IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10538 OF 2024

Kernel Enterprises Pvt. Ltd. ….Petitioner

V/s.

Union of India & Anr. ...Respondents

Mr. Prakash Shah a/w Mr. Prashant Mishra, Ms. Chahat Modi a/w Mr. Aryan Shah and Ms. Vaishnavi Dhuve i/by Enact Legal for petitioner.

Mr. Siddharth Chandrashekhar a/w Ms. Sangeeta Yadav for respondents.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.

DATE : 19th SEPTEMBER 2024

P.C. :

1 Issue raised in the matter, particularly, is whether the goods imported fall under category of silver jewellery which is freely importable or under restricted category of ITC (HS) Code 71069210.

2 According to petitioner, it is a jewellery and in worst case scenario can be called sem-finished jewellery, both of which are importable free. According to revenue, these goods are crude rounded structure made of embossed silver strips which are joined together to make it look like bangles. The samples shown to us by respondent’s officer atleast prima facie looks like they are bangles.

3 At the same time without going into details, Mr. Shah states that even assuming they are restricted, petitioner should be allowed to clear the goods provisionally on such terms and conditions as the Court may fix.

4 Mr. Shah relied upon Section 125 of the Customs Act, 1962 which provides for even release of prohibited goods on such terms and conditions as proper officer would decide. Section 125 reads as under :-

> *"**125. Option to pay fine in lieu of confiscation.***
>
> *(1)Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:*
>
> *Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed.*
>
> *Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*
>
> *(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.*
>
> *(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.*

> *Explanation. - For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received."*

5 Therefore under sub-section (1) of Section 125, whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods, an option to pay in lieu of confiscation such fine as the said officer thinks fit.

6 The second proviso indicates how much fine could be levied and it says that such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. Ofcourse, under sub-section (2), there is power to levy duty and charges payable on such goods.

7 Respondent rely upon an examination report dated 5th June 2024 to suggest that the goods are crude rounded structure made of embossed silver strips which are joined together to make it look like a bangle. We should note that the author of the report has even put a disclaimer in the report because the author says "as per our best knowledge……." Therefore, in our view, prima facie this report is not

reliable because it has been prepared on the basis of visual examination and if it is based on visual examination, the author could not have used the expression “as per our best knowledge…….” Moreover, he does not even explain from where so called knowledge was generated. Hence prima facie, we are not satisfied.

8 Mr. Shah states that petitioner shall give bank guarantee for 50% of the value of the goods.

9 Seizure memo, a copy whereof at Exhibit-E to the petition being Seizure Memo No.11/2024-25 dated 5th June 2024 states that the declared value is Rs.2,34,07,226/-. Mr. Shah states 50% of that would be Rs.1,17,03,613/-. We shall round it off to Rs.1,20,00,000/-. Upon petitioner giving a bank guarantee of a nationalised bank for Rs.1,20,00,000/-, respondent shall permit petitioner to provisionally clear the goods.

10 All rights and contentions are kept open.

11 Investigation shall be completed by 31st December 2024. Mr.Chadrashekhar states that it is DGFT which has to give inputs and the concerned officer of Custom Department has addressed two communications for which there is no reply. We direct DGFT to respond and co-operate with the Customs Officer promptly and in any case respond to the letter already addressed, by 10th October 2024.

12 Petition disposed.

(JITENDRA JAIN, J.) **(K.R. SHRIRAM, J.)**