

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.5001 of 2012

M/s Express Clearing Agency
No.3, Jaffer Syrang Street,
Chennai 600 001

Rep by its Managing Partner

... Petitioner

Vs

1.Chennai Port Trust,
Having its Administrative Office at
Rajaji Salai,
Chennai 600 001
Rep by its Chairman

2.The Traffic Manager,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 2nd respondent herein in No.C5/922/2009/T dated 21.02.2012 and quash the same in so far as it relates to Serial No.1, viz. Three times penalty of Rs.14,64,066/- pertaining to the month of May 2010 for the Shed JD-III at Area-III in the Chennai Port Trust area and the Service Tax and Penal interest payable thereon and consequently forbear the respondents herein from demanding or collecting the said amount or any other amount or for taking any adverse action against the petitioner for non-payment of the aforesaid amount.

For Petitioner : Mr.N.Balamuralikrishnan for
Mr.V.Rajinikanth

For Respondents : Mr.J.Sathya Narayanaprasad

O R D E R

Heard Mr.N.Balamuralikrishnan, learned counsel for the petitioner and Mr.J.Sathya Narayanaprasad, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 2nd respondent herein in No.C5/922/2009/T dated 21.02.2012 and quash the same in so far as it relates to Serial No.1, viz. Three times penalty of Rs.14,64,066/- pertaining to the month of May 2010 for the Shed JD-III at Area-III in the Chennai Port Trust area and the Service Tax and Penal interest payable thereon and consequently forbear the respondents herein from demanding or collecting the said amount or any other amount or for taking any adverse action against the petitioner for non-payment of the aforesaid amount."

3. The case of the petitioner is as follows:-

The petitioner is a Customs House Agent, Handling and Transport Contractor. In the course of his business, the petitioner was in need of storage space and had applied to the respondents for grant of licence for storing the cargo discharged from shipments inside the Port area. In response to the request, the petitioner was allotted shed JD-III at Area III, measuring an extent of 4,990 sq.meters, by granting due licence to the petitioner for occupation of the said place upto 30.04.2010.

4. The petitioner in the course of the business, had imported bulk Ammonium Sulphate from one M.V.Thea-K and stored the same in the licensed cargo area allotted to the petitioner. The shipment was imported by M/s.Indian Potash Limited to be supplied to Madras Fertilizers Limited (MFL). Both the companies are Central Government undertakings. According to the petitioner, the cargo could not be moved within the stipulated time of 60 days from the storage place allotted to the petitioner and it was finally cleared only on 10.05.2010. These factors have not been disputed by the respondents.

5. According to the petitioner, the entire cargo was stored only in an area of 200 sq.meters and not to an extent of 4,990 sq.meters. Since the cargo was not cleared within 60 days from the storage area by the petitioner, the respondents had passed an order on 28.06.2010, charging the petitioner three times penalty on the normal licence fee for the entire month of May 2010 and worked out the penalty amount at Rs.14,64,066/-. The petitioner was directed to remit the amount along with the Service Tax within a period of ten days. As against the above order passed by the respondents, a revision was made on 05.07.2010, by the petitioner, indicating that due to certain problem with the recipient Company viz., Madras Fertilizers Limited (MFL), the cargo was moved with the delay of seven days and a request was made to the Port authorities, not to impose any penalty for the same.

6. However, despite the representation made by the petitioner, the Port authorities insisted the payment of the penalty amount as demanded by them originally. However, the representation was finally disposed of by the respondents on 21.02.2012, rejecting the request of the petitioner and the petitioner was directed to remit the amount as demanded originally and any further occupation of the cargo area would be treated as unauthorized occupation and necessary action will be taken as per Rules. The said order dated 21.02.2012, is put of challenge in the present writ petition.

7. The learned counsel for the petitioner would submit that the demand as conveyed in the impugned proceedings cannot be sustained both in law and on facts for two reasons. First of all, the storage which was used during the relevant period was only 200 sq.meters and not the entire area allotted to the petitioner i.e., 4,990 Sq.meters and therefore, levy of penalty for the entire area is without any justification. Secondly, the respondents have calculated the penalty for the entire month of May, but, the admitted fact that the cargo was cleared on 10.05.2010 itself.

8. According to the learned counsel for the petitioner, the 60 days period had ended on 03.05.2010 and within 7 days, the cargo was eventually cleared. Therefore, levy of penalty and the demand made by the Port authorities for the entire month of May, cannot be countenanced both in law and on facts. According to the learned counsel, earlier in respect of other shipments, the respondents had given concession to the petitioner and calculated levy on the basis of the actual storage area used.

9. Upon notice, learned counsel appearing for the respondents has entered appearance and filed a detailed counter affidavit. The learned counsel would draw the attention of this Court to the allotment order issued to the petitioner on 30.04.2010, particularly, Clause 10 of the allotment order which reads as under:-

"10. The Licensee who has been allotted covered cargo storage space shall vacate the cargo stored in it on or before 60 days from the date of completion of the discharge of cargo from the vessel. Prolonged storage of cargo beyond 60 days shall attract a penal license fee of three times the normal license fee for the period beyond 60 days from the date of completion of discharge of cargo till the date of clearance of the said cargo from the allotted covered space. In respect of other cargoes stored in the covered space, for the prolonged storage beyond the normal allowed time the penalty as per the Scale of Rates and as amended from time to

time will be applicable for the period for which it has been stored beyond the normal allowed time."

10. According to the learned counsel appearing for the respondents, the cargo storage beyond 60 days shall attract penal licence fee three times of the normal licence fee for the period beyond 60 days. Therefore, the authority has rightly imposed the penalty on the petitioner. As regards the submission made by the learned counsel for the petitioner that only 200 Sq.meters was used for storage of the subject cargo, he would submit that such argument cannot be accepted as a valid argument, since it is imperative on the part of the Port authorities to charge the licence fee for the entire cargo space allotted to the petitioner and the authority cannot take into consideration how much space each time the licensee occupied for storage of shipments.

11. Such arguments advanced by the learned counsel appearing for the respondents appears to be a valid and reasonable argument and therefore, the arguments advanced by the learned counsel for the petitioner on this aspect, cannot be a valid argument and therefore, the same is rejected. As regards the other argument of the learned counsel for the petitioner, though the cargo was cleared on 10.05.2010 itself, levy of penalty for the entire month of May 2010 is without any justification and he would also refer to the Clause 10 which says that the penal licence fee will be levied only till the date of clearance of the said cargo and in which event, admittedly the petitioner had cleared the cargo by 10.05.2010. Therefore, the levy of penal licence fee by taking into consideration the entire month of May 2010, does not stand to reason. Therefore, the same is in consonance with Clause 10 of the allotment order.

12. This Court is in agreement with the submissions made by the learned counsel for the petitioner that Clause 10 provides only for imposing penal licence fee only upto the cargo is cleared and therefore, the present demand by the respondents by taking the entire month i.e., May 2010 in account and the demand made on that basis, cannot be justified in law as that would be contrary to the conditions as contained in the allotment order given to the petitioner.

13. This Court is therefore of the considered view that the present demand by the respondents as conveyed in the impugned proceedings No.C5/922/2009/T dated 21.02.2012, cannot stand the test of judicial scrutiny and therefore, the same is hereby set aside. The respondents are directed to re-work the demand on the basis of the fact that the subject cargo had been cleared on 10.05.2010 and pass orders afresh on such basis.

14. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001

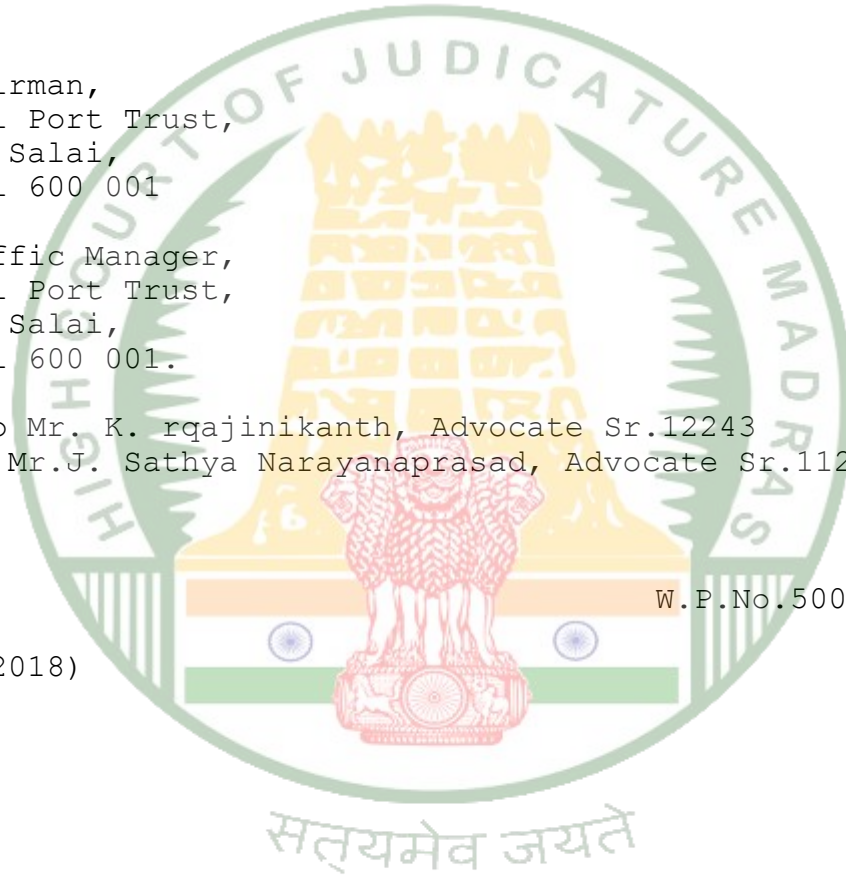
2.The Traffic Manager,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

+ 2 ccs to Mr. K. rgajinikanth, Advocate Sr.12243

+ 1 cc to Mr.J. Sathya Narayanaprasad, Advocate Sr.11231

(Cs-IV)
EU (08/03/2018)

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