



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

| Date of Reserving the Order | Date of Pronouncing the Order |
|------------------------------------|--------------------------------------|
| 10.06.2026 | 19.06.2026 |

CORAM :

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

**W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and
24104 of 2024**

and

W.M.P.(MD)Nos.20380 and 20381 of 2024

W.P.(MD)Nos.24097 to 24099 of 2024:-

M/s.Sripathi Paper and Boards Private Limited,
Represented by its Deputy General Manager – Purchase,
Shri.P.Jegatheesan,
Sukkiravarpatti, Sivakasi - 626 130.

... Petitioner in
W.P(MD)Nos.24097 to 24099 / 2024

Vs.

- 1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
- 2.The Joint Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
- 3.The Deputy Director,
Directorate of Revenue Intelligence,
22/114, Celin Garden, Rochy Colony,
South Beach Road, Tuticorin - 628 001.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

4.The Assistant Environment Engineer,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy, Chennai - 600 032.

5.M/s. Maerskline India Pvt. Ltd.,
Prestige Zackaria Metropolitan,
Block - A, 5th Floor,
Anna Salai, Chennai - 600 002.

6.M/s. A.L.S. Terminal Private Ltd.,
Harbour Express High Road,
Tuticorin.

7.The Director General of Foreign Trade,
New Delhi.

8.The Secretary to Government,
Ministry of Environment and Forests and Climate Change,
New Delhi.

(R7 and R8 are *suo motu* impleaded
order dated 05.06.2026]

... Respondents in
W.P(MD)Nos.24097 to 24099 / 2024

Prayer in W.P.(MD)No.24097 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Order-in-Original-TUT-CUSTOM-PRV-JC No.16/2024 dated 28.02.2024 and quash the same and further direct the second respondent to permit re-export of goods covered under the Bill of Entry No.8989516 dated 06.06.2022 to Dubai, United Arab Emirates or alternatively, direct the second respondent to permit disposal of the subject goods in India for recycling as per the relevant law in force.

Prayer in W.P.(MD)No.24098 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus,



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

calling for the records directing the 1st, 2nd, and 3rd respondents to bear the detention charges imposed by the fifth respondent with respect to the goods covered by Bill of Entry No.8989516 dated 06.06.2022 so as to enable the petitioner to dispose of the said goods in terms of Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 or alternatively direct the 1st, 2nd and 3rd respondent to ensure the compliance of the detention waiver certificate dated 20.05.2024 by the fifth respondent.

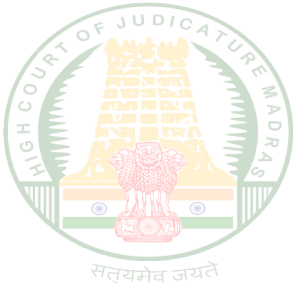
Prayer in W.P.(MD)No.24099 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, direct the first respondent to take appropriate action against the fifth respondent for suspension or revocation of the approval given to the fifth respondent as an authorized carrier in terms of Regulation 11 to the Sea Cargo Manifest and Transhipment Regulations, 2018.

| | | |
|---------------------------------|---|---|
| For Petitioner in all the W.Ps. | : | Mr.Hari Radhakrishnan |
| For R1 to R3 in all the W.Ps. | : | Mr.R.Gowri Shankar Senior Standing Counsel |
| For R4 in all the W.Ps. | : | Ms.Madhuri Donti Reddy |
| For R5 in all the W.Ps. | : | Mr.P.Giridharan |
| For R6 in all the W.Ps. | : | No Appearance |
| For R7 and R8 in all the W.Ps. | : | Mr.K.Govindarajan Deputy Solicitor General |

W.P.(MD)Nos.24101 to 24104 of 2024:-

M/s.Rajarajeswari Krafts Pvt. Ltd.,
Represented by its Director,
Shri R.Vijayakanth,
No.900 Kamak Road,
Sivakasi - 626 189.

... Petitioner in
W.P(MD)Nos.24101 to 24104 / 2024



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

Vs.

WEB COPY

- 1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
- 2.The Additional Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
- 3.The Joint Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
- 4.The Assistant Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
- 5.The Deputy Director,
Directorate of Revenue Intelligence,
22/114, Celin Garden, Rochy Colony,
South Beach Road, Tuticorin - 628 001.
- 6.M/s.A.S.Shipping Agencies Pvt. Ltd.,
No. 4/47 B, Nallamalai Road,
South Silikkanpatti, Pudukkottai,
Tuticorin - 628 103.
- 7.M/s.Sical Multimodal and Rail Transport Ltd.,
1297/1, 2, 3A, 3B, Madurai Bye Pass Road,
Opp. SIPCOT Office,
Tuticorin - 628 101.
- 8.M/s.Prompt Terminal Pvt. Ltd.,
No.24/3, Ayyanadaipu, Maduri Bypass Road,
Tuticorin - 628 101.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

9.M/s.Maerskline India Pvt. Ltd.,

1st Floor, Manickam Tower,

Palayamkottai Road,

Tuticorin - 628 003.

10.The Director General of Foreign Trade,
New Delhi.

11.The Secretary to Government,
Ministry of Environment and Forests and Climate Change,
New Delhi.

(R10 and R11 are *suo motu* impleaded
order dated 05.06.2026]

... Respondents in

W.P(MD)Nos.24101 to 24104 / 2024

Prayer in W.P.(MD)No.24101 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Order-in-Original-TUT-CUSTOMS-PRV-JC No.70/2024 dated 26.06.2024 and corrigendum to the said order dated 09.07.2024 issued by the third respondent and quash the same and further direct the third respondent to permit re-export of goods covered under the Bill of Entry No.8852312 dated 27.05.2022, 8852339 dated 27.05.2022, 9436441 dated 06.07.2022 and 9448213 dated 07.07.2022 to Dubai, United Arab Emirates or alternatively direct the third respondent to permit disposal of the subject goods in India for recycling as per the relevant law in force.

Prayer in W.P.(MD)No.24102 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 1st, 2nd, 3rd and 4th respondents to bear the ground rental and container detention charges imposed by the 6th, 7th, 8th and 9th respondents with respect to the goods covered under Bill of Entry Nos.8852312 dated 27.05.2022, 8852339 dated 27.05.2022, 9436441 dated 06.07.2022 and 9448213 dated 07.07.2022, so as to



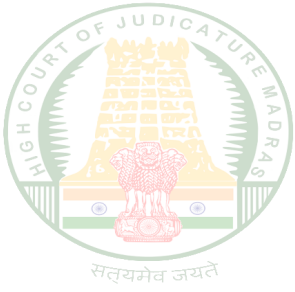
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

enable the petitioner to dispose of the said goods in terms of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 or alternatively direct the 1st, 2nd, 3rd and 4th respondents to ensure the compliance of the demurrage and detention waiver certificate dated 12.07.2024 by the 6th, 7th, 8th and 9th respondents.

Prayer in W.P.(MD)No.24103 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, direct the first respondent to take appropriate action against the 9th respondent for suspension or revocation of the approval given to the 9th respondent as an authorized carrier in terms of Regulation 11 to the Sea Cargo Manifest and Transhipment Regulations, 2018.

Prayer in W.P.(MD)No.24104 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, direct the first respondent to take appropriate action against the 6th, 7th and 8th respondents for suspension or revocation of the approval given to the 6th, 7th and 8th respondents as an authorized Customs Cargo Service Provider in terms of Regulation 12 to the Handling of Cargo in Customs Areas Regulations, 2009.

| | | |
|---------------------------------|---|---|
| For Petitioner in all the W.Ps. | : | Mr.Hari Radhakrishnan |
| For R1 to R5 in all the W.Ps. | : | Mr.R.Gowri Shankar Senior Standing Counsel |
| For R6 & R8 in all the W.Ps. | : | No Appearance |
| For R7 in all the W.Ps. | : | Mr.S.Meeankshi Sundaram |
| For R9 in all the W.Ps. | : | Mr.P.Giridharan |



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

For R10 and R11 in all the W.Ps. : Mr.K.Govindarajan
Deputy Solicitor General

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COMMON ORDER

All these writ petitions are interconnected and, therefore, taken up together for disposal by this common order.

A. The Case of M/s.Sripathi:

2. M/s.Sripathi Paper and Boards Pvt. Ltd. (hereinafter referred to as "M/s.Sripathi"), a company incorporated under the Companies Act, is engaged in the manufacture of paper and paper boards. It imports waste paper in large quantities from various countries under the authorisation issued by the Tamil Nadu Pollution Control Board under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

3. In the course of its business, M/s.Sripathi placed a purchase order dated 12.03.2022 with M/s.Gallops, Canada, having its office in Ontario, Canada, for the supply of Waste Paper – News & Pams. All relevant documents, including the Commercial Invoice, Packing List, Exporter's Statement of Origin dated 16.04.2022, and the Pre-Shipment Inspection Certificate dated 13.04.2022, described the goods as "Waste Paper – News & Pams."

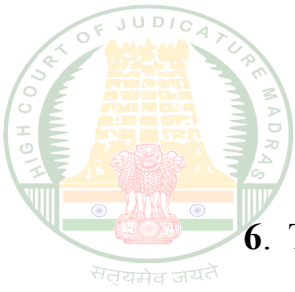


W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

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4. M/s.Sripathi filed Bill of Entry No. 8989516, dated 06.06.2022, for the clearance of 121.970 metric tonnes of goods declared as Waste Paper – News & Pams, imported through 5' * 40' containers. After the goods were unloaded at the Container Freight Station (CFS) operated by M/s.A.L.S. Terminal Private Limited, Tuticorin, the third respondent, namely, the Deputy Director, Directorate of Revenue Intelligence, Tuticorin, inspected the consignment based on information suggesting contravention of the provisions of the Customs Act, 1962.

5. On 20.06.2022, upon examination of the goods, it was found that all five containers contained a mixture of municipal waste, including used PET bottles, street sweepings, waste food paper and plastic parcels, broken glass bottles, waste plastic and paper containers, and used soft-drink cans. Since the import of municipal solid waste is prohibited under the Customs Act, 1962, read with the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, the goods were detained under a Mahazar dated 20.06.2022. Thereafter, the five containers were handed over to the sixth respondent for safe custody.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

6. The Tamil Nadu Pollution Control Board inspected the consignment and submitted a report confirming that the cargo consisted of municipal solid waste. Upon consideration of the said report and the inspection findings, the goods were seized on 08.07.2022, and a Seizure Mahazar was drawn in the presence of witnesses.

7. Subsequently, a show-cause notice under Section 124 of the Customs Act, 1962, was issued, calling upon M/s.Sripathi to explain why the seized goods should not be confiscated, why re-export should not be ordered, and why a penalty should not be imposed. M/s.Sripathi submitted its final reply on 05.12.2023, stating that it had ordered only waste paper from Canada, expressing its willingness to re-export the cargo, and requesting that the proceedings be dropped.

8. After affording an opportunity of personal hearing, the adjudicating authority concluded that M/s.Sripathi had failed to exercise due diligence and that its plea of inadvertent import was untenable and appeared to have been advanced solely to avoid legal consequences. Noting the importer's willingness to re-export the goods and its acceptance of liability for penalty, the authority ordered confiscation of the goods. Relying on O.M.No.13-1/2004-HSMD dated 11.05.2019, which prohibits the import of waste paper consignments containing



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

municipal solid waste, the authority directed that the consignment be re-exported to the exporting country at the importer's cost. A penalty was also imposed on the petitioner.

9. Thereafter, by letter dated 07.03.2024, M/s.Sripathi wrote to its supplier, M/s.Gallops, Canada, informing it that the Government of India had seized the goods and ordered their re-export, and seeking its consent to take back the consignment. In the said communication, M/s.Sripathi stated that it was aware of M/s.Gallops' commitment to environmental protection and believed that the dispatch of a consignment mixed with municipal and plastic waste was not intentional but had occurred due to oversight. It requested the supplier to accept the return of all five containers.

10. In reply, M/s.Gallops Waste Management Inc., by communication dated 11.03.2024, conveyed its consent to receive the goods back. On 05.04.2024, M/s.Sripathi and the person in charge accepted the adjudication order and paid the prescribed penalty.

11. Thereafter, by representation dated 16.05.2024, addressed to the Assistant Director, Directorate of Revenue Intelligence, M/s.Sripathi stated that



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

there had been an approximately six-month delay in issuing the show-cause notice, despite prompt cooperation on its part. It, therefore, requested the authorities to exercise their powers under the Handling of Cargo in Customs Areas Regulations, 2009, and the Sea Cargo Manifest and Transhipment Regulations, 2018, and to direct the shipping liner to waive container detention charges and the custodian to waive ground rent charges to facilitate re-export.

12. Further representations were subsequently submitted. On 20.05.2024, the Assistant Commissioner, ALS (CFS), Custom House, Tuticorin, requested M/s.A.L.S. Terminal Private Limited, the Container Freight Station, and M/s.Maersk Line India Private Limited, the shipping liner, to consider the importer's request and release the cargo without levying rent or demurrage for the period during which the goods remained under detention pending re-export. Accordingly, they were requested to waive demurrage and detention charges from the date of detention.

13. Thereafter, by letter dated 22.05.2024, M/s.Sripathi informed the Commissioner of Customs, Tuticorin, that it would not be possible to complete the re-export within the stipulated ninety-day period, which was due to expire on 29.05.2024, and sought a thirty-day extension.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

14. It is further stated that, by communication dated 24.05.2024, M/s.Gallops, while agreeing to accept the re-exported cargo, requested that the consignment be delivered at Dubai. M/s.Sripathi accepted the said request on the same day. It also addressed a detailed communication to the fifth respondent shipping line, seeking its cooperation in the re-export process and requesting confirmation of waiver of container detention charges.

15. By communication dated 27.05.2024, M/s.Sripathi requested the Joint Commissioner of Customs (Exports), Tuticorin, to permit the filing of a shipping bill for the re-export of the waste paper consignment to Dubai, UAE. On 28.05.2024, the Assistant Commissioner, Custom House, Tuticorin, extended the waiver of container detention charges and CFS ground rent charges for an additional thirty days. On 29.05.2024, the petitioner again sought permission to re-export the consignment to Dubai, UAE.

16. However, in a communication dated 03.06.2024 addressed to the Commissioner of Customs, Tuticorin, M/s.Sripathi contended that the consignment could alternatively be disposed of by incineration or landfilling after obtaining permission from the Tamil Nadu Pollution Control Board. It further alleged that the adjudication order had been passed in violation of the



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

applicable Rules and asserted that, in the absence of a waiver of container detention charges, it could not be compelled to bear the financial burden. It consequently threatened to abandon the consignment. Thereafter, the present writ petitions were filed.

17. W.P.(MD)No.24097 of 2024 has been filed challenging the Order-in-Original dated 28.02.2024 and seeking directions to permit the re-export of the goods to Dubai, UAE, or, in the alternative, to direct the Joint Commissioner of Customs, Tuticorin, to dispose of the goods within India through recycling in accordance with the applicable statutory framework.

18. W.P.(MD)No.24098 of 2024 has been filed seeking a Writ of Mandamus directing the Commissioner of Customs, the Joint Commissioner of Customs, and the Deputy Director, Directorate of Revenue Intelligence, to bear the detention charges imposed by the fifth respondent, namely M/s.Maersk Line India Private Limited.

19. W.P.(MD)No.24099 of 2024 has been filed seeking a Writ of Mandamus directing the competent authorities to take appropriate action against the fifth respondent shipping line, including the suspension or revocation of its



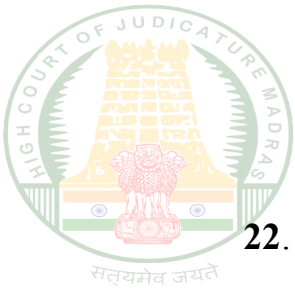
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

approval as an authorised carrier under Regulation 11 of the Sea Cargo Manifest and Transshipment Regulations, 2018.

B. The Case of the Respondents:

20. The writ petitions are opposed by the respondents. Respondents 1 to 3 had filed a counter affidavit. According to them, during the course of the investigation, the consignments were examined by the customs authorities as well as the Tamil Nadu Pollution Control Board. Thereafter, the goods were lawfully seized, and the Order-in-Original dated 28.02.2024 was passed strictly in accordance with law.

21. The respondents contend that, under the Office Memoranda dated 11.05.2019 and 10.01.2023, any waste paper consignment found to contain municipal solid waste or other contaminants must be re-exported to the exporting country at the importer's cost. Reliance is also placed on Rule 15(2) of the Hazardous Wastes (Management and Handling) Rules, 1989, which provides that, in cases of illegal import of hazardous and other waste, the importer shall re-export the waste at its own cost within ninety days of its arrival in India, and that the concerned Port and Customs Authorities shall ensure compliance with this requirement.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

22. It is further submitted that Rule 12 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, prohibits the import of hazardous and other waste into India. Reference is also made to various judicial pronouncements that mandate strict implementation of the statutory framework and governmental policy governing hazardous waste imports.

23. The counter-affidavit further details the opportunities afforded to M/s.Sripathi during the adjudication proceedings and sets out the various adjournments granted at its request. On the foregoing grounds, the respondents seek dismissal of the writ petitions.

24. The Tamil Nadu Pollution Control Board, the fourth respondent, has also filed a counter-affidavit stating that the imported consignment appeared to be municipal and hazardous waste. Following a joint inspection, it was confirmed that the cargo contained plastic cans, beverage containers, plastic carry bags, and other municipal solid waste components, though no putrefiable organic matter was found.

25. The fifth respondent shipping liner has resisted the writ petitions, contending that the petitioner is not entitled to a waiver of rental and container



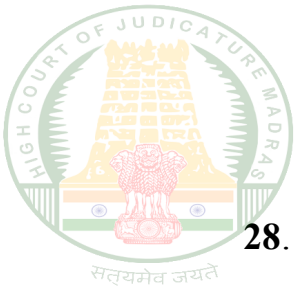
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

detention charges. According to them, the cargo's detention resulted solely from the petitioner's misdeclaration and import of prohibited goods. It is, therefore, the petitioner's responsibility to re-export the hazardous cargo and bear all consequential rental and detention charges.

26. The shipping liner has also filed a memo stating that, as per the agreed contractual rates, the total detention charges payable by M/s.Sripathi amount to Rs.14,01,95,605/-, while those payable by M/s.Rajarajeswari Krafts Pvt. Ltd. amounts to Rs.28,19,09,255/-. It has, however, expressed its willingness to waive a total sum of Rs.38,21,04,860/- and has agreed to accept a consolidated amount of Rs.4,00,00,000/- towards detention charges from M/s.Sripathi and M/s.Rajarajeswari Krafts Pvt. Ltd.

C. The case of M/s.Rajarajeswari:

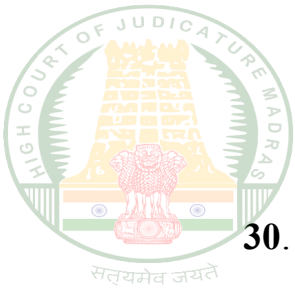
27. M/s.Rajarajeswari Krafts Pvt. Ltd., a company incorporated under the provisions of the Companies Act (hereinafter referred to as "M/s.Rajarajeswari"), is engaged in the manufacture of kraft paper and, for that purpose, imports waste paper in substantial quantities from various countries. It also possesses the requisite authorisation from the Tamil Nadu Pollution Control Board under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

28. While so, M/s.Rajarajeswari imported goods described as "Waste Paper – News & Pams" under Bill of Entry Nos.8852312 and 8852339, both dated 27.05.2022, from M/s.Gallops, Canada. It further imported goods described as "Waste Paper – ONP 6" under Bill of Entry Nos.9436441 dated 06.07.2022 and 9448213 dated 07.07.2022 from M/s. Exim Routes Inc., USA, and M/s.Exim Routes Pte. Ltd., Singapore, respectively.

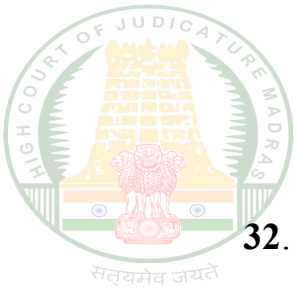
29. When the consignments were off-loaded at the sixth respondent's Container Freight Station, they were detained under separate Detention Mahazars. Upon opening the containers and conducting a visual examination of certain compressed bales, the authorities found that the consignments contained municipal solid waste, including used PET bottles, street sweepings, waste food-paper and plastic parcels, broken glass bottles, waste plastic and paper containers, waste soft-drink cans, and similar materials. The representative of M/s.Rajarajeswari also admitted that the consignments contained municipal waste. Accordingly, four separate Detention Mahazars were drawn in respect of the four consignments. Thereafter, Seizure Mahazars and related memoranda were issued from 08.07.2022 onwards.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

30. Subsequently, a show cause notice dated 04.01.2023 was issued, alleging that an inspection of the imported consignments covered by the aforesaid Bills of Entry revealed the presence of municipal solid waste, and that the inspection report of the Tamil Nadu Pollution Control Board had also confirmed the same. The show cause notice further referred to the statements recorded from the persons concerned and called upon the Company and the individuals responsible to explain why the goods imported under the four Bills of Entry, collectively valued at Rs.48,59,118/-, should not be confiscated and ordered to be re-exported, and why penalties should not be imposed upon them.

31. Upon consideration of the explanations submitted and the materials on record, the adjudicating authority concluded that the petitioner had knowingly arranged for the import of waste-paper consignments containing municipal solid waste, which were irrelevant to its manufacturing activities, with a view to deriving monetary benefit. It was further concluded that the consignments had been misdeclared and that, but for the intervention of the authorities, the *modus operandi* would have remained undetected. Consequently, by the Order-in-Original, the entire consignment valued at Rs.48,59,118/- was ordered to be confiscated and re-exported to the port of origin. A penalty of Rs.5,00,000/- was imposed on the Company, while lesser penalties were imposed on the individuals involved.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

32. Thereafter, M/s.Rajarajeswari addressed a communication dated 04.07.2024 to the Commissioner of Customs, seeking appropriate directions to the custodians and the shipping liner for waiver of rental and detention charges. On the same date, the Company also addressed communications to M/s.Gallops, Canada; M/s. Exim Routes Inc., USA; and M/s. Exim Routes Pte. Ltd., Singapore, expressing appreciation for their commitment to environmental protection and stating that the dispatch of the impugned consignments might have occurred inadvertently, not intentionally.

33. On 05.07.2024, M/s.Rajarajeswari addressed a representation to the Assistant Commissioner of Customs (Exports) seeking permission to re-export the consignments. Thereafter, by communications dated 09.07.2024, M/s.Gallops Waste Management Inc., Canada, agreed to receive the goods back but requested that they be re-exported to Jebel Ali Port, Dubai. Similar communications, containing substantially identical wording, were also received from M/s.Exim Routes Inc., USA, and M/s.Exim Routes Pte. Ltd., Singapore.

34. On 12.07.2024, M/s.Rajarajeswari requested the shipping liner to confirm the waiver of container detention charges. On the same day, the Deputy Commissioner of Customs directed the Container Freight Station to note the

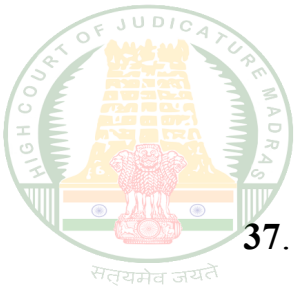


W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

exporter's communication and further directed that no rent or demurrage be collected in respect of the detained and confiscated goods until completion of the re-export process.

35. Subsequently, on 16.07.2024, M/s.Rajarajeswari submitted a further representation seeking permission to re-export the goods to Dubai. On 18.07.2024, it again approached the Commissioner of Customs, requesting a waiver of container detention charges, storage charges and other incidental expenses. By communication dated 23.07.2024, the shipping liner, namely, the ninth respondent herein, informed the petitioner that, as there was no fault attributable to it, the request for waiver could not be acceded to. On 24.07.2024, the petitioner also approached the Container Freight Station seeking a waiver of the charges. Thereafter, the present writ petitions were filed.

36. W.P.(MD)No.24101 of 2024 has been filed challenging the Order-in-Original dated 26.06.2024 and the corrigendum issued thereto, and, consequently, seeking permission to re-export the goods to Dubai, United Arab Emirates, or, in the alternative, a direction to permit disposal of the goods within India in accordance with the applicable Rules.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

37. W.P.(MD)No.24102 of 2024 has been filed seeking issuance of a Writ of Mandamus directing the official respondents to bear the ground rent, container detention charges and other charges levied by the shipping line and the respective Container Freight Station, thereby enabling the petitioner to dispose of the goods.

38. W.P.(MD)No.24103 of 2024 has been filed seeking a Writ of Mandamus directing appropriate action against the ninth respondent, including suspension or revocation of its approval as an authorised carrier under Regulation 11 of the Sea Cargo Manifest and Transhipment Regulations, 2018.

39. W.P.(MD)No.24104 of 2024 has been filed seeking a direction to the first respondent to take appropriate action against the respondents 6 to 8, including suspension or revocation of the approvals granted to them as authorised Customs Cargo Service Providers under Regulation 12 of the Handling of Cargo in Customs Areas Regulations, 2009.

D. The Respondents' case :

40. Thus, it can be seen that the case of M/s.Sripathi and M/s.Rajarajeswari are identical. Even the communications are verbatim similar.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

The respondents have filed their respective counter-affidavits. The stand taken

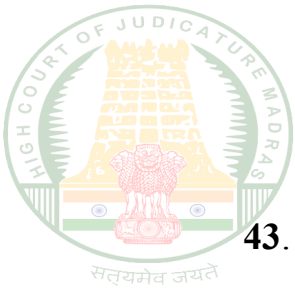
by them is substantially on the same lines as that adopted in the case relating to

M/s.Sripathi and, therefore, the same is not repeated.

E. The Arguments:

41. *Mr.Hari Radhakrishnan*, learned counsel appearing for the petitioners, would submit that the consignments were seized on the ground that they contained recyclable municipal solid waste. Upon adjudication, while ordering the confiscation of the goods, the adjudicating authority nevertheless permitted their re-export and also issued certificates directing the waiver of detention and demurrage charges in terms of Regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009 (HCCAR), and Regulation 10(1) of the Sea Cargo Manifest and Transhipment Regulations, 2018 (SCMTR).

42. According to the learned counsel, when the petitioners sought permission to re-export the goods to Dubai instead of the countries of export, namely, Canada and the United States of America, on the ground that the cost of transportation to Dubai would be substantially lower and that the foreign suppliers themselves had advised such re-export, neither the Customs Department granted the necessary permission nor did the shipping liner act upon the directions issued by the Department regarding waiver of detention charges.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

43. The learned counsel relied on Rule 15(2) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Referring to the provisions governing illegal traffic in hazardous and other wastes, he contended that waste imported without the requisite permissions must either be re-exported at the importer's cost within ninety days or be disposed of by the Port or Customs authorities after obtaining the necessary approvals from the concerned State Pollution Control Board. According to him, the Rule does not restrict re-export to the country of export and does not prohibit re-export to a third country.

44. In support of the said submission, the learned counsel relied upon the judgment of the Kerala High Court in **M/s.Hassoun Manufactures India Pvt. Ltd. v. The Commissioner of Customs¹**, wherein it was held that there is no statutory prohibition preventing an importer from re-exporting hazardous goods to a country other than the one from which they were originally imported.

45. With regard to the alternative prayer seeking permission to dispose of the consignments within India, the learned counsel submitted that such a course is permissible under the Office Memorandum dated 10.01.2023. According to him, the petitioners are willing to pay 25% of the assessed value of the imported 1 W.P.(C) No.13174 of 2018, dated 21.06.2018



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

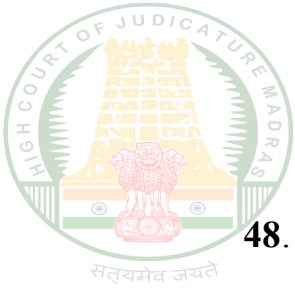
consignments, and the goods may be disposed of through cement kilns for co-processing or utilised for energy generation in waste-to-energy plants, in accordance with the applicable guidelines.

46. The learned counsel also relied on the decisions of the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, in **Uniglobal Paper Pvt. Ltd. v. Commissioner of Customs (Port), Kolkata²** and **Krishna Tissue Pvt. Ltd. v. Commissioner of Customs (Port), Kolkata³**.

47. The learned counsel further contended that the detention and demurrage waiver certificates issued by the Customs Department are legally binding on the shipping lines as well as the Container Freight Station operators, by virtue of Regulation 6(1)(l) of the HCCAR and Regulation 10(1) of the SCMTR. According to him, in the absence of any challenge to the said waiver certificates by the shipping lines or the Container Freight Station operators, they are bound to honour them and cannot insist on payment of detention, demurrage or storage charges contrary to the directions issued by the Customs authorities.

2 2024 (18) Centax 438

3 2024 (19) Centax 199



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

48. The learned counsel also drew the attention of this Court to Report No. 16 of 2018 of the Comptroller and Auditor General of India titled "Performance Audit of Working of Inland Container Depots and Container Freight Stations". Referring to the findings contained therein, he submitted that as many as 469 containers containing hazardous waste had remained abandoned in Inland Container Depots and Container Freight Stations for periods ranging from one to seventeen years. He would further submit that, in the present case, the adjudication proceedings were concluded only after a delay of nearly nineteen months, resulting in substantial accumulation of detention, demurrage and storage charges. According to the learned counsel, this delay is attributable entirely to the Customs Department and, therefore, the petitioners cannot be made to suffer the financial consequences thereof. Consequently, it is contended that any liability towards such charges, if at all payable, ought to be borne only by the Department and not by the petitioners.

49. *Mr.R.Gowri Shankar*, learned Senior Standing Counsel appearing for the Customs Department and the Directorate of Revenue Intelligence, would submit that the counter affidavits contain a detailed chronology of events demonstrating the progress of the proceedings. According to the learned Senior Standing Counsel, a perusal of the said chronology would reveal that, at every

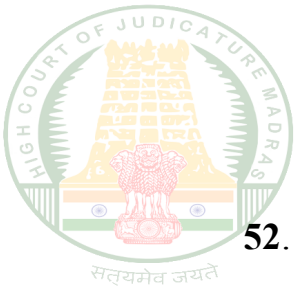


W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

material stage, the delay was attributable only to the petitioners, who repeatedly sought extensions of time and adopted dilatory tactics. On the other hand, the Customs authorities acted promptly and on a day-to-day basis in processing the matter.

50. The learned Senior Standing Counsel would further contend that the correspondence exchanged during the course of the adjudication proceedings clearly establishes that the petitioners had agreed to re-export the consignments to the port of origin and had sought leniency in the matter of punishment. It is submitted that, after the adjudication order was passed, the petitioners have been attempting to protract the proceedings by adopting one course or another with a view to avoiding compliance with the order.

51. According to the respondents, the present case involves a deliberate misdeclaration of goods and an attempt, with the active connivance of the petitioners, to dump municipal solid waste within the territory of India. It is further submitted that on a previous occasion, when an attempt was made to route the consignments to Dubai, the authorities in Dubai had also declined to accept the goods. In such circumstances, it is contended that permitting the re-export of the consignments to Dubai would neither be proper nor justified.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

52. The learned Senior Standing Counsel would submit that the goods in question constitute prohibited goods and, therefore, neither their destruction nor their disposal within India can be permitted. According to him, the Office Memorandum relied upon by the petitioners has no application to the facts of the present case. As regards the waiver of demurrage, detention and related charges, it is fairly conceded that certain communications were initially issued by the Customs authorities. However, it is contended that the subsequent accumulation of charges is entirely attributable to the conduct of the petitioners, who failed to take timely steps to complete the re-export process.

53. The learned Senior Standing Counsel would further rely on the judgment of the Division Bench of this Court in **M/s.K.Steamship Agencies Pvt. Ltd. v. M/s.Balaji Dekors⁴**. It is submitted that the Division Bench has categorically held that a detention and demurrage waiver certificate can be issued by the Customs authorities only when the adjudication proceedings conclude in favour of the importer without the imposition of any duty, fine or penalty. It is further submitted that the Division Bench has held that where the importer is found guilty of misdeclaration or any other violation attracting penal consequences, the liability to pay detention, demurrage and allied charges necessarily falls upon the importer. The learned Senior Standing Counsel would

4 W.A. No.1017 of 2017 etc. batch, dated 04.07.2024



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

also point out that the Division Bench has observed that any waiver certificate issued in favour of an importer found guilty of violations is legally unsustainable and unenforceable. Therefore, according to him, the reliefs sought by the petitioners regarding the waiver of detention and demurrage charges cannot be granted.

54. *Mr.K.Govindarajan*, learned Deputy Solicitor General of India, appearing on behalf of the Union of India, which was *suo motu* impleaded by this Court, would submit that the Union Government shall make every endeavour to take up the issue with the authorities of the respective exporting countries through appropriate channels. It is further submitted that any direction issued by this Court in that regard would be duly considered and acted upon by the competent authorities.

55. *Mr.P.Giridharan*, learned counsel appearing on behalf of the shipping liner, placing reliance upon the Memo filed before this Court, would submit that the petitioners are legally liable to bear the entire detention and allied charges accrued in respect of the subject consignments. However, taking into account the peculiar facts and circumstances of the case, and considering that the aggregate amount payable works out to Rs.42,21,04,860/-, the shipping line is willing, as a



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

matter of concession, to waive a sum of Rs.38,21,04,860/-, provided the petitioners collectively pay a sum of Rs.4,00,00,000/- towards full and final settlement of the charges payable to the shipping line.

56. The learned counsel would further submit that, after giving effect to the proposed waiver, the container detention charges are required to be paid by the importers prior to the clearance and movement of the cargo. It is further submitted that the freight charges required for the re-export of the consignments from India to Canada shall be prepaid and borne by the petitioners in respect of the containers imported by them. According to the learned counsel, a detailed break-up of the charges payable for each container has also been furnished. It is therefore submitted that the shipping liner is willing to undertake the re-export of the cargo to the country of origin, subject to the petitioners accepting and complying with the aforesaid conditions.

57. The learned counsel, apart from relying on the judgment of the Division Bench of this Court in **M/s.K.Steamship Agencies Pvt. Ltd.** [cited *supra*], also relied on the Delhi High Court's decision in **Muscles Fusion FZE v. Principal Commissioner of Customs (Import)**⁵, particularly paragraph 26. Reliance was also placed on the Delhi High Court's judgment in **Global Impex**

5 2017 (354) ELT 525 (Del.)



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

and Others v. Manager, CELEBI⁶, particularly paragraphs 169 and 170, to

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contend that the shipping line and cargo custodians are legally entitled to recover detention, demurrage and related charges from the importer, and that such liability cannot be avoided merely on account of the intervention of the Customs authorities.

58. The learned counsel appearing on behalf of the Container Freight Station would also make substantially similar submissions. According to the learned counsel, the prolonged retention of the cargo is attributable primarily to the conduct of the petitioners, who have continuously protracted the proceedings. It is submitted that nearly four years have elapsed since the date of import and, in such circumstances, there is neither any legal nor equitable basis for directing waiver of the storage, detention or other charges accrued in respect of the consignments.

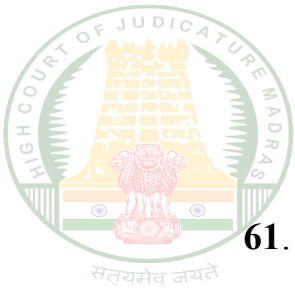
59. I have considered the rival submissions advanced on either side and carefully perused the materials available on record.

F. Issue No.1 - Validity of Orders-in-Original:

60. The first issue that arises for consideration in the present batch of cases is whether the respective Orders-in-Original dated 28.02.2024 and 26.06.2024 are liable to be interfered with and set aside.

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Page No.30 of 58

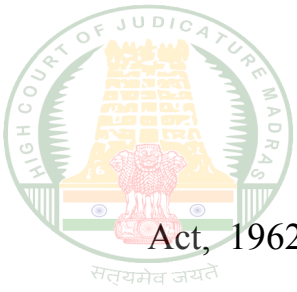


W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

61. Though such a relief has been sought in the writ petitions filed on behalf of both the petitioners, no substantial arguments were advanced during the course of the hearing challenging the validity of the adjudication orders. On the contrary, the materials placed before this Court reveal that, during the course of the adjudication proceedings as well as thereafter, both the Companies and their representatives had accepted the findings recorded by the adjudicating authority and had merely sought leniency in the matter of punishment. Even in the enquiry, they admitted the illegality, submitted that it was unintentional, and pleaded for a lesser penalty. They had also undertaken to comply with the orders proposed to be passed, including payment of the penalty.

62. Taking into consideration the representations made by the petitioners, the adjudicating authority appears to have adopted a lenient approach and imposed only a modest penalty. Pursuant thereto, both the petitioners as well as the individuals concerned have paid the penalties imposed upon them. At no point in time did they challenge either the factual findings or the conclusions arrived at by the adjudicating authority.

63. It is also pertinent to note that an effective statutory remedy of appeal is available against the Orders-in-Original under Section 128 of the Customs



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

Act, 1962. Admittedly, neither of the petitioners has chosen to avail such a

remedy. Having allowed the adjudication orders to attain finality, the petitioners have approached this Court only in September 2024, after seeking permission to re-export the goods to Dubai and failing to secure the relief they sought. In such circumstances, a belated challenge to the Orders-in-Original cannot be countenanced.

64. Even otherwise, on a perusal of the records, this Court finds that the adjudicating authority had issued detailed show cause notices, afforded adequate opportunity to the petitioners, recorded statements of the concerned persons and considered all the materials available on record before arriving at the conclusion that the consignments had been misdeclared. The finding recorded is that the case involves deliberate misdeclaration and not a mere inadvertent error. Based on such findings, orders of confiscation, imposition of penalty and re-export of the consignments were passed.

65. This Court does not find any infirmity, procedural irregularity or jurisdictional error warranting interference with the said orders in exercise of its writ jurisdiction. Accordingly, the Orders-in-Original dated 28.02.2024 and 26.06.2024 are held to be valid, and the challenge thereto stands rejected.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

G. Issue No.2 - Re-export to Dubai:

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66. The next question that arises for consideration is whether the petitioners can be permitted to re-export the goods to Dubai instead of the countries of origin.

67. For a proper appreciation of the issue, Rule 15(2) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, is extracted hereunder:

"15. Illegal traffic.-

(1)

(2) *In case of illegal import of the hazardous or other waste, the importer shall re-export the waste in question at his cost within a period of ninety days from the date of its arrival into India and its implementation will be ensured by the concerned Port and the Custom authority. In case of disposal of such waste by the Port and Custom authorities, they shall do so in accordance with these rules with the permission of the Pollution Control Board of the State where the Port exists."*

(Emphasis supplied)

68. A plain reading of Rule 15(2) makes it evident that the expression employed by the Rule-making authority is "re-export". The significance of the expression cannot be overlooked. What the petitioners had undertaken was the import of the consignments into India. If the legislative intent had been to permit



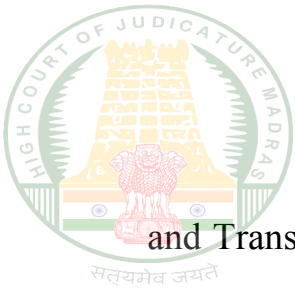
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

the consignments to be sent to any third country of the importer's choice, the

Rule would have employed the expression "export" and not "re-export". The very use of the term "re-export" necessarily connotes the return of the waste to the country from which they originated or from where they were exported to India.

69. In the present case, the adjudicating authority has recorded a categorical finding that the petitioners had imported consignments containing municipal solid waste under the guise of waste paper. The finding is that the petitioners had knowingly attempted to bring into India consignments containing prohibited waste material. When the entities from the countries of origin and the petitioners have jointly made an attempt to dispose of solid municipal waste, having regard to the nature of the violation, it is the bounden obligation of the petitioners and every one to ensure that the waste reaches back to the place of origin and the offending consignments are sent back to the countries of origin, namely, Canada and the United States of America, from where they were exported.

70. There is yet another reason why the contention advanced by the petitioners cannot be accepted. The Hazardous and Other Wastes (Management



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

and Transboundary Movement) Rules, 2016, have been framed in furtherance of

India's international obligations arising under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (effective from 05.05.1992). The provisions of the Rules, therefore, have to be interpreted in a manner consistent with the objectives and obligations embodied in the Convention.

71. It is not in dispute that India, Canada, the United States of America and the United Arab Emirates are all parties to, or are governed by, the international framework regulating transboundary movement of hazardous and other wastes. The fundamental object of the Convention is to prevent the unlawful movement of hazardous waste and to ensure that responsibility for such waste remains with the exporter and the State of export. Permitting a consignment found to contain municipal solid waste to be diverted to a third country merely because it may be economically advantageous to the importer would run contrary to the spirit and object underlying the Convention as well as the domestic Rules framed thereunder.

72. In this context, it would be relevant to refer to Article 9(2) of the Basel Convention, which reads as follows:



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

"9. Illegal Traffic.

1.

2. *In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:*

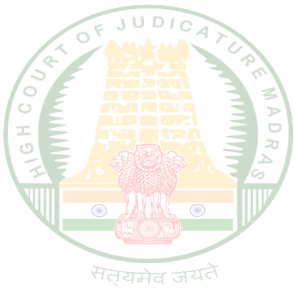
a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

b) *are otherwise disposed of in accordance with the provisions of this Convention,*

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree.

To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export." (Emphasis Supplied)

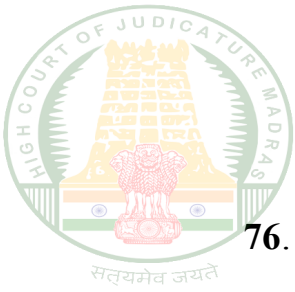
73. A reading of the aforesaid provision makes it abundantly clear that, in cases of illegal traffic, the waste is required to be taken back by or returned to the State of export and not diverted to any third country. The obligation contemplated under the Convention as well as the domestic Rules framed thereunder is one of restitution to the exporting State, thereby ensuring that responsibility for the unlawful transboundary movement of waste remains with the exporter and the State of export.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

74. The Basel Convention was conceived with the avowed objective of preventing the indiscriminate dumping of hazardous and other wastes by developed nations in developing and economically vulnerable countries. The Convention recognises the grave environmental, public health and ecological consequences that may arise if such transboundary movements are left unchecked. Its fundamental purpose is to ensure that countries generating such waste remain accountable for its environmentally sound management and disposal.

75. The phenomenon, often described as "waste colonialism", refers to the practice whereby developed countries, either directly or through unscrupulous exporters, seek to shift the burden of disposal of hazardous, toxic or other undesirable waste to developing nations, thereby externalising the environmental and social costs associated with such waste. Such practices not only undermine environmental justice but also pose a serious threat to the ecological security and public health of the receiving countries. Above all, it is a direct affront on the very sovereignty of the country and as such rightly terms as 'colonialism'.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

76. The adverse consequences of such activities were noticed by a

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The observations made therein continue to hold relevance in the present context. It would therefore be apposite to extract Paragraph 40 of the said judgment, which reads as follows:

"40. It is really painful rather pathetic to note that the foreign developed countries are searching for dumping yards to dump their municipal waste and are dumping their municipal waste somehow or other in the waters or soil of developing countries and thus are trying to enjoy a pollution free surroundings in their countries. In the case on hand, the appellant, instead of trying to secure the pollution free environment in our country, by scrupulously following the instructions given to them by the customs officials and the Pollution Control Board are raising legally unsustainable grounds, only to escape the legal liability of paying the amounts to the first respondent, which would not be allowed to happen."

77. The issue assumes greater significance when viewed in the backdrop of the mounting challenges relating to solid waste management in India. It is estimated that the country generates more than 1,70,000 tonnes of municipal solid waste every day and is already grappling with the complex task of its scientific collection, segregation, treatment and disposal. In such circumstances, 7 W.A.(MD)No.721 of 2007 and W.P.(MD)Nos.5989 and 5994 of 2008, decided on 21.11.2008



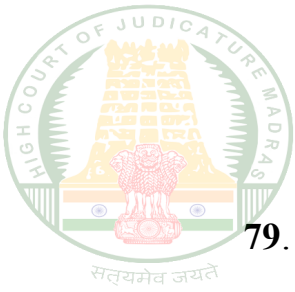
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

the nature of the business model projected by the petitioners warrants close

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scrutiny. The petitioners claim to import waste paper from foreign countries at considerable cost at a time when substantial quantities of recyclable waste paper are readily available within the country. The facts as found by the adjudicating authority raise serious concerns about whether the imports were, in reality, intended to facilitate the entry and disposal of municipal solid waste in India under the guise of waste paper consignments.

78. India has consistently adhered to its international obligations and has remained committed to the principles underlying the Basel Convention, and accordingly, the rules are framed. The wrongful acts of exporters situated in foreign jurisdictions cannot furnish a justification for permitting the offending consignments to be diverted to a third country in derogation of the obligations arising under the Convention. The materials on record also indicate that on an earlier occasion, when an attempt was made to route a similar consignment to Dubai, the same was not accepted by the authorities there. Be that as it may, neither principles of fairness (அறம் (Aram)) nor law would justify permitting municipal solid waste, found to have been illegally imported into India, to be diverted to another country merely on the prayer of the importers. It is cannot be termed as a request or arrangement between the importer and its exporter, but a conspiracy.



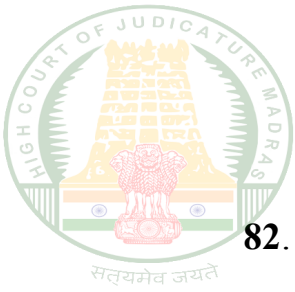
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

79. Therefore, upon a conjoint reading of the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and the obligations flowing from the Basel Convention, this Court is of the considered view that the petitioners' request to re-export the consignments to Dubai is legally untenable and cannot be countenanced. One illegality cannot be rectified by facilitating another. Accordingly, the prayer seeking permission to re-export the consignments to Dubai stands rejected.

H. Issue No.3 - Disposal of Waste within India:

80. The next question that arises for consideration is whether the petitioners are entitled to seek permission for disposal of the goods within India.

81. At the outset, this Court finds the said prayer wholly misconceived. The regulatory framework governing transboundary movement of hazardous and other wastes has been devised precisely to prevent India from becoming a destination for the disposal of waste generated elsewhere. The petitioners, in effect, seek permission to retain within India consignments found to contain municipal solid waste and thereafter channel them for disposal through cement kilns, waste-to-energy facilities, or other authorised agencies. Such a course would be fundamentally inconsistent with the object and purpose of the statutory scheme banning the import of waste materials.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

82. In this regard, reliance has been placed by the petitioners upon the

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Office Memorandum dated 10.01.2023. However, a careful reading of the said Office Memorandum demonstrates that it specifically prohibits the presence of biomedical waste, municipal solid waste, post-consumer domestic waste and other impermissible contaminants in imported waste-paper consignments. The relaxation contemplated under clause (vii) thereof applies only in respect of permissible contaminants exceeding the prescribed threshold limits. The said provision cannot be extended to categories of waste that are expressly prohibited. Any such reading of the Office Memorandum would render it illegal and violative of Rule 15(2) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, and, more importantly, the international treaty obligations of our Nation.

83. Further, any such prayer to make this great country as the 'disposal destination' should be held against not only the sovereignty of the Country but would be offensive of the basic right to life of every citizen, the ecosystems of this Country. The Hon'ble Supreme Court of India in *State of Telangana and others vs. Mohd. Abdul Qasim*⁸ has held that the environment and ecosystems of this country are not just objects for protection but are subjects with fundamental rights to exist, survive and thrive. Article 48-A obligates protection of

8 (2024) 6 SCC 461



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

environment and biodiversity. Thus, such a prayer would run counter to every declared tenants of legal policy and basic law, human rights and rights of every living organism and ecosystem of our Nation and thus has to be declared as opposed to public policy and illegal and should not be permitted. There could have been aberrations in the past, but mistakes have to be corrected and cannot be perpetuated.

84. It is also relevant to note that throughout the adjudication proceedings, the petitioners had consistently agreed to re-export the consignments and had sought only leniency in the matter of penalties. The records further indicate that one of the petitioners, namely M/s.Sripathi, had earlier faced similar proceedings and, upon detection of the violation, had re-exported the consignments in compliance with the directions issued by the authorities. M/s.Rajarajeswari imports municipal waste from different destinations simultaneously, which, according to them, was imported innocuously.

85. Accordingly, this Court holds that the prayer seeking permission to dispose of the consignments within India is contrary to the applicable statutory provisions, inconsistent with the objectives of the Basel Convention and opposed to the public policy. The said prayer is therefore rejected.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

I. Issue No.4: Charges payable to Container Freight Stations:

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86. The next issue concerns the prayer made against the sixth respondent, namely, M/s.A.L.S.Terminal Private Ltd., in W.P.(MD)Nos.24097 to 24099 of 2024, and the respondents 6 to 8 in W.P.(MD)Nos.24101 to 24104 of 2024, namely, M/s.A.S.Shipping Agencies Private Ltd., M/s.Sical Multimodal Rail Transport Ltd., and M/s.Prompt Terminals Private Ltd., which are the Container Freight Stations where the containers are detained, seeking waiver of detention charges/demurrage.

87. In this regard, it must be noted that the issue is no longer *res integra*. The same was considered by the Hon'ble Division Bench of this Court in **K.Streamship Agencies Pvt. Ltd.** [cited *supra*], and it is necessary to extract Paragraphs 45(3), 45(5), and 45(6).

"45. On the basis of the above discussion and findings arrived at, our conclusions are as follows:

(3) The waiver certificate can be issued by the Customs authorities in cases the adjudication ends in favour of the importer/exporter without imposition of any duty, fine or penalty either by order of the adjudication or clarification or order of the court or Tribunal.

.....

(5) In cases, where the importer/exporter is found guilty of misdeclaration or of any other violation by import of prohibited goods



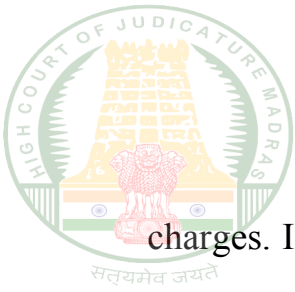
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

or violation by import of restricted goods, the demurrage charges would have to be paid.

(6) In cases where the adjudication is not in favour of the importer/exporter and some action is taken, the authorities cannot issue any waiver certificate and if such certificates have been issued despite the fact that the importer/exporter is found to be guilty, the same are invalid."

Thus, it is abundantly clear that, if the adjudication ultimately ends against the petitioners/importers, it is they who are liable to bear the charges. Even where a waiver certificate has been issued, the same stands declared invalid. In view thereof, although a waiver had been ordered for a certain period in the present case, the said waiver has become invalid. Therefore, the petitioners are liable to pay the detention/demurrage charges payable to the respective Container Freight Stations.

88. However, considering the peculiar facts and circumstances of the present case, it must be noted that, in law, solid municipal waste dumped into India is required to be re-exported within 90 days from its arrival at the Port. In the present case, the waste has remained at the Port since the year 2022 and has continued to lie there for nearly four years. Therefore, while the petitioners remain liable to pay the charges claimed by the Container Freight Stations, the containers shall not be detained merely on account of non-payment of the



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

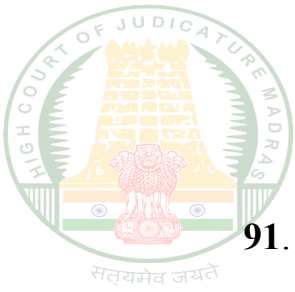
charges. If the petitioners fail to pay the same, it is always open to the Container Freight Stations to recover the amounts due in the manner known to law by initiating appropriate recovery proceedings. They cannot retain municipal waste in India to recover their dues. Everyone concerned has an obligation to see to it that the containers are off the shores of India and also reach the ports of origin.

J. Issue No.5. Charges payable to the Shipping Liner:

89. The next issue is whether the liner, namely, M/s.Maersk Line India Pvt. Ltd., arrayed as the fifth respondent in W.P.(MD)Nos.24097 to 24099 of 2024 and as the ninth respondent in W.P.(MD)Nos.24101 to 24104 of 2024, is liable to waive the rental and detention charges relating to the containers.

90. In this regard, as stated supra, the law laid down in **K.Streamship Agencies Pvt. Ltd.** [cited *supra*] would equally apply to the case of the liner, and it is only the petitioners who are liable to bear such charges. It must be noted that, apart from the Division Bench of this Court, other High Courts, including the Delhi High Court, have consistently reiterated the same position in **Trip Communication Pvt. Ltd. v. Union of India**⁹, **Muscles Fusion FZE** [cited *supra*], and **Global Impex and Others** [cited *supra*].

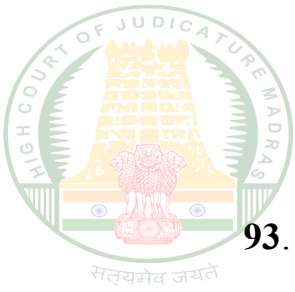
9 2014 (302) ELT 321 (Del.)



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

91. However, although the liner was not required to challenge the order directing it to grant a waiver, since such a waiver stands declared invalid, the peculiar and extraordinary circumstances prevailing in the present case deserve consideration. Upon the insistence of this Court, the liner has filed a Memo stating that it is willing to waive a substantial portion of the charges due to it. The Memo records that upon both the petitioners jointly paying a total sum of Rs.4,00,00,000/- in respect of all the containers, the liner shall not claim any further or balance charges. The said Memo is accordingly recorded.

92. Therefore, notwithstanding the legal position, the said entity has agreed to waive a substantial portion of the detention and related charges. The liner has also expressed its willingness to carry the waste back to the port of origin upon payment of the applicable freight charges. The petitioners are duty-bound to pay the freight charges necessary for transporting the goods back to the port of origin. It has also been insisted that the consignee shall undertake all necessary steps to secure clearance at the discharge port and facilitate clearance of the cargo in Canada. Since the petitioners are already in touch with their respective suppliers, they shall make all necessary arrangements and take all possible steps in that regard.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

93. Further, under Regulation 10(1)(g) of the Sea Cargo Manifest and Transhipment Regulations, 2018, the authorised carrier is also responsible for the re-export of hazardous goods. Therefore, the liner is under a statutory obligation to ensure that the goods are exported back to the exporting country. For ready reference, Regulation 10(1)(g) is extracted hereunder:

"10. Responsibilities of the authorised carrier under these regulations. - (1) An authorised carrier shall
g. be responsible for re-export of hazardous goods where such goods are ordered to be exported back to the exporting country;"

94. In view of the above, this issue is answered by holding that the petitioners shall be liable to pay the freight charges as well as the sum of Rs.4,00,00,000/- agreed to be paid to the liner, namely, M/s.Maersk Line India Pvt. Ltd. on the conditions that are imposed by the Memo. In any event, the non-payment cannot be ground to retain the goods in India. The freight charges back to the port of destination has to be mandatorily paid by the petitioners.

K. Issue No.6 - Court's Duty to Analyse the Contributing Reasons and General Directions:

95. This case presents a disturbing picture. As rightly described by environmentalists as "waste colonialism", the dumping of solid municipal waste



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

by developed countries into developing nations not only violates international treaty obligations but also results in serious environmental degradation. Such practices impose disproportionate environmental burdens upon developing countries and undermine the principles underlying international environmental governance.

96. The business model adopted by the petitioners in the present case also raises serious concerns. It is undisputed that India generates a substantial amount of solid waste every day, reportedly exceeding 1,70,000 tonnes. Further, waste paper is abundantly available within the country. By way of illustration, calculated at the prevailing exchange rate during the year 2022 when the imports were made, the waste paper imported by M/s.Sripathi worked out to approximately Rs.20/- per kilogram. Therefore, the very rationale for importing the consignments in question becomes questionable.

97. The Orders-in-Original, while adjudicating the matter, have recorded findings that the imports were made with the intention of securing illegal clearance of the goods for unlawful gain. Be that as it may, once the adjudication had concluded and the law mandated re-export within a period of 90 days, the petitioners were bound to take immediate steps for re-export. Their failure to do



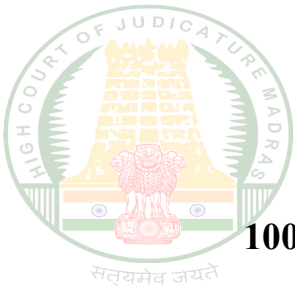
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

so has resulted in the waste remaining within India's territory for several years.

The way in which M/s.Sripathi and M/s.Rajarejeswari, compliment and praise their exporting counterparts for the egregious conduct reveals all. Further, it can be seen that *modus operandi* is similar, even the communications are worded identically and seem to be orchestrated.

98. Whenever any person imports solid municipal waste, or any other pollutant waste, into India in contravention of the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, framed under the Environment (Protection) Act, 1986, the consequences contemplated under the Act would follow. Section 15 of the Environment (Protection) Act, 1986 provides for punishment with imprisonment for a term which may extend to five years, or with fine, or with both, for violations of the provisions of the Act, the Rules, or directions issued thereunder.

99. The Central Government, or any authority or person authorised by it, has to initiate appropriate proceedings in accordance with Section 19 of the Environment (Protection) Act, 1986 by filing a complaint before the competent Court for prosecuting the company concerned and every person who, at the time of the commission of the offence, was directly in charge of and responsible for the conduct of its business.



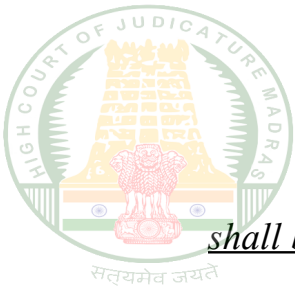
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

100. Considering the serious environmental consequences arising from such violations, the competent authorities shall initiate appropriate prosecution proceedings in deserving cases and in accordance with law. The purpose of such action is to ensure the effective enforcement of environmental laws and to deter the unlawful importation of waste into the country.

101. If any person knowingly designs, imports, or aids in importing and throws trash on Bharath Matha, it is not just an offence under the Environment Protection Act, 1985 alone, but it is a direct challenge to her sovereignty. There cannot be a more aggravated form of *deshdroh*. When the right to life and self-esteem of every citizen of the Country, living organism and eco systems is involved, certainly it is an act endangering sovereignty. From the date of coming into force of Bharatiya Nyaya Sanhita, 2023, the act amounts to an offence punishable under under Section 152 of the Bharatiya Nyaya Sanhita, 2023. The same is extracted hereunder for ready reference:

"152. Acts endangering sovereignty, unity and integrity of India.

Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial means, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Explanation: *Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section".* (Emphasis supplied)

102. Thus, a careful reading of Section 152 of the Bharatiya Nyaya Sanhita, 2023, shows that these dastardly acts amount to an offence. Whether the facts of a particular case attract the provisions of Section 152 would necessarily depend on the most important ingredient, namely, knowingly or purposely endangering the sovereignty. If, upon investigation by the customs authorities, the finding is that it was knowingly and purposely done, then prosecution should be intimated by forwarding a complaint to the jurisdictional police. In the present day scenario, unless prompt action is taking by way prosecution under the Environment Protection Act, 1985 and Bharatiya Nyaya Sanhita, 2023, the menace will continue unabated.

103. A report of the Comptroller and Auditor General of India titled "Performance Audit of Working of Inland Container Depots and Container Freight Stations" (Report No.16 of 2018) had already highlighted the serious



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

issue of containers carrying waste and other prohibited materials remaining abandoned at Container Freight Stations. The report noted that 469 containers had been left abandoned. The said findings demonstrate that the issue is neither isolated nor recent. It appears that, apart from passing adjudication orders, adequate proactive measures have not been undertaken to ensure timely removal and re-export of such consignments. In matters of this nature, financial considerations alone cannot be the determining factor. Even if expenditure is required to be incurred, the authorities concerned must take all necessary steps to ensure that such containers are removed from Indian ports and returned to their ports of origin.

104. Further, the wording of the Office Memorandum in F.No. 23/107/2022-HSMD, dated 10.01.2023, issued by the Director (HSM Division), Ministry of Environment, Forest and Climate Change, requires reconsideration. The object of the international treaty obligations and the statutory rules framed thereunder would be defeated if disposal of such solid municipal waste within India is permitted in situations where re-export is otherwise mandated. As already held by this Court, Clause (vii) is not applicable to Entry 50 in cases where import of the goods themselves is not permissible. Therefore, the Government of India shall consider incorporating specific and express provisions



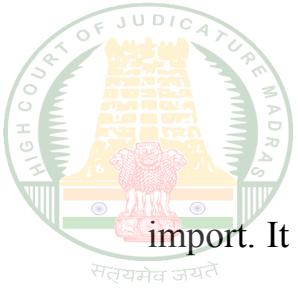
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

mandating the re-export of biomedical waste, municipal solid waste, post-consumer domestic waste, and other prohibited waste streams not specifically covered by the existing Office Memorandum, to the respective ports of origin.

105. Having regard to India's international treaty obligations, instances involving exporters from foreign jurisdictions who repeatedly indulge in such practices must also be taken up through appropriate diplomatic channels. The issue may be raised during bilateral engagements through the concerned Embassies and appropriate authorities of the exporting countries, with a request that action be taken against such exporters in accordance with their domestic laws. Wherever the existing international mechanisms permit, such issues shall be promptly flagged through diplomatic channels immediately upon detection of the offending consignments, so that effective remedial measures can be undertaken.

106. Further, it was argued, by placing reliance on certain Research Articles¹⁰, that even though a huge amount of solid waste is generated, not all waste paper is segregated and made available to the industries that need waste paper as raw materials for their products, which only leads towards the policy of

¹⁰ Article published in the Quarterly Journal of Indian Pulp and Paper Technical Association [Vol.35, E3, 2023, P.88-94]



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

import. It is also contended that only because of the imports, the need is reduced,

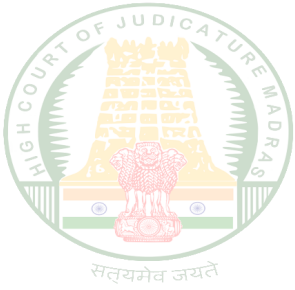
resulting in non-segregation. Thus, it is a vicious cycle. We, as the citizens of this country, have a bounden duty to source-segregate the solid wastes, and only by a robust process of realisation that entire waste paper is available for these recycling industries can the very import be given up. Thus, the Ministry of Environment, Forest and Climate Change, the Director General of Foreign Trade, and the concerned Ministry shall consider the issue of reframing the policy, improve the segregation output of the wastepaper, prevent its burning, and improve its availability for recycling.

L.The Result:

107. In view thereof, these Writ Petitions are disposed of on the following terms:

(i) The prayers sought in W.P.(MD)Nos.24097 to 24099 of 2024 and W.P.(MD)Nos.24101 to 24104 of 2024 are devoid of merit and are accordingly rejected;

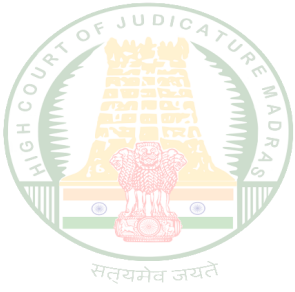
(ii) The petitioners shall take all necessary steps to re-export the goods and ensure that the same are re-exported within a period of 60 days from the date of receipt of a web-copy of this order.



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

(iii) The Container Freight Stations, namely, the sixth respondent in W.P.(MD)Nos.24097 to 24099 of 2024 and the respondents 6 to 8 in W.P.(MD)Nos.24101 to 24104 of 2024, shall be entitled to raise invoices and demand detention/demurrage charges from the respective petitioners, and the petitioners shall remain liable to pay the same. However, the process of re-export shall not be obstructed on account of any dispute relating to such charges, as the continued presence of the waste within the territory of India poses a potential environmental risk. If the petitioners fail to pay, they will be entitled to approach the appropriate fora for recovery of the dues;

(iv) The petitioners shall ensure that the containers containing the waste are re-exported to the respective ports of origin within a period of 60 days as directed above. In the event of failure, from the 61st day onwards, the petitioners shall be liable to pay environmental compensation at the rate of Rs.50,000/- each per day, applying the Polluter Pays Principle, until the waste is re-exported. The said compensation shall be recovered by the Tamil Nadu Pollution Control Board by way appropriate proceedings;



W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

(v) The petitioners are jointly liable to pay the sum of

Rs.4,00,00,000/- and the further freight charges to the Shipping Liner and *de-hors* any other disputes as may be between them, the waste shall be re-exported and both sides will be entitled to raise a dispute or approach the appropriate fora for their mutual claims, but the same shall not result in stoppage of the re-export of the wastes;

(vi) If the re-export is not made within 60 days as above, the duly authorised person as per the provisions and rules framed under the Environment Protection Act, 1985 shall take such steps to file a complaint and prosecute the petitioners and its directors and such other persons responsible for the offence punishable under Section 19 of the Act.

(vii) The general observations made and directions issued supra in the preceding paragraphs shall be considered by the authorities concerned and appropriate action in that regard be taken.

(viii) The petitioners shall pay a costs of Rs.10,000/- each to the first respondent. Consequently, the connected Miscellaneous Petitions are closed.

19.06.2026

NCC : Yes
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Page No.56 of 58



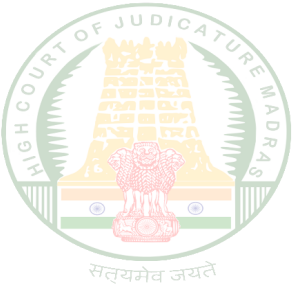
W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

To

सत्यमेव जयते

WEB COPY

1. The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
2. The Joint Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
3. The Deputy Director,
Directorate of Revenue Intelligence,
22/114, Celin Garden, Rochoy Colony,
South Beach Road, Tuticorin - 628 001.
4. The Assistant Environment Engineer,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy, Chennai - 600 032.
5. The Director General of Foreign Trade,
New Delhi.
6. The Secretary to Government,
Ministry of Environment and Forests and Climate Change,
New Delhi.
7. The Additional Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
8. The Assistant Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.



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W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

D.BHARATHA CHAKRAVARTHY, J.

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Pre-delivery common order in

W.P.(MD)Nos.24097, 24098, 24099, 24101, 24102, 24103 and 24104 of 2024

19.06.2026