Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13723 OF 2024

M/s. Idori India Pvt Ltd & Anr ...Petitioner

Versus

The Chief Commissioner of Customs
Jawaharlal Nehru Customs & Ors ...Respondent

Mr S P Bharti, *with Ganesh Kamath, for the Petitioner*.

Mr Siddharth Chandrashekhar, *with Sangeeta Yadav, for the Respondents*.

CORAM **M.S. Sonak &**
Jitendra Jain, JJ.
DATED: **21 October 2024**

PC:-

1. Heard learned Counsel for the parties.

2. The challenge in this Petition is to the public notice dated 24 June 2024 (Exhibit 'B'), including Clause 3(ii) of this public notice dated 24 June 2024.

3. The Petitioner, in addition to challenging the above public notice dated 24 June 2024, has also applied for the following reliefs:-

> "(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus, or any other suitable writ, order or direction declaring that the Petitioners are entitled to clear the goods for home consumption after availing the benefit of Notification

No.46/2011 Customs dated 01.06.2011 in regard to the goods imported by the Petitioners;

(c) That this Hon'ble Court be pleased to direct the Respondents to assess the Bill of Entries being Exhibit: F, G and H hereto finally for home consumption granting benefit of Notification No.46/2011-Customs dated 01.06.2011. return the Bank Guarantees and cancel the bonds."

4. Mr Bharti learned Counsel for the Petitioner submits that the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member states of the Association of Southeast Asian Nations (ASEAN and the Republic of India), Rules 2009 provide for the situations in which an importer is entitled to the benefit under the preferential trade agreements. He submits that the impugned public notice, including Clause 3(ii) thereof, conflicts with the 2009 Rules and, to that extent, must be either struck down or directed to be withdrawn. He submitted that the Petitioner is forced to clear the goods provisionally by providing inter alia bank guarantees and bonds on account of the public notice and Clause 3(ii).

5. Mr Bharti referred to Rules 3 and 22 of the 2009 Rules to substantiate his contention.

6. Mr Chandrashekhar learned Counsel for the Respondents submitted that Clause 3(ii) of the public notice only requires an importer to submit an explanation for the identical FOB values mentioned in the two documents, viz., FTA-COO and the third country invoice at the time of submission of the assessed bill of entry. He submitted that such information/explanation is necessary to enable the

Respondents to determine whether there is appropriate compliance with the 2009 Rules. He submitted that there is nothing illegal or ultra vires in the public notice.

7. Mr Chandrashekhar submitted that the determination is always in terms of the 2009 Rules or any other statutory rules as may be applicable. He submitted that in at least six other cases, such determination has been made by the Respondents, which, to the best of his knowledge, has not been challenged by the Petitioner. He submitted that seeking an omnibus relief of assessing the bill of entries at Exhibits 'F', 'G' and 'H' or granting the benefit of the notification dated 1 June 2011 is impermissible and, in any event, should not be entertained. He reiterated that the public notice requires the importer to include an explanation for identical FOB values mentioned in the two documents. This explanation would be considered in the light of the applicable rules.

8. We have considered the rival contentions in the context of the material placed before us and the 2009 Rules.

9. The public notice no. 55 of 2024, dated 24 June 2024, deals with guidelines for notification under the CAROTAR 2020 of the country-of-origin certificates (COO) issued under various preferential trade agreements (commonly referred to as Free Trade Agreement-FTAs).

10. The public notice, to begin with, invites attention to Section 28DA of the Customs Act, 1962, read with Rules 4, 5 and 6 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, also known as CAROTAR 2020, and CBIC circular No. 38/2020 Customs 21 August

2020, which empowers the proper officer to seek information and supporting documents from the importer claiming a preferential rate of duty, if the proper officer has reason to believe that the origin criteria prescribed in the respective rules of the origin have not been made.

11. Clause 3 of the public notice dated 24 June 2024 states that the procedure for verification of FTA-COO, as provided in public notice no. 33/2024 dated 20 March 2024 has been reviewed in detail, taking into account the pattern documentation in respect of third-country invoicing of imports made with the claim of benefit under the preferential trade agreements, trade practices invoked and in the light of the relevant statutory provisions. In supersessions of the procedure prescribed vide the public notice dated 20 March 2024 for verification of eligibility of benefit of the relevant FTA based on scrutiny of documents, a procedure is specified in sub-Clauses (i) to (vi).

12. Clause 3(ii) of the public notice dated 24 June 2024, which the Petitioner claims affects it the most reads as follows:

> "ii.If the INCOTERMS of third country invoice is FOB, and the FOB value indicated on the third country invoice is same as that indicated on the FTA-COO, the same prima facie indicates that the FOB value indicated on the FTA-COO includes the value addition (profit and other charges) of the third country supplier. The same is not permitted under the Preferential Trade Agreements. In such cases, the importer shall include an explanation for the identical FOB values mentioned in the two documents, viz. FTA-COO and the third country invoice at the time of submission of self-assessed Bill of Entry.'

13. The above clause only provides that if the INCOTERMS of the third country invoice is FOB, and the FOB value indicated on the third country invoice is the same as that indicated on the FTA-COO, the same prima facie indicates that the FOB value indicated on the FTA-COO includes the value addition (profit and other charges) of the third country supply. It adds that the same is not permitted in a preferential trade agreement. In such cases, the importer shall include an explanation for identical FOB values mentioned in the two documents, viz. FTA-COO and the third country invoice at the time of submission of the self-assessed bill of entry.

14. Clause 4 of the public notice dated 24 June 2024 also provides that the proper officer will give an option to the importer for early clearance against bond and bank guarantee if the importer needs more time to submit information and supporting documents sought by the proper officer under Rule 5 of the CAROTAR 2020. Clause 6 also provides that the public notice should be considered a standing order for the concerned officers and the staff of the customs office. Clause 8 specifies that the same is issued with the approval of the Chief Commissioner of the Customs, Zone II.

15. From the above, it is apparent that Clause 3(ii) only requires the importer to furnish or include an explanation for the identical FOB values mentioned in the two documents, viz. FTA-COO and the third country invoice at the time of submission of the self-assessed bill of entry. This clause will apply only in case of identical FOB values and not in all other cases. Nothing in this clause militates against the 2009 Rules as was sought to be suggested. This explanation is called for only to enable the proper officer to assess and verify

compliance with the 2009 Rules or other relevant rules applicable to the transaction in question.

16. The requirement in Clause 3(ii) does not infringe upon any rights of the Petitioner. Suppose the Petitioner fulfils the requirements of the 2009 Rules or other rules as may be applicable. In that case, there is no reason why the Petitioner will be denied the benefits under the preferential trade agreements. However, in a situation where the two FOB values are identical, it is too much to suggest that the Petitioner must not even be called upon to submit any explanation for the consideration of the proper officer. Based on the 2009 Rules, we cannot even say there is any prohibition to call for such an explanation in a situation where the FOB values are identical.

17. Accordingly, we find no illegality in Clause 3(ii) of the public notice. No provision has been shown to us which would as an interdict or render ultra vires the explanations sought in terms of Clause 3(ii) of the public notice dated 24 June 2024. The requirement in this clause does not affect the Petitioner's statutory entitlement. This requirement is only to assist the proper officer in determining whether the importer has complied with the terms and conditions of the relevant rules. Such explanation is necessary only when identical FOB values are disclosed in the two documents viz. FTA-COO and the third country invoice at the time of submission of self-assessed bill of entry.

18. By challenging the public notice, the Petitioner cannot seek a direction to assess the bills of entries at Exhibits 'F', 'G' and 'H' by directly granting the Petitioner the benefit of the

Customs notification dated 1 June 2011. The explanation that the Petitioner furnishes will indeed be considered. If, upon due consideration of such explanation, it is found that the Petitioner complies with the requirements of the notification or the relevant rules, there is no reason why the Petitioner would be denied the benefit of the preferential trade agreement. If the denials aggrieve the Petitioner, the Petitioner has sufficient statutory remedies to redress such denial. However, by filing a Petition to challenge the public notice itself, no omnibus relief as applied can be granted. Each transaction must be considered on its own merits given the facts disclosed, and the compliance reported.

19. For all the above reasons, we decline to entertain this Petition. But we clarify that the issue of the Petitioner's entitlement or otherwise to the benefits of the preferential trade agreements will have to be considered in accordance with the law, the relevant notifications, and the rules. The explanation that the Petitioner would submit in terms of Clause 3(ii), or the public notice dated 24 June 2024, will have to be considered following the law, the notifications, and the rules as may be applicable.

20. For all the above reasons, we dismiss this Petition, but with the above clarification. There shall be no order for costs.

(Jitendra Jain, J) **(M.S. Sonak, J)**