



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:31.10.2011

CORAM

**THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN**

WP(MD)No.3696 of 2011 And MP(MD)No.2 of 2011

M/s.APN Shell Craft,  
having Office at Near Government Bus Stand,  
Kanyakumari-629 702.

:Petitioner

-Vs-

1.The Commissioner of Customs, (Seaport-Imports),  
Customs House, Tuticorin-628 001.

2.The Assistant Commissioner of Customs,

Customs House (Group-I), Tuticorin-628 001. :Respondents

Writ petition filed under Article 226 of the Constitution, praying for the issue of a Writ of Mandamus, directing the respondents to issue a Detention Certificate waiving the demurrage, rent and container detention charges in terms of Regulation 6(1) of the Handling of Cargo Customs Areas Regulation, 2009, consequently released the imported goods viz., Sea Shells of the description "CYPRAEA ANNULUS" covered under Bill of Entry No.2384953 dated 2.12.2010.

For Petitioner :Mr.M.Ramasamy

For Respondents:Mr.R.Aravindan,

Senior Standing Counsel for customs

### **ORDER**

The petitioner has come up with the above writ petition, seeking a Mandamus, to direct the respondents to issue a detention order so that the liability to pay demurrage, rent and container detention charges freeze.

2.Heard Mr.M.Ramasamy, learned counsel for the petitioner and Mr.R.Aravindan, learned Senior Standing Counsel for the Customs Department.

3.The petitioner imported Sea Shells of the description "Cypraea Annulus", covered by Bill of Entry No.2384953 dated 2.12.2010. The same was assessed by the Customs Authorities provisionally under what is known as 'Risk Management System'. The petitioner paid the customs duty as assessed.

4.However, the Directorate of Revenue Intelligence initiated an enquiry. Thereafter, the goods were cleared.

5.Contending that the goods were detained by the respondents leading to detention charges and rent mounting day-by-day, the petitioner has come up with the above writ petition, seeking the issue of a detention order so that the benefit of



non-payment of detention charges and rent becomes available to the petitioner.

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6. Under Regulation 6(1)(1) of the Handling of Cargo in Customs Area Regulations 2009 issued by the Central Board in exercise of the powers conferred by Section 141(2) read with Section 157 of the Customs Act, 1962, an importer is not liable to pay any rent or demurrage on the goods seized or detained or confiscated by the proper Officer. Therefore, the fact that the petitioner is entitled to the benefit of the above Regulation, for the period of detention, cannot be denied. Though the goods arrived under Bill of Entry dated 2.12.2010, they were under detention by the Directorate of Revenue Intelligence, till 8.2.2011, as admitted in paragraph-4 of the counter filed by the respondents. But after completion of the investigation by the Directorate of Revenue Intelligence, the respondents have issued a Certificate on 15.2.2011. The Certificate is known as "Out of Customs Charge". Therefore, there was no impediment for the petitioner to clear the goods after 15.2.2011. Even today, there is no impediment for the petitioner to clear the goods. But in view of the detention till 8.2.2011 and the issue of the "Out of Customs Charge" clearance only on 15.2.2011, the petitioner is entitled to the benefit of Regulation 6(1)(1) upto 15.2.2011. Beyond the said period, since there was no impediment for the petitioner to clear the goods, he cannot seek the benefit of a detention order.

7. Therefore, the writ petition is disposed of, directing the respondents and other competent authorities not to claim demurrage or rent or detention charges for the period upto 15.2.2011. The petitioner is entitled to clear the Cargo at any time. The writ petition is disposed of accordingly. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/ TRUE COPY /

Sub Assistant Registrar

To:

1. The Commissioner of Customs,  
(Seaport-Imports), Customs House, Tuticorin-628 001.

2. The Assistant Commissioner of Customs,  
Customs House (Group-I), Tuticorin-628 001.

+1CC to Mr.M.Ramasamy, Advocate. SR.No.37181.