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

WRIT PETITION NO. 4693 OF 2018

PNP Polytex Pvt. Ltd., .. Petitioner.
v/s.
The Union of India & Others .. Respondents.

Mr. Naresh Jain with Ms. Neha Achliya i/b. Agrud Partners, for the Petitioner.
Mr. Pradeep S. Jetly, for the Respondents.

CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.
DATE : 17th OCTOBER, 2018.

P.C:-

This Petition under Article 226 of the Constitution of India, seeks the following prayer:-

> *" this Hon'ble Court be pleased to issue writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing the Respondent No.2, their subordinate servants and agents to forthwith reimburse the demurrage and detention charges of Rs.2,19,01,902/- along with interest as applicable, to the Petitioners."*

2 It is the Petitioner's grievance that Petitioner had to bear the demurrage charges by making payment to Central Warehousing Corporation of India, in respect of its imported goods. This payment of demurrage charges, according to the Petitioner, arose on account the malafide action on the part of the Respondent-Revenue in not accepting

the transactional value declared of goods imported in February, 2013. This resulted in the Petitioner not being able to clear its imported goods from the containers stored in the Container Depot. Further, it resulted in also filing an appeal from the order of the Commissioner of Customs to the Customs, Excise & Service Tax Appellate Tribunal (the Tribunal). By an order dated 14th May, 2013, the Tribunal upheld the Petitioner's contention in respect of the correct transactional value being one declared by it. In spite of the above, it is submitted that the Respondent took over three months before allowing the release of the goods as it was in the process of filing an appeal to the Supreme Court. It is this delay which resulted in the Petitioner having to suffer the demurrage charges on account of the unreasonable and mala-fide attitude on the part of the Officer of the Respondent-Revenue. Thus, it seeks to recover the demmurage charges from the Revenue.

3 In support, learned Counsel for the Petitioner relied upon the Circular No. 42 of 2001 dated 31st July, 2001 issued by the Central Board for Excise Customs to point out that no intimation was given by the Customs with regard to the option available to store the goods under Section 49 of the Act and/or doing provisional assessment as the clearance would take time. It is submitted that if this was pointed out, the Petitioner could have opted for the aforesaid actions and not suffered demurrage charge. Further, attention is also drawn to the decision of the Apex Court in ***Mumbai Port Trust v/s. Shri Lakshmi Steels and Others 2017 SCC Online SC 818*** to contend that although it is held in the above case, that even if the importer is not at fault, it would still be the importer who would be liable to pay demurrage charges, unless the conduct of the Officers of the Revenue, is mala-fide.

4 We are of the view that the mere fact that the Respondent do not release the goods as they were in the process of filing an Appeal to the Supreme Court, would not by itself lead to the conclusion that the decision was mala-fide. All this is matter of evidence and can be best adjudicated before the Civil Court by leading evidence. It requires determination of factual issues.

5 In the above view, we are not inclined to entertain the Petition. Thus, the remedy, if any, available to the Petitioner, is to file a suit in a Civil Court where above aspect can be considered.

6 However, we make it clear that the time spent in bona fide prosecuting this Petition, would be excluded by virtue of Section 15 of the Limitation Act, 1963, if the Respondents do raise a plea of limitation.

7 Accordingly, **Petition dismissed**. No order as to costs.

(RIYAZ I. CHAGLA,J.) **(M.S.SANKLECHA,J.)**