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W.P. Nos.56-63/21

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
22.10.2024	11.11.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.56& 63 OF 2021

M/s. Madura Coats Pvt. Ltd.
Rep. By its Senior Manager – Legal
Mr. M.Ramasubramanian
Registered Office at 7th Floor
Jupiter – Block 2A, Prestige Technology Park
Marathahalli-Sarjapur Ring Road
Bangalore 560 103.

.. Petitioner

- Vs -

1. Union of India
Rep. By its Deputy Director (ER)
B-Block, Rajiv Gandhi Bhavan
Safdarjung Airport, New Delhi 110 034.

2. AAI Cargo Logistics & Allied
Services Company Ltd. (AAICLAS)
Rep. By its General Manager (Cargo)
Airports Authority of India
Chennai Airport, Chennai 600 027.

3. Airports Authority of India (AAI)
Rep., by its Chairman



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Rajiv Gandhi Bhawan, Safdarjung Airport
New Delhi 110 003.

.. Respondents

W.P. No.56 of 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent culminating in the three impugned invoices-cum-receipts bearing Nos.TN33MAA20B109281 B202005190406 dated 18.05.2020 for Rs.32,31,333/-, TN33MAA20B1092731 B202005180398 dated 18.5.2020 for Rs.13,59,523/- and TN33MAA20B109347 B202005180472 dated 18.5.2020 for Rs.6,70,435/- totalling a sum of Rs.52,61,291/- for towards demurrage charges, demanded and collected from the petitioner for the COVID 19 lockdown period, i.e., from 22.03.2020 till 17.05.2020, quash the same as being arbitrary, illegal, unjust, etc., and consequently direct the 2nd respondent to forthwith refund the said sum together with interest thereon to the petitioner.

W.P. No.63 of 2021 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent culminating in its impugned order dated 1.4.2020 insofar as it directs waiver of only 50% of the demurrage charges by the airport



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operator/cargo terminal operator and provided that the cargo, goods, etc., are cleared and removed from the Airport by 23.59 hours on 16.04.2020 quash the same and consequently direct the 1st and 2nd respondents to grant full waiver of the demurrage charges for the Covid-19 lockdown period, i.e., from 22.03.2020 till 17.05.2020, since consignees like the petitioner were unable to clear and remove their cargo from the airport due to the covid-19 lockdown measures and strict restrictions/prohibitions imposed by the Governments.

For Petitioners : Mr. Arun Anbumani

For Respondents : Mr. AR.L.Sundaresan, ASG
Assisted by Ms. A.Anuradha,
CGSC for R-1
Ms. R.S.Poornima for RR-2 & 3

ORDER

While W.P. No.56/2021 has been filed assailing the impugned invoices-cum-receipts in and by which the petitioner was levied with demurrage charges for the storage of the goods beyond the permitted period, W.P. No.63/2021 has been filed assailing that part of the circular of the 1st respondent dated 1.4.2020 in and by which waiver of 50% of the demurrage charges alone was granted till 16.4.2020.



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2. It is the case of the petitioner that it is engaged in the business of textile industry by manufacture of yarns and threads of cotton and synthetics and exports the same. In the course of its business, the petitioner also imports some raw materials like 'Polyester Filament Yarn' through Airports for which duties charged by the Airport are paid by the petitioner and the cargoes received are removed within the permitted timelines. The 2nd respondent handles the aviation cargo in India and is a fully owned subsidiary of the 3rd respondent.

3. It is the further case of the petitioner that in December, 2019, there was outbreak of COVID-19 pandemic, which resulted in Government of India imposing Janata Curfew throughout the country on 22.3.2020. Thereafter, in terms of the provisions of the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 and the Regulations made thereto, the Government of Tamil Nadu imposed stringent restrictions from 24.3.2020 to 1.4.2020. Thereafter, in view of the national lockdown imposed by the Government of India, vide G.O. Ms. No.172, dated 25.3.2020, the Government of Tamil Nadu issued notification for lockdown initially for a period from 25.3.2020 to



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14.4.2020, which was thereafter extended from time to time by the issuance of Government Orders from time to time. In all, the lockdown was extended till 17.5.2020 by issuance of the above Government Orders and only on 18.5.2020, the lockdown was partially lifted.

4. It is the further case of the petitioner during the aforesaid lockdown, which includes the Chennai Airport the petitioner had imported 'Polyester Filament Yarn' from abroad, which arrived at the Airport by end March and April, 2020. Since the cargoes arrived at the airport during the lockdown period imposed by the Central and State Governments, the petitioner could not remove the same due to stoppage of usage of manpower for loading and unloading. The lockdown extended till 17.5.2020 though from 15.5.2020, partial permission was granted for opening the units with 50% workers and transportation was also permitted to carry non-essential goods. However, the Districts remained closed and only from 18.5.2020, the transportation became available and, therefore, the petitioner could not take any steps till 17.5.2020.



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5. It is the further case of the petitioner that when the petitioner's representatives approached the 2nd respondent for removing the goods from the Airport storage, they were informed that demurrage charges will have to be paid as per the prevailing rates till the date of removal of the cargoes. The petitioner was surprised to learn that several lakhs towards demurrage charges were to be paid inspite of the fact that 50% waiver of such charges was given as per the order of the 1st respondent dated 1.4.2020. Inspite of the fact that the petitioner approached the 2nd respondent and explained the ground realities and also brought to the notice of the 2nd respondent the order of the 1st respondent dated 1.4.2020 giving waiver of 50% demurrage charges for the goods till 16.4.2020, however the said benefit was not extended to the petitioner. Therefore, the petitioner sent email to the 1st respondent and copy of which was also forwarded to the 2nd respondent, but they did not evoke any response. Without considering all the aforesaid aspects, the 2nd respondent proceeded to raise the impugned invoices and demanded payment of the amount, which the petitioner paid under protest without prejudice to their rights to contest the demand and levy of the 2nd respondent.



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6. It is the further case of the petitioner that after paying the demurrage charges under protest and lifting the goods, the petitioner approached the 2nd respondent for complete waiver of the charges and consequent refund, the same did not evoke any response, but they took shelter under the order dated 1.4.2020 of the 1st respondent and therefore, left with no other alternative, the present petition has been filed challenging the aforesaid impugned notices and levy.

7. Learned counsel appearing for the petitioner submitted that when the whole country was under lockdown and no movement was permitted with complete restriction on passenger movement and also transportation and, therefore, the non-lifting of the arrived cargo by the petitioner cannot be put against the petitioner.

8. It is the further submission of the learned counsel that when the movement was severely restricted by imposition of prohibitory orders under Section 144 Cr.P.C., the said non-lifting not being on account of slackness of the petitioner, but due to an unprecedented and extraordinary situation beyond the



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control of the petitioner, the petitioner ought to have been granted complete waiver of the demurrage charges by the 2nd respondent.

9. It is the further submission of the learned counsel that till 17.5.2020, there was restriction on transportation and only on and from 18.5.2020, transportation of non-essential items was permitted. The said fact ought to have been taken into consideration by the 2nd respondent before imposing demurrage charges on the petitioner.

10. It is the further submission of the learned counsel that when other similarly placed authorities like the Director General of Shipping in respect of seaports and sea cargoes have given advisories in favour of the consignees, similar benefit ought to have been extended by the respondents to the consignees.

11. In the alternative, it is the submission of the learned counsel that even otherwise, the circular dated 1.4.2020 of the 1st respondent clearly provides for waiver of 50% demurrage charges for non-removal of shipments till 16.4.2020



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and only beyond that period, the demurrage charges should be levied in full.

However, without following the said circular, which was brought to the notice of the 2nd respondent, the demurrage charges have been levied and, therefore, this Court may issue appropriate directions to the 2nd respondents relating to refund of the demurrage charges which have been collected from the petitioner.

12. Per contra, learned counsel appearing for respondents 2 and 3, placing reliance on the counter affidavit, submitted that though national lockdown was imposed, however, there was movement of cargoes and space being a constraint, the cargoes, which were imported were permitted to be removed on special authorisation from the respective Governments and may of the consignees have removed their cargoes. However, the petitioner had not taken any steps to have the cargoes removed and kept silent and only after lifting of the lockdown partially by permitting movement of transportation, the petitioner has approached the 2nd respondent. Therefore, the petitioner having not been diligent and followed up with the moving of the cargoes, the 2nd respondent cannot be mulcted with responsibility to permit waiver of the entire demurrage charges from the petitioner. The inaction on the part of the



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petitioner to seek for removal of the consignment even during the pandemic period, much less after 14.4.2020 cannot be put against the 2nd respondent for demanding demurrage charges and, therefore, the writ petition seeking refund of the demurrage charges deserves to be dismissed.

13. Learned Addl. Solicitor General appearing for the 1st respondent submitted that the circular dated 1.4.2020 permitted waiver of 50% demurrage charges to such of those cases, as found prescribed in the said circular, however, the said circular was not given effect to in respect of the petitioner, as the petitioner failed to utilise the opportunity by submitting the application within the time prescribed. It is the further submission of the learned Addl. Solicitor General that the Guidelines annexed to Order No.40-3/2020-D dated 24.3.2020 issued by the Ministry of Home Affairs read together with the addendum to the guidelines bearing No.40-3/2020-DM-I(A) dated 25.3.2020 clearly specifies that warehousing services and customs clearance at port/airport/land borders were exempted activities from from lockdown and further the operation of railways, airports, seaports for cargo movement ad their related operational organisations as well as inter-State movement of goods/cargo for inland and export were



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exempted activities from lockdown. When the transportation of all goods were exempted and permission was given for clearance of the goods, many importers submitted application within the time and availed the facility of extended time till 16.4.2020 by paying only 50% demurrage charges. Since the petitioner did not avail the opportunity and filed application beyond the prescribed period, the petitioner was not granted the said benefit and, therefore, the petitioner cannot now come and claim that the 50% exemption granted is to be struck down and he should be given full exemption. Therefore, the claim of the petitioner for exemption in full as also its prayer seeking setting aside the circular dated 1.4.2020 is wholly unsustainable.

14. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

15. The fact that national lockdown was imposed by the Central Government from 25.3.2020, which was extended from time to time by the Central Government till 17.5.2020, which was followed suit by the State



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Government by issuing the requisite Government Orders is not disputed by the parties. During the aforesaid period, but for the movement of essential services and essential commodities, there was a complete lockdown imposed by the Central Government, which was followed by the State Government. However, it is to be noted that the said lockdown was also eased in situations when specific requests were made by persons with regard to movement of goods.

16. Lockdown was partially lifted on 17.5.2020 permitting movement of non-essential commodities from 18.5.2020, whereinafter alone, the petitioner had approached the 2nd respondent for removal and transportation of the goods, which were imported by the petitioner. It is not the case of the petitioner that it was not aware of the circular dated 1.4.2020 in and by which beyond the free period of storage, the period for removal of the goods was extended till 16.4.2020 on payment of demurrage charges at 50%, meaning thereby, that 50% of the demurrage charges stood waived till 16.4.2020 enabling the consignees to have the goods imported removed. In this regard, useful reference can be had to the relevant portion of the circular dated 1.4.2020 of the 1st respondent, which is extracted hereunder :-



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Therefore, the Government has been working to provide smooth functioning of the airports and airlines, and all their allied services and associated organisations across the country serving international and domestic air cargo movements; and

.....

Observing that all the imported air cargo which had landed on or after 20.03.2020 at airports in India could not be cleared and removed from the airports thereby creating congestion at some of them for no fault of the air cargo community, and caused impediments to the swift clearance and removal from such congested airports of imported essential commodities and relief materials required for handling Covid-19 related issues across the country.

.....

Further therefore, for all Customs Airports, the following provisions for the treatment of demurrage charges applicable on import air cargo are made herewith :

- A. These provisions shall apply on such imported air cargo :*
- (a) which had landed on or after 20.03.2020, but could not be cleared and removed from all the customs airports by 23.59 hours on the date of this order, and for which Bill of Entries were filed with Customs and the imported cargo, goods, etc., are lying with or without Customs Out-of-Charge (OOC) in the Custodian Warehouses, and*



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- (b) *for any delay in clearance and removal from the airport caused by reasons attributable to the aforesaid lockdown measures for the period up to and until 14 April 2020.*
- B. *Demurrage charges on such imports shall be waived at 50% by the airport operator/cargo terminal operator, provided that the cargo, goods, etc., are cleared and removed from the airport by 23.59 hours on 16 April, 2020;*
- C. *In case such imported cargo is not cleared and removed within these timelines, normal demurrage charges as applicable would be payable.*
-”

(Emphasis Supplied)

17. There is no quarrel with the fact that there was national lockdown and only essential commodities were permitted transportation. However, it is not the case of the petitioners that upon request made, the Governments did not permit movement of other commodities other than essential commodities. It is also not the case of the petitioners that they made any request for transportation to the Government, which was rejected and, therefore, they could not move the imported cargo.



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18. It is not to be lost sight of that space is a constraint in airports and only for that purpose, specific timelines are fixed for moving the cargo, once the same is received at the airport/seaport. However, in the present case the pandemic situation had interfered with the normal life of the common man, which had resulted in disruption in many services.

19. Keeping in mind the difficulties faced by the consignees, who had imported the goods and which they were unable to move, the 1st respondent had come up with a proposal to extend the time for movement of the imported goods on payment of 50% of demurrage charges till 16.4.2020 after the expiry of the free period, that is allowed for removal of the consigned goods.

20. Further, it should also not be lost sight of that as per the guidelines of the Ministry of Home Affairs dated 25.3.2020, there is a clear specification that warehousing services and custom clearance at port/airport/land borders were exempted activities from the lockdown. Such being the case, the petitioner ought to have been vigilant and ought to have removed the goods so as to get itself outside the rigours of the demurrage charges.



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21. It is not the case of the 2nd respondent that there is any requirement for a consignee to submit any application for seeking the benefit of waiver of 50% of demurrage charges in line with the circular dated 1.4.2020. A perusal of the said circular reveals that on the fulfilment of the conditions that is mandated in the said circular, the waiver of 50% demurrage charges is available to all the consignees across the board. Such being the case, the petitioner, being one of the consignee, who had received the goods, which had landed at the airport during the pandemic period, during which there was lockdown, the petitioner would also be entitled for the said benefit. It is also not the case of the 2nd respondent that the petitioner was not entitled to the said benefit, which is conferred vide the circular dated 1.4.2020. Such being the case, the 2nd respondent ought to have given the said benefit to the petitioner.

22. Though the petitioner, through the present petition as also the various representations, have sought for complete waiver of the demurrage charges, however, in view of the inaction of the petitioner from seeking permission for movement of the consigned goods from the appropriate authority, the petitioner



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cannot hide behind his own fallacy to claim the benefit of complete waiver of demurrage charges. The petitioner, though not entitled for complete waiver of the demurrage charges, would definitely be entitled to the waiver of 50% demurrage charges, as provided for in the circular dated 1.4.2020 of the 1st respondent.

23. In the aforesaid backdrop, this Court has to balance both the petitioner as well as the respondents as shifting the blame and penalising one party alone would not be meeting the ends of justice. Further, the circular dated 1.4.2020 also clearly specifies that the consignees would be entitled to waiver of 50% demurrage charges till 16.4.2020 after the free period available to them. However, it is to be borne in mind that notwithstanding the said circular, the lockdown was in force till 17.5.2020 till which time movement of non-essential goods was banned and, therefore, putting the entire blame on the petitioner would not be reasonable. Though the petitioner ought to have been vigilant and should have sought permission to move the goods from the warehouse, the error on the part of the petitioner cannot be stretched to such a limit that the whole burden would stand shifted to the petitioner. Such being the case, while



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granting the benefit of the said circular dated 1.4.2020 to the petitioner to the extent of waiver of demurrage charges by 50% till 16.4.2020, this Court is of the considered view that this is a fit case, where this Court ought to exercise its inherent and extraordinary power under Article 226 of the Constitution to grant the benefit of waiver of demurrage charges to the extent 50% granted till 16.4.2020 to be extended to the period of lockdown, viz., 17.5.2020.

24. In the aforestated circumstances, giving the benefit of the circular dated 1.4.2020 of the 1st respondent and exercising the extraordinary power vested on this Court under Article 226 of the Constitution, this Court is inclined to dispose of W.P. No.56 of 2021 by directing the 2nd respondent to grant the benefit of 50% waiver of demurrage charges, as provided for under the circular of the 1st respondent dated 1.4.2020 to the petitioner for the entire period of lockdown, viz., till 17.5.2020. Accordingly, the petitioner would be eligible for waiver of 50% of demurrage charges till 17.5.2020, viz., the date on which the total lockdown was relaxed. Accordingly, the 2nd respondent is directed to calculate the demurrage charges in line with the aforesaid direction and refund the balance amount back to the petitioner within a period of four weeks from



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the date of receipt of a copy of this order. In view of the order passed in W.P. No.56/2021, the benefit of complete waiver sought for by the petitioner in W.P. No.63 of 2021 cannot be granted and, accordingly, W.P. No.63 of 2021 is dismissed.

25. In the result, while W.P. No.56 of 2021 is disposed of in the aforesaid terms, W.P. No.63 of 2021 stands dismissed consequent upon the order passed in W.P. No.56 of 2021. There shall be no order as to costs.

11.11.2024

Index : Yes / No

GLN

To

1. The Deputy Director (ER)
Union of India
B-Block, Rajiv Gandhi Bhavan
Safdarjung Airport, New Delhi 110 034.

2. The General Manager (Cargo)
AAI Cargo Logistics & Allied
Services Company Ltd. (AAICLAS)
Airports Authority of India
Chennai Airport, Chennai 600 027.



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3. The Chairman
Airports Authority of India (AAI)
Rajiv Gandhi Bhawan, Safdarjung Airport
New Delhi 110 003.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.56 & 63 OF 2021**

Pronounced on



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W.P. Nos.56-63/21

11.11.2024