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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 2568/2017</u>**

MACGROW TECHNOLOGIES ..... Petitioner

Through: Mr Sanjoy Ghose, ASC, GNCTD with Mr Gurudev Sahil and Ms Urvi Mohan, Advocates.

versus

UNION OF INDIA & ANR ..... Respondents

Through: Mr Sanjeev Narula, SSC for Customs with Mr Abhishek Ghai, Advocate for R-1.
Mr Sarul Jain, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **09.11.2017**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "a) Issue a writ in the nature of Mandamus to Respondent No.2 to release the shipment of the petitioner without further delay.
> b) Pass an order in-rem directing the respondents not levy demurrage charges on shipments when importers are not at fault."

2. The context in which the controversy involved in the present petition arises, is briefly set out as under :-

2.1 The petitioner had imported goods worth ₹2,88,985/- (weighing 415 kgs) by Air through DHL courier services. The said goods arrived in Delhi on 27.12.2016, however, the consignment was detained by the Customs Authorities. The shipment was opened on 03.01.2017 and was assessed by the Custom Authorities. The seizure memo (*Panchnama*) drawn on the said date indicates that the goods were handed over to the Duty Officer of respondent no.2 (hereafter 'CELEBI'). The petitioner has also produced a copy of the *Supurdginama* dated 03.01.2017 signed by the Inspector Duty Officer of CELEBI accepting the custody of the goods on behalf of the Custodian, CELEBI. It is relevant to state that the *Superdarinama* clearly states that "*I shall not claim any storage charges for the safe custody of the said goods*".

2.2 The goods in question were examined by the Customs Authorities and by a letter dated 09.02.2017 the same were directed to be released to the petitioner for home consumption. The goods were released as they were found to be as per the declaration and nothing adverse was noticed against the petitioner during investigation.

2.3 The petitioner immediately approached CELEBI for release of the said goods that were in safe custody of CELEBI. The petitioner also requested CELEBI that the demurrages be waived and also applied to the Custom Authorities seeking waiver of demurrage charges. The Custom Authorities, by a letter dated 20.02.2017, advised the petitioner to take up the matter relating to waiver of demurrages/detention charges directly with CELEBI.

3. Mr Sanjoy Ghose, learned counsel appearing for the petitioner contended that the petitioner's case was squarely covered by the decision of the Division Bench of this Court in ***Trip Communications Pvt. Ltd. v. Union of India*** : ***2014 (302) E.L.T. 321 (Del)*** and requested that a similar

direction be issued to CELEBI to waive demurrages in terms of the applicable policy.

4. Mr Narula, learned counsel appearing for respondent no.1 (Custom Authorities) stated that the Custom Authorities cannot be called upon to pay demurrage charges. He relied on the decision of the Supreme Court in ***Mumbai Port Trust v. Shri Lakshmi Steels***: ***2017 (352) ELT 401 (SC)*** and contended that DRI/Custom Authorities can be asked to pay demurrage charges only in cases where it is found that the officials had acted malafide against the importer or in a case of gross abuse of power warranting that the officers be asked to compensate the importer.

5. Mr Sarul Jain, learned counsel appearing for CELEBI contended that although the Custom Authorities had directed release of the goods, the order directing release of goods did not contain any reasons and, therefore, CELEBI had no occasion to contest the same. He stated that the Panchnama/seizure memo clearly indicated that there were discrepancies between the description of goods and the goods seized. He further submitted that CELEBI was only an agent of Airport Authority of India and was bound by its directions/policy. He also referred to Regulation 3(1)(b) of the Airport Authority of India (Storage and Processing of Cargo, Courier and Express Goods Postal Mail) Regulations, 2003 (hereafter 'the 2003 Regulations') and contended that CELEBI was entitled to exercise lien in respect of the goods in question for recovery of demurrage charges.

6. Insofar as the petitioner's prayer for release of goods is concerned, the same has been addressed and the goods in question have been released to the

petitioner. The only question to be examined is whether the petitioner is entitled to waiver of demurrage charges in terms of the applicable policy.

7. This court is not persuaded to accept the contentions advanced on behalf of CELEBI. First of all, the order passed by the Custom Authorities for release of goods in question is not unreasoned; it clearly states that after investigation the goods have been found to be as per the declaration. Secondly, respondent no.2, CELEBI is only the Custodian and is not required to enter into the controversy whether the goods imported were as per declaration or not.

8. Admittedly, a policy has been framed under the 2003 Regulations. Clause 10.1 of the said policy relates to waiver of demurrage charges and the relevant clause of the said policy is set out below:-

> "10.1 General
>
> 10.1.1 Subject to such policy, rules and procedures as may be described the authorities specified hereunder are authorised to sanction, in consultation with the Finance and Accounts Department, remission/waiver of demurrage charges regarding Cargo Operation.
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> 10.1.2..............
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> ....
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> 10.1.10 Demurrage charges shall not be waived where:
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> (a) Any fine/penalty/personal penalty/ warning is imposed by the Customs Authority.
>
> (b) Delay arose by reason of dispute in the assessable value or for revalidating or correcting the license in ordinary course of appraisal."

9. The Regulation 6 (1) (l) of the Handling of Cargo in Customs Areas Regulations, 2009 (hereafter 'the 2009 Regulations') also expressly provides that the custom cargo service provider would not charge any rent, demurrage on the goods seized or detained or confiscated by the proper officer. The said Regulation is set out below:-

> "6. Responsibilities of Custom Cargo Service provider. –
>
> (1) The Custom Cargo Service provider shall :-
> (a) ....
> ....
> (I) Subject to any other law for the time being in force, shall not charge any rent, 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;"

10. In ***Trip Communications Pvt. Ltd. v. Union of India*** (*supra*) the Division Bench of this Court had examined the relevant regulations and policy and concluded that the same have to be harmoniously construed and in cases where there is imposition of penalty, personal penalty or warning by the Customs Authorities, the demurrage charges would not be waived; it would be waived only in cases where no such penalty is levied.

11. Admittedly, the *Supurdginama* executed on behalf of CELEBI also clearly provided that no storage charges for safe custody of the said goods would be claimed. In ***Trip Communications Pvt. Ltd. v. Union of India*** (*supra*) this Court had held that the said undertaking contained in the *Supurdginama* would be applicable only in cases where no fine, penalty, personal penalty and warning is imposed on the importer by the Customs

Authorities.

12. This Court finds no reason why, in the facts of this case, certificate of waiver of demurrages was not issued by the Customs Authorities. Plainly, nothing adverse has been found against the petitioner and the petitioner is entitled to the benefits of the policy for waiver of demurrage as applicable.

13. The decision in the case of ***Mumbai Port Trust v. Shri Lakshmi Steels*** (*supra*) is not applicable to the facts of this case. In that case, the Supreme Court concluded that the Regulations 6(1)(l) of the 2009 Regulations (Handling of Cargo in Customs Areas Regulations, 2009) would not supersede the statutory provisions of the Major Port Trust Act, 1963. The said decision was rendered in context of conflict between the 2009 Regulations and the Provisions of the Major Port Trust Act, 1963. In the present case, the petitioner seeks the benefit of the policy, which is concededly, to be applied by CELEBI. This Court in ***Trips Communication*** (*supra*) had examined the policy and had found that it would be applicable for waiver of demurrages in cases where no penalty, fine, personal penalty, warning had been imposed by Customs Authorities. The present case is squarely covered by the said decision of this Court.

14. In view of the above, the present petition is allowed and CELEBI is directed to refund the demurrage charges collected from the petitioner within a period of eight weeks from today. No orders as to costs.

VIBHU BAKHRU, J

NOVEMBER 09, 2017
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