

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 1708 OF 2016

Shri Sandeep Babulal Purohit ... Petitioner
Vs
1. Union of India & Ors. ... Respondents

***WITH
CIVIL APPLICATION NO. 612 OF 2016
IN
WRIT PETITION NO. 1708 OF 2016***

Shri Sandeep Babulal Purohit ... Applicant
Vs
1. Union of India & Ors. ... Respondents

Mr. Sujay N. Kantawala with Mr. Brijesh Pathak for the
Petitioner/Applicant.

Mr. Pradeep S. Jetly with Mr. Jitendra B. Mishra for the
Respondents.

***CORAM : S.C. DHARMADHIKARI &
A.A. SAYED, JJ.***

MONDAY, 07TH MARCH, 2016

P.C. :

1. We have heard both sides. On 15th February, 2016, a Division Bench of this Court to which one of us (S.C. Dharmadhikari, J.) was a party, had passed an order directing the Principal Chief Commissioner of Customs to provisionally

release the goods / consignments. He was directed to make an appropriate order in that behalf after hearing the petitioner. As set out in the Civil Application, the event subsequent to this Court's order would disclose that though the petitioner appeared before the Principal Chief Commissioner of Customs, in the absence, according to him, of any authority to adjudicate or pass a provisional order of release of goods, some communication was addressed by the Additional Commissioner. Mr. Kantawala has invited our attention to the notes of personal hearing, copy of which is at Annexure-C pages 9 and 10 of the Civil Application and the communication dated 19th February, 2016, to the Additional Commissioner of Customs (Preventive) M & P Wing, Mumbai.

2. Mr. Kantawala would submit that there is a complete breach and violation of this Court's order and direction. It is a mockery that instead of passing an order pursuant to the appearance of the petitioner, the Principal Chief Commissioner has allowed some body who not of the same rank, but in the department to address such communications and pre-judge the issue. If indeed the signatory to the letter dated 19th February,

2016, was a competent authority or official, then, the Commissioner should not have in the first instance, conducted a hearing and secondly made over the file to this Additional Commissioner. This clearly means that the issue is pre-judged and now there is no hope of any fair and reasonable treatment, leave alone justice. This Court, therefore, must take a strong view of the proceedings and the infraction of its order.

3. Mr. Kantawala also relies upon the affidavit-in-reply now filed and by the Deputy Commissioner of Customs disclosing the entire stand and on merits. Mr. Kantawala, therefore, submits that in the light of the affidavit-in-reply affirmed by the Deputy Commissioner of Customs (Preventive) no useful purpose will be served by any appearance before any of the officials in the department.

4. After perusing the petition and annexures thereto so also the Civil Application and its annexures and affidavit-in-reply, we are of the opinion that there is much substance in the complaint of Mr. Kantawala. Though Mr. Jetly would persuade us to allow the department to pass an order through a competent official, we

are not acceding to that request. In the peculiar facts and circumstances of this case when the authorities appear to have made up their mind, no fruitful purpose will be served by allowing them to now pass any order.

5. In the peculiar circumstances and expressing our strong displeasure we have taken up the request of Mr. Kantawala ourselves. We find that the goods are lying with the Customs from November, 2015. Till date, there was no prohibition or any restraint on the department to pass an order of provisional assessment or to issue show cause notice and take up the adjudication proceedings themselves. Now allowing them to again consider the request for provisional release of goods and pass an order in that regard would be an exercise in futility. Now that everything is disclosed and placed before this Court, we do not think that any further time should be wasted. The consignment lying with the Customs serves nobody's purpose.

6. Having heard both sides on the request of the provisional release of the goods, we are of the opinion that interest of justice would be served if we pass the following order :-

(a) On the petitioner allowing the department officials to take photographs of the TV sets and equally to seize any materials and documents in relation to the sets and furnishing a bond in the sum of Rs.1.28 crores and a bank guarantee of Rs.25,00,000/- within a period of one week from today, the goods shall be provisionally released.

(b) The provisional release by this Court pursuant to this order is without prejudice to the rights and contentions of both sides.

(c) This order will not prevent the respondents from issuing a show cause notice and passing appropriate order all in accordance with law.

(d) This order and direction clearly means that while passing the order of adjudication on any show cause notice, if issued, the Department / the competent official shall allow the petitioner to

raise all contentions, including those based in the grounds of this petition and will pass an order, uninfluenced by the contents of any letter or communication or the affidavit-in-reply filed in this petition.

7. The Writ Petition is disposed of in the above terms. There shall be no order as to costs.

8. In view of the disposal of the writ petition, nothing survives in the Civil Application and it is also disposed of.

A.A. SAYED, J.

S.C. DHARMADHIKARI, J.