



W.P.Nos.9695 & 9699 of 2020

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Dated: 16.06.2023

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

**W.P.Nos.9695 & 9699 of 2020**  
**and WMP Nos.11817 & 11821 of 2020**

Mr.A.Gunasekaran  
Director,  
M/s.Safire Printing & Packaging Pvt. Ltd.,  
No.16, Balaji Nagar 1st Street, Royapettah,  
Chennai - 600 014. ... Petitioner in both W.P.'s  
Vs

1.The Union of India,  
Ministry of Shipping,  
Rep. by its Secretary  
Secretariat,  
New Delhi - 110 001.

2.The Commissioner of Customs  
Customs House,  
Rajaji Salai,  
Chennai - 600 001.

3.M/s. Zim Liner Star Shipping Services India Pvt. Ltd.,  
Rep. by its Senior Executive,  
Heavitree, Unit 3-C, Third Floor,  
No.47, Mayor Ramanathan Salai,  
Chetput, Chennai - 600 031.

4.M/s. Calyx Container Terminals Private Limited,  
Rep. by its Director,  
No.28, NH-5, Puzhal, Kadirvedu,  
Chennai - 600 066.



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5.The Port of Chennai,  
No.1, Rajaji Salai,  
Chennai - 600001.

(R5 suo-moto impleaded vide  
order dated 01.09.2020 made in  
W.P.No.9695 of 2020)

... Respondents in W.P.No.9695 of 2020

1.The Union of India,  
Ministry of Shipping,  
Rep. by its Secretary  
Secretariat,  
New Delhi - 110 001.

2.The Commissioner of Customs  
Customs House,  
Rajaji Salai,  
Chennai - 600 001.

3.M/s. Evergreen Shipping Agency India Pvt. Ltd.,  
Century Center, 2nd Floor,  
No.75, T.T.K. Road, Alwarpet,  
Chennai - 600 018.

4.M/s. Calyx Container Terminals Private Limited,  
Rep. by its Director,  
No.28, NH-5, Puzhal, Kadirvedu,  
Chennai - 600 066.

... Respondents in W.P.No.9699 of 2020

**PRAYER in W.P.No.9695 of 2020:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents 3 & 4 to release the consignment in Container No.ZCSU8908545 to the petitioner without insisting for the payment of Penalty Charges and demurrage etc.



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**PRAYER in W.P.No.9699 of 2020:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents 3 & 4 to release the consignment in 2 Containers bearing Nos.TCKU6103964/404/S748317 and EITU/9002395/404/S749320, to the petitioner without insisting for the payment of Penalty Charges and demurrage etc.

In both W.P.'s

For Petitioner : Mr.I.Lakshmana Shankar

For Respondents: No appearance (for R1)

Mr.Rajnish Pathiyil (for R2)

Senior Central Government Standing Counsel

Mr.Prathamesh Kamat

for Mr.Rahul M.Shankar (for R3)

Mr.A.K.Jayaraj (for R4)

Mr.Kumara Guru (for R5)

### **COMMON ORDER**

The petitioner, represented by Mr.I.Lakshmana Shankar, learned counsel, claims to be running a company under the name and style Safire Printing and Packaging Pvt. Ltd. importing machineries, paper and allied products from abroad and selling them in domestic markets in India.

2. An order was placed for import of 10 GSM paper roll from an entity based in the United Kingdom and the consignment had been shipped through R3, reaching the Port of Chennai/R5 on 03.03.2020.

The consignments had been stored in the Container Freight Station/R4



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and the petitioner ought to have taken delivery of the same within 14 days free of rent from date of unloading.

3. Proximate to these events, the COVID-19 pandemic had resulted in a lock down being imposed and the petitioner would submit that the entirety of the consignment including the Containers belonging to R3 are still in the premises of R4.

4. The petitioner refers to an advisory issued by R1 on 31.03.2020 to R4 and other Port authorities to the effect that shipping lines and CFS should not, for the period of lock down, charge penalty, demurrage fee, rental or any charges for delayed delivery of goods.

5. It is, in light of this Circular that the petitioner has, approached this Court, as according to him, despite the advisories issued by R1, the private respondents continue to insist upon payment of demurrage.

6. Mr.Prathamesh Kamat, learned counsel for R3 circulates a decision of the Delhi High Court in the case of *Polytech Trade Foundation V. Union of India and others* (2021 SCC Online Del 3964) considering a challenge to the same Circulars relied upon by the petitioner now. Several matters had been filed relating to the same cause of action before various Courts that had been transferred to the



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Delhi High Court. The Circulars relied upon by the petitioner have been watered down, as the Bench was of the view that they were only advisory in nature and would not bind the respondents.

7. In any event, mandamus of the nature sought for by the petitioner cannot be considered by this Court, seeing as the prayer is effectively as against R3 and R5, which are private entities as against whom relief sought. As rightly pointed out by Mr.Rajnish Pathiyil, learned counsel for R2, the Commissioner of Customs is not really a necessary party in this matter.

8. For the above reasons, these Writ Petitions are seen to be misconceived and are dismissed. Needless to say, the petitioner is at liberty to approach the appropriate Forum including the Civil Courts to seek redressal as it may think fit. No costs. Connected Miscellaneous Petitions are also dismissed.

16.06.2023

Index : Yes / No  
Speaking/non-speaking Order  
Neutral citation: Yes/No  
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To

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**Dr.ANITA SUMANTH,J.**

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