

(2014) 05 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition No. 3529 of 2012

MSC Agency (India) Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Citation : (2015) 322 ELT 238

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : A.M. Vernekar, Advocate for the Appellant; Pradeep S. Jetly and S.I. Shah i/by S.I. Shah & Company, Advocate for the Respondent;

Judgement

1. The Writ Petition is filed for direction to the respondents to release forthwith and return to the petitioners 14 containers which are described in Annexure-B to the Writ Petition. The grievance of Mr. Vernekar, learned Counsel appearing for the petitioners is that the Writ Petition has been filed in April, 2012. Till date the petitioner who has no concern with the cargo in the containers is waiting for return of the empty containers. The empty containers have to be returned to the petitioner by the Container Freight Station which has been licenced in this case, namely, Central Warehousing Corporation. The cargo has to be destuffed and the empty containers have to be handed over to the petitioner. The empty containers lying in the Central Warehousing Corporation is the property of the petitioner. The petitioner is not concerned with the cargo.

2. After this Writ Petition was pending for some time and the affidavits are placed on record, what we have noticed is that the Central Warehousing Corporation finds it difficult to return the containers because the cargo which is stuffed in the same has been involved in some adjudication. So long as the Customs do not give clearance the Central Warehousing Corporation claims that it is difficult to handover the containers. It is stated that now the correspondence and finally ending with the letter dated 29-4-2014 would indicate that the adjudication in relation to the cargo is complete, the cargo is confiscated and now the law

postulates disposal of the cargo.

3. However, Mr. Vernekar complains that when the petitioner has no control over all such measures and steps which the authorities are required to take under the respective laws, the empty containers cannot be detained and indefinitely.

4. Prima facie, we see some substance in the contentions of Mr. Vernekar. We would have expected such matters being not brought before this Court and repeatedly. They reflect lack of decision making on the part of the concerned authorities. It was open for the authorities to have arranged for storage of the cargo and which is subject matter of the ongoing investigation and adjudication and release the empty containers. It does not augur well for the system that for two years and more the containers are lying with the Container Freight Station. In these circumstances we would highly appreciate all concerned taking early action and returning the empty containers to the petitioner. We would expect that before the next date the requisite steps are taken by all concerned including the Customs Department and other officials in charge in the decision making process. We would not then appreciate any stand and particularly that because the adjudication is yet not completed, the decision cannot be taken. Let the adjudication and all such process pursuant thereto continue and go in accordance with law, but detention of the containers cannot be countenanced. More so, if the adjudication is completed. Place this matter on 21st July, 2014. We would expect all concerned to take decision in terms of this order or else we would be constrained to summon them and seek their personal presence before us on the adjourned date. A copy of this order be handed over to Mr. Jetly. Stand over to 21st July, 2014.