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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 19.02.2020

+ W.P.(C) 1909/2020

MATE (INDIA) PVT. LTD. Petitioner
Through Mr. Rajat Gaur, Adv.

versus

COMMISSIONER OF CUSTOMS, INLAND
CONTAINER DEPOT & ORS Respondents
Through Mr. Pramod Bahuguna, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G E M E N T

CHIEF JUSTICE (Oral)

1. This writ petition has been preferred for the refund of demurrage charges paid by this petitioner – importer of the goods.
2. The demurrage paid by this petitioner is Rs.8,36,027/- to Respondent No. 4, Container Corporation of India Ltd (hereinafter, 'CCIL').
3. It is alleged by the petitioner that the demurrages were paid by the petitioner for no fault of the petitioner.
4. Similarly, this petitioner is also in search of refund of excess customs

duty which is paid at Rs.2,03,987/-, whereas no such refund application has been preferred by the petitioner prior to this writ.

5. At this juncture, a brief recapitulation of facts is necessary.

6. The Petitioner company, M/s Mate (India) Pvt. Ltd., imported fertilizers for agriculture, from a manufacturer based in Turkey, *vide* a commercial invoice dated 22nd February, 2019. The goods reached the Inland Container Depot, Tuglakabad, Delhi on the 17th April, 2019, the bill of entry, for which, was filed on 18th April, 2019.

7. After the examination was ordered by the department on the same day, the customs duty payable, was worked out to be Rs.2,29,106/-, which was paid by the petitioner on 20th April, 2019.

8. The examination order, dated 18th April, 2019, stated that the “plant micronutrients/growth regulators like compounds of Zinc/Boron/Manganese/Molybdenum/Iron/copper etc. are classifiable under CTH 39 and chargeable to higher rate of duty”, with reference relying on the CBEC Circular No. 392/25/1998 dated 19th May, 1998. Post which, the petitioner’s goods, were not released. The petitioner made several representations.

9. On 8th May, 2019, petitioner addressed a letter to the Deputy Commissioner, Special Intelligence and Investigation Branch (SIIB), requesting the release of goods and explaining the intended use of the product. The petitioner submitted reminders again on the 20th May, 2019 and 21st May, 2019.

10. The petitioner wrote to the Joint Commissioner, SIIB, on 10th June, 2019, requesting permission to re-export the goods and stated that the goods did not fall under the Fertilizer Control Order.

11. On 22nd August, 2019, petitioner addressed a letter to the Deputy Commissioner, Special Intelligence and Investigation Branch (SIIB), requesting the waiver of demurrage charges, ground rent and other charges levied by the CCI.

12. Subsequently, on 29th August, 2019, the respondents gave their no objection, for the release of goods, subject to reassessment and payment of deferential duty with interest.

13. On the 2nd of September, 2019, the petitioner wrote to the Executive Director, CCI, seeking waiver of Demurrage/Detention charges levied to the petitioner, in light of the petitioner's correspondence dated 22nd August, 2019. On the next day, the respondent reassessed the petitioner's bill of entry and determined the duty payable to be Rs.6,69,629/-. On the day following the reassessment, the petitioner paid the remainder of the duty payable, i.e. Rs.4,70,716/-.

14. The Respondent No. 4, CCIL, levied demurrage charge to the tune of Rs.8,36,209/-, which was duly paid by the petitioner, on 11th September, 2019.

15. The petitioner addressed a letter to the Chief Manager, CCI on 24th September, 2019, requesting the waiver of demurrage charges.

16. The CCI, Respondent no. 4, responded to petitioner, on the very same day, informing that only Rs.2,000/- to be reduced from the demurrage charges payable by the petitioner. This was appealed by the petitioner, before the Executive Director, CCI on 18th October, 2019 and before the Director (International Marketing and Operations) on 18th November, 2019, respectively, but submits that the petitioner has received no reply to the same, till the filing of this writ petition.

17. Aggrieved by the denial of waiver charges, the petitioner has approached this court by means of a writ under Article 226 of the Constitution of India, praying the Customs authorities to pay or remit the godown and the demurrage charges of Rs.8,36,207/-, as well as the refund of the excess collection of Customs Duty of Rs.2,03,987/- paid by the petitioner. The petitioner also prays for the litigation costs and compensation to be paid to it, by the Respondents.

18. We have heard, Mr. Mr. Rajat Gaur, learned counsel appearing on behalf the petitioner and Mr. Mr. Pramod Bahuguna, learned counsel for the respondents, at length and have pursued the case records in detail.

19. The issue before us, sublimates down to the question whether the court can direct the Respondent No. 4, CCI to waive the demurrage charge and whether the court can direct the other Respondents to pay/remit the demurrage charges.

20. The issue at hand, is squarely covered by our judgement rendered on 20th December, 2019 in ***Global Impex v. Manager, CELBI Import Shed***¹.

¹MANU/DE/4351/2019

21. The petitioner, therein, had filed a Bill of Entry, dated 3rd May, 2019, for import of unbranded ready-made garments. A request for first check of the consignment was also made. Consequent thereupon, the consignment was, purportedly, subjected to 100% examination. However, on 6th May, 2019, the consignment was put on hold, for further examination, by the Commissioner of Customs (Preventive). Thereafter it was found that the goods were mis-declared in quantity, and thus, *vide* Panchnama dated 9th May, 2019, the Commissioner seized the consignment and handed it over, to CELEBI for safe custody, *vide* letter dated 10th May, 2019.

22. Therefore, in ***Global Impex***¹ the rationale as set out by us, after analysing a catena of judgments, is as follows:

“104. From the aforecited decisions, the following clear principles emerge:

(i) The custodian has a lien over the imported goods, consigned to its custody. This lien may be statutory, as provided under the IAA Act, all the Major Port Trusts Acts, or contractual. It may also be relatable to Sections 170 and 171 of the Indian Contract Act, 1872.

(ii) This lien entitles the custodian to retain hold of the goods, consigned to its custody, till all its dues, including ground rent and demurrage, are paid.

(iii) The Customs authorities have no power, or the jurisdiction, to issue any instruction, to the custodian, requiring the custodian to waive, in whole or in part, the demurrage chargeable by it. of course, this would be subject to any stipulation, in the statutory or other instrument governing the affairs of the custodian, to the effect that, where the detention certificate was issued by the Customs authorities, the importer would be entitled to waiver of demurrage, in whole or in part. In the absence of any such stipulation, statutory or otherwise, the Customs authorities could not, by issuance of the detention certificate, or by any other communication, direct the custodian

not to charge demurrage, or to waive the whole, or part, of the demurrage chargeable by it.

(iv) In applying the above principles, the issue of whether the goods in question had been licitly, or illicitly, imported, as also the detention of the goods, by the Customs authorities, was justified or unjustified, bona fide or mala fide, are entirely irrelevant.

(v) The liability to pay the demurrage is on the importer, irrespective of the justifiability, or unjustifiability, of the seizure and detention of the goods by the Customs authorities. Even in a case in which the seizure is entirely unjustified, the importer would, in the first instance, have to pay demurrage, to the custodian and, thereafter, pursue, with the Customs authorities, for obtaining reimbursement of the amount.

(vi) The only exception, to the application of the above principles, is in a case in which the custodian himself is guilty of unconscionable delay, or of continuing to hold onto the goods without good reason or authority.

(vii) Rates of demurrage were deliberately made prohibitive, so as to discourage importers from consigning goods to the custody of the Port Trust or other custodian, and to avoid congestion at the port.

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136. We deem it appropriate to add, here, that the Customs authorities, while exercising their power of search, seizure and investigation, are essentially discharging sovereign functions. A reasonable amount of time is expected to be expended in this process, and the mere fact that, by reason of the investigative exercise conducted by the Customs authorities, it has not been possible for the importer to clear its goods, cannot, ipso facto, lead to transference of liability to pay demurrage, to the Customs authorities.”

23. A bare reading of the above makes it abundantly clear, that the Customs authorities cannot direct waiver of demurrage, which can only be done by the custodian (the CCI here). Moreover, merely because the Customs authority expends a reasonable time in dispensation of their

sovereign functions of search, seizure and investigation, cannot lead to transference of liability to pay demurrage, to the Customs authorities.

24. The other issue that raises before us, is , this petitioner is also in search of refund of excess customs duty which is paid at Rs.2,03,987/-, whereas no such refund application has been preferred by the petitioner prior to this writ and has neither approached the Respondents as per the provisions of the Customs Act, 1962. In light of this, we are not inclined to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India, when an alternative efficacious remedy for obtaining the refund claim is clearly prescribed in the statute. The petitioner cannot circumvent the statutory provisions by invoking the writ jurisdiction. Moreover, Clause 3 of Section 27 of the Customs Act,1962, clearly suggests that, the claim for refund must be made in accordance with clause 2 of Section 27 of the Customs Act, 1962. Hence, we are not inclined to exercise our writ jurisdiction regarding the petitioners claim for refund.

25. In ***Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and Ors.***², the three-judge bench of the Supreme Court, held that :

“3. Article 226 is not meant to short circuit or circumvent statutory procedures, it is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one

² (1985) 1 SCC 260

device or the other. The practice certainly needs to be strongly discouraged.”

(Emphasis supplied)

26. In view of the aforesaid facts, reasoning and judicial pronouncements, there is no substance in this writ petition and the same is, therefore, dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J.

FEBRUARY 19, 2020



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