IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5963 OF 2023

M/s. Entrust Shipping LLP … Petitioner

Versus

Union of India & Ors. …Respondents

Mr. Biju Joseph a/w. Ms. Bhoomika Markam i/b. Lloyd & Johnson for the petitioner.
Mr. Jitendra B. Mishra for respondent no. 1.
Mr. Y.R. Mishra i/b. Mr. Harsheel Signapure for respondent nos. 2 to 4.

CORAM: G. S. KULKARNI & JITENDRA JAIN, JJ.
DATED: 31 July, 2023

P.C.

1. This petition under Article 226 of the Constitution has been filed praying for the following reliefs:

> *"a) Declare Regulation 10(1)(l) of Sea Cargo Manifest and Transhipment Regulations, 2018 ultra vires to Customs Act, 1962 and violative of the fundamental & legal rights of the petitioner, guaranteed under Article 14, Article 19(1)(g) and Article 21 of the Constitution of India and same be struck down;*
>
> *b) Issue a writ of mandamus directing the respondent department not to implement and or give further effect to Regulation 10(1)(l) of Sea Cargo Manifest and Transhipment Regulations, 2018 until the final disposal of the matter.*
>
> *c) Issue a writ of mandamus directing the respondent nos. 2 to 4 not to take any further actions, coercive or otherwise, further to the issuance of waiver certificate and stay further actions on Exhibit no. 7 and Exhibit no. 9."*

2. The primary cause of action as asserted by the petitioner to make the above prayers is on the ground that the Deputy Commissioner of Customs had issued Detention and Demurrage waiver certificate in favour of the importer M/s. V.K. Ventures. These are certificates dated 12 October, 2022 and 24 November, 2022, which are subject matter of the present petition.

3. The grievance of the petitioner is that the said certificates have been obtained on the basis of distorted facts and incorrect information and without appreciating the fact that prejudice was being caused to the petitioner by issuance of such detention and demurrage waiver certificate. There are other contentions as raised in this petition. This apart, the petitioner is further aggrieved by the fact that after issuance of the 'detention and demurrage waiver certificates', the Joint Commissions of Customs has addressed a letter dated 20 February, 2023 to the petitioner, which is in the nature of enforcement of the detention and demurrage waiver certificate. It is contended that such a communication issued by the Joint Commissioner of Customs is totally without jurisdiction, by which he purports to enforce the waiver certificate as set out in the said communication. It is contended that such communication was addressed at the behest of the importer M/s. V.K. Venture and therefore it was not appropriate for the Joint Commissioner of Customs to issue such a communication against the petitioner, which according to the petitioner is quite coercive.

4. It is in such context, the petitioner, being aggrieved not only by the exercise of powers by the concerned authority in issuing of the detention and demurrage waiver certificate, but also, issuing the said communication dated 20 February, 2023, is before the Court.

5. On such conspectus, the prayers as made in the petition challenge the vires of Regulation 10(1)(l) of the Sea Cargo Manifest and Transshipment Regulations, 2018 ultra vires to provisions of Customs Act, 1962 as also the rights guaranteed to the petitioner under Articles 14 and 19(1)(g) of the Constitution of India. There is also a writ as prayed that the provisions of the said Regulation be not implemented.

6. We have heard Mr. Joseph, learned counsel for the petitioner, Mr. Jitendra Mishra, learned counsel for respondent no. 1 and Mr. Yogesh Mishra, learned counsel for respondent nos. 2 to 4. We have also perused the memo of the petition.

7. On the above backdrop, in our opinion, as the grievance of the petitioner is in regard to the issuance of the "detention and demurrage waiver certificates" and considering the facts, that it is the petitioner's assertion that such certificates ought not have been issued, in our opinion, it is appropriate that the petitioner assails the said decision/order passed under the said

Regulations by availing of the statutory remedy of an appeal under Regulation 14 of the Sea Cargo Manifest and Transshipment Regulations, 2018. Regulation 14 reads thus:

> *"14. **Appeal-***
>
> *Any person aggrieved by any decision or order passed under this regulation, may appeal under section 129A of the Act to the Customs, Excise and Service Tax Appellate Tribunal, established under sub-section (1) of Section 129 of the Act."*

8. We, accordingly, permit the petitioner to approach the Customs, Excise and Service Tax Appellate Tribunal by filing an appeal in regard to the grievance of the petitioner. Let such appeal be filed within two weeks from today. In the event, such appeal is filed, let the same be adjudicated as expeditiously as possible and without an objection as to limitation, as the present proceeding were being pursued by the petitioner bonafide. All contentions of the petitioner are expressly kept open.

9. Insofar as the vires of the assailed statutory provisions is concerned, in our opinion, this is a critical relief which need not be gone into considering our aforesaid observations and at this stage of proceedings. We keep open such challenge as raised by the petitioner to be asserted in the event the need for the petitioner so arises, to challenge the vires of the provisions in future. We keep

open all contentions of the petitioner as raised in the present proceedings in regard to such challenge.

10. Needless to observe that in the event if there is any action being taken by the respondents on the basis of the certificates in question, the petitioner is certainly at liberty to move an Interim Application in the appeal before the Tribunal and if such an application is filed, the same be decided in accordance in law. All contentions of the parties are expressly kept open.

11. Disposed of in the above terms. No costs.

(JITENDRA JAIN, J.) **(G. S. KULKARNI , J.)**