

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 406 OF 2023

Direct Logistics and Export Co. Ltd. ... Petitioner
vs.
The Union of India and Ors. ... Respondents

Dr. Sujay Kantawala with Mr. Anupam Dighe, Ms. Chandni Tanna and Mr. Prathamesh Chavan i/b India Law Alliance for Petitioner. Smt. Shehnaz V. Bharucha with Mr. Ashutosh Mishra for Respondents No. 1,4 and 7.
Mr. Vijay H. Kantharia with Mr. Ram Ochani for Respondents No. 2 & 3.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 3 MAY 2023

P.C. :

. Heard learned Counsel for the parties.

2. The Petitioner has sought following prayers:-

"a. That this Hon'ble Court be pleased to hold and decalre that the Respondent No.2/Principal Commissioner of Customs (Preventive) HQIU, R & I Division, New Custom House, Mumbai did not have the jurisdiction to seize the Petitioner's goods under Section 110 of the Customs Act, 1962, which are lying at the premises of Respondent No.6.

b. That this Hon'ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction calling for the records and proceedings dealing with the Seizure Memo

bearing F. No. SD/INT/HQIU/MISC-07/22-23 dated 15.11.2022 issued by Respondent No.2 in the Petitioners' case and after going into the legality, propriety and validity thereof to quash and set aside the same.

c. That this Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction directing Respondents, their servants, subordinates and agents:

i. To withdraw the Seizure Memo bearing F. No. SD/INT/HQIU/MISC-07/22-23 dated 15.11.2022 issued by Respondent No.2;

ii. To allow provisional release for export of the Petitioner's goods seized vide Seizure Memo bearing F. No. SD/INT/HQIU/MISC-07/22-23 dated 15.11.2022 issued by Respondent No.2;

iii. To allow the re-export of the said goods seized vide the F. No. SD/INT/HQIU/MISC-07/22-23 Seizure Memo dated 15.11.2022;

iv. To issue a Detention and Demurrage Waiver Certificate in respect of the said goods for the waiver of demurrage incurred till the release of the said goods;

3. Though the Petitioner has sought a writ of mandamus directing the Respondent-Customs Department to withdraw the seizure memo, essentially the prayer of the Petitioner is one of provisional release of the goods. When the Petition has come up on earlier occasion, it was adjourned since the Respondents have pointed out that presence of the third party i.e. 4D Indiateq Limited

is necessary. Thereupon, the Petitioner had joined the said entity as a Respondent. Learned Counsel appears for the added Respondent and has sought to advance certain contentions before us. Reply affidavit is filed by the Respondents, which seeks to comment on merits of the Petitioner's claim.

4. It is not necessary for us to continue with this petition further to adjudicate factual aspects. The Respondents authorities have a power to consider grant of provisional release, if all conditions as per law are met, which is the power the Petitioner seeks to invoke.

5. This being the narrow ambit of the controversy before us, without commenting on the merits of the same, as much as contentions of the Petitioner or Respondent No.9, we deem it appropriate to leave it to the concerned adjudicating Authorities to take necessary decision, as to whether Petitioner is entitled for provisional release of goods or not. In view of the peculiar facts and circumstances of the case, the concerned Adjudicating Authority will also take into consideration the stand of Respondent No.9 for proper adjudication for considering the prayer of provisional release. Subject to earlier time bound directions, the concerned Adjudicating Authority will take necessary decision within period of six weeks from today.

6. The contention of the learned Counsel appearing for Customs department that it is the Customs department, and none other

would have jurisdiction to consider the provisional release, is kept open.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

Digitally
signed by
NIKITA
YOGESH
GADGIL
Date:
2023.05.04
17:34:38
+0530