

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-CW-161-2020**

Chowgule and Company Pvt. Ltd. ... Petitioner  
Versus  
Union of India & Anr. ... Respondents

Mr. Hari Kishan Maingi with Mr. Rajeev Srivastava, Advocates for the Petitioner.

Ms. Asha Desai, Senior Standing Counsel for the Respondents.

**Coram:- M. S. SONAK &  
SMT. M. S. JAWALKAR, JJ.**

**Date:- 16<sup>th</sup> September, 2020**

**P.C.**

Heard Mr. Maingi who appears alongwith Mr. Srivastava, learned counsel for the Petitioner and Ms. Asha Desai, learned Senior Standing Counsel for the Respondents.

2. This petition *inter alia* challenges the communication/order dated 17<sup>th</sup> August, 2020 made by the Assistant Commissioner of Customs (Export Assessment ) Custom House, declining the Petitioner an opportunity to cross examine Shri A. K. Srivastava, Chemical examiner, whose report, the department relies in the proceedings against the Petitioner.

3. Mr. Maingi, learned counsel for the Petitioner points out that the right to cross examine is an essential facet of the principles of natural justice and fair play.

4. Mr. Maingi submits that since the department is relying upon the report of Shri Srivastava, the Petitioner should be granted opportunity to cross examine this chemical examiner. He submits that without afford of opportunity to cross examine this chemical examiner, the report of chemical examiner cannot even be relied upon. Mr. Maingi also relied upon the following decisions of the Tribunal in support of the aforesaid contentions.

*(i) Visalakshmi Mills (P) Ltd. Vs CCE- 1998(104) 499 (Tri);*

*(ii) Haryana Steel and Alloys Ltd. Vs CCE – 2001 (136) ELT 1304 (Tri);*

*(iii) Ultra Fine Fillers (P) Ltd. Vs CCE – 2004 (167) ELT 331 (Tri);*

*(iv) Youngman Indus Ltd. Vs CC – 2004(175) ELT 663 (Tri);*

*(v) Golden Enterprises Vs CCE & ST – 2016 (341) ELT 293 (Tri.).*

5. In addition to the aforesaid, Mr. Maingi also relied upon the decision of this Court in *Rishabh Sanghvi Vs Union of India, 2019*

(367) ELT 614 (Bom.) to submit that right to cross examination is a valuable right and the same ought not to be lightly denied. Mr. Maingi also points out that in this decision, this Court has held that bar of alternate remedy, which, in any case is only a self imposed restriction, will not apply.

6. Ms. Desai, learned Standing Counsel for the Respondents points out that Shri Srivastava, the Chemical examiner has retired from service w.e.f. September, 2019 and only for this reason the department, is unable to offer any cross examination of this chemical examiner and that in his place, the department willing to examine Shri H. S. Bhandarkar, who is quite familiar with the manner in which the tests were conducted and therefore, he is in a position to depose on the report upon which the reliance is placed by the department. She therefore submits that this is not a case of violation of principles of natural justice and in any case, the Petitioners, have alternate remedy, in case, the matter is ultimately decided against the Petitioner.

7. The rival contentions now fall for our determination.

8. It is true as contended by Mr. Maingi that bar of alternate remedy is only a self imposed restriction and in that sense there is no bar to this Court for entertaining the petition under Articles 226 and 227 of the Constitution of India. However, the fact remains that ordinarily, if

the Petitioner has an alternate and efficacious remedy available, this Court, no doubt, in exercise of self imposed limitation, declines to entertain such petitions. One of the exceptions is that there should be patent violation of principles of natural justice or fair play. In this case, at least *prima facie*, it is not as if the department was averse to examination of Shrivastava as a witness in this matter. It is only because Shrivastava has since retired, the department is unable to secure his presence for the purpose of cross examination. Besides, the department, willing to examine Shri Bhandarkar, the officer, who has replaced Shrivastava as a witness.

9. The issue as to whether Shri Bhandarkar is a competent witness to depose on the report made by Shrivastava or not, is an issue which is always open and can be gone into by the authorities. The issue as to whether non examination of Shrivastava in the peculiar facts and circumstances of the present case also amounts to violation of principles of natural justice or not, can also be kept open to be decided by the departmental authorities, moreso, since it is quite premature to anticipate what the final decision in the proceedings will be. Besides, the Petitioners have right to appeal and in the course of such appeal, the Petitioners are always at liberty to raise the issues which they have now raised in this petition.

10. According to us, this is not a fit case to exercise our

extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. The non entertainment of this petition cannot be taken as approval of the view taken in the communication dated 17<sup>th</sup> August, 2020. Even the observations made by us are not on merits of rival contentions. All that we can say that the issue with regard to the violation of principles of natural justice or otherwise is expressly kept open and liberty is granted to all concerned to agitate such issue before the departmental authorities and thereafter in the appeals as have been provided under the Customs Act.

11. Thus, by leaving all contentions of all parties open, we dispose of this petition.

12. All concerned to act on the basis of the authenticated copy of this order.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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