BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.08.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.26324 of 2019 and
W.M.P.(MD)Nos.22753 of 2019 & 2191 of 2020

M/s.Vigneswara Exims,
4, No.15, 'B' Block,
Flat No.404, Geethanjalai Apartments,
Kellys, Chennai - 600 010.
Rep. by its Proprietor
S.Selvam. ... Petitioner

Vs.

1. The Assistant Commissioner,
Ministry of Finance: Department of Revenue,
Office of the Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

2. M/s.Krisenter Impex Pvt. Ltd.,
No.105, 4th Floor, DD Corner Stone,
Kadavan Thara, Cochin,
Kerala.
R-2 is impleaded vide order dated 02.01.2020
made in W.M.P.(MD)No.23579 of 2019) ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings issued by the respondent in his proceedings in C.No.VIII/06/188/2019-(P.F-I) Import Assessment dated 03.12.2019 and quash the same.

For Petitioner	: Mr.N.Sankar Ganesh
For R-1	: Mr.Aravindan, Standing Counsel.
For R-2	: Mr.J.Alaguraam Jothi

O R D E R

Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the first respondent and the learned counsel appearing for the second respondent.

2. The case of the writ petitioner is that one Tobbana (GH) Ltd., of Ghana had exported Cashew Nuts to the second respondent herein and during the course of transit, the said Ghana exporter had transferred the title in favour of the petitioner herein. In the typed set of papers, the petitioner has enclosed a draft copy of the

bill of lading. The goods have since arrived in India, the second respondent herein had presented the necessary papers for clearing the goods. At this stage, the petitioner herein lodged their contentions and contended that the goods should not be released to the second respondent herein. The petitioner's request was not accepted by the first respondent. The first respondent by the impugned communication dated 03.12.2019 informed the petitioner that if the petitioner is unable to come forward, the first respondent would take action in the matter without further notice to the petitioner. Challenging the same, this writ petition came to be filed.

3. The writ petitioner had originally not impleaded the second respondent herein. The petitioner was therefore directed to implead the second respondent. A learned Judge of this Court had granted an interim order of status quo.

4. To vacate the same, a petition had been filed by the second respondent. The learned counsel appearing for the second respondent submitted that the goods are perishable items and that therefore he wanted that the matter may be taken up. Thereupon, the matter was taken up and I heard the learned counsel on either side.

5. The learned counsel appearing for the petitioner submitted that in a case of this nature, the first respondent ought to have followed the procedure laid down in Section 149 of the Customs Act, 1962. The said provision is regarding amendment of documents. It reads as under:-

> "**149. Amendment of documents**
>
> Save as otherwise provided in Sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the customs house to be amended:
>
> Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be."

6. The pointed contention of the petitioner's counsel is that the aforesaid statutory procedure was not at all followed in this case. The petitioner would place reliance on an unreported decision made in C.M.A.No.1028 of 2007(Commissioner of Customs(Exports), Chennai V. M/s.Ishwar Impex and one other) dated 11.11.2009. The Hon'ble Division Bench held that when the question as to the ownership of the goods imported is substantially in issue, as such, the decision on that issue will have far reaching consequences for

the determination of the release of the goods, the levy of duty, the levy of redemption fine in lieu of confiscation and for the levy of penalty for improper import. Therefore, the question as to the rights of the original importer must also be examined.

7. The stand of the petitioner is that he has title to the goods involved in the impugned transaction. On the other hand, the learned Standing counsel as well as the learned counsel appearing for the second respondent submitted that the impugned order does not warrant any interference.

8. I carefully considered the rival contentions.

9. Before considering the issue from a legal perspective, I posed a question to the petitioner as to whether the petitioner had made any payment to the foreign exporter. The petitioner's counsel fairly submitted that he had not made any payment to the foreign exporter. Then, I asked him as to whether he had made any payment to the second respondent. Again the answer was in the negative. But then, the petitioner's counsel would state that the issue does not turn on whether the petitioner made any payment to the foreign exporter or to the second respondent. The petitioner's counsel wanted me to appreciate true nature of the business transaction. On the high seas, the title has been made over in favour of the petitioner and that the petitioner had entered into transactions based on the commitment made by the foreign exporter. The petitioner has been put to a huge loss which he quantifies at Rs.10,00,000/-.

10. I am not persuaded by the submissions of the petitioner's counsel. As rightly pointed out by the learned Standing counsel, even in the affidavit filed in support of this petition, it has been stated that the second respondent herein was the original importer. It is true that certain documents had been enclosed by the petitioner in the typed set of papers. It is noted that all the original documents are only with the second respondent. The learned Standing counsel submitted that as per Section 49 of the Customs Act 1962, the Customs authority cannot retain the goods beyond a period of 60 days. The Customs authorities are not concerned with the civil claims which the petitioner may have against the foreign exporter. As far as the first respondent is concerned, they have no difficulty in releasing the goods to the second respondent, as the second respondent has complied with all the formalities.

11. I therefore sustain the contentions raised made by the learned counsel appearing for the respondents. The petitioner probably has been given a short shrift by the foreign exporter. It is quite possible that the petitioner has been misled by the foreign exporter. But then, that cannot be a ground for directing the first respondent to retain the goods. The first respondent cannot retain the goods, till the issue is decided by the civil Court. The

petitioner cannot have any claim against the respondents. It is seen that there was transaction only between the petitioner and the foreign exporter. The foreign exporter is not before this Court.

12. More than anything else, the goods are perishable commodities. Keeping them in the custody of the first respondent will only make the items lose their value. Except causing loss to the second respondent, no useful purpose will be served in keeping the matter pending. I find no ground to interfere with the impugned order.

13. The order impugned in this writ petition is sustained. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.J. ALAGURAM JOTHI, Advocate (SR-15333[F] dated 31/08/2020)

W.P.(MD)No.26324 of 2019
28.08.2020

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