IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.23720 of 2014

M/s. Indian Potash Limited
Ambal Buildings, II Floor
No.727 Anna Salai
Chennai 600 006
Rep. by its Power of Attorney Agent
S. Mithra Srikanth
S/o. K.R. Shanmugam
M/s. Express Clearing Agency
No.3, Jaffar Syrang Road, Chennai 600 001. ...Petitioner

Vs.

1. Chennai Port Trust,
Rep. by its Chairman, Chennai 600 001.

2. The Traffic Manager,
Chennai Port Trust, Chennai 600 001.

3. The Commissioner of Customs (Sea Imports)
Office of the Commissioner of Customs,
Customs House, New No.60, Rajaji Salai
Chennai 600 001.

4. The Deputy Commissioner of Customs
Grade II, Customs House,
New No.60, Rajaji Salai,
Chennai 600 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus or any other appropriate writ, Order or direction in the nature of Writ of Mandamus directing the Respondents 1 and 2 herein to forthwith refund the sum of Rs.25,85,403/- paid by the petitioner on 05.08.2014 as Demurrage Charges for clearance of Ammonium Sulphate in Bulk covered under the vessel M.V. Kenanga for the period 26.07.2014 to 05.08.2014 in respect of Import Application No. IA/14/1399 dated 12.07.2014.

For Petitioner : Mr.A.R.L. Sundaresan, Senior Counsel
for M/s. A.L. Ganthimathi.

For R1 & R2 : Mr. Niranjan Rajagopalan
Government Advocate.

For R3 & R4 : Ms. Anu Ganesan
Junior Panel Counsel.

ORDER

The relief sought for in the present writ petition is to direct the Respondents 1 and 2 to forthwith refund a sum of Rs.25,85,403/- paid by the petitioner on 05.08.2014 as demurrage charges for the clearance of Ammonium Sulphate in Bulk covered under the vessel M.V. Kenanga for the period 26.07.2014 to 05.08.2014 in respect of Import Application No. IA/14/1399 dated 12.07.2014.

2. The petitioner is a company incorporated under the Companies Act as a Joint Sector Company under the administrative control of the Department of Fertilizers, Government of India, with National and State Cooperative Federation and Public Sector Undertaking holding more than 90% of the equity in the petitioner company.

3. The grievances, in short, as put forth by the learned Senior Counsel appearing on behalf of the petitioner is that, the petitioner imported Ammonium Sulphate to be supplied to various parts of several states in the Country. The goods imported were detained by the Customs authorities without any valid reason. The petitioner was taking effective steps to take delivery of the goods, but was not allowed to clear the cargo by the Customs authorities. The Customs Authorities had sent a letter to the Ministry of Agriculture to issue necessary clarifications with reference to the production of certificate from the Regional Fertilizer Control Laboratory (RFCL). The Ministry of Agriculture, Government of India, vide letter dated 01.08.2012, issued the following clarifications.

> "Kindly refer to your letter No.247/2014-15-Gr.2 dated 23.07.2014 on the subject mentioned above. Under Clause 30 of Fertilizer Control Order, 1985 (FCO), the laboratory is required to analyse the sample and forward the analysis report within 30 days from the date of receipt of sample in the laboratory.
>
> 2. As per our information, our Ministry has not issued any directive to the Custom that they should not release the fertilizer from the port till such time, the analysis report is received by the importer from the laboratory.
>
> 3. The Clause 19 of FCO states that no person shall himself by any other person on his behalf manufacture/import for sale, sell, offer

for sale, stock or exhibit for sale or distribute any fertilizer which is not of prescribed standard. In case of the contravention of this Clause, the administrative section is taken by the Competent Authority of State Government under Clause 31 of FCO and legal action is also taken under Section 7 of Essential Commodities Act, 1955."

4. Relying on the said letter, the goods imported i.e., Ammonium Sulphate in bulk were released by the Customs authorities. Thereafter, the 1st respondent/Chennai Port Trust claimed demurrage charges. In view of the fact that Ammonium Sulphate in bulk were detained by the Customs Authorities and kept under the custody of the 1st respondent/Chennai Port Trust, the demurrage charges of Rs.25,85,403/- was imposed.

5. The learned Senior Counsel for the petitioner contended that the entire demurrage charges, as demanded, was deposited in order to clear the Ammonium Sulphate in bulk covered under the vessel M.V. Kenanga and thereafter, they have raised a dispute with reference to such demand of the demurrage charges. It is contended that the importer is not at fault. The certificate from RFCL is not required for the purpose of releasing Ammonium Sulphate as such. The certificate is required only at the time of supply of Ammonium sulphate to the dealers or to any other person. Thus, the action taken by the respondents in detaining the goods is not in consonance with the provisions of the Act. In view of the fact that the petitioner/importer was not at fault, they are not liable to pay the demurrage charges. Thus, the demurrage charges already paid by the petitioner is to to be refunded.

6. The learned counsel appearing on behalf of the first respondent, Chennai Port Trust, disputed the said contention by stating that the Port Trust had acted in accordance with the Rules. As per Rule 9, the petitioner is entitled to retain the goods at free of cost upto 45 days. However, in the present case, only if the petitioner/importer is able to provide the certificate from the competent authorities, the further delay shall be condoned by the Port Trust based on Rule-9 and the certificate is to be issued by the Customs Authorities stating that the delay is not on account of the fault on the side of the importer. Therefore, the certificate sought for by the Port Trust is no way connected with the certificate demanded by the Customs authorities, i.e., from RFCL.

7. The learned counsel for the first respondent made a submission that, in view of the fact that the petitioner has not produced any such certificate and as per the rules, they have imposed the demurrage charges and therefore, there is no

infirmity in respect of claiming of the demurrage charges from the petitioner.

8. This Court is of the considered opinion that the goods were admittedly detained by the Customs Authorities and were lying in the Chennai Port Trust. The Customs Authorities had sent a letter to the Ministry of Agriculture to issue necessary clarifications with reference to the production of certificate from the Regional Fertilizer Control Laboratory (RFCL) and the said clarifications were issued by the Ministry of Agriculture in proceedings No.17-1/2014-CFTI, dated 01.08.2014, to the Commissioner of Customs (Sea imports). Thereafter, the Ammonium Sulphate in bulk, detained by the Customs Authorities, were released. Therefore, the initial action of the Customs Authorities demanding the certificate from RFCL was incorrect and based on the subsequent clarifications issued by the Ministry of Agriculture, the Customs Authorities released the goods. Therefore, the petitioner cannot be faulted and the detention of the goods was made by the Customs Authorities on account of certain misconception, for which the petitioner cannot be penalised.

9. As far as the 1st respondent Port Trust is concerned, they are not connected with the detention of Ammoniam Sulphate in bulk or release of the said goods. The only ground on which they imposed the demurrage charges is that, the goods were lying under the custody of the 1st respondent and the petitioner failed to produce necessary certificate from the competent Customs Authorities.

10. This Court is of the considered opinion that because of certain procedural delays, the petitioner was penalised. The petitioner was not at fault, in view of the fact that the detention made by the Customs Authorities was found to be wrong, which was subsequently clarified by the Ministry of Agriculture. As far as the 1st respondent is concerned, they had acted as per the rules and imposed the demurrage charges on the petitioner, as the Customs authorities, who committed certain mistakes, had not issued any certificate as required under Rule 9 of the Port Trust Rules. In these circumstances, in the interest of justice, this Court is of the opinion that the petitioner need not be penalised and they have not committed any fault or irregularity at any point of time and the procedural delays should not affect the rights of an importer and therefore, this Court is inclined to consider this writ petition.

11. Accordingly, the respondents 1 and 2 are directed to refund a sum or Rs.25,85,403/- paid by the petitioner on 05.08.2014 as demurrage charges for clearance of Ammonium Sulphate in bulk covered under the vessel M.V. Kenanga for the period of 26.07.2014 to 05.08.2014 in respect of Import

Application No. IA/14/1399 dated 12.07.2014, within a period of eight(8) weeks from the date of receipt of a copy of this order.

12. With this direction, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Chairman,
Chennai Port Trust,
Chennai 600 001.

2. The Traffic Manager,
Chennai Port Trust, Chennai 600 001.

3. The Commissioner of Customs (Sea Imports)
Office of the Commissioner of Customs,
Customs House, New No.60, Rajaji Salai
Chennai 600 001.

4. The Deputy Commissioner of Customs
Grade II, Customs House,
New No.60, Rajaji Salai,
Chennai 600 001.

+1cc to Mr.A.L.Gandhimathi, Advocate, S.R.No.36598
+1cc to Mr.Niranjan Rajagopalan, Advocate, S.R.No.37203

W.P.No.23720 of 2014

PM(CO)
SB(24/08/2021)