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W.P.Nos.727 & 733 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.727 & 733 of 2024

and

W.M.P.Nos.743 & 745 of 2024

Modern Line-Export,

Rep. by its Directors,

Mr. Sandro Vujnovic and Mr. Ivica Lukanovic

... Petitioner

(in both W.Ps.)

Versus

1.The Deputy Commissioner,

Import Notings,

Preventive Commissionerate Custom House, No.60, Rajaji Salai,

Chennai – 600 001.

2.The Assistant Commissioner of Customs,

Uncleared Cargo Cell,

Custom House, No.60, Rajaji Salai, Chennai – 600 001.

3.M/s. Quercus,

No.39/2, Gangamma Temple Street,

Kalayani Garden, Ashok Nagar, BSK First Stage,

Bengaluru – 560 050.

... Respondents

(in both W.Ps.)

Prayer in W.P.No.727 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned letter dated 28.11.2023 issued by the 1st respondent in relation to Bill of Lading No.HLCURJ2230100994 and IGM No. 2336440 dated 24.02.2023 and



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quash the same and direct the 1st respondent to permit the petitioner to re-export the goods covered under Bill of Lading No.HLCURJ2230100994 dated 27.01.2023 and IGM No.2336440 dated 24.02.2023.

Prayer in W.P.No.733 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Mandamus, directing the 1st Respondent to issue a detention certificate recommending waiver of detention and demurrage charges and to ensure grant of waiver of demurrage and detention charges on the goods covered by Bill of Lading No.HLCURJ2230100994 dated 27.01.2023 and IGM No. 2336440 dated 24.02.2023.

For Petitioner : Mr. G. Derrick Sam
For Respondents : Mr. K. Umesh Rao, Senior Standing Counsel

COMMON ORDER

By these two writ petitions, an order rejecting a request for re-export is challenged and a direction for the issuance of a detention certificate recommending waiver of detention and demurrage charges is prayed for.

2. The petitioner is an entity based in Croatia. Such entity had exported 'rough sawn edged beech', a type of wood, under a commercial invoice dated 17.01.2023 to the third respondent. After the goods reached the Chennai Port, the third respondent informed the petitioner that he does



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not have the financial capacity to clear the imported goods. Therefore, the petitioner was requested to sell the goods to a different buyer or take back the goods. After unsuccessfully endeavouring to find another buyer, the petitioner requested the first respondent for permission to re-export the goods on 28.06.2023. Although the Uncleared Cargo Unit (UCC) had accorded no objection for such re-export, it is submitted that the request for re-export was rejected.

3. Learned counsel for the petitioner referred to the impugned order and pointed out that the rejection was by relying on Circular No.04/2015-Customs dated 20.01.2015 (Circular No.04/2015). He pointed out that the said circular applies when goods intended for a different destination are inadvertently imported at a particular customs station. In this case, he submits that the goods were intended for the third respondent and that such goods were not intended for any other destination. By relying on the 'no objection letter' issued by the UCC, learned counsel also points out that both the importer and the petitioner had addressed communications to the first respondent herein, informing such respondent that the contract for the supply of goods was cancelled on account of the inability of the third



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respondent to clear the goods and that the request for re-export was made under the facts and circumstances.

4. Learned counsel also placed reliance on the judgment of the Delhi High Court in *Agrim Sampada Ltd. v. Union of India* 2004 (168) E.L.T.15 (Del.), wherein the judgment of the Hon'ble Supreme Court in *Union of India v. Sampat Raj Durgar*, 1992 (58) E.L.T. 163(S.C.) was relied on for the proposition that the exporter of goods retains title over the goods if the importer abandons the goods and refuses to receive the documents of title. He also relied upon the judgment of this Court in *Pacificorp (HK) Ltd. v. Commr.of Cus.(Airport & ACC), Chennai*, 2012 (281) E.L.T. 522 (Mad.).

5. Mr. Umesh Rao, learned senior standing counsel, appears on behalf of the first and second respondents. He points out that the request for re-export was rejected because the petitioner failed to submit requisite documents, including the cancellation of contract between the exporter and importer. He also submits that the petitioner requested for re-export belatedly.



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6. On perusal of the impugned order, it is clear that the rejection was by referring to Circular No.04/2015. On examining the said circular, it is evident that the circular applies to a case wherein goods destined for a different destination are inadvertently imported at a particular customs station. This case does not fall within the ambit of Circular No.04/2015. The petitioner has placed on record a request from the importer/third respondent to the first respondent requesting that the petitioner be permitted to re-export the cargo. A letter on similar lines was submitted by the petitioner/exporter on 05.07.2023. In these circumstances, it is just and appropriate that the petitioner's request for re-export be reconsidered. It is needless to say that if any additional documents are required in this regard, it is open to the first respondent to call for such additional documents.

7. For reasons set out above, impugned letter dated 28.11.2023 is set aside and the matter is remanded for reconsideration. It is open to the petitioner to submit any additional documents within one week from the date of receipt of a copy of this order. Thereafter, the first respondent is directed to provide a reasonable opportunity, including a personal hearing,



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and issue a fresh order within 30 days from the date of receipt of a copy of this order. It is also open to the petitioner to request the first respondent for a detention certificate, including waiver of detention and demurrage charges. If such a request is received, the same may be considered and disposed of in accordance with the law. The first respondent shall act on a web copy of the order without insisting on a certified copy of the order from the petitioner.

8. These Writ Petitions are disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

07.06.2024

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Case Citation: Yes/No

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To



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SENTHILKUMAR RAMAMOORTHY,J

klr

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