

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17761 of 2017

M/s.YVN Traders, Rep. by its Proprietor,
Shri Y.V.Nagaraj, No.56, G-2,
Sterling Dwarakamaye Apartments,
Giri Road, T.Nagar, Chennai - 600 017.

... Petitioner

Vs.

1. Commissioner of Customs,
Chennai-II Commissionerate,
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.
2. Commissioner of Customs,
Chennai-VI Commissionerate,
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.
3. Assistant Commissioner of Customs,
Group-3, Custom House, No.60,
Rajaji Salai, Chennai - 600 001.
4. Assistant Commissioner of Customs
Docks, Custom House, No.60,
Rajaji Salai, Chennai - 600 001.
5. Hyundai Merchant Marine India Pvt., Ltd.,
Ega Trade Centre, 3rd Floor,
Door No.318 (Old No.809),
Poonamallee High Road,
Kilpauk, Chennai - 600 010.
6. Continental-1,
Container Freight Station,
Madhavaram, Chennai - 600 110.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to cause release of the goods i.e. 'Men's shoes (unbranded)

imported under Bill of Entry No.9773478 dated 20.05.2017 without payment of demurrage and container detention charges in terms of Regulation 6(1)(I) of the Handling of Cargo in Customs Areas.

For Petitioner : Dr.S.Krishnanand

For Respondents : Mr.B.Rabu Manohar (For R1 to R4)
Senior Panel Counsel
No Appearance (For R5)
Mr.P.Veeraraghavan (For R6)

O R D E R

Heard Dr.S.Krishnanand, learned counsel for the petitioner, Mr.B.Rabu Manohar, learned Senior Panel Counsel for the respondents 1 to 4, and Mr.P.Veeraraghavan, learned counsel for the sixth respondent. Even though the fifth respondent has been served and the name of the fifth respondent is also printed in the cause list, there is no representation for the fifth respondent.

2.The petitioner seeks for a direction upon the respondents to release the goods imported under Bill of Entry No.9773478 dated 20.05.2017 without payment of demurrage and container detention charges in terms of Regulation 6(1)(I) of the Handling of Cargo in Customs Areas Regulations. It is seen that the Preventive Officer of the Chennai Customs in a letter addressed to the sixth respondent with a copy marked to the fifth respondent, has clearly endorsed that the goods may be released and the detention charges of the containers since 25.03.2017 to 07.07.2017 should be waived. In spite of such endorsement being made in the letter dated 23.05.2017, the fifth and the sixth respondents have not released the cargo and not waived the detention charges. This prompted the petitioner to approach this Court by way of this writ petition.

3.In order to ascertain as to what was the exact reason as to why the detention charges have not been waived in spite of a specific endorsement made by the Preventive Officer and communicated to the respondents 5 and 6, this Court directed the learned Standing Counsel for the respondent-Department to get written instructions in the mater. The case was adjourned on two earlier dates only for this purpose.

4.Today, the learned Senior Counsel for the revenue has produced a copy of the e-mail communication sent to him wherein a reference has been made to the letter dated 26.07.2017 addressed to the sixth respondent by the Superintendent of Customs, Commissionerate No.6. The said communication is in fact

something akin to a show cause notice calling upon the sixth respondent to explain as to why the demurrage charges are being demanded from the petitioner in spite of the office letter dated 23.05.2017, directing to waive the same and why the cargo has been detained even after granting of OOC. The sixth respondent has been advised to give a reply to the Department. Thus, it is evidently clear that the Department has already passed an order waiving the demurrage charges. The sixth respondent's contention that no proper order was served on them is of little avail since the Department has in fact issued the letter dated 26.07.2017, which is in the opinion of this Court is something akin to a show cause notice.

5. Though the waiver of demurrage charges has been ordered by the Department from 23.05.2017 to 07.07.2017 and the same have not been obeyed, the petitioner approached this Court by way of filing this writ petition on 10.07.2017 and subsequently, the matter was adjourned at the instance of the respondents to get proper instructions from their clients. Therefore, till the cargo is released, the demurrage charges have to be waived. Thus, there will be a direction to the respondents 5 and 6 to waive the demurrage charges / detention charges of the said container from 23.05.2017 till the date it is released. Pursuant to the order passed by this Court, the container shall be released within a period of three days from the date of receipt of a copy of this order.

6. The writ petition is disposed of accordingly. No costs.

Sd/-
Asst. Registrar (CS IV)

/true copy/

Sub Asst. Registrar

abr/km

To

1. Commissioner of Customs,
Chennai-II Commissionerate,
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

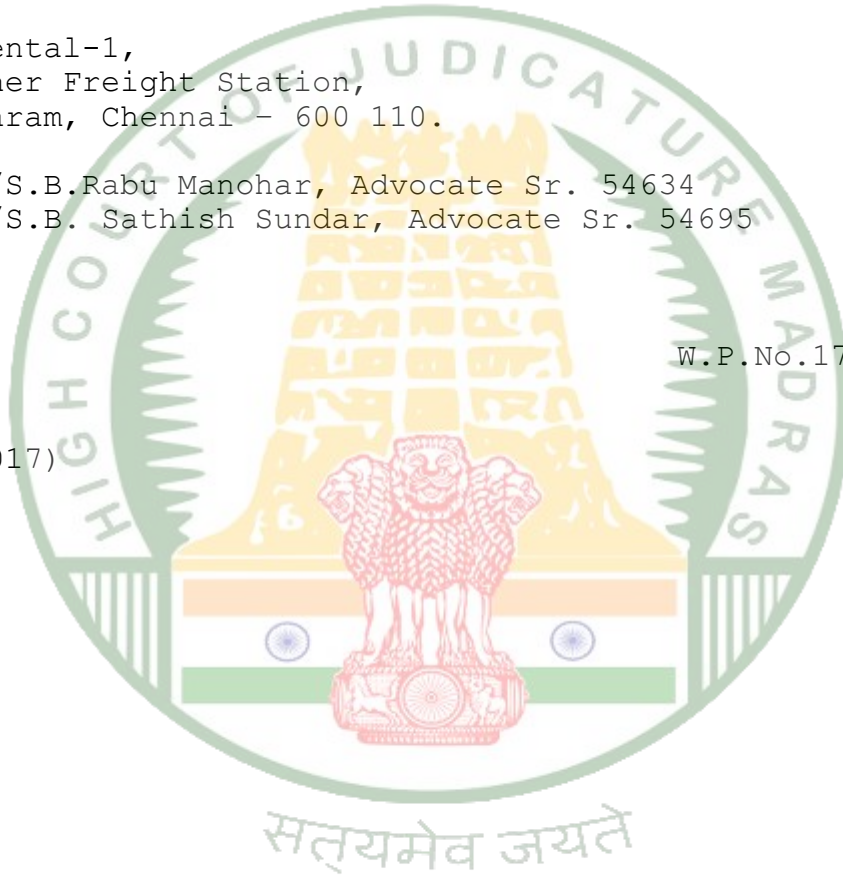
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2. Commissioner of Customs,
Chennai-VI Commissionerate,
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.
3. Assistant Commissioner of Customs,
Group-3, Custom House, No.60,
Rajaji Salai, Chennai - 600 001.
4. Assistant Commissioner of Customs
Docks, Custom House, No.60,
Rajaji Salai, Chennai - 600 001.
5. Continental-1,
Container Freight Station,
Madhavaram, Chennai - 600 110.

+1cc to M/S.B.Rabu Manohar, Advocate Sr. 54634
+1cc to M/S.B. Sathish Sundar, Advocate Sr. 54695

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RR(CO)
VR(16/8/2017)



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