(2015) 03 BOM CK 0266

In the Bombay High Court

Case No : Customs Appeal No. 67 of 2014

Jawaharlal Nehru Port Trust APPELLANT

Vs

D.B.C. Ports Logistics RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Citation : (2015) 321 ELT 568

Hon'ble Judges : S.C. Dharmadhikari, J;S.P. Deshmukh, J

Bench : Division Bench

Advocate : Shiraz Rustomjee, Hemant Prabhulkar, Ranjeet Vaghani i/b Juris Consultus, for the Appellant; Darius Shroff, Senior Counsel, Kazan Shroff, Pinkesh Shah instructed by Mulla and Mulla, Craigie Blunt and Caroe and Pradeep S. Jetley, Advocates for the Responde

Judgement

1. After having heard this matter for some time, we expressed our opinion to the learned senior counsel appearing on behalf of the appellant Mr. Rustomjee and Mr. Shroff for the contesting respondents that the only apprehension of the appellant is that the Tribunal has made certain observations and drawn certain conclusions by which the Jawaharlal Nehru Port Trust (for short "JNPT") would be adversely affected. It has already been served with a show cause notice based on these observations. According to the JNPT it apprehends that certain orders would be passed in pursuance thereof only relying on the observations and conclusions of the Tribunal in the impugned order. There was a serious debate on the maintainability of the appeal at the instance of the JNPT who was not a party before the Tribunal.

2. In the circumstances, we put to Mr. Rustomjee our suggestion that if we give appropriate clarifications whether the JNPT is interested in pressing this appeal. After taking instructions Mr. Rustomjee informed the Court that so long as this Court protects the JNPT and its rights and contentions, it would have no objection to the disposal of this appeal as not pressed. The appeal, therefore, stands disposed of as not pressed. In the light of these statements made on

instructions by Mr. Rustomjee, we clarify that in the event the competent authority in the department of customs deciding to proceed in pursuance of the show cause notice and any other communication/letter issued to JNPT, it would be open to JNPT to urge that the order of the Tribunal and any observation, finding and conclusion therein will not be binding as JNPT was not a party before the Tribunal. Similarly, the Tribunal rendered the above findings and conclusions without giving any opportunity to JNPT to place its version. We clarify that all such contentions amongst others can be raised in response to the show cause notice and such other proceedings that may be initiated or are pending against JNPT. It would be open for the JNPT to point out to the competent authority adjudicating the show cause notice that in the light of the limited role played by it and after having brought in the other entity, JNPT cannot be termed as a custodian within the meaning of the said term under the Customs Act. All such contentions and equally those to the contrary can be raised. The adjudicating authority shall deal with them in accordance with law. While dealing with and deciding the show cause notice and other proceedings, the adjudicating authority shall take into consideration all the material placed by parties, including JNPT. It should decide the rival contentions in accordance with law and not only by relying on the findings in the impugned order. However, we clarify that the respondent No. 1 before us can urge that the Tribunal''s order is based on correct legal position which even otherwise emerges from a reading of the relevant provisions of Customs Act, 1962, and the contract between JNPT and respondent No. 1.

