IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.35585 of 2002

J.D.Impex, represented by its
Proprietor Dhanish Jain, Chennai-79. .. Petitioner

Vs

1. The Commissioner of Customs (Airport)
Air Cargo Complex, Chennai-27

2. The Airport Authority of India (IAD) represented by its
Deputy General Manager, Chennai-27 .. Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, for the relief as stated therein.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mr.M.Devendran-SC-R1
Mr.S.R.Sundaram-R2

ORDER

This Writ Petition is filed to issue a Writ of Mandamus to direct the Respondent to pay the Petitioner the market value of the goods imported vide Bill of Entry 378482 dated 2.2.2002, namely, 12 packages of Halogen Lamps, weighing 125 Kgs, along with duty amount paid with interest at 15% p.a.

2. The case of the Petitioner is as follows:-

a. The Petitioner Firm is a registered importer and exporter of various goods, under the DGFT, Ministry of Commerce, Government of India. The Petitioner entered into a contract with M/s.United Trading Corporation, Honk Kong for the supply of 6000 pieces of halogen lamps in 12 cartons of China Origin, to the tune of USD 695, to be shipped by AIR. On 26.1.2002, the goods were made from Shanghai to Chennai and the goods arrived at Chennai Airport on 2.2.2002. Since the delivery order was misplaced, there was a delay in processing the clearance of the

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goods. On 19.2.2002, the Petitioner asked for duplicate copy of the delivery order from the Carrier and the same was issued. On 2.2.2002, the Bill of Entry was filed before the 1st Respondent for clearance of the goods, which was not processed on the ground of under valuation of the goods and the case was taken up for investigation. On 27.3.2002, the Petitioner sent a representation to the Deputy Commissioner of Customs, Group V B, Air Cargo Complex, along with evidence. However, the goods were not cleared on the ground that the investigation was going on. Again on 23.5.2002, the Petitioner sent a representation for granting waiver in respect of demurrage incurred. On 23.5.2002, the Bill of Entry was processed and the Petitioner paid Rs.30,341/- as customs duty and other charges for clearance. However, the goods were not cleared on the ground that the investigation was not completed.

b. The 2nd Respondent, by letter dated 14.6.2002 rejecting the request for waiver of demur rage, directed the Petitioner to clear the goods to avoid demurrage. In the mean time, the 1st Respondent informed that they proposed to go for auction of the cargo. Therefore, the Petitioner sent a representation dated 24.6.2002 to the 2nd Respondent, requesting not to dispose of the goods until further orders from the 1st Respondent. However, the 2nd Respondent sold the goods on 28.6.2002 in an auction with the permission of the 1st Respondent. Hence, the Petitioner issued a legal notice dated 3.7.2002, calling upon the Respondents to hand over the goods of similar quality and quantity or pay its value besides refund of duty paid to the 1st Respondent with interest and damages. The 2nd Respondent sent a reply dated 19.7.2002, rejecting the said claim and the Petitioner was informed that a notice dated 19.6.2002 was issued, calling upon the Importers to clear the goods, which landed on or before 31.3.2002, failing which goods would be auctioned. The Petitioner was not given such a notice under the provisions of the Customs Act. Hence, this Writ Petition has been filed for the reliefs as stated above.

3. The Respondents filed a counter affidavit, wherein it is averred as follows:-

a. The goods arrived at Chennai Airport on 23.1.2002 and not on 2.2.2002 and the Petitioner himself admitted that delivery order was misplaced, which caused delay in processing the clearance of the goods, for which the Respondents are not responsible. With reference to the letter dated 23.5.2002, regarding waiver of demurrage, the same could not be acceded to, as there is no provision in the waiver policy, which was communicated by letter dated 14.6.2002 and further advised the Petitioner to clear the goods to avoid accrual of demurrage. Since the Petitioner did not clear the goods, with the permission of the 1st Respondent, the goods were auctioned and

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hence, the 2nd Respondent cannot be held responsible for the loss as alleged by the Petitioner. The 2nd Respondent sent a reply dated 19.7.2002, stating that the delay was caused by the Petitioner only. As per the provisions of the Customs Act, if the goods are not cleared within 30 days of arrival, the same are liable for auction. The goods in question were not cleared even after lapse of 155 days of its arrival and the said delay was not properly explained.

b. The 2nd Respondent caused a public notice on 19.6.2002, calling upon all the importers to clear their respective goods which landed on or before 31.3.2002, failing which the goods would be auctioned without further notice and this public notice is sufficient notice deemed as the final notice under Section 48 of the Customs Act. Therefore, the Petitioner cannot contend that he has no knowledge and that there was no notice served upon him before auctioning of the goods and hence, there was no need to send any individual notice.

c. Though the Petitioner filed Bill of Entry on 2.2.2002 for the total assessable value of Rs.34,115/- and paid duty of Rs.29,000/- on 23.5.2002 and obtained pass out order on 23.5.2002, the Petitioner did not take any steps to clear the goods well before the auction date i.e. 28.6.2002. If any cargo on arrival not cleared within 5 days are liable for demurrage charges as per the Notification (Extraordinary Part III, Sec.IV) No.25, dated 26.6.1993 and demurrage charged will be collected at the time of clearance if not cleared within 30 days. Beyond this period, such cargo would be treated as pending cargo and the demurrage charges as applicable shall be collected. In such circumstances, this Writ Petition is liable to dismissed.

4. Heard both sides.

5.The learned counsel for the Petitioner contended that despite the Petitioner filing Bill of Entry, the action of the Respondents in not allowing the Petitioner to clear the goods is arbitrary and unwarranted and that without waiting for the Petitioner to clear the goods, the Respondents auctioned the goods, for which the Petitioner has paid necessary charges and that the Respondents, without proper notice under Section 48 of the Customs Act, auctioned the goods and sold the same, which is illegal and that the investigation department had wantonly delayed the matter under the guise of enquiry, which resulted in delay in clearing of the goods in time by the Petitioner. The learned counsel further submitted that when the goods imported are not available on the date of clearance due to auction, the party concerned is entitled to get the market value of such goods imported besides refund of duty paid and hence, prayed for a direction as prayed for in this Writ Petition.

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6. The learned senior standing counsel for the 1st Respondent submitted that due to delay on the part of the Petitioner, the Respondents cannot be held responsible and there is no provision in the waiver policy and that as per the provisions of the Customs Act, if the goods are not cleared within 30 days of arrival, the same are liable for auction and that since goods in question were not cleared even after lapse of 155 days of its arrival, the same were auctioned and the public notice dated 16.2.2002 itself can be construed as the final notice under Section 48 of the Customs Act and therefore, the Petitioner cannot contend that there was no notice served upon him before auctioning of the goods and prayed for dismissal of this Writ Petition.

7.I have considered the aforesaid submissions and perused the materials available on record.

8.It is not in dispute that the petitioner had imported 6000 pieces of halogen lamps from Shanghai to Chennai and the goods were arrived at Chennai Airport on 2.2.2002. Since there was a delay in clearing the goods and the petitioner was seeking the waiver of demurrage charges, which was declined by the Airports Authority of India, the goods could not be cleared, even after the lapse of 155 days, though the cuosoms duty was paid by the petitioner and hence, the second respondent, by issuing the press notice, auctioned the goods of the petitioner on 28.6.2002.

9.As per the Notification (Extraordinary Part III, Sec.IV) No.25, dated 26.6.1993, any cargo on its arrival, if not cleared within 5 calendar days from the date of landing is liable for demurrage charges and such demurrage charges would be collected from the consignee at the time of the clearance, if not cleared within 30 days.

10.The provisions of Section 48 deals with the, "Procedure in case of goods not cleared, warehoused or transhipped within thirty days after unloading", which reads as under:-

> "48. Procedure in case of goods not cleared, warehoused or transhipped within 1[thirty days] after unloading.—If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped 2 [within 3[thirty days]] from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper

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officer be sold by the person having the custody thereof: Provided that—
(a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;
(b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct. Explanation.—In this section, "arms" and "ammunition" have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959).

11.As per the provisions of Section 48, if the imported goods are not cleared within 30 days from the date of unloading at a Customs Station, that can be sold after notice to the importer.

12.It is pointed out by the learned Senior Standing Counsel appearing for the respondents that the goods were not cleared even after the lapse of 155 days from the date of their arrival. It is also pointed out that the petitioner had filed BOE on 2.2.2002 (BOE No.378482 and total assessable value is Rs.34,115/- and the duty was paid on 23.5.2002 (Rs.29,000/-) and obtained pass out order on 23.5.2002. However, the petitioner had not taken any steps to clear the consignment well before the auction date, i.e. on 28.6.2002 though the pass out order was given by the Customs Authority on 23.5.2002.

13.Now, the main contention of the learned counsel for the petitioner is that without notice to the petitioner, the goods ought not to have been auctioned by the respondents.

14.Refuting the contention of the learned counsel for the petitioner, the learned Senior Standing Counsel appearing for the respondents has contended that in the letter, dated 24.6.2002 addressed by the agent of the petitioner to the second respondent, it is stated that they have received the letter from the customs pending cargo section for the disposal of the consignment and therefore, when the petitioner was intimated that if the goods are not cleared as early as possible, they would be disposed off by the second respondent and the agent of the petitioner was also knowing very well that the goods would be disposed of, if the same were not cleared and therefore, that letter itself was the notice intimating the disposal of the goods, if the same were not cleared as quickly as possible and hence,, the question of non-issuance of notice does not arise.

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15.The letter, dated 24.6.2002 addressed by the agent of the petitioner to the second respondent reads as under:-

"With reference to the above, we wish to inform you that the above said consignment is already completed the custom assessment and we already been made the payment of customs duty. We submitted the Demurrage Waiver requisition letter to your office along with the customs demurrage waiver detention certificate.

In this connection, please refer to your letter No:AAM/CARGO/3140/2002/1149-50, dated 14.6.2002 stating that our waiver request is rejected due to no provision in your policy to consider such cases.

The importer is not in a position to pay the demurrage charges and they are planning to request, customs to made the demurrage charges on behalf of the importer. In the meanwhile, we receive the letter from customs pending cargo section for dispose the consignment. Hence, we request you to kindly do not dispose the consignment until the further order received from the customs. Please do the needful."

16.From the above letter, it is clear that the agent of the petitioner was informed about the disposal of the consignment.

17.Thereafter, the second respondent had issued a 'Press Notice' in a English Daily, viz., "The Hindu", dated 19th June 2002, under the caption, "Notice of Disposal To the Importer for uncleared import consignments". A copy of the same is produced in the typed set of papers.

"It is hereby notified to all importers including Govt. Undertakings/Departments and the Banks that as per the Govt. Directions, uncleared import cargo landed on or before 31.3.2002 at Chennai-Airport shall be disposed off shortly through Public Auction. Importers are requested to take immediate steps for clearance of their import consignments. In case any of the cargo is pending in the appeal process with the Customs or any court of law, it is incumbent on the importers concerned to file written submissions substantiating the above with documentary proof of the orders of the customs/court etc., to the Dy. General Manager (Cargo) AAI. If no written submissions with the documents is furnished by the importers within 15 days of this notice, un-cleared cargo will be disposed off as abovesaid and no claim whatsoever in this regard will be entertained thereafter.

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This may be deemed as a notice in terms of Section 48 of Customs Act, 1962.

Kindly note that not acknowledging/replying to the consignee's communication (addressed before or after this notice) by the AAI does not confer any right on the consignee to seek any legal remedy.

Dy. General Manager (Cargo)."

18.Further, a copy of the above said public notice was affixed on the Notice Board in the Cargo Terminal, Chennai.

19.No doubt, it is not the case of the petitioner that the goods were landed only after 31.3.2002.

20.Either the petitioner or atleast the agent of the petitioner should have come to know about the above said public notice and on seeing the above said public notice, steps should have been taken to clear the goods, or some steps should have been taken legally as stated in the notice, but nothing has been done.

21.Further, it is clear from the above said notice that any kind of communication or reply, addressed before or after the notice, does not confer any right on the consignee to seek any legal remedy. Therefore, it is more clear that either the goods should have been cleared soon after the publication of the notice or some steps should have been taken legally by the petitioner.

22.Under these circumstances, the contention of the learned counsel for the petitioner that as per the provisions of Sections 150 and 153 of the Customs Act, the goods can be sold by public auction only after notice to the owner thereof cannot be countenanced for the aforesaid reasons and the decision reported in Rang Birajgi Sarees (P) Ltd., vs. Additional Commissioner of Customs (2011 (265) E.L.T. 26 (Cal.) relied on by him would not lend any support to the case on hand.

23.Further, when the petitioner and the respondents are in exchange of correspondences in respect of the clearance of the goods, there is no need for any specific notice regarding the clearance of goods. However, in the case on hand, the agent of the petitioner himself had admitted that he was intimated about the disposal of the consignment and the press notice was issued in the English Daily, dated 19.6.2002 and a copy of the same was affixed in the office of the Cargo Terminal, Chennai and therefore, viewed from any angle, the question of non-issuance of notice before the public auction does not arise. Even after paying the customs duty, the petitioner should have been more vigil and strenuous in clearing the goods.

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24.Under these circumstances, this Court does not find that the action of the auctioning the goods of the petitioner suffers from any infirmity.

For the aforesaid reasons, the writ petition is devoid of merits and accordingly, the same is dismissed. However, there will be no order as to costs.

Srcm

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To:
1. The Commissioner of Customs (Airport)
   Air Cargo Complex, Chennai-27

2. The Deputy Managing Director
   Airport Authority of India (IAD)
   Chennai-27

+ 1 cc to Dr.M.Devendran, Advocate, SR 63814

+ 1 cc to Mr.B.Sathish Sundar, Advocate SR 63787

+ 1 cc to Mr.S.R.Sundaram, Advocate SR 63516

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