IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3546 OF 2025

Direct Logistics and Exports Co. Ltd. .. Petitioner

Versus

Union of India & Ors. .. Respondents

Mr.Rohaan Cama a/w Sahil Choudhari, Advocates for the Petitioner.

Mr.Jitendra B. Mishra a/w Ashutosh Mishra, Rupesh Dubey, Advocates for Respondent Nos.2 to 4.

Ms. S. D. Vyas, Addl. G.P. a/w Niyati Mankad, Nandita Nair, Advocates for Respondent No.1.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : MAY 09, 2025

P. C.

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

2. The present Petition has been filed seeking *inter alia* a Writ of Mandamus or a Writ in the nature of Mandamus directing the Respondent No.2, the Specified Officer of Arshiya FTWZ, to allow an amendment of the In-bond Bills of Entry bearing Nos.1014255, 1014266 and 1012470 dated 9th August 2022, copies whereof are at Exhibits "**A1 to A3**" to the Petition, and for certain further reliefs to allow the filing of the Shipping Bills for re-export of the said goods and for issuance of a waiver certificate. Further, directions are also sought against Respondent No. 5 who is the Unit Holder in respect of the Unit where the subject goods are presently stored in a Free Trade Warehouse Zone of Respondent No. 6.

3. The brief factual matrix so far as it is relevant for the purpose of the present order is as under:

i. The Petitioner herein had shipped into the Free Trade Warehouse Zone ("**FTWZ**") of Respondent No. 6, three (3) containers bearing ATX cases ("**the said Goods**"). Respondent No. 5 - Unit Holder, where the said goods were stored, filed the following 3 In-bond Bills of Entry: (I) 1014255 (II) 1014266 and (III) 1012470 all dated 9th August 2022.

ii. While the goods were stored in the Respondent Nos. 5's warehouse, on 15th November 2022, Officers of the R&I (Preventive Commissionerate), subjected the goods to 100%

examination and thereafter recorded statements of various persons following which the goods were seized and were stated to be liable for confiscation under the Customs Act, 1962 as being in breach of the Foreign Trade Policy 2015-2020 and the E-Waste Management Rules, 2016, being allegedly old products.

iii. On 11th August 2023 a Show Cause Notice was issued to the Petitioner which was duly replied to by the Petitioner. By the Order-in-Original dated 28th September 2023 the Additional Commissioner of Customs directed that the subject goods were liable for confiscation under Section 111(d), 111(l), and 111(m) of the Customs Act, 1962, but thereafter provided an opportunity to the Petitioner to re-export the goods by paying a redemption fine as set out in paragraph 68.2 of the said Order-in-Original.

iv. The Operative Order reads as under:

"68. In view of above discussion and findings, I pass the following order:

ORDER

68.1 I reject the declared value of the of the impugned goods covered under in-bond Bills of Entry No. 1014266, 1014255 and 1014270 all dated 09.08.2022 for which the said three Request IDs bearing Sr. No. 262202814856, 262202815081 and 262202815276 were *filed for Domestic Tariff Area (DTA) clearance, under Rule 12 of CVR, 2007 for the reasons as stated above and re-determine the same at Rs. 6,15,89,600/- (Rs. Six Crore Fifteen Lakh Eighty-nine Thousand Six Hundred only) under Rule 9 of the CVR, 2007.*

68.2 I order for confiscation of the above said impugned goods having re-determined value of Rs. 6,15,89,600/- under section 111(d), 111(l) and 111(m) of the Customs Act, 1962 and confiscate them accordingly. However, I give an opportunity to M/s. Direct Logistics and Export Co. Limited to redeem the same only for re-export to a place outside of India, on payment of Rs. 1,25,00,000/- (Rs. One Crore twenty five lakhs only) as redemption fine under Section 125(1) of the Customs Act, 1962.

68.3 I hereby impose penalty of Rs. 50,00,000/- (Rs. Fifty lakhs only) on M/s. Direct Logistics and Export Co. Limited under section 112(a) of the Customs Act, 1962.

68.4 I hereby impose penalty of Rs. 10,00,000/- (Rs. Ten lakhs only) on M/s. Direct Logistics and Export Co. Limited under section 114AA of the Customs Act, 1962.

68.5 I hereby impose penalty of Rs. 25,00,000/- (Rs. Twenty five lakhs only) on M/s. 4D Indiateq Limited under section 112(a) of the Customs Act, 1962.

68.6 I hereby impose penalty of Rs. 5,00,000/- (Rs. Five lakhs only) on M/s. 4D Indiateq Limited under section 114AA of the Customs Act, 1962.

68.7 I hereby impose penalty of Rs. 35,00,000/- (Rs. Thirty five lakhs only) on Shri Shailesh G Seth under section 112 (a) of the Customs Act, 1962.

68.8 I hereby impose penalty of Rs. 15,00,000/- (Rs. Fifteen lakhs only) on Shri Shailesh G Seth under section 114AA of the Customs Act, 1962

68.9 I hereby impose penalty of Rs. 25,00,000/- (Rs. Twenty five lakhs only) on Mr. Shannu Ponnappa, Customs Broker under section 112(a) of the Customs Act, 1962, for rendering subject goods liable for Confiscation, by not complying with regulations under section 10 of CBLR-2018

68.10 I hereby impose penalty of Rs. 5,00,000/- (Rs. Five lakhs only) on Mr. Shannu Ponnappa, Customs Broker under section 114AA of the Customs Act, 1962."

v. Pertinently, while the Petitioner preferred an Appeal to the Commissioner of Customs (Appeals), no Appeal was filed by the Customs authorities. Thus, the Order for re-export so far as it applied qua the Customs authorities attained finality, and the only issue in Appeal was the challenge raised to the imposition of the redemption fine and other penalties. This Appeal was partly allowed namely, the quantum of the redemption fine was reduced from Rs. 1,25,00,000/- to Rs. 1,10,00,000/-.

vi. Being aggrieved by this order, the Petitioner preferred a further Appeal to the Customs, Excise & Service Tax Appellate Tribunal Mumbai (CESTAT), by way of Customs Appeal No. 85627 of 2024. By Order dated 13th November 2024, the Appeal was allowed *inter alia* holding that the Customs authorities did not have jurisdiction to carry out the confiscation and to impose the penalties, when the goods were stored in a Special Economic Zone.

vii. The Petitioner's grievance is that the Petitioner is unable to get an amendment of the In-bond Bills of Entry for the purpose of re-export. After filing of the present Petition, there was a hearing fixed on 30.04.2025 before the Development Commissioner, SEEPZ Special Economic Zone, Andheri (East), Mumbai (Respondent No.3) for considering the request for amending the In-bond Bills of Entry so as to facilitate re-export from the 5th Respondent unit, but the Petitioner apprehends that the Development Commissioner will insist on an intimation or a No Objection Certificate (NOC) from the Customs authorities, and therefore, this Petition has been moved citing urgency.

4. As set out above, the Order-in-Original permitted re-export but subject to payment of a redemption fine. The Order-in-Original was not challenged by the Customs authorities and therefore the issue of re-export not being challenged by the Customs authorities has attained finality qua them.

5. The Customs Authorities have filed an Appeal bearing No. CUAPP(L)/14143/2025 challenging the CESTAT Order. However, there is no challenge to, and no embargo against the re-export. This Court need not opine in any manner whatsoever on the merits or the maintainability of the Appeal that is filed by the Customs Authority against the Order of CESTAT in the present matter. The said Appeal will be considered on its own merits. That said, there is no basis for withholding permission for re-export and accordingly, the following order is passed:

i. Without prejudice to the rights and contentions of the Petitioner and Respondent No.5 in the arbitration proceedings pending before the Learned Sole Arbitrator including the relief claimed for security, if any, Respondent No. 5 shall within a period of one week from today submit to the Specified Officer i.e. Respondent No.2, amended In – Bond bills of entry in respect of the In-Bond bills of entry at Exhibits “A1 to A3” to the Petition and the requisite shipping bills, for facilitating re-export of the subject consignments referred to in the said bills of entry, from out of the warehouse of Respondent No. 5.

ii. Without prejudice to the rights and contentions of the Petitioner and the Customs Authorities on the applicability of the Customs Act to the goods in SEZ, the Customs Authorities shall furnish its No Objection Certificate within one week from today, for the purpose of amendment of In-Bond Bills of Entry and for permitting the filing of the shipping bills so as to facilitate the re-export of the said goods.

iii. Respondent Nos. 2 to 4 shall within two weeks from the documents being submitted from Respondent No. 5 and the NOC of Customs authorities, decide the Application seeking amendment to the In-Bond Bills of Entry No.1014255, 1014266 and 1012470 in accordance with law.

iv. Without prejudice to its rights and contentions, the Petitioner shall deposit, within one week from Respondent Nos. 2 to 4 granting approval to re-export (but prior to any actual re-export being done), an amount equivalent to the redemption fine i.e. Rs.1.10 Crores with the Prothonotary & Senior Master of this Court to be invested in a fixed deposit in a nationalized bank for a period of 1 year, subject to further orders passed by this Court in the Customs Appeal.

6. 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.

7. Customs Appeal (L) No.14143 of 2025 be listed for admission on 18^{th} June 2025.

8. 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.]**

Utkarsh