IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.03.2016
Delivered on : 08.03.2016

Dated : 08.03.2016

CORAM:

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.28224 & 28225 of 2015
and
M.P.Nos.1 to 1 of 2015

M/s.APM Terminals India Private Limited,
No.78, Anuppampattu Village, TH Road,
Ponneri Taluk, Tiruvallur District,
Chennai - 601 203,
rep by its Authorised Signatory
Joseph Sandiav ... Petitioner in both W.Ps

Vs.

The Assistant Commissioner of Customs
(Un-cleared Cargo Cell),
Office of the Commissioner of Customs,
Sea Port-CH-IV,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001. ... 1st Respondent in both W.Ps

M/s.Devmata Exim Pvt. Ltd.,
No.84 & 85, Arihanta Plaza,
Wall Tax Road, Chennai - 600 003
rep by its Director. ... 2nd Respondent in W.P.28224/15

M/s.Nexus Electro Steel Limited,
No.202, Shivalaya, Block - C,
No.16, Ethiraj Salai, Egmore,
Chennai - 600 008
rep by its Director. ... 2nd Respondent in W.P.28225/15

Petitions filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the 1st respondent in dated 27.07.2015 and 15.07.2015 in Lot Nos.15 of 2015 & 666 of 2013 and consequently direct the 1st respondent to permit the petitioner to auction the goods stuffed in containers Nos.MSKU2415130/20,

MSKU3275687/20,MSKU3383790/20, MSKU4033121/20, MSKU7692246/20, POCU0529399/20,PONU0682890/20, PONU2092146/20, SCMU20655531/20 & TGHU2327746/20 (In WP.28224/15) and MSKU2650340/20 & MRKU9355896/20(In WP.28225/15).

For Petitioner (in both W.Ps) : Mr.P.Giridharan

For Respondents (in both W.Ps) : Mr.Vikram Ramakrishnan (R1 in both W.Ps)

Mr.N.Balaji, (R2 - in both W.Ps)

COMMON ORDER

The petitioner has filed the above Writ Petitions to issue writs of certiorarified mandamus to call for the records and to quash the order of the 1st respondent dated 27.07.2015 in Lot No.15 of 2015 and dated 15.07.2015 in Lot No.666 of 2013 and consequently direct the 1st respondent to permit the petitioner to auction the goods stuffed in containers mentioned in the Writ Petitions.

2.Since the issues involved in both the Writ Petitions are similar, by consent of both the learned counsels, both the Writ Petitions are disposed of by this common order.

3.It is the case of the petitioner that they are off dock Container Freight Station, which provides facilities for storing Containers, including movement of Containers from and to Port, delivery of Containers to customers, facilitating movement of customs cleared Containers from and to Port, receiving of export and import cargo, stuffing and de-stuffing of containers. The petitioner, being a Container Freight Station, functions as per the guidelines issued by the Customs Department in Notification No.26 of 2009 referred to as Handling of Cargo in Customs Area Regulation, 2009. The 2nd respondent, under the Bills of Lading dated 22.05.2013 and 08.09.2014, imported consignments of 10 containers stuffed with 10 lots of Light Melting Scrap weighing 258250 kgs and 2 Containers stuffed with 12 Coils of Prime Cold Rold Grain Oriented Electrical Steel Sheets respectively. The said containers arrived at Port of Chennai in the month of October 2014 and July 2013 and were brought into the Container Freight Station of the petitioner on 09.10,2014, 10.10.2014 & 11.10.2014 and 19.06.2013 & 20.06.2013. Though the containers arrived in October 2014 and July 2013, the 2nd respondent did not take steps to clear the Cargo within 30 days from the date of importation into India. Therefore, the petitioner issued a notice under Section 48 of the Customs Act to the 2nd respondent dated 06.11.2014 and 19.07.2013, stating that if the cargo is not cleared within 15 days from the date of notice, the cargo would be disposed of as per the provisions of Customs Act. However, the 2nd respondent did not take steps to clear the cargo within the stipulated time in the notice. Thereafter, the petitioner issued a 2nd notice under Section 48 of the Customs Act to the 2nd respondent stating that if the cargo is not cleared within 10 days from the date of notice, the cargo would be disposed of as per the provisions of Customs Act. Even after the 2nd notice, the 2nd respondent did not take steps to clear the cargo stuffed in the containers. Therefore, the petitioner by letters dated 31.03.2015 and 18.11.2013 sought the permission of the 1st respondent to auction the goods.

4.In the Writ Petition in W.P.No.28225 of 2015, the 1st respondent, by order dated 16.06.2014, permitted the petitioner to auction the goods. Thereafter, the goods were scheduled to be auctioned by way of E-auction on 10.07.2014. In the meantime, the 2nd respondent had, on 09.07.2014 (i.e.) one day before the auction, paid the duty for the goods.

5.In the Writ Petition in W.P.No.28224 of 2015, the 1st respondent had not taken any steps to auction the uncleared cargo. Here also, on 20.10.2014, the 2nd respondent paid the duty. Accordingly, the Dock Officials had issued out of charge order on 25.02.2015.

6.Thereafter, the petitioner sent letters dated 27.07.2015 and 05.06.2015 to the 2nd respondent, with copy marked to the 1st respondent, stating that if the goods are not cleared within 5 days from the date of receipt of the said letters, the petitioner would be forced to auction the said goods. The 1st respondent issued the impugned orders dated 27.07.2015 and 15.07.2015 stating that the 2nd respondent had filed Bill of Entry dated 20.10.2014 and 07.07.2014 and paid the duty and once the customs duty was realized, the goods cannot be included in the Lot for fresh auction.

7.According to the petitioner, the demurrage charges for the Containers amount to Rs.94,71,188/- (W.P.No.28224 of 2015) and Rs.51,47,349/0 (W.P.No.28225 of 2015).

8.The learned counsel for the petitioner, in support of his contentions, relied upon the following judgment reported in 2008 (226) E.L.T. 169 (Del.) [Associated Container Terminals Ltd., Vs. Union of India] wherein the Division Bench of Delhi High Court held as follows:

> "The reference to Section 150 concerning the application of sale proceeds in an auction cannot really help the Revenue in the instant case. Section 63 is a specific provision concerning warehousing

charges. It may be recalled that the auction took place for the purposes of recovering the warehousing duties and not for the purpose of recovering the customs duty in terms of Section 72 of the Act. It is also not possible to read Section 150(2)(b) as permitting appropriation of the sale proceeds towards the outstanding customs duty after meeting the expenses of the sale. The words and other charges, if any, payable in respect of the sale goods to the carrier, if the notice of such charges has been given to the person having custody of the goods makes it clear that this does not pertain to customs duty. Section 150(2)(d) of the Act which talks of payment of the charges in respect of the goods sold due to the person having custody of the goods is referable to payment of warehousing charges and it takes precedence over recovery of customs duty which is relatable to Section 150(2)(e) of the Act. Viewed from this angle, the right of the petitioner here to recover the warehousing charges from the sale proceeds appears superior to the right of the Revenue to recover customs duty."

9.The learned counsel for the petitioner also relied upon Handling of Cargo in Customs Areas Regulations, 2009 wherein in Regulation 6(1)(f) it has been stated as follows:

"(f)no permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer".

10.The learned counsel appearing for the 1st respondent submitted that the judgment relied upon by the learned counsel for the petitioner is not applicable to the present case as the judgment of the Delhi High Court pertains to the legality of the recovery of warehousing charges by the petitioner due to it from the auction of Sale Proceeds in terms of Section 63 (2) of the Customs Act. In the instant case, the impugned Light Melting Scrap goods were not warehoused and the Electrical Steel Sheets in Coils were not warehoused so as to make the dictum laid down in the division Bench of the Delhi High Court applicable to the present case.

11.On a perusal of the impugned orders, it is clear that the 1st respondent has considered all the aspects and passed speaking orders with reasons. On a perusal of the materials available on record, it is also clear that now the dispute is between the petitioner and the 2nd respondent for recovery of demurrage. For this, the petitioner cannot invoke Article 226 of the Constitution of India seeking a direction against the 1st respondent. When there is a dispute with regard to demurrage charges claimed by the petitioner as against the 2nd respondent, the same cannot be decided by this Court in the Writ Petition, when the 2nd respondent had paid the duty payable to the 1st respondent and the Dock officials had issued out of charge orders. The 1st respondent had rightly observed that once the customs duty was realized, the goods cannot be included in the Lot for fresh auction. The Writ Petition is filed in public law remedy. This Court, while exercising the power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a Statutory Authority, the remedy under Article 226 of the Constitution cannot be invoked for resolution of a private law dispute as contra-distinguished from a dispute involving public law character. The petitioner cannot force the 1st respondent to conduct an auction so as to recover the demurrage charges from the 2nd respondent, even though the 1st respondent does not have any control over the goods. It is open to the petitioner to file a Civil suit before the appropriate Civil Court for the recovery of their demurrage charges and the 2nd respondent is at liberty to contest the same on merits. The judgment relied upon by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case.

12.In these circumstances, there is no merit in the Writ Petitions are liable to be dismissed. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

va

To

The Assistant Commissioner of Customs
(Un-cleared Cargo Cell),
Office of the Commissioner of Customs,
Sea Port-CH-IV,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.B.Sathish Sundar, Advocate, S.R.No.14548
+2cc's to Mr.P.Giridharan, Advocate, S.R.No.15190

W.P.Nos.28224 & 28225 of 2015
and M.P.Nos.1 to 1 of 2015

VD(CO)
CA(21/03/2016)