IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13646 OF 2018

D.K. Trading Co. .. Petitioner

v/s.

Union of India & Ors. .. Respondents

Dr. Sujay Kantawala a/w Mr. Anupam Dighe, Ms. Chandani Tanna I/b India Law Alliance for the petitioner
Mr. Pradeep S. Jetly a/w Mr. Devesh Tripathi for respondent nos. 1 to 4
Mr. Ashish Agarkar I/b Mr. Omkar M. Kulkarni for respondent no.5

CORAM : M.S. SANKLECHA &
M.S. SONAK, J.J.

DATED : 9th JULY, 2019

P.C.

1. This petition under Article 226 of the Constitution of India challenges;

(a) A communication dated 4th December, 2018 issued by the Specified Officer, Arshiya Ltd. – respondent no.3 at the instance of the Commissioner of Customs – respondent no.2 releasing an export shipment on provisional basis; and

(b) The seizure memo dated 15th April, 2019 by the respondent no.3 – The Specified Officer, Arshiya Ltd. - Free Trade Warehousing Zone seizing the glass beads meant for export under shipping bill dated 23rd August, 2018.

Both the aforesaid communications have been issued under the Customs Act, 1962 (the Act).

2. The grievance of the petitioner is that they have filed shipping bill for export of glass beads (said goods) on 23rd August, 2018. The said goods have not been assessed till date resulting not only in the petitioner not fulfilling its export obligations but likely to result in cancellation of the export shipments, in view of the delay. It is further submitted that the impugned communication dated 4th December, 2018 at the instance of the respondent no.2 – Commissioner of Customs granting a provisional release of the said goods is completely without jurisdiction in as much as prior to the order dated 4th December, 2018 there was no seizure of the said goods. It is further submitted that the seizure memo dated 5th April, 2019 is not justified in the facts of the present case and the goods should be assessed and be allowed to be cleared for export as expeditiously as possible. In any case, it is submitted that the respondents be directed to issue a show-cause notice and adjudicate the same at the earliest.

3. We are of the view that the impugned order dated 4th December,

2018 allowing provisional release of the said goods for export was under Section 18 of the Act. It is not correct to state that such provisional release of the goods can only be done consequent to a seizure of the said goods under Section 110 of the Act as in this case it was provisional assessment of the shipping bills under Section 18 of the Act. The impugned order dated 4th December, 2010 is not one made under Section 110A of the Act as submitted by the petitioner but it is an order of provisional assessment of the shipping bill dated 23rd August, 2018. However, the impugned order dated 4th December, 2018 stands superseded / abandoned by the Revenue in view of the seizure of the said goods by order dated 15th April, 2019 under Section 110 of the Act. Therefore, we formally set aside the order dated 4th December, 2018 allowing provisional assessment of the shipping bill dated 23rd August, 2018 filed by the petitioner.

4. Mr. Jetly, learned Counsel for the Revenue states that the investigations are in progress and it would not be possible for them to expedite the issue of show-cause-notice. The investigation itself may take a long time before a show-cause notice can be issued. However, in the meanwhile, it is submitted by the Revenue that the Commissioner of Customs, Nhava-Sheva (the Adjudicating Authority) would consider the petitioner's request for provisional release of the said goods under

Section 110A of the Act. Needless to state that such order under Section 110A of the Act would be passed after hearing the petitioner with regard to the terms and conditions of the provisional release of the said goods, pending issue of show-cause notice and adjudication thereof. We accept the above submission on behalf of the Revenue, as it would address the issue of the petitioner as well ensure the protection of the Revenue's interest.

5. Dr. Kantawala, learned Counsel appearing for the petitioner states that as and when the Commissioner of Customs calls them for hearing in regard to the provisional release of said goods under Section 110A of the Customs Act, the petitioner would attend the same and make the submissions for provisional release of the said goods without any conditions.

6. Mr. Jetly, on instructions, states that the order on provisional release of the said goods under Section 110A of the Act will be passed within a period of three weeks from today. This statement is accepted.

7. Petition disposed of in the above terms.

(M.S. SONAK, J.) **(M.S. SANKLECHA, J.)**