IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7590 OF 2024

M/s. Venture Impex ...Petitioner
Versus
Union of India through The Secretary, Department of Revenue & Ors. ...Respondents

Mr. Karl Shroff i/b. Mr. Bimal Bhabhda for the Petitioner
Adv. Jaymala J. Ostwal a/w. Mr. Mamta Omle for the for Respondent Nos.1 to 7.
Mr. Pragyanand Singh and Mr. Abhishek Jain, Appraiser, Central Revenue Control Laboratory present.

CORAM : M. M. SATHAYE &
SOMASEKHAR SUNDARESAN, JJ.

DATED : 31 MAY 2024
(Vacation Court)

P.C.:

1. This Petition impugns the inaction of the Respondents No. 2 to 7 i.e. the Customs Authorities, in not releasing a consignment of 400 tonnes of mineral oil imported by the Petitioner, which arrived on 23.12.2023 and 27.12.2023.

2. It is the Petitioner's case that the goods were subjected to the conventional tests in order to ascertain whether the goods would fall within any prohibited list and if not, the applicable duty rate would apply on the said import. Till date, the goods have not been cleared

and it is the Petitioner's contention that the test report in this case is identical to the test report that relates to 500 imports made in the past, none of which faced such resistance from the said Respondents.

3. The reason for mentioning the matter urgently during vacation is said to be the concern expressed by Container Corporation of India Limited (for short ***"CONCOR"***) which runs the container freight station at Dronagiri, which is the Respondent No. 9 in this Petition. We have been given communications from the *CONCOR* dated 09.05.2024 and 30.05.2024, which alert the Petitioner to the risk of leakages due to spike in the temperature in current peak summer conditions, whereby bulging has been noticed in several containers posing a significant risk of leakages, which could compromise the integrity of the cargo and also inflict financial losses on all concerned parties.

4. Learned Counsel on behalf of the Respondent Nos. 2 to 7 has submitted that the Customs Authorities suspect that the goods would conform to categorization of adulterated diesel, which would then fall in the restricted list, since it is only designated entities that are permitted to import diesel into India. It is the matter of concern that even after five months, a reasonable classification of the goods has not been arrived at.

5. Learned Counsel for the Petitioner submits that one fundamental feature for determining whether the goods constitute diesel would be Sulpher Content test, which admittedly has not been done till date. Learned Counsel for the Customs Authorities submits that there is no

need to conduct such test, since they are already of the view that goods are adulterated diesel. Perusal of the records suggest that the Customs Authorities indeed sought a clarification as to the Sulpher contents from the laboratory that conducted the test but the reply they received points to the fact that there is no facility to conduct such a test.

6. Learned Counsel for the Petitioner strongly urges that since at least 500 tonnes of imports have made in the past, ad-interim relief in terms of prayer clause (e) may be granted at this stage. Considering that we are a vacation court and wish to put the controversy at rest comprehensively, we feel it would be in the interest of all parties to have the consignment tested afresh by a recognized laboratory.

7. In these circumstances, we direct that Central Revenue Control Laboratory (for short ***"CRCL"***), which we are informed is situated in New Delhi, be asked to test the goods imported by drawing samples in accordance in applicable protocols for conduct of such test. Let the report of CRCL, New Delhi be filed on or before **14.06.2024**.

8. Meanwhile, we also direct the Respondent No. 9-CONCOR to file an affidavit stating on oath the imminent danger of further storage of the said consignment without clearance.

9. At this stage, after the aforesaid portion was dictated, representatives of the Customs Authorities present in the Court gave instructions to their Advocate to submit that the CRCL already has a sample with it.

10. We trust that such samples have been drawn by the CRCL in compliance with applicable protocols as they would for a test originally by them. If not, CRCL shall draw fresh samples for conducting the test so that there is no further controversy on the subject matter of testing of the consignment in question.

11. Stand over **19.06.2024** before the regular bench for further consideration including about interim relief.

12. Affidavit on behalf of the Respondent Nos. 2 to 7 may also be filed on or before **14.06.2024**.

(SOMASEKHAR SUNDARESAN, J.) **(M. M. SATHAYE, J.)**