IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-5079-2014 (O&M)
Date of Decision: 28.01.2020

M/S. OVERSEAS WAREHOUSING PVT. LTD. .... Petitioner

Versus

UNION OF INDIA AND OTHERS ..... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

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Present: Mr. A.S.Talwar, Advocate
for the petitioner.

Mr. T.K.Joshi, Advocate
for the respondents.

AJAY TEWARI, J.(ORAL)

1. This petition has been filed challenging the order of the Customs Department-respondents in declining the waiver of Cost Recovery Charges to the petitioner.

2. Brief facts of the case are that the petitioner was approved for setting up a Container Freight Station (in short CFS) at Ludhiana (Punjab) in the year 1997 as per (Annexure P-1). In the year, 2005 respondent No.1 addressed a letter dated 12.09.2005 (Annexure P-2) which is quoted herein below in entirety:-

> *"Subject: Cost Recovery posts in respect of customs staff posted in ICD's/CFS's regarding:*
>
> *I am directed to bring to your kind attention that to consider regularization of those cost recovery posts at ICD's/CFS's which have been in operation for two consecutive years with following performance benchmark for the past two years:-*

i. No of Containers handled by ICD: 7200 TEU per annum
ii. No. of Containers handled by CFS: 1200 TEU per annum
iii. No. of Bill of Entries or Shipping 7200 per annum for ICDs and 1200 per annum for CFS.

Bench mark (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 the past period. Criteria would be applicable on actual performance of ICDs/CFSs.

3. Based on the performance of ICDs/CFSs in financial year 2003-2004 and 2004-2005 you are directed to provide information as per enclosure in respect of ICDs/CFSs falling under your. It may also be ensured that in respect of ICDs/CFSs for which regularization of posts are suggested no cost recovery charges are under dispute or pending payment as on 31.08.2005.

4. Member Custom has desired that information may be submitted by 19.09.2005 by return fax."

3. The claim of the petitioner is that it fulfilled the bench mark of mentioned in the letter and consequently it was entitled to the waiver of cost recovery charges. This has been rejected by the respondents on the ground that document (Annexure P-2) was not a decision but merely an information seeking exercise so that posts could be sanctioned but actually Government retained the right to sanction posts as it deemed fit and to then extend the benefit of waiver of cost recovery charges to only such entities where the posts were actually sanctioned.

4. The contention of the learned counsel for the petitioner is that all those entities which fulfills the trading parameters mentioned in Annexure P-2 fall in one class and any subsequent artificial classification

based on the sweet whim of the Government to sanction or to not sanction the particular posts would be discriminatory and arbitrary. The benefit of waiver of cost recovery charges is obviously intended for such entities which fulfill and rather exceed the bench mark for trading and if the arguments of Union of India were to be accepted, it could result to the position where despite having fulfilled all the essential trading parameters an entity may be denied the benefit of cost recovery charges merely because some officials decided that the customs posts on its establishment would not be sanctioned. As per him a plain perusal of para 2 reveals that the prospectivity attached to the waiver of cost recovery charges is relatable only to the issuance of the letter and not to the sanctioning of the posts.

5. We asked the learned counsel for the revenue if there was any rational policy of sanctioning which could be said to dovetail with the requirement of trading parameters but learned counsel for the revenue is not in position to satisfy us on this aspect.

6. His only argument is that it is for the Government to sanction a post and as and when a post is sanctioned the entity where that person is posted would be entitled to the benefit provided it met the trading parameters.

7. In our considered opinion, the introduction of this additional classification is arbitrary and has no nexus with any object which may be sought to be achieved. In the circumstances, petition is allowed, the respondents are directed to remove this arbitrary and then consider the case of the petitioner for waiver of cost recovery charges and consequently refund if called for. The necessary exercise be done within a period of 3 months from the date of receipt of the certified copy of this order failing

which the petitioner would be entitled to the interest @8% p.a.

Since the main case has been decided, the pending application, if any, also stands disposed of.

28.01.2020 [AJAY TEWARI]
Raman JUDGE

[AVNEESH JHINGAN]
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No