

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 135 OF 2022

IN

WRIT PETITION NO. 7155 OF 2021

Golden Tobie Private Limited

... Applicant/Petitioner

Versus

The Union Of India & Ors.

... Respondents

WITH

INTERIM APPLICATION NO. 3417 OF 2021

IN

WRIT PETITION NO. 7155 OF 2021

M/s. Golden Tobacco Limited

... Intervenor

In the matter between :-

M/s. Golden Tobie Private Limited

... Petitioner

Versus

The Union Of India & Ors.

... Respondents

Mr.Priyadarshi Manish a/w. Ms.Anjali Jha Manish i/b. Ms. Deepa Premachandran for Applicant in IA/135/2022 and for Petitioner in WP/7155/2021.

Mr.Rohan Mahadik i/b. The Juris Partners for Intervenor in IA/3417/2021.

Mr.PS. Jetly, Senior Advocate a/w. Mr.J.B. Mishra and Ms. Sangeeta Yadav for Respondents.

CORAM : R. D. DHANUKA &
S. M. MODAK, JJ.

DATE : 22nd FEBRUARY 2022.

PC. :-

1. By Interim Application No.135 of 2022, the Applicant (Original Petitioner) seeks an Order and direction against the Respondents to allow the export of the goods detained by D.R.I., Mumbai Zonal Unit, Mumbai through panchanama dated 22nd / 23rd September 2021, through 8 shipping bills all dated 17th September 2021, subject to the terms and conditions as this Court may deem fit.
2. In Writ Petition No. 7155 of 2021, the Petitioner has prayed for writ of *certiorari* to set-aside the detention of the goods made by D.R.I., Mumbai Zonal Unit, Mumbai, qua the goods exported by the Petitioner through 8 shipping bills all dated 17th September 2021 and further seeks to quash the summons dated 29th September 2021.
3. The Writ Petition has been admitted by this Court by Order dated 7th December 2021 and is pending for hearing and final disposal.
4. During the *pendency* of the Petition, the Assistant Commissioner of Customs passed an Order on 12th January 2022 thereby permitting the provisional release of the goods seized vide Seizure Memo dated 27th December 2021, subject to two conditions i.e. (a) Execution of Bond of full FOB value i.e. Rs.5,39,93,999/-. (b) Furnishing of Bank Guarantee with self

renewal clause of Rs.1,07,98,800/-.

5. Learned counsel for the Applicant invited our attention to various documents annexed to the Writ Petition and to the Interim Application and would submit that the goods which are detained are high value tobacco products (cigarettes) and by their inherent nature of perishable and with each passing day the quality and characteristics of the goods continues to deteriorate, the sample of the goods had been withdrawn on 23rd September 2021 itself and thus no purpose would be served by continuing the goods detained.

6. It is submitted by the learned counsel that in so far as the condition No.(a) i.e. Execution of Bond of full FOB value in the sum of Rs.5,39,93,999/- is concerned, the Applicant has no objection to execute such bond, as a pre-condition for provisional release of the goods in-question. It is submitted that, the condition of furnishing bank guarantee in the sum of Rs.1,07,98,800/- with self renewal clause is harsh and arbitrary.

7. Learned counsel for the Applicant submits that, the Applicant has already suffered tremendous loss in view of the detention of the goods for last three months and as a result of that, the export obligation of the Applicant could not be complied with within the time prescribed in the agreement

between the Applicant and the Importer.

8. Interim Application No.135 of 2022 is opposed by the Intervenor, who has filed a separate Interim Application No.3417 of 2021 i.e. M/s. Golden Tobacco Limited. Learned counsel for the Intervenor invited our attention to the Order passed by the Delhi High Court in Arbitration Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, by his client against the Applicant. He submits that, there is no licence in favour of the Applicant for manufacturing the said tobacco products and thus the Applicant cannot be allowed to seek permission to export the said goods, which are subject matter of the said Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 before the Delhi High Court.

9. In response to the intervention application filed by the M/s. Golden Tobacco Limited, learned counsel for the Applicant invited our attention to the Order passed by the learned Single Judge of the Delhi High Court on 24th September 2021, thereby observing that, the Delhi High Court did not consider it apposite to grant the relief as sought for by intervenor herein in the said Arbitration Petition and accordingly dismissed the said Arbitration Petition and consequently vacated the ad-interim stay, which was granted in favour of the Applicant in the said Arbitration Petition. She also

invited our attention to the Order dated 7th October 2021 passed by the Division Bench of the Delhi High Court in appeal filed by the intervenor and would submit that the parties have shown their willingness to amicably resolve the matter, without prejudice to their rights and contentions. The appeal Court has in the meanwhile directed the Applicant herein not to manufacture the brands of cigarettes of the intervenor. She submits that, as of today, there is no injunction about not to export the said goods, which are the subject matter of the Order of provisional release issued by the Respondents.

10. In our view, the intervenor has no locus to seek any relief in respect of goods which are subject matter of this Petition in this Writ Petition. The rights, if any, claimed by the intervenor on the basis of the agreement entered into between the Applicant and the Intervenor are subject matter of the arbitration proceedings. We are thus not inclined to Applicant/Intervenor to intervene in these proceedings. Intervention Application filed by the Intervenor bearing Interim Application No. 3417 of 2021 is accordingly rejected.

11. In so far as the reliefs sought by the Applicant (Original Petitioner) is concerned, Mr.Jetly, learned Senior Counsel for the Respondents invited our attention to various averments and Affidavit-in-Reply filed in Writ

Petition No. 7155 of 2021 and also in Interim Application No.135 of 2022. He submits that, the Applicant is not co-operating with the department for carrying out investigation. The next submission of the learned Senior Counsel is that, if this Court allows the Applicant to carryout export obligation without imposing any condition of furnishing bank guarantee, if the demand raised by the Respondents is upheld, the Respondents will not be able to recover any amount from the Applicant, even by enforcing the bond if executed by the Applicant. It is further submitted that, upon completion of the export, the Applicant would make further claim for refund and other benefits.

12. There is no dispute that, the Writ Petition filed by the Petitioner seeking various reliefs is already admitted by this Court and is pending for hearing and final disposal. The goods in-question were seized on 27th December 2021. The goods are of perishable nature. The Assistant Commissioner of Customs himself has considered the grant of provisional release and allowed on two conditions. In so far as condition No.(a) is concerned, the Applicant has no objection to comply with the said condition. In so far as the condition No.(b) is concerned, in our view the bank guarantee insisted by the Respondents in the sum of Rs.1,07,98,800/- can be reduced on the condition that, if the Applicant makes any claim for refund of any amount or any other incentive due to the Petitioner on completing the export of the

consignments which are subject matter of the Order dated 12th January 2022, will not press for such claim during the pendency of the Writ Petition filed by it. Though the Petitioner would be entitled to lodge their claim with the concerned Office, such claim shall remain pending and be kept in abeyance during the pendency of the Petition. The export which is being permitted by the said Order dated 12th January 2022 and modified by this Order, would be subject to the outcome of the Writ Petition.

13. In our view, interest of justice would be made, if we pass the following Order. Hence, following Order.

- (a) The Applicant is directed to execute bond of full FOB value in the sum of Rs.5,39,93,999/- within two weeks from today.
- (b) In addition to the execution bond, the Applicant is directed to furnish bank guarantee in the sum of Rs.25,00,000/- of a Nationalized Bank in the name of Principal Commissioner of Customs, Nagpur, in accordance with the Order dated 12th January 2022, duly modified by this Order within two weeks from today.
- (c) The bank guarantee shall be kept alive initially for a period of six months and thereafter for like period depending

upon the pendency of the Writ Petition.

- (d) Upon the Applicant furnishing the bond as directed aforesaid and bank guarantee in the sum of Rs.25,00,000/- the Respondents are directed to release the goods in question by way of provisional release within one week from the date of Applicant complying with this Order.
- (e) It is made clear that, if the conditions described in Order dated 12th January 2022 and modified by this Order are not complied by the Applicant, the relief granted by this Court to stand vacated without further reference to this Court.
- (f) It is made clear that, though the Applicant would be entitled to seek refund or any other incentive based on the exports that would be effected under the shipping bills, which are the subject matter of the Writ Petition as well as the Order dated 12th January 2022, the Applicant will not press such claim during the pendency of the Petition. Such claim shall be kept in abeyance by the Respondents during the pendency of the Petition and would be subject to further Order that would be passed by this Court at the time of disposal of the Writ Petition.

14. Interim Application No.135 of 2022 filed by the Applicant/Petitioner is disposed off in the aforesaid terms.

15. The parties to act on an authenticated copy of this Order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]

OMKAR
SHIVAHAR
KUMBHAKARN
Digitally signed
by OMKAR
SHIVAHAR
KUMBHAKARN
Date:
2022.02.24
17:40:04 +0530