

2024:BHC-OS:14084-DB



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.31728 OF 2023

Pall India Private Limited
Vs.
The Union of India & Ors.

...Petitioner
...Respondents

Mr. Bharat Raichandani a/w Mr. Jasmine Dixit i/b. UBR Legal for
Petitioner.

Mr. Jitendra Mishra a/w Ms. Sangeeta Yadav for Respondents.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.

DATED : 10th SEPTEMBER 2024

PC.:

1. The issue in the petition relates to classification of the goods imported by Petitioner. In the bill of entry filed Petitioner has classified the goods under Custom Tariff Item 8421, whereas it is Department's case that it should have been under 3926. It is Petitioner's case that in an earlier consignment which was imported through Mumbai, the Department accepted by a speaking order dated 23rd November 2022 that the same goods would fall under the heading 8421 of Customs Tariff Act, 1975. It is Petitioner's case that this order was also brought to the notice of the Department, when Petitioner's representative's statement was recorded on 18th July 2023. Mr. Raichandani submitted that though in the show cause notice there is a reference to this statement, there is no discussion.

2. Mr. Mishra submitted that the impugned order dated 26th March 2024 expressly provides that Petitioner did not reply to the show cause notice nor attended the personal hearing. Mr. Raichandani submitted that admittedly Petitioner had made available a copy of this petition and the Adjudicating Authority could have considered the petition as the reply and passed appropriate orders. Though we do not agree with the stand taken by Mr. Raichandani because we feel Petitioner was duty bound to reply and also attend personal hearing, we would still interfere inasmuch as Petitioner has a *prima-facie* case that the goods imported could be classified under Customs Tariff Item 8421. Moreover, the Adjudicating Authority even before issuance of show cause notice dated 31st August 2023, had before him the statement dated 18th July 2023 which he ought to have considered and dealt with in the show cause notice and not merely referred to and leave it. Mr. Mishra in fairness states the statement itself forms a part of the show cause notice and is also relied upon document. Strangely, the show cause notice does not deal with the statement. Atleast at the adjudication stage while the impugned order was passed it should have been dealt with which has not been done.

3. Therefore, as we find Petitioner has not participated and the Adjudicating Authority not considered all documents, we hereby quash and set aside the impugned order 26th March 2024. The matter is

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remanded to Respondent No.2 for *denovo* consideration. Mr. Raichandani states that on or before 1st October 2024, Petitioner will file a reply to the show cause notice and also attend personal hearing as and when called upon. We direct Respondent No.2 to give at least 5 working days advance notice for the personal hearing. The order to be passed shall deal with all submissions of Petitioner.

4. All rights and contentions of the parties are kept open.
5. Petition disposed.

[JITENDRA JAIN, J.]

[K. R. SHRIRAM, J.]