



W.P.(MD)No.3894 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.3894 of 2024

Bijil Sukumaran

... Petitioner

versus

1. The Assistant Commissioner of
Customs (Disposal)
Customs House,
Tuticorin Port,
Tuticorin District.
2. MSC Agency (India) Pvt. Ltd.,
Represented by its Manager,
1st Floor, Manickam Tower,
No.146, Palayamkottai Road,
Tuticorin.
3. Diamond CFS Park,
Rep. by its Manager,
No.5/51A, Senthilampannai,
Keelathattaparai Road,
Tuticorin.



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4. A.S.Shipping Agencies Pvt. Ltd.,
Represented by its Manager,
No.4/47B, Nallamalai Road,
South Silukkanpatti,
Pudukottai,
Tuticorin.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the 1st respondent to pass appropriate orders under Section 49 of the Customs Act 1962 so as to store the goods imported via Bill of Lading No.MEDUON100914, Bill of Lading No.MEDUON100948, Bill of Lading No.MEDUON100922 and Bill of Lading No.MEDUON100930 in a public warehouse owned by the customs department in Tuticorin forthwith.

For Petitioner : Mr.A.Anand

For R1 : Mr.N.Dilip Kumar,
Standing Counsel

ORDER

The petitioner is an importer of raw cashew nuts. He said to have imported 1000 metric tonnes of raw cashew nuts on 16.08.2023 from a shipper M/s.CASA TOMBALI COMMODITIES, South Africa. The



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petitioner said to have paid the entire payment for 1000 metric tonnes of raw cashew nuts, however, he was provided with photostate copies of Bill of Lading, which was not accepted by the first respondent and the petitioner was insisted to produce the original Bill of Lading. In the meantime, the petitioner had an issue with the Broker, who had arranged the consignment from M/s.CASA TOMBALI COMMODITIES. Yet another person, who has financed him, has also filed a suit before the Sub Court, Kollam, in O.S.No.10 of 2024. Pending these issues, the goods were directed to be kept in a private warehouse belonging to the respondents 3 to 5. Since the goods have not cleared within the permissible period of 18 days, the respondents 3 to 5 have charged demurrage cost of Rs.7.5 lakh per day from the petitioner. Therefore, the petitioner has submitted a representation on 09.02.2024 to the first respondent to shift the imported goods from the private warehouse belonging to the respondents 3 to 5 to the public warehouse owned by the Customs Department and has filed this writ petition for a Mandamus directing the first respondent to take a



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decision in accordance with Section 49 of the Customs Act, 1962, to store the goods imported via Bill of Lading No.MEDUON100914, Bill of Lading No.MEDUON100948, Bill of Lading No.MEDUON100922 and Bill of Lading No.MEDUON100930.

2. In response to this writ petition, the learned Standing Counsel for the Customs Department, based on the written communication, submits that the petitioner has not submitted any representation as claimed by him. It is only on 26.02.2024, the petitioner has approached the first respondent along with his counsel and submitted a representation requesting the Department to initiate action under Section 49 of the Customs Act, 1962. The representation dated 26.02.2024 is also without any required materials and therefore, he was directed to produce relevant documents to take a decision under Section 49 of the Customs Act, 1962. The petitioner also undertook to submit a representation along with the required documents on 29.02.2024 (i.e. tomorrow)



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WEB COPY 3. This Court considered the rival submissions made.

4. The petitioner, an importer, is having some difficulties with the consignee and with the broker. It appears that some litigations are pending. Since the petitioner has failed to produce the Bill of Lading at the relevant point of time, on the direction of the first respondent, the goods imported by the petitioner are now stored in a private warehouse. On the lapse of permissible period of 18 days, the private warehouse insisted the petitioner to pay the demurrage cost of Rs.7.5 lakh per day. Therefore, the petitioner has filed this writ petition for shifting the goods to the public warehouse owned by the Customs Department. However, the petitioner has not submitted a proper representation along with the required documents.

5. Therefore, this writ petition is disposed of with a direction to the petitioner to submit a fresh representation on 29.02.2024 (i.e.



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tomorrow) along with the required documents to the first respondent.

On receipt of such representation, the first respondent shall consider the case of the petitioner sympathetically that he is paying the demurrage cost every day and take a decision, as expeditiously as possible, within three days from thereon. No costs.

28.02.2024

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

Note: Issue order copy today.

To

1. The Assistant Commissioner of
Customs (Disposal)
Customs House,
Tuticorin Port,
Tuticorin District.



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B.PUGALENDHI, J.

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