

DELHI HIGH COURT REJECTS THE INTERIM STAY APPLICATION SEEKING INJUNCTION AGAINST CONTAINER FREIGHT STATIONS (CFS) IN VIEW OF GOVERNMENT ADVISORIES TO GRANT WAIVER OF GROUND RENT CHARGES.

Polytech Trade Foundation vs. UOI & Ors (Delhi High Court, May 22, 2020) - The copy of the order can be found here.

INTRODUCTION

Delhi High Court rejected the interim stay application of the Petitioner association of importers/traders seeking injunction against Container Freight Stations (CFS) to grant waiver of ground rent charges, demurrage, container detention charges etc for the period of lockdown on account of COVID-19 in terms of the advisories issued by the Ministry of Shipping (MoS) and Director General of Shipping urging to grant waiver of charges.

FACTUAL BACKGROUND

- MoS issued guidelines to the Major Ports in the exercise of powers under the Major Ports Trust Act, 1963 to ensure that no penalties, demurrage, charges, fee, rentals are levied on any port user for any delay in berthing, loading/unloading operations or evacuation/arrival of cargo caused by the reasons attributable to lockdown. DG Shipping also issued an advisory pursuant to the advisory of MoS which was extended to CFSs as well.
- Polytech Trade Foundation (Petitioner) filed a writ petition challenging the action of recovery of ground rent charges, demurrages, storage charges etc by Container Freight Stations for the lockdown period imposed nationwide on account of COVID-19 being in alleged violation of the advisories issued by the Ministry of Shipping (MoS) and Director General of Shipping.

KEY ARGUMENTS BEFORE THE COURT

- The advisories/guidelines issued by MoS and DG Shipping only apply to major ports and CFSs falling under them.
- CFSs are not governed by the Major Port Trusts Act, 1963 and in majority cases have their containers located on a land which is outside the land/territory of the port.

- Petitioners also had the option to take direct delivery of their products/goods from the shipping line at the port itself, immediately on discharge within 48 hours but did not chose to do so.
- There exists a privity of contract between CFSs and its customers, the Government cannot in any situation, govern or modify the terms of arrangement between two private parties under a contract.
- Claims of waiver or exemption are matters of contract which needs to be decided on facts of each case and cannot be generalized.

FINDINGS OF THE COURT

- The advisories reveal that these are not mandatory, or directory vide which only shipping lines and custodians of Inland Container Depot (ICD) are advised to only adopt a sympathetic approach while levying container detention charges/ground rent charges on import of cargo for the lockdown period.
- CFSs are not availing any concession from port authorities and who have their containers located outside the port land.
- The Letters/guidelines/advisories cannot intervene or interfere in a private contract which CFS has with its customer.
- The circulars/guidelines are prima facie not binding on the Respondent CFS.
- There is no material on record which prima facie suggests that any right of the Petitioner has been violated by the Petitioner.
- No irreparable loss is going to be caused to the Petitioner as in event the Petition is decided in their favour the ground rent charges can be recovered by them from CFS.

ELP COMMENTS

The said issue is being raised by the importers across the country and will have a huge impact on the Container Freight Stations. There are Writ Petitions filed in other jurisdictions on the said issue which are yet to be decided.

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