IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 3059 OF 2020

Ayman General Trading FZE. … Petitioner.
V/s.
Union of India and others. … Respondents.

Satish S. Sharma for the Petitioner.
Mr.Jitendra B. Mishra with Ashutosh Mishra for the Petitioner.

CORAM : NITIN JAMDAR AND GAURI GODSE, JJ.

DATE : 21 December 2022.

P.C. :

Heard the learned for the parties. Taken up for disposal.

2. The Petitioner has prayed for a direction to Respondent No.2 to pay Rs.2,48,71,619/- as damages along with interest at the rate of 18% per annum.

3. Leave to amend is granted. Amendment to be carried out within two working days. Re-verification is dispensed with.

4. Bills of Entry were filed by the importer- Stone Export House, Thane on 14 December 2012. Since the importer did not pay the duty, a notice under section 48 of the Customs Act, 1962

was issued on 4 April 2013 for auction of the goods. Thereafter, by two orders-in-original dated 7 May 2013, the goods were confiscated under section 111(m) of the Act. On 9 May 2013, second notice under section 48 of the Act was issued to the importer- Stone Export House. On 15 May 2013, the Petitioner had sent a communication to the Respondent- Department. On 2 December 2013, the Petitioner applied for amendment of the Import General Manifest (IGM), which was rejected on 6 April 2015. On 8 May 2015 and 14 July 2015, the goods were sold in e-auction. On 28 September 2015, Writ Petition No.8699/2014 which was filed by the Petitioner seeking amendment to IGM was withdrawn. The writ petition filed by the importer was also withdrawn on 12 October 2015.

5. Thereafter the Petitioner filed three appeals i.e. Appeal Nos.165/2015, 169/2016 and 170/2016 before the Commissioner (Appeals), Mumbai including the appeal challenging the rejection of amendment application. The impugned order was passed on 27 May 2016 whereby the following directions were issued:

> *"(i) I do not allow the appeal against the order bearing F.No. S/3-en-3343/2014-15 Import Noting dated 06 04.2015 wherein the amendment of IGM was denied.*
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> *(ii) I modify the order of the Additional Commissioner bearing F.No.S/26-Misc-1557/2013 Gr.lV JNCH dated 07.05.2013 to the extent that the owner of the goods, i.e. M/s Ayman Trading FZE, UAE, is given the option to redeem the confiscated goods on payment of a fine of Rs.10,00,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962.*
>
> *(iii) I modify the order of the Additional Commissioner*

bearing F.No.S/26-Misc-1558/2013 Gr.IV JNCH dated 07.05.2013 to the extent that the owner of the goods, i.e. M/s Ayman Trading FZE, UAE, is given the option to redeem the confiscated goods on payment of a fine of Rs.6,00,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962.

(iv) In case of redemption of the goods in terms of ii) and iii) above, M/s.Ayman Trading FZE, UAE shall comply with the provisions of sub-section (2) of Section 125 of the Customs Act, 1962. "

6. The contention of the learned counsel for the Petitioner is that though the Commissioner (Appeals) passed the above-mentioned order giving option to the Petitioner to redeem the confiscated goods on payment of Rs.10 lakh and another set of goods on payment of Rs.6 lakh, since these goods were sold in e-auction on 8 May 2015 and 14 July 2015, the Petitioner is not able to take benefit of these directions and, therefore, the Petitioner is entitled to damages as prayed for in this petition. Further contention of the Petitioner is that the Petitioner was not aware that the goods were sold in e-auction and this fact was not informed to the Petitioner by the Respondent- Customs Department. According to the Respondents, the Petitioner was fully aware of this fact and the application for amendment to IGM was also rejected.

7. We have gone through the order-in-appeal. It is an admitted fact that the goods were sold and were not in existence on the date when the Commissioner (Appeals) passed the order on 27

May 2016. There is no reference whatsoever to the non-existence of the goods. This is a fundamental error in the order passed by the Commissioner (Appeals). Had the Commissioner (Appeals) been apprised of the fact that the goods were not in existence, a different order could have been passed. In this state of facts, it is not possible for us to direct the Respondents to pay damages to the Petitioner. The appropriate course of action would be to relegate the parties to the Commissioner (Appeals) to find the solution to the situation and treat the impugned order as an interim order in the appeal and the restoration of the appeal. The appeal against the amendment order is not restored.

8. Accordingly, Appeal Nos. 169/2016 and 170/2016 disposed of by the Commissioner (Appeals), Mumbai are restored to the file of the Commissioner (Appeals). As regards the finding of recognizing the right of the Petitioner to redeem the confiscated goods, the same is maintained. As regards Clauses (ii) and (iii) of the operative order passed by the Commissioner (Appeals), these orders shall be considered as interim orders. The Commissioner (Appeals) will take into consideration the factum of disposal of the concerned goods and accordingly pass a final order.

9. The writ petition is accordingly disposed of in the above terms.

(GAURI GODSE, J.) (NITIN JAMDAR, J.)