BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.22015 of 2022
and
W.M.P.(MD).No.16176 of 2022

T.Vimal Agnel,
Head Operation,
M/s.Kerry Indev Logistics Private Limited,
S.F.No.214, Andankovil West Village,
Erode Main Road, Karur – 639 136. ... Petitioner

Vs.

1. The Government of India,
Represented by its Secretary to Government,
Ministry of Finance Department of Revenue,
Central Board of Excise and Customs,
B-Wing, 5th Floor, HUDCO Visala Building,
Bhikaji Cama Place,
R.K.Puram,
New Delhi – 2.

2. The Deputy Collector,
Director General of Human Resources Development,
No.409/8, Deepshikha Building,
Rajendra Place,
New Delhi – 8.

3. The Joint Director,
Directorate General of Human Resources Development,
Expenditure and Management Wing,
Customs and Central Excise,
C-4, Ircon Building, District Centre,
Saket,
New Delhi – 100 017.

4. The Chief Commissioner of Customs,
Office of the Commissioner of Customs,
Tiruchirappalli Zone No.1, Williams Road,
Cantonment,
Trichy – 620 001.

5. The Deputy Commissioner of Customs,
Office of the Commissioner of Customs,
Customs Division 'B' Wing,
III Floor, No.1, Williams Road,
Cantonment,
Trichy – 620 001. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the Respondents herein to exempt the Petitioner from payment of cost recovery charges from 22.10.2009 and consequently, directing the Respondents to repay a sum of Rs.3,35,85,181/- with interest of cost recovery charge paid after attaining the benchmark as per the notification of the 1st Respondent in F.No.434/17/2004-Cus.IV, dated 12.09.2005.

For Petitioner : Mr.S.Ramsundarvijayraj

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel
Assisted by Mr.K.Prabhu,
Jr. Standing Counsel for R4&R5

O R D E R

This Writ Petition has been filed to direct the Respondents herein to exempt the Petitioner from payment of cost recovery charges from 22.10.2009 and consequently, to repay a sum of Rs.3,35,85,181/- with interest of cost recovery charges paid after attaining the benchmark as per the notification of the 1st Respondent in F.No.434/17/2004-Cus.IV, dated 12.09.2005.

2. It is submitted by the learned counsel for the Petitioner that the Petitioner is one of the strategic stakeholders in the Supply Chain Management. The Petitioner has commenced its commercial operations in the year 2002. The cost recovery charges are the charges required to be paid by the container terminals towards cost, expenses and salary for the custom officials, who examine the goods in the Customs Notified Area. He further

submitted that during the financial year 2007-08 and 2008-09, the Petitioner has achieved minimum target / criteria and subsequently, an application has been submitted to the jurisdictional Commissioner of Customs, Trichy and requested to send the status report to the Competent Authority at New Delhi for getting necessary permission for waiver of payment of cost recovery charges. On 22.10.2009, the Petitioner has submitted a letter to the 4th Respondent and it was informed to the Department that the Petitioner has satisfied the minimum stipulated criteria and hence, sought waiver from payment of cost recovery charges. The Department has no authority to collect / recover the cost recovery charges and hence, collection of cost recovery charges from 2009-10 onwards, is without any authority of law and the same ought to be refunded to the Petitioner.

3. The Petitioner has submitted numerous representations to the Respondents, the last of which is dated 02.09.2021, reiterating the claim for waiver of cost recovery charges. Till date, the request for waiver from payment of cost recovery charges is not considered. The Petitioner's case has been recommended by the Director (Customs), Central Board of Excise

and Customs as early as on 27.10.2009 and the relevant portion is extracted hereunder:

> *"In this connection, it is also submitted that the custodian of ICD, Karur have paid the Cost Recovery Charges up to 31.12.2009.*
>
> *Inasmuch as the above custodian have achieved the target in the performance of TEUs in the last two financial years, as prescribed by the Board in Letter F.No.434/17/2004-Cus IV dated 12.09.2005 and the above custodian are exclusively dealing with exports, it is requested that their case may please be considered favorably for waiver of Cost Recovery Charges from 01.01.2010."*

4. The 5th Respondent vide communication dated 07.06.2021 to the Commissioner of Customs (Preventive), has once again recommended the case of the Petitioner and the following portions of the said communication is extracted hereunder:

> "*...6. On account of the said reason that the custodian has satisfied the criteria and also the Department had accepted the decision of the Honourable High Court of Gujarat, hence it is recommended that the Prayer of the Applicant may be considered on retrospective basis (i.e., from 22.10.2009) submitted for*

consideration.

7. The same is submitted for the Commissioner's information and necessary action, please."

5. The Petitioner had submitted the following representations dated 21.01.2016, 06.02.2016, 12.02.2016, 07.07.2016, 10.10.2018, 13.03.2019, 10.06.2019, 17.02.2020 and 02.09.2021, wherein, it was reiterated that the necessary approval may be granted along with waiver from payment of cost recovery charges at the earliest.

6. It is submitted by the learned Senior Standing Counsel appearing for the Respondents that the representations of the Petitioner would be considered and orders be passed thereon in accordance with law.

7. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

8. In view of the above submission and taking into consideration the facts and circumstances of the case and the limited relief sought for in

this Writ Petition, there shall be a direction to the Respondents to consider the Petitioner's representations dated 21.01.2016, 06.02.2016, 12.02.2016, 07.07.2016, 10.10.2018, 13.03.2019, 10.06.2019, 17.02.2020 and 02.09.2021, on its own merits and pass appropriate orders in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order after granting opportunity to the Petitioner and also putting all interested parties on notice. It is made clear that this Court has not expressed any view with regard to the merits of the representations and it is open to the Respondents to consider the representations on its own merits.

9. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

02.11.2022

Index : Yes / No
Speaking Order : Yes / No

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To

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MOHAMMED SHAFFIQ, J.

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