

M/S.G.K.International vs The Principal Commissioner Of Customs on 16 June, 2022

Author: R.Suresh Kumar

Bench: R.Suresh Kumar

W.P.Nos.6947

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2022

Pronounced on : 16.06.2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.6947 and 6949 of 2022

W.P.No.6947 of 2022

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

.....

-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.1),
O/o the Commissioner of Customs (Imports),
Custom House, 60, Rajaji Salai,
Chennai - 600 001.
3. The Assistant Commissioner of Customs
(Special Intelligence and Investigation Branch)
O/o Principal Commissioner of Customs,

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

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 Krishnan Salai,
Mylapore, Chennai - 600 004.

..... Respond

Prayer in W.P.No.6947 of 2022 : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents herein to cause release of the goods imported under Entry No.6133972, dated 05.11.2021 without levy of detention, demurrage and container storage charges waived vide detention certificate issued by the office of the third respondent in F.No.S.Misc.343/2021-SIIB, dated 17.01.2022 from the date of the detention of the goods till their release.

W.P.No.6949 of 2022

M/s.G.K.International

Rep. by its Proprietor,

Shri.Jagannathan Yogeshwaran

S/o.Jagannathan, No.175, Sivan Padal Street,
Kathivakkam,

Ennore, Chennai - 600 057.

.....

-VS-

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

W.P.Nos.6947 a

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

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

3. The Assistant Commissioner of Customs

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

4. M/s. Continental Warehousing Corporation
(Nhava Sheva) Ltd., -II,
Redhills CFS,
No.14, 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 - 600 031.

..... Responde

Prayer in W.P.No.6949 of 2022 : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents herein to cause release of the goods imported under

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

W.P.No

Entry No.5998252, dated 26.10.2021 without levy of detention, demurrage and container storage charges waived vide detention certificate issued by the office of the third respondent in F.No.S.Misc.343/2021-SIIB, dated 17.01.2022 from the date of the detention of the goods till their actual release.

For Petitioner : Mr.G.Rajagopalan, Senior Advocate
for Mr.B.Sathish Sundar
in both the writ petitions

For Respondents : Mr.T.Pramod Kumar Chopda
Senior Standing Counsel for
in both the writ petitions

Mr.P.R.Krishnaraj for R4
in W.P.No.6947 of 2022

Mr.K.Bijay Sundar for R4
in W.P.No.6949 of 2022

Mr.T.V.Suresh Kumar and
Mr.K.Balaganesh
for M/s. Genicon & Associates
in W.P.No.6949 of 2022

Since both the writ petitions were filed by the same petitioner and the issue arises out of these writ petitions is one and the same, these writ petitions were heard together and are being disposed of by this common order.

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2. The petitioner is a proprietary concern which has been given the import export license by the Office of the Additional Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry. To conduct the local business, the petitioner was given GST Registration also under the GST Act. Since the petitioner entity deals with the food items, a license in terms of Food Safety and Standards Act, 2006 has also been issued by the appropriate Authority under the said Act. The petitioner entity has been conducting business with due diligence and in compliance with the statutory obligations cast on it.

3. The petitioner during his business had placed an order to import wet dates to the extent of 25585 Kgs to one M/s. Silver Town Food Stuff Trading LLC at Dubai, UAE and accordingly, those food stuff having been packed in 850 packages covered under invoice, dated 13.10.2021 were despatched under Bill of Lading, dated 26.10.2021. The invoice value of the goods was Rs.9,74,099.20/-. The petitioner self-assessed the duty at Rs.3,56,910/-.

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4. The said goods on reaching the Chennai Port, bill of entry was submitted by the petitioner, dated 05.11.2021 in Bill of Entry No.6133972.

5. Like that, yet another consignment also was imported by the petitioner with the same goods, i.e., wet dates in Bill of Entry No.5998252, dated 26.10.2021.

6. These goods on reaching the Chennai Port, the customs authorities, on the basis of an intelligence information, had conducted detailed examinations of the cargo on 25.11.2021. On such examination, it was found that, the container in which the goods arrived were containing the goods, i.e., walnuts weighing 15,074 kgs besides the declared consignment of wet dates. Subsequently, the goods were seized on the allegation that, there has been a mis-declaration of the description of goods and also quantity.

7. A statement in this regard was recorded from the petitioner under Section 108 of the Customs Act, 1962 (in short "the Act"), in which, <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 allegedly the petitioner had admitted the goods in question, namely walnuts were despatched by one Anil Kumar Jain through the supplier along with export consignments of wet dates in order to make certain gains financially.

8. Further on investigation, the petitioner entity having admitted the fault of mis-declaration remitted the applicable customs duty besides the redemption fine as well as the penalty to the extent of Rs.65 lakhs under TR-6 Challan, dated 27.01.2021.

9. Having regard to the payment of duty with probable fine and duty of the consignments imported, the petitioner waived issuance of show cause notice and sought for adjudication directly.

10. Thereafter the office of the second respondent took up the matter in adjudication and vide in Order in Original No.87978/2022, dated 11.02.2022 found that the goods in question were mis-declared with respect to value. Accordingly, by rejecting the declared value, the goods under import were re-valued to the extent of Rs.24,80,346/-. Accordingly, the duty <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 was confirmed at Rs.24,22,457/- under Section 28(8) of the Customs Act, 1962.

11. Like that, in respect of other consignment also, vide Bill of Entry, dated 26.10.2021, such a revaluation had been fixed, accordingly, duty also has been confirmed by the Customs. Ultimately in the said Order-in- Original, dated 11.02.2022, the customs has passed order that, the goods in question are confiscated, however, an option to redeem the goods on payment of redemption fine of Rs.2,50,000/- each under Section 125 of the Act was given to the petitioner.

12. Ultimately since the revised duty on the basis of the revaluation has been imposed which were paid by the petitioner including the redemption fine as well as the penalty under the provisions of the Customs Act, altogether a sum of Rs.65 lakhs paid by the petitioner on 27.12.2021 had been appropriated by the Customs.

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13. In this regard, it is to be noted that, during the pendency of the investigation, which was carried out by the office of the third respondent, the petitioner has made an application to the office of the respondents for availing of storage facility in terms of Section 49 of the Act, which was also having been considered was granted by the Customs, by permission letter, dated 13.01.2022.

14. Since the investigation was undertaken at that time, the third respondent issued a detention certificate as per the provisions of Section 6(1)(l) of the Handling of Cargo in Customs Area Regulations, 2009 (in short "the 2009 Regulations") to the fourth respondent, advising them not to charge rent or demurrage / detention charge from the date of detention, i.e., 08.11.2021 till 13.01.2022.

15. Like that, a similar detention certificate in terms of Section 10(l) of the Sea Cargo Manifest and Transshipment Regulations, 2018 (in short "the 2018 Regulations") was also issued to the fifth respondent waiving detention charges from 08.11.2021 till 13.01.2022. <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022

16. Only in this context, it is the grievance of the petitioner that, despite the permission was given under Section 49 of the Act and the advice was given to both the fourth and fifth respondents under 2009 Regulations as well as 2018 Regulations respectively not to demand demurrage or detention charges, when the petitioner claimed to have moved with fourth and fifth respondents for release of the goods without paying such demurrage or detention charges, they have not released the goods and they have detained the same demanding such demurrage and detention charges. Therefore only in that context, these two writ petitions have been filed in respect of each of the Bill of Entry, i.e., Bill of Entry, dated 05.11.2021 and 26.10.2021 respectively with respective prayers.

17. Heard Mr.G.Rajagopalan, learned Senior counsel appearing for the petitioner assisted by Mr.B.Sathish Sundar, learned counsel on record.

18. Learned Senior counsel would contend that, after the permission letter was given by the customs authorities on 13.01.2022 under Section 49 of the Act and also the advice note given on the same date, i.e., on <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 13.01.2022 to both the fourth and fifth respondents in the respective cases with regard to waiver of demurrage and detention charges, these respondents, i.e., fourth and fifth respondents respectively in both the cases have not accepted or acted upon the advice or direction given in this regard by the customs authorities by separate advice note given on 13.01.2022 in both the cases.

19. Because of the attitude or the stand taken by the respondents 4 and 5, according to the learned Senior counsel appearing for the petitioner, the petitioner has been put into a precarious situation, where after having paid the duty for revaluation of the goods as well as the redemption charges and penalty etc., to the extent of Rs.65 lakhs, once again the petitioner was made to incur loss by demanding the detention and demurrage charges from the petitioner by the fourth and fifth respondents.

20. This action on the part of the fourth and fifth respondents is not only against the directive issued in this regard by separate communications or advice note issued by the customs authorities to both fourth and fifth <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 respondents respectively in both the cases but also against the provisions of 2009 as well as 2018 Regulations referred to above. Therefore, the learned Senior counsel seeks indulgence of this Court to issue a suitable direction by way of mandamus as prayed for in both the cases, directing the respondents 4 and 5 respectively in both the cases to release the goods without seeking for any demurrage or detention charges as they claim now, he contended.

21. Per contra, Mr.P.R.Krishnaraj and Mr.K.Bijay Sundar, learned counsels appearing for the fourth respondents and Mr.T.V.Suresh Kumar, learned counsel appearing for the fifth respondent would contend that, though they have been given license under the said Regulations, namely 2009 Regulations and 2018 Regulations, there has been a private contract between the petitioner and these respondents in terms of the license issued in this regard to these respondents. If at all, the petitioner seeks for waiver of demurrage and detention charges, that would only be made between 08.11.2021, the date on which the goods were seized and 13.01.2022, the date on which such permission letter was given and advice note also was <https://www.mhc.tn.gov.in/judis>

W.P.Nos.6947 and 6949 of 2022 given to the fourth and fifth respondents to give waiver of the demurrage and detention charges. Therefore, beyond 13.01.2022, the petitioner cannot claim or seek for any detention and demurrage charges.

22. They also contended that, assuming that the petitioner is entitled to get waiver of demurrage and detention charges as per the advice of the customs authorities in tune with Section 49 of the Act, i.e., only a temporary measure. That is the reason why a 60 days time had been given by the customs authorities to the petitioner to seek for such waiver, beyond which no such waiver would be possible as even the Regulations which are mainly relied upon by the petitioner side to claim such waiver from the fourth and fifth respondents does not permit for any such waiver beyond the maximum of 60 days.

23. In this context, the learned counsel appearing for the respondents 4 and 5 have taken this Court to the relevant Regulations, namely Regulation 6(1)(l) of 2009 Regulations and Regulation 10(l) of 2018 Regulations.

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24. By relying upon these Regulations, the learned counsel appearing for respondents 4 and 5 would contend that, beyond the 60 days period at the maximum, there could be no chance of any claim of waiver of demurrage or detention charges, therefore, the claim now made by the petitioner based on the permission letter as well as the detention certificate, dated 13.01.2022 issued by the customs authorities is misconceived as maximum waiver could be halted only at 13.01.2022 and beyond which absolutely there is no authorisation even from the customs authorities.

25. Assuming that if the customs authorities gives any further extension of the period for seeking waiver till the adjudication is completed and the confiscation order is passed, dated 11.02.2022, even such kind of extension is not possible in view of the maximum limitation of 60 days as contemplated under the Regulations referred to above. Therefore at any cost, the present prayer sought for by the petitioner to seek for waiver of the demurrage and detention charges beyond 13.01.2022 is untenable, unlawful and against the provisions of the regulation which they rely upon and therefore, the learned counsel appearing for the respondents 4 and 5 would <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 contend that, these writ petitions are liable to be dismissed for the relief sought for in each of these writ petitions.

26. On the part of the customs, Mr.T.Pramod Kumar Chopda, learned Senior standing counsel, on instructions would submit that, up to 13.01.2022 certainly the petitioner would be entitled to get the waiver of demurrage and detention charges from the fourth and fifth respondents respectively in both the cases, as that power has been exercised by the customs authorities invoking Section 49 of the Act.

27. Insofar as the period beyond 13.01.2022 is concerned, even in the permission letter itself, dated 13.01.2022, the customs authorities has indicated that for any further extension, the petitioner should make an application within 30 days period.

28. Therefore, the learned standing counsel appearing for the customs would contend that, no such application since has been filed by the petitioner, the customs authorities did not have any occasion to consider <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 whether any such extension to be given till the confiscation order is passed in this regard, i.e., dated 11.02.2022.

29. Therefore the petitioner himself has not come forward to seek for any waiver for the period beyond 13.01.2022, therefore, from 14.01.2022, whether the petitioner would be entitled to seek for wavier of these charges is a question, for which the petitioners action itself can be taken as a proof to come to a conclusion that, the petitioner has not come forward to seek for any such waiver, therefore whether they would be entitled for such waiver beyond 13.01.2022 even could not have been considered, because of that situation did not arise in view of the failure on the part of the petitioner to make such an application.

30. Therefore the learned Standing counsel appearing for the customs department would contend that, as per the power vested with the customs authorities under Section 49 of the Act, the waiver period has been given up to 13.01.2022 to the petitioner, till such period, certainly the complete waiver shall be given by both the fourth and fifth respondents to the petitioner.

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31. However beyond 13.01.2022 is concerned, it is the fault on the the part of the petitioner even to make an application to seek for such an waiver. Therefore for the period from 14.01.2022 till 11.02.2022, the date on which Orders-in-Original including confiscation of the goods as well as the permission to the petitioner to redeem the goods was issued had not been decided or could not be decided, therefore for that period, the petitioner may not be entitled to seek for any waiver of demurrage or detention charges from the fourth and fifth respondents, he contended.

32. In support of the respective contentions made by the learned Senior counsel appearing for the petitioner as well as the learned counsel for respondents, some Judgments have been quoted before this Court.

33. I have considered the said rival submissions made by the learned respective counsel appearing for the parties and have perused the materials placed before this Court.

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34. The issue raised in these writ petitions though appears to be a complicated one, after having gone through the relevant provisions of the Act as well as the Rules and the factual matrix as projected by both the parties, this Court feels that, the issue is in very narrow compass.

35. The only issue to be decided by this Court is that, whether the petitioner would be entitled to seek for any waiver of demurrage or detention charges from the fourth and fifth respondents respectively in both the cases beyond 13.01.2022 and if so, whether such claim is justifiable within the meaning of the provisions of the Customs Act as well as the two Regulations, namely 2009

Regulations and 2018 Regulations?

36. In order to delve into that issue, to get an answer, this Court feel that, the relevant provision of the Act as well as the two Regulations can be first looked into.

37. Section 49 of the Act reads thus :

"49. Storage of imported goods in warehouse pending clearance or removal.—Where,— (a) in <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 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, 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.]"

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38. Section 49(b) makes it clear that, in case of any imported dutiable goods, entered for warehousing, the customs authorities, if they 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 be pending clearance or removal, as the case may be, permitted to be stored in a public warehouse for a period of not exceeding thirty days.

39. Only invoking the said provision for storing the said goods, which were imported by the petitioner, in a public warehouse, the said permission order was passed by the Customs authorities on 13.01.2022.

40. In the said permission letter / order, the Customs had stated the following :

"The consignment covered under above said Bill of Entry filed by M/s. GK International (AFZPY2611P) was detained by SIIB vide letter, dated 08.11.2021 in

F.No.S.Misc.343/2021-SIIB for examination. Examination of the goods was completed and further investigation is in progress.

2. In this regard, it is informed that the importer <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 may avail the facility of warehousing the goods by releasing the container under Sec.49 of the Customs Act 1962 to avoid demurrage / detention charges etc., subject to fulfillment of the prescribed conditions. For further extension of the same, the importer may make request with the Commissioner of Customs before the expiry of 30 days.

3. It may kindly be noted that in the event of failure on your part to avail the facility, the responsibility for payment of any demurrage / detention and other charges lies with the importer. After warehousing, the storage details may be communicated to this office.

4. The goods shall not be removed or disposed in any manner by the importer without concurrence from SIIB."

41. In this context, there are two Regulations, namely 2009 Regulations, called Handling of Cargo in Customs Areas Regulations, 2009 and 2018 Regulations, called Sea Cargo Manifest and Transshipment Regulations, 2018.

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42. In 2009 Regulations, the relevant provision is Regulation 6(1)(l), which reads thus :

"(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 proper officer."

43. Under Regulation 6(1)(l), the Customs Cargo service provider like the private respondents shall not charge any rent or demurrage on the goods seized or detained or confiscated by the proper officer.

44. Here in the case in hand, since the goods were seized and detained and if the same is put in warehouse like the warehouse of the respondents herein, they cannot charge any rent or demurrage on the goods seized.

45. Only under these provision, the Customs authorities on the very same date, i.e., on 13.01.2022, has also issued an advice letter to the fourth respondent, which reads thus :

"The consignment covered under above said Bill of Entry filed by M/s. GK International <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 (AFZPY2611P) was taken up for investigation by SIIB vide detention order, dated 08.11.2021 in F.No.S.Misc.343/2021-SIIB and permission to avail storage facility of

goods under Section 49 of the Customs Act, 1962 was given on 13.01.2022 (wrongly typed as 13.01.2021) to the importer. As the investigation is under progress, as per the provision 6(1)(l) of Handling of Cargo in Customs Area Regulations (HCCAR), 2009 issued vide Notification No.26/2009 (NT)-Cus, dated 17.03.2009, the custodian shall not charge rent or demurrage / detention for the goods from the date of detention, i.e., 08.11.2021 to the date of issuance of permission to avail storage facility of goods under Section 49 of the Customs Act, 1962, i.e., 13.01.2022."

46. Like that, yet another Regulations, which governs, the issue is the 2018 Regulations, under which, the relevant provision is Regulation No.10(l), which reads thus :

"(l) not demand any container detention charges for the containers laden with the goods detained by customs for purpose of verifying the entries made
<https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 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."

47. The Regulation 10(l) of 2018 Regulations also containing the similar provision that, the authorised carrier under the Regulations shall not demand any container detention charges for the containers laden with the goods detained by customs for verifying the entries.

48. However a proviso is there in Regulation 10(l), which says that the authorised carrier may demand container detention charges for the period commencing after expiry of 60 days.

49. Only exercising the power under these Regulations, the customs authorities on 17.01.2021 issued an advice note to the fifth respondent, which reads thus :

"Officers of the Special Intelligence and Investigation Branch (SIIB), Chennai Preventive
<https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 Commissionerate gathered a specific Intelligence to the effect that goods imported by M/s. GK International in Container No.GRMU5200925 vide Bill of Lading No.GLPJEAMAA0038, dated 26.10.2021 (Bill of Entry No.6133972, dated 05.11.2021 have been misdeclared.

2. Based on the above intelligence, the goods covered by the aforementioned Bill of Lading were detained by the SIIB on 30.11.2021 and were subsequently examined on 30.11.2021. As the investigation is in progress, vide letter dated 13.01.2021 bearing CBIC DIN :

20220173MY000000FDFD, the goods were allowed for warehousing under the provisions of Section 49 of the Customs Act, 1962.

3. In view of the above, the detention charges for the container No. GRMU5200925 from 08.11.2021 to 13.01.2021 shall be waived off in terms of Regulation 10(l) of the Sea Cargo Manifest and

Transshipment Regulations, 2018 as amended."

50. After these communications, permission letters, advice notes were issued on 13.01.2022, 17.01.2022, it is the case of the petitioner that, they <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 approached both the fourth and fifth respondents respectively in both the cases to release the goods and the goods were not released for transfer into further warehouse or in the custody of the customs or the petitioner as these respondents, according to the petitioner had demanded the rent / demurrage or detention charges for the period from 08.11.2021 itself.

51. However, the definite case of the respondents 4 and 5 in both the cases as projected by them by way of counter affidavit as well as the arguments advanced by the learned respective counsel appearing for them was that, no doubt from 08.11.2021 to 13.01.2022, there was an advice by the authorities, i.e., from Customs for waiver of rent / demurrage / detention charges, however beyond 13.01.2022 absolutely there was no advice and no such advice infact could have been given by the Customs authorities beyond 13.01.2022, because of the specific proviso contained in clause 10(l) of 2018 Regulations that, beyond 60 days, such kind of waiver cannot be made, hence the petitioner is liable to pay the rent, demurrage and detention charges from 14.01.2022.

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52. It is the further case of the respondents 4 and 5 that, the petitioner did not immediately come forward to make a claim for waiver and in fact, the petitioner unmindful of the advice note or permission letter given by the Customs authorities dated, 13.01.2022 and 17.01.2022 had a private negotiations with these respondents for concession in paying the rental, demurrage and detention charges and infact, they agreed upon to pay such charges, of course by negotiation orally undertaken between the parties which had been stated in the counter affidavit of these respondents, all of a sudden, the petitioner had approached this Court by filing these writ petitions stating that, immediately on receipt of these communications or advice note from the customs authorities, as if that they have approached the fourth and fifth respondents for release of the goods.

53. In this context, this Court visualise the situation where, though such a advice note and permission letter was given by the customs invoking Section 49 of the Act as well as the provisions of the respective Regulations referred to above on 13.01.2021 and 17.01.2021, within a span of next 30 days, i.e., 11.02.2022 after completing the adjudication, the customs passed the Order-in-Original, where the goods were confiscated. <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022

54. In the said order itself, the redeeming option was also given after paying redemption charges to the petitioner, which the petitioner had accepted, accordingly, the petitioner since had already paid the entire amount for duty, penalty, redemption charges etc., to the extent of Rs.65 lakhs and the same since had been appropriated by the customs authorities, the petitioner was free to redeem the goods.

55. Therefore most probably only after 11.02.2022, the petitioner might have approached the respondents 4 and 5 for release of the goods.

56. Assuming that, the petitioner would be entitled for full waiver of demurrage, rent or detention charges, such claim could have been made by the petitioner immediately after the permission letter and advice note, dated 13.01.2022.

57. Here in the case in hand, since confiscation and redemption was possible only after 11.02.2022 Order-in-Original order, thereafter if at all the petitioner wanted to take the goods, whether beyond 13.01.2022 till the <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 petitioner approaches the fourth and fifth respondents, whether that kind of demurrages can also be waived is the question.

58. In this regard, it is to be noted that, since the maximum period of demurrage and detention charges waivers could be possible for 60 days, beyond which, there is no scope for such demurrage and detention charges waiver in view of proviso to Regulations 10(l) of 2018 Regulations, since the said two months period had already been given from 18.11.2021 to 13.01.2022, in my considered view beyond 13.01.2022, the petitioner cannot seek for any such waiver for detention and demurrage charges.

59. Moreover in the permission letter, dated 13.01.2022, the customs authorities had made it clear that, for further extension of the waiver, the importer may make request with the Commissioner of Customs before the expiry of 30 days.

60. If that being so, from the point of view of the customs, beyond the waiver period that was permitted up to 13.01.2022, it was possible for the <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 petitioner to seek for further period waiver, for which request should be made by the petitioner with the Commissioner of Customs before expiry of 30 days.

61. But the fact remains that, even such request or application seems to have not been made by the petitioner within 30 days from 13.01.2022. If at all any such application is made, that could have been considered by the customs authorities, especially the Commissioner of Customs, as per their letter, dated 13.01.2022 as to whether the petitioner would be entitled to claim waiver of such demurrage and detention charges beyond 13.01.2022.

62. Till the filing of these writ petitions, since such a move has not been made by the petitioner and there was no occasion for the customs authorities to consider such a plea to be made by the petitioner for giving waiver of the charges beyond 13.01.2022, even that aspect cannot be testified before this Court as of now in these writ petitions. <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022

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 <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 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 <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 provided under the Regulations, especially Regulation 10(l) proviso of 2018 Regulations and therefore, the said 60 days 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 <https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 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.

16.06.2022 Index : Yes Speaking order tsvn To

1. The Principal Commissioner of Customs Preventive Commissionerate, Custom House, 60, Rajaji Salai, Chennai - 600 001.
2. The Additional Commissioner of Customs (Imports) (Gr.1), O/o the Commissioner of Customs (Imports), Custom House, 60, Rajaji Salai, Chennai - 600 001.
3. The Assistant Commissioner of Customs (Special Intelligence and Investigation Branch) O/o Principal Commissioner of Customs, Preventive Commissionerate, Custom House, 60, Rajaji Salai, Chennai - 600 001.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.6947 and 6949 of 2022 R.SURESH KUMAR, J.

tsvn Common Order in W.P.Nos.6947 and 6949 of 2022 16.06.2022
<https://www.mhc.tn.gov.in/judis>