lgc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12292 OF 2024

Shri Anmol Singh Sethi : Petitioner

Versus

Union of India and ors. : Respondents

Mr Brijesh Pathak, for the Petitioner.
Mr Jitendra B Mishra, a/w Adv. Sangeeta Yadav for the Respondents.

CORAM **M.S. Sonak &**
Jitendra Jain, JJ.
DATED: **17 December 2024**

ORAL JUDGMENT:- (*Per M. S. Sonak, J*)

1. Heard learned counsel for the parties.

2. Rule. The rule is made returnable immediately at the parties' request and with the consent of learned counsel.

3. The Petitioner complains that despite the Tribunal's order dated 01 July 2024, the Respondents are not releasing the seized consignment on the plea that they intend to appeal the Tribunal's order dated 01 July 2024.

4. Mr Pathak, the learned counsel for the Petitioner, submitted that unwarranted conditions had been imposed upon the Petitioner only with a view not to implement the Tribunal's order dated 01 July 2024. Accordingly, he submitted that the writ of mandamus is liable to be issued, and the unreasonable conditions sought to be imposed by the letter dated 05 August 2024 deserve to be quashed.

5. Mr. Mishra, the learned counsel for the Respondents, submitted that the Respondents are in the process of appealing the Tribunal's order dated 01 July 2024. He submitted that there is nothing wrong in the conditions imposed upon the Petitioner and no prejudice will occasion the Petitioner should the same be complied with.

6. The rival contentions now fall for our determination.

7. The Customs Authorities seized the Petitioner's consignment, which contained penetrating oil, on the grounds that it was adulterated and canalized. The Adjudicating Authority and the First Appellate Authority held against the Petitioner.

8. The Petitioner, therefore, appealed to the CESTAT vide Customs Appeal No.85316 of 2024. By the judgment and order dated 01 July 2024, this Appeal was allowed, and the orders made by the Adjudicating Authority and the First Appellate Authority were set aside.

9. The CESTAT, in paragraphs 13, 14 and 15 of its judgment and order dated 01 July 2024, held/observed as follows:-

> 13. It is clear that the test for validation of re-classification devolving on the proper officer of customs by judicial mandate *supra* and by legislative obligation *supra* has not been conformed to and, consequently, the classification adopted by the lower authorities is not in accordance with law. We, therefore, find that the classification declared in the bill of entry would suffice for assessment. The lower authorities have ventured upon rejection of declared value under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 solely on the finding that the impugned goods are diesel oil. We do not have to examine the correctness of the rule applied for re-

> determination of value inasmuch as the foundation for proceeding to rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 has been displaced by our finding *supra*. Consequently, re-determination of value as well as re-assessment of the duty liability do not have any basis in law.
>
> 14. The goods having been correctly declared, both in terms of description as well as value, case for confiscation under section 111(d) of Customs Act, 1962 and section 111(m) of Customs Act, 1962 as the goods imported are neither adulterated nor canalized, does not have authority of law.
>
> 15. In view of our finding supra, the impugned order is set aside and appeal allowed."

10. Regarding the CESTAT order, the Respondents were duty-bound to release the confiscated consignment unless they were to appeal the Tribunal's judgment and order and obtain some interim relief.

11. The Petitioner, therefore, called upon the Respondents to implement the Tribunal's judgment and order dated 01 July 2024. In response, by impugned letter dated 05 August 2024, the Respondents wrote the following to the Petitioner:-

> "With reference to the above cited subject, in view of Order No. 85660/2024/0004617 dated 01.07.2024 passed by Hon'ble CESTAT, Mumbai in relation to Bill of entry no. 8511565 dated 28.10.2023, the impugned goods are being released provisionally under PD bond and end use bond. Further, as the CESTAT order is being appealed against before the Hon'ble Supreme Court, it has been, decided to draw a sample before release of the goods. Therefore, you are requested to remain present on 09.08.2024 for drawal of sample before provisional release of goods covered under Bill of entry no. 8511565 dated 28.10.2023."

12. The consignment was seized on 06 November 2023. Necessary samples were taken and analysed. Given the findings in paragraph 13 and the other observations in the Tribunal's judgment and order dated 01 July 2024, we are satisfied that the insistence upon drawing a sample at this late stage is not warranted in the facts of the present case. In all probabilities, this is nothing but buying some time and avoiding compliance with the Tribunal's judgment and order dated 01 July 2024. Because an appeal is being or is proposed to be preferred, the Respondents cannot indefinitely avoid compliance with the Tribunal's judgment and order.

13. Accordingly, we set aside the impugned letter dated 05 August 2024 and direct the Respondents to comply with and consequently release the seized goods within two weeks of the uploading of this order unless, of course, in the meanwhile, the Respondents obtain a stay on the implementation of the Tribunal's judgment and order dated 01 July 2024.

14. The rule is made absolute in the above terms without any costs order. All concerned to act upon an authenticated copy of this order.

(Jitendra Jain, J) **(M.S. Sonak, J)**