



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

**W.P (MD) Nos.19949,19950 and 19951 of 2017
and W.M.P. (MD) Nos.16218, 16219 and 16220 of 2017**

In W.P(MD) No.19949 of 2017:

Shreyas Relay Systems Limited.,
Rep. by its Branch Manager,
Mr.Sathiyan Gandhi,
19 B, 1st Floor,
Transworld House,
World Trade Avenue,
Harbour Estate,
Tuticorin 628 004

: Petitioner

Vs.

1.Union of India,
Rep. by Secretary (Revenue) Ministry of Finance,
128-A, North Block, Central Secretariat,
New Delhi - 110001.

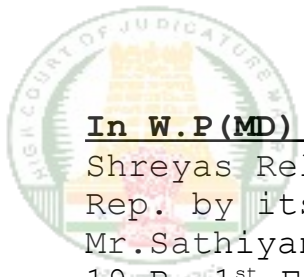
2.Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin 628 004.

3.Assistant Commissioner of Customs (Disposal),
Office of the Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin 628 004.

4.Director of Revenue Intelligence,
22/14, Celin Garden,
Roche Colony, South Beach Road,
Tuticorin - 628 001.

5.The Manager,
Container Corporation of India (Concor) CFS,
Sipcot Area,
Madurai Bye-Pass,
Milavittan Post,
Tuticorin 628 004.

: Respondents



In W.P(MD) No.19950 of 2017:

Shreyas Relay Systems Limited.,
Rep. by its Branch Manager,
Mr.Sathiyan Gandhi,
19 B, 1st Floor,
Transworld House,
World Trade Avenue,
Harbour Estate,
Tuticorin 628 004

: Petitioner

Vs.

1.Union of India,
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Tuticorin 628 004.

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Custom House,
New Harbour Estate,
Tuticorin 628 004.

4.Director of Revenue Intelligence,
22/14, Celin Garden,
Roche Colony, South Beach Road,
Tuticorin - 628 001.

5.The Manager,
Visions Container Freight Station,
Plot No.3/2B, Harbour Express Highway Road,
Near Thermal Nagar Camp 1,
Tuticorin 628 006.

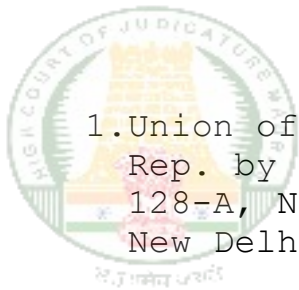
: Respondents

In W.P(MD) No.19951 of 2017:

Shreyas Relay Systems Limited.,
Rep. by its Branch Manager,
Mr.Sathiyan Gandhi,
19 B, 1st Floor,
Transworld House,
World Trade Avenue,
Harbour Estate,
Tuticorin 628 004

: Petitioner

Vs.



1. Union of India,
Rep. by Secretary (Revenue) Ministry of Finance,
128-A, North Block, Central Secretariat,
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Custom House,
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Tuticorin 628 004.
3. Assistant Commissioner of Customs (Disposal),
Office of the Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin 628 004.
4. Directorate of Revenue Intelligence,
22/14, Celin Garden,
Roche Colony, South Beach Road,
Tuticorin - 628 001.
5. The Manager,
Container Corporation of India (Concor) CFS,
Sipcot Area,
Madurai Bye-Pass,
Milavittan Post,
Tuticorin 628 004.

: Respondents

PRAYER in W.P. (MD) No.19949 of 2017: Writ Petition is filed under Article 226 of the Constitution of India directing the respondents 2 to 5 to de-stuff the cargo from the container bearing No.BLUJ-4050374 either by de-stuffing the cargo and storing the cargo in customs warehouse or by conducting auction of the cargo and return the empty container bearing No. BLJU-4050374 to the petitioner by fixing a time limit that may be fixed by this Court.

PRAYER in W.P. (MD) No.19950 of 2017: Writ Petition is filed under Article 226 of the Constitution of India directing the respondents 2 to 5 to de-stuff the cargo from the container bearing No.GESU-4866744 either by de-stuffing the cargo and storing the cargo in customs warehouse or by conducting auction of the cargo and return the empty container bearing No.GESU-4866744 to the petitioner by fixing a time limit that may be fixed by this Court.

PRAYER in W.P. (MD) No.19951 of 2017: Writ Petition is filed under Article 226 of the Constitution of India directing the respondents 2 to 5 to de-stuff the cargo from the container bearing No. BLJU-4250156 either by de-stuffing the cargo and storing the cargo in customs warehouse or by conducting auction of the cargo and return the empty container bearing No.BLUJ-4250156



to the petitioner by fixing a time limit that may be fixed by this Court.

In all Writ Petitions:

For Petitioner : Mr. Murugan
for M/s. T. Sakthikumaran

For R1 : Mr. C. Nandagopal
Central Government Counsel

For R2 to R4 : Mr. B. Vijay Karthikeyan

For R5 : Mr. P. Muthu Vijayapandian

C O M M O N O R D E R

The petitioner company is engaged in the business of Carriers providing various services such as Domestic Multimodal Coastal Container Services, Regional Liner Services and Road Transportation. During the course of their business, they hired their containers for shipment of Cargo to M/s Umang Overseas Company, M/s. J. S. Agro Plantation and M/s. Narayanan Impex. The hirer had hired 3 containers bearing Nos. BLJU-4050374, GESU-4866744 and BLJU-4250156 and stuffed materials and shifted it through vessel OEL Shreyas V.099, CAPE FLORES V.017 and OEL TRUST V.111.

2. On instruction of the fourth respondent, the container was brought back to Tuticorin and it was detained. The petitioner was further informed that the Cargo was seized by the respondents 2 to 4 and kept in the fifth respondent Container Freight Station.

3. When the matter stood thus, the Cargo, which was seized was confiscated by the respondents 2 to 4. However, the petitioner sought for release of their empty container after de-stuffing the cargo.

4. The fifth respondent refused to release the container on the ground that the demurrage for the period in which it was kept in the Container Freight Station shall be paid by the petitioner. If it is not paid, the container cannot be released. Hence, the writ petitioner is before this Court.

5. On notice, the respondents 2 to 4 filed a counter affidavit stating that the materials in the container were Red Sanders, which was prohibited item and it was attempted to be exported to Maldivees. The goods were seized and direction was issued to the fifth respondent to de-stuff the cargo from the container and hand over the empty container to the petitioner.



6. Heard the rival contentions of both sides.

7. Admittedly, the petitioner hired the empty container. The importer or exporter stuffed the container with the import and export materials and sell it. Insofar as the present cases are concerned, the importer or exporter are the owners of the goods and the container hirer has nothing to do with the same. Once import or export is complete, he is entitled to get back the empty container along with the hire amount. In the instant case, container was confiscated by the respondents 2 to 4. Once confiscation process is over, the container owner is entitled to get the empty container by de-stuffing the Cargo.

8. The contention of the learned counsel for the Container Corporation of India/fifth respondent that the period for which the container was stored at Freight Station, he is entitled to receive demurrage or rent from the container owner. It is well known that the container is kept in the Freight Station at the instance of the Customs. Till confiscation is over, the container will be kept along with seized materials in the Container Freight Station. If at all, rent is payable it shall be collected from importer or exporter and not from the container owner. Since, he leased out the container, he is entitled to rent for the usage of empty container and not more. He cannot be construed to be the owner of goods or the container was kept in the Container Freight Station at his instance.

9. This Court in a similar circumstance, in W.P. (MD) Nos. 4358 and 4836 of 2015 dated 20.07.2016 in the case of **M/s. Trans Asian Shipping Services (P) Ltd., Rep. by its Branch Manager Vs. C oncor Container Freight Station, Chennai 19 and 4 others** held that the containers were detained by the Department for investigation and have been kept in the respective container freight stations, the Customs Department/Directorate of Revenue Intelligence shall also endeavour to assist the respective container freight stations for recovery of the rent due and payable. As the importer has been found guilty, they could be made liable for payment of rental dues and not the container owner.

10. The second and third respondents have already given instruction in Letter C.No.VIII/25/55/2012-Disposal dated 28.09.2012, 13.04.2017 and 10.11.2017 to release the container after de-stuffing the cargo from the containers and hand over the empty container to the petitioner. Therefore, the rent cannot be claimed from the petitioner by the fifth respondent Container Freight Station. The petitioner is entitled to get his empty container after de-stuffing the cargo from the container.

<https://hcservices.courts.gov.in/hcservices/> In the, these Writ Petitions are allowed with the direction to the fifth respondent to release the container after



de-stuffing the Cargo from the containers bearing Nos. BLJU-4050374, GESU-4866744 and BLJU-4250156 to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/True Copy/

Sub Assistant Registrar

To

1. Secretary (Revenue) Ministry of Finance,
Union of India, 128-A, North Block,
Central Secretariat, New Delhi - 110001.

2. Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin 628 004.

3. Assistant Commissioner of Customs (Disposal),
Office of the Commissioner of Customs,
Custom House, New Harbour Estate,
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4. Directorate of Revenue Intelligence,
22/14, Celin Garden,
Roche Colony, South Beach Road,
Tuticorin - 628 001.

+ 1 cc TO Mr. B. Vijay Karthikeyan, Advocate in SR No. 68667
+ 1 cc TO Mr. P. Muthu Vijaya Pandian, Advocate in SR No. 68709
+ 1 cc TO Mr. C. Nandagopal, Advocate in SR No. 68559
+ 1 cc TO Mr. T. Sakthikumaran, Advocate in SR No. 68674

CM

AE/SKN RSK/SAR3/06.07.2018/6P/9C

**W.P (MD) Nos. 19949, 19950 and 19951 of 2017
and W.M.P. (MD) Nos. 16218, 16219 and 16220 of 2017
18.06.2018**