IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.16207 of 2021

M/s.Saikala Power Private Limited
Represented by its Manager
Mr.N.Jayachandra Reddy,
Shed No.20/B, 2nd Phase,
Peenya Industrial Area,
Bangalore-560 058. ...Petitioner

Vs.

The Deputy Chairman
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai-600 001. ... Respondent

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to order dated 08.04.2021 of the respondent passed in F.No.L2/712/2009/TC of the respondent and quash the same and to further direct the respondent to refund the excess demurrage charges of Rs.7,75,726/- (Rupees Seven Lakhs Seventy Five Thousand Seven Hundred and Twenty Six Only) along with interest to the petitioner company.

For Petitioner : Mr.Hari Radha Krishnan

For Respondent : Mr.Niranjan Rajagopalan

ORDER

This writ petition is filed seeking to quash the order of the respondent passed in F.No.L2/712/2009/TC dated 08.04.2021 and also seeking direction to the respondent to refund the excess demurrage charges of Rs.7,75,726/- along with interest to the petitioner company.

2. The case of the petitioner is that the petitioner's company is engaged in the business of supply of equipments for power plants. The petitioner's company had obtained an order from M/s.SLS Power Corporation Ltd., for supply of equipments for their hydel power project at Dummagudem Village, Bhadrachalam Taluk, Khammam District, Andhra Pradesh. The petitioner's company had obtained an Advance Authorization from the Director General of Foreign Trade (DGFT) for import of equipments worth Rs.68.27 crores. Subsequently, a bill of entry bearing No.326094 dated 06.10.2009 was filed for clearance of equipments

imported.

ii) The customs informed that a bank guarantee, for an amount representing the duty payable calculated on the full value of the advance authorization, had to be executed as a condition precedent to allow duty free import of the said goods. This was contrary to the information given by the Customs prior to the importation by which the petitioner was only required to furnish a bank guarantee for 15% of the value of the custom duty on the assessable value of the first import consignment. To comply with the requirement, the petitioner's company has applied to their bankers for the required bank guarantee, due to which, there is a delay in taking clearance of the goods imported. The delay occasioned in getting the requisite bank guarantee had resulted in mounting of the demurrage charges. The scale of rates prescribes different charges on a slab basis and the maximum rate payable if the goods are not cleared within a period of 30 days of import is fixed at Rs.65PMT. The port trust has levied port/demurrage charges of Rs.42,99,383/- which was paid vide DD.No.746615 dated 13.10.2009.

(iii) Out of total port/demurrage charges of Rs.42,99,383/- an excess collection of an amount of Rs.7,75,726/- was made by the Port Trust by arbitrarily enhancing the demurrage rate of 79.20 PMT. The imposition of the penal rate of Rs.79.20 PMT has been done without giving a notice to the petitioner's company as required by the Scale of Rates framed by the Chennai Port Trust. The demurrage rate was enhanced to Rs.79.20 pmt came to the knowledge of the petitioner's company, their representative had enquired in person with the Port Trust authorities about the abnormal charges being imposed. At that juncture, the petitioner's company has given a copy of the letter dated 09.06.2009 said to have been dispatched by the Docks Manager, Port Trust.

(iv) The petitioner's company has submitted an application dated 08.10.2009 to the Chairman of the Port Trust seeking waiver of the entire demurrage charges. The petitioner's company vide letter dated 28.12.2009 also questioned the imposition of penal rate of demurrage of Rs.79.30 PMT since no notice was sent them by the Port Trust for removal of the subject goods within a particular time frame. Accordingly, a refund of Rs.7,75,726/- which related to the excess collection on account of enhancement of the demurrage rate without prior notice was also sought. A request for personal hearing was also made to the Traffic Manager. There was no response by the Traffic Manager to the said letter dated 28.12.2009. The petitioner has preferred an application dated 09.06.2010 under the RTI to prove the fact that they had not received the notice from the Port Trust before enhancement of the demurrage rate to Rs.79.20 PMT and a reply dated 17.07.2010 was received in B6/0034/2010/T informed the petitioner's company that a notice dated 09.06.2009 in F.No.J/403/09/TC was sent to the petitioner with instructions to remove the cargo from the port premises on or before 12.06.2009.

(v) The Public Information Officer vide his reply dated 17.10.2010 has informed to the petitioner's company that the envelope which contained the letter dated 09.06.2009 was returned by the postal authorities with an endorsement “left”, since no other address was available in the records of the Port, the said notice could not be resent and also informed that the returned envelope along with the acknowledgment card was not available with them. Aggrieved by the inaction of the Chairman and the Traffic Manager of the Port Trust, the petitioner had filed a writ petition in W.P.Nos.28110 and 28111 of 2010. This Court vide order dated 27.03.2014, has directed the respondents to fix a fresh personal hearing and to reconsider the request made by for waiver of demurrage charge and also to decide the question whether the penal demurrage charges are leviable or not. After repeated reminders, the respondent has fixed a personal hearing o 25.08.2014. The learned counsel for the petitioner appeared for the hearing and also filed their written submissions on 27.09.2014. Without considering the submissions, the respondent vide impugned order dated 08.04.2021 in No.L2/712/2009/TC, confirmed levy of demurrage charges imposed on the petitioner for the reason. Being aggrieved, the present writ petition is filed.

3. The learned counsel for the respondent filed a counter affidavit on behalf of the Chennai Port Authority, wherein it is stated that the respondent Port is situated at the midst of the city and is constrained to use the limited space available for effective transit of the cargo. This warrants the cargo to be cleared from the Port Premises within the stipulated free period of time as fixed by the Tarrif Authority for Major Ports (TAMP).

TAMP is an autonomous body constituted under Section 47 of the erstwhile Major Port Trusts Act, 1963 which frames the terms and conditions and Scale of Rates enforceable on vessels called and the cargo passing through all the major ports as per the powers conferred under Section 48 of Chapter VI of the said Act. The respondent is bound to adopt the said Scale of Rates and conditions framed by the TAMP from time to time.

4. It is further stated that this is a third round of litigation initiated by the petitioner against the demurrage charges levied by the respondent, since 2010. The respondent cannot be held responsible for the miscommunication or change of conditions for bank guarantee by the Customs Department. Further, the bank guarantee and clearance for imported goods do not pertain to the respondent and those are internal issues of the petitioner. Even assuming that only due to such internal issues, there was a delay in taking delivery of the cargo, these reasons cannot be a ground to blame the respondent or make the respondent exempt the levy of penal demurrage charges for the losses it would suffer.

5. It is also stated that the petitioner itself had admitted that the delay caused due to the bank guarantee is the reason for mounting demurrage charges. The recovery of charges by the respondent Port is governed by the Scale of Rates framed and fixed by Tarrif Authority for Major Ports (TAMP).The delay caused by the petitioner due to their internal reasons, the demurrage charges had accrued. Hence the respondent was constrained to levy the said accrued demurrage charges as per the then prevailing Scales of Rates.

6. Further, TAMP approved the penal demurrage charges of 79.20 per unit per day with effect from 30.03.2006 vide Corrigendum No.TAMP/36/2005/CHPT dated 11.07.2007. The same was extended till 30.09.2010 by TAMP vide Notification dated 28.04.2010. The enhancement was approved in the year 2007, the same was also intimated to the petitioner and the incident had occurred in 2009, therefore, it cannot be stated that the respondent had arbitrarily enhanced the demurrage charges. Further, the demurrage charges were recovered from the petitioner only as per the

approved Scale of Rates and there was no excess levy or recovery.

7. It is also stated that the respondent sent various communication to the petitioner vide letters dated 13.07.2020, 01.08.2020, 08.10.2020, 10.11.2020, 24.11.2020 and 30.11.2020 to the above mentioned address. The letter dated 01.08.2020 was returned as unclaimed and the others were returned with the endorsement ' No such addressee' .

8. From the above stated facts and circumstances, it is clearly seen that the petitioner has not provided its correct address at any place and all the communications to it had been returned. Moreover, owing to the place of location of the respondent port and the frequency of loading and unloading of cargo, it is in constraint of space. If any cargo is not cleared within the stipulated time, the respondent would not be in a position to accommodate new loading/unloading or stacking of cargo and the whole operation might come to standstill. Therefore, to ensure that such commotion does not occur, the TAMP hadto fix additional levy if cargo is not within the stipulated time. The petitioner has relied on Section 62 of the erstwhile Major Port Trusts Act, 1963. However, Sections 61 and 62 of the

erstwhile Major Port Trusts Act, 1963 deals with public auction procedure of unclaimed and uncleared cargo and the same is not subject matter of the case in hand and the same has to mislead regarding the facts and circumstances. Hence, the prayer sought by the petitioner is liable to be dismissed.

9. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials placed before this Court.

10. This Court perused the materials placed before this Court including Scales of Rates Published by the Port Trust and Section 61 and 62 of Major Port Trusts Act, 1963 produced by the learned counsel for the petitioner. The relevant portion is extracted here under.

SCALE 6 – Demurrage Charges

When recoverable	Charge payable per wharfage unit per day or part thereof
(1) Import goods left lying in the CHPT Transit area beyond the expiry of the free days	....
(i) For the first 7 days after the expiry	Rs.13.00

When recoverable	Charge payable per wharfage unit per day or part thereof
of the free days	
(ii) For the next 10 days	Rs.26.00
(iii) For the next 30 days	Rs.39.00
(iv) Thereafter	Rs.65.00
(2) Export goods and transship goods left lying in the Transit Area beyond the expiry of the free days	Rs. 4.00
(3) Exports awaiting stuffing in the containers in the transit area	Rs. 4.00
In cases where the wharfage is based on per each unit and on Ad Valorem demurrage shall be reckoned with one gross weight (per tonne or part thereof.)	

Notes:

(1) It at any time CHPT should apprehend serious congestion in its transit areas to the detriment of the rapid transit of goods through the Port, it may direct the owners or consignees of any specified goods to remove such goods from the CHPT's premises within a given time; and should the goods not be so removed the CHPT may charge them demurrage thereon upto 79.20 per unit per day until the goods shall have been removed from the CHPT's premises. Also, if the aforesaid charge should prove inadequate to ensure the removal of the goods, the CHPT may itself remove them

from the transit areas at the expense of the owners and shall stack them in any space within its premises at the risk of the owners.......

61. Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged- (1) A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit, sell by public auction [or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner] such goods or so much thereof as, in the opinion of the Board, may be necessary-

(a) if any rates payable to the Board in respect of such goods have not been paid, or

(b) if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid, or

(c) if any lien of any ship-owner for freight or other charges of which notice has been given has not been discharged

and if the person claiming such lien for freight or other charges has made to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days, notice of the same by publication thereof [the Port Gazette, or where there is no Port Gazette, in Official Gazette] and also in atleast one of the principal local daily newspapers:

(3) If the address of the owner of goods has been stated on the manifest of the goods or in any of the documents which have come into the hands of the Board, or is otherwise known notice shall also be given to him by letter delivered at such address, or sent by post, but the title of a bonafide purchaser of such goods shall not be invalidated by a reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.

(4) Notwithstanding anything contained in this Section, arms and ammunition and controlled goods may be sold at such time and in such manner as the Central Government may direct.

Explanation -In this Section and Section 62

(a) " arms and ammunition"have the meanings respectively assigned to them in the Arms Act, 1959.

(b) " controlled goods" means goods the price or

disposal of which is regulated under any law for the time being in force.

62. Disposal of goods not removed from premises of Board within time limit(1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in [the Port Gazette or where there is no Port Gazette, in the Official Gazette] and also in atleast one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to sold by public auction [or by tender, private agreement or in any other manner]....

Provided that where all the rates and charges payable under this Act in respect of any such goods have been *paid, no notice of removal shall be so served or published under this Sub-Section unless two months have expired from the date on which the goods were placed in the custody of the Board.*

(2) The notice referred to in sub-section (1) may also be served on the agents of the vessel by which such goods were landed.

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody, sell the goods by public auction [or in such cases as the Board considers it necessary so to do, for reason to be recorded in writing sell by tender, private agreement or in any other manner] after giving notice of the sale in the manner specified in sub sections (2) and (3) of Section 61.

(4) Notwithstanding anything contained in sub-section (1) or sub

section (3) ---

(a) the Board may, in the case of animals and perishable or hazardous goods, give notice of removal of such goods although the period of one month or, as the case may be of two months specified in sub section (1) has not expired or give such shorter notice of sale and in such manner as, in the opinion of the Board, the urgency of the case requires;

(b) arms and ammunition and controlled goods may be sold in accordance with the provisions of sub-section (4) of Section 61.

(5) The Central Government may, if it deems necessary so to do in the public interest, by notification in the official Gazette, exempt any goods or classes of goods from the operation of this Section".....

11. The aforesaid provision has been pressed into service by the petitioners. However, it is to be pointed out that it is not the case of the petitioners that no intimation by way of notice was given to the petitioners. In fact, it is the specific case of the respondents that the notice sent to the premises of the petitioner to the address provided by the petitioner was

returned with an endorsement "Left". The said material has not been contradicted by the petitioner. When the petitioner has not taken diligent efforts to remove the cargo, which it has imported and had not provided the respondents with the correct address, inspite of which the respondents, in compliance of the procedure, had addressed a notice to the petitioner, which has been returned with endorsement "left", the respondents cannot be burdened with any responsibility and in the aforesaid scenario, passing of the impugned order levying the demurrage charges, cannot be said to be perverse, arbitrary, erroneous or unreasonable.

12. For the reasons aforesaid, no interference is warranted with the order impugned herein and, accordingly, this Writ Petition is dismissed. No order as to costs.

07.08.2024

Vv

To

The Deputy Chairman
Chennai Port Trust,

No.1, Rajaji Salai,
Chennai-600 001.

M.DHANDAPANI, J.

Vv

W.P.No.16207 of 2021