IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2258 OF 2025

BMS Enterprises .. Petitioner

Versus

Union of India & Ors .. Respondents

Dr. Sujay Kantawala, *with Mr. Anupam Dighe, Ms. Chandni Tanna, Ms. Renita Alex i/b India Law Alliance, Advocates for the Petitioner.*

Mr. Ashutosh Mishra, *Advocates for Respondent No.1.*

Mr. Jitendra Mishra *with Sangeeta Yadav, Advocates for Respondent Nos. 2 and 3.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

ANJALI TUSHAR ASWALE Digitally signed by ANJALI TUSHAR ASWALE Date: 2025.02.21 11:06:59 +0530

DATE: FEBRUARY 18, 2025

P. C.

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed seeking a direction to Respondent No.3 by themselves and/or their subordinates, servants and agents (i) to withdraw the impugned Seizure Memo bearing F. No. GEN/INT/Misc/4/2025-R & I dated 24th January 2025 issued by Respondent No.2; (ii) to unconditionally release the "Wheat Flour Sheet Dough" (the ***"said goods"***) imported by the Petitioner under:-

(a) Bill of Entry No.7443956 dated 25th December 2024,

(b) Bill of Entry No.7503032 dated 28th December 2024,

(c) Bill of Entry No.7792802 dated 15th January 2025,

(d) Bill of Entry No.7793939 dated 15th January 2025,

(e) Bill of Entry No.8075157 dated 29th January 2025, and

(f) Bill of Entry No.8085872 dated 30th January 2025

as per the provisions of the Customs Act, 1962; (iii) to issue a Detention-cum-Demurrage Waiver Certificate in respect of the aforesaid six Bills of Entry; and (iv) to issue a Show Cause Notice (in relation to the above six Bills of Entry) and complete the adjudication process in a time-bound manner.

3. The dispute in the above Writ Petition lies in a very narrow compass. The Petitioner is a proprietary concern engaged in the import of "Wheat Flour Sheet Dough" (***said goods***), for preparation of various savoury items, which is further sold to local purchasers in India. According to the Petitioner, since the commencement of its business in 2008, it has been regularly importing the said goods from one *Tee Yih Jia Food*

Manufacturing Pte Ltd (for short the ***"manufacturer"***). This manufacturer is situated in Singapore.

4. During the course of its business, the Petitioner, vide two Bills of Entry No.7443956 dated 25th December 2024 and 7503032 dated 28th December 2024 [listed at items (a) and (b) of paragraph 2 of this order] imported "Wheat Flour Sheets-Dough" (for Spring Roll). According to the Petitioner, as per some alleged intelligence received from the officers of Respondent No.2, it is the case of the Revenue that the Petitioner was mis-classifying the said goods under Customs Tariff Heading (CTH) 1901 2000, thereby resulting in short payment of duty. Based on this alleged information, the Petitioner's import consignments of the said goods under Bills of Entry Nos. 7443956 dated 25th December 2024 and 7503032 dated 28th December 2024 [the first two Bills of Entry listed at items (a) and (b) of paragraph 2 of this order] were put on hold vide letters dated 1st January 2025 and 7th January 2025 issued by Respondent No.2.

5. It appears that after the filing of this Petition, as far as the first two Bills of Entry are concerned [listed at items (a) and (b) of paragraph 2 of this order], Respondent No.3 has passed an order of provisional release on 16th February 2025 under which the release of the said goods is granted subject to the Petitioner executing a Provisional Duty Bond for Rs.1,15,85,594/- and a Bank Guarantee equivalent to Rs.75 Lakhs [for securing the differential duty, anticipated redemption fine and anticipated penalties].

6. Apart from the first two Bills of Entry, there are four other Bills of Entry under which the said goods are imported from time to time by the Petitioner. They are listed at items (c) to (f) of paragraph 2 of this order. As far as these four Bills of Entry are concerned, no order of provisional release has yet been passed. Since the said goods of the Petitioner are stuck and not being cleared, the present Petition is filed.

7. In this factual backdrop, the learned counsel appearing for the Petitioner submitted that even the said goods covered under the four Bills of Entry listed at items (c) to (f) of paragraph 2 of this order be directed to be provisionally released on such terms and conditions as we deem fit. When we enquired from the Petitioner as to why the same conditions should not be imposed as the ones imposed when provisional release was granted under the Bills of Entry listed at items (a) and (b) of paragraph 2 of this order, the learned counsel submitted that the condition of a furnishing a Bank Guarantee is exorbitant because the differential duty, even according to the

Department, for the first two Bills of Entry [for which provisional release is already granted] is Rs. 56,85,374/-. According to the Petitioner, the Department can seek to secure itself only for the differential duty and not for any anticipated redemption fine and anticipated penalties. This is more so when no Show Cause Notice has yet been issued to the Petitioner, was the submission. According to the Petitioner, therefore, what should be secured by a Bank Guarantee, if at all, should only be the differential duty or any part thereof.

8. After we heard the learned counsel appearing for the Petitioner, as well as the learned counsel appearing on behalf of Respondent Nos. 2 and 3, we are of the view that the said goods covered under all six Bills of Entry listed at items (a) to (f) of paragraph 2 of this order ought to be provisionally released. We say this because considering the overall facts and circumstances of the case, we are of the view that there is some merit in the argument canvassed by the Petitioner. When no Show Cause Notice is issued, to ask the importer to furnish a Bank Guarantee even to secure the anticipated redemption fine and anticipated penalties, would be rather harsh. We are, therefore, of the view that interest of justice would be served if the said goods imported by the Petitioner under all six Bills of Entry [listed at items (a) to (f) of paragraph 2 of this order] are allowed to be provisionally released on the

Petitioner executing a Provisional Duty Bond as per the assessable value of all six Bills of Entry and a Bank Guarantee equivalent to a sum of Rs.85 Lakhs. This Bank Guarantee would secure the Revenue for approximately 50% of the differential duty, if payable by the Petitioner. It is accordingly so ordered.

9. The Provisional Duty Bond as well as the Bank Guarantee shall be furnished by the Petitioner to Respondent No.3 within a period of one week from today. On the aforesaid Bond and Bank Guarantee being furnished, the Customs Department shall provisionally release the said goods of the Petitioner covered under the aforesaid six Bills of Entry within a period of one week thereafter.

10. Respondent Nos.2 and/or 3 shall also issue a Show Cause Notice/s as expeditiously as possible and in any event within a period of six weeks from today. Once the Show Cause Notice/s is issued, the Petitioner shall file its reply within a period of two weeks from the issuance of the said Show Cause Notice/s. The Show Cause Notice/s shall thereafter be adjudicated as expeditiously as possible and in any event within a period of 12 weeks from the date of the reply being filed by the Petitioner.

11. All contentions of the parties with regard to classification are kept open to be considered at the time of the adjudication of the Show Cause Notice/s.

12. So that future imports of the Petitioner of the very same goods is not thwarted, if any future imports are made by the Petitioner (i) of the very same goods; and (ii) from the same manufacturer; the Customs Department shall provisionally release the goods on the Petitioner furnishing a Provisional Duty Bond of the assessable value of the concerned Bill/s of Entry, as well as furnishing a Bank Guarantee for 50% of the differential duty. It is clarified that the Bank Guarantee will not be required to be furnished for any anticipated redemption fine and/or anticipated penalties. Obviously, for future imports also, the Department will have to issue separate Show Cause Notices and take them to their logical conclusion.

13. As far as the prayer for issuance of a Detention-cum-Demurrage Waiver Certificate is concerned, we have not opined on the same at this stage and the Petitioner is free to apply for the same before the Authorities at the appropriate stage. Needless to state that the same shall be decided in accordance with law.

14. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

15. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Aswale