IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16179 OF 2023

Shri Anmol Singh Sethi,
25 years, Occ: Business,
Proprietor of M/s.Ideal Impex,
Having office at 1711, 1st Floor,
Outram Lane, Kindsway Camps,
New Delhi – 110 009. … Petitioner

Versus

1. Union of India
   (Through the Secretary,
   Ministry of Law and Justice,
   Department of Legal Affairs,
   Branch Secretariat, Aaykar Bhavan
   Annexe, 2nd floor,
   New Marine Lines, Mumbai-400020

2. Commissioner of Customs, NS-1,
   Jawaharlal Nehru, Custom House,
   Nhava Sheva, Raigad – 400 707

3. Additional Commissioner of Customs, NS-1,
   Group-2C, Jawaharlal Nehru Custom House,
   Nhava Sheva, Raigad – 400 707

4. Assistant Commissioner of Customs, NS-1,
   Group-2C, Jawaharlal Nehru Custom House,
   Nhava Sheva, Raigad – 400 707 …Respondents

Mr.S.Jaikumar a/w Mr.Brijesh Pathak for the Petitioner
Mr.Jitendra B. Mishra a/w Mr.Saket R. Ketkar a/w Mr.Ashutosh Mishra for the Respondents

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 30 January, 2024

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

1. Rule. Rule made returnable forthwith.

2. Heard finally by consent of the parties.

3. In this Writ Petition, filed under Article 226 of the Constitution of India, the Petitioners have sought the following reliefs:

> *"(a) to issue Writ of Mandamus or any other appropriate writs, orders or directions under Article 226 of the Constitution of India ordering and directing the Respondents their subordinates, servants and agents to forthwith finalize the assessment and the issue of classification and thereafter release the goods covered under the Bill of Entry No. 8560406 dated 31.10.2023, Exhibit-A;*
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> *(b) to issue a Writ of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the case and direct the Respondents to issue Certificate for waiver of demurrage and other charges in terms of Rule 6(1) of Handling of Cargo in Customs Area Regulations 2009, which were detained and seized;"*

4. The Petitioner is carrying on the business of trading in Industrial Oil in the name of his proprietary concern, M/s.Ideal Impex.

5. It is the case of the Petitioner that he purchased a consignment of Penetrating Oil from Al Ziba General Trading Co. LLC, UAE. Upon arrival of the goods in India in six separate containers, the Petitioner filed Bill of Entry No.8560406, dated 31st October 2023, at the Nhava Sheva Port seeking clearance of the consignment of six containers. Pursuant to the filing of the said Bill of Entry, the officers of Rummaging and Intelligence (R & I) issued a letter to the Container Freight Station (Seabird CFS) directing them to hold the aforementioned Bill of Entry. The Petitioner was not furnished any reason for detaining the consignment.

6. Thereafter, the Petitioner was informed that the consignment covered by the said Bill of Entry was detained at the behest of the officers of the R & I

Division, Mumbai. It is the case of the Petitioner that the representative of the Petitioner visited the Officers of the R & I Division, Mumbai and duly cooperated with the enquiry proceedings conducted by them. Pursuant to the conclusion of the enquiry, the officers of R & I issued an email dated 22nd November 2023 to the Respondents vacating the directions for detaining the consignments and also informing the officers to complete the appropriate assessment proceedings on test report of samples.

7. By a further email dated 5th December 2023, the office of R & I informed the officers that the earlier instructions issued by them for detaining the consignments stood vacated.

8. The Respondents, thereafter, drew samples from all the six containers for the purpose of testing. In respect of six samples drawn by the Respondents, two reports had been furnished by the testing laboratory: CRCL, JNCH wherein it was held that the samples did not meet the standards of IS: 1460, which were mainly composed of Diesel Fractions and did not meet the IS Standards of Solvents / Kerosene / Kerosene Intermediate / Vacuum Gas Oil / Gas Oil.

9. It is the case of the Petitioner that the Respondents are seeking to classify the consignments under Chapter 27 as against the classification claimed by the Petitioner under Chapter 34. It is also the case of the Petitioner that his representative had consistently informed the Respondents that the classification was claimed as per the understanding of the explanatory notes to the HSN and also that the duty applicable on CTH 34 was higher than the CTH 27 and that there was no intention to either evade duty or derive any benefit.

10. It is also the case of the Petitioner that clearance was being allowed of consignment of identical goods to other importers.

11. Since there was a delay in clearing the consignment, the Petitioner made a representation dated 21st December 2023, requesting the Respondents to finalize the assessment and allow clearance of the goods for home consumption.

12. It is the case of the Petitioner that his authorized representative appeared in the office of the Respondents and explained in detail about the goods being imported by the Petitioner and also about simultaneous clearance of consignments being allowed at the Nhava Sheva Port. It is also the case of the Petitioner that the Respondents were requested to finalise the assessment and / or release the consignment, as the failure to do so was causing grave prejudice to the Petitioner.

13. In response, it is the submission of the Respondents that the Investigating Agency, namely R & I, HQRS, Preventive Commissionerate, Mumbai Zone-II, had investigated imports made by the Petitioner declaring the goods as "Penetrating Oil-60" vide Bill of Entry No.8511565 dated 28th October 2023. The investigation had revealed that the imported goods were mis-declared with respect to their description and classification and were undervalued. It has also come to light that the Petitioner attempted to import Prohibited Goods under the guise of declared goods in order to circumvent the stipulated guidelines for the goods covered under CTH 27, which requires mandatory First Check Examination Order as well as drawing of samples for testing purpose before releasing the goods.

14. The Respondents further submitted that the said investigation culminated in the issuance of show cause notice dated 19th December 2023 which was subsequently adjudicated by Respondent No.3 by an Order in Original dated 5th January 2024, whereby re-classification of goods under CTH 2710 1990, under the head 'Others' was ordered. The said Order also

directed re-determining the value of the goods under CVR, 2007, confiscation of the goods u/s.111 (d) of the Customs Act, 1962 and allowed for redemption only for re-export purpose on payment of RF. Penalty was also imposed on both the Importing Firm and its Proprietor.

15. On the same being pointed out, the Petitioner submitted that, in respect of the goods which are subject matter of Bill of Entry No.8560406 dated 31st October 2023, the Petitioner is willing to waive the show cause notice and is agreeable that an order similar to the Order dated 5th January 2024 be passed without prejudice to the Petitioner's right to challenge the said order by filing an Appeal, on all contentions. The Respondents would not have an objection if such request of the Petitioner is accepted.

16. We accept such request as made by the Petitioner. Accordingly, the following Orders are passed:

a. The Petitioner waives issuance of a show cause notice in respect of the goods which are the subject matter of Bill of Entry No.8560406 dated 31st October 2023.

b. An order similar to the Order dated 5th January 2024 be passed in respect of the goods which are the subject matter of Bill of Entry No.8560406 within a period of two weeks from the date of intimation of this Order. This shall be without prejudice to the right of the Petitioner to challenge the said order being so passed by filing an Appeal and to raise all contentions in the Appeal as may be permitted in law.

c. Petition is disposed of in the aforesaid terms

d. No order as to costs.

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