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1/22

WP Nos.11222, 149, 152 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.10.2025
Pronouncing orders on : 23.10.2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 11222 of 2022, WP NO. 152 OF 2022 AND WP NO. 149 OF 2022
AND
WMP NO. 172 OF 2022, WMP NO. 167 OF 2022, WMP NO. 166 OF
2022, WMP NO. 173 OF 2022, WMP NO. 10795 OF 2022

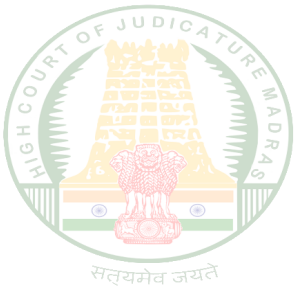
WP No. 11222 of 2022

M/s. National Association of Container Freight Stations,
Rep by its Secretary,
NACFS- Chennai Chapter (M/ 37)
NACFS, BWC Towers,
2nd Floor, 46/2, North Beach Road,
3rd Lane, Clive Battery,
Chennai- 600 001.

Petitioner(s)

Vs

1. The Joint Commissioner of Customs (CH-IV)
Office of the Commissioner of Customs (Chennai - IV),
Custom House, No.60, Rajaji salai,
Chennai- 600 001.



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2.The Joint Commissioner of Customs

Uncleared Cargo Cell,

Office of the Commissioner of Customs (Chennai -IV),

Custom House, No.60, Rajaji salai, Chennai- 600 001.

3.The Deputy Commissioner of Customs

UCC, CH-IV,

Office of the Commissioner of Customs (Chennai -IV),

Custom House, No.60, Rajaji salai,

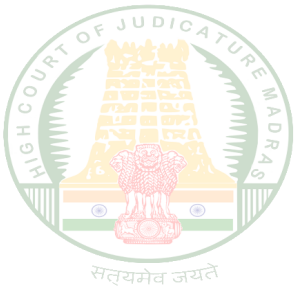
Chennai- 600 001.

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, in the Impugned Public Notice No.17/2021 F.No.S.Misc.No.134/2019-UCC (Part -I) Dated 12.02.2021 issued by the 1st Respondent to the members of the Association and quash the same as it is contrary to Section 3, Section 7 (1) and Section 9 (1) of CGST Act, 2017 and Sections 157, 158 and Section 159 of the Customs Act, 1962 and wholly without jurisdiction and authority or to issue any other appropriate Writ.

For Petitioner(s): Mrs.Radhika Chandra Sekhar

For Respondent(s): Mr.K.Mohanamurali
Senior Panel Counsel
for R1 to R3



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WP No. 149 of 2022

M/s.German Express Shipping Agency (India) Pvt. Ltd
Container Freight Station,
Kondakarai, Vallur Village,
SR Palayam Post, BPO, NCTPS SPO,
Chennai- 600 120
Rep by its Power of Attorney
Vice President and Head - CFS,
Mr.K.P. Mohan Kumar

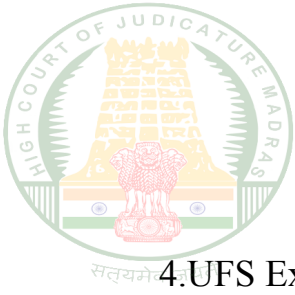
Petitioner(s)

Vs

1. The Joint Commissioner of Customs
Office of the Commissioner of Customs, (Chennai - IV)
Custom House,
No.60, Rajaji Salai,
Chennai- 600 001.

2.Joint Commissioner of Customs
Uncleared Cargo Cell,
Office of the Commissioner of Customs, (Chennai- IV)
Custom House,
No.60, Rajaji Salai,
Chennai- 600 001.

3.Deputy Commissioner of Customs
Office of the Commissioner of Customs, (Chennai- IV)
Custom House, No.60, Rajaji Salai,
Chennai- 600 001.



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WP Nos.11222, 149, 152 of 2022

4.UFS Exports
No.101, Vellala Street,
Puraswaikkam, Chennai- 600 084.

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records leading to impugned Public Notice No.17/2021 under F.No.S.Misc. No. 134 / 2019- UCC (Part- 1) dated 12.02.2021 issued by the 1st Respondent and quash the same as being contrary to the section 157, 158 and 159 of the customs act, 1962 and Section 3 of the CGST Act, and such further or other orders as this Court.

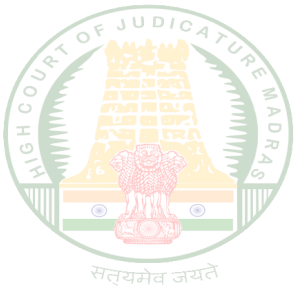
For Petitioner(s): Mr.P.Giridharan

For Respondent(s): Mr.K.Mohanamurali
Senior Panel Counsel
for R1 to R3
Mr.R.Ragavendran for R4

WP No. 152 of 2022

M/s.German Express Shipping Agency (India) Pvt. Ltd
Container Freight Station, Kondakarai,Vallur Village,
SR Palayam Post, BPO, NCTPS SPO, Chennai- 600 120
Rep by its Power of Attorney
Vice President and Head - CFS,
Mr.K.P. Mohan Kumar

Petitioner(s)



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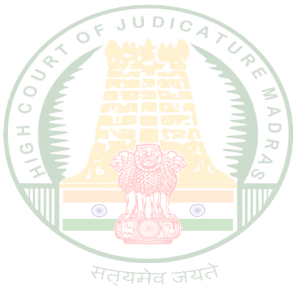
Vs

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1. The Joint Commissioner of Customs
Office of the Commissioner of Customs (Chennai - IV),
Custom House, No.60, Rajaji salai,
Chennai- 600 001.
- 2.The Joint Commissioner of Customs
Uncleared Cargo Cell,
Office of the Commissioner of Customs (Chennai -IV),
Custom House, No.60, Rajaji salai, Chennai- 600 001.
- 3.The Deputy Commissioner of Customs
Office of the Commissioner of Customs (Chennai -IV),
Custom House, No.60, Rajaji salai,
Chennai- 600 001.
- 4.UFS Exports
No.101, Vellala Street, Puraswaikkam,
Chennai- 600 084.

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records leading to Letter issued by the 2nd respondent dated 22.12.2021 in F.No. Lot. No. 18 / 2020 - German Express CFS- UCC and quash the same as being contrary to the section 48 and 150 (2) (C) of the customs Act, 1962 and Section 3 of the CGST Act, and such further or other orders as this Court.



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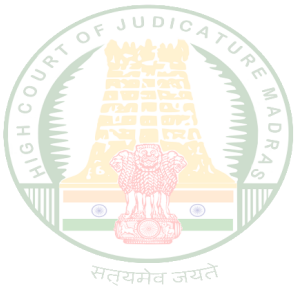
For Petitioner(s): Mr.P.Giridharan

For Respondent(s): Mr.K.Mohanamurali
Senior Panel Counsel
for R1 to R3
Mr.R.Ragavendran for R4

ORDER

W.P.No.11222 of 2022 has been filed by an Association and W.P.No.149 of 2022 has been filed by a Company challenging the impugned Public Notice issued by the 1st respondent dated 12.02.2021 and to quash the same on the ground that it runs contrary to the provisions of the Customs Act and it has been issued wholly without jurisdiction or authority.

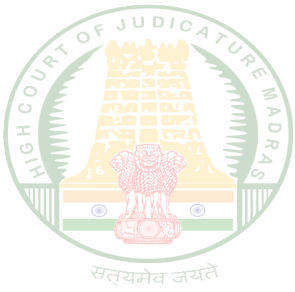
2.W.P.No.152 of 2022 has been filed by the Company challenging the impugned letter issued by the 2nd respondent dated 22.12.2021, as a consequence of the Public Notice issued by the 1st respondent dated 12.02.2021.



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3.The case of the petitioners is that they are Container Freight Stations governed by the handling of cargo in Customs Area Regulations, 2009, which is a guideline issued by the Customs Department through Notification No.26/2009.

4.Section 48 of the Customs Act, 1962 (for the sake of brevity, hereinafter referred to as 'the Act') provides the procedure in case where import cargo is not cleared, warehoused or transhipped within 30 days after unloading. If the consignee fails to clear the cargo within the time frame, a notice has to be issued to the consignee. The person in custody of the goods, with the permission of the appropriate Officer is entitled to sell the goods in their custody. In other words, Container Freight Station is entitled to auction any uncleared or unclaimed cargo after issuance of notice if goods imported for home consumption are not cleared within 30 days from the date of import.

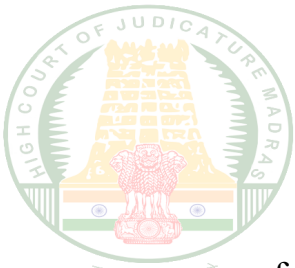


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5. Section 150(2) provides for the sequence of utilisation of proceeds and sub clause(c) refers to payment of duty if any on the goods sold. The duty referred to is the customs duty payable. Rule 2 of the Uncleared Goods (Bill of Entry) Regulations, 1972 also deals with a Bill of Entry to be submitted in the form appended to the Regulations for the goods to be sold in auction.

6. Rule 3 of the said Regulations provides that the Bill of Entry prepared under Regulation 2 shall be deemed to be a bill of entry under Section 46(1) of the Act and presented to the proper Officer.

7. By undertaking the process of selling the goods by way of auction, the Contained Freight Stations (CFS) will have to pay all the statutory dues including Integrated Goods and Services Tax (IGST) and basic customs duty. The payment of IGST is on the transaction of import of goods. However, when the goods are sold through the auction, it is the supply of goods to the



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successful bidder, falling under Section 7(1) of the CGST Act and it is liable to GST in terms of Section 9(1) of the CGST Act read with Section 15 which deals with the value and the GST at applicable rates is payable on the sale price.

8.The 1st respondent issued the Public Notice dated 12.02.2021, regarding the applicability of GST on the clearance of uncleared/unclaimed cargo. The impugned notice states as follows:

2. In respect of the clearance of Uncleared/Unclaimed cargo under section 48 of the Customs of Act, 1962, after identifying the H1 bidder, the BE is filed by the custodian in the name of the bidder and the same is then assessed by the proper officer as per Regulation 3 of Uncleared Goods (Bill of Entry) Regulation. 1972 and the assessed customs duty along with IGST is being paid by the custodian in the name of the bidder for the subject cargo. On payment of applicable duty, out of charge and delivery order will be issued by the Customs.

3. As per Section 150(2)(C) of the Act, the sale proceeds for



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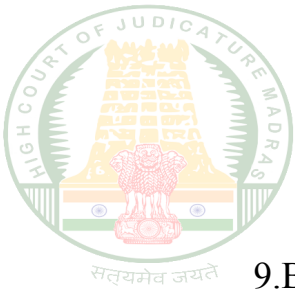
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an UCC cargo is Cum-Duty value of the goods as the Duty Portion for the cargo is appropriated from the sale proceeds of an UCC Cargo. The same is reiterated in Para No.3 (viii) of the CBIC circular No.50/2005-cus., dated 01.12.2005. Hence, the bid amount for an UCC cargo is clearly cum-duty value, inclusive of customs duty and IGST.

4. Complaints are received from the trade that GST on the bid value is being demanded from the H1 bidder by the Custodians and the Custodians are not honouring the delivery order issued by this office.

5. In this regard. it is reiterated that no amount over and above the bid value in whatsoever form is demandable from the H1 bidder. The custodian is in the receipt of bid amount from the H1 bidder after appropriation of amount towards duty/IGST. If at all any further additional tax such as SGST etc is payable, it can be paid from the balance bid amount held by the Custodian. For the appropriation of bid amount, the Custodians are hereby directed to adhere to the provisions in Section 150 of the Customs Act, 1962.



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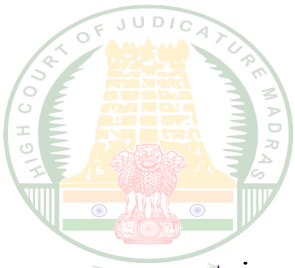
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9. Based on the above Public Notice, the office of the Commissioner of Customs informed the CFS not to charge GST on the auctioned cargo, since it will lead to double taxation.

10. In the case of the petitioner in W.P.No.149 of 2022 the consignment imported was Austrian White Wood and the importer did not clear the goods. Ultimately, a notice dated 09.07.2020 was issued by the petitioner to the importer under Section 48 of the Act informing that if no reply is received, the petitioner will proceed to clear the cargo by bringing it for auction sale. No reply was received from the importer and hence, the petitioner started the process of getting the valuation report for bringing the cargo for auction. At that point of time, the impugned notice dated 12.02.2021, came to be issued by the 1st respondent.

11. The 3rd respondent issued a letter dated 08.06.2021, fixing the reserve price for cargo. The auction was conducted on 04.08.2021 and nearly 25



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containers were sold to the 4th respondent who was the successful bidder. The bid value was also accepted by the 3rd respondent.

12.A letter came to be issued on 22.12.2021, stating that since the GST was collected, the deviance/non-compliance will be reported to the administrative jurisdictional Commissioner of Customs for further action. It is under these circumstances, the Company came to file the above writ petitions. The Association has also questioned the impugned Public Notice dated 12.02.2021, issued by the 1st respondent.

13.The respondent has filed a counter and has taken a stand that the demand for payment of GST on the auctioned goods amounts to buying his own goods which is illegal. It will also tantamount to paying the tax twice for the same goods. The Public Notice dated 12.02.2021 was issued by the 1st respondent in accordance with Para 6 of the Board's Circular dated 01.12.2005 and hence, the said Public Notice is in accordance with law and they will have a



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binding effect under the 2009 Regulations. The bidding should be on cum-duty price and duty should be back calculated from the sale price. Therefore, since the bid amount is inclusive of IGST which is one component of duty assessed in the Bill of Entry, imposition of GST once again on the bid amount amounts to double taxation of GST on the same goods. The unclaimed/uncleared cargo is not sold by the custodian as such but only an auction is conducted and the title of the goods is transferred from the original importer to the highest bidder. No sale takes place between the CFS and highest bidder and the sale proceeds of the auction are disbursed as per Section 150 of the Act. Since complaints were received for collection of GST from the auction purchaser, the Public Notice was issued by the 1st respondent clarifying the existing legal provision. The respondents have sought for the dismissal of these writ petitions.

14.The learned counsel appearing on behalf of the petitioners submitted that the 1st and 2nd respondents directed the petitioners not to collect GST on the goods sold through auction under Section 48 of the Act and the same is not



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sustainable in law, since they have no jurisdiction to give directions on whether GST is to be levied or not, once the customs duty has been duly paid. It was further submitted that the custodian of the cargo is rendering a service by auctioning the cargo to the auction purchaser who is the ultimate beneficiary of the cargo. Hence, such custodian referred to under Sections 45 and 141(2) of the Customs Act clearly qualify as a service being rendered by the petitioners, for which the petitioners are liable to collect GST. It was further submitted that the goods that are sold through an auction is supply of goods and GST will be applicable on the supply of goods. The goods lose their character of imported goods and the auction purchaser is not an importer. In view of the same, the auction sale is assessable under the CGST Act.

15.Per contra, the learned Senior Panel Counsel appearing for the respondents apart from reiterating the stand taken in the counter affidavit, submitted that the bid amount is inclusive of IGST and IGST is collected as one of the component of the duty assessed in the manual bill of entry filed under the



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Uncleared Goods (Bill of Entry) Regulations, 1972. Hence, the imposition of GST once again on the bid amount will amount to double taxation of GST on the same goods. This was merely clarified through the Public Notice and that the same does not suffers from any illegality.

16.This Court has carefully considered the submissions made on either side and also the materials available on record.

17.The main issue that is involved in these writ petitions is as to whether the impugned Public Notice issued by the 1st respondent, dated 12.02.2021, suffers from lack of jurisdiction and hence, is liable to be interfered by this Court.

18.The Public Notice issued by the 1st respondent refers to Para 3(viii) of the Circular No.50/2005. In terms of the said Para, the bidding should be on the cum-duty price and the duty shall be back calculated from the sale price. The duty that has been referred therein is the customs duty on import. The very same



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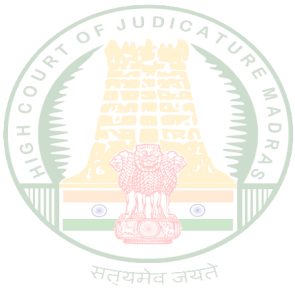
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Para also states that local taxes like Sales Tax etc., will however have to be charged/recovered extra from the buyer. In view of the same, the Public Notice of the 1st respondent runs contrary to the Circular. When cargo is auctioned under Section 48 of the Act, the manual Bill of Entry is filed by CFS who is the custodian. At that juncture, customs duty and IGST is paid to the Department for the goods. Once the bill of entry is filed and customs duty is discharged, the Customs Department will not have any further jurisdiction in the matter.

19.The IGST is paid on the import and it is a levy under Section 3(7) of the Customs Tariff Act read with Section 5 of the IGST Act. Whereas, the GST on the sale through auction is a levy under Section 9 of the CGST Act and these two transactions are separate and independent.

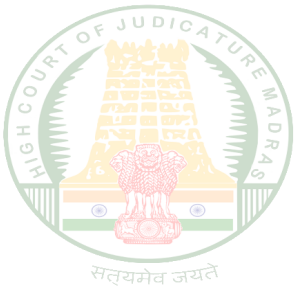
20.When goods are sold through auction by the CFS/custodian, they become the supplier of the goods and the successful bidder becomes the recipient of the goods and therefore, the transaction will fall under Section 7(1) of the CGST.



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21. When the goods are sold in auction, the title in the goods gets transferred to the auction purchaser and hence, the goods will not retain the character as imported goods in the hands of the auction purchaser. The auction purchaser therefore cannot be treated as an importer.

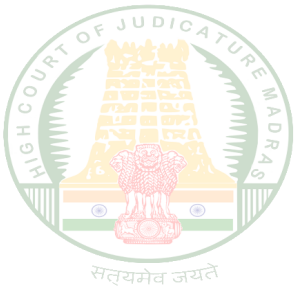
22. There is yet another angle through which the part played by the CFS can be viewed. The CFS as a customs cargo service provider under the Regulations is responsible for the receipt, storage, delivery etc., of the imported goods and export goods and includes the custodian as referred to Section 45 and Section 141(2) of the Customs Act and this also qualifies as a service being rendered by the CFS for which the petitioners are liable to collect GST. Admittedly, this service has not been exempted under the GST and therefore, the service tax ought to be paid by the petitioners. If that is not done, the custodian has to pay the entire service tax out of their pocket. Whereas, for the GST paid by the auction purchaser, they can avail the input tax credit.



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23.It is not known as to where the 1st respondent gets the power and jurisdiction to issue a Public Notice directing the custodians not to collect GST. This direction given by the 1st respondent certainly does not fall within the domain of the customs authorities.

24.Under the Scheme of the Act, the only right that is available for the authorities to make Regulations is provided under Section 152 of the Act read with Section 157. A Public Notice can be issued by the Department to the importers, exporters etc., clarifying about the changes to the customs Procedures, Regulations or Policies. Such Rules and Regulations is confined to the Customs Act alone and the same cannot be used with respect to any other enactment. In the case in hand, the Public Notice that was issued by the 1st respondent seeks to prevent the custodian to collect GST and remit it to ex-chequer.



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25.A combined reading of Sections 3, 7(1), 9(1) and 15 of the CGST Act, 2017, clearly shows that the 1st respondent is not the competent authority to issue the Public Notice touching upon the collection of GST. In fact, in cases where the cargo is auctioned by the Customs Department, GST is payable by the highest bidder and the Cargo is handed over to the highest bidder only after proof of payment of GST on the bid price by the bidder. If that is so, it is not known as to why the same GST should not be insisted for payment when the auction is conducted by the CFS.

26.In the light of the above discussion, this Court holds that the impugned Public Notice issued by the 1st respondent dated 12.02.2021, is clearly contrary to Sections 3, 7(1) and 9(1) of the CGST Act, 2017 and Sections 157, 158 and 159 of the Customs Act, 1962 and it is wholly without jurisdiction or authority and hence, this Court has no hesitation to quash the same and accordingly, the same is hereby quashed. In view of the same, the consequential notice issued by



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the 2nd respondent and which is the subject matter of challenge in W.P.No.152 of
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2022 is also hereby quashed.

27.In the result, all these writ petitions are allowed. No Costs.

Consequently, connected miscellaneous petitions are closed.

23-10-2025

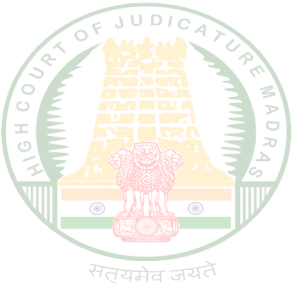
Index:Yes

Speaking order

Internet:Yes

Neutral Citation:Yes

ssr

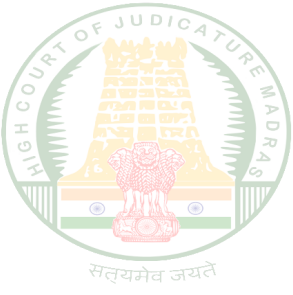


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N.ANAND VENKATESH J.

SSR

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23-10-2025