

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8495 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

M/S RUGS RURAL THROUGH PROPRIETOR NASIM AHMED KHAN  
Versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS

Appearance:

KURVEN K DESAI(7786) for the Petitioner(s) No. 1

TIRTH NAYAK(8563) for the Petitioner(s) No. 1

MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 1,2,3,4

MR ASHISH VERMA with MR. GNANESH G BHATT(10015) for the Respondent(s) No. 5

CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 06/01/2023

ORAL JUDGMENT

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The short question that needs to be addressed is the

non-compliance of the directions of this Court and waiver of the demurrage and detention charges by the respondent no.5 in the following factual background:-

1.1. A petition was filed under Article 226 of the Constitution of India being Special Civil Application No. 14849 of 2021 by the present petitioner seeking to release the consignment comprising Chinese Knotted Woolen Carpets which were detained by the respondent no.2 on 06.01.2021. This, according to the petitioner, was causing huge financial loss and therefore, the petitioner sought the following reliefs:-

*"It is, therefore, most respectfully prayed, that in conspectus of the facts, circumstances and grounds mentioned herein supra, this Hon'ble Court may graciously be pleased to:*

*(a) Issue a Writ of Mandamus or any other appropriate Writ, direction or order directing learned Respondents to release the consignment imported under B/E No. 4956991 dated 06.08.2021.*

*(b) Issue a Writ of Mandamus or any other appropriate Writ, direction or Order directing learned Respondents to either pay themselves or to waive the payment of demurrage detention and any other charges.*

*(c) Issue Rule Nisi in terms of prayers at (a) and (b) above and confirm the same after hearing the parties;*

*(d) Pass ad-interim ex-parte order in terms of prayer at (a) and above;*

*(e) Award cost of this Petition; and/or*

*(f) Pass such other order(s) or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in favour of the Petitioner in the interest of justice."*

1.2. This Court (Coram:- Ms. Sonia Gokani and Ms. Nisha M. Thakore, JJ) allowed the petition directing the consignment of the carpet of the petitioner to be released without loss of time within one week of receipt of copy of the order.

*"31. We notice that the petitioner, on one hand, has approached this Court by preferring the petition under Article 226 of the Constitution of India and he has chosen not to cooperate to complete the pending inquiry in relation to M/s. Kaka Carpets and on the other hand, he has furnished the bond before this Court and has ensured to cooperate with that inquiry. Both being separate issues and his medical condition, since did not permit him to approach in a fortnight time, with his specific assurance to the respondent, objection raised is not worth sustaining. The Court is of the opinion that there is a sufficient and independent devise and mechanism under the law for him to appear and assist the inquiry/investigation. However, the applicant's non-appearance from inquiry cannot be a valid ground for the authority to hold back his goods without following any legal procedure as contemplated under the law of seizure and, hence, the release should be made immediately within one week from the date of receipt of the copy of this order on following due procedure of law.*

*32. It is to be noted that there is no dearth of power with the respondent for it to seize the goods and provisional release could have been also permitted in such eventuality. Here neither the seizure is made*

*nor any other proceedings pursuant to the lackadaisical approach to the summons is addressed. And, therefore, this Court needs to show indulgence without even entering into the binding decision of Canon India Pvt. Ltd.(supra) of the Supreme Court.*

*33. Petition is allowed. Consignment of carpets of the petitioner shall be released without loss of time within a week of receipt of the copy of this order. The petitioner shall abide by his undertaking without fail. The petitioner is also permitted to request for demurrage to the respondent, which shall consider the said request in wake of the findings and observations made herein on following due process of law."*

2. Since the consignment imported dated 06.08.2021 had not been released despite the specific direction of this Court to release the goods within a week, the petitioner has preferred the present petition.

2.1. The respondent no.3 vide letter dated 02.02.2022 directed the Deputy Commissioner, Dock Examination to release the subject goods and vide letter dated 04.02.2022 directed the respondent no.5 not to charge any detention charges on the subject consignment till the clearance as per Regulation 10(1) of Sea Cargo Manifest Transport Regulations, 2018 ('the Regulations' hereinafter).



2.2. The petitioner forwarded this communication of 04.02.2022 to the respondent no.5 and requested the respondent no.5 to waive the demurrage and issue the delivery order through several e-mails, but, it denied the request and insisted on the payment of the demurrage charges and hence, this petition with the following prayers:-

*“(a) Issue Writ of Mandamus or any other appropriate Writ or order(s) directing Respondents to release the consignment imported under B/E No.4956991 dated 06.08.2021 without charging demurrage/detention.*

*(b) Issue Writ of Mandamus or any other appropriate Writ or order(s) directing Respondent No.5 to waive off demurrage and detention charges; or in alternative*

*(c) Issue Writ of Mandamus or any other appropriate Writ or order(s) directing Respondent No. 1 or 4 or both to pay the demurrage and detention charges to Respondent No. 5.*

*(d) Pass ad-interim ex-parte order directing Respondent No. 5 to release the goods pending outcome of final issue as to whether the demurrage and charges would be waived off or same would be paid by either Respondent No. 1 or 4 or both to Respondent No. 5.*

*(e) Award cost of this Petition; and/or*

*(f) Pass such other order(s) or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in favour of the Petitioner in the interest of justice.”*

3. On the next date of hearing on 05.05.2022, learned

advocate Mr. Ashish Verma appeared for the respondent no.5 - Shipping Line and submitted that unless and until the dues recoverable from the writ applicant towards the container detention charges are not paid, the writ applicant should not be permitted to lift the goods. He also relied on the decision of Apex Court rendered in case of Mumbai Port Trust vs. M/s. Shri Lakshmi Steels and Ors. [Civil Appeal No. 9831-32/2017; decided on 27.07.2017] and particularly paragraphs 46 and 47 in the following manner:-

*"3. Mr. Verma would submit that his argument referred to above is fortified by the judgment of the Supreme Court in the case of Mumbai Port Trust Vs. M/s. Shri Lakshmi Steels and Ors., Civil Appeal No.9831-32 of 2017 decided on 27.07.2017, more particularly, the observations made in para 46 and 47 thereunder. The same read thus:*

*"46. We are, therefore, clearly of the view that even though there may be some delay on the part of the DRI and the customs authorities, the respondent-importers have also been guilty of delaying the matter and, therefore, they cannot claim that they are not liable to pay demurrage and detention charges. We may, however, clarify that the respondent-importers are free to approach the Mumbai Port Trust in terms of Section 53 of the Act for exemption and remission of demurrage and other charges and the Board may take a sympathetic view while considering the case of the respondent-importers under Section 53.*

*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. 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."*

*4. In the aforesaid context, Mr. Tirth Nayak, the learned counsel appearing for the writ applicant invited our attention to one order passed by this Court in the case of Green Gold Timbers Pvt. Ltd. Through Its Directors Akhilesh Manglik Vs. Commissioner of Customs in Special Civil Application No.10082 of 2020 decided on 12.01.2022, wherein this Court took the view that the customs cargo service provider as defined in the 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 Customs or any other Authority. However, according to Mr. Verma, the order of this Court in the case of Green Gold Timbers Pvt. Ltd. (Supra) is with respect to ground rent charges and not helpful to the writ applicant.*

*5. We propose to admit this writ application and pass an interim order reserving the liberty in favour of the respondent No.5 to raise all the legal contentions available to him including his contention as regards his contractual lien.*

*6. Rule returnable on 23.08.2022. Mr. Ukarash Sharma, the learned senior standing counsel waives service of notice of Rule for and on behalf of the respondent Nos.1 to 4 and Mr. Ashish Verma, the learned counsel waives service of notice of Rule for and on behalf of the respondent No.5.*

*7. By way of an interim order, we direct the respondent No.5 to release the goods on or before 11.05.2022 subject to the final outcome of this writ application.*

*8. All the larger issues involved shall be looked into on the returnable date, however, we are of the view that at least the goods should be ordered to be released.”*

3.1. This has been challenged by the respondent no.5 before the Apex Court and upon hearing the parties, the Apex Court directed this Court to decide and dispose of the main writ petition being Special Civil Application No. 4895 of 2022 (present petition) at the earliest, but, not later than 31.12.2022. In the meantime, the interim order passed by the Apex Court vide order dated 01.08.2022 in favour of the respondent no.5 was directed to be continued till the final disposal of this petition and this order was directed to be placed before this Court on 28.09.2022.

4. The affidavit-in-reply is filed for and on behalf of respondent no.5 on 05.05.2022 wherein it is contended that the role of this respondent in dealing and transactions between the petitioner and other respondents is very limited. It is in a position to answer only the facts, dealings and



averments which are related to the present respondent.

4.1. The present respondent is a private limited company having its registered office at Andheri (East), Mumbai and is engaged in the business of Shipping Line, Shipping Transportation, Multimodal Transportation and providing Containers on lease and hire basis. The respondent is governed by the provisions of the Multimodal Transportation Act, 1993, Indian Bills of Lading Act, 1856, the Carriage of Goods by Sea Act and other Acts as well as statutes. The role played of the Shipping Line have been made clear from time to time by the judicial decisions.

4.2. The overseas local agent of the respondent in USA i.e. Hapag Lloyd (America) LLC received a booking from the consignee OL USA LLC having address at 998, Riverwalk, Parkway, Suite 204, Rock Hill, NC 29730, USA for booking one container for transportation of its consignment of 750 Bales of Chinese Knotted Woolen Carpets from Charleston Port to Gandhidham, Gujarat. Accordingly, the respondent's overseas agent booked the container and issued its booking confirmation number 67060695 and also issued the Sea Way

Bill as well as the Bill of Lading on 09.07.2021.

4.3. There was a transportation contract executed between the consignor, consignee, owner of goods as well as the notified consignor in India, who is to receive the same from the present respondent. The Sea Way Bill/ Bill of Lading issued by the respondent acts as a binding contract between the parties to an international shipping transaction. This has been repeatedly recognized by the Apex Court whereas it has held that the terms of the Bill of Lading is a contract of carriage between the parties which is a legal and binding contract and it can be enforced under the law. The parties to the shipping transaction i.e. the consignor, owner and the consignee, at the time of entrusting their goods to the Shipping Line or carrier for transportation of goods and issuance of a Bill of Lading entered into a legal contract and thereafter, the terms thereof are binding in nature and cannot be avoided.

4.4. It has relied upon the decisions of the Apex Court rendered in case of The Trustees of the Port of Madras vs. K.P.V. Sheik Mohamed Rowther & Co. and Others [(1963)]

Supp2 SCR 915] and J.V.Gokal & Co.(Private) Ltd. vs. The Assistant Collector of Sales Tax (Inspection) and Ors. [AIR 1960 SC 595].

4.5. It also further stated that the right of detention also extends to the right to sell away the goods for recovering any such charges. Therefore, the detention of the consignment is well within its contractual rights which is a private contract between the private parties. The correct remedy is for the petitioner to adopt appropriate proceedings before the Civil Court of contempt jurisdiction because the contractual disputes between private parties cannot be adjudicated under Article 226 of the Constitution of India.

4.6. The petitioner acts as an importer in India for the notified goods. The consignor had already paid the freight and other charges at the Port of Loading but, the local as well as the other charges in respect of the said goods need to be paid to the present respondent. The goods arrived at the Mundra and the petitioner filed the Bill of Entry on 06.08.2021 for release of the goods. Now as per the policy of the respondent no.5, the petitioner had 14 days of free period to clear the

said consignment by making payment of all the due charges and releasing the empty container to the present respondent. The petitioner is well aware of the same and also aware of the fact that in default of the clearance and return of empty container to the respondent within the scheduled time-frame, the detention as well as demurrage charges would start applying on the consignment.

4.7. It is further the say that as per the detention charges for the said container, the charges are payable from the expiry of 14 days from the date of arrival of the cargo at the destination Port, and, 14 days from 06.08.2021 would be 20.08.2021. This charges are due and payable by the petitioner as a pre-condition to get the delivery order of the subject consignment. The detention of cargo by the customs as well as DRI was held to be illegal and therefore, the release was directed under order and judgment dated 07.01.2022. The said order was passed and was passed in different set of facts and circumstances as the seizure and detention of the petitioner's consignment was by done by the other respondents who are statutory public authorities. The present respondent is only a carrier of the goods and not a public authority. It was not a



party in the previous petition and was not heard while directing the release order on 07.01.2022. The direction for release of goods issued in the previous petition was only to the other respondents and not to the present respondent. In this set of facts and events, the grievance of the petitioner against the respondent – public authorities had already been addressed by the Court by its previous order and the public authorities are directed to release the cargo where their role has come to an end.

4.8. The only question that survives is between the petitioner and the present respondent who are the private parties. The respondent had denied releasing of the petitioner's cargo as there are heavy container detention charges payable on the said cargo. The said charges are legally recoverable from the petitioner as the container was lent to the petitioner under the contract of carriage and the detention is in exercise of its right to lien over the said goods. Hence, the petition will not survive and the petitioner cannot be granted the directions which have been sought for from this Court as that would amount to interfering with the agreed terms of contract between the parties as held by the Apex Court in case of

Mumbai Port Trust vs. M/s. Shri Lakshmi Steels and Ors.  
(supra).

4.9. The petitioner was also aware that there is bound to be an issue of demurrage charges in respect of the consignment and therefore, the Court granted liberty to the petitioner to approach the respondents therein for waiver of demurrage charges. The customs in its discretion may waive the demurrage charges payable by the petitioner, but, the charges payable to the present respondent towards detention of the container cannot be waived by the customs. According to the respondent, neither the customs can direct this respondent to waive its detention charges for the prolonged detention of the containers which charges are to be paid by the petitioner as per the agreed contract between the parties, nor, anyone can ask them to release without payment.

4.10. The Dept. of Customs issued a letter dated 04.02.2022 to the present respondent directing not to charge any detention charges till the clearance of the said goods. These directions have been issued under Regulation 10(1) of the Regulations which ipso facto is bad in law as it directs the respondent not

to charge any detention till the clearance of the goods. The proviso to Clause (1) of sub-regulation (1) of Regulation 10 of the Regulations make the picture clear that the present respondent i.e. the carrier is well within the right to demand the container detention charges for the period after expiry of 60 days. The said regulation reads as follows:-

*"I.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."*

4.11. According to this respondent, there could be no compulsion to comply with the letter dated 04.02.2022 which is illegal and contrary to law and clearly violates the rights of the respondent to demand its genuine container detention charges. The respondent is an entity engaged in the business of lending containers on hire and on that revenue, the company runs. Therefore, the said containers are valuable business assets and therefore, the customs cannot be given unfettered right to detain the said containers and then direct waiver of detention charges which is demanded under a contractual agreement between the importer and the shipping

line.

5. The affidavit-in-reply on behalf of the respondent nos. 1 to 4 is by the Deputy Commissioner in the office of Commissioner of Customs, Custom House Mundra wherein it heavily relied on the provisions of Sea Cargo Manifest and Transshipment Regulations, 2018, more particularly Regulations 10, 11 and 12.

5.1. Regulation 10 states that, it is the responsibility of the authorized carrier not to 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. However, in the instant case, authorized carrier/shipping line has not followed the Regulations 10(1) of the Regulations, 2018.

5.2. As per Regulations 11 to 13 of Regulations, 2018, if the authorized carried/shipping line fails to comply with any provision of Regulations, then the jurisdictional commissioner can revoke the registration of the authorized carrier by



following the procedure laid down under Regulation 12. The authorized carriers, who contravenes the regulations is liable to penalty which may extend to rupees fifty thousand as per Regulation 13.

5.3. When the directions issued vide letter dated 04.02.2022 for waiver of charges are not honored by stakeholder/shipping line, the respondent department can take necessary actions against the authorized carrier. There are numerous judgments of the Courts where the issue pertaining to the demurrage charges has been discussed and the Courts have held that fastening of such liability upon the department is not permissible and the issue of contractual relationship between the private parties also has been vitally discussed.

6. The question that is to be determined is as to whether the judgment of this Court dated 07.07.2022 directing the release of consignment can be thwarted on the ground that the charges of detention and demurrage have not been paid by the petitioner when in fact this Court itself has found the action of the authority to be contrary to law on the basis of the decision of Apex Court in case of **Mumbai Port Trust vs.**

**M/s. Shri Lakshmi Steels and Ors. (supra)** where the Apex Court in para 46 and 47 held thus:-

*“46. We are, therefore, clearly of the view that even though there may be some delay on the part of the DRI and the customs authorities, the respondent-importers have also been guilty of delaying the matter and, therefore, they cannot claim that they are not liable to pay demurrage and detention charges. We may, however, clarify that the respondent-importers are free to approach the Mumbai Port Trust in terms of Section 53 of the Act for exemption and remission of demurrage and other charges and the Board may take a sympathetic view while considering the case of the respondent-importers under Section 53.*

*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. 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.”*

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6.1. The Madras High Court in case of **M/s. Isha Exim vs. Commissioner of Customs and others [Writ Petition No. 26838/2018]** has held that the claim for detention and demurrage charges and the exemption or refund thereof is a matter of adjudication and cannot be decided in a writ

proceedings.

6.2. The Division Bench of Delhi High Court in case of **International Lease Finance Corporation vs. Union of India and Others [Civil Writ Petition No. 6490/2018]** has held that warehousing is a commercial activity and Courts cannot direct waiver of demurrage charges to the service providers.

7. The petitioner has pleaded for the enforcement of the order dated 04.02.2022 which is an order of the customs authority to the private party. Proviso to Regulation 10(1)(1) of the Regulations, 2020 provides a right to carrier to demand container detention charges after expiry of sixty days from detention. In the present case, the container was detained from 06.08.2021. It also provides for the detention by customs for verifying entries under Sections 46 or 50 and if the entries are found to be correct then also, after expiry of sixty days from the detention, the detention charges can be demanded by the carrier.

7.1. The goods were detained for investigation into other

transactions of Kaka Group and interrogation of the petitioner. There has been a challenge to the order dated 04.02.2022 before the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT' for short) vide Diary No. 10904 of 2022 where the CESTAT has also condoned the delay and the matter is to be decided.

7.2. Respondent no.5 carried the petitioner's consignment to Mundra Port on the basis of contract of carriage which provided for demurrage and detention charges to be paid in case of delayed clearance. On 18.11.2022, an amount of Rs. 68,92,000/- plus 18% GST towards the demurrage and detention charges for the prolonged detention of the container of respondent no.5 was payable by the petitioner. The apprehension on the part of the respondent no.5 is that once the goods are released, he would never get the recovery of demurrage and detention charges as the petitioner is not responsive to the statutory authorities like Customs and DRI and would not respond to the respondent's claims as well.

8. In case of Mumbai Port Trust vs. M/s. Shri Lakshmi Steels and Ors. (supra) two issues arose before the Apex



Court; (i) whether any direction could be given to the Mumbai Port Trust to waive demurrage charges and; (ii) whether the liability to pay the demurrage/detention charges in respect of the imported goods could be fastened upon the DRI/ Customs Authorities. The Court held and observed thus:-

*“14. Two issues arise before us - (1) whether any direction could be given to the Mumbai Port Trust to waive the demurrage charges and (2) whether the liability to pay the demurrage/detention charges in respect of the imported goods could be fastened upon the DRI/Customs Authorities.*

*15. As far as the first issue is concerned, it would be pertinent to point out that the Mumbai Port Trust is a statutory authority created under the Major Port Trusts Act, 1963 (for short ‘the Act’). A Major Port Trust is managed by the Board of Trustees appointed under Section 3 of the Act. The works and services to be provided by the Trust at the Major Ports are set out in Chapter V of the Act. Chapter V-A which was introduced with effect from 09.01.1997 provides for fixation of tariff for Major Port Trusts. The tariff to be charged by the port trust is determined by an independent statutory authority, called the Tariff Authority for Major Ports, under Section 47A of the Act.*

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*46. We are, therefore, clearly of the view that even though there may be some delay on the part of the DRI and the customs authorities, the respondent-importers have also been guilty of delaying the matter and, therefore, they cannot claim that they are not liable to pay demurrage and detention charges. We may, however, clarify that the respondent-importers are free to approach the Mumbai Port Trust in terms of Section 53 of the Act for exemption and remission of demurrage and other*

*charges and the Board may take a sympathetic view while considering the case of the respondent-importers under Section 53.*

*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."*

8.1. In case of **Shipping Corporation of India Ltd. vs. C.L.Jain Woolen Mills and Others [(2001) 5 SCC 345]**, the Apex Court has dealt with the Carrier's right under bill of lading to claim demurrage charges, if affected by detention order passed by authorities under Customs Act. It was a case of Customs Authorities confiscating the goods while still in the custody of carriers who had lien on the goods till all the dues were paid. At the instance of importer, in a proceeding to which the carrier was not a party, the High Court held the confiscation order to be illegal and directed the goods to be released to the importer without payment of any detention or demurrage charges and that direction became final. In a separate proceedings, the High Court directed that the demurrage or detention charges, if any payable, would be paid by the Customs Authorities. In such circumstances, it has

been held that the Customs Authorities could not restrain the carrier from claiming demurrage charges, however, in the peculiar circumstances, the Supreme Court directed the carrier to waive the demurrage charges if so requested by the Customs Authorities. The Court extensively considered the Contract Act, 1872 particularly Sections 170 and 171. The Court held and observed thus:-

*“2. In this batch of appeals, a common question of law having arisen, they were heard together and are being disposed of by this common judgment. The question for consideration is whether the appellant, who under the terms of the contract between him and the owner of the goods, having a lien over the goods, until the dues are paid can be forced to release the goods, without charging any demurrage, merely because the customs authorities issued a detention order for a specified period ? We would discuss the question in relation to the facts in the case between the Shipping Corporation of India vs. C.L. Jain Woolen Mills. The respondent C.L. Jain Woolen Mills, imported the consignment of polyester filament yarn from Korea to India. The port of load was Busan in Korea and the port of discharge was Bombay in India, but the place of delivery of goods was ICD, Delhi. The goods thus being brought to the port of Bombay were discharged but there had been no customs clearance at Bombay and the sealed container was transhipped to ICD, Delhi, where it remained with the Container Corporation of India. The Shipping Corporation of India is engaged in the business of carriage of goods. On the terms and conditions contained in the Bill of Lading, in respect of the goods consigned to it, the corporation claims that the goods cannot be released unless demurrage charges are paid. After the goods arrived in Delhi and remained in the custody of the appellant, the customs*

authorities being of the opinion that import of polyester filament yarn weighing 5,376 kgs. was unauthorised and directed confiscation of the same, valued at Rs.11.5 lakhs under Section 111(d) of the Customs Act, 1962. The said customs authorities however permitted the owner to redeem the goods on payment of Rs. 7 lakhs. That apart, a penalty of Rs. 1 lakh was also levied under Section 112(a) of the Customs Act. The owner of the goods assailed the order before the Customs, Excise & Gold (Control) Appellate Tribunal [for short CEGAT]. The tribunal instead of deciding the objections raised by the owner to the validity of the order of the Additional Collector of Customs, ordered that the advance licence and DEEC Book be amended and adjourned the appeal for a period of three months. The owner, therefore, approached the Delhi High Court by filing a writ petition, which was registered as Writ Petition No. 1604/91, praying quashing of the order of the customs authorities, confiscating the goods and imposing the penalty and that of the Import Trade Control Authority enhancing the export obligation from 14,497.5 kgs. to 22,330 kgs. of polyester fabric. It was the contention of the owner before the High Court that in accordance with the export policy and the Duty Exemption Scheme, raw materials could be cleared for home consumption without payment of import duty. To avail of the facility, the importer is required to apply for grant of licence called the Advance Licence and on the basis of the same, raw materials could be imported without payment of any duty. According to the owner, under the licence, thus issued by the Controller of Imports and Exports, entitling import of raw materials without payment of duty, the customs authorities committed error in proceeding with the confiscation proceedings and ordering confiscation as well as levying penalty. The customs authorities as well as the Controller of Imports and Exports had been arrayed as party respondents in the writ petition. Both of them as well as Union of India resisted the claim of the owner, who had imported the goods in question. The High Court disposed of the writ petition by judgment dated



9th September, 1994, quashing the order of the Additional Collector of Customs dated 10th August, 1990 as well as the order of the Customs Excise and Gold (Control) Appellate Tribunal dated 21st March, 1991 and directed the Collector of Customs to release the goods forthwith. The High Court also further held that since the action of the customs authorities is illegal, the goods in question will have to be released to the owner without payment of any detention or demurrage charges by the owner. Needless to mention, the Shipping Corporation of India, the appellant in the present appeal, who was the carrier and who under the Bills of Lading had a lien over the goods, until the dues are paid had not been made a party to the aforesaid writ petition. At this stage it may also be noticed that during pendency of the writ petition in the High Court, an interim order had been passed, entitling the owner to take release of the goods on payment of Rs. 5 lakhs to the customs authorities and a bank guarantee of Rs. 5 lakhs but the owner had not taken advantage of the said interim order and the goods continued to remain in the custody of the present appellant and demurrage charges went on accruing. The order of Delhi High Court was assailed in this Court by filing a Special Leave Petition by the Customs Authorities but that Special Leave Petition however stood dismissed on 13.11.95 in SLP No. 5671/95. The owner of the goods having failed in his attempt to get the goods released, notwithstanding the orders of the High Court in CWP No. 1604/91, filed an application for initiating a contempt proceeding, which was registered as CCP No. 120/95. The High Court however came to hold that the authorities cannot be held to be guilty of disobeying the orders of the Court and accordingly, dismissed the contempt petition. While dismissing the contempt petition, the learned Judge, granted liberty to the owner to move the Division Bench of the High Court for appropriate directions regarding payment of demurrage/detention charges. Pursuant to the aforesaid observations in the contempt proceedings, an application being filed by the owner, the same was

registered as CM 4829/96. That application was disposed of by the Division Bench of Delhi High Court by order dated 18th January, 1999. The Division Bench, while disposing of the petition, came to hold that the entitlement of the carrier of the goods to charge demurrage charges and if so, whether the customs authorities would be liable to pay the same or not is not required to be answered and is a matter, which should be sorted out between those two corporations and the customs authorities. But so far as the owner of the goods are concerned, he having been absolved of any liability to pay the demurrage charges by virtue of the judgment of Delhi High Court dated 9.9.94 in CWP No. 1604/91, he would be entitled to get the goods released without payment of the detention and demurrage charges. The High Court, therefore called upon the customs department as well as the two corporations, who are the carriers to sort out the matter within a specified period and further held that if any detention or demurrages charges are payable, the same shall be paid by the customs department within three weeks. It further directed the carrier of the goods, including the appellant to release the goods after the customs department pays the detention/demurrage charges. Notwithstanding the aforesaid order, the goods not being released, when a fresh contempt petition was filed, registered as CCP No. 89/99, the High Court issued notice on 25.2.99, calling upon the alleged contemnor to file their reply by 11th March, 1999. Against the initiation of the aforesaid contempt proceeding, the Shipping Corporation of India filed SLP No. 3391/99. The order dated 18.1.99 was also assailed by the Shipping Corporation, which was registered as SLP No. 5001/99. The container Corporation of India filed a special leave petition on identical circumstances and raising identical question, which is SLP No. 9021/99. The Union of India also assails the order dated 18.1.99 by filing Special Leave Petition No. 3063/2001 along with the application for condonation of delay. This batch of cases were listed before a Bench of two learned Judges on 11th February, 2001 and after hearing the

*matters for sometime, the Bench felt that there appears to be some inconsistency between the decision of this Court in Union of India vs. Sanjeev Woolen Mills, 1998(9) SCC 647 and the Grand Slam Internationals case reported in 1995(3) SCC 151 and as such observed that the cases should be placed before a Three Judge Bench and that is how, this batch of cases are before this three Judge Bench. When these appeals by grant of special leave were placed before the Three Judge Bench on 1st March, 2001, we had directed the goods be released to the owner without any conditions but such release will be subject to the ultimate decision in these appeals.*

*4. In view of the submissions made at the Bar appearing for different parties, referred to earlier, the first question that arises for consideration is whether in the case in hand, the importer of the goods can be made liable to pay any demurrage/detention charges? It is undisputed that under the terms and conditions of Bills of Lading, the carrier had a lien over the goods until all the dues are paid and the goods having been kept, not being released, the corporation-carrier was entitled to charge demurrage charges. But in view of the specific directions of the Delhi High Court in the writ petition filed by the importer of the goods, challenging the legality of the order of the customs authorities in confiscating the goods and levying penalty and that order having reached finality by dismissal of the special leave petition against the same filed by the Union of India, the liability of the importer to pay the demurrage charges ceases and that question cannot be re-opened.*

*8. We have also examined the decision of this Court in Union of India vs. Sanjeev Woolen Mills, 1998(9) SCC 647 and we do not find any apparent inconsistency between the decision of this Court in Grand Slam and that of the Sanjeev Woolen Mills. In Sanjeev Woolen Mills, the imported goods were*



*synthetic waste (soft quality), though the customs authorities detained the same, being of the opinion that they were prime fibre of higher value and not soft waste. On account of non-release, the imported goods incurred heavy demurrage charges but the customs authorities themselves gave an undertaking before the High Court that in the event the goods are found to be synthetic waste, then the Revenue itself would bear the entire demurrage and container charges. Further the Chief Commissioner of Customs, later had ordered unconditional release of goods and yet the goods had not been released. It is under these circumstances and in view of the specific undertaking given by the customs authorities, this Court held that from the date of detention of the goods till the customs authorities intimated the importer, the importer would not be required to pay the demurrage charges. But in that case even subsequent to the orders of the customs authorities on a suit being filed by one of the partners of the importer-firm, an order of injunction was issued and, therefore it was held that for that period, the importer would be liable for paying the demurrage and container charges. The judgment of this Court in Sanjeev Woolen Mills, therefore, was in relation to the peculiar facts and circumstances of the case and the Court had clearly observed that the order in question is meant to do justice to the importer, looking to the totality of the circumstances and the conduct of customs authorities. Thus, we see no inconsistency between the ratio in Sanjeev Wollen Mills and the Judgment of this Court in Grand Slam. That apart, the judgment in Grnd Slam was a three judge bench judgment. In the case in hand, as has already been stated earlier, the earlier judgment of Delhi High Court dated 9.9.94 in C.W.P. No. 1604/91, has become final, which entitles the importer to get the goods released without payment of the detention and demurrage charges. In the contextual facts, notwithstanding the judgment of the High Court, the goods not having been released, the impugned order and direction dated 18.1.99, cannot be held to be infirm in any manner. 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 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. In the aforesaid premises, we see no infirmity with the directions given by the Delhi High Court on 18.1.99. The goods in question, having already been directed to be released, without the payment of the demurrage charges, the importer must have got the goods released. Having regard to the fact situation of the present case, 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. The appeal is disposed of accordingly."*

9. We could notice that in absence of any notice of seizure of goods, on provisional basis, the goods were not released which otherwise is permissible taking the bond from the owner in proper form and with certain security conditions. There were certain inquiries pending, for which, the petitioner was being called and he could not attend to the

summons because of the reason of his health as put forward by him and he approached this Court by invoking the writ jurisdiction. He, however, had ensured to cooperate with the inquiry after furnishing the bond before this Court.

10. In this background, this Court had specifically held that there was sufficient independent device and mechanism under the law for him to be asked to appear and assist the inquiry/investigation and non-appearance cannot be a valid ground for the authority to hold back the goods without following the legal procedure as contemplated under the law of seizure. Therefore, release was directed within one week from the date of receipt of copy of the order.

10.1. While disposing of the petition, the Court permitted the petitioner to make a request for waiving the demurrage and directed the respondent to consider such a request in wake of the findings and observations. It is not in dispute that the consignment has not been released till date as the respondent no.5 is demanding the demurrage charges to the tune of Rs. 25,00,000/- when the total value of the goods is of Rs. 16,00,000/- only. The strong objection on the part of the

respondent no.5 is that unless the container detention charges are paid, he cannot be permitted to lift the goods as his client has a contractual lien.

10.2. As held by the Apex Court in case of Mumbai Port Trust vs. M/s. Shri Lakshmi Steels and Ors. (supra), this Court had already permitted the petitioner to approach the respondent authority for exemption and remission of demurrage for the authority concerned to take a sympathetic view while considering the case of the petitioner. At the same time, the detention charges of the shipping lines are to be paid on the basis of the contract between the petitioner and the shipping line. The Apex Court had been quite clear that the High Court cannot in writ proceedings direct the DRI/Customs to pay the detention charges to the shipping line, firstly because there was a contract between the importer and the shipping line and moreover, under the writ jurisdiction, these aspects are not to be adjudicated as there are many aspects on facts which would need the proper adjudication.

10.3. It is quite clear from the chronological events that the period of four months for which the consignment comprising

the Chinese Knotted Woolen Carpets were detained by the respondent no.2 had resulted into this Court directing the consignment to be released. It was further directed to the respondent no.5 not to charge the detention charges on the subject consignment till the clearance as per Regulation 10(1) of the Regulations. The request had already been made by the petitioner on 04.02.2022 to the respondent no.5 to waive the demurrage and issue the delivery order through several e-mails which was denied and the insistence was on payment of the demurrage charges.

10.4. The petitioner had 14 days of free period to clear the consignment by making payment of all the due charges and releasing the empty container to the present respondent no.5. In default of such clearance and non-return of the empty container to the respondent no.5 within the scheduled time frame, the detention as well as the demurrage charges would start applying to the consignment. The charges are due and payable by the petitioner as a pre-condition to get the delivery order of the subject consignment. The detention of the cargo by the customs as well as the DRI was held to be legal and



therefore, the release was directed by an order and judgment of this Court on 07.01.2022.

10.5. It is a fact that while so directing, the respondent no.5 was not on the horizon as he was not impleaded as a party and it was a matter between the petitioner and other respondents which excluded the respondent no.5. Since the respondent no.5 was not a party in the previous petition, it was not heard while directing the release on 07.01.2022. The container since has been lent to the petitioner under the contract of carriage and the detention is in exercise of its right to lien over the said goods, the agreed terms of the contract between the parties would surely govern their fate. At the same time, on the issue of demurrage charges in respect of the consignment, the liberty was granted to the petitioner to approach the respondent for waiver of demurrage and the customs department in its discretion has waived the demurrage charges payable to the petitioner, however, towards the detention of the container, it would be the contract of the parties which would govern their fate and if there is anything on the part of the other respondents which had prolonged the detention of the containers, the

adjudication authority shall need to actually determine this aspect.

10.6. The Court also cannot be oblivious of the fact that the request was made in the previous petition by the petitioner to allow him to empty the container to the public warehouse under Section 49 in order to save the demurrage and detention charges. Both respondent nos. 1 and 3 in earlier petition were made such a request. It was further a request that the investigating officer cannot detain the goods without seizure under Section 110 of the Customs Act. The issue of Circular Trading of the Carpets was being examined by the authority concerned. The provisional assessment of the goods of the imported consignment had been put on a halt as the three summons were not answered by the petitioner.

10.7. It appears that without passing any order of seizure under Section 110 of the Customs Act, when there was a detention and there was a specific denial for shifting the goods to the public warehouse under Section 49 in order to save the demurrage and detention charges, the respondent authority cannot insist on the demurrage which is in its hand.

So far as the detention charges are concerned, in our opinion, the contract of the parties would govern the detention charges if eventually it is found that it was without any valid and justifiable reasons, the other respondents, other than respondent no.5, are the reasons for this detention charges, the Court concerned can definitely decide. It was the action of the other respondents which was under challenge by the petitioner in earlier litigation. At the same time, it was not naive enough not to include the respondent no.5 and other respondents also could have drawn the attention of this Court at the time of final hearing, however, they chose not to do and hence, the respondent no.5 would be within its right to ask for the detention charges as permissible under the contract.

10.8. The only aspect that needs to be determined by this Court is as to whether the same can be directed against the authorities which also has its defence of the petitioner not responding to its summons officially issued. The detention of the goods without the seizure under Section 110 of the Act was not found sustainable under the law and the respondent had acted as if it was powerless and it needed to continue to use this tactic of detaining the goods till the petitioner

actually attends to the proceedings of inquiry/investigation. It is worth noting that now that inquiry is completed and there has been a cooperation of the petitioner as well.

11. The additional affidavit on behalf of respondent no.5 is indicative of the fact that the Customs Appeal Diary No. 10904 of 2022 before the CESTAT is pending whereby the challenge is made and the delay have been condoned by an order dated 20.12.2022. The question as to whether the release of goods without charging the detention or the demurrage charges, is the issue directly before the CESTAT. The respondent no.5 is also in the process of filing the application for early hearing of the Customs Appeal before the CESTAT. Therefore, on the issue of detention charges, the order of the CESTAT shall govern the parties as it would also require the authority concerned to enter into the merits of the facts. We would, therefore, choose not to decide the contractual terms between the parties at this stage. Suffice to note that the contract, as mentioned between the parties, since is governed by their personal contractual terms and the owner of the shipping line also since has a lien over the goods until the dues are paid, so far as to ensure that the Court's



directions are not in any manner flouted and the goods are being released in favour of the petitioner, the Court needs to also strike the balance. The respondent – Customs Authority has acted fairly by expressing that it is not going to charge the demurrage charges, however, the shipping line would have a right and lien over the goods until the matter is decided by the CESTAT. There shall a need to direct furnishing of some security which should be in the form of the bank guarantee, in our opinion, in the given circumstances. Therefore, following operative order:-

(i) The petition is partly allowed. The respondents shall release the consignment imported under B/E No. 4956991 dated 06.08.2021 on the petitioner furnishing the bank guarantee to the tune of Rs. 16,00,000/- (Rupees Sixteen Lakhs) for a period of six (06) months.

(ii) The CESTAT shall be requested by both the sides to complete the pending proceedings within twelve (12) weeks.

(iii) The fate of detention charges claimed by the respondent no.5 shall be governed by the decision of the CESTAT.

(iv) This Court has not opined anything on the merit of that aspect except its decision in Special Civil Application No. 14849 of 2021 and that adjudication shall be made on independent evaluation of materials.

12. Petition is disposed of accordingly.

(SONIA GOKANI, J)

(MAUNA M. BHATT, J)

Bhoomi

