

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 559 of 2024

IN

WRIT PETITION NO. 4838 OF 2016

Shah Nanji Nagsi Exports Pvt. Ltd. ... Applicant

In the matter of

Shah Nanji Nagsi Exports Pvt. Ltd. ... Petitioner

Versus

Joint Directorate General of foreign Trade & Ors. ... Respondents

Mr. Amit Khanna & Ms. Samiksha Parekh i/b Dewani Associates, for Applicant.

Mr. Rajshekhar Govilkar, Sr. Advocate a/w Mr. S. M. Bhardwaj, for Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 22 JANUARY, 2024

P.C.

1. Writ Petition No.4838 of 2016 as filed by the petitioner was disposed of by judgment and order dated 21 May 2021 passed by a coordinate Bench of this Court in terms of following observations and order:

“41.Since the order-in-original dated 14.02.2014 is interfered with, the order-in-appeal dated 24.07.2015 and the order in review dated 04.11.2015 cannot survive. In so far encashment of bank guarantee furnished by the petitioner is concerned as well as the claim for refund of excise duty paid, needless to say those would be subject to such decision that may be taken by respondent No.1 on remand.

42. Since we have decided as above, it is not necessary to delve into the other ground(s) urged by the petitionere.

43. Consequently and in the light of the above, impugned orders dated 14.02.2014, 24.07.2015 and 04.11.2015 are hereby set aside

and quashed. Matter is remanded back to respondent No.1 for a fresh decision in accordance with law after giving due opportunity of hearing to the petitioner and having regard to the discussions made above. Let such decision be taken by respondent No.1 within a period of three months from the date of receipt of a copy of this judgment and order.”

2. It appears from the record that on the said writ petition an interim order was passed on 17 June 2016 whereby without prejudice to the rights and contentions of both the parties as a condition for an ad-interim stay the petitioner were directed to furnish security in the form of a bank guarantee of a nationalized bank to cover the demand and which shall be to the satisfaction of the Prothonotary and Senior Master of this Court.

3. The interim order had continued to operate and as noticed, was subject to the orders which would be passed on remand as directed by the Court and in the final orders passed and as noted by us above. As per final orders of the Court on the Writ Petition (surpa), on remand the proceedings stand disposed of by the Customs Excise & Service Tax Appellate Tribunal vide judgment and order dated 25 January 2023, wherein it was held that the orders impugned therein which held that imports were made by the petitioner in violation of the conditions of the import licence, could not be sustained and were accordingly set aside.

4. In the present application, it is the case of the petitioner that the petitioner has also received the refund. In these circumstances, the petitioner has filed the present application praying that appropriate directions be issued to release and hand over the bank guarantee dated 27 June 2016 to the petitioner / applicant as the proceedings itself has come to an end.

5. On 15 January 2024, to enable the learned counsel for the respondents to take instructions, we had adjourned the proceedings for today. It is informed

to us that instructions could not be received. In these circumstances, we are of the opinion that the contentions as urged on behalf of the petitioner in the interim application are not sought to be disputed, which are for a consequential relief that the bank guarantee as deposited in this Court, now be released to the petitioner.

6. It appears to be quite clear that the petitioner has now succeeded on remand and the orders which were passed by this Court on the writ petition were clear that in so far as encashment of bank guarantee furnished by the petitioner was concerned, as well as the claim for refund of excise duty paid, would be subject to such decision that has been taken by respondents on remand. The petitioner having succeeded before the Tribunal no useful purpose would be achieved in retaining the bank guarantee, further there was no application at any point time on behalf of the respondent for encashment of the bank guarantees in such circumstances.

7. In the light of the above discussion, the prayer as made in the interim application are required to be granted. It is accordingly granted in terms of prayer clause (a) which reads thus:

“(a) Issue appropriate order or direction to release and hand over the Bank Guarantee dated 27/06/2016 (Exhibit-B) to the Applicant/Petitioner in peculiar facts & circumstances of the case;”

8. The registry to do the needful within a one week from a copy of this order being presented before the appropriate officer of the registry.

9. Disposed of in the above terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)