IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **SUBRAMONIUM PRASAD**

W.A.No.1441 of 2018

S.John Arokiaswamy .. Appellant

versus

1. The Union of India,
Ministry of Finance,
Department of Revenue,
Rep. by Secretary,
Udyog Bhavan, New Delhi - 110 001

2. The Assistant Commissioner of Customs (UB),
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

3. Airport Authority of India,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027. .. Respondents

Writ Appeal filed against the order dated 24.08.2005 in W.P.No.22765 of 2004.

For Appellant : Mr.Derrick Sam
for Mr.K.Ramachandran

For Respondents : Mr.A.P.Srinivas (for R2)
Standing counsel
Mr.S.Venkatesan (for R3)

JUDGMENT

(Order of the Court was delivered by **S.MANIKUMAR, J.**)

Orders dated 30.03.2004 and 07.07.2004 in file No.S.Misc.07/2004-Air UB on the file of the Assistant Commissioner of Customs (UB), Air Cargo Complex, Meenambakkam, Chennai, the 2nd respondent, impugned in the writ petition is extracted hereunder.

S.Misc.07/2004-Air UB 30.03.2004

Sir,

Sub : Redemption of confiscated goods in the case of OS.No.40 - Int dated 25.10.2003 compliance of Appeal Commissioner's Order - Reg.

Ref : The letter of Shri S.S.Radhakrishnan, Advocate, dated 11.03.2004 addressed to the Commissioner (Air), Air Commissionerate, Chennai.

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With reference to your letter cited above, I am to state that all the correspondences made to this Commissionerate are attended to and responded promptly with due care and attention. Though the subject of your letter cited above is not having relevancy to this department the same was promptly answered with due care and attention vide this office letter Nos.S.Misc/07/2004 dated 23.02.2004 & 03.03.2004. Hence, the allegation made in the above letter stating that the letter was handled in a casual manner is not correct.

As already conveyed through our previous letters collection of demurrage charges are lying with the Airport Authority of India and not with this department. Hence, we ought to maintain silence in this aspect since the same is no pertaining to this department. However, we made a reference to the Airport Authority of India in this regard and awaiting reply from them. In there interim reply Airport Authority of India has informed that this matter was taken to their "Head Quarters" for clarification. On receipt of a reply from them the same will be communicated to you.

On enquiry the Airport Authority of India, ACC, Chennai states that they are not charging any demurrage charges on the goods detained by Customs Department under Customs Act or any other Act. But they are charging these charges on such goods where a fine and penalty is imposed. This appears that this procedure followed by them is in accordance with Board's Circular No.34/2002 dated 26.06.2002.

In this instant case the goods were not detained and released. Instead the goods were confiscated and fine and penalty were imposed. In other words the commission of offence was confirmed by the Lower Authority and not questioned by the appellate authority. Instead lenience was shown on imposition of fine and penalty. Hence, in the above circumstances liablity of payment of demurrage charges cannot be avoided. In this regard, the learned counsel's attention is drawn to the recent judgment of the Hon'ble High Court of Calcutta, vide its judgment in the case of Shri.Navneet Kumar Didwania Vs. Commissioner of Customs, Calcutta (Port) 2002 (145) E.L.T.6 (CAL).

Yours sincerely,

(C.NAGARAJAN)
Assistant Commissioner (UB)

S.Misc.07/2004-Air UB 07.07.2004

Sir,

Sub : Redemption of confiscated goods in the case of OS.No.40 - Int dated 25.10.2003 compliance of Appeal Commissioner's Order - Reg.

Ref : This office letter of even No. dated 30.03.2004.

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Please refer to this office letter of even No. dated 30.03.04 on the above subject.

With regard to demurrage charges, the Airport Authority of India replied vide their letter dated 02.07.2004 that as there is no provision in the Customs Act, 1962 or the Regulations made thereunder, which confers on the customs the power to direct the release of the goods kept in the custody, as AAI is custodian of the Customs Department it may not be possible to release the goods without demanding demurrage charges from the consignee for the goods because of detention certificate issued in this regard by the Customs Authority. Hence, the consignee is required to pay the applicable demurrage charges before clearing the UB goods detained by Customs / DRI.

Yours sincerely,

(C.NAGARAJAN)
Assistant Commissioner (UB)

2. When the correctness of the same was tested in W.P.No.22765 of 2004, with a consequential prayer, for a direction to the Assistant Commissioner of Customs (UB), Air Cargo Complex, Meenambakkam, Chennai, the 2nd respondent herein, to bear the custodian charges that are due to the Airport Authority of India, Air Cargo Complex, Chennai, the 3rd respondent herein, after hearing the learned counsel for the parties therein and taking note of the provisio to Section 125 of the Customs Act, writ Court declined to grant the relief as prayed for. But directed the petitioner/appellant to move the Commissioner of Customs (Appellate Authority) to clarify the position, as to the payment of demurrage charges. Operative portion of the order made in W.P.No.22765 of 2004, is extracted hereunder.

".... As per the provision under Section 125(10 of the Act, the imposition of redemption fine is only in lieu of confiscation. Hence, I am not able to countenance the argument of the learned counsel for the petitioner as the order of the appellate authority is not an order setting aside the confiscation order as illegal but only an order allowing the petitioner to clear the goods by payment of redemption fine in lieu of confiscation. Upon expressing this opinion, learned counsel for the petitioner submitted that the petitioner would move the Appellate Authority, the Commissioner of Appeals and get it clarified as to the position of demurrage charges. Thus, while reserving the liberty to move the Appellate Authority for clarification, the writ petition is dismissed. Consequently, the connected W.P.M.P. is also dismissed. No Costs."

3. Being aggrieved by the said decision, instant writ appeal is filed. During the course of hearing of the condonation petition, having regard to the direction of the writ Court to move the Commissioner of Appeals (Appellate Authority). for clarifications. on 21.06.2018, we directed Mr.A.P.Srinivas, learned counsel for the Assistant Commissioner of Customs (UB), Air Cargo Complex, Meenambakkam, Chennai, the 2nd respondent, and Mr.S.Venkatesan, learned counsel for Airport Authority of India, Air Cargo Complex, Chennai, the 3rd respondent, to ascertain as to whether any appeal has been filed before the Commissioner of Appeals (Appellate Authority), as regards demurrage charges to be paid. Today, both the learned counsel sought for further time. Mr.Derrick Sam, learned counsel for the appellant submitted that there is no instruction from his client.

4. Be that as it may, order impugned was made on 24.08.2005. Now thirteen years have elapsed. Pursuant to the order, either the appellant would have got the goods released by payment of demurrage charges to the Assistant Commissioner of Customs (UB), Air Cargo Complex, Meenambakkam, Chennai, the 2nd respondent or for non payment of demurrage charges, goods would have been sold by the Customs Department. At this length of time, after fourteen years, no useful purpose would be served in adjudicating the correctness of the order impugned, for the reason that appellant would not have allowed the electronic goods to lie in the Air Cargo Complex, for nearly fourteen years.

5. For the abovesaid reasons, we are not interfering with the impugned order and the instant writ appeal is dismissed. No costs.

[S.M.K., J.] [S.P., J.]

25.06.2018

Index : Yes/No

Internet : Yes

Speaking / Non-speaking order

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To

1. The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
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2. The Assistant Commissioner of Customs (UB),
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3. Airport Authority of India,
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S. MANIKUMAR, J.
AND
SUBRAMONIUM PRASAD, J.

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