

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1101 OF 2013

Himanshu Ishwar Bhana
and another.

..Petitioners

Versus

The Union of India & Ors.

..Respondents

Mr. Prakash Shah i/b. PDS Legal, for the Petitioners.

Mr. Pradeep S.Jetly a/w. Smt. Anmic Fernandes, for the Respondents.

CORAM : S.C. DHARMADHIKARI &
SUNIL P. DESHMUKH, JJ.

DATE : JANUARY 20, 2015

PC. :

1. The petitioners are aggrieved and dissatisfied with the communication (annexure-H) dated 28th January, 2013 and the demand notice dated 7th January, 2013. Both of which inform them that they are liable to pay the customs duty of Rs.10,49,60,813/- and Central Excise Duty of Rs.15,98,331/- along with applicable interest and penalty.

2. The petitioners submit that the Revenue is proceeding on the footing that there was a General Bond furnished by M/s. Walmek Metal Extruders Ltd. situated at village Vanvathe, Taluka – Khalapur, District – Raigad for an amount of Rs.50 Lacs which was accepted by the then Assistant Collector of Central Excise, Panvel-II Division on 11th June, 1992. In the said bond names of both the petitioners have been mentioned as surety for M/s. Walmek Metal Extruders Ltd.. The petitioners claim that they had no notice of an order-in-original stated to have been passed on 27th February, 2006 confirming the demand in the above sums and the liability to pay them in terms of the said order and provisions of the Customs Act. It is, therefore, their specific case that they did not associate themselves with this company beyond a point and that they had no idea or notice of any proceedings, much less, the order-in-original or the adjudication proceedings. In these circumstances, they are taken by complete surprise. They are also taken by surprise because the Authorities going much beyond the stipulations in this bond and recovering the sums which are not subject matter thereof.

3. When this Writ Petition was placed before us on the earlier occasion and it was argued that the petitioners had no notice of the

proceedings nor were they heard before the demand notices dated 7th January, 2013 and the communication at annexure-H that we called upon Mr. Jetly to take instructions. The instructions were to be on giving a personal hearing to the petitioners by the Authorities who have issued the demand notice and the communication at annexure-H. The matter was posted till today to enable Mr. Jetly to take instructions.

4. After taking instructions, Mr. Jetly states that Mr. V. V. Pandit, Assistant Commissioner of Central Excise and Customs having his office at New Panvel will hear the petitioners and pass appropriate orders in accordance with law. Mr. Jetly, on further instructions, states that this authority, namely, Assistant Commissioner of Central Excise, New Panvel will pass a speaking order without being influenced by the contents of the earlier communications and the affidavit-in-reply filed in this Writ Petition. We keep open all contentions and of both sides – including on the maintainability of the recovery proceedings.

5. Writ Petition is disposed of in these terms. No costs.

(SUNIL P. DESHMUKH, J.)

(S.C. DHARMADHIKARI, J.)