IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2017

Date of Reserving the Order	Date of Pronouncing the Order
31.07.2017	08.08.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.6452 & 6453 of 2017

M/s.Balaji Dekors
S.No.77-2, Koduveli Village,
Redhills, Thiruvallur High Road,
Chennai - 600055
Rep., by its Manager ..Petitioner in both W.Ps.

Vs.

1.The Commissioner of Customs,
Commissionerate III,
Special Intelligent and Investigation Branch (SIIB),
Customs House,
Chennai - 600 001.

2.Deputy Commissioner of Customs (SIIB),
Commissionerate III,
Customs House,
Chennai - 600 001. ..1st & 2nd Respondents in both W.Ps.,

3.M/s.Calyx Container Terminals Pvt., Ltd.,
No.28, GNT Road, NH-5,
Puzhal, Chennai - 66.
Rep., by Manager. ..3rd Respondent in W.P.No.6452/2017

3.M/s.K.Steamship Agencies Pvt., Ltd.,
No.2, MC Nicholas Road (6th Floor)
Chetpet, Chennai -31.
Rep., by Manager. ..3rd Respondent in W.P.No.6453/2017

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the second respondent to consider the representation, dated 06.01.2017, of the petitioner and direct the third respondent that the petitioner is entitled for waiver of rent/demurrage charges for import of “particle Board”, consignment BE.No.7688696/02.12.2016, in respect of container Nos.GATU 8661346; TCLU 5157454; KKFU 8095063 and TCLU 8034812 shipped from Thailand to Chennai Port and detained from

02.12.2016 to 27.12.2016 by SIIB (Special Intelligence & Investigation Branch) of Central Customs Department and to refuse the amount collected in this regard to the petitioner.

For Petitioner : Mr.G.Punniakoti

For Respondents: Mr.S.Rajasekar SPC for RR1&2 in both W.Ps.,
Mr.S.Dhayaleswaran for R3 in W.P.No.6452 of 2017
Mr.P.Giridharan for R3 in W.P.No.6453 of 2017

C O M M O N O R D E R

The petitioner in both these Writ Petitions are one and the same and the issue involved is also identical except for the only difference that the third respondent namely, the Container Terminal in both the Writ Petitions are different entities. With the consent on either side, the Writ Petitions themselves are taken up for disposal.

2. The petitioner seeks for issuance of a Writ of Mandamus, to direct the second respondent, the Deputy Commissioner of Customs (SIIB) to consider their representations and direct the third respondent container terminal to waive the rent/demurrage charges for import of "Particle Board", which were detained by the SIIB for investigation.

3. The petitioner is stated to be engaged in the manufacture of premium pre-laminated particle board and MDF Boards and in the course of business have been importing particle Boards from various foreign countries and in particular from Thailand. The petitioner is stated to have placed orders with M/s.Green River Ponds (Thailand) Company Limited, Thailand, for supply of particle boards, which were shipped from a Port in Thailand to Chennai Port on 13.11.2016 and were shifted through HSN Shipping Pvt., Ltd., and warehoused at the respective third respondent container terminal. The Principal Commissioner of Customs, Chennai-III, Commissionerate detained the consignment between 02.12.2016 to 27.12.2016 and ultimately release order was issued only on 27.12.2016. The petitioner seeks for waiver of the detention charges on the ground that the detention was not on account of their fault, as the Department had detained the goods and the Department has directed grant of waiver of the charges from 02.12.2016 to 27.12.2016, the third respondent should waive the charges and permit the release of the goods.

4. The third respondent in both the Writ Petitions have filed separate counter affidavits and M/s.Calyx Container Terminals have stated that they have waived the rent/demurrage charges as per waiver letter dated 28.12.2016, of the second

respondent and have given a calculation sheet and it is submitted that a sum of Rs.1,43,200/-, has been waived on account of the container storage charges for the period from 04.12.2016 to 27.12.2016 in addition to that the third respondent has also given additional discount on account of no doubt delivery charges and customs examination charges and therefore, they have complied with the directions contained in the waiver letter, dated 28.12.2016, issued by the second respondent.

5. The third respondent M/s.K.Steamship Agencies have filed a counter affidavit, stating that totally four containers were involved of which the period of detention of two containers was 28.12.2016 to 07.01.2017 i.e., for 11 days and the amount being Rs.1,86,622/- and in respect of the other two containers, the period of detention was 28.12.2016 to 13.01.2017, and the amount involved is Rs.2,88,415/- and the third respondent has given 25% waiver and the amount required to be paid by the petitioner is Rs.3,56,278/-. Further, it is submitted that the relationship between the petitioner and the third respondent is purely contractual and such contractual relationship will fall within the ambit of an ordinary Civil Suit and cannot be challenged by way of a Writ Petition under Article 226 of the Constitution of India.

6. Heard Mr.G.Punniakoti learned counsel for the petitioner, Mr.S.Rajasekar, learned Senior Panel counsel appearing for the respondent Nos.1 & 2 and Mr.S.Dhayaleswaran and Mr.P.Giridharan, learned counsel for the respective third respondents.

7. The undisputed fact is that the goods in question were detained at the instance of the 1st and 2nd respondents, who had undertaken an investigation on the cargo. By communication, dated 28.12.2016, the second respondent informed the respective third respondents that the consignment was detained by the SIIB from 02.12.2016 to 27.12.2016 and as per Regulation 6(1)(l) of the Handling of Cargo in Customs Area Regulation, 2009, the custodian shall not charge rent or demurrage for the goods under detention. The custodian in the instant case are respective third respondent in both the Writ Petitions. It is the submission of the petitioner that, though such a specific order has been issued by the department for grant of waiver, the respective third respondents have not granted full relief to the petitioner in terms of the directive of the Department.

8. Regulation No.6 of the Handling of Cargo in Customs Area Regulation, 2009, provides for "Responsibilities of Customs Cargo Service Provider". In terms of Regulation 6(1)(l), the customs cargo service provider shall subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained or confiscated by the

Superintendent of Customs or Appraiser or Inspector of Customs or Preventive Officer or Examining Officer as the case may be.

9. The second respondent, in no uncertain terms, has certified that the goods were detained by the SIIB from 02.12.2016 to 27.12.2016 and issued an order on 28.12.2016 that the custodian (third respondent) shall not charge rent or demurrage for goods under detention. Thus, the third respondent cannot interpret the said communication, as the Regulations clearly provide that the custodian cannot charge any rent or demurrage on the goods detained by the second respondent. However in the case of W.P.No.6452 of 2017, which concerns, M/s.Calyx Container Terminals, goods in question have been removed on 06.01.2017. Therefore, a levy is sought to be made for the period from 28.12.2016 to 06.01.2017. In my considered view this is unreasonable because after the order was passed on 28.12.2016, effective steps have been taken by the petitioner to clear the cargo and it has been done in the shortest possible time on 06.01.2017. Therefore, the third respondent should waive the rent or demurrage on the goods for the entire period i.e., from 02.12.2016 till it was cleared on 06.01.2017.

10. With regard to the Container Terminal, the third respondent in W.P.No.6453 of 2017, namely, M/s.K.Steamship Agencies, it appears that they have given only 25% waiver. This action of the third respondent is contrary to the statutory regulation namely, Regulation No.6(1)(l). The third respondent M/s.K.Steamship Agencies Pvt., Ltd.,having not questioned the order passed by the second respondent, dated 28.12.2016, are bound by the order and they have to proceed in letter and spirit as per the said order. The question of now interpreting the order are extending partial relief is not permissible as the Regulation uses the expression "shall not charge any rent or demurrage". This, mandates that the third respondent is prohibited from charging any rent or demurrage during the period of detention. This having been certified by the second respondent, there is no escape from the rigour of Regulation No.6(1)(l). Thus, the matter is not contractual, but it involves the implementation of a statutory regulation. Therefore, the Writ Petition filed by the petitioner is maintainable.

11. Insofar as M/s.K.Steamship Agencies Pvt., Ltd., is concerned, the cargo in two containers, have been cleared on 07.01.2017 and remaining two containers on 13.01.2017. As observed in respect of the other matters, after 28.12.2016, within a reasonable time, the containers have been removed. Admittedly, the petitioner is not responsible for detention of the container for the period from 02.12.2016. Therefore, the third respondent shall not be entitled to charge rent or demurrage on the said four containers till it was removed i.e., on 07.01.2017/13.01.2017.

12. For all the above reasons, the Writ Petitions are disposed of with a direction to the third respondent namely, M/s.Calyx Container Terminals, to waive the rent/demurrage on the goods which were detained at the instance of second respondent from 02.12.2016 till it was cleared on 06.01.2017. The third respondent in W.P.No.6353 of 2017, is directed to waive the rent or demurrage on the goods detained by the second respondent from 02.12.2016 till 07.01.2017/13.01.2017, when the containers were cleared. The above direction shall be complied with within a period of two weeks from the date of receipt of a copy of this order and the respective third respondent shall ensure full and faithful compliance of the above direction. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Commissioner of Customs,
   Commissionerate III,
   Special Intelligent and Investigation Branch (SIIB),
   Customs House,
   Chennai - 600 001.

2. Deputy Commissioner of Customs (SIIB),
   Commissionerate III,
   Customs House,
   Chennai - 600 001.

+ 2 cc to M/s.G.Punniyakoti, Advocate,SR.47014,57015

+ 1 cc to M/s.P.Giridharan, Advocate,SR.57074

+ 1 cc to M/s.S.Dhayaleswaran,Advocate,SR.57526

W.P.Nos.6452 & 6453 of 2017

ARU(CO)
NR 09/08/2017