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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14370 of 2018

M/s.Sai Lakshmi Engineering,
9-1-14, Opp.Line of Pioneer TVS
Showroom, Station Road,
Naaz Centre,
Guntur, Andhra Pradesh 520 001;
represented by its Proprietor,
Shri.K.Nagaraju

..Petitioner

vs

- 1.The Principal Commissioner of Customs
Chennai III Commissionerate
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.
- 2.The Assistant Commissioner of Customs,
Docks Intelligence Unit, Chennai-III,
Commissionerate, Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.
- 3.The Manager,
M/s.Sudarshan Logistics Pvt. Ltd.,
(CFS), 41, Red Hills High Road,
Andarkuppam, New Manali,
Chennai - 600 103.
- 4.The Manager,
M/s.Zim Shipping,
'Heavitree', Unit 3C, Level 3,
No.47, Mayor Ramanathan Salai,
(Formerly Spurtank Road)
Chetpet, Chennai - 600 031.
- 5.The Manager,
M/s.Star Shipping Services (India)
Private Limited, Heavitree,



Unit 3C, Level 3,
No.47, Mayor Ramanathan Salai,
(Formerly Spurtank Road)
Chetpet, Chennai - 600 031.

(R-5 impleaded vide Court order dated
27.08.2020 made in W.M.P.No.34348/19)

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to cause release of the goods imported vide Bill of Entry No.5103334 dated 07.02.2018 imported vide container No.ZIMU 1132145, without payment of demurrage and container detention charges in terms of Regulation 6(1) (I) of the Handling of Cargo in Customs Areas Regulations 2009, read with the Detention/ Demurrage Waiver Certificates dated 25.05.2018 issued from File No.S.Misc.11/2018-DIU.

For Petitioner : Dr.S.Krishnananth
Senior counsel

For Respondents

For R1 & R2 : M/s.Hemalatha
Senior Standing counsel for Customs

For R3 : Dr.R.Sunitha Sundar
For R4 & R5 : Mr.S.Vasudevan

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to cause release of the goods imported vide Bill of Entry No.5103334 dated 07.02.2018 imported vide container No.ZIMU 1132145, without payment of demurrage and container detention charges in terms of Regulation 6(1) (I) of the Handling of Cargo in Customs Areas Regulations 2009, read with the Detention/ Demurrage Waiver Certificates dated 25.05.2018 issued from File No.S.Misc.11/2018-DIU.

2. The petitioner states that they are involving in the business of imports, more particularly import of agricultural implements and equipments. They are favoured with an Import Export Code No.0909002924 dated 13.07.2015. The nature of transactions as described in the affidavit filed in support of the writ petitions are not disputed. However, the learned counsel for the respondents raised certain objections regarding the contractual obligations between the Customs Cargo Service Provider and the petitioner. In this context, the petitioner contended that once the Detention certificate is issued by the Customs authorities under Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009, then the third



respondent has no option, but to honour the same and release the goods without any further claim whatsoever.

3. To substantiate the said ground, the learned counsel for the petitioner contended that the certificate issued has got a statutory sanction and therefore, the Detention certificate issued, must be implemented in its letter and spirit. Thus, the relief as such sought for in the writ petition is to be granted.

4. The learned counsel for the petitioner strenuously contended that the relief as such sought for in the present writ petition is for a direction to direct the respondents to cause release of the goods imported without payment of demurrage and container detention charges in terms of Regulation 6(1) (1) of the Handling of Cargo in Customs Areas Regulations. In support of the said contentions, the learned counsel for the petitioner relied on the judgment of the Bombay High Court recently delivered on 8th March 2021 in W.P.No.3676 of 2020 and the relevant paragraphs are extracted hereunder:

"80. We have already noted that the 2018 Regulations have come into force on and from 01.08.2019. Regulation 10(1) makes it abundantly clear that an authorised carrier shall not demand any container detention charges for the containers laden with goods detained by the customs for the purpose of verifying the entries made under section 46 or section 50 of the Customs Act which deal with entry of goods on importation and entry of goods for exportation respectively if the entries are found to be correct though as per the proviso, the authorised carrier may demand container detention charges after sixty days. Regulation 10(1)(m) makes it incumbent upon an authorised carrier to abide by all the provisions of the Customs Act and the rules, regulations, notifications and orders issued thereunder.

81. The 2018 Regulations is a piece of subordinate legislation having the force of law. Since it has been framed by the Board in exercise of the powers conferred by section 157 read with sections 30, 30A, 41, 41A, 53, 54, 56, 98(3) and 158(2) of the Customs Act, certainly the 2018 Regulations have statutory force. Respondent No.3 with the approval of respondent No.2 has issued the detention cum demurrage waiver certificate dated 16.11.2020 certifying that the subject goods are detained goods and directing respondent No.4 not to demand any detention charges in respect of the containers as per Regulation 10(1)(1) of the 2018 Regulations and thus facilitate clearance of the goods immediately. Respondent No.4 has only collaterally questioned the effectiveness of such a



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certificate as being not bound by it. It has not stated anything in the reply affidavit regarding any independent challenge made by it Priya Soparkar 39 wp 3676-20 to the said certificate. Question is whether it is open to respondent No.4 or for that matter a shipping line to contend that it will not comply with the mandate of Regulation 10(1)(l) of the 2018 Regulations, more so when Regulation 10(1)(m) makes it clear that the authorised carrier shall be bound by the provisions of the Customs Act and all the rules, regulations, notifications and orders issued thereunder.

82. In the ultimate analysis, the issue boils down to a conflict between the 2018 Regulations which is a subordinate legislation having the force of law on the one hand and the contractual right of the shipping line on the other hand.

87. In the light of the above, we have no hesitation to hold that objection of respondent No.4 is not legally tenable. The detention cum demurrage waiver certificate dated 16th November, 2020 has been validly issued as it can be traced to Regulation 10(1)(l) of the 2018 Regulations and under Regulation 10(1)(m) thereof, respondent No.4 i.e., the shipping line is under a legal obligation to comply with the certificate. Thus, the detention cum demurrage certificate dated 16th November, 2020 is binding on respondent No.4. That apart, holding on to the goods of the petitioner by respondent No.4 post the detention cum demurrage waiver certificate dated 16th November, 2020 and levying detention charges thereafter would be illegal and thus unlawful.

88. We may further clarify that it is nobody's case that the 2018 Regulations have not been validly made. It has therefore the full force and effect of a statute. A conjoint reading of Regulations 10(1)(l) and 10(1)(m) makes it abundantly clear that Priya Soparkar 41 wp 3676-20 the 2018 Regulations are fully binding on the shipping line and it is not open to the latter relying on a contractual provision to contend that it will not comply with a direction or certificate issued under Regulation 10(1)(l). The private contract between the petitioner and the shipping line must yield to the rigours imposed by the subordinate legislation vis-a-vis the subject matter of conflict i.e, levy of detention charges for the period under consideration. That apart, Supreme Court has held that it is an implied condition of every contract that the parties will act in conformity with



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the law. In case of repugnancy between provisions of a subordinate legislation and provisions of a private contract, the terms of the contract will have to yield to the provisions of the subordinate legislation to the extent of repugnancy.

89. There is one more aspect which we would like to deal with. This court while setting aside the first order-in-original vide the order dated 27th October, 2020 had directed maintenance of status-quo in respect of the goods of the petitioner till passing of the fresh order. It is a settled proposition that an order of the court can cause prejudice to none. Therefore, it would be wholly unjust, unfair and inequitable to levy detention or demurrage charges on the goods of the petitioner when the status-quo order was in operation.

90. In so far investigation by respondent No.2 into the complaint lodged by the petitioner dated 3rd November, 2020 is concerned, we feel that the said investigation should be taken to its logical conclusion. Custom officials are conferred vast powers under the Customs Act and under the rules and regulations made thereunder. Such powers are to be exercised in the interest of revenue alone. Therefore, it is essential that high officials of the customs having supervisory jurisdiction should ensure that personnel working in the Priya Soparkar 42 wp 3676-20 customs department strictly follow the rule book. For this purpose, internal vigilance mechanism should be strengthened and effectively used.

92. Thus, on a thorough consideration of the entire matter, we are of the view that the following directions will meet the ends of justice :-

I) Respondent No.2 shall take all necessary steps and ensure that the detention cum demurrage waiver certificates dated 16.11.2020 are implemented by all concerned including respondent Nos.4 and 5 and thereafter to release the imported goods of the petitioner. Respondent No.2 shall ensure that the above exercise is completed within 15 days of receipt of a copy of this judgment and order.

II) Respondent No.2 shall continue with the investigation into the complaint of the petitioner dated 3rd November, 2020 in accordance with law and take the same to its



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logical conclusion within a period of three months from the date of receipt of a copy of this judgment and order. On competition of the enquiry, a copy of the enquiry report shall be furnished to the petitioner.

III) Considering the fact that customs authorities had promptly issued out of charge and the detention cum demurrage waiver certificates post the fresh order-in-original dated 6th November, 2020, we refrain from imposing cost on the customs authorities."

5. The learned counsel for the petitioner relying on the said judgment, solicited the attention of this Court with reference to Section 126 of the Customs Act, which contemplates 'the officer adjudging confiscation shall take and hold possession of the confiscated goods'. In view of the said provision under the Act, Regulations are framed and under Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009, no charges can be recovered. In the event of confiscation of goods by the Customs authorities as the authorities are in possession of the imported goods.

6. The learned counsel further relied on the judgment of the Madras High Court in the case of Giridhari Homes Private Limited, Vs. Principal Commissioner of Customs, Chennai-III, reported in 2018 (361) E.L.T., 463 (Mad) and relevant paragraph 6 is extracted hereunder:

"6. In the light of the above, the writ petition is disposed of with a direction to the respondents 3 and 4 to forthwith release the imported cargo without insisting upon the payment of demurrage charges and detention charges till the date of release, as it has already been waived by the department by their Waiver certificates dated 10.01.2018. The respondents 1 and 2 are directed to initiate appropriate action under relevant regulation against the respondents 3 and 4 on account of their disobedience. No costs."

7. In the case of M/s.P.Perichi Gounder Memorial Charitable Trust Vs. The Commissioner of Customs, dated 06.08.2019 in W.P.No.29847 of 2018, the Madras High Court held as follows:

"23. In the light of the unique and peculiar facts and circumstances of this case, viewed in the light of context of the aforesaid two reported orders (alluded to supra), by another Hon'ble Single Judge, this Court is of the considered view that it is appropriate to direct the respondents to ensure that the CFS namely Manager, All Cargo Global Logistics Ltd., Thiruvottiur



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High Road, Thiruvottiyur, Chennai - 600 019 (CFS) and M.S.C.Agency (India) P Ltd., 1st floor, KGN Tower, No.62, Ethiraj Salai, Egmore, Chennai - 600 105 (Steamer Agent who owns the container) to whom signed communication dated 25.04.2018 has been sent, implement the same in letter and spirit. In other words, respondents are directed to ensure that the addressees in the communication, signed on 25.04.2018 give effect to the same and ensure that the consignment namely Used Dialysis Machine, which is subject matter of instant writ petition is given delivery to the writ petitioner without insisting on demurrage and detention charges even post 23.03.2018. The above direction shall be complied with by the respondents as expeditiously as possible and in any event, with a period of four(4) weeks from the date of receipt of a copy of this order."

8. The learned counsel for the third respondent disputed the contentions raised on behalf of the petitioners by stating that disputes are exists between the Customs Cargo Service Provider and the petitioner in the present case. The judgments relied on by the petitioner are not applicable with reference to the facts of the present case. Regarding the judgment of the Bombay High Court, the learned counsel for the third respondent reiterated that the Sea Cargo Manifest and Transshipment Regulations, 2018 came into force with effect from 11.05.2018 and the claims set out in the present writ petitions are prior to the said date of implementation and therefore, the reference made regarding the said Regulations, deserves no consideration.

9. The learned counsel for the third respondent relied on the counter filed by the respondents 1 and 2 / Customs authorities and more specifically, she relied on Paragraphs 2.4, 2.5 and 4, which all are extracted hereunder:

"2.4 It is further submitted that after ascertaining from the ICES system that the differential duty, fine and penalty had been paid, the NOC was issued for release of the impugned goods to the petitioners and copy addressed to the AC (CFS) on 25.05.2018.

2.5 It is most respectfully submitted that the allegation made by the petitioner that the 2nd respondent took almost 3 months to complete the investigation and the petitioner paid the differential duty, fine and penalty to clear the goods without prejudice to the right to challenge the same, before the competent authority under the provisions of customs act 1962, is baseless and bald one, since



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Investigation Report dated 22.02.2018 with its findings was forwarded to Group 5, Chennai II Import Commissionerate within 10 days from the date of detention that is on 14.02.2018. It is also further submitted that the 2nd respondent had without any delay issued the notice to the petitioner and the 3rd and 4th respondents for waiver of charges under regulation 6 of the Handling of Cargo in Customs Areas Regulations, 2009 and further, it is pertinent to note and mention that the petitioner did not request to bond the goods under Section 49 of Customs Act, 1962.

4. It is humbly submitted that the allegation made by the petitioner that despite the attention of the respondents, being drawn, no action was taken by the 1st and 2nd respondents for implementation of the waiver of the demurrage/container detention charges is not acceptable by the 1st and 2nd respondents herein since due action was taken by them immediately when it was brought to the notice of the above said respondents on 06.06.2018 and immediately, the 2nd respondent herein issued a letter on 07.06.2018 to the 3rd and 4th respondent to comply with regulations of Handling of Cargo and Customs Area Regulation 2009."

10. It is contended that the scope of the Detention certificate, which is to be construed as an eligibility certificate, was well considered by the Delhi High Court in the case of Trip Communications Private Limited Vs. Union of India & Others, reported on 28th March, 2014. Reference is drawn to Paragraphs 16, 17, 19, 31, 42 to 50, wherein categorically the said Regulation 6(1)(1), its applicability, its eligibility and binding nature has been explained and the relevant said paragraphs are extracted hereunder:

"42. The custom authorities it appears issues certificate for waiver in every type of case irrespective of the fact whether the importer is at fault or not. The custom authorities have issued certificate for waiver of the demurrage charges in both the cases at hand. In one case the release of the goods are on provisional basis pending adjudication and in the other there is imposition of both fine and penalty. These are not cases where the importer has been held to be not at fault. In one case the Importer has been found to be at fault and penalty and fine imposed. The importer has accepted the said order. In the other case adjudication proceedings are pending and are yet to be finalised.

43. There is an overlap in the Policy for Waiver framed by AAI and the HCCAR. Though initially there



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appears to be a conflict between the policy and the regulations but on closer scrutiny it is apparent that they can both be harmoniously construed and coexist.

44. The policy makes a distinction between the cases where the importer is innocent but his imported goods are seized and detained pending an enquiry and adjudication and the cases where the importers have indulged in misdeclaration, misdescription, undervaluation or concealment and fine, penalty, personal penalty and/or warning is imposed by the customs authorities. Importers who are innocent cannot be equated with the importers who violate the law and be given the same treatment. The AAI policy makes a distinction between the two and in our view rightly so.

45. The regulations framed in 2009 themselves stipulate that they are subject to any law for the time being in force and as such the regulations would be applicable in terms of the Policy for Waiver framed by the AAI in 2003.

46. In case the HCCAR were to be made applicable in all cases then the result would be that in no case where there is a fine, penalty, personal penalty and/or warning imposed by the customs authorities CELEBI would be able to charge demurrage charges. Custom authorities are issuing waiver directions even in cases where the importers are clearly at fault and fine, penalty, personal penalty and/or warning has been imposed by the customs authorities. Even in cases of misdeclaration, undervaluation and concealment, the certificates are being issued. This is clearly giving premium to dishonesty. The waiver should be granted in genuine cases where the importers are ultimately found not at fault. It cannot be that all importers honest and dishonest are treated equally.

47. In cases where the importer is found innocent and there is no imposition of any fine, penalty, personal penalty and/or warning by the customs authorities, the Policy for Waiver would be applicable and the importer would be entitled to be considered for its benefit provided a certificate entitling him to be so considered is issued by the custom authorities. The importer would not be automatically exempt but would be covered under the Policy for Waiver and eligible for waiver which would be granted subject to other compliances.

48. The execution of the superdginama by CELEBI that it would not claim any storage charges for the safe custody of the goods charge would also not be in conflict with the Policy for Waiver. The Policy has been framed by the Airports Authority of India and the



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of the adjudication proceedings any fine, penalty, personal penalty and/or warning is imposed by the customs authorities.

52. In WP(C) No. 2200 of 2013 since fine and penalty has been imposed, the Petitioner is not entitled to the benefit of the Policy for Waiver and the goods can only be released on payment of the demurrage charges."

11. Relying on the said judgment and contending the disputes facts, which all are existing as of now, the learned counsel for the third respondent made a submission that the Detention certificate would not confer any right on the writ petitioner for release of imported goods. Thus, the other disputes with reference to the contractual obligations, are to be resolved between the parties and thus, the relief as such sought for cannot be granted and the writ petition is to be dismissed.

12. The learned counsel for the Respondents R4 & R5, vociferously disputed the ground by stating that they are not the liners in the present case and therefore, no relief can be granted in favour of the petitioner. The learned counsel for the Respondents R4 & R5 reiterated by referring Rule 5 of the Regulations and contended that the petitioner is not entitled for the relief and no relief can be granted against the respondents R4 and R5.

13. The enforceability of the Detention Certificate issued under Rule 6 (1) (1) - handling of Cargo in Customs Areas Regulations, 2009 and claiming of refund by the importer or exporter from the Service Provider are elaborately adjudicated by this Court in W.P.No.15490 of 2020 dated 22.06.2021 and the relevant paragraphs of the judgment are extracted hereunder:

"11. Considering the arguments as advanced by the respective learned counsels appearing on behalf of the parties to the lis, this Court is of the considered opinion that Regulation 3 of the Handling of Cargo in Customs Areas Regulations, 2009 states that "these regulations shall be applicable to the handling of imported and export goods in ports, airports, inland container depots, land customs stations and in customs areas approved or specified under section 8". Regulation 2(1)(b) defines "Customs Cargo Services Provider" means any person responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods and includes a custodian as referred to in section 45 of the Act and persons as referred to in sub-section (2) of section 141 of the said Act.



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12. Regulation 5 provides Conditions to be fulfilled by Customs Cargo Service Provider. Regulation 6 speaks about Responsibilities of Customs Cargo Service Provider. Thus, the Detention certificate issued under Regulation 6(1)(1), falls under the responsibilities of Customs Cargo Service Provider. Thus, the responsibility of the Customs Cargo Service Provider under Regulation 6(1)(1) is that "Subject to any other law for the time being in force, shall not 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". It is clear that the Customs Cargo Service Provider shall not charge any rent or demurrage.

13. Regulation 6, Sub-Clause (3) enumerates that "the Customs Cargo Service Provider shall publish and display at prominent places including website or webpage of the Customs Cargo Service Provider the schedule of charges for the various services provided by him in relation to the imported goods or export goods in the customs area." Perusal of the scheme of Regulation would reveal that there are certain contractual obligation between the Customs Cargo Service Provider as well as the importer or exporter. Such terms and conditions of the contract cannot be enforced by filing a writ petition or based on the Detention certificate issued by the competent authorities in the absence of any factual adjudication with reference to the disputes.

14. The question arises, how to decide whether any rent or demurrage on goods seized is charged, collected or recovered by the Customs Cargo Service Provider. In the present cases, the third respondent is the Cargo Service Provider and the petitioners have deposited some amount and seeks refund. The Customs authorities issued a certificate merely stating that "the request of the Importer for waiver of Detention / Demurrage charges shall be considered from the date of filing of Bill of Entry till the date of clearance of the cargo."

15. Thus, this Court has to examine the nature of the certificate issued by the Customs authorities under Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009. Definition of a certificate is that 'a document containing a certified statement especially as to the truth of something specifically a document certifying that one has fulfilled the



16. Therefore, the certificate issued under Regulation 6(1)(1) is to be construed for the purpose of eligibility for claiming refund pursuant to the conditions stipulated in Regulation 6(1)(1). In other words, the Customs authorities certified that the importer or exporter is eligible to claim refund, if any excess rent or demurrage is paid with reference to Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009.

18. Perusal of the certificate in the present writ petitions issued by the Customs Authorities in proceedings dated 05.06.2018 reveals that the "request of the Importer for waiver of Detention / Demurrage charges shall be considered from the date of filing of Bill of Entry till the date of clearance of the cargo". Therefore, the third respondents are obligated to consider the refund with reference to Regulation 6(1) (1) of the Handling of Cargo in Customs Areas Regulations, 2009. However, mere certificate, undoubtedly would not confer any right to seek refund directly by filing a writ petition before the High Court under Article 226 of the Constitution of India.

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Department of Customs. Thus, an adjudication becomes mandatory for the purpose of refund. In the event of consensus or no dispute, the parties themselves may take a decision for refund. However, the Detention certificate cannot provide cause for seeking a relief by filing the writ petitions under Article 226 of the Constitution of India.

20. The amount of deposit, the amount of refund, the period for which, the importer or exporter is entitled for refund and the other claims of the Customs Cargo Service Provider regarding freight charges, transportation charges etc., all are to be decided based on the terms and conditions of the contract entered into between the Customs Cargo Service Provider and the importer or exporter. In some circumstances, the importer or exporter pay such charges voluntarily on various reasons and all these facts and circumstances deserves an adjudication and the issues disputed are to be resolved and then only the question of refund would arise.

21. For example, a mere certificate in any circumstances, would not be a ground to claim refund directly from the Customs Cargo Service Provider. For all purposes, the authorities issued such certificate, enabling the exporter or importer to claim refund or otherwise in accordance with Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009.

22. The Regulations contemplates responsibilities of Customs Cargo Service Provider. Thus, the Service Provider is duty bound to follow the provisions of the Act as well as the Regulations scrupulously. While adhering to the provisions of the Act as well as the Regulations, the disputed facts between the parties based on certain contracts are to be adjudicated before the proper forum and such an elaborate adjudication cannot be done by the High Court in a writ proceedings.

23. Roving Enquiry cannot be conducted in a writ proceedings. Verification and scrutinization of original records and evidences are imminent. In the absence of any such scrutinization, inspection or enquiry, the liabilities of the parties cannot be determined and therefore, the High Court has to pave way for such adjudication between the parties in order to claim refund or otherwise with reference to Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009.



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24. Presuming that the relief as such sought for in the present writ petitions is granted, merely based on the Detention certificate, in the absence of factual adjudication, undoubtedly, there is a possibility of commissions or omissions, which may lead to miscarriage of Justice. Therefore, the High Court need not go into such disputed facts merely based on the affidavits filed by the respective parties to the writ petition. Mere affidavit would not be sufficient to form an opinion regarding the disputed facts, which all are to be made with reference to the documents and evidences and in consonance with the terms and conditions of the agreement or contract.

25. This being the principles to be followed, the Detention certificate issued by the Customs authorities is to be construed as an eligibility certificate for the purpose of claiming the benefit conferred under Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009 and the certificate would not confer any right on the holder of the certificate to claim refund without adjudication of the disputed facts and circumstances with reference to the terms and conditions of the agreement or contract. Such an adjudication cannot be done in a writ proceedings under Article 226 of the Constitution of India. Therefore, for the purpose of adjudication, the parties are bound to approach the competent forum and after resolving the disputes, the refund or otherwise is to be granted by following the procedures as contemplated.

26. In the present cases, the petitioners sought for a direction to the second respondent, to direct the third respondent. Such a direction is uncalled for, in view of the fact that the second respondent has already issued Detention certificate as per the provisions. It is contended that the second respondent is obligated to execute the Detention certificate. Such an execution cannot be done without adjudication of the disputed facts and circumstances. This apart, as observed earlier, mere certificate would not confer any right to claim refund and such a certificate would enable the holder to claim refund under Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009 and all further adjudications or disputes with the Customs Cargo Service Provider is to be undertaken by approaching the competent forum and certainly, not a writ proceedings.

27. The direction sought for in the writ petitions



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to direct the second respondent, to direct the third respondent to make refund is coined with an idea to overcome the maintainability of writ petitions. Thus, the prayer as such cannot be granted, in view of the fact that the second respondent has already issued a Detention Certificate, which is to be construed as eligible for the purpose of claiming refund from the third respondent. This apart, the third respondents are Private party and no relief can ordinarily be entertained in a writ proceedings. Undoubtedly, the Apex Court and the High Court in certain writ petitions, issue orders against the Private parties only in certain circumstances, where public interest and public duties are involved.

28. All the writ petitions are maintainable. High Courts will not dismiss any writ petition as not maintainable. However, the entertainability of a writ petition with reference to the facts and the principles of law is to be considered for granting the relief. The extraordinary powers conferred under Article 226 may be used by the High Court in order to mitigate the injustice, if any occurred to the citizen of this great Nation. However, the entertainability with reference to certain facts are to be considered for the purpose of granting the relief. Therefore, the maintainability may not be the point, but the entertainability is the question, which is to be considered with reference to the mixed question of fact of law. In this regard, a person approaching the High Court, should establish that he has a right to claim relief. In the absence of establishing a right, no relief can be granted in a writ proceedings. As held in aforementioned paragraphs, the Detention certificate issued by the Customs authorities is to be construed as an eligibility certificate for claiming refund. However, the said certificate would not confer right to get back the refund, in the absence of resolving the disputes between the Service Provider and the importer or exporter. Thus, the procedures and resolving the disputes in between the eligibility certificate and refund can never be waived by the High Court nor a direction can be issued to direct the Service Provider to refund the amount without resolving the disputes, if any exists between the Service Provider and the importer or exporter."

14. This Court is of the considered opinion that absolutely there is no quarrel with reference to the legal propositions propounded by the learned counsel for the petitioner, which is



well founded. Once the imported goods are confiscated by the Customs authorities, they became in possession of the goods and therefore, the Service Provider shall not levy any charges for the said confiscated goods. If at all any deposits are collected in this regard, the said deposits are to be refunded. The contentions of the petitioners are that once the Statutory provisions contemplate that the goods belong to the Customs Department are confiscation and the Service Provider is not entitled to collect any charges, then they are bound to release the goods and refund the deposit, if any collected.

15. In the present case, even the goods are not released and the Service Provider is claiming charges, which is in violation of the Detention certificate issued by the Customs authorities. Thus, the petitioner is constrained to move the writ petition.

16. This Court is of the considered opinion that a thin distinction is to be drawn in between the Detention certificate as well as the release granted by various Courts with reference to the Detention certificate issued by the Customs Department. The in-between agreements, contracts, and disputes are relevant for the purpose of granting the relief and such disputes between the Service Provider and an importer or exporter, cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

17. For example, the Customs authorities issued a Detention certificate. Based on the Detention certificate, if the imported goods are released by the Service Provider and in the event of any dues to be collected by the Service Provider from the importer or exporter, then the Service Provider has to necessarily approach the Civil Court of law for adjudication of disputes and recover the dues from the importer or exporter. When that is the scope for collection of dues by the Service Provider from the importer or exporter, the same procedure is to be followed for the purpose of release of goods or refund of deposits collected by the Service Provider.

18. Under these circumstances, this Court formed an opinion that the Detention certificate is nothing but affirmation of the statutory provisions contemplated, more specifically, with reference to Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009. Thus, such a certificate undoubtedly provides a right to the holder of the certificate to claim the relief of release of imported goods by the Service Provider or refund as the case may be. However, there is no consideration in any of these judgments submitted by the learned counsel for the petitioner that in the event of existence of a dispute between the Service Provider and the importer or exporter and the status of certificate of detention.



Pertinently, those areas are not considered in the judgments relied on by the petitioners. In the event of directly acting upon the Detention certificate, which is nothing but confirmation of the provisions of the Act and the regulations, the Service Provider may suffer any loss or otherwise. The Courts are bound to consider and protect the interest of all the parties to the lis in order to provide complete justice.

19. In the present case, admittedly, the goods are being maintained by the Service providers. On confiscation, the Customs authorities take possession. However, the goods are still under the custody of the Service Provider. The goods are not taken away from the premises of the Service Provider. Therefore, the grievances of the service provider are also to be looked into and considered, while granting the relief of release of the imported goods or refund of the deposits, if any.

20. Thus, this Court is of the considered opinion that in between disputes, more specifically, with the Service Provider and the importer or exporter has not been considered in any of the judgments produced by the petitioners. Therefore, this Court is of the opinion that the Detention certificate issued under the provisions of the Customs Act is reiteration of the legal position, which is binding on the Service Provider. Undoubtedly, the Detention certificate is binding on the Service provider. However, such Detention certificate cannot be the sole document for the purpose of grant of relief of refund or release of goods without further adjudication with reference to the disputes or grievances exists between the Service Provider, who is a private party and the exporter or importer.

21. With this observation, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Principal Commissioner of Customs
Chennai III Commissionerate
Custom House,
No.60, Rajaji Salai,



Chennai - 600 001.

2.The Assistant Commissioner of Customs,
Docks Intelligence Unit, Chennai-III,
Commissionerate, Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.30623

W.P.No.14370 of 2018

CP(CO)
SB(04/08/2021)