* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 22.04.2025
Pronounced on : 23.05.2025

\+ **W.P.(C) 10055/2018**

M/S ANKIT ELECTRONICS .....Petitioner
Through: Ms. S. Sapra and Mr. Abhinav Jain, Advocates

versus

CONTAINER CORPORATION OF INDIA LTD. .....Respondents
Through: Mr. Arun Kumar and Mr. Abhinav Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present writ petition filed under Article 226 of the Constitution of India, the petitioner seeks refund of demurrage charges in terms of Handling of Cargo In Customs Area Regulations, 2009 (hereinafter, referred to as '*subject regulations*').

2. The facts, in a nutshell are, that the petitioner had imported several consignments of 'Ferrite Ring Magnets' in the period between February and April, 2010 against 9 Bills of Entry encompassing 21 containers in toto. The said Bills of Entry were filed at Inland Container Depot, Tughlakabad, New Delhi. On 01.02.2010, the said containers were detained by Customs authorities on directions issued by Directorate of Revenue Intelligence (hereinafter, '*DRI*'), statedly on the ground that an investigation was pending in respect of the imported subject goods. After examination of 7 out

of the 21 containers by the Officers of DRI, the same were found to be in line with the declarations made in the Bills of Entry and accordingly, vide letter dated 08.04.2010, the DRI directed the Customs authorities to assess said consignments of the petitioner on declared value and clear it on payment of appropriate duty. Subsequently, on the payment of 'ground rent' or 'demurrage charges', the subject goods were released in April, 2010.

3. It is the petitioner's case that thereafter, it was directed to obtain Detention Certificates in order to claim refund of the aforesaid demurrage charges. After, initially approaching DRI, the petitioner was directed to approach Customs authorities, which again redirected the petitioner to DRI which once again shuttled the petitioner to Customs. Custom authorities failed to issue Detention Certificates despite reminders, following which the petitioner approached this Court by W.P.(C) No.1007/2015. In compliance of order of this Court dated 03.02.2015, eventually the said Detention Certificates were issued by the Customs authorities. The petitioner contends that despite communication of these certificates to respondent and several follow ups over multiple years, the respondent has failed to refund the demurrage charges and hence the present petition was filed in 2018.

4. Learned counsel for the petitioner further submits that the conduct of the respondent is in direct violation of Clause 6(1)(l) of the subject regulations insofar as it proscribes the respondent from charging any rent or demurrage on the goods seized, detained or confiscated by the authority. It is contended that when the importers are not found at fault, i.e., there are no discrepancies in their goods and the subject goods are released, the benefit of the regulations is to be given to such an importer. As to the apparent delay in submitting the Detention Certificate, it is the petitioner's case that

the same was a direct consequence of the inaction on part of the respondent department and it was only with the intervention of this Court that the said Certificates could be issued, which was immediately submitted thereafter to claim the refund of demurrage charges. In support of his submissions, learned counsel places reliance on the decision of the Division Bench of this Court in Trip Communication P. Ltd. v. UOI,[1] to submit that where the importer is held to be innocent or no penalty/fine/warning is issued by the Customs authorities, the said importer would be entitled to claim benefit under the policy of waiver of demurrage charges. It is stated that the petitioner is, in fact, on an even better footing as no adjudication against the petitioner took place and its goods were cleared on declared value itself.

5. *Per contra*, learned counsel for the respondent raises a preliminary objection to the maintainability of the present petition due to non-joinder of DRI and custom authorities, which are necessary parties.

On merits, it is submitted that the petitioner's reliance on Clause 6(1)(l) of the subject Regulations is misplaced insofar as it is a non-obstante clause in nature, and is subject to law in force at the relevant time. It is contended that the respondent's right to recovery of ground rent/demurrage charges is protected under Section 63 of the Customs Act, 1962. Moreover, it is submitted that the subject Regulations are in the nature of subordinate legislation framed under Sections 141 and 157 of the Customs Act, 1962 and therefore, cannot prevail over the statutory Act. In support of his submissions, learned counsel places reliance on decision of the Supreme Court in Mumbai Port Trust v. Shri Lakshmi Steels[2] and decisions of this

[1] 2014 SCC OnLine Del 1318.
[2] (2018) 14 SCC 317.

Court in Global Impex v. Manager, Celebi Import Shed[3] and Bhavik S. Thakkar v. Union of India.[4]

6. Trip Communication (*Supra*) is sought to be distinguished by the petitioner by submitting that the said judgment cannot be applied retrospectively, especially considering that the same was passed with respect to waiver policy of warehousing companies. It is further submitted that the judgement clearly states that waiver is subject to compliance of the relevant waiver policy, however the petitioner herein failed to comply with the policy since the same states that such application has to be made within a period of 3 months from the date of payment of such charges for the application for waiver. It is submitted that even if limitation is to be calculated from the date of issuance of the subject Detention Certificates, i.e., 13.02.2015, the petitioner filed the present writ petition after an inordinate delay of almost 3½ years and hence the present petition is time barred. Reliance is placed on letters dated 14.06.2010, and 30.08.2010 to submit that the petitioner's request for waiver was previously examined and rejected by the competent authority on 2 occasions, and appeal was also rejected on 12.04.2016, which was not deliberately not disclosed.

7. In rejoinder, the allegation of non-joinder is repelled by submitting that the role of the DRI and the Customs authorities has not been denied, neither is the petitioner questioning the veracity of the subject Detention Certificates, and the challenge is only to non-reimbursement of demurrage charges. Reliance on Section 63 of the Customs Act is stated to be misplaced insofar as it is only applicable to goods which have been

[3] (2020) 13 GSTR-OL 268.
[4] 2023 SCC OnLine Del 940.

warehoused and thus, statedly not applicable in the present case. It is also pointed out that the said Section stands repealed in 2016. Learned counsel further seeks to distinguish the cases relied upon by the respondent by contending that Mumbai Port Trust (*Supra*), Global Impex (*Supra*) and Bhavik S. Thakkar (*Supra*) cannot be held applicable in the present circumstances primarily because in all these cases, the importer was found to be at fault on account of misdeclaration of description/quantity.

8. I have heard learned counsels for the parties and have gone through the material placed on record.

9. The issue in the present case revolves around whether the petitioner is entitled to refund of demurrage charges under the subject regulations and whether there was a delay on his part in seeking such refund. Rule 6(1) of the subject regulation states as follows:-

> *6. ..The Custom Cargo Service provider shall –*
> *1) Subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive officer or examining officer, as the case may be;*

A waiver policy of the respondent has also been placed on record. A careful reading of the same would show that there is a provision for requesting of waiver of the Terminal Service Charge. Rule 7 is of relevance here which states that:-

> *7. No request for waiver will be entertained in cases where any fine/penalty/ personal penalty/ warning has been imposed by Customs authorities or delay arose by reason of dispute in the assessable value.*

Thus, the policy of the respondent makes a clear distinction between cases where the seizure by custom authorities eventually leads to imposition of fine/penalty/warning and cases where there is no such imposition.

10. Since a challenge has been made by the respondent to the applicability of the subject regulations, it would be beneficial to see the relevant legislation. Circular No. 13/2009 dated 23.03.2009 issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs clearly states that the subject regulations shall apply to handling of imported goods and export goods in customs area specified under section 8 of the Customs Act, 1962. The relevant portion reads as follows-

> *3. As specified in Regulation 3, these regulations shall apply to handling of imported goods and export goods in customs area specified under section 8 of the Customs Act, 1962. This would cover all customs facilities such as ports, airports, Inland Container Depots (ICDs), Container Freight Stations (CFSs) and Land Customs Stations (LCSs). Imported goods would cover goods under trans-shipment and all goods held under the custody of CCSP. However, these regulations shall not apply to Customs bonded warehouse or to the warehoused goods which are covered under Chapter IX of the Customs Act, 1962.*

Thus, the subject regulations are applicable to a customs area, as specified under Section 8 of Customs Act. It is not the case of the respondent that the Inland Container Depot, Tughlakabad, New Delhi was not a customs area. Rather, respondent relies on the now repealed section 63 of the Customs Act. However, the same pertains to warehoused goods. As per Section 59 and 60 of the Customs Act, for warehousing of any good, a warehousing bond has to be executed and an order has to be made by the proper officer for removal of the goods from a customs station for the purpose of deposit in a warehouse. However, no such bond or order has been placed on record by the respondent. Therefore, Section 63 would not be of any help. In fact, Section 49 of the Customs Act gives the custom authorities the power to store imported goods, dutiable or not in public warehouses for a short period

of time if their processing is taking time and it is explicitly stated that Chapter IX, pertaining to warehoused goods which contained Section 63, shall not apply to goods permitted to be stored in a public warehouse under this section.

11. A gainful reference may be made to the judgment of the Division Bench of this Court in Trip Communication (*Supra*) relied upon by both the parties, wherein it was held that in cases where an importer is found innocent or no penalty/fine/warning is issued to it, it shall be entitled to be considered for the benefit of the waiver policy of the concerned organisation. Relevant extracts of the said judgment are reproduced hereunder:

> *"44.* ***The policy makes a distinction between the cases where the importer is innocent but his imported goods are seized and detained pending an enquiry and adjudication and the cases where the importers have indulged in misdeclaration, misdescription, under valuation or concealment and fine, penalty, personal penalty and/or warning is imposed by the Customs Authorities.*** *Importers who are innocent cannot be equated with the importers who violate the law and be given the same treatment. The AAI policy makes a distinction between the two and in our view rightly so.*
>
> *xxx*
>
> *47. In cases where the importer is found innocent and there is no imposition of any fine, penalty, personal penalty and/or warning by the Customs authorities, the policy for waiver would be applicable and the importer would be entitled to be considered for its benefit provided a certificate entitling him to be so considered is issued by the Customs authorities. The importer would not be automatically exempt but would be covered under the policy for waiver and eligible for waiver which would be granted subject to other compliances.*
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> *xxx*
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> *50. To sum up :*
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> ***(1) In cases where on conclusion of the adjudication proceedings there is no imposition of any fine, penalty, personal penalty and/or warning by the Customs authorities :***

(i) the policy for waiver would be applicable ;
(ii) the importer would be entitled to be considered for its benefit when the goods were seized, detained or earlier confiscated ; and
(iii) waiver would be granted subject to other compliances.

(2) In cases where pending the adjudication proceedings, provisional release order is issued and a certificate is issued by the Customs authorities, the goods would be released subject to furnishing of bond and/or security as may be prescribed that in case any fine, penalty, personal penalty and/or warning is imposed by the Customs Authorities, the importer would pay the demurrage charges."

(Emphasis supplied)

12. In the present case, the goods of petitioner though detained initially, were found to be in line with Bills of Entry and DRI had ordered the release on 08.04.2010 on payment of appropriate duty on declared value. In order to obtain Detention Certificates, the petitioner approached DRI vide letter dated 13.01.2011. The DRI, in turn, vide its reply dated 21.02.2011, asked the petitioner to approach the Customs authorities for the same. However, the Customs authorities redirected the petitioner to approach DRI vide letter dated 04.03.2011, to which the DRI again requested the Customs authorities to do the needful vide letter dated 25.03.2011. Despite sending reminders on multiple occasions, the Customs authorities failed to issue the requisite 'Detention Certificates' for 10 of the aforesaid containers, which form the subject matter of the present proceedings. Consequently, the petitioner was statedly constrained to filing W.P.(C) No.1007/2015 seeking issuance of the said Detention Certificates and in compliance of order of this Court dated 03.02.2015, eventually the said Detention Certificates were issued by the Customs authorities.

13. These Detention Certificates were communicated to the respondent

vide letter dated 23.02.2015, which was followed up by a reminder letter dated 04.03.2015. Respondent, vide letter dated 08.07.2015, asked the petitioner to explain why after obtaining clearance in 2010 the detention certificates were submitted in 2015. This letter was promptly replied to by the petitioner on 15.07.2015, explaining the circumstances as detailed in the preceding paragraph. However, on account of no response by the respondent, the petitioner was constrained to send multiple reminder letters dated 02.11.2015 and 06.09.2016, 07.03.2017, and 02.07.2018. Thereafter, the present petition was filed in 2018. As is evident from the perusal of the overall factual matrix, there were no delay or laches on account of the petitioner. Rather it was the inaction at the hands of, first the custom authorities and then the respondent that his application for refund has not been processed till date.

14. In view of the above facts and circumstances, the present petition is allowed and the respondent is directed to process the refund of demurrage charges due to the petitioner within 4 weeks from today.

15. The present petition is disposed of alongwith pending applications.

MANOJ KUMAR OHRI
(JUDGE)

MAY 23, 2025/*ik&ry*