IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11898 OF 2019

Dry Nut Enterprises. ... Petitioner.
V/s.
Commissioner of Customs, Import. ... Respondents.

Mr.Chirag Shetty i/b. H.R.Shetty & Associate for the Petitioner.
Mr.Pradeep S. Jetly with Mr.J.B.Mishra for the Respondent.

CORAM : NITIN JAMDAR AND M.S. KARNIK, JJ.

DATE : 7 January 2020.

P.C. :

The Petitioner is aggrieved by the inaction of the Respondent authority of not releasing the goods which have been imported by it under four consignments.

2. The Petitioner imported four consignments of Areca Nuts from Sri Lanka within the period from 1 March 2003 to 18 March 2003. According to the Petitioner, the goods were covered by the benefits conferred by the Indo-Sri Lanka Free Trade Agreement. An investigation was launched by the Directorate of Revenue Intelligence, Nhava Sheva Unit in respect of the said goods on an

allegation that the goods, though imported claiming the benefit of the Indo-Sri Lanka Treaty, they were not originating from Sri Lanka. A show-cause-notice was issued on 10 July 2018. After the Petitioner submitted its reply, the Respondent, on 28 March 2019, dropped the proceedings issued pursuant to the show-cause-notice. The Petitioner thereafter made various representations to the Respondent to release the goods as the proceedings were dropped, however, since there was no response, the Petitioner has filed the present petition.

3. Heard Mr.Chirag Shetty for the Petitioner and Mr.Pradeep Jetly for the Respondent.

4. Mr.Shetty, the learned counsel for the Petitioner contended that as provided under section 47 of the Customs Act, 1962, a methodology is laid down for clearance of goods for home consumption and since there is no impediment in the way of the Respondent to release the goods having dropped the proceedings, the goods should have been released. Mr.Shetty relying upon the decision of the Supreme Court in the case of *Union of India v. Kamlakshi Finance Corporation Ltd.*[1] submitted that a matter of discipline, the authorities should release the goods.

5. Mr.Jetly, the learned counsel for the Respondent contended that an appeal has been filed against the order dated 28

1 1991 (55) ELT 433 (SC)

March 2019 and there are various contentions which are being agitated in the said appeal and, therefore, goods cannot be released.

6. When this petition had come up on board on 26 November 2019. the assertion of the learned counsel for the Petitioner was noted that the Respondent- Revenue had not even filed an application for stay in the pending appeal. Liberty was granted to the Petitioner to amend the petition to that effect which amendment has been carried out. That day, the grievance of the Petitioner that none had appeared for the Respondent in spite of service was also noted. To give one more opportunity to the Respondent to remain present, the petition was adjourned. On 3 December 2019, the petition was adjourned at the request of the learned counsel for the Respondent.

7. There is no dispute that in the normal circumstances, the Petitioner's goods will be entitled to be cleared under section 47 of the Act. What is being put forth by the Respondent is pendency of appeal. We have not been shown any statutory provision that pendency of appeal by itself would amount to a stay or mere pendency of appeal without even moving any application for stay would mean that the authorities need not to take any steps under section 47 of the Act. In the present case, the Respondent has not even filed an application for stay in the pending appeal. The fact that the assertion of the Petitioner that the Respondent has not filed

any application for stay was noted by us in the order passed on 26 November 2019 itself. Yet, no application for stay has been moved by the Respondent. We are, therefore, of the opinion that the Petitioner is entitled to direction to the Respondent to take steps as per section 47 of the Act for clearance of the goods.

8. In these facts and circumstances of the case, we direct the Respondent to take necessary steps as envisaged under section 47 of the Act for clearance of the goods in question within a period of six weeks from today. Needless to state that if there is any judicial order passed in the appeal granting stay to the order-in-original dated 28 March 2019 during this period, then this mandate would cease to operate.

9. Writ petition is accordingly disposed of in the above terms.

(M.S. KARNIK, J.) (NITIN JAMDAR, J.)