(2014) 01 BOM CK 0256

In the Bombay High Court

Case No : Writ Petition (L) No. 19 of 2014

Gippsaero Pty. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2)
Customs Act, 1962 — Section 28

Citation : (2014) 306 ELT 47

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : R.V. Desai, Sr. Advocate and R.B. Pardeshi i/b. KRF Legal, Advocate for the Appellant; Kersi Dastoor i/b. Phoenix Legal, Advocate for the Respondent

Judgement

1. What is challenged in this writ petition under Article 226 of the Constitution is the communication dated 31 December 2013 of respondent No. 2-Asst. Commissioner of Customs (Import), (Exh. U), to respondent No. 3-ANZ Bank seeking to encash the Bank Guarantee of Rs. 1,21,61,500/- issued in favour of Commissioner of Customs, Kolkata. This Bank Guarantee was being encashed on account of the petitioner''s dues under Order-in-Original dated 20 November 2013. An aircraft imported by the petitioner at Kolkata valued at Rs. 4,05,38,320/- had been seized by Customs department. Pending the adjudication of the import, the aircraft was released on 10 May 2013 provisionally on execution of bond and on furnishing a bank guarantee of Rs. 1,21,61,500/- by the petitioner.

2. The Commissioner of Customs by the adjudication order dated 18-20 November 2013 confiscated the aircraft and imposed a redemption fine of Rs. 81,61,500/- in lieu of confiscation. The adjudication order also confirmed custom duty of Rs. 82,59,527/- u/s 28 of the Customs Act, 1962 and imposed a penalty of Rs. 40,00,000/- on the petitioner. The Commissioner of Customs in the adjudication order also directed appropriation of the redemption fine and penalty

of Rs. 1,21,61,500/- out of the bank guarantee submitted by the petitioner.

3. At the very outset the counsel for respondent No. 3-bank states that the amount of bank guarantee has already been paid to the Commissioner of Customs, Kolkata. In support of the above, learned counsel places on record a copy of the communication from respondent No. 3-bank to respondent No. 2-Assistant Commissioner of Customs (Import), Kolkata. The communication is taken on record and marked "X" for identification.

4. It is, thus, clear that invocation of the bank guarantee by the impugned communication dated 31 December 2013 is only a consequence of implementation of the order dated 18-20 November 2013 passed by the Commissioner of Customs Kolkata. The cause of action for filing this petition has, therefore, arisen within the territorial jurisdiction of Calcutta High Court. It cannot be said that any part of any cause of action for filing this petition has arisen within the territorial jurisdiction of this Court.

5. Learned counsel for the petitioner in support of the petition submits that the coercive recovery by encashing the Bank Guarantee is contrary to the settled law that during the period of limitation available to file an appeal, no coercive recovery should be made by the authorities. In support of the above submission, learned counsel cited numerous decisions of this Court. On the question of maintainability of this writ petition before this Court, it is submitted that since respondent No. 3-bank is situated within the territorial limit of this Court and the amount of bank guarantee is to be paid by respondent No. 3-bank a part of the cause of action has arisen within the jurisdiction of this Court. Therefore, in terms of Article 226(2) of the Constitution of India, this Court would have jurisdiction to entertain this petition.

6. We are unable to accept the contention of the petitioner that this Court will have jurisdiction. We find that the various decisions relied upon by the petitioner declare that coercive proceedings pending the period available to file appeal before the appellate authority and obtain stay is bad in law. That, however, is on the merits of the petitioner''s challenge and the said decisions do not deal with the issue of maintainability of this petition in this Court. The cause of action is bundle of facts, which give rise to an action. The fact giving rise to the cause of action in the present case is that the Commissioner of Customs, Kolkata has passed an adjudication order adverse to the petitioner and in a consequence of implementation of that order, the Customs authorities have invoked the bank guarantee. Merely because the bank happens to be within the territorial jurisdiction of this Court, it cannot be said that any part of any cause of action has arisen within the territorial jurisdiction of this Court. The situs of the Bank at Mumbai is no part of the cause of action seeking to restrain the Commissioner of Customs, Kolkata from encashing its Bank Guarantee. Thus it cannot be said that any part of the relevant cause of action has arisen in Mumbai for the purpose of Article 226(2) of the Constitution of India.

7. In any event as held by the Apex Court in Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, that in appropriate cases, the Court may refuse to exercise its jurisdiction on the ground of forum convenience. In this case the contesting respondent viz. Commissioner of Customs is at Kolkata and therefore it would not be appropriate for this Court to exercise jurisdiction, even if it is assumed that this Court has jurisdiction. Accordingly, petition is dismissed with no order as to costs.

