

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.15829 of 2015

M/s.Saikala Power Private Limited

Represented by its Manager,

Mr.Mukesh Kumar,

Shed No.20/B, 2nd Phase,

Peenya Industrial Area,

Bangalore - 560 058.

... Petitioner

Vs.

The Deputy Chairman,

Chennai Port Trust,

No.1, Rajaji Salai,

Chennai - 600 001.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified Mandamus to call for the records relating to order dated November 06, 2014 in F.No.L2/712/2009/TC of the Respondent and quash the same and to further direct the respondent to refund the excess demurrage charges of Rs.7,75,726/- along with interest to the petitioner Company.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.M.Palanimuthu

ORDER

This writ petition has been filed challenging the impugned order dated 06.11.2014 passed by the respondent levying penal demurrage charges of Rs.7,75,726/-.

2.The case of the petitioner is that they had a dispute with the Customs Department with regard to payment of customs duty in respect of their imports and in view of the said dispute, the cargo imported by the petitioner was lying in the Chennai Port premises. However, the respondent called upon the petitioner to pay demurrage charges for not removing the cargo from the Chennai Port premises within the prescribed period. It is the case of the petitioner that they filed writ petitions namely W.P. Nos.28110 & 28111 of 2010 before this Court challenging the demand made by the respondents towards Penal demurrage charges and by an order dated 27.03.2014, a learned Single Judge of this Court in the aforesaid writ petitions directed the petitioner to approach the respondents by way of a fresh representation pointing out the

circumstances under which they were prevented from removing the cargo with documentary evidence and the respondents were directed to consider the representation on merits and in accordance with law after giving sufficient opportunity to the petitioner in the said enquiry proceedings. Pursuant to the order dated 27.03.2014 passed in W.P.Nos.28110/2010 and 28111/2010, the respondent has passed the impugned order dated 06.11.2014 holding that the levy of penal demurrage charges on the petitioner is in order and does not call for any interference. Aggrieved by the same, this writ petition has been filed.

3.A counter affidavit has been filed by the respondent stating that the claim for penal demurrage charges is only in accordance with the scale of rates fixed by the Chennai Port Trust. It is also their case that notice sent to the petitioner claiming penal demurrage charges was returned with the endorsement "left" and it is their case that sufficient opportunity was given to the petitioner in the enquiry proceedings and they have complied with the directions given by a learned single judge of this Court on 27.03.2014 in W.P.Nos.28110 of 2010 and 28111 of 2010.

4.Heard Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner and Mr.M.Palanimuthu, learned counsel appearing for the respondent.

5.The learned counsel for the petitioner drew the attention of this Court to the impugned order dated 06.11.2014 and submitted that the respondent has not complied with the directions issued by the learned single judge of this Court on 27.03.2014 in W.P.Nos.28110 of 2010 and 28111 of 2010 by affording sufficient opportunity to the petitioner with regard to the levy of penal demurrage charges. He would further submit that by a non speaking order, the respondent has confirmed that the levy of penal demurrage charges on the petitioner is in order. सत्यमेव जयते

6.However, the learned standing counsel for the respondent would submit that only in accordance with the scale of rates fixed by the Chennai Port Trust, the penal demurrage charges have been claimed by the respondent. It is also his case that the notice sent to the petitioner with regard to the claim of the penal demurrage charges was returned with the endorsement "left". According to him, the address mentioned in the notice is the correct address of the petitioner as declared by the agent of the petitioner.

7.This Court has perused and examined the impugned order dated 06.11.2014, which has been passed pursuant to the order dated 27.03.2014 passed by a learned single judge of this Court in W.P.Nos.28110 of 2010 and 28111 of 2010.

8.The impugned order reads as follows:

"After extensive perusal of your counsel's oral and written submissions and the position of the Trust, it is informed that as per the Trust's Rules and procedures, the notice was sent to the official address, as furnished in the Trust's import Applications filed by your Custom House Agent (CHA) M/s.DLC Forwarders Pvt. Ltd., Chennai, appointed by you adopting the procedure followed for all port users".

9. As seen from the impugned order, it is evident that it is a non speaking order. The details of (a) declaration allegedly made by the petitioner's agent with regard to the petitioner's address, (b) when such a declaration was given by the petitioner's agent and (c) date of the alleged notice sent by the respondent to the petitioner, are all not reflected in the impugned order. As seen from the counter affidavit, the case of the respondent is that the notice sent to the petitioner was returned with the endorsement "left". Further, as seen from the bill of entry filed by the petitioner for the imported goods, the address of the petitioner is declared as SHED No.20/B, 2nd PHASE, PEENYA in TRIAL AREA, BANGALORE whereas as seen from the notice alleged to have been sent by the respondent dated 09.06.2009, the address of the petitioner is mentioned as Shed No.835, 1st stage, 4th Cross, behind SP 51 & 52 Peenya Industrial Estate, Bangalore - 560 058. Even though it is the case of the respondent that the address was given only by the petitioner's agent, the said communication of the agent disclosing the petitioner's address has not been reflected in the impugned order dated 06.11.2014. By a single paragraph cryptic order, without any discussion with regard to the service of notice and with regard to the liability of the petitioner to pay penal demurrage charges, the impugned order has been passed by total non application of mind and has also been passed without adhering to the directions issued by a learned single judge of this Court on 27.03.2014 in W.P.Nos.28110 of 2010 and 28111 of 2010.

10.For the forgoing reasons, this Court is of the considered view that arbitrarily without affording a fair hearing to the petitioner, the respondent has passed the impugned order confirming the levy of penal demurrage charges on the petitioner.

11.In the result, the impugned order dated 06.11.2014 is hereby quashed and the matter is remitted back to the respondent for fresh consideration and the respondent is directed to pass final orders after affording sufficient opportunity to the petitioner to place all their submissions including producing the documentary evidence in support of their case and also affording them the right of personal hearing within a period of eight weeks from the date of

receipt of a copy of this order. Accordingly, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sms

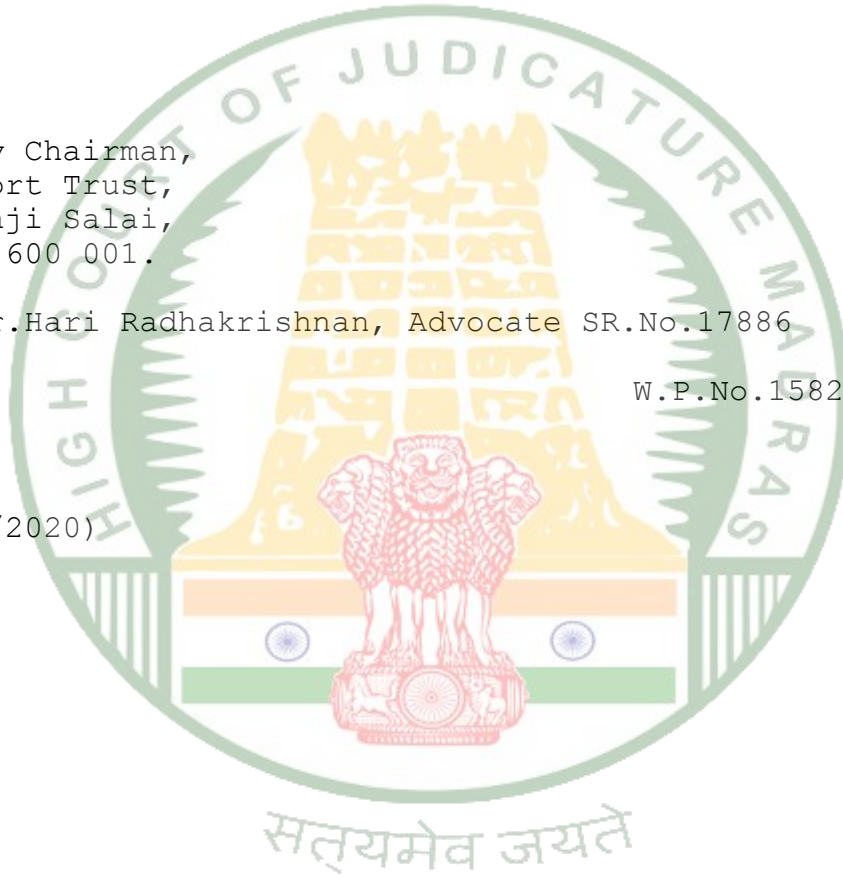
To

The Deputy Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.Hari Radhakrishnan, Advocate SR.No.17886

W.P.No.15829 of 2015

SJ(CO)
GMY(10/06/2020)



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