IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 29434 of 2014 (D)

PETITIONER(S):

M/S.ROLEX ARABIAN COURIER SERVICE,
PARAPPANPOIL P.O., THAMARASSERY, CALICUT-673 573,
REPRESENTED BY ITS PROPRIETOR HASHIR K.C.

BY ADVS.SRI.P.A.AUGUSTIAN
SRI.M.A.BABY

RESPONDENT(S):

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1. COMMISSIONER OF CUSTOMS,
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS SERVICE TAX,
PRESS CLUB ROAD, I.C.E. BHAVAN,
THIRUVANANTHAPURAM-695 001.

2. COMMISSIONER OF CUSTOMS,
CUSTOMS COMMISSIONERATE, PB NO.5400, QUEEN'S ROAD,
BANGALORE-560 001.

3. COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, COCHIN-09.

4. M/S.AIRPORT AUTHORITY OF INDIA,
TRIVANDRUM INTERNATIONAL AIRPORT, TRIVANDRUM,
PIN-695 008, REPRESENTED BY AIRPORT DIRECTOR.

5. M/S.KERALA STATE INDUSTRIAL ENTERPRISES,
ST.JOSEPH'S PRESS BUILDINGS, COTTON HILL,
THYCAUD.P.O., THIRUVANANTHAPURAM-695 014,
REPRESENTED BY ITS MANAGING DIRECTOR.

R1-R3 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EX
R4 BY ADV. SRI.V.SANTHARAM
R5 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R5 BY ADV. SRI.P.GOPINATH
R5 BY ADV. SRI.P.BENNY THOMAS
R5 BY ADV. SRI.K.JOHN MATHAI
R5 BY ADV. SRI.JOSON MANAVALAN
R5 BY ADV. SRI.KURYAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1: COPY OF THE REGISTRATION NO.3/2013 DATED 28/3/13.

EXT. P2: COPY OF THE LICENSE ISSUED BY PALLIKKAL PANCHAYATH ON 29/10/12.

EXT. P3: COPY OF THE FORM ST2 DATED 29/10/12 ISSUED BY CENTRAL BOARD OF EXCISE & CUSTOMS FOR SERVICE TAX REGISTRATION.

EXT. P4: COPY OF THE VAT REGISTRATION DATED 9/11/12.

EXT. P5: COPY OF THE LETTER DATED 15/11/12 ISSUED BY MINISTRY OF COMMERCE & INDUSTRY ALLOTTING IE CODE.

EXT. P6: COPY OF THE LETTER DATED 13/5/13 ALONG WITH COPY OF THE BANK GUARANTEE AND BOND.

EXT. P7: COPY OF THE LETTER DATED 17/06/13.

EXT. P8: COPY OF THE LETTER DATED 7/10/13 ALONG WITH COPY OF THE FORM A.

EXT. P9: COPY OF THE LETTER DATED 27/08/14.

EXT. P10: COPY OF THE LETTER DATED 9/9/14.

RESPONDENT(S)' EXHIBITS :

EXT. R4(A): TRUE COPY OF THE LICENSE AGREEMENT DATED 20/02/2013 EXECUTED BETWEEN AAI AND KSIE.

EXT. R4(B): TRUE COPY OF THE COMMUNICATION C.NO.VIII/48/65/2012 CUS(T)/11385 DATED 23/09/2014.

EXT. R4(C): TRUE COPY OF THE LETTER NO.AAT/LM/COURIER TERMINAL/2014/323 DATED 18/11/2014.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. VINOD CHANDRAN, J

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W.P(C) No. 29434 of 2014

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Dated this the 08th day of June, 2015

J U D G M E N T

The petitioner is a courier service provider who has been permitted to operate in the Trivandrum International Airport (TIA) by the 1st respondent-Commissioner of Customs. The petitioner had been carrying on the operations of courier service in accordance with the permit issued by the 1st respondent, when a stalemate occurred by reason of the dispute between the 4th respondent-Airport Authority of India, the 1st respondent-Commissioner of Customs and the 5th respondent-Kerala State Industrial Enterprises; which resulted in suspension of the handling activities in the TIA. The 5th respondent was earlier appointed as the custodian of the cargo terminal within the TIA entitled to carry on t he cargo handling at the airport. The Airport Authority of India subsequently was appointed as custodian of the premise and the KSIE had the status of a handling agent operating under the custodian; The Airport Authority of India. However, there were disputes between the custodian Airport Authority of India and the KSIE.

3. W.P(C) No. 2491/2015 in which two courier operators, similarly aggrieved were before this Court, was disposed of by judgment dated 27.03.2015. In the said case, the petitioners were aggrieved since there was a revocation of permits granted to them by the 1st respondent; which was agitated before this Court, which ended in favour of the courier service agents. However, the resumption of operations did not occur in the TIA since the customs authorities were reluctant insofar as the Airport Authority of India having not paid the cost recovery charges as mandated under the Handling of Cargo in Customs Area Regulations, 2009. The Airport Authority on the other hand claimed an exemption which is asserted to have been always enjoyed by the Airport Authority. The claim of exemption is challenged by the

Commissioner of Customs citing that there was no exemption order from the Ministry of Finance. The writ petitions were considered and noticing that the stalemate occurred only on the basis of the dispute, as to who is the custodian, this Court in WP (C)2491/2015 by judgment dated 27.03.2015 directed that the petitioners therein, the courier agents, would be permitted to resume their operations by the Commissioner. It was also directed that the Commissioner should issue necessary notifications making the Airport Authority of India, the custodian.

4. The notification appointing the Airport Authority of India as custodian has been issued and is produced across the Bar; which bears No. C.No.VIII/48/65/2012 Cus. Tech. Dated 16.04.2015. As it stands now, the Airport Authority of India is the custodian of the cargo handling terminal. The KSIE has the stuatus of the handling agent under the Airport Authority of India. Hence, any operation by the petitioner also will have to be only

through the KSIE. However, again disputes arose between the Airport Authority of India and KSIE since the latters term expired on 31.03.2015. There also exist considerable dues to be paid by the KSIE to the Airport Authority of India. In such circumstance the Airport Authority of India approached this Court with an I.A No.6053/2015 in W.P(C) No.2491/2015, which was disposed of by order dated 28.05.2015. The KSIE was directed to remit the amounts due within one month, i.e on or before 28.06.2015. The period is not yet over and it is not clear whether the KSIE has made the deposit. In any event, the KSIE has further time even as per the order and the continuance of the KSIE would depend upon such compliance.

5. The learned Standing Counsel for the Airport Authority submits that if payment is not made as directed in the I.A the Airport Authority of India would proceed with an open tender for appointing a handling agent. Hence, the stalemate

continues despite a direction in the judgment dated 27.03.2015 even though the Commissioner of Customs on compliance of the said judgment allowed resumption of operation by the courier services.

6. The petitioners and similarly situated persons are unable to carry on such operations, because of the disputes between Airport Authority of India and the KSIE. In the meanwhile the petitioner would further seek for a direction to the respondents to permit their operations through the Airport Authority, Bangalore and Cochin for which they will have to file separate applications. If the petitioner files such an application before the respondents 2 and 3, then the same shall be considered independently in accordance with law also considering the fact that there is a stalemate insofar as the operations in the Trivandrum International Airport. In any event, the petitioners would be permitted to carry on their operations in the Trivandrum

Airport, as and when the Airport Authority of India resumes the cargo handling facilities in TIA, since the 1st respondent, being such authority with respect to the TIA having permitted the petitioner to do so.

Writ petition is disposed of with the above observations.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge