IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.1604 of 2009 and
M.P.No.1 of 2009 and 1 of 2013

M/s.K.S.P.S. Natarajan CFS Park,
(A Division of K.S.P.S. Textiles Pvt. Ltd)
having its office at
No.7B, Madurai By-Pass Road,
Opp. Sri Saibaba Petrol Bunk,
Meelavittan,
Tuticorin - 628 008. ... Petitioner

Vs.

1. The Government of India,
Ministry of Finance, Dept. of Revenue,
New Delhi - 110 002
Rep. by Secretary to Government.

2. The Joint Secretary (Administation),
Central Board of Excise and Customs,
Department of Revenue,
North Block, New Delhi - 110 002.

3. The Commissioner of Customs,
Customs House, Tuticorin. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent herein viz.(i) C.No.II/39/07/2006 dated 17.10.2007, (ii) C.No.VIII/39/07/2006 dated 12.06.2008 and (iii) C.No.II/39/07/2006 Estt. dated 22.12.2008 and quash the same and forbear the respondent herein from in any manner demanding or collecting the cost recovery charges/establishment charges from the petitioner for its cargo freight service station.

For Petitioner : Mr.A.R.L.Sundaresan
For Respondents: Mr.A.P.Srinivas,
SCGSC for Customs

ORDER

The petitioner is a private limited company, engaged in the business of operating a Customs Freight Service Station (CFS). In view of liberalization of Indian Economy there is considerable growth in volume of imports and exports and in order to decongest the existing traffic, it was decided to have Container Freight Stations and Inland Container Deports to operate as dry port.

2. Guidelines were fixed for operating container freight stations. For the purpose of customs clearance at these places, custom staff are provided. The payment for these staff are borne by the person operating customs freight service station. Representations were received from entities operating these customs freight service station that they should not be made liable for payment to the staff provided by custom authorities.

3. The Government of India after considering the representations brought out a Notification on 12.09.2005, the relevant point of which, reads as under:-

> I am directed to bring you kind attention that it has been decided to consider regularization of those cost recovery posts at ICDs/CFSs which have been in operation for two consecutive years with following performance benchmark for past two years:-
>
> | | | | |
> |---|---|---|---|
> | i. | No. of containers handled by ICD | : | 7200 TEUs per annum |
> | ii. | No. of containers handled by CFS | : | 1200 TEUs per annum |
> | Iii. | No. of BE or SB processed by ICDs/CFSs | : | 7200 per annum for ICDs and 1200 for CFSs |
>
> iv. Bench mark at (1) to (3) shall be reduced by 50% for those ICDs/CFSs exclusively dealing with exports, as per staffing norms.
>
> 2. The waiver of cost recovery charges would be prospective with no claim for past period. Criteria would be applicable on actual performance of ICDs/CFSs.

3. Based on the performance of ICDs/CFSs in the Financial Year 2003-2004 and 2004-2005 you are requested to provide the information as per enclosure in respect ICDs/CFSs falling under your. It may also be ensured that in respect of ICD/CFS for which regularization of posts are suggested, no cost recovery changes are under dispute or pending payment as on 31st August, 2005.

4. Member (Customs) has desired that information should be submitted by 19.09.2005 by return FAX and by email at anuparn.prakash@rediffmail.com.

4. The petitioner herein applied for benefit of this Notification. The said benefit was not granted to the petitioner, which has led to the filing of the instant Writ Petition.

5. Heard the learned counsel appearing for the petitioner and the Department and perused the materials on record.

6. It is the submission of the learned counsel appearing for the petitioner that they fulfilled the requirements as mentioned in the Notification from 2004 to 2006 and the basis of the performance from 2004 to 2006, they are entitled to the exemption of the benefit of the Notification dated 12.09.2005.

7. On the other hand, it is the contention of the Department that this benefit is available only to those persons who had completed two years as on 01.04.2006 and since the petitioner had not completed the period of two years as on 01.04.2006 as they are not entitled to the benefit of the said Notification.

8. Be that as it may, the petitioner has given a representation on 12.03.2007 stating that any person operating ICDs/CFSs, fulfilling the requirements of the Notification for two years after 12th September, 2005, would be entitled to the benefit of the Notification and since they have fulfilled the necessary requirements mentioned in the Notification dated 12.09.2005 from the time it started, which is February, 2004, they are entitled to the exemption.

9. There is nothing on record which would indicate that the representation dated 12.03.2007 has been considered or disposed of. The respondents are therefore directed to consider the representation dated 12.03.2007 given by the petitioner within a period of four weeks from today(27.06.2018). In case, the representation has already been considered and rejected, liberty is granted to the petitioner to challenge the same in accordance with law.

10. With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government
   Government of India,
   Ministry of Finance, Dept. of Revenue,
   New Delhi - 110 002

2. The Joint Secretary (Administation),
   Central Board of Excise and Customs,
   Department of Revenue,
   North Block, New Delhi - 110 002.

3. The Commissioner of Customs,
   Customs House, Tuticorin.

+1 CC to Mr.A.P. Srinivas, Advocate sr 41068.
+1 CC to Mrs.A.L. Gandhimathi, Advocate sr 41284.

W.P.No.1604 of 2009 and
M.P.No.1 of 2009 and 1 of 2013

VGII(CO)
SP(13/07/2018)