

M/S.K.Steamship Agencies Pvt. Ltd vs M/S.Balaji Dekors on 4 July, 2024

Author: Mohammed Shaffiq

Bench: R. Mahadevan, Mohammed Shaffiq

W.A.Nos.2235 of

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN, ACTING CHIEF JUSTICE
AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.1017 and 1058 of 2017 &
W.A.Nos.2159 , 2175, 2230, 2235 and 2250 of 2021,
W.A.Nos.363, 574 , 1667, 1668, 2073, 2767 and 2768 of 2022,

and

W.P.Nos.1885, 1890, 4284, 4285, 6603, 20229, 20236, 25548, 29948
and 32579 of 2019

W.P.Nos.5896, 8497, 8498, 10131, 10133, 10512, 10515, 14257, 15469,
15612, 15619, 15631, 16323, 16403, 16772, 16817, 16868, 16968,
16979, 17087, 17141, 17159, 17250, 17148, 17196, 17466, 17529,
17705, 17715, 17733, 17736, 17738 17769, 17770, 17773, 17921 and
18263 of 2020

W.P.Nos.352, 461, 750, 751 and 1328 of 2021

W.P.No.17386 of 2022

and

W.P.Nos.5074, 5077 of 2023

and

CMP Nos.14310 and 14848 of 2017, 11441, 11443, 11445, 11447,
22521, 22517 and 22519 of 2022

and

WMP Nos.2084, 2090, 4824, 4826, 19631, 19638, 25078,
29858, 32958 and 32960 of 2019,
8397 and 8398 of 2021
and 33984 of 2022 and 5096 of 2023

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W.A.Nos.22

W.A.No.1017 of 2017

M/s.K.Steamship Agencies Pvt. Ltd.,
No.2, Mc Nicholos Road, 6th Floor,
Chetpet, Chennai - 600 031.

... Appellant

Vs.

1.M/s.Balaji Dekors,
S.No.77-2, Koduvelli Village,
Redhills, Thiruvallur High Road,
Chennai - 600 005.
Rep. by its Manager,

2.The Commissioner of Customs (Imports),
Commissionerate III,
Special Intelligence and Investigation,
Branch (SIIB), Customs House,
Chennai - 600 001.

3.The Deputy Commissioner of Customs (SIIB),
Commissionerate III,
Custom House,
Chennai - 600 001.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 08.08.2017 passed by the learned Judge in W.P.No.6453 of 2017.

For Appellant

: Mr.P.Giridharan,
Mr.Dominic S. David,
Mr.S.Santhosh

For Respondents

: M/s.G.Punniakoti for R1
Mr.Sai Srujan Tayi for R2

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W.A.Nos.

W.A.No.1058 of 2017

M/s.Calyx Container Terminals Pvt Ltd.,

No.28, GNT Road, NH-5,
Puzhal, Chennai - 66.
Represented by Manager.

Vs.

... Appella

1.M/s.Balaji Dekors,
S.No.77-2, Koduvelli Village,
Redhills, Thiruvallur High Road,
Chennai - 600 005.
Rep. by its Manager,

2.The Commissioner of Customs (Imports),
Commissionerate III,
Special Intelligence and Investigation,
Branch (SIIB), Customs House,
Chennai - 600 001.

3.The Deputy Commissioner of Customs (SIIB),
Commissionerate III,
Custom House,
Chennai - 600 001.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 08.08.2017 passed by the learned Judge in W.P.No.6452 of 2017.

For Appellant : Mr.S.Dhayalesswaran

For Respondents : M/s.G.Punniakoti for R1
Mr.Sai Srujan Tayi for R2

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W.A.Nos.2

W.A.No.2235 of 2021

Wardha Solar (Maharashtra) Private Limited,
Represented by its Authorized representative,
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Appella

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House, 60, Rajaji Salai,
Chennai - 600 001.

3.Ennore Cargo Container Terminal
Container Freight Station,
No.144, Kondakarai Village SR Palayam,
Chennai - 600 120.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street,
Chennai - 600 001.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 22.06.2021 passed by the learned Judge in W.P.No.16359 of 2020.

For Appellant : Mr.Arvind P. Datar
Senior Counsel
For Mr.Joseph Prabakar

For Respondents : No appearance

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W.A.Nos

Mr.ARL.Sundaresan
Additional Solicitor General

For Mr.Rajnish Pathiyil
Senior Panel Counsel for

Dr.R.Sunitha Sundar
for Mr.K.Bijai Sundar

Mr.Andrew Vivek for R4

W.A.No.2175 of 2021

Wardha Solar (Maharashtra) Private Limited,
Represented by its Authorized representative,
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Appel

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House, 60, Rajaji Salai,
Chennai - 600 001.

3.RCL Agencies East India Pvt. Ltd.,
No.40, 2nd Floor, Rajaji Salai,
Parrys, Nr.Customs House, Chennai - 600 001.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street,
Chennai - 600 001.

... Respond

Writ Appeal filed under Clause 15 of the Letters Patent, aga

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W.A.Nos.2

dated 22.06.2021 passed by the learned Judge in W.P.No.15490 of 2020.

For Appellant : Mr.Arvind P. Datar
Senior Counsel
For Mr.Joseph Prabakar

For Respondents : Mr.ARL.Sundaresan
Additional Solicitor General

Mr.Rajnish Pathiyil
Senior Panel Counsel for
Dr.R.Sunitha Sundar
for Mr.K.Bijai Sundar
Mr.Andrew Vivek for R4

No appearance for R1

W.A.No.2230 of 2021

Adani Enterprises Ltd,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate house, Shanthigram,
Near Vaishnav Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Appella

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.

2.The Commissioner of Customs, (CH-II),
Custom house, 60, Rajaji Salai,
Chennai - 600 001.

3.Ennore Cargo Container Terminal Pvt. Ltd.,
Container Freight Station,

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W.A.Nos.2

No.144, Kondakarai Village S.R.Palayam,
Chennai - 600 120.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street,
Chennai - 600 001.

... Responden

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 22.06.2021 passed by the learned Judge in W.P.No.17114 of 2020.

For Appellant : Mr.Arvind P. Datar
Senior Counsel
For Mr.Joseph Prabakar

For Respondents : Mr.ARL.Sundaresan
Additional Solicitor General

Mr.Rajnish Pathiyil
Senior Panel Counsel for R

: Dr.R.Sunitha Sundar
for Mr.K.Bijai Sundar for

W.A.No.2250 of 2021

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle,
SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Appella

Vs.

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W.A.Nos.223

1.The Union of India,
Represented by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House, 60, Rajaji Salai,
Chennai - 600 001.

3.Ennore Cargo Container Terminal,
Container Freight Station,
No.144, Kondakarai Village S.R.Palayam,
Chennai - 600 120.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street,
Chennai - 600 001.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 22.06.2021 passed by the learned Judge in W.P.No.17433 of 2020.

For Appellant : Mr.Arvind P. Datar
Senior Counsel
For Mr.Joseph Prabakar

For Respondents : Mrs.R.Hemalatha
Senior Panel Counsel for R2

: Dr.R.Sunitha Sundar
for Mr.K.Bijai Sundar for

: Mr.Andrew Vivek for R4

: No appearance for R1

W.A.No.2159 of 2021

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W.A.Nos.2

M/s.Goyal Impex and Industries Ltd.,
5/IV, The Mall, Ludhiana, Punjab
Rep. by its Director Shri Hira Lal

... Appellan

Vs.

1.The Commissioner of Customs (Exports),
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

2.The Assistant Commissioner of Customs,
(Group-7B, 7H) Custom House,
No.60 Rajaji Salai,
Chennai - 600 001.

3.Ennore Cargo Container Terminal
Private Ltd.,
No.144, Kondakarai Village SR Palayam,
Chennai - 600 120.

4.M/s.Wan Hai Lines (India) Pvt. Ltd.,
No.8B, "Capitale" No.554, 555, Anna Salai,
Teynampet, Chennai - 600 018.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 22.06.2021 passed by the learned Judge in W.P.No.21258 of 2013.

For Appellant : Mr.B.Sathish Sundar

For Respondents : Mrs.R.Hemalatha
Senior Panel Counsel for R1
: Dr.R.Sunitha Sundar
for Mr.K.Bijai Sundar for R3
: No appearance for R4

W.A.No.2767 of 2022

1.The Chief Commissioner of Customs,

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W.A.Nos.223

Custom House No.60, Rajaji Salai,
Chennai - 600 001.

2.The Additional Commissioner of Customs,
Group-II, Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

3.The Deputy Commissioner of Customs,
Group-II, Customs house, No.60, Rajaji Salai,
Chennai - 600 001.

... Appellants

Vs.

1.M/s.Sherisha Technologies P Ltd.,
Rep. by its Authorized Signatory,
No.67, Bazullah Road, T.Nagar,
Chennai - 600 017.

2.M/s.Continental Warehousing Corporation,
(Nava Sheva), Madhavaram, Chennai - 600 110.

3.M/s.Sanco Trans Ltd.,
No.592, Ennore Express High Road,
Chennai-600 057.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 13.06.2022 passed by the learned Judge in W.P.No.23755 of 2017.

For Appellants

: Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by Mr.V.Sundareswara
Senior Panel Counsel

For Respondents

: Mr.V.P.Raman for R1
Dr.R.Sunitha Sundar
for Mr.K.Bijai Sundar for R2

No appearance for R3

W.A.No.2768 of 2022

1.The Chief Commissioner of Customs,
Custom House No.60, Rajaji Salai,

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W.A.Nos.22

Chennai - 600 001.

2.The Additional Commissioner of Customs,
Group-II, Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

3.The Deputy Commissioner of Customs,
Group-II, Customs house, No.60, Rajaji Salai,
Chennai - 600 001.

... Appellants

Vs.

1.M/s.Sherisha Technologies P Ltd.,
Rep. by its Authorized Signatory,
No.67, Bazullah Road, T.Nagar,
Chennai - 600 017.

2.M/s.Continental Warehousing Corporation,
(Nava Sheva), Madhavaram, Chennai - 600 110.

3.M/s.Sanco Trans Ltd.,
No.592, Ennore Express High Road,
Chennai-600 057.

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 13.06.2022 passed by the learned Judge in W.P.No.23756 of 2017.

For Appellants

: Mr.ARL.Sundaresan
Additional Solicitor General
Assisted by Mr.V.Sundareswara
Senior Panel Counsel

For Respondents

: Mr.V.P.Raman for R1
: Dr.R.Sunitha Sundar
for Mr.K.Bijai Sundar for R2
No appearance for R3

W.A.No.363 of 2022

M/s.Sai Lakshmi Engineering, 9-1-14,
Opp. Line of Pioneer TVS Showroom,
Station Road, Naaz Centre, Guntur,

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W.A.No

Andhra Pradesh - 520 001.
Represented by its Proprietor,
Shri K.Nagaraju

... Appel

Vs.

1.The Principal Commissioner of Customs,
(Exports), Chennai III Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Assistant Commissioner of Customs,
Docks Intelligence Unit, Chennai III,
Commissionerate, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

3.The Manager,
M/s.Sudarshan Logistic Pvt. Ltd.,
(CFS), 41, Red Hills High Road,
Andarkuppam, New Manali,
Chennai - 600 103.

4.The Manager, M/s.Zim Shipping,
"Heavitree", Unit 3 C, Level 3, No.47,
Mayoor Ramanathan Salai,
(Formerly Spur Tank Road),
Chetpet, Chennai - 600 031.

5.The Manager,
M/s.Star Shipping Services (India)
Private Limited, Heavitree,
Unit 3 C, Level 3,
No.47, Mayor Ramanathan Salai,
(Formerly Spur Tank Road),
Chetpet, Chennai - 600 031.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 01.07.2021 passed by the learned Judge in W.P.No.14370 of 2018.

For Appellant

: Mr.B.Sathish Sundar,
Dr.S.Krishnanadh

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W.A.Nos.

Mr.N.Balaji

For Respondents

: Mr.A.P.Srinivas
Senior Standing Counsel for
: Dr.R.Sunitha Sundar
for Mr.K.Bijai Sundar for R
Mr.S.Vasudevan for R4 & R5

W.A.No.574 of 2022

M/s.Isha Exim, P-586 Block N,

New Alipore, Kolkatta - 700 053,
Rep. by its Proprietor Shri.Prabal Kumar Kundu

... Appell

Vs.

1.The Commissioner of Customs,
Chennai II Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Additional Director General,
Directorate of Revenue Intelligence
No.27, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

3.The Deputy Commissioner of Customs,
Group-II, Chennai II Commissionerate
Custom House No.60, Rajaji Salai,
Chennai - 600 001.

4.The Manager, APL (India) Pvt. Ltd.,
New No.8, Old No.15, Whannels Road,
Egmore, Chennai - 600 008.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 01.07.2021 passed by the learned Judge in W.P.No.26838 of 2018.

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W.A.Nos.2235 o

For Appellant	: Mr.B.Sathish Sundar
For Respondents	: Mrs.R.Hemalatha Senior Panel Counsel for R1, R
	: Mr.V.Sundareswaran Senior Panel Counsel for R2

W.A.No.1667 of 2022

M/s.G.K.International,
Rep. by its Proprietor,
Shri Jagannathan Yogeshwaran,
S/o.Jagannathan,
No.175, Sivan Padai Street,

Kathivakkam, Ennore,
Chennai - 600 057.

... Appellant

Vs.

- 1.The Principal Commissioner of Customs,
Preventive Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.
- 2.The Additional Commissioner of Customs,
(Imports) (Gr.I),
O/o. The Commissioner of Customs (Imports),
Chennai, Custom house, 60, Rajaji Salai,
Chennai - 600 001.
- 3.The Assistant Commissioner of Customs,
Special Intelligence and Investigation Branch,
(SIIB), O/o.Principal Commissioner of Customs,
Preventive Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.
- 4.M/s.Continental Warehousing Corporation,

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W.A.Nos.2

(Nhava Sheva) Ltd.-II, Redhills CFS, No.114,
Nallur Village Thiruvallur High Road,
Attanthangal, Red Hills, Chennai - 600 052.

- 5.M/s.Transmarine Cargo Services Pvt Ltd.,
9, 7B Raintree Place, 7th Floor,
M.S.Nicolas Road, Chetpet,
Chennai - 60 0031.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 16.06.2022 by the learned Judge in W.P.No.6949 of 2022.

For Appellant : Mr.M.Ravichandran

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel for
: Dr.Sunitha Sundar
for K.Bijai Sundar for R4 &

W.A.No.1668 of 2022

M/s.G.K.International,
Rep. by its Proprietor,
Shri Jagannathan Yogeshwaran,
S/o.Jagannathan,
No.175, Sivan Padai Street,
Kathivakkam, Ennore,
Chennai - 600 057.

... Appellant

Vs.

- 1.The Principal Commissioner of Customs,
Preventive Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.
- 2.The Additional Commissioner of Customs,
(Imports) (Gr.I),
O/o. The Commissioner of Customs (Imports),

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W.A.Nos.2235

Chennai, Custom house, 60, Rajaji Salai,
Chennai - 600 001.

- 3.The Assistant Commissioner of Customs,
Special Intelligence and Investigation Branch,
(SIIB), O/o.Principal Commissioner of Customs,
Preventive Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

- 4.M/s.Kailash Shipping Services Pvt Ltd.,
No.43, Kadapakkam Village,
Vichoor High Road, Manali New Town,
Chennai - 600 103.

- 5.M/s.Good Rich Logistics Pvt Ltd.,
Regus City Centre, Muttukadu 1, Level 6,
10/11, Radha Krishna Salai, Mylapore,
Chennai - 600 004.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
dated 16.06.2022 by the learned Judge in W.P.No.6947 of 2022.

For Appellant : Mr.M.Ravichandran

For Respondents : Mr.T.Pramod Kumar Chopda
for R1 to R3
: Mr.P.R.Krishnaraj for R4

: Mr.Raffiq Mohammed
for Mr.M.Ashwin Kumar for R5

W.A.No.2073 of 2022

M/s.Good Rich Logistics Pvt Ltd.,
Regus City Centre, Muttukadu 1, Level 6,
10/11, Radha Krishna Salai, Mylapore,
Chennai - 600 004.

Presently At
Guna Complex, 443-445, 3rd Floor,
Main Building, Annex-1,

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W.A.Nos.2

Anna Salai, Teynampet, Chennai - 600 018.
Represented by its General Manager.

... Appell

Vs.

1. M/s.G.K.International,
Rep. by its Proprietor,
Shri Jagannath Yogeshwaran,
S/o.Jagannathan,
No.175, Sivan Padai Street,
Kathivakkam, Ennore,
Chennai - 600 057.

2.The Principal Commissioner of Customs,
Preventive Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

3.The Additional Commissioner of Customs,
(Imports) (Gr.I),
O/o. The Commissioner of Customs (Imports),
Chennai, Custom house, 60, Rajaji Salai,
Chennai - 600 001.

4.The Assistant Commissioner of Customs,
Special Intelligence and Investigation Branch,
(SIIB), O/o.Principal Commissioner of Customs,
Preventive Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

5.M/s.Kailash Shipping Services Pvt Ltd.,
No.43, Kadapakkam Village,
Vichoor High Road, Manaly New Town,
Chennai - 600 103.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against dated 16.06.2022 by the learned Judge in W.P.No.6947 of 2022.

For Appellant : Mr.Raffiq Mohammed
for Mr.Biju Joseph

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W.A.Nos.2

For Respondents : Mrs.Hema Muralikrishnan for

W.P.No.1885 of 2019

M/s.Goyal Impex and Industries Limited,
5/IV, The Mall, Ludhiana - 141 001.
Represented by its Authorized Signatory,
Shir.Gagan Goyal.

... Petitione

Vs.

- 1.The Commissioner of Customs,
Chennai II Commissionerate,
Custom House No.60, Rajaji Salai,
Chennai - 600 001.
- 2.The Deputy Commissioner of Customs,
Group 7B/7H, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.
- 3.M/s.Hind Terminals Chennai
Private Limited-CFS,
S.F.No.392/1, 393/2&3, Elavambedu Village,
Ponneri, Tiruvallur, Chennai - 601 203.
- 4.M/s.MSC Agency (I) Pvt. Ltd.,
First Floor, KGN Towers,
No.62 Ethiraj Salai,
Egmore, Chennai - 600 105.

... Responde

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to cause release of goods imported vide Bill of Entry No.5435629, dated 03.03.2018, import container Numbers BHOU5583387 and MEDU8076896, without payment of

demurrage and container detention charges in terms of Regulation 6(1)(
Handling of Cargo in Customs Areas Regulations 2009 read with the Dete

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W.A.Nos.2

Certificate dated 05.09.2018 attributable to the second respondent and
direct the respondents 3 and 4 respondents to release the goods without
of container detention charges in terms of the Detention Certificate d
05.09.2018

For petitioner : Mr.B.Sathish Sundar

For respondents : Mr.ARL.Sundaresan
Additional Solicitor General

For Mr.Rajnish Pathiyil
Senior Panel Counsel for

: Mrs.Pushpa Menon for R3

: Mr.P.Giridharan for R4

W.P.No.1890 of 2019

M/s.Goyal Impex and Industries Limited,
5/IV,
The Mall, Ludhiana - 141 001.
Represented by its Authorized Signatory,
Shir.Gagan Goyal.

... Petitione

Vs.

1.The Commissioner of Customs,
Chennai II Commissionerate,
Customs House No.60, Rajaji Salai,
Chennai - 600 001.

2.The Deputy Commissioner of Customs,
Group 7B/7H, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

3.M/s.All Cargo Logistics Ltd., - CFS,

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W.A.Nos.

Thrivottiyur High Road, Ernavur,
Chennai - 600 057.

4.M/s.MSC Agency (I) Pvt. Ltd.,
First Floor, KGN Towers,
No.62 Ethiraj Salai,
Egmore, Chennai - 600 105.

... Respond

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to cause release of goods imported vide Bill of Entry No.5854865, dated 04.04.2018, import container Numbers TCLU5587584 and TCLU8960433, without payment of demurrage and container detention charges in terms of Regulation 6(1)(b) of the Handling of Cargo in Customs Areas Regulations 2009 read with the Detention Certificate dated 05.09.2018 attributable to the second respondent and direct the respondents 3 and 4 respondents to release the goods without payment of container detention charges in terms of the Detention Certificate dated 05.09.2018.

For petitioner : Mr.B.Sathish Sundar

For respondents : Mr.Rajinish Pathiyil
Senior Panel Counsel for R1
: Mrs.Pushpa Menon for R3
: Mr.P.Giridharan for R4

W.P.No.4284 of 2019

MSC Agency (India) Private Limited,
1st Floor, KGN Towers,
No.62, Ethiraj Salai,
Egmore, Chennai - 600 015.
Represented by its Authorized Signatory,
A.Umaibalan

... Petitioner

Vs.

1.The Deputy Commissioner of Customs,

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W.A.Nos.2

Group-2, Commissionerate-II,
Customs House No.66, Rajaji Salai,
Chennai - 600 001.

2.M/s.Goyal Impex and Industries Limited,

5/IV, The Mall,
Ludhiana - 141 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records leading to passing Certificate vide F.No.S.MISC.814/2018-Gr2, dated 05.09.2018, passed by respondent and quash the same.

For petitioner : Mr.P.Giridharan

For respondents : Mr.Rajkumar Jhabak for R1
: No appearance for R2

W.P.No.4285 of 2019

MSC Agency (India) Private Limited,
1st Floor, KGN Towers,
No.62, Ethiraj Salai,
Egmore, Chennai - 600 015.
Represented by its Authorized Signatory,
A.Umaibalan

... Petitioner

Vs.

1.The Deputy Commissioner of Customs,
Group-2, Commissionerate-II,
Customs House No.66, Rajaji Salai,
Chennai - 600 001.

2.M/s.Goyal Impex and Industries Limited,
5/IV, The Mall,
Ludhiana - 141 001.

... Respondents

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W.A.Nos.

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records leading to passing Certificate vide F.No.S.MISC.814/2018-Gr2, dated 05.09.2018, passed by respondent and quash the same.

For petitioner : Mr.P.Giridharan

For respondents : Mr.Rajkumar Jhabak for R1
: No appearance for R2

W.P.No.6603 of 2019

M/s.Orion Enterprises,
No.4, Lalta Yadav Chal,
Near Prakash Nagar,
Lake Road, Sonapur,
Bhandup West, Mumbai-400 078.
Rep. by its Partner
Shri Mohamed Salim

... Petition

Vs.

- 1.The Principal Commissioner of Customs,
Commissioner of Customs-II,
Custom House No.60, Rajaji Salai,
Chennai - 600 001.
- 2.The Joint Commissioner of Customs,
Group 5B, Commissionerate - II,
Custom House, No.60, Rajaji Salai,
Chennai - 60 0001.
- 3.Assistant Commissioner of Customs,
Group 5 B, Commissionerate - II,
Custom House, No.60, Rajaji Salai,
Chennai - 60 001.

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W.A.Nos.2

- 4.The Additional Director,
Directorate of Revenue Intelligence,
Ministry of Finance,
Department of Revenue,
Government of India,
27, GN Chetty Road, T.Nagar,
Chennai - 600 017.

- 5.M/s.A.P.M.Terminals Inland Service,
No.78, Anuppampatu Village,
T.H.Road, Ponneri Taluk,
Thiruvallur District - 601 203.
Rep. by its Manager (Operations)

... Responde

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus directing the respondents 1 to 4 herein to gr

detention cum demurrage waiver certificate in terms of the Handling of Customs Area Regulation, 2009 with respect to import and clearance of Cadillac Escalade Vehicle imported under Bill of Entry No.9023152, dated 24.03.2017 from the date of detention and allowed to be re-exported in the adjudication order culminating in Final Order No.42483 & 42484 of dated 25.09.2018 of the CESTAT, South Zonal Bench, Chennai till its ph release and consequently direct the fifth respondent herein to refund rent charge and demurrage collected from the petitioner.

For petitioner : Mr.B.Sathish Sundar

For respondents : Mr.V.Sundareswaran
Senior Panel Counsel for R1
: Mr.P.Giridharan for R5

W.P.No.20229 of 2019

Shri Makkara Rama Sudarshan Reddy,
Proprietor of Tejaswi Hotel,
No.25/685A, TTD Road,
Opp. Rythu Bazaar, Nandyal,
Andhra Pradesh - 518 501.

... P

Vs.

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W.A.Nos.223

1.The Assistant Commissioner of Customs,
Group 6, Chennai II Commissionerate,
Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

2.The Deputy Commissioner of Customs,
SIIB, Chennai III Commissionerate,
Custom house, No.60, Rajaji Salai,
Chennai - 600 001.

3.The Deputy Commissioner of Customs,
Docks, Chennai III Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

4.The Commissioner of Customs, Chennai,
III Commissionerate,
Custom House No.60, Rajaji Salai,
Chennai - 600 001.

... Res

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to quash the communication issued by the second respondent issued from file No.S.Misc.187/2018-SIIB, dated 08.03.2019; and F.No.S.Misc.187/2018-SIIB, dated 17.01.2018 and quash same and further direct the respondents to issue a detention certificate of demurrage and container detention charges in terms of Regulation 6 of the Handling of Cargo in Customs Areas Regulations 2009 in respect of Entry No.8374760, dated 08.10.2018 from the date of filing of the Bill of Lading to the date of actual clearance of the goods and ensure due compliance with the said certificate by the Container Freight Station and the Steamer Agent in terms of the said Regulations.

For petitioner : Mr.B.Sathish Sundar

For respondents : Mrs.R.Hemalatha
Senior Panel Counsel for R1

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W.A.Nos.223

W.P.No.20236 of 2019

M/s.Rajahamsa Avenue Private Limited,
18-2-109, Rajahamsa Residency,
Besides Journalist Colony,
Near RTC Bus Stand,
Anantapur, Andhra Pradesh - 515 001,
Represented by its Director,
Shri Bulle Srinivasulu.

...

Vs.

1.The Assistant Commissioner of Customs,
Group 6, Chennai II Commissionerate,
Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

2.The Deputy Commissioner of Customs,
SIIB, Chennai III Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

3.The Deputy Commissioner of Customs,
Docks, Chennai III Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

4.The Commissioner of Customs
Chennai III Commissionerate,
Custom House No.60, Rajaji Salai,
Chennai - 600 001.

...

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to quash the communication issued by the second respondent issued from file No.S.Misc.189/2018-SIIB, dated 13.03.2019; F.No.S.Misc.189/2018-SIIB, dated 17.01.2019. F.No.S.Misc.189/2018-SIIB, dated 22.10.2018 and quash the same and further direct the respondents to issue a detention certificate for waiver of and container detention charges in terms of Regulation 6(1)(i) of the

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<https://www.mhc.tn.gov.in/judis>

W.A.Nos.22

Cargo in Customs Areas Regulations 2009 in respect of Bill of Entry No. dated 08.10.2018 from the date of filing of the Bill of Entry till the clearance of the goods and ensure due compliance with the said certificate Container Freight Station and the Steamer Agent / Liner in terms of the Regulations.

For petitioner : Mr.B.Sathish Sundar

For respondents : Mrs.R.Hemalatha
Senior Panel Counsel for R1

W.P.No.25548 of 2019

Hyundai Merchant Marine India Pvt. Ltd.,
Ega Trade Centre, 3rd Floor,
Door No.318 (Old No.809),
Poonamallee High Road,
Kilpauk, Chennai - 600 010.
Represented by its Authorized Signatory,
Mr.D.Balaji i

... Petitioner

Vs.

1.The Assistant Commissioner of Customs,
Special Intelligence and Investigation Branch (SIIB),
Office of the Principal Commissioner of Customs,
Commissionerate - III,
Custom House, Chennai - 600 001.

2.M/s.Aadidev International,
No.7918, Roshanara Road,

Dinanath Marg, Delhi - 110 007.

3.M/s.Neelkanth Impex,
No.V-393, Rajeev Gandhi Marg,
Vijay Park, North Delhi - 110 053.

4.M/s.Priyanshi Overseas,
No.F-893, Ram Park Ext. Loni,

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W.A.Nos.2

Ghaziabad - 201010.

5.Ace Kargoways Pvt. Ltd.,
No.83/84, Moore Street,
2nd Floor, Chennai - 600 001.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records leading to passing of the letter, vide F.No.S.MISC.189/2019-SIIB, dated 02.07.2019, issued by the respondent, quash the same.

For petitioner : Mr.P.Giridharan

For respondents : Mrs.Anu Ganesan
Junior Panel Counsel for R1

: Mr.B.Sathish Sundar for R2 to

W.P.No.29948 of 2019

Yang Ming Line (India) Pvt. Ltd.,
84, 3rd Floor, MMPDA Tower,
Royapettah High Road,
Chennai - 600 014.
Represented by its Power of Attorney,
Mr.A.A.Krishnan,
New No.143A-B, Old No.39,
Ellaiamman Koil Street,
Shastri Nagar, Adyar,
Chennai - 600 020.

... Petitioner

Vs.

1.The Assistant Commissioner of Customs,
(Group-1),
Office of the Commissioner of Customs, Chennai-II,

Custom House, 60,

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<https://www.mhc.tn.gov.in/judis>

W.A.Nos.2

Rajaji Salai, Chennai - 600 001.

2.Royal Impex,
No.77, Old No.38,
Acharappan Street,
2nd Floor, Chennai - 600 001.

... Responde

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records leading to passing of the letter F.No.S.MISC/64/2019-Gr-1, dated 01.04.2019, issued by the first respondent, quash the same.

For petitioner : Mr.P.Giridharan

For respondents : Mr.Rajkumar Jhabak for R1
: Mr.B.Sathish Sundar for R2

W.P.No.32579 of 2019

PIL (India) Private Limited,
807-809, Raheja Towers,
177, Anna Salai,
Chennai - 600 002.
Represented by its Authorized Signatory,
Mr.Aroop Banerjee

... Petitione

Vs.

1.The Assistant Customer of Customs, Group-1,
Office of the Commissioner of Customs,
Chennai-II, Custom House,
Chennai - 600 001.

2.Asia Marketing,
17/1, R.C.Building,
Kamtee Road, Near SFS Church,
Nagpur - 440 001.

... Respondent

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W.A.Nos.2

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records leading to passing of the order letter vide F.No.S.MISC/64/2019-Gr-1, dated 03.04.2019, passed by the respondent, quash the same.

For petitioner : Mr.P.Giridharan

For respondents : Mr.K.Makesh for R1
: No appearance for R2

W.P.No.5896 of 2020

M/s.Navkar Exim
No.9, Chandrappa Mudali Street,
Sowcarpet, Chennai-600 079.
Rep. by its Proprietor,
Mr.Sanjeev Kumar Jain

V_S .

1.The Deputy Commissioner of Customs (SIIB),
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

2.The Deputy Commissioner of Customs (Gr.2),
No.60, Rajaji Salai, Custom House,
Chennai - 600 001.

Writ Petition filed under Article 226 of the Constitution of India. I issue a Writ of Mandamus, directing the respondents herein to issue a certificate waiver towards the rent paid by the petitioner concerning the amount of Rs.22,83,189/- of imported goods covered under Bill of Entry No.3386891, dated 26.09.2009, under Regulation 6(1)(1) of Handling of Cargoes in Customs Area Regulations, 2009, as amended, so as to entitle the petitioner to get refund of the amount of Rs.22,83,189/- paid to M/s.Sudharsan Container Freight Station, Chennai, by considering the representation of the petitioner dated 18.09.2009.

For petitioner : Mr.S.Baskaran

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W.A.Nos

For respondents : Mr.K.Ravi
Senior Panel Counsel

W.P.No.8497 of 2020

Golden Hatcheries,
Represented by its Authorized Signatory,
Mr.Jeros Bhoja
No.3, First Cross, Queen Road,
Millers Tank Bund Road,
Bangalore - 560 052.

... Petition

Vs.

1.The Principal Commissioner of Customs,
Chennai-IV, Seaport Commissionerate,
Custom House, 60, Krishna Block Rajaji Salai,
Opp. District Collectorate,
Chennai - 600 001.

2.The Deputy Commissioner of Customs,
Special Intelligence and Investigation Branch,
Custom House, 60, Krishna Block Rajaji Salai,
Opp. District Collectorate,
Chennai - 600 001.

3.Triway Container Freight Station Pvt. Ltd.,
No.14, Jaffer Street,
Behind Custom House,
Chennai - 600 001.

4.M/s.T.S.Lines (India) Pvt. Ltd.,
7th Floor, A Wing KGN Towers,
New No.62, Old No.32,
Commander in Chief Road,
Egmore, Chennai - 600 105.

5.Assistant Commissioner of Customs (ENQ),
Custom House Chennai VIII,
No.60, Rajaji Salai,
Chennai - 600 001.

... Respondents

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<https://www.mhc.tn.gov.in/judis>

W.A.Nos.22

Writ Petition filed under Article 226 of the Constitution of I
issue a Writ of Mandamus, directing the fourth respondent to refund to
petitioner, a sum of Rs.1,45,57,352/- paid under protest by the petiti
respondent No.4 plus interest thereon, as being collected and retained
contravention of Regulation 6(1)(1) of the Handling of Cargo in Custom
Regulations, 2009 and the statutory direction bearing reference-F.No.S
22/2019-ENQ and dated 04.11.2019 issued by the respondent No.5 to the
respondent No.4.

For petitioner

: Mr.Rahul Unnikrishnan

For respondents : Mr.A.P.Srinivas
Senior Standing Counsel for
Mr.S.R.Sundar for R2 to R5

W.P.No.8498 of 2020

Golden Hatcheries,
Represented by its Authorized Signatory,
Mr.Jeros Bhoja
No.3, First Cross, Queen Road,
Millers Tank Bund Road,
Bangalore - 560 052. ... Petitioner

Vs.

- 1.The Principal Commissioner of Customs,
Chennai-IV, Seaport Commissionerate,
Custom House, 60, Krishna Block Rajaji Salai,
Opp. District Collectorate,
Chennai - 600 001.
- 2.The Deputy Commissioner of Customs,
Special Intelligence and Investigation Branch,
Custom House, 60, Krishna Block Rajaji Salai,
Opp. District Collectorate, Chennai - 600 001.
- 3.Triway Container Freight Station Pvt. Ltd.,

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W.A.Nos.2

No.14, Jaffer Street,
Behind Custom House,
Chennai - 600 001.

- 4.M/s.T.S.Lines (India) Pvt. Ltd.,
7th Floor, A Wing KGN Towers,
New No.62, Old No.32,
Commander in Chief Road,
Egmore, Chennai - 600 105.
- 5.Assistant Commissioner of Customs (ENQ),
Custom House Chennai VIII,
No.60, Rajaji Salai,
Chennai - 600 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent No.1 and the respondent No.5 respectively, to take penal action under the Handling of Cargo in Customs Areas Regulations, 2009 against the Respondent No.4 and Respondent No.3 for violation of the provisions thereof, and, non-compliance with the statutory provisions thereof, directing bearing reference -F.No.S.Misc 22/2019-ENQ and dated 04.11.2019 issued by the respondent No.5 to Respondent No.4.

For petitioner	: Mr.Rahul Unnikrishnan
For respondents	: Mr.A.P.Srinivas Senior Standing Counsel for the Government Mr.S.R.Sundar for R2 to R5

W.P.No.10131 of 2020

M/s.Gravity Ventures,
Represented by its Proprietor,
Mr.S.U.Sirajdeen,
No.96A, Sri Ganapathy Complex,
2nd Floor, A.K.Nagar,
Sai Baba Colony, Coimbatore - 641 001.

...

Vs.

1.The Commissioner of Customs,

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W.A.Nos.223

Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Assistant Commissioner of Customs
(Docks Intelligence Unit)
Chennai III Commissionerate,
Docks Intelligence Unit,
Custom House No.60, Rajaji Salai,
Chennai - 600 001.

3.M/s.Kailash Shipping Container Freight Station,
43, Vichur Road, Andarkuppam Post,
Manali New Town, Chennai - 600 103.

... R

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent to take appropriate action against the third respondent for suspension or revocation of the license given to the third respondent as a custom cargo service provider in terms of Regulation 11 of the Handling of Cargo in Customs Areas Regulations, 2009.

For petitioner : Mr.Hari Radhakrishnan

For respondents : Mr.ARL.Sundaresan
Additional Solicitor General

For Mr.Rajnish Pathiyil
Senior Panel Counsel for

W.P.No.10133 of 2020

M/s.Gravity Ventures,
Represented by its Proprietor,
Mr.S.U.Sirajdeen,
No.96A, Sri Ganapathy Complex,
2nd Floor, A.K.Nagar,
Sri Baba Colony, Coimbatore - 641 001.

...

Vs.

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W.A.Nos.223

1.The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Assistant Commissioner of Customs
(Docks Intelligence Unit)
Chennai III Commissionerate,
Docks Intelligence Unit,
Custom House No.60, Rajaji Salai,
Chennai - 600 001.

3.M/s.Kailash Shipping Container Freight Station,
43, Vichur Road, Andarkuppam Post,
Manali New Town, Chennai - 600 103.

... R

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first and second respondent to that the Demurrage Waiver Certificate dated 25.06.2020 issued by the second respondent is complied by the third respondent and the goods covered by Entry No.6929147, dated 18.02.2020 is released to the petitioner without charges.

For petitioner : Mr.Hari Radhakrishnan

For respondents : Mr.ARL.Sundaresan
Additional Solicitor General

For Mr.Rajnish Pathiyil
Senior Panel Counsel for

W.P.No.10512 of 2020

M/s.Honfooyo Automotive Services Pvt. Ltd.,
Represented by its Director,
Vishnu Ram M,
19A Karanam Street,

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W.A.Nos.2

Selaiyur, Chennai - 600 073.

... Petition

Vs.

1.The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Additional Commissioner of Customs (Group 6),
Chennai VIII Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

3.The Deputy Commissioner of Customs (SIIB),
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

4.M/s.Balmer Lawrie & Company Limited,
Container Freight Station,
Manali, Chennai - 600 068.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
issue a Writ of Mandamus, directing the first respondent to take appropriate
action against the fourth respondent for suspension or revocation of the license
given to the fourth respondent as a custom cargo service provider in terms of
Regulation 11 of Handling of Cargo in Customs Areas Regulations, 2009.

For petitioner : Mr.Hari Radhakrishnan

For respondents : Mr.B.Ramanakumar for R1 to R3
: Mr.Johan Zachariah for R4

W.P.No.10515 of 2020

M/s.Honfooyo Automotive Services Pvt. Ltd.,
Represented by its Director,
Vishnu Ram M,
19A Karanam Street,

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W.A.Nos.

Selaiyur, Chennai - 600 073.

... Petition

Vs.

1.The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Additional Commissioner of Customs (Group 6),
Chennai III Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

3.The Deputy Commissioner of Customs (SIIB),
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

4.M/s.Balmer Lawrie & Company Limited,
Container Freight Station,
Manali, Chennai - 600 068.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 2 and 3 to ensure demurrage waiver certificate dated 19.03.2020 issued by the third respondent and also the provisions of Regulations 6(1)(l) of the Handling of Cargo Areas Regulations, 2009 is complied by the fourth respondent and the goods covered by Bill of Entry No.5079699, dated 02.01.2020 is released to the petitioner without levying any demurrage or storage charges.

For petitioner : Mr.Hari Radhakrishnan

For respondents : Mr.B.Ramanakumar for R1 to R3
: Mr.Johan Zachariah for R4

W.P.No.14257 of 2020

Wardha Solar Maharashtra Private Limited,

Represented by its Authorized representative
Ganesh Sharma,

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W.A.Nos.

Adani Corporate House, Shantigram,
Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Petiti

Vs.

- 1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
- 2.The Commissioner of Customs (CH-II),
Custom House,
60, Rajaji Salai, Chennai - 600 001.
- 3.Allcargo Logistics Limited,
913, Thiruvottiyur High Road,
Ernavur, Chennai - 600 057.
- 4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respond

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent No.3, to act in compliance with the Detention Certificate dated 05.06.2018 issued by Respondent No.2 and to direct Respondent No.3 to refund the amounts collected by them at the time of clearance of the goods in question forthwith along with appropriate interest.

For petitioner	: Mr.Arvind P. Datar Senior Counsel for Mr.Joseph
For respondents	: Mr.T.L.Thirumalaisamy CGSC for R1
	: Mr.A.P.Srinivas Senior Standing Counsel for
	: M/s.Pushpa Menon Mr.Vivek Menon for R3

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W.A.Nos.

No appearance for R4

W.P.No.15469 of 2020

Wardha Solar Maharashtra Private Limited,
Represented by its Authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Petiti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Custom House,
60, Rajaji Salai, Chennai - 600 001.

3.M/s.Safmarine India Pvt. Ltd.,
Prestige Palladium Bayan,
3rd Floor, Greams Road,
Chennai - 600 006.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respond

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent No.3, to act in compliance with the Detention Certificate dated 05.06.2018 issued by Respondent No.2 and Respondent No.3 to refund the amounts collected by them at the time of clearance of the goods in question forthwith along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

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W.A.Nos.2

For respondents : Mr.T.L.Thirumalaisamy
CGSC for R1
: Mr.A.R.L.Sundaresan

Additional Solicitor General
Assisted by Mr.Rajnish Pathi
Senior Panel Couns

: Mr.P.Giridharan for R3

W.P.No.15612 of 2020

Wardha Solar Maharashtra Private Limited,
Represented by its Authorized representative
Ganesh Sharma,
Adani Corporate House, Shantigram,
Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Petition

Vs.

- 1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
- 2.The Commissioner of Customs (CH-II),
Custom House,
60, Rajaji Salai, Chennai - 600 001.
- 3.Hyundai Merchant Marine India Pvt. Ltd.,
EGA Trade Centre, 3rd Floor, Door No.318,
Poonamallee High Road, Kilpauk,
Chennai - 600 010.
- 4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Responde

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W.A.Nos.2

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing the respondent No.3, to act in com
the Detention Certificate dated 05.06.2018 issued by Respondent No.2 a
Respondent No.3 to refund the amounts collected by them at the time of
clearance of the goods in question forthwith along with appropriate in

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.T.L.Thirumalaisamy
CGSC for R1

: Mr.AR.L.Sundaresan
Additional Solicitor General

Assisted by Mr.Rajnish Pathi
Senior Panel Coun

: Mr.P.Giridharan for R3
: No appearance for R4

W.P.No.15619 of 2020

Wardha Solar Maharashtra Private Limited,
Represented by its Authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Petition

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,

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W.A.Nos.2

New Delhi.

2.The Commissioner of Customs (CH-II),
Custom House,
60, Rajaji Salai, Chennai - 600 001.

3.APL India Pvt. Ltd.,
Calavala's Aditya 2nd Floor,
New No.8, Old No.15, Whannels Road,
Egmore, Chennai - 600 008.

4.NTC Logistics India (P) Ltd.,

(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Responde

Writ Petition filed under Article 226 of the Constitution of I
issue a Writ of Mandamus, directing the respondent No.3 to refund the
collected by them at the time of clearance of the goods in question fo
along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.T.L.Thirumalaisamy
CGSC for R1

: Mr.AR.L.Sundaresan
Additional Solicitor General

Assisted by Mr.Rajnish Pathi
Senior Panel Coun

: Mr.P.Giridharan for R3

: No appearance for R4

W.P.No.15631 of 2020

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W.A.Nos.

Wardha Solar Maharashtra Private Limited,
Represented by its Authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Petiti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Custom House,
60, Rajaji Salai, Chennai - 600 001.

3.Calyx Container Terminal Pvt. Ltd.,

No.28, GNT Road, (Nh-5), Puzhal Junction,
Kathirvedu Village (Near ErattaiEn),
Chennai -600 006, Tamil Nadu, India.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respond

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing the respondent No.3 to act in comp
the Detention Certificate dated 05.06.2018 issued by respondent No.2 a
respondent No.3 to refund the amounts collected by them at the time of
clearance of the goods in question forthwith along with appropriate in

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.T.L.Thirumalaisamy
CGSC for R1

: Mr.AR.L.Sundaresan

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W.A.No

Additional Solicitor Gener

Assisted by Mr.Rajnish Pat
Senior Panel Co

: Mr.A.K.Jayaraj for R3
No appearance for R4

W.P.No.16323 of 2020

Wardha Solar Maharashtra Private Limited,
Represented by its Authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Peti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,

60, Rajaji Salai, Chennai - 600 001.

3.ZIM Line,
Haevitree, Unit 3-C, 3rd Floor, No.47,
Major Ramanathan Salai,
Chetpet (Spur Tank Road),
Chennai - 600 031.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respo

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing respondent No.3 to act in complian
Detention Certificate dated 05.06.2018 issued by Respondent No.2 as al

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W.A.Nos.2

compliance of Regulation 6(1)(l) of Handling of Cargo in Customs Areas
Regulations, 2009 and to further direct the respondent No.3 to refund
amounts collected by them at the time of clearance of the goods in que
forthwith along with appropriate interest.

For petitioner	: Mr.Arvind P. Datar Senior Counsel for Mr.Joseph
For respondents	: Mr.T.L.Thirumalaisamy CGSC for R1 Mr.AR.L.Sundaresan Additional Solicitor General Assisted by Mr.Rajnish Pathiyil Senior Panel Counsel f No appearance for R4

W.P.No.16403 of 2020

Wardha Solar Maharashtra Private Limited,
Represented by its Authorized representative
Ganesh Sharma,
Adani Corporate House, Shantvigam,
Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Petitio

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,

New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Maersk Line India Pvt. Ltd.,
M1-Tamil Nadu,
Prestige Palladium Beyan, 3rd Floor,
Greems Road, Nungambakkam,

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<https://www.mhc.tn.gov.in/judis>

W.A.Nos.

Chennai - 600 006.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respond

Writ Petition filed under Article 226 of the Constitution of India
issue a Writ of Mandamus, directing respondent No.3 to act in compliance with
Detention Certificate dated 05.06.2018 issued by Respondent No.2 and direct
respondent No.3 to refund the amounts collected by them at the time of
clearance of the goods in question forthwith along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.ARL.Sundaresan
Additional Solicitor General

For Mr.Rajnish Pathiyil
Senior Panel Counsel for

: M/s.Dominic S.David for R3

: No appearance for R4

W.P.No.16772 of 2020

Wardha Solar Maharashtra Private Limited,
Represented by its Authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Petiti

Vs.

1.The Union of India,
Represented by its Secretary,

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W.A.Nos.2

Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.APM Terminals India Pvt. Ltd.,
No.78, Anuppampattu Village,
T H Road, Ponneri Taluk,
Thiruvallur District,
Chennai - 601 203.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Responde

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing respondent No.3 to act in complian
Detention Certificate dated 05.06.2018 issued by Respondent No.2 and d
respondent No.3 to refund the amounts collected by them at the time of
clearance of the goods in question forthwith along with appropriate in

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.G.Ilangovan for R1

: Mr.A.P.Srinivas
Senior Standing Counsel for

: No appearance for R3

: M/s.Andrew Vivek for R4

W.P.No.16817 of 2020

Wardha Solar Maharashtra Private Limited,
Represented by its Authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,

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W.A.Nos.

Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Petiti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Parekh Marie,
KRD Gee Gee Crystal,
6th Floor, No.91/92,
Dr.Radhakrishnan Salai, Mylapore.
Chennai - 600 004.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respond

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing respondent No.2 and Respondent No.
comply with Regulation 6(1)(l) of Handling of Cargo in Customs Areas
Regulations, 2009 and to ensure the refund of the amounts collected by
respondent No.3 at the time of clearance of the goods in question fort
with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by
Mr.Rajinish Pathiyil
Senior Panel Counsel for R1

: Mr.S.Raghunathan for R3

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W.A.Nos.

: M/s.Andrew Vivek R4

W.P.No.16868 of 2020

Wardha Solar Maharashtra Private Limited,
Represented by its Authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle, SG Highways,
Khodiyar, Ahmedabad 382 421.

... Petiti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.CMA CM SA, C/O. CCAI,
India Bullas Financial Centre,
Tower 3-8th Fl Senapati Bapat Marg,
Elphinstone West, Mumbai - 400 013.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respond

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing respondent No.2 and Respondent No.
comply with Regulation 6(1)(l) of Handling of Cargo in Customs Areas
Regulations, 2009 and to ensure the refund of the amounts collected by
respondent No.3 at the time of clearance of the goods in question fort
with appropriate interest.

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W.A.Nos

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Josep

For respondents : Mr.S.Janarthanam
SPCGSC for R1

: Mr.AR.L.Sundaresan
Additional Solicitor Genera

Assisted by
Mr.Rajinish Pathiyil
Senior Panel Counsel for

: M/s.Andrew Vivek for R4

No appearance for R3

W.P.No.16968 of 2020

Adani Green Energy (UP) Ltd.,
Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shantigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petition

Vs.

- 1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
- 2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.
- 3.M/s.Safmarine India Pvt. Ltd.,
Prestige Palladium Bayan,
3rd Floor, Greams Road,
Chennai - 600 006.
- 4.NTC Logistics India (P) Ltd.,

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W.A.Nos.

(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing respondent No.2 and Respondent No.3 to comply with Regulation 6(1)(l) of Handling of Cargo in Customs Areas Regulations, 2009 and to ensure the refund of the amounts collected by respondent No.3 at the time of clearance of the goods in question forthwith with appropriate interest.

For petitioner

: Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents

: Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by
Mr.Rajinish Pathiyil
Senior Panel Counsel for

Mr.P.Giridharan for R3

M/s.Andrew Vivek R4

W.P.No.16979 of 2020

Adani Enterprises Ltd.,
Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petiti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),

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W.A.Nos

Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.CMA CGM SA, C/o.CCAI,
India Bullas Financial Centre,
Tower 3-8th Fl Senapati Bapat Marg,
Elphinstone West, Mumbai - 400 013.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respon

Writ Petition filed under Article 226 of the Constitution of India
issue a Writ of Mandamus, directing the respondent No.3 to act in compliance
the Detention Certificate dated 05.06.2018 issued by respondent No.2 in
compliance of Regulation 6(1)(l) of Handling of Cargo in Customs Areas
Regulations, 2009 and to further direct respondent No.3 to refund the
collected by them at the time of clearance of the goods in question for
along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Jose

For respondents : Mr.AR.L.Sundaresan
Additional Solicitor General

For Mr.Rajnish Pathiyil
Senior Panel Counsel for

: M/s.Andrew Vivek for R4

No appearance for R3

W.P.No.17087 of 2020

Adani Enterprises Ltd.,

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W.A.Nos.

Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petiti

Vs.

- 1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
- 2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.
- 3.Hyundai Merchant Marine India Pvt. Ltd.,
EGA Trade Centre, 3rd Floor, Door No.318,
Poonamalle High Road, Kilpauk,
Chennai - 600 010.
- 4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),

Linghi Chetty Street, Chennai - 600 001.

... Respond

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent No.3 to act in compliance with the Detention Certificate dated 05.06.2018 issued by respondent No.2 and directing respondent No.3 to refund the amounts collected by them at the time of clearance of the goods in question forthwith along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.AR.L.Sundaresan

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W.A.Nos.2

Additional Solicitor General

Assisted by
Mr.Rajinish Pathiyil
Senior Panel Counsel for

: Mr.P.Giridharan for R3

: M/s.Andrew Vivek for R4

W.P.No.17141 of 2020

Wardha Solar (Maharashtra) Private Limited,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporatehouse, Shantvigam,
Near Vaishnav Devi Circle,
SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petition

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,

60, Rajaji Salai, Chennai - 600 001.

3.T.S.Line,
KGN towers, 7th Floor,
'A' Wing, Old No.31, 32, New No.62,
Commander in Chief Road, Egmore,
Chennai - 600 105.

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W.A.Nos.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respond

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent No.3 to act in compliance with the Detention Certificate dated 05.06.2018 issued by respondent No.2 and directing respondent No.3 to refund the amounts collected by them at the time of clearance of the goods in question forthwith along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents :Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by
Mr.Rajinish Pathiyil
Senior Panel Counsel for

: Mr.P.Giridharan for R3

: M/s.Andrew Vivek for R4

W.P.No.17159 of 2020

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle,
SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petiti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,

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W.A.Nos

Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Allcargo Logistics Limited,
913, Thiruvottiyur High Road,
Eravanur, Chennai - 600 057.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

5.Babaji Shivram Clearing & Carriers Pvt. Ltd.,
Plot No.2, Behind Excom House, Sakivihar Road,
Sakinaka, Andheri East, Mumbai - 400 072.

6.Adani Logistics Ltd.,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421.

... Respo

Writ Petition filed under Article 226 of the Constitution of I
issue a Writ of Mandamus, directing the respondent No.3 to act in comp
Detention Certificate dated 05.06.2018 issued by respondent No.2 as al
compliance of Regulation 6(1)(l) of Handling of Cargo in Customs Area
Regulations, 2009 and to further direct respondent No.3 to refund the
collected by them at the time of clearance of the goods in question fo
along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by

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W.A.Nos.

Mr.Rajinish Pathiyil
Senior Panel Counsel fo

: M/s.Pushpa Menon
Mr.Vivek Menon for R3

: M/s.Andrew Vivek for R4

W.P.No.17250 of 2020

Adani Green Energy (UP) Pvt. Ltd.,
Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petiti

Vs.

- 1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
- 2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.
- 3.APL CO.PTE Ltd,
C/o. CMA CGM Agencies (India) Pvt Ltd.,
Seshachalam Centre,
No.636/1, Anna Salai (Mount Road), Nandanam,
Chennai - Tamil Nadu - 600 035.
- 4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respond

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing the respondent No.2 and Respondent

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W.A.Nos.2235

comply with Regulation 6 (1)(l) of Handling of Cargo in Customs Areas
Regulations, 2009 and to ensure the refund of the amounts collected by
respondent No.3 at the time of clearance of the goods in question fort

with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph P

For respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by
Mr.Rajinish Pathiyil
Senior Panel Counsel for

: Mr.P.Giridharan for R3

: M/s.Andrew Vivek for R4

W.P.No.17148 of 2020

Wardha Solar (Maharashtra) Private Limited,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle,
SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petitioner

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

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W.A.Nos

3.Aissa Marine Private Limited,
No.64, Catholic Centre,
Parrys, Armenian St. Perry's Corner,
George Town, Chennai,
Tamil Nadu - 600 001.

4.NTC Logistics India (P) Ltd.,

(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent No.3 to act in compliance with the Detention Certificate dated 05.06.2018 issued by respondent No.2 and respondent No.3 to refund the amounts collected by them at the time of clearance of the goods in question forthwith.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.AR.L.Sundaresan
Additional Solicitor General

Assisted by
Mr.Rajinish Pathiyil
Senior Panel Counsel for

: M/s.T.Poornam for R3

: M/s.Andrew Vivek for R4

W.P.No.17196 of 2020

Adani Green Energy (UP) Pvt. Ltd.,
Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petitioner

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W.A.Nos.2

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.APM Terminals India Pvt. Ltd.,
No.78, Anuppampattu Village,

TH Road, Ponneri Taluk,
Thiruvallur District, Chennai - 601 203.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent No.3 to act in compliance with the Detention Certificate dated 05.06.2018 issued by respondent No.2 and respondent No.3 to refund the amounts collected by them at the time of clearance of the goods in question forthwith.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.AR.L.Sundaresan
Additional Solicitor General

Assisted by
Mr.Rajinish Pathiyil
Senior Panel Counsel for

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W.A.Nos.223

Dr.Sunitha Sundar for R3

: M/s.Andrew Vivek for R4

W.P.No.17466 of 2020

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421.

...

Vs.

1.The Union of India,
Represented by its Secretary,

Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Aissa Maritime Private Limited,
No.64, Catholic Centre,
Parrys, Armenian St. Parry's Corner,
George Town, Chennai,
Tamil Nadu - 600 001.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

5.Babaji Shivram Clearing & Carriers Pvt. Ltd.,

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W.A.Nos.223

Plot No.2, Behind Excom House,
Sakivihar Road,
Sakinaka, Andheri East,
Mumbai - 400 072.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
issue a Writ of Mandamus, directing the respondent No.3 to act in compliance with
the Detention Certificate dated 05.06.2018 issued by respondent No.2 and
respondent No.3 to refund the amounts collected by them at the time of
clearance of the goods in question forthwith.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.K.S.Jeyaganeshan
Senior Panel Counsel for R1

: Mr.A.P.Srinivas
Senior Standing Counsel for

: M/s.T.Poornam for R3

W.P.No.17529 of 2020

Adani Green Energy (UP) Pvt. Ltd.,
Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Pe

Vs.

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W.A.Nos.2

- 1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
- 2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.
- 3.Maersk Line India Pvt. Ltd.,
M1-Tamilnadu,
Prestige Palladium Beyan, 3rd Floor,
Greems Road,
Nungambakkam Division - 600 006.
- 4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Responde

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent No.3 to act in compliance of the Detention Certificate dated 05.06.2018 issued by respondent No.2 and to further direct respondent No.3 to refund the amounts collected by them at the time of clearance of the goods in question forthwith along with appropriate interest.

For petitioner

: Mr.Arvind P. Datar

Senior Counsel for Mr.Josep

For respondents

: Mr.K.S.Jeyaganeshan
Senior Panel Counsel for R1

: Mr.A.P.Srinivas
Senior Standing Counsel for

: Mr.P.Giridharan for R3

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<https://www.mhc.tn.gov.in/judis>

W.A.Nos.

: M/s.Andrew Vivek for R4

W.P.No.17705 of 2020

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421.

...

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.NDR Infrastructure Private Limited,
Nandiambakkam Port Road,
Nandiambakkam Ponneri Taluk,
Tiruvallur District,
Chennai - 600 120.

4.Adani Logistics Ltd.,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle,
SG Highway, Khodiyar,

Ahmedabad - 382 421.

... Respondents

Writ Petition filed under Article 226 of the Constitution of

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W.A.Nos.2235

issue a Writ of Mandamus, directing the respondent No.2 and respondent comply with Regulation 6(1)(l) of Handling of Cargo in Customs Areas Regulations, 2009 and to ensure the refund of the amounts collected by Respondent No.3 at the time of clearance of the goods in question forth along with the appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.R.Rajesh Vivekananthan
Senior Panel Counsel for R1

: Mr.Umesh Rao
Standing Counsel for R2

: Mr.A.K.Jayaraj for R3

No appearance for R4

W.P.No.17715 of 2020

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421.

... Pet

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Maersk Line India Private Limited,
M1-Tamilnadu,

Prestige Palladium Beyan, 3rd Floor,
Greems Road,
Nungambakkam Division - 600 006.

4.Babaji Shivram Clearing & Carriers Pvt. Ltd.,
Plot No.2, Behind Excom House, Sakivihar Road,
Sakinaka, Andheri East,
Mumbai- 400 072.

5.Adani Logistics Ltd.,
Adani Corporate House, Shanthigram,
Near Vaishnav Devi Circle,
SG Highway, Khodiyar,
Ahmedabad - 382 421.

... Respondents

Writ Petition filed under Article 226 of the Constitution of I
issue a Writ of Mandamus, directing the respondent No.3 to act in comp
the Detention Certificate dated 05.06.2018 issued by Respondent No.2 a
compliance of Regulation 6(1)(l) of Handling of Cargo in Customs Areas
Regulations, 2009, and to further direct Respondent No.3 to refund the
collected by them at the time of clearance of the goods in question fo
along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Jose

For respondents : Mr.R.Rajesh Vivekananthan
Senior Panel Counsel for R

: Mr.Umesh Rao
Standing Counsel for R2

: Mr.P.Giridharan for R3

W.P.No.17738 of 2020

PARAMPUJYA SOLAR ENERGY PVT LTD
Rep. by its authorized representative Ganesh Sharma,
Adani Corporate House, Shantigram,

Near Vaishnav Devi Circle,
SG Highway, Khodiyar,

Ahmedabad 382 421.

.... Petitioner

Vs.

1. THE UNION OF INDIA,
Rep. by its Secretary,
Ministry of Finance Department of Revenue,
North Block, New Delhi.
2. THE COMMISSIONER OF CUSTOMS (CH-II)
Customs House, 60 Rajaji Salai,
Chennai 600001.
3. ZIMINTEGRATED SHIPPING Services (India) Pvt.Ltd.,
As Agent for Gold State Lines Ltd.,
Shri Mahalakshmi Building, First Floor,
New No.6, Third Street, Habibullah Road,
T.Nagar, Chennai 600017,
Tamil Nadu.
and Registered Office at
3rd Floor, Raheja Centre Point, 294 CST Road,
Near Mumbai University, Kalina,
Santacruz (E) Mumbai 400 098.
4. NTC LOGISTICS INDIA (P) LTD.,
(Formerly NTC Logistics (P) Ltd),
NTC Tower 97 (Old No.47), Linghi Chetty street,
Chennai 600 001.
5. ADANI LOGISTICS LTD.,
Adani corporate House, Shantigram,
Near Vaishnav Devi circle,
SG Highway, Khodiyar,
Ahmedabad 382 421

... Respo

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing Respondent No.3 to act in compliance with detention certificate dated 05.06.2018 issued by Respondent No.2, as a compliance of Regulation 6 (1) (1) of Handling of Cargo in Customs Area Regulations, 2009 and to further direct respondent No.3 to refund the amount collected by them at the time of clearance of the goods in question for

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<https://www.mhc.tn.gov.in/judis>

W.A.Nos.2235

along with appropriate interest.

For petitioner	: Mr.Arvind P. Datar Senior Counsel for Mr.Joseph
For respondents	: Mr.R.Rajesh Vivekananthan Senior Panel Counsel for R1

: Mr.Umesh Rao
Standing Counsel for R2

: Mr.S.Vasudevan for R3
Mr.M.Andrew Vivek for R4

W.P.No.17733 of 2020

Adani Green Energy (UP) Pvt. Ltd.,
Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Peti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Allcargo Logistics Limited,
913, Thiruvottiyur High Road,
Ernavur, Chennai - 600 057.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,

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<https://www.mhc.tn.gov.in/judis>

W.A.N

"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respo

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing the respondent No.2 and respondent
comply with Regulation 6(1)(l) of Handling of Cargo in Customs Areas
Regulations, 2009 and to ensure the refund of the amounts collected by
Respondent No.3 at the time of clearance of the goods in question fort
along with the appropriate interest.

For petitioner

: Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : M/s.K.Umesh Rao,
Senior Standing Counsel for R

M/s.Pushpa Menon
Mr.Vivek Menon for R3

M/s.Andrew Vivek for R4

W.P.No.17736 of 2020

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421. ... Pet

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,

Page 68/309

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W.A.Nos.2

60, Rajaji Salai, Chennai - 600 001.

3.RCL Agencies East India Pvt. Ltd.,
40, Rajaji Salai, 2nd Floor,
Post Box No.1880,
Chennai - 600 001.

4.BabajiShivram Clearing & Carriers Pvt. Ltd.,
Plot No.2, Behind Excom House,
Sakivihar Road,
Sakinaka, Andheri East,
Mumbai - 400 072 ... Respondents

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing the respondent No.3 to act in comp
the Detention Certificate dated 05.06.2018 issued by Respondent No.2 a
respondent No.3 to refund the amounts collected by them at the time of
clearance of the goods in question forthwith along with appropriate in

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Jose

For respondents : Mr.R.Rajesh Vivekanandhan
Senior Panel Counse for R1

Dr.Sunitha Sundar
for Mr.K.Bijai Sundar for

W.P.No.17769 of 2020

Adani Green Energy (UP) Pvt. Ltd.,
Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

...

Vs.

1.The Union of India,
Represented by its Secretary,

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W.A.Nos.223

Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Ennore Cargo Container Terminal,
Container Freight Station,
No.144, Kondakarai Village S R Palayam,
Chennai - 600 120.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
issue a Writ of Mandamus, directing the respondent No.2 and respondent
comply with Regulation 6(1)(l) of Handling of Cargo in Customs Areas
Regulations, 2009 and to ensure the refund of the amounts collected by
Respondent No.3 at the time of clearance of the goods in question forth
along with the appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : M/s.K.Umesh Rao,
Senior Standing Counsel for

Dr.Sunitha Sundar
for Mr.K.Bijai Sundar for R3

M/s.Andrew Vivek for R4

W.P.No.17770 of 2020

Adani Green Energy (UP) Pvt. Ltd.,

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<https://www.mhc.tn.gov.in/judis>

W.A.Nos.223

Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Pe

Vs.

- 1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
- 2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.
- 3.Wan Hai Line,
No.684-690, Ground Floor,
Seethakathi Business Centre,
Anna Salai, Thousand Lights,
Chennai, Tamil Nadu - 600 006.
- 4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Respondent

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing the respondent No.2 and respondent

comply with Regulation 6(1)(l) of Handling of Cargo in Customs Areas Regulations, 2009 and to ensure the refund of the amounts collected by Respondent No.3 at the time of clearance of the goods in question forth along with the appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : M/s.K.Umesh Rao
Senior Standing Counsel for

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W.A.No

M/s.T.Poornam for R3

M/s.Andrew Vivek for R4

W.P.No.17773 of 2020

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shantvigram,
Near Vaishav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421.

... Peti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.CMA CGM SA, C/o. CCAI,
India Bullas Financial Centre,
Tower 3-8th F1 Senapati Bapat Marg,
Elphinstone West,
Mumbai - 400 013.

4.Adani Logistics Ltd.,
Adani Corporate House,

Shantigram, Near Vaisnav Devi Circle,
SG Highway, Khodiyar,
Ahmedabad - 382 421.

... Respondents

Writ Petition filed under Article 226 of the Constitution of

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W.A.Nos.223

issue a Writ of Mandamus, directing the respondent No.2 and respondent
comply with Regulation 6 (1)(l) of Handling of Cargo in Customs Areas
Regulations, 2009 and to ensure the refund of the amounts collected by
respondent No.3 at the time of clearance of the goods in question forth
with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph P

For respondents : Mr.R.Rajesh Vivekananthan
Senior Panel Counsel for R1 an

W.P.No.17921 of 2020

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421.

... Petitione

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Hyundai Merchant Marine India Pvt. Ltd.,
EGA Trade Centre, 3rd Floor, Door No.318,
Poonamallee High Road, Kilpauk,
Chennai - 600 010.

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W.A.Nos.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street,
Chennai - 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India. The petitioner seeks to issue a Writ of Mandamus, directing the respondent No.3 to act in compliance with the Detention Certificate dated 05.06.2018 issued by respondent No.2 and to ensure compliance of Regulation 6(1)(l) of Handling of Cargo in Customs Areas Regulations, 2009 and to further direct respondent No.3 to refund the amount collected by them at the time of clearance of the goods in question for the goods along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.K.S.Jeyaganeshan
Senior Panel Counsel for R1

Mr.A.P.Srinivas
Senior Standing Counsel for

Mr.P.Giridharan for R3

Mr.M.Andrew Vivek for R4

W.P.No.18263 of 2020

Adani Green Energy (UP) Pvt. Ltd.,
Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petiti

Vs.

1.The Union of India,
Represented by its Secretary,

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W.A.Nos.2

Ministry of Finance,
Department of Revenue, North Block,

New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Calyx Container Terminal Pvt. Ltd.,
No.28, GNT Road (NH-5) Puzhal Junction,
Kathirvedu Village (Near Erattai En),
Chennai - 600 006, Tamil Nadu, India.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Responde

Writ Petition filed under Article 226 of the Constitution of India
issue a Writ of Mandamus, directing the respondent No.3 to act in compliance
the Detention Certificate dated 05.06.2018 issued by respondent No.2 to
compliance of Regulation 6(1) of Handling of Cargo in Customs Areas Regulation
2009 and to further direct respondent No.3 to refund the amounts collected
them at the time of clearance of the goods in question forthwith along with
appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : Mr.K.S.Jeyaganeshan
Senior Panel Counsel for R1

Mr.A.P.Srinivas
Senior Standing Counsel for R2

Mr.A.K.Jayaraj for R3

Mr.M.Andrew Vivek for R4

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W.A.No

W.P.No.352 of 2021

Wardha Solar Maharashtra Private Limited,
Represented by its authorized representative
Ganesh Sharma,

Adani Corporate House, Shantvigram,
Near Vaishnav Devi Circle,
SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petit

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Sical Logistics Ltd.,
73, Armenian Street,
Chennai - 600 001.
Tamil Nadu.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street,
Chennai - 600 001.

... Responde

Writ Petition filed under Article 226 of the Constitution of I
issue a Writ of Mandamus, directing the respondent No.3 to act in comp
the Detention Certificate dated 05.06.2018 issued by respondent No.2 a
compliance of Regulation 6(1)(i) of Handling of Cargo in Customs Areas
Regulations, 2009 and to further direct respondent No.3 to refund the
collected by them at the time of clearance of the goods in question fo
along with appropriate interest.

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W.A.Nos.22

For petitioner : Mr.Arvind P.Datar
Senior Counsel for Mr.Joseph P

For respondents : Mr.Anuradha
ACGSC for R1

Mr.A.P.Srinivas
Senior Standing Counsel for R

Mr.Anand Sashidharan for R3

W.P.No.461 of 2021

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421.

...

Petition

Vs.

- 1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
- 2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.
- 3.COSCO Shipping Lines (INDIA) Pvt. Ltd.,
ICICI Venture House, 2nd Floor,
Appasaheb Marathe Marg,
Prabhadevi, Mumbai - 400 025.
- 4.Baba Shivram Clearing and Carriers Pvt. Ltd.,
Plot No.2, Behind Excom House, Sakivihar Road,

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W.A.Nos.

Sakinaka, Andheri East,
Mumbai - 400 072.

...

Response

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent No.3 to act in compliance with the Detention Certificate dated 05.06.2018 issued by respondent No.2 and to direct the respondent No.3 to refund the amounts collected by them at the time of clearance of the goods in question forthwith along with appropriate interest.

For petitioner

: Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents

: Mr.Ravi
Senior Standing Counsel for

Mr.A.P.Srinivas
Senior Standing Counsel for R

No appearance for R4

W.P.No.750 of 2021

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421.

... Petiti

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block, New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

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W.A.Nos.2

3T.S.Lines (India) Pvt. Ltd.,
7th Floor, A-Wing,
KGN Towers, New No.62, Old No.32,
Commander-in-Chief Road, Egmore,
Chennai - 600 105.

4.Baba Shivram Clearing and Carriers Pvt. Ltd.,
Plot No.2, Behind Excom House, Sakivihar Road,
Sakinaka, Andheri East,
Mumbai - 400 072.

... Responde

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing the respondent Nos.2 and 3 to act
compliance of the Detention Certificate dated 05.06.2018 issued by res
No.2 and direct respondent No.3 to refund the amounts collected by the
time of clearance of the goods in question forthwith along with approp
interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Joseph

For respondents : M/s.Anu Ganesan

Junior Standing Counsel for

: Mr.P.Giridharan for R3

No appearance for R4

W.P.No.751 of 2021

Adani Enterprises Limited,
Represented by its authorized
representative Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishnavi Devi Circle, SG Highway,
Khodiyar, Ahmedabad - 382 421.

... Petition

Vs.

1.The Union of India,

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W.A.Nos.2

Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Sical Logistics Limited,
73, Armenian Street,
Chennai - 600 001,
Tamil Nadu.

4.NTC Logistics India (P) Ltd.,
(Formerly NTC Logistics (P) Ltd.,
"NTC Tower", 97 (Old No.47),
Linghi Chetty Street, Chennai - 600 001.

... Responde

Writ Petition filed under Article 226 of the Constitution of India
issue a Writ of Mandamus, directing the respondent Nos.2 and 3 to act
compliance of the Detention Certificate dated 05.06.2018 issued by res
No.2 and direct respondent No.3 to refund the amounts collected by the
time of clearance of the goods in question forthwith along with approp
interest.

For petitioner

: Mr.Arvind P. Datar

Senior Counsel for Mr.Joseph

For respondents

: M/s.Anu Ganesan
Standing Counsel for R1 & R2

Mr.Anand Sasidharan for R3

: Mr.M.Andrew Vivek for R3

W.P.No.1328 of 2021

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W.A.Nos.2

Parampujya Solar Energy Pvt. Ltd.,
Represented by its authorized representative
Ganesh Sharma,
Adani Corporate House, Shanthigram,
Near Vaishav Devi Circle,
SG Highway, Khodiyar, Ahmedabad - 382 421.

... Petition

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2.The Commissioner of Customs (CH-II),
Customs House,
60, Rajaji Salai, Chennai - 600 001.

3.Calyx Container Terminal Pvt. Ltd.,
No.28, GNT Road (NH-5) Puzhal Junction,
Kathirvedu Village ((Near Erattai En),
Chennai - 600 006, Tamil Nadu,
India.

4.Baba Shivram Clearing and Carriers Pvt. Ltd.,
Plot No.2, Behind Excom House, Sakivihar Road,
Sakinaka, Andheri East,
Mumbai - 400 072.

... Responde

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing the respondent Nos.2 and 3 to act
compliance of the Detention Certificate dated 05.06.2018 issued by res

No.2 and direct respondent No.3 to refund the amounts collected by the time of clearance of the goods in question forthwith along with appropriate interest.

For petitioner : Mr.Arvind P. Datar
Senior Counsel for Mr.Josep

For respondents : Mr.K.Subbu Ranga Bharathi

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W.A.Nos.2

CGC for R1

: M/s.Anu Ganesan
Standing Counsel for R2

: Mr.A.K.Jayaraj for R3

No appearance for R4

W.P.No.17386 of 2022

ZETWERK MNUFACTURING
BUSINESS PVT. LTD.,
Rep. by its Senior Sales Manager,
Mohamed Tanveer V,
S/o.Javeed Basha,
Oriental Towers, No.461, 1st Floor,
17th Cross, IV Sector,
HRS Layout, Bangalore - 560 102.

... Petitione

Vs.

1.The Principal Commissioner of Customs,
Chennai-III, Customs house, 60, Rajaji Salai,
Chennai - 600 001.

2.The Deputy Commissioner of Customs,
O/o.The Principal Commissioner of Customs,
Chennai-III Commissionerate,
Special Intelligence and Investigation Branch,
Custom House, Chennai - 600 001.

3.The Manager,
M/s.Sanco, CFS,
Ennore Express High Road,
Chennai - 600 057.

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W.A.No

4.The Manager,
M/s.Fair Freight Lines Pvt.Ltd.,
Office No.TSA, 3rd Floor No.45/29,
Amar Sindu Complex Pantheon Road,
Egmore, Chennai - 600 008.

... Responden

Writ Petition filed under Article 226 of the Constitution of In
issue a Writ of Mandamus, directing the respondents herein to cause re
the goods imported under Bill of Entry No.8549686 dated 05.05.2022, ha
20 Flexi Bag Container, without levy of detention, demurrage and conta
storage charges waived vide detention certificate issued by the office
second respondent in F.No.S.Misc 118/2002-SIIB from the date of the de
of the goods till their actual release.

For petitioner : Mr.G.Gokula Kishore

For respondents : Mr.Umesh Rao for R1 & R2

Dr.Sunitha Sundar
for Mr.K.Bijai Sundar for R3
Mr.Karthick Sundaram for R4

W.P.No.5074 of 2023

M/s.Reflex Industries Ltd.,
Represented by its Authorized Signatory,
Ms.Lalitha Uthayakumar,
No.10/2, Bascon Futura SV IT Park,
Ground Floor, Venkatanarayana Road,
T.Nagar, Chennai - 600 017.

... Petitioner

Vs.

1.The Commissioner of Customs (Imports),
Chennai II Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

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<https://www.mhc.tn.gov.in/judis>

W.A.Nos.2

2.The Deputy Commissioner of Customs (SIIB),
Chennai III Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai - 600 001.

3.Balmer Lawrie & Co. Ltd.,
No.32, Thiruvottiyur High Road,
Mananli, Chennai - 600 068.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent to take appropriate action against the third respondent for suspension or revocation of the license plan to the third respondent as a customs cargo service provider in terms of Regulation 11 of the Handling of Cargo in Customs Area Regulations, 2007.

For petitioner : Mr.V.P.Raman
For Mr.Hari Radhakrishnan

For respondents : Mr.K.Mohanamurali
Senior Panel Counsel for R1

Mr.John Zachariah for R3

W.P.No.5077 of 2023

M/s.Refex Industries Ltd.,
Represented by its Authorized Signatory,
Ms.Lalitha Uthayakumar,
No.10/2, Bascon Futura SV IT Park,
Ground Floor, Venkatanarayana Road,
T.Nagar, Chennai - 600 017.

... Petitioner

Vs.

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<https://www.mhc.tn.gov.in/judis>

W.A.Nos.2

1.The Commissioner of Customs (Imports),
Chennai II Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

2.The Deputy Commissioner of Customs (SIIB),

Chennai III Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai - 600 001.

3.Balmer Lawrie & Co. Ltd.,
No.32, Thiruvottiyur High Road,
Mananli, Chennai - 600 068.

... Respond

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first and second respondents to issue that the demurrage waiver certificate dated 08.12.2022 issued by the second respondent is complied by the third respondent and the subject containers Nos.ZFLU2013012 and ZFLU2013080 are released to the petitioner without requirement to pay any demurrage and storage charges including the charges from 03.09.2020 to the date of actual release of the goods.

For petitioner : Mr.Hari Radhakrishnan

COMMON JUDGMENT

(Judgment of the Court was delivered by the Acting Chief Justice) Since common issues are involved in these writ petitions and writ appeals, all these cases are taken up together for disposal by this common judgment. To <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch have a bird's eye view, this judgment is organised in the following manner:

Sl.No.	HEADINGS
I	PLEADINGS AND RELIEFS SOUGHT
III	DISCUSSION AND FINDINGS
	(C) UNDERSTANDING THE CASE ON HAND
	(D) UNDERSTANDING THE LEGAL FRAMEWORK
	PREVAIL OVER THE STATUTORY PROVISIONS
	(F) MAINTAINABILITY OF WRIT PETITIONS AGAINST CFS, SHIPPING LINES / STEAMER AGENTS
	(H) PERIOD OF WAIVER
	(I) CONCLUSIONS AND DIRECTIVES ISSUED

I. PLEADINGS & RELIEFS SOUGHT

2. For the sake of convenience and clarity, and al

reference, we will enumerate the various parties involved in these batches of cases as under:-

Importers

Customs Authorities

Container Freight Stations

<https://www.mhc.tn.gov.in/judis>

Steamer Agents

Shipping Lines

Writ Petitions

3. According to the importers, Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009 (in short, "the HCCA Regulations") prohibits Container Freight Station (in short, "CFS") and shipping lines/steamer agents from charging rent or demurrage fees on goods detained by customs authorities. It would be useful to refer to the said provision, which reads as under:

"6(1) The Customs Cargo Service provider shall –

(l) 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."

However, the waiver of detention certificate issued by the customs authorities is not being honoured by the CFS and shipping lines/steamer agents.

4. The steamer agents (involved in W.P.Nos.4284, 4285, 25548, 29948 and 32579 of 2019) challenged the validity of the waiver letters issued by the Customs authorities to the importers. According to them, Rule 6(1)(l) only applies to waiver of demurrage/ground rent charges and does not cover detention charges. However, in the orders impugned in these writ petitions, the Customs <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch authorities waived the detention period. They further stated that when a request to waive the detention charges was made by the importers, the Customs authorities should have heard the steamer agents, after issuing notice to them.

However, without doing so, the waiver of detention charges was granted. The steamer agents also submitted that the representation made by the importers seeking waiver of detention charges is, at best, a grievance under the terms of the Bill of Lading, which is the contract of carriage. This contract contains the stipulations pertaining to the detention charges payable. As such, the levy of detention charges is a private dispute between the steamer agents and the importers. Thus, the Customs authorities do not have any jurisdiction over the matter, since it is a contractual dispute governed by the terms and conditions of the Bill of Lading. Stating so, the petitioners have preferred these writ petitions seeking to set aside the waiver letters issued by the customs authorities.

5. In W.P.Nos.1885 and 1890 of 2019, the importer self-assessed the goods under Section 17(1) of the Customs Act, 1962. However, the adjudicating authority did not accept the self-assessment and rejected the declared values based on Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Rule 3(1). The unit price of the goods was then re-determined. The importer, aggrieved by such re-determination of the value, preferred statutory appeal before the appellate authority/Commissioner of <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Customs, who set aside the order passed by the adjudicating authority. The appellate authority further directed the adjudicating authority to issue a detention certificate in terms of Regulation 6(1). However, during the interregnum period, delay occurred in clearing the goods. Despite the issuance of the detention certificate in favour of the importer, the CFS and shipping lines/steamer agents did not honour it. Therefore, these writ petitions have been filed praying a direction to the authorities to release the goods imported, without charges.

6. In W.P.No.6603 of 2019, the imported goods were confiscated by the adjudicating authority due to mis-declaration of the country of origin, the value of goods and their classification in violation of the provisions of the Foreign Trade Policy. Aggrieved by the same, the importer filed an appeal before the appellate authority, who confirmed the findings of the adjudicating authority.

Challenging the same, the importer went on further appeal before the Tribunal, which upheld the order of confiscation, but set aside the imposition of penalty.

During these processes, delay occurred. Hence, the importer made a representation to the Customs authorities seeking waiver of detention charges.

However, no positive response was forthcoming. Eventually, the importer was directed to approach the Directorate of Revenue Intelligence for waiver of detention charges. Finding no response on the same, the petitioner has preferred this writ petition seeking a direction to the authorities to issue detention-cum-

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch demurrage waiver certificate.

7. In W.P.Nos.20236 and 20229 of 2019, the importers' goods were confiscated by the Customs authorities. Upon payment of penalties, the goods were subsequently released. Thereafter, the importers requested waiver of the detention charges, which was granted by the Customs authorities. However, they sought waiver of detention charges from the date of filing of the bill of entry till the

date of actual clearance of the goods. The said request was rejected, which compelled the petitioners to file these writ petitions.

8. In W.P.No.5896 of 2020, the goods were investigated by the Special Intelligence and Investigation Branch (in short, "the SIIB"). The department claimed that the goods are subject to Anti-Dumping Duty (ADD). After filing of W.P.No.31796 of 2017 by the importer, the goods were released on furnishing bank guarantee. Thereafter, the importer requested waiver of demurrage and detention charges, which was not considered, despite the several attempts made.

Hence, this writ petition.

9. In W.P.Nos.8497 and 8498 of 2020, the goods of the importer were seized by the SIIB due to the alleged wrongful classification. The Customs <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch authorities had already issued detention certificate for waiver of demurrage and detention charges. However, the CFS / shipping lines declined to waive these charges. Upon payment of the necessary charges, the goods were eventually released. Therefore, the petitioner has preferred these writ petitions seeking direction to the authorities to refund the amount paid and take penal action against the suspension of approval.

10. The goods of the importer in W.P.Nos.10131 and 10133 of 2020, described as "non-woven interlining chemical bond/double dot/embroidery paper," were taken up for investigation and the benefit of exemption claimed by the importer was not accepted. As a result, there was a delay of three weeks, leading to demurrage and detention charges. After furnishing the bank guarantee, the goods were cleared. Hence, the importer has approached the CFS, requesting waiver of demurrage charges. However, the said request was rejected. Therefore, W.P.No.10131 of 2020 has been filed seeking a direction to the Customs Department to take action against the CFS for suspension or revocation of their approval, besides W.P.No.10133 of 2020 has been filed seeking a direction to the Customs Department to ensure that the CFS release the goods without levying demurrage or storage charges on the importer.

11. The petitioner in W.P.No.10512 of 2020 stated that they imported <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch dish washer cabinet, mahjong machine, shoe cabinet, and shoe cabinet drawer from China. They have been penalized for misdeclaration of goods. Although the Customs authorities granted waiver of demurrage and detention charges, the CFS/shipping lines declined to waive the charges. Therefore, this writ petition came to be filed seeking a direction to the Customs Department to take action against the CFS/shipping lines for suspension or revocation of their approval.

Similarly, W.P.No.10515 of 2020 has been filed seeking a direction to the Customs Department to ensure that the CFS / shipping lines release the goods without levying demurrage or storage charges on the importer.

12. The petitioners in W.P.Nos.14257 of 2020, 15469 of 2020, 15612 of 2020, 15619 of 2020, 15631 of 2020, 16323 of 2020, 16403 of 2020, 16772 of 2020, 16817 of 2020, 16868 of 2020, 16968 of

2020, 16979 of 2020, 17087 of 2020, 17141 of 2020, 17159 of 2020, 17250 of 2020, 17148 of 2020, 17196 of 2020, 17466 of 2020, 17529 of 2020, 17705 of 2020, 17715 of 2020, 17733 of 2020, 17736 of 2020, 17738 of 2020, 17769 of 2020, 17770 of 2020, 17773 of 2020, 17921 of 2020, 18263 of 2020, 352 of 2021, 461 of 2021, 750 of 2021, 751 of 2021 and 1328 of 2021 stated that they are engaged in various spheres of businesses including the generation of electricity through the means of renewable sources like solar energy. The goods of the importers were seized by the SIIB and were subsequently released provisionally under Section 110 A of Customs Act, <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 1962. Investigation was completed and the Customs authorities accepted the bills of entry filed by the importers and detention certificates were also issued for waiver of demurrage and detention charges. However, the CFS and Shipping Lines in respective cases declined to waive these charges. Therefore, the importers made representations to the CFS and Shipping Lines, requesting to refund of the amount collected in terms of the HCCA Regulations. However, nothing moved, which led to the filing of these writ petitions, seeking to direct the CFS and Shipping Lines to act in compliance of the detention certificates issued by the Customs Department and direct the CFS and Shipping Lines to refund the amounts collected by them at the time of clearance of goods in question.

13. The petitioner in W.P.No.17386 of 2022, viz., Zetwerk Manufacturing Business Pvt Ltd., imported fuel oil from CHEVRON GENERAL TRADING LLC. The customs authorities detained the goods (205.580 kgs in 10 containers) on 09.05.2022 for inspection. After analysis, the customs laboratory gave a clean chit on 01.06.2022 certifying the quality of the fuel oil. On 14.06.2022, the Customs authorities issued a waiver certificate stating that the liner detention charges and demurrage charges for the 10 containers from 09.05.2022 to 07.06.2022 be waived off as per the HCCA Regulations. Despite the same, the Customs Cargo Service Providers (in short, "the CCSP") refused to accept the total waiver and to release the containers without payment of charges. Hence, this writ petition.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

14. In W.P.No.5074 of 2023, the petitioner company imported R-22 gas in two tanktainers, which were detained and confiscated by the Customs authorities. Despite legal proceedings and court orders, the containers were not released to the importer/petitioner. The Customs authorities issued a show cause notice proposing to confiscate the tanktainers and impose fines and penalties.

Subsequently, an order was passed confiscating the tank containers and imposing penalties. The importer went on appeal to the CESTAT, which is pending. Despite the efforts taken by the importer, including issuance of a contempt notice for non-compliance of court orders, the containers remain unreleased for want of payment of outstanding demurrage charges. Hence, this writ petition came to be filed seeking action against the CFS / Shipping Lines for suspension or revocation of their approval. The prayer made in W.P.No.5077 of 2023 is to issue a direction to the customs authorities to ensure that the demurrage waiver certificate issued by the Customs Department is complied with by the CFS / Shipping Lines and that the goods be released to the importer without requiring payment of any demurrage and storage charges.

Writ Appeals

15. Earlier, for the same set of facts, writ petitions were filed by the importers to refund the demurrage charges. The CFS and Shipping Lines have <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch also filed writ petitions challenging the waiver of detention charges granted by the Customs authorities. In these writ petitions, several orders came to be passed by different learned Judges. While some learned Judges granted the relief of refund of demurrage charges, some other learned Judges declined to do so. All the matters are now being taken up in the appeals.

16. The appellants/importers are engaged in various spheres of businesses, including the generation of electricity through solar energy. Their goods were detained by the SIIB for investigation and subsequently released provisionally under Section 110A of the Customs Act. According to the appellants, in terms of Rule 6(1)(l) of the HCCA Regulations, rent or demurrage charges should not be charged if the goods are detained by the Customs Department.

Hence, the appellants applied for a certificate from the Department for the period during which the goods were detained and for the period the appellants had paid rent and demurrage charges. The Customs authorities had also issued a certificate for waiver of detention/demurrage charges from the date of filing the Bill of Entry until the date of clearance of the Cargo. Subsequently, the appellants issued a notice to the CFS / Shipping Lines, requesting to refund of the amount in terms of the HCCA Regulations. However, the CFS / Shipping Lines did not refund the amount collected. Consequently, the appellants addressed a representation to the Customs authorities, requesting to issue directions to the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch CFS / Shipping Lines, which was not considered. Hence, the appellants filed writ petitions and the learned Judge, after hearing the parties, dismissed the writ petitions by holding that the appellants had not established a right for the relief claimed and that such disputes require adjudication through the proper forum, not directly through a writ petition. The relevant portions of the said order passed in W.P.Nos.16359, 15490, 17114 & 17433 of 2020 filed by the appellants, are extracted hereunder:

"25. This being the principles to be followed, the Detention certificate issued by the Customs authorities is to be construed as an eligibility certificate for the purpose of claiming the benefit conferred under Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009 and the certificate would not confer any right on the holder of the certificate to claim refund without adjudication of the disputed facts and circumstances with reference to the terms and conditions of the agreement or contract. Such an adjudication cannot be done in a writ proceedings under Article 226 of the Constitution of India. Therefore, for the purpose of adjudication, the parties are bound to approach the competent forum and after resolving the disputes, the refund or otherwise is to be granted by following the procedures as contemplated.

26. In the present cases, the petitioners sought for a direction to the second respondent, to direct the third respondent. Such a direction is uncalled for, in view of the fact that the second respondent has already issued Detention certificate as per the

provisions. It is contended that the second respondent is obligated to execute the Detention certificate. Such an execution cannot be done without adjudication of the disputed facts and circumstances. This apart, as observed earlier, mere certificate would not confer any right to claim refund and such a certificate would enable the holder to claim refund under Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009 and all further adjudications or disputes with the Customs Cargo Service Provider is to be undertaken by approaching the competent forum and certainly, not a writ proceedings.

27. The direction sought for in the writ petitions to direct the second respondent, to direct the third respondent to make refund is coined with an idea to overcome the maintainability of writ petitions. Thus, the prayer as such cannot be granted, in view of the fact that the second respondent has already issued a Detention Certificate, which is to be construed as eligible for the purpose of claiming refund from the third respondent. This apart, the third respondents are Private party and no relief can ordinarily be entertained in a writ proceedings. Undoubtedly, the Apex Court and the High Court in certain writ petitions, issue orders against the Private parties only in certain circumstances, where public https://www.mhc.tn.gov.in/judis W.A.Nos.2235 of 2021 etc. batch interest and public duties are involved.

28. All the writ petitions are maintainable. High Courts will not dismiss any writ petition as not maintainable. However, the entertainability of a writ petition with reference to the facts and the principles of law is to be considered for granting the relief. The extraordinary powers conferred under Article 226 may be used by the High Court in order to mitigate the injustice, if any occurred to the citizen of this great Nation. However, the entertainability with reference to certain facts are to be considered for the purpose of granting the relief. Therefore, the maintainability may not be the point, but the entertainability is the question, which is to be considered with reference to the mixed question of fact of law. In this regard, a person approaching the High Court, should establish that he has a right to claim relief. In the absence of establishing a right, no relief can be granted in a writ proceedings. As held in aforementioned paragraphs, the Detention certificate issued by the Customs authorities is to be construed as an eligibility certificate for claiming refund. However, the said certificate would not confer right to get back the refund, in the absence of resolving the disputes between the Service Provider and the importer or exporter. Thus, the procedures and resolving the disputes in between the eligibility certificate and refund can never be waived by the High Court nor a direction can be issued to direct the Service Provider to refund the amount without resolving the disputes, if any exists between the Service Provider and the importer or exporter.

29. In result, this Court could able to form an opinion that the writ petitioners have not established any right for grant of the relief as such sought for in these writ petitions and consequently, all the writ petitions are dismissed. No costs."

Challenging the aforesaid order, the importers have filed the writ appeals bearing Nos.2235, 2175, 2230 and 2250 of 2021.

17. In W.A.Nos.1017 and 1058 of 2017, the appellants are CFS / steamer agents. The importers in these cases filed W.P.Nos.6453 and 6452 of 2017, stating that they are engaged in the manufacture of premium pre-

laminated particle board and MDF Boards. In the course of business, they have been importing particle boards from various foreign countries, particularly from Thailand. The containers were detained for investigations, and after verification, <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch a release order was issued. According to the importers, as the detention was not due to their fault and the Customs granted waiver of charges, the writ petitions have been filed seeking a direction to the CFS / steamer agents to refund the charges paid. The learned Judge vide order dated 08.08.2017, held that the importers are entitled to a waiver of rent/demurrage charges till the date of clearance of the goods detained by the Customs authorities. The relevant portion of the said order is extracted hereunder, for better appreciation:

"10. With regard to the Container Terminal, the third respondent in W.P.No.6453 of 2017, namely, M/s.K.Steamship Agencies, it appears that they have given only 25% waiver. This action of the third respondent is contrary to the statutory regulation namely, Regulation No.6(1)(l). The third respondent M/s.K.Steamship Agencies Pvt., Ltd., having not questioned the order passed by the second respondent, dated 28.12.2016, are bound by the order and they have to proceed in letter and spirit as per the said order. The question of now interpreting the order are extending partial relief is not permissible as the Regulation uses the expression 'shall not charge any rent or demurrage'. This, mandates that the third respondent is prohibited from charging any rent or demurrage during the period of detention. This having been certified by the second respondent, there is no escape from the rigour of Regulation No.6(1)(l). Thus, the matter is not contractual, but it involves the implementation of a statutory regulation. Therefore, the Writ Petition filed by the petitioner is maintainable.

11. Insofar as M/s.K.Steamship Agencies Pvt., Ltd., is concerned, the cargo in two containers, have been cleared on 07.01.2017 and remaining two containers on 13.01.2017. As observed in respect of the other matters, after 28.12.2016, within a reasonable time, the containers have been removed. Admittedly, the petitioner is not responsible for detention of the container for the period from 02.12.2016. Therefore, the third respondent shall not be entitled to charge rent or demurrage on the said four containers till it was removed i.e., on 07.01.2017/13.01.2017.

12. For all the above reasons, the Writ Petitions are disposed of with a direction to the third respondent namely, M/s.Calyx Container Terminals, to waive the rent/demurrage on the goods which were detained at the instance of second respondent from 02.12.2016 till it was cleared on 06.01.2017. The third respondent in

W.P.No.6353 of 2017, is directed to waive the rent or demurrage on the goods detained by the second respondent from 02.12.2016 till 07.01.2017/13.01.2017, when the containers were cleared. The above direction shall be complied with within a period of two weeks from the date of receipt of a copy of this order and the respective third respondent shall ensure full and <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch faithful compliance of the above direction. No costs."

Challenging the aforesaid order, the CFS / steamer agents have filed the present writ appeals.

18. In W.A.No.2159 of 2021, the importer originally filed a writ petition in W.P.No.21258 of 2013, seeking a direction to the respondents for the release of detained goods, issuance of a detention certificate, and a direction to the CFS / Shipping Lines for the refund of the amount paid towards detention, demurrage, and other charges. During the pendency of the writ petition, the goods were released and the detention certificate was issued. However, the importer filed a miscellaneous petition to amend the prayer, seeking action against the CFS / Shipping Lines for the charges collected pursuant to the detention certificate issued by the Customs. The learned Judge dismissed the writ petition with the following observations:-

"8.This Court is of the considered opinion that disputed facts can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. Such disputed issues are to be adjudicated with reference to the original documents and evidences which all are to be scrutinized by the authorities competent and by the parties concerned. This apart, the terms and conditions of the contract, if any violations there on, are to be adjudicated by conducting a trial before the appropriate forum and such an exercise is impermissible in writ proceedings. The High Court cannot conduct a roving enquiry based on the affidavits filed by the parties in a Writ Petition. This being the principles to be followed, the extended prayer sought for by the petitioner by filing an amendment petition deserves no merit consideration and further relief, if any requires, the petitioner has to approach the competent forum for adjudication. However, the fact remains that the original relief sought for in the Writ Petition had been granted in favour of the writ petitioner and 100% goods were released <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch and the detention certificate was also issued. This being the factum, the petitioner cannot continue the Writ Petition by filing amendment petition in order to redress a fresh cause of action arose consequent to the issuance of detention certificate by the authorities. Such an adjudication requires verification and scrutinization of documents, evidences which all are to be produced by the parties to the dispute. In view of the facts and circumstances, this Court is of the considered opinion that the cause arose for filing of the present Writ Petition did not exist and the amendment sought for is beyond the scope of the original relief sought for in the Writ Petition, as admittedly, the original relief sought for had been granted by the respondents. Accordingly, the writ petitioner is at liberty to pursue his remedy before the appropriate forum in the manner known to law, if any grievances exist.

9. With these observations, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed."

Challenging the aforesaid order, the importer has filed this writ appeal.

19. The relief sought in the writ petition in W.P.No.14370 of 2018 was to direct the CFS / Shipping Lines to release imported goods without payment of demurrage/detention charges based on the detention certificate issued under Regulation 6(1)(l) of the HCCA Regulations. The goods of the importer/appellant were investigated by the Docks Intelligence Unit (DIU). Upon inspecting the container's contents, the DIU discovered discrepancies, revealing that instead of the declared 1500 pieces of Sprayer Starter Kits, there were 1000 pieces of Lead Acid Batteries (12V) and 500 Pieces of Adaptors. Additionally, an excess of 100 pieces of Sprayer Back Belts with an Assessable Value of Rs.4068/- and 10 pieces of Sprayer 2-way Nozzles with an assessable value of Rs.373/- was found. The appellant waived the issuance of a show cause notice regarding the mentioned import. Subsequently, the Joint Commissioner of Customs (Group-5) issued an <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch adjudication order, confiscating the excess and goods and permitted redemption upon payment of a fine amounting to Rs.1,00,000/- under section 125 of the Customs Act, 1962. Furthermore, a penalty of Rs.17,000/- was imposed on the appellant. The learned Judge held that the detention certificate issued by the customs authorities under Regulation 6(1)(l) only confirms the statutory provisions and makes the importer eligible to claim refund of any excess charges paid. However, it does not by itself confer an enforceable right to claim refund or release of goods, without adjudication of any disputes between the private service provider and importer regarding contractual obligations. Having held so, the learned Judge dismissed the writ petition, however, granting liberty to pursue other remedies available before appropriate forums. The relevant portion of the said order is usefully extracted below:-

"18. Under these circumstances, this Court formed an opinion that the Detention certificate is nothing but affirmation of the statutory provisions contemplated, more specifically, with reference to Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009. Thus, such a certificate undoubtedly provides a right to the holder of the certificate to claim the relief of release of imported goods by the Service Provider or refund as the case may be. However, there is no consideration in any of these judgments submitted by the learned counsel for the petitioner that in the event of existence of a dispute between the Service Provider and the importer or exporter and the status of certificate of detention. Pertinently, those areas are not considered in the judgments relied on by the petitioners. In the event of directly acting upon the Detention certificate, which is nothing but confirmation of the provisions of the Act and the regulations, the Service Provider may suffer any loss or otherwise. The Courts are bound to consider and protect the interest of all the parties to the lis in order to provide complete justice.

19. In the present case, admittedly, the goods are being maintained by the Service providers. On confiscation, the Customs authorities take possession. However, the

goods are still under the custody of the Service Provider. The goods are not taken away from the premises of the Service Provider. Therefore, the grievances of the service provider are also to be looked into and considered, while granting the relief of release of the imported goods or refund of the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch deposits, if any.

20. Thus, this Court is of the considered opinion that in between disputes, more specifically, with the Service Provider and the importer or exporter has not been considered in any of the judgments produced by the petitioners. Therefore, this Court is of the opinion that the Detention certificate issued under the provisions of the Customs Act is reiteration of the legal position, which is binding on the Service Provider. Undoubtedly, the Detention certificate is binding on the Service provider. However, such Detention certificate cannot be the sole document for the purpose of grant of relief of refund or release of goods without further adjudication with reference to the disputes or grievances exists between the Service Provider, who is a private party and the exporter or importer.

21. With this observation, the writ petition stands dismissed. No costs"

Challenging the aforesaid order passed by the learned Judge, the importer has filed the writ appeal viz., W.A.No.363 of 2022.

20. The appellant company imported 27,000 kgs. of unflavoured supari and filed a bill of entry, paying the applicable customs duty. However, the goods were detained by the DRI, alleging misclassification. The question of classification of the goods was no longer res integra because the appellant had approached the Advance Ruling Authority, which held that the imported goods do not contain any specified ingredients, namely, lime, katha, and tobacco. However, as there was no response, the appellant filed a writ petition and obtained an order for the release of goods and a detention/demurrage waiver certificate. However, the service provider did not fully honor it and compelled the appellant to pay Rs.20.57 lakhs as charges. Therefore, the appellant filed another writ petition in W.P.No.26838 of 2018, seeking refund, which was dismissed by the learned Judge with the following observations:-

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch "22. The undertaking clause in Regulation 5 (5) is to ensure that the service providers implement the provisions of the Act and the Rules as well as the consequent orders issued by the Authorities. However, this Court has held in the aforementioned paragraphs that Detention Certificate is to be construed as Eligibility Certificate for the purpose of claiming refund and the refund is to be granted after resolving the disputes, if any exist between the service providers and importers or exporters. The contractual relationship between the service providers, who is a private person and the petitioner cannot be resolved under writ jurisdiction by the High Court. Thus, based on the Detention Certificate issued by the Customs Authorities, the petitioner has to adjudicate the same before the Competent Forum or claiming recovery of

refund.

23. This being the nature of the Detention Certificate issued under the Regulations, this Court is of an opinion that mere issuance of Detention Certificate would not confer any right to get refund directly from service provider, who is a private party. The contract between the service provider and the importer and exporter are to be considered and terms and conditions are to be looked into with reference to the facts and an adjudication on the factual aspects, became imminent, and such an exercise cannot be done in a writ proceedings.

24. Thus, the relief as such sought for cannot be granted and the petitioner is at liberty to initiate appropriate action and claim refund before the appropriate forum and by following the procedures as contemplated. With these observations, the writ petition stands dismissed. No costs."

Challenging the aforesaid order, the importer has preferred the writ appeal bearing No.574 of 2022.

21. The appellant company imported food items like wet dates and filed bill of entries, but the goods were detained by the Customs on finding that the goods were misdeclared; the appellant was given permission to warehouse goods and detention certificates were issued advising waiver of charges till 13.01.2022, but when the appellant approached CFS/shipping lines for release of goods without charges, they denied the same and hence, the appellant filed writ petitions seeking direction to release the goods without charges relying on detention certificates. The learned Judge held that detention certificates issued <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch by the Customs authorities under the Regulations are valid only till 13.01.2022 as per 60 days limitation and no application was made by the appellant for extension of waiver beyond 13.01.2022 and hence, the appellant is not entitled for waiver of charges beyond the said period. However, the appellant was given an opportunity to negotiate with the CFS/shipping lines for any concession.

Accordingly, the writ petitions were dismissed. The relevant portion of the said order is extracted hereunder:-

"63. Moreover since the petitioner being an importer has mis-declared the goods and whatever reason is attributed by the petitioner by putting a blame in some foreign company or other third parties, the entire responsibility of such mis- declaration has to be shoulder only by the petitioner.

64. That is the reason why the petitioner having accepted the guilt of mis-declaration of the goods as well as the quantity had paid the revised customs duty, penalty, redemption charges etc., to the extent of Rs.65 lakhs, whereas the original self-assessed duty of the goods imported on the part of the petitioner is only Rs.9 lakhs and odd.

65. Because of this attitude of the petitioner, there could be no sympathy on the part of the petitioner from any side, apart from the legal position discussed above.

66. Though the customs authorities invoking the power under Section 49 of the Act, has permitted the petitioner to avail the facility of warehousing the goods by releasing the container under Section 49 of the Customs Act, to avoid demurrage / detention charges, that was subject to fulfilment of the prescribed conditions.

67. Assuming that, under Section 49 of the Act, when such a permission was given and an advice note on the same date, since has been given by the customs authorities to both fourth and fifth respondents under 2009 as well as 2018 Regulations respectively, all these benefits can be extended to the petitioner as per the customs authorities communication, dated 13.01.2022 and 17.01.2022 only for the period up to 13.01.2022.

68. Beyond which, first of all, there was no application or request made by the petitioner to the customs authorities, secondly the customs authorities had no occasion to consider any such request of the petitioner, thirdly assuming that if any request had been made orally or otherwise by the petitioner to the customs authorities, whether they had power to extend that period to the petitioner to seek for a waiver beyond 13.01.2022 is concerned, it is not possible, because, only 60 days maximum time has been provided under the Regulations, especially Regulation 10(l) proviso of 2018 Regulations and therefore, the said 60 days <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch period already since had been covered for the period between 08.11.2021 and 13.01.2022, this Court feel that, the petitioner may not be entitled for further waiver of rent, detention, demurrage charges from either of these respondents, namely fourth and fifth respondents in both the cases beyond 13.01.2022.

69. Therefore this Court is of the considered view that, the claim made by the petitioner through the prayer sought for in these writ petitions are untenable, hence, it is liable to be rejected.

70. However, it is open to the petitioner to have a private negotiation with fourth and fifth respondents in both the cases for giving any concession in the rent / demurrage / detention charges for the period from 14.01.2022. In this context, the fourth and fifth respondents in both the cases are hereby directed to consider such request if any comes from the petitioner, in view of the fact that, these writ petitions have been filed sometime in March 2022. Therefore taking into account of these writ petitions which were pending from March 2022, such kind of concession of demurrage, detention and rental charges can be considered by these respondents and for making such consideration, this order will not stand in the way.

71. With these observations, both the writ petitions are disposed of. However, there shall be no order as to costs."

Challenging the aforesaid order, the importer has filed these writ appeals viz., W.A.Nos.1667 and 1668 of 2022.

22. Similarly, the shipping lines filed Writ Appeal No.2073 of 2022, challenging the order passed by the learned judge in W.P.No.6947 of 2022, dated 16.06.2022. They contended that the importer mis-declared the cargo in the Bill of Entry, leading to the detention of goods by the Customs on 08.11.2021. The customs issued a letter on 17.01.2022, directing the appellant-terminal to waive detention charges from 08.11.2021 to 13.01.2022, which is against Regulation 10(1) of the Sea Cargo Manifest and Transshipment Regulations 2018 and does not bind the appellant. Though detention waiver was offered, the importer did <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch not take delivery after paying balance charges but filed a writ petition seeking release without charges, relying on the detention certificate. However, the learned Judge granted waiver only until 13.01.2022, overlooking the misdeclaration by the importer and the fact that waiver beyond 60 days is not permitted under Regulations.

23. The importer filed the writ petitions in W.P.Nos.23755 and 23756 of 2017, seeking a declaration declaring the impugned communication dated 23.12.2016 as illegal, without jurisdiction, against the provisions of the Act, and null and void and a mandamus directing the third respondent to issue the Detention Certificate and other appropriate directions to enable the importer to comply with the Order-in-Original dated 05.01.2016 by re-exporting the subject consignment. The learned Judge held that the importer had attempted to illegally import restricted R22 gas instead of R410A gas, leading to an evasion of import restrictions. Consequently, the goods were deemed liable to be confiscated under the Customs Act. Redemption fines and penalties were imposed on the importer.

Despite payment of fines, the goods were not allowed to be re-exported by the officials. Although the officials issued only a partial waiver of rent/demurrage up to 19.10.2015, the learned Judge directed the officials to allow re-export if the goods were still available. The learned Judge specified that demurrage for the period from 19.10.2015 to 19.04.2016 should be paid by the importer. For the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch period after 19.04.2016, the loss would be borne by the Customs Department.

The relevant portion of the said order is profitably extracted hereunder:-

"42. The facts on record clearly indicate that the official respondents have also not co-operated with the petitioner for re-export R22 Refrigerant Gas, despite, the Order in Original No.43805 of 2016 dated 05.01.2016 of the second respondent and the subsequent dismissal of the appeal of the petitioner vide Order in Appeal C.Cus II No.373 & 374/2016 dated 19.04.2016.

43. Despite, Order in Original No.43805 of 2016 dated 05.01.2016 passed by the second respondent Additional Commissioner of Customs (Gr-2) as affirmed by the

Commissioner of Customs (Appeals-II) vide Order in Appeal C.Cus II No.373 & 374/2016 dated 19.04.2016, the imported goods were not allowed to be re-exported and remained in the custody of the private respondent mainly fourth and fifth respondents.

44. The private respondents namely the fourth and fifth respondents cannot be forced to bear the loss suffered by them on account of storage of R22 Refrigerant Gas imported by the petitioner illegally which was earlier attempted to be cleared contrary to the restriction for the period after Order in Appeal C.Cus II No.373 & 374/2016 dated 19.04.2016 was passed by the Commissioner of Customs (Appeals-II). The petitioner also cannot be burdened with the demurrage liability for the period thereafter as the goods were not allowed to be re-exported despite the above mentioned orders. Therefore, partial waiver up to 19.10.2015 is liable to be sustained.

45. Therefore, while upholding the impugned order of the third respondent dated 23.12.2016. I am also inclined to hold that the demurrages for the period between 19.10.2015 and passing of the Commissioner of Customs (Appeal-II) vide Order in Appeal C.Cus II No.373 & 374/2016, bearing reference No.C3-II/181 & 182/O/2016-SEA dated 19.04.2016 will have to be borne by the petitioner, as the petitioner showed no inclination to re-export the consignment. For the period thereafter, the loss caused to the fourth and fifth respondents on account of storage of R22 Refrigerant Gas will have to be borne by the Customs Department.

46. Since the goods are still reportedly in the custody of the fourth and fifth respondents, I direct the official respondents as also the fourth and fifth respondents to permit re-export of the imported consignment by the petitioner to the foreign exporter from China provided the consignment of imported R22 Refrigerant Gas are still there in the containers and have not evaporated due to efflux of time as expeditiously as possible from the date of receipt of a copy of this order, subject to the petitioner paying the demurrage charges to the fourth and fifth respondents for the period between 19.10.2015 up to 19.04.2016 together with applicable interest.

47. The amount is directed to be calculated by the fourth and fifth respondents as expeditiously as possible, preferably, within a period of thirty days from the date of receipt of a copy of this order and suitably intimated to the petitioner.

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48. On such intimation of the amount together with applicable interest to be paid by the petitioner, the petitioner shall pay the same and the petitioner shall be allowed to re-export the imported R22 Refrigerant Gas as expeditiously as possible, preferably, within fifteen days thereafter. The Customs Department is directed to make good the loss suffered by the private respondents namely the fourth and fifth respondents for

forcing them to store the imported R22 Refrigerant Gas despite Order in Original No.43805 of 2016 dated 05.01.2016 and Order in Appeal C.Cus II No.373 & 374/2016 dated 19.04.2016 of the Commissioner of Customs (Appeals-II). In case the amount determined by the fourth and fifth respondent is excessive according to the petitioner, the petitioner shall pay the amount without prejudice to its right to recover the same from fourth and fifth respondent in the manner known to law.

49. It is made clear that partial waiver granted herein is available to the petitioner subject to the petitioner strictly complying with the terms of this order without any deviation within the period specified above, failing which this order shall automatically stand vacated.

50. This Writ Petition stands partly allowed in terms of the above observations. No costs. Consequently, connected miscellaneous petition is closed."

Challenging the above order, the writ appeal bearing Nos.2767 and 2768 of 2022 have been filed.

II. SUBMISSIONS OF LEARNED COUNSELS

24. In the writ appeals and writ petitions, common issues have arisen and to avoid repetition of arguments and consequential verbosity, the respective learned counsels' submissions in all the cases are categorized into six heads:-

24.1. Submissions of Importers 24.1.1. Mr.Arvind P. Datar 24.1.2. Mr.B.Sathish Sundar 24.1.3. Mr.V.P.Raman 24.1.4. Mr.Hari Radhakrishnan <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 24.2. Submissions of CFS 24.2.1. Dr.Sunitha Sundar 24.2.2. Mr.Giridharan 24.2.3. Mr.A.K.Jayaraj 24.2.4. Mrs.Pushpa Menon 24.2.5. Mr.S.Dhayaleswaran 24.3. Submissions of shipping lines 24.3.1. Dr.Sunitha Sundar 24.3.2. Mr.Giridharan 24.3.3. Mr.S.Vasudevan 24.3.4. Mr.Karthik Sundaram 24.3.5. Mr.M.Ashwin Kumar, 24.3.6. Mr.Raffiq Mohammed M/s. Lloyd and Joseph 24.4. Submissions of Customs Authorities 24.4.1. Mr.V.Sundareswaran 24.4.2. Mr.ARL.Sundaresan, Additional Solicitor General 24.5. Reply submissions of importers 24.5.1. Mr.Arvind Datar 24.5.2. Mr.B.Sathish Sundar <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 24.5.3. Mr.V.P.Raman 24.1. Submissions of importers 24.1.1.(a) Mr.Arvind P. Datar, learned senior counsel representing Mr.Joseph Prabhakar, learned counsel for the importers in respective writ petitions and writ appeals would argue that Container Freight Stations (CFSs) and shipping lines should not impose detention charges on the importers. He highlights Regulation 6 (1) of the HCCA Regulations, particularly Clause (l), which prohibits Customs Cargo Service Providers (CCSPs) viz., CFS and shipping lines from charging detention charges. He also asserts that both CFS and Shipping Lines fall under the scope of CCSPs as per Regulation 2(1)(b), involving various logistical functions within the Customs Area. Public Notices bearing Nos.

158/2016, 169/2016, and 12/2019-20 explicitly include Shipping Lines/Freight Forwarders/Carriers as CCSPs, making them subject to the Regulations.

Consequently, they cannot claim exemption from their responsibilities in the Customs Area, and their charges are considered non-statutory and purely contractual. Adding further, he submitted that once goods are detained but later exempted or correctly classified, CFS / shipping lines lack the authority to impose detention charges, as mandated in Regulation 6(1)(I). Furthermore, under Section 2(11) of the Customs Act, the customs area is defined as any region where imported or exported goods are stored before clearance. Section 45 empowers the Customs Authorities to appoint custodians for imported goods, while Section <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 141 places all goods in a customs area under the control of customs officers.

Thus, it is submitted that the CFS / shipping lines, acting as extensions of the Customs Department, must comply with the regulations and cannot levy such charges.

(b) The learned senior counsel elaborates that Regulation 2(1)(b) of the HCCA Regulations defines CCSPs, and Regulation 5(5) requires them to abide by all provisions of the Customs Act and related Rules. Detention Certificates issued under Regulation 6(1)(I) mandate CCSPs to waive detention charges, with the term "shall" indicating the obligatory nature of this waiver. He would further submit that Regulation 6(1)(I) categorically prohibits CCSPs from charging rent or demurrage on goods seized, detained, or confiscated by customs. The said mandate is however, subject to any other law for the time being in force. The said phrase in the Regulations has been interpreted to mean and exclude cases of statutory charges / levies collected by Major Port Trusts or Airports Authority of India respectively, but in these cases, the collection by the CFS/shipping lines are not statutory, but only contractual. Collection of such contractual amounts cannot be classified as amounts as per any Regulations / statute. References to the Indian Contract Act, 1872, the Bills of Lading Act, 1856, and the Customs Act, 1962 were made to justify that such charges are invalid, as these Regulations supersede contractual provisions.

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(c) The learned senior counsel referring to Section 23 of the Contract Act, would submit that it restricts any consideration under a contract which is forbidden by law and/ or which would of such a nature that it would defeat the provisions of law. The collection / retention charges would be contrary to the mandate under Regulation 6(1)(I) and would even otherwise be prohibited under the Contract Act itself. Further, referring to Sections 170 and 171 of the Contract Act, he would submit that these sections also do not apply inasmuch as the right of the CFS/shipping lines as bailee is restricted by mandate under the Regulations. Once the CFS/shipping lines act as a CCSP, they are obligated to follow the mandate under the Regulations which would prevail over their right as bailee. It is also submitted that Section 1 of the Bills of Lading Act extends the contractual relationship to the consignee. However, the source of charge under the contractual document between the parties remains the same.

(d) The learned senior counsel also submitted that the detention certificate issued by the Customs authorities directing Customs Cargo Service Providers (CCSPs) not to charge rent, demurrage, etc., is a statutory decision taken under the HCCA Regulations and the Sea Cargo Manifest and Transshipment Regulations (SCMTR), 2018, which are subordinate legislations under Sections 141(2) and 157(2)(h) of the Customs Act, 1962. He would further submit that Regulations 2(b), 3, 5(5), 6(1)(l), and 6(1)(q) of the HCCA Regulations define CCSPs broadly to include steamer agents, freight forwarders, and custodians <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch under Section 8 of the Customs Act, 1962. These regulations bind CCSPs to follow the Act, regulations, notifications, and orders, including a decision not to charge rent, demurrage, or other charges on detained/seized/confiscated goods. In support of his contentions, he relied on the following judgments:-

(i) M/s.P.Perichi Gounder Memorial Vs. The Commissioner of Customs [2019(368) ELT 495 (Mad.)] "17. In this factual setting, as it is undisputed obtaining position that said Regulations apply, learned counsel for writ petitioner drew the attention of this Court to the definition of 'Customs Cargo Services Provider' contained in Section 2(b) of the said Regulations.

18. Section 2(b), which defines "Customs Cargo Services Provider" says 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 said Act and persons as referred to in sub-section (2) of Section 141 of the said Act.

19. A perusal of Section 2(b), read in conjunction with Sections 45 and 141(2) of said Act leaves no doubt in the mind of this Court that both CFS and the Steamer Agent would qualify as Customs Cargo Services Provider. There is also no disputation that they function under the control of the Customs Department.

20. In this regard, it is submitted by learned counsel for writ petitioner that the respondents have to ensure that their communication signed on 25.04.2018 is adhered to and implemented in letter and spirit. In support of his contention, learned counsel pressed into service two orders made by another Hon'ble Single Judge of this Court. One is reported in 2018 (13) G.S.T.L.273(Mad.) in the case of Isha Exim Vs. A.D.G., Directorate of Revenue Intelligence, Chennai [hereinafter 'Isha Exim case' for brevity] and the other is 2018 (361) E.L.T.463 (Mad.) in the case of Giridhari Homes Pvt. Ltd., Vs. Principal Commissioner of Customs, Chennai – III [hereinafter 'Giridhari case' for brevity]. Relevant paragraphs in Isha Exim case are paragraphs 15 to 18 and the same read as follows:

'15. The learned counsel appearing for the petitioner submitted that, since the goods were detained at the instance of D.R.I., they are entitled for Demurrage and Detention Certificate for waiver of the warehousing and demurrages from the date of detention till the date of release of the goods. It is pointed out that, on an earlier occasion, the petitioner has approached this <https://www.mhc.tn.gov.in/judis>

W.A.Nos.2235 of 2021 etc. batch Court, by way of W.P.No.22114 of 2017, seeking for release of the same product, which was imported vide Bill of Entry No.2696680, dated 02.08.2017 and detained vide Mahazar, dated 10.08.2017. The said Writ Petition was disposed of, by this Court, by order, dated 12.09.2017, directing the Authority to provisionally assess the Bill of Entry and release the goods and a direction was issued to the Commissioner of Customs to issue Detention Certificate. It appears that, though the Detention and Demurrage Certificate was issued, yet, the Steamer Agent did not honour the certificate and the petitioner has paid demurrages and container detention charges, without prejudice to their rights to contest the same in other legal proceedings.

16. It is not known, as to why, action was not initiated against the Steamer Agent for not complying with the order qua certificate passed/issued by the Customs Department, and therefore, this Court is inclined to observe that the Customs Department should also ensure that whether the Detention Certificate issued for waiver of the warehousing and demurrages has been complied with in letter and spirit and should not be reduced into a paper order. In the decision rendered by the Hon'ble Division Bench of High Court of Delhi, in the case of Worldline Tradex Pvt (supra), it was held that D.R.I was responsible to bear the charges.

17. Considering the facts of the present case, the respondents 2 to 4 are directed to issue Demurrage and Detention Certificate for Waiver of Warehousing, Demurrage and Container Charges and ensure that such order is complied with by the Steamer Agent and Container Terminal, as it was held by the High Court of Delhi, in the case of Worldline Tradex Pvt (supra) that, detention having occurred due to illegal action of D.R.I., they have to bear responsibility in that regard.

18. In the result, W.P.No.765 of 2018 is disposed of and W.P. No.1114 of 2018 is allowed on the aforesaid terms. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.'

21. A perusal of Giridhari case also reiterates the same principle i.e., that the CFS and Steamer Agent have to necessarily implement the orders of Customs Department.

22. From the narrative thus far, it comes to light that import of the petitioner is for a hospital which is being run for economically less privileged strata of the society and it provides medical help by charging only actual cost of basic disposable products alone. In other words, for all practical purposes, writ petitioner is providing free medical treatment with a 50 bedded hospital and in instant case, consignment imported itself is a Used Dialysis Machine. This leaves this Court with the considered view that there are unique and peculiar facts and <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch circumstances in this case.

23. In the light of the unique and peculiar facts and circumstances of this case, viewed in the light of context of the aforesaid two reported orders (alluded to supra), by another Hon'ble Single Judge, this Court is of the considered view that it is appropriate to direct the respondents to ensure that the CFS namely Manager, All Cargo Global Logistics Ltd., Thiruvottiyur High Road, Thiruvottiyur, Chennai – 600 019 (CFS) and M.S.C.Agency (India) P Ltd., 1st floor, KGN Tower, No.62, Ethiraj Salai, Egmore, Chennai – 600 105 (Steamer Agent who owns the container) to whom signed communication dated 25.04.2018 has been sent, implement the same in letter and spirit. In other words, respondents are directed to ensure that the addressees in the communication, signed on 25.04.2018 give effect to the same and ensure that the consignment namely Used Dialysis Machine, which is subject matter of instant writ petition is given delivery to the writ petitioner without insisting on demurrage and detention charges even post 23.03.2018. The above direction shall be complied with by the respondents as expeditiously as possible and in any event, with a period of four(4) weeks from the date of receipt of a copy of this order."

(ii) M/s.Vanathi Exports Private Ltd Vs. The Commissioner Of Customs (Exports) [2020(374) ELT 490 (Mad.)] "10. Regulation 2(1)(b) of the Handling of Cargo and Customs Areas Regulations, 2009 defines a CCSP as follows:

Regulation 2. Definitions. (1) In these regulations, unless the context otherwise requires.-

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;'

11. The third respondent disputes that they are not a CCSP, but are freight forwarders and delivery agents. The Bill of lading dated 02.03.2020 pertaining to the 1x40' container, identifies the third respondent as an agent for the carrier. As per the definition in the aforesaid Regulations, "any person" responsible for receipt, storage, delivery, dispatch or otherwise handling of imported and exported goods would fall within the purview of the definition of a CCSP. Merely because the petitioner has not sought for an approval from the authorities to be recognized as a CCSP, it cannot be said that the provisions of Handling of Cargo and Customs Areas Regulations, 2009 will not be applicable to them, since the Regulations would be applicable to any person who fulfills the ingredients of the definition clause of a CCSP. If that be so, Regulation 5(5) mandates such a person to comply with the provisions and abide by all the provisions of the Act including the rules, regulations, notifications and orders issued therein. In Perichi Gounder Memorial case (supra), this Court had held that both CFS and Steamer Agent would qualify as a CCSP and are required to implement the orders of the Customs Department. The relevant portion of order reads thus:-

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch "18.Section 2(b), which defines "Customs Cargo Services Provider" says 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 said Act and persons as referred to in sub section (2) of Section 141 of the said Act.

19.A perusal of Section 2(b), read in conjunction with Sections 45 and 141(2) of said Act leaves no doubt in the mind of this Court that both CFS and the Steamer Agent would qualify as Customs Cargo Services Provider. There is also no disputation that they function under the control of the Customs Department.

21.A perusal of Giridhari case also reiterates the same principle i.e., that the CFS and Steamer Agent have to necessarily implement the orders of Customs Department.”

12. Regulations 5(5) and 6(1)(l) of the Regulations reads as follows:

Regulation 5(5): Undertake to comply with the provisions and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

Regulation 6(1)(l): .. 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;

13. Thus, a combined reading of the Regulation 2(b) and 5(5) along with Regulation 6(1)(l) would qualify the third respondent to be a CCSP.

14. In similar situations, when statutory regulations came to be violated by a CCSP and the maintainability of a Writ Petition against the CCSP was questioned before this Court in Balaji Dekors' case (supra), this Court has held that the matter involved is not contractual but involves the implementation of the statutory regulation and therefore, the Writ Petition would be maintainable. The relevant portion of the order reads as follows:-

“5. The third respondent M/s.K.Steamship Agencies have filed a counter affidavit, stating that totally four containers were involved of which the period of detention of two containers was 28.12.2016 to 07.01.2017 i.e., for 11 days and the amount being Rs.1,86,622/- and in respect of the other two containers, the period of detention was 28.12.2016 to 13.01.2017, and the amount involved is Rs.2,88,415/- and the third respondent has given 25% waiver and the amount required to be paid by the petitioner is Rs.3,56,278/-. Further, it is submitted that the relationship between the petitioner and the third respondent is purely contractual and such contractual relationship will fall within the ambit of an ordinary Civil Suit and cannot be challenged by way of a Writ Petition under Article 226 of the Constitution of India.

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7. The undisputed fact is that the goods in question were detained at the instance of the 1st and 2nd respondents, who had undertaken an investigation on the cargo. By communication, dated 28.12.2016, the second respondent informed the respective third respondents that the consignment was detained by the SIIB from 02.12.2016 to 27.12.2016 and as per Regulation 6(1)(l) of the Handling of Cargo in Customs Area Regulation, 2009, the custodian shall not charge rent or demurrage for the goods under detention. The custodian in the instant case are respective third respondent in both the Writ Petitions. It is the submission of the petitioner that, though such a specific order has been issued by the department for grant of waiver, the respective third respondents have not granted full relief to the petitioner in terms of the directive of the Department.

8. Regulation No.6 of the Handling of Cargo in Customs Area Regulation, 2009, provides for “Responsibilities of Customs Cargo Service Provider”. In terms of Regulation 6(1)(l), the customs cargo service provider shall 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.

9. The second respondent, in no uncertain terms, has certified that the goods were detained by the SIIB from 02.12.2016 to 27.12.2016 and issued an order on 28.12.2016 that the custodian (third respondent) shall not charge rent or demurrage for goods under detention. Thus, the third respondent cannot interpret the said communication, as the Regulations clearly provide that the custodian cannot charge any rent or demurrage on the goods detained by the second respondent. However in the case of W.P.No.6452 of 2017, which concerns, M/s.Calyx Container Terminals, goods in question have been removed on 06.01.2017. Therefore, a levy is sought to be made for the period from 28.12.2016 to 06.01.2017. In my considered view this is unreasonable because after the order was passed on 28.12.2016, effective steps have been taken by the petitioner to clear the cargo and it has been done in the shortest possible time on 06.01.2017. Therefore, the third respondent should waive the rent or demurrage on the goods for the entire period i.e., from 02.12.2016 till it was cleared on 06.01.2017.

10. With regard to the Container Terminal, the third respondent in W.P.No.6453 of 2017, namely, M/s.K.Steamship Agencies, it appears that they have given only 25% waiver. This <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch action of the third respondent is contrary to the statutory regulation namely, Regulation No.6(1)(l). The third respondent M/s.K.Steamship Agencies Pvt., Ltd., having not questioned the order passed by the second respondent, dated 28.12.2016, are bound by the order and they have to proceed in letter and spirit as per the said order. The question of now interpreting the order are extending partial relief is not permissible as the Regulation uses the expression “shall not charge any rent or demurrage”. This, mandates that the third respondent is prohibited from charging any rent or demurrage during the period of detention. This having been certified by the second respondent, there is no escape from the rigour of Regulation No.6(1)(l). Thus, the matter is not contractual, but it involves the implementation of a statutory regulation. Therefore, the Writ Petition filed by the petitioner is maintainable.”

15. In the light of the decisions in Perichi Gounder Memorial (supra) and Balaji Dekors' (supra), the petitioner is deemed to be a CCSP, who is bound by the advisories of the Customs Department and DGS and therefore is amenable to Writ Jurisdiction and the Writ Petition would thus, be maintainable. Writ Petitions under Article 226 of the Constitution of India in similar circumstances, have also been entertained in the cases of Priyanka Enterprises Vs. Joint Commissioner of Customs reported in 2018 (360) ELT 962 (Mad); Giri Dhari Homes Pvt. Ltd., Vs. Principal of Commissioner of Customs [2018 (361) ELT 463 (Mad) and Isha Exim Vs. ADG, Chennai [2018 (13) GSTL 273 (Mad)."

(iii) M/s. Empire Exports Vs. The Commissioner Of Customs [2021 (376) ELT 716 (Mad.)]
"14. Clauses 5(5) and 6 of the Handling of Cargo in Customs Areas Regulations, 2009 read as follows:-

"5. Conditions to be fulfilled by Customs Cargo Service Provider:

The Customs Cargo Service provider for custody of imported goods or export goods or export goods and for handling of such goods in a customs area shall fulfill the following conditions, namely:- (1)

(2)

(3)

(4)

(5) Undertake to comply with the provisions and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

6. Responsibilities of Customs Cargo Service Provider:

(1) The Customs Cargo Service provider shall -

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

(a) keep a record of imported goods, goods brought for export or transshipment, as the case may be, and produce the same to the Inspector of Customs or Preventive Officer or Examining Officer as and when required;

(aa) Provide information regarding arrival of the imported goods to the Deputy Commissioner or Assistant Commissioner of Customs immediately on arrival of said goods in the customs area and also information about their departure after the clearance thereof.

(b) keep a record of each activity or action taken in relation to the movement or handling of imported or export goods and goods brought for transshipment;

- (c) display or make available in any other manner, information of process or movement or handling of imported or export goods and goods brought for transshipment;
- (d) demarcate separate areas for unloading of imported goods for their storage with respect to the category of importers, nature of goods, place of destination, mode of transportation or any other criterion as the Commissioner of Customs may specify having regard to the custody and handling of imported goods in a customs area;
- (e) demarcate separate areas for loading of export goods for their storage with respect to categories of exporters, nature of goods, examined and sealed containers or other criterion as the Commissioner of Customs may specify having regard to the custody and handling of export goods in a customs area;
- (f) not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the Superintendent of Customs or Appraiser;
- (g) not permit any export cargo to enter the customs area without a shipping bill or a bill of export having been filed with the Deputy Commissioner or Assistant Commissioner of Customs;
- (h) not permit any import cargo to enter the customs area or be unloaded therein without the import report or the import manifest having been filed with the Deputy Commissioner or Assistant Commissioner of Customs;
- (i) be responsible for the safety and security of imported and export goods under its custody;
- (j) be liable to pay duty on goods pilfered after entry thereof in the customs area;
- (k) be responsible for the secure transit of the goods from the said customs area to any other customs area at the same or any other customs station in accordance with the permission <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch granted by the Deputy Commissioner or Assistant Commissioner of Customs;
- (l) 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;
- (m) dispose off in the manner specified and within a time limit of ninety days, the imported or export goods lying unclaimed, uncleared or abandoned:

Provided that the period of ninety days may be extended by the Commissioner of Customs by such further period as may be allowed, on sufficient cause being shown for delay in the disposal;

(n) not make any alteration in the entry or exit points or boundary wall without the permission of the Commissioner of Customs;

(o) shall bear the cost of the customs officers posted by the Commissioner of Customs on cost recovery basis and shall make payments at such rates and in the manner specified by the Government of India in the Ministry of Finance unless specifically exempted by an order of the said Ministry;

(p) shall observe the Central Government holidays as followed by the jurisdictional Customs formations and in case of any variation in the working days, intimate the same to Commissioner of Customs and the trade, at least seven days in advance, and

(q) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder."

15. In the case on hand, the importer after filing the bills of entry was continually calling upon the customs authority to release the goods. The customs authority have declined to release the goods by citing food safety issues and valuation dispute. After a gap of about 13 months, the food safety concerns were addressed and two of the consignments were released in January 2012. As regards the remaining three consignments, the customs authority struck to their stand that there was under valuation. Therefore, the challenging the notice issued by the customs authority, the importer filed W.P.(MD)No.6961 of 2012 and obtained an interim order in their favour. Even thereafter, the authority did not release the goods. Only after disposal of W.A.(MD)No.548 of 2012, the goods were ordered to be released in November, 2012. Thus, the goods could not be released only for the reason that they were detained by the customs authority. Clause 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009 states that the customs cargo services provider shall not charge any rent or demurrage on the goods detained by the customs authorities. Therefore, the importer cannot be fastened with any liability whatsoever. The statutory scheme is very clear. So long as the goods have been detained, the question of levying <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch any rent on the importer will not arise. This of course is subject to some caveats that have been laid down in the various precedents. If the importer is at fault, then of course, the customs authority may refuse to issue certificate as sought for by him. But in the case on hand, I note that there is absolutely no fault on the importer. The goods could not be released only on account of the detention proceedings initiated by the customs authority. This is a case, in which Clause 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009, will come into play. I, therefore, sustain the order impugned in W.P.(MD)No.15985 of 2012 to the extent, it states that there will be no charging of rent or demurrage on the goods of the importer.

16. Of course, I will have to deal yet another contention of the learned senior counsel. He would fall back on some of the provision of the Indian Contract Act, 1872 to drive home his point that the warehousing entity is a bailee and that therefore, it has charge on the goods warehoused by them. This contention will have to be negated in view of the categorical judgement of the Madras High Court in Balaji Dekors Vs. Commissioner of Customs, Commissionerate-III, Chennai, reported in 2017 (356) E.L.T. 2019 (Mad.). The learned Judge had categorically held that the relationship

between the parties is not contractual but one that involves the implementation of a statutory regulation. When the regulation uses the expression “shall not charge any rent or demurrage”, the warehousing entity is prohibited from charging any rent or demurrage during period of detention. Therefore, the order impugned in W.P.(MD)No.15985 of 2012 is sustained to the extent, it releases the importer of any obligation to pay any rent or demurrage.”

(e) It is also submitted by the learned senior counsel that despite the availability and issuance of a detention certificate/direction by the Customs authorities not to collect rent, demurrage, and other charges, if any CCSP proceeds to collect such charges, possibly forcibly or due to economic compulsions, they are bound to refund/return the amounts collected. This is in the light of the fact that the wording of Regulation 6(1)(l) does not distinguish between goods released with or without adjudication and consequent liabilities. In support of this argument, he placed reliance on the following judgments:

(i) Sahaj Impex Vs. Balmer Lawrie and Co. Ltd. and Another [2021 SCC OnLine Bom 70] <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch "15. Section 45 of the Customs Act under the heading 'clearance of imported goods' deals with restrictions on custody and removal of imported goods. Sub-section (1) says that save as otherwise provided in any law for the time being in force, 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 Chapter VIII which deals with goods in transit.

15.1. As per sub-section (2), the person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force, shall keep a record of such goods and send a copy thereof to the proper officer; shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.

15.2. Sub-section (3) deals with pilferation of imported goods in a customs area with which we are not presently concerned.

16. Section 141 of the Customs Act says that conveyances and goods in a customs area are subject to control of officers of customs. As per sub-section (1), all the conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of the Customs Act, be subject to the control of officers of customs. Sub-section (2) says that the imported or export goods may be received, stored, delivered, despatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.

17. Section 157 of the Customs Act provides the general power to make regulations.

18. In exercise of powers conferred by sub-section (2) of Section 141 with Section 157 of the Customs Act, the Central Board of Excise and Customs (briefly "the Board" hereinafter) have made a set of regulations called Handling of Cargo in Customs Areas Regulations, 2009 (briefly "the Regulations"

hereinafter). Regulation 2(1)(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.

18.1. Regulation 6 deals with responsibilities of Customs Cargo Service Provider. A large number of responsibilities to be discharged by Customs Cargo Service Provider are mentioned in Regulation 6. Relevant for the present case is the responsibility mentioned in clause (1) which says that the Customs Cargo Service Provider shall 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.

19. It is not in dispute that respondent No. 1 is a Customs Cargo Service Provider as defined in Regulation 2(1)(b) of the Regulations. Being so, it is under <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch a legal obligation to discharge the responsibilities as mandated under Regulation 6, more particularly in clause (1) thereof which clearly says that a Customs Cargo Service Provider 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. This position has been clarified by the Commissioner of Customs (Export) in the public notice No.26/2010 with the further clarification that Customs Cargo Service Providers shall allow the goods on production of a certificate issued from the proper officer certifying such period of seizure or detention or confiscation without charging and collecting any rent or demurrage for such period.

20. It is also not disputed that the goods imported by the petitioner vide bill of entry No. 7540462 dated 07.08.2018 were detained by the proper officer of the customs department for the period from 14.08.2018 to 06.02.2019 which has been certified by the Superintendent of Customs in the prescribed format further mentioning that the certificate was issued as per public notice No. 26/2010 dated 02.03.2010.

21. Therefore, for the period from 14.08.2018 to 06.02.2019, respondent No. 1 is under a legal obligation not to charge any rent or demurrage on the goods of the petitioner or on the container in which the goods have been stored and kept under its custody. Following the certificate dated 31.01.2019, it was also under a legal obligation to release the goods kept under its custody on or before 06.02.2019 to enable the petitioner to re-export the goods. Failure to do so has not only caused

prejudice to the petitioner but would also disentitle respondent No. 1 from claiming any rent and demurrage for the period beyond 06.02.2019 till release of the goods because such retention of goods would be clearly unlawful being in violation of Regulation 6(1)(l) of the Regulations and the public notice dated 02.03.2010.

22. That being the position, we do not agree with the submissions made by Mr. Mishra that the dispute between petitioner and respondent No. 1 being contractual, petitioner should be relegated to the forum of civil court for obtaining relief. That apart, respondent No.1 being a Government of India enterprise has to act in a responsible manner. Moreover, being a Customs Cargo Service Provider, it is subject to the control of the officers of the customs department and cannot act in defiance of the law and of lawful directions of the customs authorities.

23. Thus having regard to the above, we direct respondent No.1 to release the goods imported by the petitioner vide bill of entry No. 7540462 dated 07.08.2018 kept in container No. TTNU9895081 forthwith to enable the petitioner to re-export the same in terms of letter dated 28.11.2018 of the Deputy Commissioner of Customs, Special Investigation and Intelligence Branch.

24. The writ petition is accordingly allowed. However, there shall be no order as to costs."

(ii) Green Gold Timbers Pvt. Ltd. Vs. Commissioner of Customs (Special Civil Application No.10082 of 2020 decided on 12.01.2022) <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch "1. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs :

"(A) Your Lordships may be pleased to admit and allow this petition. (B) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, by declaring that, the detention charges of Rs.17,51,964/- imposed by respondent no.2 and ground rent charges of Rs.7,64,934/-imposed by respondent no.3 are unjust and illegal in terms of Regulations, 2009;

(C) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing respondent Nos.2 and 3 to refund the amount of Rs.25,16,898/-

(Rs.17,51,964/- to be refunded by respondent no.2 and Rs.7,64,934/- to be refunded by respondent no.3) along with interest as may be deemed fit by this Hon'ble Court to the petitioner in the interest of justice;

(D) Your Lordships may be pleased to grant such other and further relief as may be deemed fit and proper in the facts and circumstances of the case."

2. We have heard Mr.Jigar Patel, the learned counsel appearing for the writ-applicant, Mr.Hardik Modh, the learned counsel appearing for the respondent no.3 and Mr.Priyank Lodha, the learned standing counsel appearing for the respondent no.1.

3. The short point that falls for our consideration is, whether the customs cargo service provider (respondent no.3 herein) is entitled to 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.

4. The aforesaid issue is no longer res integra in view of a recent decision of the Bombay High Court in the case of Sahaj Impex vs. Balmer Lawrie & Co. Ltd. and another (Writ Petition No.10492 of 2019 decided on 18th January 2021), wherein the Bombay High Court, from paragraph-15 onward, has observed as under :

"15.Section 45 of the Customs Act under the heading 'clearance of imported goods' deals with restrictions on custody and removal of imported goods. Sub-section (1) says that save as otherwise provided in any law for the time being in force, 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 Chapter VIII which deals with goods in transit.

15.1. As per sub-section (2), the person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force, shall keep a record of such goods and send a copy <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch thereof to the proper officer; shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed. 15.2. Sub-section (3) deals with pilferation of imported goods in a customs area with which we are not presently concerned.

16.Section 141 of the Customs Act says that conveyances and goods in a customs area are subject to control of officers of customs. As per sub-section (1), all the conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of the Customs Act, be subject to the control of officers of customs. Sub-section (2) says that the imported or export goods may be received, stored, delivered, despatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.

17.Section 157 of the Customs Act provides the general power to make regulations.

18. In exercise of powers conferred by sub-section (2) of section 141 read with section 157 of the Customs Act, the Central Board of Excise and Customs (briefly "the Board"

hereinafter) have made a set of regulations called Handling of Cargo in Customs Areas Regulations, 2009 (briefly "the Regulations" hereinafter). Regulation 2(1)(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.

18.1. Regulation 6 deals with responsibilities of Customs Cargo Service Provider. A large number of responsibilities to be discharged by Customs Cargo Service Provider are mentioned in Regulation 6. Relevant for the present case is the responsibility mentioned in clause (l) which says that the Customs Cargo Service Provider shall 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.

19. It is not in dispute that respondent No. 1 is a Customs Cargo Service Provider as defined in Regulation 2(1)(b) of the Regulations. Being so, it is under a legal obligation to discharge the responsibilities as mandated under Regulation 6, more particularly in clause (l) thereof which clearly says that a Customs Cargo Service Provider shall not charge any rent or demurrage on the goods seized or detained or confiscated by <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive Officer or Examining Officer as the case may be. This position has been clarified by the Commissioner of Customs (Export) in the public notice dated 26/2010 with the further clarification that Customs Cargo Service Providers shall allow the goods on production of a certificate issued from the proper officer certifying such period of seizure or detention or confiscation without charging and collecting any rent or demurrage for such period.

20. It is also not disputed that the goods imported by the petitioner vide bill of entry No. 7540462 dated 07.08.2018 were detained by the proper officer of the customs department for the period from 14.08.2018 to 06.02.2019 which has been certified by the Superintendent of Customs in the prescribed format further mentioning that the certificate was issued as per public notice No. 26/2010 dated 02.03.2010.

21. Therefore, for the period from 14.08.2018 to 06.02.2019, respondent No. 1 is under a legal obligation not to charge any rent or demurrage on the goods of the petitioner or on the container in which the goods have been stored and kept under its custody. Following the certificate dated 31.01.2019, it was also under a legal obligation to release the goods kept under its custody on or before 06.02.2019 to enable the petitioner to re-export the goods. Failure to do so has not only caused prejudice to the petitioner but would also disentitle respondent No. 1 from claiming any rent and demurrage for the period beyond 06.02.2019 till release of the goods because such retention of goods would be clearly unlawful being in violation of Regulation 6(1)(l) of the Regulations and the public notice dated 02.03.2010.

22. That being the position, we do not agree with the submissions made by Mr. Mishra that the dispute between petitioner and respondent No. 1 being contractual, petitioner should be relegated to the forum of civil court for obtaining relief. That apart, respondent No.1 being a Government of India enterprise has to act in a responsible manner. Moreover, being a Customs Cargo Service Provider, it is subject to the control of the officers of the customs department and cannot act in defiance of the law and of lawful directions of the customs authorities.

23. Thus having regard to the above, we direct respondent No.1 to release the goods imported by the petitioner vide bill of entry No. 7540462 dated 07.08.2018 kept in container No. TTNU9895081 forthwith to enable the petitioner to re-export the same in terms of letter dated 28.11.2018 of the Deputy Commissioner of Customs, Special Investigation and Intelligence Branch."

5. Thus, the observations made by the Bombay High Court in paragraph-

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 19 clinches the issue. The respondent no.3, as the customs cargo service provider as defined in regulation No.2(1)(b) of the Regulations, is not entitled in law to charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or any other authority as referred to above.

6. This position seems to have been further clarified by the Commissioner of Customs (Export) by way of a public notice No.26/2010 with the further clarification that the customs cargo service providers shall allow the goods on production of a certificate issued from the proper officer certifying such period of seizure or detention or confiscation without charging and collecting any rent or demurrage for such period.

7. On account of the contractual relationship if the respondent no.3 wants to recover any other dues from the writ- applicant, it is open for the respondent no.3 to approach the appropriate forum for obtaining appropriate relief.

8. In view of the aforesaid, this writ-application succeeds and is hereby allowed.

9. The amount of Rs.7,64,934.00 recovered by the respondent no.3 towards the demurrage of the goods of the writ- applicant shall be refunded within a period of four weeks from the date of receipt of the writ of this order."

(f) The learned senior counsel further referred to the following orders passed by the learned Judges in (i)Y.V.N.Traders Vs. Commissioner of Customs Chennai [2017 (355) E.L.T. 531 (Mad), wherein, it was held that since order of waiver was not obeyed, demurrage charges/ detention charges to be waived from 23.05.2017 till date of container's release. (ii) Isha Exim Vs. ADG, Directorate of Revenue Intelligence [2018 (13) G.S.T.L. 273 (Mad)], in which, it was observed that for goods detained at instance of DRI, the importer is entitled to certificate for waiver of demurrage and detention charges and the DRI should also ensure that certificate is complied with by steamer agent and container terminal. (iii) Priyanka Enterprise Vs. Joint Commissioner of Customs, Chennai [2018 (360) <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Customs, Chennai [2018 (360)

E.L.T. 962 (Mad.)], wherein, it was held that the goods having been directed to be released on certain conditions, the importer is entitled to certificate of waiver of detention / demurrage charges till the date of release of goods and it cannot be restricted to an earlier date i.e., the date on which goods permitted to be stored in a public warehouse under section 49 of the Customs Act, 1962. (iv) Giridhari Homes Pvt. Ltd., Vs. Principal Commissioner of Customs [2018 (361) ELT 463 (Mad.)], in which, it was held that the failure by the CFS to release the goods despite waiver certificates being issued to the petitioner the department ought to initiate action to cancel the licence / permission granted to CFS when found to be flouting the orders of the department. (v) Royal Impex Vs. Commissioner of Customs , Chennai [2019 (366) E.L.T. 820 (Mad.)], wherein, it was held that Customs Cargo Provider not to charge any rent or demurrage on the goods seized or detained or confiscated by Superintendent of Customs or Appraiser or Inspector of Customs or Preventive Officer or examining officer, in view of Rule 6(1)(l) of HCCA Regulations.

(g) On facts, the learned senior counsel pointed out that the importers, between August 2017 and March 2018, imported Solar PV Modules classified under CTH 8541. However, the Customs authorities detained them under CTH 8501, leading to further investigation. Despite provisional release upon furnishing <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch bank guarantee/bond, the importers were compelled to pay ground rent and detention/demurrage charges for the goods' release. Following a CBIC Circular in April 2018 clarifying the correct classification under CTH 8541, the importers sought waivers for the charges, supported by Detention Certificates from the Deputy Commissioner of Customs. Though the regulatory mandates and directions were given by the Customs Authorities, the CFS/Shipping Lines refused refunds. Thus, the learned senior counsel would submit that the importers filed complaints with the Customs authorities, but no action was taken. Subsequently, they filed writ petition bearing nos.15490, 16359, 17114 & 17433 of 2020 seeking compliance of the regulations and Detention Certificates. However, these writ petitions were dismissed by the learned Judge by the order impugned in W.A.Nos.2175 of 2021, 2235 of 2021, 2230 of 2021 and 2250 of 2020.

(h) The learned senior counsel emphasizes that the learned Judge erred in dismissing the writ petitions on the ground of disputed facts, ignoring the law laid down in Vanathi Exports Private Limited Vs. Commissioner of Customs (Exports), Chennai [2020 (374) ELT 490 (Mad.) (2020)]. That apart, the learned Judge failed to consider that under Regulation 11(1), the Commissioner of Customs can suspend or revoke CCSP approval for non-

compliance with regulations, thus reinforcing the binding nature of the regulations.

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(i) The learned senior counsel further submits that the writ petitions filed seeking enforcement of a mandate provided under the Regulations against the entities acting as extended arms of the Customs authorities, namely CFS/Shipping Lines, squarely fall within the purview of Article 226 of the Constitution of India. The Act and Regulations unambiguously designate CFS/Shipping Lines as integral to Customs Authorities' functioning, obliging them to comply with the Regulations. This obligation is further underscored by Sections 2(11) and 141 of the Act, which delineate Customs Area

control and the appealability of Detention Certificates issued by the Customs authorities. Lastly, he submitted that payments made under duress for immediate goods release do not constitute a waiver of the statutory prohibition against charging demurrage.

With these submissions and case laws, the learned senior counsel prayed for appropriate orders in these matters.

24.1.2.(a) Continuing further, Mr.B.Sathish Sundar, learned counsel appearing for the importers in the respective writ petitions and writ appeals would submit that the detention certificate is a statutory edict and not merely a contractual matter between the importer/exporter and the CCSP. In support of the same, he placed reliance on the following judgments:

(i) Balaji Dekors Vs. The Commissioner of Customs, Commissionerate III and Ors. [2017 (356) ELT 219] "7. Regulation No. 6 of the Handling of Cargo in Customs Area <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Regulation, 2009, provides for "Responsibilities of Customs Cargo Service Provider". In terms of Regulation 6(1)(l), the customs cargo service provider shall 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.

8. The second respondent, in no uncertain terms, has certified that the goods were detained by the SIIB from 02.12.2016 to 27.12.2016 and issued an order on 28.12.2016 that the custodian (third respondent) shall not charge rent or demurrage for goods under detention. Thus, the third respondent cannot interpret the said communication, as the Regulations clearly provide that the custodian cannot charge any rent or demurrage on the goods detained by the second respondent. However in the case of W.P. No. 6452 of 2017, which concerns, M/s. Calyx Container Terminals, goods in question have been removed on 06.01.2017. Therefore, a levy is sought to be made for the period from 28.12.2016 to 06.01.2017. In my considered view this is unreasonable because after the order was passed on 28.12.2016, effective steps have been taken by the petitioner to clear the cargo and it has been done in the shortest possible time on 06.01.2017. Therefore, the third respondent should waive the rent or demurrage on the goods for the entire period i.e., from 02.12.2016 till it was cleared on 06.01.2017. With regard to the Container Terminal, the third respondent in W.P. No. 6453 of 2017, namely, M/s. K. Steamship Agencies, it appears that they have given only 25% waiver. This action of the third respondent is contrary to the statutory regulation namely, Regulation No. 6(1)(l). The third respondent M/s. K. Steamship Agencies Pvt., Ltd., having not questioned the order passed by the second respondent, dated 28.12.2016, are bound by the order and they have to proceed in letter and spirit as per the said order. The question of now interpreting the order as extending partial relief is not permissible as the Regulation uses the expression "shall not charge any rent or demurrage". This, mandates that the third respondent is prohibited from charging any rent or demurrage during the period of detention. This having been certified by the second respondent, there is no escape from the rigour of Regulation No. 6(1)(l). Thus, the matter is not contractual, but it involves the implementation of a statutory regulation. Therefore, the Writ Petition filed by the petitioner is maintainable."

(ii) Supreme Industries Limited Vs. Central Board of Indirect Taxes and Customs and Ors. [2021 (377) ELT 698 (Bom.)] "65. Having noted the rival stands as above, we may now advert to some of the relevant legal provisions.

66. Section 45 of the Customs Act under the heading "clearance of imported goods" deals with restrictions on custody and removal of imported goods. As per sub section (1), save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the https://www.mhc.tn.gov.in/judis W.A.Nos.2235 of 2021 etc. batch 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 Chapter VIM which deals with goods in transit. Sub section (2) says that the person having custody of any imported goods in a customs area whether under the provisions of sub section (1) or under any law for the time being in force, shall keep a record of such goods and send a copy thereof to the proper officer; shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed. Sub section (3) deals with pilferation of imported goods in a customs area with which we are not presently concerned.

67. Section 141 of the Customs Act says that conveyances and goods in a customs area are subject to control of officers of customs. As per sub section (1), all the conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of the Customs Act, be subject to the control of officers of customs. Sub section (2) says that the imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.

68. Before proceeding to the provision providing the power to make regulations, it may be noted that a conjoint reading of sections 45 and 141 of the Customs Act makes it clear that officers of customs have an overall control over the goods unloaded in a customs area or which are in custody of persons approved by the Principal Commissioner or Commissioner. However, as we shall see, such general power cannot be invoked by a customs officer to issue a detention cum demurrage certificate to a customs freight station or to a shipping line.

69. Section 157 of the Customs Act provides the general power to make regulations. In exercise of powers conferred by sub section (2) of section 141 read with section 157 of the Customs Act, Central Board of Excise and Customs, now called Central Board of Indirect Taxes and Customs (already referred to as "the Board" hereinabove) has made a set of regulations called the Handling of Cargo in Customs Areas Regulations, 2009 (already referred to as "the 2009 Regulations" herein-above). While Regulation 2(1)(b) defines 'customs cargo services provider', Regulation 6 deals with responsibilities of 'customs cargo services provider'. Clause (I) says that subject to any other law for the time being in force, a 'customs cargo services provider' shall not charge any rent or demurrage on the goods seized or detained or confiscated by the prescribed customs authority. We need not labour much on the 2009 Regulations because the "customs cargo services provider" as defined under the said Regulations i.e., respondent No. 5 has decided to comply with the detention cum

demurrage waiver certificates dated 10th November, 2020 and 16th November, 2020 issued by respondent No. 3.

70. The only obstacle now to the release of the goods of the petitioner is respondent No. 4 and its principal who have taken the stand that they are not customs cargo services provider and therefore the 2009 Regulations are not <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch applicable to them. The detention cum demurrage waiver certificate dated 16th November, 2020 is not in terms of Regulation 10(1)(l) of the 2018 Regulations and in any case it is not bound by the same.

71. This brings us to the Sea Cargo Manifest and Transhipment Regulations, 2018 (already referred to as "the 2018 Regulations" herein-above). In exercise of the powers conferred by section 157, read with sections 30, 30A, 41, 41A, 53, 54, 56, 98(3) and 158(2) of the Customs Act and in supersession of Import Manifest (Vessels) Regulations, 1971 and Export Manifest (Vessels) Regulations, 1976, the Board has made the 2018 Regulations which had come into force on and from 1st August, 2019. "Authorised carrier" has been defined in Regulation 2(1)(c) to mean an authorised sea carrier, authorised train operator or a custodian, registered under Regulation 3 and postal authority. Regulation 2(1)(d) defines the expression "authorized sea carrier" to mean the master of the vessel carrying imported goods, export goods and coastal goods or his agent or any other person notified by the Central Government. "Custodian" has been defined under Regulation 2(1)(f) to mean a person approved by the Principal Commissioner or the Commissioner of Customs, for the purposes of section 45 of the Customs Act. "Jurisdictional Commissioner of customs" has been defined under Regulation 2(1)(j) to mean the Commissioner of Customs who has granted registration under Regulation 3. Regulation 2(2) clarifies that any reference to a Commissioner of Customs shall also include a reference to Principal Commissioner of Customs for the purposes of the 2018 Regulations. Regulation 3 deals with registration of a person required to deliver arrival manifest or departure manifest. Regulation 10 deals with responsibilities of the authorised carrier under the 2018 Regulations. Sub regulation (1) lays down as many as 13 responsibilities of an authorised carrier. Paragraphs (1) and (m) are relevant. As per paragraph (1), an authorised carrier shall not demand any container detention charges for the containers laden with the goods detained by customs for purpose of verifying the entries under section 46 or section 50 of the Customs Act, if the entries are found to be correct. As per the proviso, the authorised carrier may demand container detention charges for the period commencing after expiry of sixty days. Paragraph (m) makes it clear that an authorised carrier shall abide by all the provisions of the Customs Act and the rules, regulations, notifications and orders issued thereunder.

72. Stand of respondent No. 4 is that its principal had entered into a contract with the petitioner by way of the bill of lading dated 4th June, 2020; therefore petitioner being in a contractual relationship with the principal is bound by the terms of the contract which includes payment of detention charges for use of the containers. It has also taken the stand that it is not bound by the detention cum demurrage waiver certificate dated 16th November, 2020 of respondent No. 3 because of the contract and also because the said certificate is not in terms of the 2018 Regulations.

73. We will deal with this aspect a little later. Before that let us examine the decisions cited at the bar by Mr. Singh as well as by Mr. Kamat.

74. In *Shipping Corporation of India Ltd. (supra)*, the question which fell <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch for consideration before the Supreme Court was whether the appellant who under the terms of the contract between it and the owner of the goods having a lien over the goods until the dues are paid could be forced to release the goods without charging any demurrage merely because the customs authorities issued a detention order for a specified period. We may note that this case was decided by the Supreme Court on 10th April, 2001. Supreme Court noted that the relationship between the importer and the carrier of the goods in whose favour the bill of lading has been consigned and who has stored the goods in his custody is governed by the contract between the parties. Reference was made to section 170 of the Indian Contract Act, 1872 which engrafts the principle of bailee's lien, namely, if somebody has received the articles on being delivered to him and is required to store the same until cleared for which he might have borne the expenses, he has a right to detain them until his dues are paid. It was held that such rights accruing in favour of the appellant could not be nullified by issuance of a certificate of detention by the customs authorities unless for issuance of such detention certificate any provisions of the Customs Act authorise. Thereafter it was noted that their Lordships were not shown any provisions of the Customs Act which would enable the customs authorities to compel the carrier not to charge demurrage charges the moment a detention certificate is issued. Referring to section 45(2)(b) of the Customs Act, Supreme Court held that the said provision cannot be construed to mean authorizing a customs officer to issue a detention certificate in respect of the imported goods which would absolve the importer from paying the demurrage charges and which would prevent the proprietor of the space from levying any demurrage charges. In the absence of any provision in the Customs Act entitling the customs officer to prohibit the owner of the space where the imported goods have been stored from levying the demurrage charges, levy of demurrage charges for non-release of the goods was held to be in accordance with the terms and conditions of the contract and was as such held to be a valid levy.

75. Supreme Court in *All India Power Engineer Federation (supra)*, was examining amongst others waiver as a legal concept in the context of a power purchase agreement under the Electricity Act, 2003. One of the questions which arose for consideration was when public interest is involved whether waiver can at all take the place of a right in favour of the generator of electricity under a power purchase agreement if the right also has an impact on consumer interest. This judgment delivered on 8th December, 2016 was in the context of infrastructure laws i.e. Electricity Act, 2003. In that case, the power purchase agreement between the parties provided for preconditions to be satisfied for declaration of a generating unit as commercial operation date i.e. readiness to commence commercial operations. The supplier contended that the procurers had waived the requirement of 95% of contracted capacity demand under the power purchase agreement and that it was only at the behest of procurers themselves that the commercial operation date was declared on 31st March, 2013. As a result of the commercial operation date being declared on 31st March, 2013, the tariff laid down in schedule 11 of the power purchase agreement became applicable with one year being treated as one day and the second year commencing from 1st April, 2013. In the facts of that case, it has been held that a consumer of electricity would have to pay substantially more by way of

tariff under the power purchase agreement if the first year is gobbled up in one day as <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch the second year's tariff is one paisa more than the first year's tariff and the third year's tariff is substantially more than the second year's tariff. In the circumstances, it has been held that if the waiver was to be accepted, it would impact the public interest in as much as consumers of electricity would have to pay substantially more for electricity consumed by them. Therefore, waiver could not be allowed. Evidently, this decision cannot be applied to the facts of the present case. While the petitioner is relying upon the detention cum demurrage waiver certificate dated 16th November, 2020, respondent No. 4 is banking upon the terms of the contract to not give effect to such a certificate. There is no element of public interest involved in the present case.

76. A division bench of this court in J.J. Polyplast Private Ltd. (supra) decided on 30th June, 2015 took the view that relation between the importer and the shipping line is purely contractual which is by virtue of a contract between the two parties. The contract being a contract of carriage of goods, it would be outside the purview of the powers of the customs officer to give any direction or to intervene in any dispute between the shipping line and the importer. Section 141 cannot be construed to confer power upon the customs officers to intervene in a contractual dispute between importer and shipping line. This court noted that no statutory provision or any rule conferring any legal right on the importer and the same being infringed at the hands of the respondents were brought to its notice to invoke its writ jurisdiction. As noted above, the decision in this case was rendered on 30th June, 2015 much before the 2018 Regulations came into effect and therefore this court had no occasion to examine the impact of the said Regulations.

77. We may now turn our attention to the decision of the Supreme Court in the case of Mumbai Port Trust (supra), on which much emphasis has been placed by both Mr. Singh, learned Additional Solicitor General and Mr. Kamat, learned counsel for respondent No. 4. In that case, the High Court of Punjab and Haryana had allowed the writ petition filed by the importer and held that detention of the goods imported by the importer by the customs at the instance of the Directorate of Revenue Intelligence was illegal; therefore, the High Court directed that the goods imported by the importer should be released to it on payment of customs duty, further directing that Mumbai Port Trust was not entitled to charge any demurrage in view of Regulation 6(1) of the 2009 Regulations since customs had issued the detention certificate. Detention charges demanded by the shipping line were ordered to be borne by the Directorate of Revenue Intelligence and customs besides imposing cost on the customs department. This judgment was rendered on 27th July, 2017. In the above context, Supreme Court noted that Mumbai Port Trust is a statutory body constituted under the Major Port Trusts Act, 1963. Tariff authority for major ports is constituted under section 47A of the said act and imposition and recovery of rates at major ports are fixed by the tariff authority which shall notify a scale of rates under section 48. Supreme Court also considered various provisions of the Customs Act including section 160(9) which provides that nothing in the Customs Act shall affect any law for the time being in force relating to the constitution and powers of any port authority in a major port. Referring to previous decisions of the Supreme Court, it has been held that port trusts are public representative <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch bodies entrusted by the legislature with authority to frame scale of rates which are approved by the Central Government. Such rates thus have the force of law. Port trusts are under a statutory obligation to

render services of various kinds and are thus entitled to charge demurrage and other charges from the importer even in respect of those periods during which the importer was unable to clear the goods from the premises of the port for no fault or negligence on the part of the importer. Similar is the position in respect of International Airport Authority constituted under the International Airport Authority Act, 1971. In the circumstances, this Court held that neither the Customs Act nor the 2009 Regulations can impinge upon the statutory power of major port trusts to levy rates under the Major Port Trusts Act, 1963. Supreme Court also noted that Regulation 6(1)(l) of the 2009 Regulations begins with the words "subject to any other law for the time being in force". Therefore, it is obvious that the 2009 Regulations are subject to any other law including the Major Port Trusts Act, 1963. It was in that context Supreme Court held that as far as detention charges are concerned, this is a private contract between the importer and the carrier i.e. the shipping line. Directorate of Revenue Intelligence or the customs authorities can be directed to pay the demurrage/detention charges only when it is proved that the action of the said authorities is absolutely mala fide or is in gross abuse of power. Even if an importer feels that it has been unjustly dealt with, still it must clear the goods by paying the charges due and then claim reimbursement from the customs authority. Therefore, Supreme Court held that the High Court could not have in a writ proceeding directed the Directorate of Revenue Intelligence or the customs to pay the detention charges to the shipping line since these were to be paid on the basis of a contract between the importer and the shipping line. The *raison d'être* of the Supreme Court ruling can be found in paragraphs 29 to 32 which we quote hereunder:-

"29. Assuming for the purpose of the decision of this case that Mumbai Port Trust is a custodian or cargo service provider, the question that arises is whether these Regulations apply to the Mumbai Port Trust. These Regulations have been framed under Section 157 of the Customs Act. Section 160(9) of the Customs Act clearly lays down that nothing in the Act shall affect the power of the Port Authority in a Major Port, as defined in the Indian Major Port Trusts Act, 1963. It is not disputed before us that the Mumbai Port Trust is a major port.

30. As already explained hereinabove, the Mumbai Port Trust has the power and authority to levy rates including demurrage as fixed by the Tariff Authority under Section 47A of the Act. This right of the Port Trust is not affected either by the provisions of the Customs Act or by the Regulations of 2009. Section 160(9) of the Customs Act clearly lays down that the provisions of the Customs Act shall not in any manner affect the constitution and powers of any port authority in a major port. This will include the right of the major port authority that is a Major Port Trust to levy and charge rates and demurrage.

31. As far as 2009 Regulations are concerned, these are the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Regulations framed under the Customs Act. Regulations are in the nature of subordinate legislation. There can be no manner of doubt that subordinate legislation that too a legislation framed by a Board under the Customs Act cannot in any manner affect the power and authority of the Major Port Trust, statutorily vested in it.

32. Neither the regulations nor the provisions of the Customs Act can impinge or in any manner affect the statutory power of the Major Port Trusts to levy rates under the Act. In fact, the Authority that framed the Regulations was itself aware of this because Regulation 6(1) itself begins with the words "subject to any other law for the time being in force". It is, therefore, obvious that the Regulations are subject to any other law including the Major Port Trust Act. Therefore, these Regulations cannot in any manner affect the right of the Port Trust. We are, therefore, of the view that the High Court erred in holding that the law settled by this Court in a catena of judgments referred to above was no longer applicable in view of the 2009 Regulations. Reliance placed by the Union of India on Section 128 of the Major Port Trusts Act is totally misplaced. This provision only deals with the right of the Central Government to collect customs duties. It does not deal with the rights of the Port Trust to collect rates including demurrage."

78. The above decision of the Supreme Court in Mumbai Port Trust (supra) is clearly distinguishable and would not be attracted to the facts of the present case. In addition to the distinguishing features clearly discernible from paragraphs 29 to 32 which we have extracted above, we also find that relationship between the petitioner and the shipping line is contractual being bound by the bill of lading dated 4th June, 2020, but in this case respondent No. 3 has issued two detention cum demurrage waiver certificates dated 10th November, 2020 and 16th November, 2020, one to the container freight station i.e. respondent No. 5 and the other to respondent No. 4 not to demand any rent or demurrage or detention charges. In the certificate addressed to respondent No. 4, it has been clarified that the goods are detained goods and hence as per Regulation 10(1)(l) of the 2018 Regulations, it was directed not to demand any detention charges and to facilitate clearance of the goods immediately. Official respondents in their reply affidavit have stated that the container freight station i.e., respondent No. 5 has expressed its willingness to comply with the detention cum demurrage waiver certificate. It is only the shipping line which has raised objection contending that it is not bound to comply with the detention cum demurrage waiver certificate dated 16th November, 2020. Unlike Mumbai Port Trust, shipping line in this case is a private entity espousing its contractual right and not a statutory right. In case of Mumbai Port Trust, it has the statutory authority under section 47A of the Major Port Trusts Act, 1963 to levy various rates exercise of which power cannot be affected because of section 160(9) of the Customs Act. Even otherwise also, the 2009 Regulations being a subordinate legislation cannot in any manner affect the power and authority of the Mumbai <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Port Trust statutorily vested in it.

79. That apart, all the decisions relied upon by the respondents were rendered before the 2018 Regulations came into effect and therefore, the effect of the 2018 Regulations vis-a-vis claim of the shipping line to detention charges when Regulation 10(1)(l) thereof has been invoked by the customs authority could not be discussed or analyzed. We may also highlight the fact that unlike Regulation 6(1)(l) of the 2009 Regulations, Regulation 10(1)(l) of the 2018 Regulations is not subject to any other law for the time being in force.

80. We have already noted that the 2018 Regulations have come into force on and from 01.08.2019. Regulation 10(1) makes it abundantly clear that an authorised carrier shall not demand any container detention charges for the containers laden with goods detained by the customs for the purpose of verifying the entries made under section 46 or section 50 of the Customs Act which deal with entry of goods on importation and entry of goods for exportation respectively if the entries are found to be correct though as per the proviso, the authorised carrier may demand container detention charges after sixty days. Regulation 10(1)(m) makes it incumbent upon an authorised carrier to abide by all the provisions of the Customs Act and the rules, regulations, notifications and orders issued thereunder.

81. The 2018 Regulations is a piece of subordinate legislation having the force of law. Since it has been framed by the Board in exercise of the powers conferred by section 157 read with sections 30, 30A, 41, 41A, 53, 54, 56, 98(3) and 158(2) of the Customs Act, certainly the 2018 Regulations have statutory force. Respondent No. 3 with the approval of respondent No. 2 has issued the detention cum demurrage waiver certificate dated 16.11.2020 certifying that the subject goods are detained goods and directing respondent No. 4 not to demand any detention charges in respect of the containers as per Regulation 10(1)(l) of the 2018 Regulations and thus facilitate clearance of the goods immediately. Respondent No. 4 has only collaterally questioned the effectiveness of such a certificate as being not bound by it. It has not stated anything in the reply affidavit regarding any independent challenge made by it to the said certificate. Question is whether it is open to respondent No. 4 or for that matter a shipping line to contend that it will not comply with the mandate of Regulation 10(1)(l) of the 2018 Regulations, more so when Regulation 10(1)(m) makes it clear that the authorised carrier shall be bound by the provisions of the Customs Act and all the rules, regulations, notifications and orders issued thereunder.

82. 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.

83. 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*.

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84. A full bench of the Allahabad High Court in (1968) IILLJ 483 All, S.P. Srivastava Vs. 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.

85. In *Ganga Retreat and Towers Ltd. Vs. 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 Vs. 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.

86. Again in *State of Rajasthan Vs. 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 Concession 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.

87. 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.

88. 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 <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 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."

(b) The learned counsel further submitted that the only exception to Regulation 6(1)(l) is the existence of "any other law for the time being in force".

This implies that if there is any other law or policy governing the waiver of detention and demurrage charges, it will apply as an exception to the stated regulations. Otherwise, in the absence of any other law currently in force, the HCCA Regulations 2009, and SCMTR, 2018, must be fully enforced. To substantiate the same, he referred to the following judgments:-

(i) Trip Communication Pvt. Ltd. Vs. Union of India and Others [2014 (302) ELT 321 (Del.)] "28. Section 141 of the Customs Act, 1962 lays down as under:

'Section 141. Conveyances and goods in a customs area subject to control of officers of customs.-(1) All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of customs.

(2) The imported or export goods may be received, stored, delivered, despatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.'

29. Section 141 of the Customs Act, 1962 stipulates that the conveyances and goods in a customs area are subjected to the control of the officers of customs and are to be handled in a customs area in such a manner as may be prescribed and responsibilities of a person engaged in the receiving, storing, delivering, dispatching and otherwise handling import or export goods in customs area shall be such as may be prescribed by the customs authorities.

30. The above noted sections of the Customs Act postulate a scheme or a procedure whereby goods which are imported into a customs area immediately come into the control and power of the officers of the customs. The customs authorities are empowered under the Act to appoint persons or officers who are <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch responsible for receiving, storing, delivering, despatching and handling goods in the customs areas. Under certain circumstances, the customs authorities may permit storage of imported goods in a warehouse pending clearance on a application by the importer, where goods cannot be cleared within a reasonable time (Section 49) or warehoused in a public or private warehouse (Section 60,

61).

31. The Regulation 6(1)(I) of HCCAR lays down as under:

6. Responsibilities of Custom Cargo Service provider:

(1) The Custom Cargo Service provider shall:-

(a)....

.....

(i) subject to any other law for the time being in force, shall not charge any rent, demurrage on the goods seized or detained or confiscated by the proper officer.

32. The Airports Authority of India, is an authority established under the Airports Authority of India Act, 1994 (hereinafter referred to as, 'the AAI Act'). In terms of the said Act, all rights, powers, authorities, privileges and ownership in respect of all property movable or immovable airports of India. The functions and powers of AAI include establishment of warehouses and cargo complex at the airports for storage and processing of the goods at the terminals.

33. Under the provision of the AAI Act, AAI is empowered to make lease of premises of Airport to carry out some of functions under the Act. AAI, for overall public interest granted some of its functions, being the functions of operating, maintaining, developing, designing, construction, upgradation, modernisation, finances and managing the airport to the Delhi International Airport Private Limited, (DIAL for short) under the operation, management and developing agreements (OMDA) dated 4.4.2006 which agreement further empowers DIAL to sub contract any activity covered by OMDA.

34. The Government of India formulated Airports Economic Regulatory Authority of India (AERA for short) under the Airport Economic Regulatory Authority of India Act, 2008. The AERA was given the responsibility of providing and fixing demurrage charges in respect of storage, processing and handling of Cargo at the terminal.

35. By concession agreement dated 24.8.2009, CELEBI has been granted sub-contract by DIAL for the purposes of upgradation, modernisation, finances, operation and maintenance and management and for providing service at the Cargo Terminal of the said airport. CELEBI handles Cargo at the terminal and provide service relating to processing, storage and follows the instructions, guidelines, circulars and notifications formulated by Ministry of Civil Aviation. CELEBI collects charges as per the orders, directions, policies, guidelines and regulations formulated by Ministry of Civil Aviation, AERA, AAI, and pays the same to DIAL and DIAL in turn pays the same to AAI.

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36. The AAI has framed regulations in exercise of powers conferred under the AAI Act. The regulations relied upon by the respondent CELEBI as applicable to the present case are the Airports Authority of India (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail) Regulations, 2003 (hereinafter referred to as, 'the Regulation'). As per the said Regulation, the Airport Authority fixes the charges for processing of the Cargo and also formulates Policy for Waiver of such demurrage charges. The relevant portion of the policy relating to waiver of demurrage charges (Cargo) lays down as under:

"10.1 GENERAL 10.1.1 Subject to such policy, rules and procedures as may be described the authorities specified hereunder are authorised to sanction, in consultation with the Finance and Accounts Department, remission/waiver of demurrage charges regarding Cargo Operation.

10.1.2. ...

.....

10.1.10 Demurrage charges shall not be waived where:

- (a) Any fine/penalty/personal penalty/warning is imposed by the Customs Authority.
- (b) Delay arose by reason of dispute in the assessable value or for revalidating or correcting the license in ordinary course of appraisal."

37. The Policy framed by the AAI lays down that the authorities specified are authorised to sanction, in consultation with the Finance and Accounts Department, remission/waiver of demurrage charges regarding Cargo Operation. It further lays down that Demurrage charges shall not be waived where any fine/penalty/personal penalty/warning is imposed by the Customs Authority or where the delay arose by reason of dispute in the assessable value or for revalidating or correcting the license in ordinary course of appraisal.

38. Section 156 of the Customs Act lays down the general rule making power of the central government to make rules to carry out the purposes of the Act and Section 157 lays down the power of the Board to make regulations to carry out the purposes of the Act. Under the customs Act, the custom authorities are concerned with the setting up of public or private warehouses and for storage, removal and handling of imported goods in a customs area.

39. The Handling of Cargo under Customs Area Regulations, 2009 have been framed to provide for the manner in which the imported goods/export goods shall be received, stored, delivered or otherwise handled in a customs area. The regulations also prescribe the responsibilities of the persons engaged in <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch aforesaid activities.

40. The custom authorities are concerned with the receiving, storing, delivering and handling of cargo in a custom area. The custom authorities are not concerned with the upgradation, modernisation, finances, operation and maintenance and management and provision of services at the Cargo Terminal of the Airport, which is the function of the AAI. The custom authorities are also not concerned with the responsibility of providing and fixing demurrage charges in respect of storage, processing and handling of Cargo at the terminal, which responsibility is of the AERA."

41. The Regulations of the AAI of which the Policy for Waiver of demurrage charges is a part specifically deals with the Storage and Processing of Cargo, Courier and Express Goods and Postal Mail. The Airport Authority fixes the charges for processing of the Cargo and has thus formulated the Policy for Waiver of such demurrage charges.

42. The custom authorities it appears issues certificate for waiver in every type of case irrespective of the fact whether the importer is at fault or not. The custom authorities have issued certificate for waiver of the demurrage charges in both the cases at hand. In one case the release of the goods are on provisional basis pending adjudication and in the other there is imposition of both fine and

penalty. These are not cases where the importer has been held to be not at fault. In one case the Importer has been found to be at fault and penalty and fine imposed. The importer has accepted the said order. In the other case adjudication proceedings are pending and are yet to be finalised.

43. There is an overlap in the Policy for Waiver framed by AAI and the HCCAR. Though initially there appears to be a conflict between the policy and the regulations but on closer scrutiny it is apparent that they can both be harmoniously construed and coexist.

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 mis- declaration, mis-description, 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.

45. The regulations frames in 2009 themselves stipulate that they are subject to any law for the time being in force and as such the regulations would be applicable in terms of the Policy for Waiver framed by the AAI in 2003.

46. In case the HCCAR were to be made applicable in all cases then the result would be that in no case where there is a fine, penalty, personal penalty and/or warning imposed by the customs authorities CELEBI would be able to charge demurrage charges. Custom authorities are issuing waiver directions even in cases where the importers are clearly at fault and fine, penalty, personal penalty and/or warning has been imposed by the customs authorities. Even in <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch cases of mis-declaration, undervaluation and concealment, the certificates are being issued. This is clearly giving premium to dishonesty. The waiver should be granted in genuine cases where the importers are ultimately found not at fault. It cannot be that all importers honest and dishonest are treated equally."

(ii) *Muscles Fusion Fze vs The Principal Commissioner Of Customs (IMP), ACC, New Delhi* [2017 (354) ELT 525 (Del.)] "25. The question that then arises is whether the Petitioner is entitled to waiver of demurrage/rent charges. This issue is no longer res integra. In *Trip Communication* (supra), this Court has discussed the law on the subject after taking into account the various prevalent policies etc. The Court has held as under:

".....

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 case where the importers have indulged in misdeclaration, misdescription, undervaluation 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.

.....

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 custom 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.

49. Where the importer is clearly at fault and fine, penalty, personal penalty and/or warning is imposed by the customs authorities, making the regulations applicable and granting the benefits of waiver would be clearly unreasonable and would grant benefit of waiver, with the person who has provided space suffering. This was and is not the intention and purpose behind HCCAR. Regulation recognises and accepts that any other law in force is not abrogated or repealed. The existing provision applicable stands protected."

The above decision clearly holds that there would be <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch no automatic exemption of demurrage/rent charges.

26. In the present case, the arrival of the consignment in Delhi, which contains prohibited goods, is clearly not innocent and is contrary to law. The goods being prohibited goods and having been confiscated, even as per Trip Communication, the Petitioner would not be entitled to waiver of demurrage/rent charges. The Petitioner, having accepted the finding that the consignment contained prohibited goods and was liable for confiscation, cannot claim waiver of demurrage/rent charges to the detriment of CELEBI, which was not even heard by the ACC (Imports). None of the decisions, relied upon by the Petitioner, would support the position that is being canvassed by the Petitioner."

(iii) Global Impex and Others Vs. Manager, CELEBI [2019 SCC OnLine Del 11918] "106. From the afore-cited decisions, the following clear principles emerge:

(i) The custodian has a lien over the imported goods, consigned to its custody. This lien may be statutory, as provided under the IAA Act, all the Major Port Trusts Acts, or contractual. It may also be relatable to Sections 170 and 171 of the Indian Contract Act, 1872.

(ii) This lien entitles the custodian to retain hold of the goods, consigned to its custody, till all its dues, including ground rent and demurrage, are paid.

(iii) The Customs authorities have no power, or the jurisdiction, to issue any instruction, to the custodian, requiring the custodian to waive, in whole or in part, the demurrage chargeable by it. Of course, this would be subject to any stipulation, in

the statutory or other instrument governing the affairs of the custodian, to the effect that, where the detention certificate was issued by the Customs authorities, the importer would be entitled to waiver of demurrage, in whole or in part. In the absence of any such stipulation, statutory or otherwise, the Customs authorities could not, by issuance of the detention certificate, or by any other communication, direct the custodian not to charge demurrage, or to waive the whole, or part, of the demurrage chargeable by it.

(iv) In applying the above principles, the issue of whether the goods in question had been licitly, or illicitly, imported, as also the detention of the goods, by the Customs authorities, was justified or unjustified, bona fide or mala fide, are entirely irrelevant.

(v) The liability to pay the demurrage is on the importer, irrespective of the justifiability, or unjustifiability, of the seizure and detention of the goods by the Customs authorities. Even in a case in which the seizure is entirely unjustified, the importer would, in the first instance, have to pay demurrage, to the custodian and, thereafter, pursue, with the Customs authorities, for obtaining reimbursement of the amount.

(vi) The only exception, to the application of the above principles, is in a <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch case in which the custodian himself is guilty of unconscionable delay, or of continuing to hold onto the goods without good reason or authority.

(vii) Rates of demurrage were deliberately made prohibitive, so as to discourage importers from consigning goods to the custody of the Port Trust or other custodian, and to avoid congestion at the port.

Does Regulation 6(1)(l) of the Handling of Cargo Regulations change this position?

107. The Handling of Cargo Regulations were notified vide Notification 26/2009-Cus (NT), dated 17th March, 2009, issued in exercise of the powers conferred by Section 141(2), read with Section 157 of the Customs Act. Regulation 6(1)(l), which stands extracted in para 2 hereinabove, stipulates that the Customs Cargo Service provider shall, subject to any other law for the time being in force, not charge any rent or demurrage on goods seized, detained, or confiscated by the Customs authorities. To our mind, it appears a trifle incongruous that, even in a case where the goods are confiscated, i.e. where the import is illicit and in contravention of the provisions of the Customs Act, the importer should escape demurrage. As the legality of Regulation 6(1)(l) is, however, not in question in these proceedings, we refrain from opining further in that regard.

108. Regulation 6(1)(l) makes for fairly plain reading. It completely injuncts the Customs Cargo Services provider from charging demurrage or rent, on the seized, detained, or confiscated goods, subject, however, to any other law for the time being in force.

109. There is no dispute about the fact that CELEBI is a "Customs Cargo Services provider", as defined in clause (b) of Regulation 2 of the Handling of Cargo Regulations.

110. Given the law, relating to the charging of demurrage, as it emerges from the decisions cited hereinabove, the highest that the petitioner could contend, therefore, is that there is no "other law for the time being in force", as would mitigate the effect of Regulation 6(1)(l) of the Handling of Cargo Regulations.

111. Per contra, in order to escape the rigour of Regulation 6(1)(l), the Customs Cargo Service provider – in the present case, CELEBI – would have to establish that its entitlement, to charge demurrage, is relatable to "any other law for the time being in force".

131. We have no manner of doubt, whatsoever, in our mind, that in view of the above factual and legal position, the charging of demurrage, by CELEBI, is by authority of statute, or contract sanctified by statute. CELEBI charges demurrage as per the clauses of the agreement between CELEBI and DIAL which, in turn, was entered into, in accordance with Article 2.1 of the OMDA which, again in turn, was authorised by Section 12A of the AAI Act.

132. This, in our view, clearly constitutes, "law for the time being in force, within the meaning of the expression, as employed in Regulation 6(1)(l) of the Handling of Cargo Regulations.

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133. In *Shrimani Sugar Mills v. Governor General In Council* (AIR 1954 All 354), it has been held that the expression "law for the time being in force", concerning any particular matter, "whether it be the collection of revenue or anything else, is a comprehensive expression which includes, not one particular statute, but the whole body of law, whether in one or more statutes or outside a statute altogether, which for the time being governs that particular matter". An administrative order, which has no authority of statute, however, is not law, as held in *Dwarka Nath Tiwari v. State of Bihar* (AIR 1959 SC 249).

134. The expression "law" has also been, from time to time, expansively interpreted.

135. In *Rashid Ahmed v. Municipal Board, Kairana* (AIR 1950 SC 163), it was held that, "law" includes bye-laws made by local authorities. A resolution of the government, fixing dearness allowance was held, in *State of Madhya Pradesh v. G.C. Mandawar* (AIR 1954 SC 493), to constitute "law". As employed in Article 13 of the Constitution of India, it stands authoritatively held, in *Ram Krishna Dalmia v. Justice S.R. Tendolkar* (AIR 1958 SC 538), that the expression "law" includes any notification or order. To the same effect, is *Narender Kumar v. U.O.I.* (AIR 1960 SC 430). A scheme, drawn for running motor carriages, was held to constitute "law", in *H.C.Narayanappa v. State of Mysore* (AIR 1960 SC 10730). In *Sant Ram v. Labh Singh* (AIR 1965 SC 3314) it was held that the expression "law" means any ordinance, order, bye-law, rules, regulations, notification, custom or usage, having, in the territory, the force of law. In *Raj Kumar Narsingh Pratap Singh Deo v. State of Orissa* (AIR 1964 SC 1793), the Supreme Court held that "law generally is a body of rules which had

been laid down for determining legal rights and regulations which are recognised by courts."

136. The expression "law" and, consequently, the expression "any other law for the time being in force" are, therefore, required to be compendiously interpreted, rather than infusing, into the said expression, any unwarranted restrictions.

137. The charging of demurrage by the CELEBI, being in terms of the concessionaire agreement, between the DIAL and CELEBI, which was entered into, by them, in terms of the OMDA, which, in turn, stands sanctified by Section 12A of the AAI Act, in our opinion, the CELEBI must be treated as charging, and recovering, demurrage, in accordance with "law for the time being in force".

138. The inevitable sequitur would be that the injunction, engrafted in Regulation 6(1)(l) of the Handling of Cargo Regulations, on the charging of demurrage in respect of goods detained/seized, or confiscated by the customs authorities, would not apply to, or affect, CELEBI. It has to be remembered, in this context, that CELEBI is required to pay a colossal sum of ? 35,00,00,000/-, every year (which is subject to further upward revision) to the DIAL. There is, therefore, substance in Mr. Tiku's protestation, that the CELEBI cannot be expected to cede its right to charge demurrage, solely on the basis of a "direction" by the Customs authorities."

(iv) Mumbai Port Trust Vs. Sri Lakshmi Steel (2017 (352) ELT 401 [https://www.mhc.tn.gov.in/judis/W.A.Nos.2235 of 2021 etc. batch \(SC\)\)](https://www.mhc.tn.gov.in/judis/W.A.Nos.2235%20of%2021%20etc.%20batch%20(SC))) "30. As already explained hereinabove, the Mumbai Port Trust has the power and authority to levy rates including demurrage as fixed by the Tariff Authority Under Section 47A of the Act. This right of the Port Trust is not affected either by the provisions of the Customs Act or by the Regulations of 2009. Section 160(9) of the Customs Act clearly lays down that the provisions of the Customs Act shall not in any manner affect the constitution and powers of any port authority in a major port. This will include the right of the major port authority that is a Major Port Trust to levy and charge rates and demurrage.

31. As far as 2009 Regulations are concerned, these are the Regulations framed under the Customs Act. Regulations are in the nature of subordinate legislation. There can be no manner of doubt that subordinate legislation that too a legislation framed by a Board under the Customs Act cannot in any manner affect the power and authority of the Major Port Trust, statutorily vested in it.

32. Neither the Regulations nor the provisions of the Customs Act can impinge or in any manner affect the statutory power of the Major Port Trusts to levy rates under the Act. In fact, the Authority that framed the Regulations was itself aware of this because Regulation 6(1) itself begins with the words " subject to any other law for the time being in force". It is, therefore, obvious that the Regulations are subject to any other law including the Major Port Trust Act. Therefore, these Regulations cannot in any manner affect the right of the Port Trust. We are, therefore, of the view that the High Court erred in holding that the law settled by this Court in a catena of judgments referred to above was no longer applicable in view of the 2009 Regulations. Reliance placed by the Union of India on Section 128 of the Major Port Trusts Act is totally misplaced. This provision only deals with the right of the Central Government to collect customs duties. It does not deal with the rights of the Port Trust to collect rates including demurrage."

(c) It is also submitted that Regulation 6(1)(l) itself was subject matter of challenge in the case of Delhi International Airport Pvt. Ltd., Vs. UOI [2017 (346) ELT 65 (Delhi)] and the same was rejected by the Delhi High Court, by observing as under:-

"17. In the present case, the Court notices that the power to frame regulations is located in Section 42 (1) and (2) of the Airports Authority of India Act, 1994, which, by clause (d) (of sub-section [2]) provides the following specific regulation making power:

"(d) the storage or processing of goods in any warehouse established by the Authority under clause (g) of sub-

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch section (3) of section 12 and the charging of fees for such storage or processing"

Section 141 (2), - of the Customs Act, inserted by Finance Act 18 of 2008 provides as follows:

"(2) The imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as maybe prescribed."

This court has, in its preceding discussion, held that the above power cannot be questioned, as wide and that as long as Parliamentary intent is discernable, subordinate legislation, which broadly conforms to its objectives, cannot be impeached. In exercise of its powers, Regulation 6 (1) was framed; it specifically obliges service providers not to charge demurrage in certain cases if directed not to do so ("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."). Interestingly, the duty not to charge - when imposed by any customs official authorized to do so, is specifically subordinated to other laws ("subject to any other law for the time being in force"). Thus the powers under the Airports Authority Act, 1994 (like in the case of the International Airports Authority in Grand Slam)- specifically, Section 42 (2) (d)- discussed above are available for prescribing the rate(s) for storage charges. In Grand Slam (supra), the court had commented on the power of the Central Government to issue directions to the IAAI with respect to demurrage charges:

"The Central Government is empowered by section 35 of the International Airports Authority Act, 1971, and section III of the Major Port Trusts Act, 1963, to issue to the Authority and the Boards of Trustees, respectively, directions on questions of policy after giving them an opportunity, as far as practicable, of expressing their views. -the Central Government can, if so advised, after giving to the Authority and the Boards of Trustees the opportunity of expressing their views, direct them, under the aforementioned provisions, not to levy demurrage charges for periods covered by

detention certificates."

18. Identical power vests with the Central Government under the AAI Act to issue <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch directions (Section 40). In the event DIAL is of the view that customs authorities' directions to it to not charge demurrage are unwarranted, it can seek guidance and directions in that regard, from the Central Government. In these circumstances, the grievance that Regulation 6 can potentially render DIAL's functioning unviable and result in losses to it, has to fail."

Stating so, the learned counsel prayed for appropriate reliefs in favour of the importers.

24.1.3.(a) Mr.V.P.Raman, learned counsel appearing for the first respondent / importer in W.A.Nos.2767 and 2768 of 2022 submits that these appeals are filed by the Customs, challenging the common order dated 13.06.2022 passed in W.P.Nos.23755 and 23756 of 2017. Initially, the importer was directed by the Order-in-Original dated 05.01.2016 to re-export four containers containing refrigerant gas. Complying with this order, the importer filed the necessary shipping bills on 25.06.2016 and 11.07.2016. However, the Customs authorities failed to process these shipping bills, leading to significant delays. The importer informed the Deputy Commissioner of Customs about the filing of the shipping bills through a communication dated 27.06.2016. The importer requested that suitable instructions be given to the CFS/shipping lines for releasing the cargo and waiving demurrage charges. Despite multiple communications and persistent requests, the Customs authorities did not take action to release the goods, which prompted the importer to file contempt petitions against the Customs and the CFS/shipping lines.

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(b) The learned counsel would further submit that during this period, there were instances of gas leakage from the containers. This situation should have expedited the re-export process; however, the inaction and negligence by the Customs authorities and CFS/shipping lines necessitated the filing of contempt petitions. The learned counsel also submits that the importer was not granted an opportunity of personal hearing, despite numerous requests. Furthermore, the surveyors inspected the containers and certified that the containers are "not seaworthy" and as a result the shipping lines also refused to board the goods for re-export. However, the contempt petition was closed on 12.10.2023 granting liberty to the parties to work out available remedy, if any, in accordance with law.

The learned counsel would further highlight the consistent delaying attitude on the part of the Customs authorities, which has been a significant factor in the prolonged dispute. The importer's compliance with all requirements and the failure of the customs authorities to process the shipping bills timely exemplify the undue delays faced.

(c) The learned counsel submits that the CFS/shipping lines are governed by the HCCA Regulations, which mandates compliance with the provisions of the Customs Act, rules, regulations, notifications, and orders issued thereunder. Regulation 6(1)(l) of HCCA Regulations specifically prohibits

CFS/shipping lines from charging rent or demurrage on goods that are seized, detained or confiscated and thus, the waiver certificate issued by the Customs <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch authorities is binding on the CFS/shipping lines, who cannot demand charges contrary to this waiver.

(d) Therefore, the learned counsel prayed for dismissal of the appeals filed by the customs authorities and also sought a direction to the CFS/shipping lines to repay the demurrage charges paid by the importers.

24.1.4.(a) Mr.Hari Radhakrishnan, learned counsel for the importer in W.P.Nos.5074 and 5077 of 2023, submitted that the CFSs are governed by HCCA Regulations. As CCSP, they must obtain approval under regulation 9 of HCCA Regulations, which is granted only when the Commissioner of Customs is satisfied that all requirements have been met. Regulation 5 of HCCA Regulations mandates that CCSPs comply with the Customs Act, Rules, Regulations, notifications, and orders, specifically requiring an undertaking under Regulation 5(5). Regulation 7 allows for exemptions from these conditions if compliance is beyond the CCSP's control, though no such exemptions have been obtained by any CCSPs in this case. Regulation 11 empowers the Customs authorities to suspend or revoke approval if CCSPs fail to comply with the Act, Rules, Regulations, notifications, or orders. Importantly, Regulation 6(1)(l) stipulates that CCSPs must not charge rent or demurrage on goods that are seized, detained, or confiscated, making a waiver certificate unnecessary. Any waiver certificate issued is binding and must be honored. Citing the Bombay High Court's decision in Supreme Industries Vs. <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch CBIC, [2021 (377) ELT 698 (Bomb)] (Supra) which held that subordinate legislation like HCCA Regulations overrides conflicting contractual obligations, the learned counsel emphasized that the waiver certificate issued by the Customs authorities is legally binding unless challenged.

(b) The learned counsel further submitted that the CFS in this case, had agreed to waive demurrage charges until the date mentioned in the detention waiver certificate dated 08.12.2022, but the goods were later confiscated with an option for redemption upon payment of a fine. Regulation 6(1)(l) mandates that the CFS must waive demurrage and rent charges even after confiscation, precluding any charges for the period beyond the waiver certificate date. In the light of these submissions, the learned counsel prayed to direct the CFS to waive all demurrage and rent charges for the entire period, including after the waiver certificate date, in accordance with regulation 6(1)(l) of HCCA Regulations.

24.2. Submissions of CFS 24.2.1.(a) Dr.R.Sunitha Sundar, learned counsel appearing for CFS would submit that according to Regulation 2(l)(b) of the HCCA Regulations, a Container Freight Station (CFS) is a Customs Cargo Service provider (CCSP) and a Customs Area as declared under Section 8 of the Customs Act. Therefore, a CFS being an extended arm of a Port/ICD/ACC, the words “subject to any other law for the time being in force” in the HCCA Regulations would include Customs Act <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch also. In other words, Regulation 6(1)(l) is subject to the provisions of Customs Act. On this point she referred to the following judgments:

(i) International Airports Authority v. Grand Slam International [(1995) 3 SCC 151];
and

(ii) Polytech Trade Foundation v. Union of India [2021 SCC Online Del 3694].

(b) The learned counsel would further submit that a CFS is a deemed 'Custodian' for the Customs under Section 45 of the Customs Act. Compliance with conditions listed in Regulation 5 of HCCA Regulations is required for licensing, and the responsibilities under Regulation 6 are owed solely to the Customs, not to contractual parties. She would thus submit that the CFS, as a custodian, has statutory obligations towards the Customs under the Customs Act. Therefore, when the goods are detained, seized or confiscated the "Control" of the goods being with Customs thereon, no charges can be demanded by the CFS from the Customs, and however, the same does not apply to the importers.

(c) The learned counsel would further submit that there is a contract between the CFS and the importer who voluntarily chooses the services of the CFS, the choice being exercised in multiple stages, such as at the filing the IGM, Bill of Entry, and thereby agreeing to pay the storage charges as per Regulation <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 6(3) of HCCA Regulations. Further this contractual obligation gets established before the goods enter the Indian Customs area. She further submits that this contract which is essentially a contract of carriage constitutes a bailment, and the CFS can exercise a lien on imported goods for charges payable for services rendered (Sections 148, 158, 170 of the Indian Contract Act and Section 48 of the Customs Act, 1962). Thus she submits that the CFS has only contractual obligations in terms of the agreement of service as it is a bailor under Section 151 of the Indian Contract Act and the question of waiver or the question of refund of charges paid after voluntarily choosing the services and making payment does not arise at all. The learned counsel thus points out that when the importer has accepted the detention without questioning its legality, it implies acceptance of the associated charges. Refunds are not permissible under the Customs Act, the Law of Contracts, or HCCA Regulations. Further, seeking refund is an afterthought. In this regard, the learned counsel relied upon the judgment of *Rasiklal Kantilal & Co. Vs. Port of Bombay* [(2017) 11 SCC 1].

(d) The learned counsel would further point out that Section 49 of the Act deals with storage of imported goods in a warehouse pending clearance or removal and it allows the importers to store dutiable goods in public warehouse on the occasion of a delay of expected delay in customs clearing the goods. It is an enabling provision which permits the importer of the goods to store the cargo <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch in the public warehouse. Thus, the importers had the option to invoke Section 49 of the Customs Act to custom bond the goods during detention for investigation, for a period of 30 days, which can also be extended for another 30 days, thereby minimizing storage charges. However, the non-invocation

of Section 49 amounts to a failure to mitigate losses under contractual law and lack of availing lawful waiver provision under statutory law. She would also point out that Regulation 6(1)(l) concerns 'Rent or demurrage' on goods stored in containers. CFS/CCSP charge only for storage on the containers, not rent or demurrage. Thus, if the importer had utilized Section 49 to devann and warehouse the goods, storage charges also would have been significantly reduced. The learned counsel would submit that the importer did not take prudent steps to mitigate losses, such as devanning goods and warehousing them separately. Therefore, the request for a detention certificate itself is an afterthought.

(e) The learned counsel would also submit that the principles of natural justice apply to the CCSP in two stages: (a) when an importer applies for a waiver certificate from the Customs and (b) when the Customs requests a waiver before implementation. The CCSP's rights here are vitiated as the waiver certificate was given without hearing the CFS.

(f) The learned counsel would further submit that waiver of demurrage charges cannot be granted without proper justification and Court, in judicial <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch review, cannot issue a direction without considering the reasons. Though the provisions of HCCA Regulations would bind the CFS, discretionary authority is given to the CFS under Regulation 6 (1)(l) which cannot be thrust and forced on the service provider, either by contract or by any principle of law or statute.

Further, if the grievance of the importer is against the customs, independent action for recovery of the payments made towards storage can only be demanded from the customs. She would submit that Regulation 6(1)(l) does not apply when goods are provisionally released. Provisional release pending adjudication implies that the importer was not deemed innocent, hence storage charges are payable.

She referred to the judgment of Trip Communication P. Ltd. V. Union of India. [(2014) 25 GSTR 611]. She would also argue that waivers under Regulation 6(1)(l) should align with the time limits specified in Sections 48 and 49 of the Customs Act, typically not exceeding 60 days.

(g) On the question of maintainability of the writ petitions, the learned counsel would submit that claims for refund are time barred and there are various disputed facts which cannot be adjudicated under writ jurisdiction. She further submits that when the facts are disputed, only a civil action before the appropriate civil court can be instituted, since an adversarial trial is required to elicit the truth.

(h) The learned counsel would also submit that the CFS has provided services in accordance with Sections 2(43), 45, 49, 57, and 58 of the Customs Act.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Non-payment of charges entitles the CFS to exercise a lien and proceed with auction and sale under Section 150 of the Customs Act. Regulation 6(1)(l) does not negate this right.

(i) The learned counsel, as regards the facts of the cases in W.A.Nos.

2230, 2235, and 2250 of 2021, would submit that the writ petitions have been filed beyond the period of limitation, after the subject shipments were gated in at the CFS, and are totally time-barred. The learned counsel further submits that the waiver certificate dated 05.06.2018, which relates to the waiver request for the detention/demurrage paid, is not demanded by the CFS. The CFS is neither a shipping line to demand 'container detention charges' nor a port to demand 'demurrage charges'. The invoices pertain to storage charges and other related charges. Hence, the relief claimed, seeking direction for the CFS to act in compliance with the said detention certificate, does not arise at all. Furthermore, the contention of the importer that after the provisional assessment of the imported goods, the CBIC issued a Circular dated 06.04.2018 clarifying that Solar PV Modules equipped with bypass diodes were correctly classifiable, only confirms that the payments made by the importer towards the storage charges were correct and proper. This is because (i) Storage charges for the services rendered by the CFS are unrelated to the said Circular, which pertains to the relationship between the importer and the customs; (ii) The Circular is to be applied prospectively and does not affect the provisional assessment order sought by the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch importer or the clearance made prior; (iii) The Circular does not address any alleged illegality of charges demanded before its issuance; (iv) All charges paid by the importer were made before the issuance of the Circular; and (v) Payments were made voluntarily without reserving any right for recovery. Thus, according to the learned counsel, the above points collectively go against the importers and the importers have not submitted any document in the writ proceedings to support their claims.

(j) As regards W.A. No. 2159 of 2021, the learned counsel would contend that the importer originally filed a writ petition in W.P.No. 21258 of 2013, seeking a direction to the customs authorities for the release of detained goods, issuance of a detention certificate, and a direction to the CCSP for the refund of the amount paid towards detention, demurrage and other charges. During the pendency of the writ petition, the goods were released and the detention certificate was issued. However, the importer subsequently filed a miscellaneous petition to amend the prayer, seeking action against the CCSP for the charges collected pursuant to the detention certificate issued by the Customs authorities.

The learned Judge held that the original documents and evidence, which are to be scrutinized by the competent authorities and the concerned parties, were required. Furthermore, any violation of the terms and conditions of the contract are to be adjudicated by conducting a trial before the appropriate forum, and <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch such an exercise is impermissible in the writ proceedings. The High Court cannot conduct a roving inquiry based on the affidavits filed by the parties in a writ petition.

(k) Insofar as the case in W.A.No.363 of 2022, the learned counsel would submit that the importer had declared the imported goods as agricultural implements and filed the bill of entry with the Customs. However, the cargo was detained for investigation as other misdeclared goods were found inside the container, which were not imported by the declared importer. Since the importer is not a bona fide importer, he is not eligible for the refund. Similarly, the cases in W.A. Nos. 2767 and 2768 of 2022 are related to misdeclared goods. The learned counsel submits that no documents regarding the alleged detention, seizure, or confiscation have been forwarded to the CFS or the shipping lines.

These parties only became aware of the facts after the third writ petition was filed by the importer, in which they were made parties. Furthermore, the importer has not produced any material documents necessary for considering a waiver request or for establishing the applicability of such an alleged waiver. The bona fides for seeking such a waiver have not been established or proved by the importer.

(l) Insofar as the case in W.A.No.1667 of 2022, the learned counsel <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch would submit that the detention order has not been questioned by the importer and payment of fine and penalty has been made voluntarily. He would further submit that the importer has not invoked Section 49 of the Customs Act, despite the permission and direction given by the Customs Authority to bond the imported goods when they were to be detained for investigation, which would have reduced the storage charges payable to a large extent. The non-invoking of Section 49 to bond the goods while in detention during the investigation, despite specific directions, is fatal to the importer. This amounts to (a) a lack of steps to mitigate losses under contractual law, and (b) a failure to avail of lawful waiver provisions while the goods were detained by customs under statutory law.

24.2.2.(a) Continuing further, Mr.Giridharan, learned counsel argues that importers involved in illegal activities should not benefit from Customs Department circulars or certificates. He invokes the principle of "one cannot take advantage of their own wrong/mistake. On the question of vires of HCCA Regulations, he contends that neither Section 141 nor Section 157 of the Customs Act empowers regulations to waive detention charges. Quoting the Telangana High Court's ruling in Central Board of Excise and Customs vs. GMR Hyderabad International Airport Limited (W.A.No.1321 of 2012), he contends that Regulations cannot authorize cost recovery charges or waivers beyond what is stipulated in the Customs Act. The relevant portion of the said <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch judgment is extracted hereunder:-

"Thus, from a perusal of Section 157 of Customs Act, it is evident that Section 157 does not enumerate any specific provision under which cost recovery charges i.e., the amount of salary payable to the officials of the Customs Department, who are deployed at the Airport who perform their statutory duties, can be recovered. The 2009 Regulations have been framed in exercise of powers conferred under Section 141 of Section 157 of the Customs Act. From a close scrutiny of the aforesaid provisions of Section 141 and 157, it is evident that there is no express statutory provision conferring authority on the appellants to levy cost recovery charges. In the

absence of any special authorization to levy cost recovery charges, appellants have no authority to impose cost recovery charges by means of Regulation. The inevitable conclusion is that the 2009 Regulation are ultra vires the Customs Act, 1962."

(b) According to the learned counsel, the customs authorities lack the power to issue certificates for waiver of detention or demurrage charges. In support of his contentions, the learned counsel has cited the following judgments:-

(i) Sirajudeen Vs. Well Trans Logistics India Pvt. Ltd. and Another [O.S.A.(CAD) No.45 of 2021 decided on 13.08.2021]:

"3. The appellant seeks to rely on the Handing of Cargo on Customs Area's Regulations, 2009, to suggest that upon an appropriate certificate being issued by the customs authorities, the rent and demurrage for the relevant period that the goods may have been detained in course of an investigation would stand waived. Some of the regulations from the said Regulations of 2009 have been placed.

4. It is one thing to suggest that rent or demurrage during the period of detention of goods would stand waived qua the customs or the port authorities and quite another that a private party's container or containers may be detained without any compensation. The waiver under the said Regulations would not apply to the party whose containers have been detained.

8. In view of the fact that the first respondent has already made a claim on account of container detention charges or the delay that was occasioned to the first respondent as a result of the goods being detained, the first respondent cannot be called upon to release the goods without its demand being met or an adjudication that the demand may not be tenable."

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

(ii) M/s.J.P.Impex Vs. Principal Commissioner of Customs, ACC & Others [2021 (375) ELT 69 (Del.)] "33. Keeping in view, clause (iii) of para 104 in Global Impex [MANU/DE/4351/ 2019], we reiterate that the Customs authorities cannot direct waiver of demurrage, which can only be done by the custodian (the DCSC here). Moreover, merely because the Customs authority expends a reasonable time in dispensation of their sovereign functions of search, seizure and investigation, cannot lead to transference of liability to pay demurrage, to the Customs authorities.

36. This shall not preclude the Petitioner, from pursuing any claim for damages, against any of the Respondents, if permissible by and in accordance with law, if so advised."

(iii) Global Impex and Others Vs. Manager, CELEBI [2019 SCC OnLine Del 11918]

105. The Handling of Cargo Regulations were notified vide Notification 26/2009-Cus (NT), dated 17th March, 2009, issued in exercise of the powers conferred by Section 141(2), read with Section 157 of the Customs Act. Regulation 6(1)(I), which stands extracted in para 2 hereinabove, stipulates that the Customs Cargo Service provider shall, subject to any other law for the time being in force, not charge any rent or demurrage on goods seized, detained, or confiscated by the Customs authorities. To our mind, it appears a trifle incongruous that, even in a case where the goods are confiscated, i.e. where the import is illicit and in contravention of the provisions of the Customs Act, the importer should escape demurrage. As the legality of Regulation 6(1)(I) is, however, not in question in these proceedings, we refrain from opining further in that regard.

106. Regulation 6(1)(I) makes for fairly plain reading. It completely injuncts the Customs Cargo Services provider from charging demurrage or rent, on the seized, detained, or confiscated goods, subject, however, to any other law for the time being in force.

107. There is no dispute about the fact that CELEBI is a "Customs Cargo Services provider", as defined in clause (b) of Regulation 2 of the Handling of Cargo Regulations.

108. Given the law, relating to the charging of demurrage, as it emerges from the decisions cited hereinabove, the highest that the petitioner could contend, therefore, is that there is no "other law for the time being in force", as would mitigate the effect of Regulation 6(1)(I) of the Handling of Cargo Regulations.

109. Per contra, in order to escape the rigour of Regulation 6(1)(I), the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Customs Cargo Service provider - in the present case, CELEBI - would have to establish that its entitlement, to charge demurrage, is relatable to "any other law for the time being in force."

110. At this juncture, we may refer, profitably, to the judgment of the Supreme Court in Mumbai Port Trust v. Shri Lakshmi Steels MANU/SC/0910/2017 : 2017 (352) ELT 401 (SC), in which note, of Regulation 6(1)(I), has been taken. The respondent, before the Supreme Court, imported cold rolled sheets and coils. The DRI directed the consignment to be placed on hold, on 14th December, 2015. On 28th December, 2015, the DRI wrote, again, to the Customs authorities, stating that specific intelligence had been received, that Shri Lakshmi Steels (hereinafter referred to as "SLS"), and its associated firms, had been importing consignments in violation of notifications issued by the Customs authorities. The Customs authorities were, therefore, requested to have the goods subjected to 100% examination. In the meantime, on 18th December, 2015, SLS requested that the goods, covered by Bills of Entry dated 4th December, 2015 and 11th December, 2015, be provisionally assessed and released, so as to avoid mounting demurrage the detention charges. Three reminders followed. Thereafter, samples of the goods were drawn and tested, whereupon they were found to conform to the description, as proposed by SLS. It appears that, thereafter, the goods were retested and that, this time, the test report was in favour of the Customs authorities.

122. Insofar as the right of CELEBI, to charge demurrage, is concerned, we are of the opinion that, legally speaking, the position, qua the said right, is the same as that which obtained in respect of the

Mumbai Port Trust, even though CELEBI is, admittedly, not covered by the Major Port Trusts Act. We say so because, even in the case of CELEBI, demurrage is charged on the basis of Regulations which are statutory by nature and which, therefore, partake of the character of 'any other law for the time being in force', for the purposes of Regulation 6(1)(l) of the Handling of Cargo Regulations.

169. For the aforesaid reasons, we are of the view that the prayer, of the petitioner, for issuance of directions to the respondents, not to collect any demurrage, in respect of the goods, imported by the petitioner and in the custody of CELEBI, is bereft of merit.

170. We confirm that CELEBI is entitled, despite Regulation 6(1)(l) of the Handling of Cargo Regulations, to charge demurrage in respect of the goods consigned to its custody, and to retain custody over such goods till the demurrage is paid. We also confirm that demurrage, to CELEBI, would be payable by the petitioners-importers in these writ petitions, and not by the Customs authorities.

171. We do not express any view regarding the entitlement, or otherwise, of the petitioner, to claim waiver of demurrage charges from CELEBI. It would be for the petitioner to prefer an appropriate application in that regard, and for CELEBI to take a call thereon, keeping in view its policy, and assessing the entitlement of the petitioner to waiver in terms thereof."

(iv) *Muscles Fusion Fze vs The Principal Commissioner Of Customs* <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch (IMP), ACC, New Delhi [2017 (354) ELT 525 (Del.)] "26. In the present case, the arrival of the consignment in Delhi, which contains prohibited goods, is clearly not innocent and is contrary to law. The goods being prohibited goods and having been confiscated, even as per Trip Communication, the Petitioner would not be entitled to waiver of demurrage/rent charges. The Petitioner, having accepted the finding that the consignment contained prohibited goods and was liable for confiscation, cannot claim waiver of demurrage/rent charges to the detriment of CELEBI, which was not even heard by the ACC (Imports). None of the decisions, relied upon by the Petitioner, would support the position that is being canvassed by the Petitioner.

27. The Regulations relied upon by the Petitioner do not come to the Petitioner's rescue as the same do not apply in the case of goods which are confiscated and Regulation 6 (1) (l) is itself "subject to any other law for the time being enforced". Thus, the Regulations are subject to the provisions of the CA.

28. The judgment in *Garden Silk Mills* (supra) does not come to the aid of the Petitioner, inasmuch as, para 18 of the said judgment relates to the taxable event after import and does not deal with the payment of demurrage /rent charges while the goods are under detention. Moreover, Section 111(d) applies not just to 'imports' but even 'attempts to import'. Even in the case of *Sampat Raj Dugar* (supra), the Supreme Court while holding that the exporter is the owner of the goods, permitted re-export "in accordance with law and subject to payment of such dues or other charges as may be leviable in that behalf". In *Grand Slam* (supra) it was unequivocally held that that the custodian of the goods would be entitled to charge demurrage for the goods in its custody.

29. In fact, Grand Slam (supra) has been followed subsequently in Trustees of Port of Madra v. Nagavedu Lungi & Co., (1995) 3 SCC 730 wherein the Supreme Court held that the liability to pay demurrage charges or incidental charges as per Grand Slam (supra) applies equally to exporters/consigners of goods.

29A. In view of the above, this Court concludes that the consignment having contained 'prohibited goods', which were confiscated in terms of Section 111 (d) of the CA, the Petitioner is not entitled for re-export of the same without payment of demurrage/ground rent."

(V) Trip Communication Pvt. Ltd vs Union Of India & Others [2014 (302) ELT 321 (Del.) "42. The custom authorities it appears issues certificate for waiver in every type of case irrespective of the fact whether the importer is at fault or not. The custom authorities have issued certificate for waiver of the demurrage charges in both the cases at hand. In one case the release of the goods are on provisional basis pending adjudication and in the other there is imposition of both fine and penalty. These are not cases where the importer has been held to be not at fault. In one case the Importer has been found to be at fault and penalty and fine imposed. The importer has accepted the said order. In the other case <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch adjudication proceedings are pending and are yet to be finalised.

43. There is an overlap in the Policy for Waiver framed by AAI and the HCCA R. Though initially there appears to be a conflict between the policy and the regulations but on closer scrutiny it is apparent that they can both be harmoniously construed and coexist.

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 mis- declaration, mis-description, 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.

45. The regulations frames in 2009 themselves stipulate that they are subject to any law for the time being in force and as such the regulations would be applicable in terms of the Policy for Waiver framed by the AAI in 2003.

46. In case the HCCAR we re to be made applicable in all cases then the result would be that in no case where there is a fine, penalty, personal penalty and/or warning imposed by the customs authorities CELEBI would be able to charge demurrage charges. Custom authorities are issuing waiver directions even in cases where the importers are clearly at fault and fine, penalty, personal penalty and/or warning has been imposed by the customs authorities. Even in cases of mis-declaration, undervaluation and concealment, the certificates are being issued. This is clearly giving premium to dishonesty. The waiver should be granted in genuine cases where the importers are ultimately found not at fault. It cannot be that all importers honest and dishonest are treated equally.

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 custom 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.

48. The execution of the superdginama by CELEBI that it would not claim any storage charges for the safe custody of the goods charge would also not be in conflict with the Policy for Waiver. The Policy has been framed by the Airports Authority of India and the execution of the Superdginama by an employee would not override the policy. It would be applicable in cases where no fine, penalty, personal penalty and/or warning is imposed by the customs authorities. In cases where the importer is found eligible for the benefit of the Policy, the Superdginama would automatically become applicable.

49. Where the importer is clearly at fault and fine, penalty, personal penalty and/or warning is imposed by the customs authorities, making the regulations applicable and granting the benefits of waiver would be clearly unreasonable and would grant benefit of waiver, with the person who has provided space suffering. This was and is not the intention and purpose behind HCCAR. Regulation recognises and accepts that any other law in force is not <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch abrogated or repealed. The existing provision applicable stands protected.

51. In WP (C) No. 7438/2012 since the goods have been directed to be released on provisional basis pending the adjudication proceedings, the petitioner shall be entitled to release of the goods by furnishing a security bond and a Bank Guarantee securing the demurrage charges and undertaking that the Petitioner would pay the demurrage charges in case on conclusion of the adjudication proceedings any fine, penalty, personal penalty and/or warning is imposed by the customs authorities.

52. In WP(C) No. 2200/2013 since fine and penalty has been imposed, the Petitioner is not entitled to the benefit of the Policy for Waiver and the goods can only be released on payment of the demurrage charges.

53. The Writ Petitions are disposed of in the above terms. No costs."

(vi) M/s.Polytech Trade Foundation vs Union Of India & Ors [W.P.(C) No.3029 of 2020 decided on 10.08.2021] "35.8.1 The HCCAR were notified vide Notification 26/2009- Cus.(N.T.) dated 17th March, 2009, under Section 141(2) of the Customs Act. Regulation 3 made the HCCAR applicable to handling of imported and export goods in ports, airports, ICDs, land customs stations and in customs areas approved or specified under Section 8 of the Customs Act.

35.8.2 That the HCCAR, therefore, applies to the handling of import or export goods in ICDs cannot, therefore, in our view, be gainsaid. Regulation 2(b) defines "Customs Cargo Services Provider" as

meaning "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 Customs Act". Learned counsel before us are ad idem that CFSs and ICDs are "Customs Cargo Service Providers" within the meaning of Regulation 2(b).

35.8.3 Regulation 5 delineates the conditions to be fulfilled by Customs Cargo Service Providers. Of the various sub-regulations under Regulation 5, Sub- Regulation (5), which alone is of relevance, requires the Customs Cargo Services Provider "to comply with the provisions and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder." This requirement is reiterated in clause (q) of Regulation 6(1), which sets out the "responsibilities" of Customs Cargo Service Providers. Regulation 6(1)(q) requires every Customs Cargo Service Provider to "abide by all the provisions of the (Customs) Act and the rules, regulations, notifications and orders issued thereunder".

35.8.4 Sub-regulation 6(1) may, for ready reference, be reproduced as under:

"6. Responsibilities of Customs Cargo Service provider: -

(1) The Customs Cargo Service provider shall -

(a) keep a record of imported goods, goods brought for export or transshipment, as the case may be, and produce the same to <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch the [Inspector of Customs or Preventive officer or Examining officer] as and when required;

(b) keep a record of each activity or action taken in relation to the movement or handling of imported or export goods and goods brought for transshipment;

(c) display or make available in any other manner, information of process or movement or handling of imported or export goods and goods brought for transshipment;

(d) demarcate separate areas for unloading of imported goods for their storage with respect to the category of importers, nature of goods, place of destination, mode of transportation or any other criterion as the Commissioner of Customs may specify having regard to the custody and handling of imported goods in a customs area;

(e) demarcate separate areas for loading of export goods for their storage with respect to categories of exporters, nature of goods, examined and sealed containers other criterion as the Commissioner of Customs may specify having regard to the custody and handling of export goods in a customs area;

(f) not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the

[Superintendent of Customs or Appraiser];

(g) not permit any export cargo to enter the customs area without a shipping bill or a bill of export having been filed with the [Deputy Commissioner of Assistant Commissioner of Customs];

(h) not permit any import cargo to enter the customs area or be unloaded therein without the import report or the import manifest having been filed with the [Deputy Commissioner of Assistant Commissioner of Customs];

(i) be responsible for the safety and security of imported and export goods under custody;

(j) be liable to pay duty on goods pilfered after entry thereof in the customs area,

(k) be responsible for the secure transit of the goods from the said customs area to any other customs area at the same or any other customs station in accordance with the permission granted by the [Deputy Commissioner of Assistant Commissioner of Customs];

(l) 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];

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

(m) dispose off in the manner specified and within a time limit of ninety days, the imported or export goods lying unclaimed, uncleared or abandoned :

Provided that the period of ninety days may be extended by the Commissioner of Customs by such further period as may be allowed, on sufficient cause being shown for delay in the disposal;

(n) not make any alteration in the entry or exit points or boundary wall without the permission of the Commissioner of Customs;

(o) shall bear the cost of the customs officers posted by the Commissioner of Customs on cost recovery basis and shall make payments at such rates and in the manner specified by the Government of India in the Ministry of Finance unless specifically exempted by an order of the said Ministry;

(p) shall observe the Central Government holidays as followed by the jurisdictional Customs formations and in case of any variation in the working days, intimate the

same to Commissioner of Customs and the trade, at least seven days in advance, and

(q) abide by all the provisions of the Act and the rules, regulations, notifications orders issued thereunder."

35.8.5 Regulation 6(3) requires a Customs Cargo Service Provider to publish and display, at prominent places including its website, the schedule of charges for the various services provided by him in relation to the imported goods or export goods in the customs area.

35.8.6 Of all the responsibilities envisaged by Regulation 6, therefore, the only responsibilities which have any bearing at all on levying of charges on goods are contained in Regulations 6(1)(l) and (6)(3). Regulation 6(1)(l) proscribes Customs Cargo Service Providers from charging 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. This clause has no application to the present case, as we are not dealing with any goods which are seized, confiscated or detained. Regulation 6(3) requires the Customs Cargo Service Provider to publish and display, at a prominent place, including its website, the schedule of charges for the services provided by the Customs Cargo Service Provider in relation to the imported goods or export goods in the customs area. Clearly, therefore, an importer or exporter availing the services of the Customs Cargo Service Provider is aware, in advance, of the charges levied by the Customs Cargo Service Provider, including the penal charges which would be levied in the event of failure, on the part of the importer or exporter, to remove the goods from the premises of the Customs Cargo Service Provider within the free period.

35.8.7 Regulation 7 which deals with power to relax and regulate, reads thus:

"7. Power to relax and regulate. -

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch (1) If the Commissioner of Customs is satisfied that in relation to the custody and handling of imported or export goods in a customs area, the Customs Cargo Service provider, for reasons beyond his control, is unable to comply with any of the conditions of regulation 5, he may for reasons to be recorded in writing, exempt such Customs Cargo Service provider from any of the conditions of regulation 5.

[Provided that no exemption shall be granted in respect of any of the conditions referred to in regulation 5, where the overall safety and security of the premises are likely to be affected thereby.]

(2) The Commissioner of Customs may regulate the entry of goods in a customs area for efficient handling of such goods."

35.8.8 Regulation 8 prohibits a Customs Cargo Service Provider from commencing any operation in the customs area for the first time unless the Commissioner is satisfied that the requirements of the Act have been fulfilled and grants permission to commence the operations. Regulation 9 sets out the particulars of the approval to be submitted by the Customs Cargo Service Provider for being permitted custody of imported or export goods and for handling of such goods in a customs area.

Where the Commissioner of Customs is satisfied that the applicant fulfils the conditions prescribed in Regulation 5, the Commissioner is empowered, by Regulation 10(1), to approve the applicant as a Customs Cargo Service provider for a period of two years.

35.8.9 Regulations 11, 12 and 13 deal with suspension or revocation of the approval of Customs Cargo Service provider, the procedure stipulated in that regard and renewal of the approval for appointment of Customs Cargo Service provider. These Regulations are of no particular significance in the present case.

35.8.10 It is apparent, from a reading of the HCCAR, that they do not regulate charging of detention charges or any other charges by the Customs Cargo Service provider from its customers, except to the extent of Regulation 6(1)(l), which prohibits charging of rent or demurrage by the Customs Cargo Service provider on goods which are seized, detained or confiscated. All that the HCCAR otherwise require is that the schedule of charges, for the service provided by the Customs Cargo Service provider, be displayed prominently on its website.

39.9 Shipping lines, we may note, are not even Customs Cargo Services Provider within the meaning of the HCCAR and are, therefore, entirely outside the purview of the said Regulations."

(vii) S.K.Metal & Co. and Others Vs. Commissioner of Customs and Others [2016(338) ELT 383 (Del.)] "34.11 The conclusion of the three Judge Bench in Shipping Corporation of India Limited v. C.L. Jain Woollen Mills (supra) was as under:

8.In the absence of any provision in the Customs Act, entitling the customs officer to prohibit the owner of the space, where the imported goods have been stored from levying the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch demurrage charges, levy of demurrage charges for non-release of the goods is in accordance with the terms and conditions of the contract and as such would be a valid levy. The conclusion of the High Court to the effect that the detention of the goods by the customs authorities was illegal and such illegal detention prevented the importer from releasing the goods, the customs authorities would be bound to bear the demurrage charges in the absence of any provision in the Customs Act, absolving the customs authorities from that liability. Section 45(2)(b) of the Customs Act cannot be construed to have clothed the customs authorities with the necessary powers, so as to absolve them of the liability of paying the demurrage charges....."

34.12 However, the ultimate relief granted by the Court was to direct that, with the goods having already been released without payment of demurrage charges, "it would be meet and proper for us to direct the Shipping Corporation and Container Corporation, if an application is filed by the Customs Authorities, to waive the demurrage charges."

Summary of the legal position

35. At this point it is necessary, therefore, to summarize the principles that can be culled out from the aforementioned decisions in *International Airport Authority of India v. Grand Slam International* (supra) as well as *Shipping Corporation of India Limited v. C.L. Jain Woollen Mills* (supra). The principles are set out as under:

- i. There is no provision in the Act that enables the customs authorities to direct a carrier of goods to waive demurrage charges or container charges even in terms of Section 45(2)(b) of the Act. That would be governed entirely by the contract between the importer and the carrier and the terms and conditions of the bill of lading, if any.
- ii. Where the carrier is a corporation incorporated by a statute like for instance, the CWC, or the CCI or SCI then it would be bound by the provisions of the Act as far as its right to recover demurrage or container charges is concerned.
- iii. Section 45(2)(b) of the Act, which enables the customs authorities to issue a detention certificate, cannot extend to directing the carrier or the owner of the container to waive the charges even where an order of confiscation or levy of penalty is ultimately held to be illegal by the courts.
- iv. The only option is for the Central Government to make a request to the owner of the container or the space where the goods were stored to waive demurrage charges and if it is so conceded then to that extent the importer would be able to get some relief.

Later case law

36. It may be noted at this stage that *International Airport Authority of India v. Grand Slam International* (supra) has been consistently followed in a <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch large number of cases. These include *Trustees of Port of Madras v. Nagavedu Lungi & Co.* (1995) 3 SCC 730 where the Supreme Court reiterated that the importer cannot avoid its liability to pay demurrage charges and other incidental charges in respect of the goods illegally detained under the customs area by the customs authorities under the Act."

(viii) *Mumbai Port Trust Vs. M/s.Shri Lakshmi Steels and Others* [2017 (352) ELT 401 (SC)]:

"47. As far as detention charges of the Shipping Line are concerned, in addition to what we have observed above, we are of the view that the High Court could not in writ proceedings have directed the DRI/Customs to pay the detention charges to the Shipping Line since these were to be paid on the basis of a contract between the respondent-importers and the shipping line.

48. In view of the above discussion, the appeals are allowed. The judgment of the High Court is set aside and the writ petitions filed by the respondent-importers are

dismissed. No order as to costs. Pending application(s), if any, stand(s) disposed of."

(ix) M/s.The Nut Co. Vs. Union of India [MANU/GJ/1197/2022] "16. Mr. Lodha requested this Court to take into consideration the reply filed on behalf of the respondent No.2, which reads thus;

7. It is submitted that M/s. The Nut Co., Delhi, the petitioner herein, filed a bill of entry No.5173132 dated 24.08.2021 for import of Srilankan Areca Nut availing the benefit of Notification No.26/2000 dated 01.03.2000. The said bill of entry was assessed on 27.08.2021. Since, the genuineness of the country of origin certificate (COC) wa to be verified under the provisions of the Customs (Administration of Rules of Origin under the Trade Agreements) Rules, 2020 ('CAROTAR'), a request was sent for verification of the genuineness of the COC under Rule 6 of the CAROTAR.

8. It is submitted that any such request for verification under Rule 6 is to be made through a nodal office as may be designated by the Board, i.e, the Central Board of Indirect Taxes and Customs. Thus, a request vide a letter dated 04.10.2021 was sent to the Director (International Customs Division), Central Board of Indirect Taxes and Customs, who was designated as the nodal office under the CAROTAR for verification, copy of the same is annexed herewith and marked as Annexure-R1.

9. It is submitted that vide a letter dated 18.11.2021, the response received vide letter dated 15.11.2021 from the Sri Lankan Authorities was provided with respect to verification of 4 candidates of origin, including the one concerning the Petitioner. The letter dated 15.11.2021 issued by the Director of C/SCA/17523/2021 ORDER <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch DATED: 18/04/2022 Commerce for the Director General of Commerce, Department of Commerce of Sri Lanka was provided vide email dated 17.11.2021, wherein 4 certificates, including the one concerning the Petitioner, was confirmed by the said Sri Lankan Authority. Thus, on receipt of such confirmation vide the letter dated 18.11.2021, the Bill of Entry filed by the Petitioner was processed and out of charge was issued on 24.11.2021. Copy of the letter dated 19.11.2021 and coy of the letter dated 15.11.2021 and copy of the letter dated 15.11.2021 is annexed herewith and marked as Annexure-R2 and Annexure-R3.

10. Thus, in view of the aforesaid, it is most respectfully submitted that none of the actions of the Respondent were in violation of any provisions of law. The Answering Respondent had acted in accordance with the provisions of law including the CAROTAR. It is submitted that there is no unjustified and unlawful detention and departmental action was for the bonafide purpose to protect the government revenue. It is primary duty of the officers of the department to protect the government revenue and conduct the enquiry/investigation in terms of provisions of law. Admittedly, the bill of entry was not assessed and kept pending only because of the pending verification. However, pursuant to the verification assessment was carried out and goods were cleared.

11. It is submitted that the Petitioner has failed to prove any unlawful/unjustified action on part of the Respondent. The petitioner has failed to demonstrate any mala fide intent or extraneous reasons/grounds which can be attributed to the Respondent in its action of keeping the bills of entry

pending till the verification was being conducted. Outcome of such verification would not make the respondent liable/Responsible, as has been sought to be contended by the petitioner unless the initial action is palpably/unreasonably wrong or wholly unacceptable which is not the position in the present C/SCA/17523/2021 ORDER DATED: 18/04/2022 case. Hon'ble the Apex Court in Jindal Drugs Ltd. vs. Union of India (UOI) (26.07.2018-SC) being Civil Appeal No.7243 of 2018, held as follows;

7. We have read and considered the contents of Paragraphs 4 and 5 of the counter/reply affidavit filed before the High Court on behalf of the Revenue. On a consideration of the averments contained therein we are fully satisfied that no mala fide intent or any extraneous reasons/grounds can be attributed to the revenue in detaining and refusing to clear the goods of the importer(s). Rather, the actions of the revenue were prompted by what we consider to be a possible understanding of the provisions of the Notification in force i.e. Notification No.104/95, dated 30th May, 1995.

The subsequent change of opinion and issuance of circular bearing No.4/1006, dated 14th May, 1996 would not made the revenue liable as has been sought to be contended by the importer(s) unless the initial action is palpably wrong or wholly unacceptable which is not the position in the present case. A <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch stand taken by the revenue or an action undertaken which is subsequently corrected by the Revenue itself or corrected on the basis of a subsequent judicial pronouncement will not, ipso facto, make the revenue liable for payment of demurrage charges as has been contended on behalf of the appellant(s)-importer(s). We, therefore, will have no occasion to interfere with the order of the High Court insofar as demurrage charges are concerned and issue any direction, as prayed for by the appellant(s)- importer(s). Consequently and in the light of the above the appeal is found to be without any merit and is accordingly dismissed."

12. The Hon'ble Delhi High Court in its judgment dated 20.12.2019 in Global Impex vs. Manager, Celebi Import, being W.P. (C) 7577/2019 observed thus;

"....136. We deem it appropriate to ad, here that the customs authorities, while exercising their power of search, seizure and investigation, are essentially discharging sovereign functions. A reasonable amount of time is expected to be expended in this process, and the mere fact that, by reason of the investigative exercise conducted by the customs authorities, it has not been possible for the importer to clear its goods, cannot, ipso facto, lead to transference of liability to pay demurrage to the customs authorities.

137. In is only where as clear case of unquestionable delay, bordering on malafide and demonstrative of unreasonable harassment of an importer, is made out, that the customs authorities can be mulcted with the liability to pay demurrage or detention charges.

138. Such is the law, as enunciated by the Supreme Court in a plethora of decisions and hereinabove and, with the same, we express our respectful concurrence..."

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the writ applicant is entitled to the relief as prayed for in this writ application.

18. Having regard to the ratio of the decision of the Supreme Court in the case of Jindal Drugs Ltd.(supra) and also that of the Delhi High Court in the case of Global Impex (supra), we are of the view that we should notC/SCA/17523/2021 ORDER DATED: 18/04/2022 fasten any liability to the respondent. In such circumstances, referred to above, this writ application fails and is hereby rejected."

24.2.3.(a) Mr.A.K.Jayaraj, learned counsel appearing for the CFS in W.P.Nos.15631, 17705, 18263 of 2020 and 1328 of 2021 submits that the facility <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch maintained by them ensures adequate space, modern infrastructure and security measures. The CFS also boasts sufficient manpower for various tasks such as loading, unloading, and handling of containers. These facilities entail significant expenses to ensure the safe and efficient processing of import and export goods.

Furthermore, he argues that the CFS charges appropriate service fees, which are disclosed and agreed upon by customers before the services are rendered. These fees, he contends, are reasonable and comparable to market rates charged by similar CFSs in comparable conditions.

(b) The learned counsel would further argue that the importer only provided the particulars of Bills of Entry without furnishing specific container details such as bills of lading, arrival dates, detention period and gate out dates.

He emphasizes that the importers' consignments remained uncleared at the CFS beyond the free period, occupying valuable space and hindering other users.

Additionally, the counsel asserts that the CFS provided all necessary facilities for secure cargo storage.

(c) Adding further, the learned counsel would submit that whenever there is an apprehension of delay in clearance of goods from a CFS, the importers immediately de-stuff the container and store the goods in a customs bonded warehouse as per the provisions available under Sections 18, 49, 59, and 110A of the Customs Act, 1962. He would further submit that the customs department <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch also grants such permission in cases where the goods are likely to be held up for customs investigation or verification. He would submit that in the present case, the Special Intelligence and Investigation Branch of Chennai Customs, Chennai-

III Commissionerate have extended these statutory facilities of de-stuffing and storage of the goods to the importer, which the importer should have availed, and thereby could have avoided accrual of demurrage, detention, and rental charges.

(d) The learned counsel would further point out that the provisions of Rule 6(1)(l) of the HCCA Regulations are not applicable to the current situation since it can be applied only subject to the provisions of the Indian Contract Act, 1872. He would argue that the relationship between the importer and the CFS, who has stored the goods in its custody, is governed by the contract between the parties, including the importer. Citing Section 170 of the Indian Contract Act, he would submit that if somebody has received the articles and is required to store them until cleared, for which expenses might have been borne, then the CFS have the right to detain the articles until their dues are paid, as per the express terms of the Contract and the common law principle of Bailee's lien followed by the courts in India.

(e) The learned counsel would submit that the 'Detention Certificate' issued by the Deputy Commissioner of Customs is without jurisdiction, bad in law, and is not binding on the CFS. He would cite the case of Shipping Corporation of India Limited vs. C.L. Jain Woollen Mills wherein the Supreme Court held <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch that the customs authorities do not have the power to direct the carrier who continues to retain a lien over the imported goods, so long as his dues are not paid, not to charge any demurrage charges nor would the issuance of a detention certificate prohibit the carrier from demanding such charges. The relevant portions of the judgment is as follows:-

"It may be undoubtedly true that the customs authorities might have bona fide initiated the proceedings for confiscation of the goods which however, ultimately turned out to be unsuccessful and the Court held illegal. But that by itself, would not clothe the customs authorities with the power to direct the carrier who continues to retain a lien over the imported goods, so long as his dues are not paid, not to charge any demurrage charges nor the so-called issuance of detention certificate would also prohibit the carrier from raising any demand towards demurrage charges, for the occupation of the imported goods of the space, which the proprietor of the space is entitled to charge from the importer. The importer also will not be entitled to remove his goods from the premises unless customs clearance is given."

(e) The learned counsel would further submit that the writ is not maintainable since the CFS is not subject to writ jurisdiction under Article 226 of the Constitution of India. Although the CFS is a notified custodian under Section 8 of the Customs Act, it cannot be considered as an instrumentality of the State, particularly, in matters purely involving a contractual dispute. Even presuming that the CFS could be considered an instrumentality of the State, the writ jurisdiction of this Court cannot be invoked in contractual matters without specific exceptions. In support of this contention, the learned counsel has referred to the judgment of the Apex Court in Zonal Manager, Central Bank of India Vs. Devi Ispat Limited [2011 (1) ALD 22 (SC)], wherein, it was pointed out as <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch follows:

"15. It is clear that, (a) in the contract if there is a clause for arbitration, normally, writ court should not invoke its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and (c) if the instrumentality of the

State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power."

(f) The learned counsel would also contend that the demurrage for the stored containers was charged for the services provided by the CFS as per the contractual obligations. The importer elected to avail themselves of the services of the CFS after fully understanding the stipulated conditions and obligations.

There is absolutely no evidence of unfairness or arbitrariness, and the charges were applied on a pro rata basis in accordance with the terms previously agreed upon by the parties. In support of this contention, the learned counsel has relied upon the decision in the case of *Monika India Vs. Union of India* 2[2012 SCC Online Del 1095] :-

" 28 (3) Detention certificate issued by the customs authorities is not a mandate on the shipping company or warehousing companies. These corporations/companies are entitled to claim demurrage/container charges. These corporations cannot be compelled and mandamus cannot be issued to waive demurrage on the ground that the importer/consignee was unable to clear the goods due to fault on the custom authorities."

(g) The learned counsel would further contend that the waiver granted in the detention certificate is only recommendatory in nature and does not impose any obligations on the CFS. It can be seen from the language of the Detention <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Certificate dated 05.06.2018 issued by the Deputy Commissioner of Customs that it is merely for the consideration of the CFS and is not binding. It is mentioned in the Detention Certificate that in terms of Rule 6(1)(l) of the Handling of Cargo in Customs Area Regulations, 2009, the request of the importer for waiver of detention/demurrage charges shall be considered from the date of filing of bill of entry till the date of clearance of cargo. To negate the applicability of the waiver, the learned counsel has relied on the judgment in *Monika India v. Union of India* [2012 SCC Online Del 1095]:-

"27. Respondents have relied upon decision of a Single Judge of this Court in *Narain International vs. UOI & Ors.*, in WP(C) No. 777/1992, decided on 1st October, 2007, and the order passed in appeal bearing LPA No. 1319/2007, dismissing the appeal against the Single Judge's order.

28. On examination of the aforesaid decisions, the following legal propositions emerge:

(1) The customs authorities are entitled to examine the goods and draw samples to verify and determine the duty liability.

(2) The customs authorities can issue detention certificate or for good reasons may be called upon and directed by the Courts to issue detention certificate in respect of imported goods.

(3) Detention certificate issued by the customs authorities is not a mandate on the shipping company or warehousing companies. These corporations/companies are entitled to claim demurrage/container charges. These corporations cannot be compelled and mandamus cannot be issued to waive demurrage on the ground that the importer/consignee was unable to clear the goods due to fault of the custom authorities.

(4) Whether and in what circumstances customs authorities can be compelled and asked to pay demurrage to the warehousing companies/shipping companies, is a matter of considerable debate. Decision in the case of Sanjeev Woolen Mills (supra) states that in some cases customs authorities can be asked to pay demurrage to the warehousing company or shipping company. However, for this exceptional relief, grounds are required to be made out and established."

(h) Further, the learned counsel would submit that the Detention Certificate issued by the Deputy Commissioner of Customs suffers from infirmities <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch and thereby making it legally incorrect. According to the Detention Certificate, the goods have been 'detained' for investigation and subsequently 'provisionally released' under Section 110A of the Customs Act, 1962. This statement is prima facie invalid. Section 110A provides for the provisional release of goods only if they have been seized and not merely detained. In the current case, there has been no seizure of goods; they have only been detained by the SIIB. In support of this contention, the learned counsel has relied upon the judgment in Wordline Tradex Private Limited vs. The Commissioner of Customs (Import) & Ors. [2016 (340) ELT 174 (Del.)]. In the said case, the Delhi High Court held that for a 'seizure' to occur, the proper officer must record reasons for believing that the goods are liable for confiscation under Section 111 of the Customs Act, 1962, and these reasons must be recorded before the seizure.

Hence, unless an order has been passed by the proper officer with recorded reasons, the goods cannot be considered seized. The relevant portions of the judgment are as follows:

"23. The power of seizure under Section 110 of the Act has to obviously be exercised for valid reasons. The proper officer has to record his reasons to believe that the goods that he proposes to seize are liable to confiscation. The said reasons for exercise of the power have to be recorded prior to the seizure. In the present case, as already noticed, apart from the panchnama, there is no separate order passed under Section 110(1) of the Act by the proper officer recording the reasons to believe that the goods are liable for confiscation. Since till date no other order exists and no such

order has been communicated to the Petitioner, it is not possible to accept the plea of Mr. Agarwala, learned counsel for the DRI, that the 'detention' of the goods by the DRI was with the authority of law and in any event should be treated as a seizure in terms of Section 110 of the Act."

(i) The learned counsel would submit that the copy of the 'Detention Certificate' <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch F.No.S.Misc.28/2018-Gr-5A, dated 05.06.2018 issued by the Deputy Commissioner of Customs (Group 5A) submitted by the importer along with their affidavit is not addressed to the CFS. He would further submit that it also does not mention any waiver of rental charges. Without prejudice, he would argue that the Detention Certificate has been issued without authority of law as it has not been issued by the proper officer of customs. Referring to the Detention Certificate, he would point out that as per that, the goods have been detained by SIIB for investigation and subsequently released provisionally under Section 110A of the Customs Act, 1962. However, the Detention Certificate has been issued by the Deputy Commissioner of Customs, Group 5A of Chennai-II Commissionerate with the approval of Commissioner of Customs, Chennai-II Commissionerate, who is not the competent authority to issue the same.

(j) The learned counsel would further submit that a plain reading of Sections 48 and 49 of the Customs Act, 1962, indicates that the legislature intended for goods imported into India to be stored in a CFS for not more than 30 days. A CFS, as described in Circular No. 50/2020, dated 05.11.2020, is an off-

seaport facility equipped with fixed installations, equipment, machinery, etc., providing services for handling and clearance of laden import and export goods.

It is a Customs area notified under Section 8 of the Customs Act, 1962, serving as an extension of a Customs port with the primary objective of decongestion. In a <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch CFS, only a part of the customs process, mainly the examination of goods, is typically carried out by Customs, along with stuffing, destuffing, aggregation and segregation. Therefore, through Sections 48 and 49 of the Customs Act, 1962, the legislature has ensured that CFS facilities do not become congested by providing for the warehousing of goods in public warehouses in case of delays in clearance.

The learned counsel further submits that Rule 6(1)(l) of the HCCA Regulations is qualified by Sections 48 and 49 of the Customs Act, which stipulate that goods are not to be kept in the CFS beyond a period of 30 days. Without prejudice to other submissions made herein, even assuming that demurrage and ground rent can be waived, such a waiver is permissible only for the maximum storage period envisaged by the Customs Act, 1962, which is 30 days. Therefore, when the provisions of the Customs Act, 1962, were not followed and the goods were not shifted to a warehouse, the burden of storing the goods fell on the CFS.

Consequently, any waiver of charges would be inequitable and result in unjust enrichment.

(k) The learned counsel would further point out that the CFS had not collected any amounts from the importer in respect of the subject consignments imported by them. He would put the importer to strict proof to show that they have paid any amounts to the CFS in respect of the subject containers. The learned counsel would further submit that the CFS is only a CFS and collects only <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch ground rent and related charges from their customers and does not collect any demurrage charges. Hence, he would argue that the allegation that the importer has unlawfully and illegally retained the amount collected from them is factually incorrect and not tenable and therefore, the question of refund does not arise at all.

(l) The learned counsel would further point out that neither Section 141 nor Section 157 of the Customs Act permits the issuance of regulations that waive detention charges levied by the carrier. Section 157 of the Customs Act deals with the power of the Board to make regulations, but it does not authorize the Board to make regulations regarding the waiver of detention charges or demurrage charges to be collected by carriers or container freight stations for the services rendered by them. Hence, the provisions of the HCCAR Regulations are ultra vires the Customs Act and therefore cannot be enforced. In this regard, the learned counsel has referred to the judgment of the Telangana High Court in GMR Hyderabad International Airport Limited (supra). In this judgment, the Telangana High Court held that cost recovery charges are not provided as an entry under Section 157 of the Customs Act, and in the absence of any special authorization, cost recovery charges cannot be levied by means of a regulation.

Similarly, the waiver of detention or demurrage is not an entry under Section 157 of the Customs Act. Therefore, according to the learned counsel, such a <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch certificate for the waiver of detention charges cannot be issued by the customs authorities as it is beyond their powers conferred under the Customs Act.

24.2.4.(a) Mrs.Pushpa Menon, the learned counsel representing the container freight stations in W.P.Nos. 1890 of 2019 and 14257, 17159, and 17733 of 2020, primarily contends that the writ petitions are not maintainable against a private body like the CFS because there is no pervasive control over it by the Government. Therefore, it does not fall within the category of authorities discharging public functions for the purpose of maintaining the writ petitions.

Firstly, the learned counsel points out that CFSs are private companies registered under the Companies Act, 1956. They operate on their own land and engage in purely commercial activities, such as storing cargo until it is cleared by importers/exporters. She further contended that the control of the Government should be pervasive and not merely regulatory or statutory for a writ petition to be maintainable. In support of the same, the learned has relied upon the judgment of the Division Bench of Delhi High Court in Polytech Trade Foundation Vs. Union of India & Others. [MANU/DE/1591/2021] wherein, it was held as under:-

"39.3. Mr. Sibal sought to draw upon Sections 7, 8, 45, 141 and 143AA of the Customs Act, as well as the provisions contained in the HCCAR, to contend that CFSs and ICDs were bound by all executive instructions issued by the CBIC. We have already examined these provisions, in detail, earlier in this judgment. We are unable to

sustain the submission of Mr. Sibal. CFSs and ICDs are notified as "customs areas", and as "extensions" of the Port, for a specific purpose, viz., to permit unloading and loading of goods. If at all, therefore, the situation may be analogized to the creation of a deeming fiction by the legislature for a particular purpose. In such a case, the consequence of creation of the deeming fiction cannot extend beyond the purpose for which it was created.²³ We find ourselves unable to hold, as Mr. Sibal would exhort us to do, that, merely because, for this limited purpose, CFSs and ICDs are to be treated as customs areas and notional extensions of the Port, they would, ipso facto, be mandatorily subject to every executive direction issued by the CBIC.

39.4. CFSs and ICDs are not creatures of the Customs Act, as the petitioners would seek to contend. They are, essentially, in the nature of godown facilities - whether privately owned or managed by governmental agencies such as the Central Warehousing Corporation or the Container Corporation of India (which, as on date, manages all ICDs in the country) - which owe their entitlement to operate as CFSs and ICDs (for the purpose of loading and unloading of export, and imported, goods) to the notifications issued under Section 7 or Section 8 of the Customs Act. That, by itself, cannot render the collection of charges by CFSs or ICDs from their customers, penal or otherwise, subject to control by the CBIC. The CBIC, therefore, has wisely not chosen to issue any mandatory directive, on its own accord, to CFSs or ICDs, not to charge penal charges from importers or exporters against storage of containers in their premises beyond the "free period".

39.8. Assuming, arguendo, that the CBIC were to issue directives, for compliance, to the Customs Cargo Services Provider, which they are not empowered to issue, such directives cannot be enforced, least of all by a mandamus by the Court."

In the above judgment, the Supreme Court has distinguished between pervasive control and regulatory control. In the present case, at best, the Customs Department or the Central Government, as applicable, can be said to exercise regulatory or statutory control over the operations of the CFSs. There is no scenario where the Government or the Customs Department could exert pervasive control over the private commercial activities of the CFSs, particularly concerning the ground rent charged for warehousing third-party goods, as dictated by private contracts. Additionally, the mere presence of government officials on the board does not inherently imply pervasive control over the organization or its authority in question. In support of this contention, the learned counsel has referred to the judgment of *K.K.Saksena Vs. International Commission on Irrigation and Drainage & Others*. [2015 ALL SCR 1401] "12. The High Court has referred to the provisions of the Constitution of ICID while embarking on the aforesaid discussion and in this process it has noted as under:

1.1 The International Commission on Irrigation and Drainage is established as a Scientific, Technical, Professional, and Voluntary Not-for-Profit Non-Governmental International Organization (NGO-ONG), dedicated, inter alia, to enhance the

world-wide supply of food and fibre for all people by improving water and land management, and the productivity of irrigated and drained lands through the appropriate management of water, environment and the application of irrigation, drainage and flood control techniques.

3.1 ICID consists of National Committees of Participating Countries, on the basis of one National Committee for each such country. Where no National Committee exists, officers of government or of an institution or institutions effectively representing interests within the scope of the objects of the Commission may participate in ICID activities. In such cases one officer shall be designated as Representative.

15. The Court also took into consideration and referred to the following passage from the judgment in Pradeep Kumar Biswas and Ors. v. Indian Institute of Chemical Biology and Ors. MANU/SC/0330/2002 : (2002) 5 SCC 111.

40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesis, be considered to be a State within the meaning of Article 12. The question in each case would be--whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

16. The aforesaid judgment was relied upon by another Constitution Bench in M/s. Zee Telefilms Ltd. and Anr. v. Union of India and Ors.

MANU/SC/0074/2005 : (2005) 4 SCC 649. In that case, the Court was concerned with the issue as to whether Board of Control for Cricket in India (BCCI) is a 'State' within the meaning of Article 12 of the Constitution. After detailed discussion on the functioning of the BCCI, the Constitution Bench concluded that it was not a 'State' Under Article 12 and made the following observations in this behalf:

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30. However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organising cricket matches and travel of the Indian team abroad as also granting of permission to allow the foreign teams to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas case is not a factor indicating a pervasive State control of the Board.

17. Before arriving at the aforesaid conclusion, the Court had summarized the legal position, on the basis of earlier judgments, in para 22, which reads as under:

22. Above is the ratio decidendi laid down by a seven-Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touchstone of the parameters laid down in Pradeep Kumar Biswas case. Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in Pradeep Kumar Biswas case for a body to be a State Under Article 12. They are:

(1) Principles laid down in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesis, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.

29. If the authority/body can be treated as a 'State' within the meaning of Article 12 of the Constitution of India, indubitably writ petition Under Article 226 would be maintainable against such an authority/body for enforcement of fundamental and other rights. Article 12 appears in Part III of the Constitution, which pertains to 'Fundamental Rights'. Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. Article 226 of the Constitution, which deals with powers of High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.

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43. There is yet another very significant aspect which needs to be highlighted at this juncture. Even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review, as already pointed out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction. In *The Praga Tools Corporation v. Shri C.A. Imanuel and Ors.* MANU/SC/0327/1969 : (1969) 1 SCC 585, as already discussed above, this Court held that the action challenged did not have public element and writ of mandamus could not be issued as the action was essentially of a private character. That was a case where the concerned employee was seeking reinstatement to an office.

47. In the present case, though we have held that ICID is not discharging any public duty, even otherwise, it is clear that the impugned action does not involve public law element and no 'public law rights' have accrued in favour of the Appellant which are infringed. The service conditions of the Appellant are not governed in the same manner as was the position in Anadi Mukta Sadguru (supra)."

(b) The learned counsel further argues that these petitions have been filed essentially as substitutes for money suits to recover money from liners and CFSs owed by a private party according to contractual agreements. In support of her contentions, she referred to the following judgments:-

(i) K.K.Saksena Vs. International Commission on Irrigation and Drainage and Ors;

(ii) ARL INFRATECH LET and Anr Vs . Union of India;

(iii) M/s.Sherisha Technologies Private Limited Vs. The Chief Commissioner of Customs and 4 others;

(iv) St. Mary's Education Society and another Vs. Rajendra Prasad Bhargava and others; and

(v) Binny Ltd. and another Vs.Sadasivam and others Thus, the learned counsel submits that the CFS, being private entities, are <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch engaged in the business of storing goods in their warehouses without pervasive control by the Government, since the only condition applicable to the CFS is compliance with all laws. In any case, only rights akin to public duties can be enforced in a writ petition. Even statutory rights cannot be enforced through a writ petition. In many cases, there are disputed questions of fact involved, which cannot be resolved in a writ petition. Adding further, she would submit that personal grievances regarding contractual rights cannot be remedied through writs. In many cases in this batch, the petitioners seek refund of money purportedly paid to the liners or CFSs according to the contract between the parties, arguing that the liners or CFSs should not have collected the said money.

She also argues that these petitions serve essentially as replacements for money suits aimed at recovering owed funds from liners and CFSs by a private party based on contractual agreements.

(c) The learned counsel emphasizes that merely signing a declaration to comply with Customs laws and regulations does not change the status of the CFS.

It is the duty of every citizen to obey all laws, but this does not transform a private company into a public entity.

(d) The learned counsel asserts that while CFSs do not contest the applicability of the HCCA Regulations, Regulation 6(1)(l) is deemed inapplicable.

She argues that only regulations falling under the jurisdiction of Section 159 of the Customs Act can be enforced upon CFSs. Therefore, there exists significant <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch uncertainty regarding the applicability of Regulation 6(1)(l) of HCCA Regulations, especially in the light of the rationale outlined in the recent judgment of the Telangana High Court. In essence, the learned counsel contends that if any regulation is formulated pursuant to Section 159 of the Customs Act and pertains to a subject within the scope of the said section, it should logically apply.

However, if such a regulation cannot reasonably apply to any entity, particularly CFS, then, its enforcement becomes questionable. Moreover, the learned counsel contends that if there are any other laws being in force as per Regulation 6(1)(l), like the Indian Contract Act or Customs Act in force allowing charging of rent or storage charges, then Regulation 6(1)(l) of the HCCA Regulations exempting imported goods from demurrage/rent during detention, may not be applicable to CFS.

(e) The learned counsel further submits that according to Sections 48 and 49 of the Customs Act, CFS are mandated to retain cargo for 30 days after which they may issue a notice to the importer and subsequently auction the cargo. However, under Section 49, importers can opt to warehouse the cargo if a dispute arises, as directed by Customs Board Circular Ref.No.F.No.450/160/2011- Cus.IV. Even if it is contested that Regulation 6(1)(l) of HCCR does apply to CFSs and they are obligated to waive rent/demurrage during detention, this exemption should only extend to the initial 30 days and in any case, no exemption can be <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch given at the higher storage rate charged in the CFS rather than the lower rate charged in the warehouse after 30 days of storage of goods in the CFS.

(f) In conclusion, the learned counsel asserts that regulations must align with the authority granted under the Customs Act, and any regulation outside its purview cannot apply, especially to entities like CFSs.

24.2.5.(a) Mr.S.Dhayaleswaran, learned counsel, for the CFS in W.A.No.1058 of 2017, contends that the primary business of his client is providing customs cargo services to importers and exporters. He highlights that the customs department detained four containers of particle boards belonging to the importer from 02.12.2016 to 27.12.2016. Subsequently, on 28.12.2016, a waiver letter was issued, directing the appellant to waive rent/demurrage charges for this period in accordance with the HCCA Regulations.

(b) He further submits that the impugned order concluded that the CFS cannot interpret the communication received from the Customs authorities dated 28.12.2016, which waived detention charges, as the Regulations clearly stipulate that the custodian cannot levy any rent or demurrage on goods detained by the Customs Department. He also submits that the levy sought by the CFS for the period from 28.12.2016 to 06.01.2017 is reasonable, as effective steps were not <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch taken by the importer to clear the cargo promptly, resulting in clearance only on 06.01.2017. Therefore, he asserts that the CFS should not waive the rent or demurrage on the goods for the entire period from 02.12.2016 until it was cleared on 06.01.2017.

(c) Moreover, he points out that when the importer was granted a waiver to pay ground rent for the period from 04.12.2016 to 27.12.2016, they removed the goods nine days after the date of the said order. Hence, the importer cannot claim any further waiver without an order from the authority.

The amount involved is Rs.1,08,000/-, which cannot be waived as such a claim lacks any legal basis. He further emphasizes that the appellant, being a CFS, the collection of rent is the sole source of income for maintaining the warehouse, inclusive of substantial machinery. Therefore, according to the learned counsel, the finding that the importer removed the goods in the 'shortest possible time' is legally unsustainable; and that waiving the detention charges beyond the stipulated period will inflict financial loss upon the CFS.

(d) The learned counsel also contends that only civil courts have the authority to resolve the contractual obligations between the appellant and the importer, and not before the High Court under Article 226 of the Constitution of India, as this is a private dispute.

24.3. Submissions of shipping lines <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 24.3.1.(a) Dr.R.Sunitha Sundar, learned counsel appearing for the 'shipping lines' / 'steamer agents', would strenuously contend that the shipping lines will not come under the HCCA Regulations. According to her, the steamer agent operates solely as a steamer agent at the disport of the carrier of the import goods and should not be classified as a CCSP under Regulation 2(l)(b) of the HCCA Regulations. It is further contended that the steamer agent does not undertake any responsibilities such as receipt, storage, delivery, dispatch, or handling of the import goods, and hence, it does not qualify as a 'custodian' under Section 45 of the Customs Act and further according to Regulation 3 of HCCA Regulations, the steamer agent does not handle imported goods in Customs areas as specified under Section 8 of the Customs Act which related to the power of approval given by the Customs for loading/unloading of goods and which only Ports, Container Freight Stations (CFS), and Inland Container Depots (ICD) are given approval and the steamer agent would not be included. Thus, she argues that none of the conditions stipulated therein is fulfilled by the steamer agent's operations, and it does not bear any responsibility as a CCSP under the regulation. The learned counsel also contends that, even if the steamer agent were to be appointed as a CCSP, Regulation 6(1)(l) would not be applicable, as it is not a Container Freight Station (CFS) or Inland Container Depot (ICD).

(b) The learned counsel would emphasize that the contract of carriage <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch constitutes a contract of bailment, entitling the steamer agent to exercise its contractual lien on the imported goods for the charges payable for the services rendered, in accordance with the agreed tariff, supported by Section 170 of the Indian Contract Act. Furthermore, it is contended that the provisions of Regulation 6(1)(l) of HCCA Regulations, have the words "subject to any other law for the time being in force", and therefore, should not apply to the steamer agent, as the terms and conditions of the contract of carriage, particularly those outlined in the Bill of Lading, take precedence to HCCA Regulations. She further submits that assuming but without admitting that Regulation 6(1)(l) would be applicable, the steamer agent does not charge rent or demurrage on the goods but only container charges for the duration the importer utilizes the containers and returns it, rendering Regulation 6(1)(l)

inapplicable as it applies only to rent or demurrage.

(c) In response to the detention certificate issued by the Customs authorities, it is highlighted that the goods were provisionally released under Section 110A of the Customs Act, indicating pending adjudication, thus precluding any retrospective waiver of charges. She further contended that the importer's failure to mitigate its losses by not availing customs bonding for the goods, as provided under Section 49 of the Customs Act, precludes them from claiming any waiver of charges. Finally, it is emphasized that both reliefs sought by the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch importer are directed solely against the steamer agent, a private contracting party not amenable to writ jurisdiction, and the claims for refund of payments under different contracts of carriage should be pursued separately.

(d) As regards W.A.No.1667 of 2022, it is submitted that the steamer agent functions solely as an agent of the carrier and is not bound by the Sea Cargo Manifest and Transshipment Regulations, 2018 (SCMT Regulations). Even if SCMT Regulations were deemed applicable, it is argued that the conditions and restrictions therein do not justify waiver under Regulation 10(1) of SCMT Regulations.

(e) The learned counsel would further submit that the obligations of the steamer agent are only contractual and not statutory. Emphasizing the contractual nature of the relationship, she asserted that the steamer agent can exercise its contractual lien on the import goods for charges payable under the agreed tariff, as per the Indian Contract Act. Further, any fines or penalties paid by the importer do not automatically necessitate waiver of container detention charges without due consideration of the underlying reasons. Carriage, being a commercial activity, involves investment, manpower deployment, and risk-bearing by the service provider. Thus, a judicial review cannot mandate waiver without proper consideration of the underlying circumstances.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

(f) The learned counsel further submitted that the failure of the importer to utilize Section 49 of the Customs Act for the customs bonding during detention for investigation indicates a lack of prudent action to mitigate losses and failure to avail lawful waiver provisions, and thus, the pursuit of the detention certificate was an afterthought. She further submitted that the absence of documents relating to adjudication proceedings and voluntary payment of fines and penalties by the importer suggests an admission of liability.

(g) The learned counsel also submitted that the principles of natural justice, including audi alteram partem, are invoked, asserting the steamer agent's right to present its views before any waiver decision. It is also clarified that Regulation 10(1) of SCMT Regulations is not mandatory, rendering waiver letters as 'consideration' and 'request' rather than mandatory directives.

(h) It is pointed out by the learned counsel that the relief sought by the importer is solely against the steamer agent and cannot be pursued through writ proceedings, requiring a civil action for recovery. Highlighting the limitations of writ courts in adjudicating disputed facts without adversarial trials

and cross-

examinations, the importer's acceptance of detention without challenge is construed as an admission of violations, precluding legal waiver claims under relevant statutes and regulations.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 24.3.2.(a) Mr.P.Giridharan, learned counsel representing the carriers and container owners argues that the HCCA Regulations applies solely to CFS and not carriers. He emphasizes that carriers do not obtain a specific license under HCCA Regulations, as it is intended for CFS. He contends that the explanatory memorandum of HCCA Regulations clearly limits its application to ICDs (Inland Container Depots), CFSs, seaports, or airports of Land Customs Stations (LCS), thus excluding carriers. Therefore, including carriers in the definition of custom cargo service providers is legally unfounded.

(b) He further highlights that neither the Import Manifest Vessels Regulation, 1971 nor the Export Manifest Vessels Regulation, 1976 provides for waiver of detention charges. He argues that the imports of all the cargos which are subject matter of the present writ petitions and writ appeals have taken place in 2017, and therefore, SCMTR 2018, which only came into effect from 1st August, 2019, cannot be applied retrospectively to importers prior to that date.

(c) He also asserts that mandamus cannot be issued for matters not prescribed by statute. Since HCCA Regulations does not apply to carriers, it cannot be enforced in a writ petition. Disputes between importers and carriers are contractual and should be resolved in civil courts. Refunding detention charges is beyond the scope of contractual arrangements, as carrier services are based on agreed contractual terms and not gratuitous.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 24.3.3.(a) Mr.S.Vasudevan, learned counsel representing the Non-

Vessel Owning Common Carrier (NVOCC) and shipping lines in Writ Appeal No.363 of 2022, asserts that Regulation 6(1)(l) of the HCCA Regulations, was governed by the Regulations of 1971 and 1976 until 01.08.2019. However, subsequent to 01.08.2019, Regulation 6(1)(l) falls under the purview of the Sea Cargo Manifest and Transhipment Regulations, 2018, which are applicable to Sea Carriers.

(b) The learned counsel further submits that Regulation 6(1)(l) of the Regulations is subject to any other law for the time being in force, which in this case refers to the 1971 and 1976 Regulations applying to authorized sea carriers, shipping lines, and steamer agents. Notably, the 1971 and 1976 Regulations do not impose restrictions on charging container detention charges, unlike Regulation 6(1)(l), which prohibits charging rent or demurrage on detained, seized, or confiscated goods. Therefore, prior to 01.08.2019, the 1971 and 1976 Regulations would override Regulation 6(1)(l) as it is subject to any other prevailing law.

(c) Moreover, the learned counsel contends that Regulation 6(1)(l) of the Regulations is subject to any other law for the time being in force, including the subsequent 2018 Regulations. Although both

the 2009 and 2018 Regulations <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch are issued by the Central Board of Customs and Indirect Taxes, they are established under different sections of the Customs Act and pertain to distinct legal entities. There was no need to issue Regulations 2018, if the Sea Carriers were also covered by the 2009 Regulations. Additionally, while Regulation 6(1)(l) is explicitly made subject to any other prevailing law, the Board has not chosen to make Regulation 10(1)(l) of the 2018 Regulations subject to any law.

(d) That apart, he contends that sea carriers and shipping lines are only covered by the 2018 Regulations, not the 2009 Regulations. He denies the inclusion of shipping lines under 2(b) of the 2009 Regulations, citing the exhaustive nature of the definition starting with "means" and not expressly including authorized sea carriers. He contends that sea carriers, shipping lines, and steamer agents are governed solely by the 2018 Regulations under 2(c) and 2(d) of the Sea Cargo Manifest and Transhipment Regulations, 2018, thus excluding them from the purview of the 2009 Regulations. Regarding the interpretation of Regulation 2(b) of the 2009 Regulations, which the importers argue includes shipping lines, the learned counsel denies this interpretation. He points out that the definition provided in the Act begins with the word "means,"

indicating an exhaustive definition that does not expressly include authorized sea carriers. Sea carriers are involved solely in discharging cargo/containers at the port and do not have custody over them, further supporting their exclusion from <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch the 2009 Regulations.

(e) The learned counsel emphasizes that Container Freight Stations and Ports covered by the 2009 Regulations must possess licenses or approvals under Regulations 5 and 9. Since sea carriers/shipping lines do not obtain licenses, they are not bound by Regulation 6(1)(l). On the matter of detention certificates, he argues that they merely certify the duration of detention or confiscation and do not entail any waiver. The prohibition against charging rent or demurrage on goods stems solely from Regulation 6(1)(l), not from the detention certificate itself and thus, any challenge to the certificate, is unnecessary.

(f) The learned counsel also asserts that detention certificates issued under the 2009 Regulations to sea carriers governed by the 2018 Regulations lack jurisdiction and are void ab initio. He further argues that such certificates were issued in violation of the principles of natural justice and adversely affect the civil rights of CCSPs. In this regard, he referred to the judgment of Apex Court in *Automotive Tyre Manufactures Vs. Designated Authority and Others* [2011 (2) SCC 258], wherein, it was held as follows:

"80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made,

is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application.

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81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. "

Therefore, he submitted that before the issuance of detention certificate, proper show cause notices must be issued. In their absence, he deems the detention certificate issued under Regulation 6(1)(l) of the 2009 Regulations null and void, subject to challenge in collateral proceedings such as writ petitions or appeals. In support of his contentions, the learned counsel has referred to the following Judgments:-

(i) Dhurandhar Prasad Singh Vs. Jai Prakash University and others [2011 (6) SCC 535]

(ii) DLF Universal Limited & Anr. Vs Director Town & Country Planning Department, Haryana & Ors. [2010 (14) SC 1] .

24.3.4.(a) Mr.Karthik Sundaram, learned counsel appearing for the Non-

vessel owning common carrier in W.P.No.17386 of 2022 would submit that the importer is seeking release of imported goods under Bill of Entry dated 05.05.2022 without levying detention, demurrage and container storage charges, based on the detention certificate issued by the Customs Department. He would further submit that permission for warehousing of the goods was provided by customs authorities on 13.05.2022. The 21 free day period as per the Bill of <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Lading ended on 26.05.2022. The 60-day period from the date of Bill of Entry ended on 08.07.2022. Despite warehousing permission on 13.05.2022, the importer chose not to warehouse the goods and did not pay container detention charges beyond the 21 free days as the carrier refused release without payment.

(b) The learned counsel raised the two primary legal issues and they are:

(i) Whether Container Detention Charges can be waived/exempted under Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009 (HCCAR)?

(ii) Whether Container Detention Charges can be waived/exempted under Regulation 10(1)(l) of the Sea Cargo Manifest and Transhipment Regulations, 2018 (SCMTR)?

On the first issue, the learned counsel submitted that Regulation 6(1)(l) of HCCA Regulations deals only with non-charge of rent/demurrage on goods seized/detained/confiscated by the Proper Officer. Placing reliance on the decision in Chairman, Board of Trustees, Cochin Port Trust v. Arebee Star Maritime (2021 11 SCC 641), it was argued that containers are merely receptacles for imported goods and cannot themselves be considered as "goods"

under the Customs Act. Therefore, the said provision does not apply to Container Detention Charges levied by the carrier on their owned containers. The relevant passage of the said decision reads as follows:

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch "49. Given the aforesaid judgments under the Customs Act, a container, being a receptacle in which goods are imported, cannot be said to be "goods"

that are imported as it does not become part of the mass of goods within the country on the facts of these cases. Thus, once destuffing takes place, the container has to be returned either to the shipowner's agent, or to the person who owns such container."

On the second and more pivotal issue, the learned counsel would submit that the SCMTR is a piece of delegated/subordinate legislation. In this regard, the learned counsel relied upon the judgment of the Apex Court in Indian Express Newspapers v. UOI [(1985) 1 SCC 641] and Council of Architecture v.

Mukesh Goyal [(2020) 16 SCC 446], and contended that delegated legislation cannot override primary parent legislations. The relevant portions of the said judgments are extracted below:

(i) Indian Express Newspapers v. UOI [(1985) 1 SCC 641]:

"75. In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

(ii) Council of Architecture v. Mukesh Goyal [(2020) 16 SCC 446]:

38. The UP. Industrial Area Development Act provides NOIDA with the power to make Rules for the management of its internal affairs. In exercise of this power, NOIDA formulated the Service Regulations of 1981. Rule 16 of the Service Regulations sets out the 'Sources of Recruitment' for posts under NOIDA's authority. By Clause (iv) of Rule 16 NOIDA has the power to modify the sources of recruitment for posts under its supervision. It is in exercise of this power that NOIDA formulated the Promotion Policy of 2005 which sets out the sources and qualifications for recruitment in its various departments. It is well established that delegated legislation is susceptible to invalidity on the grounds of being ultra vires its parent legislation but also ultra vires other primary legislation. Where the provisions of a primary legislation (the Architects Act) are contradictory to the provisions of a delegated legislation (the Promotion Policy 2005), the provisions of the primary legislation must prevail. This principle is well established and has been articulated by this Court on several occasions. In *Indian Express Newspapers v. Union of India* MANU/SC/0406/1984 : (1985) 1 SCC 641 Justice Venkataramiah speaking for a three-judge Bench of this Court stated:

75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature.

Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute.

This is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary....

(Emphasis supplied) Thus, the learned counsel submitted that the Customs Act does not confer any power to waive Container Detention Charges. Further, containers are not considered as "goods" capable of separate regulation under the Customs Act. The role and responsibility of Carriers ends with the filing of the Import General Manifest as per the Customs Act.

(c) The learned counsel would next argue that the Bill of Lading is a contract between the Exporter/Supplier and the Shipper and not between the Shipper and the Importer/Consignee. Therefore, the rights that a Carrier exercises against an Importer are (a) Statutory rights under Sections 1 and 2 of the Bill of Lading Act, 1856, read with the conditions incorporated in the Bill of Lading; and (b) Contractual rights sanctified by the Bill of Lading Act, 1856, which is a statute. Further, referring to the decision in *Volcafe and others Vs. Compania Sud Americana De Vapores SA* [(2018) UKSC 61], the learned counsel submitted that the contract of carriage is a contract of bailment.

(d) Additionally, it is submitted by the learned counsel that the Non-

Vessel Owning Common Carrier exercises the rights of a Bailee under Section 170 of the Indian Contract Act, 1872. In this regard, he relied on the judgment in Shipping Corporation of India Ltd. v. C.L. Jain Woollen Mills [(2001) 5 SCC 345], in which it was observed as follows:

"9. Before examining the correctness of the rival submissions, one thing is crystal clear that the relationship between the importer and the carrier of goods in whose favour the Bill of lading has been consigned and who has stored the goods in his custody, the relationship is governed by the contract between the parties. Section 170 of the Indian Contract Act engraft the principle of Bailee's lien, namely if somebody has received the articles on being delivered to him and is required to store the same until cleared for which he might have borne the expenses, he has a right to detain it until his dues are paid. But it is not necessary in the case in hand to examine the common law principle and the bailee's lien inasmuch as the very terms of the contract and the provisions of the Bills of Lading,, unequivocally conferred power on the appellant to retain the goods, until the dues are paid. Such rights accruing in favour of the appellant cannot be nullified by issuance of a certificate of detention by the customs authorities unless for such issuance of detention certificate any provisions of the Customs Act authorities. We have not been shown any provisions of the Customs Act, which would enable the customs authorities to compel the carrier, not to charge demurrage charges, the moment a detention certificate is issued. It may be undoubtedly true that the customs authorities might have bona fide initiated the proceedings for confiscation of the goods which however, ultimately turned out to be unsuccessful and the Court held the same to be illegal. But that by itself, would not clothe the customs authorities with the power to direct the carrier who continues to retain a lien over the imported goods, so long as his dues are not paid, not to change any demurrage charges not the so-called issuance of detention certificate would also prohibit the carrier from raising any demand towards demurrage charges, for the occupation of the imported goods of the space, which the proprietor of the space is entitled to charge from the importer. The importer also will not be entitled to remove his goods from the premises unless customs clearance is given."

Relying on the aforesaid decision, the learned counsel emphasized that as a <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Bailee, the Carrier has a statutory right to detain goods until its dues are paid, and this right emanates from the Indian Contract Act, a primary legislation.

(e) The learned counsel vehemently argued that these statutory and contractual rights of the Carrier, flowing from primary legislations like the Bill of Lading Act and Indian Contract Act, cannot be nullified or overridden by a mere certificate issued under the SCMTR, which is delegated legislation, unless such a certificate can be directly traced to and is authorized by a specific provision under the Customs Act itself. Fortifying this argument further, the learned counsel cited the following judgments to illustrate that a waiver granted under delegated legislation like the SCMTR cannot

supersede rights granted under primary statutes or contractual rights sanctified by statutes:

(i) Mumbai Port Trust v. Shri Lakshmi Steels [(2018) 14 SCC 317]

(ii) J.P. Impex v. Principal Commissioner [(2020) (2) TMI 1384]

(iii) Global Impex v. Celebi [2019 (12) TMI 957] 106 and 120

(f) Without prejudice to the above, the learned counsel contended that once the importer opted for the rights under the Bill of Lading by accepting the 21 free day period, it amounts to a waiver of any other statutory rights, including those under the SCMTR. In this regard, the learned counsel relied upon the decision in CCE v. Reliance Industries Ltd. [(2015) 14 SCC 413], wherein, it <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch was held as follows:

"3. The above view of this court can be traced to the maxim which sanctions the non-observance of statutory provision *cuilibet licet renuntiare juri pro se introducto*. Everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy."

Relying on the above decision, the learned counsel states that a party can legally waive rights of a private nature.

(g) Delving into the text of Regulation 10(1)(l) of the SCMT Regulations, the learned counsel argued that even if applicable, it cannot waive container detention charges (a) beyond the period of 60 days from the date of Bill of Entry, as per the proviso; (b) if the entries are found to be incorrect; and (c) in cases where the containers laden with goods are not detained by the customs authorities for verification of entries. He would further point out that the terms "detention"/"detained" are not used or found in the Customs Act, which only provides for "seizure" of goods under Section 110, as held in:-

(i) J.K Exim v. Principal Commissioner [(2017) 348 ELT 612] (Mad)

(ii) Mohd. Salman Khan v. Union of India [(2016) SCC OnLine Del 6739]

(iii) Sunil Patil v. Union of India [(2024) 15 Centax 439 (del.) <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

(h) Specifically addressing the facts of the present case, the learned counsel pointed out that once permission for warehousing was granted by the Customs authorities on 13.05.2022, the containers cannot be said to be laden with goods "detained" by customs for verification of entries under Sections 46 or 50 of the Customs Act.

Therefore, from 13.05.2022 onwards, the requirements and applicability of Regulation 10(1)(l) of SCMTR cease to exist. Consequently, any Detention Waiver Certificate granted for the period after 13.05.2022 is without authority of law and beyond the scope of Regulation 10(1)(l).

(i) Additionally, the learned counsel argued that the dispute regarding classification or valuation of the imported goods is solely between the importer and customs authorities. The Carrier has no role to play in such disputes. Its role ends with filing the Import General Manifest. Hence, issuing a Detention Waiver Certificate to penalize the Carrier, who is a third party not involved in the actual dispute between the importer and customs, is wholly arbitrary and not traceable to any provision of the Customs Act, as opposed to the subordinate SCMTR.

(j) As a last resort, without prejudice to the previous grounds, the learned counsel submitted that the issue of waiver of container detention charges is essentially a commercial dispute arising out of private rights between two private parties - the importer and the Carrier. In this regard, the learned counsel relied upon the following decisions:-

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

(i)Praga Tools Corporation v. Imanual [1969(1) SCC 585]

(ii)Marg Limited Vs. Karaikal Port Pvt. Ltd., [2021 SCC Online Mad 2585] .

Thus, the learned counsel prayed for dismissal of the writ petition as being thoroughly misconceived, unsustainable, and an abuse of the extraordinary writ jurisdiction.

24.3.5.(a) Mr.M.Ashwin Kumar, learned counsel appearing for the Non-

Vessel Operating Common Carrier/ fifth respondent in W.A.No.1668 of 2022, would submit that goods imported by the appellant/importer were detained by SIIB due to suspicion of misdeclaration. He would further submit that the false declaration was established against the importer/appellant and the goods were confiscated vide order in original dated 11.01.2022. Furthermore, he points out that the benefit under Regulation 10(1)(l) of the SCMT Regulations would only apply if the entries in the bill of entry presented under Section 46 are found to be correct. He highlights that although there was an option to temporarily store the imported cargo offered by the Customs Department under Section 49 of the Act during the investigation, the importer/appellant did not take advantage of it.

(b) The learned counsel also points out that even in cases where entries made in the Bill of Entry are found to be correct upon verification, the proviso to <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Regulation 10(1)(l) authorizes the demand of container detention charges for a period beyond 60 days. He also points out that even now, there are no provisions in the

Customs Act, 1962, nullifying the rights of the carrier under the Bills of Lading Act and Contract Act.

(c) The learned counsel also points out that the SCMT Regulations, are subordinate legislations made by the Central Board of Indirect Taxes and Customs in the exercise of powers conferred under Sections 157 read with 30, 30A, 41, 41A, 53, 54, 56, 93(8), and 158(2) of the Customs Act. Though none of the Sections referred to above clothes the Board with the power to supersede the right of the carrier in their relationship with the consignee-importer, the rights of the Carrier to claim container detention charges have been restricted by Regulation 10(1)(l). In support of his contentions, the learned counsel has referred to the following judgments:

(i) The Hon'ble Supreme Court in *Shipping Corpn. of India Ltd. v. C.L. Jain Woollen Mills*, [(2001) 5 SCC 345] held that even in cases where confiscation orders passed by the customs authorities are set aside and detention orders are held to be illegal, claims of a carrier based on the terms and conditions of the contract between the importer and the carrier cannot be nullified since every consignee of goods named in a Bill of Lading and every endorsee of a Bill of Lading, is vested with absolute right over the goods under the Bills of Lading Act, 1956. It was further held that the Bill of Lading being the mercantile document of <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch title, clauses therein relating to payment of charges in case of non-clearance of goods within the free time available as well as those relating to carrier's applicable tariff and provisions as to lien on the goods for all sums payable to the carrier under the contract shall have full force. Since the provisions of the Bill of Lading unequivocally confer power on the carrier to retain the goods until the dues are paid, such rights cannot be nullified by the issuance of a certificate of detention by the Customs Authorities in the absence of provisions in the Customs Act authorising to do so.

(ii) In *Mumbai Port Trust v. Shri Lakshmi Steels*, [(2018) 14 SCC 317], the Apex Court, while interpreting provisions similar to Regulation 10(1)(l) in the Handling of Cargo in Customs Areas Regulations, 2009 made by the Board, has categorically held that the Regulations framed under the Customs Act are in the nature of subordinate legislation and that such subordinate legislation framed by a Board cannot, in any manner, affect the power and authority of the Port Trust flowing from the Major Port Trust Act. Therefore, upon applying the dictum so laid down, regulation 10(1)(1) cannot in any manner, take away the rights of the respondent in the instant case as a carrier governed by the Bill of Lading Act and Contract Act.

(iii) The Hon'ble Supreme Court, in *Kerala Samsthana Chethu Thozhilali Union V. State of Kerala*, [2006 4 SCC 321] has held that a rule is not only required to be made in conformity with the provisions of the Act <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch whereunder it is made, but the same must be in conformity with the provisions of any other Act, as subordinate legislation cannot be violative of any plenary legislation made by the Parliament or State Legislature. It was also held in that case that, the power conferred on the rule-making authority to

make rules is only for the purpose of carrying out the purposes of the Act and not dehors the same.

In other words, rules cannot be framed in matters that are not contemplated under the Act and the rules made must conform to the legislative policy and they must not be framed in contravention of the constitutional or statutory scheme.

(iv) The Supreme Court in *State of Rajasthan Vs Basant Nahatha*, [(2005) 12 SCC 77] held that essential legislative functions cannot be delegated.

Therefore, the learned counsel states that the Non-Vessel Operating Common Carrier is entitled to container detention charges claimed from the importer/appellant in terms of the bill of lading concerned for the whole period while the container remained under detention.

24.3.6.(a) Mr.Raffiq Mohammed, learned counsel representing M/s.

Lloyd and Joseph, learned counsel appearing for the appellant / Non Vessel Operating Common Carrier in W.A.No.2073 of 2022, would submit that they have been providing shipping services as a shipping agent in India since 2017, after obtaining necessary approval from the Department of Customs by furnishing the continuity bond. At the time when they commenced Non Vessel Operating <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Common Carrier Operations and furnished the continuity bond, the SCMT Regulations had not yet commenced. He would therefore submit that they have not acted as the authorized sea carrier in the present case and therefore, they have not filed the import general manifest during the import process. Adding further, the provisions under SCMT Regulations, which are made applicable to the "Authorized Sea Carrier" are not applicable to the container operator, as they are neither the operator of the "conveyance" nor the agent of the conveyance who has carried the imported goods in container into India. Further, the containers of the appellant were carried by the vessel (conveyance) MV SSL Krishna, and therefore, the said vessel operator or their appointed agent in India is the "Authorized Carrier" who filed the statutory IGM with the Department of Customs.

Therefore, the container operator is not bound by Regulation 10(1)(l) of SCMT Regulations and hence, the waiver letter issued under Regulation 10(1)(l) of SCMT Regulations is not applicable to the container operator. He further submits that the appellant has challenged the validity of Regulation 10(1) of SCMT Regulations before the court in W.P.No.25524 of 2022, which is pending.

(b) He further submits that Regulation 10(1)(l) of SCMT, 2018, does not include any non-obstante clause, and therefore, it has no overriding effect over the provisions of other statutes and instruments made under relevant statutes. The learned counsel also submits that the HCCA Regulations does not <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch apply to shipping lines. In support of the same, the learned counsel has relied on the following judgments:-

(i) In the case of *Polytech Trade Foundation Vs. Union of India* [(2021) SCCOnLine Del 3694], the High Court of Delhi held that shipping lines are not considered

Customs Cargo Service Providers within the meaning of HCCAR and are, therefore, entirely outside the purview of the said Regulations.

(ii) Similarly, in the case of S.U. Sirajudeen Vs. M/s. Well Trans Logistics India Pvt. Ltd., (O.S.A. (CAD) No. 45 of 2021), the court held that the waiver under the Handling of Cargo in Customs Areas Regulations, 2009, would not apply to a private party whose containers have been detained, and they are not obligated to adhere to it.

Therefore, it is submitted that since the appellant has not acted as an authorized sea carrier in the present shipment, they cannot be compelled to abide by the impugned detention and demurrage waiver certificate.

24.4. Submissions of Customs authorities 24.4.1.(a) Mr.V.Sundareswaran, learned senior panel counsel appearing for the appellant / Customs Department in W.A.Nos.2767 and 2768 of 2022 would submit that in the common order dated 12.06.2022 passed in W.P.Nos.23755 & 23756 of 2017, the learned judge directed the appellants (Customs authorities) to pay the loss caused to the 2nd and 3rd respondents (Customs Freight Stations) <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch for the period after 19.10.2015, on account of storage charges for the prohibited R22 refrigerant gas imported by the 1st respondent.

(b) The learned senior panel counsel for the appellants submits that the importers in these cases had illegally imported 80000 kgs of prohibited R22 refrigerant gas by misdeclaring it as R410A refrigerant. After due process, the prohibited goods were confiscated vide Order-in-Original dated 05.01.2016, with an option to redeem the goods for re-export subject to payment of redemption fine of Rs.10 lakhs and penalty of Rs.5 lakhs, which was paid by the importer on 22.01.2016.

(c) The learned senior panel counsel for the Customs Department would submit that the importer filed an appeal against the Order-in-Original before the Commissioner (Appeals), which was dismissed in OIA Nos.373 & 374, dated 19.04.2016. Thereafter, the importer, on 27.06.2016, 19.08.2016, and 12.09.2016, requested a waiver of demurrage charges on the detained cargo. The waiver was granted by letter dated 23.12.2016 for the investigation period from 27.01.2011 to 19.10.2016, pursuant to Regulation 6(1)(l) of HCCAR, 2009.

However, the importer, vide letters dated 04.01.2017 and 05.05.2017, requested a waiver of demurrage from 29.01.2015 until the release of the consignments.

Subsequently, the importer filed W.P.No.15563 of 2017 seeking a mandamus directing the customs authorities to consider the representation dated 05.05.2017.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch This Court, vide order dated 21.05.2017, directed the customs authorities to dispose of the representations without expressing any view on the merits of the matter. The importer then filed two writ petitions, W.P.No.23755 of 2017, seeking to declare the communication dated 23.08.2016 issued by the Customs to the CFS as illegal and against the provisions of the Act, and W.P.No.23756 of 2017, seeking a mandamus

directing the Customs Department to issue a detention certificate and to comply with the Order-in-Original dated 05.01.2016 for re-

export. The goods imported were prohibited goods, which the importer was aware of, as corroborated by the records seized at the importer's premises. The prohibited goods were confiscated and were allowed to be redeemed subject to the payment of a redemption fine and penalty as per the order passed by the Adjudicating Authority. Hence, given the lack of bona fide on the part of the importer, even the waiver granted for a limited period is excessive. It is further submitted that in the affidavit filed by the importer, there was no averment alleging any mala fide. Furthermore, the learned Judge found that the order dated 23.08.2016, restricting the partial waiver of demurrage charges for the period up to 19.10.2015, was justified and declined to interfere with the period of waiver. The learned Judge also found that the importer showed no inclination to re-export the consignment. Contrary to the above facts and findings, the learned Judge directed the Customs to bear the loss caused to the CFS on account of the storage of R22 refrigerant gas for the period thereafter, which is unwarranted <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch and uncalled for. Hence, the learned senior panel counsel submitted that the importer, being a willful defaulter who imported prohibited goods by mis-

declaration, is not entitled to any waiver of demurrage charges beyond what has already been allowed for the period up to 19.10.2015. Therefore, the learned senior panel counsel prays that the order passed by the learned Judge, directing that the loss caused to the Container Freight Station on account of storage of prohibited goods, viz., R22 refrigerant, be borne by the Customs Department, is liable to be set aside.

(d) As regards W.A.No.574 of 2022, the learned senior panel counsel appearing for the respondent/customs department would submit that the importer has filed the present appeal challenging the Final Order passed by the learned Judge in WP.No.26838 of 2018, dated 01.07.2021, who dismissed the writ petition praying for a Mandamus to refund Rs.20,57,526.72 paid by the importer for the release of goods by the CFS. The learned Judge dismissed the writ petition on the ground that the detention certificate issued under the regulations does not confer a direct right to obtain a refund from the service provider, a private entity.

The learned counsel emphasized that the contractual relationship between the service provider and the importer or exporter necessitates an examination of the terms and conditions in light of the facts and therefore such adjudication on factual aspects, cannot be made in Writ Proceedings.

(e) The learned senior panel counsel would further submit that the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch importer imported goods by filing Bill of Entry No.2696680 dated 02/08/2017, declaring them as "Unflavoured Supari." However, the goods were detained at the Customs Freight Station. Subsequently, the Customs Department seized the goods for mis-declaration, as they were prohibited under Customs Tariff Heading (CTH) 21 and imported below the Minimum Import Price (MIP), resulting in duty evasion.

(f) The learned senior panel counsel would also submit that the importer approached the Court through Writ Petition No.22114 of 2017. By an order dated 12.09.2017, the learned Judge directed provisional assessment of the goods and consideration of a waiver for demurrage and detention charges.

Despite the Customs authority issuing a waiver certificate on 27.10.2017, the CCSP/APL India Private Limited refused to honor it, compelling the importer to pay Rs.20,57,526.72. The learned senior panel counsel would submit that after making the payment, the importer filed Writ Petition No.26838 of 2018 seeking a refund. The learned Judge dismissed the petition, noting that the Customs certificate served only as an eligibility certificate and that factual adjudication was necessary, which could not be undertaken in a Writ Petition and the importer was directed to seek remedy in an appropriate forum.

(g) The learned senior panel counsel would assert that the present writ appeal is not maintainable against Customs department, as they are not proper parties in the appeal against the Writ Petition. On merits, the issue requires <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch factual adjudication, especially given the importer's lack of bona fides and the prohibited nature of the goods. The learned senior panel counsel referred to the following judgments on whether the importer is entitled to any waiver and whether the customs authorities are liable to pay the charges:

(i) The Division Bench of the Delhi High Court in the case of M /s. Trip Communication Pvt. Ltd. vs Union of India reported in 2014 (302) ELT 321, after harmoniously construing the HCCA Regulations, held that when the importer is at fault and fines/penalties are imposed by the Customs authorities, granting the benefit of waiver of demurrage is unreasonable as the importer had provided the space/warehouse to suffer and was not the intention behind the HCCA Regulations.

(ii) The Division Bench of the Delhi High Court in the case of M/s.

Muscles Fusion FZE vs Principal Commissioner reported in 2017 (354) ELT 555 has categorically held that Regulation 6(1)(l) of HCCA Regulations does not apply to goods which are confiscated. Further, the Court observed that an importer/exporter having accepted the finding that the consignment contained prohibited goods cannot claim waiver of demurrage charges. The Court also added that prohibited goods which are confiscated are not entitled to re-export, without payment of demurrage or ground rent.

(iii) The Hon'ble Supreme Court in the case of M/s.Rasiklal Kantilal & Co. vs Board of Trustees reported in 2017 (348) ELT 3 (SC), has held that <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch delay in taking delivery of imported goods will be attributable purely to the importer, and mere pendency of proceedings initiated by the Customs authorities while discharging their sovereign function does not create any right for remission in favour of the importer.

(iv) The Hon'ble Supreme Court in the case of Mumbai Port Trust vs M/s Sri Lakshmi Steels reported in 2017 (352) ELT 401 (SC), has held that even if the importer is not at fault, it is the

importer alone who is liable to pay charges like demurrage, etc. The Apex Court further held that as far as detention charges are concerned, being a private contract between the importer and carrier/shipping lines, the customs authorities cannot be directed to pay any amount unless it is proved that their action is absolutely mala fide or is such gross abuse of power that they should be asked to compensate the importer.

24.4.2.(a) Mr.AR.L.Sundaresan, learned Additional Solicitor General, representing Mr.Rajnish Pathiyil, learned senior panel counsel for Customs, submits that Shipping Lines, Freight Forwarders, and Non-Vessel Operating Common Carriers (NVOCC) are Customs Cargo Service Providers (CCSPs) as per Regulation 2(1)(b) of the HCCA Regulations. He emphasizes that for imports prior to 01.08.2019, before the Sea Cargo Manifest and Transshipment Regulations, 2018 came into force, only HCCA Regulations applies. Moreover, he submits that the existence of SCMT Regulation does not nullify HCCA Regulations and both <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch regulations coexist and are applicable based on the circumstances.

(b) Referring to various circulars and public notices, including Circular No.13/2009, Public Notices No.158/2016, No.169/2016, and No.12/2019, the learned Additional Solicitor General argues that entities such as CFS, shipping lines, and steamer agents fall under the purview of HCCA Regulations. It is further submitted that though the CCSPs have made a submission that HCCA Regulations is not applicable to them, they have not yet challenged the validity of the same.

(c) The learned Additional Solicitor General further argues that any entity handling imported and exported goods, including custodians, falls under the definition of a Customs Cargo Service Provider (CCSP). He asserts that CCSPs cannot question the integrity of importers, as detention certificates are only issued when importers bonafide are established. Since there is no common format provided under the rules, a standard procedure is adopted for issuing detention certificates for goods detained pending investigation, often due to classification doubts.

(d) Regarding maintainability, the learned Additional Solicitor General opposes the application of precedents like K.K. Saxena Vs. International Commission of Irrigation and Drainage & Ors. and St Mary's Education <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Society & Anr. Vs. Rajendra Prasad Bhargava & Ors., arguing that they do not align directly with the present cases, which are distinguishable.

(e) The learned Additional Solicitor General emphasizes the government's pervasive control under Section 8 of the Customs Act, 1962, and Section 141, stating that ownership of land does not negate control once designated as a 'customs area'. In this context, he refers to the Supreme Court judgment in M/s. Zee Telefilms Ltd. and Anr. Vs. Union of India and Ors.

(2005) 4 SCC 649, where the Court held that the control exercised over BCCI was merely regulatory in nature, especially considering BCCI's status as a society.

(f) In conclusion, the learned Additional Solicitor General asserts that the Customs Department's control over designated customs areas, regardless of private ownership, validates the applicability of

HCCAR to entities involved in cargo handling. Therefore, he prayed for appropriate orders in the present batches of cases.

24.5. Reply submissions of importers 24.5.1. Mr.Arvind Datar, learned senior counsel in reply to the arguments made by the learned senior counsels appearing for the CFS/shipping lines has made the following submissions:-

(a) Firstly, referring to the judgment of the Telangana High Court <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch dated 27.03.2024 in the case of GMR Hyderabad International Airport Ltd., (supra), the learned senior counsel submits that the court only ruled on cost recovery charges under Regulation 5(2) of the Handling of Cargo in Customs Areas Regulation, 2009. The Division Bench held that Regulation 5(2) lacked a legal basis to stand, asserting that there was no authority under Section 157 of the Customs Act, 1962, to formulate rules concerning cost recovery charges. This judgment, though cited by the counsel for the Shipping Lines/CFS, is deemed irrelevant to the present cases. The source of power for issuing the HCCAR Regulations, 2009 primarily stems from Section 141(2) of the Customs Act, 1962, and not Section 157, as contended by the opposing counsel. Hence, the Telangana High Court's judgment holds no bearing on the issue at hand.

(b) Regarding the clause "subject to any other law for the time being in force," it is essential to note that this term is specifically used in Sub Clause (1) of Regulation 6 of the Handling of Cargo in Customs Areas Regulation, 2009. This clause pertains to rent or demurrage on detained, seized, or confiscated goods.

Therefore, any law addressing rent or demurrage becomes relevant in interpreting the scope of Regulation 6(1). The Bill of Lading Act, 1856, and the Contract Act, 1872, govern the relationship and rights between two private parties individually. However, the Handling of Cargo in Customs Areas Regulation, 2009, delineates the obligations of Customs Cargo Service Providers <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch toward the customs department. These regulations, being special legislation, take precedence over general laws like the Bill of Lading Act, 1856, and Contract Act, 1872.

(c) The learned senior counsel would further submit that the prohibition from the collection of rent or demurrage by CFS/Shipping Lines, acting as Customs Cargo Service Providers (CCSP), is mandated by law, without discretion, applying universally to all cases of goods seizure, detention, or confiscation by Customs Authorities, irrespective of importer classification. This blanket prohibition renders any arguments regarding the waiver period raised by the CCSP i.e., CFS/shipping lines irrelevant. Additionally, the learned Judge has explicitly stated that CCSPs are not permitted to charge rent or demurrage, and any challenges to the regulations' validity cannot be entertained, including claims of natural justice violations or regulatory disparities. Furthermore, the contention that waivers can only be granted for a certain period lacks support in the regulations' language.

(d) The learned senior counsel would further submit that the judgments cited by the CFS/container terminals, such as in the cases of Muscles Fusion (supra) Global Impex (supra), are not applicable here, as they concern statutory charges, unlike the present case. Additionally, the Polytech Trade Foundation case (supra), where it was remarked that Shipping Lines are not <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch CCSP (Customs Cargo Service Providers), was based on different circumstances regarding the implementation of directions issued by DCS (Deputy Commissioner of Customs). This remark, therefore, constitutes obiter dicta and does not constitute a conclusive judgment on the matter. Hence, the learned senior counsel prays for appropriate orders in the present cases.

24.5.2.(a) Mr.B.Sathish Sundar, learned counsel argues that the case laws cited by the private respondents (CCSPs and Steamer Agents) involving other laws like the AAI Act, 1987, and the Major Port Trust Act, 1963, are not applicable, as those laws provide for policies governing the waiver of detention and demurrage charges. The learned counsel criticizes the judgment in Polytech trade Foundation Vs. UOI, arguing that it incorrectly concluded that shipping lines are not CCSPs under the HCCAR, 2009, without logical reasoning.

(b) The learned counsel submits that Steamer Agents and Freight Forwarders cannot claim that the HCCAR, 2009 does not apply to them, as they are required to register under the 2009 and 2018 regulations and abide by their provisions, failing which they are liable to be proceeded against departmentally.

(c) The learned counsel also cites instances where the Commissionerate of Customs at Mundra issued Show Cause Notices to CFS and Steamer Agents, calling upon them to show cause as to why a penalty amounting to Rs. 4,00,000/-

should not be imposed under Section 117 of the Customs Act, 1962, for violating <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch the detention certificates issued under the HCCA Regulations and collecting rent and container detention charges from the assesseees. Consequent to these Show Cause Notices, the Steamer Agents and CFS were compelled to refund the amounts of rent and container detention charges collected from the assesseees in violation of the detention certificates and the HCCA Regulations.

(d) The learned counsel vehemently argues that by virtue of Section 141(2) of the Customs Act, 1962, and the subordinate legislations framed thereunder, i.e., the HCCAR, 2009 and SCMTR, 2018 Regulations, the official respondents, being the Commissioners of Customs, are bound to ensure compliance with these regulations by CCSPs, including Steamer Agents and Freight Forwarders.

(e) The learned counsel emphasizes that the revenue authorities are duty-bound to take appropriate coercive action, including the imposition of penalties under Section 117 of the Customs Act, 1962, amounting to Rs.4,00,000/-

as per the Show Cause Notices issued, in the event of non-compliance by the CFS and Steamer Agents with the detention certificates issued in accordance with the HCCA Regulations.

24.5.3.(a) Mr.V.P.Raman, learned counsel would further submit that the CCSP's argument regarding the non-binding nature of the waiver certificate lacks merit. The waiver certificate, being an official direction under the HCCAR <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Regulations, has a binding legal effect that supersedes any contractual agreements between the CCSP and the importer to the extent of any conflict. This legal principle is upheld by the Bombay High Court in Supreme Industries Vs. CBIC (2021 (377) ELT 698 (Bom), where it was held that regulations as subordinate legislation have the force of law and override contractual obligations where there is repugnancy. Without challenging the regulation or waiver certificate, the CCSP's contention that the waiver certificate is not binding is legally untenable.

(b) The learned counsel further submits that the common order dated 13.06.2022 passed in the writ petitions is well-reasoned, reflecting a comprehensive examination of the facts and applicable law. The Customs' and CCSP's appeals against this order lack substantial grounds and should therefore be dismissed.

III. DISCUSSION AND FINDINGS

25. Heard the learned counsel for the respective parties and also perused the materials available on record.

(A) ISSUES FOR CONSIDERATION

26. The issues that arise for consideration in these cases are whether <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch the importers are liable to pay detention/demurrage charges to the CFS and the shipping lines/steamer agents when the goods have been detained by the Customs Department for verification, and after the verification, it was found that the imported goods were in order. The connected question to be decided is whether the waiver certificate for the detention/demurrage charges granted by the Customs Department is statutorily binding on the CFS and shipping lines/steamer agents. In this context, the issue relating to the maintainability of the writ petitions and whether the statutory regulations would have an overruling effect on the contract between the parties also arises for consideration.

(B) LEGAL FRAMEWORK- RELEVANT PROVISIONS

27. Before going to the issues involved in these batches of cases, it would be useful to refer to the relevant provisions of the Customs Act, HCCA Regulations, SCMT Regulations, Contract Act and the Indian Bills of Lading Act, which read as under:

"Customs Act Section 2(11):

customs area means the area of a customs station [or a warehouse] and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities;

Section 2(43):

Warehouse means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A;

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Section 8: Power to approve landing places and specify limits of customs area.—The [Principal Commissioner of Customs or Commissioner of Customs] may,—

(a)approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;

(b)specify the limits of any customs area.

Section 10: Appointment of boarding stations.—The [Principal Commissioner of Customs or Commissioner of Customs] may, by notification in the Official Gazette, appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of customs.

Section 18: Provisional assessment of duty: (1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 [and section 50],—

(a)where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b)where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c)where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

[(1A) Where, pursuant to the provisional assessment under sub-section <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.] (2) When the duty leviable on such goods is assessed finally [or re- assessed by the

proper officer] in accordance with the provisions of this Act, then —

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty 4[finally assessed or re- assessed, as the case may be,] and if the amount so paid falls short of, or is in excess of 5[the duty[finally assessed or re-assessed, as the case may be,]], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty [finally assessed or re-assessed, as the case may be,] is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

[(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order [or re-assessment order] under sub-section (2), at the rate fixed by the Central Government under section [28AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.] (4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment, of duty finally [or re-assessment of duty, as the case may be,] there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.] (5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to— <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.

Section 45: Restrictions on custody and removal of imported goods.— (1) Save as otherwise provided in any law for the time being in force, 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 Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force,—

(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer [or in such manner as may be prescribed].

[(3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an [arrival manifest or import manifest] or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.] Section 46: . Entry of goods on importation <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch (1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed]:

[Provided that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system], allow an entry to be presented in any other manner:

Provided further that] if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

[(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented [at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods

have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.] (4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [and such other documents relating to the imported goods as may be prescribed.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch [(4A) The importer who presents a bill of entry shall ensure the following, namely:—

- (a) the accuracy and completeness of the information given therein;
 - (b) the authenticity and validity of any document supporting it; and
 - (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.
- (5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

Section 48: Procedure in case of goods not cleared, warehoused, or transhipped within [thirty days] after unloading.—If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped [within [thirty days]] from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof:

Provided that —

- (a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;
- (b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Explanation.— In this section, "arms" and "ammunition" have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959).

49. Storage of imported goods in warehouse pending clearance or removal.—Where,—

(a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;

(b) in the case of any imported dutiable goods, entered for warehousing, <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time, the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding thirty days:

Provided that the provisions of Chapter IX shall not apply to goods permitted to be stored in a public warehouse under this section:

Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time.] Section 49 Act prior to the 2017 amendment read as follows: “49. Storage of imported goods in warehouse pending clearance.— Where in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored for a period not exceeding thirty days in a public warehouse, or in a private warehouse if facilities for deposit in a public warehouse are not available; but such goods shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods:

Provided that the Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time.”.

Section 50: Entry of goods for exportation.

(1) The exporter of any goods shall make entry thereof by presenting 1[electronically] [on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [in such form and manner as may be prescribed].

[Provided that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system] , allow an entry to be presented in any other manner.] <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch (2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

[(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:—

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.] Section 57: Licensing of public warehouses.—The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.

Section 58: Licensing of private warehouses.—The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Section Act 59: Warehousing bond:

(1)The importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself

(a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;

(b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and

(c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

(2) For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) The importer shall, in addition to the execution of a bond under sub- section (1) or sub-section (2), furnish such security as may be prescribed.

(4) Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another

warehouse.

(5) Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-

section (3).]

110. Seizure of goods, documents and things.—(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or
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(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.] (2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

Section Act 110A: Provisional release of goods, documents and things seized pending adjudication.—Any goods, documents or things seized under section 110, may, pending the order of the [adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the [adjudicating authority] may require.

Section 141. Conveyances and goods in a customs area subject to control of officers of customs.—(1) All conveyances and goods in a <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of customs.

(2) The imported or export goods may be received, stored, delivered, despatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.

Section 157. General power to make regulations.

(1) Without prejudice to any power to make regulations contained elsewhere in this Act, the Board may make regulations consistent with this Act and the rules, generally to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the form [and manner to deliver or present] of a bill of entry, shipping bill, bill of export, [arrival manifest or import manifest], import report, [departure manifest or export manifest], export report, [bill of transshipment, declaration for transshipment] boat note and bill of coastal goods;

[(ai) the manner of export of goods, relinquishment of title to the goods and abandoning them to customs and destruction or rendering of goods commercially valueless in the presence of the proper

officer under clause (d) of sub-section (1) of section 26A;

(aii) the form and manner of making application for refund of duty under sub-section (2) of section 26A;] [(aa) the [form and manner] in which an application for refund shall be made under section 27;] [(ab) the form, the particulars, the manner and the time of delivering the passenger and crew manifest for arrival and departure and passenger name record information and the penalty for delay in delivering such information under sections 30A and 41A;]

(b) the conditions subject to which the transshipment of all or any goods under sub-section (3) of section 54, the transportation of all or any goods under section 56 and the removal of warehoused goods from one warehouse to <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch another under section 67, may be allowed without payment of duty;

(c) the conditions subject to which any manufacturing process or other operations may be carried on in a warehouse under section 65.

(d) the time and manner of finalisation of provisional assessment;

(e) the manner of conducting pre-notice consultation;

(f) the circumstances under which, and the manner in which, supplementary notice may be issued;

(g) the form and manner in which an application for advance ruling or appeal shall be made, and the procedure for the Authority, under Chapter VB;

(h) the manner of clearance or removal of imported or export goods;

(i) the documents to be furnished in relation to imported goods;

(j) the conditions, restrictions and the manner of making deposits in electronic cash ledger, the utilisation and refund therefrom and the manner of maintaining such ledger;

(k) the manner of conducting audit;

(l) the goods for controlled delivery and the manner thereof; the measures and separate procedure or documentation for a class of importers or exporters or categories of goods or on the basis of the modes of transport of goods."

Handling of Cargo in Customs Area Regulations, 2009 Regulation 2(1)(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.

Regulation 3:

These regulations shall be applicable to the handling of imported and export goods in ports, airports, inland container depots, land customs stations and in customs areas approved or specified under section 8.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Regulation 5:

The Customs Cargo Service provider for custody of imported goods or export goods and for handling of such goods in a customs area shall fulfill the following conditions, namely:-

(1) Provide the following to the satisfaction of the Commissioner of Customs, namely:

(i) Infrastructure, equipment and adequate manpower for loading, unloading, stacking, handling, stuffing and de-stuffing of containers, storage, dispatch and delivery of containers and cargo etc., including:-

(a) standard pavement for heavy duty equipment for use in the operational and stacking area;

(b) free of cost or rent fully furnished office accommodation for Customs, Customs Electronic Data Interchange(EDI) Service Centre, with required amenities and facilities and residential accommodation and transportation facilities for customs staff;

(c) premises for user agencies with basic amenities and facilities;

(d) storage facility, separately for imported, export and transshipment goods;

(e) gate complex with separate entry and exit;

(f) adequate parking space for vehicles;

(g) boundary wall

(h) internal service roads

(i) electronic weigh-bridge and other weighing and measuring devices;

(j) computerized system for location and accountal of goods, and processing of documents;

(k)adequate air-conditioned space and power back up, hardware, networking and other equipment for secure connectivity with the Customs Automated system; and for exchange of information between Customs Community partners;

(l)facilities for auction, including by e-auction, for disposal of uncleared, unclaimed or abandoned cargo;

(m)facilities for installation of scanning equipment;

(n)security and access control to prohibit unauthorized access into the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch premises, and

(o) such other facilities as the Commissioner of Customs may specify having regard to the custody and handling of imported or export goods in a customs area;

Regulation 6:

(1) The Customs Cargo Service provider shall -

(a)keep a record of imported goods, goods brought for export or transshipment, as the case may be, and produce the same to the Inspector of Customs or Preventive Officer or Examining Officer as and when required;

(b)keep a record of each activity or action taken in relation to the movement or handling of imported or export goods and goods brought for transshipment;

(c)display or make available in any other manner, information of process or movement or handling of imported orexport goods and goods brought for transshipment;

(d)demarcate separate areas for unloading of imported goods for their storage with respect to the category of importers, nature of goods, place of destination, mode of transportation or any other criterion as the Commissioner of Customs may specify having regard to the custody and handling of imported goods in a customs area;

(e)demarcate separate areas for loading of export goods for their storage with respect to categories of exporters,nature of goods, examined and sealed containers or other criterion as the Commissioner of Customs may specify having regard to the custody and handling of export goods in a customs area;

(f)not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the Superintendent of Customs or Appraiser;

(g)(a) not permit any export cargo to enter the customs area without a shipping bill or a bill of export having been filed with the Deputy Commissioner or Assistant Commissioner of Customs;

(h) not permit any import cargo to enter the customs area or be unloaded therein without the import report or the import manifest having been
<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch filed with the Deputy Commissioner or Assistant Commissioner of Customs;

(i)be responsible for the safety and security of imported and export goods under its custody;

(j)be liable to pay duty on goods pilfered after entry thereof in the customs area;

(k)be responsible for the secure transit of the goods from the said customs area to any other customs area at the same or any other customs station in accordance with the permission granted by the Deputy Commissioner or Assistant Commissioner of Customs;

(l)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;

(m)dispose off in the manner specified and within a time limit of ninety days, the imported or export goods lying unclaimed, uncleared or abandoned:

Provided that the period of ninety days may be extended by the Commissioner of Customs by such further period as may be allowed, on sufficient cause being shown for delay in the disposal;

(n)not make any alteration in the entry or exit points or boundary wall without the permission of the Commissioner of Customs;

(o) shall bear the cost of the customs officers posted by the Commissioner of Customs on cost recovery basis and shall make payments at such rates and in the manner specified by the Government of India in the Ministry of Finance unless specifically exempted by an order of the said Ministry;

(p)shall observe the Central Government holidays as followed by the jurisdictional Customs formations and in case of any variation in the working days, intimate the same to Commissioner of Customs and the trade, at least seven days in advance, and

(q) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

(2) The Customs Cargo Service provider approved for custody of imported or export goods and for handling of such goods shall not lease, gift, sell or sublet or in any other manner transfer any of the premises in a customs area;

or sub contract or outsource functions permitted or required to be carried out by <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch him in terms of these regulations to any other person, without the written permission of the Commissioner of Customs.

(3) The Customs Cargo Service provider shall publish and display at prominent places including website or webpage of the Customs Cargo Service provider the schedule of charges for the various services provided by him in relation to the imported goods or export goods in the customs area.

Regulation 7:

(1) If the Commissioner of Customs is satisfied that in relation to the custody and handling of imported or export goods in a customs area, the Customs Cargo Service provider, for reasons beyond his control, is unable to comply with any of the conditions of regulation 5, he may for reasons to be recorded in writing, exempt such Customs Cargo Service provider from any of the conditions of regulation 5.

Provided that no exemption shall be granted in respect of any of the conditions referred to in regulation 5, where the overall safety and security of the premises are likely to be affected thereby.

(2) The Commissioner of Customs may regulate the entry of goods in a customs area for efficient handling of such goods.

Regulation 9:

(1) An application to act as a Customs Cargo Service provider for custody of imported or export goods and for handling of such goods in a customs area shall be made in the form of a letter to the jurisdictional Commissioner of Customs containing details as prescribed in Form A. (2) The Commissioner of Customs shall dispose of the application within forty five days of the receipt of the application.

Regulation 11:

(1) The Commissioner of Customs may, subject to the provisions of these regulations, suspend or revoke the approval granted to the Customs Cargo Service provider subject to the observance of procedure prescribed under regulation 12 and also order for forfeiture of security, if any, for failure to comply with any of the provisions of the Act and the rules, regulations, notifications and orders made thereunder;

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch (2)Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the approval granted to a Customs Cargo Service provider where an enquiry against such Customs Cargo Service provider is pending or contemplated."

Sea Cargo Manifest and Transhipment Regulations, 2018.

"In exercise of the powers conferred by section 157, read with sections 30, 30A, 41, 41A, 53, 54, 56, sub-section (3) of section 98 and sub-section (2) of section 158 of the Customs Act, 1962 (52 of 1962), and in supersession of Import Manifest (Vessels) Regulations, 1971 and Export Manifest (Vessels) Regulations, 1976 the Central Board of Indirect Taxes and Customs hereby makes the following regulations, namely: -

1. Short title and commencement. – (1) These regulations may be called the Sea Cargo Manifest and Transhipment Regulations, 2018.

(2) These regulations shall come into force on 1st August, 2018.

2- Definitions

(c) "authorised carrier" means an authorised sea carrier, authorised train operator or a custodian, registered under regulation 3 and postal authority;

(d) "authorised sea carrier" means the master of the vessel carrying imported goods, export goods and coastal goods or his agent, or any other person notified by the Central Government;

(e) "authorised train operator" means the train operator carrying imported goods and export goods;

(f) "custodian" means a person approved by the Principal Commissioner or the Commissioner of customs, for the purposes of section 45 of the Act;

....

Regulation 10 Responsibilities of the authorised carrier under these regulations.- (1) An authorised carrier shall-

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch a. transact business in the customs station either personally or through an employee duly approved by the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be;

b. keep a record of imported goods, export goods, coastal goods or goods brought for transhipment as the case may be, and produce such records to the proper officer as and when required;

- c. keep a record of movement or handling of imported goods, export goods, coastal goods or goods brought for transshipment;
- d. make available track and trace facility for locating imported or export goods, coastal goods or goods brought for transshipment;
- e. be responsible for the safety, security and delivery of imported, export goods or coastal goods under its custody;
- f. be liable to pay duty on goods pilfered, lost during the transit or transshipment thereof in the customs area or enroute under its custody;
- g. be responsible for re-export of hazardous goods where such goods are ordered to be exported back to the exporting country;
- h. advise his client to comply with the provisions of the Act and in case of non- compliance, shall bring the matter to the notice of the deputy commissioner or assistant commissioner of customs as the case may be;
- i. not procure or attempt to procure directly or indirectly, information from the government records or other government sources of any kind to which access is not granted by the proper officer;
- j. ensure electronic transmission of delivery orders to the importer or the consignee and intimation of the same to the custodian and the proper officer;
- k. publish and display at prominent places including website or webpage of the authorised carrier the schedule of charges for the various services provided by him in relation to the imported goods or export goods or coastal goods in the customs area;
- l. not demand any container detention charges for the containers laden with the goods detained by customs for purpose of verifying the entries made under section 46 or section 50 of the Act, if the entries are found to be correct.

Provided that the authorised carrier may demand, container detention charges for the period, commencing after expiry of sixty days.”;

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch m. abide by all the provisions of the Act and the rules, regulations, notifications and orders issued there under;

(2) The authorised carrier, after intimation to the Commissioner of customs, may outsource any function, required to be carried out by him under these regulations, to any other person on his behalf. The authorised carrier and such person shall be liable for any act of commission or omission while transacting business under these regulations.” Contract Act Section 1. Short title.—This Act may be called the Indian Contract Act, 1872.

Extent, Commencement.—It extends to the whole of India 2[3***]; and it shall come into force on the first day of September, 1872.

Saving—Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Section 23. What considerations and objects are lawful, and what not.— The consideration or object of an agreement is lawful, unless— it is forbidden by law; or is of such a nature that if permitted, it would defeat the provisions of any law; or is fraudulent ; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

Section 37. Obligation of parties to contracts.—The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Section 56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.— Where one person has promised to do something which <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Section 148. "Bailment", "bailor" and "bailee" defined. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called, the "bailee".

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Section 158: Repayment, by bailor, of necessary expenses. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Section 170. Bailee's particular lien.— Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them. Illustrations(a)A delivers a rough diamond to a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.(b)A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months credit for the price. B is not entitled to retain the coat until he is paid.

Section 171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.— Bankers, factors, wharfingers, attorneys of a High Court and policy- brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.' <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Bills of Lading Act Section 1. Rights under bills of lading to vest in consignee or endorsee.- Every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself."

(C) UNDERSTANDING THE CASES ON HAND

28. The factual matrix involved herein would show that the cases can be classified as follows:-

A. Cases where the detention was found to be illegal or erroneous in the final adjudication, B. Cases where the final adjudication is in favour of the department justifying the detention.

C. Cases where Customs has issued a certificate for exemption from the Charges, D. Cases where the Customs has not passed orders on the request for a certificate for exemption from the Charges, E. Cases where the adjudication is pending after provisional release either on the order of the Court or otherwise, F. Cases where the goods have not been provisionally released <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

29. The writ petitions and the writ appeals revolve on the applicability, enforceability and the binding nature of the Regulations, which contemplate waiver of demurrage/detention charges in the above circumstances, apart from the question of maintainability raised by the CFS/Steamer Agents/Shipping Line.

29.1. The issue of maintainability of the writ petitions under Article 226 of the Constitution of India, on which extensive arguments have been made by the learned counsels for CFS/Steamer Agents/Shipping Lines, has been dealt differently by different learned Judges. In the cases before

us, one batch of writ petitions in WP.Nos.15490 of 2020 etc. cases, was dismissed on 22.06.2021 and another on 01.07.2021, wherein the writ petitions viz., WP.Nos.14370 and 26838 of 2018, were held to be not maintainable as there was an inter se dispute between the CFS/Steamer Agents/Shipping Lines and the importers regarding the applicability of the terms and conditions of the contract between them and thus the question of refund could only be decided after adjudication of such disputes.

In the above said orders, the learned Judge, though in principle, agreed that the importers are eligible for a refund based on the detention waiver certificate issued by the Customs authority, ultimately held that the right to claim refund cannot be automatic, but subject to adjudication on the terms and conditions of contract before the Civil Court. Aggrieved by the same, appeals have been filed by the Importers.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 29.2. On the other hand, in another batch of cases in WP Nos.6947 and 6949 of 2022 decided on 16.06.2022 by another learned Judge, the contentions of the CFS/Steamer Agents/ Shipping Lines, including the applicability of Sea Cargo Manifest and Transshipment Regulations, 2018 were considered and the writ petitions were rejected on merits. In that process, the learned Judge, after finding that the adjudication order was passed confirming misdeclaration, doubted the very eligibility of the waiver. Aggrieved, the writ appeals have been filed.

29.3. In yet another order dated 13.06.2022 in WP Nos.23755 and 23756 of 2017, another learned Judge has approved partial waiver of the charges as ordered by the Customs authorities, wherein a contention on the maintainability of the case was also raised. In the said order, partial waiver was allowed despite the fact that the adjudication order was accepted and complied with by paying penalty, fine and all other charges to redeem and export the goods to the original sender. However, the goods were not re-exported as the importer unsuccessfully challenged the order-in-original in appeal and thereafter, sought full waiver.

Ultimately, the said writ petitions were partly allowed by extending the benefit of waiver till 19.04.2016 and for the period thereafter, the liability was fastened on the Customs Authorities as they did not facilitate re-export by issuing appropriate <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch orders. The petitioner therein was directed to pay the charges with interest and the Customs authorities were directed to make good the loss. Aggrieved, the writ appeals have been filed. On the maintainability, the learned Judge had not rendered any finding.

29.4. In another order dated 08.08.2017 passed in WP Nos.6452 and 6453 of 2017, another learned Judge has passed orders directing the CFS / Streamer Agents / Shipping Lines, to waive the demurrage charges negating the plea of maintainability by holding that the issue involved is fulfilment of statutory obligations and not about inter se terms and conditions of the contract.

Aggrieved, the writ appeals have been filed.

30. While it is true that the issue of maintainability is usually to be decided as a preliminary issue, in the present cases, in view of the fact that the issue of maintainability is directly related to the question of the binding nature or otherwise of the Regulations and the consequential proposition on whether or not the said Regulations cast a duty on the CFS / Steamer Agents / Shipping Lines, to be bound by the same and thereby honour the waiver certificate issued by the Customs authorities, the same will be taken up for consideration simultaneously and decided.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch (D) UNDERSTANDING THE LEGAL FRAMEWORK

31. Coming to the provisions of the Act and the Regulations, Chapter III of the Customs Act deals with appointment of Customs Port, Airport, etc. We are here concerned with other entities who have been appointed under Section 7 (aa) to (f) and approved under Section 8 of the Act, by which the Principal Commissioner of Customs or Commissioner of Customs has been vested with the authority to approve any places for unloading of goods in Customs port, Customs airport or coastal port and also to specify the limits of customs area. The entities appointed under Section 7 or approved under Section 8 are bound by provisions of the Customs Act, rules and regulations framed thereunder. Section 45 imposes a restriction on the custodian of the imported goods unless cleared by the Customs for home consumption or warehoused or transhipped. Section 48 would provide that if the goods are not cleared within 30 days, the custodian can sell the same after giving notice to the importer with the approval of the proper officer. Hence, what is to be seen here is that there is no vested right with the custodian to clear the goods without the approval of the proper officer. This, according to us, is the time period prescribed under the Act for the authorities to decide on the release of the goods either provisional or otherwise by following the due procedures.

32. Prior to the Amendment of Section 49, the Customs Authorities, on <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch an application of the importer, if satisfied, that the goods entered for home consumption cannot be cleared within a reasonable time, can permit the importer to deposit the goods in a public area or a private warehouse for a period of 30 days at a time. The period may be extended from time to time by the Commissioner of Customs, which however shall not be more than 30 days at a time. Section 49 further stipulates that the goods so warehoused, on an application by the importer, shall not be deemed to be warehoused goods for the purposes of this Act and provisions of Chapter IX shall not apply. The provision was amended by substitution on 31.03.2017, whereby changes made to the provision to the effect that permission to store at a private warehouse was removed and the discretion for permission to store in a public warehouse was also extended to a situation where the goods cannot be removed for deposit in a warehouse within a reasonable period. Again, the timeline of 30 days has been retained in the amendment also.

33. Chapter IX of the Act, deals with the general provisions under which an importer may warehouse the imported goods. It also stipulates the period for which the goods may be warehoused and general conditions for removal / clearance of the goods. Sections 57 and 58 lay down that the Assistant Commissioner/Deputy Commission of Customs may appoint public warehouses and grant licence to private warehouses wherein dutiable goods may be <https://www.mhc.tn.gov.in/judis>

W.A.Nos.2235 of 2021 etc. batch deposited where the facilities for deposit in a public warehouse are not available.

Section 59 deals with execution of a bond by the importer after an order is passed under Section 17 or 18 of Act. After compliance of the conditions in Section 59, the proper officer may make an order for deposit of the goods in the warehouse under Section 60 and the period of such deposit shall be as contemplated under Section 61. Insofar as the present cases are concerned, sub-clause (c) of sub-

section (1) of Section 61 would be relevant, wherein goods can remain in the warehouse for a period of one year from the date of the order under Section 60(1) and for a further period of one more year for sufficient reasons to the satisfaction of the Principal Commissioner or the Commissioner of Customs. It is also clear from the provision that interest shall be payable from the 91st day on the duty payable, if the goods are not cleared. It is pertinent to mention here that the goods once presented for clearance for export or after landing, the provisions relating to verification of duty self-assessed or assessable, mis-declaration on the nature of goods, quantity or quality or the value, prohibited or restricted and the requirements under the law come into operation. The presentation of the goods for clearance is through the Bill of Entry in case of import and a Shipping bill/ Bill of export /Bill of lading in case of export. It is again pertinent to mention here that the Customs Act was amended in 2018 enabling electronic presentation and Sea Cargo Manifest and Transshipment Regulations, 2018 was also introduced, which will be discussed a little later.

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34. Section 110 of the Act empowers the proper officer authorized by the Principal Commissioner or the Commissioner of Customs to seize the goods which are liable for confiscation and the details of imported goods liable for confiscation are enumerated in Section 111. Similar details of goods meant for export are mentioned in Section 113. As per the proviso to Section 110, if it is not practicable to seize the goods, the proper officer may pass an order that the owner of the goods shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer. As per sub-section (2) of Section 110, if the notice of seizure under subsection (1) is served under Section 124 within six months of the seizure of the goods, then the goods are to be released to the person from whose possession, they were seized. By the proviso to sub-section (2), the period of six months can be further extended by a period not extending six months for the reasons to be recorded in writing. Such extension is not a mechanical exercise and if such extension is not accorded within the expiry of the first six months from the date of seizure, the goods would have to be returned.

35. Section 110A enables provisional release of goods on taking a bond from the owner upon such conditions as the adjudicating authority may require.

What is clear from the provisions is that there is a difference between seizure and confiscation. As already stated by us, once the goods are presented for clearance, <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch the importer or the exporter cannot clear the goods except with the approval of the customs authority. The word “detention” has not been used in the provisions.

However, once, the goods come under the dominion control of the customs authorities for verification, the importer or exporter or CFS or shipping line or steamer agents are not entitled to remove them as the goods are under the custody of the Customs authorities. Therefore, we are of the view that once the goods are not cleared, the goods are deemed to be seized. What is relevant is the control over the goods. The issuance of notice is only a subsequent act. The various provisions discussed above also clarify the position that the goods which are imported into a customs area immediately come into the control and power of the officers of the Customs and cannot be cleared without the permission of the proper officer and therefore, there is a restriction in handling of the goods.

36. Even as per Section 141 of the Customs Act, 1962, the conveyances and goods in a customs area are subjected to the control of the officers of Customs and are to be handled in a customs area in such a manner as may be prescribed and responsibilities of a person engaged in the receiving, storing, delivering, despatching and otherwise handling import or export goods in customs area shall be such as may be prescribed by the customs authorities. The HCCA Regulations was enacted by exercising the authority under Section 141 to have pervasive control over the custodians, based on the recommendations of the Public Accounts Committee (2005-06). The Customs authorities are empowered <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch under the Act to appoint persons or officers who are responsible for receiving, storing, delivering, despatching and handling goods in the customs areas.

Therefore, it can be concluded that the detention of goods is nothing but seizure as contemplated under Section 110 of the Act. The word 'detention' is to be read synonymous to the word 'Seizure'. It will be useful to refer to the following judgments on this aspect:

(i)Collector of Customs and Central Excise v. Hindustan Motors Ltd., [1975 SCC OnLine Cal 33 : AIR 1975 Cal 368 : 1975 CHN 215 : 1979 ELT 313 : (1974-75) 79 CWN 648], wherein, it was held as follows:

“33. The second contention of counsel for the Customs authorities has been that a distinction should be made between a seizure of goods under Section 110(1) of the Customs Act, 1962 and a prohibitory order under the said sub- section as envisaged by the proviso thereto. It is submitted that under proviso to sub-section (2) an order for extension of time is necessary provided that the goods have been seized. In the instant case the goods had not been seized but merely a prohibitory order in terms of the proviso to Section 110(1) was passed. In these premises there was no necessity for an order for extension of time.

34. This argument, prima facie, appears to be attractive. But it would not be necessary for us to express our opinion, one way or the other. We have looked into the order of seizure dated the 7th November, 1969, at pages 23 and 24 of the Paper Book. It is true that in this order the Inspector of Customs says:“That it is not practicable to seize such goods” and that “in the exercise of powers vested in me under Section 110(1) of the Customs Act, I do hereby order that you the owner of the

said goods shall not remove, part with or otherwise deal with the said goods except with my prior permission.” But when we turn to the next page, i.e. page 24, we find a different picture altogether. There are two witnesses to this document, viz., one Pannalal Banik and one Gorennath Kapore.

Before these two witnesses, 5 original drums and 4 drums repacked in local drums were sealed with the seal of the Assistant Collector of Customs, West Bengal, Calcutta. This overt act of sealing the packed drums amounts to exercise of dominion over the goods. In other words, it is an act of seizure of the goods within the meaning of Section 110(1) of the Customs Act, 1962. Moreover, in all the affidavits on behalf of Customs Authorities which have been shown to us it appears that their case is that the goods were actually seized. It is not, therefore, a prohibitory order in terms of the proviso to Section 110(1). There is no dispute that when goods have been seized a notice to show cause under Section 124 (a) is to be served within six months provided that the period may be extended on <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch sufficient cause being shown.”

(ii)M. Mohammed v. Collector of Customs & C. Ex., [1975 SCC OnLine Ker 147 : (1999) 110 ELT 451], in which, it was observed as under:

“2. Dr. T.K. Kochu Thomman, Counsel for the Petitioner, submits that as the period of six months from 3-7-1973 on which date Ext. P1 order was issued has elapsed and no extension of that period has been made as required under the provisions of Section 110 of the Customs Act, the respondents are not competent to retain possession of the goods, and are bound to return the same to the petitioner. On behalf of the respondents it is argued that Ext. P1 is not really an order passed under the proviso to sub-section (1) of Section 110 of the Act, as there is no reference to that proviso to that sub-section a statement that it was because it was found impracticable to seize the goods in question that the owner was ordered not to remove or otherwise deal with the goods. The Counsel for the petitioner submits that the only provision under which the second respondent could have passed an order in the nature of Ext. P1 was under the proviso to sub-section (1) of Section 110 of the Act, and even though the provision of law under which the impugned order was passed has not been mentioned, there could be no doubt that the order was passed under the said provision. It is further argued by the Counsel that the orders of detention virtually amounts to seizure, the only difference being that physical possession is not taken by the person entitled to effect the seizure; all the same the dealer is not in a position to remove or deal with the goods, as there is restraint in regard to that.

3. The argument of the Counsel is that the period of six month's beyond which the detention or seizure could not be extended unless extended by another/legally valid order should be reckoned from the date of the order passed under section -110, whether it be a detention under the proviso to Section 110(1) or an actual seizure under Section 110(1) of the Act-There seems to be considerable force in this argument.”

(iii)E.S.I. Limited v. Union of India [2002 SCC OnLine Cal 241 : (2002) 3 CHN 275 : (2003) 156 ELT 344], wherein, it was pointed out as below:

“20. Having considered the submissions made on behalf of the respective parties we are inclined to accept Mr. Panja's submission that dominion over the goods initially detained on 9th November, 2000, went out of the hands of the appellant company when on 22nd November, 2000, the rooms in which the goods had been kept were sealed by the Customs Officers, Varanasi Division. The facts of this case are squarely covered by the facts of the Hindustan Motors case (supra). Once the dominion over the goods passed out of the hands of the appellant company it tantamounted to seizure for all practical purposes. It is one thing for the goods to be kept detained in a manner where the owner thereof has <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch access to the same but is prevented by a prohibitory order from dealing with the same. The situation is radically altered when the owner of the goods no longer has access thereto and has no control over the same.

.....

22. In the instant case, when the rooms in which the goods in question had been kept were sealed by the Customs authorities on 22nd November, 2000, as will appear from the Supurdnama, the order of detention purportedly passed under the proviso to section 110(1) of the Customs Act, 1962, on 9th November, 2000, stood superseded and the goods came to be actually seized on 22nd November, 2000, and the Customs authorities were, therefore, under an obligation to issue a show cause notice relating to confiscation of the goods under section 124 of the said Act. Not having done so within six months from 22nd November, 2000, the appellant company was entitled to return of the seized goods under section 110(2) of the said Act.”

37. Now, coming to the 2009 and 2018 Regulations, we have already seen that Section 141 of the Act enables the Board to prescribe the manner in which goods may be received, stored, delivered, despatched or otherwise handled in customs area and also the responsibilities of the persons engaged in aforesaid activities. The provision is clear to include not only the custodian but every player engaged at some point in the import or export of goods. Section 156 of the Customs Act lays down the general rule making power of the Central Government to make rules to carry out the purposes of the Act and Section 157 lays down the power of the Board to make regulations to carry out the purposes of the Act. Under the Customs Act, the Custom authorities are concerned with the setting up of public or private warehouses and for storage, removal and handling of imported goods in a customs area.

37.1. The Comptroller and Auditor General of India placed a report for the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch year 2003-04, ending on 31st March, 2004 (No.10 of 2005) on the Table of the House on 6th May, 2005. The report pointed out the repercussions and the loss of national revenue to the tune of several crores due to non-clearance of the cargo, injudicious decisions of the custodian and the delay on part of the Customs authorities

in adjudicating the matter. The matter was taken up by the Public Accounts Committee for investigation, and certain recommendations were subsequently, made.

37.2. The Audit Report tabled before the House is as under:

“AUDIT PARAGRAPH REPORT No. 19 Of 2005 3.7 Non-disposal of uncleared/unclaimed imported cargo According to section 55 read with section 48 of the Customs Act, 1962, if goods brought into India from a place outside India were not cleared within 30 days from the date of unloading thereof at the customs station and if no extension for retention of such goods beyond 30 days was obtained, they could be sold by the person having custody thereof.

Further, the Board vide circular of October 1997 stipulated that:—

1. (a) All goods that landed till 1 January, 1994 and were lying uncleared/unclaimed were to be taken up for disposal by the custodian even without No Objection Certificate (NOC) from customs if there was no stay/court case.
2. (b) For goods that landed between 1 January, 1994 and 31 December, 1996, custodian was to prepare a monthly list of cargo due for disposal and sent it to customs for NOC. If no intimation was received from customs within 30 days, custodian was to presume that the former had no objection and go ahead with the disposal.
3. (c) For goods pending since 1997 a monthly list was sent to customs for their permission to dispose off the cargo within 30 days, failing which the custodian would be free to dispose off these goods.

Scrutiny of records of 37 ICD/CFS in 13 Commissionerates revealed that goods worth Rs. 540.47 crore imported between 1985 and March 2003 were awaiting disposal action for periods ranging from one to eighteen years resulting in <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch blockage of duty amounting to Rs. 192.81 crore apart from notional loss of interest of Rs. 58.41 crore.

Analysis of non-disposal of goods in 16 ICD/CFS revealed that for 1466 containers valued at Rs. 301.55 crore in Chennai (Sea), Tuticorin, Tiruchirapalli and Coimbatore the reasons for non-disposal were as under:—

1. (i) Clearance of 115 containers valued at Rs. 35.00 crore involving custom duty of Rs. 16.44 crore, were locked up in court cases.
2. (ii) Twenty five containers valued at Rs. 1.21 crore involving custom duty of Rs. 0.47 crore were pending as the cases were referred to Board for Industrial and Financial Reconstruction (BIFR).

3. (iii) One hundred and eleven containers valued at Rs. 10.04 crore were detained by Special Investigation and Intelligence Branch (SIIB)/Directorate of Revenue Intelligence (DRI)/Dock Intelligence Unit (DIU) and customs duty amounting to Rs. 4.75 crore was blocked due to delay in adjudication.

4. (iv) One thousand two hundred and fifteen containers of goods valued at Rs. 255.31 crore were free from litigation, yet were delayed in clearance leading to blockage of customs duty of Rs. 59.27 crore.

In above cases delays had ranged from 9 to 105 months involving a notional loss of interest of Rs. 43.03 crore.

Of 1215 containers, the Department reported (July 2004) that the goods contained in 33 containers were disposed off and duty amounting to Rs. 10.96 lakh was realised (March/April 2004). In another case the importer cleared the goods in June 2004 on payment of duty of Rs. 1.83 lakh.

Illustrative cases are narrated below:—

1. (a) A second-hand blast furnace plant imported by M/s. Kitti Industries Limited in January 1999 was transhipped partly to a CFS, in Chennai and balance retained in Port Trust, Chennai. Due to non-payment to the supplier, Chennai, High Court restrained the removal of cargo. No action was initiated by the Department for lifting the restrictions on sale of goods and the same remained uncleared (December 2003) for five years causing blockage of customs duty of Rs. 15.67 crore with notional loss of interest of Rs. 11.16 crore.

2. (b) Eighteen consignments of cold store equipments imported during 1995-96 at a public CFS could not be cleared owing to importer's financial constraints. Duty amounting to Rs. 33.75 lakh remained blocked for more than seven years apart from notional loss of interest of Rs. 39.23 lakh.

3. (c) Capital goods valued at Rs. 3.97 crore imported (February 1999) under export promotion of capital goods scheme (EPCG) at a private CFS in Chennai were detained by the Department, as the importer did not fulfil conditions of import on earlier occasion under the same scheme. The case was adjudicated in July 2002 whereby benefit of EPCG scheme was disallowed. However, the goods lay uncleared (December 2003). Delay in adjudication and disposal of goods led to blockage of customs duty of Rs. 1.86 crore for more than 58 months apart from notional loss of interest of Rs. 1.33 crore.

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4. (d) Five consignments of dewatering equipments worth Rs. 1.80 crore imported in 1995-96 at a public sector CFS in Chennai were placed for auction in 2002-03 after the Department permitted the custodian to auction the goods. However, in October 2002 customs department intimated the custodian that the goods were liable for confiscation and should not be auctioned. They remained uncleared (December 2003). The inordinate delay in disposal of goods caused blockage of duty of

Rs. 90.36 lakh apart from notional loss of interest of Rs. 1.05 crore.

5. (e) A public limited company, imported (November 1999 to September 2000), 663 containers of second hand refinery equipment valued at Rs. 144.92 crore at a private CFS at Chennai. The Department did not take action to dispose off the goods in terms of section 48 ibid. On the request of the importer, the containers were transhipped (January 2003) to factory premises at Cuddalore through ICD Sattva, Pondicherry after obtaining permission from Chennai customs. The goods remaine uncleared (December 2003), causing blockage of duty of Rs. 31.59 crore for 39 months apart from notional loss of interest of Rs. 17.65 crore. Further, 354 containers of the same goods valued at Rs. 98.72 crore imported (April 2001), through Chennai Sea customs, were transhipped to the bonded warehouse of the importer through the same ICD, after obtaining permission. The goods remained uncleared (December 2003) in the bonded warehouse causing blockage of customs duty of Rs. 22.20 crore and interest thereon amounting to Rs. 7.49 crore.

On this being pointed out (April 2004), the Department stated (May 2004) that the remaining 30 per cent of the equipments were yet to be received and only then would erection of the equipment be completed. The Department further stated that the importer could not clear the goods owing to their financial constraints and that the duty with interest would be collected early.

The fact remains that there was delay in warehousing the goods and the same still remained uncleared (for three to four years causing blockage of revenue amounting to Rs. 78.93 crore.

(f) In CFS (CWC/Kolkata and Haldia), 74 consignments of goods of perishable nature valued at Rs. 4.44 crore were lying undisposed for a period ranging from 10 months to six years (December 2003) contrary to instructions issued in this regard resulting in loss/blockage of revenue of Rs. 1.45 crore.

3.7.1 Delay in disposal of uncleared/unclaimed cargo Test check of records in eight ICDs/CFS located in three Commissionerates revealed that goods valued at Rs. 7.53 crore were disposed off after periods ranging from six months to fifteen years of their importation. Delayed disposal resulted in loss of duty/notional loss of interest of Rs. 1.78 crore.

Illustrative cases are narrated below:—

1. (a) Four consignments of machinery imported at a private CFS in Chennai (March 1996) were not cleared by the importer. The machinery was place for auction for the first time in June 2001 after a lapse of five years though the subject goods were free from litigation. They were sold in auction in <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch September 2001 and customs duty of Rs. 16.51 lakh was realised in November 2001. Delay in disposal of cargo had led to postponement of revenue of Rs. 16.51 lakh for more than five years apart from notional loss of interest of Rs. 13.61 lakh.

2. (b) In five cases of PSWC Ludhiana where uncleared cargo arrived between 1997 and 2001, the goods were auctioned by custodian for Rs. 71.15 lakh (between March 2002 and March 2003) and duty of Rs. 28.20 lakh was realised. Delay in disposal led to postponement of revenue realisation

causing notional loss of interest of Rs. 8.46 lakh.

3.7.2 Non-disposal of confiscated goods Section 126 of the Customs Act, 1962 provides that ownership of confiscated goods vests in the Central Government who is promptly required to dispose them to avoid loss of revenue due to deterioration in quality, commercial value of the goods, excess expenditure incurred in the maintenance of the goods besides rent liability to the custodian.

Scrutiny revealed that in eight Commissionerates goods valued at Rs. 27.23 crore (involving duty of Rs. 10.74 crore) were confiscated between 1991 to 2003. The same were awaiting disposal for periods ranging from eight months to twelve years resulting in consequential loss of interest amounting to Rs. 3.64 crore to the Government. Also, six cars confiscated in May 2001 were awaiting disposal in Overseas Warehousing Limited, Ludhiana till May, 2004.

Illustrative cases are as under:—

1. (a) Forty two cargo containers (medical equipments, fruit juice, organic chemicals, oil seeds etc.) valued at Rs. 2.52 crore (involving duty of Rs. 82.42 lakh) confiscated between April 1996 and February 2003 in Kolkata Commissionerate were awaiting disposal for periods ranging from eight months to seven years (December 2003). Their non-disposal would result in deterioration in quality and commercial value.

2. (b) Four hundred and sixty bales of synthetic rags imported in October/November 1998 and lying uncleared on account of delay beyond 30 days in terms of section 48 of the Customs Act, had been confiscated in July 2000 on termination of appointment of the custodian of CFS, Thammanam (Cochin). However, no action was taken by the Department for its disposal even after two years, which resulted in blockage of revenue amounting to Rs. 36.30 lakh apart from notional loss of interest of Rs. 21.78 lakh (December 2003).

3.7.3 Loss of revenue due to delayed disposal of confiscated/unclaimed goods Ministry's instructions issued on 7 September, 1961 provided that the reserve price fixed by Joint Pricing Committee would be the absolute minimum price below which for legal or other reasons & consignment could not be sold.

However, some instances came to light as follows:—

1. (a) According to orders of Commissioner (Amritsar) (January 2003) auction of goods made in February/March 2003 for Rs. 91.34 lakh against the reserve price of Rs. 1.39 crore fixed by the Committee (July 2002) resulted in short realisation/loss of Government revenue to the extent of Rs. 47.62 lakh.

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2. (b) According to instructions (May 1984) electronic goods liable to rapid depreciation in value on account of fast change in technology, should be disposed off immediately after adjudication.

In Delhi Commissionerate a container of "flat shadow" (electronic goods) involving FOB value of Rs. 60.39 lakh was brought to ICD Patparganj (PPG) for export in May 1993. The goods were not exported and finally sold (March 2001) by the custodian for Rs. 7200. Thus, delay in disposal of goods resulted in loss of Rs. 60.32 lakh, as the value of the article was highly prone to depreciation.

3.7.4 Injudicious decision of custodian resulted in loss of customs duty Disposal guidelines contained in chapter-21 (para 6) of Customs Law Manual 2002- 03 provided that in the event of goods not being disposed off at the reserve price (or within the permissible margin) in the first auction, the reserve price be reduced according to prescribed scale in the subsequent auction.

In Delhi Commissionerate (ICD TKD) imported goods such as brass dross/eckart ink were put for auction (March 2002) with reserve price of Rs. 31.96 lakh. The highest bid received was Rs. 29 lakh (9.26 per cent less than reserve price). The bid was not accepted and in the next four auctions the highest bid did not cross the limit of Rs. 13.51 lakh. Goods remained uncleared and after the fifth auction the Department restrained the custodian from disposing off the goods on the ground of their being restricted items. However, it was not clear as to how an item put to auction five times was declared as restricted by the Department subsequently.

Non-disposal of the goods resulted in loss of customs duty to the extent of Rs. 9.77 lakh (applicable at the first auction value).

3.7.5 Non-disposal of export cargo Under instructions issued by the Ministry in May 1984, seized, confiscated goods were to be disposed off within the time frame prescribed for each category according to preservation periodicity i.e. goods prone to rapid decay — immediately after seizure, goods having short span of life — within six months from the date of seizure, and goods liable to rapid depreciation in value immediately after adjudication.

Test check of records of four Commissionerates revealed that due to non-compliance of aforesaid instructions export goods worth Rs. 67.92 crore were not disposed for one to eighteen years.

The following cases came to light:—

1. (a) In Delhi Commissionerate export goods i.e. readymade garments, compact disc, hand tools and electronic goods worth Rs. 63.15 crore entered for export between 1985 and 2003 were lying in the export shed as unclaimed/ detained/confiscated/seized.

Non-disposal as required in the aforesaid instructions, of such items having short span of life, within appropriate time limit resulted in their commercial value being lost leading to loss of revenue amounting to Rs. 49.88 crore apart from blocking of revenue amounting to Rs. 13.27 crore on other goods.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Regarding non-disposal of watches, the Department (ICD PPG) stated (February 2004) that the goods were presumably disallowed for export and were seized by customs for over valuation. It was further stated that

detailed reply would be furnished in due course.

2. (b) In Chennai (Sea) and Tuticorin Commissionerates, of 11 consignments, four cases involving value of Rs. 2.27 crore were confiscated but not sold for 33 months. Show cause notices were issued in six cases involving value of Rs. 1.76 crore. Delay in adjudication of these cases was for 31 months. A case involving value of Rs. 66.67 lakh was pending before CEGAT who granted stay in 1999. The case had not been decided and the goods remained uncleared. On this being pointed out (March/May 2004), the Department (Tuticorin) reported (July 2004) disposal of one export cargo in June 2004 for Rs. 6.40 lakh. These goods valued at Rs. 1.03 crore were brought to CFS in November, 2001 and confiscated in December, 2003. Thus the delay in adjudication and disposal led to loss of revenue of Rs. 96.60 lakh.” 37.3. The Public Accounts Committee concluded with the following report and the recommendations:

“REPORT Inland Container Depot (ICD)/Container Freight Station (CFS) is a common user facility offering services for handling and temporary storage of import/export laden and empty containers carried under customs transit. All activities related to clearance of goods for home use, warehousing, outright export etc. take place from such stations. The main function of ICD/CFS is receipt, dispatch and clearance of containerised cargo. The custodian after taking over goods from the carrier, arranges their proper storage and safety and allows clearance to importers after they fulfil customs formalities. An ICD is notified under Section 7 (aa) of the Customs Act 1962 by the Ministry of Finance. After the infrastructure for an ICD/CFS is developed, notification under Section 8 ibid declaring the facility as Customs area is issued by the jurisdictional commissioner of customs.

2. ICD/CFS were established to facilitate importers and exporters based in the hinterland, to come to gateway ports for clearance of import or export goods. These were to essentially function like a dry port. All activities relating to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, take place from such stations. CFS is essentially treated as an extension of a port/ ICD/air-cargo complex. However for importers and exporters all formalities like documentation and examination of cargo is carried out as at the ports/ICDs.

Provisions in the Customs Act/instructions regarding disposal of un- cleared/ unclaimed imported cargo

3. According to the Ministry of Finance, customs duty is levied on the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch activity of importation and the duties are collected at the time of clearance of goods for home consumption. From the time of unloading of goods into the customs area, the imported goods remain under the custody of Custodians till these are cleared from ICD/CFS for home consumption or warehousing or transshipment. As per Section 48 of the Customs Act, 1962, if the importer does not clear the goods within 30 days of unloading of cargo at Customs Port or such extended period as the proper officer

may allow, or on relinquishing the title by importer of the imported goods, the custodian may dispose off the goods after seeking permission from the Customs. When the goods are pending, unclaimed/ uncleared beyond specified period they are liable for disposal and the sale proceeds are to be applied towards the import duty liability as provided in Section 150 of the Customs Act 1962.

4. For disposal of the uncleared cargo the Board issues instructions from time to time. In the process of disposal of cargo, the custodian undertakes various processes which, inter alia, include preparation of detailed inventory, examining the status of each cargo, reasons for non-clearance, valuation of the cargo through approved valuer and Customs, issuing pre-auction notice to the importer for taking his consent, preparation for auction, conducting auction etc. All the processes leading to auction of cargo involve detailed exercise on the part of the custodian to ensure that the goods are disposed off in a proper manner. Under the provision of the Customs Act, 1962 the only role of Customs in disposal of the cargo is to examine the status of cargo and give permission to the Custodian when sought for in terms of Section 48 read with Section 150 of the Customs Act, 1962.

5. In order to clear the pending Cargo, Central Board of Excise and Customs vide their circular No. 50/97 of October 1997 issued instructions which stipulated that :—

1. (a) All goods that landed till 1 January 1994 and were lying un- cleared/unclaimed were to be taken up for disposal by the custodian even without No Objection Certificate (NOC) from Customs if there was no stay/court case.

2. (b) For goods that landed between 1 January 1994 and 31 December 1996, custodian was to prepare a monthly list of cargo due for disposal and send it to Customs for NOC. If no intimation was received from Customs within 30 days, custodian was to presume that the former had no objection and could go ahead with the disposal.

3. (c) For goods pending since 1997 a monthly list was sent to Customs for their permission to dispose off the cargo within 30 days, failing which the custodian would be free to dispose off these goods.

6. The details of the circular No. 50/97 dated 17th October, 1997 are given in Appendix-II.

7. Further vide their circular No.7/2004 issued on 28th January 2004, the CBEC had prescribed simplified procedure for disposal of unclaimed/ uncleared cargo, landed upto 31.3.2003 and lying with custodian. The details of the circular are given in Appendix-III.

8. This Report is based on Paragraph 3.7 of the Report of C&AG of India <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch for the year ended March 2004, No. 10 of 2005, Union Government (Indirect Taxes – Customs) relating to “Non-disposal of uncleared/unclaimed imported cargo” which is reproduced as Appendix-I. Audit undertook a review on working of ICD/CFS by conducting test check of records of customs as well as custodians for three years from 2000-01 to 2002- 03 in relation to transmission of import/export goods between ICD/CFS and gateway port, proper storage, safe custody and clearance thereof on payment of

appropriate Customs duty to the Government. For this purpose, 37 ICD/CFS located in 13 Commissionerates were examined by Audit with the objective of seeking assessment that revenue due to the Government. viz. duty on uncleared/unclaimed goods at ICDs had been recovered in time.

9. Audit Review highlighted that (I) Non-disposal of uncleared/ unclaimed/ confiscated, import/export goods had resulted in blockage of customs revenue to the extent of Rs. 287.96 crore apart from notional loss of interest of Rs. 62.05 crore and (2) Delay in disposal of uncleared/unclaimed and confiscated goods and injudicious decision of department had caused loss of Rs. 2.96 crore.

10. The Committee's examination of some of the important aspects of Audit findings are dealt with in the succeeding paragraphs." OBSERVATIONS/RECOMMENDATIONS

58. An Inland Container Depot (ICD) or Container Freight Station (CFS) is a common user facility which offers services for handling and temporary storage of import/export goods. They were established in order to facilitate the clearance of import and export goods of importers or exporters based in hinterland and were to function as a dryport.

Under Section 45 of the Customs Act, 1962, the Commissioner of Customs approves a Custodian under whose custody all the imported goods unloaded in a customs area remains till they are cleared from ICDs/CFSs for home consumption, warehoused or transhipped. The clearance/disposal of uncleared and unclaimed goods is to be initiated and carried out by the Custodian as per the instructions in vogue.

59. The Committee's examination of the subject is based on the Audit Review on the working of Inland Container Depots (ICDs)/ Container Freight Stations (CFSs) in relation to clearance/disposal of uncleared/unclaimed cargo on payment of appropriate customs duty to the Government. For this, Audit had conducted test- check of records of customs as well as custodians i.e. ICDs/CFSs located in 13 Commissionerates for three years i.e. from 2000-01 to 2002-03 with the objective of assessing whether Revenue due to the Government viz. duty on uncleared/unclaimed goods at ICDs was recovered in time. The Committee's examination of the subject has revealed a number of deficiencies in the system. There have been instances where the prescribed rules/regulations and procedures have not been followed in respect of disposal of uncleared/unclaimed goods leading to inordinate delay in their disposal and consequent non-recovery/delay in recovery of customs duty on auctioned goods etc. The existing monitoring mechanism in the Ministry/Department in respect of functioning of ICDs/CFSs, also seem to be very weak and ineffective. These issues have been discussed in detail in the succeeding paragraphs.

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60. As per the extant instructions of Central Board of Excise and Customs (CBEC) contained in their Circular No.50/97 of October, 1997 in respect of disposal of unclaimed/ uncleared goods lying with Custodians, all goods that landed till 1.1.1994 and were lying uncleared/unclaimed were to be

disposed off by Custodians even without NOC from Customs. For goods that landed between 1.1.1994 and 31.12.1996, it was prescribed that a monthly list of Cargo due for disposal was to be prepared and sent to Customs for NOC and if no intimation was received from Customs within 30 days Custodian was to presume that the former had no objection and could go ahead with disposal. Further, according to these instructions in respect of goods pending since 1997 a monthly list was to be sent to Customs for their permission to dispose off cargo within 30 days failing which the Custodian would be free to dispose off these goods. The Board vide their Circular No.7/2004 dated 28.1.2004 further simplified the procedure for disposal of unclaimed/uncleared cargo landed upto 31.3.2003, wherein the waiting period for customs clearance/NOC has been reduced from 30 to 15 days.

Notwithstanding the simplified procedure prescribed by the Board from time to time, Audit scrutiny of records of 37 ICDs/CFSs in 13 Commissionerates had revealed that goods worth Rs. 540.47 crore imported between 1985 and March 2003 were awaiting disposal for periods ranging from one to eighteen years resulting in blockage of duty amounting to Rs. 192.81 crore apart from notional loss of interest of Rs.58.41 crore. Out of this outstanding, there were a number of high money value cases pertaining to six Commissionerates viz., Chennai (sea), Tiruchirapalli, JNCH, Mumbai, Pune (Customs), Mumbai (sea) and Delhi. The total number of containers involved in these cases were 4748, which were valued at Rs. 514.97 crore and involved duty of Rs.183.50 crore along with notional loss of interest of Rs. 55.79 crore. Thus, these high value cases involved 95% of duty blockage i.e. Rs. 183.50 crore from out of total duty of Rs.192.81 crore recoverable. In this connection, the Committee have been informed by the Ministry that in respect of Chennai (sea), out of 436 containers, 140 had been disposed off for Rs.6.38 crore. Of the remaining 296 containers, 241 containers are pending due to court cases/CESTAT and under BIFR action/ investigation. Only 55 containers involving 39 cases valued at Rs. 2.14 crore are stated to be still pending for disposal. As regards Tiruchirapalli, all the 1017 containers imported by a Public Sector Company were bonded due to non-clearance by the importer and are awaiting disposal action. In respect of JNCH, Mumbai, out of 1712 containers 1207 have been disposed off and out of balance 505 containers 333 are still under process of disposal. In so far, as Pune Customs, out of 63 Twenty feet Equivalent Units, 21 have been disposed off and in respect of balance goods, the issue had been taken up by the Department and Custodians with the concerned Municipal Authorities for settling the issue relating to payment of octroi tax. As regards, Mumbai (Sea), unclaimed cargo consisted of only 111 Twenty feet equivalent units (TEUs) and 43 Less than full Container Load (LCL) cargo, out of which 44 TEUs and 19 LCL consignments were disposed off. The balance 67 TEUs and 24 LCLs were put to auction but could not be disposed off. In Delhi actual number of containers involved were only 854 for ICD-TKD and 28 for ICD (PPG). Out of these, 251 were disposed off, 384 containers pertain to hazardous waste which is a matter of litigation in Supreme Court and 103 containers were ripe for disposal.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch The Committee regret to observe that even after a lapse of more than 3 to 11 years from the date of their importation, a large number of containers/TEUs in respect of above 6 Commissionerates are still awaiting disposal on the pretext of one or the other reason. No concrete action seems to have been taken by the Ministry/Board to expedite disposal of pending cargo. What is surprising is the fact that the Board was just content with issuing routine circulars asking the Commissionerates to speed up disposal of pending cargo.

The Committee feel that the Ministry should have taken a pro-active role and closely monitored the disposal of cases on a case to case basis with respect to each Commissionerate where considerable backlog of cargo was pending disposal/clearance for several years. That this was not done is regrettable. While deploring the lackadaisical attitude of the Government, the Committee recommend that the Ministry should immediately direct the concerned Commissionerate to act swiftly in the matter to ensure early disposal of pending cargo. A definite time limit should be fixed for this purpose and any delay in this regard should be taken seriously and responsibility fixed both on the Custodian as well as the concerned officials of the respective Commissionerates.

61. Apart from Cargo that is pending disposal with Custodians, Audit had pointed out cases of 115 containers valued at Rs.35 crore and involving customs duty of Rs.16.44 crore pending/locked up in court cases. Further, 25 containers valued at Rs.1.21 crore and involving duty of Rs .0.47 crore pending on account of these cases referred to Board for Industrial and Financial Reconstruction (BIFR), and 111 containers valued at Rs.10.04 crore detained by Departmental Agencies viz., Special Investigation and Intelligence Branch(SIIB)/ Directorate of Revenue Intelligence(DRI)/Dock Intelligence Unit (DIU) for investigation. Due to delay in the adjudication of these cases, duty amounting to Rs. 4.75 crore was blocked. As regards the latest position with regard to disposal of these cases and the efforts made by the Board/Department to get the stay orders vacated, the Ministry have merely given an updated information on the number of cases of cargo pending alongwith their value. The reply was conspicuously silent with respect to action taken/efforts made for getting the stay orders vacated from court as well as expediting the investigation process by the Departmental Agencies in respect of cargo held under detention. The Committee urge upon the Ministry to ensure that Commissionerates are directed to take all possible efforts for speedy trial of Court/BIFR cases. The Committee however, feel that there should not be any inordinate delay in cases of cargo that are pending investigation before SIIB/DRI/DIU which are Departmental Agencies. A definite time limit may be fixed for disposal of cases by these Agencies so as to protect the Government Revenue.

62. Another disquieting feature has been the instances of delay in clearance of those cargo where there was no litigation. 1215 such containers of goods valued at Rs. 255.31 crore in various Commissione rates were not cleared timely leading to blockage of duty amounting to Rs. 59.27 crore. According to the Ministry, 157 such containers pertain to Chennai (Sea), 35 to Tuticorin, 1017 to Trichy and one case belongs to Coimbatore Commissionerate. Out of above cases with respect to Chennai (Sea), 102 containers had been disposed off and 55 are <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch still pending. In respect of Tuticorin Commissionerate, all the 35 pending containers were stated to have been disposed off by March 2005 through Public auction. As regards Trichy, all the 1017 containers imported by a Public Limited Company (M/s. Nagarjuna Oil Corporation) were stated to be pending. In so far as Coimbatore Commissionerate, out of 22 cases of seized, confiscated, unclaimed and uncleared cargo that was pending disposal, 18 were disposed off and 4 consignments are still pending. The Committee further note that in a Container Freight Station (Central Warehousing Corporation-Kolkata and Haldia) 74 consignments of goods of perishable nature valued at Rs. 4.44 crore were lying undisposed for a period ranging from 10 months to 6 years (December, 2003) resulting in blockage of revenue of Rs. 1.45 crore. In this connection, the Ministry have explained that out of 74 containers, 39 had been disposed off and 33

containers (11 in Haldia and 22 at Kolkata CWC) are lying uncleared. Despite a monitoring system/arrangement in place whereunder the Custodians periodically submit the list of uncleared/unclaimed goods, pending with them, to jurisdictional Customs authorities and the same is monitored by them, it is incomprehensible as to how a large number of cases of cargo/ containers were pending disposal with Custodians. Ironically the Task Force constituted in 2005 to suggest measures for expeditious disposal of imported unclaimed/uncleared/confiscated cargo, in their Report have observed that the existing departmental instructions on disposal by sale of unclaimed/uncleared and confiscated goods were clear and unambiguous and required no major revision/modification. The Task Force opined that had these instructions been strictly followed by Customs and Custodians, the position should have been that no confiscated goods older than about six months and unclaimed goods landed earlier than 31.3.2003 would be lying unsold. The Committee are, thus, inclined to conclude that the instructions of Board are not being followed in letter and spirit by the Commissionerates. The Board also, after having issued the necessary instructions, did not seem to have bothered to ensure their strict compliance by the field officials. This reflects the sorry state of affairs prevalent in Board as well as in field units as regards to expeditious disposal of confiscated goods. Not only it is necessary to ensure strict compliance of instructions, the Board should examine the feasibility of evolving a system of periodical physical verification by an appropriate machinery of the cargo to be disposed of. For this, special cargo disposal cells may be set up in each of the Commissionerate.

63. The Committee note that out of 1215 containers of goods, which were free from litigation, a large consignment of goods i.e. 1017 containers were stated to have been imported by a Public Limited Company (M/s. Nagarjuna Oil Corporation Ltd.) during November, 1999 to September 2000 and in April 2001. These goods valued at Rs. 243.64 crore and involving duty of Rs. 53.79 crore, had remained uncleared in the bonded warehouse. The notional loss of interest on account of blockage of customs duty was worked out to be Rs.25.14crore. Explaining the reasons for non-disposal, the Chairman, CBEC stated during evidence that the equipment imported was specific or an Oil Refinery and the importer could not clear the goods because of his inability to arrange finances for payment of duty. According to him, it is a matter of subjective judgement whether customs should wait for the clearance to be effected by the importer or whether it should be sold at a scrap value. The Committee are concerned to note that there are no guidelines with regard to fixing cut- off period or time limit for disposal of goods in respect of such cases, where the importer/consignee could <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch not clear the goods due to financial difficulties. During evidence, the Secretary(Revenue) had deposed that the Task Force constituted to suggest measures for expeditious disposal of uncleared/ unclaimed and confiscated goods etc. would look into this matter. However, the Committee now find that the Report of Task Force is conspicuously silent in this regard. The Committee would, therefore, recommend that in cases where imported cargo is uncleared/unclaimed on account of non-clearance by the importer/consignee owing to financial difficulties or otherwise, Government should formulate guidelines for fixing time-limit/cut-off period, within which all the pending cargo should be disposed off.

64. One of the important pre-requisites for effective administration is to ensure proper monitoring of the system that is in place. Monitoring involves ensuring proper maintenance of prescribed

records by the concerned authorities and to keep a close and continuous watch on the working of the system and also initiating timely and effective action in cases of default. For this, the Internal Audit Wing of a Department is expected to play an effective role. The Committee were given to understand that the role of Internal Audit Wing of the Customs Department is limited to auditing of statutory records relating to clearance of goods and payment of duty on imports and exports, maintained by the Department. It does not undertake audit of ICD/CFS in relation to checking of the records in respect of goods that were awaiting disposal. Even where the Department has admitted the role of Internal Audit, they have not performed their functions effectively resulting in cases of delayed/non-disposal of goods pending for disposal. The Committee, therefore, recommend that Internal Audit system in Customs Department should be revamped and strengthened so that they perform their role satisfactorily. Their scope and ambit should also be broadened so as to bring all the records of cases pertaining to non-disposal of cargo by the Custodian under their scrutiny/check.

65. Under the extant rules/arrangements, responsibility for clearance/disposal of goods lies with the Custodian and the role of Customs in disposal of cargo is to examine the status of cargo and give permission to Custodians when sought for under the Customs Act. The Committee are informed that in case of non-fulfilment of the obligations by the Custodians the concerned Commissioner of Customs can cancel the approval given to them to operate ICDs/CFSs. However, no detail Rules empowering the Customs to take any punitive/deterrent action against the Custodians in such cases have been framed. Further, no safeguards for protection of Revenue in cases of negligence or violations of the conditions/guidelines by the Custodians exist in the Customs Act. The Committee feel that Government should formulate appropriate rules and guidelines to control the activities of the Custodian so that in the event of their failure to adhere to the obligations, the Department/Board can take suitable punitive action against the erring Custodians so that revenue could be protected. For this, if necessary, the Customs Act, 1962 may be amended.

66. Apart from non-disposal of uncleared/unclaimed cargo there also exist cases where there were inordinate delays in disposal of these goods ranging from six months to as much as fifteen years. The Ministry have attributed these delays by saying that the goods could not be disposed of early and repeated auctions had to be conducted to dispose them off. Another factor leading to such delays is stated to be the inability on the part of the Custodian in taking prompt <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch and immediate action in disposal of goods that had become ripe for disposal. Though suo-motu action was required to be taken by the Custodian for disposal of goods they unnecessarily chose to seek permission of the Customs Department to dispose off the goods thereby leading to considerable avoidable delays. The Committee desire that there should be close coordination between Custodians and Customs to ensure speedy disposal of goods. The monitoring mechanism for speedy/expeditious disposal of uncleared/ unclaimed goods in the Customs Department also needs to be strengthened. For this, the Committee recommend that the CBEC should examine the feasibility of constituting a core group at the Board level, which should meet at regular intervals for monitoring the progress made in expeditious disposal of uncleared/unclaimed goods in various ICDs/CFSs.

67. In terms of Section 126 of the Customs Act, 1962, ownership of confiscated goods vests in the Central Government which is required to promptly dispose them to avoid loss of revenue due to

deterioration of quality, commercial value of the goods and excess expenditure incurred in the maintenance of the goods etc. Even in such cases, the Committee have come across considerable delays on the part of the Customs authorities. In eight Commissionerates, goods valued at Rs 27.23 crore involving duty of Rs. 10.74 crore were confiscated between 1991-2003 and the same were awaiting disposal for periods ranging from 8 months to 12 years resulting in consequential loss of interest amounting to Rs. 3.64 crore. During their recent visit to Kolkata Customs, the Committee were informed that there has been a lack of persistent follow up, in addition to legal incumbrances in the matter of disposal of confiscated/seized goods. The Committee were apprised that goods valued at Rs. 2.02 crore were still awaiting disposal in their Commissionerates. The Committee regret to find that no specific time frame has been prescribed for disposal of confiscated/seized goods. The Committee recommend that Ministry/Department should look into the matter with a view to find ways and means to simplify the procedures for expeditious disposal of cargo. Further, a time limit should also be fixed for all categories of confiscated/seized goods with a view to dispose them expeditiously.

68. The Committee find that in Delhi Commissionerate (ICD,TKD) imported goods such as brass dross/eckart ink were put for auction and when they could not be sold in the first auction they were again put for repeated auction in the next four auctions. After the fifth auction, the said item was declared as restricted by the Department. In a written information furnished to the Committee, the Ministry while admitting the lapse stated that the No Objection Certificate was inadvertently issued overlooking the aspect that the goods in question were allowed only to units registered with the Ministry of Environment & Forests, Government of India and by the actual user condition. Such serious lapse on the part of the Board/Department has revealed deficiencies in the procedures and monitoring systems in clearance of the goods for disposal. Such avoidable lapses render considerable loss of time and money to the exchequer in terms of expenditure incurred on auction. The Committee recommend that the procedures/guidelines involved in examination/scrutiny of cargo before their clearance for disposal, should be reviewed in their entirety. The management information system in this regard should be strengthened and <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch periodically reviewed so that such lapses do not recur in future.

69. In yet another case export goods i.e. ready-made garments, compact disc, hand tools and electronic goods worth Rs. 63.15 crore which entered for export between 1985 and 2003 were lying in the export shed in Delhi Commissionerate as unclaimed/detained/ confiscated/seized. Non-disposal of such items, having short span of life, resulted in their commercial value being lost leading to loss of revenue amounting to Rs. 49.88 crore apart from blocking of revenue amounting to Rs. 13.27 crore on other goods. The Ministry have contested this Audit finding by saying that the goods under question were not seized or confiscated. Some of them were connected with investigation by Customs and the remaining were abandoned export goods over which Customs had no claim. It has been contended that abandoned export goods did not come either under the category of seized or confiscated goods and therefore their non- disposal did not involve any Revenue loss. The Committee are of the opinion that since the abandoned goods occupy considerable space of the godowns of ICDs/CFSs thereby involving opportunity cost, it is imperative that the status of abandoned goods should be properly defined and appropriate amendments to this effect should be made in the Customs Act, 1962 so as to recover the costs involved in their

maintenance. The Board should also formulate guidelines/ instructions with respect to the modalities for their disposal.

70. The Committee are deeply perturbed to note that an atmosphere of non- accountability is prevailing in the entire system of disposal of pending cargo. While Customs Department have no powers to take action against the Custodians for inordinate delay in disposal of cargo, the Ministry/Board have also shirked their responsibility to fix responsibility on the concerned officials for delay in disposal of goods on the plea that it is the Custodian who is responsible for disposal of pending cargo. With a view to address this problem, the Committee recommend that Ministry of Finance should constitute a high level Committee comprising of members of the CBEC and other experts on the subject, to go into the entire gamut of functioning of ICDs/CFSS and Customs Commissionerates, in relation to disposal of pending uncleared/unclaimed goods and also to investigate into the causes for inordinate delay in disposal of cargo, on a case to case basis and fix responsibility on the concerned Customs officials and the Custodians.

71. In January, 2004 the Ministry of Finance are stated to have introduced e-auction system at field level with the objective of providing time efficient and transparent procedure for disposal of cargo. The e-auction software is presently being implemented in Chennai, Mumbai II and Bangalore Commissionerates. As regards its status of implementation, the Ministry have informed that e-auction had helped in facilitating a time-bound and efficient mechanism for disposal of cargo and also eliminated cartelization in auction procedure and the same would be implemented in other Commissionerates in a phased manner. The Committee expect the Ministry of Finance to take necessary steps to introduce/implement e-auction in all the Commissionerates in a time- bound period. They also hope that e-auction would cut red tape and simplify the procedures in clearance/disposal of the uncleared/unclaimed goods in an expeditious manner so as to safeguard the revenue of the Government. The Committee would also like to be apprised of the further progress made in this regard.

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72. The Committee are informed that a Task Force headed by Chief Commissioner of Customs, New Delhi and comprising of Chief Commissioner of Customs of different zones was set up by the Ministry of Finance on 27th June, 2005 to suggest administrative measures including monitoring mechanism for clearance of cargo lying undisposed/ uncleared/unclaimed or confiscated beyond specific period of time, in an expeditious manner, by effective use of IT sources, appropriate development of manpower etc. The Committee regret to observe that the subject-disposal of uncleared/ unclaimed/ confiscated cargo seems to have been neglected by the Department/ Board until Audit conducted a review on the working of ICDs/CFSS and Public Accounts Committee took up the subject for detailed examination. It is only after that the Ministry woke up to the problem and constituted a Task Force. The Committee are of the opinion that had the Ministry seized of the problem and taken corrective measures well in advance, things would not have come to such a pass.

The Task Force had submitted its Report in September, 2005. Important recommendations made by the Task Force are stated to be as under:

1. (i) The procedure laid down in the last Circular dated 28.01.2004 should be put in place as a permanent measure. However, the procedure should be made applicable only to unclaimed/uncleared cargo landed at least one year prior to the date on which the list of goods for customs “no objection” is prepared. The total number of auctions/tenders to which a lot is subjected should be four, with the goods to be necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed.

2. (ii) All other Custom Houses should mandatorily introduce e-

auctions utilizing the software developed by Chennai Custom House within 100 days of the Task Force report being approved by the Board. The physical auctions should be altogether discontinued once the e-auction has become operational. Such e-auctions would not only cover goods confiscated by Customs or time- expired warehoused goods but also to uncleared/unclaimed cargo lying with the custodians required to be disposed of under Section 48.

3. (iii) The Customs Act, 1962 should be amended to provide that if the importer does not avail of the option given to him for taking delivery of the goods on a provisional basis, the Department may offer the goods for sale in public auction after giving a notice of say 30 days to the importer. The sale proceeds should be kept in a fixed deposit with the nationalized bank until the case is decided and the proceeds be disposed of depending on the final outcome. As a follow up of Task Force Report, the CBEC have issued two circulars on 1st and 9th December, 2005 prescribing a revised Procedure for expeditious disposal of unclaimed/uncleared cargo under Section 48 of the Customs Act lying with the Custodians—both Public and Private. The Committee hope that the revised Procedure prescribed by the Board in the light of Task Force Report would cut down the delays and enable the Custodians to dispose unclaimed/uncleared goods expeditiously and also protect the revenue due to the Government. They also recommend that Ministry of Finance should apprise them of the progress made in the disposal of all pending cargo in the light of the revised Procedure.

NEW DELHI;

14 March, 2006 <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 23 Phalguna, 1927 (Saka) PROF.VIJAYKUMARMALHOTRA, Chairman"

37.4. The HCCA Regulations have been framed based on the recommendations of the Public Accounts Committee (2005-06) in its 27th report to provide for the manner in which the imported/ export goods shall be received, stored, delivered or otherwise handled in a customs area. The Regulations also prescribe the responsibilities of the persons engaged in aforesaid activities.

Regulation 2 (1) (b) defines Customs Cargo Service Provider, which is an inclusive definition to include all handlers of Imported and exported goods and also a custodian. It is not restricted only to a custodian. The terms “any person responsible for”, “otherwise handling of imported goods” are of wider connotations. 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 (ICD), Container Freight Stations (CFS) and Land Customs Stations (LCS). Imported goods would cover goods under transshipment 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.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 37.5. Regulation 6(1) is applicable to all 'Customs cargo service providers', that is to say, all persons operating in a customs area and engaged in the handling of import/export goods. The definition of CCSP is wide enough to include all the players including the intermediate handlers of the goods either imported into the customs area or to be exported. These include the custodians holding custody of import / export goods and handling such goods and all persons working on behalf of such custodians such as fork lift or material handling equipment operators, etc. The Regulations cover consolidators/ break bulk agents and other persons handling imported / export goods in any capacity in a customs area. The Regulations provide for various responsibilities and conditions for different kinds of CCSPs.

37.6. The conditions prescribed under Regulation 5 would apply to the CCSPs who desire to be approved as custodians of imported / export cargo and thus handle goods in customs areas. The responsibilities prescribed in Regulation 6 apply to both categories of persons i.e. all custodians and persons who provide various services as above. The responsibility for safety and security, pilferage of goods under their custody, disposal of uncleared, unclaimed or abandoned goods within the prescribed time limit, payment of cost recovery charges of the Customs officers posted in the facility are applicable to the persons who handle imported or export goods in the capacity of an approved custodian. On the other hand, the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch responsibilities for publishing or display of the schedule of charges for the activities undertaken in respect of imported/ export goods shall apply to both categories of persons.

37.7. These responsibilities have been specified with the overall objective of expeditious clearance of goods, reduction of dwell time, transaction cost and to safeguard revenue. The persons handling cargo have to obtain an approval under Regulation 9 of the HCCA Regulations, by submitting and executing necessary documents. Therefore, the claims of the Shipping lines, Steamer Agents, Carriers, Container operators and Non-vessel owning common carrier are not sustainable.

The HCCA Regulations contain many provisions to control the CCSP. It is clear that the persons falling under the definition of CCSP cannot function otherwise than in compliance with the provisions of the Customs Act and the Regulations.

Therefore, in terms of functioning and responsibilities, the authorities under the Customs Act have control over the CCSPs. Insofar as the waiver of charges are concerned, the right to waive the demurrage/detention charges has been retained by the department. Though there is a contract fixing the rates to be paid, the Regulations have statutory force and the person whose existence is legal based on the licence/approval to operate cannot claim that the Regulations are not binding. The Regulations are therefore binding on all the persons as defined under Regulation 2 (1) (b) of HCCA Regulations.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 37.8. While so, the Customs Act was amended with effect from 28.03.2018 wherein many provisions were amended and significant changes were brought about for the electronic presentation of arrival manifest or import manifest or delivery manifest or export manifest. Additionally, the amendment also brought in provisions relating to timelines and furnishing of particulars in advance for early clearance of goods. Simultaneously, the Sea Cargo Manifest and Transshipment Regulations, 2018 was brought into force with effect from 1st August 2018 to facilitate expeditious clearance. The SCMT Regulations is applicable for all cargo to be discharged, loaded, or transhipped at any Indian port and also for cargo transiting via any Indian port.

37.9. The object of SCMT Regulations though was to facilitate early clearance by employing transparency, predictability of movement of goods and advance collection of information. It primarily prescribed more procedures to be followed by the custodians and carriers handling the goods. The provisions are applicable to authorised carrier which included authorised sea carriers and authorised train operators and custodian as defined under Section 45 of the Act.

On the contrary, the HCCA Regulations was more concerned with receipt, storage and delivery of goods in customs area. The provisions of HCCA Regulations, 2009 alone would be applicable until the SCMT Regulations, 2018 came into operation.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 37.10. Further, though there are some overlapping provisions with regard to certificate of waiver and time period, which may give an impression of conflict, it is really not so and both can be harmonised and thereby co-exist. The policy makes a distinction between cases where the importer is innocent, but his imported goods are seized and detained pending an enquiry and adjudication, and cases where the importers have indulged in mis-declaration, mis-description, under valuation or concealment and fine, penalty, personal penalty and/or warnings are imposed by the Customs authorities.

37.11. In a significant change in SCMT Regulations, 2018, there is a clear embargo on granting such a certificate to offenders. The HCCA Regulations, though, does not make any distinction between a person who has committed an offence and a person who has been exonerated after adjudication, the provisions of the Act would have to

be read together and the object of the Regulations should be garnered from the report of the Public Accounts Committee, which was not to give a premium to offenders. It is in this context, the words “subject to any other law in force” in Regulation 6 (1) (l) of HCCA Regulations would have to be understood and referred.

37.12. Importers who violate the law cannot be equated with the importers <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch who are innocent and be given the same treatment. In case the HCCA Regulations were to be made applicable in a blanket manner, then, the result would be that in no case where the importer is found guilty and a fine, penalty or personal penalty is imposed, would be able to charge demurrage charges. A person cannot be permitted to take advantage of his own wrong, as otherwise, it would amount to granting premium to dishonesty. There must be a nexus between the truthfulness of the particulars furnished and the waiver certificate.

Therefore, the Custom authorities cannot issue directions for a waiver in cases where the importers are clearly at fault and fine, penalty, personal penalty and/or warning has been imposed by the Customs authorities as a result of mis-

declaration, undervaluation and concealment.

37.13. The waiver should be granted in genuine cases where the importers are ultimately found not at fault. Honest and dishonest importers cannot be treated equally as they form different classes and it would violate Article 14 of the Constitution of India. As a result, only in cases where the importer/exporter is found innocent and there is no imposition of any fine, penalty, personal penalty, prosecution, 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. Another important aspect that needs to be considered in <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch implementing the waiver granted under HCCA Regulations, is about the person who has offered his space for the storage of goods. The legal embargo comes into operation only after a detention certificate is issued with conditions for waiver. But for the adjudication proceedings, the goods would have to be cleared before the free time.

37.14. The demurrage/detention charges are payable only when the goods are not cleared either voluntarily by the importer or because of action or inaction of the Customs authorities in completion of the adjudication proceedings or in taking a decision on provisional release. It would be apropos to mention here that the question of payment of demurrage/detention charges arises only if the goods are not cleared within the free period. An objection has been raised by the CCSP stating that they are only rental/storage charges and not demurrage/detention charges. This objection according to us will not hold water as such narrow approach cannot be

given to the words ‘demurrage /detention charges’ as they are charges payable by the owner/Importer of the goods for not having cleared the goods within the agreed free time. Though the word ‘detention’ has not been defined under the Act, we have already held that it is to be treated as synonymous with the “seizure” of the goods which takes place when the same is directed not to be cleared.

37.15. At this juncture, it would be relevant to refer to Sections 158 and <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 170 of the Contract Act which deal with repayment by bailor and bailees particular lien, wherein the word “remuneration” is used. The word “remuneration” would refer to the charges payable by the importer/owner of the goods to the CCSP, by whatsoever nomenclature agreed by them. When it is not in dispute that the charges become payable only after a particular period and upon default in clearance, the nomenclature used in the agreement as ‘rent or penal or storage charges’ is nothing but the demurrage or detention charges as stated in the both the regulations. In fact, regulation 6 (1) (1) also uses the word “rent”, implying that no charges during the period of detention can be charged.

Therefore, this court finds no force in the submission of the learned counsel for the CCSP.

(E) WILL THE CONTRACT BETWEEN THE PARTIES PREVAIL
OVER STATUTORY REGULATIONS?

38. Now, coming to the next claim that the contract will prevail over the statutory regulations in view of the savings clause, we do not agree with this contention. We have already held that the words “subject to any other law for the time being in force” would have to be read as a reference to the provisions of the Customs Act with regard to result of the final adjudication proceedings. Though any contract entered into would be governed by the provisions of the Contract Act to decide the inter se rights between the parties, it is still subject to law of the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch land, which in this case is the Customs Act, 1962 and the Regulations framed thereunder. The saving clause in Section 1 of the Contract Act clearly states that nothing contained in the Act shall affect the provisions of any Statute, Act or Regulations. This cannot be disputed. Further, as per Section 23 of the Contract Act, the consideration or object is unlawful if it is forbidden by law or if permitted would defeat the provisions of any law. It would also be useful to refer to Section 56 of the Contract Act, wherein the contract may become void because of a subsequent event not within the control of the promisor, in the instant case, the importer.

38.1. In the present cases, when the goods are presented, detained and ultimately cleared after having found that there is no fault on the part of the importer, and

subsequently a waiver certificate is issued, then, the contract between the parties cannot be implemented. The Judgment relied upon by the learned counsels for the importers in Supreme Industries Limited Vs. Central Board of Indirect Taxes and Customs and Ors. [2021 (377) ELT 698 (Bom.)], in which there is a reference to the judgments of the Apex Court in Ganga Retreat and Towers Ltd. Vs. State of Rajasthan, (2003) 12 SCC 91, PTC India Limited Vs. Central Electricity Regulatory Commission, (2010) 4 SCC 603 and State of Rajasthan Vs. J.K. Synthetics Limited, (2011) 12 SCC 518, which hold that the contracts would be amenable to the provisions of law, is <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch squarely applicable. Therefore, the judgments relied upon by the learned counsels for CCSP, wherein the payment of demurrage charges is based on a statutory implication in the Port Trusts Act or Airports Authority of India Act, are not applicable as the charges therein are statutory and not contractual.

38.2. Insofar as the judgment in Central Board of Excise and Customs vs. GMR Hyderabad International Airport Limited, which has been relied upon by the learned counsels for CCSP, has no application to the facts of these cases as the subject matter therein was imposition of cost recovery charges under Regulation 5 (2) and not Regulation 6 (1) (I) of the HCCA Regulations. In the present case, we are concerned with Regulation 6 (1) (I) and not Regulation 5 (2).

We have also already held that the power to issue Regulations is traceable to Section 141(2) which provides that the conditions for receipt, storage, delivery, despatch or otherwise of imported goods or goods meant for export handled in a customs area and the responsibilities of persons engaged in the aforesaid activities shall be as prescribed. Therefore, the contention that the Regulations are contrary to the Act cannot be countenanced.

38.3. Further, in the cases before us, the Regulations are not under challenge. It is settled law that unless the provisions are put to challenge and tested, the same cannot be declared as null and void. In this regard, it will be useful to refer to the judgment of the Apex Court in UNION OF INDIA & ORS.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Vs. MANJURANI ROUTRAY & ORS., [2023 LiveLaw (SC) 745 : 2023 INSC 787] wherein it has been held as follows:

“9. While hearing learned counsels appearing for the parties, we asked Shri B.H. Marlapalle, learned senior counsel along with Shri Shibashish Mishra appearing on behalf of the respondents and intervenors, as to how, in absence of any pleading setting out grounds challenging the vires of Rule 4(b) and in the absence of seeking any relief to that effect, the High Court was justified in exercising jurisdiction to declare Rule 4(b) as ultra vires? In response, learned senior counsel has fairly stated that it is a defect in the pleadings as well as in the relief sought before the CAT and in

the writ petition. But still, they made an unsuccessful attempt to satisfy this Court that the said rule appears to be discriminatory and therefore the High Court has rightly exercised the jurisdiction while passing the impugned order. It is a trite law that for striking down the provisions of law or for declaring any rules as ultra vires, specific pleading to challenge the rules and asking of such relief ought to be made, that is conspicuously missing in the present case. In the absence of such a pleading, the Union of India did not have an opportunity to rebut the same. The other side had no opportunity to bring on record the object, if any, behind the Rules that were brought into force. We are also of the considered view that, in the writ petition seeking a writ of certiorari challenging the order of the CAT, the High Court ought not to have declared Rule 4(b) as ultra vires in the above fact situation. Therefore, the High Court was not justified to declare Rule 4(b) as ultra vires.” 38.4. Irrespective of that, as rightly contended by the learned counsel for the importers, the validity of Regulation 6 (1) (I) has been upheld in the case of Delhi International Airport Pvt Ltd Vs UOI [(2017 (346) ELT 65] , wherein it has been held as follows:

“11. Undoubtedly DIAL's functions in relation to operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing of the Indira Gandhi International Airport as conferred by the agreement, except those functions pertaining to the cargo terminal which have been sub-contracted to the pro forma fourth respondent by virtue of the concession agreement (supra), are governed by the Airports Authority of India Act, as was argued by it. Nevertheless, the obligations of the "customs cargo service provider"/pro forma fourth respondent is governed by the Cargo Regulations. This court is aware that the Supreme Court has, in *Grand Slam International* (1995) 3 SCC 151 and *C. L. Jain Woolen Mills* (2001) 129 ELT 561 (SC), observed that there was no provision in the Customs Act empowering the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Customs authorities to direct the custodian of goods to waive the demurrage charges on the goods. However, these decisions were pronounced before introduction of sub-section (2) to section 141, which later gave way to the notification of the Cargo Regulations. Therefore, the petitioner's argument that the second respondent exceeded the power delegated to it by the Customs Act must fail.

12. The contention that the impugned regulation violates article 14 of the Constitution of India, as it has no nexus with the object sought to be achieved, is insubstantial because the Cargo Regulations were enacted for the purpose of prescribing the responsibilities of persons engaged in the activities of receiving, storing, delivering, dispatching or otherwise handling of imported or export goods in a customs area, and the impugned regulation is as such an obligation cast upon the persons involved in the said activities. DIAL also urged that the regulations contravene article 19(1)(g) inasmuch as it places a blanket ban on the charge of demurrage by the custodian of goods in case of detention, confiscation or seizure of goods by customs. However, such restriction is covered under the premise of article 19(6), by which reasonable restrictions in the interest of general public may be imposed on the right under article 19(1)(g). Investigation being an integral part of working of the Customs Department, the consignments detained by the Customs authorities or other investigating agencies,

cannot be cleared during investigation particularly if such cases involve trade policy, human safety and security, security of State, etc. It is with these considerations that the impugned regulation was included in the Cargo Regulations and it should be viewed in the light of the object with which it has been framed. To this extent, the court is in agreement with the third respondent. Therefore, the allegation that the impugned regulation violates article 19(1)(g) does not survive.

13. When the subordinate legislation made under a power to carry out the provisions of the Act has reasonable nexus with the object and purpose of the enabling statute, the court is not to concern itself with the wisdom or efficacy of the subordinate legislation or of its underlying policy : (Ref. Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth (1984) 4 SCC 27 where the court upheld the validity of a regulation made "to carry out the provisions of the Act". It was held in that case that the Regulations had to be judged on a three-fold test, namely : (1) whether the provisions of the Regulations fall within the scope and ambit of the power conferred on the delegate ; (2) whether the Regulations made are to any extent inconsistent with the provisions of the enabling Act ; and (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution. In the present case, the first test is answered in the affirmative and the second and third tests are answered in the negative, which would imply that the Cargo Regulations is well within the scope and ambit of its parent Act, i.e., the Customs Act, and is also consistent with the same, and does not, in any way, violate Constitutional provisions." (F) MAINTAINABILITY OF THE WRIT PETITIONS AGAINST <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch CCSP, CFS, SHIPPING LINES/STEAMER AGENTS

39. The question as to the maintainability of the writ petitions can be decided at this juncture in the light of the above observations and findings as to the binding nature of the statutory regulations and their superseding effect on the contract between the parties. The counsels for CCSP have submitted that the eligibility for a waiver can be decided only by letting in evidence as the parties are governed by the terms of the contract. We have already held that the terms of the contract are subject to the Regulations which have statutory force and that the importers who are found not to be guilty of any violation are entitled to waiver, if a certificate is issued by the authorities. That apart, we have already held that the CCSP are obliged to perform their duties in accordance with the provisions of the Customs Act and the Regulations, namely the HCCA Regulations, and SCMT Regulations.

39.1. The Regulations not only insist on obtaining appropriate approval under Section 8 of the Act but also require declarations and documents to be executed by the CCSP failing which they can neither operate in the customs area nor handle imported goods. While acting in accordance with the directions given by the Customs authorities, they are performing their statutory obligation. Therefore, what is also to be considered in the present case is the circumstances and the object for which the Regulations have been brought into <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch force.

39.2. We have already seen that the 2009 Regulations were brought into force in the public interest as the Government was facing revenue losses. Further, when the goods are under the control of the Customs authority, the person holding them on instructions from a statutory authority is

performing a public duty, failure of which can lead to consequences commencing from suspension or revocation or imposition of penalty. That apart, in cases involving inquiries into smuggling or prohibited goods, which has the drastic consequences of causing financial loss to the government or threat to public life, the role of CCSP is of public importance, as they act as the custodian or the handler of the goods, until further directions are given. Therefore, we disagree with the findings of the learned Judge in the orders dated 22.06.2021 & 01.07.2021 that the rights of the parties should be determined by the civil court. The writ petitions ought not to have been rejected on that ground and as the directions sought are only to enforce a statutory right, a writ of mandamus is entertainable.

39.3. It will be useful to refer to the following judgments on the above aspect:

(i) In Board of Control for Cricket in India v. Cricket Association of Bihar & Ors., (2015) 3 SCC 251, the Supreme Court held as follows:

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch “30…….

Suffice it to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law takeover or regulate but even lends its assistance to such a non-government body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial review of State action. Our answer to question No.1, therefore, is in the negative, qua, the first part and affirmative qua the second. BCCI may not be State under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India.”

(ii) Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 :

2019 SCC OnLine SC 408 at page 453, in which, it was held as under:

"14. This Court has laid down in Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] that the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short “the DSE Act”) was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.

15. Writ application was clearly maintainable in view of aforesaid discussion and more so in view of the decision of this Court in *Ramesh Ahluwalia v. State of Punjab* [*Ramesh Ahluwalia v. State of Punjab*, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] in which this Court has considered the issue at length and has thus observed : (SCC pp. 336-37, paras 13 & 14) “13. In the aforesaid case [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691] , this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under : (V.R. Rudani case [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691] , SCC pp. 700-701, paras 20 & 22) ‘20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article

12. Article 12 is relevant only for the purpose of enforcement of <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

22. Here again, we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: “To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract”. [Ed. : S.A. de Smith, *Judicial Review of Administrative Action* (4th Edn., Stevens & Sons Ltd., London 1980) at p. 540.] We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available “to reach injustice wherever it is found”. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellant on the maintainability of the writ petition.’ The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgments in *Unni Krishnan [Unni Krishnan, J.P. v. State of A.P.]*, (1993) 1 SCC 645 : 1 SCEC 523] and *Zee Telefilms Ltd. [Zee Telefilms Ltd. v. Union of India]*, (2005) 4 SCC 649] brought to our notice by the learned counsel for the appellant Mr Parikh.

14. In view of the law laid down in the aforementioned judgment of this Court, the judgment of the learned Single Judge [Ramesh Ahluwalia v. State of Punjab, 2009 SCC OnLine P&H 11755] as also the Division Bench [Ramesh Ahluwalia v. State of Punjab, 2010 SCC OnLine P&H 13111] of the High Court cannot be sustained on the proposition that the writ petition would not maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India.” (emphasis supplied)”
<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

(iii)ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., [(2004) 3 SCC 553 : 2003 SCC OnLine SC 1442], in which, it was observed as under:

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.”

(iv)Satimbla Sharma v. St Paul's Senior Secondary School,(2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75 : 2011 SCC OnLine SC 1087 at page 768, wherein, it was observed as follows:

“25. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to teachers of government-aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of government schools and therefore a mandamus could not be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as were payable to teachers of government institutions.

26. In K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg.

[(1997) 3 SCC 571 : 1997 SCC (L&S) 841] , relied upon by the learned counsel for the appellants, executive instructions were issued by the Government that the scales of pay of Laboratory Assistants as non-teaching staff of private colleges shall be on a par with the government employees and this Court held that even though there were no statutory rules, the Laboratory Assistants as non-teaching staff of private college were entitled to the parity of the pay scales as per the executive

instructions of the Government and the writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on a par with government employees. In the present case, there are no executive instructions issued by the Government requiring private schools to pay the same salary and allowances to their teachers as are being paid to teachers of government schools or government-aided schools.” <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

40. Much reliance has been placed by the learned counsels for CCSP on the judgment of the Delhi High Court in Polytech Trade Foundation (Supra) .

We find that the said judgment cannot come to the aid of the CCSP for the following reasons:-

(i) the judgment was dealing with the period of detention during the Covid-19 pandemic and the impact of the assessment was held to be question of fact in such circumstances;

(ii) the waiver was sought based on circulars and instructions claimed to be issued under Section 111 of the Major Port Trusts Act, which were treated as advisory;

(iii) entire findings and discussions are based on judgments rendered during Covid -19 pandemic and waiver of interest;

(iv) the facts of the case were different and the High Court was not dealing with any case where the goods were seized, confiscated or not cleared as evident from para 91, wherein the High Court has lucidly held that Regulation 6 (1) (I) would not be applicable. Therefore, the contention that the contract will prevail over the regulations is not sustainable.

(G) CCSPs' RIGHT TO BE HEARD

41. The next issue that arises for consideration is whether the CCSPs ought to have been heard before the waiver certificates were granted. We have <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch already seen that the right to seek a waiver stems from the Regulations, which have statutory force. The CCSPs are bound by statutory obligations. We have also held that the entitlement to waiver is dependent on the outcome of the adjudication proceedings. During the adjudication proceedings, the CCSPs have no say as it is a matter between the importer/exporter and the authorities. The detention of the goods is a statutory act for verification of the correctness of the particulars furnished. The resultant actions of confiscation or assessment of duty or levy of penalty are also statutory acts in which the role of the CCSP is limited to the extent of holding the goods. More importantly, the Regulations do not contemplate any provision for the CCSP to be heard when a waiver is issued and only contemplates for opportunities before penal action is taken against them for non-compliance. It is not to be forgotten that the

authorities in the adjudication process perform quasi-judicial function and therefore, the detention order for waiver cannot be said to be purely administrative, more so in the light of our findings that it cannot be in a blanket manner issued just because the goods were detained. As the facts are not in dispute and as the legal issues have already been decided against the CCSP, the grant of opportunity in our view is only an useless formality and therefore, the contention is unsustainable. In this context, it would be useful to refer to the following judgments of the Hon'ble Apex Court:

(i) S.L. Kapoor v. Jagmohan, [(1980) 4 SCC 379] “17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for https://www.mhc.tn.gov.in/judis W.A.Nos.2235 of 2021 etc. batch themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs.

But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.”

(ii) M.C. Mehta v. Union of India, [(1999) 6 SCC 237 : 1999 SCC OnLine SC 655] “20. It is true that in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66, HL] it has been held that breach of the principles of natural justice is in itself sufficient to grant relief and that no further de facto prejudice need be shown. It is also true that the said principles have been followed by this Court in several cases but we might point out that this Court has not laid down any absolute rule. This is clear from the judgment of Chinnappa Reddy, J. in S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379] . After stating (at SCC p. 395, para 24) that “principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed” and that “non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary”, Chinnappa Reddy, J. also laid down an important qualification as follows: (SCC p. 395, para 24) “As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs.” (emphasis supplied)

21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.” (H) PERIOD OF WAIVER

42. Now, coming to the next claim that the importers are not entitled to any waiver beyond a maximum period of 60 days as per Section 49 and 2018 Regulations, the answer, according to us, depends on the facts of each case and https://www.mhc.tn.gov.in/judis W.A.Nos.2235 of 2021 etc.

batch the timeline followed by the Customs Authorities in taking a decision. Before, we delve into this aspect, it would be appropriate to recall that the proper officers have the authority to clear the goods provisionally under Section 110A by following the due procedures and applicable circumstances, which we find, is seldom exercised. Such an action by the authority though to be exercised judiciously, would have minimized the storage period and facilitated the expeditious clearance and at the same time, secures the interest of the department and public.

42.1. Insofar as Section 49 is concerned, it is the contention that if steps had been taken to warehouse the goods within 30 days and the extended period of 30 days, the charges could have been mitigated. Though such an exercise is plausible, the failure, according to us, would not affect or take away the right of the importer to get complete waiver under Regulation 6 (1) (l) of the HCCA Regulations, if the adjudication proceedings ends in his favour. It can only be said that the importer would be at his own peril, in case, he fails in his attempt to convince the authorities and get clearance without any adverse order. Further, in cases where warehousing is permitted and a detention certificate for waiver is granted by the Customs authorities, and the goods are not permitted to be cleared by CCSPs who insist on payment for the detention period before clearance, as held by us, the Regulations being binding and would override the contract, the charges cannot be demanded.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 42.2. As far as the timeline under the SCMT Regulations is concerned, Regulation 10 (1) (l) states that the authorised carrier shall not demand any container detention charges, if the entries are found to be correct. There is a reference to detention for verification under Sections 46 and 50 of the Act, which deal with entry of goods on importation and entry of goods for export. The proviso enables the authorised carrier to demand container detention charges for the period after 60 days. The proviso also impliedly casts a duty on the customs authorities to conclude the proceedings within 60 days as without their approval, the goods or the container in which the goods are stored cannot be cleared. In view of the fact that the 2018 SCMT Regulations primarily deal with movement of goods, the waiver contemplated therein is restricted to containers laden with goods and the benefit granted under the 2009 HCCA Regulations, would still apply under the circumstances stated in the earlier paragraphs, if the adjudication is not completed within 90 days.

42.3. It is also to be understood that the time of 90 days provided under Regulation 6 (1) (m) for clearance of the goods under 2009 Regulations is enforceable only if there is no detention by the authorities and when there is a detention of goods for verification, the timelines would not apply. This postulates the question that if the goods are not verified and an order is not passed within 60 days of detention, can the liability be fastened on the importer or the Customs Authority? The answer again is similar. If the goods are cleared with the <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch adjudication ending in favour of the importer, there cannot be any demand and if the detention is found to be in order and such an order is passed after the time prescribed for waiver under the Regulations, the liability would fall on the authorities for the period after 60 days and on the importer until 60 days.

Similarly, if the authorities delay the issuance of any order for re-export or clearance, the liability would fall on the authorities. At this juncture, it would be appropriate to recall the circumstances and object of the HCCA Regulations.

43. It has been argued in some cases, that the importers who have got the goods cleared after payment of the charges are not entitled to refund and it is to be deemed that they have waived their statutory right. We are not in agreement with the said contention. We have already held that entitlement of waiver is dependent on the final adjudication proceedings. One of the objects of both the regulations is for expeditious clearance of goods. The importer may be under any contingency to get the goods cleared and for that purpose, may have approached the authority and paid the tax for provisional release or executed a bond and in order to get the goods cleared from CCSP, could pay the charges.

But as stated earlier, the statutory entitlement under those circumstances, when the adjudication is pending cannot be treated as waived. The right to seek waiver would commence only after the adjudication.

43.1. In this regard, it would be relevant to refer to the judgement of the Apex Court in All India Power Engineer Federation v. Sasan Power Ltd., <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch [(2017) 1 SCC 487 : (2017) 1 SCC (Civ) 277 : 2016 SCC OnLine SC 1436], wherein it was held as follows:

“21. Regard being had to the aforesaid decisions, it is clear that when waiver is spoken of in the realm of contract, Section 63 of the Contract Act, 1872 governs. But it is important to note that waiver is an intentional relinquishment of a known right, and that, therefore, unless there is a clear intention to relinquish a right that is fully known to a party, a party cannot be said to waive it...” Therefore, we are of the view that an importer who has ultimately succeeded in the adjudication proceedings is entitled for refund. However, insofar as the claim for interest is concerned, it is open to the parties to approach the authority concerned, who shall consider the same in accordance with law.

44. The next and last question that arises for consideration is the non-compliance of the waiver certificates by the CCSPs and the authorised carriers.

The provisions of the Customs Act, the 2009 HCCA Regulations and the 2018 SCMT Regulations, contain various provisions for cancellation of licence, suspension and imposition of penalty. When the waiver certificate is issued, it is the obligation on the part of the CCSP to honour the same and waive the charges.

Further, the Act and the provisions do not carry any provision for payment of interest. Therefore, the only deterrent for non-compliance can be initiation of appropriate action against the CCSPs. Therefore, in cases, where the certificates are issued after conclusion of the adjudication

proceedings in favour of the importer/exporter and if not complied, appropriate action may be initiated by the department by following the due process of law.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch (I) CONCLUSION & DIRECTIVES ISSUED:

45. On the basis of the above discussion and findings arrived at, our conclusions are as follows:

(1) The writ petitions under Article 226 of the Constitution will be maintainable against the CCSPs as they are bound by the statutory regulations and thus, the writ petitions filed will be deemed to be for the enforcement of a statutory right and thus maintainable.

(2) The 2009 HCCA Regulations, and 2018 SCMT Regulations will prevail over the contract between the parties and the waiver certificates issued by the authorities are valid in law, if the adjudication ends in favour of the importer/exporter.

(3) The waiver certificate can be issued by the Customs authorities in cases where the adjudication ends in favour of the importer/exporter without imposition of any duty, fine or penalty either by order of the adjudication or clarification or order of the court or Tribunal.

(4) The provisional release is always subject to outcome of the adjudication proceedings and wherever such application is pending, the authorities are directed to pass order within two weeks from the date of receipt of a copy of this order.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch (5) In cases, where the importer/exporter is found guilty of misdeclaration or of any other violation by import of prohibited goods or violation by import of restricted goods, the demurrage charges would have to be paid.

(6) In cases where the adjudication is not in favour of the importer/exporter and some action is taken, the authorities cannot issue any waiver certificate and if such certificates have been issued despite the fact that the importer/exporter is found to be guilty, the same are invalid.

(7) The Customs authorities are bound to follow the timelines under the Act and the Regulations and in case of any delay in conclusion of the adjudication proceedings or for issuance of orders permitting re-export, the department is liable to compensate the importer/exporter or the CCSP, as the case may be.

(8) Wherever the application for waiver has been made and is pending, the appropriate officer is to pass orders on such application within four weeks from the date of receipt of this order in terms of the proposition laid down in the preceding paragraphs.

(9) Wherever the adjudication proceedings are pending, the same must be completed within four weeks and appropriate orders, depending upon the facts of the case either granting or rejecting request for waiver, must be passed within four weeks from the date of receipt of this order.

(10) Wherever the clearance for re-export is pending, the same must be completed within four weeks from the date of receipt of this order and <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch appropriate orders depending upon the facts of the case on the waiver application, must be passed.

(11) For non-compliance of the directions, it is open to the department to initiate appropriate proceedings by following the due procedures under the provisions.

(12) In cases where any security has been encashed or where charges have been realized from the importer/exporter pending adjudication proceedings, which concluded in their favour, the importer/exporter is entitled to refund, which shall be made within four weeks from the date of receipt of this order.

(13) As far as the claim for interest is concerned, it is open to the parties to approach the authority concerned, who shall consider the same and pass appropriate orders, on merits and in accordance with law.

(14) It is open to the Central Government to look into the different timelines prescribed under the Act and the regulations and bring about appropriate changes to have uniform timelines and to bring in accountability.

(15) The Board is directed to issue appropriate instructions in this regard and fix the liability on the officers responsible for the delay and take appropriate action against them.

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46. In the result,

(i) W.A.Nos.1017/2017 and 1058/2017 challenging the order dated 08.08.2017 of the learned Judge are dismissed.

(ii) W.A.Nos.2767/2022 and 2768/2022 challenging the order dated 13.06.2022 of the learned Judge are dismissed.

(iii) W.A.Nos.2235/2021, 2175/2021, 2230/2021, 2250/2021 and W.A.No.2159/2021, are allowed by setting aside the orders dated 22.06.2021 passed by the learned Judge in WP Nos.16359, 15490, 17114 and 17433 of 2020 and 21258/2013 respectively.

(iv) W.A.Nos.363/2022 and 574/2022 are allowed by setting aside the order dated 01.07.2021 passed by the learned Judge in WP Nos.14370 and 26838 of 2018.

(v) W.A.Nos.1667/2022 and 1668/2022 are allowed by setting aside the order dated 16.06.2022 passed by the learned Judge in WP.Nos.6949 and 6947 of 2022.

(vi) W.A.No.2073/2022 challenging the order dated 16.06.2022, is dismissed.

(vii) W.P.Nos 4284/2019 and 4285/2019 seeking to quash the detention certificate dated 05.09.2018 is dismissed. However, the entitlement of the importer would be subject to the conditions and directions issued above.

(viii) W.P.No.25548/2019 seeking to quash the waiver letter dated <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch 02.07.2019, W.P.No.29948/2019 seeking to quash the waiver letter dated 01.04.2019 and W.P.No.32579/2019 seeking to quash the waiver letter dated 03.04.2019 are dismissed. However, the entitlement of the importer would be subject to the conditions and directions issued above.

(ix) W.P.Nos.20229/2019 and 20236/2019 are allowed by setting aside the orders passed by the authorities concerned, relating to waiver period.

(x) W.P.Nos.1885/2019, 1890/2019, 6603/2019, 5896/2020, 8497/2020 8498/2020, 10131/2020, 10133/2020, 10512/2020, 10515/2020, 14257/2020, 15469/2020, 15612/2020, 15619/2020, 15631/2020, 16323/2020, 16403/2020, 16772/2020, 16817/2020, 16868/2020, 16968/2020, 16979/2020, 17087/2020, 17141/2020, 17159/2020, 17250/2020, 17148/2020, 17196/2020, 17466/2020, 17529/2020, 17705/2020, 17715/2020, 17733/2020, 17736/2020, 17738/2020, 17769/2020, 17770/2020, 17773/2020, 17921/2020, 18263/2020, 352/2021, 461/2021, 750/2021, 751/2021, 1328/2021, 17386/2022, 5074/2023 and 5077/ 2023 which have been filed seeking a writ of mandamus for directions to grant waiver certificates or for compliance of waiver certificates or for appropriate actions against the CCSPs are disposed of, in terms of the directions issued above.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Connected C.M.Ps and W.M.Ps are closed. No costs.

[R. M. D., ACJ] [M.S.Q., J] 04.07.2024 rns Index: Yes / No. Speaking order/ Non-speaking order Neutral Citation: Yes / No. To

1.The Principal Commissioner of Customs, Chennai-IV, Seaport Commissionerate, Custom House, 60, Krishna Block Rajaji Salai, Opp. District Collectorate, <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Chennai - 600 001.

2.The Deputy Commissioner of Customs, Special Intelligence and Investigation Branch, Custom House, 60, Krishna Block Rajaji Salai, Opp. District Collectorate, Chennai - 600 001.

3.The Commissioner of Customs (Imports), Commissionerate III, Special Intelligence and Investigation, Branch (SIIB), Customs House, Chennai - 600 001.

4.The Deputy Commissioner of Customs (SIIB), Commissionerate III, Custom House, Chennai - 600 001.

5.The Secretary, Ministry of Finance, Department of Revenue, Union of India, North Block, New Delhi.

6.The Commissioner of Customs (CH-II), Customs House, 60, Rajaji Salai, Chennai - 600 001.

7.The Commissioner of Customs (Exports), Custom House, 60, Rajaji Salai, Chennai - 600 001.

8.The Assistant Commissioner of Customs, (Group-7B, 7H) Custom House, No.60 Rajaji Salai, Chennai - 600 001.

9.The Chief Commissioner of Customs, Custom House No.60, Rajaji Salai, Chennai - 600 001.

10.The Additional Commissioner of Customs, Group-II, Customs House, No.60, Rajaji Salai, Chennai - 600 001.

<https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch

11.The Deputy Commissioner of Customs, Group-II, Customs house, No.60, Rajaji Salai, Chennai - 600 001.

12.The Principal Commissioner of Customs, (Exports), Chennai III Commissionerate Custom House, No.60, Rajaji Salai, Chennai - 600 001.

13.The Assistant Commissioner of Customs, Docks Intelligence Unit, Chennai III, Commissionerate, Custom House, No.60, Rajaji Salai, Chennai - 600 001.

14. The Additional Director General, Directorate of Revenue Intelligence No.27, G.N.Chetty Road, T.Nagar, Chennai - 600 017.

15.The Principal Commissioner of Customs, Preventive Commissionerate, Custom House, 60, Rajaji Salai, Chennai - 600 001.

16.The Additional Commissioner of Customs, (Imports) (Gr.I), O/o. The Commissioner of Customs (Imports), Chennai, Custom house, 60, Rajaji Salai, Chennai - 600 001.

17.The Assistant Commissioner of Customs, Special Intelligence and Investigation Branch, (SIIB), O/o.Principal Commissioner of Customs, Preventive Commissionerate, Custom House, 60, Rajaji Salai, Chennai - 600 001.

18.The Deputy Commissioner of Customs, Group 7B/7H, Custom House, No.60, Rajaji Salai, Chennai - 600 001.

19.The Principal Commissioner of Customs, Commissioner of Customs-II, Custom House No.60, Rajaji Salai, <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch Chennai - 600 001.

20.The Joint Commissioner of Customs, Group 5B, Commissionerate - II, Custom House, No.60, Rajaji Salai, Chennai - 60 0001.

21.Assistant Commissioner of Customs, Group 5 B, Commissionerate - II, Custom House, No.60, Rajaji Salai, Chennai - 60 001.

22.The Additional Director, Directorate of Revenue Intelligence, Ministry of Finance, Department of Revenue, Government of India, 27, GN Chetty Road, T.Nagar, Chennai - 600 017.

23.The Deputy Commissioner of Customs, Docks, Chennai III Commissionerate, Custom House, No.60, Rajaji Salai, Chennai - 600 001.

24.The Commissioner of Customs, Chennai III Commissionerate, Custom House No.60, Rajaji Salai, Chennai - 600 001.

25.The Assistant Commissioner of Customs, (Group-1), Office of the Commissioner of Customs, Chennai-II, Custom House, 60, Rajaji Salai, Chennai - 600 001.

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26.The Deputy Commissioner of Customs (SIIB), No.60, Rajaji Salai, Customs House, Chennai - 600 001.

27.The Deputy Commissioner of Customs (Gr.2), No.60, Rajaji Salai, Custom House, Chennai - 600 001.

28.The Assistant Commissioner of Customs (ENQ), Custom House Chennai VIII, No.60, Rajaji Salai, Chennai - 600 001.

29.The Commissioner of Customs, Chennai VIII Commissionerate, Custom House, No.60, Rajaji Salai, Chennai - 600 001.

30.The Additional Commissioner of Customs (Group 6), Chennai VIII Commissionerate, Custom House, 60, Rajaji Salai, Chennai - 600 001.

31.The Principal Commissioner of Customs, Chennai-III, Customs house, 60, Rajaji Salai, Chennai - 600 001.

32.The Deputy Commissioner of Customs, O/o.The Principal Commissioner of Customs, Chennai-III Commissionerate, Special Intelligence and Investigation Branch, Custom House, Chennai - 600 001.

THE HON'BLE ACTING CHIEF JUSTICE <https://www.mhc.tn.gov.in/judis> W.A.Nos.2235 of 2021 etc. batch and MOHAMMED SHAFFIQ, J.

rns W.A.Nos.2235 of 2021 etc. batch 04.07.2024 <https://www.mhc.tn.gov.in/judis>