IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 2491 of 2015 (J)
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PETITIONER(S):
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1. M/S. ROYAL PLUZ COURIER,
   VALLAKKADAVU P.O., THIRUVANANTHAPURAM-695 008
   REPRESENTED BY ITS PROPRIETOR, SHRI. RAJEEV R.

2. M/S. RUBY CARGO
   TC 34/718, SHEELA HOUSE, VALIATHOPE
   VALLAKKADAVU P.O., THIRUVANANTHAPURAM-695 008
   REPRESENTED BY ITS PROPRIETOR, SHRI.ANIL KUMAR RUBY.

   BY ADV. SRI.P.G.JAYASHANKAR

RESPONDENT(S):
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1. UNION OF INDIA
   REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE
   MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI-110 001.

2. COMMISSIONER OF CUSTOMS
   TRIVANDRUM COMMISSIONERATE, ICE BHAVAN
   PRESS CLUB ROAD, THIRUVANANTHAPURAM-695 001.

3. AIRPORT DIRECTOR, AIRPORT AUTHORITY OF INDIA
   TRIVANDRUM INTERNATIONAL AIRPORT
   THIRUVANANTHAPURAM-695 008.

* ADDL.R4 IMPLEADED

4. KERALA STATE INDUSTRIAL ENTERPRISES LTD.
   ST.JOSEPH PRESS BUILDING, COTTON HILL
   THIRUVANANTHAPURAM - 695 015
   REPRESENTED BY ITS GENERAL MANAGER

   ADDL.R4 IMPLEADED AS PER ORDER DATED 19.02.2015 IN IA 2145/15.

   R1-R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EX
   R3 BY ADV. SRI.V.SANTHARAM
   R4 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
   SRI.P.GOPINATH
   SRI.P.BENNY THOMAS
   SRI.K.JOHN MATHAI
   SRI.JOSON MANAVALAN
   SRI.KURYAN THOMAS

   THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS

P1: **COPY OF THE LICENSE BEARINGNO.02/2009 DATED 1-4-09 ISSUED TO THE 1ST PETITIONER**

P2: **COPY OF THE LICENSE BEARINGNO.01/2009 DATED 12-2-09 ISSUED TO THE 1ST PETITIONER**

P3: **COPY OF LETTER NO.VIII/48/03/2009 CUS TECH DATED 31/10/12 ISSUED TO THE 1ST PETITIONER**

P4: **COPY OF LETTER NO.VIII/48/20/2008 CUS TECH DATED 31/10/12 ISSUED TO THE 2ND PETITIONER**

P5: **COPY OF THE ORDER IN ORIGINAL NO.10/12 CUS TECH DATED 22/11/12 ISSUED TO THE 1ST PETITIONER**

P6: **COPY OF THE ORDER IN ORIGINAL NO.4/12 CUS TECH DATED 22/11/12 ISSUED TO THE 2ND PETITIONER**

P7: **COPY OF THE ORDER BEARING NO.05/13/CUS TECH DATED 25/3/13 ISSUED TO THE 1ST PETITIONER**

P8: **COPY OF THE ORDER BEARING NO.02/13 CUS TECH DATED 25/3/13 ISSUED TO THE 2ND PETITIONER**

P9: **COPY OF ORDER ISSUED BY THE CHIEF COMMISSIONER BEARING NO VIII/48/5/13 CCO/KZ)V DATED 2/7/13 ISSUED TO THE 1ST PETITIONER**

P10: **COPY OF THE ORDER ISSUED BY THE CHIEF COMMISSIONER BEARING NO.VIII/48/68/13 CCO(KZ)SV DATED 12/7/13 ISSUED TO THE 2ND PETITIONER**

P11: **COPY OF THE INQUIRY REPORT PREPARD BY THE INQUIIRY COMMITTEE BEARING NO.CTT/CCOA/13 DATED 1/10/13 ISSUED TO THE 1ST PETITIONER**

P12: **COPY OF THE INQUIRY REPORT PREPARED BY THE INQUIRY COMMITTEE BEAIRNG NO.CIT/CCOA/2013 DATED 6/1/14 ISSUED TO THE 2ND PETITIONER**

P13: **COPY OF THE RESTORATION ORDER BEARING NO.VIII/48/03/2009 UCS TECH DATED 31/1/14 ISSUED TO THE 1ST PETITIONER**

P14: **COPY OF THE INTERIM ORDER DATED 5/2/14 IN WPC.30237/13 OF THIS HON'BLE COURT**

P15: **COPY OF THE INTERIM ORDER DATED 5/2/14 IN WPC.27431/13 OF THIS HON'BLE COURT**

P16: **COPY OF THE RESTORATION ORDER BEARING NO.VIII/48/20/2008 CUS TECH DATED 7/2/14 ISSUED TO THE 2ND PETITIONER**

RESPONDENTS' EXHIBITS

R3(A): **COPY OF THE LEASE AGREEMENT DATED 20/2/13 EXECUTED BETWEEN AA1 AND KSIE**

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R3(B): COPY OF THE COMMUNICATION C.NO.VIII/48/65/2012 CUS(T)/11385 DATED 23/9/14

R3(C): COPY OF THE LETTER NO.AAT/LM/COURIER TERMINAL/2014/323 DATED 18/11/14

R3(D): COPY OF THE LETTE NO.AAT/LM/COURIER TERMINAL/2014/345 DATED 17/12/14

R3(E): COPY OF THE LETTER NO.AAT/LM/COURIER TERMINAL/2015356 DATED 13/1/15.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J

WPC No.2491 of 2015

Dated this the 27th day of March, 2015

JUDGMENT

The petitioners, who are the authorised courier agency registered under the provisions of the Courier Import and Export (Clearance) Regulations, 1998 and who are functioning in the Trivandrum International Airport since 2009 pursuant to Exts.P1 and P2 has approached this Court alleging inertia on the part of the respondents in not permitting the petitioners to carry on their trade and seeking the following reliefs:

> i) issue a writ of mandamus or any other appropriate writ, direction or order, commanding the respondents to permit the petitioners to resume courier operations at Thiruvananthapuram International Airport;
>
> ii) issue a writ of mandamus or any other appropriate writ, direction or order commanding the respondents to provide all necessary facilities to the petitioners for the courier operations at Thiruvananthapuram International Airport;
>
> iii) Declare that the inertia exhibited by the respondents in not permitting the petitioners to resume the courier operations is violative of the petitioners' fundamental rights guaranteed under

Arts.14, 19 and 21 and is bad in law and illegal;

iv) direct the respondents to compensate the petitioners for the unreasonable inertia, arbitrary exercise of authority and abuse of office exhibited by them, and for the consequential financial constrains caused to the petitioners.

2. The petitioners are authorised couriers and are in possession of valid courier licenses issued by the 2nd respondent under the Courier Import and Export (Clearance) Regulations, 1998. They were operating in the Thiruvananthapuram International Airport. The licenses of the petitioners were revoked by the 2nd respondent and huge liabilities were sought to be mulcted on the petitioners. The petitioners were able to successfully challenge the revocation orders culminating in Exts.P9 to P16 orders issued by various authorities including this Court as well as the Chief Commissioner of Customs. The licenses were restored as evidenced by Exts.P13 and P16.

3. However, the respondents are not permitting the petitioners to function at Thiruvananthapuram Airport and the petitioners are arbitrarily denied their right to carry on

their trade. No facilities which were earlier enjoyed by the petitioners prior to their revocation are now offered by the respondents thus denying the petitioners' rights guaranteed under the Constitution of India.

4. While the courier operations are going on very smoothly in all the other Airports in India, the respondents seem to turn a Nelson's Eye towards the petitioners; it is alleged. The petitioners further pointed out that they are incurring phenomenal expenses in maintaining their offices and other infrastructural facilities.

5. In the counter affidavit filed by respondents 1 and 2, they have contended as follows:

It is stated that the payment of cost recovery charges is a mandatory requirement to be fulfilled by the third respondent under Handling of Cargo in Customs Area Regulations, 2009 unless specifically exempted by an order of the Ministry of Finance, Government of India. No such order has been issued by the Ministry of Finance, Government of India. On the contrary, the Central Board of Excise and Customs have issued several instructions to the effect that no new custom facilities shall be operationalised without proper sanction of posts on cost recovery basis. True copy of Instruction G.No.450/59/2010-Cus IV dated 6.4.2011 of the Central Board of Excise and Customs, New Delhi is produced as Ext.R4. True copy of Instruction F.No.8/B/52/HRD(HRM) 2012 dated 4.4.2014 of the Directorate General of Human Resource Development, Customs and Central Excise, New Delhi is produced as Ext.R5. True copy of Instruction F.No.8/B/12/HRD(EMC)/2014 dated 23.6.2014 of the Directorate General of Human Resources Development, Customs and Central Excise, New Delhi is produced as Ext.R6. In view of the above instructions, the 2nd respondent has, by letter dated 28.1.2015, informed the 3rd respondent that it is imperative that they should comply with the mandatory conditions prescribed under Regulation 5 of the Handling of Cargo in Customs Area Regulations, 2009 and also pointing out that Regulation 10 of Handling of Cargo in Customs Area Regulations, 2009 enjoins that prior to approval of a custodian/customs cargo service provider the conditions under Regulation 6 shall be fulfilled by the applicant to the satisfaction of the Commissioner of Customs. True copy of letter dated 28.1.2015 of the 2nd respondent addressed to the third respondent is produced as Ext.R7.

6. It is stated that the courier terminals are sensitive and vulnerable points for smuggling and hence, the 2nd respondent have to put in place proper and effective control mechanisms and must ensure that necessary facilities and infrastructure provided by the custodian is fool proof and also ensure that adequate staff is provided on a dedicated basis to the terminal. In this connection, the true copy of Alert Circular No.19/2014 dated 23.12.2014 issued by the Directorate of Revenue Intelligence, New Delhi is produced as Ext.R8. It is stated that the appointment of the custodian for handling of courier cargo is a precondition prescribed by statute for allowing courier operations and hence, the courier operations can be allowed only after the statutory requirement is fulfilled.

7. In the counter affidavit filed by the third respondent he is contending that the Airport Authority of India has no direct role in the issue raised in this writ petition and is not the authority to permit the petitioners to resume the courier operations.

8. It is stated that in the meeting held on 4.12.2014 at the Chamber of Principal Secretary-II, Industrious Department, Government of Kerala, Customs Officials/authorities intimated that application in the prescribed form under Regulation 9(1) of the Handling of Cargo in Customs Area Regulations, 2009 has to be submitted by the Handling of Cargo in customs Area Regulations 2009. Accordingly, Airport Authority of India vide letter No.AAT/LM/Courier Terminal/2014/345 dated 17.12.2014 and No.351 dated 13.1.2015 has submitted application for the restoration of Custodianship for International Courier Cargo Terminal in favour of Airport Authority of India in the Thiruvananthapuram International Airport in the prescribed Form A along with a draft bond to be executed under the Handling of Cargo in Customs Area

Regulations 2009 and for giving permission/approval for the handling/operation of International Courier Cargo by M/s Kerala State Industrial Enterprises (KSIE) Ltd. as the handling agent under the custodianship of Airport Authority of India from the facilities created by M/s KSIE near New International Terminal Building, Thiruvananthapuram Airport. True copy of the above stated communication dated 17.12.2014 and dated 13.1.2015 are produced as Exts.R3(d) and Ext.R3(e) respectively.

9. I have heard Mr.P.G.Jayashankar, the learned counsel for the petitioners, Mr.Thomas Mathew Nellimoottil, the learned standing counsel for respondents 1 and 2 and Mr.V.Santharam, the learned standing counsel for the Airport Authority of India.

10. Mr.Jayashankar argued that the petitioners are eligible to continue operations as authorised couriers under CIECR as is evident from Exts.P9 to P16 and in such circumstances the action on the part of the respondents in not permitting the petitioners to resume operations even

after the license is restored is a flagrant violation of the fundamental right of the petitioners.

11. It was pointed out that the petitioners have huge expenses for setting up their offices and other infrastructural facilities which are still maintained by them on the expectation that the petitioners would be permitted to resume their work. They are retaining the staff, the telephone connections, hired vehicles etc. and are thus incurring a monthly expense of approximately Rs.75,000/- each. The losses, though not quantifiable in terms of money would approximately come to about Rs.40,00,000/- till date, excluding the loss of business, loss of reputation etc.

12. Since 2012, the petitioners have been deprived of their income, solely due to the hasty steps taken by the then Commissioner of Customs and his subordinate officers, it was argued. Arbitrariness of the said action are under challenge before this Court in WPC Nos.30237/2013 and 27431/2013 filed by the petitioners.

13. According to the learned counsel for the

petitioners, the inertia on the part of the respondents is also a blatant violation of the directions issued by this Court in Exts.P14 and P15. Admittedly, the petitioners are presently having valid license to work in view of Exts.P13 and P15. Admittedly, in all other Airports and Seaports, courier operations are provided under the CIECR are going on smoothly and in full swing. As a result of the same, all the business handled by the petitioners are now being done by other couriers in the rest of the country.

14. From the line of the contentions taken by respondents 1 and 2, it can be seen that the petitioners are not permitted to operate on account of an issue regarding the cost recovery charges. An extent of 1209 sq.m. of unpaved land in the operational area adjacent to the land already allotted for import/export cargo near the new International terminal building at International Airport at Thiruvananthapuram was allotted to KSIE (the additional 4th respondent in this case) for international courier cargo operations in the said Airport. Accordingly, the 4th respondent had set up the facility for courier cargo

at Thiruvananthapuram Airport by investing its own fund in the land provided by the Airport Authority of India. The facility is ready for operation since last 1½ years, according to the third respondent. The allotment of land to additional 4th respondent by Airport Authority of India is on temporary basis for a period of three years up to 31.3.2014 as per the approval of Air Port Authority of India, New Delhi. A true copy of the lease agreement executed between the Airport Authority and the additional 4th respondent is produced as Ext.R3(a). The third respondent in their counter affidavit has submitted that the issue between the additional 4th respondent and the Airport Authority of India in connection with the custodianship and commencement of International Courier Cargo at Thriuvananthapuram Airport has been resolved in the meeting held on 13.8.2014 in the presence of the Principal Secretary (Industries), Government of Kerala wherein officials of Central Excise & Customs (2nd respondent), Air Port Authority of India and the 4th respondent were present. In the said meeting, the custodianship given to the 4th respondent can be cancelled and be returned to Airport Authority of India as held by it earlier. It has also been decided to take necessary steps to notify Airport Authority of India as the custodian for operating international courier cargo terminal as requested by the Airport Authority of India to resolve the present issue and commence the courier operations from Thiruvananthapuram International Airport at the earliest. Accordingly, the Commissioner of Central Excise & Customs, Thiruvananthapuram has been requested by the Airport Authority of India to issue necessary notification for custodianship and operation of courier terminal intimating that the rules and regulations and other formalities with respect to operation of courier terminal would be maintained by the Airport Authority of India's handling agent, the 4th respondent which would be ensured by the Airport Authority of India as custodian. The lease agreement between the 4th respondent and Airport Authority of India for the operation of courier terminal is valid up to March 2015 which would be renewed subsequently. It is further stated in the counter affidavit that the Commissioner of Central Excise & Customs vide their letter C.No.VIII/48/65/2012 Cus.(T)/ 11385 dated 23.9.2014 has intimated that the conditions to be fulfilled by Customs Cargo service provider, guidelines on safety and security of premises where imported or export goods are loaded, unloaded, handled or stored, the details of the measures taken to implement the requirements to be fulfilled for appointment as custodian/customs cargo service provider under Section 45 of the Customs Act, 1962 and the Handling of Cargo in Customs Areas Regulations, 2009 be furnished to consider the Airport Authority of India's request for appointment as custodian/Customs Cargo service provider. A copy of the communication is produced and marked as Ext.R3(b). The obligations specified in Regulation 6 of the Regulations are also required to be fulfilled by the custodian/customs cargo service provider. Further, the Commissioner of Central Excise and Customs has also informed that the lease agreement entered into with the 4th respondent which is valid up to March 2015 was made without the written approval of the Commissioner. Hence, steps are being taken by the Airport Authority of India to apply for the approval of the Commissioner with details of the terms and conditions of the agreement. A copy of Ext.R3 (a) lease agreement was forwarded to the Commissioner of Central Excise & Customs for approval as per Ext.R3(c) covering letter. In the meeting held on 16.10.2014, it was told by the Commissioner that necessary action would be taken for notifying Airports Authority of India as the custodian of courier cargo operations at Thiruvananthapuram Airport and will issue necessary approval for the 4^{th} respondent as the courier cargo operator/handling agent on the receipt of the lease deed (Ext.R3(b) and subject to the fulfilment of conditions for appointment of custodian/customs cargo service provider as specified under Section 45 of the Customs Act, 1962. Thus, the third respondent has clarified the issue of custodianship and handling agent and commencement of international cargo at Thiruvananthapuram Airport. The definite stand taken by respondents 1 and 2 is that cost recovery charges is a mandatory requirement to be fulfilled by the third respondent under Handling of Cargo in Customs Area Regulations, 2009 unless specifically exempted by an order of the Ministry of Finance, Government of India. Mr.Thomas Mathew Nellimoottil has submitted that no such orders have been issued by the Ministry of Finance, Government of India. Central Board of Excise and Customs have issued several instructions to the effect that no new customs facilities shall be operationalised without proper sanction of posts on cost recovery basis.

15. Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that the present stalemate is only because of the communication gap between the third respondent and the first respondent regarding cost recovery charges. The petitioners are penalised on account of the same. Though it is imperative that the third respondent should comply with the mandatory conditions prescribed under

Regulation 5 of the Handling of Cargo in Customs Area Regulations 2009, respondents 1 and 2 should not have prevented the petitioners from conducting their operations.

Therefore, the writ petition is allowed. Respondents 1 and 2 are directed to issue necessary notification permitting the petitioners to resume their courier operations in the Thiruvananthapuram International Airport and provide all necessary facilities to the petitioners to take courier operations in the said airport on the basis the undertaking given by the third respondent. The notification as above shall be issued within a period of two weeks from the date of receipt of a copy of this judgment.

To facilitate the above, the third respondent shall give an undertaking in respect of cost recovery charges, as early as possible, and respondents 1 and 2 shall issue notification as above on the basis of the same.

If the third respondent was specifically exempted by an order of Ministry of Finance, the same shall be produced by the third respondent before respondents 1 and 2 without much delay.

Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/ **true copy**

P.S.TO JUDGE