

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 20th November, 2015

+

W.P.(C) NO. 6726/2010

ASPAM PETRONERGY

..... Petitioner

Through: Mr. Naveen Malhotra, Adv.

Versus

GGM COMMERCIAL CONTAINER

CORPORATION INDIA LIMITED AND ANR Respondents

Through: Mr. Abhas Kumar, Adv

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petition seeks mandamus to the respondent Container Corporation of India Ltd. (CONCOR) to refund the "hazardous charges and penalty charged illegally" from the petitioner. Notice of the petition was issued and counter affidavits have been filed. No rejoinder thereto has been filed by the petitioner. The counsels have been heard.

2. The counsel for the petitioner has argued that the petitioner had imported mixed Hybrid Carbon Oil and which arrived at Mumbai and the respondent CONCOR was to transport the same from Mumbai to Delhi. It is further stated that the respondent CONCOR however in its bill dated 15th

December, 2009 raised on the petitioner, besides freight, also claimed a sum of approximately Rs.1,41,150/- towards Handling Charges by treating the goods as hazardous as well as Hazardous Penalty Charges and which the respondent CONCOR was not entitled to charge and of which the petitioner by this petition seeks refund.

3. I have at the outset enquired from the petitioner whether the petitioner, before paying the aforesaid amount had protested thereagainst and / or made the payment without prejudice, expressing urgency and reserving the right to claim refund of the same.

4. The counsel for the petitioner has fairly stated that no protest was made at any time before payment and the claim for refund was made for the first time after the payment had been received.

5. I am of the view that the petition is liable to be dismissed on this ground alone. The petitioner, if was disputing the demand / bill raised by the respondent CONCOR including towards Handling Charges treating the goods as hazardous and / or Hazardous Penalty charges imposed by the petitioner, ought to have, even if the goods were at that time required to be immediately transported, informed the respondent CONCOR of the

petitioner disputing the said amounts and / or of the petitioner reserving the right to seek refund of the said amount and without the same it cannot be permitted.

6. In fact, the Courts have held in the context of insurance claims arising under the Consumer Protection Act, 1986 that if a complainant / claimant satisfies the consumer forum that discharge vouchers were obtained by fraud, coercion, undue influence etc., they should be ignored, but if they were found to be voluntary, the claimant will be bound by it, resulting in the rejection of the complaint (*United India Insurance Co. Ltd. Vs. Ajmer Singh Cotton & General Mills* 1999 (6) SCC 400, *National Insurance Co. Ltd. Vs. Nipha Exports (P) Ltd.* 2006 (8) SCC 156, *National Insurance Co. Ltd. Vs. Sehtia Shoes* 2008 (5) SCC 400 and *Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly* 1986 (3) SCC 156). Applying the said principle, the Supreme Court in *National Insurance Company Ltd. Vs. M/s Boghara Ployfab Pvt. Ltd.* 2009 (1) SCC 267 held that, the mere production of a full and final discharge voucher cannot be a ground for declining the reference to arbitration as it has to be determined by adducing evidence whether the petitioner / claimant has furnished the same voluntarily or otherwise.

7. Rather I find that it is the case of the respondent CONCOR in their counter affidavits that the petitioner had mis-declared the goods and thus willingly paid the penalty charges, to avoid any further action against the petitioner. The respondent in this regard has also relied upon plethora of other material to show that mixed Hydro Carbon Oil more than 70 degrees centigrade, as the subject goods were, has been declared to be hazardous for transportation.

8. The claim thus, entails disputed questions of facts and is incapable of adjudication in writ jurisdiction.

9. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 20, 2015

‘gsr’..