

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1492 OF 2015

DBC Port Logistics Limited and Anr.	}	Petitioners
versus		
The Union of India and Ors.	}	Respondents

Mr. Darius Shroff-Senior Advocate with Mr. Karan Shroff and Mr. Pinkesh Shah i/b. M/s. Mulla and Mulla and CBC for the Petitioners.

Mr. Pradeep S. Jetly for Respondent Nos. 1 and 2.

Mr. Sanjay Jain with Mr. Hemant Prabhulkar i/b. M/s. Juris Peritus Mumbai for Respondent No. 3.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- OCTOBER 12, 2015

P.C. :-

The Petitioners are essentially aggrieved by the letter/communication at page 137 of the paper book dated 8th January, 2015, which contains, according to the Petitioner, an order that in view of what has been observed and held in the communication, it is only the Jawaharlal Nehru Port Trust (JNPT), being the custodian, who will have a right to apply for the authorization for handling hazardous cargoes in

the Customs Freight Station (CFS). Therefore, the Petitioners were informed that their application cannot be processed further.

2) The Petitioners applied for permission for handling hazardous cargo. That was dated 28th November, 2014. In that application, copy of which is at page 109 of the paper book, the Petitioners pointed out that they are making a complete application for handling the hazardous cargoes as per the requirement of the Customs Department. The application was first submitted on 10th October, 2014, but the Commissioner of Customs (CFS) Management Cell, Jawaharlal Nehru Customs House, Sheva, Navi Mumbai informed the Petitioner that they must re-submit the application via JNPT. That was done on 22nd October, 2014, but the JNPT has not submitted their application to the Commissioner of Customs. In these circumstances, by this application, the Petitioners prayed to process their case and grant the handling permission. They specifically stated that the matter involving them and Customs is sub-judice and will take its own time to resolve.

3) By the impugned communication, this application has been refused or in a way the Petitioners have been informed that it cannot be processed further. Reference is made to the very legal proceedings.

4) Mr. Shroff, learned Senior Counsel appearing for the Petitioner has invited our attention to the Handling of Cargo and Customs Area Regulations, 2009 and the definitions therein particularly of the words “Customs Cargo Service Provider” in Regulation 2(b). He has invited our attention to the conditions to be fulfilled by the Customs Cargo Service Provider. He has also invited our attention to the details of the application and equally the stand of Respondent Nos. 1 and 2 as reflected in their affidavit in reply. The arguments center around the submission and furnishing of Bank Guarantee, which the Petitioners submitted that they are not required to furnish, as Regulation 5 itself clarifies this aspect.

5) We are not required to go into either the Regulations or its clauses. For the simple reason that the communication which is impugned in this Petition refuses to process the Petitioners' application. The ground of refusal is that the JNPT should make the application and the Petitioner's application cannot be processed.

6) Once we have found that the Petitioners' application has been rejected or refused to be processed only on the above ground, then, we invited the attention of Mr. Jetly appearing for Respondent Nos. 1 and 2, to the Handling of Cargo and Customs Area Regulations, 2009 and what the Petitioners have relied in their affidavit in rejoinder,

namely, Circular No. 13/2009-Customs dated 23rd March, 2009 and the further letter of June, 2011, which has been addressed to the Deputy Chairman, JNPT from the office of the Chief Commissioner of Customs, Mumbai, Zone – II.

7) Mr. Jetly fairly stated that in the light of these Regulations, the Petitioners' application can be processed further and without the tag/label that it is submitted through JNPT. If the appointment is sought in terms of the Regulations, then, irrespective of what is stated in the impugned communication and the issues in the pending litigation, in terms of these Regulations, the Petitioners' application can be processed. It can be processed and a decision taken thereon in accordance with law.

8) Mr. Jetly has not disputed the position that the application can be considered independent of the proceedings before this Court and the stand of the JNPT, but in terms of the Regulations.

8) We, therefore, direct that the application of the Petitioner shall be processed without in any manner being influenced by the impugned communication and the issues in the pending litigation, but strictly in terms of the Regulations and in accordance with law. Let that application be processed and accordingly the decision communicated to

the Petitioners as expeditiously as possible and within a period of six weeks from the date of receipt of a copy of this order. We clarify that we have not expressed any opinion on the rival contentions.

9) With the aforesaid directions, the Petition is disposed of.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)