

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5846 OF 2021**

M/s. Durga Bearings (Mumbai) Pvt. Ltd.
Through its Director Mr. Deepak Sultania .. Petitioner
Vs.

Union of India and ors. .. Respondents

Mr. Parth Singh i/b. Saghai Manan Kuldeep for petitioner.
Mr. J.B. Mishra and Ms. Maya Mujumdar for respondents.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: OCTOBER 26, 2021

P.C. :

1. This writ petition dated January 7, 2021 seeks direction to the Deputy Commissioner of Customs, Group-5, Jawaharlal Nehru Customs House to consider the representations dated July 14, 2020 in respect of two Bills of Entry dated June 26, 2020 and July 2, 2020. It is claimed in such representations that because of the national lockdown arising out of Covid-19 w.e.f. March 24, 2020, the staff of the petitioning company could not come from long distance in the absence of transport facility to join work and that the petitioning company was also not aware of arrival of the shipments at the port on April 12, 2020 and April 21,

2020, which resulted in delay in filing of the Bills of Entry. A prayer was, therefore, made to condone the delay.

2. Although, the writ petition could have been disposed of on the first day the same was moved having regard to the nature of relief claimed by the petitioning company, this Court directed the parties to exchange their affidavits. A reply affidavit has been filed by the Commissioner of Customs. Paragraph 12 of the reply affidavit being relevant is set out below: -

“12. With reference to paragraph 5(h) of the petition, I say that since this Customs House was working throughout the lockdown period it was duty of the Petitioner to file the Bills of Entry within time limit prescribed by Notification. Moreover, they need not come to office for filing the Bills of Entry. It can be filed online from their office through ICEGATE. Hence, question of condonation of delay and waiver of the late filing penalty didn't arise.”

3. If indeed the customs office was in functional mode throughout the lockdown period, it has not been shown from the said affidavit-in-reply as to why, despite receipt of the representations of the petitioner dated July 14, 2020 on

July 15, 2020, disposal of the representations in accordance with law was not effected despite obligation cast by the second proviso to sub-section (3) of Section 46 of the Customs Act, 1962. That would have been the proper course of action, and the cause of action for presenting this writ petition may not have arisen. Unfortunately, that course was not followed.

4. Be that as it may, we do not propose to comment any further on the omission and/or remissness of the respondents in failing to dispose of the representations dated July 14, 2020. In our considered opinion, interest of justice would be sufficiently served if the Deputy Commissioner of Customs (to whom the representations dated July 14, 2020 are addressed) is directed to consider the same independently and with an open mind, without in any manner being influenced by the contents of the reply affidavit referred to above. The Deputy Commissioner of Customs shall bear in mind that the shipments had arrived within a month of the national lockdown being announced and at least till the end of the year, normalcy was not

restored in Maharashtra. There being special circumstances prevailing in the nation for which even the Supreme Court of India by its order passed in a *suo motu* Public Interest Litigation had suspended the period of limitation, the Deputy Commissioner of Customs ought to proceed to consider the representations bearing in mind the situation prevailing at the time the shipments arrived and when the representations were made.

5. An appropriate order on the representations be made after granting an opportunity of personal hearing to the authorized representative of the petitioner as early as possible, but not later than a fortnight of receipt of a copy of this order.

6. If the prayer of the petitioner is not granted, a reasoned order shall be passed in accordance with law and the same shall be communicated to it immediately thereafter.

7. The writ petition stands disposed of. No costs.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)