IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.21258 of 2013
and W.M.P.No.3735 of 2021
and M.P.No.1 of 2013

M/s.Goyal Impex & Industries Ltd.,
5/IV, The Mall, Ludhiana, Punjab,
rep. By its Director Shri Hira Lal. ...Petitioner

Vs.

1. The Commissioner of Customs (Exports),
   Custom House, No.60, Rajaji Salai,
   Chennai 600 001.

2. The Assistant Commissioner of Customs,
   (Group-7B-7H), Custom House,
   No.60, Rajaji Salai, Chennai 600 001.

3. M/s.Ennore Cargo Container Terminal Private Ltd.,
   No.144, Kondakarai Village,
   S.R.Palayam, Chennai 600 120.

4. M/s.Wan Hai Lines (India) Private Limited,
   No.8B, "Capitale" 554, 555, Anna Salai,
   Teynampet, Chennai 600 018. ...Respondents

(R3 & R4 impleaded as per order of this Court dated 01.12.2014 in M.P.No.1/2014 in W.P.No.21258/2013)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of mandamus, directing the respondents herein to release the balance 10% of the goods detained, covered under Bills of Entry No.8920742 and 8921497 both dated 02.01.2013 on furnishing simple bond which has been submitted, and for issue of a detention certificate for the period during which the goods imported under the aforesaid Bills of Entry have been detained from the date of filing of the Bills of Entry till the date of assessment and release of the said goods and consequently refund the amount Rs.40,61,375/- paid by the petitioner Entity towards detention, demurrage, warehouse charges, under protest, while seeking release of the 90% of the imported goods, with interest.

For Petitioner : Mr.B.Sathish Sundar

For Respondents : Ms.R.Hemalatha (For R1 & R2)
Senior Standing Counsel

Mr.K.Bijai Sundar (For R3)

No appearance (For R4)

ORDER

The relief sought for in the present Writ Petition is to direct the respondents to release the balance 10% of the goods detained, covered under Bills of Entry Nos.8920742 and 8921497, both dated 02.01.2013 on furnishing simple bond which has been submitted, and for issue of a detention certificate for the period during which the goods imported under the aforesaid Bills of Entry have been detained from the date of filing of the Bills of Entry till the date of assessment and release of the said goods and consequently, refund the amount of Rs.40,61,375/- paid by the Petitioner Entity towards detention, demurrage, warehouse charges, under protest, while seeking release of 90% of the imported goods with interest.

2.Subsequently, the petitioner filed a Writ Miscellaneous Petition No.3735 of 2021, seeking amendment of the prayer set out in the original Writ Petition and the proposed amendment reads as under:

> "Writ of Mandamus, directing the 1st and 2nd respondents to take suitable action against the 3rd and 4th respondents herein in terms of the Handling of Cargo in Customs Area Regulation 2009 for refunding the detention and demurrage collected by them from the petitioner entity with respect to the cargo under import covered under Bills of Entry No.8920742 and 8921497 both dated 02.01.2013 pursuant to the detention certificates issued by the 2nd respondent in F.No.S.Misc.288/2012-GR.7B/7H dated 19.09.2013."

3.It is not in dispute that during the pendency of the Writ Petition, 100% goods were released by the authorities competent. The original relief sought for to issue detention certificate also has been complied with. The petitioner also confirmed the same and the detention certificate is enclosed in the additional typed set of papers.

4.Inspite of the redressal of the grievances in favour of the writ petitioner, the learned counsel appearing for the petitioner reiterated that further action is to be taken against the respondents 3 and 4 based on the detention certificate and based on the complaint given by the petitioner. In other words, it is contended that the relief is to be extended for the purpose of directing the respondents 1 and 2 to initiate action against the respondents 3 and 4.

5.The 3rd respondent, admittedly, is the Customs Service Provider and admittedly they are providing various services in handling of cargo in customs area. They are covered under the Regulations namely Handling of Cargo in Customs Area Regulations, 2009. The Regulations contemplate various procedures to be followed. The learned counsel appearing for the 3rd respondent contended that in respect of the contractual obligations between the parties, no writ is entertainable and such disputed facts are to be adjudicated before the competent forum. Thus, the Writ Petition became infructuous as the relief originally sought for by the petitioner had been granted.

6.The learned Senior Standing Counsel appearing on behalf of the Customs Department also made a submission that during the pendency of the Writ Petition, the relief sought for by the petitioner had been granted and therefore, nothing survives in this Writ Petition.

7.Inspite of the submissions made on behalf of the respondents, the learned counsel appearing for the petitioner proceeded with the case on merits by stating that based on the complaint and based on the detention certificate, further actions are to be initiated by the respondents 1 and 2 against the respondents 3 and 4. It is contended that the complaint submitted in this regard are not even looked into by the respondents 1 and 2 and thus, suitable orders are to be passed on merits.

8.This Court is of the considered opinion that disputed facts can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. Such disputed issues are to be adjudicated with reference to the original documents and evidences which all are to be scrutinized by the authorities competent and by the parties concerned. This apart, the terms and conditions of the contract, if any violations there on, are to be adjudicated by conducting a trial before the appropriate forum and such an exercise is impermissible in writ proceedings. The High Court cannot conduct a rowing enquiry based on the affidavits filed by the parties in a Writ Petition. This being the principles to be followed, the extended prayer sought for by the petitioner by filing an amendment petition deserves no merit consideration and further relief, if any requires, the petitioner has to approach the competent forum for adjudication.

However, the fact remains that the original relief sought for in the Writ Petition had been granted in favour of the writ petitioner and 100% goods were released and the detention certificate was also issued. This being the factum, the petitioner cannot continue the Writ Petition by filing amendment petition in order to redress a fresh cause of action arose consequent to the issuance of detention certificate by the authorities. Such an adjudication requires verification and scrutinization of documents, evidences which all are to be produced by the parties to the dispute. In view of the facts and circumstances, this Court is of the considered opinion that the cause arose for filing of the present Writ Petition did not exist and the amendment sought for is beyond the scope of the original relief sought for in the Writ Petition, as admittedly, the original relief sought for had been granted by the respondents. Accordingly, the writ petitioner is at liberty to pursue his remedy before the appropriate forum in the manner known to law, if any grievances exist.

9.With these observations, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gsa
To

1. The Commissioner of Customs (Exports),
   Custom House, No.60, Rajaji Salai,
   Chennai 600 001.

2. The Assistant Commissioner of Customs,
   (Group-7B-7H), Custom House,
   No.60, Rajaji Salai, Chennai 600 001.

+1 CC to M/s.R.Hemalatha, Advocate, Sr 29068.
+1 CC to M/s.B.Sathish Sundar, Advocate, Sr 28892.
+1 CC to M/s.K.Bijai Sundar, Advocate, Sr 28832.
+1 CC to M/s.B.Sathish Sundar, Advocate, Sr 28787.

W.P.No.21258 of 2013

PMK(CO)
LS(23/08/2021)