

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 204 OF 2024

Madhav Vivitex Pvt. Ltd.

...Petitioner

Vs.

Union of India & Ors.

...Respondents

Mr. Vikram Nankani, Senior Advocate with Mr. Roshil Nichani, Ms. Sabeena Mahadik and Mr. Mangesh Avhale for Petitioner.

Mr. Jayant Gohil for Respondent No.6.

Mr. Prathamesh Kamat with Ms. Aditi Maheshwari, Ms. Ankita Sen and Mr. Arpeera Panvalkar i/b. Renata Partners for Respondent No.8

Mr. Yogendra Mishra with Ms. Sangeeta Yadav for Respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

DATE: 03 APRIL, 2024.

P.C.

1. We have heard Mr. Nankani, learned senior counsel for the petitioner and Mr. Mishra with Ms. Yadav, learned counsel for the respondents.

2. This petition filed under Article 226 of the Constitution of India is filed praying for the following reliefs:-

“(a) that this Hon'ble Court be pleased to declare that the Respondent No.3 has acted beyond its territorial jurisdiction by directing the containers containing the goods of the Petitioner to be put on hold”;

(b) that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction calling for the records of the present case and after going through the legality and validity thereof be pleased to quash and set aside the impugned letter dated 26.11.2023 issued by the Respondent No.3, by

which the 43 containers containing the goods belonging to the Petitioner have been put on hold" ("Exhibit-E");

(c) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction directing the Respondent Nos.3 and 5 to release the 43 containers containing the goods belonging to the Petitioner, in favour of the Petitioner;

(d) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction directing the Respondent No.5 to amend the Bill of Entry filed by the Respondent No.6, in the name of the Petitioner or to allow the Petitioner to file a fresh Bill of Entry for the clearance of the goods belonging to it.

(e) that this Hon'ble Court be pleased to declare that Notification No.25/2022-Cus. (NT) dated 31.03.2022 issued by the CBIC is beyond the provisions of Section 5(4) of the Act;

(f) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction directing the Respondent Nos.3 and 5 to issue detention and demurrage waiver certificate in favour of the Petitioner;

(g) that pending the hearing and final disposal of the petition, this Hon'ble Court may be pleased to;

i. direct the Respondent No.5 to amend the Bill of Entry No.8845987 dated 20.11.2023 in favour of the Petitioner or to allow the Petitioner to file a fresh Bill of Entry;

ii. direct the Respondents, its officers, subordinates, servants and agents to refrain from acting pursuant to letter dated 26.11.2023 issued by the Respondent No.3;

iii. direct the Respondent No.3 and 5 to issue a detention/ demurrage waiver certificate to the Petitioner.

(h) for ad-interim reliefs in terms of all the prayer clauses above;

(i) for costs, and

(j) for such further and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. The primary contention as urged on behalf of the petitioner in support of the prayers, which are intended to seek clearance of the goods, subject matter of Bill of Entry No. 8845987 dated 20 November, 2023, is to the effect that the petitioner is the original importer of the goods purchased from the

foreign exporter Apelo Hongkong Limited. It is contended that after such sale from the foreign exporter, there was a High Seas Sale Agreement dated **13 November, 2023**, between the petitioner and respondent no.6. However, as there was default on the part of respondent no.6 in making payments, the High Seas Sale agreement was required to be cancelled.

4. It is contended that respondent no.6 earlier had presented the bill of entry in question and had sought to clear the goods, however, due to cancellation of the High Seas Sale agreement between the petitioner and respondent no.6, respondent No.6 cannot clear the goods as its rights qua the goods stand extinguished. It is contended that the petitioner has now stepped into the shoes of respondent no.6 and has become entitled to seek amendment of the bill of entry and/ or to file a fresh bill of entry to clear the goods.

5. It is submitted that the respondents may have some concern in regard to the antecedents of respondent no.6 with which the petitioner in no manner whatsoever is concerned and therefore, any investigation or inquiry into any acts of respondent no.6 ought not to weigh with the respondents on the petitioner seeking clearance of the goods. It is also contended that the goods cannot be kept on hold, as losses are being incurred by the petitioner. Such is the complexion of the dispute before us.

6. The goods in question are contained in 43 containers which belong to respondent no.8- Mediterranean Shipping Company S.A. If there is any issue

inter se between the petitioner and respondent no.8, all contentions in that regard are required to be expressly kept open.

7. Be that as it may, today we are primarily concerned with the contention as urged on behalf of the petitioner for clearance of the goods. In supporting the petitioner's contentions, Mr. Nankani has brought to our notice a letter dated 15 December, 2023 addressed by the petitioner to the Deputy Commissioner of Customs (Imports), JNCH, Nhava Sheva which reads thus:-

“

Date: 15.12.2023

To,
The Deputy Commissioner of Customs (Imports)
JNCH, Nhava Sheva

Sub.: Request for Cancellation / Amendment in BOE No. 8845987
Dated 20.11.2023 & allow us to file the fresh Bill of Entry in the name
of Actual Importer M/s. Madhav Vivitex Pvt. Ltd.

Dear Sir,

We have sold the goods on High Seas Sale Basis to M/s. Navajo Polymers Pvt Ltd. & they have filled the subject Bill of Entry No. 8845987 Dated 20.11.2023.

However, M/s. Navajo Polymers Pvt Ltd has not made the payment as per agreed terms, & they informed us that they are unable to make the payment and have requested to cancel the High Seas Sale Agreement and take the goods back.

As per inability of making payment and request by M/s Navajo Polymers Pvt Ltd, we have executed the High Seas Sale Cancellation Agreement duly signed and executed before the notary, which is self-explanatory and enclosed for your reference.

Hence, we request you to cancel / amend the said Bill of Entry and allow us to file a fresh Bill of Entry & clear the goods in the name of actual Importer M/s. Madhav Vivitex Pvt Ltd on the payment of Customs Duty & Taxes.

We hereby authorized M/s. TIME RICH SHIPPING PVT LTD CHA No. 11/2699 to complete the customs formalities in this regards.

Thanking you
For Madhav Vivitex Pvt. Ltd.

Sd/-
Director
Mr. Naveen Sharma”

(emphasis added)

8. Mr. Nankani has also submitted that the petitioner has the legal right and entitlement for clearance of the goods being the original importer. In support of such contention, Mr. Nankani has placed reliance on the decision of the Supreme Court in *Union of India and Another Vs. Sampat Raj Dugar and Another*¹.

9. On a query made by us, Mr. Nankani has submitted that there are no transactions of the petitioner with respondent no.6, except the present High Seas Sale which too stands cancelled. It is submitted that except for this contract, the petitioner has never dealt with respondent no.6.

10. Respondent no.6 who is represented by Mr. Gohil, learned counsel states that respondent no.6 has no objection whatsoever for the goods being cleared by the petitioner.

11. Mr. Mishra has made submissions relying on the reply affidavit filed on behalf of the respondents. There are several contentions which primarily appear to be the contentions against respondent no.6, who is being investigated in respect of issues set out in the reply affidavit.

¹ (1992) 2 Supreme Court Cases 66

12. In the aforesaid circumstances, in our opinion, considering the request which is made by the petitioner by its letter dated 15 December, 2023 addressed to the Deputy Commissioner of Customs (Imports), JNCH, Nhava Sheva (supra), it is appropriate that the application of the petitioner for clearance of the goods either by permitting amendment of bill of entry or by filing of a fresh bill of entry as the law may permit, needs to be decided by the concerned designated officer.

13. We accordingly permit the petitioner to place on record of the designated Customs Officer, a proper application raising all contentions as may be permissible in law which the petitioner state would be filed within two days from today. If the same is filed along with the documents on the credentials of the petitioner, let the designated officer take a decision on the same after granting an opportunity of hearing to the petitioner and all other concerned parties including respondent No.8.

14. It is fairly pointed out by Mr. Mishra that within two weeks from the date of application, decision would be rendered on such application of the petitioner. All contentions including contentions of the petitioner qua respondent no.8 are expressly kept open.

15. The petition stands disposed of in the aforesaid terms. No costs.

16. Parties to act on an authenticated copy of this order.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)