Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 6525 of 2025

Phonex Logistics Pvt. Ltd.
versus
Union of India & Ors.

For the petitioner	:	Mr. Chirag Shetty Ms. Shreya Mundhra
For the CGST Authority	:	Mr. Ahok Kumar Chakraborti, Ld. ASG Ms. Rashmi Bothra
For the Customs Authorities	:	Ms. Manasi Mukherjee Mr. Bijitesh Mukherjee
Heard on	:	29.10.2025.
Judgment on	**:**	**29.10.2025**

Raja Basu Chowdhury, J (Oral):

1. By consent of the parties the matter is taken up for final consideration on the basis of the available records.
2. The instant writ petition has been filed, inter alia, not only challenging Regulation 5(2) and 6(1)(o) of Handling of Cargo in Customs Area Regulations, 2009 (hereinafter referred to as the "said Regulation") as being ultra vires the Customs Act, 1962 (hereinafter referred to as the "said Act") but also seeking for a specific direction upon the respondents to refund the amount paid

by the petitioner on account of cost recovery charges, by claiming an exemption from payment of cost recovery charges.

3. Mr. Shetty, learned advocate representing the petitioner after arguing the matter for some time, on instruction, has submitted that the petitioner no longer insists on maintaining the challenge insofar as the claim of declaration for Regulation 5(2) and 6(1)(o) of the said Regulation as *ultra vires* the said Act. He would, however, insist and having regard to the Circular issued by the Central Board of Excise and Customs dated 12th September, 2005 and 19th January, 2021, the petitioner is entitled to the exemption from payment of cost recovery charges as the petitioner is otherwise eligible for exemption in terms of the above Circulars.

4. Mr. Chakraborti, learned Additional Solicitor General appears on behalf of the respondent nos.1 and 2 and Ms. Mukherjee, learned advocate appears on behalf of the respondent nos. 3 to 8.

5. Having heard the learned advocates appearing for the respective parties I find that the petitioner is a Container Freight Station (CFS) and is engaged in facilitating imports to and exports from India of containerized cargo. It is the petitioner's case that the petitioner was appointed custodian under Section 45 of the said Act and was providing cargo handling service. As the respondent no.1 had deployed customs staff at its CFS for assessment, levy and collection of taxes, in terms of Regulation 5(2) of the said Regulation, the petitioner is required to undertake and bear the cost

of customs officers posted at the customs area on cost recovery basis. Similarly in terms of Regulation 6(1)(o) of the said Regulation, the petitioner as customs cargo service provider is required to pay cost of customs officer posted on cost recovery basis unless exempted by an order. To morefully appreciate the same the relevant Regulations being Regulation 5(2) and 6(1)(o) of the said Regulation are reproduced hereinbelow:-

> *"5. Conditions to be fulfilled by Customs Cargo Service provider -*
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> *The Customs Cargo Service provider for custody of imported goods or export goods and for handling of such goods in a customs area shall fulfil the following conditions, namely:-*
>
> *....*
>
> *(2) Undertake to bear the cost of the Customs officers posted, at such customs area, on cost recovery basis, by the Principal Commissioner or Commissioner, as the case may be and shall make payments at such rates and in the manner prescribed, unless specifically exempted by an order of the Government of India in the Ministry of Finance;*
>
> *Xxx xxx xxx*
>
> *6. Responsibilities of Customs Cargo Service provider:*
>
> *(1) The Customs Cargo Service provider shall -*
>
> *......*
>
> *(o). shall bear the cost of the customs officers posted by the Principal Commissioner of Customs of Commissioner of Customs, as the case may be on cost recovery basis and shall make payments at such rates and in the manner specified by the Government of India in the Ministry of*

Finance unless specifically exempted by an order of the said Ministry;"

6. From the records I find that although, the petitioner had applied for exemption under the Circular of 2005, such application was later given a goby, and a fresh application was filed by the petitioner under the 2021 Circular by its letter dated 19th March, 2021. In response to a query from Court Mr. Shetty has been candid enough in submitting that application dated 19th March, 2021 was later rectified and the rectified application was ultimately filed on 25th May, 2021. The application has been pending since then, though the petitioner has from time to time made payments of the cost recovery charges and lastly for the period from 1st October, 2022 to 31st December, 2022 as would corroborate from the letter dated 27th March, 2023 appearing at page 2024 of the writ petition. However, since then no further payments have been made. From time to time the petitioner has made several representations. Mr. Shetty, learned advocate representing the petitioner by placing before this Court a judgment delivered by the Hon'ble Gujarat High Court in the case of ***Adani Ports and Special Economic Zone Limited v. Union of India*** reported in **2018 (11) GSTL 150 (Guj.)** and the judgment delivered by the Hon'ble Bombay High Court in the case of ***Sarveshwar Logistics Services Pvt. Ltd. v. Union of India*** reported in **2023 (386) ELT 702 (Bom.)** would submit that once an application has been made in terms of Circular Dated 19th January,

2021, the petitioner's claim for exemption could not have been ignored. In this context I am of the view that a Circular cannot be made effective retrospectively unless the law provides for the same. The Circular dated 19th January, 2021 provided for complete new set of guidelines for dealing with cost recovery charges and the manner in which exemption shall be granted including eligibility conditions thereof. Having regard thereto it is difficult to accept that the petitioner can be entitled to maintain the application for exemption under 2005 Circular once the petitioner had applied under 2021 Circular. In any event, in this context it would be relevant to note that the Hon'ble Bombay High Court in the case of ***Sarveshwar Logistics Services Pvt. Ltd.*** (supra) had considered the scope of the eligibility to be entitled to exemption from the date of making the application.

7. In my view at this stage without going into any such issue, noting that the Regulation 6(1)(o) of the said Regulation makes a provision for grant of exemption and provides that the petitioner shall be liable to make payment of cost recovery charges unless exempted and since the Circular dated 19th March, 2021 has been issued providing for conditions which would entitle a facility to seek exemption and the petitioner having made such application, I am of the view that the respondents must decide on the petitioner's application for exemption as expeditiously as possible, preferably

within a period of eight weeks from the date of communication of this order.

8. Since, the petitioner *prima facie* has been able to demonstrate that the petitioner is entitled to maintain an application for exemption under the Circular dated 19th March, 2021, I am of the view that the respondents shall not demand any further cost recovery charge from the petitioner till a decision on the application for waiver is taken. If the petitioner is found eligible, the respondents shall consider and allow such eligibility from the date when the application was finally made free from all defects.

9. With the above observations and directions, the writ petition stands disposed of.

10. There shall be no order as to costs.

11. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

SB
A.R. (Court)