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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8967 OF 2023

Sher Ali Proprietor of SH Rugs Company,
Thr Its Constituted Attorney .. Petitioner

v/s.

Union of India Thr. Principal Chief
Commissioner of Customs And Anr. .. Respondents

AND

WRIT PETITION NO.8969 OF 2023

Rajesh Kumar Proprietor of Global Rugs
Enterprises Thr. Its Constituted Attorney .. Petitioner

v/s.

Union of India Thr. The Principal
Chief And Anr. .. Respondents

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Mr. Prakash Shah, a/w. Mr. Jas Sanghavi, i/b. Mr. S.S. Sharma, for the
Petitioners.

Mr. Subir Kumar, a/w. Mr. Harshad Shingnapurkar, for Respondent
No.2.

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**CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.**

DATE : 1st AUGUST 2023

P.C:-

We have heard Mr. Shah, learned Counsel for the

Petitioners and Mr. Kumar, learned Counsel for Respondent No.2.

2. The Petitioners in both these petitions are aggrieved by an order dated 24th April 2023 issued by the Deputy Commissioner of Customs SIIB (X), JNCH, Nhava Sheva, whereby the consignments in question, which are silk carpets, sought to be exported by the Petitioners, are put on hold.

3. The Petitioners have contended that on 19th/20th April 2023, the shipping bills were filed by the Customs with invoice at the time consignment of the carpets arrived at the JWS, CFS for exports. The same were examined by the Superintendent of Customs at docks and samples were also drawn from the consignment from the concerned invoice no. as set out in the petitions.

4. Thereafter, the Petitioners received a Let Export Order. However, in the last week of April 2023, the export consignment was put on hold by the Deputy Commissioner of Customs by the impugned order. The Petitioners also submitted the corrected shipping bills and had requested that the consignment be released provisionally.

5. The Petitioners have contended that on 15th May 2023, the Petitioners had also received a test report from DYCC JNCH Lab, to the effect that the consignment was fulfilling the export requirements. In pursuance thereto, the Petitioners addressed letters to the

Commissioner SIIB (X) for release of the goods. On such correspondence, the Petitioners received summons to appear before the Superintendent, SIIB (X), JNCH, Nhava Sheva. The summons was received on 19th May 2023 and, thereafter, again in the last week of May 2023. The Petitioners' representatives also visited the office of Deputy Commissioner of Customs, who was the Investigating Officer. Thereafter, the Petitioners received e-mails on 12th June 2023 from the Deputy Commissioner of Customs for a physical examination of the export consignment. In these circumstances, the Petitioners are before the Court contending that there is no warrant for the Respondents, to not permit the said consignment for export and/or detain the same.

6. Mr. Shah, learned Counsel for the Petitioners, has drawn our attention to the averments made in the petitions. He has submitted that valid reasons were set out as to why the Petitioners could not appear before the concerned Customs Officer. He submitted that the Petitioners are willing to furnish any information as may be required by the Customs Authorities and/or the Petitioners are willing to co-operate in any investigation, which the Customs Officer intend to undertake. It is Mr. Shah's contention that the delay in export of the consignment is causing a serious prejudice to the Petitioners, who are proprietors of small business, engaged in export of the items like handmade carpets being the goods in question in the present petitions. Mr. Shah has also submitted that the prejudice caused to the Petitioners

is so much, that the Petitioners are, in fact, willing to take back the goods and sell them in the domestic market. He submits that, in these circumstances, the Petitioners pray that the Petitioners' consignments ought not to be detained.

7. On the other hand, Mr. Kumar, learned Counsel for the Respondents, has submitted that the Petitioners have not co-operated in the investigation. It is submitted that the Petitioners need to supply all information and co-operate in the investigation. It is also submitted that the Petitioners can also furnish bond as may be demanded by the Customs Authorities and same be considered for the release of the goods.

8. Responding to Mr. Kumar's submissions, Mr. Shah would contend that the Petitioners were never informed by the concerned Officers of the Customs that the department would be willing to release the goods on furnishing of bond. It is also his submission that if the Respondents would desire, the Petitioners would certainly furnish a bond, as also co-operate in the investigation and, in fact, no prejudice whatsoever would be caused to the Respondents, if the goods are immediately released for the export.

9. Having heard learned Counsel for the parties and having perused the record and the reply, we are of the opinion that there is

substance in the contention as alleged on behalf of the Petitioners that the goods ought not to be detained any further, as also the Petitioners need to co-operate in the investigation and/answering the questions, which the Customs Authorities may have in regard to the consignments. In our opinion, what is also relevant for the Customs Authorities to consider is that the Petitioners are running small businesses. The business is of export of the carpets, which are stated to be handmade and customised. Considering this peculiar situation, in our opinion, the goods ought not to be detained and are required to be released on the Petitioners furnishing an appropriate bond as may be desired by the custom officers. The Petitioners also shall co-operate in the investigation.

10. In any event, we find from the record that in response to the summons as issued by the Petitioners under Section 108 of the Customs Act, 1962, the Petitioners were called upon to submit all shipping bills, tax invoices, GST returns as also the export details and consignee details, photo id and authorization, etc. It is seen that all such requirements were met and such details were supplied to the Superintendent of Customs, by the Petitioners, as seen from the letters of the Petitioners dated 21st May 2023 and 2nd June 2023. We do not find from the record that there is any other communication from the Customs Officer to furnish any other details. Thus, we are of the opinion that the consignments in question ought not to be detained.

11. We, accordingly, dispose of the petitions by the following order:

- (i) The Petitioners to furnish an appropriate bond within a period of two weeks from today, to be submitted to the Deputy Commissioner of Customs/Respondent No.2. On the Petitioners furnishings such bond, the Respondents are directed to forthwith permit the Petitioners to export the consignments in question.
- (ii) It is also ordered that if the Petitioners are not interested to export the goods in question, the Respondents shall release the goods for sale in the domestic market.
- (iii) All contentions of the parties are expressly kept open.
- (iv) Petitions disposed of in the above terms. No costs.

(JITENDRA JAIN, J.)

(G.S. KULKARNI, J.)