

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10366 OF 2015

M/s Nayasa Exports Pvt Ltd and Others ..Petitioners

Vs.

Union of India and Another ..Respondents

Mr. Prakash Shah a/w Ms. Neha Ahuja, Mr. Jas Sanghavi i/b
Yogesh Rohira,for the Petitioners.

Mr. Pradeep S. Jetly a/w Smt Neeta V. Masurkar and Pratik
Sexaria,for the Respondents.

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

DATE :- NOVEMBER 21, 2016.

P. C.:

The Joint Director General of Foreign Trade has passed an order on a showcause notice against the Petitioners. That is impugned in the Writ Petition directly and when we were disinclined to entertain it since there is alternate, efficacious remedy of Appeal under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992.

2 Mr.Shah appearing on behalf of the Petitioners submitted that in a show cause notice dated 9th July, 2010 and when the same was not adjudicated up to 2015, nothing was lost if an opportunity had been given to the Petitioners to appear in-person and show cause. There was a detailed reply given but on the date fixed for hearing the Petitioners could not remain present, as an advocate engaged by them was out of town. The authority claims that second notice of personal hearing was issued but there is no record of same being received. The ground on which the authority proceeded exparte appears to be a communication from the Ministry of Finance, Government of India, Directorate of Revenue Intelligence, copy of which is annexed as Exhibit-I page 65 to the affidavit in reply.

3 Mr. Jetly appearing on behalf of the Respondents supports the impugned order by contending that ample opportunities were given to remain present but the Petitioners did not avail of the same. In the absence of real prejudice the Petitioners cannot be granted a further opportunity and on that ground the impugned order does not get vitiated. Hence, it should not be set aside.

4 After having heard both sides, we find that the Respondents admit that the show cause notice issued on 9th July, 2010 could not be adjudicated till 2015 for some reason or other. The Petitioners have already submitted their reply to the show cause notice. Once it was decided to take it up for adjudication only in the year 2015, then, interests of justice demanded that the Petitioners should have been heard before an adverse order. The opportunity of personal hearing, even if the earlier date had been postponed, should have been granted in the peculiar facts and circumstances. We are of the opinion that the Petitioners were granted an opportunity on 5th June, 2015 to remain present. However, that was not availed of on the ground that the advocate was unavailable. Though, the Petitioners claim that a notice dated 11th June, 2015 scheduling the hearing on 16th June, 2015 was never received, we do not wish to enter into that controversy. As we have noted that the show cause notice remained pending for nearly five years, if one more opportunity had been extended and granted, nothing was lost. In such circumstances, without entering into the merits, we quash and set aside the impugned order.

5 It is quashed and set aside only on the ground that the Petitioners were not granted an opportunity of personal hearing. Now, the Petitioners have agreed to appear before the authority on 1st December, 2016. Let, the Petitioners so appear and if on that date they remain present, the Joint Director shall allow them to rely on such material as is permissible in law. If the Petitioners fail to appear on that date, the authority can proceed on the footing that right of personal hearing stands forfeited. Thereafter it can pass an order in accordance with law.

6 In the light of this order and agreement reached by the Petitioners before us, it would not be necessary for the authorities to issue any notice for the hearing on 1st December 2016.

7 We clarify that we have only quashed and set aside the order under challenge for want of personal hearing. We have not expressed any opinion on the rival contentions as far as merits are concerned.

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