



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2020

CORAM

WEB COPY THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. (MD)No.12213 of 2019
and W.M.P. (MD)No.9173 of 2019

M/s.Chandra Dhall Industries Pvt. Ltd.
rep. by its Director
Muneeswaran,
No.63, Great Cotton Road,
Tuticorin-628 002, TN

.. Petitioner

Vs.

1. The Commissioner of Customs
Custom House : New Harbour Estate,
Tuticorin-628 004.

2. The Assistant/Deputy Commissioner
of Customs, Customs House,
New Harbour Estate,
Tuticorin-628 004.

.. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondent to clear the consignment "Yellow Peas/Green Peas" under two bill of entries 1. 9754212, dt. 22.01.2019/2. 9809031, dt.28.01.2019 covered under Sales contracts No.CD/YP/001/18, dated 13.11.2018 and direct the respondents to issue a "Detention Certificate" in terms of order passed in W.P.No.6619 of 2019, dated 18.03.2019.

* * *

For Petitioner : Mr.P.Siddarthan

For Respondents : Mr.B.Vijaya Karthikeyan
Standing Counsel

O R D E R

The petitioner sought for a direction to the respondent to clear the consignment "Yellow Peas/Green Peas" under two bills of entry 1. 9754212, dated 22.01.2019/2. 9809031, dated 28.01.2019 covered under Sales contracts No.CD/YP/001/18, dated 13.11.2018 and also a direction to issue a "Detention Certificate" in terms of order passed in W.P.No.6619 of 2019, dated 18.03.2019.



2. The case of the petitioner, in a nutshell, is as follows :

2.1. The petitioner is involved in the business of import and sale of pulses, cereals, spices, etc. with a valid licence issued by the Director General of Foreign Trade (in short, "the DGFT") and it entered into a Sales Contract dated 13.11.2018 for import of 2850 MTs of "Yellow Peas" from an entity at Austria and also paid advance. Since the DGFT issued Notification No.37 of 2015/2020, dated 28.09.2018, restricting the import of Yellow Peas, the respondents refused to clear the consignment. The petitioner filed W.P.No.30890 of 2018 before the Principal seat of this Court questioning the said notification and seeking clearance of the imported goods, wherein, this Court vide order dated 23.11.2018 granted an order of interim stay till 26.11.2018.

2.2. Though the respondents released goods to the persons till 31.01.2019, they refused to do so thereafter. Hence, the petitioner submitted a representation dated 28.02.2019 seeking release of the consignments. Even thereafter, the respondents, in violation of the interim stay, failed to release the goods leading to the petitioner filing second writ petition in W.P.No.6619 of 2019 before the Principal Seat of this Court, wherein, this Court, relying upon the order dated 27.02.2019 in W.P.No.4403 of 2019, etc. batch (M/s.Royal Impex V. Commissioner of Customs), *inter alia*, directed the release of the consignment.

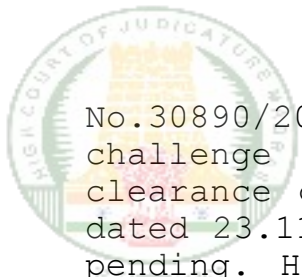
2.3. The petitioner further claimed that pursuant to the said order dated 27.02.2019, the goods covered under two Bills of Entry pertaining to the petitioner were cleared, whereas, four more Bills of Entry were kept pending. Thus, seeking clearance of the consignment covered under the remaining four Bills of Entry, the petitioner filed third set of writ petitions, of-course, before the Principal Seat, in W.P.Nos.11677 and 11681 of 2019, which were dismissed on 16.04.2019, placing reliance upon the order of this Court dated 04.04.2019 passed in W.P.Ns.15921 of 2018, etc. batch (M/s.Hira Traders V. DGFT).

2.4. Ironically, seeking to release the consignment covered under two of the very same Bills of Entry covered under the order dated 16.04.2019 and also seeking a direction to the respondents to issue the "Detention Certificate" in terms of the order dated 18.03.2019 in W.P.No.6619 of 2019, this writ petition is filed before this Bench.

3. Refuting the claims of the petitioner, the respondents filed a detailed counter dated 03.06.2019.

4. Heard the learned counsels for the petitioner and the learned Standing counsel appearing on behalf of the respondents.

<https://hcservices.courts.gov.in/hcservices> 5. Permeated in the facts, the petitioner filed W.P.



No.30890/2018 before the Principal seat of this Court laying challenge to the notification issued by the DGFT and seeking clearance of the imported goods, wherein, an interim order of stay dated 23.11.2018 was granted in its favour and the said petition is pending. However, since the respondents failed to comply with the said order, it instituted second writ petition in W.P.No.6619 of 2019 before the Principal Seat of this Court. The prayer of the petitioner in W.P.No.6619 of 2019 reads hereunder :

".... directing the respondent to cause release of "Yellow Peas / Green Peas" imported by the petitioner under bill of entries 1. 9754212 dated 22.01.2019 2. 9809031 dated 28.01.2019 3. 9808968 dated 28.01.2019 4. 9847573 dated 28.01.2019 5. 9945544 dated 05.02.2019 and 6. 9945550 dated 05.02.2019 covered under Sales contracts No.CD/YP/001/18 dated 13.11.2018 in terms of orders of the Court in W.P.No.30890 of 2018, W.M.P.No.36043 of 2018, and further direct the respondents to issue a "Detention Certificate" for waiver of DEMurrage and container Detention charges in terms of Regulation 6(1)(I) of Handling of Cargo in Customs Areas Regulations, 2009."

6. This Court, while disposing of the writ petition on 18.03.2019, besides directing the release of the consignment, issued the following directions :

"5. The authorities are at liberty to initiate proceedings in respect of the transactions in question and if done, the petitioners shall appear, be heard and file their submissions pursuant to which orders shall be passed by the authorities in accordance with law.

6. The petitioners have also prayed for waiver of demurrage charges incurred in respect of the detained consignments. In the light of Rule 6(1) of the Handling of Cargo in Customs Areas Regulations, 2009, which provides that the Customs Cargo Provider shall not, subject to any other law for the time being in force, 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, there shall be a waiver of demurrage charges."

7. Thereafter, the petitioner submitted a representation dated 16.05.2019 to the first respondent, *inter alia*, stating that the goods covered under out of six Bills of Entry, only two Bills of Entry were released, pursuant to the directions issued by this Court and sought to release the remaining consignments. Since there was no response forthcoming from the respondents, the petitioner filed the third set of writ petitions at the Principal Seat in W.P.Nos.11677 and 11681 of 2019 making similar prayer in W.P.No.6619 of 2019



merely omitting the two Bills of Entry, which were released by then. This Court dismissed those writ petitions on 16.04.2019 holding as follows :

"Learned counsel for the petitioner fairly brought to the notice of this Court that a batch of Writ Petitions challenging Notification No.4/2015-2020, dated 25.04.2018 has been rejected by a learned Single Judge of this Court in a batch of Writ Petitions in the case of M/s.Hira Traders V. DGFT (W.P.No.15921 of 2018 etc. batch dated 04.04.2019). The benefit of interim stay on the basis of which this Court has entertained all the Writ Petitions seeking identical prayers now no longer exists."

8. Clandestinely, the petitioner without mentioning anything about the dismissal of W.P.Nos.11677 and 11681 of 2019 on 16.04.2019 filed this writ petition before the Madurai Bench of this Court during May 2019.

9. It is to be stated that if the petitioner is aggrieved over the action/inaction of the respondents, they could have very well filed appropriate petition before this Court. But the petitioner, having invited a dismissal order on 16.04.2019 superseding the earlier order dated 18.03.2019, has chosen to file the instant writ petition suppressing the dismissal of the earlier writ petition for the very same relief. Hence, now they cannot blame the respondents that they have not cleared the consignment or disobeyed the orders of this Court.

10. In such view of the matter, this writ petition fails and the same is dismissed. It is open to the petitioner to take appropriate action in accordance with law, if it is advised so. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

1. The Commissioner of Customs
Custom House : New Harbour Estate,
Tuticorin-628 004.



2. The Assistant/Deputy Commissioner
of Customs, Customs House,
New Harbour Estate,
Tuticorin-628 004.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-6178[F] dated
13/02/2020)

+1 CC to M/s.P.SIDDARTHAN, Advocate (SR-6237[F] dated 13/02/2020)

Order in
W.P. (MD) No.12213 of 2019
& W.M.P. (MD) No.9173 of 2019
13.02.2020

JMN(18.02.2020) 5P : 5C