IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1896 OF 2016

Hathway Cable and Datacom Ltd.	}	**Petitioner**
versus		
Union of India and Ors.	}	**Respondents**

Mr. Vikram Nankani - Senior Advocate with Mr. Prithviraj Choudhari and Mr.Bhupendra Singh i/b. Ms. Sharon Patole for the petitioner.

Mr. Pradeep S. Jetly for respondent nos. 1 to 3.

Mr. Sham Walve for respondent no. 4.

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

DATED :- SEPTEMBER 14, 2016

P.C. :-

We have heard both sides at some length and perused the writ petition, the annexures thereto and the affidavits placed on record. The petitioner has sought a declaration that no Customs duty is payable on the licence fee paid to the overseas licensor in connection with the import of set top boxes/smart cards and that the same attracts only service tax, which the petitioner had paid to the competent authority.

2) The writ petition is essentially on the apprehension that this stand of the petitioner is not acceptable to the Customs and the Customs, upon some investigation by the Directorate of Revenue Intelligence and at their behest are holding a *prima facie* view that the petitioner is liable to pay Customs duty. The further apprehension is that the investigations that are stated to be going on would prejudicially affect the petitioner's case that without any adjudication on this crucial and important issue, the petitioner would be coerced to pay sums towards the alleged Customs duty. It is upon such apprehensions that the petitioner entertains that we allowed the writ petition to be placed on board and called for an affidavit essentially from the Customs.

3) Apart from them, it would have been for the Directorate of Revenue Intelligence to clarify the position.

4) Since the apprehension was that the authorities under the Customs Act, 1962 would not take cognizance of the petitioner's contentions, but proceed to coerce it to pay certain sums, the affidavit clarifies in para 3 as under:-

> "3. At the outset, I most respectfully submit that the present petition is premature. I say that these Respondents are conducting an investigation. I say that no prejudice is caused to the Petitioners at the present. I say that these Respondents on conclusion of the ongoing investigations could issue a Show Cause Notice. I say that thereafter due process of law will follow. I say that the Customs Act, 1962 [for short said Act] is a complete code

> in itself and provides an aggrieved party with a mechanism for redressal. I further say that till such time the issue is adjudicated, the Petitioners will not be compelled to deposit sums. It is altogether another thing that the Petitioners of their own volition deposit sums to check escalating interest. I say that there is no imminent prejudice to the Petitioners. I say that this Honourable Court may be pleased to direct the Petitioners to participate in the ongoing investigations and submit documents requisitioned. I therefore most respectfully submit that this Honourable Court may be pleased to dismiss the petition as premature."

5) Upon such statements, which are made on affidavit and accepted as undertakings given to this court, we do not think that the petitioner's apprehensions are well founded.

6) Needless to clarify that it is not the Directorate of Revenue Intelligence to deal with the rival contentions and the element of any duty liability. It is for the competent authorities under the Customs Act, 1962 to follow that process and as enshrined in that Act. Therefore, the further apprehension that the statements in the affidavit in reply would influence the adjudicating officer also is not sound, but is without any basis.

7) The writ petition is disposed of accordingly. We clarify that while disposing of this petition, we have not expressed any opinion on the rival contentions. All contentions are left open.

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