

**HIGH COURT OF GUJARAT (D.B.)**

**MODERN SYNTEX (I) LIMITED**

***Versus***

**ASSISTANT COMMISSIONER OF CGST AND CENTRAL EXCISE, DIVISION VI**

**Date of Decision:** 08 April 2022

**Citation:** 2022 LawSuit(Guj) 3524

**Hon'ble Judges:** [J B Pardiwala](#), [Nisha M Thakore](#)

**Case Type:** Special Civil Application; Civil Application (For Direction)

**Case No:** 15927 of 2020; 1 of 2021

**Subject:** Constitution

**Acts Referred:**

[Constitution Of India Art 226](#)

**Final Decision:** Application disposed

**Advocates:** [Nanavati Associates](#), [Nikunt K Raval](#), [Pratik Bhatia](#)

**J. B. Pardiwala, J.**

**[1]** Draft amendment is allowed. The necessary incorporation shall be carried out at the earliest.

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

8(A) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction directing the respondent to initiate and complete the final assessment proceedings within a reasonable time period;

(B) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction directing the respondent to release the Bank Guarantees dated 15.07.1995 and 31.07.1996 in favour of the petitioner;

(C) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or directions directing the respondent to return in favour of the petition a sum of Rs.32,11,115/- deposited by the petitioner;

(D) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction to the respondent to compensate the petitioner for an amount of Rs.96,87,616/- being the monetary losses suffered by petitioner due to bank guarantee charges;

(E) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction directing the respondent to permit the petitioner to sell their machines;

(F) Grant such other and further relief(s) as may be deemed fit in the interest of justice;

**[3]** We take notice of the intimation dated 15.10.2012 addressed by the Deputy Commissioner of Customs, Contract Cell to the Assistant Commissioner of Central Excise, Vadodara, which reads thus:-

**OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT)  
9TH FLOOR, ANNEXE BUILDING, NEW CUSTOM HOUSE  
BALLARD ESTATE MUMBAI – 400 001**

F.No.S/5-  
102/95CC  
Date : 15/10/2012

To,  
The Dy./Asstt. Commissioner of Central Excise,  
Office of the Central Excise & Customs  
Makarpura Division  
Central Excise & Customs Building  
Near Shubhanpura Atithi Griha  
Shubhanpura Ellora Park  
Vadodara – 390023, Gujarat.

Sir,

Subject: Finalization of assessment relating to contract registered in terms of Project import Regulations, 1986 – Reg. - M/s. Modern Petrofils-reg.

Please refer this office letter dated 16.12.2011 and your letter dated 02.01.2012 on the above subject (copy enclosed).

1. It may please be noted that the Bond Bill of entry and its Exbond Bills of Entry (enclosed in original) as per Annexure 'A' attached had been cleared at Makarpura Division, Vadodara.

2. For the finalization of the project, the above mentioned bills of Entry needs to be finally assessed and finally audited. Following documents are enclosed for your reference:

Copy of Reconciliation Statement.  
Copy of invoices (Original).  
Copy of plant Site Verification Certificate from the C. Ex. Authority.  
Copy of Bank Remittance Certificate.  
Copy of Recommendation letter from the Sponsoring Authority.

3. The above said In-bond Bills of Entry have been conditionally assessed subject to final assessment at your end. Ex-bond Bills of Entry may be finally assessed and audited and returned to this office at the earliest so as to enable this section to finalise the project under the Project Import Regulations, 1986.

Your faithfully,

(S.P. SINGH)  
DY. COMMISSIONER OF CUSTOMS  
CONTRACT CELL  
PHONE NO.022-22757450

Encl: As above.

**[4]** We also take notice of one reminder dated 15.12.2018 given by the writ-applicant to the Assistant Commissioner, Vadodara in the aforesaid context. The reminder reads thus:-

**MODERN PETROFILS**

[A Unit of Modern Syntex (I) Ltd.]

N.H. No.8, Post: Bamangam, Taluka : Karjan, District BARODA –  
391 243, INDIA

Phone: +91 6545611-14; E-mail: mail@modernpetrofiles.in

Date: 15th DECEMBER, 2018

**REMINDER**

To,  
The Asstt. Commr., CGST & Central Excise,  
Division-VI,  
Vadodara-I Commissionerate,  
GST Bhavan, Race Course,  
Vadodara – 390 007.

Dear Sir,

REF: Our Communication, dated 19.11.2018 requesting you, to finalise the matter, in connection with Impost Regulations, 1986, in terms of the letter F.No.S/5-102/95/CC, dated 15.10.2012 of the Office of the Commr., of Customs (Imports), Ballard Estate, Mumbai, originally addressed to the Deputy Commr., C. Ex. & Cus., Division-Makarpura, Vadodara-II Commissionerate.

SUB: Request to undertake the process, connected with the finalisation of the Contract, referred to hereinabove.

1. Vide our Communication, dated 19.11.2018, we requested you, to kindly complete the Procedure, required to be undertaken by your Office, in terms of the Communication, addressed by the concerned Customs Authorities.

2. We are sorry to learn that nothing has been done so far, by your Office, in the matter, in question.

3. This has caused a lot of inconvenience to us and we once again request you, to please undertake the process of completion of finalization of Assessment of Project Import, undertaken by us and as requested by the Customs Authorities.

4. It is needless to state that any delay in carrying out the aforesaid Procedure, by your Office, is resulting into huge monetary loss to us, due to involvement of Bank Guarantee and accordingly, if the matter has not been treated on priority within 10 days, we will have to approach the appropriate Forum, to obtain the directions, as may be deemed fit by the said Forum.

Thanking you,

Yours sincerely,  
FOR MODERN PETROFILS

AUTHORISED SIGNATORY

CC: Office of the Commissioner of Customs (Imports), Ballard Estate, Mumbai.

**[5]** We also take notice of one letter addressed by the writapplicant to the Commissioner, CGST, Vadodara dated 07.02.2019, which is at Page-49 of the paper-book, Annexure-K, which reads thus:-

**MODERN PETROFILS**

[A Unit of Modern Syntex (I) Ltd.]

N.H. No.8, Post: Bamangam, Taluka : Karjan, District BARODA -

391 243, INDIA

Phone: +91 6545611-14; E-mail: [mail@modernpetrofiles.in](mailto:mail@modernpetrofiles.in)

Date: 07.02.2019

To,  
The LD. COMMISSIONER CGST,  
Vadodara.

Sub: Releasing of Bank Guarantee and cash security.

Ref: Bank Guarantee furnished pursuant to Project Import during the period 1995-97.

Dear Sir,

This is in furtherance to our earlier letter dated 15.12.2018 wherein we requested for release of bond executed by us along with Bank Guarantee and Cash Security copy of which sent to Mumbai Customs office. As stated by us earlier our company "Modern Petrofiles" got registered Project Import for the import of Plant & Machinery for the initial setting up of plant for the manufacture of Polyester Partially Filament Yarn with contract cell of the New Custom House, Mumbai in February 1995. Pursuant to the same we executed bond (copy enclosed) with required BG & cash security.

It is submitted that imports were made during the period from 07.07.95 to 30.07.97. Bill of Entries were assessed provisionally and goods cleared for home consumption were duly installed in our factory and were used for manufacture of finished goods. However, the Bill of Entries are still pending for final assessment for want of installation certificate to be issued by the jurisdictional officer.

Central Excise office at Vadodara has replied that due to restructuring of Commissionerate/ Divisions, the concerned file is not readily traceable for that they are making efforts to locate the relevant records & as soon as the same will be located, necessary action will be initiated under intimation to us.

It is submitted that due to the delay we are incurring heavy monetary loss for no fault of ours.

Please revert if any further information require to be provided at our end.

Thanking you,

For- Modern Petrofiles  
(A Unit of Modern Syntex (I) Ltd.)

Authorized Signatory

Encl. As above.

**[6]** The grievance of the writ-applicant is that the final assessment proceedings are yet to be undertaken. No final assessment order has been passed till this date.

**[7]** We also take notice of the averments made in paragraphs-3.3 and 3.4 respectively in the memorandum of the writ-application.

3.3 In pursuance of the aforesaid EPCG license, the petitioner through its manufacturing unit i.e. Modern Petrofils had imported various items between 7.7.1995 to 30.7.1997. Bill of entries were assessed provisionally and the goods were cleared for home consumption and used for manufacture of finished goods. However, till date the bill of entries is pending final assessment. The petitioner had also executed a bond along with bank guarantees bearing no.004/03 dated 15.07.1995 for Rs.4,18,88,085/- and 004/85 dated 31.07.1996 for Rs.4,49,484/- as security for their imports. Along with the Bank Guarantee of Rs.4,18,88,085/-, the petitioner had also deposited an amount of Rs.32,11,115/- with the Custom Authorities, which is due to be refunded to the petitioner.

3.4 The bank guarantees; totally amounting to Rs.4,23,37,569/-, have been extended till date since its issuance in 1995 and 1996 respectively. Marked and annexed hereto as Annexure-C is the copy of the letter dated 26.06.2020 granting extension of bank guarantee issued by Axis Bank. The total bank guarantee charges which the petitioner had had to borne till date amount to Rs.96,87,616/-. Marked and annexed hereto as Annexure-D is the computation of bank guarantee charges.

**[8]** We have heard Mr. Pratik Bhatia, the learned counsel for Nanavati Associates appearing for the writ-applicant and Mr. Nikunt Raval, the learned standing counsel appearing for the respondents.

**[9]** We have gone through the affidavit-in-reply filed on behalf of the respondents. We do not intend to enter into the merits of this litigation as the issue is still at large before the Assistant Commissioner, Vadodara. Our only concern is the delay that has occurred in the present litigation in finalizing the assessment proceedings.

**[10]** We direct the Assistant Commissioner of Central Excise, Vadodara to immediately take up the matter and see to it that the assessment proceedings are concluded finally with an appropriate order of assessment in accordance with law within a period of two (02) months from the date of the receipt of the writ of this order.

**[11]** If the Assistant Commissioner of Central Excise, Vadodara is in need of any documents to finalize the assessment proceedings, then it may intimate the writ-applicant at the earliest to furnish such documents. If the writ-applicant receives any such intimation, it shall act promptly for effective and expeditiously disposal of the assessment proceedings.

**[12]** With the aforesaid, this writ-application stands disposed of. The connected Civil Application also stands disposed of.

Direct service is permitted.

One copy of this order shall be furnished to Mr. Nikunt Raval, the learned standing counsel at the earliest for its onward communication.

