(2016) 06 MAD CK 0096

In the Madras High Court

Case No : Writ Petition No. 20828 of 2016 and W.M.P. Nos. 17848 to 17849 of 2016

Thiru Rani Logistics Pvt. Ltd. APPELLANT

Vs

Dir. General, Dghrd, C. and C.E., New Delhi RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Citation : (2016) 340 ELT 160

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri P. Gridharan, Advocate, for the Petitioner; Shri K. Mohana Murali, SPC, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—Heard Mr. P. Giridharan, learned counsel for the petitioner and Mr. K. Mohana Murali, learned Standing Counsel accepting notice for the respondent-Department. With their consent, the writ petition is taken up for final disposal.

2. The petitioner is an off dock Container Freight Station (CFS), which provides facilities for storing Containers, including movement of containers from and to Port, delivery of containers to customers, etc. The petitioner was appointed as Custodian of Import and Export of goods under Section 45(1) of the Customs Act, 1962 vide Public Notice Nos. 42/2010 and 43/2010, dated 21-5-2010 with effect from 1-6-2010. In terms of Clause 2.8 of Chapter 28 of the Customs Manual, the petitioner is required to pay cost recovery charges in respect of the Customs Officers deployed at the CFS, unless exempted by a specific order or a circular or instructions issued by the Ministry of Finance. To be entitled for grant of exemption, the concerned CFS should satisfy the conditions stipulated in Clauses 2.8 and 2.10 of the Customs Manual.

3. It is the case of the petitioner that even as early as 2013 they had achieved

the benchmark for being eligible for grant of exemption of cost recovery charges and they made an application for grant of such exemption on 16-4-2013. It is pointed out by the learned counsel for the petitioner that this application was recommended and forwarded by the 6th respondent. It appears that no orders were passed on the said representation and in 2015, the petitioner has made another representation on 11-4-2015 to consider their application for waiver of exemption of cost recovery charges. However, these subsequent representations followed by other letters were not considered. While so demand notice was issued to the petitioner on 31-12-2015 demanding a sum of Rs. 25,32,523/-. It is stated that this amount has been paid by the petitioner.

4. Be that as it may, the petitioner is said to have made another request on 29-3-2016 requesting for grant of exemption of cost recovery charges and they have enclosed all the earlier representations along with the representation dated 29-3-2016. This representation was addressed to the Chief Commissioner of Customs and it is stated that the Chief Commissioner of Customs has been delegated with the power to consider such applications for waiver and in this regard, the order passed by the 1st respondent dated 3-11-2015 was referred to. When this was the position, the 6th respondent sent a letter to the petitioner on 9-5-2016 calling upon the petitioner to pay the cost recovery charges and also informing the petitioner that their request for waiver of cost recovery charges has been forwarded to the Chief Commissioner by letter dated 15-12-2015 in spite of the letter dated 9-5-2016 since the petitioner has not effected payment, the 6th respondent has issued a demand dated 18-5-2016 for Rs. 45,76,369/-. This has been impugned in this writ petition.

5. From a perusal of Clauses 2.8 and 2.10 of the Customs Manual, it is seen that the cost recovery charges to be paid by the ICD/CFS may be waiver subject to fulfilment of conditions laid down. The regulations issued the expression ''may'' and it cannot be stated to be mandatory. In any event, an exemption notification has to be strictly construed and a person claiming exemption has to fulfil all parameters and thereafter, it is for the authority to consider the plea of exemption. From a perusal of the proceedings of the 6th respondent dated 31-11-2015, it is seen that such authorisation given to the Chief Commissioner of Customs appears to be a one time measure and it is not clear as to whether this order still holds good and the Chief Commissioner of Customs would be entitled to consider the request for waiver of cost recovery charges. As long as the petitioner has not been granted an order of waiver in terms of Clauses 2.8 and 2.10 of the Customs Manual, he is bound to pay the cost recovery charges. Therefore, the impugned demand cannot be quashed. Accordingly, the writ petition fails and it is dismissed. However, it is seen that the petitioner''s application for waiver of cost recovery charges dated 29-3-2016 is pending, this Court is inclined to direct the 2nd respondent to consider such claim. Since the 6th respondent has informed the petitioner that their earlier request for waiver has been forwarded to the 2nd respondent through letter dated 15-12-2015, the learned Standing Counsel for the respondents submitted that reasonable time

should be granted to the 2nd respondent to consider such a plea.

6. In the light of the above, while dismissing the writ petition and confirming the impugned demand, there will be a direction to the 2nd respondent to consider the petitioner''s application/representation dated 29-3-2016 claiming exemption/ waiver of cost recovery charges and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.