

Royal Exports Enterprises vs Union Of India on 11 January, 2022

Author: N.Nagaresh

Bench: N.Nagaresh

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH
TUESDAY, THE 11TH DAY OF JANUARY 2022 / 21ST POUSHA, 1943
WP(C) NO. 25608 OF 2021

PETITIONER:

ROYAL EXPORTS ENTERPRISES
2ND FLOOR, 20/621, PEN ACADEMY BUILDING,
PANJAYATH JUNCTION, MUPATHADAM, ERNAKULAM-583
110 REPRESENTED BY ITS MANAGING PARTNER,
ASHIK M.U., AGED 34 YEARS, S/O. USMANKUTTY,
METHARUPARAMBIL HOUSE, EDAYAR,
BINANIPURAM P.O., ERNAKULAM-683 502.

BY ADVS.
ESM.KABEER
ANILKUMAR P.

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY, MINISTRY OF RAILWAY,
BLOCK NO.27, NEW DELHI-100 001.
- 2 THE CONTAINER CORPORATION OF INDIA
A GOVERNMENT OF INDIA UNDERTAKING, MINISTRY OF
RAILWAYS, REPRESENTED BY ITS DIRECTOR,
CORPORATE OFFICE, CONCOR BHAWAN, C-3, MATHURA
ROAD, OPP. APPOLO HOSPITAL, NEW DELHI-110 076.
- 3 THE EXECUTIVE DIRECTOR
CONTAINER CORPORATION OF INDIA LIMITED,
REGIONAL OFFICE, SOUTHERN REGION, 8TH FLOOR,
CAO/CN BUILDING, SOUTHERN RAILWAY, EVR PERIYAR
SALAI, EGMORE, CHENNAI-600 008.
- 4 THE TERMINAL MANAGER
CONTAINER CORPORATION OF INDIA LIMITED,
CONTAINER FREIGHT STATION, NH 47C,
MUVLAVUKADU P.O., VALLARPADAM-682 504.

BY SRI.A.DINESH RAO, SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 11.01.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

W.P.(C) No.25608/2021

:2:

N. NAGARESH, J.

.....
W.P.(C) No.25608 of 2021
.....

Dated this the 11th day of January, 2022

JUDGMENT

~~~~~ The petitioner, a partnership Firm, seeks to quash Exts.P9 and P10 notices and to direct the 4 th respondent to calculate the charges only with respect to the actual space occupied/used by the petitioner for storing the items at Wharf, CONCOR, Vallarpadam and not in terms of Ext.P10 notice.

2. The petitioner imported Split Cassia, Spring Star Aniseed and Broken Spring Star Aniseed in a 40 feet container. The Food Safety and Standard Authority of India (FSSAI) cleared only Split Cassia, as the remaining items did not clear mandatory tests under the Food Safety Act. The uncleared cargo is detained at Container Freight Station (CFS) CONCOR, at Vallarpadam. The cargo was detained nine months ago and the value of goods is diminishing. The petitioner therefore submitted Ext.P5 request for waiver of warehouse charges and for release of goods.

3. The 4th respondent declined waiver of charges, as per Ext.P6. The 3rd respondent also declined waiver, in spite of the judgment of this Court in W.P.(C) No.14387/2021. Now, Ext.P9 notice is served on the petitioner informing that the Competent Authority has declined the request of the petitioner. The petitioner submits that the rate applied by the respondents for wharfage charges is exorbitant compared to other Major Ports in India. Ext.P10 Trade Notice is therefore liable to be set aside, contended the petitioner.

4. The respondents contested the writ petition. The respondents stated that since the cargo does not confirm to FSSAI regulations, the cargo cannot be auctioned and sold in the country and has to be re-exported by the Importer as per the redemption allowed by Customs. Wharfage charges accrued on cargo is as per tariff applicable at CFS/VPDM i.e., 40 Square metres for 40' container. The total charges accrued on the balance cargo till 10.01.2022 is 19,12,556/- (incl. GST). As per extant Waiver Policy of CONCOR dated 03.12.2007 and Guidelines under Serial No.4, in case cargo is sent for laboratory testing, no waiver should normally be granted if the results of the test decision are not in favour of the importer. As per addendum dated 26.03.2019 to waiver policy, no request for waiver will be entertained in cases where any fine/penalty/personal penalty/warning has been imposed by Customs Authorities or delay arose. The Container Corporation of India is operating Inland Container Depots (ICD's)/Container Freight Stations (CFSs) at 60 locations across the country and every facility has different wharfage/storage charges based on the Geographical location of the

facility. The petitioner has no legal right to demand that rates should be uniform in all Ports.

5. Heard the counsel for the petitioner and the Standing Counsel for the respondents.

6. It is an admitted position that the cargo of the petitioner is detained as it did not confirm to FSSAI Regulations. The contention of the petitioner is that the warehouse charges are calculated at a higher rate. According to the respondents, the warehouse charges have been calculated as per the public tariff of Container Freight Station at Vallarpadam. The Container Corporation of India is operating Inland Container Depots and Container Stations in 60 locations across India and charges are levied on the basis of facilities available in different ports at different geographical locations. It will also depend on the volume of business in each terminal.

7. The petitioner, apart from alleging that the rates at Vallarpadam are excessive, has not produced any material to establish that the rates fixed are unreasonable to stand the scrutiny of law. The respondents are forced to keep the petitioner's cargo in warehouse, as the cargo failed to comply FSSAI standards. The respondents are therefore not in a position to auction off the materials in India.

8. In the afore facts, this Court find no illegality or arbitrariness in the action of the respondents. Exts.P9 and P10 are not liable to be set aside on any of the grounds urged by the petitioner.

The writ petition therefore fails and it is consequently dismissed.

Sd/-

N. NAGARESH, JUDGE aks/24.01.2022 APPENDIX OF WP(C) 25608/2021 PETITIONER'S EXHIBITS Exhibit P1 TRUE PHOTOCOPY OF THE PARTNERSHIP DEED DATED 21.9.2019.

Exhibit P2 TRUE PHOTOCOPY OF THE DETAILS OF IMPORTER EXPORTER CODE.

Exhibit P3 TRUE PHOTOCOPY OF THE GST REGISTRATION CERTIFICATE DATED 10.10.2019.

Exhibit P4 TRUE PHOTOCOPY OF THE PACKING LIST DETAILS DATED 23.7.2020.

Exhibit P5 TRUE PHOTOCOPY OF REQUEST FOR WAIVER SUBMITTED BEFORE THE 4TH RESPONDENT DATED 10.6.2021.

Exhibit P6 TRUE PHOTOCOPY OF THE NOTICE OF DEMAND ISSUED BY THE 4TH RESPONDENT DATED 29.6.2021.

Exhibit P7 TRUE PHOTOCOPY OF THE REPRESENTATION SUBMITTED BEFORE THE 3RD RESPONDENT DATED 5.7.2021.

Exhibit P8 TRUE PHOTOCOPY OF THE JUDGMENT IN WPC 14387/2021.

Exhibit P9 TRUE PHOTOCOPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT DATED 14.9.2021.

Exhibit P10 TRUE PHOTOCOPY OF THE TRADE NOTICE DATED 15.7.2020 ISSUED BY THE 4TH RESPONDENT.

RESPONDENT'S EXTS:

R4(a) COPY OF ORDER ISSUED BY THE CUSTOMS DEPARTMENT DT 20.10.2020.

R4(b) COPY OF EXTRANT WAIVER POLICY OF CONCOR DT 3.12.2007.

R4(c) COPY OF ADDENDUM DT 26.3.2019 ISSUED BY CONCOR/INTERNATIONAL MARKETING DEPARTMENT.