

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17433 of 2018****with****CIVIL APPLICATION NO.1 OF 2018****IN****SPECIAL CIVIL APPLICATION NO.17433 OF 2018****with****CIVIL APPLICATION NO.2 OF 2018****IN****SPECIAL CIVIL APPLICATION NO.17433 OF 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS.JUSTICE HARSHA DEVANI****and****HONOURABLE DR.JUSTICE A. P. THAKER**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

PRISHA OVERSEAS PVT LTD THROUGH PRASHANT ARVINDBHAI
SHUKLA
Versus
UNION OF INDIA

Appearance:

MR HARSIT DAVE, ADVOCATE with JAY A MEHTA(9088) for the PETITIONER

MR NIRZAR S DESAI(2117) for the RESPONDENTS

=====

CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI
and
HONOURABLE DR.JUSTICE A. P. THAKER

Date : 30/11/2018

ORAL JUDGMENT
(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Rule. Mr. Nirzar Desai, learned standing counsel waives service of notice of rule on behalf of the respondents.
2. Having regard to the controversy involved in the present case and more particularly, considering the urgency in the matter, with the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.
3. This petition challenges query memo dated 13.11.2016 issued by the Superintendent of Customs, Old Tune Port, requesting to supply the documents/information listed thereunder; as well as the communication dated 16.11.2018 issued by the Superintendent of Customs, Old Tuna Port, informing the petitioner that in respect of the Shipping Bill No.106/2018-19 dated 13.11.2018 filed by the petitioner with the office, certain representations have been received by that office raising the issues enumerated thereunder, which is under consideration of the Customs House, Kandla and further informing the petitioner that after consideration of the same, a decision will be taken in the matter, which will be communicated to it.
4. The petitioner is engaged in the export of livestock of

sheep and goats. The petitioner has been issued importer exporter code by the Director General of Foreign Trade (DGFT) under the Foreign Trade (Development and Regulation) Act, 1992 and has been exporting live sheep and goats from Tuna Port upon purchasing such livestock from Gujarat, Rajasthan and other places in India. The live sheep and goats so purchased are kept in special premises near Tuna Port and maintained till their actual exportation. It appears that this port is a suitable port for livestock of sheep and goats due to its strategic and particular location and such livestock exports have been taking place even pre-independence from this port and regular exports have been taken place since more than four decades.

4.1 It appears that in August 2018, pursuant to the representations made by some animal rights activists, the District Magistrate, Kachchh issued orders to stop export of sheep and goats from Tuna Port and directed the Deen Dayal Port authorities not to allow movement of goats and sheep meant for export. The petitioner challenged such orders before this court by way of a writ petition being Special Civil Application No.12462 of 2018, which came to be admitted and by way of interim relief, the implementation of the communication impugned therein came to be stayed till the pendency of the petition, with a direction that the petitioner shall comply with all requisite rules and regulations for export of livestock in future, after obtaining the necessary certificates and necessary permissions from the concerned authorities.

4.2 Thereafter, on 1st November, 2018, the Port Trust authorities issued permission for movement of livestock for

export after much harassment, persuasion and efforts and suffering a lot of pressure from the overseas buyers who had placed orders with them. In the meantime, they had suffered a lot of recurring losses.

4.3 Insofar as the present petition is concerned, based on an export order, the petitioner filed Shipping Bill No.106/2018-19 dated 13.11.2018 at Old Tuna Port. Their vessel, livestock and everything was ready. However, the customs authorities raised queries vide query memo dated 16.11.2018, calling upon the petitioner to supply the documents enumerated therein. While such query memo is subject matter of challenge in this petition, the learned advocate for the petitioner has submitted that the petitioner has complied with the said query memo. The challenge to the said query memo, therefore, no longer survives.

4.4 Thereafter, by the impugned communication dated 16.11.2018, the shipping bill of the petitioner has been put on hold till a decision is taken in respect of the representations referred to therein, which has given rise to the present petition.

5. Mr. Harshit Dave, learned advocate for the petitioner submitted that the livestock is being exported from this port since decades and that no such issues have been raised in the past for more than forty years. It was submitted that the queries raised by the communication dated 13.11.2018 have been complied with by the petitioner and that the respondent authorities have not pointed out any breach of law in compliance of any statutory provisions on part of the petitioner

insofar as the export of the livestock in question is concerned. It was submitted that in the absence of any restrictions having been imposed by the Central Government under the relevant statutory provisions, it is not permissible for the respondents to restrain the petitioner from exporting the livestock and keep it on hold in terms of the communication dated 16.11.2018. It was submitted that the objections and points of consideration canvassed by the respondents are not prescribed by any law. It was emphatically argued that till date, the petitioner has already suffered huge loss and continues to incur demurrages and maintenance of the live stock with each passing day which is equally huge for them to bear. It was urged that the impugned communication dated 16.11.2018 be quashed and set aside and the respondent authorities be directed to process the shipping bill dated 13.11.2018 submitted by the petitioner and unless any statutory requirement is not complied with, to permit the export thereof.

6. On the other hand, Mr. Nirzar Desai, learned standing counsel for the respondents, submitted an affidavit on behalf of the respondents No.2, 3 and 4, annexing therewith various representations received from different authorities and organizations. It is averred in paragraph 24 of the affidavit-in-reply that though ship and goats are freely exportable under the Export Policy notified vide Notification No.47/2015-2020 dated 31.01.2018, but Para (1) of the General Notes to Export Policy states that the free exportability is subject to any other law for the time being in force. The learned counsel for the respondents invited the attention of the court to the provisions of sub-section (33) of section 2 of the Customs Act, 1962, which defines "prohibited goods" as well as to the provisions of

clause (d) of section 113 of the said Act, which provides for confiscation of goods attempted to be improperly exported, etc. It was submitted that even if the goods are freely exportable under the Export Policy, for the purpose of considering prohibition aspect, all other laws are also required to be taken in consideration. It was further submitted that if any of the four procedures challenged by the petitioner have been incorporated in any law, it is mandatory to follow the same failing which the goods will be treated as “prohibited goods”. The learned counsel for the respondents is, however, not in a position to pinpoint any express provision or requirement under the customs laws which the petitioner has not complied with.

7. The captioned applications have been made by one Animal Welfare Foundation and by Akhil Bharat Krishi Go Seva Sangh respectively, seeking to be impleaded as parties to the main petition. Having regard to the fact that this petition challenges the action of the respondent No.3 and is not in the nature of a public interest litigation, the court is not inclined to entertain the applications. Moreover, the court had called upon the learned counsel for the applicants if they were willing to deposit the costs for the demurrages and maintenance of live stock suffered by the petitioner as the delay in processing the shipping bill was on account of their representations, neither of the parties showed any willingness to do so. In these circumstances, this court has not thought it fit to entertain the applications. Nonetheless, this court has heard the learned counsel for the said parties.

8. On behalf of the Animal Welfare Foundation, Mr. S. N. Soparkar, Senior Advocate, learned counsel has submitted that

vide Trade Notice No.18/2018 dated 23rd October, 2017, the exporters have been sensitized to ensure that Sanitary and Phyto-Sanitary laws of importing countries are strictly adhered to. They are advised to seek requirements of importing country along with export order and while, exporting goods, they must provide certificate (s) from designated agencies along with export documents indicating the observance of the norms mandated by the importing country. Reference was made to the Federal law number (6) of the year 1979 concerning veterinary quarantine of U.A.E. and more particularly, Article (5) thereof, to submit that the requirements thereof are required to be satisfied by the exporter while exporting the livestock.

9. The short question that arises for consideration in the present case is regarding the validity of the query memo dated 13.11.2018 and the communication dated 16.11.2018 of the Superintendent of Customs, Old Tuna Port. Insofar as the query memo dated 13.11.2018 is concerned, as noted hereinabove, the petitioner has already complied with the same and hence, the challenge thereto no longer survives.

10. Reference may be made to the impugned communication dated 16.11.2018 issued by the Superintendent of Customs, Old Tuna Port, which reads thus:

"F.No.SB-106/2018-19

Date: 16.11.2018

*To,
M/s Prisha Overseas Pvt. Ltd.,
3/4 Shankar Nagar Society,
Radhaswami Road,
Ranip,
Ahmedabad.*

Gentlemen,

Subject : Shipping Bill No. 106/2018-19 dated 13.11.2018

In respect of Shipping Bill No. 106/2018-19 dated 13.11.2018 filed by you with this office, it is to inform that certain representations have been received by these office raising issues, including, following:

- Applicability of the BIS 14904:2007 (Transport of Live-stock – Code of Practice) in exportation of live-stock;*
- Applicability of international guidelines / standards in the form of Terrestrial Animal Health Code, issued by World Animal Health Organization (OIE);*
- Applicability of Quarantine procedure and certification laid down by AQCS prior to exports;*
- Necessity of health/fitness certificates issued by the Veterinary Officer under whose jurisdiction the port of export is situated.*

2. This issue is under consideration with Customs House, Kandla. It is to inform that after consideration of the same decision taken in the matter will be communicated.

*Yours sincerely,
sd/-
(Manoj Kumar Ojha)
Superintendent of Customs
Old Tuna Port"*

11. On a plain reading of the above communication, what emerges is that the Superintendent of Customs has informed the petitioner that his office has received certain representations raising the issues mentioned therein and that such issue is under consideration of the Customs House, Kandla and that after consideration of the same, a decision will be taken in the matter. Thus, the shipping bill of the petitioner

has been kept on hold till the Customs House, Kandla, takes a decision on the representations received by its office.

12. Though the said communication is expressly subject matter of challenge in the present petition, the learned advocate for the respondent No.3 is not in a position to point out as to which statutory requirement the petitioner is required to satisfy and which in fact has not been satisfied by the petitioner. All that is stated is that various representations have been received and that in the light of such representations, it is possible that the provisions of certain laws have not been followed. In the opinion of this court, if there is breach of any provision other than the provisions of the Customs Act and the Import Export Policy, it is for the concerned authorities under those Acts to take action in respect of such breach. The customs authorities are governed by the provisions of the Customs Act and the Import Export Policy, and are required to take action pursuant to the shipping bill filed by an exporter within the four corners of such law and the policy and restrictions provided thereunder. The Superintendent of Customs, Old Tuna Port, therefore, merely on the basis of certain representations received from different quarters, could not have kept the shipping bill of the petitioner on hold till such representations are considered. It may be noted that the petitioner is in the business of exporting of livestock. Once it receives an export order, it is required to comply with the time-lines. If there is a valid reason for refusing to permit such export, it is always permissible for the custom authorities to do so. However, the custom authorities are not justified in keeping the shipping bill on hold merely because they have received the representations from certain

authorities and organizations.

13. The learned counsel for the respondents has placed reliance upon the provisions of section 2(33) of the Act which defines “prohibited goods” and reads thus:

“ (33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;”

14. In the present case, it is an admitted position that export of the goods in question is not prohibited under the Customs Act or any other law for the time being in force, nor is the learned counsel for the respondent able to point out to the court as to which condition subject to which the goods are permitted to be exported has not been complied with, under the circumstances, reliance placed upon the said provision is misconceived.

15. The learned counsel for the respondents has further placed reliance upon the provisions of clause (d) of section 113 of the Act which insofar as the same is relevant for the present purpose reads thus:

113. Confiscation of goods attempted to be improperly exported, etc.— The following export goods shall be liable to confiscation—

xxxxxx

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

16. It is an admitted position that this is not a case of confiscation of goods, but a case where the shipping bill is not being processed on account of representations made by some third parties. Reliance placed upon the said section is therefore, thoroughly misconceived and deserves to be stated only to be rejected.

17. In the opinion of this court, in the absence of non compliance of any statutory provision, the respondent No.3 is not justified in keeping on hold the shipping bill of the petitioner. The representations received by the respondent No.3 being extraneous to the provisions of the Customs Act, ought not to have deterred him from performing his duties in accordance with law. The impugned communication dated 16.11.2018 whereby the shipping bill of the petitioner has been kept on hold, therefore, cannot be sustained.

18. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned communication dated 16.11.2018 issued by the Superintendent of Customs, Old Tuna Port (Annexure "G" to the petition) keeping the Shipping Bill No.106/2018-19 dated 13.11.2018 of the petitioner on hold, is hereby quashed and set aside. The respondent authorities are directed to process the shipping bill of the petitioner in accordance with law without any further delay.

19. Rule is made absolute accordingly with no order as to costs.

20. Both the civil applications shall stand rejected.

Direct Service is permitted.

(HARSHA DEVANI, J)

(A. P. THAKER, J)

B.U. PARMAR