

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.439 OF 2023

Blue Spring FZE and anr.

... Petitioners

V/s.

Union of India and ors.

... Respondents

Mr.Anil Balani i/by Mr.Devraj Kansara, Advocates for the Petitioners.

Mr.J.B.Mishra with Mr.Satyaprakash Sharma, Advocates for Respondents No.2 to 5.

Mr.Karl Shroff with Ms.Laxmi Jessani and Mr.Bimal Bhabhda, Advocates for Respondent No.8.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 28 APRIL 2023.**

P.C.:-

1. Heard learned counsel for the parties.
2. Having heard the learned counsel for the parties, it would so transpire that the controversy is pending before the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") and hearing this petition would be merely a parallel adjudication.

Priya Soparkar

3. According to the Petitioners, the Petitioners had shipped certain quantity of Rubber Processing Oil and Respondent No. 8 had sought clearance of the goods, but according to the Petitioners, he failed to clear the same.

4. The shipping agent of the Petitioners - an authorized person filed an application for amendment of the Import General Manifest ("IGM"). Thereafter, the Petitioners filed a writ petition in this court bearing No.1394 of 2021, wherein an interim order was passed on 8 October 2021 that the competent authority will take a decision on the application for amendment. The decision was so rendered by Respondent No.4 on 30 November 2021 and amendment was permitted. Thereafter, the Respondent No.1 Department and Respondent No. 8 filed appeals before the Appellate Authority who passed the order on 31 May 2022 against the Petitioners. Petitioners thereafter filed an appeal in the Tribunal on 24 August 2022, which is pending. This writ petition is filed seeking to question a communication issued by the Deputy Commissioner of Customs dated 26 September 2022 issuing certain directions on the subject matter.

5. The impugned direction dated 26 September 2022 cannot be considered as a stand alone communication and correctness of this communication would depend upon the adjudication of the main controversy which is pending in the appeal filed by the Petitioners in the Tribunal. In the appeal, it is always open to the Petitioners to seek

an interim order on merits or to bring subsequent developments on record in the appeal. Since a substantive appeal from controversy is pending before the Tribunal where all issues can be decided, it is not necessary to proceed further in the writ jurisdiction.

6. However, considering the facts that the goods are still lying unattended in view of the pending controversy, if the parties make an application for early disposal of the appeal, we have no doubt that the Tribunal will consider the same sympathetically and take up the appeal for early disposal.

7. Keeping all contentions of the parties open, to be agitated in the pending appeal, we dispose of the petition.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

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