BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.3781 of 2024

M/s.Alagar Shipping Lines,
represented by its Proprietor,
No.72, Vannar 2nd Street,
Mela Shanmugapuram,
Tuticorin-628001. ... Petitioner

Vs.

1.The Deputy Director,
Directorate of Revenue Intelligence,
Indore Zonal Unit,
Indore-452014,
Madhya Pradesh.

2.The Commissioner of Customs,
Customs House,
New Harbour Estate,
Tuticorin-628004.

3.M/s.Kerry Indev Logistics Pvt. Ltd.,
Container Freight Station,
Harbour Express Road,
Near Fisheries College,
Tuticorin-628004. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the first and second respondents to provisionally release the cargo covered under the four Bills of Entry immediately and to direct the third respondent for simultaneously making insurance claim.

For Petitioner	: Mr.K.K.Senthilvelan Senior Counsel for Mr.S.C.Herold Singh
For R1	: Mr.Govinda Rajan Deputy Solicitor General of India
For R2	: Mr.N.Dilipkumar Senior Standing Counsel
For R3	: Mr.K.Karthik

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ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus directing the first and second respondents to provisionally release the cargo covered under the following four Bills of Entry immediately and to direct the third respondent for simultaneously making insurance claim.

Sl. No.	Date	Bill of Entry No
1	22.10.2023	8425600
2	22.10.2023	8425601
4	23.10.2023	8429514
5	23.10.2023	8429516

2. The Writ Petition has been filed on 15.02.2024 long after the goods were allegedly damaged in the custody of the third respondent, which is a custodian of goods in accordance with the provisions of the Handling of Cargo in Customs Areas Regulation, 2009.

3. The learned counsel for the petitioner would submit that the petitioner had imported 10 containers of Arecanuts from Srilanka and had availed the benefit of exemption under Notification No.26/2000-Customs dated 01.03.2000 by classifying the imported consignment of Arecanuts under the head of CTH 0802 80 90 (wrongly mentioned as 0802 80 20) under the aforesaid Bills of Entry.

4. The learned counsel for the second respondent would submit that the petitioner had earlier filed an Application for provisional release of the consignments on 06.12.2023 under Section 110A of the Customs Act, 1962 after the consignments were seized on the suspicion that the Certificate of Origin (COO) produced by the petitioner appeared to be a fake certificate as if they were issued by the Srilankan Authority under the Indo-Sri Lanka Free Trade Agreement (ISFTA).

5. The learned counsel for the second respondent would further submit that the Certificate of Origin (COO) produced by the petitioner appeared to have procured by the petitioner by downloading it from the web-site. A reference was made to para 7 and 8 of the counter, which reads as under:

> *"7.It is submitted that after verifying the seal and signature, the QR code was scanned, and on scanning the same, it showed the Country-of-Origin Certificate submitted by them. Based on the above, the Country-of-Origin Certificate was defaced by the TSK* Section. At a late point of time on verification of the E-Country-of- Origin Certificate uploaded by them on the E-Sanchit by the Directorate of Revenue Intelligence, Indore Zonal Unit using QR code, the same was found to be re-directed to an unknown and very similar looking web address http.//ecoo.doc.govlk.co/ecoo-core/file/abc.pdf or http.//ecoo.doc.lk.eco-core.file.abc.doc.gov-Ik.com//abc.pdf) other than the approved web address of the Government of Sri Lanka ie: https.//ecoo.doc.gov.lk which might have been created by the importer to fraudulently claim the IFSTA duty exemption.*
>
> *8.It is submitted that an open-source investigation found that these similar web addresses/links are hosted/registered on www.godaddy.com a publicly traded American Company that provides domain registration, web hosting, and website building services."*
>
> **Turant Seva Kendra*

6. By way of rejoinder, the learned counsel for the petitioner would submit that it is confirmed in the counter affidavit that the goods have been damaged. It is the responsibility of the third respondent to have the goods surveyed by the Insurance Agent, so that the petitioner can recover the loss suffered, if any, by the petitioner during the storage of the goods, which have been damaged due to the Michaung Cyclone in December, 2023.

7. The third respondent in its counter affidavit has stated as follows:-

> *"9........The relevant extract from the said Public Notice is as follows:*
>
> *"6.It has been reported that some of the custodians have, on their own, taken up within the customs area segregation and insurance survey of the goods damaged or suspected to be damaged in respect of the Bills of entry where OCC had been granted by customs. While the entitlement of persons interested in goods and claims of damage to undertake such activity within customs area is acknowledged, it is to be noted that such activity within the customs area need to be carried out necessarily after obtaining prior approval of the Asst. Commissioner (Docks) or the! Asst. Commissioner (CFS) as the case may be and that such survey shall necessarily be in the presence of the Customs officer and Customs Broker and such other parties interested*

> *in the matter. It is to be noted that goods, damaged or otherwise, lying in Customs area, whether granted OCC or not, continue to be under control of Customs and shall not be dealt with by way of de-stuffing/segregation/survey etc. by anyone without the above said permission. Such goods shall not be disposed of in any manner from segregation carried out, than by way of clearance provided under sections 46 or Section 48 of the Customs Act, 62 and without further approval by customs.""*

8. I have considered the arguments advanced by the learned counsel for the petitioner, learned Deputy Solicitor General of India for the first respondent, learned Senior Counsel for the second respondent and the learned counsel for the third respondent.

9. The third respondent is a custodian of the imported goods under the Handling of Cargo in Customs Areas Regulations, 2009. The aforementioned regulation mandates that the third respondent as a custodian to keep the consignment safe and ensure that the revenue does suffer any due to the loss of the consignment.

10. Although it is submitted by the learned counsel for the third respondent that the first respondent had put an embargo on the third

respondent from in any manner dealing with the seized goods, I am of the view that the third respondent cannot refuse to survey the goods by a Surveyor so that the extent of damage suffered by the petitioner can be determined.

11. It is precisely for this reason that the aforementioned regulation mandates insurance by the third respondent as the custodian of imported goods before they are cleared for consumption. The first respondent also cannot have no objection to the same.

12. The submission of the learned counsel for the third respondent is that out of 10 consignments, only 4 consignments were damaged and therefore, the petitioner at behest can have only 4 consignments surveyed and rest of the consignments need not be surveyed.

13. Considering the submissions made by the learned counsel for the petitioner, I am of the view that this Writ Petition can be disposed of by directing a survey of all containers covered under the subject Bills of Entries to be conducted by an insurer appointed by the third respondent. Subject to the above, the petitioner may workout their remedy.

14. As far as the consignments which were not damaged is concerned, the petitioner may be allowed to re-export the consignments subject to the petitioner providing reasonable security, in the proposed action for confiscation and imposition of penalty under Section 125 of the Customs Act, 1962.

15. As far as the request of the petitioner for re-export of goods is concerned, I see no impediment in allowing the same subject to the petitioner providing a reasonable security in form of Bank Guarantee in favour of the respondents. The petitioner shall pay a sum of Rs.50 Lakhs in form of Bank Guarantee to the credit of the Department and such other securities in the form of Bond or other securities as may be decided.

16. This Writ Petition stands disposed of. No costs.

01.07.2024

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

MM/JEN

Copy To:

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Indore-452014,
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2.The Commissioner of Customs,
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C.SARAVANAN, J.

JEN

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