

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10545 OF 2024

My Own Eco-energy Private Ltd.	...Petitioner
Versus	
Union of India & Ors.	...Respondents

**WITH
WRIT PETITION NO. 10546 OF 2024**

Mr. Prakash Shah, Senior Advocate a/w Brijesh Pathak for the
Petitioner.

Mr. Siddharth Chandrashekhar a/w Sangeeta Yadav for Respondents.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 08 September 2025

P.C.:-

1. Learned counsel for the parties state that common issues of law and facts arise in these Petitions and therefore a common order could dispose of them by treating Writ Petition No.10545 of 2024 as the lead Petition.

2. The Petitioner in the lead Petition seeks the following substantive reliefs:-

(a) THAT this Hon'ble Court may be pleased to issue a writ, order or direction in the nature of mandamus or any other

appropriate writ thereby declaring that the Impugned Show Cause Notice No. 107/ADC/GR.I&IA/NS-I/CAC/JNCH dated 23.04.2024 issued by Respondent No.2, Exhibit B, issued to the Petitioner, by the Respondent No.2 is cryptic and without any material evidence (including Test Report) for changing the classification of the goods, which causes and deserves to be quashed and/or set aside;

(b) THAT this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction calling for the record and proceedings of the impugned Order No. 358/2024-25/ADC/GR-I & IA/NS-I/CAC/JNCH dated 13.06.2024, Exhibit H, and all other records pertaining thereof and after considering the validity, legality and propriety of the said Order, changing the classification and confiscating the goods, be pleased to quash and/or set aside the Impugned Order, Exhibit-H;

3. Admittedly, as against the impugned order, the Petitioner has an alternate and efficacious remedy of an appeal available. However, the Petitioner seeks a departure from the practice of exhaustion of alternate remedies by alleging that this was a matter where principles of natural justice were breached.

4. In support, the argument advanced before us is that the test report, which is relied upon in the impugned order, had considered only 5 out of 21 parameters, which were otherwise required to be considered for determining whether the product is HSB. Mr. Shah learned senior counsel for the Petitioner relied on a

judgment of the Hon'ble Supreme Court in the case of ***Gastrade International Vs. Commissioner of Customs, Kandla***¹, to submit that all 21 parameters had to be considered before any opinion could be formed regarding the product being HSB. He submitted that given the cryptic finding in the impugned order and the decision of the Hon'ble Supreme Court in the case of ***Gastrade International*** (supra), this Court must entertain this Petition, set aside the impugned order, and if necessary, remand the matter to the adjudicating authority for reconsideration.

5. In this case, Mr. Chandrashekhar, learned counsel for the Respondents pointed out that this Court, by its order dated 11 September 2024 had, after recording consent of the learned counsel for the parties, appointed a team from the Commissionerate, Jawaharlal Nehru Custom House to visit the factory premises as well as office premises of the Petitioner to ascertain the veracity of Petitioner's contention that it had the necessary machinery and wherewithal to blend the product. He submitted that a panchnama was drawn, and the results are adverse to what was contended by the Petitioner. Mr. Shah, referring to the panchnama, contends that the results are not adverse and that the Petitioner has the necessary machinery and wherewithal for blending purposes.

6. We have also perused the decision of the Hon'ble Supreme Court in the case of ***Gastrade International*** (supra) and based on certain factual observations therein, we are not too sure whether the

¹ 2025 LiveLaw (SC) 366

Petitioners are correct in their construction of the ratio decidendi.

7. In any event, we are satisfied that this is not a clear-cut case of the breach of the principles of natural justice. Besides, we are also satisfied that the issue of wherewithal and machinery for blending would constitute a disputed question of fact which the Appellate Authority best addresses.

8. In the above circumstances, we are not satisfied that we should allow the Petitioner to deviate from the normal practice of exhaustion of an alternate statutory remedy.

9. In the case of **Oberoi Constructions Ltd. Vs. Union of India and other connected matters (Writ Petition (L) No.33260 of 2023) disposed of on 11 November 2024**, we have considered several precedents of the Hon'ble Supreme Court and this Court on the issue of exhaustion of alternate remedies. By following the reasoning therein, as also the reasoning in the several precedents referred to therein, we do not think that any exceptional case is made out to deviate from the normal practice of exhaustion of alternate remedies.

10. Therefore, upon cumulative consideration of all the above facts, we decline to entertain these Petitions. However, we leave it to the Petitioners to avail of the alternate remedy of Appeal, if they so choose.

11. If the Appeals are instituted within a period of four weeks of the uploading of this order after complying with the requisite

conditions, like pre-deposit, etc., the appellate authority must consider such Appeals on merits without adverting to the issue of limitation. This is because these Petitions were instituted within the prescribed period of limitation and have been pending to date before this Court. Thus, Petitioners were bona fide pursuing these Petitions.

12. All contentions of all parties on merits, including the contentions raised in these Petitions, are expressly left open. Our observations in this order need not influence the appellate authority because such observations are made in the context of the plea about an alternate remedy available to the Petitioners, as was raised on behalf of the learned counsel for the Respondent.

13. Further, in the peculiar facts of this case, we request the appellate authority to expedite the disposal of the Appeals. Both these Petitions are disposed of with liberty in the above terms. No costs.

14. All concerned must act upon an authenticated copy of this order.

(Advait M. Sethna, J)

(M.S. Sonak, J.)