BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDERS RESERVED ON : 20.06.2016
ORDERS DELIVERED ON : 01.07.2016
CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.(MD) No.9351 of 2016
and
WMP(MD)Nos.7404 and 7719 of 2016

N.Ponnappan, S/o.Narayanan,
Power Agent of A.Mohammed Shafeek,
S/o.Abid S.Thaha, Sole Proprietor,
M/s.Best Cashew Traders,
Uliyacovil P.O. Kollam 691019,
Kerala. .. Petitioner

vs.

1.The Assistant Commissioner Customs
Tuticorin Customs House,Tuticorin.

2.The Officer Incharge,
Continental Ware Housing Corporation,
(Nhava Seva) Limited,Custom Freight Station,
Madurai Bye Pass Road, Melavittan,Tuticorin.

3.Cosco India Shipping Pvt Ltd.,
Tuticorin Branch Office,
Opp to Rajaji Park, Palai Road,Tuticorin – 2.

4.Vinod Varghes,
Sparklewat Limited,C/o.Master Distributors Limited,
Cosco Containers Ltd., Tuticorin Branch Office,
Opp to Rajaji Park, Palai Road, Tuticorin -2.

5.S.Johnson
(R5 was impleaded as per order of this Court
dated 01.07.16 in WMP(MD)No.7714/16)

6.M/s.Tasty Nut Industries
Represented through its Managing Partner
S.Mohammed Nowfal
(R6 was impleaded as per
order of this Court dated 01.07.16
in WMP(MD)No.8151 of 2016) .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Mandamus directing the 1st Respondent to restrain the delivery of 18 containers of raw cashew to any other 3rd party based on any illegal amended bill of lading other than the Petitioner and consequently order to deliver the cargo which are kept in 2nd Respondent warehouse in bill of lading numbers 1. COSU6095467990-14.4.2016-4 Containers - 64.500MT - 860 bags 2.COSU6095468160-14.4.2016-8 Containers - 129.375MT - 1725 bags 3. COSU6095468170-14.4.2016-3 Containers - 48.000MT - 640 bags 4. COSU6095468180 -14.4.2016-3

Containers - 48.375MT - 645 bags TOTAL 18 Containers - 290.250 MT - 3870 bags to the Petitioner only according to law based on his representation dated 08.05.2016.

For Petitioner : Mr.S.Muthalraj

For R1 : Mr.B.Vijay Karthikeyan

For R2 : Mr.R.Vijayakumar
For R3 : Mr.K.Gokul

For R4 : Mr.V.J.Mathew
Senior Counsel
for Mr.C.Muthusaravanan

For R5 : Mr.V.T.Gopalan
Senior Counsel
for Mr.D.Sivaraman

For R6 : Mr.V.Sasikumar

O R D E R

The Petitioner has focused the instant writ petition before this Court praying for passing of an order by this Court in directing the First Respondent to restrain the delivery of 18 containers of 'Raw Cashews' to any other third party based on illegal amended Bill of Lading, other than the Petitioner and consequently, to pass order to deliver the cargoes, which are kept in the Second Respondent/warehouse Corporation in Bill of Lading No.(1) COSU6095467990-14.4.2016-4 Containers - 64.500MT - 860 bags (2)COSU6095468160-14.4.2016-8 Containers - 129.375MT - 1725 bags (3) COSU6095468170-14.4.2016-3 Containers - 48.000MT - 640 bags and (4) COSU6095468180 -14.4.2016-3 Containers - 48.375MT - 645 bags, in all 18 Containers-290.250 MT - 3870 bags to the Petitioner only, according to law, based on his representation, dated 08.05.2016.

2.***Resume of Writ Facts***:-

2.1.According to the Petitioner, it is one of the importers of Raw Cashew nuts in shell from Tanzania and entered contract with 4th Respondent, wherein 'Master Distributor Limited' is one of the seller and shipper to them and issued a proforma Bill of Lading. The aforesaid party had agreed to deliver a larger extent of Six thousand Nine hundred and Sixty Metric Tons of Raw Cashew nuts as per contract and the Petitioner had almost received the considerable quantum of Cargo. However, there is a remaining cargo of 290.250 M.Ts dispatched through Port of Origin Tanzania and necessary details are as under:-

BILL OF LADDING NUMBERS

1.COSU6095467990 - 14.4.2016 - 4 Containers - 64.500MT - 860 bags
2.COSU6095468160 - 14.4.2016 - 8 Containers - 129.375MT -1725 bags
3.COSU6095468170 - 14.4.2016 - 3 Containers - 48.000MT - 640 bags
4.COSU6095468180 - 14.4.2016 -3 Containers – 48.375MT - 645 bags

TOTAL -18 Containers- 290.250MT - 3870 bags

2.2.The categorical case of the Petitioner is that it had already paid amount through bank for 6846 Mts. So far, they had received 5534.828 MT only. In respect of the remaining quantity of 1311.172 Mt., the present 18 containers consisting of 290.250 MT of cargo is dispatched. As such, they had paid the entire amount for the cargo in question. It is further represented on bealf of the Petitioner that on receipt of consideration value only, they had released the Bill of Lading in the Petitioner's name viz., Best cashew Traders Kollam.

2.3.As a matter of fact, the cargo was laden on Board at Port of Origin DAR ES SALAAM, TANZANIA on 14.04.2016 and reached the delivery/destination port Tuticorin on 29-04-2016 and further that the cargo was cleared from the Port. In fact, the 3rd Respondent submitted IGM MANIFESTO in the name of their concern 'Best cashew Traders Kollam' and cargo is under the custody of the secod Respondent Customs Freight Station.

2.4.It comes to be known that the letter of Legal Manger of Bollore Africa Logistics Tanzania Limited shows that the 4th Respondent had taken steps to change the name of the consignee from 'Best cashew Traders Limited' to Glory Cashews of SNP, Kollam. Also, that the letter shows that the consignee name should not be changed and if they failed to do so, the matter would be reported to police from the Managing Director of the contracting Company. Furthermore, the Logistics Company requires formal notification /instructions from Police/ Court order directing them not to amend the consignee’s name and therefore, the Petitioner lodged a complaint before police.

2.5.The version of the Petitioner is that by naratting necessary facts, on 08-05-2016, a representation was made to Respondent Nos.1 to 3 and in fact, the first and 2nd Respondents are state Authorities, who are regulating the import of cargo at Tuticorin Port. The Third Respondent Container lines had prepared the IGM Manifesto in the name of their concern Best cashew Traders Kollam, till then there was no amendment in the name of Third Respondent. The grievance of the Petitioner is that the shipper had not come forward to hand over the 'Original Bill of Lading' to clear the cargo. The obvious intention is to change the name in original bill of lading and to sell the cargo at the increased rate to some other third party. As such, the Petitioner made a representation to the state authorities to stop the delivery of the cargo to any third parties by producing 'unlawful' amended Bill of lading etc. and also asked to restrain the further movement of the cargo without their consent and concurrence.

2.6.The cargo is perishable in nature and therefore it is to be cleared from Customs Ware House. The Petitioner is the real legal owners of the cargo and as such, it may be permitted to move the cargo. The Petitioner is having a good case and balance of convenience. Indeed, the cargo had reached Tuticorin on 29-04-2015 and the Petitioner is to pay heavy cost and demurrage to both 2nd and 3rd Respondents.

3.***<u>Gist of contents of the Third Respondent's Counter:-</u>***

3.1.The 18 containers of Raw Cashew Nuts of Tanzaia Origin arrived destination Port Tuticorin on 29.04.2016. For the import of shipment, the Third Respondent had filed 'Import General Manifest (IGM) with Tuticorin Customs on 28.04.2016 in advance, which is the prevailing procedures as per manifest received from Transhipment Port Colombo to the name of consignee M/s.Best Cashew Traders-Kollam (The writ Petitioner). On 09.05.2016 the Consignee M/s.Best Cashew Traders-Kollam had served a copy of letter to the Third Respondent office that they lodged a complaint at Kollam East Police Station on 02.05.2016 against the Fifth Respondent and on 18.05.2016, their Port of Loading agent at Dar Es Salam had informed that they had changed consignee as M/s.Glory Cashews as per Shipper M/s.Master Distributors request on 03.05.2016 and release the new original Bills of Lading on 09.05.2016, which was confirmed by the shipper M/s.Master Distributors.

3.2.It transpires that (through e-mail) on 18.05.2016, the Third Respondent's Port of Lading Agent at Dar Es Salam had asked them about the formalities required to amend the Import General Manifest (IGM) filed by the Customs, since Shipper M/s.Master Distributor had approached their Port Loading Agent at Dar Es Salam and requested for Import General Manifest amendment, inasmuch as the 'Original Bill of Lading Consignee' is different from Import General Manifest (IGM) filed consignee for which they had replied that they would check and revert back.

3.3.The writ Petitioner (IGM Consignee) on 20.05.2016 had obtained an interim direction from this Court restraining the Respondent Nos.1 and 2 not to release the cargo to anyone based on any amended Bill of Lading and immediately they had informed the said order to the Port of Loading Agent at Dar Es Salam, the Fourth Respondent, Fifth Respondent and all other stack holders.

3.4.Even after knowing the Court order on 25.05.2016, the Shipper M/s.Master Distributor again insisted the Third Respondent's Port of Loading Agent at Dar Es Salam for amendment of Consignee as 'M/s.Glory Cashews' and asked to submit documents to Customs and as per their Port of Loading Agent, at Dar Es Salam request, they had informed the formalities required to be fulfilled for the amendment in IGM with Tuticorin Customs.

3.5.As per Electronic Data Interchange (EDI) manifest consignee is M/s.Best Cashew Traders with onboard date and Bill of Lading date was 14.04.2016 i.e. the date of sailing of vessel Ex Port of Loading. As per the Third Respondent's Port of Loading Agent, Shipper M/s.Master Distributor had approached their Port of Loading Agent and requested for change of new consignee as M/s.Glory cashews on 03.05.2016 and as per Shipper M/s.Master Distributor and their Port of Loading Agent confirmation new Original Bill of Lading was released on 09.05.2016 to the name of M/s.Glory Cashews with shipped onboard and Bill of Lading date as 14.04.2016. Therefore, the 'Original Bill of Lading' was released only on 09.05.2016 and not on 14.04.2016 itself. It is wrongl to mentioned that 'Original Bill of Lading' was prepared on 14.04.2016 itself, but as per records it is only on 09.05.2016. In fact, without submitting the 'Original Bill of Lading' in the Third Respondent's office, the Third Respondent could not start processing amendment and that was informed to the Third Respondent's Port of Loading Agent at Dar

Es Salam, Shipper M/s.Master Distributor and Amended Original Bill of Lading Consignee M/s.Glory Cashews.

3.6.The Third Respondent had informed the Port of Loading Agent that the dispute is between the Shipper M/s.Master Distributor and IGM Consignee M/s.Best Cashew and amended Original Bill of Lading Consignee M/s.Glory Cashew and hence, they, as carrier agent, are not responsible for the time delay, cargo damage, demurrage, detention, loss and towards any claim. The Third Respondent has a carrier agent as per the regulation, whoever is submitting the original documents with it, by the proper consignee, cargo shall be released and submit their request to the First Respondent for amendment if required for approval based on Original Bill of lading submitted in their office. The Third Respondent submitted its request to the First Respondent for approval of amendment and further processing on 10.06.2016 based on Original Bill of Lading submitted in their office, which was acknowledged by Customs vide No.4319/10.06.2016 and that the documents are pending before the First Respondent.

4.**The Contents of the Fourth Respondent's Counter**:-

4.1.The Petitioner has no valid title over the cargo or had produced any supporting evidence/document to show that he has any sort of title over the cargo. The Petitioner produced a copy of the draft 'Proforma Bill of Lading', which is normally prepared by Importer or their Customs House Agents not signed by carrier and not issued by the carrier in the carrier's name. Therefore, 'Proforma Bill of Lading' is not sealed by the carrier and the same cannot be considered as a 'Bill of Lading' as mentioned in the Indian Bill of Lading Act.

4.2.In the instant case all the original four Bills of Lading bearing Nos.(i) COSU6095467990; (ii) COSU6095468160; (ii) COSU6095468170 and (iv) COSU6095468180 produced or issued by the Carrier/Shipping Line showing the Fourth Respondent/master Distributors Limited as the 'Shipper' and Glory Cashews as the 'Consignee' of the Cargo. The Petitioner is not a party to the aforesaid four Original Bills of Lading, which is the essential document in shipping to prove their ownership/title. Therefore, the Petitioner has not right to claim any title over the cargo mentioned in the said Bill of Ladings.

4.3. A mere production of 'Proforma Bill of Lading' by the Petitioner would not entitle him to claim title over the goods under the Maritime Law. Only when the Bills of Lading from the Shipper passes on to the consignee/notified party, through the bank or directly after receipt of consideration for the goods, the title/ownership on the cargo passes on to the consignee.

4.4.The original consignee/Glory Cashew had already made interim payment to the Fourth Respondent/Master Distributors Limited and the said Respondent, as Shipper had released the Original Bills of Lading to the consignee/Glory Cashews. Therefore, 'Glory Cashews' is now the Original owner of the cargo, which is legally entitled to receive the cargo from the Port on surrendering Original Bill of Lading and production of delivery order from the carrier/shipping Company.

4.5.The real intention of the Petitioner is to stop delivery of the cargo to its rightful owners and to cause hardship and loss to the Fourth Respondent. The Fourth Respondent is one among the Directos of another Company viz., 'Sparkle Way Limited', which had a contract with the 'Petitioner/Best Cashew Traders' to supply Raw Cashew. The Petitioner on 14.08.2015 had entered into a Memorandum of Understanding for the supply of 6000 MT of Raw Cashews with 'Sparkle Way Limited'. Based on the said MOU, the Sparkle Way Limited supplied 4750 MT of cashew to the Petitioner as on 31.01.2016. Also, on 05.02.2016, the Petitioner and the Sparkle Way Limited entered into another MOU, whereby the Petitioner had acknowledged the receipt of 4750 MT of Cashew and the Sparkle Way Limited had agreed to supply the balance of 1150 MT of cargo to the Petitioner. As per second MOU, the Sparkle Way Ltd., (through Fourth Respondent) shipped the balance cargo to the Petitioner. But the Petitioner had not mentioned about the MOU entered with Sparkle Way Limited as regards the delivery of their cargo. One of the sale agreement, bearing No.PL/506/2015, dated 01.11.2015 entered into with Sparkle Way Limited and the Fourth Respondent for the delivery of cargo was only produced before this Court, with a view to obtain an order in their favour.

4.6.There is no agreement between the Fourth Respondent and the Petitioner for the delivery of any additional cargo for 6900 MT, as stated by the Petitioner. In fact, the agreement entered into between the Petitioner and the Sparkle Way Limited is for the delivery of 6000 MT and there is no valid agreement in force for delivery of their cargo in the present shipment covered under the four bills of lading to the Petitioner. The Petitioner has failed to produce any original bills of lading issued in their favour before this Court and therefore, it is not entitled for any cargo covered under the said four original bills of lading.

4.7.The Fourth Respondent or his Company does not have any legally binding liability to supply any quantity of Raw Cashews to the Petitioner, as alleged, since the Petitioner had not paid any amount to the Fourth Respondent's Company viz., 'Master Distributors Limited'/Shipper/Consignor in the present case. The Petitioner's name was wrongly entered in the IGM instead of the name of the Consignee/'Glory Cashews' by mistake. Therefore, a proper application was submitted by the carrier before the authority/Customs to amend the Import General Manifest, which is permissible under the Customs Law in Section 30(3) r/w Levy of Fees (Customs Documents) Regulations, 1970.

4.8.The original Consignee/Glory Cashews had imported the present consignments on the basis of a separate purchase contract, dated 20.03.2016 and invoices. Due to the unlawful action of the Petitioner, the containers with cargo due to the Consignee/Glory Cashews are lying in the Tuticorin Port incurring heavy demurrage, ground rent etc. Further, if at all there is no further dispute between the parties, the same is to be adjudicated before the appropriate Civil Court and this Court shall not invoke its writ jurisdiction to settle a private complaint/civil dispute between two parties.

4.9.The Consignee/Glory Cashew holds the original Bills of Lading to establish their ownership and they are willing to surrender the original Bills of Lading and take delivery of the cargo as per conditions, to be fixed by the Court. The cargo is of perishable in nature and the same was loaded in the containers on 22.03.2016 and shipped on14.04.2016 and it is lying in the Port of Tuticorin for more than one month. Since the Consignee/Glory Cashews is holding the original Bills of Lading, the balance of convenience is in its favour to take delivery of the cargo.

5.**The Petitioner's Contentions**:-

5.1.According to the Learned counsel for the Petitioner, in the instant case, the Petitioner as an importer of 'Raw Cashew Nuts' in Shell from Tansania had entered into a contract with the Fourth Respondent, wherein the Master Distributor is one of the seller and shipper to it and issued a Proforma Bills of Lading. It is also represented that as per the contract, it was agreed to deliver a larger extent of 6960 Mt 'Raw Cashew Nuts' and that the Petitioner is to receive the remaining cargo of 290.250 MTs despatched through Port of origin Tansania.

5.2.The Learned counsel for the Petitioner submits that the Petitioner had paid the amount through bank for 6846 Mts and they had received 5534.828 MT. Only for the balance quantity of 1311.172 MT, the present 18 containers consisting 290.250 MT of cargo was despatched and further that on receipt of consideration value only, the 'Bill of Lading' in Petitioner's name viz., Best Cashew Traders, Kollam, was released.

5.3.Added further, the Learned counsel for the Petitioner contends that the cargo was laden on Board at Port of Origin DAR ES SALAAM, TANZANIA on 14.04.2016 and reached the delivery/destination port Tuticorin on 29-04-2016 and the cargo was cleared from the port and that that Third Respondent/Cosco India Shipping Private Limited, Tuticorin submitted 'Import General Manifesto' in the name of the Petitioner's concern 'Best Cashew Traders, Kollam' and the cargo is under the custody of the Second Respondent Customs Freight Station.

5.4.The Learned counsel for the Petitioner proceeds to take a stand that 'Original Bill of Lading' would be given to 'Consignee' and that Import General Manifesto' was prepared in Petitioner's name. The Learned counsel for the Petitioner submits that the letter of Legal Manger of Bollore Africa Logistics Tanzania Limited shows that the 4th Respondent had taken steps to change the name of the consignee from 'Best cashew Traders Limited' to Glory Cashews of SNP, Kollam.

5.5.At this state, the Learned counsel for the Petitioner brings it to the notice of this Court that the letter of the Bollore Africa Logistics Tanzania Limited also shows that the 'Consignee name' should not be changed and if they failed to do so, the matter will be reported to the Police from the Managing Director of the contracting company. That aprt, it is the stand of the Petitioner that the said Logistic Comapny requires instructions/notification from the Police/Court order directing them not to amend the Consinee's name. Therefore, the Petitioner had made a complaint before the Police.

5.6.The Learned counsel for the Petitioner referes to the ingredients of Section 30(3) of the Customs Act 1962, which mentions that if the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete and that there was no fraudulent intention, he may be permitted to be amended or supplemented. He would further submit that IGM can be amended as per Sections 30(3) and Section 149 of the Customs Act, 1962. In this connection, the Learned counsel for the Petitioner proceeds to state that the 'Import from Tansania' attracts import duty and refers to the Book Customs Law Mannual, with Special Economic Zones of R.K.Jain in 35th Edition (2008), 7.133 and 7.134, wherein M.F.(D.R.) Circular No.13/2005-Cus, dated 11.03.2005, deals with instructions regarding the Import Manifest – Incomplete or incorrect filing of. In the said circular, the major amendment (iv) relates to 'Change the Importer's/Consignee name'. Also, at paragraph Nos.3 and 4, it is *inter alia* observed as follows:-

> "3.... The major amendments can only be made with the prior permission of proper officer and adjudication of the same. It has b een further decided that if there is incomplete or incorrect filing of import report or import manifest by the person who is required to file the import manifest or import report as per the provision of sub-section (1) of Section 30 of the Customs Act, 1962, penalty should invariably be administered if the same is not corrected within permissible time limit, as per the legal provisions considering such filing as improper filing. The cases should be decided immediately, if required, using waiver of show cause notice and written defense reply.
>
> 4.The above instructions may be brought to the notice of the Trade immediately through appropriate Public Notice."

5.7.Likewise, the Learned counsel for the Petitioner refers to the Import Manifest Circular in M.F.(D.R.)Circular No.44/2005-Cus, dated 24.11.2005, wherein at paragraph Nos.3 and 4, it is observed as under:-

> "3.The matter was re-examined. It has been decided by the Board that all amendments to the Import General Manager (IGM) may be considered on the basis of the provisions contained in Section 30(3) of the Customs Act, 1962. The said Section (Sub-Section 3) provides that if the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fradulent intention, he may permit it to be amended or supplemented. Hence, the need for adjudication will arise only in cases where there are major amendments involving fraudulent intention or substantial revenue implication arising from the amendments. Further it is possible that in certain special situations such as mother/daughter vessel operation for lighterage on account shortage of draft, congestion of port, natural calamity, the final quantity of goods covered by the IGM would be known only after completion of such lighterage operstion, requiring am in quantity originally declared at the time of filing of IGM.

These exceptional situations need to be taken care so that penal action is not initiated mechanically in such situations.

4.The Board's Circular No.13/2005-Cus, dated 11.03.2005 should be read as amended to the above extent. The above instructions may be brought to the notice of the Trade immediately through appropriate Public Notice."

5.8.The Learned counsel for the Petitioner submits that one N.C.Paul had filed a third party affidavit before this Court in W.P.(MD) No.9351 of 2016 inter alia stating that 18 containers consisting of 290.250 Mts Raw Cashews were despatched from Dar Es Salam on 14.04.2016 and that the cargo was loaded with the Transport documents proforma Bill of Lading in the name of M/s.Best Cahsew Traders, Kollam, Kerala. Further in the said third party affidavit, it was mentioned that '... The said Mr.Vinod Varghese misrepresenting Indian Cashew Trader and win their confident and changed the bill of lading in another party's name M/s.Glory Cashew and thereby, cheating the entire business man in India. On checking with the shipping company, they came to know that M/s.Bollore Logistics located at Tanzania, colluded with above person changed the consignee name as M/s.Glory Cashew instead of Best Cashew.'

5.9.Finally, at paragraph No.7 of the affidavit, the third party Mr.N.C.Paul, had stated that M/s.Best Cashew Traders, Uliyacovil Post, Kollam - 691 019, Kerala is the real consignee and not M/s.Glory Cashew, Aanaiyadi, Kollam, Kerala.

5.10.The Learned counsel for the Petitioner contends that in the present case, the Petitioner's legal right under Article 14, 19 and 21 of the Constitution of India are violated. Also, the Learned counsel for the Petitioner brings it to the notice of this Court that on 02.06.2016, in ***B.A.No.3658 of 2016*** (Crime No.1476 of 2016 of East Police Station, Kollam) between ***VINOD VARGHESE v. STATE OF KERALA*** represented by Public Prosecutor, on the file of High Court of Kerala, the Circle Inspector of Police, Kollam East had filed a report, wherein at paragraph Nos.4 to 6, it is among other things, mentioned as follows:-

"4. ... But after drawing the Bill of Lading in the name of the complainant, the first accused with the help of second accused forged the Bill of Lading by changing the naem of consignee in the name of one Johnson, S/o.Jose, Proprietor of Gloria Cashew and received an amount of Rs.78,000/- US Dollar and again forged the Bill of Lading in the name of one Anzar Babu, S/o.Abdul Rasheed, Proprietor Ideal Cashew, Kollam by promising to import Raw Cashew Nuts to them from Thanzaia. Since the consecutive forgery committed by the accused amounted to serious offence punishable under Section 420 of Indian Penal Code, I submitted another report to the Chief Judicial Magistrate Court, Kollam, under Sections 120 B, 409, 465, 468 and 420 IPC.

5.It is respectfully submitted that subsequent to the registration of the Crime, the witnesses including the above mentioned Johnson and Anzar Babu were recorded, who have given statement to the effect that the Bill of Lading issued in the name of defacto complainant issued in their name also. The *documents including agreement as well as the forged Bill of Lading issued in the name of Anzar Babu have been recovered. It is submitted that on the basis of the statement and the documents recovered so far it has come out that apart from the offences of cheating the accused have committed the above mentioned the offences also.*

6.It is respectfully submitted that the investigation of the case is in progress and the recovery of original Bill of Lading is essential for the investigation of the case. The recovery of the Bill of Lading stated to have given to Johnson is also to be recovered. The various documents for transporting the material from Thanzania are yet to be recovered. It is submitted that for the proper investigation of the case, the arrest of the accused is highly necessary. But as this first accused is a person who is fradulently travelling from one place to another, the investigating agency is not in a position even to contact him or to apprehend him. It is further submitted that the first accused is highly influential and there is every chance of influencing the witnesses and tampering with the evidence if he is released on bail."

5.11.The Learned counsel for the Petitioner submits that the writ Petitioner's good will is affected and his legal right is infrinched and inthe instant case, the fraud is exercised and the substantial amount is lost by reexport to the exchequer. That apart, the Deputy High Commissioner of High Commission of India/Dar Es Salam, Tuticorin in reference No.Dar/Com/212/3/2015, dated 18.05.2015 had mentioned about the incidents of cheating/fraud against Indian Companies/businessmen in the field of Cashew Nuts and advised the Indian businessmen to be extra cautious of the Tanzanian Company called M/s.Acclimatise International Group.

6.**<u>The Submissions of the Respondent No.1</u>**:-

The Learned Senior Standing Counsel for the First Respondent states that the dispute in the present case is a private dispute and that the Original Bill of Lading is in the name of Petitioner in WMP(MD)No.7714 of 2016 and further, the Original Import General Manifest is in the name of Petitioner and in fact, the First Respondent is willing to abide by this Court's order.

7.**<u>The Second Respondent's Contentions</u>**:-

According to the Learned counsel for the Second Respondent, 18 containers are lying in its warehouse at Tuticorin and as per Section 63 of the Customs Act, 1962, it is entitled to 'Payment of Rent' and warehouse charges. In fact, the writ Petitioner and the Fifth Respondent claim to be the owner.

8.**<u>The Submissions of the Respondent No.3</u>**:-

8.1.According to the Learned counsel for the Third Respondent, the writ Petitioner on 20.05.2016, in WMP(MD)No.7404 of 2016 in W.P.(MD) No.9351 of 2016 had obtained an interim direction restraining the Respondent Nos.1 and 3 not to release the cargo to anyone on any amended

Bills of Lading, in which, the Third Respondent is a party. The Learned counsel for the Third Respondent contends that as per Third Respondent's Port of Loading Agent, Shipper M/s.Master Distributor and the Third Respondent's Port of Loading Agent confirmation of new original Bills of Lading was released on 09.05.2016 in the name of M/s.Glory Cashews, with which, shipped onboard and Bill of Lading date was 14.04.2016, the date of sailing of vessel Ex-Port of Loading based on already released Bill of Lading.

8.2.The Learned counsel for the Third Respondent submits that without submitting 'Original Bills of Lading' in Third Respondent's office, they could not start processing amendment. The Learned counsel for the Third Respondent takes a stand that it had informed its Port of Lading Agent that the dispute is between the Shipper M/s.Master Distributor and Import General Manifest Consignee M/s.Best Cashews and the amended original Bill of Lading Consignee M/s.Glory Cashew and hence, as a carrier agent, it is not responsible for the time delay, cargo damage and demurrage etc.

8.3.The Learned counsel for the Third Respondent takes a prime plea that as a carrier agent and as per Regulation, whoever is submitting the original document, with which by the proper consignee cargo shall released and submit its request to the First Respondent for amendment, if required, for approval, based on original Bill of Lading submitted in their office.

9.**<u>The Contentions of the Fourth Respondent</u>**:-

9.1.The Learned Senior counsel for the Fourth Respondent submits that the writ petition is filed by the Petitioner without having any evidence to prove his title or ownership over the cargo as claimed in the writ petition. Therefore, it is contended that the writ petition is to be dismissed in limini, since the same is not maintainable.

9.2.The Learned Senior counsel for the Fourth Respondent takes a plea that the documents produced by the Petitioner are just copy of a draft proforma Bill of Lading (which is normally prepared by the Importer or their Customs House Agent not signed by the carrier and not issued by the carrier in carrier's name) and as such, the proforma Bill of Lading is not sealed by the carrier and the same cannot cannot be considered as a Bill of Lading as per Indian Bill of Lading Act.

9.3.The Learned Senior counsel for the Fourth Respondent projects an argument that in the instant case, all the four Bills of Lading (originals) produced or issued by the carrier/shipping line indicating the Fourth Respondent/Master Distributor as Shipper and Glory Cashews as the Consignee of the cargo. Moreover, the writ Petitioner is not a party to the fourth Original Bills of Lading, which is a basic document to establish the ownership/title.

9.4.The emphatic stand of the Fourth Respondent is that a mere production of a 'Proforma Bill of Lading' does not enable the Petitioner to claim title over the case and the holder of 'Original Bills of Lading' is considered as owner of the goods inasmuch as the original

Bill of Lading is the evidence of contract between the parties in the Bill of Lading and treated as evidence of title.

9.5.The Learned Senior counsel for the Fourth Respondent contends that the Fourth Respondent is one among the Directors of another Company viz., 'Sparkle Way Limited', which had a contract with the Petitioner/Best Cashew Traders to supply Raw Cashews. Also that the Petitioner had entered into a Memorandum of Understanding dated 14.08.2015 for supply of 6000 MT of Raw Cashew with Sparkle Way Limited. It is further represented on behalf of the Fourth Respondent that based on the Memorandum of Understanding, Sparkle Way Limited supplied 4750 MT of Cashew to the Petitioner on 31.01.2016. Moreover, on 05.02.2016, the Petitioner and Sparkle Way Limited entered into another Memorandum of Understanding whereby the Petitioner acknowledged the receipt of 4750 MT of Cashew and the Sparkle Way Limited had agreed to supply the remaining 1150 MT of cargo to the Petitioner. Apart from that, as per second Memorandum of Understanding, the Sparkle Way Limited through Fourth Respondent had shipped the balance cargo to the Petitioner. Indeed, the Petitioner had produced only one of the sale agreement dated 01.11.2015 entered into with Sparkle Way Limited and the Fourth Respondent for the delivery of cargo.

9.6.The categorical stand of the Fourth Respondent is that there was no valid agreement in force for delivery of their cargo in the present shipment covered under the four bills of lading to the Petitioner. Continuing further, it is the case of the Fourth Respondent that the present cargo/consignment lying at Tuticorin (vide four Bills of Lading referred to in the writ petition) was not intended to be supplied to the Petitioner. However, the said consignments are covered under separate agreements between the Fourth Respondent and the consignee/Glory Cashews. In fact, the Petitioner's name was wrongly entered in the IGM instead of the name of consignee/Glory Cashews by mistake and therefore, a proper application was supplied by the carrier before the authority/Customs to amend the IGM (Import General Manifest), which is permissible as per Section 30(3) r/w Levy of Fees (Customs Documents) Regulations, 1970.

9.7.The Learned Senior counsel for the Fourth Respondent submits that the First Respondent is obliged to amend the name of the Consignee/Glory Cashew in the IGM and substitute the name of the Petitioner with that of Original Consignee/Glory Cashew (original holder of Bill of Lading and owner of cargo) for the shipment in question.

9.8.The Learned Senior counsel for the Fourth Respondent cites the Book on ***'LAW OF CARRIAGE (AIR, LAND AND SEA)***, wherein at Chapter 4, at paragraph No.3, under the Caption ***'Bill of Lading as Document of Title'***, it is mentioned as under:-

> *"A bill of lading is a document of title; it is a symbol of the goods; it represents the goods themselves. It is a symbol of the right to property in the goods specified in the bill. Its possession is equivalent to the possession of the goods themselves, and its transfer being a symbolic delivery of the goods themselves has by mercantile usage the same*

effect as an actual delivery ***(vide HALSBURY'S LAWS OF ENGLAND, Vol.26, 146-47).***"

9.9.The Learned Senior counsel for the Fourth Respondent cites the Book on ***'Bills of lading in International law and Practice'*** of ***Mr.T.K.Thommen***, wherein at page No.26, it is observed as follows:-

*"... In practice, however, the terms of the bill of lading govern the contractual relations between the shipowner and the shipper, and the booking notes generally state that the carrier's regular forms of bill of lading shall be used and all the terms thereof shall form part of the contract. The bill of lading assumes the character of conclusive evidence once it has passed into the hands of a consignee or endorsee, and evidence may not be given which varies or contradicts it (****vide decision of the English Court in Leduc v. Ward, (1888) 20 QBD 475****). ..."*

9.10.Also, at page No.27 of the said Book, it is mentioned as follows:-

"A bill of lading is regarded as the symbol of the goods mentioned in it. An endorsement of the bill of lading while the goods are in the hands of the carrier may confer upon the endorse all the rights and liabilities of the shipper as if the contract evidenced by the bill of lading had been originally made with him. An endorsement and delivery of the bill of lading is a symbolic delivery of the goods entitling the holder of the bill to physical delivery of the goods at the port of discharge. ..."

9.11.Moreover, at page No.29 of the Book, it is mentioned as under:-

"... A bill of lading endorsed in blank or to bearer or endorsed with the name of the transferee left bland can be transferred from person to person by mere delivery. The holder of such a bill of lading may, however, at any time fill in the blank and insert the name of the transferee and this makes it non-transferable by mere delivery. The bill would then require the endorsement by the transferee whose name is inserted before it can be further transferred."

9.12.The Learned Senior counsel for the Fourth Respondent refers to the Book on 'Bills of Lading' of ***SIR RICHARD AIKENS; RICHARD LORD AND MICHAEL BOOLS***, wherein at Chapter-6, at page No.106 under the Head ***'The Bill of Lading and Property and Title to the Goods'***, at paragraph No.6.1., it is mentioned as follows:-

"The bill of lading is, under the common law, a document of title to goods, Rather confusingly, this does not, however, mean that its transfer necessarily confers title to the goods on its transferee. ..."

9.13.Also, at paragraph Nos.6.2 and 6.3 of the above said Book, it is mentioned as follows:-

"The ocean bill of lading is the only document of title to goods at common law presently recognised under the English

common law. ...

*It is often said that the bill of lading is recognised by the common law as a document of title to goods by reason of the custom of merchants established in Lickbarrow v. Mason (**(1787) 2 T.R. 63, 69**).”*

9.14. Besides the above, the Learned Senior counsel for the Fourth Respondent refers to the Book on '***The Law of Carriage of Goods***' by H.K.Saharay, 2013, wherein in Section 1, at page 443, it is mentioned that “in the decision in ***E.CLEMENS HORST Co. v. BIDDELL BROS ((1912) AC 12)***, it is held by the House of Lords that the possession of the bill of lading was in law possession of the goods and that under the c.i.f. Contract the seller was entitled to payment on shipping the goods and tendering to the buyer the documents of title.”

9.15.The Learned Senior counsel for the Fourth Respondent cites the decision in ***COLLIS LINE PRIVATE LTD. v. NEW INDIA ASSURANCE CO. LTD.*** Reported in ***AIR 1982 Ker. 127***, wherein at paragraph no.4, it is observed as follows:-

“The bill of lading which is governed by the Indian Carriage of Goods by Sea Act, 1925, is an acknowledgement of the receipt of the goods mentioned therein. It evidences the term of the contract of affreightment made between the shipowner and the shipper. Bill of lading which is a symbol of the goods covered by it is regarded by the custom of merchants as a document of title. “Carriage of goods' covers the period from the time when the goods are loaded on to the time when they are discharged from the ship. ...”

9.16.The Learned Senior counsel for the Fourth Respondent relies on the Judgment dated 23.02.1966 between ***CHHAGANLAL SAVCHAND v. COMMISSIONER OF INCOME TAX, BOMBAY***, wherein at paragraph No.17, it is observed as follows:-

“It would be cleared that in India the bill of lading in the commercial world is used in the ordinary course of business as proof of possession or control of the goods themselves, and the possessor of the bill of lading is taken in the commercial world as a person authorised to transfer these goods either by making an endorsement on the bill of lading or even by mere delivery of the bill of lading. ...”

9.17.That apart, the Learned Senior counsel for the Fourth Respondent, cites the following decisions/Orders:-

(a)In the decision in ***ELLERMAN AND BUCKNALL STEAMSHIP Co. LTD. v. SHA MISRIMAL BHERAJEE*** reported in ***AIR 1966 SC 1892***, at paragraph No.10, it is observed as follows:-

“A bill of lading serves three purposes, viz., (i) it is receipt for the goods shipped containing the terms on which they have been received; (ii) it is evidence of the contract for carriage of goods-, and (iii) it is a document of title for the goods specified therein. The contract of the shipowners in the bill of lading is that they will de.liver the goods at their destination "in the like good order and condition" in

which they were when shipped. In terms of the contract the shipowners delivered the goods to the buyer in the drums. The consignee incurred damages not because of any defect in the drums but because the seller sent goods different from those he had agreed to sell to him. Therefore, the shipowners were not liable for any damages to the purchaser on the basis of breach of any of the terms of the contract."

(b)In the Order dated 18.12.2014 in ***W.P.Nos.4552 and 6258 of 2013*** between ***VELLANKI FRAME WORKS v. THE COMMERCIAL TAX OFFICER (vide MANU/AP/2058/2014)***, at paragraph No.40, it is observed as follows:-

"Section 30(3) of the Customs Act read with the Levy of Fee (Customs Documents) Regulations, 1970, allows the proper officer to permit an IGM to be amended or supplemented, on payment of prescribed fees, if he is satisfied that there is no fraudulent intention. The Central Board of Excise and Customs has provided for two broad categories of amendments Major and Minor. The major amendments include changing the Importers/consignees name. Section 32 stipulates that no imported goods, required to be mentioned in an import manifest or import report, shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station. In the exercise of the powers conferred by Section 157 of the Customs Act, the Central Board of Excise and Customs made the Import Manifest (Vessels) Regulations, 1971. Regulation 3 thereof relates to the import manifest and, under sub-regulation (1) thereof, every import manifest shall (a) be delivered in duplicate; (b) cover all the goods carried in a vessel; and (c) consist of, among others, a cargo declaration in Form III. Regulation 5 prescribes the manner of declaring cargo and, under sub-regulation (1)(a) thereof, the cargo declaration shall be delivered in separate sheets in respect of each of the categories of cargo, viz, the cargo to be landed. The cargo declaration form contains, among others, the name of the ship, the port of loading, the bill of lading number, the number and kinds of packages, description of goods, name of the consignee/importer, the date of presentation of the bill of entry, the name of the customs house agent etc."

(c)In the Final Order No.A/54/2015-WZB/SMB in Appeal No.C/88253/2014-Mum, dated 02.01.2015, between ***JAI DURGE TRADING Co. v. COMMISSIONER OF CUS. (IMPORT) (VIDE MANU/CM/0039/2015)***, at paragraph No.3.1, it is observed as follows:-

"Section 149 of the Customs Act provides for amendment of IGM as per the discretion of the proper officer after the IGM has been presented. In the present case, the original importer's name was indicated in the IGM as M/s.Jai Durge Trading Co. However, the said importer did not clear the goods nor did he pay the duty within thirty days from the date of

unloading of the goods as stipulated under Section 48 of the Customs Act, 1962. This clearly shows that the appellant, M/s.Jai Durge Trading Co., was not interest in clearance of the goods and had abandoned their claim of the goods. Therefore, the amendment of the IGM sought by the shipping agent for substituting the name of the importer with M/s.BGH Exim Ltd. Cannot be faulted at all. An identical matter came up for consideration before the Hon'ble Delhi High Court in the case of Agrim Sampada Ltd. & Another V. UOI in CW No.2438/2001 : MANU/DE/0006/2004 : 2004(168) E.L.T. 15 (Del.). The Hon'ble High Court held that "when an Importer fails to pay for the goods and abandons/refuses them, the supplier continues to remain the owner of the goods and that he can transfer the document of title to another person and thereafter person will be entitled to clear the goods." The ratio of the said decision would apply squarely to the facts of the present case."

(d)In the order, dated 15.03.2010, in ***W.P.No.1066 of 2010*** between ***MR.RAKESH DHIR v. THE UNION OF INDIA (UOI) AND OTHERS (VIDE MANU/MH/0232/2010)***, at paragraph No.14, it is observed as follows:-

"Sub-Section (3) of Section 30 lays down that if the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there is no fraudulent intention, he may permit it to be amended or supplemented. As against this, if one turns to the public notice dated 14th January, 2010, the policy decision taken by the Revenue is only by way of gude-line and the public notice issued by the authorities covers only the part of the problem faced by the department. The guide-lines mentioned therein is not exhaustive and does not cover all contingencies falling under Sub-Section (3) of Section 30 of the Customs Act. The proper Officer is bound to consider the case of the Petitioner independent to the guide-lines. The Apex Court, in the case of Indian Railway Construction Co. Ltd. V. Ajay Kumar MANU/SC/0166/2003 : 2003 (4) SCC 579 has clearly laid down that whenever there is a failure to exercise discretion under discretionary power conferred by the statute, then, it is permissible for the Court to take note of such inaction and give a direction to consider the case."

10.***<u>The Contentions of the Fifth Respondent</u>***:-

10.1. It is the submission of the Learned Senior Counsel for the Fifth Respondent that Section 30 of the Customs Act, specifies filing of Import General Manifest immediately or soon before the vessel is berthed in the Port and in fact, the writ petition filed by the Petitioner is not maintainable before this Court and it is for the Petitioner to seek appropriate remedy before the concerned statutory authorities. Further, it is represented on behalf of the Fifth Respondent that the writ Petitioner is making an endeavour to stall the proceedings by producing the 'Proforma Bill of Lading', in which, the Shipper had not signed.

10.2. The Learned Senior Counsel for the Fifth Respondent contends that the Petitioner after seeking redressel on his grievance before the authorities concerned, thereafter, is to look into the other options available under the Customs Act, 1962 and before that, the filing of the writ petition is not *per se* maintainable.

11.***The Submissions of the Sixth Respondent***:-

11.1.The Learned counsel for the Sixth Respondent submits that the Fourth Respondent is not competent to amend any original Bill of Lading on account of his whims and fancies and the writ Petitioner only is entitled to get the cargo and thereby the Sixth Respondent's Firm is entitled to get delivery of cargo pursuant to the High Sea Sale Agreement, dated 21.04.2016.

11.2.The Learned counsel for the Sixth Respondent contends that the Sixth Respondent is one of the bona fide purchasers of Raw Cashews and further had entered into a valid High Sea Sale Agreement and that the title of goods was on the basis of Bill of Lading carrier documents vested with the Petitioner. In short, it is projected on the side of the Sixth Respondent that the cargo in question viz., 18 containers of Raw Cashews is food items and they are only the rightful owner, pursuant to the High Sea Sale Agreement from writ Petitioner.

12.***Discussions and Findings***:-

12.1. At the outset, it is to be pointed out that the Petitioner in the instant case claims that he is an absolute right holder of the cargo. Also, he claims that the 'cargo' is intended for him only. That apart, it is the stand of the Petitioner that considerable amount was spent and therefore, his legal and constitutional rights are to be protected. Therefore, the Petitioner has filed the present writ petition seeking for issuance of a direction in directing First Respondent to restrain the delivery of 18 containers of 'Raw Cashews' to any other third party based on illegal amended Bill of Lading, other than the Petitioner etc.

12.2. At this stage, this Court on perusal of the representation of the Petitioner dated 08.05.2016, addressed to the First Respondent and two others, shows that the Petitioner had averred among other things that the Fourth Respondent/Sparkle Way Limited tries to change the name of the consignee from Best Cashew Traders to Glory Cashews of SNP VII/017, Sooranadu North, Anaiyadi Post, Kollam, Kerala and that the transaction is illegal and against the prevailing International Law. Moreover, it was also mentioned that the Petitioner Company had framed the entire cargo value and further that being the Shipper Forwarding Agent, they deliver the cargo only to the persons, in whose name IGM is prepared M/s.Cosco India Shipping Pvt. Ltd. (Third Respondent) etc.

12.3. It is the plea of the Fourth Respondent that the Petitioner has no valid title over the cargo and in fact, the Petitioner has produced only a copy Draft Proforma Bill of Lading and in fact, without proof of his title or ownership over the cargo, the writ filed by him is not maintainable. The categorical case of the Fourth Respondent is that the Petitioner cannot demand the cargo, over which, he has no legal right and in fact, the Petitioner's name was wrongly entered in the IGM instead of the name of the consignee/Glory Cashews by mistake and therefore, the proper application was submitted by the carrier before the authority/Customs to amend the IGM, which is permissible under Customs Law, as per Section 30(3) r/w Levy of Fees (Customs Documents) Regulations, 1970. Apart from that, the Fourth Respondent before this Court has taken a plea that the First Respondent/Customs is obliged to amend the name of Consignee/Fourth Respondent in the IGM and substitute the name of the Petitioner with that of the original consignee/Fourth Respondent (Original holder of Bill of Lade and owner of cargo) for the above shipment and if there is any further dispute between the parties, the same will have to be raised before the appropriate Civil Court.

12.4.The Fifth Respondent has taken a stand in the present writ petition to the effect that the writ Petitioner has only filed the writ petition based on 'Proforma Bill of Lading' and the same was not signed by the carrier/Third Respondent. Further, although the IGM was wrongly mentioned in the name of the writ Petitioner, subsequently, the carrier/Master of the Vessel had applied for rectifying the error by incorporating the name of the Fifth Respondent viz., 'Glory Cashews' and indeed the writ Petitioner ought to have proceeded against the carrier, if there is any dispute in this regard and as such, the writ petition filed by the Petitioner before this Court is not maintainable.

12.5.The plea of the Sixth Respondent is that the writ Petitioner is entitled to get the cargo and that the Fourth Respondent is not competent to amend any original Bill of Lading for his whims and fancies. Moreover, the Sixth Respondent is entitled to get delivery of cargo pursuant to High Sea Sale Agreement dated 21.04.2016. In short, the Sixth Respondent's High Sea Sale Agreement is legally enforceable one.

12.6. At this juncture, this Court refers to the definition to Section 2(1) of the Customs Act,1962, which enjoins as follows:-

> "“Adjudicating authority” means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.”

12.7. Also, Section 2(26) speaks as follows:-

> "”Importer”, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.”

12.8. As a matter of fact, Section 2(34) deals with as follows:-

> "”proper officer”, in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs.”

12.9. It is to be noted that Section 2(1) of the Customs Act, does not define 'Adjudication'. Moreover, the adjudicating process is defined as 'Method of adjudicating factual dispute, employed generally in administrative proceedings in contrast to Judicial proceedings', as opined by this Court. At this juncture, a perusal of Section 30(3) of the Customs Act, 1962, indicates that the Master of a vessel has a duty to deliver the import manifest within 24 hours after arrival of the ship at Customs Station. Also, that in terms of Section 30(3) of the Customs Act, if the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete and that there was no fraudulent intention, then, he may permit it to be amended or supplemented.

12.10. It is to be pointed out that Section 63 of the Customs Act refers to 'Payment of Rent and Warehouse Charges'. In fact, the liability to pay the warehouse charges is basically on the importers, who stores the goods in warehouse. Moreover, the liability to pay the warehouse charges may shift from the importer to some other person based on the facts and circumstances of each case, in the considered opinion of this Court. It is to be noted that Section 149 of the Customs Act, deals with 'Amendment of Documents'. In terms of this Section, the proper officer may, in his discretion authorise any document after it was presented in the Customs house to be amended and that the proviso to Section 149 of the Act, mentions that no amendment of a bill of entry or a shipping bill or bill of export shall be authorised to be amended, after the import goods have been cleared for home consumption or deposited in a warehouse or the export goods have been exported, except on the basis of documentary evidence, which was in existence at the time the goods were cleared, deposited or exported, as the case may be.

12.11. In regard to the liability of an agent under Section 148 of the Customs Act, 1962, it is to be pointed out that the same is limited to the fulfilment of obligation caused upon the carrier of the vessel under the Customs Act.

12.12.Be that as it may, as far as the present case is concerned, the Petitioner makes a claim for the cargo in the writ petition based on 'Proforma Bill of Lading'. However, the Petitioner's claim in respect of the cargo in question on the basis it is the owner, is seriously disputed on behalf of the fourth and Fifth Respondents. In fact, the Sixth Respondent sails with the writ Petitioner and has taken a stand that the writ Petitioner is entitled to get the cargo and therefore, the Sixth Respondent's Firm is entitled to take delivery of cargo pursuant to High Sea Sale Agreement, dated 21.04.2016.

12.13. As a matter of fact, the Fourth Respondent has come out with a plea that the Petitioner without possession of original sets of Bill of Lading has no legal right to claim title, ownership over the goods covered under the 'Bill of Lading'. Further, the Fourth Respondent has taken a stand that the Petitioner's name was wrongly entered in IGM instead of the name of the consignee/Glory Cashew by mistake and therefore, a proper application was submitted by the carrier before the authority/Customs to amend IGM, which is permissible in terms of Section 30(3) r/w Levy of Fees (Customs Documents) Regulations, 1970.

12.14. At this stage, this Court significantly points out that in general, disputed questions of facts, are not to be investigated in a proceeding under Article 226 of the Constitution of India especially when an effective, efficacious and alternative remedy is available to the parties. Undoubtedly, the power under Article 226 of the Constitution is a discretionary one, yet, the writ Court is to act with self imposed, limitations, as a matter of prudence and policy. There is no dispute that the power under Article 226 of the Constitution is one of 'Judicial Review'. As an ordinary Rule, the jurisdiction under Article 226 of the Constitution of India, cannot be pressed into service for settling the private disputes or for deciding disputes under general Law, Civil or Criminal Law are very much available. Moreover, after a contract was entered into, the rights of parties shall be determined only by the terms of contract, even though one of the parties is a statutory authority, in the considered opinion of this Court. It is to be remembered that a 'Mandamus' will not be issued to enforce a contract. The remedy in private Law is to file a suit for damages or for specific performance, as the case may be. In short, for the claims arisen out of violation of contract, the suit for damages is the proper remedy and not a petition under Art.226 of the Constitution of India.

12.15. It cannot be forgotten that when a right or liability is created by a statute, that itself prescribes a remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy, as opined by this Court. Further, just because the statutory remedy is an onerous one, without exhausting the same, a litigant is not entitled to file a writ petition. To put it precisely, as the writ proceedings is one of summary nature, the disputed questions of fact are mixed questions of fact and law, which require an elaborate enquiry on tender evidence and marking of documents, then, the parties concerned are to take recourse to the appropriate remedy provided under the Statute and straightaway filing of writ petition in the High Court is *per se* not maintainable. To put it succinctly, the Court exercising its prerogative of issuing of writ should not ordinarily entertain private disputes, when there is an alternative remedy available in Law. Further, the power to be exercised by the High Court under Article 226 of the Constitution is one of the 'Judicial Review' and not 'An Appeal' on the merits of their case. It can only examine procedural correctness and not the merits of controversy, as opined by this Court.

12.16. In the upshot of qualitative and quantitative discussions and also this Court, keeping in mind of an essential fact that the Petitioner makes a claim for the cargo in question based on proforma Bill of Lading and when the claim of the Petitioner is very much disputed by the Respondent Nos.4 and 5, and further when the Sixth Respondent falls in line with that of the Petitioner to the effect that the writ Petitioner is only entitled to get the cargo and thereby its Firm is entitled to get delivery of the cargo, pursuant to High Sea Sale Agreement, dated 21.04.2016 and that apart, when the Fourth Respondent comes out with the plea that the IGM can be amended as per Section 30(3) r/w Levy of Fees (Customs Documents) Regulations, 1970, then, this Court is of the considered view that the disputes between the parties are only to be settled before the Adjudicating Authority/proper officer (Fact Finding Authority) under the Customs Act. In fact, the rival claims/disputes between the parties in the instant case, which centres around on mixed questions of Facts and Law, cannot be investigated/not to be gone into by a writ Court under summary proceedings. Viewed in that perspective, this Court holds that filing of writ petition by the Petitioner is per se not maintainable. Consequently, writ petition fails.

12.17. In fine, the writ petition is dismissed leaving the parties to bear their own costs. Liberty is granted to the respective parties to approach the Adjudicating Authority/proper officer under the Customs Act, 1962 or to seek appropriate remedies under the General Law, Civil Law or Criminal Law and to seek redressal of their grievances, if they so desire/advised. The connected Miscellaneous Petition Nos.WMP(MD) Nos.7404 and 7719 of 2016 are also dismissed.

Sd/
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To:
1.The Assistant Commissioner Customs
Tuticorin Customs House, Tuticorin.

2.The Officer Incharge,
Continental Ware Housing Corporation,
(Nhava Seva) Limited, Custom Freight Station,
Madurai Bye Pass Road, Melavittan,
Tuticorin.

+2cc to M/S.D.Sivaraman, Advocate in SR.No.34503
+1cc to M/S.R.Vijayakumar, Advocate in SR.No.34504
+1cc to M/S.V.Sasikumar, Advocate in SR.No.34542
+1cc to M/S.C.Muthu Saravanan, Advocate in SR.No.34472
+1cc to M/S.B.Vijay Karthikeyan, Advocate in SR.No.34410
+1cc to M/S.S.Muthalraj, Advocate in SR.No.34379

Pre-Delivery Order Made in
W.P.(MD) No.9351 of 2016
and
WMP(MD)Nos.7404 and 7719 of 2016
01.07.2016

rj2
PA-JM/NGM-MP/SAR I/01.07.2016/21P/10C(IT)