

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 29888 of 2015 (I)

PETITIONER :

**M/S.MARKS LOGISTICS,
MAHAVIR & CO. BUILDING, MINE ROAD, W/ISLAND,
COCHIN- 682 003,
REPRESENTED BY ITS PROPRIETOR SHAJI P KURIAN.**

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

RESPONDENT(S):

- 1. COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, W/ISLAND, COCHIN- 9**
- 2. ASSISTANT REGISTRAR,
CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, 1ST FLOOR, WTC BUILDING,
FKCCI COMPLEX, K.G ROAD, BANGALORE -560 009**

**BY ADV. SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCISE
SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EXCISE**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

EXHIBIT P1 TRUE COPY OF THE ORDER -IN-ORIGINAL NO.COC CUSTM-000-COM-30-14-15 DATED 23/10/14

EXHIBIT P2 TRUE COPY OF THE ORDER -IN-ORIGINAL NO.COC-CUSTM-000-05-15-16 DATED 29/04/15

EXHIBIT P3 TRUE COPY OF THE INTERIM ORDER NO.155/2015 DATED 07/08/15

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NIL

/TRUE COPY/

P.S.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P(C)No. 29888 of 2015

Dated this the 9th day of October, 2015

J U D G M E N T

Petitioner-M/s.Marks Logistics is working as Customs Broker in Cochin. The petitioner's licence has been revoked by the Commissioner of Customs/the first respondent. This was challenged by the petitioner before the Customs,Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore.

2. It was heard by the two Members of the Tribunal. The Tribunal, on account of difference of opinion, with regard to forfeiture of security amount referred the matter to the third Member. The operative portion of the order of the Tribunal is as follows:-

“Since there is a difference of opinion as regards the forfeiture of the security amount and since both the Members have agreed to set aside the order of revocation of licence, we accept the prayer of the learned advocate for restoration of the licence with immediate effect and the point of difference of opinion of forfeiture of security can be resolved by the

third Member.

However, on going through the order signed by the learned Member (Technical), it is seen that following differences of opinion emerge:-

- (i) When both the Members have set aside the revocation of the licence, whether the appellant's licence should be restored with immediate effect or the same would become operative from the date of deposit of the fresh security amount of ₹75,000/-, as ordered by learned Member (Technical);*
- (ii) Whether the forfeiture of security amount has to be set aside in toto, as held by learned Member (Judicial) or the same has to be upheld to the extent of ₹75,000/-, as ordered by learned Member (Technical); and*
- (iii) Whether the appeal has to be allowed fully as held by learned Member (Judicial) or the same has to be allowed partially requiring the Customs Broker to deposit an amount of ₹75,000/- for restoration of his licence.”*

Petitioner approached this Court to restore the Customs Broker's licence to the petitioner.

3. The learned Standing Counsel would oppose the prayer and submit that since the matter is pending before the Tribunal, it is not proper for this Court to issue a mandamus to restore the licence. It

is pointed out that the matter has not attained finality.

4. This Court is of the view that final order regarding the restoration shall be passed by the Tribunal after the opinion of third Member. However, as an interim measure, this Court is of the view that taking note of the majority view now taken, there shall be a provisional restoration of petitioner's licence, pending consideration of the opinion of third Member.

5. This Court is of the view that since majority has now agreed to set aside the order of revocation of licence, interest of justice demands, licence shall be provisionally restored to the petitioner subject to the outcome of the Tribunal's decision.

6. In that view of the matter, following directions are issued.

The Tribunal shall dispose of the appeal within three months from the date of receipt of a copy of this judgment. Pending disposal of the appeal by the Tribunal, the petitioner's licence shall be restored in such terms and conditions, as may be imposed by the second

respondent. It is made clear that this would depend upon the outcome of the final verdict of the Tribunal.

This writ petition is disposed of with the above direction.

sd/-

A.MUHAMED MUSTAQUE,
Judge

MBS/

WP(C).NO.29888 of 2015

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