BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.04.2021

PRONOUNCED ON: 08.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.14695 & 14813 of 2020
and
W.M.P.(MD)Nos.12361 & 12469 of 2020

M/s.A.B.Kanisha Timbers,
Rep., by its Proprietor Mr.Britto Mariyasami Adiyan,
Head Office at No.14, Seevalaperi Road,
Palayamkottai,
Tirunelveli-627 002. ... Petitioner in both W.Ps.

-Vs-

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

2.The Assistant Commissioner of Customs (Disposal),
Custom House, New Harbour Estate,
Tuticorin-628 004.

3.M/s.Continental Warehousing Corporation (Nhava Seva) Limited,
Tuticorin CFS, 1S/76K, Madurai Bypass Road,
Milavittan, Tuticoriin-628 002.

4.M/s.COSCO Shipping Lines(India) Private Limited,
(Formerly known as Cosco(India) Shipping Pvt., Ltd.,)
No.5,176, IInd Floor, M.M.Building,
Opp. Rajaji Park, Palai Road,
Tuticorin-628 003. ... Respondents in both W.Ps.

5.M/s.Glottis Global Logistics Services,
5A/179, 2nd Street, Cold Well Colony (West),
Tuticorin-628 008. ... Respondent
in W.P.(MD)No.14813 of 2020

Prayer in W.P.(MD)No.14695 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the 2nd and 3rd respondents herein not to dispose of / Auction nor Destruct the above goods viz., 249 Pieces viz., 71.5480 CBM of Teak Round Logs covered under Bill of Entry No.7721400, dated 21.05.2020, imported vide Bill of Lading No.COSU 6257345340, dated 06.03.2020 in 4X40 Container Nos.CCLU 7024829, CCLU 7155602, CSLU 6175307, FCIU 9125884.

Prayer in W.P.(MD)No.14813 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the first respondent to issue necessary direction to the fourth respondent to release/hand over the Delivery Order for the Bill of Lading NO.COSU6257345340, dated 06.03.2020 without insisting of payment of any detention charges and further, direct the fourth respondent herein to honour the same by giving Delivery Order of the goods pertaining to Bill of Lading No.COSU6257345340, dated 06.03.2020 to the writ petition without insisting for payment of any detention charges and also to issue direction to the third respondent herein not to collect the Ground Rent Charges/CFS Storage Charges by waiving the same where the petitioner's goods were stored.

For Petitioner	: Mr.A.Jayaraj
For R1 & R2	: Mrs.S.Ragaventhre
For R3	: Mr.R.Vijayakumar
For R4 (in both W.Ps.)	: Mr.K.Prabhakar

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner is an importer. He had imported teak in four containers. One M/s.Maria International Pte., Limited is the seller. One M/s.Cosco Shipping Lines (India) Private Limited is the provider of logistics services. The fourth respondent herein is the agent of the said service provider. The shipment arrived at Tuticorin Port on 09.05.2020. The petitioner had free time till 25.05.2020 to clear the goods. The fourth respondent raised an invoice on 27.05.2020 calling upon the petitioner to make payment of USD 4800 (INR 4,37,544) being the container detention charges upto 29.05.2020. Though the petitioner had made the said payment, due to reasons that are not quite clear, the amount was not credited to the account of the fourth respondent immediately. Only by 05.06.2020, the amount got credited and by then, further detention charges had accrued. So, the fourth respondent asked the petitioner to make a further payment of Rs.65,564/- for issuance of delivery order for clearing the goods. The petitioner requested for waiver of this demand. But there was no response to this request from the fourth respondent. In the meanwhile, the charges mounted by exponential proportions and by December 2020, it accumulated to Rs.1,03,40,323/-. Since the goods were not cleared within the time limit stipulated in Section 48 of the Customs Act, 1962, the customs authority proposed to auction the goods. The goods had been kept in the warehouse maintained by M/s.Continental Warehousing Corporation (Nhava Save) Limited. The warehousing charges had also mounted to more than a crore of rupees. In this background, these two writ petitions came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavits filed in support of these writ petitions. He also placed reliance on some of the decisions of the Madras High Court and also a recent decision of the Bombay High Court rendered in Writ Petition No.3676 of 2020 (Supreme Industries Vs. Central Board of Indirect Tax and Customs and others). The foremost contention of the petitioner's counsel is that under Regulation 6 of the Handling of Cargo in Customs Areas Regulation, 2009, the authorities are bound to issue certificate for waiving demurrage and rent and other charges. According to him, the petitioner is not at all fault. The total value of the consignment would only be around Rs.40,00,000/-. If the petitioner is made to pay the warehousing charges and the shipping charges, as presently quantified by the private respondents, the petitioner will have to abandon the goods altogether. That would ruin him financially. The petitioner's counsel, therefore, wanted this Court to bear in mind the conduct of the parties and grant equitable relief.

4.Per contra, the learned counsel appearing for the customs authority submitted that they cannot be blamed. They had merely enforced the statutory mandate. If the goods are not cleared within the time prescribed in the statute, the customs authority in order to decongest the premises will have to necessarily bring the goods to auction.

5.The learned counsel for the liner agent and the warehousing entity submitted that the relationship between the petitioner on the one hand and them on the other is purely contractual and that, therefore, the writ petition itself is not maintainable. They submitted that they had raised invoices only in terms of the contract and that, therefore, no adverse orders can be passed against them. They cannot be compelled to issue the delivery certificate, when the petitioner has not satisfied their contractual demand.

6.I carefully considered the rival contentions and went through the materials on record.

7.The first question that arises for my consideration is whether the customs authority can be restrained from disposing of the petition mentioned goods. It is well settled that no Court can issue 'Mandamus' contrary to law. The statutory authority cannot be restrained from discharging its statutory functions. Section 48 of the Customs Act reads as under:-

> "48.Procedure in case of goods not cleared, warehoused, transhipped within thirty days after unloading-if any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within thirty

days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof"

8.In the case on hand, the customs authority had issued notice on 15.09.2020 calling upon the petitioner to clear the goods. In the counter affidavit, the customs authority has pointed out that though the customs authority could have issued first notice on the expiry of the 30th day, they chose to wait for about three months before issuing the notice. Since proper response was not forthcoming from the petitioner, they decided to e-auction the imported goods. The goods had arrived on 09.05.2020. The bill of entry was filed on 21.05.2020. Warehousing was ordered on 21.05.2020. The Customs Authority has pointed out that if the goods had been seized or detained or confiscated by them, the Customs Cargo Services Provider cannot charge any rent or demurrage on the goods. In the case on hand, there has been no seizure or detention or confiscation. Hence, as rightly contended by the learned Standing Counsel, the question of issuing waiver certificate will not arise at all.

9.Though the learned counsel for the shipping liner and the warehousing entity would contend that the writ petition is not maintainable, I am of the view that under certain circumstances, the writ petition would lie against them. If there was detention of goods and the customs authority had issued waiver certificate and still the warehousing entity refuses to release the goods, the importer can certainly move the Writ Court for relief. The issue is *no longer res integra*.

10.A learned Judge of this Court vide order dated 08.08.2017 in WP Nos.6452 & 6453 of 2017 (M/s.Balaji Dekors vs. the Commissioner of Customs and three others), had held that when the matter involves implementation of a statutory regulation, it is not merely contractual and that the writ petition filed against a private entity is maintainable.

11.But the case on hand is not one such. The customs authority at no point of time detained the goods. Therefore, this is purely a contractual issue between the petitioner on the one hand and the private respondents on the other. In such a case, it would not be open to the Writ Court to issue any Mandamus compelling the private respondents herein to permit clearance of the goods, even though the petitioner has not satisfied the contractual demand raised by the shipping liner/warehousing entity. I cannot find fault with the customs authority. Nor can I issue any mandamus for compelling the private respondents. At the same time, I cannot help observing that the pathetic situation, in which the petitioner is finding himself, cannot really be ascribed to any fault on his part. The petitioner is a genuine importer and he honored the demand raised by the shipping liner. The goods are not prohibited goods. Unfortunately, though the amount was debited from his account, it did not get credited in the account of the fourth respondent.

12.Taking into account the scope of the writ proceedings, I am not in a position to undertake any factual investigation to probe the matter further for fastening liability in this regard. It is most unfortunate that delay of few days in the matter of crediting in the fourth respondent's account has given rise to the present situation. The amount then involved was hardly Rs.65,564/-. The petitioner could have made the payment without prejudice to his contention that he was not liable to pay. The fourth respondent could have been magnanimous enough. Both adopted a wooden headed approach. As a result, the detention charges have mounted to astronomical levels. Even if the goods are brought to sale, the warehousing entity and the shipping liner can realize only a miniscule portion of the demand. On account of the delay in clearing the goods, the value of the goods has also come down drastically. Everyone is a loser in the situation.

13.I thought of passing some equitable order, if consensus is arrived at between the parties. The matter was in fact passed over to enable the counsel to get instructions. While the petitioner is willing to pay a sum of Rs.2,00,000/- to the warehousing entity, the demand of the third respondent is Rs.35,00,000/-. Since I do not see any meeting point, no purpose will be in keeping the issue alive. I cannot grant any relief in these writ petitions. These Writ Petitions stand dismissed. However, the petitioner is given liberty to file claim before the appropriate forum/Court against the parties concerned for the loss suffered by him in the process. I give this liberty because I find that the petitioner is not at fault. Since the petitioner's counsel insisted that he would be able to persuade the warehousing entity/ shipping liner, I direct the customs authority not to bring the goods to e-auction for a period of ten days from the date of receipt of a copy of this order.

14.Subject to this observation, liberty and direction, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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.

Copy to

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VR(CO)
TR(08.04.2021) 6P 3C