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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.07.2021

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.26838 of 2018

M/s.Isha Exim,
P-586 Block N, New Alipore,
Kolkata - 700 053, Rep.by its
Proprietor Shri Prabal Kumar Kundu

...Petitioner

Vs

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

2.The Additional Director General,
Directorate of Revenue Intelligence,
No.27, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

3.The Deputy Commissioner of Customs,
Group - II, Chennai II Commissionerate Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

4.The Manager, APL (India) Private Ltd.,
New No.8, Old No.15, Whannels Road, Egmore,
Chennai - 600 008.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the respondents, to cause refund of an amount of Rs.20,57,526.72 collected by M/s.APL India Pvt.Ltd., Chennai, as container Detention Charges, in blatant violation of the Detention / Demurrage Waiver Certificate dated 27.10.2017, issued by the 3rd respondent in F.No.S49/340/2017-Gr.1 in terms of Regulation 6 (1) (1) of Handling of Cargo in Customs Areas Regulations 2009.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mrs. R.Hemalatha,
Senior Panel Counsel for R1 & 3
Mr.V.Sundareswaran,
Senior Panel Counsel for R2
Not Ready in Notice for R4.



O R D E R

The relief sought for in the present writ petition is directing the respondents to cause refund of an amount of Rs.20,57,526.72 collected by M/s. APL India Pvt.Ltd., Chennai, as Container Detention Charges, in blatant violation of the Detention / Demurrage Waiver Certificate dated 27.10.2017, issued by the 3rd respondent in F.No.S49/340/2017-Gr.1 in terms of Regulation 6 (1) (1) of Handling of Cargo in Customs Areas Regulation 2009.

2. The petitioner is involved in the business of imports more particularly import of betelnuts, from overseas. The petitioner states that for the purpose of the said imports the petitioner is favoured with an Import Export Code No.0214014525 issued by Office of the Zonal Director General of Foreign Trade, Calcutta. The petitioner states that during the course of his business, imported a quantity of 27,000 kgs (net weight) ; of unflavoured supari from M/s. PT.V J&J INTERNASIONAL, INDONESIA, vide Commercial Invoice No.056/VJJI/BN/07/2017 dated 20.07.2017 for an amount of USD 48600. The said consignment was shipped vide Bill of Lading No.APLU078459111 by the said supplier. The import was accompanied by a Certificate of Origin, issued under the ASEAN - India Free Trade Area, Preferential Tariff, dated 26.07.2017, for import of the said goods, as well as phytosanitary certificate issued by the Ministry of Agriculture, Agency for Agriculture Quarantine, Republic of Indonesia No.0945982 dated 28.07.2017.

3. The petitioner states that on arrival of goods at Chennai Port, he filed Bill of Entry dated 02.08.2017 for clearance of the goods. The Bill of Entry was assessed to duty and out of charge was accorded in respect of the said Bill of Entry under CTH 21069030, as "unflavoured supari". However, for reasons unknown to the petitioner and best known to the respondents, despite according out of charge, by the proper Officer of Customs, the goods have not been permitted to be cleared for home consumption. The petitioner had paid applicable duties and the Officers of the Directorate of Revenue Intelligence, attached to the 2nd respondent on the basis of information and intelligence, that the goods imported by the petitioner, were misclassified, conducted examination of goods imported by the petitioners and subsequently the goods were detained. The imported goods by the petitioner are perishable in nature and also for human consumption, besides requiring storage in a refrigerated container considering the perishable nature of the goods, despite such a position, the goods were detained by the Officer of the Directorate of Revenue Intelligence.



4. However, pursuant to the orders of this Court in W.P.No.22114 of 2017 dated 12.09.2017, the goods were released.

5. As far as the present writ petition is concerned, the learned counsel for the petitioner reiterated that the petitioner with great difficulty got the goods released and thereafter initiated steps for refund of the deposited amount. Pursuant to the directions of the High Court, the petitioner has furnished Provisional Duty Bond and Test Bond as per the assessable value. Subsequently, the Deputy Commissioner of Customs in proceedings dated 27.10.2017 issued Detention / Demurrage Waiver Certificate, under Rule 6 (1) (1) of Handling of Cargo in Customs Area Regulations, 2009.

6. The learned counsel for the petitioner reiterated that once a Detention Certificate is issued under the provisions of the Regulations, then the 4th respondent has no option but to honour the said Detention Certificate by making refund of the amount deposited by the petitioner. In the present case, despite the Detention Certificate, no action has been taken by the 4th respondent / Service Provider. The petitioner submitted a representation on 15.11.2017 and there was no response from the 4th respondent. Finally, he approached the Competent Customs Authority including the Deputy Commissioner of Customs, to initiate actions under the provisions of Regulations.

7. The learned counsel for the petitioner made a submission that under Regulation 5 (5), the Service Provider undertakes to comply with the provisions and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder; Once such an undertaking is given by the Service Provider and not complying with the same, then the Authorities are bound to initiate action against the Service Provider and in the present case, no action has been taken by the Authorities.

8. The petitioner referred Regulation 6 (1) (1) also, under the said Section, 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];

9. 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



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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)(l) of the 2018 Regulations and thus facilitate clearance of the goods immediately. Respondent No.4 has only collaterally questioned the effectiveness of such a 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



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validly issued as it can be traced to Regulation 10(1)(1) 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)(1) 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)(1). 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 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



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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 logical conclusion within a period of three months from the date of receipt of a copy of this judgment and order. On completion 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."

10. 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.

11. 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."

12. 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., Thiruvottiyur 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."

13. 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 confiscated 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.

14. 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.

15. This Court is of the considered opinion that a thin distinction is to be drawn in between the Detention certificate as well as the relief granted by various Courts with reference to the Detention certificate issued by the Customs Department. The in-between possible or existing 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.

16. Before resolving the disputes between the Customs Cargo Service Provider and the exporter or importer, the Statutory Detention Certificate issued by the Customs Authorities cannot be acted upon. There may be some disputes regarding collection of service charges or otherwise between the Customs Cargo service Providers and the importer or exporter. Thus, High Court cannot directly issue a direction to release the goods or refund the deposit before adjudication of any of these disputes between the Service Provider and importer or exporter and such an adjudication cannot be exercised in writ proceedings. While granting the relief, the grievances of both the parties are to be considered by the Courts. Admittedly the Detention Certificate is issued by the Customs Authorities and the Customs Authorities are not connected with the contract between the service provider and the importer. Thus, the Detention Certificate confers a right to claim the relief of refund or release of goods. However, the right is to be exercised in the manner known to law and after resolving the disputes if any prevails between the service provider and the importer or exporter.



17. The Detention Certificate is issued in conformity with the Rule 6 (1) (1) - handling or Cargo in Customs Areas Regulations, 2009. The certificate provides a right to the holder to claim release of the imported goods or to seek refund of deposit. The terms and conditions of the contract and the dispute if any prevails between the service provider and the importer are not adjudicated in any of the judgments cited by the petitioners. Such disputes provide a cause for either of the parties to resolve the same before releasing the goods or refund of deposit amount. Thus, the terms and conditions of the contract between the Service Provider and the importer is also an important factor, which is to be considered while granting relief in writ petition, merely based on the Detention Certificate issued by the Customs Authorities.

18. 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 made.

19. 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 these judgments relied upon 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. 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.

20. The learned Senior Panel Counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the writ petitioner by stating that the Authorities considered the classification of the impugned goods. However, the Customs Authorities issued the Detention Certificate based on the orders of this Court dated 12.09.2017 passed in W.P.No.22114 of 2017. The learned Senior Panel Counsel made a submission that based on the regulations, the Customs Authorities issued the Detention Certificate and the notice pursuant to the orders of the High Court in writ petition, Detention Certificate was issued. Therefore, they have implemented the order and the recovery of refund is to be made by the 4th respondent, who is the Service Provider. The 4th



respondent is APL India Private Limited and private person. Thus, the disputes between the parties are to be adjudicated and the Customs Authorities cannot involve in any of such disputes between the parties based on the terms and conditions of the contract. Therefore, the relief as such sought for are not entertainable and Customs Authorities have granted the Detention Certificate as per the Regulations and it is for the petitioner to resolve the disputes with the 4th respondent and claim refund before the Forum concerned in the manner prescribed under law.

21. 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.

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



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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 requirements.'

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.

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.



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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.

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)(1) 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,



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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.

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.



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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."

22. The undertaking clause in Regulation 5 (5) is to ensure that the service providers implement the provisions of the Act and the Rules as well as the consequent orders issued by the Authorities. However, this Court has held in the aforementioned paragraphs that Detention Certificate is to be construed as Eligibility Certificate for the purpose of claiming refund and the refund is to be granted after resolving the disputes, if any exist between the service providers and importers or exporters. The contractual relationship between the service providers, who is a private person and the petitioner cannot be resolved under writ jurisdiction by the High Court. Thus, based on the Detention Certificate issued by the Customs Authorities, the petitioner has to adjudicate the same before the Competent Forum or claiming recovery of refund.



23. This being the nature of the Detention Certificate issued under the Regulations, this Court is of an opinion that mere issuance of Detention Certificate would not confer any right to get refund directly from service provider, who is a private party. The contract between the service provider and the importer and exporter are to be considered and terms and conditions are to be looked into with reference to the facts and an adjudication on the factual aspects, became imminent, and such an exercise cannot be done in a writ proceedings.

24. Thus, the relief as such sought for cannot be granted and the petitioner is at liberty to initiate appropriate action and claim refund before the appropriate forum and by following the procedures as contemplated. With these observations, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

Pns

To

- 1.The Commissioner of Customs,
Chennai II Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.
- 2.The Additional Director General,
Directorate of Revenue Intelligence,
No.27, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.
- 3.The Deputy Commissioner of Customs,
Group - II, Chennai II Commissionerate Custom House,
No.60, Rajaji Salai, Chennai - 600 001.
- 4.The Manager, APL (India) Private Ltd.,
New No.8, Old No.15, Whannels Road, Egmore,
Chennai - 600 008.

+1cc to Mr.R.Hemalatha, Advocate SR.No. 30624
+1cc to Mr.V.Sundareswaran, Advocate SR.No. 30759

W.P.No.26838 of 2018

PCH(CO)
A.SK(06.08.2021)