

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 30148 of 2015 (P)

PETITIONER :

**M/S. BON FREIGHT
31/995-2, ANRA # 37A, AYANIKKADU NAGAR
PALKULANGARA, THIRUVANANTHAPURAM - 695 024
REPRESENTED BY ITS MANAGING PARTNER
SHRI. O.G. HARI RAJ.**

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

RESPONDENT :

**COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS
PRESS CLUB ROAD, I C E BHAVAN
THIRUVANANTHAPURAM, PIN - 695 001.**

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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...2/-

WP(C).No. 30148 of 2015 (P)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P-1: TRUE COPY OF THE ORDER-IN-ORIGINAL NO.1/2012 DATED 6.11.12.**
- EXT.P-2: MISC ORDER NO.27414/2013 DATED 27/9/13.**
- EXT.P-3: TRUE COPY OF THE INQUIRY REPORT DATED 18-6-2015.**
- EXT.P-4: TRUE COPY OF THE LETTER DATED 17.7.15.**
- EXT.P-5: TRUE COPY OF THE ORDER-IN-ORIGINAL
 NO.TVM-EXCUS-000-COM-16-15-16 DATED 15.9.15.**
- EXT.P-6: TRUE COPY OF THE LETTER DATED 3.10.15.**
- EXT.P-7: TRUE COPY OF THE JUDGEMENT DATED 24.9.14 ISSUED BY THIS
 HON'BLE COURT IN WPC NO.24284/14 (REPORTED
 IN 2015 (315) ELT 542 (KER)).**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.30148 of 2015

Dated this the 2nd day of November, 2015

JUDGMENT

The petitioner's firm is a holder of licence for Customs House Agent.

2. The petitioner's licence was suspended. Thereafter, it was restored as per the directions of this Court, which is produced as Ext.P2.

3. The enquiry conducted by the Enquiry Officer found that the allegations against the petitioner are unsustainable. Ext.P3 is the proceedings of the Enquiry Officer. However, as per Ext.P5, the Commissioner of Customs disagreed with the enquiry report and found that the entire security deposit of the petitioner has to be forfeited and the petitioner has been prohibited in the UB Section of the Air Cargo Complex, Trivandrum for a period of one year from the date of Ext.P5 order. The petitioner, aggrieved by Ext.P5 order, have approached this Court.

4. The petitioner relies on the judgment of this Court in **Portlines Logistics & Courier Services (P) Ltd. v.**

Commissioner of Customs [2015 (315) E.L.T. 542 (Ker.)].

5. The petitioner submits that in the light of the above judgment, if the Commissioner is entering on disagreement with the enquiry report, certainly, the petitioner ought to have been given an opportunity before initiating action. Therefore, Ext.P5 is issued in violation of the principles of natural justice.

6. The learned Standing Counsel opposed the prayer of the petitioner and submits that the petitioner has an alternate remedy.

7. Admittedly, the petitioner has not been given an opportunity of hearing before the decision taken by the Commissioner. If the Commissioner disagrees with the enquiry report, he should record the reasons for disagreement and forward the same to Customs House Agents for its comments and it is only thereafter, the Commissioner can pass final orders. This Court categorically held in **Portlines Logistics's case** (*supra*) as follows:

“Order - Show cause notice before final order necessary when adjudicating authority take a different view with the report of enquiry officer - Where the Commissioner disagrees with the enquiry report, he should record the reasons for disagreement and

forward the same to Customs House Agents for his comments before passing a final order - Commissioner's order to be treated as show cause notice against the petitioner on disagreement entered by Commissioner and petitioner directed to furnish his objection to such findings.”

In the light of the above judgment, Ext.P5 is treated as a show cause notice. The petitioner shall raise their objection to Ext.P5 within a period of three weeks. It is only after the final order passed in this matter, any further action can be initiated against the petitioner. The petitioner is also free to raise question of limitation before the Commissioner. The Commissioner shall also consider the question of limitation while taking a final decision.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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