

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.467 OF 2011***

M/s. Flemingo (Duty Free Shop) Pvt. Ltd.,
a Company registered under the Companies
Act, 1956 and having its registered Office at
D/73/I, TTC Ind. Area,

MIDC – Turbhe,

Navi Mumbai – 400 075

represented by its authorized representative
& Location Manager,

Mr. Prakash Methil,

31 years of age,

son of late P. C. Sundereshawaran,

r/o: Ist Floor, Eagle Apartment,

Airport Road, Chikalim, Goa.

.... Petitioner.

Versus

1. The Deputy Commissioner of
Customs (P),
Office of the Commissioner of
Customs, Custom House,
Mormugao.

2. The Commissioner of Customs,
Office of the Commissioner of Customs,
Custom House, Panaji – Goa.

.... Respondents.

Mr. S. D. Lotlikar, Senior Advocate along with Mr. A.D. Bhobe and
Mr. T. Sequeira Advocates for the petitioner.

Ms. Asha A. Desai, Senior Standing Counsel, Advocate for the

respondents.

**Coram : M. S. SONAK &
SMT. M.S. JAWALKAR, JJ.**

Date : 17th February, 2020.

Oral Judgment: (Per M.S. Sonak, J.) :

Heard Mr. S. D. Lotlikar, the learned Senior Counsel along with Mr. A.D. Bhobe and Mr. T. Sequeira, the learned Counsels for the petitioner and Ms. Asha Desai, the learned Senior Standing Counsel for the Customs Department – respondents.

2. The challenge in this petition is to the demand for Cost Recovery Charges and Merchant Overtime Charges (CRC and MOT) contained in Communications dated 28.3.2011, 5.4.2011 and 2.5.2011 in respect of the Duty Free Shop which the petitioner operates at Dabolim International Terminal.

3. After this matter was heard, after sometime Ms. Desai, the learned Senior Standing Counsel for the respondents submitted that since the petitioners disputed the aforesaid demand notices, the procedure requires that the respondents will issue a Show Cause Notice to the petitioner in order to commence adjudication proceedings. She submits that such Show Cause Notice will be issued within four weeks period from today. She submits that adjudication

proceedings, in pursuance of such Show Cause Notice will be concluded within a period of four months from the date of receipt of the reply to the petitioner's Show Cause Notice. She therefore submits that this Court, may not go into the merits of the disputes sought to be raised by the petitioner at this stage.

4. Ms. Desai, also points out that for the period up to the year 1.10.2016, no fresh demand has been raised. She points out for the period beyond 1.10.2016, the petitioner have paid only the MOT Charges under protest.

5. According to us, since the Demand Notices which have been impugned in the present petition are not to be immediately acted upon but rather they were only precursor to the adjudication proceedings, it will not be appropriate to ourselves to adjudicate into the merits of the rival contentions raised by the parties on the issues of CRC and MOT in respect of the Duty Free Shop of the petitioner at the Dabolim International Airport.

6. By our Interim Order dated 16.1.2012, we had protected the petitioner insofar as CRC Charges are concerned but directed the petitioner to pay MOT Charges until the disposal of the petition to the respondents. There is no dispute that the petitioner have paid the MOT Charges in terms of our Order, though, at one stage there was

issue of deposit of such charges in this Court instead of actual payment to the respondents.

7. According to us, the interim position can continue until the disposal of the adjudication proceedings by the respondents. This means that the petitioner will only be liable to pay the MOT Charges and that too without prejudice to their contention that these charges are not liable to be paid in respect of the Duty Free Shop which they operate at Dabolim International Airport. The payment of MOT Charges during the pendency of the petition as well as the pendency of the adjudication proceedings and as well as the cost recovery charges paid by the petitioner under protest will abide by the final orders to be made in the adjudication proceedings.

8. Accordingly, we dispose of this petition by recording the statement made on behalf of the respondent that within a period of four weeks from today Show Cause Notice will be issued to the petitioner for the purpose of adjudication proceedings. We also further record the statement made on behalf of the respondents that these adjudication proceedings will be disposed of within a period of four months from the date of receipt of the response to the Show Cause Notice by the petitioner. The interim arrangement during the pendency of the adjudication proceedings shall be as indicated in paragraph (7) of this order.

9. All contentions of all the parties on merits are kept open to be decided in the adjudication proceedings.

10. The Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

11. The Miscellaneous Civil Application No.932/2012, no longer survives and the same is also disposed of.

12. All concerned to act on the authenticated copy of this Order.

SMT. M.S. JAWALKAR, J. *M. S. SONAK, J.*
*af**