Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5945 OF 2018

Prashant S. Bedmutha ...**Petitioner**

Versus

The Union of India & Ors. ...**Respondents**

Mr. N.D. George, a/w Mr. Viraj Bhate, i/b PDS Legal, for the Petitioner.

Mr. Vijay Kantharia, a/w Mr. Ram Ochani, for the Respondents.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 1 November 2018

ORDER :

1. This Petition under Article 226 of the Constitution of India seeks implementation of the order dated 22nd November 2016 passed by the Commissioner of Customs (Appeals) under Section 128A of the Customs Act, 1962 ("***the Act***").

2. The above order dated 22nd November 2016 set aside the order dated 22nd August 2016 of the Additional Commissioner of Customs. The above order dated 22nd August 2016 had enhanced the value of the imported goods and also confiscated it with an option of redeem the same on payment of fine of Rs. 18,00,000/-.

3. It is the Petitioner's grievance that inspite of the order dated 22nd November 2016 of the Commissioner of Customs (Appeals), the Respondent is not implementing the same. Thus, the prayer is to release the imported goods in terms of the order dated 22nd November 2016.

4. Shri. Kantharia, the learned Counsel for the Respondent, invites our attention to the Affidavit dated 17th October 2018 has been filed on behalf of the Respondents by one Dr. Satish V. Shitole, Deputy Commissioner of Customs NS-III. In the Affidavit, it is pointed out that the Container Freight Station namely All Cargo Logistic Limited, in which the goods

are stored had auctioned the goods on 25th October 2016 for non removal of the warehoused goods, after notice to the Petitioner. This was much before the order dated 22nd November 2016 in Appeal was passed. Shri. Kantharia also submits that M/s. All Cargo Logistic Limited are not made parties to the proceedings and the entire issue gives rise to disputed question of fact. Thus, it is submitted that this Petition should not be entertained.

5. Shri. George, the learned Counsel appearing in support of the Petition, submits that once the Appeal has been filed, there is automatic stay of the order under challenge in Appeal or in any event, a stay in recovery proceedings. In support reliance is placed as Section 129E of the Act. It is further submitted that in view of Section 126 of the Act, on confiscation the goods vests in the Customs. Therefore, it was the duty and responsibility of the Customs to take charge of the goods and ensure that the goods are not auctioned till the final disposal of the Appeal.

6. From the perusal of the record, we find that the subject goods were imported in March, 2016. The goods continued to remain not cleared or warehoused for a period in excess of 30 days. Thus, the container freight station, All Cargo Logistic Limited had by letters dated 19th April 2016 and 5th May 2016 informed the Petitioner that in the absence of the imported goods being cleared and/or warehoused, it would dispose of the imported goods by auction. On record, there is no response by the Petitioner to the Container Freight Station-All Cargo Logistic Limited about pending Appeal. Nor did the Petitioner make any attempt to warehouse the goods and/or provisionally clear the goods pending final assessment. These notices were issued by M/s. All Cargo Logistic Limited before the assessment order was passed. Further the Petitioner was claiming to be the owner of the goods and had at no time after filing of the Appeal approached All Cargo Logistic Limited not to auction the goods for non removal of the same. The Customs cannot be held responsible for the auction of the goods by the Container Freight Station-All Cargo Logistic Limited after issue

of the notice to the Petitioner, which the Petitioner chose not to respond. Besides even if we assume the contention of the Petitioner that there was a stay of the assessment order dated 22nd August 2016 in view of the Appeal filed by the Petitioner (without accepting the same) yet it would be the obligation of the importer to protect the goods from auction till disposal of the Appeal. This fact of pending Appeal resulting in automatic stay was also not brought to the notice of All Cargo Logistic Limited prior to the auction. Further, Section 126 of the Act will not apply in the present facts as the goods are still available for redemption by the importer. Prior to amendment of Section 125 of the Act with effect from 2018, there was no time limit to redeem the goods in the absence of the same being provided in the order of confiscation.

7. Therefore, in the above facts, we are not inclined to entertain this Petition.

8. Accordingly, the Petition is dismissed with no order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**