Reserved on : 22.04.2016
Delivered on : 29.04.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.04.2016
CORAM:

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.1969 of 2016 and
W.M.P.No.1717 of 2016

M/s.Express Clearing Agency,
rep by its Managing Partner,
No.3, Jafar Syrang Street,
Chennai - 600 001. ... Petitioner

Vs.

1.The Chennai Port Trust,
rep by its Chairman,
Rajaji Salai, Chennai - 600 001.

2.The Traffic Manager,
Chennai Port Trust, Chennai.

3.The Commissioner of Customs,
Customs House, 60 Rajaji Salai,
Chennai - 600 001. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus to direct the respondents herein to release the cargo stored in E1 Shed pursuant to the bill of entry No.3466985 dated 03.12.2015 without insisting for any payment towards demurrage charges and direct the respondents to refund the sum of Rs.9,39,867.53p erroneously paid by the petitioner towards demurrage charges.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
Mrs.AL.Gandhimathi

For Respondents : Mr.S.Haja Mohideen Gisthi (R1 & R2)
Mrs.Mallika Srinivasan (R3)

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of mandamus to direct the respondents to release the cargo stored in E1 Shed pursuant to the bill of entry dated 03.12.2015 without insisting for any payment towards demurrage charges and to direct the respondents to refund the sum of Rs.9,39,867.53p erroneously paid by the petitioner towards demurrage charges.

2.According to the petitioner, they were appointed as Agent for clearing the cargo Muriate of Potash imported by M/s.Indian Potash Limited, Chennai, a Government of India Limited. The said importer has imported 13,050 metric tons of Muriate of Potash from Israel through Vessel MV Euro Sky. The petitioner has filed the bill of entry for clearing the cargo under the Bill of Exchange dated 03.12.2015 and paid the necessary wharfage charges. The Customs Department, by their Examination Order dated 07.12.2015, had released 80% of the cargo and retained 20% on site for verifying the description with all the original bank attested documents and to verify the analytical certificate/technical literature. The samples were ordered to be drawn by the Fertilizer Control Laboratory for testing the standards as per the Fertilizer Control Order. It was further directed that the remaining 20% of the cargo would be released after the receipt of the test report. The cargo was off-loaded from the Vessel and stored in the E1 Shed on transit basis in the Port area. Pursuant to the said order of the Customs Department, the petitioner had cleared 80% of the cargo. The remaining 20% of the cargo had to be detained by the petitioner in the transit shed on account of the direction issued by the Customs Department.

3.In terms of Chapter IV of the Scale of Rates, demurrage charges is chargeable on goods left at Chennai Port Trust's transit sheds or yards beyond the expiry of free days. Clause 9 (a) provides that the first 45 days will be free days for the period of detention during which the goods were detained by the Commissioner of Customs for the purpose of special examination involving analytical or technical tests other than the ordinary process of appraisement and certified by the Commissioner of Customs to be attributable to any fault or negligence on the part of the importers.

4.According to the petitioner, 20% of the cargo could not be moved by the petitioner on account of the restraint imposed by the Customs Authorities. Therefore, the petitioner contended that they are entitled for 45 free days, however, the respondents 1 & 2 Port Trust insisted and collected demurrage charge on 20% of the cargo, viz., 2,610 tons at the rate of Rs.18.50 per Ton initially from 20.12.2015 to 26.12.2015 and at the rate of Rs.36/- per Ton from 27.12.2015 to 30.12.2015 and in the process, had collected a sum of Rs.9,39,867.53p.

5.By the test report conducted by the Central Fertilizers Quality Control and Training Institute, Faridabad, the imported cargo satisfies the standards as per Fertilizer Control Order, therefore, the restraint imposed on the petitioner in respect of 20% of the cargo was lifted by the Customs Department pursuant to the report dated 04.01.2016. The petitioner approached the 2nd respondent on 13.01.2016 requesting the 2nd respondent to release the goods without levying any demurrage charges in the light of the relevant Clause contained in Chapter IV of the Scale of Rates prescribed by the Port Trust and also to refund the sum of Rs.9,39,867.53p, which was erroneously paid by them. However, the 2nd respondent had neither released the goods nor returned the payment. The respondents have not permitted the petitioner to remove the remaining 20% quantity of the goods imported and are insisting for the payment of demurrage charges, as condition precedent for the removal of the remaining goods.

6.The respondents 1 & 2, in their counter, have stated that the demurrage charges are being levied in order to speed up the clearance of cargo from the transit area of the Port and to discourage the users to utilize the area as their warehouse. Further, they have stated that it is their duty to ensure that the Customs give clearance, the customs duty is paid and the Port charges are paid prior to the delivery of the cargo. According to the respondents 1 & 2, by the order of the Customs dated 07.12.2015, 80% of the cargo was ordered to be released and in respect of 20% of the cargo on Board/site was not released to verify the description with respect to all original bank attested import documents and also to verify Analytical Certificate/Technical Literature by Regional Fertilizer Control Laboratory (RFCL). Out of the total quantity of 13,050 metric tons, the Customs had cleared 10,440 metric tons on 07.12.2015 within the free days. Further, they have stated that in respect of the 20% of the cargo, the Customs have not imposed Detention Order, therefore, it was not detained as per the orders of the Customs. Further, the respondents 1 & 2 contended that since there was no Detention Order passed by the Customs and the Customs Detention Certificate was issued in respect of the 20% of the cargo, the petitioner is liable to pay demurrage charges.

7.In the counter filed by the 3rd respondent/Customs Department, in paragraphs - 2 to 5, the 3rd respondent has stated as follows:

> "2.Adverting to para 6 the respondent submits that the petitioner had filed bill of Entry No.3466985 dated 03.12.2015 for import of 13,000 M.Tones of Muriate of Potash from Israel through vessel M.V.Eurosky on behalf

of M/s.Indian Potash Ltd., Chennai. The bill of entry was duly assessed on 07.12.2015 with a direction to the shed officers to release 80% of the cargo and inspect the balance 20% on board with reference to import documents and representative samples to be drawn by RFCL for testing the standards as per FCO 1985 and the balance cargo to be released after verification of test report. Accordingly, 80% of the cargo was released.

3.The Test report was received on 4-1-2016 wherein the under the column remarks it was shown as "standard". Consequently, the balance 20% retained by the respondent was released on 13-1-2016 after receipt of RFCL test report No.526/2015 dated -4-1-2016.

4.On receipt of the test report the petitioner approached the respondent for release of the detained goods. Accordingly, on 13-1-2016 the goods were released.

5.The respondent submits that there is no delay on the part of the respondent in releasing the cargo. The total number of days covered to clear the cargo by the customs is less than 45 days."

8.On a perusal of the stand taken by the 3rd respondent Customs Department, it is clear that only 80% of the cargo was released on 07.12.2015 and the balance 20% was retained by the respondents for verification and conducting test. The report was received from Regional Fertilizer Control Laboratory on 04.01.2016. Pursuant to the report, the Customs released the remaining 20% of the cargo on 13.01.2016. Further, in paragraph – 4, the Customs Department had specifically stated that on receipt of the test report, the petitioner approached the respondents for release of the detained goods. Further, the 3rd respondent had stated that the total number of days to clear the cargo is less than 45 days.

9.When the 3rd respondent, Customs Department had specifically stated that the goods were detained for conducting verification and tests and that the detained goods were released on 13.01.2016 after the receipt of the report from the Regional Fertilizer Control Laboratory on 04.01.2016, the contention of the respondents 1 & 2 that unless the goods were detained by the Customs Department, the petitioner is liable to pay the demurrage charges, cannot be accepted. When the counter filed by the Customs Department clearly says that the goods were detained, the respondents 1 & 2 cannot take a different stand stating that the goods were not detained by the Customs Department. Even by the order of the Customs Department dated 07.12.2015, they ordered for the release of only 80% of the cargo and 20% of the cargo was not released by the said order. Therefore, it also implies that 20% of the goods were detained by the Customs Department without issuing an order for release. This stand of the petitioner is also now supported by the counter filed by the Customs Department. When the goods were released only on 13.01.2016, the petitioner approached the respondents on the same day for the release of the goods, however, the respondents 1 & 2 levied demurrage charges stating that there was no order of detention. Since it is clear that the goods were detained by the Customs Department, the stand taken by the respondents 1 & 2 cannot be accepted. The respondents 1 & 2 are liable to release the cargo stored in E1 Shed pursuant to the bill of entry dated 03.12.2015 without insisting for any payment towards demurrage charges. The respondents 1 & 2 should also refund the amount received by them towards the demurrage charges for the 20% of the cargo.

10.Accordingly, I direct the respondents to release the cargo stored in E1 Shed pursuant to the bill of entry dated 03.12.2015, without insisting for any payment towards demurrage charges and I also direct the respondents 1 & 2 to refund the amount paid by the petitioner towards demurrage charges for 20% of the cargo, which was not released pursuant to the order dated 07.12.2015.

11.With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Chairman,
The Chennai Port Trust,
Rajaji Salai, Chennai - 600 001.

2.The Traffic Manager,
Chennai Port Trust, Chennai.

3.The Commissioner of Customs,
Customs House, 60 Rajaji Salai,
Chennai - 600 001.

+1 cc to M/s.AL.Ganthimathi Advocate sr.27801
+1 cc to M/s.S.Haja Mohideen Gisthi Advocate sr.27508
+1 cc to M/s.Mallika Srinivasan Advocate sr.27178

Order made in
W.P.No.1969 of 2016 and
W.M.P.No.1717 of 2016

aa03/05/2016

29.04.2016