IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.14847 and 15651 of 2008
and
W.M.P.Nos.1 & 2 and 1 & 2 of 2008

M/s.Continental Container Freight Station,
Rep by its Partner,
No.81, Thambu Chetty Street,
Chennai - 600 001. ... Petitioner in W.P.No.14847 of 2008

M/s.Raja Agencies,
Rep by its Partner,
N. Pitchaiah
No.16, Manakavalan Street,
Tuticorin 600 002. ... Petitioner in W.P.No.15651 of 2008

Vs.

1.The Secretary to Government,
Department of Revenue,
Ministry of Finance,
Government Of India, New Delhi.

2.The Chief Commissioner of Customs (Preventive),
Customs House,
Chennai - 600 001.

3.The Commissioner of Customs,
New Harbour Estate,
Tuticorin. ... Respondents in both W.Ps.

Common Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to the issuance of writ of Certiorari, calling for the proceedings of the 1st respondent made in F.No.A-11018/02/2005-Ad-IV dated 04.06.2008 and quash the para-2, viz, the instructions to pay cost recovery charges upto 31.05.2008.

For Petitioner : Mr.Thirumavalavan
(in both W.Ps)

For Respondents : Mr.A.P.Srinivas
(in both W.Ps) Senior Standing Counsel

C O M M O N O R D E R

In these two Writ Petitions, the petitioner's Container of Freight Charges (CFS) was approved on 07.06.2001. In the case of the Writ Petition in W.P.No15161 of 2008 and on 23.03.2000 in the case of W.P.No.14847 of 2008. Since, the Officers of the customs were been deployed the practice of the department was recovery of cost of development of such Officers. The industry took up issue to Government of India, Ministry of Finance, Public Notice No.35/2002 was issued wherein on 17.05.2006. A notice was issued by the Deputy Secretary to the Government, Government of India, Ministry of Finance Department from Revenue wherein the decision was taken to exempt the ICD/CFSs as per the list enclosed at Annexure, who are in existence for the past two years. Accordingly, on the basis of their work load, from recovery of cost of the posts sanctioned for carrying of customs functions forthwith.

2.In the list annexed to the said order dated 17.05.2006, the petitioner's name is at Serial No.32 and 33 respectively. Thereafter, it appears to the representation was signed by the National Association of Container Freight Stations to the Revenue Secretary, Ministry of Finance, stating that though three of the persons name therein in the representation had been considered two names had been left out fulfill the criteria.

3.The petitioner meanwhile, sending the representation asking for a decision taken exempting the petitioner along with the payment of recovery of cost of posts sanctioned of carrying out of the Customs Finance.

4.By an communication dated 04.06.2008, filed by the petitioners were informed by the respondent that the above exemption was being granted subject to the said condition of the private persons operating ICD/CFS shall first deposit the cost recovery charges for a ll the Customs Staff Working in the ICD/CFS for the period upto 31.05.2008 within a period of ten days of the issue of this letter.

5.At that time, when the petitioner was requested for the charges of exemption they were not sanctioned post for the Customs Officers in the ICD/CFS of the respective petitioners. It appears subsequently, they were deputed challenging the impugned order that the petitioner pay the cost recovery charges of the Customs Officers subsequently for the period up to 31.05.2008. It appears to the discriminated there is no basis for which such discretionary can be adopted by the respondent.

6.Defending the impugned order, Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondent submits that these are discretionary exemption and has submitted that it is prerogative of the respondent to grant exemption with or without condition and no vested rights are vested with the petitioner to claimed the said exemption. He therefore, submits that the Writ Petition is liable to be dismissed.

7.Heard the learned counsel for the petitioner and the learned Senior Standing Counsel appearing for the respondents.

8.The petitioner had been recognised has a person who qualifies for exemption by the respondent as early as 17.05.2006. The petitioners name were found in the annexure to the aforesaid exemption letter of the respondent. Their names are at Serial Nos.32 and 33. At that time, there were no sanctioned posts their CFS. Subsequently, posts were sanctioned and the officers were deployed. The respondent has arbitrarily discriminated the petitioner from extending benefit to the petitioner by asking the cost recovery charges up to the period of 31.05.2008 within a period of 10 days from the impugned order dated 24.08.2006. The decision has been taken that the petitioner was entitled to exemption from payment of cost recovery charges the respondent cannot exercise any further discrimination in allowing the said discretionary arbitration. The petitioner is entitled to the relief sought for in the present Writ Petitions.

9.Therefore, these Writ Petitions stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To
1.The Secretary to Government,
Department of Revenue,
Ministry of Finance,
Government Of India, New Delhi.

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3.The Commissioner of Customs,
New Harbour Estate,
Tuticorin.

+2 CCS to Mr.S. Thirumavalavan, Advocate sr 5117 & 5116
+1 CC to Mr.A.P.Srinivas, Advocate sr 5779.

W.P.Nos.14847 and 15651 of 2008
and
W.M.P.Nos.1 & 2 and 1 & 2 of 2008

MP(CO)
SP(27/02/2020)