(2016) 07 MAD CK 0082

In the Madras High Court

Case No : Writ Petition Nos. 4358 and 4836 of 2015

Trans Asian Shipping Services (P) Ltd. APPELLANT

Vs

Concor Container Freight Station RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

Citation : (2016) 340 ELT 123

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Ms. S. Pandeswari, Counsel for Mrs. Anita Thomas, Advocate, for the Petitioner; S/Shri V. Sundareswaran, SPC, V.G. Suresh Kumar, A.P. Srinivas and S. Raghunathan, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J.—I have heard Ms. Pandeswari, learned counsel for the petitioner, Mr. V.G. Suresh Kumar, learned counsel for the container freight station in W.P. No. 4358 of 2015, Mr. V. Sundareswaran, learned Senior Panel Counsel appearing for the Directorate of Revenue Intelligence, Mr. A.P. Srinivas, learned Senior Panel Counsel appearing for the Customs Department and Mr. S. Raghunathan, learned counsel appearing for another container freight station in W.P. No. 4836 of 2015.

2. The petitioner has filed these writ petitions seeking a direction to the respondents to release the containers now lying in the respective container freight stations. The petitioner is the owner of the containers. In both the writ petitions, the owner of the cargo is not a party.

3. The Directorate of Revenue Intelligence, Bangalore caused a search in the residential and office premises of various parties and gathered intelligence and after obtaining voluntary statement from one Mr. Pandian Muruganathan, the officers of the Directorate of Revenue Intelligence had reason to believe that the export consignment was Muriate of Potash (MOP) and that the exporter

attempted to export the same in violation of the Customs Law and hence, the consignment was seized at Chennai during transshipment and 17 representative samples of the goods were drawn under a mahazar.

4. Ultimately, an Order-in-Original dated 29-2-2012 had been passed by the Additional Commissioner of Customs, Coimbatore absolutely confiscating the seized quantity of 28 MTs of MOP in terms of Sections 113(d), 113(h) and 113(i) read with Sections 11 and 50 of the Customs Act, 1962 and Section 3 (3) of the Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade (Regulation) Rules, 1993 and Notification No. 3/2009-2014, dated 27-8-2009 issued by the Director General of Foreign Trade, New Delhi. A sum of Rs. 15 lakhs was imposed as penalty on M/s. Omsri Mata Devi Exports Private Limited and another sum of Rs. 10 lakhs was imposed on Mr. Pandian Muruganathan. It appears that the order of absolute confiscation has become final.

5. The problem has now arisen for the petitioner because the containers are being detained by the Directorate of Revenue Intelligence/Customs Department in the respective container freight stations owned and established by the first respondent in WP. No. 4358 of 2015 and the second respondent in W.P. No. 4836 of 2015. Admittedly, the containers have not been confiscated, but only the goods were confiscated and the confiscation is absolute. In such circumstances, the Directorate of Revenue Intelligence/Customs Department should take immediate steps for de-stuffing the containers and releasing the containers, especially when the Order-in-Original ordering confiscation has been passed as far back as on 29-2-2012.

6. In the light of the above, the writ petitions are disposed of with a direction to the Competent Authority of the Customs Department/Directorate of Revenue Intelligence to consider the petitioner''s request and order for de-stuffing the cargo and deal with the same in the manner as decided by them and also for release of the containers within a period of twelve weeks from the date of receipt of a copy of this order.

7. It is pointed by both the learned counsel appearing for the container freight stations that the containers have been lying in their premises for a long period of time and no rent has been paid so far. The learned counsel have got a working sheet to show the amount of rent due and payable.

8. In view of the fact that the containers were detained by the Department for investigation and have been kept in the respective container freight stations, the Customs Department/Directorate of Revenue Intelligence shall also endeavour to assist the respective container freight stations for recovery of the rent due and payable. As the importer has been found guilty, they could be made liable for payment of rental dues. Therefore, there will be a direction to the container freight stations to submit a claim to the Customs Department/Directorate of Revenue Intelligence for settling the rental dues for the period, during which, the containers were detained in their premises and if such claim is made, the

Customs Department/Directorate of Revenue Intelligence shall take appropriate action in this regard within a period of two weeks from the date, on which, the claim is made. No costs.