Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1408 OF 2016

Atul Chamanlal Mehta …Petitioner
Versus
The Union of India & Ors. …Respondents

WITH
WRIT PETITION NO. 1462 OF 2016

Messrs. K. Raj and Company ...Petitioner
Versus
The Union of India through the secretary & Ors. ...Respondents

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Mr. Prakash Shah, *a/w Mr. J. C. Patel and Mr. Jas Sanghavi, i/b PDS Legal, for the Petitioner.*
Mr. Pradeep S. Jetly, *for the Respondent.*
Mr. A.I.I. Patel, AGP, *for the the Intervenor.*

CORAM: S.C. DHARMADHIKARI & G.S. PATEL, JJ.
DATED: 9th February 2016

PC:-

1. These Petitions under Article 226 of the Constitution of India pray for the following relief:

> **Prayer clause**(a) in Writ Petition No.1408 of 2015 reads thus:

"(a) this Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ, order or direction ordering and directing the Respondents, their subordinate servants and agents to forthwith permit the Petitioner to clear the said Laboratory Chemical-Ethanol AR covered under Bill of Entry Nos. 2928884 dated 14.10.2015 and 3599576 dated 15.12.2015 without any condition including insisting on any state excise license"

Prayer clause(a) in Writ Petition No.1462 of 2015 reads thus:

"(a) this Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ, order or direction ordering and directing the Respondents, their subordinate servants and agents to forthwith permit the Petitioner to clear 27,500 liters of the said Laboratory Chemical Ethanol AR covered under the Bill of Entry No.3036167 dated 26.10.2015 without any condition including insisting on any state excise license."

2. The Petitioners claim that the product/goods have been brought in this country so as to meet a contractual obligation. That is evidenced by the Bill of Entries filed with the Customs.

3. Even the agreement to have an assessment so as to enable early release of the goods/consignment has been expressed by the Petitioners but the Respondents have not passed the requisite order and directions with the result that the consignment is lying at Port. It cannot be released in favour of the Petitioners.

4. The Deputy Commissioner of Customs, Group VI, Nhava-Shiva has filed Affidavit in both Petitions stating that the Customs have been allowing clearance of subject goods without insisting on any license/No Objection Certificate from the State Excise. The consignments prior to the one involved herein were cleared on the basis of a bank guarantee and bond. That was executed and later on requirement of bank guarantee was waived. In respect of assessed Bills of Entries when goods have been released, importers have been directed to produce evidence of sale of goods to reputed laboratories for use in research and development and proof of any State Excise duty/Cess which may be payable or a no objection from the State Excise.

5. However, the importers have not adhered to these directions and that is why the Commissioner of State Excise, Mumbai addressed several letters relying on the provisions of Maharashtra Prohibition Act, 1949. The said Commissioner insist that any transactions in spirit, alcohol and liquor are regulated and controlled. Therefore, their misuse and otherwise diversion leads to tragedies like hooch tragedy. All such tragedies occurred because of consumption of spurious liquor. Several substances are mixed and that is dangerous and unsafe for human consumption. It is with this end in mind that the Customs have been requested not to release the goods unless the State Excise license or No Objection Certificate is produced.

6. This position is contested by the Petitioners but we do not wish to enter into this controversy. Mr. Prakash Shah appearing for the Petitioners states that the Petitioners are desirous of obtaining early and expeditious release of the subject consignment and they do not wish presently to raise any contentions with regard to the legality and validity on the condition sought to be imposed of a No Objection Certificate from State Excise or the liability to pay any duty under the Maharashtra Prohibition Act, 1949 and Rules framed thereunder.

7. Though an Affidavit has been filed and the State Excise is seeking to intervene in the present Petitions, we are of the view that the State Excise has distinct powers and which it can exercise under the Maharashtra Prohibition Act, 1949. It can also take such steps as are permissible in law to prevent any of the products in question being consumed or being diverted for consumption, use and sale in the market so as to prevent any tragedies particularly in cities like Mumbai and Pune. We do not see any justification for such insistence on intervention by the State Excise. The State Excise possibly feels that there is a judgment of the Hon'ble Supreme Court in the field. It enables them to impose restrictions and in order to regulate the dealings in Intoxicants and Liquor in order to prevent their possible misuse.

8. We have no doubt that if such powers and as are enumerated in the Maharashtra Prohibition Act, 1949 and are subject matter of the judgment of the Hon'ble Supreme Court can indeed be exercised. However, in matters of import of consignments/goods attracting the customs duty and liability to pay the same, the release of such goods for home consumption are all matters within the preview of the customs and once they take the precautionary measures and satisfy themselves about the compliances under the Customs Act and Rules framed thereunder, then, the consignments deserve to be released. Merely because they are released on passing on an assessment order does not mean that the powers under the Maharashtra Prohibition Act, 1949 cannot be exercised by the State Excise. That is a distinct matter and covered by distinct enactment. In these circumstances, both the Writ Petitions are disposed of with a direction that the Respondent shall pass the requisite orders within a period of one week from today.

9. Mr. Jetly assures that the requisite orders would be passed and duly communicated within a period of one week. We accept this statement made on instructions by Mr. Jetly as an undertaking given to this Court.

(G. S. PATEL, J.) **(S. C. DHARMADHIKARI, J.)**