

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.No.939 of 2016

1. The Chennai Port Trust
rep by its Chairman
Rajaji Salai
Chennai 600 001
2. The Traffic Manager
Chennai Port Trust
Chennai .. Appellants/Respondent Nos.1 and 2

-vs-

1. M/s Express Clearing Agency
rep by its Managing Partner
No.3, Jafar Syrang Street
Chennai 600 001.1st Respondent/Petitioner
2. The Commissioner of Customs
Customs House
No.60, Rajaji Salai
Chennai 600 001.2nd Respondents/3rd Respondent

Appeal under Clause 15 of the Letters Patent, against the order dated 29.04.2016 made in W.P.No.1969 of 2016.

Petition 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 3.12.2015 without insisting for any payment towards demurrage charges and direct the respondents to refund the sum of Rs.9 39 867.53 erroneously paid by the petitioner towards demurrage charges.

For Appellants :: Mr.S.Haja Mohideen Gisthi

For Respondents:: Mr.Rahul Balaji for R1/Caveator
Mrs.R.Hemalatha
Senior Standing Counsel for R2

JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel for the parties.

2. It appears that there is a confusion as to the retention of 20% of the goods viz., Muricate of Potash, which were imported through the first respondent, lying with the appellant-Port Trust at the instance of the second respondent-Customs authority for the purpose of verification/test etc., as 80% of the goods had already been released by an order passed during December, 2015 by the Customs authority. Now the dispute is only with regard to the release of the remaining 20% of the goods.

3. In our view, there appears to be some communication gap between the appellant-Port Trust and the second respondent-Customs authority. Though the learned counsel for the appellant-Port Trust has contended that the first respondent is liable to pay demurrage charges for the 20% of the goods detained, on the ground that there was no detention order passed by the Customs authority and no detention certificate was issued for the same, the learned counsel for the first respondent submitted that for no fault of them, the first respondent has been penalised or sought to be penalised by the appellant-Port Trust in spite of an application made in this regard for release of the 20% goods. However, the learned senior standing counsel for the second respondent-Customs authority has submitted that with regard to the release of the 20% of the goods, which were detained for verification/test, the said goods have also been directed to be released by an order passed on 13.1.2016 by the Customs authority even before completion of 45 days.

4. Since it is now made clear by the second respondent-Customs authority that an order has been passed way back during January, 2016 and only for want of communication from the Customs authority, the appellant-Port Trust has not released the goods, we direct that the 20% of the goods, if not already released, be released by the appellant-Port Trust to the first respondent forthwith without any demurrage charges, as the same has to be waived of by the Port Trust authority. However, the copy of the order passed during January, 2016 by the second respondent-Customs authority may be made available to the appellant-Port Trust for record purpose. It is also made clear that the first respondent shall produce the release certificate

within six months from the date of clearance of the goods, failing which the first respondent will have to pay demurrage charges. The writ appeal is disposed of accordingly. Consequently, C.M.P.No.12195 of 2016 is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.
2. The Traffic Manager,
Chennai Port Trust,
Chennai.
3. The Commissioner of Customs,
Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

+2cc to M/S.Satish Parasaran, Advocate Sr.44846
+1cc to M/S.R.Hemalatha, Advocate Sr.44917
+1cc to Mr.S.Haja Mohideen, Gisthi, Advocate Sr.45338

W.A.No.939 of 2016

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srg 11/08/2016

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