IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7390 OF 2018

Cubex Tubings Limited ... Petitioner

Vs

1 The Assistant Commissioner of
State Tax INV)D-002) & Ors. ... Respondents

Mr. Dhopatkar i/b Santosh Vhatkar & Associates for the Petitioner.

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

TUESDAY, 17TH JULY, 2018

P.C. :

1 The petitioner has approached this Court complaining that the consignment, which was loaded on a vehicle, was intercepted during the course of its transport from the petitioner's office and factory to the State of Gujarat. The petitioner claims that they are manufacturers of copper and copper alloy products. They are holding the necessary Central Excise registration till migration to Goods and Services Tax (GST). They are also admitting that the product is covered by

Chapter Heading 74 and the petitioners are holding a GST identification, details of which are set out in their letter Exhibit-F page 30 of the petition addressed to the Assistant Commissioner of State Tax, Solapur. The petitioners claim that they are involved in the manufacturing activity for past thirty years and supply the goods all over the country, specially Maharashtra, Gujarat, Uttar Pradesh, West Bengal, Karnataka, Andhra Pradesh and Chattisgarh etc. They claim that they are all duty paid goods and they have been dealing with such goods. The petitioners prepared the necessary bills and handed over the material for being transported to the concerned factory/establishment in the State of Gujarat. The goods were handed over to the transporter. The documents were generated. The transporter ignored to generate the documents at its end and cleared the goods for delivery to the customer. That is how the petitioners complain that the consignment was intercepted and because the vehicle is detained and the goods are seized that they are unable to comply with their obligations during the course of the business and their assurances to the ultimate user. The material be, therefore, released, otherwise the consignees export will be hampered and they will suffer huge losses. An alternate request is made that the vehicle can be detained, but at least the goods be released.

2 Mr. Dhopatkar appearing for the petitioners does not dispute that the power to detain and seize and release goods and conveyances in transit is conferred by section 129 of the Goods & Service Tax Act, 2017. That sub-section (1) of section 129 confers an overriding power and the authorities can proceed to detain or seize and equally after detention or seizure, release the goods. However, there is a complete procedure, in the sense, the release can be directed provided the concerned person complies with clauses (a), (b) and (c) of sub-section (1) of section 129. Thus, to the satisfaction of the officer detaining the seizing the goods, the goods can be released. It is common ground before us that the seizure has not been challenged. Equally the detention of the vehicle has also not been challenged. A notice has been issued and by sub-sections (3) and (4) of section 129, there is a complete mechanism provided to obtain release of the goods. There is no reason why the petitioners should rush to this Court in its writ jurisdiction and at this stage. We do not find the petitioners to be remediless or in such a situation that none is taking cognizance of the request that is made.

3 We are not in agreement with Mr. Dhopatkar that the communication, copy of which is at pages 30 & 31 of the paper-book Exhibit-F, is enough to obtain release of the goods. By such communication alone we do not think that the officers are obliged to release the goods. It is very clear that insofar as these proceedings are concerned, the sub-sections of section 129 is a complete remedy. The remedy can be availed of and the release obtained provided there is readiness and willingness to comply with the conditions imposed while obtaining the release of the goods. The conduct of the petitioner shows that it is not ready and willing to comply with these conditions, but desires that this Court should interfere and direct unconditional release of goods. We are not inclined to agree with Mr. Dhopatkar given that there are disputed about questions of fact.

4 In the circumstances, the petitioner is aware of the consequences which would follow post such detention and seizure and if it still desires to approach the concerned official with a proper request and express its readiness and willingness to comply with all the conditions permissible in law, we have no

doubt in our mind that the release would be granted.

5 In the teeth of an alternate, equally efficacious remedy, we do not think that we should interfere in this writ petition.

6 We do not wish to start a trend which was prevalent during the earlier regime. On most occasions, people would rush to this Court and invoke its extra ordinary, discretionary and equitable jurisdiction to obtain release of the goods or consignments which were detained or seized, but without setting out full details which resulted in the proceedings under the Act being frustrated and defeated. No short-cuts should now be resorted to and given the comprehensive nature of the legislation. In such circumstances, the Writ Petition is dismissed.

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

Syed Rehmat Pasha

Digitally signed by Syed Rehmat Pasha
Date: 2018.07.30 14:26:45 +0530