

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5415 OF 2023

Speedy Multimodes Limited ..Petitioner

Versus

Union Of India The Secretary
Ministry Of Finance Dept. & Ors. ...Respondents

Mr. Rafique Dada, Senior Advocate a/w Mr. Chirag Shetty and Ms. Diva Devarsha i/by M/s. Economic Laws Practice for the Petitioner.
Mr. Subir Kumar a/w Ms. Kavita Shukla and Mr. Kashish Rehan for Respondent Nos.2 and 3.

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

DATE : 19th JUNE, 2023.

P. C. :

1. This Petition under Article 226 of the Constitution challenges an order dated 5th April 2023 passed by the Commissioner of Customs (General), whereby exercising powers under the Handling of Cargo in Customs Areas Regulations 2009 (for short 'HCCAR 2009') the Petitioner's license as a Customs Cargo Service Provider has been suspended w.e.f. 16th April 2023 to 30th April 2023.

2. The Petitioner being aggrieved by the impugned order contending that it is a running concern with large number of containers in its area, as also having employed large number of employees to conduct the unit contended that a serious prejudice would be caused to

the Petitioner if the impugned order was allowed to operate and accordingly filed the present Petition. A Coordinate Bench of this Court on 13th April 2023, after hearing the parties and for reasons as recorded in an order passed on the even date, directed that the impugned order suspending the Petitioner's license, which was to take effect on 16th April 2023 was required to be deferred and was re-scheduled to operate from 4th May 2023, subject to further orders to be passed in the present Writ Petition. By further orders, such protection as granted by this Court was extended till date i.e. 19th June 2023.

3. It is on the above backdrop we have heard learned counsel for the parties. Mr. Dada, learned senior counsel for the Petitioner has taken us through the record which primarily includes the show cause notice to the Petitioner's reply, panchnama, other documents and the impugned order. Mr. Dada has urged several contentions, however, Mr. Dada would fairly state that the impugned order is an appealable order under Regulation 12(9) of the said Regulations, and an appeal would lie against the impugned order before the Tribunal under Section 129(A) of the Customs Act, 1962.

4. Mr. Subir Kumar, learned counsel for Respondent Nos.2 and 3 would also state that the impugned order is an appealable order. He would however submit that even if the Petitioner is permitted to

approach the Tribunal in an Appeal, in the facts of the case, the protection as granted by this Court ought not to be continued.

5. Having heard learned counsel for the parties and having perused the record, in our opinion, it would be appropriate for the Petitioner to avail of the remedy of an appeal, so that the rival contentions of the parties on the aspects of facts and law can be adjudicated before the Tribunal. We, therefore, do not dwell into the merits of the rival contentions. We are also informed by Mr. Dada that the limitation under the provisions is of three weeks which would come to an end on or about 6th July 2023.

6. Insofar as the protection granted by this Court as noted above is concerned, in our opinion, the protection needs to be continued till the Petitioner approaches the Tribunal alongwith a stay application and till the orders are passed on the stay application. We, accordingly, dispose of this Petition in terms of the following order:-

ORDER

- (i). Petitioner is permitted to approach the Tribunal in an Appeal to assail the order dated 5th April 2023. Let the Appeal be filed along with the stay application.
- (ii). The protection granted by this Court vide order dated 13th April 2023 shall continue to operate till the disposal of the stay application as may be filed by the Petitioner.

- (iii). All contentions of the parties on the Appeal and stay application are expressly kept open.
- (iv). Needless to observe that if the appeal alongwith stay application is not filed, protection granted by this Court shall cease to operate and in that event, Respondent shall be at liberty to take further appropriate action as per the provisions of law after the period limitation to file the appeal expires.
- (v). The Tribunal shall make an endeavour to hear the parties on the stay application and pass appropriate orders within a period of three months of the pleadings on the stay application being completed.
- (vi). Writ Petition is disposed of in the above terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]