BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P(MD)No.2793 of 2017
and
W.M.P(MD)Nos.2297 of 2017 and 10128 of 2017

Shreyas Relay Systems Ltd.,
19 B, 1st Floor,
Transworld House,
World Trade Avenue,
Harbour Estate,
Tuticorin - 628 004.
represented by its
Branch Manager,
Sathiyan Gandhi ... Petitioner

Vs.

1.The Principal Secretary to Government of Tamil Nadu,
Commercial Taxes Department,
Rajaji Salai,
Fort St. George, Chennai - 600 009.

2.The Deputy Commercial Tax Officer (Enf)/
Assistant Commissioner (Enf),
Check Point (FAC),
Commercial Tax Office,
282, North Beach Road,
Commercial Tax Building, Tuticorin - 628 001.

3.The Commercial Tax Officer,
Enforcement (FAC),
Commercial Tax Office,
282, North Beach Road,
Commercial Tax Building,
Tuticorin - 628 001.

4.Sagar Enterprises,
No.16 C 6, Pollachi Road,
Veerapandi,
Palladam,
Tamil Nadu - 641 605.

5.Sivansi Tiles Park,
2/184, B-4, Chennathur,
Sundagiri,
Hosur,
Krishnagiri,
Tamil Nadu - 635 117. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus to direct the respondents 1 to 3 to de-stuff the cargo of the respondents 4 and 5 either by emptying or by conducting auction of the cargo and return the empty containers bearing Nos.TWLU3005154, TSAU2200210, GESU3684961, GESU3131992 and TSAU2200102 to the petitioner by considering the petitioner's representation dated 25.07.2016 by fixing a time limit that may be fixed by this Court.

For Petitioner : Mr.T.Sakthi Kumaran
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader for R.1 to R.3

ORDER

This writ petition has been filed seeking a writ of Mandamus to direct the respondents 1 to 3 to de-stuff the cargo of the respondents 4 and 5 either by emptying or by conducting auction of the cargo and return the empty containers bearing Nos.TWLU3005154, TSAU2200210, GESU3684961, GESU3131992 and TSAU2200102 to the petitioner by considering the petitioner's representation dated 25.07.2016 by fixing a time limit that may be fixed by this Court.

2. 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.Sagar Enterprises [the fourth respondent] and M/s.Sivansi Tiles Park [the fifth respondent]. The fourth respondent had hired 2 containers bearing Nos. TWLU3005154 and TSAU2200210 and the fifth respondent had hired 3 containers bearing Nos.GESU3684961, GESU3131992 and TSAU220102 and stuffed materials and shifted it through vessels OEL Kutch 54 and OEL Kochi 60.

3. On instruction of the first respondent, the containers were brought back to Tuticorin and they were detained. The petitioner was further informed that the Cargo was seized by the respondents 1 to 3 and kept in Indev Logistics Pvt. Ltd., and Diamond Shipping Agencies Pvt. Ltd., (CFS/DEPO).

4. When the matter stood thus, the Cargo, which was seized was confiscated by the authorities concerned. However, the petitioner sought for release of their empty containers after de-stuffing the cargo.

5. The authorities refused to release the containers on the ground that the respondents 4 and 5 had not paid the sales tax to the State Government and hence, the second respondent vide letters dated 29.11.2014 and 05.12.2014, directed to detain the containers of the petitioner. Hence, the petitioner is before this Court.

6. It is the contention of the petitioner that he is not the owner of the goods and what are detained by the customs are only goods which were illegally transmitted and therefore, the petitioner being the owner of the containers who has nothing to do with the goods, cannot be forced to pay the rental dues.

7. Whereas Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents 1 to 3, on instructions, would submit that as per Section 67(3) of the Tamil Nadu Value Added Tax Act, 2006, the owner of the container himself can pay the amount and get the container released without wasting time.

8. I have heard the rival contentions.

9. Admittedly, the petitioner hired the empty containers. The importer or exporter stuffed the container with the import and export materials and sell it. Insofar as the present case is concerned, the importer or exporter is the owner 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, containers were confiscated by the authorities concerned. Once confiscation process is over, the container owner is entitled to get the empty container by de-stuffing the Cargo.

10. 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 and4 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.

11. Following the same, this writ petition is disposed of on similar lines and accordingly, a direction is issued to the authorities concerned to release the containers of the petitioner after de-stuffing the Cargo from the containers bearing Nos.TWLU3005154, TSAU2200210, GESU3684961, GESU3131992 and TSAU220102 to the petitioner. No costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1.The Principal Secretary to Government of Tamil Nadu,
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+1CC to Mr.T.Sakthi Kumaran Advocate in SR.No.75454.
+1CC to Special Government Pleader in SR.No.75632.

RSB
DS/SKN/SAR-3 :14.08.2018: 4P/6C

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