IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 14977 of 2016

M/s.Indian Christian Outreach Ministries,
A registered trust, Represented by its Trustee,
Mr.A.Jasper New Prabhu,
Plot No.412, 7th Block,
Mugappair West, Chennai - 600 037. ... Petitioner

Vs

1. Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2. M/s.Ennore Cargo Container Terminal Pvt.Ltd.,
No.144, Kondakarai Village,
S.R.Palayam, Chennai - 600 120. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to take appropriate action against the 2nd respondent for suspension or revocation of the approval given to the 2nd respondent as a customs cargo service provider in terms of Regulation 11 of the Handling of Cargo in Customs Areas Regulations, 2009.

For Petitioner : Mr.G.Derrick Sam
For R1 : Mr.A.P.Srinivas Standing Counsel
For R2 : Mr.Bijai Sundar

ORDER

The petitioner has filed the present writ petition for a mandamus to direct the 1st respondent to take appropriate action against the 2nd respondent for suspension or revocation of the approval given to the 2nd respondent as a customs cargo service provider in terms of Regulation 11 of the Handling of Cargo in Customs Areas Regulations, 2009.

2. The petitioner had imported goods way back in 2013. The imports were without license and therefore the imports were restricted. Under these circumstances, proceedings were initiated against the petitioner which culminated in Order-in-

Original No.22542 of 2013 dated 21.11.2013. Imported medical equipments value at Rs.5,37,521/- were ordered to be confiscated under Section 111(d) of the Customs Act, 1962 with an option to pay redemption fine of Rs.1,50,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962 and subject to payment of applicable customs duties and penalty of Rs.50,000/- under Section 112(a) of the Customs Act, 1962.

3. On appeal, the aforesaid order was modified by the Commissioner of Customs(Appeals) vide C.Cus.No.1852 of 2013 dated 31.12.2013. The redemption fine imposed under Section 125 of the Customs Act, 1962 and penalty imposed under Section 112(a) of the Customs Act, 1962 were reduced to Rs.50,000/- and Rs.10,000/- respectively.

4. The Commissioner of Customs (Appeals) also ordered waiver of detention and demurrage charges amounting to Rs.20,00,000/- to the petitioner on the ground that the petitioner was a charitable organisation and cannot afford to pay the detention and demurrage charges. The Commissioner of Customs (Appeals) also directed the lower authority to issue necessary detention and demurrage waiver certificate to the petitioner in accordance with law.

5. Pursuant to the aforesaid order of the Commissioner of Customs (Appeals), the Assistant Commissioner of Customs issued letter to the petitioner dated 23.01.2015 bearing Ref.No.F.Misc.67/2013-GR.6 for waiver of detention/demurage charges for the period upto 28.01.2015.

6. Against the said communication, the petitioner preferred an appeal once again before the Commissioner of Customs (Appeals). The Commissioner of Customs (Appeals) vide Order-in-Appeal No.168 of 2015 dated 19.02.2015 had set aside the communication of the Assistant Commissioner of Customs dated 23.01.2015.

7. The petitioner therefore filed writ petition in W.P.No.25723 of 2015 dated 07.09.2015 for a mandamus to direct the 1st respondent to ensure compliance by the 2nd respondent of the directions issued by the Appellate Authority(Commissioner Appeals) vide Order-in-Appeal No.C.Cus.II No.168 of 2015 dated 19.02.2015 read with Regulation 6(1) of the Handling of Cargo in Customs Areas Regulations, 2009 within a reasonable period.

8. By an order dated 07.09.2015, the said writ petition was disposed by directing the 2nd respondent to pass appropriate orders with regard to waiver of demurrage charges upto 14.08.2015, on the basis of recommendation of the 1st respondent vide letter dated 06.08.2015 and on consideration of the complaint of the petitioner dated 11.08.2015.

9. The 2nd respondent in compliance with the aforesaid order has issued letter to the petitioner dated 25.11.2015 and

has concluded as follows:-

"It is hence concluded that

(a) The petitioner has not complied with the provisions of the Customs Act as confirmed by the orders passed by the 1st respondent and its appellate authority.

(b) The fact that the petitioner is a charitable organization and has imported the goods for the said purpose, would not bind either the 1st respondent to permit clearance without complying with the provisions of the Customs Act or the 2nd respondent custodian to waive demurrage and rent charges for rendering services to the cargo imported by the petitioner.

(c) No steps have been taken to establish the bonafides with respect to imports, including clearance of the cargo by the petitioner.

(d) The waiver of storage or demurrage charges cannot be claimed as a matter of right and demanded by the petitioner, especially when the 1st respondent has passed orders confirming violation of the provisions of the Act.

(e) Appeal against non-waiver that too without the custodian being made a party would not lie before the 1st respondent.

(f) Judicial decisions with respect to the demand of storage and demurrage charges by the custodian of the cargo is well settled.

DECISIONS ON THE ISSUE:-

On the basis of the recommendation made by the 1st respondent dated 6.8.2015 and the complaint made by the petitioner dated 11.8.2015, and the direction passed by the Honorable High Court of judicature by its order dated 7.9.2015, it is hereby ordered that there is no factual or legal justification in the claim for waiver of demurrage charges or rent made by the petitioner and the petitioner is liable to pay the charges incurred and mounting on the cargoes imported by the petitioner. As a voluntary waiver of storage is granted for the period commencing from 15.4.2014 to 27.8.2014 by the 2nd respondent, the balance amount incurred till the date of clearance is payable as per the tariff, like any other importer for whom services have been rendered. We have duly complied with the directions of the Honorable High Court. A copy of this order is also sent to the 1st respondent for its file purposes.

10. The learned counsel for the petitioner submits that the 1st respondent has now filed a compliance report dated 10.11.2020, in terms of which, it has been stated that the Principal Commissioner of Customs, Chennai-VIII is having administrative control over the Custodians of Container Freight Station for appointing or suspending them under Handling of Cargo in Customs Areas Regulations, 2009 and that pursuant to the interim direction of this Court on 09.10.2020, steps have been taken by the 1st respondent as per law against the 2nd respondent and a Show Cause Notice dated 28.10.2020 has been issued bearing Show Cause Notice F.No.S.Misc.08/2020-Enquiry to the 2nd respondent. It is stated that the notice has been issued calling upon the 2nd respondent to show cause why the approval granted for custodianship and CCSP to them, shall not be revoked and why penal action shall not be taken against them under Regulation 11(1) read with Regulations 6(1)(I) of the Handling of Cargo in Customs Areas Rules, 2009. The learned counsel for the 1st respondent reiterates the same.

11. The learned counsel for the 2nd respondent on the other hand submits that the petitioner invited an order of this Court in W.P.No.25723 of 2015 dated 07.09.2015 and in pursuance of the said order, the 2nd respondent has issued letter/order to the petitioner on 25.11.2015 and therefore it was improper on the part of the petitioner to approach with this Writ Petition once again to force the 1st respondent to take action against the 2nd respondent.

12. It is submitted that it was open for the petitioner to have challenged the order passed by this Court on 07.09.2015 in W.P.No.25723 of 2015 and the said order stood complied with the communication of the order dated 25.11.2015 the present writ petition was misconceived and is liable to be dismissed. It is further submitted that no interim direction was passed on 09.10.2020 in this writ petition and therefore the said 1st respondent was not justified in issuing impugned Show Cause Notice.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents and I have gone through the records of the case.

14. By an order dated 09.10.2020, this Court merely directed the 1st respondent to file report on the action taken based on the representation dated 11.08.2015 of the petitioner against the 2nd respondent. On the other hand, the so called compliance report dated 10.11.2020 of the 1st respondent seems to indicate that action has been taken pursuant to a direction of this Court dated 09.10.2020.

15. It is not clear on what basis the 1st respondent has issued the said Show Cause Notice to the 2nd respondent. This

Court vide its order dated 09.10.2020, merely called upon the 1st respondent to file a report of the action taken.

> "This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/s.HARI RADHAKRISHNAN Advocate for the petitioner in both the petitions the court made the following order:-
>
> Having due regard to the contentions raised in the Writ Petition, the First Respondent shall file a report of the action taken on the representation dated 11.08.2015 made by the Petitioner against the Second Respondent.
>
> Post the matter under the caption 'Customs and Central Excise Cases' after four weeks."

16. Since the relief as prayed for has worked out, I am inclined to close this Writ Petition in the light of the above development. At the same time, I leave it open for the 2nd respondent to challenge the said Show Cause Notice dated 28.10.2010 bearing F.No.S.Misc.08/2020-Enquiry, in the manner known to law or to participate in the said show cause proceeding before the 1st respondent by making all submissions on merits that are available in law.

17. This Writ Petition stands closed with the above observations. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To

Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 13328

W.P. No. 14977 of 2016

PL(CO)
GN(26/03/2021)