

S.R.JOSHI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1581 OF 2024

Unik Traders

.. Petitioners

Versus

The Union of India & Ors.

.. Respondents

Mr. Jitendera Motwani with Ms. Ayushi Agrawal i/b. Economic Laws Practice,
for the Petitioners.

Mr. Jitendra B. Mishra with Ms. Sangeeta Yadav, for Respondent No.2-DRI.

Mr. Satyaprakash Sharma, for Respondent No.3.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 5th FEBRUARY, 2024

P.C.

1. We have heard Mr. Motwani, learned Counsel appearing for the Petitioners, and Mr. Mishra, learned counsel for the Respondents, on this Petition.

2. At the outset, Mr. Motwani would submit that the issue as raised in the present Petition, namely the challenge to the show cause notice issued by the Principal Additional Director General of the Directorate of Revenue Intelligence, under Section 28, read with Section 124, of the Customs Act, 1962, and an Order dated 9th January, 2024 passed on such show cause notice issued to the Petitioners, would stand covered by the decision of the Supreme Court in **Canon India Private Limited V/s. Commissioner of Customs**¹. He submits that the impugned Order dated 9th January, 2024 passed on such show

¹ AIR 2021 SC 1699

cause notice is thus rendered illegal and without jurisdiction, considering the law as laid down in such decision by the Supreme Court.

3. In this context, Mr. Motwani has drawn our attention to the Order passed by this Court in the case of **Heranba Industries Ltd. Vs. The Union of India & Ors.**² as also the Orders passed by this Court in a batch of petitions in **Elite Aromas Vs. Union of India**,³ **Viral Kanubhai Mehta Vs. Union of India & Ors.**⁴ and **Indu Shekar & Ors. Vs. Union of India**⁵ wherein taking into consideration the decision of the Supreme Court in **Canon India Private Limited** (supra), the Court had admitted the Petitions assailing the orders passed by the Designated Officer of the Directorate of Revenue Intelligence. For convenience, we note the Order passed by this Court in **Heranba Industries Ltd.** (supra), which reads thus:-

“1. This petition is moved on behalf of the Petitioner pointing out that proceedings in the present petition would stand covered by the decision of the Supreme Court in **Canon India Private Limited V/s. Commissioner of Customs**⁶.

2. We have heard learned counsel for the Petitioner who has brought to our notice an Order dated 6th June, 2023 passed in a batch of Petitions by a co-ordinate bench of this Court in **Idea Cellular Ltd. V/s. The Union of India & Anr.**⁷ and subsequent orders passed by this Court in the proceedings of **Elite Aromas V/s. Union of India**⁸ to contend that the issues raised in the present petition are identical to the issues raised in the above referred decision of **Idea Cellular Ltd.** (supra) and **Elite Aromas** (supra), wherein this Court has admitted the petitions.

2 Writ Petition No.10774 of 2023 order dated 11.9.2023.

3 2023(8) TMI 1164 Bombay High Court.

4 2023(8) TMI 930 Bombay High Court

5 Writ Petition No.12507 of 2023 dated 17.10.23

6 AIR 2021 SC 1699

7 Writ Petition No. 1204 of 2018 dated 6th June, 2023

8 Writ Petition No.1929 of 2023 dated 25th July, 2023

3. The aforesaid contention of the Petitioner is not disputed by the counsel for the Respondent.

4. We may note that in our order passed on the proceedings of Idea Cellular Ltd.(supra), it is noted that there is a review petition arising out of the decision of the Supreme Court in Canon India Private Limited (supra), which is pending before the Supreme Court. Also subsequently, an amendment was brought by the Finance Act, 2022 which is also a subject matter pending before the Supreme Court.

5. In such view of the matter, following order was passed in the case of **Idea Cellular Ltd. V/s. Union of India:**

1. Common issues of law are involved in the present proceedings as observed in the order passed by the co-ordinate bench of this Court on the earlier occasion. The learned counsel for the petitioners submits that the impugned orders passed by the respondent-revenue are contrary to the principles of law as laid down by the Supreme Court in the case of M/s. Canon India Private Limited Versus Commissioner of Customs. Learned counsel for the parties would inform that there is a petition filed before the Supreme Court praying for review of the decision in Canon India Pvt. Ltd. Also there are subsequent events namely that by an order dated 2 May 2022 an amendment has been made by Finance Act 2022 in which it is alleged to overcome the effect of the decision of the Supreme Court in Canon India Pvt. Ltd. (supra). It is informed by Mr. Nankani, learned senior counsel for the petitioners that the said amendment is also subject matter of challenge in writ petition(s) filed before the Supreme Court which are stated to be pending before the Supreme Court. In this context, Mr. Nankani has drawn our attention to an order passed by the Supreme Court in Civil Appeal No(s). 6142 of 2019 (**Union of India & Ors. vs. Aspam Petrochem Pvt. Ltd.**) dated 26 July, 2022 which is an order on batch of civil appeals as also writ petitions filed under Article 32 of the Constitution of India, in which the 2022 amendment is stated to the subject matter of challenge. The Supreme Court having noted the order passed in Review Petition No.400 of 2021 in the case Commissioner of Customs V/s. M/s. Canon India Pvt. Ltd. dated 19 May, 2022, has adjourned the said proceedings awaiting the decision of the review petition.

2. In the aforesaid circumstances, in our opinion, the present petitions would be required to be adjudicated finally as

agreed by the learned counsel for the parties. Hence Rule. Respondents waive service.

3. Interim order passed earlier shall continue to operate till the final decision of the petitions.

4. Liberty to the parties to move the Court after the proceedings decided by the Supreme Court.

5. In the meantime, the parties are directed to complete the pleadings on the petitions.

6. Learned counsel for the Petitioner and the Respondent are *ad-idem* that as on similar issues proceedings are already admitted by this Court which are pending before the Court as noted above, similar orders can be passed on the present proceedings. We accept such plea. Hence, Rule. Respondents waive service.

7. As and by way of *ad-interim* relief, we stay the impugned Order dated 23rd February, 2023, however, liberty to the Respondents to make an application for vacating the said order in the event the Respondents are of the opinion that the same ought not to be continued and/or after the decision of the Supreme Court in the pending Review/Writ Petition in the case of Canon India Private Limited (*supra*).

8. All contentions of the parties are kept open.”

4. Learned Counsel for the Respondents would be *ad idem* in contending that, on similar issues, the proceedings are already admitted by this Court and are pending, hence, similar orders can be passed on the present proceedings.

5. Hence, **Rule**. Respondents waive service.

6. As and by way of *ad-interim* relief, we stay the impugned Order dated 9th January, 2024, however, with liberty to the Respondents to make an application for vacating this Order in the event the Respondents are of the opinion that the same ought not to be continued and / or after the decision of the Supreme Court in the pending Review / Writ Petition in the case of *Canon India Private Ltd. (supra)*.

7. All contentions of the parties are hereby expressly kept open.

(FIRDOSH P. POONTIWALLA, J.)

(G. S. KULKARNI, J.)