IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

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THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**

W.P.No.28473 of 2012

D.R.Logistics (P) Ltd.,
Rep. By its Managing Director
Mr.R.Devadoss,
No.435/24, T.H.Road,
Kaladipet,
Chennai – 600 019. ... Petitioner

Vs.

1.Union of India,
Rep. By its Secretary to Government,
Department of Revenue,
Ministry of Finance,
New Delhi – 110 002.

2.The Commissioner of Customs,
Customs House,
No.60, Rajaji Salai,
Chennai – 1.

3.The Assistant Commissioner of Customs,
(APPG.DOCKS-ADMN),
'Customs House',
No.60, Rajaji Salai,
Chennai – 1.

4. The Joint Secretary (Admin.),
Central Board of Customs and Excise,
Department of Revenue,
North Block, New Delhi – 110 002.
(suo-moto impleaded vide order dated 17.7.17) ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the third respondent in connection with the impugned order passed by him in F.No.S.MISC.07/2005-PT, dated 08.09.2012 and quash the same and further direct the respondents to grant exemption to the petitioner company from cost recovery charges with effect from April, 2007, onwards and pass such further orders.

For Petitioner	: Mr.K.S.Viswanathan for M/s.M.Muthappan
For Respondents	: Mrs.R.Hemalatha, SPC

ORDER

Heard Mr.K.S.Viswanathan, learned counsel, for Mr.M.Muthappan, learned counsel for the petitioner, and Mrs.R.Hemalatha, learned Senior Central Government Standing counsel for the respondents.

2. In this writ petition, the petitioner has not impleaded the Central Board of Excise and Customs as a party. Therefore, this Court suo-motu impleads the Joint Secretary (Admin.), Central Board of Customs and Excise, Department of Revenue, North Block, New Delhi – 110 002, as the fourth respondent and the Registry is directed to carry out the amendment in the cause list.

3. This writ petition has been filed challenging the order passed by the third respondent dated 08.09.2012, by which, the third respondent has directed the petitioner to pay the arrears of cost recovery charges for the period from 01.04.2007 to 31.03.2011 within a stipulated time. The only ground on which the impugned order has been challenged is by contending that the petitioner has filed an application for grant of exemption from payment of these charges and the application is now pending before the Central Board of Excise and Customs (CBEC) and since no orders were passed on the same, the petitioner had approached this Court by filing Writ Petition No.10081 of 2009 praying for a direction to the respondents in particular to the CBEC to grant exemption to the petitioner from payment of cost recovery charges/establishment charges incurred for the petitioner's cargo freight service station on the basis of cargo handled by the petitioner with effect from April, 2007 onwards. The writ petition was disposed of by order dated 12.06.2009 directing the Commissioner of Customs, Customs House, Chennai, to consider the representation dated 04.05.2009 seeking exemption and pass orders on merits and in accordance with law.

4. Therefore, the petitioner would state that when a direction has been issued to consider the representation seeking exemption, issuance of the impugned demand is not sustainable. The Court, while entertaining the writ petition, has granted an interim order which has been in-force since 2012 onwards and no steps have been taken by the department to vacate the interim order, except by filing a counter affidavit on 05.01.2016.

5. Be that as it may, in paragraph No.9 of the counter affidavit, the third respondent has admitted that the application for waiver of cost recovery charges has been forwarded to the CBEC which is the competent authority to grant waiver. Thus, as on date, the CBEC is seized of the matter and it appears that no order has been passed by the CBEC either accepting or rejecting the claim for exemption made by the petitioner. In the meantime, the impugned order has been passed directing the petitioner to pay the cost recovery charges for the period from 01.04.2007 to 31.03.2011. In the interregnum, the petitioner was served with a demand for payment of the cost recovery charges for the period from April, 2007 to December, 2008, which was due to the implementaion of the 6th Pay Commission. Accordingly, a demand was issued by the third respondent dated 17.12.2008 and the said demand was challenged by the petitioner in

W.P.No.30867 of 2008, which was dismissed by this Court by order dated 08.02.2011 following the earlier order in the case ***of M/s.Hari CFS, represented by its CFS Manager Vs. Union of India (W.P.(MD).Nos.2634 to 2636 of 2009, dated 04.02.2011.*** The said order has become final and therefore, the petitioner cannot now wriggle out of the demand dated 17.12.2008.

6. As pointed out earlier, the petitioner's plea for exemption from the said charges is sought for from April, 2007, and the petitioner would place reliance upon a Notification issued by the CBEC stating that the Government has exempted all CFS which handled minimum 1200TUE per annum. Therefore, the petitioner is entitled for exemption of the cost recovery charges based on the Notification dated 12.09.2005.

7. Learned Senior Central Government Standing Counsel for the respondents would submit that the plea of waiver of exemption of cost recovery charges can be considered only in terms of the Notification and there are specific conditions which have been laid down by the CBEC vide Circular No.16/2013-Cus., dated 10.04.2013, and the petitioner, having not complied with those conditions, is not entitled for the exemption of those charges. However, since

the CBEC is yet to take a decision, this Court does not wish to express any opinion on the petitioner's entitlement for exemption, as already a direction has been issued to consider the plea for exemption and the said matter is now pending consideration of the CBEC.

8. Learned Senior standing counsel for the respondents relied upon a decision of this Court in the case of ***M/s.Thiru Rani Logistics Pvt. Ltd., Madhavaram, Chennai, v. the Director General, Directorate General of Human Resource Development, New Delhi, and five others (W.P.No.20828 of 2016, dated 20.06.2016),*** wherein it is held that an exemption notification has to be strictly construed and a person claiming exemption has to fulfill all the parameters and thereafter, it is for the authority to consider the plea of exemption.

9. Thus, taking note of the above facts, the petitioner cannot escape from the liability as raised in the demand dated 17.12.2008 for the period from April, 2007 to December, 2008, which has been quantified at Rs.20,52,498/-. What is important to note is that thought the petitioner's application for exemption was not considered and no orders were passed, the petitioner on their own

volition stopped remitting the charges from the period of January, 2009. Such conduct of the petitioner is not appreciable, as unless and until exemption is granted the petitioner has to pay the said amount without prejudice their rights to seek for exemption from the CBEC.

10. Considering the fact that the writ petition has been pending since 2012 and the order of interim stay was in operative against the department from recovery charges and the department took no steps to move a petition for vacating the interim order, excepting by filing a counter affidavit after more than 4 years, this Court is of the view that some conditions can be imposed on the petitioner while issuing further directions to the CBEC, where the petitioner's application seeking exemption is pending consideration.

11. Accordingly, the writ petition is disposed of with the following directions;

(i) the petitioner is directed to pay a sum of Rs.20,52,498/- as demanded vide proceedings in F.No.S.Misc.7/2005-Appg.Docks, dated 17.12.2008, within a period of three weeks from the date of receipt of a copy of this order;

(ii) the petitioner is directed to pay 25% of the cost recovery charges for the period from January, 2009, to till date, and such payment shall be made within a period of three months from the date of receipt of a copy of this order;

(iii) for the remaining amount, the petitioner is directed to furnish a bond to the satisfaction of the third respondent, simultaneously along with the payment directed to be made in Clause (ii) above;

(iv) if the petitioner complies with all the three conditions stipulated in Clauses (i) to (iii), then the CBEC is directed to consider the application for exemption filed by the petitioner on merits and in accordance with law;

(v) if the petitioner fails to comply with in any one of the above conditions, then the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed with liberty to the department to proceed further in accordance with law.

(vi) in the event, if the petitioner complies with the conditions (i) (ii) and (iii) above, the remaining amount payable by the petitioner for the period from January, 2009, to till date shall remain stayed.

(vii) the petitioner is directed to pay the cost recovery charges payable by the petitioner from the month of September, 2017, without any default and the said payment shall be subject to the final outcome of the exemption application pending before the CBEC.

No Costs. M.P.No.1 of 2012 is closed.

17.07.2017

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Index: Yes/no

To

1.The Member-Customs,
Central Board of Excise and Customs,
Department of Revenue,
Ministry of Finance,
New Delhi – 110 002.

2.The Commissioner of Customs,
Customs House,
No.60, Rajaji Salai,
Chennai – 1.

3.The Deputy Commissioner (Enquiry),
O/o. The Commissioner of Customs,
'Customs House',
No.60, Rajaji Salai,
Chennai – 1.

T.S.SIVAGNANAM, J.

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