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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19851 of 2020

and

W.M.P.No.24521 of 2020

(Through Video Conferencing)

M/s.Rangsugandh Manufacturing Pvt. Ltd.,
Represented by its Director, Mr.M.R.Suresh,
No.1553, Vanivilas Road,
Mysore, Karnataka - 570004.

...Petitioner

Vs.

The Assistant Commissioner of Customs (Group 1),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 05.08.2020 of the respondent in F.No.S.Misc/117/2020-Gr.1 and quash the same and further direct the respondent to issue a Detention Certificate recommending waiver of detention and demurrage charges for the period 15.05.2020 to 25.05.2020.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.V.Sundareswaran

Senior Panel Counsel

O R D E R

The petitioner had imported a consignment of Bamboo Sticks and filed a Bill of Entry No.7512692 on 24.04.2020. Since the import pertains to plant, the import could be cleared on production of "No Objection Certificate (NOC)" from the Plant Protection, Quarantine and Storage Department as per the Clause 3(16) of the Plant Quarantine (Regulation of Import into India) Order, 2003.



2. It is the specific case of the petitioner that though the Plant Protection, Quarantine and Storage Department had issued a "No Objection Certificate (NOC)" to the petitioner to import as early as on 14.05.2020, it was not properly uploaded in the ICEGATE server of the respondent/ Customs Department for assessing the Bill of Entry, as a result of which, the container in which the imported Bamboo Sticks were imported attracted detention charges from the Liner. It is submitted that since the imported consignments were kept for assessment and clearance after the initial import into India, they also attracted demurrage for no fault of the petitioner.

3. The learned counsel for the petitioner submits that in this connection, several communications were exchanged between the petitioner and the help desk of ICEGATE. The help desk informed the petitioner that the issue had been resolved when indeed the issue was not resolved as the "No Objection Certificate (NOC)" was uploaded only on 29.05.2020 and the imported consignment of Bamboo Sticks covered by the aforesaid Bill of Entry thereafter cleared.

4. It is submitted that unless the respondent issues "Detention Certificate" in terms of Central Board of Excise and Customs (CBEC) Instructions dated 26.11.1976 bearing reference C.B.E.C.F.No.501/9/75-Cus-IV, the petitioner cannot claim the excess amount paid towards "Demurrage" from the Container Freight Station and from the Liner for refund of the "Detention Charges" of Rs.2,37,395/- paid to the Liner and Rs.66,0200/- paid to the Container Freight Station on account of the delay caused in the uploading of "No Objection Certificate (NOC)".

5. The learned counsel for the petitioner further submits that the respondent cannot refuse "Detention Certificate" to the petitioner as the delay is purely on account of the mistakes / technical problems / glitch arising out of the delay in uploading of "No Objection Certificate (NOC)" from the Plant Protection, Quarantine and Storage Department.

6. It is submitted that the petitioner cannot be forced to incur the aforesaid expenses as the petitioner is not at fault. It is further submitted that unless the aforesaid detention certificate is issued by the respondent, the petitioner will not be in a position to claim refund of the amounts paid by the petitioner either to the Liner and the Container Freight Station.



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7. Opposing the prayer, learned Senior Panel Counsel for the respondent submits that the delay is purely on account of the fault of the petitioner in as much as the petitioner did not take adequate steps for getting "No Objection Certificate (NOC)" from the Plant Quarantine Department for being uploaded in the ICEGATE server of the respondent.

8. It is submitted that after 2011, the filing of documents for assessment has been made online under the provision of Bill of Entry (Electronic Integrated Declaration) Regulations, 2011.

9. The learned Senior Panel Counsel for the respondent further submits that the petitioner has not followed the procedure under the provisions of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 and thus there was a delay in uploading of the "No Objection Certificate (NOC)" from the Plant Protection, Quarantine and Storage Department.

10. In so far as the grounds raised in para C of the affidavit, it was stated that the Government has enacted several laws to regulate importation of food items, livestock products, plant materials and other agricultural commodities into the country. The import of plants and plant materials is regulated as per the Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989 issued under the Destructive Insects and Pests Act, 1914 to prevent introduction of exotic pests and diseases into the country. The Customs has a pivotal role to play because, it is the agency stationed at the border to enforce the rules, regulations and orders issued by various administrative Ministries. Consequent to that the importer's request to release the cargo without "No Objection Certificate (NOC)" had been denied.

11. The learned Senior Panel Counsel further submits that in so far as the grounds raised in para D is concerned, non-availability of "No Objection Certificate (NOC)" from Plant Quarantine did not fall under the instruction dated 01.12.1976 quoted by the petitioner as is clear on perusal of the same.

12. The learned Senior Panel Counsel appearing for the respondent has specifically referred to Regulation 3 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 which reads as under:-



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- (b) Destruction - goods to be destructed by the Customs.
- (c) Deportation - goods to be exported back to the Country of Origin.
- (d) No Objection Certificate (NOC) - goods can be released by the Customs.
- (e) NCC (Non-compliance Certificate) - non-rectifiable defects observed in the goods.
- (f) Product Out of scope - goods are out of scope for FSSAI/PQIS.

(vi) In case, the Release Order falls under types (b), (c) and (e) above, the OOC would not be allowed in the ICES. Details of such consignments will be entered by the Customs Assessing Officer in the closure of B/E menu after all processes are complete.

(vii) On receipt of RO online, the Customs ICES shall integrate the data in the ICES database, which shall be available to the Customs officers concerned.

14. It is submitted that there is no question of approaching any of the department to whom a sample of consignments was sent for testing or for obtaining a "No Objection Certificate (NOC)". All that is required is to upload the Bill of Entry and once the Bill of Entry is uploaded, the system itself will not directly communicate with the respective departments, i.e. Plant Protection, Quarantine and Storage (PQIS) Department and/or Food Safety and Standards Authority of India (FSSAI) Department and such other departments which has been notified subsequently vide Circular No.10/2016-Cus., dated 15.03.2016 in F.No.450/147/2015-Cus-IV.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Panel Counsel for the respondents. I have also perused the direction of Central Board of Excise & Customs issued on 01.12.1976 vide C.B.E.C.F.No.501/9/75-Cus.VI. By the said Circular, the Board directed that a detention certificate may be issued for the period of delay on account of Custom House in the following three categories:-

- (a) Delay in Chemical Examination.
- (b) Delay in Customs Examination.
- (c) Operation of I.T.C. Regulations.



16. The above clarification was issued when the filing of Bill of Entry was physical and Assessment was fully manual. From 2011, the Customs Department changed the method of filing of Bill of Entry vide Bill of Entry (Electronic Integrated Declaration) Regulations, 2011. This was later substituted with the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. The assessment is online.

17. Circular No.9/2015 - Cus., dated 31.03.2015 of the Central Board of Excise & Customs filed by the learned counsel for the petitioner makes it clear that the details of the Bill of Entry are directly transmitted to the concerned Department and are to be acknowledged by the concerned Department and after processing the date and receipt of information from the concerned Department, a release order (R.O) for each item in the Bill of Entry is to be directly sent to the Customs Department in the Indian Customs Electronic Gateway (ICEGATE).

18. The above Circular also makes it clear that on receipt of online Release Order (RO), the Customs ICES (Indian Customs EDI System) shall integrate the data in the ICES database which shall be available to the concerned Customs Officer for processing of Bill of Entry.

19. The fact on record indicates that the petitioner had filed Bill of Entry on 24.04.2020 and Plant Protection, Quarantine and Storage Department had processed the "No Objection Certificate (NOC)" on 14.05.2020. The "No Objection Certificate (NOC)" was however not uploaded for the reasons not known to the petitioner. Therefore, the petitioner kept sending representations to Help Desk of the Customs ICEGATE. Ultimately, "No Objection Certificate (NOC)" dated 14.05.2020 was uploaded only on 25.05.2020.

20. The petitioner has asked for a "Detention Certificate" for the period from 15.05.2020 to 25.05.2020. The respondent vide impugned Communication has rejected the request of the petitioner stating that there is no provision to issue "Detention Certificate" due to the "Technical Error" in ICEGATE and therefore, the "Detention Certificate" cannot be issued as prayed for by the petitioner.

21. The method of filing of Bill of Entry and Exchange of information for assessment is online in the ICEGATE. Therefore, the delay on account of any technical glitches / error in uploading the relevant information document by the concerned



Department cannot saddle an importer with liability unless the delay was itself on account of the importer. In this case, the respondent has not been able to show how there was any delay on the part of the petitioner.

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22. The clarification of the Central Board of Customs in C.B.E.C.F.No.501/9/75-Cus.VI , dated 01.12.1976 is still relevant. The benefit of the said clarification will enure to the petitioner mutatis mutandis in the context of assessment of Bill of Entry under the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. An importer cannot be denied "Detention Certificate" if the delay was not on account of any fault of the importer, but on account of the technical glitches in the system.

23. In view of the above, this Writ Petition is allowed by quashing the impugned order and by directing the respondent to issue Detention Certificate to the petitioner within a period of thirty (30) days from the date of receipt of a copy of this order. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Customs (Group 1),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

+1 CC to Mr.V.Sundareswaran, Advocate sr 1796.

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PCH(CO)
SP(08/02/2022)