IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.Nos.33142 & 33146 of 2018
and
W.M.P.Nos.38443 & 38451 of 2018

Hyundai Merchant Marine India Pvt. Ltd.,
A company incorporated under the Companies Act of 1956
having registered office at
No.318, Old No.809,
Poonamallee High Road,
Ega Trade Centre, 3rd Floor,
Kilpauk, Chennai - 600 010. ... Petitioner in both writ petitions

Vs.

1.Union of India
Through the Department of Revenue & Central Board of Excise and Customs,
Customs House,
60, Rajaji Salai,
Chennai - 600 001.

2.Gateway Distriparks (South) Pvt. Ltd.,
Container Freight Station No.200,
Ponneri High Road,
New Manali, Chennai - 600 103.

3.Galaxy Container Terminals Pvt. Ltd.,
No.28, GNT Road,
Puzal Junction,
Kathirvedu Village,
Chennai.

4.Sanco Trans Ltd.,
592, Express High Road,
Chennai - 600 057.

5.Thiru Rani Logistics Pvt. Ltd.,
Container Freight Station No.1,
New North 200 Feet Road,
Maduvaram, Chennai - 600 010.

6.A.S.Shipping Agencies Pvt. Ltd.,
Container Freight Station,
Numbal Village,
Chennai - 600 077.

7.Sattva Hi-tech and Conware Pvt. Ltd.
Container Freight Station,
126/A/Ponneri High Road,
Chennai - 600 103.

8.Sical Multimodal and Rail Transport Ltd.,
Container Freight Station No.144,
Ponneri High Road,
Vallur, NCPTS,
Chennai - 600 120.

9.DRI Logistic (P) Ltd.,
Container Freight Station,
Ponneri High Road,
Vallur,
Chennai - 600 012

10.Viking Warehousing Container Freight Station,
No.5, Ponniamman,
GNT Road, Moolakadai,
Meduan, Chennai - 660 110.

11.Office of the Commissioner of Customs, Chennai-IV,
Customs House,
60, Rajaji Salai,
Chennai - 600 001.

12.Directorate of Revenue Intelligence,
No.27, Adarsh Towers,
Lakshmi Nagar,
GN Chetty Road,
T.Nagar, Chennai - 600 017.

13.Office of Principal Commissioner of Customs,
Docks Intelligence Unit,
Chennai III, Customs House,
Chennai - 600 001.

14.Special Investigation and Intelligence Branch,
Office of Commissioner of Custom
Chennai III Customs House,
60, Rajaji Salai,
Chennai - 600 001 ... Respondents in both writ petitions

Prayer in W.P.No.33142 of 2018 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to forthwith release and return to the petitioner's container bearing Nos.CAIU8855792, HDMU2670071, TCKU3075154, HDMU6414421, HDMU6655481, DFSU2901995, FCIU4086804, HDMU6413359, HDMU6654490, FCIU8968626, TCNU7316608, INKU6369220, HDMU6891698, HDMU6824220, DRYU9187739, TCNU6678351,

TEMU3343966, SEGU1595643, BEAU2019384, CNSU2018775 and TRHU2460257 and pay such compensation towards the container idling charges as may seem appropriate to this Honourable Court upto the date of release of the said containers.

Prayer in W.P.No.33146 of 2018 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring the conduct of the respondents detaining of petitioner's container bearing Nos.CAIU8855792, HDMU2670071, TCKU3075154, HDMU6414421, HDMU6655481, DFSU2901995, FCIU4086804, HDMU6413359, HDMU6654490, FCIU8968626, TCNU7316608, INKU6369220, HDMU6891698, HDMU6824220, DRYU9187739, TCNU6678351, TEMU3343966, SEGU1595643, BEAU2019384, CNSU2018775 and TRHU2460257 as contrary to the provisions of the Customs Act, 1962 and hence illegal and further hold that the respondents are not entitled to claim or demand any charges from the petitioner with respect to the aforesaid containers.

For Petitioner	:	Mr.Mahesh Kumar in both writ petitions
For R1, R11 to R14	:	Mrs.R.Hemalatha Senior Standing Counsel in both writ petitions
For R2, R3, R4 & R10	:	Dr.R.Sunitha Sundar in both writ petitions
For R6	:	Mr.S.Santhosh in both writ petitions
For R8	:	Mr.S.Gopinathan in both writ petitions
For R5 & R7	:	No appearance in both writ petitions
R9	:	Not ready in notice in both writ petitions

C O M M O N   O R D E R

W.P.No.33142 of 2018 :

The relief sought for in W.P.No.33142 of 2018 is to direct the respondent to forthwith release and return the petitioner's containers bearing Nos.CAIU8855792, HDMU2670071, TCKU3075154, HDMU6414421, HDMU6655481, DFSU2901995, FCIU4086804, HDMU6413359, HDMU6654490, FCIU8968626, TCNU7316608, INKU6369220, HDMU6891698, HDMU6824220, DRYU9187739, TCNU6678351, TEMU3343966, SEGU1595643, BEAU2019384, CNSU2018775 and TRHU2460257 and pay such compensation towards the container idling charges.

2.The petitioner is a company incorporated under the Companies Act, 1956. The petitioner states that they are the agent of Hyundai Merchant Marine Company Limited, Seoul (Korea), which carries on business as container owners and carriers at Korea. The petitioner is entrusted with the obligation to receive and return the containers to the Principal company after the discharge of the cargo.

3.The prime contention of the petitioner is that, certain containers imported are illegally detained by the respondents, and in spite of their request, the respondents have not taken any steps to release the containers as specified. Thus, the petitioner is constrained to move the present writ petition.

4.The learned counsel appearing on behalf of the Customs Cargo Service Providers made a submission that the writ petition itself is not maintainable. Various procedures are contemplated for the purpose of release of containers imported and therefore, the petitioner has to produce all relevant documents and comply with the conditions stipulated for release of the containers as sought for in the present writ petition. It is contended that, on various reasons, the containers are lying under the control of the respondents 2 to 14. If at all any dispute prevails with the Customs Department, the same is also to be sorted out and all necessary actions are to be taken in this regard. This apart, such disputes are of civil nature and the Customs Cargo Service Provider is a private company and with reference to the agreement between the petitioner and the Customs Cargo Service Provider, the disputes are to be resolved before the competent forum and no writ petition can be entertained in this regard.

5.This Court is of the considered opinion that imports and exports are to be done by following the procedures contemplated and by complying with the mandatory requirements. The relief as such sought for in the present writ petition to direct the respondents to forthwith release and return the containers, itself is absurd. Such a relief requires adjudication in view of the fact that there are statutory requirements and compliance of the terms and conditions with the Customs Cargo Service Provider and other aspects of the matter. Without adjudicating all those factors, the High Court cannot issue a writ granting the relief in the writ petition filed. When disputed facts are raised between the parties, the same cannot be entertained and the High Court cannot conduct a roving enquiry with reference to the dispute, which is to be resolved with reference to the documents and evidence produced before the competent authorities.

6.This being the principles to be followed, the relief as such sought for in the present writ petition cannot be granted and the petitioner is at liberty to approach the competent authority of the respondents or before the competent forum for the purpose of adjudication of disputes and redressal of grievances.

7.With these observations, the writ petition in W.P.No.33142 of 2018 stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

W.P.No.33146 of 2018 :

8.This writ petition is filed by the very same petitioner, namely, Hyundai Merchant Marine India Private Limited, and the relief sought for is to declare the conduct of the respondents detaining the petitioner's containers, as illegal.

9.In view of the observations made in W.P.No.33142 of 2018, no further consideration is required to the grounds raised. The petitioner has to comply with the statutory requirements, including the payment of charges to be paid as per the terms and conditions of the contract or under the Statute. However, for grant of any such declaration as sought for, elaborate adjudication is required. The High Court cannot entertain any such adjudication which is to be done with reference to the documents and evidence, and therefore, the petitioner is at liberty to approach the competent authorities for adjudication of issues or before the competent forum in the manner known to law.

10.With these observations, the writ petition in W.P.No.33146 of 2018 stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mkn

To

1.The Department of Revenue &
Central Board of Excise and Customs,
Union of India, Customs House,
60, Rajaji Salai,
Chennai - 600 001.

2.The Office of the Commissioner of Customs, Chennai-IV,
Customs House,
60, Rajaji Salai,
Chennai - 600 001.

3.The Directorate of Revenue Intelligence,
No.27, Adarsh Towers,
Lakshmi Nagar,
GN Chetty Road,
T.Nagar,
Chennai - 600 017.

4.The Office of Principal Commissioner of Customs,
Docks Intelligence Unit,
Chennai III, Customs House,
Chennai - 600 001.

5.The Special Investigation and Intelligence Branch,
Office of Commissioner of Custom
Chennai III Customs House,
60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.S.Gopinathan, Advocate, S.R.No. 31032
+2cc to Mr.R.Hemalatha, Advocate, S.R.No. 31115

W.P.Nos.33142 & 33146 of 2018

RSV(CO)
GN(03/08/2021)