

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

***CIVIL APPELLATE JURISDICTION***

**WRIT PETITION NO. 9026 OF 2015**

PNP Polytex Pvt Ltd

..Petitioner

Vs.

The Union of India and Others

..Respondents

Ms. Shilpi Jain i/b Agrud Partners,for the Petitioner.

Mr. Sujay Kantawala i/b Brijesh Pathak,for the Respondent  
Nos.4,5,6 and 7.

Mr. Pradeep S. Jetly, for Respondent Nos.1,2 and 3.

Ms. Ridhi Nyati i/b Ashwin Shanker, for Respondent No.9.

**CORAM :- S.C. DHARMADHIKARI &  
B.P.COLABAWALLA, JJ.**

**DATE :- NOVEMBER 28, 2016.**

**P. C.:**

This Writ Petition under Article 226 of the Constitution of India seeks a writ of mandamus or any other appropriate writ, order or direction directing Respondent No.2, its subordinates, servants, agents and officers reporting at the Jawaharlal Nehru Customs House, Nhava Sheva to unconditionally implement and enforce what is styled as Facility

Notice No.69 of 2011.

2           We have heard Ms. Jain, learned counsel appearing on behalf of the Petitioner, Mr. Jetly appearing for Respondent Nos.1 to 3 and Mr. Kantawala, appearing for Respondent Nos. 4,5, 6 and 7.

3           The Petitioner states that the importer like the Petitioner is facing immense difficulties. Despite issuance of this Facility Notice, shipping lines refused to abide by the same.

4           The Petitioner regularly imports inter alia PVC coated cloth. It has been importing goods for the past 13 years or more from the Nhava Sheva Port and the International Container Depot (ICD) Mulund ports in Mumbai.

5           It is stated that as per this Facility Notice issued on 3<sup>rd</sup> May, 2011, the importers have been given a liberty to take their goods to a Container Freight Station (CFS for short) of their choice provided such intimation is given to the shipping lines 72 hours prior to the arrival of the vessel. However, even after issuance of

the Facility Notice by the 2<sup>nd</sup> Respondent, the shipping lines are not complying with the instructions. The Petitioner has set out as to how the Facility Notice came to be issued. It is stated that the vessel owner along with other information as provided in the Import General Manifest (IGM for short) has to also inform the proper officer about the nominated CFS where imported goods will be stuffed once they reach the Indian Port. Generally, the shipping agents choose the CFS on behalf of the importers and after getting the permission from the Assistant / Deputy Commissioner the goods are unloaded at the Ports and are brought to the CFS, stacked therein after verification by the customs authorities under the bond. Thereafter, the CFS allows destuffing of the goods and after the formalities of assessment and payment of customs duty are made, the goods can be moved out. The custodian releases the goods from CFS by issuing them a gate pass. However, the shipping lines themselves choose the CFS of their choice with whom they have a tie up and intimate to the Customs Authorities that there is no say from the importers. It is therefore apparent that the CFS operators near several ports may be paying a nomination premium to shipping lines to get business and have been recovering the money from the importers making the import

costlier.

6           These and other difficulties are highlighted and it is stated that even after issuance of this Facility Notice, several importers from Mumbai approached the customs authorities. They brought to their notice the practical difficulties and frustration of their right to nominate the CFS. However, nothing has been done in that regard and the grievance is not redressed.

7           It is fairly stated that regarding one such grievance and on the same lines, an importer approached this Court. A judgment delivered by the Division Bench in which one of us (S. C. Dharmadhikari, J.) is a party and that judgment is reported in **2015 (325) Excise Law Time page 594 (Bom.) ( J. J. Polyplast Pvt Ltd v/s Ministry of Shipping, Mumbai).**

8           Though, that judgment covers the controversy but this Court can direct the authorities to look into the grievances of importers like the Petitioner even now. It is high-time that either the customs authority evolves a procedure by itself and in furtherance of the Facility Notice or takes back the Facility Notice

itself.

9           We clarified to the learned counsel appearing for the Petitioner that given the relationship between the Petitioner and shipping lines it is not possible to resolve contractual issues in writ jurisdiction. However, she would submit that the customs can at least be directed to look into the grievances of the importers and outlined above.

10           We do not think that we can resolve the contractual disputes. The Petitioner essentially has a contractual dispute but if several importers and over a passage of time are complaining about the working of the system which is evolved by the Facility Notice, then, surely the customs and competent authority managing the customs house at the port can look into and rather should look into these grievances. Therefore, without in any manner expressing any opinion with regard to the contractual dispute, since there are day to day and practical difficulties projected in implementing the Facility Notice, we direct the competent authority or the 2<sup>nd</sup> Respondent by himself to treat the present Petition and all annexures thereto as a

complaint or representation in writing by the Petitioner importer. The competent authority shall take a decision on the same as expeditiously as possible and within a period of two months from the date of receipt of a copy of this order. With these directions the Writ Petition is disposed off.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)