(2010) 02 MAD CK 0200

In the Madras High Court

Case No : Writ Petition Nos. 2044-2045 of 2010

Shubham Construction APPELLANT

Vs

Commr. of Cus. (Sea Port-Imports), Chennai RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Citation : (2017) 346 ELT 208

Hon'ble Judges : P. Jyothimani, J.

Bench : Single Bench

Advocate : Shri N. Viswanathan, Counsel, for the Petitioner; Shri T.R. Senthilkumar, Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

P. Jyothimani, J.—These writ petitions are filed by the respective petitioners, who are the work contractors, traders in digital office equipments and suppliers of spares, challenging the orders of the third respondent, the Deputy Commissioner of Customs (Group-5A), Chennai-1 in F. No. S59A/701/2009-Gr.5A and F. No. S59A/778/2009-Gr.5A, dated 7-1-2010 respectively and also for direction against the respondents to release the goods imported under Bill of Entry No. 279266 dated 5-8-2009 and 294982, dated 25-8-2009 respectively in terms of the orders of appeal passed by the Commissioner of Customs (Appeals) in Cus. No. 1138/2009, dated 15-9-2009 and Cus. No. 1147/2009, dated 17-9-2009 respectively and also for further direction to the respondents to compensate the petitioners in respect of detention/storage/demurrage charges suffered by them from the date of the order of the Commissioner of Customs (Appeals) till the date of its release.

2. It is the case of the petitioners that during the course of their trading operations, they imported 108 units and 77 units respectively of old and used digital multifunction (print and copying) machines falling under sub-heading No. 8443 31 00 of the Customs Tariff Act apart from 24 units of used photocopier machines falling under CTH 8443 39 30 by the petitioner in W.P. No. 2044 of

2010 under bill of entry Bearing Nos. 279266, dated 5-8-2009 and 294982, dated 25-8-2009 respectively.

2(a) In terms of the provisions of the Customs Act, 1962, the third respondent seized the same. The petitioners purchased the said goods from their supplier, M/s. Ruehl Printing Solutions GmbH, Baiersdorfer Stra Be, 15,91099 Poxdorf/ Germany for Euro 17,275/- against Invoice No. 907217, dated 1-7-2009 and from M/s. Habibullah Copiers Trading LLC, PO. No. 83565, Dubai, UAE for US $ 22100 against Invoice No. 190HCT2009, dated 5-8-2009 and accordingly declared the said transacted value in the bill of entry for assessment.

2(b) On examination of the goods by the Docks Officers with the help of an approved Chartered Engineers viz., M/s. Supreme Techno Associates Private Limited, who have issued the reports dated 10-8-2009 and 31-8-2009, it was found that the goods imported were as per declared and estimated value of goods at an enhanced value of Euro 19830 as against the transacted value of Euro 17275 and enhanced value of US $ 27570 as against the transacted value of US $ 22100 respectively.

2(c) The petitioners, in order to avoid additional demurrage and detention charges, by letters dated 10-8-2009 and 31-8-2009 respectively addressed the second respondent, the Additional Commissioner of Customs (Group 5A), agreeing to pay the enhanced value determined by the chartered engineers for assessment. The petitioners also informed that for the import of the said goods as per the foreign trade policy, they do not require any licence and even if it is felt that any licence is required for the import, the same may be adjudicated without a show cause notice to avoid any further delay.

2(d) It is stated that the second respondent in the orders dated 12-8-2009 and 2-9-2009 respectively enhanced the value of imported goods of Euro 19830 stated to be equivalent to Indian currency of Rs. 13,94,692/- apart from confiscating the imported goods under Section 111(d) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 with an option to redeem the same on payment of fine of Rs. 4,18,000/- under Section 125 of the Customs Act while imposing a penalty of Rs. 3,49,000/- under Section 112(a) of the Customs Act.

2(e) In respect of the writ petitioner in W.P. No. 2245 of 2010, the second respondent ordered enhancement of the value of the imported goods of US $ 27570 equivalent to Indian currency of Rs. 13,15,089/- apart from confiscating the imported goods under Section 111(d) of the Customs Act read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 with an option to redeem the same on payment of Rs. 4,07,000/- under Section 125 of the Customs Act while imposing a penalty of Rs. 5,43,000/- under Section 112(a) of the Customs Act.

2(f) Aggrieved by the said orders of the second respondent in so far as they relate to the confiscation of imported goods, the petitioners filed statutory appeals in terms of Section 128 of the Customs Act before the first respondent, the Commissioner of Customs (Appeals), Chennai who by his Order-in-Appeal No. 1138/09, dated 15-9-2009 and Appeal No. 1147/09, dated 17-9-2009, while confirming the order of confiscation ordered by the second respondent, however, reduced the redemption fine and penalty to Rs. 2,10,000/- and Rs. 1,30,000/- and Rs. 2,00,000/- and Rs. 1,35,000/- respectively in both the cases.

2(g) The Commissioner of Customs (Appeals) passed the orders on 15-9-2009 and 17-9-2009 respectively and in spite of the same, the respondents have not allowed the petitioners to clear the goods out of the customs custody. In the representations made on 16-9-2009, 14-10-2009 and 19-10-2009 (W.P. No. 2044/10), 19-9-2009 and 14-10-2009, 19-10-2009 and 3-11-2009 (W.P. No. 2045/10), the petitioners have stated about the mounting detention and storage charges and requested to clear the goods based on the orders of Commissioner of Customs (Appeals) dated 15-9-2009, unless the said orders are annulled or stayed by the higher appellate forum.

2(h) It is stated that since the respondents have not passed any order clearing the goods, by the representation dated 19-10-2009, both the writ petitioners even offered to clear the goods on payment of applicable duty on the enhanced value and to furnish bank guarantee equivalent to 50% of the fine and penalty imposed by the second respondent, in case the respondents desire to file appeal against the orders of the Commissioner of Customs (Appeals).

2(i) It is the case of the petitioners that the third respondent in his letter dated 7-1-2010, which is impugned in these writ petitions, addressed to the counsel of the petitioners informed that the first respondent had already directed the release of goods on the petitioners furnishing bank guarantee for 50% of the value of fine and penalty imposed by the second respondent in addition to the remittance of duty assessed on the goods and penalty.

2(j) The said communication of the first respondent is assailed by the petitioners on the ground that they are perverse and frivolous and the detention of the goods can be continued only if there is an order of stay granted by the higher forum, and therefore, by the lethargic conduct of the respondents in not releasing the goods as per the terms of the orders passed by the Commissioner of Customs (Appeals) dated 15-9-2009, enormous demurrage charges and detention charges were paid by the petitioners resulting in huge loss. In these circumstances, the present writ petitions have been filed by the petitioners for the reliefs as stated above.

3. The respondents have filed a counter affidavit in W.P. No. 2044 of 2010 which is adopted in W.P. No. 2045 of 2010 also. In that, while it is admitted that the Commissioner of Customs (Appeals) has partly allowed the appeals filed by the petitioners, in respect of fine and penalty, it is stated that there was no direction to release the goods and according to the respondents, there was no obligation on the part of the respondents to release the goods, unless the petitioners filed

appeal against the order of the Commissioner of Customs (Appeals) to have the goods released and therefore, without filing an appeal, the present writ petitions are not maintainable.

3(a) It is also stated that the Department filed appeal against the order of the Commissioner of Customs (Appeals) before the CESTAT on 10-12-2009 and the same was numbered as C/16/2010 and the stay petition was numbered as C/ Stay/13/2010 and early hearing petition was numbered as C/Misc/15/2010 in respect of the order which is subject matter in W.P. No. 2044 of 2010 and in respect of the order challenged in W.P. No. 2045 of 2010, appeal as well as stay petition was also filed on the same date, but remained to be numbered.

3(b) According to the respondents, when the statutory remedy of appeal is available, the writ petitions are not maintainable. It is also stated that when the petitioners themselves are having the right of appeal for the purpose of release of goods, without exhausting the same, the writ petitions filed under Article 226 of the Constitution are not maintainable. It is stated on the merits of the case that the petitioners have not produced specific licence for old and used digital multifunction (print & copying) machines and under the Foreign Trade Policy 2004-2009, there are restrictions regarding the import of second-hand goods except second-hand capital goods. Therefore, the confiscation has been done in accordance with law.

3(c) While it is admitted that the Additional Commissioner of Customs viz., the second respondent passed the original order under Section 111(d) of the Customs Act, 1962, with an option to the importer to redeem the goods on payment of Rs. 4,18,000/- as redemption fine, the Commissioner of Customs (Appeals) has only reduced the fine and penalty, against which the department is stated to have filed appeal.

3(d) It is specifically stated in Para-15 of the counter affidavit that the petitioner in the letter dated 19-10-2009 informed that the petitioner would execute bank guarantee for 50% of redemption fine and penalty imposed by the original authority and requested for the release of goods in view of the increase in demurrage and detention charges and that was considered by the Department and the petitioners were permitted to clear the goods on payment of duty, fine and penalty as ordered by the Commissioner of Customs (Appeals) and on execution of 50% bank guarantee on the fine and penalty imposed by the original authority.

3(e) It is the case of the respondents that the impugned orders were passed only in terms of the request made by the petitioners dated 19-10-2009 and that is also the case of the counsel for the respondents while making his contentions. It is also stated that the imports were subject to the adjudication by the department. It is also stated that the consignment under the Bill of Entry No. 279266, dated 5-8-2009 is a third consignment and as such a third offence and the same has been made without licence and since the petitioners are importers and repeated offenders, to safeguard the interests of the Revenue, the impugned orders came to be passed.

3(f) It is also stated that on receipt of letter from the Customs House dated 23-11-2009, the petitioners have agreed for adjudication without show cause notice to avoid demurrage charges and therefore, according to the respondents, the impugned orders passed by the respondents are valid in law.

4. Learned counsel for the petitioners would vehemently submit that when the Commissioner of Customs (Appeals) passed the orders in the appeals filed by the petitioners as early as on 15-9-2009 and 17-9-2009 respectively in these two cases, even though it is true that appeal remedy is available to the respondents within a period of 3 months, it is the duty on the part of the respondents to obey the orders of the Commissioner of Customs (Appeals) unless and until an order of stay is obtained from the Appellate Tribunal. According to him, the mere filing of appeal is not deemed to be an automatic stay under the provisions of the Customs Act. It is his contention that by the delaying tactics of the respondents for nearly four months, the goods are detained and the petitioners have been paying demurrage as well as storage charges to a large extent causing irreparable loss to them.

4(a) It is his further contention that even in the letter dated 11-1-2009 by the counsel addressed on behalf of the petitioners, the petitioners have only agreed to furnish bank guarantee for 50% of the total fine and penalty imposed by the original authority, of course in addition to the duty, but under the impugned order the first respondent who is a subordinate to the Commissioner of Customs (Appeals) and who is expected to obey his orders, has chosen to pass independent orders on the basis of the letter of the petitioners dated 11-9-2009 and 15-9-2009 sent through their counsel allowing the petitioners not only to execute bank guarantee for 50% of fine and penalty as levied by the original authority and to pay duty applicable, but also directing the petitioners to pay fine and penalty as ordered by the Commissioner of Customs (Appeals) and in effect, the impugned orders reiterate the orders of the original authority in full while the appellate authority, the Commissioner of Customs (Appeals) has reduced the fine and penalty.

4(b) By relying upon the judgment of the Supreme Court in Union of India v. Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433 (S.C.)], he would contend that the first respondent being a subordinate authority to the Commissioner of Customs (Appeals), is expected to follow the orders of the Commissioner of Customs (Appeals) unless the same are stayed by the higher forum and therefore, the conduct of the first respondent is in clear violation of the orders passed by the Commissioner of Customs (Appeals).

5. On the other hand, Mr. T.R. Senthilkumar, learned counsel for the respondents would submit that there is an adequate alternative remedy available to the petitioners under the Customs Act, and therefore the writ petitions are not

maintainable, by relying upon the Division Bench judgment of this Court in M/s. Nivaram Pharma Private Limited v. The Customs, Excise and Gold (Control), Appellate Tribunal [(2005) 2 MLJ 246 : 2006 (205) E.L.T. 9 (Mad.)] apart from another order of a learned Single Judge of this Court reported in M/s. Parmar Exports, Chennai v. The Assistant Commissioner of Customs (Drawback), Customs House, Chennai [2010 TIOL-93-HC-Mad-Cus : 2010 (254) E.L.T. 281 (Mad.)].

6. The impugned orders passed by the first respondent, which is challenged in these writ petitions are as follows :

"In this regard, it is stated that the request made by the importer for release of the goods on execution of 50% Bank Guarantee on the fine and penalty levied by the original authority was processed and Commissioner has ordered for release of the goods on payment of applicable duty, fine & penalty as ordered by Commissioner (Appeals) in addition to execution of 50% Bank Guarantee on the fine and penalty imposed by the original authority."

7. As stated above, the original authority viz., the Additional Commissioner of Customs (Group 5A), second respondent herein, in the order dated 12-8-2009 which is subject matter of W.P. No. 2044 of 2010, while ordering confiscation and rejecting the declared value, redetermined the value, gave an option to the importer to redeem on payment of fine and also imposed penalty. The said order is as follows :

"(i) I reject the declared value of EURO 17275 (C&F) of the subject goods imported vide Bill Entry No. 279266, dated 5-8-2009 under Rule 12 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 and re-determine the value of the said goods at EURO 19830 (C&F) equivalent to Rs. 13,94,692/- (CIF) under Rule 9 of CVR 2007.

(ii) I confiscate the impugned offending goods valued at Rs. 13,94,692/- (CIF) under Section 111(d) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992. However, I give an option to the owner of the goods to redeem the same on payment of fine of Rs. 4,18,000/- (Rupees Four Lakhs Eighteen Thousand only) under Section 125 of the Customs Act, 1962 subject to payment of applicable rate of duty.

(iii) I also impose a penalty of Rs. 3,49,000/- (Rupees Three Lakhs Forty Nine Thousand only) on M/s. Shubham Construction, Mirzapur, under Section 112(a) of the Customs Act, 1962, for having rendered the subject goods liable for confiscation and having committed the offence for the third time."

8. Likewise, in respect of the petitioner in W.P. No. 2045 of 2010, the first respondent passed the original order on 2-9-2009 the operative portion of which is as follows :

"(i) I reject the declared value of USD 22,100/- (C&F) of the subject goods imported vide Bill of Entry No. 294982, dated 25-8-2009 under Rule 12 of

Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 and re-determine the value of the said goods at USD 27,570/- (C&F) equivalent to Rs. 13,57,764/- (CIF) under Rule 9 of CVR, 2007.

(ii) I confiscate the impugned offending goods valued at Rs. 13,57,764/- (CIF) under Section 111(d) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992. However, I give an option to the owner of the goods to redeem the same on payment of fine of Rs. 4,07,000/- (Rupees Four Lakh Seven Thousand only) under Section 125 of the Customs Act, 1962 subject to payment of applicable rate of duty.

(iii) I also impose a penalty of Rs. 5,43,000/- (Rupees Five Lakh Forty three thousand only) on M/s. Deepak Enterprise, Delhi under Section 112(a) of the Customs Act, 1962, for having rendered the subject goods liable for confiscation for the third time."

9. The Commissioner of Customs (Appeals) in the appeals filed by the petitioners, while confirming the order of confiscation, reduced the amount of fine and penalty by orders dated 15-9-2009 and 17-9-2009. The relevant portion of the orders are as follows :

"Order dated 15-9-2009 :

I therefore do not accept the contention that the machines, which are multi function machines including the function of photocopying, are not liable for confiscation as photocopiers. The order of the lower authority is therefore upheld inasmuch as it refers to the above.

As regards the plea that the fine and penalty are on the higher side and that they have been fixed much lower for similar cases by various adjudicating authorities, it is not mandatory that the same has to be followed in all cases. The Apex Court has noted in the case of Indo China Steam Ship Navigation Co. Ltd. v. Jagjit Singh, Addl. Collector, Calcutta and Others - 1983 (13) E.L.T. 1392 (S.C.) that where an importer is inspired merely by cupidity to carry out illegal acts for the purpose of making profit, it would be open to the Customs to impose deterrent fines. At various times, in photocopier cases judicial forums have imposed fine and penalty cumulatively varying between 20% [CC, Chennai v. Omex International - 2007 (216) E.L.T. 144 (Tri.-Chennai) to as much as 40% when margin of profit was found to be 25% [G.B. Trading Co. v. CC, Tuticorin - 2008 (231) E.L.T. 325 (Tri.-Chennai). Here no finding has been made with regard to margin of profit by the lower authority. However, the need to impose a sufficiently deterrent fine and penalty has to be balanced with the requirement for equity and justice. The lower authority has imposed as much as 30% fine and 25% penalty. In light of previous precedents, I am of the view that a fine of Rs. 2,10,000/- and penalty of Rs. 1,30,000/- would suffice under the circumstances. I therefore order accordingly. Appeal is partly allowed."

"Order dated 17-9-2009 :

I therefore do not accept the contention that the machines, which are multi function machines including the function of photocopying, are not liable for confiscation as photocopiers. The order of the lower authority is therefore upheld inasmuch as it refers to the above.

As regards the plea that the fine and penalty are on the higher side and that they have been fixed much lower for similar cases by various adjudicating authorities, it is not mandatory that the same has to be followed in all cases. The Apex Court has noted in the case of Indo China Steam Ship Navigation Co. Ltd. v. Jagjit Singh, Addl. Collector, Calcutta and Others - 1983 (13) E.L.T. 1392 (S.C.) that where an importer is inspired merely by cupidity to carry out illegal acts for the purpose of making profit, it would be open to the Customs to impose deterrent fines. At various times, in photocopier cases judicial forums have imposed fine and penalty cumulatively varying between 20% [CC, Chennai v. Omex International - 2007 (216) E.L.T. 144 (Tri.-Chennai) to as much as 40% when margin of profit was found to be 25% [G.B. Trading Co. v. CC, Tuticorin - 2008 (231) E.L.T. 325 (Tri.-Chennai)]. Here the margin of profit has been indicated by the chartered engineer to be between 15-25%. In any case the fine and penalty imposed @ 30% and 40% of the CIF value appear to be exorbitant.

The need to impose a sufficiently deterrent fine and penalty has to be balanced with the requirement for equity and justice. Keeping in view the precedents, I reduce the fine to Rs. 2,00,000/- and penalty to Rs. 1,35,000/-."

10. A combined reading of the orders of the original authority, the second respondent and the Commissioner of Customs (Appeals) in these cases show that while both the authorities have accepted the confiscation, the original authority has given an option to the petitioners to redeem the goods on payment of redemption fine and penalty which has been reduced by the original authority. The redemption fine imposed by the original authority in W.P. No. 2044 of 2010 viz. Rs. 4,18,000/- has been reduced to Rs. 2,10,000/- by the Commissioner of Customs (Appeals) and the penalty imposed by the original authority to the extent of Rs. 3,49,000/- has been reduced to Rs. 1,30,000/-.

11. Likewise, in respect of W.P. No. 2045 of 2010, the redemption fine imposed by the original authority to the extent of Rs. 4,07,000/- has been reduced to Rs. 2 lakhs by the Commissioner of Customs (Appeals). The penalty of Rs. 5,43,000/- imposed by the original authority, the second respondent, has been reduced to Rs. 1,35,000/-. Unless and until these orders are stayed by the Appellate Tribunal, certainly the orders are binding on the first respondent. The first respondent has passed the impugned orders, based on the representations stated to have been made by the petitioners through their counsel dated 11-11-2009 and 15-12-2009 which is also the case of the counsel for the respondents during the course of arguments.

12. Now, let us refer to the relevant portions of the said letters of the counsel for the petitioners dated 11-11-2009 and 15-12-2009 as follows :

Letter dated 11-11-2009 :

"4. My client states that in the last communication dated 19-10-2009 addressed to the learned Additional Commissioner he had after setting out the fact which came to his knowledge namely the fact of the department proposing to file an appeal against the order of the learned Commissioner of Customs (Appeals) and had accordingly come forward to furnish a BG for 50% of the total fine and penalty imposed by the learned adjudicating authority, which would sufficiently cover the confirmation of the fines and penalties approved by the learned Commissioner of Customs (Appeals) in his order-in-appeal referred to above."

Letter dated 15-12-2009 :

"4. My client states that in the last communication dated 3-11-2009 he had after setting out the fact which came to his knowledge namely the fact of the department proposing to file an appeal against the order of the learned Commissioner of Customs (Appeals) and head accordingly come forward to furnish a BG for 50% of the total fine and penalty imposed by the learned adjudicating authority, which would sufficiently cover the confirmation of the fines and penalties approved by the learned Commissioner of Customs (Appeals) and also interest of which the orders of the Hon''ble High Court of Madras."

13. Therefore, as per the request made on behalf of the petitioners, they have agreed for furnishing the bank guarantee in respect of fine and penalty imposed by the original authority to the extent of 50% apart from payment of duty. Based on the said undertaking, while the first respondent has chosen to pass the impugned orders directing the petitioners to furnish bank guarantee for 50% in respect of fine and penalty apart from the duty, also directed the petitioners to pay fine and penalty as ordered by the Commissioner of Customs (Appeals). The fact remains that in spite of the order of the Commissioner of Customs (Appeals), the appellate authority, reducing the fine and penalty for the purpose of releasing the goods by way of redemption, the first respondent has imposed a condition similar to the order passed by the original authority, the second respondent which has been set aside in respect of fine and penalty. The contention of the learned counsel for the respondents that there was no direction by the Commissioner of Customs (Appeals) for releasing the goods and therefore, the petitioners should file appeal against the said orders has no meaning. The original authority, the second respondent, has passed the order of redemption imposing fine and penalty which means that on payment of the said amounts, the petitioners are entitled for the release of goods of course, subject to adjudication. When that order was modified by the appellate authority, viz., the Commissioner of Customs (Appeals) by reducing fine amount and penalty, absolutely there is no necessity for an express direction to release the goods on fulfilment of the said condition, since the order of the Commissioner of Customs (Appeals) is in continuation of the order of the original authority and therefore, the contention that an alternative remedy is available to the petitioners before the Tribunal has no meaning.

14. Now, it is relevant to mention the judgment of a Larger Bench of the Supreme Court in Union of India v. Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433 (S.C.)] wherein it was insisted that the duty of the lower authorities is to follow the orders of the appellate authority and the relevant portion is as follows :

"It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not ''acceptable'' to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assess and chaos in administration of tax laws."

15. Now coming to the contention of the learned counsel for the respondents that the respondent department has filed appeal before the Tribunal, even though it is true that the department has got time to file appeal for a period of three months under Section 129A(3) of the Customs Act, which is as follows :

"Sec. 129A(3). Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the [Commissioner of Customs], or as the case may be, the other party preferring the appeal."

The Appellate Tribunal has the powers to grant stay subject to the condition as contemplated under Section 129A(7) which is as follows :

"Sec. 129A(7). Every application made before the Appellate Tribunal -

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees :

Provided that no such fee shall be payable in the case of application filed by or on behalf of the Commissioner of Customs under this sub-section."

Therefore, there is no doubt that unless the Appellate Tribunal grants stay of the order of the Commissioner of Customs (Appeals), the orders of the appellate authority has to be implemented.

16. The impugned orders on the face of them, are opposed to the orders of the Commissioner of Customs (Appeals) and therefore, the same are liable to be set

aside and accordingly, they are set aside with direction to the respondents to give option to the petitioners for redemption on furnishing the bank guarantee to the extent of 50% of the redemption fine and penalty imposed by the original authority viz., the second respondent by orders dated 12-8-2009 and 2-9-2009 apart from payment of applicable duty and on compliance of the said condition, the respondents shall release the goods and such release shall be subject to the final adjudication made by the authorities competent under the Customs Act or to release the goods on the petitioners complying with the orders of the Commissioner of Customs (Appeals), Chennai.

17. Insofar as the claim of the petitioners for the payment of demurrage and detention/storage charges, as submitted by the learned counsel for the respondents, the same is a separate issue which has to be decided based on appreciation of evidence and materials to be placed which cannot be done by this Court by exercising powers under Article 226 of the Constitution of India, by exchange of affidavits. Even assuming that there has been delay on the part of the respondents in releasing the goods, in the context of specific contention raised by the respondents that statutory appeals have been filed within the time stipulated therefor and the Tribunal is taking time for the purpose of numbering the appeals, it is not possible at this stage to decide who is at fault so as to come to the conclusion that any damages or compensation to which the petitioners may be otherwise entitled to.

18. There is no grave circumstance for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. It is not as if the petitioners who are regular importers are left in lurch without remedy available in law. It is always open to the petitioners to work out their remedy in the proper forum either by filing a regular suit or by approaching the competent forums. In such circumstances, I do not agree with the contention of the learned counsel for the petitioners that a grave situation is in existence so that this Court should grant compensation against the demurrage and storage charges incurred by the petitioners. Therefore, leaving it open to the petitioners to work out their remedy before the properly constituted forum, the said claim in respect of compensation against demurrage and storage charges is rejected.

19. In fine, the writ petitions stand ordered and the impugned orders of the third respondent dated 7-1-2010 in both the writ petitions stand set aside. The claim of the petitioners for payment of compensation stands rejected, however, with liberty to the petitioners to work out the remedy in the appropriate forum. The third respondent is directed to release the goods on either the petitioners'' furnishing the bank guarantee for 50% of the amount of redemption fine and penalty imposed by the second respondent as per orders dated 12-8-2009 and 2-9-2009 along with payment of applicable duty to the goods or on the petitioners complying with the orders of the Commissioner of Customs (Appeals), Chennai dated 15-9-2009 and 17-9-2009 respectively and if the above said payment is made within a period of two months from the date of receipt of a

copy of this order, and on compliance of the above said order, the third respondent shall release the goods and such release shall be subject to the final decision in the adjudication process. No costs. Connected miscellaneous petitions are closed.

