IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.25723 of 2015

M/s. Indian Christion Outreach Ministries [Petitioner]
A Registered Trust Represented by its Trustee
Mr.A. Jasper New Prabhu
Plot No.412, 7th Block, Mugappair West,Chennai-37.

Vs

1 Commissioner of Customs
Chennai VIII Commissionerate Custom House
No.60 Rajaji Salai Chennai-01.

2 M/s. Ennore Cargo Container
Terminal Pvt.Ltd No.144 Kondakarai Village
S.R. Palayam Chennai-120 [Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the 1st Respondent to ensure compliance by the 2nd Respondent of the directions issued by the appellate authority vide order-in-appeal C.Cus II No.168/2015 dated 19.02.2015 read with Regulation 6(1) of the Handling of Cargo in Customs Areas Regulations 2009 within a reasonable time frame.

For Petitioner : Mr.Hari Radhakrishnan
For Respondent : Mr.S.Haja Mohideen Gisthi, SC (R1)
No appearance for R2

O R D E R

This writ petition is filed for the issue of a Writ of mandamus directing the 1st Respondent to ensure compliance by the 2nd respondent of the directions issued by the appellate authority vide order-in-appeal in C.Cus II No.168/2015 dated 19.02.2015 read with Regulation 6(1) of the Handling of Cargo in Customs Areas Regulations 2009, within a reasonable time frame.

2. The petitioner had filed Bill of Entry dated 04.04.2013 for import and clearance of goods declared as Miscellaneous Medical Equipments, Dental Equipments, Medical items such as Syringes, Plastic tubes, saline/fluid metal stand etc. Based on the declaration made by the petitioner, the goods were subjected to first

check examination both by the Assistant Drug Controller and also by a Chartered Engineer. The Assistant Commissioner of Customs, after adjudication, passed an order dated 21.11.2013, by which, goods to the value of Rs.5,220/- were confiscated under Section 111(d) of the Customs Act, 1962 read with Drugs and Cosmetics Act, 1940. In addition, the value for other medical equipments were enhanced with a further imposition of Redemption fine of Rs.1,50,000/- and penalty of Rs.50,000/-. Aggrieved over the said order dated 21.11.2013, the petitioner preferred an appeal before the Commissioner of Customs (Appeals), who vide order dated 31.12.2013 reduced the redemption fine to Rs.50,000/- and penalty to Rs.10,000/- with a further direction to the original adjudicating authority to issue necessary detention and demurrge waiver certificate as per law. Accordingly, the Assistant Commissioner of Customs, had issued the waiver certificate dated 23.01.2015 directing the 2nd respondent to waive the detention /storage charges upto 28.01.2015 excluding the period 15.05.2014 to 27.08.2014. Since, waiver for demurrage and detention charges was not given upto the actual clearance of the goods, an appeal was preferred before the Commissioner of Customs (Appeals), who by order dated 19.02.2015, directed the Assistant Commissioner to give waiver of demurrage and detention charges for the entire period till the goods are actually cleared. Despite the same, the 2nd respondent had not granted the waiver of detention and storage charges. Hence, the petitioner is before this Court.

3. The learned counsel for the petitioner would contend that with regard to waiver of demurrage charges, as claimed by the petitioner, even the Assistant Commissioner of Customs (Group 6) on 06.08.2015, wrote a letter to the 2nd respondent recommending wavier upto 14.08.2015 and since there was no response, a complaint was also lodged by the petitioner on 11.08.2015 to the Commissioner of Customs, Chennai VIII Commissionerate. Thereupon, again nothing moved on, the petitioner is before this Court.

4. Heard the learned counsel for the petitioner and Mr.S.Haja Mohideen Gisthi, learned Standing Counsel for the 1st respondent. There is no representation for the 2nd respondent.

5. On considering the submissions made by the learned counsel on either side, this Court feels it appropriate that the letter dated 06.08.2015 of the 1st respondent followed by a complaint of the petitioner dated 11.08.2015 should be considered by the 2nd respondent and orders passed within a reasonable time.

6. Accordingly, the 2nd respondent is directed to pass appropriate orders with regard to waiver of demurrage charges upto 14.08.2015, on the basis of the recommendation of the 1st respondent vide letter dated 06.08.2015 and on consideration of the complaint of the petitioner dated 11.08.2015. Such exercise shall be completed by the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is disposed of with the above directions. No costs.

rg

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1 Commissioner of Customs
Chennai VIII Commissionerate Custom House
No.60 Rajaji Salai Chennai-01.

2 M/s. Ennore Cargo Container
Terminal Pvt.Ltd No.144 Kondakarai Village
S.R. Palayam Chennai-120

+ 1 cc to Mr.S.Hajamohideen Gizthi, Advocate SR 48741

+ 1 cc to Mr.Hari Radhakrishnan, Advocate SR 48695

sr(co)
prk22/9