

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7199 OF 2016

M/s. Orient Trade International FZE,
through its Proprietor Mr. Sanjay
Kumar

.... Petitioner

Vs.

Union of India & Others

.... Respondents

Mr. Sujay Kantawala with Ms Chandani Tanna i/by
India Law Alliance for the Petitioner.

Mr. Pradeep S. Jetly for the Respondent Nos.1 to 5.

Mr. Swapnil R. Patil for the Respondent No.6.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : JULY 11, 2016

P.C:

1. The petitioner has approached this Court in its writ jurisdiction under Article 226 of the Constitution of India seeking essentially a relief in terms of prayer clause (c) of the writ petition.

2. That prayer clause (c) at pages 16 and 17 reads as

under:-

"c. that it is just, equitable and in the interest of justice that this 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 or direction ordering and directing the Respondents jointly/collectively and their sub-ordinate officers to forthwith:

i. To allow the re-export of the goods, after lifting the seizure covered by 3 Bill of Lading Nos. EXP/HAM/038/12/2015, EXP/HAM-001/01/2016 and JEANSA1631346, Exhibit A, B & C, as per the terms and conditions imposed as per the pleasure of this Hon'ble Court;

ii. to direct the Respondent to issue necessary Certificate for waiver of the Detention Charges;

iii. Cease and desist from issuing summons and again calling for re-examination of the already examined goods in gross abuse of the powers under the Act."

3. It is the case of the petitioner that the Proprietor who has filed this writ petition had shipped four containers of carpets. Those were consigned to two separate consignees. The names of the consignees and the details together with the dates of the Bills of Lading are set out in para 3 of the petition.

4. It is claimed that these documents were lodged quite a few months back and following which the Advocate for the petitioner made a representation also on 18-2-2016, a copy of which is at Exhibit-D to the petition. It is the case of the petitioner that instead of examining the request, the authorities had, firstly, granted permission to warehouse the goods on examination of the same. Once they were so examined, then, the petitioner was expecting the usual No Objection Certificate for the export of the goods.

5. However, neither the Bills of Entry were processed for such NOC nor the No Objection Certificate has been issued. The petitioner is holding the three Bills of Lading, but faces a peculiar situation because of the godown/warehousing charges. The goods are incurring heavy detention and demurrage charges. It is in these circumstances that the petitioner prays that even after responding to the summonses issued, the authorities have failed to consider the alternate request and now the foreign buyers are not interested. The petitioner is, therefore, submitting that they may be allowed to re-export the

goods. The goods are lying at Nhava Sheva. Thus, the decision and on the representation be taken as expeditiously as possible.

6. Affidavit in-reply has been filed to this writ petition in which, how there is a fraud perpetrated on the Revenue is narrated and with great details. The necessity to issue summons/the recording of statements and equally a systematic plot, according to the Directorate of Revenue Intelligence (DRI), has been unearthed. Now that the steps are being taken, any order passed by this Court would prejudice the same. More so, when the petitioner has not yet co-operated. His examination is necessary to elicit the details. For all these reasons, it is submitted that the petition be dismissed.

7. After hearing both sides, we are of the view that it is not necessary to enter into the merits of the controversy. We do not, however, appreciate the filing of lengthy affidavits by the DRI and disclosing the state-of-affairs to their knowledge. Disclosure on merits is likely to affect the case of the Department, namely, the Customs, in the adjudication

proceedings. The DRI should refrain from expressing any opinion even *prima facie* about the legality and validity of the acts, such as export of carpets in this case. While it is true that powers of investigation are conferred for gathering intelligence on this Directorate, beyond that it is the recommendation made which can at best be taken into account, but would never bind the adjudicating authorities. This distinct departure in the nature of functions and duties is lost sight of and more because of the over-enthusiasm by the DRI. We hope and expect that hereafter the Court's time would not be wasted by filing such detailed affidavits.

8. What we have noted from the petition and the Exhibits thereto, and all the statements in the affidavit in-reply, is that there is a doubt expressed about the transaction and undertaken by the petitioner. How that doubt was expressed, at what stage and that is how suspecting a fraud investigations were commenced. They appear to be still in progress. In such circumstances, if now the petitioner desires to make an alternate request and that of re-export of the goods on the footing that

they continue to be the owner of the same, then that request would have to be examined not by the DRI but by the Commissioner of Customs (Exports) or his delegates. Let that be done as expeditiously as possible and within a period of four weeks from the date of receipt of a copy of this order.

9. Needless to clarify that while passing any orders, the said Officer shall issue a notice to the petitioner to appear before him and decide the issue raised by a reasoned order, uninfluenced by any of the contents and statements in the affidavit in-reply. He shall not rely solely on the contents of the report or the recommendations of the DRI. The matter must be decided strictly on merits and in accordance with law. The writ petition is disposed of.

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(S.C. DHARMADHIKARI, J.)