

WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF SEPTEMBER 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

WRIT APPEAL NO. 4398/2013 (GM-RES)

C/W

WRIT APPEAL NOS. 4400/2013, 4402/2013,
4403/2013, 4422/2013, 4423/2013, 4424/2013,
4425/2013, 4486/2013, 4487/2013, 4489/2013,
4490/2013, 4495/2013, 4497/2013, 4499/2013,
4518/2013, 4519/2013, 4520/2013 (GM-RES)

IN WA No. 4398/2013:

BETWEEN:

M/S SRI GANESH SHIPPING AGENCY
A REGISTERED PARTNERSHIP FIRM HAVING ITS
OFFICE AT DEREBAIL
MANGALORE-575006
REPRESENTED BY ITS MANAGING PARTNER
SRI. B. NAGARAJ SHETTY

...APPELLANT

(BY SRI. MANU KULKARNI, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING,
NO.1, TRANSPORT BHAVAN,

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

PARLIAMENT STREET,
NEW DELHI, BY ITS SECRETARY.

2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS,
4TH FLOOR, BHANDAR BHAVAN
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400010.

3. THE CHAIRMAN
NEW MANGALORE PORT TRUST,
PANAMBUR,
MANGALORE-575010

...RESPONDENTS

(BY SRI. M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI. ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT. SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED
IN THE WRIT PETITION NO.34867 & 34868/2011 DATED
28/06/2013.

IN WA NO. 4400/2013:

BETWEEN:

SRI CLIFFORD D SOUZA
S/O SRI. ANTONY JOHN D"SOUZA,
AGED ABOUT 73 YEARS
PROPRIETOR,
M/S EXPORT TRADELINK AGENCIES,
HAVING OFFICE AT 3RD FLOOR,
PUNJA BUILDING, LALBAGH,
MANGALORE-03
(SR. CITIZEN BENEFIT NOT CLAIMED)

...APPELLANT

(BY SRI. Y RAJENDRA PRASAD SHETTY.,ADVOCATE)

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING,
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET,
NEW DELHI-110011
BY ITS SECRETARY
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS,
4TH FLOOR, BHANDAR BHAVAN
MUZAWAR PAKHADI ROAD,
MAZGAON,
MUMBAI-400010
3. THE CHAIRMAN
NEW MANGALORE PORT TRUST,
PANAMBUR,
MANGALORE-575010

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER
PASSED IN THE WRIT PETITION 34541/2011 & 34784/2011
DATED 28/6/13.

IN WA NO. 4402/2013:

BETWEEN:

M/S KIN-SHIP SERVICES (INDIA) PVT LTD
A COMPANY REGISTERED
UNDER THE COMPANIES ACT 1956
HAVING ITS OFFICE AT NO. 104
1ST FLOOR, VEE KAY TOWERS

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

KULUR, MANGALORE-575 013.
REPRESENTED BY ITS AUTHORISED SIGNATORY
SRI J SURENDRA

...APPELLANT

(BY SRI. Y RAJENDRA PRASAD SHETTY.,ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING
NO.1, TRANSPORT BHAVAN
PARLIAMENT STREET
NEW DELHI
BY ITS SECRETARY
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN
MUZAWAR PAKHADI ROAD
MAZGAON, MUMBAI-400 010.
3. THE CHAIRMAN
NEW MANGALORE PORT TRUST
PANAMBUR,
MANGALORE-575 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER
PASSED IN THE WRIT PETITION NO.34492/2011(GM-RES)
DATED 28/06/2013.

IN WA NO. 4403/2013:

BETWEEN:

1. SRI ANIL D SOUZA

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

S/O OSWALD D SOUZA
AGED ABOUT 46 YEARS
PROPRIETOR OF PROVIDENCE SHIPPING AGENCY,
HAVING OFFICE AT D.NO.C-23,
CITY GATE,KADRI,
MANGALORE-575 002

...APPELLANT

(BY SRI. Y RAJENDRA PRASAD SHETTY.,ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING,
NO.1,TRANSPORT BHAVAN,PARLIAMENT STREET,
NEW DELHI -110011
BY ITS SECRETARY
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS,
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON,MUMBAI-400010
3. THE CHAIRMAN
NEW MANGALORE PORT TRUST,
PANAMBUR,MANGALORE-575010

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER
PASSED IN THE WRIT PETITION NO.36973-74/2011(GM-RES)
DATED 28/06/2013.

IN WA NO. 4422/2013:

BETWEEN:

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

M/S EVERGREEN SUPPLIERS
REGISTERED PARTNERSHIP FIRM
HAVING ITS OFFICE AT 5TH FLOOR
RAMA BHAVANA COMPLEX,
KODIYALBAIL, MANGALORE-567 503.
REPRESENTED BY ITS PARTNER
SRI. U. K. KHADER

...APPELLANT

(BY SRI. Y. RAJENDRA PRASAD SHETTY., ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET, NEW DELHI-110 011.
BY ITS SECRETARY

2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400 010.

3. THE CHAIRMAN,
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575 010.

...RESPONDENTS

(BY SRI. M. UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI. ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT. SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED
28/06/2013 PASSED BY THE LEARNED SINGLE JUDGE IN
WRIT PETITION NO.26708/2011 IN THE INTEREST OF
JUSTICE AND EQUITY.

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

IN WA NO.4423/2013:

BETWEEN:

M/S WORLDWIDE SHIPPING INC,
A PARTNERSHIP FIRM HAVING ITS OFFICE
AT NO.201, VEEKAY TOWERS, KULUR,
MANGALORE – 575 013.
REPRESENTED BY ITS MANAGING PARTNER
MR.AHMED MOHIUDDIN.

...APPELLANT

(BY SRI.MANU KULKARNI, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET,
NEW DELHI-110 001.
BY ITS SECRETARY.
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400 010.
3. THE CHAIRMAN,
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH
COURT ACT PRAYING TO SET ASIDE THE ORDER DATED
28/06/2013 PASSED BY THE LEARNED SINGLE JUDGE IN
WRIT PETITION NO.41019/2011 IN THE INTEREST OF
JUSTICE AND EQUITY.

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

IN WA NO.4424/2013:

BETWEEN:

M/S ASPINWALL & CO. LTD.,
A COMPANY REGISTERED UNDER THE
COMPANIES ACT, 1956
HAVING ITS OFFICE AT KULSHEKAR,
MANGALORE – 575 005.
REPRESENTED BY ITS AUTHORISED SIGNATORY
SRI.M.SHEKHARA PUJARI.

...APPELLANT

(BY SRI.MANU KULKARNI, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET,
NEW DELHI-110 001.
BY ITS SECRETARY.
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400 010.
3. THE CHAIRMAN,
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH
COURT ACT PRAYING TO SET ASIDE THE ORDER DATED
28/06/2013 PASSED BY THE LEARNED SINGLE JUDGE IN
WRIT PETITION NO.34542/2011 IN THE INTEREST OF
JUSTICE AND EQUITY.

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

IN WA NO. 4425/2013:

BETWEEN:

M/S DIX SHIPPING CO
A REGISTERED PARTNERSHIP FIRM
HAVING ITS OFFICE AT NMC COMPLEX,
BEACH ROAD, PANAMBUR
MANGALORE-575 010.
REPRESENTED BY ITS MANAGING PARTNER
SRI DEVANANDA SHETTY

...APPELLANT

(BY SRI.MANU KULKARNI, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET,
NEW DELHI-110 001.
BY ITS SECRETARY.
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400 010.
3. THE CHAIRMAN,
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED
28/06/2013 PASSED BY THE LEARNED SINGLE JUDGE IN
WRIT PETITION NO.29007/2011 IN THE INTEREST OF

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

JUSTICE AND EQUITY.

IN WA NO. 4486/2013:

BETWEEN:

M/S ALVARES @ THOMAS
A PARTNERSHIP FIRM HAVING ITS
OFFICE AT ALVARES CENTER,
N H 17, NANTHOOR,
MANGALORE-575 005.
REPRESENTED BY ITS MANAGING PARTNER
MS. HELEN ALVARES REIN.

...APPELLANT

(BY SRI. Y.RAJENDRA PRASAD SHETTY.,ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET,
NEW DELHI-110 011
BY ITS SECRETARY.
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS,
4TH FLOOR, BHANDAR BAHVAN,
MUZAWAR PAKHADI ROAD, MAZGAON,
MUMBAI-400 010.
3. THE CHAIRMAN,
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575 010.

...RESPONDENTS

(BY SRI. M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI. ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT. SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED
28/06/2013 PASSED BY THE LEARNED SINGLE JUDGE, IN THE

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

WRIT PETITION 36109/11.

IN WA NO.4487/2013:

BETWEEN:

M/S HASAN HAJEE & COMPANY,
A PARTNERSHIP FIRM,
HAVING ITS OFFICE AT NO.20/8/678,
KHADEEJA COURT, NEAR OLD
MUNICIPAL OFFICE ROAD, BUNDER
MANGALORE – 575 001.
REPRESENTED BY ITS MANAGING PARTNER,
SRI.B.KUNHI AHMED.

...APPELLANT

(BY SRI.MANU KULKARNI, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET,
NEW DELHI-110 001.
BY ITS SECRETARY.
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400 010.
3. THE CHAIRMAN,
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 28/06/2013 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.34491/2011 IN THE INTEREST OF JUSTICE AND EQUITY.

IN WA NO.4489/2013:

BETWEEN:

MR. GERALD SEQUEIRA
S/O ALBERT SEQUEIRA,
AGED ABOUT 66 YEARS,
PROPRIETOR, M/S CARGOLINKS,
HAVING OFFICE AT 1ST FLOOR,
ABCO TRADE CENTRE, KOTTARA CHOWKI,
MANGALORE – 575 006.
(SENIOR CITIZEN BENEFIT NOT CLAIMED)

...APPELLANT

(BY SRI.MANU KULKARNI, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET,
NEW DELHI-110 001.
BY ITS SECRETARY.
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400 010.
3. THE CHAIRMAN,
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 28/06/2013 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.36972/2011 IN THE INTEREST OF JUSTICE AND EQUITY.

IN WA NO.4490/2013:

BETWEEN:

M/S DELTA INFRALOGISTICS (WORLDWIDE) LIMITED
A COMPANY REGISTERED
UNDER THE COMPANIES ACT,1956
HAVING ITS OFFICE AT NO.201,
VEE KAY TOWERS, KULUR,
MANGALORE – 575 013.
REPRESENTED BY ITS MANAGING DIRECTOR
SRI.AHAMED MOHIUDDIN
AGED ABOUT 53 YEARS,

...APPELLANT

(BY SRI.MANU KULKARNI, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET,
NEW DELHI-110 001.
BY ITS SECRETARY.
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400 010.
3. THE CHAIRMAN,
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575 010.

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 28/06/2013 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.34865/2011 IN THE INTEREST OF JUSTICE AND EQUITY.

IN WA NO. 4495/2013:

BETWEEN:

M/S. BHARATH MINES AND MINERALS
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR SILAS NERELLA S/O LATE H S NEERELLA
AGE: 42 YEARS, OCCU: GENERAL MANAGER-PR,
CORPORATE OFFICE, 101, 1ST FLOOR
PRIDE ELITE, NO.10, MUSEUM ROAD,
BANGALORE 560 001.

...APPELLANT

(BY SRI. K.DHIRAJ KUMAR.,ADVOCATE)

AND:

1. THE NEW MANGALORE PORT TRUST
REPRESENTED BY ITS CHAIRMAN
PANAMBUR, MANGALORE 10.
2. THE TRAFFIC MANAGER
NEW MANGALORE PORT TRUST
PANAMBUR, MANGALORE - 10.
3. THE DEPUTY TRAFFIC MANAGER (C)
NEW MANGALORE PORT TRUST
PANAMBUR, MANGALORE - 10.
4. THE TARIFF AUTHORITY FOR MAJOR PORTS

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

REPRESENTED BY IS CHAIRMAN
4TH FLOOR, BHANDAR BHAVAN,
M P ROAD, MAZGAON, MUMBAI 400 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER
PASSED IN THE WRIT PETITION NO.16279 AND
16596/2012(GM-RES) DATED 28/06/2013 IN THE INTEREST
OF JUSTICE.

IN WA NO. 4497/2013:

BETWEEN:

M/S. VEERABHADRAPPA SANGAPPA & CO
REPRESENTED BY ITS AUTHORIZED SIGNATORY
K S NAGARAJ S/O LATE K S VEERABHADRAPPA
AGED ABOUT 58 YEARS,
OCC:MANAGING PARTNER,
R/O VESCO HOUSE, NO.2/138, BELLARY ROAD
SANDUR, BELLARY-583 119.

...APPELLANT

(BY SRI. K.DHIRAJ KUMAR.,ADVOCATE)

AND:

1. THE NEW MANGALORE PORT TRUST
REPRESENTED BY ITS CHAIRMAN
PANAMBUR, MANGALORE-10
2. THE TRAFFIC MANAGER
NEW MANGALORE PORT TRUST
PANAMBUR, MANGALORE-10.
3. THE DEPUTY TRAFFIC MANAGER
NEW MANGALORE PORT TRUST
PANAMBUR, MANGALORE-10.

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

4. THE TARIFF AUTHORITY FOR MAJOR PORTS
REPRESENTED BY ITS CHAIRMAN
4TH FLOOR, BHANDAR BHAVAN,
M P ROAD, MAZGAON, MUMBAI-400 010.

...RESPONDENTS

- (BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER
PASSED IN THE WRIT PETITION NO.39416-39417/2012
DATED 28/06/2013.

IN WA NO. 4499/2013:

BETWEEN:

M/S. K.G.C. ENTERPRISES
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
K.S. VINAYAK S/O LATE K.S. VEERABHADRAPPA,
AGE: 45 YEARS,
OCC: MANAGING PARTNER,
R/O NO. 2/138, BELLARY ROAD,
SANDUR, BELLARY DISTRICT-583 119.

...APPELLANT

- (BY SRI. K.DHIRAJ KUMAR, ADVOCATE)

AND:

1. THE NEW MANGALORE PORT TRUST,
REPRESENTED BY ITS CHAIRMAN,
PANAMBUR, MANGALORE-10.
2. THE TRAFFIC MANAGER,
NEW MANGALORE PORT TRUST, PANAMBUR,
MANGALORE-10.10
3. THE ASSISTANT ESTATE MANAGER,
NEW MANGALORE PORT TRUST, PANAMBUR,

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

MANGALORE-10.10

4. THE TARIFF AUTHORITY FOR MAJOR PORTS,
REPRESENTED BY ITS CHAIRMAN,
4TH FLOOR, BHANDAR BHAVAN, M.P ROAD,
MAZGAON, MUMBAI-400 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER
PASSED IN THE WRIT PETITION NO.39414-39415/2012
DATED 28/06/2013.

IN WA NO. 4518/2013:

BETWEEN:

M/S TERAPANTH FOODS LIMITED
A COMPANY DULY REGISTERED,
UNDER THE COMPANIES ACT,
NOW HAVING ITS OFFICE AT NO.B4/152,
M.J.NAGAR, 1ST CROSS, DAM ROAD,
HOSPET-583 203.
REPRESENTED BY ITS AUTHORISED SIGNATORY,
SRI.P.KISHORKUMAR JAIN.

...APPELLANT

(BY SRI. RAJENDRA.S.,ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPAING,
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET, NEW DELHI-110001,
BY ITS SECRETARY.

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS,
4T FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400010.

3. THE CHAIRMAN
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH
COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED BY
THE LEARNED SINGLE JUDGE IN THE WRIT PETITION
NO.44487/2011(GM-RES) DATED 28/6/2013.

IN WA NO. 4519/2013:

BETWEEN:

M/S SOCIAL LOGISTICS LIMITED
A COMPANY INCORPORATED UNDER
THE INDIAN COMPANIES ACT 1913
HAVING ITS OFFICE AT NO.113/43, 44,
COMMERCE CENTER, KULUR,
MANGALORE 575 103.
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE
SRI ASHOK KUMAR B V

...APPELLANT

(BY SRI. RAJENDRA.S.,ADVOCATE)

AND:

1. UNION OF INDIA ,
MINISTRY OF SHIPPING,
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET,

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

NEW DELHI-110 001.
BY ITS SECRETARY

2. THE CHAIRMAN ,
TARIFF AUTHORITY FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI 400 010.

3. THE CHAIRMAN ,
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE 575 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER
PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE
COURT IN THE WRIT PETITION NO.2747/12 DATED
28/6/2013.

IN WA NO. 4520/2013:

BETWEEN:

SRI. H. G. RANGAN GOUD ,
S/O LATE H.R.GAVIAPPA,
AGED ABOUT 75 YEARS,
NO.31/354, NEHRU CO-OPERATIVE COLONY,
HOSPET-583 203.
(SR. CITIZEN BENEFIT NOT CLAIMED)

...APPELLANT

(BY SRI. RAJENDRA.S.,ADVOCATE)

**WA No. 4398 of 2013
C/W WA No. 4400 of 2013
WA No. 4402 of 2013
AND 10 OTHERS**

AND:

1. UNION OF INDIA
MINISTRY OF SHIPPING,
NO.1, TRANSPORT BHAVAN,
PARLIAMENT STREET, NEW DELHI-110 001,
BY ITS SECRETARY.
2. THE CHAIRMAN
TARIFF AUTHORITY FOR MAJOR PORTS,
4TH FLOOR, BHANDAR BHAVAN,
MUZAWAR PAKHADI ROAD,
MAZGAON, MUMBAI-400 010.
3. THE CHAIRMAN
NEW MANGALORE PORT TRUST,
PANAMBUR, MANGALORE-575 010.

...RESPONDENTS

(BY SRI.M.UNNI KRISHNAN, SENIOR CGC FOR R1 TO R2;
SRI.ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SMT.SAKSHI, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED
28/6/2013 PASSED BY THE LEARNED SINGLE JUDGE OF THIS
HON'BLE COURT; ALLOW THIS WRIT APPEAL CONSEQUENTLY
ALLOWING THE WRIT PETITION NO.17688/2012(GM-RES).

THESE APPEALS HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 19.08.2026 AND COMING ON FOR
PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE
H.SHANTHI BHUSHAN** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

A demand does not become retrospective merely because it is raised retrospectively. The law draws a distinction between the creation of a liability and the quantification of a liability already incurred. Where the statutory scheme, the licence conditions and the undertaking furnished by the licensee contemplate payment of provisional charges pending determination of the final rate, the liability exists throughout the subsistence of the licence. The subsequent demand does not create a fresh obligation for a concluded period. It merely crystallises and recovers a pre-existing contractual and statutory liability upon final determination of the applicable rate.

Since the issues raised in this batch of petitions were interlinked and involved common questions of law, though arising from diverse factual circumstances, the learned

Single Judge heard the matters together and disposed of them by a common judgment and order dated 28.06.2013 in Writ Petition Nos.39414-415/2012 (GM-RES) and other connected matters.

2. For the purpose of disposal of these appeals, Writ Appeal No.4422/2013 is taken up as the lead matter and the facts and circumstances thereof are referred to for the sake of convenience.

3. For the sake of convenience, the parties shall be referred to as per their ranking before the learned Single Judge.

4. The learned Single Judge, upon consideration of the respective pleadings, contentions and material placed on record, proceeded to consider and decide the common legal issues arising in the petitions and disposed of the same by the common judgment and order, which is assailed before us in the present intra-court appeals.

5. The petitioner, M/s. Evergreen Suppliers, is a registered partnership firm carrying on the business of clearing and forwarding, stevedoring, customs house agency, steamer agency, handling, transportation and allied works. The third respondent-New Mangalore Port Trust had allotted an unpaved area measuring 2,000 sq. metres to the petitioner for stacking granite blocks, under allotment letter dated 10.02.2004, for a period of one month from 07.02.2004 to 06.03.2004, subject to the terms and conditions contained therein. Pursuant to the said allotment, the petitioner furnished an undertaking dated 13.02.2004, in the format prescribed by the third respondent, agreeing to abide by the terms and conditions of the allotment letter.

6. It is the case of the petitioner that, in terms of Clause 5.1.1(b) of the Land Policy for Major Ports, a license could be renewed on expiry and each renewal was to be treated as a fresh license. According to the petitioner, since the license was granted for one month, it

used to seek renewal for the succeeding month by submitting a request in advance and paying the license fee in advance. The petitioner contends that acceptance and encashment of the cheque by the third respondent amounted to renewal of the license and, consequently, a fresh license came into existence for every succeeding month.

7. The petitioner further contends that the earlier scale of rates prescribed by the Tariff Authority for Major Ports ('**TAMP**') was valid up to 19.02.2007 and that its validity was subsequently extended from time to time, ultimately up to 30.09.2010. According to the petitioner, during the extended period it continued to pay the license fee at the applicable rates, including the 2% escalation contemplated under Clause 5.3(I)(c) of the Land Policy for Major Ports. It is contended that neither the extension orders nor the conduct of the third respondent reserved any right to recover any difference in license fee subsequently with retrospective effect.

8. The TAMP thereafter passed the order revising the lease rentals, which was published in the Gazette on 23.07.2010. The third respondent subsequently issued a circular dated 31.01.2011 notifying the revised license fee with effect from 20.02.2007. The petitioner contends that the New Mangalore Port Trust Stevedores and Clearing and Forwarding Agents' Association represented against giving retrospective effect to the revised rates, but no response was received. Thereafter, the third respondent issued a demand notice dated 27.05.2011 demanding a sum of Rs.7,92,783/- towards the difference in license fee, together with interest.

9. Aggrieved by the retrospective operation of the revised license fee and the consequential demand, the petitioner approached this Court by filing W.P. No.26708/2011 seeking to quash the impugned notification dated 23.07.2010 and the circular dated 31.01.2011, insofar as the revised license fee was sought to be given effect from 20.02.2007 and also the consequential

demand notice issued by the third respondent. The learned Single Judge, after hearing the parties, dismissed the writ petition. Being aggrieved by the said order dated 28.06.2013, the petitioner has preferred the present writ appeal.

10. The third respondent opposed the writ petition by filing its statement of objections. It contended that the allotment letter itself contained a condition that the rate then being charged was only provisional and that the petitioner was liable to pay the difference amount after the revised rate was approved by TAMP. The third respondent further contended that the petitioner had agreed to the terms and conditions contained in the allotment letter and had also submitted an undertaking to abide by the same.

11. The third respondent disputed the contention that the license continued automatically. It stated that the license was renewed from time to time on the basis of written requests made by the petitioner. It was further contended that, while seeking renewal, the petitioner had

agreed not only to pay the tentative/provisional rental charges as per the existing scale of rates, but also the differential rate whenever the same was revised by TAMP.

12. The third respondent also contended that the proposal for revision of lease rentals had been sent to TAMP on 15.03.2007 and that the revision process remained pending before TAMP. According to the third respondent, the subsequent approval of the revised rates did not amount to a retrospective levy but was the conclusion of the revision process which had commenced earlier. It was also contended that the rates had been fixed for a block period of five years and that the petitioner, having agreed to pay the differential rate, could not dispute the liability subsequently.

13. The third respondent further contended that the petitioner was bound by the terms of the license/allotment letter and was estopped from disputing its liability to pay the differential license fee. It was also submitted that similarly situated persons had paid the enhanced license

fee and that there was no illegality in demanding the differential amount from the petitioner.

14. The learned Single Judge considered the rival contentions with reference to the Land Policy for Major Ports, the allotment letters and the material placed on record. The learned Single Judge noted that the allotment letters stipulated that the land was allotted for a period of one month on payment of provisional license fee and also contained a condition that the revision of the rate had been proposed to TAMP and that the licensee would be liable to pay the difference after the rate was approved by TAMP.

15. On that basis, the learned Single Judge held that what was charged at the initial stage was only a provisional rate and that the rate of rent had not been finally fixed. The learned Single Judge further held that the petitioners, having agreed to the terms and conditions of the allotment letters and having sought renewal of the

licenses on the basis of the existing provisional rates, were bound to pay the differential rate after revision by TAMP.

16. The learned Single Judge also considered Clause 5.3(I) of the Land Policy, particularly the provision that the Schedule of Rates was to be escalated by 2% per annum until it was revised with the approval of the competent authority/TAMP and that the Schedule of Rates was to be revised every five years. The learned Single Judge treated the revision as pertaining to a block period of five years and held that the decision taken by TAMP during the block period could operate for the entire block period.

17. The learned Single Judge further noticed that the revision proceedings had commenced in 2007 and that the TAMP had conducted hearings and considered the submissions of the concerned users before issuing the notification dated 23.07.2010. The learned Single Judge therefore held that the revision was the result of the process undertaken from the commencement of the block

period and that the revised rates were applicable to the block period commencing from 20.02.2007.

18. The learned Single Judge also considered the petitioner's contention based on Clause 3.2.8 of the TAMP Notification dated 28.03.2005, which provides that, in exceptional cases, retrospective modification of licence fee may be made for reasons to be recorded. The learned Single Judge held that the said clause makes it clear that reasons are required to be recorded only where a retrospective modification of the licence fee is effected. In this context, the learned Single Judge placed reliance on the judgment of the Hon'ble Supreme Court in *Assistant Commissioner, Commercial Tax Department v. Shukla and Brothers*, (2010) 4 SCC 785, wherein it was observed that an administrative process is best vindicated by clarity in its exercise and that reason is the very life of law.

19. The learned Single Judge, however, held that no reasons are required where the revised licence fee is charged in the ordinary course. Applying the said principle,

the learned Single Judge observed that the block period commenced on 20.02.2007 and the licence fee was liable to be revised with effect from 20.02.2012. Pending such revision, the Land Policy for Major Ports contemplated recovery of a provisional licence fee with a 2% annual escalation until the Schedule of Rates was approved by the competent authority. Since NMPT had collected the escalated licence fee as a provisional rate in accordance with the Land Policy until approval of the Schedule of Rates, the learned Single Judge concluded that the present case did not involve a retrospective revision of licence fee.

20. The learned Single Judge considered the decision in ***Hindustan Lever Limited v. Board of Trustees, Visakhapatnam***¹, relied upon by the petitioners, but distinguished the same on the ground that, in the present case, according to the learned Single Judge, the allotment letter specifically provided for

¹ AIR 2003 AP 217

payment of provisional license fee and payment of the difference after approval of the revised rates by TAMP.

21. The learned Single Judge also considered **Lala Ram (D) By LRs. & Others v. Union of India & Another²** and held that although collection of enhanced license fee with retrospective effect would ordinarily be impermissible, the position was different where the authority had made it clear at the inception that only provisional license fee was being charged and that the licensee would be liable to pay the revised fee after approval by TAMP.

22. Consequently, the learned Single Judge rejected the challenge to the circular dated 31.01.2011 and also rejected the consequential prayer for quashing the demand notices issued by the New Mangalore Port Trust. The writ petitions were accordingly disposed of.

² 2013 Sar (Civil) 347

23. Aggrieved by the said order, the petitioner has challenged the aforesaid order principally on the ground that the learned Single Judge failed to appreciate Clause 5.1.1(b) of the Land Policy for Major Ports, under which each renewal of the license was to be treated as a fresh license. According to the petitioner, the license was renewed every month upon payment of the license fee in advance and, therefore, each period constituted a concluded contract without any outstanding dues. The petitioner contends that the learned Single Judge erred in treating the retrospective demand as a continuity of payment merely because the question of revision was pending before TAMP.

24. The petitioner contends that Clause 5.3(I)(c) of the Land Policy provided for a 2% escalation until the Schedule of Rates was revised with the approval of the competent authority/TAMP. It is therefore contended that the rates being paid by the petitioner were applicable until the revised rates were actually approved and that the third

respondent had neither reserved nor communicated any right to recover a difference in license fee with retrospective effect.

25. Another ground urged is that the third respondent had accepted the license fee paid by the petitioner without raising any objection regarding the amount and had permitted the petitioner to continue using the allotted land. The petitioner therefore contends that the subsequent demand for the differential amount with retrospective effect was not justified.

26. The petitioner has also challenged the finding that some of the petitioners had paid the difference amount, contending that none of the petitioner's C&F agents had paid the difference amount with retrospective effect. It is further contended that the undertaking relied upon by the learned Single Judge was confined to the period from 07.02.2004 to 06.03.2004 and that there was no undertaking to pay any differential amount for the subsequent period or with retrospective effect.

27. The petitioner has also urged that the demand was raised after a lapse of four years and that this aspect was not considered by the learned Single Judge. It is further contended that the arrangement between the petitioner and the third respondent was on a monthly basis and that the petitioner had collected rent from its respective clients on the basis of the license fee fixed by the third respondent. According to the petitioner, since its role was only that of an agent, it could not subsequently recover the retrospective difference from its clients under the concluded transactions.

28. The petitioner has further contended that each renewed license was a fresh license on a monthly basis and that it had already paid the revised rental rates prospectively. It is also urged that the learned Single Judge failed to appreciate the material documents produced by the petitioner.

29. Lastly, the petitioner has specifically contended that the license issued by the third respondent was not a

provisional license and that there was no provision making the petitioner liable to pay the difference after the rate was approved by TAMP. It is further contended that, for the period from 20.02.2007 to 23.07.2010, there was no provisional clause and, therefore, the petitioner was not liable to pay the difference for the said period. The petitioner has also challenged the observation of the learned Single Judge that there was virtually no retrospective revision, pointing out that Clause 13 of the TAMP order expressly referred to revision from 20.02.2007.

30. Accordingly, the petitioner seeks setting aside of the order dated 28.06.2013 passed in W.P. No.26708/2011.

31. We have heard Sri.Manu Kulkarni, learned counsel for the petitioners, Sri.M.Unni Krishnan, learned Senior Central Government Counsel for respondent Nos.1 and 2, and Sri.Ashok Haranahalli, learned Senior Counsel on behalf of respondent No.3.

32. Having heard the learned counsel for the petitioner and having carefully gone through the pleadings, the documents placed on record, the statement of objections filed by the third respondent and the reasons assigned by the learned Single Judge, the question that arises for our consideration is,

"Whether the contentions urged by the petitioner call for interference with the order dated 28.06.2013 passed in W.P. No.26708/2011?"

33. The grievance of the petitioner is principally with regard to the demand for differential license fees for the period from 20.02.2007. The petitioner contends that the land was allotted on a monthly license basis and that the license was renewed from time to time on payment of the fee demanded by the third respondent. Placing reliance on Clause 5.1.1(b) of the Land Policy for Major Ports, it is contended that every renewal was a fresh license and, therefore, once the fee for that particular period had been paid and accepted, the transaction stood

concluded. On that basis, the petitioner contends that the revised rate could not subsequently be applied to a period which had already come to an end.

34. The stand of the third respondent is that the amount collected from the petitioner was only a provisional license fee and that the petitioner was liable to pay the difference once the revised rate was approved by TAMP. The third respondent has relied upon the terms of the allotment letters as well as the subsequent correspondence and renewals in support of its contention. The learned Single Judge has considered this aspect of the matter and has placed reliance on the relevant terms of the allotment documents.

35. The allotment letter is of some significance in considering the rival contentions. The rate being collected was stated to be provisional and it was indicated that the difference would be payable after approval of the rate by TAMP. The subsequent demand notice also proceeds on the basis that the land had been allotted on a monthly

rental basis at the prevailing rate, subject to payment of the revised rate approved by TAMP. In these circumstances, the payment of the amount at the prevailing rate cannot, by itself, be treated as a final discharge of the license fee, without considering the condition under which the amount was being collected.

36. The petitioner has sought to meet this condition by contending that the undertaking furnished at the initial stage was confined to the period from 07.02.2004 to 06.03.2004 and that there was no undertaking to pay the difference for the subsequent period in question. It is also the specific grievance of the petitioner that there was no provisional clause applicable to the disputed period from 20.02.2007 to 23.07.2010. The learned Single Judge has considered this contention with reference to the allotment and renewal documents and has taken the view that the petitioner was aware of the provisional nature of the license fee and the consequence of the subsequent revision. On going through the material, we find that the

said conclusion is based on the documents forming part of the record.

37. The contention that every monthly renewal constituted an independent and concluded contract also cannot be considered in isolation. Even if the license was renewed from month to month, the renewal was subject to the terms and conditions governing the license. The mere fact that the petitioner paid the amount demanded for a particular month does not, in itself, render the payment final if the terms under which the license was granted contemplated payment of the difference upon approval of the revised rate.

38. The petitioner has also relied upon the provision relating to escalation of the Schedule of Rates by 2% per annum until the rates were revised with the approval of the competent authority/TAMP. The contention is that the rate so arrived at ought to have continued until the actual revision and that the third respondent had not reserved any right to recover a differential amount retrospectively.

This contention has to be considered along with the specific terms of the allotment. The existence of the escalation provision does not, by itself, render the stipulation regarding the provisional nature of the license fee ineffective.

39. The petitioner has further contended that the third respondent accepted the license fee at the prevailing rate without raising any objection and therefore, could not subsequently demand the difference. Acceptance of the amount, however, has to be viewed in the context of the terms governing the payment. Where the rate itself was subject to revision and the difference was contemplated upon approval by TAMP, the mere acceptance of the amount then payable cannot be regarded as abandonment of the right to recover the difference.

40. The petitioner has also raised the question of delay. It is contended that the demand was raised after a considerable lapse of time and without any bona fide reason. The record, however, shows that the revision of

the rates was under consideration during the intervening period and that the proposal was placed before TAMP. The concerned parties and their associations were also heard in the course of the proceedings. The fact that the final decision took time cannot, in itself, bring the process to an end or render the condition regarding payment of the difference ineffective.

41. Another contention of the petitioner is that it had already collected charges from its clients on the basis of the license fee prevailing at the relevant time and that, being only an agent, it could not now recover the differential amount from them. This may explain the difficulty pleaded by the petitioner, but it does not determine the liability arising under the license granted by the third respondent. The terms governing that license have to be considered on their own footing. The fact that the petitioner may have entered into separate arrangements with its clients cannot alter the conditions subject to which it obtained the license.

42. The petitioner has relied upon the decisions dealing with retrospective enhancement of license fee. The principle that a fresh liability cannot ordinarily be imposed for a concluded period in the absence of authority cannot be disputed. The question in the present case, however, is whether the demand represents a fresh liability or is referable to the terms under which the license was granted and the rate was collected provisionally. On that aspect, the learned Single Judge has considered the distinction between the cases relied upon by the petitioner and the terms applicable to the present license. The existence of the stipulation regarding payment of the difference after approval of the revised rate is a material circumstance which cannot be overlooked.

43. The judgments relied upon by the petitioners, namely, ***Lala Ram (supra), Hindustan Lever Ltd. (supra), UCO Bank v. Cochin Port Trust and Assistant Commissioner, Commercial Tax Department v. Shukla & Bros.***, were considered by the

learned Single Judge in the context of the challenge raised to the retrospective recovery of the enhanced licence fee. The principle emerging from these decisions is that a statutory authority cannot retrospectively impose or recover an enhanced fee unless such retrospective operation has a lawful basis and is supported by the terms governing the licence or the statutory power under which the levy is made. The learned Single Judge, however, distinguished the said decisions on the ground that, in the present case, the allotment and renewal conditions were treated as providing for provisional rates and making the licensees liable to pay the difference upon approval of the revised rates by TAMP. Thus, while the judgments relied upon by the petitioners recognise the general limitation against retrospective enhancement, the learned Single Judge found the present case distinguishable on the basis of the contractual terms governing the licence and the manner in which the licence fee had been stipulated.

44. The Supreme Court in ***Govt. of Maharashtra v. Deokar's Distillery***³, considered whether the State Government was entitled to recover differential supervision charges from liquor licensees pursuant to a retrospective revision of pay scales of the excise staff posted for supervision under Section 58-A of the Bombay Prohibition Act, 1949. The licensees had paid supervision charges in advance under the applicable Rules, but were subsequently issued demand notices seeking the differential amount after the pay scales of the supervisory staff were revised with retrospective effect under the Maharashtra Civil Services (Revised Pay) Rules, 1998.

45. The Supreme Court upheld the demand and held that the liability already existed under Section 58-A, the licence conditions and the undertaking furnished by the licensees at the time of grant and renewal of the licence. Herein, it observed that:

³ (2003) 5 SCC 669

"29. *In the case on hand, the licensees gave an undertaking at the time of obtaining grant or renewal of the licence in the application form itself, both under the Rules of 1966 and the Rules of 1973, that they would abide by all orders made under the Prohibition Act and the Rules. Under Rule 17(43) of the Rules of 1966 and under Rule 6(36) of the Rules of 1973, there are residuary powers of making a demand in special circumstances not foreseen in Rule 17(12) of the Rules of 1966 or Rule 6(12) of the Rules of 1973. It is seen from Rule 17(43) of the Rules of 1966 that the licensee shall abide by all the rules, regulations and orders made from time to time under the Act. A similar provision also exists under Rule 6(36) of the Rules of 1973. The object of Section 58-A of the Prohibition Act and the intention of the legislature, in our opinion, could not be anything other than that the entire cost incurred by the Government on account of pay scales paid to the government employees posted for supervision should be paid by the licensee and that this cost should not be met from the government exchequer.*

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32. *The order of the High Court is bad in law. The High Court, in our view, has erred in not appreciating that the impugned demand notice was also in the nature of demanding balance of the price*

of the exclusive privilege which would become final only on issue of the notification, order under Article 309, the bulk of which has already been recovered in advance, which privilege exclusively vests with the Government considering the effect of provisions especially Section 49 and Section 143(2)(u) of the Prohibition Act. In our opinion, the establishment charges demanded are in the nature of price for parting with the privilege to permit manufacture and sale of liquor, and the privilege exclusively vests with the Government.

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39. *For the aforesaid reasons, we are of the opinion that the impugned demand notice was nothing but final settlement of accounts communicated by Appellant 4, one contracting party to the other contracting party, the respondents, in terms of the contract executed between them, which is executed at the time of grant/renewal of the licence. The contract is executed after the licensee gives the undertaking in the application in Form PLA prescribed under the Rules of 1966 or the licence in Form CLA prescribed under the Rules of 1973, to abide by directions/orders and complies with all other requirements and when the application is accepted by the appellants by grant/renewal of the licence. The respondent licensees, therefore, cannot wriggle out of*

the contractual obligation of payment of the entire cost of supervision regarding which they receive a final account or bill through the impugned demand notice and, therefore, the respondents ought to pay the amount demanded.”

46. The petitioner has also questioned the observation regarding payment of the differential amount by other similarly placed persons. The appeal specifically disputes that such payment was made by the C&F agents concerned. We do not consider it necessary to rest the liability of the petitioner upon that circumstance. The liability has to be determined primarily with reference to the terms of the license and the documents relating to the petitioner.

47. What ultimately emerges from the record is that the petitioner was permitted to use the allotted area on payment of the prevailing license fee, while the rate was under consideration for revision by TAMP. The documents relied upon by the third respondent contemplated payment of the difference after the revised rate was approved. The

petitioner has not been able to demonstrate, on the basis of the documents placed on record, that the payments made at the earlier rate were intended to constitute an unconditional and final settlement of the license fee irrespective of the outcome of the revision proceedings.

48. The contention of the petitioner that the subsequent demand amounts to an entirely new retrospective liability, therefore, cannot be accepted without giving effect to the terms under which the license was granted and renewed. The revision of the rate and the date from which it was made applicable have to be considered in that context. On the material before us, the liability claimed by the third respondent has a direct basis in the terms governing the license and the revision process undertaken by TAMP.

49. In view of the statutory prohibition on export of iron ore and the orders passed by the Hon'ble Supreme Court, the petitioners could not undertake the shipping activities during the relevant period. The order of

prohibition came to be modified by the Hon'ble Supreme Court only on 11.02.2011. Therefore, the petitioners cannot be saddled with the penal licence fee for the period during which they were prevented from lifting and transporting the iron ore on account of the statutory ban and the orders of the Court.

50. The notification dated 04.03.2010 issued by the New Mangalore Port Trust contemplated levy of ten times the normal licence fee on certain petitioners on the ground that they could not lift and transport the iron ore from the Port for a period extending up to seven months. In the facts of the present case, such levy would operate as a substantial burden upon the petitioners for a period during which the shipping activity could not be carried on for reasons beyond their control.

51. This Court, ***in M/s. Sathya Granites v. New Mangalore Port Trust, in W.P.No.6725/2011 (GM-RES), disposed of on 29.05.2012***, had directed levy of four times the normal licence fee in the circumstances

arising therein. Following the said decision and having regard to the statutory and judicial prohibition operating during the relevant period, the levy of penal licence fee imposed upon the petitioners is liable to be interfered with.

52. For the aforesaid reasons, we are of the considered view that the petitioner has failed to make out any ground to interfere with the order dated 28.06.2013 passed by the learned Single Judge in W.P. No.26708/2011. Consequently, all the writ appeals are liable to be dismissed.

53. Accordingly, we pass the following;

ORDER

(i) These appeals are disposed of, with the following observations:

(a) Insofar as the prayer for quashing the Circular dated 31.01.2011 issued by the New Mangalore Trust Port, produced as Annexure-H to the writ petitions, notifying the

revision of licence fee is concerned, we are not inclined to interfere with the order of the learned Single Judge. Consequently, the prayer for quashing the demand notices issued by the New Mangalore Trust Port pursuant to the said Circular is also rejected.

(b) In some of the connected matters, the challenge is confined to the levy of penalty for non-shipment of goods. The learned Single Judge had directed levy of penalty at four times the normal fee by treating the non-shipment of goods for a period of seven months as liable for such levy. Having regard to the circumstances noticed and discussed above, particularly the circumstances which prevented the petitioners from lifting and transporting the goods during the relevant period, we are of the view that the penalty for the said period ought not to be recovered.

(c) Accordingly, the New Mangalore Trust Port is directed to waive off the penalty imposed for non-shipment of goods for the period of seven months.

**WA No. 4398 of 2013
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WA No. 4402 of 2013
AND 10 OTHERS**

(ii) To this limited extent, the order of the learned Single Judge is modified;

(iii) In all other respects, the order of the learned Single Judge stands undisturbed.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(H.SHANTHI BHUSHAN)
JUDGE**

KNM