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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11002/2016 & CM No. 43020/2016

INTECH INDIA LIMITED

..... Petitioner

Through: Mr R. K. Saini, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms Shubhra Parashar, Advocate for
R-1/UOI.

Mr Arun Kumar, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.08.2017

1. The petitioner has filed the present petition, *inter alia*, challenging the rates of Terminal Handling Charges(THC)/ Terminal Service Charges(TSC) specified by the Container Corporation of India (respondent no.2). The petitioner also impugns the detention charges levied by respondent no. 3, COSCO India Shipping Private Limited (hereafter 'COSCO').

2. The petitioner had imported a consignment of air-conditioners from Hong Kong at a declared value of US\$ 33078 (₹22,41,035/-). The said goods were shipped in a container, which arrived at India on 31.07.2016 and was kept at the Inland Container Depot. The said goods were shipped through Hanjin Logistics. M/s Hanjin Logistic (India) Pvt Limited, by a letter dated 02.08.2016 instructed COSCO to issue the Delivery Order (DO) and consequently COSCO issued the DO on 08.08.2016. The petitioner was to lift the said consignment within a period of 14 days, however, the

petitioner failed to do so.

3. On 10.10.2016, the petitioner received an e-mail sent by COSCO claiming ₹6,04,686/- towards detention charges from 14.08.2016 to 15.10.2016. It is stated that this was in addition to the THC/TSC payable to respondent no.2

4. The petitioner sent a letter to respondent no. 2, *inter alia*, stating that it could not lift the goods as the shipping documents had been misplaced. It was further stated that the petitioner was facing a financial crunch and therefore could not pay the charges as claimed by respondent no.2 and at best the petitioner could remit a sum of ₹46 per day. Respondent no. 2 has not acceded to the petitioner's request.

5. According to the petitioner, the charges are exorbitant and penal in nature and are therefore, liable to be quashed. The petitioner also claims that COSCO is in charge of the depot and the detention charges demanded by COSCO are also punitive and unreasonable.

6. COSCO states that it is the agent of the carrier (Hanjin) and is entitled to raise charges as per its tariff. According to COSCO, the petitioner's recourse , if any, would be against the agency with who the petitioner had entered into the contract of carriage.

7. In so far as the THC/TSC levied by respondent no.2 is concerned, the same is per the tariff published by respondent no.2 on 02.09.2014. Indisputably, the matter of levy of THC/TSC is a matter of commercial expediency and the claim of the petitioner that respondent no.2 should

charge only such amount as is commensurate with the rent for open land, is unsustainable. Respondent no.2 is run on commercial lines and its commercial freedom to fix such charges cannot be fettered.

8. This court is also not persuaded to interfere in the matter also for the reason that the rates chargeable by respondent no. 2 were duly published and the petitioner was fully aware of the same.

9. In so far as the detention charges claimed by COSCO are concerned, the same is not a matter of public law. COSCO is not a state under article 12 of the Constitution of India and the amount charged by it for detention of its containers cannot be impugned in proceedings under Article 226 of the Constitution of India. Thus, this Court is not inclined to entertain the question whether the charges are penal or not in these proceedings.

10. Accordingly, the petition and the pending application are disposed of with liberty to the petitioner to file appropriate proceedings, as available in law.

VIBHU BAKHRU, J

AUGUST 17, 2017
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