



Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 31254 OF 2024

Aarti Drugs Limited

Ground Floor, Plot No. 109-D,

Road No. 29, Sion (East),

Mumbai – 400022.

...Petitioner

Versus

1. Union of India

Notice to be served through

Ministry of Finance,

Department of Revenue,

New Delhi – 110 001.

2. The Chairman

Central Board of Indirect

Taxes & Customs,

Ministry of Revenue,

North Block,

New Delhi – 110001.

3. Joint Secretary Tax

Research Unit,

Central Board of Indirect Tax & Customs,

Ministry of Revenue,

North Block,

New Delhi- 110001.

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Date: 2025.07.10
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4. Additional Director General**Directorate of Revenue Intelligence****Visakhapatnam Regional Unit,**

Door No. 11-3-3/1, Plot No. 15,

Gangapur Layout, Near Governor's Bungalow,

Visakhapatnam – 530 003

5. Senior Intelligence Officer**Directorate of Revenue Intelligence****Visakhapatnam Regional Unit,**

Door No. 11-3-9/1, Plot No. 15,

Gangapur Layout, Near Governor's Bungalow,

Visakhapatnam 530 003.

...Respondents

Mr Prasannan Namboodiri, *with ms Pallavi Dabak, for the Petitioner.*

Mr Jitendra B Mishra, *with Ms Sangeeta Yadav & Mr Rupesh Dubey, for the Respondent 4 and 5.*

CORAM **M.S. Sonak &
Jitendra Jain, JJ.**

DATED: **07 July 2025**

ORAL JUDGMENT *(Per M S Sonak, J)*

1. Heard learned Counsel for the parties.
2. The Petitioner seeks the following substantive reliefs: -
 - a. *That the Hon'ble Court may be pleased to issue a writ of certiorari, to call for the records in the*

proceedings of the Respondent No. 1 & 2 in the matter of omission of tariff items under sub-heading 293359 of Chapter 29 of the Customs Tariff from Third Schedule of the Finance Act, 2022;

b. That the Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ/order/directions to Respondent No. 1 & 2 to revise the tariff rate of Basic Customs Duty (BCD) for tariff items under sub-heading 293359 from 10% to 7.5% w.e.f. 01.05.2022'

c. That the Hon'ble Court may be pleased to issue a writ of mandamus and/or any other appropriate writ, order or directions under Article 226 of the Constitution of India may direct the Respondent No. 1 & 2 to decide upon the Representation dated 23.03.2024 of the Petitioner requesting to revise the tariff rate of Basic Customs Duty (BCD) for tariff items under sub-heading 293359 from 10% to 7.5% w.e.f. 01.05.2022;"

3. Regarding prayer clauses (a) and (b), the learned Counsel strenuously submitted that the customs tariff, in so far as it concerns sub-heading 293359 of Chapter 29, is concerned, obvious errors, which he describes as “clerical errors”, have crept in. He submits that this Court should issue either a writ of certiorari or a writ of mandamus directing its correction.

4. The learned Counsel for the Petitioner points out that the errors have now been corrected; however, such corrections/changes are to take effect from either 1 February 2025 or 1 May 2025. He submits that since that was an error, the same ought to have been corrected with retrospective effect and therefore, reliefs in terms of prayer clause (a) and (b) deserve to be granted.

5. In the alternate, he submits that relief in terms of prayer clause (c) may be granted by issuing time bound directions to Respondents 1 and 2 to decide Petitioner's representation dated 23 March 2024 for revision of the tariff rate of Basic Customs Duty (BCD) for the tariff items under the sub-heading 293359 from 10% to 7.5% effective from 1 May 2022.

6. Mr Mishra opposes the grant of any reliefs in this Petition by pointing out that once a particular tariff heading is prescribed, that constitutes the authoritative expression of the legislative will of the parliament, and the Courts cannot exercise their powers of judicial review in such matters. He relies on the decision of the Hon'ble Supreme Court in the case of **Amin Merchant Vs Chairman, Central Board of Excise & Revenue**¹ to support his contention. Accordingly, he submits that this Petition is misconceived and may be dismissed.

7. The rival contentions now fall for our determination.

8. As noted above, the Petitioner claims that there is an "omission" or "obvious error" or "clerical error" in the customs tariff relating to sub-heading 293359 of Chapter 29 from the 3rd Schedule of the Finance Act, 2022. Accordingly, the Petitioner seeks a writ from this Court for correction of this so-called error in the customs tariff.

9. On the Petitioner's own showing, certain changes were brought about in the finance bill from 1 May 2025 or, in terms of the notification dated 1 February 2025, effective from 1 February 2025, by which such so-called errors stand rectified. The Petitioner's grievance now is that such rectification should

¹ 2016 (338) E.L.T. 164 (S.C.)

have been retrospective, i.e. effective from 1 May 2022, so that the Petitioner could have the benefit of such rectification.

10. Normally, it is not for this Court to rule on what the Petitioner describes as errors, obvious errors or clerical errors in a legislative instrument. In any event, it is not for this Court to issue directions for corrections of the so-called errors. The Courts interpret the laws enacted by the Legislature. They may, if a case is made out, strike down a law if it is ultra vires the Constitution. But they do not encroach upon the domain of the Legislature by directing it to enact a law or to correct what they believe may be errors in such enacted law.

11. In the case of *Amin Merchant* (supra), the Hon'ble Supreme Court upheld the view taken by this Court that once the Finance Act enacts a law, and the rate of duty is prescribed in relation to a specific tariff, that represents the definitive expression of the legislative intent of the parliament.

12. Therefore, it is not for this Court to ordinarily issue writs of the type now prayed for by the Petitioner. Only if a law suffers from a lack of legislative competence or is ultra vires any provision of the Constitution can the Court interfere. However, on the grounds urged by the Petitioner, there is no question of issuing directions to the legislature to correct what the Petitioner terms as errors in the customs tariff.

13. The circumstance that the legislature has intervened prospectively and brought about changes in the legislation is also no ground to presume that the legislature has accepted the position that there were errors in the unamended legislation. In any event, the changes have been given a prospective effect, and it is ordinarily not for this Court to

direct that such changes must be given a retrospective effect. This is not to preclude any argument before a competent forum that the changes being clarificatory should be regarded as retrospective. However, this Petition is not the occasion for dealing with such issues and therefore, we refrain from making any observations in this regard.

14. Suffice it to note that reliefs in terms of prayer clauses (a) and (b) of this Petition cannot be granted. Grant of such reliefs would virtually amount to directing the legislature to modify the law by accepting the Petitioner's contention that there was some error, an obvious error, or a clerical error in the customs tariff. Similarly, no relief can be ordinarily granted by the Court to direct the legislature to give retrospective effect to a legislative measure. All this would amount to encroaching on the domain primarily reserved for the Legislature by our Constitution.

15. Insofar as relief in terms of prayer clause (c) is concerned, the Petitioner cannot, as a matter of right, seek a mandamus upon the 1st and 2nd Respondents to decide its representation dated 23 March 2024. However, at the same time, if the Petitioner has raised the grievance, there is no harm in looking into the Petitioner's representation and disposing of this representation within a reasonable period.

16. Therefore, we request the 1st and 2nd Respondents to dispose of the Petitioner's representation within a reasonable period. However, we clarify that we are not issuing a writ of mandamus in this regard, as these matters ultimately fall within the purview of the 1st and 2nd Respondents to investigate and decide upon thereafter.

17. The learned Counsel for the Petitioner states that the Petitioner will, within two weeks from today, file a supplementary representation incorporating the subsequent developments. Accordingly, we request that the original representation dated 23 March 2024 and the supplementary representation be disposed of within a reasonable time.

18. With the above observations, we dispose of this Petition without any order for costs. All concerned are to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)