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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9968 OF 2019

Vishal Bhavsar .. Petitioner
Vs
The Union of India and others .. Respondents

Mr.Prakash Shah a/w Mr.Jas Sanghavi i/b PDS Legal, for the Petitioner.
Mr.Pradeep S.Jetly a/w Mr.J.B.Mishra, for Respondent Nos.1 and 3.
Mr.Mohit Prabhakar a/w Mr.Dhaval Patil, Mr.Karan Dhawan i/b M/s.K.Ashar & Co., for Respondent No.5.

CORAM : M.S.SANKLECHA &
NITIN JAMDAR, JJ.
Date : 20 November 2019.

P.C. :

This Petition under Article 226 challenges the communication dated 4 April 2019 passed by Respondent No.3 i.e. Commissioner of Customs under section 28(9A)(a) of the Customs Act, 1962 (the 'Act'). Besides, at the hearing of the Petition for admission, the Petitioner pointed out that his applications dated 9 January 2019 and 16 April 2019 seeking relief in regard to the abandonment of five containers of imported goods in terms of provisions of section 23(2) of the Act, have not yet been disposed of and therefore, seeks early disposal of the applications.

2. Mr.Shah in support of the Petition submits that provisions of section 28(9A)(a) of the Act would not apply in the facts of the present case. This for the reason that there has been no order passed in their own case which would warrant keeping the present proceedings in abeyance. Moreover it is submitted that the issue otherwise stands covered according to the Petitioner, by the decision of the jurisdictional High Court.

3. Mr.Jetly, learned counsel appearing for the Respondents states that the impugned communication/ order dated 4 April 2019 was passed on the basis of an order in the case of one M/s.Sahayadri Starch and Industries Pvt. Ltd. by the Customs, Excise and Service Tax Appellate Tribunal. The Revenue has challenged the above order of the Tribunal in this Court by filing an appeal.

4. We find that the impugned communication dated 4 April 2019 does not reflect / indicate the basis for exercise of powers under Section 28(9A)(a) of the Act. Therefore, unable to fathom the reasons for keeping the present proceedings in abeyance.

5. Mr.Jetly learned Counsel for the Revenue very fairly does not dispute the above position. Thus, the impugned communication dated 4 April 2019 is set aside.

6. The Commissioner of Customs (Import), Respondent

No.3 shall in the peculiar facts of this case consider the Petitioner's representation, to be filed within one week (from the date this order is uploaded) and pass an appropriate order.

7. So far as the Petitioner's applications dated 9 January 2019 and 16 April 2019 are concerned, the Respondent No.3 will dispose of the same as expeditiously as possible within a period of three weeks from today. We are of the view that the Commissioner of Customs would make an endeavour to dispose of the application as quickly as possible. Needless to state that the principles of natural justice would be followed while disposing of the Petitioner's applications dated 9 January 2019 and 16 April 2019.

8. Petition disposed of in above terms. All contentions are left open.

(NITIN JAMDAR, J.) *(M.S.SANKLECHA, J.)*