BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.09.2018
CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
W.P.(MD)No.10432 of 2013
and
M.P.(MD)Nos.1 to 3 of 2013

CMA CGM Agencies (India) Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956,
Having Corporate Office at
India Bulls Finance Centre,
Tower 3, 8^{th} Floor,
Senapati Bapat Marg,
Elphinston (west), Mumbai - 400 013,
Rep. by its Branch Manager,
N.Shyam Sundar ... Petitioner

Vs.

1. Union of India,
   Rep. by Secretary to Government,
   Ministry of Finance,
   Department of Revenue,
   Central Board of Excise & Customs,
   New Delhi.

2. Continental Warehousing Corporation
   (Nhava Seva) Ltd.,
   Tuticorin : CFS,
   1S/76K, Madurai Bye-pass Road,
   Meelavittan, Tuticorin - 628 002.

3. Office of the Commissioner of Customs,
   Customs House, New Harbour Estate,
   Tuticorin - 629 004. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of MANDAMUS, directing the respondents 2 and 3 to forthwith release and return to the Petitioner the aforesaid 17 empty containers (set out in Exhibit A) lying with the 2nd respondent herein along with such compensation towards the container idling charges, upto the date of release of the containers.

For Petitioner : Mr.V.Kalyana Raman
for M/s.Aiyar and Dolia
For Respondents : Mr.S.Gurumoorthy

ORDER

The petitioner Company, which is an agent of CMA CGM S.A., - a company indulged in the business of containers & carriers, is before this Court, seeking a direction to the respondents 2 & 3 to release the 17 containers, which are lying in Container Freight Station (in short 'CFS') of the second respondent, namely, Continental Warehousing Corporation, forthwith.

2. According to the petitioner, 17 containers belonging to CMA CGM S.A., were booked in the name of various consignees and arrived at Tuticorin Port on different dates and later, were moved to CFS. However, the consignees, to whom they were addressed, have abandoned their respective cargos, in other words, delivery was not taken. According to the petitioner, the respondents 2 & 3, being the custodian of containerized cargo and the authority under Customs Act, 1962 are obliged to return the container after a particular time frame, in terms of Section 48 of the Customs Act, 1962 and Sections 61 & 62 of the Major Port Trust Act, 1963. Since the cargos were left abandoned, the respondents 2 & 3 ought to have exercised their powers and carried out the auction proceedings after de-stuffing the containers, in the manner known to law. However, they failed to do so and therefore, the present petition came to be filed.

3. Respondents 1 & 3 have filed a common counter affidavit. Second respondent, though appeared through Counsel, has not filed any counter affidavit.

4. In the counter affidavit, it has been averred that of the 17 containers, two containers bearing Nos.ECMU 1356280 and ECMU 1562191 were cleared on payment of duty. Of the remaining 15 containers, one M/s.Vembar Timber and Agencies, a consignee, had already filed Bill of Entry and paid Customs duty, in respect of four containers. However, due to non-payment of cargo rental charges to the custodian and non-payment of container demurrage charges, they are yet to be cleared. In respect of the remaining 11 containers, in the counter affidavit, it has been averred that there is a civil dispute pending before the Principal District Munsif, Tuticorin. Therefore, in respect of these 15 containers, though action was initiated by issuing notice under Section 48 of Customs Act, 1962, due to the aforementioned reasons, auction proceedings were withheld.

5. I have perused the records placed on record.

6. When the matter was taken up for hearing today, the learned Counsel for the petitioner submitted that he is not able to contact his client, ie., the petitioner, despite sincere efforts.

7. It is seen that the counter affidavit was dated 12.09.2013, ie., the narration of things, in the counter affidavit, was with regard to the status in the year 2013 and now, five years have lapsed. Much water should have flown by this time. Therefore, the current position has to be ascertained.

8. It is seen that the respondents, in the counter affidavit, have stated that they have withheld the auction proceedings because of the pending civil dispute. Its fate is not known. Assuming that the suit is still pending, the next question that arose is whether any interim order is passed against the respondents. If there exists an interim order, then the water should have to take its own course, ie., petitioner has to work out his remedy in the manner known to law. But, in the event of non-existence of any such order, it is for the authorities to take action in the manner known to law. There is no material to show what prevented the authorities to take further action. In the absence of such material facts, which are very much essential for deciding the case and in view of the handicap situation of the learned Counsel for the petitioner, this Court is not in a position to pass orders on the basis of the minimal available records.

9. Hence, this writ petition is closed. Needless to state that the respondents shall deal with the matter in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Secretary to Government,
   Union of India,
   Ministry of Finance,
   Department of Revenue,
   Central Board of Excise & Customs,
   New Delhi.

2. Continental Warehousing Corporation
   (Nhava Seva) Ltd.,
   Tuticorin : CFS,
   1S/76K, Madurai Bye-pass Road,
   Meelavittan, Tuticorin - 628 002.

3. Commissioner of Customs,
   Office of the Commissioner of Customs,
   Customs House, New Harbour Estate,
   Tuticorin - 629 004.

+1cc to M/s.Aiyar and Dolia Advocate in SR. No.82643
gk
TE/SKN/SAR 1/03.10.2018/4P/5C

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and
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