

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7237 OF 2015**

Pandurang Ramchandra Jadhav	...Petitioner
<i>Versus</i>	
Union of India through Joint Secretary & Ors.	...Respondents

Mr. Vikram Nankani, *a/w Mr. Prithviraj Chaoudhari, Ms. Neha Ahuja and Mr. H. K. Sudhakara, i/b Prompt Legal, for the Petitioner.*

Mr. B. M. Chatterjee, *Senior Advocate, with Mr. Pradeep S. Jetly and Mr. M. S. Bhardwaj, for the Respondents.*

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**

DATED: 22nd February 2016

PC:-

1. This Petition under Article 226 of the Constitution of India has a limited challenge and, particularly, after our earlier order dated 24th August 2015.

2. The only contention of Mr. Nankani, learned senior Advocate appearing for the Petitioner is that the Joint/Additional Commissioner of Customs or Competent Authority functional either at Mumbai or Thane should adjudicate and decide the proceedings. The Petitioner should not be forced to appear before a

Commissioner of Service Tax/Competent Authority in the State of West Bengal.

3. The Petitioner in this case is a resident of Pune. From the narration of facts and, particularly the allegations, it is not disputed that two persons were transporting alleged smuggled gold. They were intercepted at Shahad station on Central Railway, which is in Thane district. The investigation revealed that the gold under seizure passed through Bagdogra Airport. That is how the Joint/Additional Commissioner of Customs, Central Excise and Service Tax at Bagdogra is stated to be the Competent Authority. A Notification dated 9th September 2009 issued by the Central Board of Excise and Customs, Annexure “1” and “2” of the Affidavit in Reply are relied upon.

4. Mr. Nankani would submit that barring a reference to the alleged smuggling of gold through Bagdogra, the other allegations in the show-cause notice pertaining to interception at Shahad in Thane District, investigations carried out within that district have not been denied. In such circumstances, the Petitioner be proceeded against either in Mumbai or in Thane district.

5. Having perused the Affidavit in Reply and from page 72 of the paper-book, we are of the firm view that in the facts of this case, the larger or wider controversy need not be addressed. The territorial limits of the jurisdiction of Commissionerates or Commissioners need not be defined in the facts of this case. It is not necessary to express any opinion on the contents of the Notification either. The Affidavit in Reply indicates that the

information was received by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit. The two persons were travelling by Howrah-CST Duronto Express. That was a train scheduled to arrive at Mumbai and both passengers alleged to be involved in transporting the goods were travelling by this train. When this train reached Igatpuri station, that a watch was kept on their movement. That is how these two persons got down when the train just passed Shahad station. The officers followed them and arrested them with the alleged contraband. The seizure was effected and all that has taken place within the Thane district. It also reveals that the persons arrested and travelling by train were produced before the Additional Chief Metropolitan Magistrate, Mumbai.

6. Therefore, in the facts peculiar to this case, we are not in a position to agree with Mr. Jetly that it is only the Commissioner or Competent Authority at Silliguri who can adjudicate and pass an order in terms of any show-cause notice or any investigation proceedings.

7. We have seen the entire Affidavit in Reply. We have noted the history of the investigations and commencing with regard to a movement of gold smuggled allegedly through Bagdogra. However, the subsequent and further events would denote as to how the alleged smuggled gold came to be transported by train and arrived in Mumbai. It was intercepted while in journey towards Thane station on the Central Railway.

8. In these circumstances, we dispose of this Petition by directing that the Competent Authority at Mumbai/Thane will adjudicate the matter and pass a reasoned order after hearing all the Petitioners.

9. We clarify that in this Petition a direction is issued to the Commissionerate at Mumbai/Thane to adjudicate the matter, but this order would not mean that all Assesseees and other than the Petitioners can derive benefits of the same. This order is passed in the peculiar facts of this case and at the request of the Petitioner.

10. The Writ Petition is allowed. We have not expressed any opinion on the merits of the allegations.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)