BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.12622 of 2020

M/s. Kurian Abraham Private Limited,
Represented by its Director,
Mr.Praveen Mathew ... Petitioner

Vs.

1.The Assistant Commissioner of Customs (SIIB),
Customs House, New Harbour Estate,
Tuticorin – 628 004.

2.The Superintendent of Customs (SIIB),
Customs House, New Harbour Estate,
Tuticorin – 628 004. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st Respondent to issue a detention certificate recommending waiver of demurrage and detention charges in terms of Regulation 6 (1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009.

For Petitioner : Mr.G.Derrick Sam
For Respondents : Mr.B.Vijaykarthikeyan
Senior Standing Counsel

ORDER

The petitioner has filed this writ petition for a writ of Mandamus to direct the first respondent to issue a detention certificate recommending waiver of demurrage and detention charges in terms of Regulation 6(1)(l) of the Handing of Cargo in Customs Areas Regulations, 2009.

2. The petitioner filed this writ petition along with two other writ petitions in W.P.(MD).Nos.12620 and 12621 of 2020, which have today dismissed as infructuous.

3. The petitioner had imported a consignment of Former Holder and had filed a bill of Entry No.796361, dated 19.06.2020. While filing the bill of entry, the petitioner appears to have claimed exemption under Notification No.20 of 2020-customs, dated 09.04.2020. The petitioner appears to have claimed the above exemption on the ground that the Former Holder was an input eligible for exemption. Since the RMS method of filing of bill entries was resorted, the goods would have got cleared without physical examination. However, on suspicion, the imported goods were seized on 26.06.2020 on the ground that imported goods were not eligible for exemption under Notification No.20 of 2020-Cus, dated 09.04.2020 referred to supra. After the seizure was effected, the provisional release order with a direction to the petitioner to execute bond and furnish bank guarantee towards redemption fine and penalty, was issued by the respondents on 17.07.2020. Meanwhile, the petitioner also furnished the bank guarantee by executing bond on 19.08.2020 and the imported goods were allowed to be cleared on 21.08.2020.

4. The case of the petitioner is that the petitioner is entitled for exemption from payment of demurrage and detention charges payable to the container freight station of M/s.CWC (Nhavasheva) CFS, Tuticorin, when imported the goods were stationed before being cleared.

5. Opposing the prayer, the learned counsel for the respondents submits that the petitioner took the risk to wrongly claim the benefit of exemption under Notification No.20 of 2020-Cus, dated 09.04.2020, since the bill of entry were filed under the Risk Management Condition and but for the alertness of the Department, the imported goods would have escaped liability. It is further submitted that the imports were not containerised and imported as cargo part ie., LCL unloaded in the container were kept in the import godown of M/s.CWC (Nhavasheva) CFS, Tuticorin and therefore, the question of granting detention certificate or waiver of demurrage does not arise. Sine the cargo unloaded in the container were kept at the CFSI godown purusant to the seizure effected on 26.06.2020, it submitted that there is no merits in the present writ petition. It is further submitted that the petitioner was issued with letter, dated 17.07.2020, to furnish bank guarantee and bond for provisional release. However, the petitioner did not come forward for immediate release of the goods and hence order, dated 17.07.2020 was issued. The learned counsel for the respondents has also placed reliance on the decision of the Delhi High Court in **Trip Communication Private Limited Vs Union of India, 2014 (302) ELT 321.** The specific reference was made in paragraph 50, which reads as under:

To sum up:

(1) In cases where on conclusion of the adjudication proceedings there is imposition of any fine, penalty, personal penalty and/or warning by the customs authorities:

(i) The policy for waiver would be applicable; and

(ii) The importer would be entitled to be considered for its benefit when the goods were seized, detained or earlier confiscated; and

(iii) Waiver would be granted subject to other compliances.

(2) In cases where pending the adjudication proceedings, provisional release order is issued and a certificate is issued by the custom authorities, the goods would be released subject to furnishing of bond and/ or security as may be prescribed that in case any fine, penalty, personal penalty and/or warning is imposed by the customs authorities, the importer would pay the demurrage charges.

6. The learned counsel for the respondents has also relied on the decision of this Court rendered in **Qatar Airways Vs Commissioner of Customs (AIR), Chennai, 2020 (373) ELT 631 (Mad.)**, wherein the views of the Delhi High Court cited above have been reiterated and followed. The learned counsel for the respondents further submits that the decision of the Delhi High Court in **Trip Communication Private Limited Vs Union of India, 2014 (302) ELT 322** was also followed by Division Bench of the Delhi High Court in **S.K.Metal and Co. Vs Commissioner of Customs 2016 (338) ELT 383.** Under these circumstances, the learned counsel for the respondents submits that the writ petition filed by the petitioner is devoid of merits and is liable to be dismissed.

7. By way of rejoinder, the learned counsel for the petitioner submits that after letter, dated 17.07.2022, was issued for provisional release of the goods subject to furnishing of bank guarantee and bond for the goods to secure the interest of the revenue, the petitioner had given a representation, dated 21.08.2020, which was later considered by the respondents.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents and also perused the provisions of Handling of Cargo in Customs Areas Regulations, 2009. Regulation 6 (1) (l) which reads as under:

> *6. Responsibilities of Customs Cargo Service provider:*
>
> *(1) The Customs Cargo Service Provider Shall-*
>
> *(l) Subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained by the Superintendent of custom or Appraiser or Inspector of Customs or Preventive Officer or Executive Officer as the case may be.*

9. The facts on record indicate that the petitioner had imported the goods on 19.06.2020 and had filed a bill of entry No.796361. While filing the bill of entry, the petitioner appears to have claimed the benefit of exemption under custom Notification No.20 of 2020-Cus, dated 09.04.2020. Whether the petitioner was indeed eligible for the above exemption or not, is now a matter of appeal before the Appellate Commissioner, pursuant to adjudication order passed by Joint Commissioner on 29.06.20221. The question further that remains to be answered whether the petitioner is entitled to a detention and demurrage certificate to produce the same to the respective service providers, namely, M/s.CWC (Nhavasheva) CFS, Tuticorin and the liner to waive demurrage and dentention charges for the period starting during the period when the goods were under seizure.

10. Regulation 6 (1) (l) as reproduced above indicates that no rent or demurrage shall be charged on the seized or detained goods. Thus, during for the period when the imported goods were under seizure and/or no demurrage charges can be levied. The goods were seized on 26.06.2020. They were eventually, ordered to be released provisionally on 17.07.2020. Therefore, for the aforesaid date the petitioner cannot be mulcted to bear such charges. The goods were eventually cleared on 21.08.2020 after the petitioner complied with the requirements of letter, dated 17.07.2020 on 19.08.2020.

11. Considering the above, I am inclined to partly allow this writ petition by directing the respondents to issue appropriate

detention and demurrage certificate to the petitioner for the period between 26.06.2020 and 17.07.2020 inasmuch as during the aforesaid period, the petitioner could not have cleared the imported goods as the goods under seizure. The respondents are directed to issue appropriate certificate to the petitioner within a period of thirty days from the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

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.

To

1.The Assistant Commissioner of Customs (SIIB),
Customs House, New Harbour Estate,
Tuticorin – 628 004.

2.The Superintendent of Customs (SIIB),
Customs House, New Harbour Estate,
Tuticorin – 628 004.

order made in
W.P(MD).No.12622 of 2020
22.02.2022

PNK(12.03.2022) 5P 3C