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

WRIT PETITION NO.1191 OF 2022

Tinita Engineering P. Ltd. … Petitioner

Versus

The Union of India & Ors. …Respondents

Ms. Deepali Kamble for the Petitioner.
Mrs. Shehnaz V. Bharucha and Ms. Priyanka Chavan and Mr. Vikas Salgia for Respondent Nos. 1 and 6.
Mr. Jitendra B. Mishra a/w. Ms. Neha Pandey, Mr. Satyapraksh Sharma for Respondent Nos. 2 to 5.

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.
DATED: 20th FEBRUARY, 2024

P.C.

1. We have heard Ms. Kamble, learned Counsel for the Petitioner, Ms. Bharucha, learned Counsel for Respondent Nos.1 and 6 and Mr. Mishra, learned Counsel for Respondent Nos. 2 to 5.

2. This Petition has been filed praying for the following reliefs:-

> *"a) Your Lordships be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other Writ order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner in the file no S/6-CEN- 03/2344/2019-20 CEAC dated 15.11.2019 and after examining the legality and validity thereof be pleased to quash and set aside the impugned letter dated 15.11.2019 issued by Respondent no. 5*
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> *b) Your lordships be pleased to issue Writ of Mandamus or Writ in the nature of the Mandamus or any other*

appropriate writ order or direction, directing the Respondents to forthwith i) permit the Petitioner to amend two shipping bills as detailed in Exhibit. ii) refrain from taking any steps of recovery.

c) Pending final decision in present Writ Petition the Respondents and all officers working under them be refrained by an interim order and injunction from in any manner taking any steps or proceedings to deny or recover and amount in pursuance to the aforesaid shipping bills,.

d) Ad- Interim reliefs in terms of Prayer (c) above

e) For cost of this Petition

f) Such other and further orders as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted."

3. It is the case of the Petitioner that on 15th November 2015 the Petitioner was issued Advance Authorization Scheme for duty free imports. During the period 2015-2016 imports were undertaken by the Petitioner. During the period 7th December 2016 to 28th December 2016, the Petitioner received foreign remittances. Sometime in March 2019 a recovery letter was received by the Petitioner from the customs authority demanding customs duty Rs. 24,56,393/-.

4. On receiving such demand, on 28th October 2019, a request letter was addressed to Respondent No.4-The Deputy Commissioner of Customs (CEAC) Speedy CFS, for carrying out amendment in the shipping bills as filed by the Petitioner. On 15th November 2019, such request as made by the Petitioner was rejected by Respondent No.4. The Petitioner, in these circumstances, between the period 2020-2021 had addressed letters-

applications before Respondent Nos.3 and 6. On 9th September 2019, on the above backdrop, a show cause notice was issued to the Petitioner by Respondent No.6. In these circumstances, the present Petition is filed praying for the reliefs as noted by us hereinabove.

5. A reply affidavit has been filed in the Petition on behalf of Respondent Nos.1 and 6 as also a separate reply affidavit has been placed on record on behalf of Respondent Nos.1 to 5.

6. We have heard learned Counsel for the parties and with their assistance we have perused the pleadings and the documents placed on record.

7. After the proceedings were heard for some time, it appears to us that, after filing of the Petition, in pursuance of the Order dated 13th march 2023 passed by this Court, a personal hearing was granted to the Petitioner by Shri. Sanjeev Kumar Singh, Commissioner of Customs NS-II, in regard to which minutes of such hearing are placed on record at Exhibit-A of the Reply Affidavit filed on behalf of Respondent Nos.1 to 5. Such record of the personal hearing sets out the case of the Petitioner. The relevant part of the said record of personal hearing is required to be noted and reads thus:-

> *"2. Since the matter related to conversion of shipping bill from one scheme code to another, the competent authority for which is the Commissioner of Customs, PH memo was issued to the petitioner in the WP to appear before the Commissioner of Customs i.e. Respondent No 2.*

> *3. Ms. Deepali Kamble, Advocate of M/s Tinita Engineering Pvt. Ltd. appeared for the petitioner. The Assistant Commissioner of Customs, CEAC (respondent No 5) is also present. Ms. Kamble submitted as follows:*
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> *3.1. Because of the mistake of their staff, the scheme code was entered into the shipping bill as 00 (free shipping bill) instead of 03(advance authorisation). Therefore she requested that the amendment of scheme code may be allowed in terms of Section 149 of the Customs Act, 1962.*
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> *3.2. She has further stated that two shipping bills were dt. 17.11.2016 and 22.11.2016. However they could find the inadvertent mistake in the scheme code only after getting notice from Customs in March 2019. On a query as to why they filed their application for amendment in the scheme code after almost 7 months she stated that after getting the letter from Customs, they exercised their internal audit and then came to know that the shipping bill was filed with wrong scheme code by their staff and then they filed the application dt. 28.10.2019.*
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> *3.3. She further requested that the amendment in the scheme code may be allowed and the delay, if any, in filing the application may be allowed."*

8. It appears that, although, such hearing was granted to the Petitioner on 29th March 2023 on the Petitioner's application for conversion of shipping bill from one scheme code to another, a final order has not been passed. Also, in the reply affidavit as filed on behalf of Respondent Nos.1 and 6, a contention has been raised that Respondent No.6 has issued a show cause notice dated 9th September 2021 to the Petitioner contending that the Petitioner had failed to fulfill its Export Obligation and Respondent No.6 had also issued a deficiency letter dated 9th March 2020 to the Petitioner, however, the Petitioner failed to rectify the deficiency. In paragraph 15 it is stated that the relevant compliance is not undertaken by the Petitioner leading to cancellation of the Advance

Authorization Scheme and disentitling the Petitioner from availing of any benefit from the Respondents.

9. It is on the above backdrop, we have heard learned Counsel for the Petitioner reiterating the contentions as urged in the Petition as also the contentions as urged on behalf of the Petitioner at the hearing which has taken place on 29th March 2023 before the Commissioner of Customs NS-II. The case of the Petitioner is to the effect that the request of the Petitioner was *bona-fide* and it was obviously on account of a mistake which had taken place in entering the wrong scheme code, hence, the Application filed by the Petitioner for entering the correct scheme code ought to have been granted. In this context on behalf of the Petitioner reliance is placed on the decision of this Court in **Pinnacle Life Science Pvt. Ltd. Vs. Union of India & Ors**. (Writ Petition No.1198 of 2022) as also the decision in **Colossustex Private Limited and Anr. Vs. Union of India & Ors.** dated 23rd August 2023 rendered on Writ Petition No. 2010 of 2022.

10. We find that as the hearing that has taken place before the Commissioner of Customs NS-II on 29th March 2023 which was post the filing of this Petition, the Petitioner needs to raise all the contentions as raised in the present Petition, before the Commissioner, and an appropriate decision can be taken by the Commissioner, after considering the principles of law as applicable including in the decisions noted hereinabove. Accordingly, a final

decision be taken by the Commissioner of Customs, NS-II and an order thereon be passed in accordance with law. Needless to observe that, in the event, the Commissioner is of the opinion that there was any inadvertent error and all other statutory compliances have been met, the Commissioner would consider granting the benefit to the Petitioner.

11. All contentions of the Petitioner on merits, if any, which may arise from the order which may be passed, are expressly kept open.

12. Needless to observe that as the hearing was closed by the Commissioner of Customs NS-II and about a year has been passed since then, we would request the Commissioner of Customs NS-II to grant a fresh personal hearing to the Petitioner, and after considering the materials on record as placed by the Petitioner, pass a reasoned order on the plea as urged by the Petitioner.

13. Let an appropriate order be passed within a period of four weeks from the day a copy of this order is made available.

14. The Petitioner is directed to appear before the Commissioner with a copy of this order on **28th February 2024 at 2:30 p.m.**

15. Writ Petition disposed of in the above terms. No costs.

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