

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3900 OF 2023

M & A Metals Ltd.

...Petitioner

Versus

Union of India & Ors.

...Respondents

Dr. Sujay Kantawala a/w Mr. Anupam Dighe, Ms. Chandni Tanna and Mr. Prathamesh Chavan i/by India Law Alliance for the Petitioner.

Mr. Ram Ochani a/w Ms. Nitee Punde for Respondent Nos.2 and 3.

Mr. Sachin Punde for Respondent No.4.

Mr. Ashish Verma i/by Mr. Vipin Sharma for Respondent No.6

CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

Date : 9th NOVEMBER, 2023.

P.C.

. By this Petition under Article 226 of the Constitution of India,
the Petitioner has prayed for following substantive reliefs :

“a. 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 said Auction Notices dated 23.01.2023, 07.02.2023, 21.02.2023 & 01.02.2023, 13.02.2023, 02.03.2023 (“Exhibit F1-F6” hereto) issued by the office of the Respondent No.4 in the Petitioners’ case and after going into the legality, propriety and validity thereof to quash and set aside the same;

b. 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 Respondent No.2, their servants, subordinates and agents:

i. To direct withdrawal the Auction Notices dated 23.01.2023, 07.02.2023, 21.02.2023 & 01.02.2023, 13.02.2023, 02.03.2023 (“Exhibit F1-F6” hereto) issued by the Respondent No.4;

ii. To direct the Respondent No.4 to unconditionally release the goods to the Petitioner covered under Bill of Lading No.HLCULIV221048518 dated 10.11.2022 and Bill of Lading No.HLCULIV221052551 dated 21.11.2022 (“Exhibit A” hereto);

iii. To permit Respondent No.6 to amend the Import General Manifest on behalf of the Petitioner before Respondent No.3 and to allow the name of the consignee to be changed as per Section 30 read with Section 149 of the Customs Act, 1962

iv. To direct Respondent Nos.2&3 to issue a Detention and Demurrage Waiver Certificate in respect to the Petitioner’s goods for the waiver of charges incurred till the release of the Petitioner’s goods.”

2. At the of hearing of the present proceedings, the Petitioner has confined this petition on the prayers of the writ petition on its representation dated 16th March 2023 to be decided by Respondent No.3. It is further prayed that the Writ Petition itself can be treated as a further representation.

3. We have heard learned counsel for the Petitioners and learned counsel for the Respondents.

4. It is the petitioner’s case that the petitioner is an exporter located in United Kingdom and who has exported goods in question to Respondent No.5. It is stated in the Petition that Respondent No.5, appears to have sold the good on an alleged High Sea transaction to Respondent No.7 contrary to the terms and conditions of contract between the Petitioner and Respondent No.5.

5. The Respondent No.6/Hapag-Lloyd India Pvt. Ltd. has filed Import General Manifest (IGM) in the name of Respondent No.7 without the approval of the Petitioner. This has been objected to by the Petitioner vide letter dated 16th March 2023 addressed to Principal Commissioner of Customs NS-III and therefore sought for amendment of said IGM.

6. The Petitioner contends that the representation dated 16th March, 2023 has not been decided by the Respondent No.3 and therefore, suitable directions be issued to Respondent No.3 to decide the same. The Petitioner has further submitted that in addition to the representation dated 16th March 2023, the present petition may also be treated as additional representation objecting to the aforesaid IGM.

7. All the Respondents are represented before this Court and have no objection to the aforesaid limited prayer as made by the Petitioner being granted .

8. Having heard learned counsel for the Petitioner and the learned counsel for the Respondents, we are of the opinion that the prayer made by the Petitioner appears to be fair. We accordingly pass the following order.

ORDER

- (i) Respondent No.3 would treat the present Writ Petition along with letter dated 16th March 2023 as representation of the Petitioner on the issue in question.
- (ii) The Petitioner and the Respondent Nos.4 to 7 should appear before Respondent No.3 on 15th November 2023 and make their submissions including to placing on record their written submissions, if they so desire.
- (iii) Respondent No.3 after hearing the parties should pass an appropriate speaking order on or before 25th November 2023 and in accordance with law.
- (iv) All contentions of the parties are expressly kept open.
- (v) Writ Petition is disposed of in above terms. No order as to costs.

[JITENDRA JAIN, J.]**[G. S. KULKARNI, J.]**