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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 157 OF 2019

M/s. Sanathan Textile Pvt. Ltd.

....Petitioner

V/s.

Union of India and Anr.

...Respondents

Mr. V. Raghuraman, Senior Advocate a/w Mr. Raghavendra, Mr. Shailesh Seth and Mr. Prabhakar K. Shetty for Petitioner.

Mr. J.B. Mishra, Senior Advocate a/w Mr. Anjani Kumar Singh for Respondent Nos. 1 and 2.

CORAM : K.R. SHRIRAM &

A.S. DOCTOR, JJ.

DATED : 10th OCTOBER 2022

P.C. :

1. Heard Mr. Raghuraman and Mr. Mishra and as we understand the facts of this case, import of capital goods under the valid authorisation under the Export Promotion Capital Goods Scheme (EPCG Scheme) was wholly exempted from payment of any additional duty under Section 3 of the Customs Tariff Act. Petitioner has availed of this EPCG Scheme.

2. The intention of the Central Government while framing EPCG Scheme was to permit import at zero customs duty. Accordingly, by Notification No. 16/2015-Cus dated 1st April 2015 goods covered by valid authorisation issued under the EPCG Scheme in terms of Chapter 5 of the Foreign Trade Policy were exempted from the whole of the additional duty leviable under Section 3 of the Customs Tariff Act. When the GST regime

came into force, Section 3 of the Customs Tariff Act came to be amended by insertion of Sub Section (7) and Sub Section (9) that provided for levy of Integrated Tax and Goods and Services Compensation Cess. Corresponding amendment was made in Notification No. 16/2015-Cus vide Notification No. 26/2017-Cus dated 29th June 2017. In the Notification No.26/2017, the import under the EPCG Scheme which was exempted from additional duty under Sub Section (7) and Sub Section (9) of Section 3 of the Customs Tariff Act was not included. However, within a short time thereafter in Notification dated 13th October 2017 being amended Notification No.16/2015-Cus came to be issued and the imports under the EPCG Scheme were exempted from additional duty under Sub Section (7) and Sub Section (9) of the Customs Tariff Act. It is petitioner's case that during this period, i.e., from 1st July 2017 when Notification No. 16/2015-Cus came into effect and the fresh amendment dated 13th October 2017 came into effect, petitioner paid Integrated Goods and Service Tax (IGST) amounting to Rs.24,94,53,580/- on the capital goods imported by petitioner. The details of the bills of entries are provided in the petition.

3. Mr. Raghuraman submitted that the fact that within a short time the original Notification No.16/2015 came to be further amended itself makes it apparent that it was on account of inadvertence or oversight while amending Notification No.16/2015-Cus by Notification No. 26/2017-Cus dated 29th June 2017. The words "figures and brackets Sub Section (7) and

Sub Section (9)” were not inserted and it was always the intention of the Central Government to exempt imports of capital goods under the EPCG Scheme from payment of additional duty under Section 3 of the Customs Tariff Act.

4. Mr. Raghuraman added that it is more so because customs duty was always exempted and therefore Notification No. 79/2017-Cus dated 13th October 2017 has to be read as clarificatory or curative in nature, in as much as, otherwise it would leave whole class of importers who had imported capital goods uncovered from period 1st July 2017 to 13th October 2017. Mr. Raghuraman placed reliance on a judgment of the Gujarat High Court in ***Prince Spintex Pvt. Ltd. vs. Union of India***¹.

5. In our view, it would also assist the court if respondents place on record the Minutes of Meeting recorded alongwith discussion notes, file notings, representations received and the agenda placed before the Central Board of Indirect Taxes and Customs (CBI & C) that resulted in issuance of Notification No.79/2017 dated 13th October 2017. Ordered accordingly.

6. We would like to dispose this matter before diwali holidays start and therefore respondents are directed to file an affidavit placing the documents/details on record as noted in paragraph 5 above and serve a copy thereof upon petitioner by 18th October 2022.

1 2020 (35) G.S.T.L. 261 (Guj)

7. Stand over to 20th October 2022.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)