IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3336 OF 2018

S. S. Offshore Pvt. Ltd. } Petitioner
versus
The Union of India and Ors. } Respondents

Mr. Prakash Shah i/b. M/s. PDS Legal for the petitioner.

Mr. Pradeep S. Jetly for the respondents.

CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.
DATED :- MARCH 27, 2018

P.C. :-

1. The petitioner impugns an interim order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

2. By the order under challenge, the CESTAT has directed the petitioner to abide by the condition imposed on it. The condition imposed by the tribunal in the impugned order and which is challenged before us pertains to furnishing of a bank guarantee. The bank guarantee is of Rs.10 crores. The operative part of the order reads as under:-

> "5. Taking into consideration the above guidelines, bank guarantee should cover entire differential duty, redemption fine and penalties. In the present case value of the goods estimated by the customs authority is Rs.41.45 crore, accordingly differential duty amount (after payment of duty on the declared value) come to Rs.3.62 crores. By taking this differential duty, we are of the view that total

> amount as per the guidelines given in para 2.2 of Circular dated 16-8-2017 should be approximately not more than Rs.10 Crores. Accordingly, we hold that goods can be provisionally released by taking bond of 100% of the estimated value i.e. 41.45 crores and accepting bank guarantee of Rs.10 Crores. Appeal is disposed of in the above terms. Early hearing application also stands disposed of."

3. Ordinarily this court is loath and reluctant to interfere in such interim orders, but what is projected before us is that the seizure will cripple and particularly affect the operations of the Oil and Natural Gas Commission. The said Commission can deploy vessels once the said person and who places his vessels at the disposal of the said Commission obtains a certificate from the authority, namely, a certificate from the Directorate General of Hydrocarbon. The petitioner, therefore, questions the seizure effected and prays that the vessel be released. However, the Deputy Commissioner passed an order determining the value of the vessel "Sagar Fortune" at Rs.41.45 crores. The petitioner challenges this order on the ground that it imposes onerous, arbitrary and excessive condition. It is that order of the authority which was then questioned before the tribunal. Since the order under challenge is an interim order, a writ petition is held to be maintainable.

4. We extensively heard both sides on the earlier occasion. Mr.Jetly had argued before us that the petitioner was granted

relief. The condition was modified and by directing it to furnish a bond of 100% of the estimated value i.e. Rs.41.45 crores and furnishing a security in the form of a bank guarantee of Rs.10 crores. The bank guarantee amount in the order-in-original is to the extent of 30% of the estimated value. Mr. Jetly would submit that we should not interfere with the impugned order.

5. After hearing Mr. Shah at great length on the earlier occasion, we passed the following order:-

> 1. After this writ petition was heard for some time and during the course of the arguments, our attention was invited to the order passed by the tribunal in the case of *Hal Offshore Ltd. V. Commissioner of Customs, Mumbai* [**2014(303) ELT 119**] and the view taken in the case of *Raj Shipping Agencies vs. Commissioner of Customs, Mumbai* [**2015(329) ELT 913**] we inquired from Mr. Jetly as to whether the Revenue has challenged these orders of the tribunal in the higher court. The tribunal's orders, as is now stated by Mr. Jetly, on instructions, are challenged by the Revenue before the Hon'ble Supreme Court and the civil appeals against these orders are admitted being Civil Appeal Nos. 10592-10595 of 2013 filed by the Commissioner of Customs (Import), Mumbai. Against these final orders of the Tribunal, another set of appeals, being Civil Appeal Diary No. 15734 of 2016 has been filed and the Hon'ble Supreme Court has issued notice on these civil appeals. There are connected Civil Appeal Nos. 8869-8871 of 2013 as well pending in the Hon'ble Supreme Court.
>
> 2. In these circumstances, we called upon Mr. Sridharan learned senior counsel appearing for the petitioner to take instructions and file an affidavit incorporating therein an undertaking of the petitioner that the subject seized vessel would be released to the petitioner only for the purpose of the fulfillment of their contractual obligation with the Oil and Natural Gas Corporation, the vessel will not be moved out of the jurisdiction of the Indian authorities/competent courts in India and that in the event there is an

adjudication order passed by the competent authority, then, subject to the legal rights of the petitioner, they would abide by the same. Mr. Sridharan, on instructions of the petitioner's representative present in court, states that on or before 23rd March, 2018, an affidavit incorporating the express undertaking in the above terms would be filed in this court. A copy thereof will also be served on Mr. Jetly. It is only in the event such an affidavit is filed and copy duly served that we would consider the contentions and particularly the request to delete the condition imposed by the tribunal and modify the order under challenge to the extent prayed by the petitioner. Else and in the absence of such an affidavit-cum-undertaking, the writ petition would stand dismissed without any further reference to the court.

3. List the matter for "passing orders" on 26th March, 2018.

6. In terms of the order passed by this court, the petitioner has now furnished an undertaking. The undertaking very clearly says that this is a platform supply vessel. The platform supply vessel is an Indian flag vessel. The petitioners have been awarded a contract by the ONGC for the platform supply vessel and it is used in offshore exploration operations. Under the notification of award dated 1st March, 2018 issued by the ONGC, the platform supply vessel is to be put to use in connection with the offshore exploration operations for a period of three years in the designated area and will be deployed as per the directions of the ONGC. The signatory to this affidavit-cum-undertaking has been duly authorised by the petitioner company. On such authority and expressly conferred, he gives the following undertakings:-

> “a. The platform supply vessel 'Sagar Fortune' will be used only for discharge of the contractual obligations with ONGC and will not be used or deployed/used for any other purpose without the permission of this Hon'ble Court;
>
> b. That the platform supply vessel 'Sagar Fortune' will not be taken out of the jurisdiction of the Indian authorities and Courts; and
>
> c. That the Petitioners, subject to such remedy, as may be available to the Petitioners in law including filing of appeal and seeking stay, shall abide by the adjudication order.”

7. In the light of these undertakings, we are of the firm opinion that in the facts and circumstances of the case and only not to cause a breach of the contractual obligations as also to allow the petitioner to argue its case on merits as and when a show cause notice is issued, the seized vessel can be released. Each of these undertakings and reproduced above are accepted as undertakings given to this court. In these circumstances, we modify the order of the tribunal. We modify it only to the extent of furnishing the bank guarantee in the sum of Rs.10 crores. That bank guarantee need not be furnished, but the vessel should be released provisionally to the petitioner on the express undertakings given to this court. This order shall not be treated as a precedent for cases of this nature.

8. The writ petition is disposed of by clarifying that insofar as the merits of the case are concerned, this court has not expressed any opinion.

9. Mr. Jetly, on instructions, submits that now the show cause notice would be adjudicated in accordance with law and a reasoned order will be passed on hearing the petitioner.

(PRAKASH.D.NAIK, J.) (S.C.DHARMADHIKARI, J.)