



W.P.(MD)No.5400 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.5400 of 2019

and

W.M.P.(MD)Nos.4292 and 4293 of 2019

M/s.Shanthi Feeds Pvt. Limited,
Rep. by its General Manager,
K.Gunasekaran,
6/15, Main Road,
Pappaampatti (PO),
Coimbatore – 641 016.

... Petitioner

Vs.

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

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

3.The Assistant Commissioner of Customs (Disposal),
Custom House, New Harbour Estate,
Tuticorin – 628 004.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the records of the second respondent herein the Additional Commissioner of Customs, Custom House, Tuticorin, made in Order-in-Original No.05/2019, dated



W.P.(MD)No.5400 of 2019

25.01.2019 in C.No.VIII/10/71/2018-ADJN., SCN
C.No.VIII/06/45/2018-Imp.Asst., and quash the same as arbitrary and
illegal.

For Petitioner : Mr.A.K.Jayaraj
For Respondents : Mr.R.Nandagopal
Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned Order-in-Original No.
05/2019, dated 25.01.2019, passed by the second respondent herein.

2. By the impugned order, the consignment covered by Bill of
Lading No.SAFM 769367756, dated 19.01.2017, have been held to be
confiscable and the petitioner has been imposed with penalty of
Rs.10,00,000/- under Section 112(a)(i) of the Customs Act, 1962. The
operative portion of the impugned order reads as under:-

*"(i) I hold that 1,82,066 Kgs. of imported
"Soya Beans" valued at Rs.47,18,750/- (appraised
value by the CE) covered under B/L No. SAFM
769367756 dated 19.01.2017 are liable to
confiscation. Since the goods are not available, they
are not confiscated.*

*(ii) I impose a penalty of Rs.10,00,000/-
(Rupees Ten Lakhs only) on M/s. Shanthi Feeds Pvt
Ltd., under Section 112(a)(i) of the Customs Act,
1962."*



W.P.(MD)No.5400 of 2019

3. The impugned order precedes a show cause notice that was issued to the petitioner on 10.07.2018, wherein the petitioner was called to show cause as to why:-

"i. 1,82,066 Kgs of imported "Soya Beans" valued at Rs.47,18,750/- (appraised value by the CE) covered under B/L No. SAFM 769367756 dated 19-01-2017 should not be confiscated under Sec. 111 (d) of the Customs Act, 1962 read with Section 25 (1) (iii) of Food Safety and Standards Act, 2006 and Food Safety and Standards (Packing and Labelling) Regulation, 2011.

ii. Penalty should not be imposed under Sec. 112(a) of the Customs Act, 1962 on the importer for rendering the goods liable for confiscation."

4. The petitioner has replied to the show cause notice on 28.07.2018, wherein it has been stated by the petitioner that the seller of the Cargo was from Dubai and that due to dispute between the shipper and seller of the Cargo, the original shipping documents were not presented by the shipper to the seller's bank. Consequently, the petitioner is not an importer within the meaning of Section 2(26) of the Customs Act, 1962.

5. It is submitted that there is a jurisdictional error in invoking Section 112(a) of the Customs Act, 1962, as far as the petitioner is concerned. Similarly, it is submitted that the show cause notice calling



W.P.(MD)No.5400 of 2019

upon the petitioner to show cause as to why the imported goods should not be confiscated under Section 111 (d) of the Customs Act, 1962 read with Section 25 (1) (iii) of Food Safety and Standards Act, 2006 and Food Safety and Standards (Packing and Labelling) Regulation, 2011, was without any merits, as the imported goods itself were destroyed as unclaimed cargo pursuant to letter dated 25.07.2018 of the third respondent addressed to the Manager, M/s.Hari CFS, Tuticorin.

6. The learned counsel for the petitioner would also draw the attention to Section 46 of the Customs Act, 1962. The learned counsel for the petitioner would submit that only the importer of any goods is required to file a Bill of Entry. In this case, admittedly, no documents were given to the petitioner and therefore, the petitioner is not an importer for the purpose of Section 46 of the Customs Act, 1962. Consequently, the impugned proceedings are arbitrary and liable to be quashed.

7. Opposing the prayer, the learned Senior Standing Counsel for the respondents, on the other hand, would draw the attention to previous transactions between the petitioner and the seller. A reference was made to the findings in the impugned order, wherein it has been stated that the



W.P.(MD)No.5400 of 2019

petitioner had dealings with the shipper from Dubai, inasmuch as in the earlier Bill of Lading No.CT00113211, dated 14.12.2016, wherein the petitioner's name has been shown as Importer. Therefore, it is submitted that there is a clear indication that the petitioner is an Importer for the purpose of Section 2(26) of the Customs Act, 1962.

8. The learned Senior Standing Counsel for the respondents further referred to the letter dated 09.02.2018 addressed to the Office of the Customs Department by the Liner namely, M/s.Maersk Line, which reads as under:-

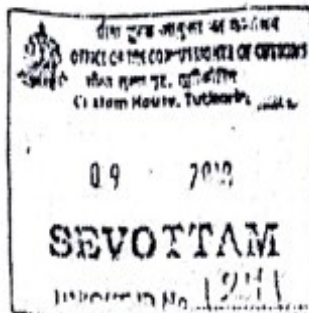
"It is stated that the import shipment vide Bill of Lading No.769367756 with 8 x 20 Dry containers had arrived in MV. Cape Nemo V 2365 on 17.02.2017 to Tuticorin Bill of Lading was released with the below name and manifest was also filed in the name of the consignee as M/s.Shanthi Feeds Pvt Ltd, 61/15, Main Road, Pappampatti (PO), Coimbatore - 641 016, India. There were multiple mails sent to consignee for clearance and customer had also requested to us for detention waiver of 90% but since we offered only 65% to customer but customer could not clear the consignment and it is lying as longstanding at CFS."



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**MAERSK
LINE**



Maersk Line India Pvt. Ltd.
Maersk House, No 185/198
Pillayar Street, High Road, W
Tuticorin - 628 004
CIN: U63040MH2011PTC214311
Toll-free: 1800-451-4003508
www.maerskline.com

Date: 09/02/18

Handwritten signature and date 9/2

To
The Assistant Commissioner (Disposal),
Customs House,
Tuticorin - 628 004

Dear Sir,

Subject: Disposal of Unclaimed / Uncleared Cargo vide B/L No. 769367756

Ref : C.No. VIII/25/101/2017 - Disposal Date: 27.12.2017 & 24.01.2017

Please be Inform you that subject Import shipment vide B/L no 769367756 with 8x 20 DRY containers had arrived in MV. Cape Nemo V.2365 on 17.02.2017 to Tuticorin BL was released with the below name and manifest was also filed in the name of the consignee as M/S SHANTHI FEEDS PVT LTD, 61/15 MAIN ROAD, PAPPAMPATTI (PO), COIMBATORE-641016, INDIA

There were multiple mails sent to consignee for clearance, and customer had also requested to us for detention waiver of 90 % but since we offered only 65 % to customer but customer could not clear the consignment and it is lying as Longstanding at C.H.

Since we are unable to contact consignee directly we have info. med our origin office to get in touch with shipper for clarifications. Awaiting for the feedback for the same.

We will confirm upon the receipt of confirmation (reply) from origin. We will provide the necessary document to your good office.

Delay in this regard may please be condoned.

Thanking You,

Yours Faithfully

Handwritten signature
For Maersk Line India Pvt. Ltd





W.P.(MD)No.5400 of 2019

Hence, it is submitted that the petitioner's claim that they are only the notified party cannot be accepted and they are not the consignee of the goods imported under Bill of Lading No.769367756. The petitioner, in their reply to the show cause notice, dated 28.07.2018, stated that they relinquished the title "Notify Party" to allow the Customs Department to declare the imported cargo as an unclaimed cargo or to confiscate the goods and dispose of the goods.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

10. No doubt, the petitioner would have had transactions with the shipper, namely, STE EKE ET FILS SARL. The transactions were to be routed through the Bank namely, Bank PSC Dubai, United Arab Emirate. In the above said Bill of Lading, the petitioner's name has been shown as notified party. Thus, unless the transaction is complete in all respects, the petitioner cannot be termed as an Importer. To import the goods, the petitioner should have been given all the documents to negotiate the same with the Bank.



W.P.(MD)No.5400 of 2019

11. In this case, the shipper has not given the documents and therefore, the petitioner has not come forward to take delivery of the same. Thus, the petitioner neither satisfies the definition of Importer within the meaning of Section 2(26) of the Customs Act, 1962 nor has crossed the threshold under Section 46 of the Customs Act, 1962 to file a Bill of Entry for clearance of imported goods for home consumption. Therefore, imposition of penalty on the petitioner on the abandoned cargo cannot be justified in the absence of Bill of Entry by the petitioner.

12. Although the petitioner has an alternate remedy by way of an appeal before the Appellate Commissioner under Section 128 of the Customs Act, 1962, I find there is no reason to prolong the litigation for the time to come. Therefore, I am inclined to allow this Writ Petition. Hence, this Writ Petition is allowed. Consequently, the impugned order dated 25.01.2019 of the second respondent stands quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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W.P.(MD)No.5400 of 2019

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W.P.(MD)No.5400 of 2019

C.SARAVANAN, J.

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W.P.(MD) No.5400 of 2019

09.07.2024