IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021
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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.15490, 16359, 17114 & 17433 of 2020

W.P.No.15490 of 2020:

Wardha Solar (Maharashtra) Private Limited,
Represented by its authorized representative,
Ganesh Sharma,
Adani Corporate House, Shantigram,
Near Vaishnav Devi Circle, SG Highway,
Khodiyar, Ahmedabad – 382 421. ..Petitioner

vs

1. The Union of India,
   Represented by its Secretary,
   Ministry of Finance, Department of Revenue,
   North Block, New Delhi.

2. The Commissioner of Customs (CH-II),
   Customs House, 60, Rajaji Salai,
   Chennai – 600 001.

3. RCL Agencies East India Pvt Ltd.,
   No.40, 2nd Floor, Rajaji Salai,
   Parrys, Nr.Customs House,
   Chennai – 600 001.

4. NTC Logistics India (P) Ltd.,
   (Formerly NTC Logistics (P) Ltd.,)
   "NTC Tower", 97, (Old No.47)
   Linghi Chetty Street,
   Chennai. ..Respondents

W.P.No.16359 of 2020:
Wardha Solar (Maharashtra) Private Limited,
Represented by its authorized representative,
Ganesh Sharma,
Adani Corporate House, Shantigram,
Near Vaishnav Devi Circle, SG Highway,
Khodiyar, Ahmedabad – 382 421. ..Petitioner

vs

1. The Union of India,
   Represented by its Secretary,
   Ministry of Finance, Department of Revenue,
   North Block, New Delhi.

2. The Commissioner of Customs (CH-II),
   Customs House, 60, Rajaji Salai,
   Chennai – 600 001.

3. Ennore Cargo Container Terminal,
   Container Freight Station,
   No.144, Kondakarai Village S R Palayam,
   Chennai – 600 120.

4. NTC Logistics India (P) Ltd.,
   (Formerly NTC Logistics (P) Ltd.,)
   "NTC Tower", 97, (Old No.47)
   Linghi Chetty Street,
   Chennai. ..Respondents

W.P.No.17114 of 2020
Adani Enterprises Limited,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shantigram,
Near Vaishno Devi Circle, SG Highway,
Khodiyar, Ahmedabad 382 421 ..Petitioner

vs

1. The Union of India,
   Represented by its Secretary,
   Ministry of Finance, Department of Revenue,
   North Block, New Delhi.

2. The Commissioner of Customs (CH-II),
   Customs House, 60, Rajaji Salai,
   Chennai – 600 001.

3. Ennore Cargo Container Terminal Pvt Ltd.,
   No.144, Kondakarai Village S R Palayam,
   Chennai – 600 120.

4. NTC Logistics India (P) Ltd.,
   (Formerly NTC Logistics (P) Ltd.,)
   "NTC Tower", 97, (Old No.47)
   Linghi Chetty Street,
   Chennai. ..Respondents

W.P.No.17433 of 2020

Parampujya Solar Enerty Pvt.Ltd.,
Represented by its authorized representative
Mr.Ganesh Sharma,
Adani Corporate House, Shantigram,
Near Vaishnav Devi Circle,
SG Highway, Khodiyar, Ahmedabad-382421 ..Petitioner

vs

1. The Union of India,
   Represented by its Secretary,
   Ministry of Finance, Department of Revenue,
   North Block, New Delhi.

2. The Commissioner of Customs (CH-II),
   Customs House, 60, Rajaji Salai,
   Chennai – 600 001.

3. Ennore Cargo Container Terminal Pvt Ltd.,
   No.144, Kondakarai Village S R Palayam,
   Chennai – 600 120.

4. NTC Logistics India (P) Ltd.,
   (Formerly NTC Logistics (P) Ltd.,)
   "NTC Tower", 97, (Old No.47)
   Linghi Chetty Street,
   Chennai. ..Respondents

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent No.3 to act in compliance of the Detention Certificate dated 05.06.2018 issued by Respondent No.2 and direct Respondent No.3 to refund the amounts collected by them at the time of clearance of the goods in question forthwith along with appropriate interest.

Petitioner in all W.Ps : Mr.Joseph Prabakar

For Respondents:

W.P.No.15490 of 2020:

For R1: Mr.R.Sankaranarayanan
Additional Solicitor General of India
Assisted by Mr.T.L.Thirumalaisamy
Central Government Standing counsel

For R2: Mr.Rajnish Pathiyil
Senior Central Government
Standing counsel

For R3: Dr.R.Sunitha Sundar

For R4: Mr.Andrew Vivek

W.P.Nos.16359 & 17114 of 2020:

For R1& R2 : Mr.R.Sankaranarayanan
Additional Solicitor General of India
Assisted by Mr.Rajnish Pathiyil
Senior Central Government
Standing counsel

For R3: Dr.R.Sunitha Sundar

For R4: Mr.Andrew Vivek

W.P.No.17433 of 2020:

For R1 : Mr.R.Sankaranarayanan
Additional Solicitor General of India
Assisted by Mr.K.S.Jeyaganesan
Central Government Standing counsel

For R2 : Mr.A.P.Srinivas
Senior Standing counsel
For R3 : Dr.R.Sunitha Sundar
For R4 : Mr.Andrew Vivek

COMMON ORDER

The relief sought for in all the writ petitions is to direct the third respondent to act in compliance of the Detention Certificate dated 05.06.2018 issued by second respondent and direct the third respondent to refund the amounts collected by them at the time of clearance of the goods in question forthwith along with appropriate interest.

2. The petitioners in all the writ petitions are engaged in various spheres of business including the generation of electricity through means of renewable sources. The petitioners regularly imports various goods including goods such as 'Solar Panels'. The present petitions pertain to imports of Solar Panels made by the petitioners during the period 2017-2018.

3. The learned counsel for the petitioners strenuously contended that the maintainability of the writ petitions is the core point, which is to be decided in these writ petitions. Once the writ petitions are maintainable, then the direction as sought for is to be granted, in view of the Detention

Certificate already issued by the Customs authorities, which is binding on the third respondent, pursuant to the Handling of Cargo in Customs Areas Regulations, 2009.

4. The learned counsel for the petitioners reiterated by stating that the issue regarding the maintainability has been elaborately considered by this Court in the case of Vanathi Exports Private Limited Vs. Commissioner of Customs (Exports), Chennai, reported in (2020) 374 E.L.T.490 (Mad) and this Court held that the writ petition in such circumstances are maintainable with reference to the Detention Certificate issued for the purpose of claiming refund from the Service Providers. Admittedly, in the present cases, the third respondent is the Service Provider and the writ petitioners deposited the amount with the third respondent. In view of the Detention certificate issued by the Customs authorities in proceedings dated 05.06.2018, the third respondents are obligated to refund the amount and the Customs authorities in this regard must ensure that the Detention Certificate issued by them is executed in its real spirit and in consonance with the Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009. To substantiate the said ground, the learned counsel for the petitioners referred paragraphs 15 and 16 of the judgment in the case of Vanathi Exports (cited supra), which reads as under:

> "15. In the light of the decisions in Perichi Gounder Memorial (supra) and Balaji Dekors' (supra), the petitioner is deemed to be a CCSP, who is bound by the advisories of the Customs Department and DGS and therefore is amendable to writ jurisdiction and the writ petition would thus, be maintainable. Writ petitions under Article 226 of the Constitution of India in similar circumstances, have also been entertained in the cases of Priyanka Enterprises v. Joint Commissioner of Customs reported in 2018(360) E.L.T.962(Mad); Giridhari Homes Pvt. Ltd. v. Principal of Commissioner of Customs [2018 (361) E.L.T.463 (Mad.)] and Isha Exim v. ADG, Chennai [2018 (13) G.S.T.L.273 (Mad)]
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> 16. In all these aforesaid decisions, the Learned Counsel for the third respondent submitted that the facts involved therein, are not applicable to the facts in the present case and therefore reliance cannot be laid on these decisions. I am not in agreement with such a submission."

5. In this backdrop, it is contended that the petitioner sent a detailed letter to the Customs Department on 11.03.2020, setting out the facts and circumstances, warranting an action against the third respondent by the Customs authorities. However, the said letter has not acted upon and thus, the petitioners are constrained to move the present writ petitions,

seeking a direction to direct the second respondent, to direct the third respondent for refund of the amounts collected from the petitioners in accordance with the Detention Certificate.

6. However, the learned counsel for the third respondent intercepted and informed this Court that the third respondent had already considered grounds raised by the writ petitioners and a reply was communicated on 12.02.2020. The reply was issued pursuant to the legal notice issued by the petitioners to the third respondent on 10.12.2019. Thus, the grievances of the writ petitioners are considered and reasons were also furnished.

7. The learned counsel for the petitioners is of an opinion that the third respondent has no option, but to reject the refund in view of Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009. The said Regulation contemplates 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." Therefore, there is no discretion to be exercised by the third respondent in the matter of refund of the amount collected. Once Detention certificate issued by the competent customs authority, then the Service Provider is duty mandate to refund the amount and therefore, they have no option to reject the claim of the writ petitioners for refund of the amount collected.

8. The learned counsel for the petitioners concluded by stating that the writ petitions are maintainable, in view of the judgment in the case of Vanathi Exports (Cited supra) and in view of the Detention certificate issued, the second respondent has to enforce the said Detention certificate by initiating appropriate action against the third respondent for refund of the amount collected from the petitioners. Thus, the writ petitions are to be allowed.

9. The learned counsel appearing on behalf of the third respondent vociferously objected the contentions raised on behalf of the writ petitioner by stating that the writ petitions on hand are not maintainable. The judgment cited by the learned counsel for the petitioners is of no avail, in view of the fact that the facts are distinguishable and unconnected. Thus, the very judgment in the case of Vanathi Exports (Cited supra) cannot be relied upon by the petitioners for the purpose of granting the relief regarding refund of the amount collected by the third respondent from the writ petitioners. It is further contended that the scheme of the Act as well as the Regulations issued by way of notification in exercise of the powers conferred under the Act, the rights of the parties are provided. However, those rights are exercisable with reference to the

disputes raised and such disputes are to be adjudicated for arriving a conclusion. At the outset, it is contended that disputed facts and circumstances cannot be adjudicated in a writ proceedings and the Detention Certificate is issued by the Customs authorities based on certain facts and circumstances and such certificate would not provide cause for the writ petitioners to claim refund without any further adjudication. Further adjudication is required, in view of the disputed facts regarding the claim of the importer or exporter. Thus, the writ petitions are not maintainable and by citing the judgment in the case of Vanathi Exports (cited supra), the petitioners cannot contend that the writ petitions are to be maintained and the relief as such sought for is to be granted.

10. The learned counsel for the third respondent solicited the attention of this Court with reference to Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009 and contended that the Regulation indicates 'shall not charge any rent or demurrage on the goods seized'. Thus, the Regulation itself speaks about rent or demurrage and in the present cases, beyond rent and damage, the freight charges, transportation charges and other charges are also involved and therefore, complete adjudication is essential for the purpose of arriving a conclusion. As far as the Detention Certificate is concerned, the amount of refund or the disputed facts are not adjudicated and therefore, the mere Detention certificate would not provide a cause for the petitioners to maintain the writ petitions and therefore, the petitioners cannot adjudicate the disputed facts and in the event of any such grievances, it is for the petitioners to approach the competent Civil Court of law for resolving the disputes with reference to the documents, terms and conditions as well as the contractual obligation between the parties i.e., the petitioners and the third respondent in the present cases.

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.

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)(l), falls under the responsibilities of Customs Cargo Service Provider. Thus, the responsibility of the Customs Cargo Service Provider under Regulation 6(1)(l) 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)(l) 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 requirements.'

16. Therefore, the certificate issued under Regulation 6(1) (l) is to be construed for the purpose of eligibility for claiming refund pursuant to the conditions stipulated in

Regulation 6(1)(l). 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)(l) of the Handling of Cargo in Customs Areas Regulations, 2009.

17. The next question would be, whether issuance of a certificate would provide a cause for seeking the relief of refund directly under Article 226 of the Constitution of India.

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)(l) 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.

19. Eligibility to claim refund is one aspect and right for such refund is another aspect. In between the eligibility and right, an adjudication is warranted with reference to any dispute exists between the parties based on the agreement or contractual obligations. Thus, Detention Certificate is an eligibility certificate, confirming the eligibility of an importer or exporter to claim refund under Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009. However, mere eligibility would not confer any right to claim refund in the absence of adjudication of disputes or compliance of the contractual obligations between the parties. In other words, the Detention certificate perse would not confer any right on the petitioners to seek refund directly from the Customs Cargo Service Provider. The terms and conditions, contractual obligations between the petitioners and the Customs Cargo Service Provider are unconnected with the Customs authorities of the 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)(l) 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)(l) of the Handling of Cargo in Customs Areas Regulations, 2009.

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)(l) 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)(l) 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 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.

29. In result, this Court could able to form an opinion that the writ petitioners have not established any right for grant of the relief as such sought for in these writ petitions and consequently, all the writ petitions are dismissed. No costs.

s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

Kak
To
1.The Secretary,
Union of India,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House, 60, Rajaji Salai,
Chennai - 600 001.

+3 Ccs to Mr. Rajnish Pathiyil, SCGSC sr 29077, 29076, 29075
+1 CC to Mr.T.L.Thirumalaisamy, Advocate sr CGSC sr 29213.
+1 CC to Mr.A.P.Srinivas, Advocate sr 28864.

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GPL(CO)
SP(23/07/2021)