



WP(MD)Nos.1043, 1044 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)Nos.1043, 1044 of 2024

and

WMP(MD)No.3389 of 2024

M/s.M.R.J.Trading,
Rep. by its Proprietor
Abdulla Jasim M.P

.. Petitioner in both WPs

v.

- 1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004.
- 2.The Superintendent Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004.
- 3.M/s.Dahnay Logistics Private Limited,
No.9A, Chidambara Nagar, 4th Street,
Tuticorin – 628 008.
- 4.M/s.JJ Logistics,
Old No.4/1, New No.9/1,
1st Floor, Armenian Street,
Mannady, Chennai – 600 001.



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5.M/s.Skycon Shipping Line Private Limited,
No.36B, B/4, 2nd Floor, Toovipuram 10th Street,
Tuticorin – 628 002.

WEB COURT

.. Respondents in both WPs

PRAYER in WP(MD)No.1043/2024: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the first respondent to take appropriate action against the respondents 3 to 5 for suspension or revocation of the registration issued to the respondents 3 to 5 as authorised carrier in terms of Regulation 11 of the Sea Cargo Manifest and Transhipment Regulations, 2018, for violation of Regulation 10(1)(1) of the Sea Cargo Manifest and Transhipment Regulations, 2018.

PRAYER in WP(MD)No.1044/2024: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondents 1 & 2 to ensure that the Demurrage Waiver Certificate dated 08.12.2023 issued by the second respondent is complied by the respondents 3 to 5 and the goods covered by Bill of Entry No.8313701 dated 15.10.2023 and 8313702 dated 15.10.2023 is released to the petitioner without imposition of any detention charges.



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For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.N.Dilip Kumar
for R.1, R.2

Mr.Sakthi Kumaran for R.3

Mr.N.S.Karthikeyan for R.4

Mr.T.S.Mohammed Mohideen for R.5

[In both WPs]

COMMON ORDER

The petitioner is an Importer. He has imported Areca nuts from Srilanka and he is also having the Bill of Entry dated 15.10.2023. The second respondent has conducted an enquiry with regard to the genuineness of the country of origin certificate referred by the petitioner. After ascertaining the genuineness of the certificate, the second respondent has issued demurrage waiver certificate dated 08.12.2023 and also permitted the clearance of the goods. However, the respondents 3 to 5 have insisted for demurrage charges and therefore, the petitioner has filed these writ petitions.



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2.The writ petition in WP(MD)No.1043 of 2024 is filed for a mandamus to the first respondent to take action as against the respondents 3 to 5 that they have acted in violation of the Regulation 10(1)(L) of the Sea Cargo Manifest and Transhipment Regulations, 2018.

3.The writ petition in WP(MD)No.1044 of 2024 is filed for a mandamus directing the second respondent to ensure that the Demurrage Waiver Certificate dated 08.12.2023 issued by him is duly complied with by the respondents 3 to 5.

4.The respondents 3 to 5 are authorised carriers. The petitioner has imported the goods through their containers. The period of verification, according to the petitioner, is liable to be waived from detention charges, as per Regulation 10(1)(L) of the Sea Cargo Manifest and Transhipment Regulations, 2018. For better appreciation, the said provision is extracted as under:-

“10. Responsibilities of the authorised carrier under these regulations:-



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(1) An authorised carrier shall -

... .. l. not demand any container detention charges for the containers laden with the goods detained by customs for purpose of verifying the entries made under section 46 or section 50 of the Act, if the entries are found to be correct.

Provided that the authorised carrier may demand, container detention charges for the period, commencing after expiry of sixty days.”

5.By relying on this provision, learned Counsel for the petitioner submitted that the respondents 3 to 5 are not entitled to collect any demurrage charges for a period of 60 days from the Importer. The Bill of Entry is dated 15.10.2023 and the clearance certificate cum waiver of demurrage charge was passed on 08.12.2023, within 60 days. However, the owners of the containers are not releasing the goods and insisting for demurrage charges.

6.Learned Counsel appearing for the respondents 1 & 2 submitted that there are so many malpractices in the manufacture and import of Areca nuts and therefore, the origin of the goods – Areca nuts was strictly verified. They



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have verified and ascertained that the petitioner's shipment was from Srilanka.

It is not only the consignment of this petitioner, but they have verified 17 other consignments as well. This is a routine process and the petitioner is having exemption of demurrage charges, as per Regulation 10(1)(L) of the Sea Cargo Manifest and Transhipment Regulations, 2018 and therefore, the demurrage waiver certificate was also issued to the petitioner on 08.12.2023.

7.Learned Counsel for the respondents 3 & 5 submitted that the agreement between them and the petitioner for waiver is only for 21 days and therefore, beyond the period of 21 days, the petitioner is liable to pay demurrages to the respondents 3 & 5, who are the owners of the containers. Therefore, they have insisted the petitioner to pay the demurrages and the petitioner has also agreed to the same. To that extent, the petitioner has sent an email communication dated 07.12.2023. However, after the stand taken by the respondents 1 & 2, the petitioner has gone back in his words and now denying to pay the demurrages. In any event, in view of the stand now taken by the respondents 1 & 2, they are not insisting for the demurrages.



8.Learned Counsel for the fourth respondent submitted that the fourth respondent is only a Liner and not the owner of the container. Therefore, he cannot take any decision with regard to the release of the goods and it has to be decided only by the owner of the container, namely, M/s.Zahara Shippings Lines LLC. He also filed an application for impleading the owner of the container as a party to these writ petitions.

9.In response to this submission, learned Counsel for the petitioner submitted that the invoice for demurrages was issued only by the fourth respondent and now, he claims that some other person is the owner of the container. He further submitted that the agreement is between the petitioner and the fourth respondent only and they are not aware of the so called M/s.Zahara Shipping Lines LLC and there is no privity of contract between the petitioner and M/s.Zahara Shipping Lines LLC.

10.This Court considered the rival submissions made on either side and perused the available materials.



11.The respondents 3 & 5 have now come forward to release the goods from their respective containers, as per the waiver certificate issued by the second respondent. The second respondent has issued the waiver certificate on 08.12.2023 for release of the goods, after ascertaining the origin of the goods. There cannot be any demurrages for a period of 60 days, as per Regulation 10(1)(L) of the Sea Cargo Manifest and Transhipment Regulations, 2018. If any of the respondents are retaining the goods seeking any demurrages as against the provision, it is open to the second respondent to conduct an enquiry and to take appropriate action as contemplated under the Act and Regulations, as expeditiously as possible, so that the petitioner's goods shall be released.

12.Recording the submissions made by the respondents 3 & 5 that they are accepting the waiver certificate issued by the second respondent dated 08.12.2023 and they are releasing the petitioner's goods, no further order is required to be passed as against them. The respondents 3 & 5 shall ensure that the petitioner's goods are released forthwith.



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13. Insofar as the fourth respondent is concerned, the second respondent shall conduct an enquiry and find out as to how the fourth respondent is justified in not releasing the goods, as against the Regulations. If any violation is detected, the second respondent shall take appropriate action and shall ensure that the petitioner's goods are released within a period of two weeks from the date of receipt of a copy of this order.

In fine, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

14.02.2024

To

1. The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004.

2. The Superintendent Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004.

B.PUGALENDHI, J.



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