



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13322 OF 2023

M/s. J. M. Baxi Ports & Logistics	}	
Private Limited, Sector-8, Dronagiri,	}	
Opp: Bhendkal Vil, Tal: Uran,	}	
Dist: Raigad, Maharashtra – 410 206	}	...Petitioner

Versus

1.	Union of India,	}	
	Notice to be served through,	}	
	The Secretary, Ministry of Finance,	}	
	Department of Revenue North Block,	}	
	New Delhi – 110 001	}	
2.	Commissioner of Customs (General)	}	
	Jawaharlal Nehru Custom House	}	
	Nhava Sheva, Taluka – Uran,	}	
	Navi Mumbai – 400 707	}	
3.	Assistant Commissioner of Customs	}	
	CCSP Cell, Jawaharlal Nehru	}	
	Custom House, Nhava Sheva,	}	
	Taluka-Uran, Navi Mumbai-400 707	}	...Respondents

Mr. Naresh Thacker a/w Mr. Chirag Shetty i/by Economic Laws Practice
for the Petitioner.

Mr. Subir Kumar a/w Ms. Sangeeta Yadav, Ms. Sruti Kalyanikar and Ms.
Janhavi Hirlekar for the Respondents.

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

DATE : 26th OCTOBER, 2023.

JUDGMENT:

1. This Petition under Article 226 of the Constitution challenges an order dated 20 October 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') inter alia the petitioner's license as a Customs Cargo Service Provider has been suspended for the period of 1st November 2023 to 15th November 2023. By the said order, sum of Rs.3,24,03,300/- is directed to be deposited by the petitioner against as a value of the pilfered/stolen goods as per under Regulation 5 of HCCAR 2009 and further a penalty is imposed under Regulation 12 (8) of HCCAR and Rs.5,00,000/- under Section 117 of the Customs Act.

2. The petitioner being aggrieved by the impugned order contended that it is a handling large number of containers which would be arriving at the port everyday. The petitioner also contended that around more than 360 employees are employed by the petitioner for carrying out its cargo handling services and therefore, a serious prejudice would be caused if the impugned order to the extent it suspends the licence of the petitioner is allowed to operate.

3. It is on the above backdrop we have heard learned counsel for the parties. Mr. Thacker, learned counsel for the petitioner has taken us through the record which primarily includes the show cause notice and order in original. However, Mr. Thacker fairly states that the impugned order dated 20th October 2023 is an appealable under Regulation 12(9) of the HCCAR 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 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 suspension order ought not to be stayed by this Court.

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 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.

6. In our view, since the petitioner is a running concern employing more than 350 employees and handling large number of consignments day-in day-out, if the suspension order is not stayed certainly a prejudice would be caused to the petitioner who is dealing with the cargo belonging to third parties, further the petitioner has also more than 360 employees.

7. 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 20 October 2023 passed by the Commissioner of Customs. Let the Appeal be filed along with the stay application within a period of two weeks from the date of uploading the present order.
- (ii) The suspension of the licence under HCCAR Regulations for the period of 1st November 2023 to 15th November

2023 is stayed till disposal of the stay application by the Tribunal 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 within two weeks as in (i) above, the stay as granted by us 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 of 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.]