IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4304 OF 2024

1. Ideal International Power Tools
Pvt. Ltd. a company incorporated
Under the companies Act, 1956
Having its office at
9, Greenstone Heritage Building,
Opposite Haj House,
Shalimar Estate, Mumbai 400 001

2. Zoher Bhopalwala, aged 56 years
Director of Petitioner No.1
Currently residing at 2301, Tower 2,
Saifee Park, Mazgaon,
Mumbai 400 010.

3. Shabbir Bhopalwala, aged 54 years
Director of Petitioner No.1
3203, B Tower, Vivarea Raheja,
Saat Rasta, Mumbai 400 011 … Petitioners

Versus

1. The Union of India,
through the Secretary,
Department of Revenue,
Ministry of Finance having
its office at 128-A, North Block
New Delhi – 110 001.

2. The Principal Additional Directorate
General, Directorate of Revenue
Intelligence New Delhi,
7th Floor, D Block,
I.P. Bhawan, I.P. Estate,
New Delhi – 110 002.

3. The Commissioner of Customs
(Import), NS-V, having his office
Jawaharlal Nehru Customs House

Nhava Sheva, District Raigad
Taluka – Uran, Pin – 400 707. …Respondents

Mr.Anil Balani a/w Mr.Jas Sanghavi a/w Ms.Priyasha Pawar i/b M/s.PDS Legal for the Petitioner
Mr.Jitendra B. Mishra a/w Ms.Sangeeta Yadav for the Respondents

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 27th March, 2024

ORAL JUDGMENT: (PER FIRDOSH P. POONIWALLA, J.)

1. This Petition has been filed under Article 226 of the Constitution of India. Petitioner No. 1 is, *inter alia,* engaged in the business of imports of power tools and its parts and accessories. Petitioner Nos.2 and 3 are directors of Petitioner No.1.

2. On the basis of an intelligence that various importers were evading customs duty by mis-declaring the value of the imported goods, an investigation was initiated by the officers of Respondent No.2. Search action was conducted at the premises of the Petitioners and their customs broker. During the course of search, various documents and electronic records were seized in terms of Section 110(1) of the Customs Act, 1962 ("the Act") by the officers of Respondent No.2. Further, statements of Petitioner Nos.2 and 3 were recorded by the Directorate of Revenue Intelligence, New Delhi on 6th September 2018, 24th September 2018 and 27th September 2018 wherein they had confessed under valuation of imports made by them. It is also the case of the Petitioners that mobile phones and pen drives of the Petitioners were also seized and never returned even though no evidence from the same has been found or referred to in the impugned show cause notice. Petitioner No.2 also deposited Rs.1,60,00,000/- on 7th September 2018 and executed a bank guarantee for Rs.3,20,06,852/-. It is further the case of the Petitioners that, subsequently, Petitioner Nos.2 and 3 retracted the statements made by them.

3. Thereafter, 17 consignments of the imported goods were seized by the office of Respondent No.3 and goods therein were examined in the month of October 2018. At the request of the Petitioners, the said goods were provisionally released on execution of bank guarantees for 80% of the differential duty.

4. Upon completion of the investigation, the impugned Show Cause Notice dated 31st December 2020 was issued by Respondent No.2 in terms of Section 28(4) of the Act, *inter alia,* demanding duty of Rs.33,05,60,513/- from the Petitioners, and proposing to confiscate the goods and impose penalties. The impugned Show Cause Notice also proposed to appropriate the amount of Rs.1.60 crores deposited by Petitioners and, further, sought to encash the bank guarantees amounting to Rs.3.2 crores which were executed by the Petitioners at the time of provisional release of the goods.

5. The Petitioners, by their letter dated 3rd February 2021, replied to the Show Cause Notice and denied the allegations made therein against the Petitioners.

6. Further, by a letter dated 27th March 2021, the Petitioners relied upon the judgement of the Supreme Court in the case of ***Canon India Pvt. Ltd. Vs. Commissioner of Customs***[1] and submitted that Respondent No.2 was not a proper officer to issue the impugned Show Cause Notice under Section 28 of the Act and requested Respondent No.3 to drop the proceedings.

7. A personal hearing was fixed before Respondent No.3 on 4th March 2024. The Petitioners, by their email dated 4th March 2024, submitted that no reply was received from the Respondents to the letters dated 3rd February 2021 and 27th March 2021 of the Petitioners.

---

1 2021 SCC Online SC 200

8. Another personal hearing was fixed on 15th March 2024 before Respondent No.3 The Advocate for the Petitioners appeared and reiterated the submissions made by the Petitioners' letters dated 3rd February 2021 and 27th March 2021. It was, *inter alia,* submitted that the proceedings be dropped as the Show Cause Notice was not issued by the proper officer. However, the Petitioners were informed that cross examination could not be granted and the adjudication would continue as the proceedings were time bound.

9. In these circumstances, the Petitioners have filed the present Petition seeking the following final reliefs:

> *"a) that this Hon'ble Court be pleased to issue an appropriate writ, order or direction to declare that the Impugned provisions (Sections 86, 87, 88, 94, and 97) of the Finance Act, 2022 are violative of Articles 14 and 19(1)(g) of the Constitution being discriminatory, unreasonable and disproportionate to the intent of the Act; and*
>
> *b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the impugned Show Cause Notice bearing no. DRI/HQ-CI/50D/ENQ-16/(INT-26)/2018-CI dated 31.12.2020 (Exhibit A herein) and to quash and set aside the same after going into the validity and legality thereof;*
>
> *c) That this Hon'ble Court be pleased to issue Writ of Prohibition or any other appropriate writ in the nature of prohibition prohibiting the Respondents to refrain from taking any further steps or proceeding pursuant to or in furtherance of the impugned Show Cause Notice bearing no. DRI /HQ-CI/50D/ENQ-16/(INT- 26)/2018-CI dated 31.12.2020 (Exhibit A herein);*

10. Mr.Balani, the learned Counsel for the Petitioners, submitted that Respondent No.2, not being the proper officer under the Act, could not have exercised powers for issuance of the impugned Show Cause Notice under Section 28(4) of the Act. He submitted that the same was not maintainable under the statute and deserved to be termed as illegal.

11. Mr.Balani submitted that this position is covered by the decision of the Supreme Court in the case of ***Canon India Pvt. Ltd.*** (Supra).

12. Mr.Mishra, the learned Counsel appearing on behalf of the Respondents, submitted that the challenge to the said Show Cause Notice dated 31st December 2020 and the grounds raised by the Petitioners in regard to the legality of its issuance, i.e., the same being covered by the decision of the Supreme Court in the case of ***Canon India Pvt. Ltd.*** (Supra), can certainly be raised by the Petitioners before the adjudicating officer, who can take them into consideration and pass appropriate orders. He submitted that, in the facts of the present case, the adjudication of the Show Cause Notice dated 31st December 2020 ought to be taken forward. In support of his submission, Mr.Mishra relied upon the decision of the Division Bench of this Court in the case of ***Laxmi Organic Industries Ltd., through Shri Aniket Hirpara va. Union of India, through its Secretary, Department of Revenue & Ors.***[2], of which one of us (G.S.Kulkarni, J.) was a member.

13. After hearing the learned counsel for the parties, we are of the opinion that the view taken by the Division Bench of this Court in the case of ***Laxmi Organic Industries Ltd.*** (Supra), needs to be followed in the present proceedings inasmuch as, in the present proceedings, the Show Cause Notice is dated 31st December 2020, which was issued during the COVID-19 Pandamic. For such reason, the Show Cause Notice could not be taken forward. In the meantime, the Supreme Court pronounced its decision in the case of ***Canon India Pvt. Ltd.*** (Supra). What has been laid down by the Supreme Court in such decision is the law of the land under Article 141 of the Constitution of India. The adjudicating officer is thus bound by the law as laid down by the Supreme Court in the said decision. The Petitioners can certainly raise such plea placing reliance on the said decision of the Supreme Court, and in that

2 Writ Petition No.13304 of 2023 decided on 8th November 2023 case it would be incumbent for the adjudicating officer to consider the applicability of the said decision, and if so applicable, abide by the said decision in adjudicating the said Show Cause Notice dated 31st December 2020. In the event, the said decision is not applicable, reasons for the same are required to be furnished by the adjudicating officer. We are therefore of the opinion, that the Petitioner needs to canvass such legal position as asserted in the present proceeding before the adjudicating officer, who, as fairly pointed out on behalf of the Respondents, would take into consideration all such contentions, including the issues on the law laid down by the Supreme Court in the case of ***Canon India Pvt. Ltd.*** (Supra) and pass appropriate orders on the said Show Cause Notice.

14. The Petition is accordingly disposed of directing the Respondents to adjudicate the Show Cause Notice dated 31st December 2020 as expeditiously, as possible, and, in any event, within a period of six months from today. As the show cause notice is issued more than three years back, there cannot be any further delay in the adjudication of the same.

15. All contentions of the Petitioners are expressly kept open for agitation in the adjudication of the Show Cause Notice.

16. Petition is disposed of in the aforesaid terms.

17. In the facts and circumstance of the case, there will be no order as to costs.

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