



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1359 OF 2024

Apollo Green Energy Ltd.

... Petitioner

Versus

The Union of India, through Ministry of Law and
Justice & Ors.

... Respondents

Mr. V. Sridharan, Senior Advocate a/w. Mr. Akhilesh Kangsid, Mr.
Siddharth Sen, Ms. Madhura Khandekar i/b. Mr. Sriram Sridharan for the
petitioner.

Mr. Karan Adik a/w. Ms. Maya Majumdar for respondent nos. 1 to 3.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 13 March, 2024

P.C.

1. This petition under Article 226 of the Constitution assails an order dated 14 June, 2022 passed by the Deputy Commissioner of Customs, DEEC (M) CELL, NCH, Mumbai whereby the duty amounting to Rs.565677578/- alongwith applicable interest thereon under the Customs Notification No. 149/95 – Customs dated 19 September, 1995; 31/97-Customs dated 1 April, 1997; 77/98 – Customs dated 16 October, 1998 and 51/00 – Customs dated 27 April, 2000 read with LUT Bond conditions at standard rate of duty and exemption of Notification is denied to the petitioners on the ground that the petitioner has not fulfilled the conditions of the said Customs Notifications. As urged on behalf of the petitioner although in paragraph 5 of the impugned

order it has been recorded that an opportunity was afforded to the petitioner of being heard in person on 15 March, 2022, 21 March, 2022 and 31 March, 2022, no notice to that effect was received by the petitioner. Hence, the contention is that the impugned order has been passed without an opportunity of personal hearing being granted to the petitioner. It is submitted that such an order ought to have been passed only after an opportunity to the petitioner of placing on record all materials which the petitioner had and a personal hearing thereon, as the export obligation in question under the licence relate back to the period 1996 to 2000.

2. With the assistance of learned senior counsel for the parties, we have perused the record and the impugned order. Considering the nature of the impugned order and the facts and circumstances of the case, we are of the opinion that it would be appropriate that the petitioner is granted an opportunity of a hearing by the Deputy Commissioner of Customs.

3. We observe that apart from the materials which the department has purported to refer in the impugned order, if any other materials are sought to be relied upon, the same needs to be furnished to the petitioner. We are thus of the clear opinion that it will be in the interest of justice that a fresh order be passed by the concerned officer by following due process of law. Thus, without going into the merits of the rival contentions on such limited ground, we wish to dispose of this petition by the following order:

ORDER

(i) The impugned order dated 14 June, 2022 passed by the Deputy Commissioner of Customs is quashed and set aside. The proceedings are remanded to the Deputy Commissioner of Customs to enable him to hear the petitioner and pass a reasoned order in accordance with law.

(ii) The petitioner is permitted to submit its materials within a period of two weeks from today.

(iii) An appropriate date be fixed to hear the petitioner and after the petitioner is heard, an order be passed by the Deputy Commissioner of Customs within a period of four weeks from date of hearing, in accordance with law.

(iv) All contentions of the parties are expressly kept open.

4. At this stage, it is submitted by Mr. Sridharan that the intimation of hearing can also be forwarded to the office of the advocate for the petitioner. The department is agreeable to do so.

5. Disposed of. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)