

2019-TIOL-1650-HC-DEL-CUS

IN THE HIGH COURT OF DELHI

**WP (C) 9863/2018
CM 45169/2018 (directions)**

MUHAMMAD SAYED SALIM CHAIWALA

Vs

UNION OF INDIA AND ORS

S Muralidhar & Prateek Jalan, JJ

Dated: July 23, 2019

Appellant Rep by: Ms Amrita Joshi, Adv.

Respondent Rep by: Mr Amit Bansal and Mr Aman Rewaria, Advs., Mr Sarul Jain and Ms Kshinja Aggarwal, Advs

Cus - These are two review petitions; one by Customs Department and the other by DRI seeking review of two orders - The first is the order dated 19th September, 2018 whereby it was directed that the goods should be released to petitioner and demurrage/ detention charges, shall be on account of Customs Department - The second is the order dated 29th October, 2018, directing the Customs Authorities and the DRI to deposit with the warehousing agent viz., Celeb a sum of Rs.50 lacs without prejudice to the rights and contentions of the parties - This Court's attention has been drawn to the judgment passed by Supreme Court in *Mumbai Port Trust* -explaining the law in relation to payment of demurrage charges - It is submitted that the said decision has not been taken into account in determining, on the first date of hearing itself, that the demurrage/detention charges in the present case would have to be paid by the Customs Authorities - It does appear to the Court that the law as explained in *Mumbai Port Trust v. Shri Lakshmi Steels* would require to be examined as regards its applicability to the facts in the present case - Consequently, the orders dated 19th September, 2018 and 29th October, 2018 are hereby recalled: HC

Petitions disposed of

Case laws cited:

Mumbai Port Trust v Shri Lakshmi Steels - 2017-TIOL-270-SC-CUS... Para 2

Civil Appeal Nos. 4066 and 4067 of 2019, Union of India v. Afzal Khan... Para 3

16th October, 2018 in W.P.(C) No. 10018/2018, Afzal Khan v. Union of India... Para 3

JUDGEMENT

Review Pet. Nos.429/2018 and 440/2018

1.These are two review petitions - one by the Customs Department (Review Petn 429/2018) and the other by the Directorate of Revenue Intelligence (DRI) (Review Petn 440 of 2018) - seeking review of two orders. The first is the order dated 19th September, 2018 whereby it was directed that the goods should be released to the Petitioner and demurrage/ detention charges, shall be on account of the Customs Department. The second is the order dated 29th October, 2018, directing the Customs Authorities and the DRI to deposit with the warehousing agent viz., Celebi Delhi Cargo Terminal Management India Pvt. Ltd ('Celebi') a sum of Rs.50 lacs without prejudice to the rights and contentions of the parties.

2. This Court's attention has been drawn to the judgment passed by the Supreme Court of India in *Mumbai Port Trust v Shri Lakshmi Steels 2017 (352) ELT 401 (SC)* = explaining the law in relation to payment of demurrage charges. It is submitted that the said decision has not been taken into account in determining, on the first date of hearing itself, that the demurrage/detention charges in the present case would have to be paid by the Customs Authorities.

3. Secondly, the Court's attention has been drawn to an order dated 22nd April, 2019 passed by the Supreme Court of India in *Civil Appeal Nos. 4066 and 4067 of 2019 (Union of India v. Afzal Khan)* whereby a similar order passed by this Court on 16th October, 2018 in *W.P.(C) No. 10018/2018 (Afzal Khan v. Union of India)* was set aside by the Supreme Court and the matter was remanded to this Court for a fresh consideration on merits whether it is the importer or the Customs Authorities who would be liable to pay the demurrage/detention charges.

4. It does appear to the Court that the law as explained in *Mumbai Port Trust v. Shri Lakshmi Steels (supra)* would require to be examined as regards its applicability to the facts in the present case.

5. Consequently, the orders dated 19th September, 2018 and 29th October, 2018 are hereby recalled. *W.P.(C) No. 9863/2018* together with the *CM No. 45169/2018* filed in the said writ petition are restored to file.

6. Both the review petitions are disposed of in above terms.

W.P.(C) 9863/2018

7. List before the roster Bench on 29th August, 2019. In the meanwhile, the Respondents will file their respective replies within two weeks from today. Rejoinder thereto be filed before the next date.

CM 45169/2018 (directions)

8. The Court is informed that pursuant to the orders dated 19th September and 29th October 2018, the goods have already been released to the Petitioner. It is clarified that the release of the goods as well as the payment if any of the sum to Celebi towards demurrage/detention charges by the Customs/DRI would be subject to the final orders in the writ petition.

9. The application is disposed of.