

(2022) 04 CAL CK 0047

In the Calcutta High Court

Case No : I.A No. GA/01/2022, CC No. 08 Of 2022

Vinod Kumar Jain

APPELLANT

Vs

Rajesh Jindal, Principal Commissioner Of Customs (Port)

RESPONDENT

Date of Decision : 18-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 129, 215, 226
Customs Act, 1962 — Section 2(11), 8, 10(1)(l), 14, 29(2)(c), 33, 42, 45, 45(2)(b),
49, 112(a)(ii), 111(f), 111(m), 141, 141(1), 141(2), 157, 170, 171
Electricity Act, 2003 — Section 178

Citation : (2022) 04 CAL CK 0047

Hon'ble Judges : T.S. Sivagnanam, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Sudhir Mehta, Anurag Bagaria, K.K. Maity, Abhradip Maity, Jaydip Kar, Labanyasree Sinha

Judgement

1. This application has been filed by the petitioner in contempt petition in CC No. 08 of 2022 to grant leave to add the container freight station (CFS) and the Shipping Line as party respondents in the contempt petition. The parties who are sought to be added in the contempt petition are:-

1) M/s. Century Plyboards (I) Limited, Century House, P-15/1, Taratala Road, Kolkata – 700088.

2) PIL India Private Limited, Lala Lajpat Rai Sarani, 238 AJC Bose Road, Kolkata – 700020.

2. The facts leading to filing of the petition for adding the aforementioned two parties as a respondents in the contempt petition is as hereunder:-

3. The petitioner had filed WP NO. 870 of 2021 for issuance of a writ of mandamus to direct the respondents 1 to 3 who are official respondents, to dyestuff the container and permit warehousing of the goods under Section 49 of the Customs Act, 1962 (the Act) and to draw fresh samples in the presence of

the petitioner and send the same for retest to any accredited laboratory and one sealed sample be provided to the petitioner. As ordered by the Commissioner of Customs (Appeals) dated 11.08.2021 and to direct the first respondent to make an enquiry and investigation if on retest, samples of the goods are found to be swapped and take suitable steps against the delinquent officers and for a direction to the official respondent to reimburse the warehousing charges and container rent suffered on the goods.

4. The petitioner imported a consignment of mixed lot of 100 % polyester, knitted fabric and filed bill of entry dated 15.09.2020. The consignment was examined by the officials in the presence of the petitioner/importer and on visual examination, it was prima facie found that the goods were fresh and high-quality fabric. Representative samples were drawn and forwarded to the Central Revenue Control Laboratory, Calcutta for testing and to ascertain the actual nature and quality of the goods. The Central Laboratory opined that the samples may be treated as "tufted fabric". The Joint Commissioner of Customs (Port) issued show cause notice dated 05.11.2020 calling upon the petitioner to explain as to why the imported goods should not be held liable for confiscation under Section 111 (f) and 111 (m) of the Act; why the value of the goods as mentioned by the petitioner should not be rejected; why the value of the goods should not be re-determined @ USD 1.85 per kg (CIF), under Section 14 of the Act read with Customs Valuation (determination of value of imported goods) Rules 2017; why the goods found as "tufted fabric" should not be classified under CTH 5802 3000 and basic customs duty should not be calculated at specific duty of Rs. 150 per kg, why IGST @ 12 % should not be levied on the goods instead of 5 % IGST already paid by the petitioner and why the petitioner should not be held liable for penal action under Section 112 (a) (ii) of the Act. The petitioner submitted their reply dated 14.12.2020 disputing the quality of the fabric as opined by the Central Laboratory and requested to draw fresh samples and send the same for re-test to the Textile Committee at Calcutta and NIFT at Calcutta. The request made by the petitioner was not accepted and the Joint Commissioner of Customs passed an order-in-original dated 15.06.2021 confirming the proposal in the show cause notice, re-determining the assessable value of the goods and giving an opportunity to the petitioner to redeem the goods upon payment of redemption fine of Rs. 3,00,000/- and also imposed penalty of Rs. 2,50,000/-. Aggrieved by such order, the petitioner filed appeal before the Commissioner of Customs, (Appeals) Calcutta. The Appellate Authority allowed the appeal by order dated 11.08.2021 by setting aside the order of the Joint Commissioner and remanding the matter to the said authority to decide the case afresh and by directing fresh representative samples to be drawn as per the prescribed procedure and forward to other accredited laboratory for retesting and the case be adjudicated accordingly. The original authority was directed to allow warehousing of the goods as sought for by the petitioner under Section 49 of the Act. The petitioner approached this Court by filing the writ petition on the ground that the order passed by the Appellate Authority has not been complied with

inspite of the request made by the petitioner, fresh samples have not been drawn, the goods are not being allowed to be warehoused and the petitioner is incurring heavy demurrages charges as well as rent payable for the container and therefore a direction was sought for to implement the order passed by the Appellate Authority. The writ petition was disposed of by the order dated 29.09.2021. The Learned Writ Court noted that during the pendency of the writ petition, one of the directions issued by the Appellate Authority was complied with and the goods have been permitted to be warehoused. However, the direction for retesting of the goods has not been complied with. The respondents resisted the prayer by contending that the order passed by the Appellate Authority dated 11.08.2021 is an appealable order and sought to distinguish the decision relied on by the petitioner in the case of Umbar Marketing Private Limited Versus Commissioner of Customs (Port) (2016) 338 ELT 362 (Calcutta), on the ground that it is not applicable to the facts of the case. The Learned Writ Court rejected such contention of the department and held that the department cannot take different stand for different parties. Accordingly, the writ petition stood disposed of by directing the concerned respondent to draw samples for the purpose of retesting the goods within one week from the date of the order and in the event if the test report is against the petitioner, the amount deposited by the petitioner for retesting will be forfeited. The Court made it clear that it has not gone into the merits of the matter. Aggrieved by such order, the department preferred appeal in APOT/170/2021. In the said appeal the petitioner filed cross objection in OCOT NO. 02 of 2021. The appeal and the cross objection were heard together and were disposed of by the judgment dated 24.11.2021. When the appeal was heard, the department conceded to the direction issued by the Appellate Authority by permitting warehousing of the goods. The Court noted that warehousing could not be done by the importer since the container charges and demurrage have not been waived as no detention certificate has been issued by the appropriate authority of the Customs department. The department would contend that the order passed by the Appellate Authority is an appealable order and appeal has been preferred to the tribunal against the said order. The petitioner contended that the goods were detained at the instance of the department and the petitioner was not permitted to warehouse the goods and they are entitled for issuance of detention certificate which will enable them to get the demurrage and container charges waived. In this regard, the petitioner referred to Regulation 10 (a) of the Sea Cargo Manifest and Transshipment Regulation 2018 and Regulation 6 (I) of the Handling of Cargo in Customs Area, Regulation 2009. The Court after taking into consideration the submission on either side, pointed out that this Court cannot be converted into an executing Court to execute the order passed by Appellate Authority which is the subject matter of challenge before the Tribunal at the instance of the department. A need was felt to bring about a workable solution as the goods which were imported during September 2020 are still lying in the customs area and that the department themselves conceded to the direction issued by the Appellate Authority permitting warehousing. Therefore, the writ appeal filed by the

department was allowed in part and the order and direction issued in the writ petition was modified on the following terms:-

1) The appellant department is directed to draw representative sample in the presence of the first respondent/importer and in accordance with the relevant procedure and send the samples for testing to the accredited laboratory in Kolkata and the charges be payable by the first respondent. It is made clear that drawl of the samples and sending the same for testing to the laboratory shall be without prejudice to the rights and contention of the appellant in appeal which was filed by the department before the Tribunal challenging the order passed by the Commissioner of Customs dated 11th August, 2021.

2) We are informed that the department has agreed that the first respondent can warehouse the goods but the same could not be complied with because there is huge demand of detention charges. We find that there is no formal request made by the first respondent for waiver of these charges. Therefore, there will be a direction to the first respondent to submit the request of waiver of detention charges and issuance of detention certificate within three days from the date of the receipt of the copy of demand which shall be considered by the appropriate authority within ten days therefrom.

3) Subject to the orders that may be passed on the representation for issuance of detention certificate, the goods shall be permitted to be warehoused so as to comply with the direction issued in sub para (i) for drawal of samples and testing.

5. Along with the writ appeal and the cross objection, a contempt petition was also heard OCOT No. 02 of 2022 which was disposed of as nothing would survive for adjudication in the light of the direction issued.

6. The petitioner is before us, by way of this contempt application in CC NO. 08 of 2022, contending that the official respondents have deliberately failed to obey the direction issued in the judgment and order dated 24.11.2021 by not obtaining the test report of the goods and deliberately delaying the matter. Therefore, the petitioner prayed that the official respondents be punished under the Contempt of Courts Act. By order dated 17.02.2022, this Court was of the prima facie view that, it would be well justified in initiating action for contempt against the official respondents. However, refrained from doing so, in the light of the stand taken by the department, if direction is issued the goods will be released based on the test report dated 06.01.2022. This test report was pursuant to the sample drawn based on the direction issued in the order dated 24.11.2021. The test report was in favour of the petitioner. Therefore, direction was issued to the department to release the goods within 48 hours from the date of receipt of the copy of the order and the release of the goods based on the test report dated 06.01.2022 will not prejudice the rights of the department as already observed in the judgment and order dated 24.11.2021. Taking note of the submission made on behalf of the petitioner, that the department has not issued detention certificate for waiver of demurrages and container charges and

certificate has been issued only for a partial period, the Court observed that the department should not frustrate the order and direction issued on 24.11.2021 more particularly when the said direction had attained finality as department has not preferred any appeal. Therefore, direction was issued to the department to issue detention certificate for the entire period of detention, i.e. till the goods are released in terms of the earlier direction. Subsequently, the contempt application was heard on March 04, 2022, wherein it was noted that the department has complied with the directions issued and an order to release the goods has been passed on 19.02.2022. Further the Court noted that the department has issued detention certificate dated 18.02.2022 and forwarded the same to the CFS and the Shipping Line (proposed parties). The grievance of the petitioner was that in spite of the detention certificate having been communicated to the proposed parties they have not permitted the petitioner to clear the goods and are insisting upon the payment of demurrage and container charges. The department contended that the relationship between the petitioner and the CFS/Shipping Line is contractual and it is for the petitioner to work out the remedies in accordance with the law and the department cannot be hauled up for contempt. Certain decisions were relied on by the Senior Standing Counsel to support his contention. The Court took into the consideration regulations which have been issued under the Customs Act and noted that the regulation being a statutory regulation not only binds the department but also the person who has been granted licence under such regulation. After referring to Regulation 10 (I) of the 2018 regulation and Regulation 6(1) (I) of the 2019 regulation, it was held that those regulations provide for waiver of the demurrages and container charges, the compulsion exerted on the petitioner to pay the same was not sustainable. The department took the stand that if appropriate direction is issued to them, they will immediately comply with such direction. The Court found such submission to be not tenable as it is for the department to exercise the power under the statutory regulation and it is not for the Court to suggest or issue any direction. The department by communication dated 09.03.2022 enclosed the copy of the order dated 04.03.2022 passed by this Court and brought it to the notice of the proposed party that the detention certificate dated 18.02.2022 has been issued however no action has been taken at their end. The proposed parties were directed to waive the detention certificate/demurrages charges and submit action taken report by 09.03.2022 failing which appropriate action under the 2018 Regulation may be initiated against them. The Shipping Line sent reply dated 09.03.2022 stating that the container when they land at any customs station in India are subject to landing guarantee or under taking to reship the container within a period of six months failing which penalty has been prescribed under the appropriate notification. Any delay or default on the part of the importer to return the container after the free time allowed after landing at Indian Port imposes a cost to the Shipping Line and entitles the Shipping Line to be compensated for being deprived of the use of these containers in business. Further the Shipping Line stated that none of the issues pointed out by them were brought to the notice of this Court and an order has been obtained without

representing their concerns all though part of the order directly affects their interest and legal rights. Further they stated that the issuance of the detention certificate has impacted the contract between them and the importer and under the contract they are entitled to recover the charges and this is purely a commercial transaction. Further it was pointed out that they have not been made a party to the proceeding which has affected their subsisting rights.

7. The contempt petition was heard on 11.03.2022, on which day the Learned Counsel for the petitioner submitted that they have filed an application for impleading the CFS and the Shipping Line and after the direction issued by the department the CFS has granted waiver certificate.

8. The Learned Senior Counsel appearing for the Shipping Line submitted that without hearing his client, the direction for grant of detention certificate has been issued and they have to be heard in the matter as legal issues have to be decided before issuing any direction on the Shipping Lines.

9. Considering the submissions made on either side, we granted liberty to the Shipping Line to file an affidavit to the application seeking impleadment pointing out all factual and legal issues and adjourned the matter.

10. On March 14, 2022, the case was adjourned to March 21, 2022 for the Shipping Line to file affidavit-in-opposition to the petition for impleadment. Accordingly, affidavit-in-opposition has been filed by the Shipping Line.

11. The learned Senior Counsel appearing for the Shipping Line raised a preliminary objection with regard to impleadment of his client as a respondent in contempt proceedings on the ground that the Shipping Line is neither a proper nor a necessary party to the adjudication of the contempt petition as no order has been passed against them in the writ appeal, nor they have acted in disobedience of any order passed by this Court. Further it was submitted that the Shipping Line was not impleaded as party in the writ petition and the relief claimed by the petitioner would materially and adversely affect the valuable contractual rights of the Shipping Line and with an oblique motive of nullifying such rights they have not been made as the respondent in the writ petition. Without prejudice to the said submission it was submitted that the 2009 regulation would not apply to the Shipping Line as they are not a "Customs Cargo Service Provider". Further, the proviso to Section 10(1)(I) has not been brought to the attention of this Court. Further if any direction is issued against the Shipping Line it would tantamount to re-writing the terms of the contract of carriage which is not permissible in law and such re-writing cannot be done in the writ petition as the contract is purely in the private law domain. Further it is submitted that the Shipping Line were never made aware of the order passed in the writ petition or the judgment in the writ appeal and for the first time they came to know about the direction when they received an email for which a suitable reply was given.

12. The learned Senior Counsel further submitted that in terms of Section 170 of

the Indian Contract Act, the Shipping Line has a lien over the goods and such contractual right cannot be abrogated. Further it is submitted that there is no power under Section 42 of the Customs Act or more specifically under Section 45(2)(b) of the Act to set aside a private contract between the petitioner and the Shipping Line. In support of his contention reliance was placed on the decision of the Hon'ble Supreme Court in Shipping Corporation of India Ltd. Versus C.L. Jain Woolen Mills, (2001) 5 SCC 344.

13. Referring to Section 157 of the Customs Act, it is submitted that the said provision gives power to frame regulation consistent with the provisions of the Act and such regulations should fall within the four corners of the legal principles. It is further submitted that the proviso to Regulation 10(1)(I) of the 2018 Regulation provides that the authorized carrier may demand, container detention charges for the period, commencing after expiry of 60 days. By relying upon the said proviso it is submitted that upto 60 days should be considered as "free period" and beyond 60 days there is no power vested with the department to direct waiver of the charges. The decision relied on by the petitioner in the case of Supreme Industries Ltd. Versus Central Board of Indirect Taxes & Customs & Others (2021) SCC Online Bombay 324 was distinguished by contending that the prayer sought for in the said case was to implement and enforce the waiver certificate and the Court has not rendered any finding on the proviso to Regulation 10(1)(I). Furthermore, the Shipping Line in the said case had not questioned the effectiveness of the certificate even collaterally which is not the case of the Shipping Line before this Court as they have not given up their challenge to the waiver certificate and therefore, this Court should either protect the interest of the Shipping Line or grant liberty to the Shipping Line to challenge the detention certificate issued by the department by way of separate proceedings. Further the Shipping Line cannot be made as a respondent in the contempt petition as there is no allegation that the Shipping Line has committed any contempt. Thus, it is the submission of the learned Senior Counsel that the detention certificate/ waiver certificate issued by the department is not sustainable in law, it cannot negate the contractual right preserved under Section 170 of the Contract Act in the contract entered into between the petitioner and the Shipping Line, the Shipping Line was not heard before the waiver certificate was issued by the department which is in violation of principles of natural justice. There is no provision under the Customs Act to interfere with the contractual right of the Shipping Line which is preserved in terms of Section 170 of the Contract Act.

14. The learned Counsel appearing for the petitioner submitted that the decision relied on by the Shipping Line were rendered much prior to the 2018 Regulation coming into force and the Shipping Line having been granted a license under the said regulations is bound by the terms of the said regulations and consequently the direction issued by the department by granting waiver certificate is binding upon the Shipping Line and they cannot question the same. Further, it is submitted that the proviso to Regulation 10(1)(I) of the 2018 Regulation does

not specifically state as to how to compute the 60 days time limit and in the absence of any such provision for computation of the time limit a purposive interpretation has to be given to the provision and such interpretation cannot be done by the Shipping Line and it will be the department who can make such an interpretation and the Court may test the correctness of the interpretation. The learned Counsel referred to Sections 29(2)(c) , 33, 45 and 141(1) and (2) of the Customs Act to explain the scheme of the Act and how the Shipping Line is bound by the directions issued by the department and that the goods are retained in terms of the provisions of the Act. It is further submitted that in the contempt proceedings even third parties who are not originally parties to the initial order can be impleaded. To explain the concept of control over the Shipping Line by the Customs department, reliance was placed on the decision in the case of Sahaj Impex Versus Balmer Lawrie Co. Ltd. 2021 (378) E.L.T 32 (Bombay). To explain the theory of purposive interpretation, reliance was placed on the decision in Richa Mishra Versus State of Chattisgarh & Others (2016) 4 SCC 179. Reliance was also placed on the decision in Balaji Dekors Versus Commr. of Customs, Commissionerate-III Chennai 2017 (356) E.L.T. 219 (Mad), Priyanka Enterprises Versus Joint Commissioner of Customs, Chennai 2018 (360) E.L.T. 962 (Mad), Giridhari Homes Pvt. Ltd. 2018 (361) E.L.T. 463 (Mad) also.

15. It is further submitted that if a third party knowingly assists in the breach of an order he will also be liable for contempt of Court and to support such contention, reliance was placed on the decision in Sita Ram Versus Balbir Alias Bali (2017) 2 SCC 456.

16. Thus, it is submitted that the certificate issued by the Customs department waiving the detention charges binds the Shipping Line in terms of Regulation 10(l) of the 2018 Regulation read with Section 29(2)(c) and Section 141 of the Customs Act.

17. The learned Senior Standing Counsel appearing for the official respondent submitted that all the decisions which have been referred to with regard to the power under Section 45 of the Act have been rendered prior to the coming into force of the 2018 Regulations. Further it is submitted that no contempt has been committed by the department and as they have complied with the order and direction issued by this Court and this Court will not issue any direction supplemental to what has been already expressed in the judgment and the power vested to this Court to punish the contempt is a special and rare power and the Court will exercise the same with greatest care and caution. To support such contention reliance was placed on the decision of the Hon'ble Supreme Court in Er. K. Arumugam Versus V. Balakrishnan & Others, Civil Appeal No. 1510 of 2019 dated 06.02.2019.

18. Reliance was also placed on the decision of the Hon'ble Supreme Court in Jindal Drugs Ltd. Versus Union of India 2018 (361) E.L.T. 769 (S.C), and the decision in Sai Lakshmi Engineering Versus Pr. Commr. of Customs. 2021 (378) ELT 760 (Mad).

19. The Learned Senior Counsel appearing for the Shipping Line by way of reply submitted that the 2009 Regulation is not applicable to his client as the Shipping Line is not a ""Customs Cargo Service Provider"" as defined under Regulation 2(b) of the 2009 Regulation. In this regard, the Learned Senior Counsel also referred to Section 2(11) and Section 8 of the Customs Act. It is submitted that Regulation 6(I) of the 2009 Regulation applies only to a service provider in the "Customs area" and the Shipping Line not being a ""Customs Cargo Service Provider"" in the "Customs area", Regulation 6(I) cannot be applied to the Shipping Line. Further it is submitted that the 2018 Regulation has an effect by diluting Regulation 6(I) of the 2009 Regulation in the light of the proviso contend Regulation 10(1)(I) of the 2018 Regulation. Further it is submitted that the 2009 Regulation was made in exercise of the powers conferred under Section 141 of the Customs Act which would have no application to the Shipping Line. Regulation 10 of the 2018 Regulation, sets out the responsibilities of the authorised carrier hence this regulation operates in a different field from that of the 2009 Regulation. Further it is reiterated that no opportunity was given to the Shipping Line before issuance of the detention certificate. It is reiterated that after the 2001 judgment of the Hon'ble Supreme Court no amendment has been brought out to Section 45 of the Customs Act and therefore, the decision rendered by the Hon'ble Supreme Court continues to hold the field. It is submitted that the Learned Advocate for the petitioner invoked the theory of purposive construction, which theory cannot be applied to the case on hand as there is no conflict between two laws and only if there is a conflict, the principle of purposive construction can be applied. The Learned Senior Counsel referred to the facts in the case of Sita Ram and submitted that the same is clearly distinguishable as the Court, on facts, held medical professionals to be guilty of contempt as they extended medical asylum to the accused. However, in the case on hand there is no allegation of contempt against the Shipping Line. Further it is submitted that the decision in Richa Mishra cannot be applied to the facts of the case as in the said decision there were three sets of rules of which one of the rules provided for relaxation of upper age limit in respect of women candidates and while interpreting the three sets of rules, the principle of purposive construction was applied. However, in the case on hand, the 2009 Regulation is wholly inapplicable to the Shipping Line and applying the principle of purposive construction/ interpretation does not arise. Further it is reiterated that if the interpretation given by the petitioner is to be accepted while interpreting the 2018 Regulation, it would supersede Section 45 of the Act which is not permissible. With regard to the decision in Balaji Dekors, it is submitted that the Court on facts held that the detention certificate was not questioned by the shipping agent and therefore the Court held the certificate to be binding on them whereas in the case on hand, the Shipping Line has not given up their challenge and they approached this court, and this Court should protect their rights in the present proceedings or grant liberty to the Shipping Line to separately challenge the detention certificate. Further it is submitted that at best, the 2018 Regulation can override the contract between the Shipping Line and the

petitioner to an extent of 60 days and not more than that. Therefore, it is submitted that the Shipping Line should be entitled to enforce the terms of the contract and are entitled for payment of the detention charges for having retained the container a beyond the period of 60 days.

20. Mr. Sudhir Mehta, Learned Advocate appearing for the petitioner by way of reply referred to the 2009 Regulation and submitted that Regulation 2(b) defines Customs Cargo Services Provider to mean any person responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods and includes a custodian as referred to in Section 45 of the Act and persons as referred to in sub-section (2) of Section 141 of the Act. Further by referring to Regulation 10 of the 2018 Regulation, it is submitted that the various clauses in the Regulation namely clauses (a) to (m) would clearly show that both regulations are applicable to the Shipping Line. Further it is submitted that the lien is a processory right and the Shipping Line having obtained licence under the Regulation, are bound by the certificate issued by the Customs department and if they do not grant waiver as per the direction issued by the Customs, it will amount to obstructing the cause of justice and the Shipping Line is liable to be punished for contempt.

21. We have elaborately heard the Learned Counsels for the parties and carefully perused the materials placed on record.

22. In the preceding paragraphs, we have set out the background facts and as to the circumstances under which the petitioner filed an application for impleadment of the CFS and the Shipping Line. It is not in dispute that the detention certificate has been received by the Shipping Line as well as the CFS. We are informed that the CFS has complied with the direction issued by the Customs and waived/agreeable to waive the demurrages. However, the Shipping Line has not obeyed the direction of the department which was directed by this Court to issue the detention certificate. On notice being served on the Shipping Line and the CFS, the CFS did not choose to appear before this Court. Presumably, because they have/will comply with the directions issued by this Court and accept the detention certificate and waive the demurrages. However, the Shipping Line has reservation to grant waiver and they appeared before us and at the request of the Learned Senior Counsel for the Shipping Line, they were permitted to file an affidavit-in-opposition as they objected to their impleadment and also sought leave to raise legal issues with regard to the effect of the detention certificate qua the private contract between the petitioner and the Shipping Line. The Court granted liberty and the Shipping Line has filed their affidavit-in-opposition and a reply has also been filed by the petitioner. Therefore, in the present proceedings, we will be deciding firstly as to whether the Shipping Line is a proper and necessary party to the proceedings and also consider the legal submissions made by the Shipping Line as to the validity and enforceability of the detention certificate issued by the department on them. The Learned Senior Counsel had on more than one occasion submitted that the

Shipping Line is neither a proper nor necessary party to the contempt proceedings and because the proceeding were pending and application for impleading his client was taken out by the petitioner, the Shipping Line has come before this Court without independently challenging the detention certificate. Therefore, it is the submission that one of the two options should be allowed to the Shipping Line that is to protect their interest as provided under the contract or to grant liberty to them to independently challenge the detention certificate.

23. We have elaborately heard the Learned Senior Counsel for the Shipping Line on factual and legal issues. The Learned Advocate for the petitioner and the Learned Standing Counsel appearing for the department have also made their submission.

24. In the light of the above, the Court would proceed to decide the contention of the Shipping Line as regards their plea that the rights under their contract as preserved under Section 171 of the Contract Act, cannot be taken away or diluted by virtue of a detention certificate issued by the customs. While deciding such question, we shall also proceed to decide the applicability of the 2009 and 2018 Regulations to the Shipping Line and all other issues which have been canvassed before us. Therefore, the question of granting liberty to the Shipping Line to initiate separate proceedings does not arise as elaborate submission have been made both on facts as well as on law and therefore the Court will proceed to decide the matter in its entirety. Having steered clear of this issue, we would sum up the contentions/objections raised by the Shipping Line in the following terms:-

(i) The Shipping Line is neither a proper nor necessary party to the contempt proceeding as no order has been passed against them, they were not impleaded in the writ petition and no act of contempt has been alleged against them.

(ii) The relief now claimed by the petitioner would materially affect the valuable contractual right of the Shipping Line protected under Section 171 of the Contract Act and it would amount to re-writing the contract and if at all the contractual right is to be overridden on account of the 2018 Regulation, it can at best be overridden for a period of 60 days and not more.

(iii) Section 45(2)(b) of the Act does not empower the customs to set aside a contract in the private law field between the petitioner and the Shipping Line and after the decision of the Hon'ble Supreme Court in Shipping Corporation of India Limited, no amendment has been made to Section 45 of the Act and the law as interpreted by the Hon'ble Supreme Court is in favour of the Shipping Line.

(iv) The principle of purposive construction cannot be applied to the case on hand as there is no conflict between two enactments or two Regulations as the 2009 Regulation is inapplicable to the Shipping Line as they are not a "Customs Cargo Services Provider" as defined under Regulation 2(b) of the 2009 Regulation.

25. The first issue is whether the Shipping Line is a proper and necessary party to the present proceedings as it is their contention that though the Act of contempt has been alleged against them, there was no direction issued by this Court to the Shipping Line and if any orders have to be passed by the department contrary to the Regulation 10(1)(I) proviso of the 2018 Regulation it will negate the contractual right between the petitioner and the Shipping Line which stands protected in terms of Section 171 of the Contract Act. Therefore, the question would be if the Shipping Line is considered as a third party on whom no specific direction was issued, can they be heard to say that the order does not bind them?

26. Admittedly the detention certificate has to be issued by the Customs in terms of the provision of the Act and the various notifications issued from time to time. In *Acrow (Automation) Limited Versus Rex Chainbelt Inc and another* (2017) 3 All England Reporter 1175, Lord Denning summarised the legal position as hereunder:-

Held:-

(i) If one person, without just cause or excuse, deliberately interfered with the trade or business of another, and did so by unlawful means, i.e. by an act which he was not at liberty to commit, then he was acting unlawfully, and in a proper case an injunction could be granted against him.

(ii) A person acted unlawfully if he complied with a direction of another which he knew or had reason to know was unlawful, for then he was aiding and abetting an unlawful act and participating in it and could not excuse himself by saying that he was under contract to obey the direction for no person was bound to obey an unlawful direction.

(iii) Applying those principles to the defendants, by refusing to supply chain to the plaintiffs, they had deliberately interfered with the plaintiffs' business since they had made it impossible for the plaintiffs to manufacture or sell the 'lo-tow' equipment. This interference was done by unlawful means because it was done in obedience to the unlawful directions of SI Inc not to supply chain to the plaintiffs, given in breach of the injunction against SI Inc, and in breach of the implied term of the licence agreement not to impede the plaintiffs in the manufacture and sale of the lo-tow equipment; and by obeying SI Inc's instructions the defendants were aiding and abetting SI Inc in breaking the injunction, and were themselves in contempt of court.

(iv) Such unlawful interference with the plaintiffs' business could be restrained by the court, and an injunction should issue restraining the defendants from obeying SI Inc's directions purporting to prohibit them from supplying chain to the plaintiffs. Further, to protect the defendants from harassment by SI Inc, a mandatory order would be made against the defendants that they should use all reasonable endeavour to supply the plaintiffs with the chain needed for the manufacture of the lo-tow equipment.

27. The legal principle that can be culled out from the above decision is that if one person, without just cause or excuse deliberately interfered with the trade or business of another, he was said to be acting unlawfully. In *Eckman & Others Versus Midland Bank Limited* (1973) 1 All England Reporter 609, it was held that although a writ of sequestration (a writ of sequestration is a pre-judgment process which orders the seizure or attachment of property to be maintained in the custody of the Sheriff under Court order and supervision until the Court determines the proper owner) did not itself bind the third party, a third party was nonetheless under a duty to refrain from knowingly assisting in the breach of any order of the Court. In the decision of the Full Bench in *Vidya Charan Shukla Versus Tamil Nadu Olympic Association and Another* AIR 1991 (Mad) 323 (FB), it was held that the courts in India invariably accepted the law applied in England and held:-

(i) A party to sue if he had notice or knowledge of the order of the Court

(ii) A third party or a stranger, if he had yielded or abetted the violation with notice or knowledge of the order of injunction guilty of contempt and otherwise found a third party guilty of criminal contempt if he has been found knowingly obstructing implementation of its order or direction.

28. It is admitted case that the Shipping Line was aware of the order of the direction issued to by this Court for issuance of detention certificate. The department had intimated the Shipping Line by email dated 08.03.2022 about the order passed by this Court on 04.03.2022 and requested them to forward action taken in compliance of the detention certificate dated 18.02.2022. It is not in dispute that the detention certificate was issued on 18.02.2022 and communicated to the Shipping Line and the CFS. Even much earlier by email dated 23.02.2022 and letter dated 25.02.2022, the Customs had called upon the Shipping Line to comply with the direction issued by this Court in its order dated 17.02.2022 at the earliest. As mentioned, after the filing of the contempt petition and after the order dated 04.03.2022 email was sent to the Shipping Line on 08.03.2022. This was followed by a letter dated 09.03.2022 by directing the Shipping Line to waive the detention/demurrages charges and if no action has been taken at their end, the department would be initiating appropriate action under the 2018 Regulations. The Shipping Line by their letter dated 09.03.2022 sought for clarification under which legal provision the customs have issued detention certificate so as to impact their contractual rights where under they were entitled to recover charges for use of their container. Further the Shipping Line stated that they are extremely aggrieved by the fact that the legal provisions and their independent contractual rights were not placed before this Court and without joining them as a party even though the proceedings would affect their subsisting rights.

29. Thus, the facts clearly disclose that the Shipping Line was communicated with the detention certificate, informed about the orders passed by this Court and they have submitted their reply/objection which would categorically show

that they were not inclined to comply with the detention certificate and grant waiver. Thus, the order passed by this Court directing issuance of detention certificate to the Customs which direction was not complied with, though communicated to the Shipping Line. Therefore, the Shipping Line though would have been a third party to the proceedings when the writ petition was heard, on and after they have been issued with the detention certificate, they are precluded from raising a plea that they are third party to the proceedings and alien to the directions issued by this Court, resulting in issuance of the detention certificate.

30. Therefore, we are of the clear view that the Shipping Line is not only a necessary party to the proceedings but also a proper party to the proceedings. So far as the CFS is concerned, they also did not initially comply with the terms of the detention certificate and only during the pendency of this contempt application, it appears that they have complied with or agreeable to comply with the terms and conditions of the detention certificate. Therefore, in order to give a binding direction, the CFS is also held to be a proper and necessary party to the present proceedings.

31. For the above reasons in I.A No. G.A/01/2022 in CC No 08 of 2022 is allowed and the CFS and the Shipping Line are impleaded as party respondents to the contempt petition.

32. Having come to the above conclusion, we are to test the correctness of the contention of the Shipping Line that the detention certificate cannot negate their contractual rights which stands protected under the provisions of the Contract Act, that the 2009 Regulation would be inapplicable to them and at best by virtue of cross 10(1)(I) of the 2018 Regulations their right to demand container detention charges stands postponed by 60 days over and above the free period allowed under the contract between the petitioner and the Shipping Line.

33. Firstly, we shall consider the applicability of the 2009 Regulation to the Shipping Line. The argument before us is that the Shipping Line would not fall within the definition of "Customs Cargo Service Provider" as defined under Regulation 2(b) of the 2009 Regulations. The said definition reads as follows:-

a)

b) "Customs Cargo Services provider" means any person responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods and includes a custodian as referred to in Section 45 of the Act and persons as referred to in sub-section (2) of Section 141 of the said Act;

c) "Specified" means specified by a notification or an order issued under the provisions of the Act.

34. In terms of the above definition, the "Customs Cargo Service Provider" would mean any person responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and exported goods and includes a

custodian as referred to in Section 45 of the Act and persons referred to in Section 141(2) of the Act. The Shipping Line cannot be heard to say that they are not a person responsible for receipt nor storage nor delivery nor dispatch, they cannot contend that they are not otherwise handling imported cargo and even going by their own submissions that they have got a lien over the goods stuffed in the container, it goes without saying that they are a custodian. Therefore, in our considered view, the definition of "Customs Cargo Service Provider" is so widely couched to bring under its umbrella all persons including the Shipping Line. Therefore, to state that the definition does not cover a Shipping Line is not feasible of acceptance. Therefore, we have to read the 2009 Regulation harmoniously with 2018 Regulations. If such course is adopted then Regulation 10 of the 2018 Regulations which is applicable to the Shipping Line has to be enforced. Regulation 6 of the 2009 Regulations deals with responsibilities of "Customs Cargo Service Provider". We have held that the Shipping Line is a service provider and consequently the Regulation 6 will be applicable to them. In terms of clause (I) of the Regulation (6), the Shipping Line shall not charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraisal or Inspector of Customs or Preventive Officer or Examining Officer as the case may be. It is not in dispute that the goods were detained by the proper officer and if that be the case the Shipping Line is bound by Regulation 6(I) and is not entitled to charge any rent or demurrage during the period of detention. It was contended that the Regulation 10(1)(I) proviso provides that the authorised carrier may demand container detention charges for the period, commencing after expiry of 60 days. The proviso is sought to be pressed into service to contend that the free period which was permissible under the contract stood extended up to the maximum period of 60 days and beyond the said period the Shipping Line is entitled to enforce the terms of their contract and demand the rent for the container. In our considered view, the proviso to Regulation 10(1)(I) cannot be read in isolation. It has to be read in conjunction with the other clauses under Regulation 10. Even otherwise, the proviso only enables an authorised carrier/Shipping Line to demand container detention charges for the period commencing after expiry of 60 days. The expression used is "may" which cannot be read as "shall". Thus, assuming an authorised carrier makes a demand for container detention charges for the period, commencing after expiry of 60 days, it is for the Customs to consider such a demand. There is no vested right on the authorised carrier that they will unilaterally proceed to demand container detention charges when the container along with the cargo has been detained by the proper officer in exercise of the powers conferred under the provisions of the Customs Act. That apart, the question would be as to from what day the 60 days period should be computed. It is the submission of the Learned Senior Counsel that the 60 days period will commence on the expiry of the free period stipulated under the contract between the petitioner and the Shipping Line. Even assuming the said argument to be correct, the regulation having not clearly specified as to how the period of 60 days should be computed, an interpretation cannot be given so as to

defeat the object and purpose of the 2009 Regulation. As observed earlier the 2009 and the 2018 Regulation have to be read harmoniously as there is no inconsistency between both the regulations. As pointed out, the Shipping Line is a "Customs Cargo Service Provider" in the light of the wide and expansive definition of such service provider. In terms of Regulation 6(I) of the 2009 Regulation, there is a complete bar for charging any rent or demurrage on the goods seized or detained or confiscated by the proper officer. Therefore, on an after issuance of the detention certificate, the Shipping Line cannot take umbrage under the proviso to Regulation 10(1)(I) of the 2018 Regulation and contend that their right to claim container detention charges still stands preserved and they can do so after expiry of 60 days. Admittedly, the Shipping Lines have registered themselves under the provisions of the statutory regulations. If that be the case, all conditions stipulated by the Customs under the provisions of the Act and the regulation binds the Shipping Line. The terms of the contract between the petitioner and the Shipping Line which is contended to be preserved and safeguarded under the provisions of the Contract Act would be subject to the conditions under the regulations to which the Shipping Line have consciously submitted themselves. Therefore, the right which according to the Shipping Line exists under the contract is subservient to the conditions under the regulations. This is more so because the regulations are statutory in character. The Shipping Lines by a conscious act have submitted themselves to the provisions of the Act and the Regulations and they have been issued a licence for such purpose. Therefore, it would be too late for the Shipping Line to contend that they will continue to exercise their rights by referring to the provisions of the Contract Act which is general law by ignoring the provisions of a Special Act namely the Customs Act and a special regulation namely 2009 and 2018 Regulations to which they have submitted themselves and unequivocally agree to abide by the conditions stipulated therein. Therefore, the argument that the right under the contract between the petitioner and the Shipping Line still stands preserved is not feasible of acceptance and such right is subject to and subservient to the conditions under the 2009 and 2018 Regulations. Having held so, we have no hesitation to hold that the decision in the case of Shipping Corporation of India Limited would be inapplicable to the facts and circumstances of the case. Admittedly the said judgment was delivered on April 10, 2001 much prior to the 2009 Regulations and 2018 Regulations. Therefore, the contentions of the Shipping Line have to be tested on the anvil of the 2009 and 2018 Regulations to which they have voluntarily submitted themselves. Having held so, we need not travel further to examine as to whether the principle of purposive construction has to be applied or any amendment is required to Section 45 of the Act as we have no doubt in our minds that the 2009 and 2018 Regulations are not in conflict with each other, both the Regulations are applicable to the Shipping Line and they are irrevocably bound to the conditions therein as long as they continue to enjoy the benefits of the licence granted by the Customs.

35. With the above reasoning, if we look into Section 45 of the Customs Act, it is seen that the said provision deals with restrictions on custody and role of imported goods and in terms of sub-section (1) therein all imported goods unloaded in a Customs area shall remain in the custody of such person as may be approved by the Principal Commissioner of Customs or Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of the chapter VIII which deals with goods in transit. In terms of sub section 2, the person having custody of any imported good in the Customs area whether under the provision of subsection (1) or under any law for the time being in force, shall keep the record of such goods and send a copy thereof to the proper officer; shall not permit such goods to be removed from the Customs areas or otherwise deal with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.

36. Having held that the Shipping Line would fall within the definition of "Customs Cargo Service Provider", the 2009 Regulation is held to be applicable and they are required to comply with the mandate under the said Regulation and in particular Regulation 6 (1) therein and they are not entitled to charge any rent or demurrage on the goods seized or detained or confiscated. One more fact which we note is that at no earlier point of time, the Shipping Line had sought to exercise their alleged right under the proviso to Regulation 10(I) of the 2018 Regulation and it is for the first time before this Court such a plea is being canvassed. In the preceding paragraphs, we have discussed about the effect of the proviso and held that it in no manner improves the case of the Shipping Line. Thus, by conduct, the Shipping Line was fully aware of the effect of the statutory regulations and the present attempt to wriggle out of their obligations is impermissible.

37. In Supreme Industries Limited, the petitioner approached the Court under Article 226 of the Constitution for a direction upon the respondents to strictly implement and enforce the detention cum demurrage waiver certificate and for other consequential direction, (as before us) the respondent No. 4 therein and its principle had taken a stand that they are not ""Customs Cargo Service Provider"" and therefore, the 2009 Regulations are not applicable to them and the detention certificate being not in terms of Regulation 10(1)(I) of the 2018 Regulations they are not bound by the same. Further it was contended that the respondent No. 4 and its principles (therein) had entered into a contract with the petitioner therein by way of bill of lading and therefore it being a contractual relationship, the principle is bound by the terms of the contract which includes payment of detention charges for the use of the containers. The Court after referring to various decisions held that the objection raised was not legally tenable, the detention cum demurrage waiver certificate has been validly issued and it can be traced to Regulation 10(1)(I) of the 2018 Regulation and under Regulation 10(1) (m) thereof and the Shipping Line is under a legal obligation to comply with the certificate. Further the Court after referring to the decisions in the State of

Rajasthan Versus J & K Synthetics Limited (2011) 12 SCC 518, held that an implied condition of every contracts that the party will act in conformity with law and in case of repugnancy between the provisions of subordinate legislation and provisions of a private contract, the terms of the contract will have to yield to the provisions of the subordinate legislation to the extent of repugnancy. It would be beneficial to quote with approval the following paragraphs of the said decision:-

1) In the ultimate analysis, the issue boils down to a conflict between the 2018 Regulations which is a subordinate legislation having the force of law on the one hand and the contractual right of the Shipping Line on the other hand.

2) The question as to whether in the event of a conflict between provisions of a subordinate legislation and provisions of a contract which one would prevail is no longer *res integra*.

3) A Full Bench of the Allahabad High court in (1968) IILLJ 483 All., S.P. Srivastava v. Banaras Electric Light and Power held that in the case of a conflict between the contract of service entered into between the employee and the company and the standing orders of the latter, the standing orders would prevail. It was held that the terms of the standing order would prevail over the terms of the contract which conflicts with the standing over.

4) In Ganga Retreat and Towers Ltd. V. State of Rajasthan, (2003) 12 SCC 91, Supreme Court held that every contract is subject to provisions of law. This position was reiterated by a Constitution Bench of the Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission, (2010) 4 SCC 603, wherein it has been held that a regulation under Section 178 of the Electricity Act, 2003 can intervene and even override an existing contract between regulated entities inasmuch as it cast a statutory obligation on the regulated entities to align their existing and future contracts with the regulation.

5) Again in State of Rajasthan v. J.K. Synthetics Limited, (2011) 12 SCC 518, Supreme Court has held that the lease-deed under consideration was governed by the Mineral Concession rules, 1960. Though the lease-deed provided that any royalty not paid within prescribed time should be paid with simple interest at the rate of 10 per annum, the same was subject to the Mineral Concessions Rules, 1960 which upon amendment increased the rate of interest to 24% per annum in the event of default. In the circumstances, it has been held that any term in the lease-deed prescribing lesser rate of interest would have to yield to the Mineral Concession rules, 1960 from the date of amendment as the rules will prevail over the terms of the lease.

6) In the light of the above, we have no hesitation to hold that objection of respondent No. 4 is not legally tenable. The detention cum demurrage waiver certificate dated 16th November, 2020 has been validly issued as it can be traced to Regulation 10(1)(l) of the 2018 Regulations and under Regulation 10(1)(m) thereof, respondent No. 4 i.e., the Shipping Line is under a legal obligation to comply with the certificate. Thus, the detention cum demurrage certificate dated

16th November, 2020 is binding on respondent No. 4. That apart, holding on to the goods of the petitioner by respondent No. 4 post the detention cum demurrage waiver certificate dated 16th November, 2020 and levying detention charges thereafter would be illegal and thus unlawful.

7) We may further clarify that it is nobody's case that the 2018 Regulations have not been validly made. It has therefore the full force and effect of a statute. A conjoint reading of Regulations 10(1)(l) and 10(1)(m) makes it abundantly clear that the 2018 Regulations are fully binding on the Shipping Line and it is not open to the latter relying on a contractual provision to contend that it will not comply with a direction or certificate issued under Regulation 10(1)(l). The private contract between the petitioner and the Shipping Line must yield to the rigours imposed by the subordinate legislation vis-a-vis the subject matter of conflict i.e., levy of detention charges for the period under consideration. That apart, Supreme Court has held that it is an implied condition of every contract that the parties will act in conformity with the law. In case of repugnancy between provisions of a subordinate legislation and provisions of a private contract, the terms of the contract will have to yield to the provisions of the subordinate legislation to the extent of repugnancy.

38. The Learned Senior Counsel for the Shipping Line sought to distinguish the decision by contending that in the said case the directions sought for was to implement and enforce the detention cum demurrage waiver certificate and the Court found that the respondent 4 therein has only collaterally questioned the effectiveness of such a certificate as being not bound by it and there has been no independent challenge made by it to the said certificate. Further it is submitted that the Court has not interpreted the effect of the proviso to Regulation 10(1)(l) of the 2018 Regulations.

39. With regard to the effect of the proviso, we have already given our interpretation which is against the Shipping Line. With regard to the submissions that the Shipping Line's interest either should be protected by this Court or they should be permitted to independently challenge the same has been dealt with by us in the preceding paragraphs and we have come to the conclusion that the effect, validity and enforceability of the detention certificate is called in question by the Shipping Line in the present proceedings both on facts as well as on law and extensive arguments have been advanced on both the aspects. Therefore, we have held that granting liberty to the Shipping Line to now independently challenge the detention certificate to be impermissible. Apart from that we note that the detention certificate was issued on 18.02.2022 duly communicated to the Shipping Line followed by the various communications calling upon them to forward action taken report. In other words, Customs had called upon them to abide by the certificate. The Shipping Line was not inclined to and had sent their response by letter dated 09.03.2022, in sum and substance, questioning the authority of the Customs to issue the detention certificate. Nothing prevented the Shipping Line to take recourse to law soon after they were communicated with

the detention certificate dated 18.02.2022 and also having being informed and put on notice about the directions issued by this Court, more particularly the order dated 04.03.2022. It is only after the petitioner filed GA No. 01 of 2022 to implead the Shipping Line and CFS as respondents in the present proceedings, filed on 10.03.2022, the Shipping Line was before this Court contending that they wish to not only oppose the prayer for impleadment but also to contend that the detention certificate is not binding upon.

40. Thus, we are of the clear view that the Shipping Line appears to have been "sitting on the fence" and watching the proceedings and to see as to what extent this Court may exercise its jurisdiction under the provisions of the Contempt of Courts Act. Thus, we can safely conclude that the attempt of the Shipping Line is to obstruct the implementation of the order and directions issued by this Court by seeking to make an attempt to challenge the detention certificate by appearing before this Court after they have been put on notice in the impleadment application. Thus, we would be well justified in holding that the Shipping Line has consciously taken a move to obstruct implementation of the order passed by this Court which order was complied by the Customs by issuing detention certificate. Therefore, the Shipping Line could be very well hauled up for having obstructed to the implementation of the order and direction issued by this Court in its letter and spirit. We are conscious of the fact that elaborate submissions made by the Learned Senior Counsel for the Shipping Line both on facts as well as on law. Therefore, we do not wish to proceed to initiate any action for contempt against the Shipping Line for the present. Nevertheless would be well justified in issuing further directions so that the Shipping Line is given an opportunity to remedy the breach.

41. During the course of argument before this Court, in the presence of the Shipping Line, the petitioner had offered to deposit the cost of the container which according to the petitioner was about Rs. 5,00,000/-. The Shipping Line was not inclined to accept such an offer. It should not be forgotten that the CFS was also alien but they have not raised any plea before us resisting the directions issued though initially, they were not very inclined to comply with the direction. Therefore, we do not intend to initiate action for the present against the Shipping Line for having obstructing the implementation of the order passed by this Court but are inclined to issue further directions as the jurisdiction of this Court under the Contempt of Courts Act is also curative.

42. The Constitution Bench of Hon'ble Supreme Court in *Supreme Court Bar Association versus Union of India* (1998) 4 SCC 409 elaborately considered the jurisdiction of the Hon'ble Supreme Court and the High Courts to exercise that power of contempt. It was pointed out that the expression "Court of record" has not been defined in the Constitution of India. Article 129 declares the Supreme Court to be a court of record, while Article 215 declares a High Court also to be a court of record. It was further pointed out that the power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is

essential to enable the Courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice. While dealing with the other punishments which may be imposed for contempt of court, reference was made to Halsbury's Laws of England, 4th Edition, Paragraph 99, 100 to 105 which reads as follows:

"99. Fines and security for good behaviour.-The court may, as an alternative or in addition to committing a contemner, impose a fine or require security for good behaviour.

As in the case of imprisonment, there is no statutory limit to the amount of a fine which the court can impose.

100. Other remedies.- As a further alternative to ordering committal, the court may, in its discretion, adopt the more lenient course of granting an injunction to restrain repetition of the act of contempt. The court may also penalise a party in contempt by ordering him to pay the costs of the application.

103. Fine.- The court may, as an alternative to committal or sequestration, impose a fine for civil contempt.

In assessing the amount of the fine, account should be taken of the seriousness of the contempt and the damage done to the public interest.

104. Other remedies.-The court may, in its own discretion, grant an injunction, in lieu of committal or sequestration, to restrain the commission or repetition of a civil contempt. The court may in lieu of any other penalty require the contemner to pay the costs of the motion on a common fund basis.

105. Costs.-The costs of an application for committal are in the discretion of the court, and should be asked for on the hearing of the application. The respondent can as a general rule only be ordered to pay costs if he has been guilty of contempt. An action is maintainable in the Queen's Bench Division to enforce an order made in the Chancery Division to pay the costs of a motion for committal."

43. After referring to the above paragraphs in Halsbury's Laws, the Hon'ble Supreme Court pointed out that the recognised and accepted punishments for civil or criminal contempt of Court in English law which have been followed and accepted by the Courts in this country incorporated in the Indian Law in so far as civil contempt is concerned are:-

- i) sequestration of assets
- ii) fine
- iii) committal to prison

44. Further the Hon'ble Supreme Court held that the object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy

for punishing civil contempt, since the administration of justice would be undermined if the order of any Court of law is to be disregarded with impunity. Further it was pointed out that under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt power.

45. Having held so, we would reiterate that there is a statutory embargo on the Shipping Line, prohibiting them from charging any rent or demurrages during the period of detention and a certificate having been issued by the proper officer waiving the detention charges, there is no escape from the rigour of such a certificate issued by the proper officer. The contractual rights which have been held to be subservient are to yield to the provisions of the statutory regulations, there is no escape, but to implement the detention certificate in its letter and spirit.

46. We also take note of the fact that the Customs have issued show cause notice dated 17.03.2022 under Regulation 12(1) of the 2018 Regulation to the Shipping Line calling upon them to explain as to why the registration under the 2018 Regulations may not be revoked and why penalty under Regulation 13 may not be imposed on them. The Shipping Line has been granted 31 days' time to respond to the notice. Further we would point out that under Regulation 10 of the 2018 Regulation which deals with responsibilities of the authorised carrier, in clause (m) the Shipping Line is bound to abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder. This condition is very widely couched and would encompass all rules and regulations as well as notifications and orders and therefore there can be no escape from the rigour of the regulations nor the Shipping Line can contend that the 2009 Regulations are inapplicable to them.

47. Thus, for all the above reasons, IA No. GA 01 of 2022 is allowed and the proposed parties added as respondents in contempt petition.

48. As observed earlier for the present we do not propose to initiate any action for contempt against the Shipping Line or the CFS but direct the Shipping Line and the CFS to comply with the terms of the detention certificate issued by the Customs in its letter and spirit and consequently waive the detention charges and demurrages on account of the detention of the cargo along with the container by the proper officer of Customs from the date of detention till the date the cargo along with the container is released from the Customs Barrier.

49. The newly added respondents are granted 3 days' time to implement the above directions failing which the Court may be constrained to initiate action for contempt in accordance with the law.

50. For the present, no adverse orders are passed against the officials of the Customs department and a decision will be taken subject to the compliance or otherwise of the directions issued by us to the Shipping Line and CFS.

51. List the matter on 25.04.2022 for reporting compliance.