

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

Before

**THE HON'BLE MR. JUSTICE SHAJI P. CHALY**

**&**

**THE HON'BLE MRS. JUSTICE M.R. ANITHA**

Friday, the 8<sup>th</sup> day of May, 2020/18<sup>th</sup> VAISAKHA, 1942

**W.A. NO. 640 OF 2020**

***Against the Judgement dated 04.03.2020 in W.P.(C) No. 30811/2019 of HIGH COURT OF KERALA.***

**Appellant/5<sup>th</sup> Respondent :**

Gateway Distriparks (Kerala) Limited,  
Chakiat House, Subramaniam Road,  
Willington Island,  
Cochin- 682 003.

By Adv. Sri. Paul Jacob

**Respondents/Petitioner & Respondents 1 to 4 and 6:**

1. Dolphin Shipping Line(UK) Ltd.,  
A Company registered in United Kingdom,  
Having Its Operational Head Quarters at  
Suite No.1401- Mai Tower, Al Nahdal,  
Dubai Represented by its Managing Director,  
Mr. Ahamed Shabeer K.S, Aged 46 years,  
S/o Subhair Kakkassery Kadherkunji,  
Kakkassery House, Mathilakam P.O., Puthiyakavu,  
Thrissur- 680 685.
2. Union of India,  
Ministry of Finance,  
Department of Revenue, New Delhi- 110011  
Represented by its Secretary.
3. Commissioner of Customs,  
Customs House, Willington Island,  
Cochin-682 009.

4. Assistant Commissioner of Customs,  
Customs House, Willington Island,  
Cochin-682009.
5. Container Corporation of India Limited,  
Container Freight Station, NH47C,  
Mulavukadu P.O, Vallarpadam,  
Ernakulam- 682504.
6. Choice Associates,  
Mazhuvaneri, Madathil Building,  
Thirumarady, Ernakulam-686687,  
Represented by its Sole Proprietor,  
Mr. Arun Jimmy, Aged 30, S/o Jimmy Elias.

**R1 by Sri. Harikrishnan G  
Sri. P. Vijayakumar, ASG of India**

This Writ Appeal having come up for orders on 08.05.2020,  
the court on the same day passed the following:

**Dated this the 8<sup>th</sup> day of May, 2020**

**J U D G M E N T**

**SHAJI P. CHALY, J**

This appeal is filed by the 5<sup>th</sup> respondent against the judgment in W.P.(C) No.30811/2019 dated 4.3.2020, by which directions were issued by the learned Single Judge to de-stuff the containers belonging to the writ petitioner i.e., the 1<sup>st</sup> respondent within one month from the date of receipt of a copy of the judgment.

2. The subject issue relates to transportation of portland cement from Pakistan in the container belonging to the 1<sup>st</sup> respondent Shipping Line. It is evident from the pleadings put forth by the writ petitioner as well as the appellant that the cement was sold in high sea to a consignee, however when

the cement reached the Cochin Port, the Government of India has increased the import duty from 100% to 200% in order to discourage import of goods from Pakistan consequent on the Pulwama attack by militants. However, the consignee on account of the enhancement of the duty did not take delivery of the consignment and later seven containers were shifted to the container freight station operated by the appellant, in accordance with section 45 of the Customs Act.

3. The contention put forth by the appellant is that, later the cement was tested and it was found that it has become unusable and necessary steps are being taken for auction of the products, and thereafter only the de-stuffing of the containers are possible. It is also submitted that the consignee is not made a party in the writ petition and necessary

procedure will have to be followed by the appellant as per the Customs Act, Regulations, and Rules in order to auction the consignments. So also, it is submitted that notice of auction will also have to be issued to the consignee, if he has not turned up for taking delivery of the cement. Therefore, it is contended that the learned Single Judge has passed the judgment without taking into account the operational procedure for de-stuffing the containers. It is also pointed out that the 1st respondent bailor is also responsible for the inaction on the part of the consignee, and the bailor's interest well protected in accordance with the agreement executed by and between the 1<sup>st</sup> respondent and the consignor at Pakistan, due to the delay occurred.

4. We have heard the learned counsel appearing for the

appellant and learned counsel for the 1<sup>st</sup> respondent, and perused the pleadings and documents on record.

5. The learned Single Judge, after taking into consideration the rival submissions made across the Bar, came to a conclusion that the grievance of the writ petitioner cannot remain unaddressed for an indefinite period, for no fault of the writ petitioner. It is also found that the appellant i.e., the 5<sup>th</sup> respondent in the writ petition along with the 5<sup>th</sup> respondent can always destuff goods and keep elsewhere, subject to any claim from any person responsible for honouring the consignment, but cannot keep/retain the containers of the writ petitioner i.e., the 1<sup>st</sup> respondent in the appeal, who had no role to play in not paying the charge/duty towards the customs. It was

accordingly that the writ petition was disposed of with a direction to the appellant as well as the 5<sup>th</sup> respondent i.e., the Container Corporation of India, Container Freight Station, Vallarpadam, Ernakulam – 682 504 to de-stuff the cargo in the containers within one month, and keep elsewhere subject to any claim from the person responsible for honouring the consignment, and in accordance with law. However, with a further rider that, in case such containers are not handed over after de-stuffing, the writ petitioner is entitled to claim damages against the appellant and 5<sup>th</sup> respondent.

6. Having evaluated the situation, we are of the considered opinion that it cannot be said that there is any legal infirmity in the findings rendered by the learned Single

Judge so as to interfere with the judgment invoking the powers conferred under section 5 of the Kerala High Court Act. It is an admitted fact that even though the writ petitioner was the bailor who had agreement with the consignor, and thereby incurred the responsibility to deliver the consignment at the destination port, we are of the considered opinion that, the containers belonging to the writ petitioner cannot be detained indefinitely, because the writ petitioner has no manner of liability or responsibility in the matter of payment of customs duty or any other charges incurred by the consignee. It is an admitted fact that the containers belong to the writ petitioner and they are entitled to get it back after de-stuffing the cement that was imported. It was taking into account the said aspect that



the learned Single Judge has issued directions to de-stuff and release the containers to the writ petitioner within one month. We also do not find any manner of legal requirements to be discharged by the writ petitioner to get back the containers. However, when we expressed our inability to interfere with the judgment of the learned Single Judge, learned counsel for the appellant submitted that they were unable to de-stuff the goods from the containers within the time period provided by the learned Single Judge and sought reasonable time for complying with the directives. Taking into account the present emergent situation of the pandemic COVID – 19, it is only appropriate that some more time is granted to the writ petitioner to de-stuff the containers and release the containers to the writ

petitioner.

7. Learned counsel for the writ petitioner i.e., the 1<sup>st</sup> respondent in the appeal, has also agreed for the proposal and therefore, the writ appeal is disposed of granting two more months' time from the date of receipt of a copy of this judgment to the appellant to de-stuff the containers. In all other respects the directions issued by the learned single Judge would remain intact.

**SHAJI P. CHALY, JUDGE.**

**M.R.ANITHA, JUDGE.**

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**APPENDIX**

**Appellants' Annexures:**

Annexure A1: True copy of the application dated 30.07.2019 issued to the Superintendent of Customs (Prev), ICTT Vallarpadam.

Annexure A2: True copy of the letter dated 13.09.2019 issued by the Appellant.

Annexure A3: True copy of the letter dated 05.10.2019 issued by the Appellant.

Annexure A4: True copy of the letter dated 18.10.2019 issued by the Importer to the Appellant.

Annexure A5: True copy of the letter dated 29.10.2019 issued by the Appellant to the 3<sup>rd</sup> Respondent.

Annexure A6: True copy of the letter dated 18.11.2019 issued by the 3<sup>rd</sup> Respondent to the Appellant.

Annexure A7: True copy of the valuation certificate dated 27.11.2019 issued by the certified valuer.

Annexure A8: True copy of the letter dated 02.12.2019 submitted by the Appellant to the 3<sup>rd</sup> Respondent.

Annexure A9: True copy of the letter dated 19.02.2020 issued by the office of the 1<sup>st</sup> Respondent to the Appellant.

Annexure A10: True copy of the letter dated 28.02.2020 submitted by the Appellant to the Chemical Examiner of the 2<sup>nd</sup> Respondent.

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Annexure A11: True copy of the report dated 09.03.2020 issued by the office of the 2<sup>nd</sup> Respondent.

Annexure A12: True copy of the letter dated 10.03.2020 issued by the Appellant to the Deputy Commissioner Customs.

RESPONDENTS' ANNEXURES: NIL

/True Copy/

PS to Judge.

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