

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2926 OF 2021

Ganesh Export

... Petitioner

vs.

Union of India & Ors.

... Respondents

.....

Mr. Prathamesh Chavan i/b. India Law Alliance for the Petitioner.

Ms. Anusha Amin for Respondent No.1.

Mr. Pradeep Jetly, Senior Advocate with Mr. J.B. Mishra for
Respondent Nos. 2 and 3.

.....

**CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.**

DATE : 6 MARCH 2023

P.C. :-

The Petitioner filed the writ petition *inter alia* challenging seizure memo dated 5 November 2020 and interim prayer was made for provisional release of goods. On 2 February 2021, the Adjudicating Authority allowed provisional release of goods on compliance of certain conditions. Thereafter, on 10 February 2021, this Court modified the conditions of the order dated 2 February 2021. The Respondents challenged the interim order dated 10 February 2021 before the Hon'ble Supreme Court and by order dated 6 August 2021, the Hon'ble Supreme Court stayed the interim order dated 10 February 2021. On 19 April 2022, the Hon'ble

Supreme Court directed the Respondents to complete the investigation within 60 days and show cause notice to be issued within 30 days and the Petitioner to file reply to show cause notice within 30 days, and adjudication to be completed in 30 days. A show cause notice was issued to the Petitioner on 13 July 2022 and the Order-in Original was passed on 1 September 2022. On 18 October 2022, the Hon'ble Supreme Court quashed and set aside interim order dated 10 February 2021 as final adjudication order was passed.

2. On 16 January 2023, the following order came to be passed :

“1. The learned counsel for the Respondents states that this petition is part of the group of the writ petitions bearing Writ Petition (L) No.6821 of 2020. There are interim orders passed in these petitions and orders have also been passed by the Hon'ble Supreme Court.

2. The Respondents will place on record current position of the matter by way of affidavit by the next date.

3. Stand over to 30 January 2023 to be heard alongwith Writ Petition (L) Nos.6821 of 2020, 6827 of 2020, 6826 of 2020 and Writ Petition (St.) Nos.96099 of 2020, 96777 of 2020”.

Thereafter, time was granted to the Respondents to file a reply affidavit. Reply affidavit is filed by one Mahendra Rathod, Assistant

Commissioner of Customs, PCCCC/APSC, Mumbai- IIII on 3 February 2023 wherein it is stated as under :

“3. I say that this Hon’ble Court vide interim order dated 10.02.2021 had ordered for the provisional release of the goods subject to fulfillment of conditions in the case of the Petitioner and 5 (five) other Exporters viz. Writ Petition (L) No. 6821 of 2020, Shine Star Exports V/s. Union of India and Ors. with Writ Petition (L) No. 6827 of 2020, Sea Shine Exports V/s. Union of India and ors. with Writ Petition (L) No. 6826 of 2020, Jayshree Enterprises V/s Union of India and ors. and Writ Petition (L) No. 6824 of 2020, with Writ Petition (ST) No. 96099 of 2020, Shri Mukesh Madhu Regar V/s. Union of India and ors. and Writ Petition (ST) No. 96777 of 2020, Shri Kanheiya Lal Vaishnav V/s. Union of India and Ors. This Hon’ble High Court vide its said interim order 10.02.2021 had modified the conditions imposed by the Principal Commissioner of Customs vide Order dated 02.02.2021 while ordering provisional release of the exportable goods. The modified conditions are as under :-

(a) Petitioners shall furnish a bond equal to the free on board value of the goods.

(b) Further, petitioners shall furnish bank guarantee to the extent of 20% of the free on board value of the goods.

(c) Petitioners shall also furnish an undertaking to the adjudicating authority that they would co-operate in the investigation and in the event of any amount that may be found due relatable to the

exports, they would discharge their liability.

(d) Petitioners shall not claim any duty drawback or other benefits relatable to the exports till disposal of the writ petitions.

4. I say that being aggrieved by the said interim order dated 10.02.2021 passed in above petition, the Respondents (Union of India) filed a Special Leave Petition (C) No. 11273 of 2021 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide it's Order dated 06.08.2021 stayed the said interim Order dated 10.02.2021 passed by this Hon'ble Court in above petition and also in connected five petitions. A copy of Order dated 06.08.2021 passed by Hon'ble Supreme Court is annexed herewith and marked as Exhibit "A".

5. After hearing the concerned parties, the Hon'ble Supreme Court vide order dated 19.04.2022 passed order giving following directions :

a) We permit the Petitioner to complete investigation within a period of 60 days as prayed for;

(b) The Petitioner will be entitled to issue show cause notice, if deemed proper post investigation within a period of 30 days thereafter.

(c) If such a show cause notice is issued, the respondent will respond to the same within a period of two weeks of the receipt of the show cause notice;

(d) The Petitioner/authorities will adjudicate on the

show cause notice within a maximum period of 30 days of the reply being filed. A copy of Order dated 19.04.2022 is annexed herewith and marked as Exhibit "B".

6. Pursuant to the order of Hon'ble Supreme Court, a Show Cause Notice AC/C/19/2022-23 dated 13.07.2022 was issued to the Petitioner herein and consequently Order-in-Original (Adjudication Order) No. ADC/SS/20/2022-23/ PCCCC dated 01.09.2022 has been passed by Competent Authority after following all the procedures under the relevant law. A copy of Show Cause Notice dated 13.07.2022 and Order-in -Original dated 01.09.2022 are annexed herewith and marked as Exhibits "C" and "D" respectively.

7. I say that the Hon'ble Supreme Court of India vide Order dated 18.10.2022 observed that as the final order has been passed by the adjudicating authority, the impugned order passed by High Court for provisional release of the goods is not required to be given effect to and the parties shall have to be governed by the decisions that may be taken by the higher court/forum. The Hon'ble Supreme Court accordingly quashed and set aside the interim order dated 10.02.2021 passed by this Hon'ble Court. A copy of Order dated 18.10.2022 passed by Hon'ble Supreme Court is annexed herewith and marked as Exhibit "E".

8. I submit that the above petition was filed at the initial stage of investigation, inter alia challenging the Seizure Memo dated 05.11.2020. Since, the adjudication order is passed thereby ordering confiscation of the goods, the petition has become infructuous and thus, the petition is liable to be

dismissed. The Hon'ble Supreme Court has already granted liberty to the Petitioner to adopt appropriate proceeding against the adjudication order."

3. The learned Counsel for Respondent No.1 and learned Senior Advocate for Respondent Nos. 2 and 3 state that therefore nothing would survive in this petition as the Petitioner has a remedy under the statute in case the Petitioner is aggrieved.

4. The learned Counsel for the Petitioner states that no instructions are being received from the Petitioner to proceed further. Perhaps after the interim order has been set aside, the Petitioner has lost interest in prosecuting the petition. Since alternate remedy is available to the Petitioner, in case the Petitioner chooses to avail the same, it is not necessary to proceed further in this writ petition.

5. The writ petition is accordingly disposed of.

ABHAY AHUJA, J.

NITIN JAMDAR, J.