
(2022) 02 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 507 Of 2022

M/s. Kaka Carpets

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226 Customs Act, 1962 — Section 110

Citation : (2022) 02 BOM CK 0014

Hon'ble Judges : R. D. Dhanuka, J; S. M. Modak, J

Bench : Division Bench

Advocate : Dr. Sujay Kantawalla, Chandani Tanna, Anupam Dighe, P. S. Jetly, Sangeeta Yadav

Final Decision : Disposed Of

Judgement

R. D. Dhanuka, J

1. Rule. Mr. Jetly, learned senior counsel for the respondents waives service. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner prays for a writ of certiorari for quashing and setting aside the

impugned provisional release order dated 4th January, 2022 issued by the respondent no.4, declaration that the respondents do have the jurisdiction to

put on hold and/or put on alert and deal with the IEC of the petitioner, for a writ of mandamus directing the respondents to withdraw the written

representation issued to put the petitioner on alert and for various other reliefs.

3. The respondents had issued a seizure memo on 17th December, 2021 under Section 110 of the Customs Act, 1962 in respect of the export shipment

of goods having description as "OTHER FABRICS, CONTAINING 85% OR MORE BY WEIGHT OF SILK OR OF SILK WASTE OTHER

THAN NOIL SILK (SILK FABRIC) (GSM 60) (18) under declared CTH 50072090 and declared total FOB of Rs.7.343 crores attempted to be

exported vide Shipping Bills described in the said seizure memo and directing the custodian M/s. JWC Logistics Private Limited, petitioner and the

Customs Broker M/s. Rajbir Singh not to remove, part with or otherwise deal with the said goods except with the written permission of the Deputy

Commissioner of Customs, SIIB, Export, JNCH.

4. It is not in dispute that after passing of the said seizure memo dated 17th December, 2021, the petitioner made a request to the respondents for a

provisional release of the said goods which were subject matter of the subject memo. The respondents after hearing the petitioner personally passed

the impugned order on 4th January, 2022 permitting provisional release of the goods seized vide said seizure memo dated 17th December, 2021 against

the Bond in the prescribed format for the full declared value of the seized goods and a Bank Guarantee for 25% of such value.

5. Dr. Kantawalla, learned counsel for the petitioner invited our attention to some of the documents annexed to the petition and also some of the

averments made by the respondents in their affidavit-in-reply and certain averments made in the affidavit-in-rejoinder filed by the respondents.

6. It is submitted by the learned counsel that the respondents have without any justification placed the petitioner under put alert list causing tremendous

hardship in respect of the export already held by the petitioner and also in respect of the export likely to be effected by the petitioner in future. He

submits that the said placement of the petitioner in the put alert list is with ulterior motive.

7. Learned counsel invited our attention to the averments made in the affidavit-in-reply stating that the respondents are examining the past export and

also the consignment cleared having the same declared description. Result of the investigation would decide the eligibility of drawback. He submits

that under the guise of the said put alert list, the respondents are trying to reopen the exports already completed by the petitioner.

8. Learned counsel invited our attention to the judgment of Gujarat High Court in case of Veer Impex v/s. Union of India, 2016 (332) E.L.T. 87 (Guj.)

and would submit that the Gujarat High Court had permitted provisional release of seized goods upon furnishing of bond of 100% value of the goods.

He submits that no condition of furnishing a bank guarantee was imposed by the Gujarat High Court in the said judgment against the petitioner therein.

Learned counsel strongly placed reliance on an unreported judgment of this Court delivered on 20th January, 2021 in Interim Application (L) No. 578

of 2021 in Writ Petition (L) No. 98518 of 2020 filed by the petitioner itself and would submit that this Court had modified the provisional release order

by directing the respondents to release the goods of the petitioner for export subject to submission of bond equivalent to declared value of goods and

submission of bank guarantee to the extent of 20% of the duty drawback payable. He submits that the petitioner is ready and willing to submit the

bank guarantee to the extent of 20% of the duty drawback payable and also PR Bond.

9. Mr. Jetly, learned senior counsel for the respondents on the other hand would submit that the petitioner can impugn the order of provisional release

by filing an appeal.

10. Insofar as issue of placement of petitioner in put alert list is concerned, learned senior counsel invited our attention to the averments made by the

respondents in the paragraph 7 of the affidavit-in-reply and would submit that by placing the petitioner under the said put alert list, field Officer was

instructed that the goods of the petitioner may be examined carefully and if required samples may be drawn and tested. He submits that no restriction

on exports are imposed by placing the petitioner under the put alert list.

11. Learned senior counsel submits that during the course of the examination of the goods, the respondents found that the goods were of different

sizes and shapes, few pieces of clothes had holes in it and were torn at few places having non uniform edges, some of them also had dying defects,

most of them appeared to be old pieces of textile. He submits that the investigation in respect of the past exports completed by the petitioner is

pending. He has no objection, if this Court direct the respondents to expedite the completion of the said investigation.

12. Insofar as pending investigation against the petitioner in respect of the identical goods exported by the petitioner is concerned, it appears that the

issue of mis-description of the goods on the basis of which the seizure memo was issued by the respondents is common in respect of shipping bills,

which are subject matter of this petition and the goods already exported by the

petitioner according to the respondents. In our view, if the respondents are directed to complete the said investigation expeditiously, the issue would be resolved once for all. We accordingly direct the respondents to complete the investigation already started by the respondents alleging mis-description in respect of the export of goods already completed by the petitioner in past within a period of four months from today and also in respect of the exports which are subject matter of this petition within a period of four months from today subject to the petitioner cooperating with the respondents in concluding the investigation within the time prescribed.

13. Dr. Kantawalla, learned counsel for the petitioner undertakes to this Court that his client would cooperate with the respondents in concluding the said investigation expeditiously and would appear before the Authority as and when called for recording statement or for producing the relevant documents. Undertakings rendered by the learned counsel for the petitioner are accepted. We accordingly direct the respondents to complete the investigation within a period of four months from today.

14. Insofar as the issue of placement of the petitioner under put alert list is concerned, a perusal of the averments made in paragraph 7 of the affidavit-in-reply indicates that the put alert has been inserted with instructions to the field Officer that "Goods may be examined carefully and if required samples may be drawn and tested". We also take notice of the averments made in the said paragraph that there is no restrictions on the export proposed by the petitioner under the said put alert list issued by the respondents. In our view, the petitioner thus would not be affected by the said put alert notice. We have already directed the respondents to complete the investigation within four months from today.

15. There are serious allegations made by the respondents in the order of seizure memo as well as in the impugned order permitting provisional release. We do not make any comments on the allegations made by the respondents in the seizure memo as well as in the order of provisional release, at this stage, in view of the pending investigation. The truth will come out in the investigation.

16. Insofar as those conditions imposed by the respondents in the impugned order of provisional release is concerned, Dr. Kantawalla, learned counsel for the petitioner placed reliance on the judgment of the Gujarat High Court in

case of Veer Impex (supra) and the judgment of this Court in case of Kaka Overseas Limited (supra). In case of Veer Impex (supra), the Gujarat High Court has considered the Circulars dated 4th November, 2011 and dated 5th August, 2013 relied upon by the learned counsel for the revenue. After considering those two circulars which required exporter to execute a bond of an amount equal to the value of goods and furnish appropriate security in order to cover the redemption fine and penalty in case of goods found to be liable to confiscation and accordingly directed the petitioner therein to furnish bond of 100% value of the goods. In our view, those circulars pressed in service by the revenue before the Gujarat High Court would not apply to the exports which are subject matter of this petition. The said judgment of Gujarat High Court in case of Veer Impex (supra) thus would not advance the case of the petitioner.

17. Insofar as the judgment of this Court in case of Kaka Overseas Limited (supra) is concerned, a perusal of paragraph 15 of the said judgment indicates that after considering the documents placed on record in that matter and after considering the fact that the petitioner had conceded that if necessary it would furnish bank guarantee to the extent of 20% of the duty drawback amount which would accrue on export of the goods, this Court modified the provisional release order which was subject matter of that writ petition by permitting the respondents to release the goods of the petitioner for export on submission of bond equivalent to declared value of goods and submission of bank guarantee to the extent of 20% of the duty drawback payable.

18. In view of the rival contention of both parties relating to the description of the goods in the bill of shippings, since the investigation is directed to be completed within a period of four months from today, in our view, interest of justice would be met with if the order of provisional release is modified by permitting the petitioner to export goods in question on submission of bond equivalent to declared value of goods and submission of bank guarantee to the extent of 20% of the duty drawback payable. We accordingly modify the impugned order by issuing such directions. Learned counsel for the petitioner agrees to submit PR Bond within a period of three days from today and the bank guarantee to the extent of 20% of the duty drawback payable within one week from today.

19. Insofar as the issue of detention charges and for issuance of detention certificate in respect of the goods which are subject matter of the seizure

memo as well as the order of provisional release is concerned, the petitioner is at liberty to make a representation to the respondents for waiver. If any

such application is made within one week from today, the respondents shall pass an appropriate order on such represent within two weeks thereafter,

in accordance with law. The order that would be passed by the respondents shall be communicated to the petitioner within one week from the date of

passing of such order. If the petitioner is aggrieved by the said order, the petitioner would be at liberty to file appropriate proceedings.

20. We accordingly direct the respondents to permit the petitioner to export the goods which are subject matter of the impugned order upon the

petitioner submitting PR Bond equivalent to declared value of goods within three days from today and upon furnishing of bank guarantee to the extent

of 20% of the duty drawback payable within one week from today. It is made clear that the goods shall be permitted to be released only after the

petitioner complying with the aforesaid two conditions.

21. It is made clear that the goods allowed to be released on the conditions imposed aforesaid would be subject to the investigation that would be

carried out by the respondents. It is made clear that this Court has not expressed any views on the merits of the investigation proposed to be carried

out by the respondents.

22. All contentions of both the parties are kept open.

23. The impugned order of provisional release dated 4th January, 2022 is modified by this order.

24. Writ Petition is disposed of in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

25. Parties to act on an authenticated copy of this judgment.