
(2014) 09 MAD CK 0401

In the Madras High Court

Case No : Writ Petition No. 12230 of 2011 and M.P. No. 1 of 2011

My Home Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0401

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Judgement

S. Vaidyanathan, J.—The petitioner has come forward with this writ petition challenging the order of the 2nd respondent dated 29.04.2011 and to forbear the respondents from levying any penal demurrage charges in respect of the consignment covered under the impugned order on the basis of the proceedings of the 2nd Respondent dated 21.04.2011.

2. The case of the petitioner is that a consignment of 2674.8 metric tonnes of cement, was loaded in a rake, consisting of 42 goods wagon at Melachery Nalagunta District, Andhra Pradesh was booked for transportation to Irugur goods shed in Coimbatore on 15.04.2011 vide RR No. 262000278. The said consignment booked by the petitioner was arrived at Irugur, Coimbatore District on 22.04.2011. However, due to heavy rain, the consignment was not cleared and after the rains had stopped, the consignment was cleared on 25.04.2011. In the meantime, a circular was issued by the 2nd respondent levying penal demurrage charges with effect from 24.04.2011 to 25.04.2011, at the following rates:-

"1. Upto 3 Hours after free time: Normal DC = Rs. 100/-

2. More than 3 hours and upto 6 hours: 1 1/2 times of Normal DC =Rs. 150/-

3. More than 6 hours and upto 12 hours: 3 times of normal DC=Rs. 300/-

4. After 12 hours: 6 times of normal DC=Rs. 600/-

But, according to the petitioner, at the time of booking of consignment of goods, no such provision was in force and unilaterally demurrage charges have been imposed with effect from 24.04.2011, by circular dated 21.04.2011 and based on the said circular, the impugned demand of Rs. 12,46,350/- was directed to be paid for the goods lying in the yard from 22.04.2011 in terms of Section 30 of the Indian Railway Act, 1989 (hereinafter referred to as the Act), which is extracted below:-

"30. Power to fix rates: (1) The Central Government may, from time to time, by general or special order fix, for the carriage of passengers and goods, rates for the whole or any part of the railway and different rates may be fixed for different classes of goods and specify in such order the conditions subject to which such rates shall apply.

(2) The Central Government may, by a like order, fix the rates of any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and specify in the order the conditions subject to which such rates shall apply".

Aggrieved against the same, this writ petition is filed.

3. The learned counsel for the petitioner submitted that imposing demurrage charges for the goods lying in the yard from 22.04.2011 is illegal, since as per the Circular dated 21.04.2011, imposition of demurrage charges commenced only from 24.04.2011. He further submitted that there is no wide publication and no notice has been served on the petitioner and hence the circular cannot be given effect to. That apart according to him, levying penal charges under the guise of demurrage is bad.

4. Though counter has not been filed by the respondents, the learned counsel for the respondents contended that in order to de-congest the goods for the shortage of space, circulars used to be widely published in the respective railway stations for clearance of the goods lying there and that is the wide publication and all the persons who have booked the consignment and receive the consignment will deem to have knowledge about the said circular as the said circular or proceedings are exhibited in the notice board at various places of the Railways, including the yard. Since the Circular dated 21.04.2011 has been exhibited on 22.04.2011 and that the petitioner's goods had arrived on 15.04.2011, the petitioner is liable to pay demurrage charges from 22.04.2011, in terms of the Circular dated 21.04.2011.

5. Heard both sides and perused the materials available on record.

6. Though the learned counsel for the petitioner contended that the Circular was not in force when the consignment booked on 15.04.2011 and consequently demurrage charges cannot be imposed for the goods arrived at in the Railways or Goods shed/Yard prior to the date of coming into force of the Circular, though they have not cleared the goods with reference to the conditions stipulated in the

Circular, I do not agree with the said contention for the reason that the date on which the Circular in question came into force, the goods were lying in the Railways or Goods shed/Yard and as per the Circular, if the goods are not cleared and within the time stipulated by the Railways, demurrage charges will have to be paid from the date on which the Circular came into force. If such contention is accepted, the persons like that of the petitioner may use the Railways as their godown. Only to de-congest the goods, circular has been issued for a particular period/notified period, to enable the clearance of goods without payment of demurrage charges or payment of demurrage charges as per the conditions stipulated in the said circular. Further more, it is to be noted that the Circular in question was also issued in a particular area. Since the issuance of Circular and the conditions stipulated therein is in administrative hand, this Court, cannot go into the competence of the issuance of the Circular.

7. As far as the date on which demurrage charges to be imposed is concerned, since the Circular has come into force with effect from 24.04.2011, I find justification in the contention of the learned counsel for the petitioner that demurrage charges cannot be collected prior to 24.04.2011. Admittedly, the goods have been cleared on 25.04.2011. Hence, the petitioner is bound to pay the demurrage charges for two days viz., (24.04.2011 and 25.04.2011) as per the valuation decided in the Circular of the Railways dated 21.04.2011.

8. In view of the same, the writ petition is disposed of by directing the respondents to make a fresh demand in respect of demurrage charges for the aforesaid period viz., (24.04.2011 and 25.04.2011) on the petitioner, after adjusting the amount already paid, if any, within a period of 15 days from the date of receipt of a copy of this order and on receipt of the same, the petitioner is directed to pay the same, within a period of thirty days thereafter. No costs. Connected miscellaneous petition is closed.