificate thereof was issued to the Petitioner. In the meantime, the Petitioner met Respondent Nos. 3 and 4 personally and requested them to release Ethanol Absolute. The Petitioner was orally informed by Respondent Nos. 3 and 4 that the same would be provisionally released only after a bank guarantee was furnished by the Petitioner. Since, no written communication was received by the Petitioner, by his e-mail dated 18th October 2023, requested Respondent Nos.2 to 4 to provide the amount for furnishing the Bank Guarantee and permit provisional release of Ethanol Absolute. However, no reply was received from Respondent Nos.2 to 4.

15. Thereafter, the Petitioner, by his two e-mails dated 19th October 2023 and 23rd October 2023, once again requested Respondent Nos.2 to 4 to

provide the necessary details and permit clearance of Ethanol Absolute. In response to the said e-mails, Respondent Nos. 2 to 4, by their email dated 24th October 2023, informed the Petitioner that the Bank Guarantee and Bond is yet to be decided by the adjudicating authority as per Board Circular No. 35/2017-Cus and the same would be communicated to the Petitioner shortly.

16. Further, by two e-mails dated 30th October 2023 and 1st November 2023, the Petitioner requested Respondent Nos. 2 to 4 to provide a No Objection Certificate for the provisional release of the Ethanol Absolute. In response to the said two emails, Respondent Nos. 2 to 4 by an e mail dated 2nd November 2023, informed the Petitioner that the Investigation Report dated 27th October 2023, in respect of Bill of Entry No.7515045 dated 25th August 2023, was forwarded to the office of Respondent No.5 for issuance of a Show Cause Notice.

17. On 3rd November 2023, the Petitioner received a letter dated 27th October 2023 issued by Respondent No.2 informing him that investigation in respect of the said Ethanol Absolute was concluded by its office and an Investigation Report thereof was sent to the concerned field formation for further necessary action. The Petitioner was further informed that any further action, including request for provisional release of Ethanol Absolute, shall be communicated to the concerned field formation by the office of Respondent No.3.

18. It is the case of the Petitioner that no Show Cause Notice has been issued to him till date. It is also the case of the Petitioner that even the Investigation Report dated 27th October 2023 has not been provided to him.

19. In the meantime, by a Judgement dated 4th November 2023 passed in Writ Petition No. 12757 of 2023, this Court was pleased to provisionally release Ethanol AR imported by M/s. K. Raj and Company on execution of a bond. In view of the said Judgement dated 4th November 2023, the Petitioner met the concerned officer and requested him to permit provisional release of Ethanol Absolute on furnishing of a bond. However, the Respondents refused to release the Ethanol Absolute provisionally.

20. Further, this Court by its Order dated 24th January 2024 had also permitted provisional release of Ethanol AR imported by M/s. K. Raj and Company on execution of a bond.

21. It is the submission of the Petitioner that the action of the Respondents in seizing and withholding the Ethanol Absolute covered under Bill of Entry No.7515045 dated 25th August 2023, despite an Order for clearance of the same for home consumption having been granted under Section 47 of the Act by the proper officer of customs, is *ex-facie,* arbitrary, without jurisdiction, without authority of law and contrary to the orders passed by this Court.

22. The Petitioner submits that the purported seizure is arbitrary and no reasonable person can have a belief that the goods are liable to confiscation by invoking Section 110 of the Act.

23. The Petitioner submits, relying upon the Judgement dated 4th November 2023 and Order dated 24th January 2024 passed by this Court in the case of M/s. K Raj and Co., that the Respondents ought to have allowed provisional release of the goods upon execution and submission of a bond by the Petitioner.

24. The Petitioner submits that the Ethanol Absolute has been seized on the purported belief that it is classifiable under CTH 22.07, which is *ex-facie* erroneous and without any basis. The Petitioner submits that the goods have been imported by the Petitioner and have always been classified and assessed by him under CTH 98.02 as laboratory chemical and 10% basic customs duty has been paid on the same. The said assessments have become final and have not been set aside by any authority. Thus, there was no justification on the part of the Respondents in seizing the Ethanol Absolute on the ground that the same is classifiable under CTH 22.07, when, admittedly, the same had been regularly assessed under CTH 98.02 by the custom authorities themselves.

25. Further, the Petitioner submitted that the imported goods satisfy the requirements of Note 3 of Chapter 98. Therefore, by virtue of Note 1 of

Chapter 98, the said Ethanol Absolute had to be classified under CTH 98.02 even assuming, without admitting, that they were covered by CTH 22.07.

26. The Petitioner submits that the clearance under Section 47 of the Act had been ordered by the proper officer of customs upon satisfaction that the Mandatory Compliance Requirements Examination Instructions for CTH 98020000 appearing in the Bill of entry were fulfilled. As per Chapter Notes, CTH 98.02 covers all chemicals, organic or inorganic, whether or not chemically defined, imported in packings not exceeding 500 gms or 500 millilitres and which can be identified with reference to the purity, marking or other features to show them to be meant for use solely as laboratory chemicals.

27. The Petitioner submits that, as per the said Compulsory Compliance Requirements, for classification of the goods under CTH 98.02, the proper officer of customs has ascertained that the goods are in packing not exceeding 500 gms or 500 millilitres and are identified as being meant solely for use as laboratory chemicals based on the purity and markings.

28. The Petitioner further submits that, in any event, the Ethanol Absolute in question is correctly classifiable under CTH 98.02. It is packed in 500 ml bottles, which clearly bear a marking *"For Laboratory use only"*. As per the Certificate of Analysis, it is clear that the Ethanol Absolute imported by the Petitioner has purity of 99.9 % and above. Further, the Ethanol Absolute has been classified as HPLC, which can be used only in Laboratories. The

Petitioner submits that, on the basis of purity, packing and marking the said Ethanol Absolute is meant for laboratory use only and is rightly classifiable under CTH 98.02.

29. The Petitioner further submits that a mere claim for classification or exemption cannot be the basis for seizure of goods. In these circumstances, the Petitioner submits that there is no justification on the part of the Respondents in seizing the goods in question and, therefore, he is entitled for the reliefs sought by him in the present Petition.

30. Having heard learned Counsel for the parties and having perused the documents on record, we are of the view that the Petitioner would be justified in seeking provisional release of the Ethanol Absolute. Admittedly, there no dispute that the Petitioner has been importing Ethanol Absolute for the last few years and the classification under CTH 98.02 has been accepted by the Respondents, except in respect of Bill of Entry No.7515045, which is the subject matter of the present Petition.

31. The Petitioner has not been issued any Show Cause Notice till date. According to the Petitioner even the Investigation Report dated 27th October 2023 has not been provided to him. The Petitioner is a regular importer of Ethanol Absolute and not a fly by night operator. The Ethanol Absolute is in bottles of 500 ml and confirms to the marking requirement as per Chapter 98 of the Customs Tarrif Act.

32. In our view, the Respondents would not be justified in not permitting provisional release of Ethanol Absolute on the basis that some investigation is being conducted. 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, it imposes such an obligation on the Petitioner. In our view, in the light of these facts, the Respondents are not justified in refusing to release the Ethanol Absolute provisionally.

33. The Ethanol Absolute under consideration is 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 years under CTH 98.02 by the Respondents.

34. As correctly submitted by the Petitioner, in similar circumstances, this Court, by its Judgement dated 4th November 2023 in **M/s. K. Raj and Co. Vs. the Union of India** (Writ Petition No.12757 of 2023) and by its Order dated 24th January 2024 in **M/s. K. Raj and Co. Vs. the Union of India** (Writ Petition No.391 of 2024) has ordered provisional release of the seized goods on execution of a bond. We see no reason as to why similar orders ought not to be passed in the present matter.

35. For the aforesaid reasons, we pass the following orders:-

a) The Petitioner is entitled for provisional release of the Ethanol Absolute under Bill of Entry No.7515045 dated 25th August 2023 on execution of a bond by the Petitioner to secure the differential duty and consequential amount, if any.

b) The Respondents are directed to release the goods within a period of two weeks from the execution of such a bond by the Petitioner.

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

d) Rule is made absolute in the aforesaid terms.

e) The Writ Petition is disposed of.

f) In the facts and circumstances of the case, there will be no order as to costs.

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