

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

WRIT PETITION NO. 4686 OF 2016

M/s. D.K. Collection

... Petitioner

Vs

1. Union of India & Ors.

... Respondents

Mr. Sujay Kantawala with Mr. Brijesh Pathale for the Petitioner.

Mr. Pradeep S. Jetly for the Respondents.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKARJOSHI, JJ.**

MONDAY, 25TH APRIL, 2016

P.C. :

1. The only grievance raised in this petition is that though a provisional order has been passed in relation to certain goods lying at a warehouse called Deva Logistics Warehouse, the release is in favour of the petitioner, but another entity called M/s. Top Home Interior.

2. Reliance is placed upon the annexures to the writ petition and particularly page 18. Then, it is submitted that a provisional release order was passed and Mr. Kantawala submits that the

petitioner is M/s. D.K. Collection. The petitioner's representative attended the office of the Special Investigation Officer. He produced the necessary documents which would establish the identity of the goods and the relation to the petitioners therewith. Yet, strangely recommendation is made by the Directorate of Revenue Intelligence (DRI) to release the goods in favour of M/s. Top Home Interior. It is urged that the DRI cannot control the powers of the competent authority and the provisional release order should not be influenced by any recommendations of the DRI.

3. Mr. Kantawala submits that contrary to all this, the Principal Commissioner of Customs, Special Investigation and Investigation Branch (Export), through its Assistant Commissioner on 15th March, 2016, passes a provisional assessment order, but releasing the goods in favour of the Proprietor of M/s. Top Home Interior.

4. Our attention is invited to a letter at page 35 of the paper-book which is addressed to the Deputy Director, Directorate of Revenue Intelligence and it is stated that this letter clarifies that

M/s. Top Home Interior has nothing to do with the provisional release nor any storage has been effected by this entity in Deva Logistics Warehouse.

5. It is then urged that on page 36 of the paper-book, an advocate's letter has been addressed to the Principal Commissioner of Customs, but no cognizance thereof has been taken.

6. After hearing both sides, we find that the goods are lying at Deva Logistics Warehouse from the date of seizure and to nobody's use. The goods are stated to be carpets and seized on 21st January, 2016.

7. We are aware that we do not in this jurisdiction grant any declaration particularly of title in the goods. We are equally aware that we do not accept as conclusive proof and evidence the statements contained in the letter at page 35 of the paper-book. It may be that the goods are claimed by the petitioner but there is some role of M/s. Top Home Interior also. That is a matter of investigation and if investigations are concluded and a

provisional release order is passed, then, without affecting, much less prejudicially any rights and contentions of the Revenue and in terms of the express agreement by the petitioners before us, we direct that in the event the petitioners indemnify both the Commissioner as also the DRI against any claims by third parties, including M/s. Top Home Interior and on the petitioners also obtaining a specific undertaking from M/s. Top Home Interior granting their no objection to release the goods in favour of the petitioners, the goods shall be released. They shall be released only on compliance with all the conditions as are imposed in the provisional release order. If all this is done by the petitioners, then, the goods shall be released. However, the release shall not affect any powers of the Commissioner of Customs as also DRI. Both proceedings, namely, adjudication and prosecution, if any, initiated shall be concluded in accordance with law. Equally, we express no opinion on the merits of the controversy and the petitioners contentions are also kept open.

8. The writ petition is disposed of in these terms.

DR.SHALINI PHANSALKAR-JOSHI, J. S.C. DHARMADHIKARI, J.