IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9405 OF 2019

M/s. Anjney Loys Pvt. Ltd. and Ors. ….Petitioners

V/s.

Union of India and Ors. …Respondents

Ms. Kiran Doiphode for Petitioner.
Ms. Ruju Thakkar a/w Ms. Neeta Masurkar for Respondent No.2.
Mr. Kazan Shroff a/w Mr. Vikash Kumar i/b Let Legal & Partners for Respondent No.3.
Ms. Jyoti Chavan, AGP for State.
Mr. Merugu Suresh, Additional Commissioner, Customs, Nhava Sheva present.

CORAM : K.R. SHRIRAM &
GAURI GODSE, JJ.
DATED : 22nd AUGUST 2022

P.C. :

1. Since no reply is filed by respondents despite giving opportunity, we decided to dispose the petition at this stage itself. Rule. Rule made returnable.

2. Petitioner had imported a consignment of Pistachio Kernels Oil Stock Feed Grade (said consignment) vide Bill of Entry No. 3086383 dated 29th October 2015. The Intelligence Unit of the Department of Customs, Government of India detained the consignment and referred the matter to Animal Quarantine and Certification Services, Plant Protection Quarantine and Storage, FSSAI and one Manisha Analytical Laboratores Pvt. Ltd., to ascertain whether the goods imported were actually unfit for human

consumption and could be used only for industrial use. In the meanwhile, by letter dated 5th November 2015 Supdt.-HQIU (R&I) of Customs informed Shed Manager, DRT, JNPT (Respondent No.3) directing them not to allow clearance of the said consignment without receiving No Objection from Respondent No.2. Upon completion of investigation, petitioner waived the Show Cause Notice which was accepted by the Customs department and personal hearing was granted on 1st March 2016. An order in original dated 19th May 2016 was passed whereby goods were ordered to be confiscated under Section 111(m) and 111(d) of the Customs Act, 1962 (the Act) and penalty of Rs.10,000/- was imposed on petitioner under Section 112(a) of the Act. Petitioner preferred an appeal before the Commissioner (Appeals) who upheld the order passed by the adjudicating authority. Impugning this order of the Commissioner (Appeals) petitioner preferred an appeal before The Customs, Excise and Service Tax Appellate Tribunal (CESTAT). By an order dated 20th February 2017 CESTAT set aside the order passed by the Commissioner (Appeals) and allowed the appeal filed by petitioner.

3. Soon thereafter, petitioner by letter dated 28th March 2017 requested Respondent No.2 to issue a certificate of waiver of detention and demurrage charges since the said consignment was lying detained in the area of Respondent No.3 for no fault of petitioner. This was followed by communication dated 15th July 2016 to Respondent No.3 reminding Respondent No.3 to release consignment immediately.

4. In the meanwhile, Respondent No.2 filed appeal in this court being Customs Appeal No. 35 of 2017 impugning the order passed by CESTAT. This appeal came to be dismissed by an order dated 26th March 2018. Respondent No.2 put a quietus to the issue thereafter and the order passed by this court has attained finality.

5. It is petitioner's case that as per Public Notice No.26/2010 issued on 2nd March 2010 where any goods are seized/detained by any officer of the customs authority for no fault of the importer, the custodians of the freight stations/warehouses/godowns should not charge any rent or demurrage or stock charges for the goods detained upon production of certificate issued by the proper officer certifying such period. The goods have to be delivered without charging and collecting any rent or demurrage for such period. The public notice also provides that violation of the Regulation No.6 (1) (I) of the Handling of Cargo in Customs Areas Regulation, 2009 under which such public notice has been issued would attract penal action. In the public notice, proforma of the detention waiver certificate is also provided.

6. It is petitioner's case that Respondent No.3 has not granted waiver of the rent/demurrage/other charges for the period for which the goods were detained by Respondent No.2 notwithstanding petitioner submitting detention waiver certificate issued by Respondent No.2.

7. Though sufficient time was given, neither Respondent No.2 nor Respondent No.3 have filed any affidavit in reply. The main contesting respondent in our view would have been Respondent No.3 who despite being given sufficient opportunity have chosen not to file affidavit in reply. We have to note that on earlier occasion cost of Rs.25,000/- was also imposed on Respondent No.3. Though Respondent No.3 has paid the cost still no affidavit is filed. Mr. Shroff sought further time to file reply which the court was not inclined to grant unless further cost of Rs.25,000/- was paid for the adjournment. Mr. Shroff then stated he was ready to argue the matter for Respondent No.3 without filing any reply.

8. Mr. Shroff submitted that if petitioner submitted the certificate from Respondent No.2 as per the proforma prescribed and used in the certificate dated 24th April 2018 (typed copy of which is at Exhibit "E" to the petition), Respondent No.3 will refund the amount that was paid by petitioner while clearing the said consignment. Mr. Shroff submitted further that the alleged certificate dated 11th September 2018 was not only in the prescribed format but is also not issued by the authorised authority. Mr.Shroff, however, did not dispute the period of detention as claimed by petitioner, i.e., from 5th November 2015 to 29th August 2018.

9. Ms. Thakkar for Respondent No.2, on instructions from Mr.Merugu Suresh, Additional Commissioner, Customs, Nhava Sheva who is

present in the court left it to the court and was ready to accept orders of the court.

10. In the certificate dated 24th April 2018 issued by Deputy Commissioner of Customs JNCH, it provides for waiver of demurrage and detention charges as per Public Notice No. 26/2010 for the period from 10th February 2016 to 13th April 2018. It is petitioner's case that goods were detained for a longer period and waiver should have been granted for the period from 5th November 2015 to 29th August 2018. Ms. Doiphode submitted that petitioner was informed by an officer of Respondent No.3 that their records showed the said consignment was still in the hold of Head Quarters Intelligence Unit, Rummaging and Intelligence Division (HQIU, R & I Department) and said department has to release its hold and should also issue certificate of waiver of demurrage and detention charges for the period 5th November 2015 to 29th August 2018. Petitioner by letter dated 4th September 2018 accordingly made a request to Commissioner of Customs (Preventive) in response to which Deputy Commissioner of Customs (Preventive) HQIU/R & I, Mumbai issued certificate dated 11th September 2018. Ms. Doiphode submitted petitioner had no control over it and Respondent No.3 instead of taking such a bureaucratic obstinate stand should have accepted and acted on the said certificate because the said certificate dated 11th September 2018 was addressed to Respondent No.3 [The Shed Manager (Import)] and it also provides for waiver of demurrage and detention charges from 5th November 2015 to 29th August 2018.

11. Notwithstanding this certificate, Respondent No.3 refused to waive the demurrage and detention charges for the period 5th November 2015 to 29th August 2018 but waived only for the period 10th February 2016 to 13th April 2018.

12. Mr. Shroff pointed out that the rejection has been communicated to petitioner vide E-mail dated 18th October 2018, print out of which is at Exhibit "J" to the petition. We have considered the said E-mail with the assistance of counsel and in our view though the said E-mail mentioned about rejection of the period 5th November 2015 to 29th August 2018, it does not indicate the reason for rejection. As a Government of India enterprise, we would have expected Respondent No.3 to have atleast informed petitioner reasons for rejection and if only that had been communicated, petitioner would have perhaps taken further steps through the customs authorities. Even to the notice dated 26th October 2018 from petitioner to Respondent No.3, there is not even a reply. Even affidavit in reply to this petition is filed. This reflects nothing but high handed behaviour on the part of Respondent No.3 and its officers. This conduct on the part of Respondent No.3 and its officers is totally not acceptable and has to be deprecated. We only hope after considering this order, copy whereof has to be sent by the Registry to the Chairman and Managing Director of Respondent No.3, Concor Bhawan, C-3, Mathura Road, Opposite Apollo Hospital, New Delhi – 110 076, suitable action is taken against the delinquent officers.

13. In view of the above, we hereby direct Respondent No.3 to consider the certificate dated 11th September 2018 (Exhibit "H" to the petition) as the proper waiver certificate issued by Respondent No.2. As undertaken by Mr. Shroff, the excess amount which petitioner says is Rs.19,02,455/- recovered from petitioner (for the period 5th November 2015 to 29th August 2018 less for the period 10th February 2016 to 13th April 2018) shall be returned to petitioner within four weeks from the date this order is uploaded. In our view, petitioner should also be paid interest on the amount refunded at 9% p.a. from the date the amount was paid until the amount is refunded.

14. Respondent No.2 also consider if any action is required to be taken against Respondent No.3 in view of the Public Notice No.26/2010.

15. Petition disposed with costs. Respondent No.3 to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as costs to petitioner in addition to the amount payable under paragraph no.13 above.

(GAURI GODSE, J.) **(K.R. SHRIRAM, J.)**