

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM

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

W.P.No.6637 of 2018

M/s.Giridhari Homes Pvt Ltd
H.No.6-1-134, Padmarao Nagar
Secunderabad
Andhra Pradesh -500025
Rep by its Authorised Signatory

... Petitioner

v.

- 1 The Principal Commissioner of Customs
Chennai III, Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai-600 001
- 2 The Assistant Commissioner of Customs
Docks Intelligence Unit, Chennai- III
Commissionerate Custom House
No.60, Rajaji Salai, Chennai-600 001
- 3 The Manager
M/s.Sattva Hi Tech (CFS)
126A Ponneri High Road
Chennai-600 103
- 4 The Manager
Hyundai Merchant Marine India Pvt Ltd
318, Poonamallee High Road
Kilpauk, Chennai-600 010

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to cause release of the good imported vide Bill of Entry No.3049374, dated 31.08.2017 imported vide Container No.HDMU6891698, without payment of demurrage and container detention charges in terms of Regulation 6(1) (I) of the Handling of Cargo in Customs Areas Regulations 2009 read with the Detention/Demurrage Waiver Certificates dated 10.01.2018 issued from File No.O.S. No.37/ 2017- DIU.

For Petitioner : Mr. B.Sathish Sundar

For Respondent : Mr.S.Santhana Raman
Standing Counsel - for R1 & R2

ORDER

Heard Mr. B.Sathish Sundar, learned counsel appearing for the petitioner and Mr.S.Santhana Raman, learned Standing Counsel for the respondents 1 and 2. Notice to the 3rd respondent has been served and their name has been printed in the cause list. Notice sent to the 4th respondent has returned with an endorsement "vacated".

2. The petitioner is before this court praying for issuance of a Writ of Mandamus, directing the respondents to cause release of the good imported vide Bill of Entry dated 31.08.2017 without paying the demurrage and container detention charges in terms of Regulation 6(1) (I) of the Handling of Cargo in Customs Areas Regulations 2009 read with the Detention/Demurrage Waiver Certificates dated 10.01.2018.

3. The department has granted Waiver Certificates to the petitioner waiving the detention charges and demurrage charges, however, the respondents 3 and 4 have not obeyed the direction and in fact, they have defied the order passed by the department. Therefore, the petitioner has been compelled to approach this court.

4. In fact, the 4th respondent in this writ petition was one of the respondent in an another writ petition filed by M/s.YVN Traders in W.P.No.17761 of 2017. In the said writ petition, he was impleaded as 5th respondent, however, did not choose to appear before this court, though similar complaint was made against him in the said case. The writ petition was disposed of by issuing a direction to the respondents 5 and 6 therein to waive the demurrage charges and detention charges till the cargo is released and direction was issued to release the cargo within a period of three days time. The 4th respondent had complied with the said direction issued on 01.08.2017.

5. It is not clear as to why on every occasion the Court has to direct the 4th respondent to comply with the orders passed by the department. If the respondents 3 and 4 are flouting the orders passed by the department, then, it is for the department to initiate action to cancel the licence/permission granted to them. The respondents 3 and 4 have been granted licence under the relevant regulations and if they do not comply with the direction issued by the department, necessary action should be initiated against them. It would have been different matter if the respondents 3 and 4 had challenged any of the direction issued by the department. In the instant case, there is no such challenge, however, the respondents 3 and 4 have not obeyed the direction issued by

the respondent, which should not be encouraged and to be viewed seriously.

6. In the light of the above, the writ petition is disposed of with a direction to the respondents 3 and 4 to forthwith release the imported cargo without insisting upon the payment of demurrage charges and detention charges till the date of release, as it has already been waived by the department by their Waiver Certificates dated 10.01.2018. The respondents 1 and 2 are directed to initiate appropriate action under relevant regulation against the respondents 3 and 4 on account of their disobedience. No costs.

Sd/--

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Rj

To

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

2 The Assistant Commissioner of Customs
Docks Intelligence Unit, Chennai- III
Commissionerate Custom House
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3 The Manager
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126A Ponneri High Road
Chennai-600 103

4 The Manager
Hyundai Merchant Marine India Pvt Ltd
318, Poonamallee High Road
Kilpauk, Chennai-600 010

+1cc to Mr.S.Santhana Raman, Advocate Sr.No.32352

+1cc to Mr.B.SathishSundar, Adocate Sr.No.31524

sm:14.5.2018

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