IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.34100 OF 2014
AND
M.P.NOS.1 TO 4 OF 2014
IN
W.P.NO.34100 OF 2014

The Great Eastern Shipping Company Ltd.,
A Company within the meaning of
Companies Act, 1956 and
Having its Registered Office at
Ocean House, 134/A,
Dr.Annie Besant Road,
Worli, Mumbai - 400 001.
Represented by its Company Secretary,
Jayesh Trivedi. ... Petitioner

.Vs.

1. The Union of India,
   Through Secretary,
   The Ministry of Shipping,
   Transport Bhavan,
   New Delhi - 110 001.

2. The Chennai Port Trust,
   Represented by its Chairman,
   1, Rajaji Salai,
   Chennai - 600 001.

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

4. The Senior Deputy Chief Accounts
   Officer (Revenue),
   Chennai Port Trust
   1, Rajaji Salai,
   Chennai - 600 001.

5. The Financial Advisor and Chief
Accounts Officer,
Chennai Port Trust
1, Rajaji Salai,
Chennai - 600 001. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the demand letter bearing No.AO(A)/IA/Counter/2014/FR dated 16.12.2014 issued by the respondent no.4 and quash the same, and forbear the respondents from levying or collecting wharfage charges on the vessel "Jag Roopa" belonging to the petitioner, under the provisions of the Order dated 27.08.2014 in Case No.TAMP/11/2013 - CHPT passed by the Tariff Authority for Major Ports (the Tariff Order) read with the provisions of the Major Port Trusts Act, 1963.

For Petitioner : Mr.Arvind P.Dattar
Senior Counsel
For Mr.Karthik Sundaram

For Respondents 2 to 5 : Mr.P.M.Subramaniam

O R D E R

The petitioner challenges the wharfage charges imposed by the fourth respondent on their Vessel "Jag Roopa".

2. According to the petitioner, the Vessel "Jag Roopa" entered into the Port of Chennai on 05.12.2014. It appears that the fourth respondent treated the Vessel as Cargo and demanded wharfage charges at 0.81% on the value of the Vessel. The petitioner objected to the same by letters dated 08.12.2014 and 09.12.2014 and further, undertook to pay the wharfage charges because of the commercial exigencies and furnished a Bank Guarantee towards payment of wharfage charges to the tune of Rs.87,59,223. Thereafter, the fourth respondent issued the impugned order in Ref.No.AO(A)/IA Counter/2014/FR dated 16.12.2014, wherein the Vessel of the petitioner was treated as "Cargo" and wharfage charges was imposed to the tune of Rs.98,75,621.00. Challenging the same, the petitioner is before this Court.

3. Heard the submissions made on either side and perused the materials available on record.

4. From a reading of the Major Port Trusts Act, 1963, it is noted that the words "Vessel" and "Wharf" are defined as follows:

> "2 [(z) "vessel" includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson;]
>
> (za) "wharf" includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods, or for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same. "

As per the above definition, a Ship which is used to transporting human beings or of goods and a caisson mainly by water. "Wharf" is a part of land or foreshore used for loading or unloading goods or for the embarkation or disembarkation. Thus, the word "wharf" is used for loading or unloading or for the embarkation or disembarkation of the goods.

5. It is also useful to look into the definition of "wharfage". "Wharfage" is defined as follows:-

> " 'Wharfage' shall mean the basic dues recoverable on all cargo imported or exported or transhipped or passing through the port, whether porteraged by the CHPT or not."

As per the above definition, 'wharfage' is the basic dues recoverable on all cargo imported or exported or transhipped or passing through the Port. Therefore, as per the above definition, 'wharfage' can be collected for loading or unloading of all cargo imported or exported or transhipped or passing through Port, whether porteraged by Chennai Port Trust or not. In that view of the matter, the Vessel which carries the cargo or passengers cannot be treated as a cargo itself.

6. Further, the Vessel which is treated as cargo under the Customs Act, for Import General Manifest or Export General Manifest will not apply to the Vessels which come to the major Ports particularly, the second respondent. It is very clear that the Vessel cannot be treated as Cargo and whatever transported by the Vessel and unloaded or loaded in the Vessel can be treated as Cargo. In that view of the matter, I consider that the second respondent's action in treating the Vessel "Jag Roopa" as a Cargo and imposing porterage charges is illegal and not sustainable.

7. It is submitted by the learned counsel on either side that pursuant to the challenge to the order, it appears that the second respondent has taken up the matter with the Tariff Authority of Major Ports (TAMP). The Tariff Authority of Major Ports (TAMP) by its letter dated 25.03.2015 has clarified that filing of customs documentation for the purposes of compliance of provisions of that Act, will not and does not have a right to the Chennai Port Trust to levy and charge wharfage on such Vessels that are being imported and/or exported, but coming/ going on its own stream as conveyance, as defined under the Major Port Trust Act, 1963. It is also clarified that there is no provision whatsoever for treating the Vessels which come into Port on their own stream and/or depart from the Port on their own stream, as Cargo under the Major Port Trust Act, 1963. Therefore, the Vessel can be treated as conveyance and it shall not be treated as Cargo and there cannot be any wharfage charges on such Vessels.

8. In a similar circumstance, this Court in ALCATEL SUBMARINE NETWORKS UK LTD. VS. THE UNION OF INDIA AND OTHERS [W.P.NO.15248 OF 2017 DECIDED ON 25.04.2019] dealt with the subsequent clarification issued by the Tariff Authority of Major Ports (TAMP) dated 15.05.2015 and that the amendment issued subsequently will not cover the earlier period and it will be only prospective. Therefore, according to the learned counsel for the second respondent even assuming that the Vessel shall not be treated as Cargo, refund of the charges collected earlier cannot be ordered retrospectively.

9. It is brought to the notice of this Court the order passed QUANTA LOGISTICS PRIVATE LIMITED AND ANOTHER VS. THE BOARD OF TRUSTEES, CHENNAI PORT TRUST AND OTHERS [WP NO.26534 OF 2019 ETC., BATCH DECIDED ON 10.03.2022] wherein this Court has discussed the clarification issued by the Tariff Authority of Major Ports (TAMP) dated 25.03.2015 and the later amendment dated 15.05.2015 and held that the Vessel shall not be treated as Cargo and that it should be taken as conveyance even for first voyage as well as the subsequent voyage as per rules. While holding so, the amendment dated 15.05.2015 was set aside and a direction was issued to the concerned authorities to follow the clarification dated 25.03.2015 and review the pending cases in the light of the clarification dated 25.03.2015 and the refund shall be processed and paid over, within a period of 16 weeks from the date of the said order.

10. The order impugned in the present writ petition came to be passed even before issuance of clarification. This Court has come to a conclusion that as per the definition contained in the Major Port Trusts Act, 1963, a Vessel cannot be treated as Cargo and the wharfage can be collected only for the goods loaded or

unloaded from the Port or for the embarkation or disembarkation of passengers. Therefore, the wharfage imposed by the fourth respondent is not sustainable. This view is supported by the subsequent development made in W.P.Nos.26534 of 2019 and etc., batch dated 10.03.2022.

11. Accordingly, the impugned demand letter bearing No.AO (A)/IA/Counter/2014/FR dated 16.12.2014 of the fourth respondent stands set aside. The respondents are directed to take further action in the light of the order passed by this Court in W.P.Nos.26534 of 2019 and etc., batch dated 10.03.2022.

12. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Secretary,
The Union of India,
The Ministry of Shipping,
Transport Bhavan,
New Delhi - 110 001.

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

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

4. The Senior Deputy Chief Accounts Officer (Revenue),
Chennai Port Trust,
1, Rajaji Salai,
Chennai - 600 001.

5. The Financial Advisor and Chief
   Accounts Officer,
   Chennai Port Trust
   1, Rajaji Salai,
   Chennai - 600 001.

+1cc to Mr.Karthik Sundaram, Advocate, S.R.No.19291
+1cc to Mr.P.M.Subramaniam, Advocate, S.R.No.19346

W.P.NO.34100 OF 2014

VG-II(CO)
PBS/26/05/2022