BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.01.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.12941 of 2020

M/s.MGG Trading Pvt. Ltd.,
Represented by its Director,
Behin,
No.12/1, Sri Puram,
Tirunelveli - 627 001. ... Petitioner

Vs.

1. The Additional Commissioner of Customs,
Custom House,
New Harbour House,
Tuticorin - 628 004.

2. M/s.Prompt Terminals Pvt. Ltd.,
Rep. by its Director,
No.24/3, Ayyanadaippu Village,
Madurai Byepass Road,
Tuticorin - 627 001.
(R-2 is impleaded vide order dated 16.10.20 in W.M.P.(MD)No.12301 of 2020) ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to issue Detention Certificate in terms of Regulation 6 (1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009 recommending waiver of demurrage and detention charges and also direct the respondent to ensure that the goods are permitted to be re-exported without charging any demurrage or container detention charges.

For Petitioner	:	Mr.Hari Radhakrishnan
For R-1	:	Mr.B.Vijay Karthikeyan, Senior Panel Counsel.
For R-2	:	Mr.N.Manickam

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the first respondent and the learned counsel appearing for the second respondent.

2. The petitioner had imported certain goods and filed Bill of Entry No.4808192 dated 07.09.2019. The petitioner had declared to the first respondent that they are importing Aluminium Scrap. It

turned out during inspection that the consignment also contained e-waste. Therefore, the authorities seized the goods on 24.09.2019 and adjudication proceedings were initiated. On 08.11.2019, the first respondent passed an order directing confiscation of the goods. Aggrieved by the same, the petitioner filed appeal before the Commissioner of Customs(Appeals), Coimbatore. Vide order dated 19.02.2020, the appellate authority directed the petitioner herein to re-export the e-waste that was imported along with Aluminium Scrap.

3. The petitioner's consignment was lying with the second respondent. The petitioner requested the second respondent to permit the petitioner to comply with the order dated 19.02.2020 passed by the appellate authority. The second respondent made it clear that unless the detention and demurrage charges are paid as per their calculation, the goods would not be released. Therefore, this writ petition came to be filed for directing the Customs authority to issue detention certificate.

4. The petitioner wanted waiver of demurrage and detention charges. Since the goods were lying with the second respondent, the contest virtually became one between the petitioner and the second respondent.

5. The learned Standing counsel appearing for the first respondent filed counter affidavit through the learned Standing counsel and it was clarified that there is no provision for issuing detention certificate as sought for and that the seizure mahazar and the Order-in-Original of confiscation are sufficient for evidencing that the cargo is seized by the first respondent.

6. The learned counsel appearing for the second respondent submitted that they are spending huge sum of money for maintaining the container freight station. The second respondent has been keeping the goods of the petitioner since September 2019 and that therefore, the petitioner is obliged to pay appropriate demurrage charges to be computed on a grading scale. According to the learned counsel appearing for the second respondent, even a conservative calculation indicates that the demurrage charges and detention charges would run into a few million rupees.

7. Now the question that arises for consideration is whether the second respondent was justified in insisting on payment of demurrage charges when the petitioner approaches them for clearance of the goods. The learned counsel appearing for the petitioner drew my attention to the decision reported in (2018) 13 G.S.T.L. 273 (Mad.) (Isha Exim V. A.D.G.Directorate of Revenue Intelligence, Chennai). Paragraph Nos.15 and 16 of the said order read as follows:-

" The Learned Counsel appearing for the

> petitioner submitted that since the goods were detained at the instance of the D.R.I., they are entitled for Demurrage and Detention Certificate for waiver of the warehousing and demurrages from the date of detention till the date of release of the goods. It is pointed out that, on an earlier occasion, the petitioner has approached this Court, by way of W.P.No.22114 of 2017, seeking for release of the same product, which was imported vide Bill of Entry No.2696680, dated 02.08.2017 and detained vide Mahazar, dated 10.08.2017. The said writ petition was disposed of, by this Court, by order, dated 12.09.2017, directing the Authority to provisionally assess the Bill of Entry and release the goods and a direction was issued to the Commissioner of Customs to issue Detention Certificate. It appears that, though the Detention and Demurrage Certificate was issued, yet, the Steamer Agent did not honour the certificate and the petitioner has paid demurrages and container detention charges, without prejudice to their rights to contest the same in other legal proceedings.
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> 16. It is not known, as to why, action was not initiated against the Steamer Agent for not complying with the order qua certificate passed/issued by the Customs Department, and therefore, this Court is inclined to observe that the Customs Department should also ensure that whether the Detention Certificate issued for waiver of the warehousing and demurrages has been complied with in letter and spirit and should not be reduced into a paper order. In the decision rendered by the Hon'ble Division Bench of High Court of Delhi, in the case of Worldline Tradex Pvt. Ltd.(supra), it was held that D.R.I. was responsible to bear the charges."

8. The learned counsel appearing for the second respondent would contend that the said case law may not have any relevance to the facts on hand because in the reported decision, the Customs authority had issued Waiver Certificate whereas in the case on hand, no such Waiver Certificate has been produced.

9. Now the question is not whether the petitioner has been issued with any Waiver Certificate. The question is whether the petitioner is liable to pay demurrage and detention charges. The learned counsel appearing for the petitioner draws my attention to the Notification No.26/2009-Cus (NT), dated 17.03.2009. Clause No.6 dealing with the responsibilities of Customs Cargo Service provider

states that the Customs Cargo Service Provider shall not charge any rent or demurrage on the goods seized or detained or confiscated.

10. In the case on hand, the learned counsel appearing for the second respondent referring to the decision of the Hon'ble Delhi High Court reported in 2014(302) ELT 321(Trip Communication Pvt. Ltd. V. Union of India and Others) contended that the aforesaid regulation would come to the rescue of the petitioner only if he can show that he was not at fault. I express my respectful disagreement with the aforesaid view. The language of the regulation is simple and plain. When the goods remain seized or detained by the Customs authority and the petitioner is not able to clear them, he should not be charged any rent or demurrage for the said period.

11. Therefore, I am of the view that the petitioner cannot be made liable to make any payment towards detention or demurrage for the period up to 19.02.2020. The petitioner would have become fully liable to pay the charges as demanded by the second respondent, if the second respondent had originally taken a reasonable stand. It is seen that the petitioner was ready to clear the goods then and there. But the second respondent was insisting that the petitioner should pay even for the period during which the department proceedings were pending. It is beyond dispute that seizure was effected on 24.09.2019 and the proceedings got concluded only on 19.02.2020. I have already held following the aforesaid decision of the Madras High Court that the petitioner cannot be made liable to pay any demurrage charges for this period. It is the second respondent who has to blame himself for the delay. However, it cannot be disputed that the second respondent has also been put to difficulty and hardship. The second respondent has not committed any fault at all. This Court called upon the petitioner to make a statement agreeing to pay some amount. The petitioner's counsel after getting instructions submitted that the petitioner will pay a sum of Rs.1,00,000/- towards demurrage charges and a sum of Rs.1,00,000/- towards detention charges. This undertaking is placed on record.

12. Now the question is whether the first respondent should be directed to issue Detention Certificate recommending waiver of demurrage and detention charges as prayed for. The stand of the first respondent is that the regulations had not provided for issuing such a certificate.

13. The question is not whether the regulation provide for issuing Detention Certificate. The question is whether there is any prohibition. It is seen from the earlier reported decisions that it has been the practice of the authority to issue certificate when the circumstances warrant and when directed by the Court. Since the petitioner has made out a case, I direct the first respondent to issue detention certificate as sought for. Such certificate will be

issued within a period of twelve weeks from the date of receipt of a copy of this order. Of course the undertaking of the petitioner to pay the sums mentioned above will have to be adhered to.

14. This writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

pmu

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:
The Additional Commissioner of Customs,
Custom House,
New Harbour House,
Tuticorin – 628 004.

+1 CC to M/s.B.VIJAYA KARTHIKEYAN, Advocate (SR-573[F] dated 08/01/2021)

+1 CC to M/s.N.MANICKAM, Advocate (SR-781[F] dated 11/01/2021)

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(MJ)CO
AP(01/02/2021) 5P 4C