

IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 30.07.2020

PRONOUNCED ON : 21.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.8573 of 2020

and

W.M.P.No.10362 of 2020

M/s.Vanathi Exports Private Ltd.,
rep. By its Director Mr.C.Sundareswaran,
3/1, 2nd Floor, Flat No.2/5, Ramachandra Road,
T.Nagar, Chennai-600 017.Petitioner

.Vs.

1. The Commissioner of Customs (Exports),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
2. The Joint Commissioner of Customs (Preventive),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
3. M/s.E-Ship Global Logistics,
No.309 & 310, I Floor, Bilal Towers,
Linghi Chetty Street, Parrys,
Chennai-600 001.Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to issue necessary direction to the third respondent to release/hand over the delivery order for the Bill of Lading No.ACL/JEA/MAA-766/20, dated 02.03.2020, without insisting for payment of any detention charges during lockdown period in obedience of the orders of Government of India, Ministry of Shipping, and DGS Circular and MOS Circulars and Guidelines and also as per order of the Commissioner of Customs, Chennai and further direct the third respondent herein to honour the same by giving delivery order of the goods pertaining to Bill of Lading No.ACL/JEA/MAA-766/20, dated 02.03.2020 to the Writ Petitioner without insisting for payment of any detention charges during lock down period.

For Petitioner : Mr.A.K.Jayaraj

For Respondent : Mr.S.R.Sundar
Nos.1 & 2

For Respondent : Mr.Bijai Sundar
No.3

With the consent of both the parties, the present Writ Petition is heard through Video Conferencing on 30.07.2020.

2. The brief facts of the case are as follows:

The petitioner had imported one container Low Aromatic White Spirit from UAE, through the third respondent, vide Bill of lading No. ACL/JAE/MAA-766/20. The cargo, which was in a 40' container, arrived at Chennai Port on 16.03.2020. Though the petitioner had paid the delivery charges of Rs.50,593/- on 22.04.2020, the third respondent had failed to issue the delivery order. According to the third respondent, two other shipments were entrusted to them for carriage in 2x20' containers vide Bill of lading No. ACL/JEA/KAT-429 dated 04.02.2020, for which the petitioner had neither paid the detention charges nor returned the two containers.

3. The Director General of Shipping had issued advisories for non charging of containers' detention charges on import and export from 22.03.2020 to 03.05.2020, owing to the COVID-19 pandemic situation. The Customs Department had also issued advisories to all CFS to consider waiver of ground rent, penalties and demurrage charges during the lock down period.

4. According to the third respondent, both the shipments in the 1x40' and 2x20' containers, had reached the Chennai Port, prior to COVID-19 lock down period and since the petitioner had executed a Container Bond to return the empty containers after payment of container's detention charges, non return of the containers and non payment of the detention charges, is a breach of the bond and unless and until the total outstanding dues under both the Bill of lading No. ACL/JEA/KAT-429 and Bill of lading ACL/JEA/MAA-766 of Rs.27,23,893.42 is paid, the petitioner will not be entitled for the relief.

5. The petitioner is aggrieved against the non issuance of the delivery order for the Bill of lading for the 1x40' container, without insistence of payment of detention charges during the lock down period, as per the orders of the Government for waiver of the same during the COVID-19 lock down period. The learned counsel for the petitioner submitted that since they have already paid the delivery charges for the 1x40' container on 22.04.2020 itself, the third respondent is not justified in

refusing the delivery order. The learned counsel further submitted that the dispute with regard to the payment of the detention charges for the 2x20' containers is not related to the present dispute.

6. The learned counsel for the third respondent would submit that since the transactions with the petitioner is contractual in nature and the dispute between them is with regard to breach of contract, the present Writ Petition is not maintainable. It is her further submission that the third respondent was a delivery agent and their transactions with the petitioner is based on two Bills of lading of cargo in 2x20' and 1 x 40' containers. While the 2x20' containers were discharged at disport on 21.02.2020, the third container (1x40') was discharged on 16.03.2020, which are much prior to the commencement of the COVID period. In terms of the government orders passed by the Government as well as the Director General of Shipping, no detention charges were claimed for the 1x40' container from 22.03.2020 to 03.05.2020. As such, the total dues payable on the entire shipments are Rs.27,23,893.42, which the petitioner is bound to settle.

7. While the petitioner is aggrieved against non issuance of the delivery order for the 1x40' container, the third respondent is aggrieved against the non payment of the detention charges and non return of the 2x20' containers.

8. Before advertng to the grounds raised by the petitioner vis-a-vis the relief claimed for, it would be appropriate to deal with the preliminary objections raised by the third respondent with regard to maintainability of the Writ Petition. According to them, they are only freight forwarder and delivery agent and not amenable to writ jurisdiction. The learned counsel would submit that the grievance of the petitioner is a breach of contractual obligations and therefore, the Writ Petition is not maintainable. Contrary to the claim made by the petitioner, the third respondent is not a "Customs Cargo Service Provider" (hereinafter referred to as CCSP) under the Handling of Cargo and Customs Areas Regulations, 2009. In support of such a contention, the learned counsel for the third respondent drew attention of this Court to Regulations 5 & 6 which pertains to the conditions and responsibilities to be fulfilled by a CCSP and since the third respondent does not qualify to most of the conditions and responsibilities provided therein and also since they are not an approved CCSP, the provisions of the Handling of Cargo and Customs Areas Regulations, 2009 will not be applicable.

9. Per contra, the learned counsel for the petitioner placed reliance on the definition of CCSP under Regulation 2(1)(b) and stated that the third respondent squarely fall within the

definition. He would place reliance on the decision of this Court in the cases of M/S. P.Perichi Gounder Memorial Vs. The Commissioner of Customs (W.P.No.29847/2018 dated 06.08.2019) and M Balaji Dekors Vs. The Commissioner of Customs, Chennai reported in 2017 (356) ELT 219 (Mad) and by referring to the facts of the present case, would submit that the issue involved is not contractual but it involves the implementation of the statutory regulation and hence, the Writ Petition is maintainable.

10. Regulation 2(1)(b) of the Handling of Cargo and Customs Areas Regulations, 2009 defines a CCSP as follows:

Regulation 2. Definitions. (1) In these regulations, unless the context otherwise requires.-

b) "Customs Cargo Services provider" means any person responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods and includes a custodian as referred to in Section 45 of the Act and persons as referred to in sub-section (2) of section 141 of the said Act;"

11. The third respondent disputes that they are not a CCSP, but are freight forwarders and delivery agents. The Bill of lading dated 02.03.2020 pertaining to the 1x40' container, identifies the third respondent as an agent for the carrier. As per the definition in the aforesaid Regulations, "any person" responsible for receipt, storage, delivery, dispatch or otherwise handling of imported and exported goods would fall within the purview of the definition of a CCSP. Merely because the petitioner has not sought for an approval from the authorities to be recognized as a CCSP, it cannot be said that the provisions of Handling of Cargo and Customs Areas Regulations, 2009 will not be applicable to them, since the Regulations would be applicable to any person who fulfills the ingredients of the definition clause of a CCSP. If that be so, Regulation 5(5) mandates such a person to comply with the provisions and abide by all the provisions of the Act including the rules, regulations, notifications and orders issued therein. In Preichi Gounder Memorial case (supra), this Court had held that both CFS and Steamer Agent would qualify as a CCSP and are required to implement the orders of the Customs Department. The relevant portion of order reads thus:-

"18. Section 2(b), which defines "Customs Cargo Services Provider" says any person responsible for receipt, storage, delivery,

dispatch or otherwise handling of imported goods and export goods and includes a custodian as referred to in Section 45 of said Act and persons as referred to in sub section (2) of Section 141 of the said Act.

19.A perusal of Section 2(b), read in conjunction with Sections 45 and 141(2) of said Act leaves no doubt in the mind of this Court that both CFS and the Steamer Agent would qualify as Customs Cargo Services Provider. There is also no disputation that they function under the control of the Customs Department.

....

21.A perusal of Giridhari case also reiterates the same principle i.e., that the CFS and Steamer Agent have to necessarily implement the orders of Customs Department."

12. Regulations 5(5) and 6(1)(1) of the Regulations reads as follows:

Regulation 5(5): Undertake to comply with the provisions and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder ..

Regulation 6(1)(1): .. subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive officer or examining officer, as the case may be;

13. Thus, a combined reading of the Regulation 2(b) and 5(5) along with Regulation 6(1)(1) would qualify the third respondent to be a CCSP.

14. In similar situations, when statutory regulations came to be violated by a CCSP and the maintainability of a Writ Petition against the CCSP was questioned before this Court in Balaji Dekors' case (supra), this Court has held that the matter involved is not contractual but involves the implementation of the statutory regulation and therefore, the Writ Petition would be maintainable. The relevant portion of the order reads as follows:-

"5. The third respondent M/s.K.Steamship Agencies have filed a counter affidavit, stating that totally four containers were involved of which the period of detention of two containers was 28.12.2016 to 07.01.2017 i.e., for 11 days and the amount being Rs.1,86,622/- and in

respect of the other two containers, the period of detention was 28.12.2016 to 13.01.2017, and the amount involved is Rs.2,88,415/- and the third respondent has given 25% waiver and the amount required to be paid by the petitioner is Rs.3,56,278/-. Further, it is submitted that the relationship between the petitioner and the third respondent is purely contractual and such contractual relationship will fall within the ambit of an ordinary Civil Suit and cannot be challenged by way of a Writ Petition under Article 226 of the Constitution of India.

...

7. The undisputed fact is that the goods in question were detained at the instance of the 1st and 2nd respondents, who had undertaken an investigation on the cargo. By communication, dated 28.12.2016, the second respondent informed the respective third respondents that the consignment was detained by the SIIB from 02.12.2016 to 27.12.2016 and as per Regulation 6 (1)(1) of the Handling of Cargo in Customs Area Regulation, 2009, the custodian shall not charge rent or demurrage for the goods under detention. The custodian in the instant case are respective third respondent in both the Writ Petitions. It is the submission of the petitioner that, though such a specific order has been issued by the department for grant of waiver, the respective third respondents have not granted full relief to the petitioner in terms of the directive of the Department.

8. Regulation No.6 of the Handling of Cargo in Customs Area Regulation, 2009, provides for "Responsibilities of Customs Cargo Service Provider". In terms of Regulation 6(1)(1), the customs cargo service provider shall subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive Officer or Examining Officer as the case may be.

9. The second respondent, in no uncertain terms, has certified that the goods were detained by the SIIB from 02.12.2016 to

27.12.2016 and issued an order on 28.12.2016 that the custodian (third respondent) shall not charge rent or demurrage for goods under detention. Thus, the third respondent cannot interpret the said communication, as the Regulations clearly provide that the custodian cannot charge any rent or demurrage on the goods detained by the second respondent. However in the case of W.P.No.6452 of 2017, which concerns, M/s.Calyx Container Terminals, goods in question have been removed on 06.01.2017. Therefore, a levy is sought to be made for the period from 28.12.2016 to 06.01.2017. In my considered view this is unreasonable because after the order was passed on 28.12.2016, effective steps have been taken by the petitioner to clear the cargo and it has been done in the shortest possible time on 06.01.2017. Therefore, the third respondent should waive the rent or demurrage on the goods for the entire period i.e., from 02.12.2016 till it was cleared on 06.01.2017.

10. With regard to the Container Terminal, the third respondent in W.P.No.6453 of 2017, namely, M/s.K.Steamship Agencies, it appears that they have given only 25% waiver. This action of the third respondent is contrary to the statutory regulation namely, Regulation No.6 (1)(1). The third respondent M/s.K.Steamship Agencies Pvt., Ltd., having not questioned the order passed by the second respondent, dated 28.12.2016, are bound by the order and they have to proceed in letter and spirit as per the said order. The question of now interpreting the order as extending partial relief is not permissible as the Regulation uses the expression "shall not charge any rent or demurrage". This, mandates that the third respondent is prohibited from charging any rent or demurrage during the period of detention. This having been certified by the second respondent, there is no escape from the rigour of Regulation No.6(1)(1). Thus, the matter is not contractual, but it involves the implementation of a statutory regulation. Therefore, the Writ Petition filed by the petitioner is maintainable."

15. In the light of the decisions in Perichi Gounder Memorial (supra) and Balaji Dekors' (supra), the petitioner is deemed to be a CCSP, who is bound by the advisories of the Customs Department and DGS and therefore is amendable to Writ Jurisdiction and the Writ Petition would thus, be maintainable. Writ Petitions under Article 226 of the Constitution of India in similar circumstances, have also been entertained in the cases of Priyanka Enterprises Vs. Joint Commissioner of Customs reported in 2018 (360) ELT 962 (Mad); Giri Dhari Homes Pvt. Ltd., Vs. Principal of Commissioner of Customs [2018 (361) ELT 463 (Mad) and Isha Exim Vs. ADG, Chennai [2018 (13) GSTL 273 (Mad).

16. In all these aforesaid decisions, the learned counsel for the third respondent submitted that the facts involved therein, are not applicable to the facts in the present case and therefore reliance cannot be laid on these decisions. I am not in agreement with such a submission.

17. It is a settled proposition of law that it is the ratio decidendi of a judgment which forms a precedent. It is such underlying principle in the decision which would have a binding effect of a precedent. The facts of a case may differ from one precedent to another, which facts will not form part of the ratio decidendi. The facts of a case may be relevant only to ascertain as to whether a judgment is in personam or in rem. In Booz-Allen & Hamilton Inc. Vs. SBI Home Finance Ltd. reported in (2011) 5 SCC 532, the Hon'ble Supreme Court had held, a "judgment in personam" as a judgment against a person as distinguished from a person, thing, right or status and a "judgment in rem" to be a judgment that determines the status or condition of property which operates directly on the property itself. Thus, while a "judgment in personam" would be a judgment binding between the parties claiming right in form as well as in substance, a "judgment in rem" is one that is pronounced upon the status of some particular person or thing and which binds all persons.

18. The ratio decidendi in the judgments cited by the learned counsel for the petitioner are of judgments in rem and therefore, though the facts of such precedents may differ from the facts in hand, the same would have no relevance and will not take away the binding effect of such ratio decidendi.

19. Having held that the present Writ Petition would be maintainable, the next issue that would arise for consideration is as to whether the third respondent is justified in withholding the delivery order for the 1x40' container, by insisting for clearance of the dispute against the 2x20' containers.

20. The cause of action for the present writ petition arose when the petitioner had paid the delivery charges for the 1x40' container and the third respondent herein had insisted for payment of the detention charges and return of 2x20' containers covered under different bills of lading, as a pre condition for the issuance of a delivery order. Insofar as the outstanding due for the 1x40' container is concerned, both the parties admit that a sum of Rs.8,61,358.30/- is outstanding.

21. In A.K.Gupta & Sons Vs. Damodar Valley Corporation (AIR 1967 SC 96), the Hon'ble Apex Court had held that the expression "cause of action" does not mean every fact which is material to be proved to entitle the plaintiff to succeed, but only a new claim made on a new basis, constituted by new facts. In Sidramappa Vs. Rajashetty and others (AIR 1970 SC 1059), it was held that a cause of action is that which gives occasion for and forms the foundation for the litigation.

22. Thus, when the third respondent herein had not disputed the receipt of the delivery charges and when it is mutually admitted that the outstanding dues for the 1x40' container is Rs.8,61,358.30/-, there is no justification on the part of the third respondent to combine the cause of actions of the 2x20' containers with that of the 1x40' container and thereby refrained from issuing the delivery order for the 1x40' container. The learned counsel for the third respondent claims that their correspondences with the petitioner was comprehensive, touching upon both causes of action pertaining to the 1x40' and 2x20' containers. Such a submission is opposed to the ratio laid down in A.K.Gupta's case (supra) and Sidramappa's case (supra) and thus, comprehensive correspondences or demand, for two distinct causes of action, will not entitle the third respondent to combine these distinct causes and thereby, attempt to deny the petitioner for the relief. Thus, the third respondent's claim of Rs.27,23,893.42/- as the consolidated dues for both 1x40' container and 2x20' containers is not justified.

23. The third respondent also claims to have granted waiver of the detention charges for the 1x40' container during the Covid-19 lock down period, pursuant to the order of the Government of India, DGS and MOS Circulars, as well as the orders of the Commissioner of Customs, Chennai, which is also not disputed by the petitioner, which is not disputed by the petitioner. Thus, if the petitioner is granted liberty to settle the entire outstanding dues for the 1x40' container to the third respondent and thereby direct the third respondent to release the delivery order, the ends of justice could be secured. It is needless to point out that it is always open to the third respondent to ventilate their grievances in accordance with law,

for any claim that may be due in connection with 2x20' containers.

24. In the light of the above observations, a Writ of Mandamus is hereby issued, directing the third respondent to release/handover the delivery order vide Bill of Lading No.ACL/JEA/MAA-766/20, dated 02.03.2020 for the 1x40' container on receiving a sum of Rs.8,61,358.30/- from the petitioner and consequently deliver the goods pertaining to this Bill of lading to the petitioner. Such an exercise shall be done atleast within a period of one week from the date of receipt of a copy of this order.

25. The Writ Petition stands thus allowed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Customs (Exports),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
2. The Joint Commissioner of Customs (Preventive),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
3. M/s.E-Ship Global Logistics,
No.309 & 310, I Floor, Bilal Towers,
Linghi Chetty Street, Parrys,
Chennai-600 001.

+1 cc to Mr.S.R.Sundar, Advocate Sr.No.27620

+1 cc to Mr.A.K.Jayaraj, Advocate Sr.No.27473

Pre-Delivery Order made in
W.P.No.8573 of
2020

and
W.M.P.No.10362 of 2020

rsv (co)

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