(2012) 01 AHC CK 0799

In the Allahabad High Court

Case No : Writ Tax No. 1716 of 2011

Trans Asian Shipping Services Pvt. Ltd. APPELLANT

Vs

Addl. Commr. of Customs RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Citation : (2013) 290 ELT 641

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : Gulab Singh Yadav and Ms. Rasmitha R. Chandran, for the Appellant; S.P. Kesarwani, Senior Standing Counsel and A.K. Shukla, for the Respondent

Judgement

1. By means of present writ petition the petitioner seeks a writ, order or direction in the nature of mandamus commanding the respondents to release the containers to the petitioner. Briefly stated the facts giving rise to the present writ petition are as follows:

The petitioner is a privately owned shipping company registered under the Indian Companies Act. It is a multinational company having operations in the Indian sub-continent, Middle East & South East Asia. Its core business is shipping especially transportation of containerized cargo. For the transportation of cargo the petitioner-company uses company-owned as well as leased containers. In October, 2009, M/s. ONS Maritime Pvt. Ltd. - an international freight forwarder located at Pratap Vihar, Ghaziabad - placed booking orders for forty numbers of 20''DV containers for the shipment of Oil Well Chemicals cargo. The orders were placed on behalf of Vission Mineral and Energy, 301, III Floor, Street No. 3, Gaffar Manzil, Jamia Nagar, New Friends Colony, New Delhi. The petitioner-company released forty numbers of requisite empty containers from its depot, M/s. LCL Logistics (India) Pvt. Ltd. to the shipper M/s. Vision Mineral and Energy though the above-mentioned freight forwarder ONS Maritime Pvt. Ltd. for stuffing the cargo in their factory.

2. While containers were on the move it was seized by the Customs Authorities at ICD Dadri on 13-10-2009 on the ground that some restricted commodity is being transported/exported in these containers. The goods were given on 23-1-2010 in the supurdagi of the Chief Manager, Container Corporation of India Ltd. Inland Container Depot, Noida-Dadri Road, Near Dadri Railway Station, Tilapata, Greater Noida, District Gautam Budha Nagar, Uttar Pradesh, the respondent no. 2. All the forty containers are standing there. Since then correspondences have been exchanged between the parties. The petitioner is pressing for release of containers after unloading the goods contained therein. The petitioner earlier approached the Delhi High Court by means of Writ Petition No. 3925 of 2011 seeking release of the containers. It has been dismissed as withdrawn vide judgment and order dated 12-9-2011 on the ground that the Delhi High Court has no territorial jurisdiction to entertain the petition. Thereafter, the petitioner has approached this Court by means of filing the present writ petition. On 12-12-2011 the Court while entertaining the writ petition had passed following order:

Sri R.C. Shukla, appears for respondent No. 1.

The petitioner is permitted to serve the notice on respondent no. 2 outside the Court and file an affidavit of service within a week. Office to hand over Dasti notices within three days.

The notice will indicate that the writ petition will be taken up as a fresh case on 20th December 2011.

The respondent No. 2 shall instruct its counsel as to why the containers are not being released after unloading the goods therein in terms of the order issued by the respondent No. 1.

3. Sri Arun Kumar Shukla has put in appearance on behalf of respondent no. 2 and has also filed a counter affidavit today, which is taken on record.

4. We have heard Ms. Rasmitha R. Chandran, learned counsel for the petitioner, Sri Arun Kumar Shukla, learned counsel appearing for respondent no. 2. Sri R.C. Shukla learned counsel appears for respondent no. 1. Learned counsel for the petitioner submitted that respondent no. 1 himself had written a letter to the respondent no. 2 to keep the seized goods i.e. 20,000 bags of MOP of Fertilizer Grade in safe custody so that the containers may be released, thus there is no justification for not releasing the containers. The petitioner is suffering irreparable loss as containers are being held up for a pretty long period, which is now more two years.

5. Sri A.K. Shukla, learned counsel for respondent no. 2 referred to the stand taken in the counter affidavit filed by Sri Vinod Bhatia, Chief Manager of the respondent no. 2 and submitted that the respondent no. 2 does not have enough space so as to keep the goods in safe custody. Moreover the goods cannot be kept in an open area. The goods are highly perishable in nature. He submitted

that the respondent no. 2 has sent letters to the respondent no. 1 seeking clarification, which is awaited. Thereafter necessary action would be taken for releasing the containers.

6. We have given our thoughtful consideration to the various pleas raised by the learned counsel for the parties and find that vide letter dated 11-10-2010 the office of the Additional Commissioner (Customs) had asked the respondent no. 2 to keep seized goods i.e. 20,000 bags of MOP of Fertilizer Grade in the warehouse in safe custody so that the containers could be released to the concerned shipping line. This letter has been filed along with counter affidavit as Annexure CA-7 by the respondent no. 2. From the said letter it is absolutely clear that Office of the Additional Commissioner (Customs) respondent no. 1 wants that container should be released to the Shipping Line. However, the containers are not being released as the seized goods are not being kept in safe custody by the respondent no. 2. If the respondent no. 2 has expressed his inability to keep seized goods in a safe custody, it is the responsibility of respondent no. 1 to keep the seized goods at suitable place.

7. In this view of the matter, we are of the considered opinion that the respondent no. 1 should take appropriate steps for keeping the seized goods in the safe custody and for releasing the 40 containers to the petitioner for which the Court thinks that period of one month would be reasonable as more than a year have passed since letter dated 11-10-2010. We, therefore, dispose of this writ petition with a direction to the respondent on. 1 to take appropriate steps for keeping the seized goods i.e. 20,000 bags of MOP of fertilizer grade unloaded in the presence of any authorized representative of the petitioner-company and also get few sample of the goods sealed with the joint signature to avoid any dispute regarding the nature/quality of the seized goods in the adjudication proceedings and release the forty containers to the petitioner latest by 6th February, 2012. The petitioner shall file a certified copy of this order before respondent no. 1 within a week from today. We may make it clear that by this order directing for release of the 40 containers after unloading the seized goods in favour of the petitioner it should not be taken to mean that the petitioner has been absolved of its liability if any under the provisions of the Customs Act, 1962 or any enactment, in case the authorities decide to take any action.