IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.Nos.33111 & 33118 of 2018
and
W.M.P.Nos.38403 & 38409 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,
Chennai - 600 001.

2.All Cargo Logistic Ltd.,
913, Thirvottiyur High Road,
Ernavoor,
Chennai - 600 066.

3.Office of Assistant Commissioner of Customs,
Chennai IV, Customs 60,
Rajaji Salai, Customs House,
Chennai - 600 001.

4.Directorate of Revenue Intelligence,
Chennai Zonal Unit,
Lakshmi Colony,
T.Nagar,
Chennai, Tamil Nadu - 600 017.

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

6.Docks Intelligence Unit,
Chennai III, Customs House,
Chennai - 600 001. ... Respondents
in both writ petitions

Prayer in W.P.No.33111 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 containers bearing Nos. HDMU6327420, UETU5021728, TCNU7636319, HDMU6292431, HDMU6349120, TRHU3311350 and HDMU6977209 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.33118 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. HDMU6327420, UETU5021728, TCNU7636319, HDMU6292431, HDMU6349120, TRHU3311350 and HDMU6977209 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, R3 to R6 : Mrs.R.Hemalatha
Senior Standing Counsel
in both writ petitions

For R2 : Mrs.Pushpa Menon
in both writ petitions

C O M M O N O R D E R

W.P.No.33111 of 2018 :

The relief sought for in W.P.No.33111 of 2018 is to direct the respondent to forthwith release and return the petitioner's containers bearing Nos.HDMU6327420, UETU5021728, TCNU7636319, HDMU6292431, HDMU6349120, TRHU3311350 and HDMU6977209 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 2nd respondent/Customs Cargo Service Provider 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 the 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 2nd respondent. 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 2nd respondent/Customs Cargo Service Provider is a private company and with reference to the agreement between the petitioner and the 2nd respondent, 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.33111 of 2018 stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

W.P.No.33118 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 respondent detaining the petitioner's containers, as illegal.

9.In view of the observations made in W.P.No.33111 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.33118 of 2018 stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

mkn

To

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

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

3.The Directorate of Revenue Intelligence,
Chennai Zonal Unit,
Lakshmi Colony,
T.Nagar,
Chennai, Tamil Nadu - 600 017.

4.The Special Intelligence and Investigating Branch, Custom
Office of Commissioner of Custom,
Chennai III Customs House 60,
Rajaji Salai,
Chennai – 600 001.

5.The Docks Intelligence Unit,
Chennai III, Customs House,
Chennai – 600 001.

+2cc to Mrs.R.Hemalatha, Advocate SR.No.31117

W.P.Nos.33111 & 33118 of 2018

PCH(CO)
GMY(02/08/2021)