

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10833 of 2020**

M/S HLG TRADING SPACE E

Versus

UNION OF INDIA

Appearance:

MR CHETAN K PANDYA(1973) for the Petitioner(s) No. 1

NOTICE SERVED(4) for the Respondent(s) No. 2,3,4,5

UNSERVED WANT OF TIM(31) for the Respondent(s) No. 1

CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 05/01/2021****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

1. This petition preferred under Article 226 of the Constitution of India seeking following prayers:

“a. To issue a writ of mandamus directing the respondents, more particularly, the 3rd to 5th respondents to act on the petitioner's representation dated 29.7.2020 and 31.7.2020 by taking suitable action under the Handling of Cargo at Custom Area Regulation 2009 against the Steamer Agents / Liners / CFS to whom the detention and demurrage waiver certificates dated 23.7.2020, 27.7.2020 have been communicated by directing them to refund / return the demurrage and detention / storage charges collected from the petitioner entity and in the event of such not being done, make good to the petitioner the aforesaid sums by themselves.

b. To pass any other and further orders as may be deemed fit and proper.

c. To provide for the costs of this petition.”

2. The petitioner is in the business of import and local sale of filament yarn, polyester yarn etc. from various countries like China, United States of America etc. The petitioner imported 10 consignments

of goods through Mundra Customs Seaport from its overseas suppliers. The consignments were accompanied by import documents which included invoice, packing list, bill of lading etc. The details have been provided of each bills of entry, the date of assessment, the payment of duty etc. by the authority concerned.

3. It is averred by the petitioner that the duty payments were made by the petitioner on the goods imported under respective bills of entry. The examination of the goods was undertaken and completed belatedly. Although, out of charge order was given with respect to the first five consignments, there was no physical release on account of such doubts entertained by the office of the respondent No.5.

4. The relief sought for was taking an appropriate decision on the pending representations within the stipulated time period. Court directed the authority to take an appropriate decision in accordance with law within 10 days from the date of the submission of the covering letter along with the other material. The grievance on the part of the petitioner is that although in case of nine bills of entries there had been already a grant of detention and demurrage waiver certificates, no benefits have been accrued to the petitioner and they remained only piece of papers. Relying on various decisions of the High Court of Madras directing the authorities to seek the compliance of the detention and demurrage waiver certificates, this petition has been brought with the aforementioned prayers.

5. This Court had issued notice on 08.09.2020. We have heard today the learned Senior Counsel Mr. B. Satish Sundar and learned advocate Mr. Chetan Pandya for the petitioner. Learned Additional Solicitor General Mr. Devang Vyas represented on behalf of all the respondents.

6. We notice that the respondents though duly served have so far not filed

any affidavit-in-reply. Instructions received by the learned Additional Solicitor General is to the effect that the representations made by the petitioner are not till date decided. Since the dominant relief sought for by the petitioner is for seeking directions against the respondents No.3 to 5 for them to take an appropriate decision on the pending representations dated 29.07.2020 and 31.07.2020 by taking a suitable actions under the Handling of Cargo at Custom Area Regulation 2009 against the Steamer Agents / Liners / CFS to whom the detention and demurrage waiver certificates dated 23.07.2020 and 27.07.2020 have been communicated, we have chosen to dispose of this petition with a direction to the respondent No.3 to take an appropriate decision in accordance with law within three weeks from the date of receipt of copy of this order in respect of pending representations dated 29.07.2020 and 31.07.2020 bearing in mind Handling of Cargo at Custom Area Regulation 2009 and other provisions applicable in the instant case including the case laws which may be presented before the authority concerned. If permissible under the law, the opportunity of personal hearing shall be availed to the petitioner otherwise any additional material the petitioner seeks to file before the authority concerned shall be permitted within one week from the date of receipt of the copy of this order.

7. It is being clarified that this Court has chosen not to enter the merits of the matter. The authority shall take the decision strictly in accordance with law. The petitioner if aggrieved eventually shall have a recourse under the law.

8. With the above directions, present petition stands disposed of.

(SONIA GOKANI, J)

(SANGEETA K. VISHEN, J)

RAVI P. PATEL