

28.07.2021
p.b.
Sl. No.1.

W.P.A. 10617 of 2021

Allier ICD Services Ltd.
Vs.
The Chief Commissioner of Customs & Ors.

(Via Video Conference)

Mr. Jishnu Saha,
Mr. Sarathi Das Gupta,
Mr. Souvik Bhadra,
Mr. Vikram Chaudhuri.
.....for the petitioner.
Mr. B. P. Banerjee,
Ms. Aishurya Rajashree.
.....for Customs Authorities.

Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned order dated 5th May, 2021 being Annexure P-14 to the writ petition extendin the license in question of the petitioner up to 31st July, 2021 instead of for the period of 10 years as claimed by the petitioner. Facts involved in short in this writ petition is that petitioner is a service provider of container in tranship both in export and import through its Inland Container Depot (ICD) Unit at Durgapur.

It is the case of the petitioner that it had made an application for renewal of licence in question on dated 1st February, 2021 being Annexure P-9 to the writ petition for custodianship as Custom Cargo Service Provider under the

Handling of Cargo in Customs Area for a period of 10 years which was going to expire on 8th May, 2021.

The petitioner claims that it is an Authorised Economic Operator (AEO) Certificate Holder by virtue of certificate issued on 29th November, 2019 by the Ministry of Finance, Government of India for a period of 10 years and the said certificate is for the period up to 28th November, 2024 as appears at page 85 being Annexure P-8 to the writ petition and petitioner also asked the authority to consider his application for renewal of licence in question for a period of 10 years as per the Regulation 13 of the Handling of Cargo in Customs Areas Regulations, 2009 read with 1.5.4 (page 8) of CBIC Circular 33/2016 dated 22nd July, 2016. It appears from the impugned order of renewal of licence in question dated 5th May, 2021 (Annexure P-14), the reasons disclosed by the respondent authorities are as follows:-

“This is to inform you that the Pr. Commissioner of Customs, CC(P), West Bengal has been pleased to consider your request for renewal of Customs Cargo Service Provider at ICD, Durgapur, under the Handling Cargo in Customs Area Regulation, 2009, and the validity of the license has been extended up to 31.07.2021 in the light of the order of Hon’ble High Court, Calcutta dated 22.04.2021, passed in the matter of W.P.A. 21840 of 2018, granting stay to the petitioner up to 31.07.2021.”

Prima facie, it appears that the reason for extending the license only up to 31st July, 2021 and not for 10 years, is the interim order passed by this Court on 22nd April, 2021 in WPA 21840 of 2018.

On perusal of record, I found that the aforesaid writ petition being WPA 21840 of 2018 was moved against the demand towards cost recovery charges and it also appears from record that the said writ petition involves the issue of claim of exemption from making such payment as claimed by the petitioner.

As appears from the order dated 19th October, 2020 passed in WPA 21840 of 2018 which appears at page 140 of the writ petition that in the said order it has already been recorded by this Court about the fact that the petitioner's claim of entitlement of exemption was dismissed by Delhi High Court and the party has moved SLP before the Hon'ble Supreme Court which is pending and it has also been recorded in the said order that the demand relates to the period 2014-2015 and an interim order was passed not to take any coercive action against the petitioner on condition of payment of certain amount indicated in the said order and the said interim order was extended from time to time by the orders of this Court and lastly it was extended till 31st July, 2021 by order dated 22nd April, 2021.

The petitioner submits that in compliance of the aforesaid interim order dated 14th December, 2021 petitioner has already made the payment in terms of the said order of this Court and it is still enjoying the said interim order because of the order of the Hon'ble Supreme Court in connection with prevailing COVID-19 as well as the order of this Court by five Judges Bench dated 16th July, 2021.

Mr. Banerjee, learned advocate appearing for the respondents has placed an order dated 14th June, 2021 passed by the respondent authority concerned which was passed after the impugned order dated 5th May, 2021 extending the period of license till 31st July, 2021 and during the pendency of the writ petition disclosing other reasons for extension up to 31st July, 2021.

Notification No.26/2009-Customs (N.T.) dated 17th March, 2009 has been placed before me by which the "Handling of Cargo in Customs Areas Regulations, 2009" came into force on specified date and Regulation 10 and 13 of which are relevant to this case and are as follows:

"10. Approval of appointment of a Customs Cargo Service provider and review thereof:

(1) Where the Commissioner of Customs is satisfied that the applicant has fulfilled the conditions prescribed in regulation 5, he may approve such an applicant as a

Customs Cargo Service provider, for a period of two years from the date of issue of such approval.

Provided that a Customs Cargo provider already approved on or before the date of coming into force of these regulations, shall be deemed to be approved as a Customs Cargo Service provider under these regulations for a period of five years from the date of compliance with the conditions of these regulations as stipulated in regulation 4.

(2) The Commissioner of Customs shall review the approval granted under sub regulation (1) before the expiry of the initial period of approval of two years or five years, as the case may be, and may extend such approval to a further period of five years at a time.

Provided that the Commissioner of Customs, for reasons to be recorded in writing, may order for review of the approval granted to any Customs Cargo Service provider before the completion of the period of approval.”

“13. Renewal of approval for appointment of Customs Cargo Service provider: The Commissioner of Customs may on application made by the Customs Cargo Service provider before the expiry of the validity of the appointment under regulation 10, renew the approval for a further period of five years from the date of expiration of the original approval granted under regulation 10 or of the last renewal of such approval, as the case may be, if the

performance of the approved Customs Cargo Service provider is found to be satisfactory with reference to his obligations under any of the provisions of the Act and the rules, regulations, notifications and orders made thereunder.”

Mr. Saha, learned senior advocate appearing for the petitioner has filed xerox copy of the cheque issued by his client in the name of the respondents dated 26th July, 2021 for an amount of Rs.1,06,23,017/- and submits that his banker has informed him that the said cheque has been encashed by the respondent customs authority. The main grounds of the petitioner for claiming exemption from payment of the cost recovery charge in question is that the guidelines as set out in paragraph 7.3 and 7.4 of CBIC Circular 2002 and Customs dated 19th January, 2021 has no manner of application at the stage of renewal of the licence in question of the petitioner as its eligibility for exemption from cost recovery charge in terms of the Circular 0/2/2021 Customs dated 19th January, 2021 is under consideration before the Hon’ble Gujarat High Court and this issue of claim of exemption issue is also pending before this Court in WPA 21840 of 2018 and he is still enjoying the interim order passed in the said writ petition.

Mr. Banerjee, learned advocate appearing for the respondent customs authority submits that huge due is involved in the matter and the demand involved in WPA

21840 of 2018 is only in connection with the period 2014-2015 and the petitioner has not fulfilled the criteria of the aforesaid Regulation 13 and he has also relied on Regulation 5(2)(3) and Regulation 6(4) of the said Regulation in support of his contention.

Considering the submission of the parties and facts discussed above, I am of the view that this writ petition cannot be thrown out and the argument made by Mr. Saha has some force and substance and the adjudication of the issues requires affidavits.

Taking into consideration, the stand of the department that in not extending or renewing the licence for 10 years up to 31st July, 2021 as disclosed in its order dated 5th May, 2021 is the interim order passed in WPA 21840 of 2018 though Mr. Saha submits that it has got no relevance because issue of renewal of license is involved in this writ petition and in WPA 21840 of 2018 subject matter of dispute was claim of exemption of cost recovery charges though later on department has come up with different reasons as appears from order dated 14th June, 2021 placed by Mr. Banerjee issued by the respondent authority for non-renewal of licence in question for 10 years.

The petitioner has already paid the said amount as per the terms and conditions of the said of this Court in WPA No.21840 of 2018 interim order and also that during

the pendency of this writ petition the petitioner has already paid further amount Rs.1,06,23,017/-.

Considering the submissions of the parties and on perusal of records, I am inclined to pass the interim order to protect the interest of the petitioner as well as of the revenue authority by way of unconditional interim order in terms of prayer-C of the writ petition for a week on condition of making payment of rupees one crore in addition to whatever has already been paid, within 7 days from date and this interim order will continue till 30th September, 2021 if such payment is made within 7 days without prejudice to the rights and contentions of the parties in this writ petition as well as in WPA 21840 of 2018.

The respondents are directed to file affidavit in opposition by 23rd August, 2021. The petitioner to give reply thereto, if any, by 31st August, 2021.

The matter to be listed for final hearing on 6th September, 2021.

At the time of hearing, both parties should be ready with short written notes of argument.

This writ petition will be heard along with WPA 21840 of 2018.

(Md. Nizamuddin, J.)