

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.04.2017

Coram:

The Hon'ble Mr. Justice HULUVADI G.RAMESH
and

The Hon'ble Dr. Justice S.VIMALA

Writ Appeal Nos.2085 & 2086 of 2011
and Writ Petition No.28762 of 2011
and M.P.Nos.1 and 1 of 2011

M/s. Sathya Granites,
No.51 South Railway Road,
Kumarasamypet,
Dharmapuri District 636 703

... Appellant in both W.As &
Petitioner in W.P.No.28762/2011

Vs.

1. Chennai Port Trust,
Rep. By its Chairman,
Rajaji Salai, Chennai 600 001

2. The Traffic Manager,
Chennai Port Trust,
Rajaji Salai, Chennai 600 001

3. The Deputy Traffic Manager (L&B),
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001

... Respondents /Respondents in both
Writ Appeals & Writ petition
No.28762/2011.

Writ Appeals filed under Clause 15 of the Letters Patent
Appeal against the common order, dated 12.10.2011 in
W.P.No.23298 & 23299 of 2010.

Common prayer in WP.Nos.23298 & 23299 of 2010:

Writ petitions filed under Article 226 of the constitution
of India for issuance of a Writ of Certiorari to call for the
records of the Second and third respondents pertaining to the
proceedings in C2/1284/2009/T dated 06.10.2010 and quash the
same.

Writ Petition filed under Article 226 of the Constitution of
India praying for the issuance of a Writ of Certiorarified
Mandamus to call for the records on the file of the respondents
made in C2/1284/2009/T, dated 07.04.2011 and C2/1284/2009/T

dated 12.07.2011, quash the same and consequently to direct the respondents to consider the petitioner's request for waiver of penalty and licence fee, as per its request, dated 23.03.2011.

For Appellant in both W.As. : Mr. S.Ramesh
For Petitioner in writ petition : M/s. Selvi George
For Respondents in both W.As. : Mr.P.M.Subramaniam

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C O M M O N J U D G M E N T

(Judgment of the Court was delivered by
Huluvadi G.Ramesh, J.,)

Heard the learned counsel appearing for the appellant / petitioner and the learned counsel for the respondents.

2. These Writ Appeal Nos.2085 and 2086 of 2011 have been filed against the common order, dated 12.10.2011 passed by the learned single Judge in W.P.Nos.23298 and 23299 of 2010, in and by which, the impugned proceedings dated 06.10.2010 of the respondents herein have been set-aside and the respondents were directed to issue a fresh show cause notice towards the demand for payment of penalty with service tax, including licence fee payable after the licence period is over.

3. Writ Petition No.28762 of 2011 was filed by the petitioner seeking to quash the orders, made in C2/1284/2009/T, dated 07.04.2011 and C2/1284/2009/T dated 12.07.2011, and to direct the respondents to consider the petitioner's request, dated 23.03.2011, for waiver of penalty and licence fee.

4. The appellant / petitioner was granted licence, by allotting Plot No.3 at JD East, for storage and export of iron-ore by the respondents, vide proceedings dated 09.07.2010. The respondents have passed the proceedings, directing the appellant / petitioner to remit a sum of Rs.48,69,282/- towards licence fee and also Rs.16,05,240/- along with service tax towards shortfall, since the appellant / petitioner had not cleared the cargo.

5. When these writ appeals and writ petition are taken up for hearing, the learned counsel appearing for the respondents would submit that the total outstanding amount, including the licence fee, beyond the granted period of licence, including service tax and penalty was Rs.1,49,77,428/-. The learned counsel would further submit that, by the order, dated 12.10.2011, the learned single Judge permitted the respondents to invoke the Bank Guarantee, for a sum of Rs.70,00,000/- and

thus, the respondents had invoked the same and appropriated the same under the dues payable by the appellant / petitioner and towards the remaining dues, the respondents had initiated proceedings in accordance with law to recover the same. The learned counsel would further submit that, similarly placed persons have paid their dues by remitting the licence fee and penalty thereof, and surrendered their allotted plots to the Port Trust.

6. According to the learned counsel appearing for the appellant / petitioner, in view of prohibition issued by the State of Karnataka, the appellant / petitioner was not in a position to continue the business of iron-ore export. The learned counsel further submitted that, vide letter dated 07.09.2010, the appellant / petitioner has undertaken to surrender Plot No.3, as on 07.09.2010 itself and whatever the licence fee accrued on that date for the plot allotted to the appellant / petitioner, the same was sought to be adjusted from the deposit amount and the outstanding balance thereto to be paid after such adjustment and to release the Bank Guarantee for the allotment of plot to them; the appellant / petitioner undertakes to take the materials measuring 16,389.340 MTs stored in Plot No.3 immediately and requested for acknowledgement of the letter and to accept the surrender of Plot No.3, so as to enable them to take the stored materials and to release the bank guarantee and to get the refund of security deposit.

7. At this juncture, it is pertinent to point out that, under clause (xi) of the terms and conditions of the allotment order dated 09.07.2010, it is stated that, in the event of licensor requires the licensed area, the licensor shall give one month's prior notice and the licence shall come to an end after the one month's notice period without any liability or compensation whatsoever and if the licensor terminates the licence, as stated above, there would not be any recovery / forfeiture of security deposit for not attaining the MGT or proportionate MGT up to the date of termination of the licence. A perusal of the materials available on record would go to show that such notice was not given by the Chennai Port Trust.

8. Further, for the letter of surrender of plot, dated 07.09.2010, by the petitioner / Appellant, a reply, dated 06.10.2010, has been given by the second respondent, which reads thus:-

"Please refer to your letter cited stating to surrender Plot No.3 at JD (E). As per condition (x) of the allotment order the licence shall come to an end after one month notice period and as per the said condition, you should have cleared the cargo

from the plot on or before 05.10.2010. But till date, you have not cleared the cargo. Hence, your request to surrender the plot cannot be considered.

Further, you were advised to remit Rs.48,69,282/- (along with service tax @ 10.30%) towards licence fee for Oct & Nov'10 vide letter second cited. You have not remitted the same till date. The licence fee should be remitted on or before 11.10.2010 with interest @ 15% per annum as per condition (xv) of the allotment order, failing which, the licence shall be cancelled and the security deposit shall be forfeited."

9. Citing the said letter, the learned counsel appearing for the respondents vehemently contended that, despite the request to remove the materials on or before 05.10.2010, the appellant / petitioner has not cleared the cargo. Therefore, the request of the petitioner, to surrender the plot, has not been considered.

9.1. To this, the learned counsel for the appellant / petitioner submitted that, in the absence of grant of any such permission as sought for, the question of clearing cargo from Plot No.3 does not arise.

9.2. It appears that, there are no such materials produced by the respondents / Port Trust also for having permitted the petitioner to remove the cargo, which was stored in Plot No.3.

10. As far as the communication, dated 06.10.2010, of the Chennai Port Trust, asking the petitioner to remit Rs.48,69,282/- (along with service tax of 10.30%) towards licence fee for October and November 2010 and the same has not been remitted and that the licence fee was sought to be remitted on or before 11.10.2010 along with interest at 15% per annum, failing which, the licence should be cancelled and the security deposit shall be forfeited, is concerned, it is the case of appellant / petitioner that, in view of the embargo imposed by the Government of Karnataka for transporting the iron-ore minerals to the ports for export purpose to any one, the appellant / petitioner is unable to remove the same.

11. The fact that the respondents have not passed any appropriate orders terminating the licence and allowing the petitioner to remove the stored iron-ore and that there is no fault on the part of the appellant / petitioner, ought to have been appreciated, while passing the order by the learned Single Judge. Further, the fact that insofar as the penalty levied for the shortfall and for unauthorised occupation beyond the period of licence, the appellant / petitioner was not issued with any show cause notice by the respondents before passing the orders, shows non-application of mind on the part of the respondents.

12. Be that as it may. As on date, the facts available on record would go to show that the materials have not been removed, so far from Plot No.3 by the appellant / petitioner. The fact remains that the demand made by the Port Trust for payment of Rs.48,69,282/- and also penalty of shortfall and service tax towards licence fee and penal interest at 14.25% appear to be totally uncalled for. Hence, under these circumstances, we are of the view that the acceptance letter, dated 07.09.2010, of the appellant / petitioner, to surrender the plot, should have been held to be the date, for all purposes of calculation. If that is reckoned as the date of consideration of one month's notice period, the licence shall come to end on 06.10.2010 and that should have been held to be date for all the purpose of calculation due. Hence, whatever the subsequent demands made by the respondents / Port Trust, in the absence of any permission for removal of materials, are non-est in the eye of law.

13. Under these circumstances, the Writ Appeals and the writ petition are allowed and the impugned orders are liable to be set-aside and they are set-aside accordingly. It is for the Port Trust to calculate the amounts due till 06.10.2010 treating their letter dated 07.09.2010 as the show cause notice and the period of one month's notice has come to an end on 06.10.2010. Accordingly, it is ordered to the respondents to calculate the amounts due for one month, realize the consolidated amounts from the bank guarantee and return the balance amount out of the bank guarantee along with any other amount(s) available with them, to the appellant / petitioner. The said exercise shall be completed by the respondents within a period of one month from the date of receipt of a copy of this judgment. No costs. Consequently, the connected MPs are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

WEB COPY
Sub Assistant Registrar

srk

To

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

2. The Traffic Manager,
Chennai Port Trust,
Rajaji Salai, Chennai 600 001

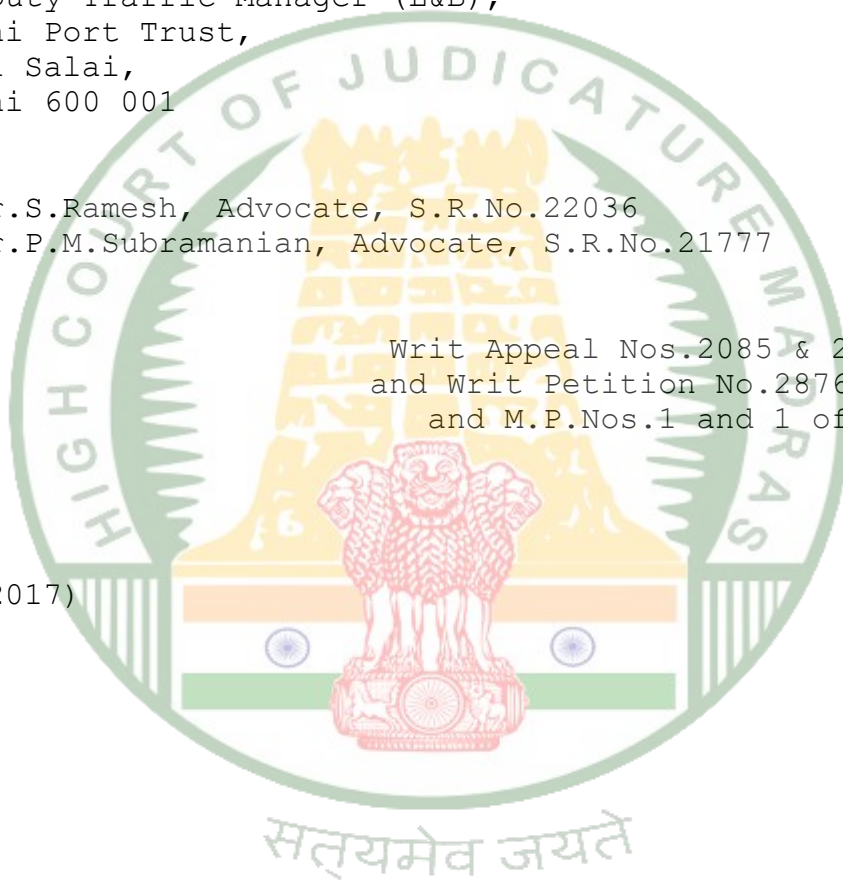
3. The Deputy Traffic Manager (L&B),
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001

+1cc to Mr.S.Ramesh, Advocate, S.R.No.22036

+3cc to Mr.P.M.Subramanian, Advocate, S.R.No.21777

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NMI (CO)
RS (07/06/2017)



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