

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 19TH DAY OF JANUARY 2021/29TH POU SHA, 1942

WP(C).No.17924 OF 2020(M)

PETITIONER:

M/S. SEAHORSE SHIP AGENCIES PVT. LTD.,
PLOT NO.10A, NILHAT HOUSE, GROUND FLOOR,
J. THOMAS BUILDING, BRISTOW ROAD,
WILLINGDON ISLAND, KOCHI-682 003,
REP BY ITS BRANCH-IN-CHARGE MR. K.C DEVADAS

BY ADVS.

SRI.JOY THATTIL ITTOOP
SRI.BIJISH B.TOM
SRI.JACOB TOMLIN VARGHESE
SMT.BABY SONIA
SRI.GENS GEORGE ELAVINAMANNIL
SHRI.MATHEW JOSEPH BALUMMEL

RESPONDENTS:

- 1 UNION OF INDIA,
MINISTRY OF FINANCE, NORTH BLOCK,
NEW DELHI-110 001, REP. BY SECRETARY
- 2 COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, WILLINGDON ISLAND,
COCHIN-682 009.
- ADDL. 3 DIRECTOR GENERAL OF LIGHTHOUSES AND LIGHTSHIPS,
DIRECTORATE GENERAL OF LIGHT HOUSES AND
LIGHTSHIPS,
"DEEP BHAVAN", A-13, SECTOR 24,
NOIDA-201 301(U.P.)
(A SUBORDINATE OFFICE UNDER MINISTRY OF
SHIPPING, UNION OF INDIA).

IS IMPEADED AS ADDITIONAL R3 AS PER ORDER
DATED 25.11.2020 IN I.A. 1/2020 IN WPC
17924/2020.

R1,R3 BY SRI.K.R.RAJKUMAR, C.G.C.
R2 BY SREELAL N. WARRIER, SC, CENTRAL BOARD OF
EXCISE & CUSTOMS
SRI P.VIJAYAKUMAR, ASGI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-01-2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

[CR]

J U D G M E N T

~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 19th day of January, 2021

The writ petitioner, a company in the business of shipping agents, is before this Court seeking to direct the 2nd respondent-Commissioner of Customs to return to the petitioner the duplicate payment of ₹6,33,144/- made by the petitioner under Ext.P2.

2. The petitioner was Agent of the vessel M. V. Cape Chronos. The vessel was to call at Cochin Port Trust on 09.05.2016. The vessel was expected to arrive in the evening. In the morning, the petitioner remitted Light Dues amounting to ₹6,33,144/- through the web portal of the Director General of Lighthouses and Lightships (DGLL). However, the receipt was not generated by the web portal. The petitioner was under the impression that the online payment had not gone through. The vessel was to arrive in the evening and in the

absence of proof of payment of Light Dues, the petitioner would have faced difficulties. The petitioner therefore made a manual payment of ₹6,33,144/- before the Cochin Customs, for which Ext.P2 receipt was issued. On the following day, the petitioner-Company received receipt for the payment made online. The petitioner accordingly and unintentionally made dual payment.

3. The petitioner would submit that though the double payment was made in the year 2016, due to the resignation of the Accountant of the petitioner soon thereafter, the petitioner failed to take appropriate steps to get back the duplicate payment made. When the Auditors of the petitioner noted the dual payment, the petitioner submitted Ext.P3 letter to the 2nd respondent-Commissioner of Customs seeking repayment of the duplicate payment. Ext.P3 was acknowledged as per Ext.P4 dated 31.05.2018.

4. The 2nd respondent, however, instead of repaying the duplicate payment, advised the petitioner to file an application for refund before the Assistant Commissioner of

Customs (Refunds). The petitioner accordingly made an application on 23.08.2018. The Assistant Commissioner of Customs rejected the petitioner's application for refund as per Ext.P5 dated 05.10.2018, on the ground that the claim was made after the period of six months prescribed under the Lighthouse Act, 1927. The petitioner, aggrieved by Ext.P5, submitted Ext.P6 application before the Commissioner of Customs (Appeals) on 15.10.2018. On the Commissioner's advise, the petitioner filed a statutory appeal against Ext.P5 order. The Commissioner of Customs (Appeals), by Ext.P9 order, dismissed the appeal filed under the Customs Act, 1962 holding that the appeal was filed beyond the period of limitation.

5. The counsel for the petitioner would submit that the dual payment made by the petitioner cannot be treated as excess payment as contemplated under Section 9 of the Lighthouse Act, 1927. Therefore, statutory limitation for claiming excess payment would not be applicable to the case. The petitioner was ill-advised to resort to an inappropriate

statutory remedy by the Customs authorities. According to the petitioner, the payment made by them as per Ext.P1 was not excess payment. The claim of the petitioner is for reimbursement of “Amount paid twice”. The respondents are therefore compellable to make repayment of the amount inadvertently paid by the petitioner.

6. The 2nd respondent filed a statement in the writ petition as directed by this Court. The 2nd respondent stated that Ext.P9 order is appealable before the CESTAT. The petitioner has not impleaded necessary parties. The 2nd respondent further submitted that Light Dues are not customs revenue though it is collected by the Customs authorities. The Customs authorities collect Light Dues on behalf of DGLL and the amounts will be transferred to DGLL. Therefore, refund cannot be granted by the Customs authorities.

7. The petitioner thereupon impleaded the DGLL as additional 3rd respondent. The additional 3rd respondent stated that a claim for refund has to be presented in ILH–Form 10 in duplicate, to the officer of the Customs. Repayment can be

made only with the special authority of Ministry of Surface Transport. Under Section 19 of the Lighthouse Act, 1927, the time limit for refund claim of excess payment is six months. Hence, the decision made by the Customs authorities is in accordance with the provisions of the Lighthouse Act, 1927. The Director General of Lighthouses and Lightships does not have any role on the subject. The additional 3rd respondent stated that the petitioner is not legally entitled to any relief.

8. I have heard Sri. Joy Thattil Ittoop, counsel for the petitioner, Sri. Sreelal N. Warriar, learned Standing Counsel for the 2nd respondent and Sri. K.R. Rajkumar, Central Government Counsel appearing for the additional 3rd respondent.

9. There is no dispute that the amount payable by the petitioner towards Light Dues in respect of the vessel MV Cape Chronos arrived at the Cochin Port Trust on 09.05.2016, is ₹6,33,144/-. It is also not disputed that the petitioner has made two payments towards the same Light Dues on 09.05.2016. However, the application filed by the petitioner

for refund was rejected by the Assistant Commissioner of Customs, on the ground of limitation. The appeal was also rejected on the same ground. The question to be considered is whether the delay will spoil the right of the petitioner for refund of dual payment/duplicate payment.

10. Section 19 of the Lighthouse Act, 1927 provides that where Light Dues have been paid in respect of any ship in excess of the amount payable under this Act, no claim for refund of such excess payment shall be admissible, unless it is made within six months from the date of each payment. It is relying on the said period of limitation prescribed that the Assistant Commissioner of Customs has rejected the application preferred by the petitioner.

11. The issue therefore is whether Section 19 of the Lighthouse Act, 1927 would apply to the case of the petitioner. The Act, 1927 was promulgated for the purpose of effective management of Lighthouses by the Central Government. Section 9 of the Act, 1927 enables the additional 3rd respondent to levy Light Dues in respect of every ship arriving

at or departing from any Port in India, for the purpose of providing and maintaining lighthouses for the benefit of ships voyaging to or from India or between Ports in India.

12. Section 10 of the Act enables the Central Government to prescribe rates of Light Dues by notification in the official gazette. Section 10(2) of the Act 1927 specifically provides that if Light Dues have been paid in accordance with the provisions of this Act in respect of any ship, no further dues shall become payable in respect of that ship for a period of 30 days from the date on which the dues so paid became payable.

13. Section 12 of the Act, 1927 would make it clear that the levy of Light Dues is dependent on the tonnage of a ship or vessel. Sub-section (2) of Section 12 provides for method of ascertaining the tonnage of any ship for the purpose of levying Light Dues. Section 19 provides that where Light Dues have been paid in excess of the amount payable under this Act, no claim for refund of such excess payment shall be admissible unless it is made within six months.

14. It is therefore evident that Light Dues are directly related to tonnage of the ship/vessel and excess payment can occur when payment of Light Dues is made disproportionately disregarding the tonnage of the ship. Shipping companies and shipping agents are expected to measure the tonnage of the ship/vessel correctly and pay Light Dues with due regard to notified rates. Excess payment of Light Dues may occur if the shipping companies/agents cause mistake in the tonnage of the ship or in respect of notified rates. It is for the refund of such excess payment effected by the shipping companies/shipping agents without regard to the tonnage of the ship or rate of Light Dues, that a period of limitation has been prescribed under Section 19.

15. The Supreme Court had held in the judgment in ***Sales Tax Officer v. Kanhaiya Lal Makund Lal Saraf*** [AIR 1959 SC 135] that refund of sales tax paid under a mistake of law could be claimed based on Section 72 of the Indian Contract Act, 1872. The court examined the scope of Section 72 and held that a person who pays money either under a

mistake of law or of fact, is entitled to recover the amount so paid, and the party receiving the same is bound to repay or return it irrespective of any consideration whether the money had been paid voluntarily, subject however to questions of estoppel, waiver, limitation or the like. That was a case where the levy was made under a law which was subsequently held to be unconstitutional and the Apex Court held that as far Section 72 was concerned, there was no distinction between a tax liability and any other liability and, therefore tax paid under a mistake of law under the enactment in question could be got refunded.

16. The principle of this decision was applied by the Hon'ble Apex Court in ***State of Kerala v. Aluminium Industries Ltd.*** [(1965) 16 STC 689]. A levy was made in violation of Article 286(1)(a) of the Constitution and the assessee claimed refund of the amount on discovery of the mistake. The assessee had not raised the question of non liability at the time the assessment was completed and the mistake was on the part of both the assessee and the

assessing authority. Subsequently, the assessee discovered the mistake, and made the claim for refund which was allowed by this Court in a petition filed under Article 226 of the Constitution. The Supreme Court observed that such payment was within the scope of Section 72 of the Contract Act and the claim for refund was to be entertained if it was made within three years from the date on which the mistake became known to the assessee who made payment by mistake. The Court went on to observe that it was the duty of the State to investigate the facts when the mistake was brought to its notice and to make refund if the mistake was proved and the claim was made within the period of limitation, under Article 96 of the Limitation Act, 1908.

17. In ***Commissioner of Sales Tax v. Auraiya Chamber of Commerce*** [AIR 1986 SC 1556], the Hon'ble Apex Court held that when tax is collected without the authority of law, the State has no right to the money and that it was refundable to the assessee. The same position has been reiterated in the decisions of the Apex Court in ***Shri Vallabh***

Glass Works Ltd. v. Union of India [AIR 1984 SC 971] and in ***Salonah Tea Company Ltd. v. Superintendent of Taxes*** [AIR 1990 SC 772]. In the latter case, the Court ordered refund in an appeal arising out of an application under Article 226 of the Constitution of India, filed within the period of limitation. In ***Sri Ravi Oil Mills v. Commercial Tax Officer*** [(1990) 77 STC 7], the Hon'ble Apex Court in a similar situation, where an assessee paid tax under a mistake of law and the mistake came to his knowledge years later. The assessee's approach to the High Court was unsuccessful and the High Court dismissed the writ petition on the ground that a suit for refund was time barred. The Hon'ble Apex Court set aside the order of the High Court and directed refund, holding that in the absence of any denial or controversy, as to the date on which the assessee came to know of the mistake on his part and the excess payment, he was entitled to refund of the amount collected illegally.

18. In ***Mahabir Kishore v. State of Madhya Pradesh*** [AIR 1990 SC 315], the Hon'ble Apex Court considered the

starting point of the period of limitation of three years for a proceeding of this nature. The Hon'ble Apex Court held that when money is paid under a mistake of law, the period of limitation for recovery of the amount does not begin to run until the date on which the plaintiff discovers the mistake or could with reasonable diligence have discovered the mistake. Article 113 of the Schedule to the Limitation Act, 1963 and the provisions of section 17(1)(c) of that Act apply in such cases.

19. The dual payment made by the petitioner in this writ petition cannot be described as excess payment, in the sense contemplated by Section 19 of the Lighthouse Act, 1927. What is effected by the petitioner is a dual payment or duplicate payment. The petitioner was forced to make such dual payment due to the failure of the web portal system to generate a receipt, when the petitioner made the first payment through the web portal. This Court is of the view that Section 19 is not intended to operate in such circumstances. If Section 19 does not apply to the dual payment made by the

petitioner, then there is no question of a period of limitation under the Customs Act for making an application for refund of the dual payment.

20. The State and its authorities are not expected to act in a Shylochian manner and squeeze money from its citizens. Levy of any tax/dues should have the authority of law. If the petitioner calculated Light Dues in respect of the Vessel correctly and remitted the correct amount, then Section 19 of the Act, 1927 cannot be resorted to withhold an erroneous double payment or dual payment made by a citizen due to a system error or failure.

21. The State is not expected to get itself unduly enriched by erroneous or forced or inadvertent payments of money made by its citizens. The State is not expected to bring in defence of limitation in respect of such payments resulting in unjust enrichment. The claim of the petitioner for refund of the dual payment, in the circumstances, would not fall within the ambit of Section 19 of the Customs Act. Exts.P5 and P9 orders are therefore otiose.

In the circumstances, the writ petition is allowed. The 2nd respondent and additional 3rd respondent are directed to refund to the petitioner the dual payment made, within a period of one month.

Sd/-
N. NAGARESH, JUDGE

aks/11.01.2021

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE RECEIPT DATED 09.05.2016 FOR RS 6,33,144/- GENERATED BY THE WEB-PORTAL OF DIRECTORATE GENERAL OF LIGHTHOUSES AND LIGHTSHIPS AND RECEIVED BY THE PETITIONER ON 10.5.2020
- EXHIBIT P2 THE TRUE COPY OF THE RECEIPT NO.145952 DATED 9.5.2016 FOR RS 6,33,144/- ISSUED BY ADMINISTRATIVE OFFICER, CUSTOMS HOUSE, COCHIN TO THE PETITIONER
- EXHIBIT P3 THE TRUE COPY OF THE LETTER DATED 31.5.2018 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- EXHIBIT P4 THE TRUE COPY OF THE ACKNOWLEDGEMENT DATED 31.5.2018 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P5 THE TRUE COPY OF THE ORDER DATED 5.10.2018 PASSED BY THE ASSISTANT COMMISSIONER OF CUSTOMS (REFUNDS)
- EXHIBIT P6 THE TRUE COPY OF THE APPLICATION DATED 12.10.2018 ISSUED BY THE PETITIONER TO THE COMMISSIONER OF CUSTOMS (APPEALS)
- EXHIBIT P7 THE TRUE COPY OF THE ACKNOWLEDGEMENT DATED 15.10.2018 ISSUED BY THE COMMISSIONER OF CUSTOMS (APPEALS) TO THE PETITIONER
- EXHIBIT P8 THE TRUE COPY OF THE WRITTEN SUBMISSION FILED BY THE PETITIONER BEFORE THE COMMISSIONER OF CUSTOMS (APPEALS)
- EXHIBIT P9 THE TRUE COPY OF THE ORDER DATED 29.7.2020 PASSED BY THE COMMISSIONER OF CUSTOMS (APPEALS)