IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14064 OF 2017

M/s. International Clearing And Shipping Agency (India) Pvt. Ltd. … Petitioner

Vs.

The Principal Commissioner of Customs (General) & Anr. … Respondents

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Mr. Ashish Kamath a/w Ms. Vinita Hombalkar i/by Orbit Law Services for the Petitioner.
Mr. Pradeep S. Jetly for Respondent No.1.

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CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 21, 2017.

P.C. :

1. The Petition challenges an order passed by the Principal Commissioner of Customs (General), Mumbai-1st respondent.

2. By this order, copy of which is at page 89 of the paper book, the said Principal Commissioner has recorded his *prima facie* satisfaction particularly under Regulation 23 of the Customs Brokers Licensing Regulations, 2013 and prohibited the petitioner from working in all sections of the Mumbai Customs Zones I, II & III pending post-decisional hearing by the competent authority.

3. The direction to surrender all Custom Passes has also been issued and that is why this matter was moved. Mr. Kamath

appearing for the petitioner stated that once the Custom Passes have to be surrendered, then, the petitioner would be out of business.

4. On this Petition when notice was issued, Mr. Jetly appeared and raised two objections. Firstly, he stated that there is post-decisional hearing and at which the petitioner can place all the facts and circumstances and seek exoneration from the charge of violation of the Regulations and/or Customs Act, 1962 itself. He can also, in addition to personal hearing, tender a written representation.

5. Mr. Jetly would submit that against the order of prohibition, as also the direction to surrender, equally, the final order after the above hearing, both are appealable and that Writ Petition should not be entertained.

6. We had indicated to Mr. Kamath on the earlier occasion and reiterated today that given the factual scenario and dispute of that nature, we are not inclined to entertain the Petition. Secondly, the post-decisional hearing is now stated to be held at Chennai for it is at the instance of that very Commissionerate that the Mumbai Zone Commissioner took the necessary steps and action. On such a hearing, the petitioner can avail of all opportunities and thirdly, when the only grievance is that the petitioner would have to surrender the passes, he can very well request the authorities, particularly at Chennai, to expedite the process. If the

grievance still persists, an Appeal can be brought before the Tribunal.

7. All that was requested by Mr. Kamath is that the impugned communication was only received on 22nd November, 2017, as would be evident from the receipt stamped by the petitioner on it. Therefore, the Custom Passes may not be seized or directed to be surrendered.

8. Even on this aspect, there is a dispute because Mr. Jetly, on instructions, states that this communication was served in April 2017 itself. Though our attention is invited to page 96 of the paper book which reiterates, according to Mr. Kamath, the above position, what we have noted is that the petitioner has ample opportunities available in law to resist the action. Secondly,the alternate and equally efficacious remedy of approaching the Customs, Excise and Service Tax Appellate Tribunal can be also availed of. In the circumstances, we do not think that the Writ Petition should be entertained.

9. We dispose of the Writ Petition with a direction that the petitioner shall be granted a personal hearing by the concerned Commissioner and equally allow it to tender written submissions or representation. If those are tendered within a period of 15 days from today, they shall also be taken on record and duly considered.

10. The petitioner is free to dispute the allegations in the show-cause notice dated 17th April, 2017 which has been issued by the Commissioner of Customs, Chennai and received by the petitioner on 26th April, 2017. The petitioner has given a reply thereto on 20th May, 2017, but it would be open for it to file an additional reply as well.

11. Since there is a prohibition against the petitioner from operating as a Customs Broker and which has come into effect now, more so after surrender of the passes, we would expect the Principal Commissioner at Chennai to expedite the proceedings and conclude them as expeditiously as possible and in any event within a period of two months from the date of the petitioner's appearance.

(SMT. BHARATI H. DANGRE, J.) **(S. C. DHARMADHIKARI, J.)**