

R.M. AMBERKAR  
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 10198 OF 2018**

M/s. Harsiddh Shipping Agency .. Petitioner

*Versus*

Union of India & Ors. .. Respondents

- .....
- Dr. Sujay Kantawala a/w Brijesh Pathak, Kartik Vig and Poorva Patil for the Petitioner
  - Mr. Pradeep S. Jetly for the Respondents
- .....

**CORAM : AKIL KURESHI &**  
**M.S. SANKLECHA, JJ.**

**DATE : NOVEMBER 22, 2018.**

**P.C.:**

1. Heard.
2. Rule. Rule is made returnable forthwith and by consent of the parties, the matter is taken up for final disposal today.
3. The petitioner is a registered partnership firm. The petitioner is registered as Customs broker. The petitioner has prayed for direction to the respondents to remove "Alert" inserted against the petitioner in its electronic system. The petitioner has also challenged several show cause notices

issued by the Customs Authorities calling upon the petitioner why certain late fine charges with penalty should not be recovered from the petitioner.

4 Briefly stated, the facts are as under:-

4.1 As a Customs broker, the petitioner enables the importers to file necessary documents and declarations before the Customs Authorities at the time of import of goods into India. The case of the department is that in the process of so doing, the petitioner had committed certain deliberate breaches of rules. The allegation of the department is that in order to avoid late fine charges, the petitioner was availing 'Regular Bill of Entry' as "Advance Bill of Entry". The petitioner, on behalf of the importers, though filed the Bills of Entry late but showed in the system as if it was filed as "Advance Bill of Entry". As a result, the Customs' system treated these Bills of Entry as advance and assessment was completed accordingly. According to the department, the petitioner in the process avoided late payment charges.

4.2 According to the department, several other Customs brokers had employed the same modus operandi. The department detected such irregularities and estimated that the late payment charges in all to the tune of approximately Rs. 9 Crores became recoverable. So far as the petitioner is concerned, this amount is estimated at Rs. 89 Lacs.

4.3 The department, it appears, took up the issue with the concerned Custom brokers. Many of those who were informed, paid up the late charges without protest. The petitioner, however, was unmoved. The department, therefore, placed the name of the petitioner agency in its electronic system under "Alert". Subsequently, the department also issued as many as 18 show cause notices in the month of May 2018 and thereabouts calling upon the petitioner to show cause why certain late fine charges under Section 46 of the Customs Act, 1962 should not be recovered with penalty under Section 117 of the said Act.

4.4 The petitioner has, under such background, prayed for reversal of the 'Alert' against the petitioner and has also

challenged the show cause notices.

5. Learned counsel for the petitioner submitted that by virtue of placing the name of the petitioner in the "Alert", the department is preventing the future clearances of the petitioner unless and until the petitioner pays up the entire demand of Rs. 89 Lacs. He submitted that this action of the department is without authority of law. He pointed out that the demand is yet to be adjudicated. The petitioner is contesting the demand. There cannot be a coercive recovery of the demand even before the same has been adjudicated. Learned counsel further submitted that even if there is any law for payment of late fine, statute vests the competent authority the discretion of reducing or waiving the same. He submitted that in the present case, all the late filing of Bills of Entry were regularized by the competent authority. In the context of the challenge to show cause notice, learned counsel submitted that the contents of the notice would suggest that the authority has prejudged the issue.

6. On the other hand, learned counsel for the department submitted that the petitioner had adopted an irregular procedure to avoid late fine charges. When it was detected, the petitioner was asked to pay up the same. According to him, the action of the department is just and proper. He further submitted that the petitioner has not filed reply to the show cause notices, instead, he has directly challenged the same before the High Court.

7. In so far as the challenge to the show cause notices is concerned, we are not inclined to interfere. The allegations made in the show cause notices and the petitioner's possible defence as it emerges from the averments made in the Writ Petition need to be adjudicated by the competent authority. In a Writ Petition, we would be extremely slow in striking down the show cause notice unless the petitioner demonstrates lack of jurisdiction or breach of natural justice or some such defect which goes to the very root of the matter. In the present case, we do not notice any such ground to quash the notices in exercise of writ jurisdiction. The petitioner must reply to the show cause notices and

cooperate in the adjudication thereof. The petitioner has so far not filed any reply. If the petitioner wishes, such replies may be filed latest by 10.12.2018. The petitioner shall cooperate with the adjudication of such notices.

8. However, in so far as the action of the department in placing the name of the petitioner in the 'Alert' is concerned, the issue stands on a different footing. During the course of the arguments, in response to our queries, learned counsel for the department clarified two issues. Firstly, the action of the department in placing the name of the petitioner in the 'Alert' was on account of unpaid late fine charges which are the subject matter of the show cause notices. Secondly, the consequences on account of the name of the agency being placed in the 'Alert' list would be that all future clearances of such agency would not be made unless the amount demanded by the department is paid up. In other words, in the present case, unless and until the petitioner pays up the entire amount of Rs. 89 Lacs, future clearances of the Bills of Entry filed by the petitioner would not be permitted. In our opinion, this would be wholly impermissible. The amount

demanded by the department and the recovery of which is made a precondition for clearing the future Bills of Entry of the petitioner is the same for which the department has issued show cause notices to the petitioner calling upon the petitioner why such demands should not be confirmed. On the other hand, the department seeks recovery of such amount coercively by blocking the petitioner's future clearances. Obviously, there cannot be recovery coercively made even before the demand is confirmed.

9. For such reasons, the respondents are directed to delete the name of the petitioner from the 'Alert' list.

10. The petition is disposed of in the above terms. We have not expressed any opinion on rival contentions about the petitioner's liability to pay late fine charges or being visited with penalty. The adjudicating Authority shall decide the issues independently on the basis of the material that may be brought on record.

**[ M.S. SANKLECHA, J. ]**

**[ AKIL KURESHI, J ]**