

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8116 OF 2023

Direct Logistics & Export Co. Ltd. ...Petitioner
Versus
Union of India,
Through Secretary Ministry of
Finance & Anr. ...Respondents

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

Mrs. Shehnaz V. Bharucha and Mr. Ram Ochani for Respondents.

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

DATE : 21st AUGUST, 2023.

P.C.

. We have heard Dr. Sujay Kantawala, learned counsel for
the Petitioner and Mrs. Shehnaz V. Bharucha, learned counsel for
Respondents.

2. Mrs. Bharucha has tendered reply affidavit on behalf of
Respondent of Shri. Krishna Kumar Prasad, Additional
Commissioner of Customs (NS-General), Jawaharlal Nehru
Custom House, Nhava Sheva, Taluka Uran, District Raigad.

3. This petition under Article 226 of the Constitution of India is filed praying for the following 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 Provisional Release Order bearing F. No.S/V-30(442)/2022-23/JNCH dated 15.06.2023 (Exhibit ‘I’ hereto) issued by Respondent No.2 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 Respondents, their servants, subordinates and agents:

i. To withdraw Provisional Release Order bearing F. No.S/V-30(442)/2022-23/JNCH dated 15.06.2023 (Exhibit ‘I’ hereto);

ii. To allow provisional release for re-export of the Petitioner’s goods seized vide Seizure Memo bearing F. No.SD/INT/HQIU/MISC-07/22-23 dated 15.11.2022 (Exhibit ‘B’ hereto);

iii. To implement the Order-in-Appeal dated 09.05.2023 passed by the Ld. Commissioner of Customs (Appeals), Mumbai II, JNCH (Exhibit ‘E’ hereto) and exercise its power to:

I. Obtain second opinion of Electrical Engineers in respect of the Petitioner’s goods seized vide Seizure Memo bearing F. No.SD/INT/HQIU/MISC-

*07/22-23 dated 15.11.2022 (Exhibit 'B' hereto);
and*

II. Issue a detention and demurrage waiver certificate in respect to the Petitioner's goods seized vide Seizure Memo bearing F. No.SD/INT/HQIU/MISC-07/22-23 dated 15.11.2022.

c. That pending the hearing and final disposal of the Petition, the Respondents by themselves and their subordinates, servants and agents be directed by an interim order of this Hon'ble Court to:

i. To allow provisional release the goods of the Petitioner seized vide Seizure Memo bearing F. No.SD/INT/HQIU/MISC-07/22-23 dated 15.11.2022 (Exhibit 'B' hereto);

ii. To allow provisional release for re-export of the Petitioner's goods seized vide Seizure Memo bearing F. No.SD/INT/HQIU/MISC-07/22-23 dated 15.11.2022 (Exhibit 'B' hereto)

iii. To implement the Order-in-Appeal dated 09.05.2023 passed by the Ld. Commissioner of Customs (Appeals), Mumbai II, JNCH (Exhibit 'E' hereto) and exercise its power to:

I. Obtain second opinion of Electrical Engineer in respect of the Petitioner's goods seized vide Seizure Memo bearing F. No.SD/INT/HQIU/MISC-07/22-23 dated 15.11.2022 and

II. Issue a detention and demurrage waiver

certificate in respect to the Petitioner's goods seized vide Seizure Memo bearing F. No.SD/INT/HQIU/MISC-07/22-23 dated 15.11.2022.

(d) For interim and ad-interim relief in terms of the prayer (c) above;"

4. There are subsequent developments during the pendency of this petition as pointed out on behalf of the Respondents in the reply that is show cause notice was issued to the Petitioner dated 11th August 2023. The Petitioner is yet to file the reply to the show cause notice. Dr. Kantawala on instructions states that within a period of one week from today, the Petitioner would file a reply to the show cause notice, if that be so, in our opinion, considering the facts and circumstances of the case, it is appropriate that the show cause notice be adjudicated by the Additional Commissioner, Customs Department.

5. All contentions of the parties are kept open, including on re-export, to be considered in the adjudication of the show cause notice.

6. Let the show cause notice be adjudicated as expeditiously as possible and in any event within a period of six weeks from today.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]