

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION {L} NO.1630 OF 2016

Ajay Shinde

.... Petitioner

Vs.

Union of India & Others

.... Respondents

Mr. Prakash Shah i/by Ms Chitra Subba Reddy for
the Petitioner.

Ms P.S. Cardozo for Respondent Nos.2 and 3.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : AUGUST 02, 2016

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioner is seeking essentially the relief of release of a consignment meant for export.

2. The petitioner has pointed out in the writ petition that he is the proprietor of one M/s. Shruti Exports. That is operating from the address mentioned in the cause title and is engaged in the export of different kinds of consumer items. The

petitioner, for the purpose of exporting such goods, has been taking assistance of different individuals to source the goods and provide the details of foreign buyers. Upon such assistance and invention of foreign buyers and the contact established with them by the petitioner himself, transactions and deals are arrived at. That is how the petitioner arranges for export of these goods.

3. The petitioner, in para 4.3 of this petition, has set out the practice and procedure relating to exports. Since the petitioner's goods are under claim for duty drawback (export incentive), they are liable to be inspected/examined in accordance with the instructions issued by the Department. The petitioner has compiled as annexures collectively some of the circulars which provide for examination of the goods and thereafter the procedure to be followed. In para 4.5 of the writ petition, the petitioner has stated that he has in the past two years exported 27 such consignments under claim for duty drawback. In all these cases, the goods have been procured from open market and through intermediaries and who are prepared

to supply such goods for a consideration. In the 27 consignments exported, all the procedure has been duly followed, the goods/consignments were inspected and examined and export permit for clearance was issued. The petitioner also, and in tune with the same procedure, tried to export a consignment and details of which are set out in para 4.7 including the invoice number and shipping details. The petitioner's case is that the consignment was permitted to be exported by granting what is known as "Let Export Order". Thereafter, the consignment was handed over to the Airlines for transportation to Nigeria.

4. An intelligence was received, on the basis of which the second respondent suspected that narcotic drugs are concealed and being exported under this consignment of jewellery and footwear. The consignment, therefore, was held up, opened up for examination once again. This was done under a panchnama. During the course of such examination, a synthetic footwear was torn open to ascertain that no narcotic drugs are concealed therein. The petitioner's case is, nothing was found but the petitioner was called upon to appear before

the authorities. Summons was issued and the petitioner appeared before the Competent Authority. His statement was also recorded.

5. The petitioner, therefore, submits that holding of consignment serves no purpose and causes inconvenience not only to the petitioner but also to the third party-buyer. The petitioner has submitted that whatever samples are required to be drawn have now been drawn. Reports of the examination have been prepared and there are panchnamas in place. It is in these circumstances that the request to release the goods which are lying with the Department from 12-4-2016 is made.

6. Upon such a petition, an affidavit is filed. We have noted in our earlier orders in several matters of this nature the usual tendency in filing such detailed affidavits. We have impressed upon the authorities in several matters and in one of the detailed orders that, this effort really turns counter productive. The whole case of the Department is revealed at this stage itself, whereby all wrong doers are then alerted. We have

noted in the past as to how statements which are made under Section 108 of the Customs Act, 1962, are promptly retracted. Even in matters which go for adjudication after such revelations, as are made presently on affidavit, appropriate contentions are raised and based on the documents which have been produced for perusal of the parties like the petitioner. Yet, the Department goes on insisting and by filing such affidavits desire that the Court must pronounce such parties like the petitioner guilty at this stage itself.

7. We have clarified, time and again, that neither we hold up, or scuttle any investigation. If the larger public interest demands, that the consignment meant for export undergoes thorough and proper inspection and examination, then, all such steps can be taken. We are only anxious and on several occasions expressed it, that the time that is lost in all this is indeed valuable. Such delays give enough time for the parties to change and retract their positions and versions. Sometimes vital piece of evidence is lost. Therefore, the authorities should either take a decision and issue show cause notice and commence the

adjudication proceedings promptly or should take steps so that the export consignments are not withheld for an unnecessarily long duration. There are circulars in place and there is a substantive power under the Customs Act, 1962 in terms of Section 110A.

8. In the present case also, we do not know why the petitioner was compelled to move this Court.

9. It is the contention of the respondents that it is only when the petitioner establishes that he is the owner and executes a bond in the proper form with such security and conditions as the Adjudicating Authority may require that the goods can be released.

10. We express no opinion on the contention insofar as the ownership is concerned.

11. The petitioner in the writ petition as also in his affidavit in rejoinder specifically stated that the goods do not belong to him and that is why he did not sign any of the export

documents, nor did he authorize any person to do so on his behalf. The petitioner has, based on his assertions in the petition and the affidavit in rejoinder so also the oral arguments, asserted that he is the exporter of the goods. He has stated in paras 5 and 6 of the affidavit in rejoinder that the goods are exported by giving correct description and value. Since he does not have the resources for purchasing the goods, the petitioner has entered into arrangements with the suppliers and the profit earned is shared, which is a normal and acceptable trade practice. In para 6 of the affidavit in rejoinder, the petitioner states that he is the exporter of the goods. The goods have been exported after he procured them from different sources. Payments for the goods have been made by him from his bank accounts. Remittances have also been received in his bank account. Copies of the bank certificates for export realizations in respect of 14 consignments have already been submitted during the course of investigation. Since the consignment under export is procured by the petitioner and being exported by him in the name of his firm, as claimed by him, and as no other person is

claiming to be the owner of the goods, the petitioner has the *locus standi* to claim this relief and eventually its provisional clearance.

12. We do not express any opinion on the said assertions for they may have some impact on the ongoing investigation. We say nothing about the correctness or otherwise of the orders as well as the duty drawback granted in relation to the past exports. The respondents possess necessary and requisite power in law to probe and investigate even the past transactions and recover such amounts as are permissible in law. We express no opinion also on the outcome of the ongoing investigation. If the petitioner is able to satisfy the authorities with regard to his claim, as narrated and referred above, and complies with all the circulars, so also the requirement of furnishing a bond with such security and conditions, upon this, we have no doubt, that the Competent Authority would take appropriate steps and provisionally release the goods. Needless to state that neither such provisional release would confer or create any right in favour of the petitioner nor such an exercise at this stage affects

or prejudices the rights and contentions of the respondents.

13. We, therefore, dispose of this writ petition with a direction that, if an application for provisional release of the goods is made, then, in tune with the applicable policies, circulars, rules and regulations, the same shall be examined and a decision taken thereon as expeditiously as possible and within four weeks from today.

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(S.C. DHARMADHIKARI, J.)