IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.03.2018

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. No. 21987 of 2003
and W.M.P. No. 27231 of 2003

M/s J.M. Baxi & Co.,
No.37, Rajaji Salai,
Chennai - 600 001 ... Petitioner

Vs.

Chennai Port Trust,
rep by its Chairman,
Rajaji Salai,
Chennai - 600 001 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records leading to the passing of the impugned order bearing No. S3/4388/99/M. dated 25.07.2003 passed by the Respondent and to quash the same.

For Petitioner : Mr.K. Bijai Sundar

For Respondent : Mr.R. Karthikeyan
Standing Counsel

ORDER

The Petitioner in this Writ Petition is a Steamer Agent acting for various shipping lines and ship operators. The Respondent, viz., Chennai Port Trust, which is a body corporate constituted under the Major Port Trusts Act, 1963, renders various services to the ship owners of the vessels arriving in the Port of Chennai in terms of the provisions of that Act.

2. The Tariff Authority for Major Ports (TAMP) has been constituted under the provisions of Chapter V-A of the Major Port Trusts Act, 1963, has been, inter alia, conferred with various powers and duties with regard to operations of all major ports in India and under Section 49 of that Act, it has been empowered to frame scale of rates for various services rendered by the major ports to the port users. TAMP by proceedings dated

06.04.2000 had taken a decision about charging port dues with reference to the reduced gross tonnage of tankers with segregated ballast tanks by which it had been provided for oil tankers with segregated ballast, the reduced gross tonnage that is indicated in the "Remarks" Column of its international tonnage certificate will be taken to be its gross tonnage. Based on the same, the Respondent had raised bills for which the Petitioner, as Steamer Agent, had paid the same. Subsequently, TAMP by another order dated 09.10.2002 had held as follows:-

> "In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby decides not to review its earlier Order dated 15 March 2000 about concession in the vessel-related charges payable by oil tankers with segregated ballast tank as in the Order appended hereto."

The Respondent had issued revised bills by letters dated 02.05.2003 and 31.05.2003 claiming differential amount due from the Petitioner for services extended at the port.

3. The Petitioner through its Advocate objected to the revised demand made by way of legal notices dated 08.05.2003 and 27.06.2003, but the Respondent had not sent any response to the objections of the Petitioner and instead, the Respondent, by communication dated 25.07.2003 called upon the Petitioner to settle the pending bills, failing which, it was warned that the respondent will be constrained to stop rendering services to the vessels of the Petitioner.

4. Aggrieved thereby, the Petitioner has filed the present Writ Petition challenging the said notice dated 25.07.2003 of the Respondent on various grounds. The Respondent had entered appearance in the Writ Petition and has filed counter refuting the various contentions of the Petitioner in the Writ Petition.

5. The main focus of attack of the impugned action of the Respondent urged by the learned Counsel for the Petitioner is that the manner in which the revised bills had been raised are contrary to Section 56 of the Major Port Trusts Act, 1963, inasmuch as no show cause notice had been issued prior to the issuance of the said bills, and in the absence of any determination of the amount due after consideration of the representation of the Petitioner, it is not permissible for the Respondent to claim the differential amount as revised charges.

6. In this backdrop, it is necessary to refer to Section 56 of the Major Port Trusts Act, 1963, which reads as follows:-

> 56. Notice of payment of charges short levied or erroneously refunded:
>
> (1) When any Board is satisfied that any charge leviable under this Chapter has been short levied or erroneously refunded it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:
>
> Provided that no such notice shall be issued after the expiry of two years,-
>
> (a) When the charge is short levied, from the date of the payment of the charge;
>
> (b) Where a charge has been erroneously refunded, from the date of the refund.
>
> (2) The Board may, after considering the representation, if any, made by the person to whom the notice is issued under sub-section (1), determine the amount due from such person and thereupon such person shall pay the amount so determined."

On a reading of the Section 56 of the Major Port Trusts Act, 1963, it is clear that if for any reason the Board or Trustees of the Port Trust is satisfied that any charge leviable under Chapter VI of the Act has been short levied or erroneously refunded, it would have to issue a notice to the person concerned, who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice and in terms of sub-section (2) of Section 56 of that Act, it would be only after considering the representation that may be filed by the person concerned to the show cause notice, the Board of the Port Trust may determine the amount due from such person and thereupon such person shall pay the amount so determined.

7. Though the Respondent has filed an elaborate counter affidavit, there is conspicuously no reference to the issuance of any show cause notice to the Petitioner in terms of sub-section (1) of Section 56 of the Major Port Trusts Act, 1963, before the revised bills had been issued. Even from the materials placed before this Court, the Respondent has not shown that such show cause notice as mandatorily required has been issued to the Petitioner. In such circumstances, the only conclusion that could be inferred is that the revised bills had been raised against the Petitioner without issuing the requisite show cause notice under sub-section (1) of Section 56 of the Major Port Trusts Act, 1963. When the claim made by the Respondent in the revised bills for the differential amount cannot be sustained for that reason, it would necessarily follow that the consequential order issued requiring the Petitioner to pay the amount due with a warning that failure to do so it would disentitle services to the vessels of the Petitioner, has to be quashed.

8. That apart, the learned Counsel for the Petitioner submitted that the Petitioner has various objections for the revised bill claiming differential amounts, such as the following:-

(1) Limitation in raising a demand for short levying under provision of Sub Section (1) of Section 56 of the Act.

(2) Impermissibility of TAMP for Major Ports to fix scale of rates retrospectively for services already rendered and payment levied.

(3) Promissory Estoppel as the initial levy had been made after resolution of the International Maritime Organisation.

(4) The Bills had been raised by the Financial Adviser and Chief Accounts Officer instead of the Board of Trustees of the Port Trust.

(5) The Petitioner is the Streamer Agents and the charges are to be claimed from the owners of the vessel only and the steamer agents do not fall under the definition of Section 2(o) of the Major Port Trusts Act, 1963.

(6) Section 49-A of the Major Port Trusts

Act, 1963, speaks about fees for pilotage and other services and Section 49-B of the Major Port Trusts Act, 1963, speaks of Port dues and both the services are tonnage based services and the fees should be levied on Reduced Gross Registered Tonnage and not on Gross Registered Tonnage.

(7) The Segregated Ballast Tank (SBT) is not put to any commercial use and no cargo is carried in the same and only sea water is carried for the purpose of safety and stability of the vessel and to prevent marine pollution, and the added weight of Segregated Ballast Tank does not result in any advantage for the vessel.

However, the aforesaid contentions are not dealt with in this order as these are all matters for the Petitioner to place in its representation under sub-section (2) of Section 56 of the Major Port Trusts Act, 1963, if a show cause notice under Section (1) of Section 52 of the Major Port Trusts Act, 1963, is issued by the Respondent.

9. In the result, the impugned order dated 25.07.2003 is quashed. However, it is made clear that if the Respondent still desires to raise any demand against the Petitioner, it could do so only after following the procedure contemplated under sub-section (1) of Section 56 of the Major Port Trusts Act, 1963, by issuing show cause notice and if show cause notice is issued, it would be open to the Petitioner to place all objections in the representation to be submitted in terms of sub-section (2) of Section 56 of the Major Port Trusts Act, 1963 and it shall be incumbent upon the Respondent to consider each of the objections raised by the Petitioner and pass reasoned order on merits in accordance with law and communicate the decision taken. It is needless to add here that the Respondent shall be entitled to pursue any legal remedy for the recovery of the amount, if found due, only after having complied with the aforesaid procedure in terms of that statutory provision.

10. The Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vjt

To

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

+1cc to Mr.K.Bijai Sundar, Advocate, S.R.No.24169.
+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.24217.

W.P.No.21987 of 2003

SSV(CO)

rrs 17/09/2018.