IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2020

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THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.787 of 2020

Qatar Airways,
rep. By its Cargo Manager-South India,
Mr.SK Syed Mansoor,
Integrated Cargo Complex,
Phase I, Room No.29,
Cargo Complex, Meenambakkam,
Chennai 600 027 ...Appellant

vs

1.Commissioner of Customs (Air)
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

2.The Asst. Commr. Of Customs (Transshipment)
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

3.The Deputy General Manager Cargo,
Airport Authority of India,
Integrated Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

4.Asst. General Manager (F&A)
Airport Authority of India,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027. ...Respondents

Writ Appeal filed against the order of this court in W.P.No.6225 of 2010 dated 19.05.2020.

W.P.No.6225 of 2010:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the order of the 1st respondent dated 10.03.2010 issued in F.No.S.Misc.22/2009-(T.S) ACC and to direct the 1st respondent to bear the said transsshippment charges payable to the 3rd respondent.

For Appellant : Mr.Hari Radhakrishnan
For respondents: Mrs.R.Hemalatha,
Senior Standing counsel

JUDGMENT
(Delivered by DR.VINEET KOTHARI, J.)

The present Appeal has been filed by M/s.Qatar Airways. The Writ Petition filed by the Appellant in W.P.No.6225 of 2010 was disposed of by the learned Single Judge with the following observations :-

> "86. If there were no proper officers or there were only few officers to handle the workload due to alleged arrest and the delay in receiving the transshipment application for being processed by the 1st respondent should not be at the cost of the petitioner. If indeed there was a complete breakdown due to alleged arrest and resulted in disruption of the operations at the Air Cargo Complex, the petitioner should be compensated as such delay cannot be attributed by the petitioner. This would require proper facts being established by the petitioner.
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> 87. Therefore, this aspect would require proper verification. Issue is therefore left open for the petitioner to establish that Customs Department is liable to compensate the petitioner in the light of the observation of the Hon?ble Supreme Court in Mumbai Port Trust Vs. Shri Lakshmi Steels, 2017 (352) E.L.T.401 (S.C) : (2018) 14 SCC 317.
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> 88. The petitioner may therefore establish before the 1st respondent that there was total or near total disruption of

work due to alleged arrest of the customs officers and therefore, there was delay in receiving and processing of transshipment application and therefore the petitioner is entitled to compensation.

89. The 1st respondent also will have all the official information and details on this aspect. I am therefore inclined to remit the case back to the 1st respondent to pass appropriate orders after taking all the factors into account. The petitioner may independently substantiate the allegations before the 1st respondent with necessary documents.

90. The 1st respondent may clearly state whether indeed any of its officers stationed at the Air Cargo Complex for the purpose of processing the transshipment application were arrested as was claimed by the petitioner and whether such arrest resulted in disruption of operation at the Air Cargo Complex. If so, the petitioner shall be compensated.

91. The 1st respondent is therefore directed to pass appropriate orders within a period of three months from the date of receipt of a copy of this order. Meanwhile, the petitioner is directed to pay the amounts that are due to the 3rd and the 4th respondents.

92. This Writ Petition stands disposed with the above directions. No cost. Consequently, connected Miscellaneous Petition is closed.

2. The learned counsel for the Appellant Mr.Hari Radhakrishnan submitted that while setting aside the impugned order dated 10.03.2010, by which the learned Commissioner refused to issue the Detention Certificate, which is required for waiver of Demurrage Charges, the learned Single Judge ought not to have directed payment of Demurrage charges which runs approximately to Rs.67 lakhs against the Appellant, as the delay

was not on account of any fault of the Appellant in transshipment of goods from Chennai to Trivandrum in the bonded trucks. He submitted that the broad body aircrafts, which brought these goods to Chennai Airport, could not land at Trivandrum Airport because of relevant regulations and they have to land at Chennai and transshipped under the due permission given by the Custom Authorities at Chennai, to the Airport at Trivandum in bonded trucks, where the goods will be cleared in favour of the importers. The Appellant being the custodian of goods till the goods are cleared by the Custom Authorities, had to apply for such transshipment to the Custom Authorities at Chennai. But on account of certain issues like arrest of some officials of the Customs Department at Chennai in some criminal matter, office staff were not available at Chennai Airport to receive these applications and process the same. Therefore, delay occurred in allowing transshipment, running from 4 days to 28 days. He therefore submitted that for reasons beyond the control of the Appellant, such delay had occurred and therefore, the Custom Authorities ought to have verified these facts at their own end, whether the delay was attributable to the Appellant company or not. He submitted that though finding these reasons to be valid for the said purpose of delay, the learned Single Judge has remanded the case back to the Commissioner of Customs to verify these facts once again, while setting aside the impugned order dated 10.03.2010, and therefore, the question of payment of Demurrage for the said period of delay does not arise.

3. The learned counsel for the respondent/ Department Ms.Hemalatha, however, prays for time to take instructions in the matter.

4. We have perused the records and the operative part of the order of the learned Single Judge.

5. We are satisfied that while the matter has been remanded back to the learned Commissioner, the demand made under the said order, on account of Detention Certificate not being issued by the Commissioner of Customs, cannot be sustained for the time being and therefore, payment thereof, in favour of the respondents 3 and 4 viz., Deputy General Manager Cargo, Airport Authority of India, Chennai, and the Assistant General Manager (F&A), Airport Authority of India, Chennai, cannot arise. Such payment can be made, if, only after such reconsideration on remand, the concerned Commissioner again passes a fresh order and sustains the order against the Appellant. The said order obviously has to be passed after giving due and reasonable opportunity of hearing to the Appellant to ascertain as to whether reasons for delay in issuing the permission for

transshipment was on account of fault of the officials at the Chennai Airport during the relevant period or on account of any fault of the Appellant, the custodian of the goods at the relevant point of time. Therefore, with this slight modification of paragraph 91 of the order of the learned Single Judge to the extent that the petitioner shall not be required to pay Demurrages in favour of respondents 3 and 4, for the time being, till the learned Commissioner re-decides the said issue in pursuance of the remand order passed by the learned Single Judge, we dispose of the present Writ Appeal. We expect the learned Commissioner to decide the issue once again, as directed by the learned Single Judge, as expeditiously as possible, preferably within a period of six weeks from today.

6. With these observations, the writ appeal is disposed of. No costs. Consequently, C.M.P.Nos.10302 and 10303 of 2020 are also closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To
1.Commissioner of Customs (Air)
Air Cargo Complex, Meenambakkam,
Chennai 600 027.

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Airport Authority of India,Air Cargo Complex
Meenambakkam, Chennai 600 027.

W.A.No.787 of 2020

SSV(CO)
SP(06/11/2020)