

In the High Court of Judicature at Madras

Dated: 22.12.2020

Coram:

The Hon'ble Mr.Justice **M.S.RAMESH****Contp.No.793 of 2020**

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

Vs.

1.Samayamurali, I.R.S.,
Joint Commissioner of Customs (Preventive),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

2.K.E.Balaji,
Branch Head,
M/s.E-Ship Global Logistics,
No.309 & 310, I Floor, Bilal Towers,
Linghi Chetty Street, Parrys,
Chennai-600 001. .. Respondents

Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act, to punish the Respondents for thier wilful disobedience of the order of this Court dated 21.08.2020 made in W.P.No.8573 of 2020.

For Petitioner : Mr.A.K.Jayaraj

For Respondent-1 : Mr.S.R.Sundar, SC

For Respondent-2 : Mrs.Sunitha

ORDER

Today the matter is listed and heard through Video Conferencing.

2. By an order dated 21.08.2020 passed in W.P.No.8573 of 2020, this Court had observed as follows:-

“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.”

The petitioner, claiming disobedience of the aforesaid directions, has filed the present Contempt Petition.

3. During the course of deliberations in the Contempt Petition, Mrs.Sunitha, learned counsel for the second respondent submitted that if the petitioner is permitted to devan the goods from the 1x40' feet container from M/s. CONCOR, CFS, without moving the container, they will not make any further claim of demurrage charges.

4. Mr.A.K.Jayaraj, learned counsel for the petitioner also agrees that they will make their own arrangements to devan the goods from the second respondent's container.

5. Mr.S.R.Sundar, learned counsel for the first respondent submitted that the procedure to unload the goods from the container would be governed under Sections 33 & 34 r/w.32 of the Customs Act, 1962 and therefore since the import manifest shows the final port of destination as M/s.J.Matadee Free Trade Ware-housing Zone, Mannur, the proper officer is not empowered to permit unloading of the goods from M/s.CONCUR, CFS.

6. It is brought to the notice of this Court that though the import manifest indicates M/s.J.Matadee Free Trade Ware-housing Zone, Mannur as the final port of destination, the container came to be moved to M/s. CONCUR, CFS on 05.04.2020 due to congestion by Port. The provisions of the Customs Act may not empower the proper officer of the Customs Department to permit unloading of the goods from the place which is not recorded in the import manifest. However, when both the petitioner as well as the second respondent herein have agreed that inspite of their claims against each other, they intend to amicably resolve the present issue whereby the second respondent will not object if the goods are cleared from the 1 x 40' feet container lying at M/s. CONCUR, CFS, which was also the intention of this Court when the original order in W.P.No.8573 of 2020 dated 21.08.2020 was passed, the Customs Department may be directed to facilitate the petitioner to unload the goods from M/s.CONCUR, CFS, in order to resolve the dispute.

7. The learned counsel for the petitioner would submit that pursuant to the orders of this Court in the Writ Petition, they had also paid the sum of

Rs.8,61,358.30 /- to the second respondent herein, which the second respondent also acknowledges the receipt thereof.

8. In the light of the aforesaid observations, it is hereby clarified that the intention of this Court in its earlier order dated 21.08.2020 in W.P.8573 of 2020 was to enable the Writ Petitioner to clear the goods from the 1x40' container by the Bill of Lading No.ACL/JEA/MAA-766/20 dated 02.03.2020, paying a sum of Rs.8,61,358.30/- to the second respondent herein. Since the container had been moved in the meantime from M/s. J.Matadee Free Trade Ware-housing Zone, Mannur to M/s. CONCUR, CFS, the petitioner could be permitted to devan the goods from the second respondent's container from M/s. CONCUR, CFS. The first respondent herein, viz., the Customs Department, shall permit the petitioner to unload the goods from the 1 x 40' feet container lying at M/s. CONCUR, CFS, even though the import manifest does not show the port of destination as M/s. CONCUR, CFS. The petitioner shall not claim movement of the second respondent's 1 x 40' feet container. It is needless to point out that the Customs Department would be entitled to claim the customs duty payable on the goods, in accordance with the provisions of the Customs Act.

9. The aforesaid clarification shall form part of the order dated 21.08.2020 passed in W.P.No.8573 of 2020. With such clarifications, this Court is of the view that the disobedience alleged in this Contempt Petition requires no further adjudication. Accordingly, the Contempt Petition stands closed.

DP

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

IM/09/03/2021

To

The Joint Commissioner of Customs (Preventive),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.