IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.17381 of 2022

Real Petrochem
Rep by its Partner,
Mohammed Abdhul Kadhar Ansari
S/o Mohammed Khaja Mohiddin
No.1, Plot No.113/114, ASK Nagar,
4th Street, Adambakkam,
Chennai 600 088. … Petitioner

v.

1. The Principal Commissioner of Customs,
Chennai-III, Customs House, 60, Rajaji
Salai, Chennai – 600 001.

2. The Deputy Commissioner of Customs,
O/o The Principal Commissioner of Customs,
Chennai – III Commissionerate,
Special Intelligence and Investigation Branch,
Customs House, Chennai 600 001.

3.The Manager,
M/s Calyx, CFS,
28 NHS., Puzhal, Kadhirvedu,
Chennai – 600 066.

4.The Manager,
M/s Cosco Shipping Lines (Indis) Pvt., Ltd.,
6th Floor, 0, Khivraj Complex 2,
No 480, Annasalai, Nandanam,
Chennai Tamil Nadu 600 035. … Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus directing the respondents herein to cause release of goods imported under Bill of Entry No.8283769 dated 15.04.2022 without levy of detention, demurrage and container storage charges waived vide detention certificate issued by the office of the 2nd respondent in F.No.S. Misc 122/2022-SIIB from the date of the detention of the goods till their actual release.

For Petitioner	:	Mr.M.Ravichandran
For Respondents	:	Mr.Umesh Rao Senior Standing Counsel for R1 & R2 Mr.A.K.Jayaraj for R3 Mr.Rahul M. Shankhar for R4

ORDER

(Order of the court was made by Mohammed Shaffiq, J.)

This Writ Petition is filed praying for a writ of mandamus to direct the respondents to release the goods imported under Bill of Entry No.8283769 dated 15.04.2022 without levy of Detention, Demurrage and Container Storage Charges, based on waiver certificate issued by the 2nd respondent dated 08.06.2022.

2. The petitioner had imported Fuel Oil in Flexi Bags to the extent of 205.580 Kgs from Singapore. The goods were imported under the cover of Certificate of Origin dated 07.04.2022 and were dispatched under Bill of Lading No.COAU 7237305340 dated 10.04.2022. The invoice value was Rs. 78,56,513/-, but the petitioner had self assessed the duty at Rs. 17,07,072/-. The petitioner's container was examined by the Customs Authority on 10.05.2022 and samples were drawn from one of the containers and sent for analysis. Subsequently, the results were reeived from the Customs Housing Laboratory on 25.05.2022 to the effect that the samples collected match the standards and quality of the Fuel Oil declared by the petitioner. On 30.05.2022 the 2nd respondent issued a No Objection Certificate (NOC) and a waiver certificate was also issued on 08.06.2022 stating that the Liner Detention Charges and Demurrage Charges for the 10 containers from the date of detention i.e., on 19.04.2022 to till the date of NOC i.e., 30.05.2022. Despite the waiver certificate being submitted, the 3rd and the 4th respondents refused to waive the Demurrage and the Container Storage Charges. Aggrieved, the petitioner filed a writ petition before the learned Single Judge.

3. By order dated 27.09.2022, the learned Single Judge directed the writ petition to be tagged along with W.A. Nos.1667 and 1668 of 2022, after obtaining orders from the Hon'ble Chief Justice, since identical question is raised in the said writ appeals,

which are pending before the Division Bench of this Court. Pursuant thereto, the present writ petition was tagged along with the said Writ Appeals.

4. A Division Bench of this Court was pleased to frame the following issues for consideration in the above batch of matters:

> (1) Whether Regulation 6 (1) (l) of the Handling of Cargo in Customs Areas Regulations, 2009, is binding on all Customs Cargo Service Providers (hereinafter referred to as "CCSP")?
>
> (2) Whether in the absence of any challenge to Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009, it is open to the CCSP to act contrary to the Certificate issued therein?
>
> (3) Whether the Certificate issued would constitute an order for the purposes of Handling of Cargo and Customs Areas Regulations,2009 ?
>
> (4) Whether there is any distinction in terms of Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009, for the purpose of waiver of demurrages, on the basis of the detention being justifiable or otherwise?
>
> (5) Whether, in the absence of a challenge to the Detention Certificate by the Customs Cargo Service Providers, it is open to CCSP to question the correctness or legality in the Writ Petitions filed by the importers for release of the goods ?
>
> (6) Whether Sea Cargo Transhipment Regulations, introduced in the year 2018, would have a bearing ?

(7) Whether the judgments of the Supreme Court in Grandslam and four other cases, which are relied upon in the case of Celebi (Delhi HC) would have a bearing and what would be the precedential value of those judgments in the absence of reference to Regulation 6 (1) (l) Handling of Cargo in Customs Areas Regulations, 2009,?

(8) Whether Customs Authorities are held liable for demurrages, if so, under what circumstance?

5. In the connected matter, viz., W.P.No.17386 of 2022, interim order directing release of goods, was passed on 22.12.2022 subject to complying with the following conditions as specified in the order of the Division Bench of this Court dated 26.09.2022 passed in WA Nos.1667 and 1668 of 2022:

i) The petitioner shall execute two bank guarantees equivalent to 50% of the charges payable to each of the private respondents in favour of the Customs Department as security for payments to the private respondents;

ii) Over and above the bank guarantees, the petitioner shall also execute personal bonds for the remaining 50% of the charges payable to each of the private respondents in favour of the Customs Department.

iii) On confirmation of receipt of the bank guarantees and execution of bonds from the Customs Department to cover the amount payable to the respective 3rd and 4th respondents, the imported goods covered by the respective Bills of Entries and the containers shall be handed over to the respective parties forthwith.

iv) The bonds and the bank guarantees which are directed to be offered by the petitioner are to be held as a security for the amounts to be paid by the petitioner, if any, to the respective private parties herein.

v) This arrangement is only an interim measure and will be subject to the final disposal of the writ petition.

vi) The bank guarantees shall be kept alive till the disposal of the writ petition.

vii) As there is some dispute regarding the constitution of the petitioner, it is clear that if the petitioner is a company, the personal bonds shall be given by the Director or else, by the Proprietor, if the petitioner is a propreitory concern.

6. While so, the learned counsel for the petitioner submitted that there is a need to detag/delink the present writ petition from the batch inasmuch as there is no misdeclaration, while the above batch of cases relate to misdeclaration. Accordingly, the present writ petition was delinked from the batch and listed for hearing before this court.

7. During the course of hearing, the learned counsel for the petitioner would submit that the sum that is due to the respondents 3 and 4 is only Rs.14,00,000/- and Rs.22,96,000/- respectively, while the learned counsel for the 3rd and 4th respondents would submit that the sum that is due, is much higher than what is stated by the writ

petitioner. The learned counsel for the fourth respnodent also expressed that they were willing to give a waiver of 30%, which is not accepted by the petitioner. Ultimately, the learned counsel for the petitioner submitted that the petitioner intends to resolve, by paying whatever the amount is due, on consulting / settling with the 3rd and the 4th respondents.

8. In view of the above submissions, we grant liberty to the petitioner to approach the 3rd and the 4th respondents for release of the goods. However, we make it clear that we have neither decided on the quantum that is due to the 3rd and 4th respondents nor have we resolved any of the issues that may arise for consideration, which we intend to, while disposing of the batch of matters pending before us.

9. With the above observations, the writ petition stands disposed of. No costs.

[R.M.D., J.] [M.S.Q., J.]
12.06.2023

Speaking (or) Non-Speaking order
Index: Yes/ No
Neutral Citation : Yes/No
shk/mka

R.MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

shk/ mka

To
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O/o The Principal Commissioner of Customs,
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