IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13341 of 2021

With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 13341 of 2021

==
MESSRS SENTRUM ENTERPRISES
Versus
UNION OF INDIA
==
Appearance:
AMAL PARESH DAVE(8961) for the Petitioner(s) No. 1
MR PARESH M DAVE(260) for the Petitioner(s) No. 1
MR DEVANG VYAS(2794) for the Respondent(s) No. 1,4
MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 2,3
==

CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 03/03/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. With the consent of the learned counsel appearing for the parties, the matter is taken up for final disposal.

2. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

> *"(A) That Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction directing Respondent Nos.2 and 3 to allow clearance for home consumption of the goods covered under Bill of Entry No.4271384 dated 11.06.2021;*
>
> *(B) That Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate writ, order directing Respondent Nos.2 and 3 herein to issue an order for waiver of penal charges like container detention charges, demurrage charges, ground rent charges etc. for 12 containers of Base Oil*

imported by the Petitioner in respect of such recoveries being made by M/s. Eminent Shipping Services LLP and M/s. Mundra International Container Terminal Pvt. Ltd.;

(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct the Respondent Nos.2 and 3 herein to forthwith allow clearance of goods imported by the Petitioner vide Bill of Entry No.4271384 dated 11.06.2021 without payment of penal charges like container detention charges, demurrage charges, ground rent charges etc. on the terms and conditions that may be deemed fit by this Hon'ble Court;

(D) An ex-parte ad-interim relief in terms of para 20(C) above may kindly be granted;

(E) Any other further relief as may be deemed fit in the facts and circumstances of the case may also please be granted."

3. The facts giving rise to this litigation may be summarized as under:

3.1 The writ applicant is a sole proprietary concern. The proprietary concern is engaged in the business of trading of various commodities. It is the case of the writ applicant that it purchased a consignment of Base Oil from one M/s. Rajasa Petrochem, FZC of Sharjah, UAE. The transaction was finalized and accordingly, the Sharjah based supplier issued a commercial invoice dated 31.05.2021 in favour of the writ applicant. The gross and net weight of the goods was agreed upon at 490 US Dollars per MT. The Base Oil is a commodity classified under the Customs Tariff Heading No.2710, Sub Heading No.27101971. The import of the Base Oil classifiable under the above Sub Heading is "free" under the provisions of the Foreign Trade (Development and Regulation) Act, and the Foreign Trade Policy (FTP) constituted under the Foreign Trade Act.

3.2 The goods-in-question arrived at the Mundra Port in 12 containers for which a bill of lading was issued recording therein the details like the name of the vessel, the Port of export etc.. The entire price of the goods being Rs.79,29,314.85 in Indian currency is said to have been paid by the writ applicant to the supplier. When the goods were offloaded at the Mundra Port, the Customs Department drew few samples of the goods imported by the writ applicant for being sent for analysis. The samples were collected and were sent to the Customs House Laboratory at Kandala. The test report issued by the Chemical Examiner Grade-1, Custom House Laboratory, Kandla is at Page 39 of the paper book. It appears on plain reading of the said test report that the sample mainly composed of saturated hydrocarbons, which is suppose to be one of the main constituents of the Base Oil.

3.3 It is the case of the writ applicant that he deposited an amount of Rs.19,75,399/- to the credit of the Customs Department on 01.07.2021 towards the duty on the goods-in-question. It appears that once again, the samples of the goods were sent for analysis, this time to the Joint Director, CRCL, Kandala. The CRCL, Kandala vide its test report dated 14.07.2021 certified that the sample is composed mainly of saturated hydrocarbons which are the main constituents of Base Oil. The CRCL, Kandla also stated in its report that the sample is other than the product mentioned in the queries Nos. 3, 10, 12 and 13 respectively in the TM. It appears that the samples were sent for analysis for the third time.

4. At this stage, Mr. Devang Vyas, the learned ASG pointed out that since the earlier two reports referred to above certified the samples to be Base Oil, with a view to be sure of the exact nature of the sample, the department thought fit to get it further analyzed at the Central Revenues Control

Laboratory, New Delhi. The Central Revenues Control Laboratory, New Delhi in its report dated 07.10.2021, at page 76 of the paper book, certified that the sample does not meet the available specification for Base Oil. It meets the requirement of Light Diesel Oil as per IS : 15770:2008. It is this last report of the Central Revenues Control Laboratory, New Delhi that has created trouble for the writ applicant.

5. Thus, on one hand, it is the case of the writ applicant that the sample imported is Base Oil while on the other, the case of the DRI seems to be that the sample is not Base Oil but it is Light Diesel Oil. If the goods in fact, is Light Diesel Oil then according to the Department, it is liable to be confiscated. The case of the writ applicant is that he has imported Base Oil for home consumption and has paid duty of Rs.20,00,000/- for getting the goods cleared from the Customs House. As on date, the writ applicant has not been able to take delivery of the goods, said to be for home consumption. The goods are lying at the Mundra Port since June, 2021.

6. We do not want to come in the way of the Revenue, if the Revenue intends to carry out any further inquiry so as to be absolutely sure of the exact nature of the goods. Even with the materials as on date on record, the Revenue may, if it deems fit, issue a show cause notice calling upon the writ applicant to show cause as to why the goods should not be confiscated. If ultimately, any such show cause notice is issued, the writ applicant will have to meet with it. At this point of time, we are only concerned with the goods. We are of the view that there is no point in keeping the goods detained at the Mundra Port. The goods should be ordered to be released subject to the writ applicant executing a Bond of an amount to the satisfaction of

the authority concerned (inclusive of interest, fine and penalty) with an appropriate further undertaking in writting on oath.

7. In view of the aforesaid, we direct the respondents nos.3 and 4 respectively to release the goods after obtaining a Bond from the writ applicant of the requisite amount as above to its satisfaction and also an appropriate undertaking on oath at the earliest. We clarify that the release of the goods shall not come in the way of the Revenue in continuing with the inquiry so as to ascertain the exact nature of the goods-in-question. The relief, as prayed for, in paragraph 20(B) is kept open.

8. With the aforesaid, the present writ application stands disposed of. The connected civil application also stands disposed of.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

NEHA