

Delhi High Court - Orders

M/S Polytech Trade Foundation vs Union Of India & Ors on 22 May, 2020

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 18th May, 2020

Pronounced on: 22nd May, 2020

+ C.M. No. 10546/2020 in W.P.(C) 3029/2020

M/S POLYTECH TRADE FOUNDATION Petitioner

Through: Mr. Abhishek Aggarwal, Advocate
with Mr. Balram Gupta,
Authorized Representative.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through:

Mr. Amit Bansal, CGSC with
Ms.Vipasha Mishra, Advocate for
respondent No.1
Mr. Asheesh Jain, Advocate for
Ms, Maninder Acharya, ASG, for
respondent No.2
Mr. Vikram Nankani, Senior
Advocate with Mr.Naresh Thacker
& Mr. Kumar Visalaksh,
Advocates for respondents No.3 to
6.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

% C.M. No. 10546/2020 (for stay) in W.P.(C) 3029/2020

1. The petitioner/Foundation is stated to be an association registered with the Registrar of Societies under the Societies Registration Act, 1860, which comprises of persons/traders/companies/dealers, who are in the business of importing plastic/polymer raw material from different countries through sea and supply it to the manufacturers / companies engaged in the business of packaging of food, medicines, medical equipments etc. Petitioner/ Foundation claims that the usage of PVC Resin is intermediary to manufacture bottles containing sanitizers, masks and personal protective equipments (PPE), helmets, goggles or other garments etc., which are urgently needed to meet the requirements to contain Covid 19.

2. Respondent No.3 is the association of Container Freight Stations, whose members are involved in the overall movement and handling of the containers.

3. It has been stated that due to lock down since 22nd March, 2020, several shipments/ containers belonging to the importers/traders associated with petitioner/Foundation could not be lifted from

respective ports due to non availability of transport and labour. It is alleged that the respondent No.3 and its members i.e. respondents No. 4 to 6, are not permitting the traders/members of petitioner/Foundation to lift their material from their respective ports without payment of penal charges. In this petition, a direction is sought to direct respondents No.1 & 2 to further direct respondents No.3 to 6 and all other CFSs not to charge demurrage, ground rent, container detention charges etc. till the lockdown is functional and to permit traders/members of petitioner/Foundation to lift/ de-stuff their material on payment of usual valid charges. In support of the relief sought, petitioner/Foundation is relying upon the various advisories issued by first and second respondent.

4. Since several questions of facts as well as law have been raised which require detailed affidavits and submissions and that may take considerable time, the learned counsel for the petitioner/Foundation has prayed for disposal of its application under Section 151 CPC seeking injunction/ restraint order

5. The prayer for ad interim relief is strongly opposed by respondents No.1, 2 and 3 to 6.

6. Learned Central Government Standing Counsel (CGSC) appearing for the first respondent/ Union of India (UOI) submitted that since the subject containers/materials are lying on ports, therefore, this Court has no territorial jurisdiction to entertain this petition. Learned CGSC for respondent No.1/UOI further submitted that consequent upon issuance of Notification of 24th March, 2020 and 15th April, 2020 by Ministry of Home Affairs, lockdown was imposed from 22nd March, 2020 till 3rd May, 2020 due to Covid 19 and Ministry of Shipping/ respondent No.2, vide order PD-14033/4/2020-PD VII dated 21st April, 2020 had directed that no penal charges, dwell time charges, detention charges etc. shall be levied on import and export shipments for the delay in evacuation of cargo during the lockdown period.

7. Learned CGSC for first respondent/UOI submitted that vide letter E.No. 394/46/ 2020 dated 23rd April, 2020, a direction was issued to all Principal Chief Commissioner/ Chief Commissioner of Customs to ensure strict compliance of these directions by the major port users, including Inland Container Depot (ICD) [where containers are aggregated for onward movement to or from the port]; Container Freight Station (CFS) [where containers are stuffed, unstuffed and aggregation/segregation of cargo takes place] and shipping lines etc. Customs Stations (LCSs).

8. Learned CGSC further submitted that the order dated 21st April, 2020 issued by second respondent/Ministry of Shipping is in respect of "Major Ports" and CFSs operating under them and, therefore, the letter dated 23rd April, 2020 issued by the first respondent in furtherance to that order, would be binding on all the CFSs operating under Major Ports whereas respondents No.4 to 6 are operating from Mudra and Jam Nagar ports in Gujrat, which are not Major Ports.

9. It was further submitted by learned CGSC that CFSs are not custom stations, but are declared as customs areas by virtue of Section 8 of Customs Act, 1962 read with Handling of Cargo in Custom Area Regulations, 2009 by the Principal Commissioner or Commissioner of Customs and their functions are under the control of customs. It was submitted that these Regulations also decide the manner in which the goods imported/exported, shall be received, stored and delivered in the

customs area and are applicable to all 'Custom Cargo Service Providers" (CCPs) and would cover all custom facilities ports, airports, ICDs, CFSs and Land Customs Station (LCSs).

10. Lastly, it was submitted that the letter of 23rd April, 2020 issued by first respondent is binding upon Custom Cargo Service Providers, including Container Freight Stations (CFSs) operating under "Major Ports" and all other CFSs operating under other ports, are bound to adhere to the advisories issued by their respective Commensurate.

11. On behalf of Respondent No.2/Ministry of Shipping, learned Additional Solicitor General (ASG), submitted that the Government of India has itself permitted establishment of Private Public Partnership (PPP) or permitted select private entities to establish Inland Container Depots (ICD), Container Freight Stations (CFS) to speed up the international trade involving export and import of goods and materials and also help small exporters, whose consignments are less than container loads (LCL) and that respondent No.2 does not have any control or supervision over activities or practices or cost structures of the CFSs or ICDs service providers.

12. Learned ASG appearing for respondent No.2 also stated that the tariff of various services provided by CFSs/ICDs is a private arrangement between the CFSs/ICDs and their customers unless the CFS/ICD is actually located on land that may have been leased or granted on concession basis by a major port onto a CFS/ICD operator. It was submitted that only CFS operators at Kandla Port and Jawahar Lal Nehru Port are under control of respondent No.2 with regard to fixation of tariff etc.

13. Learned ASG further submitted that assertion of petitioner / Foundation that the communication dated 21st April, 2020 of respondent No.2/ Ministry of Shipping shall apply upon all CFSs or ICDs is entirely misconceived, as the said communication of respondent No.2 is applicable only to Major Ports in the country by virtue of powers under Section 111 of the Major Port Trusts Act, 1963, administered by Ministry of Shipping. Attention of this Court had also been drawn to sub section 8 of Section 3 of The Indian Ports Act, 1963 to submit that by "Major Ports" means that any port which the Central Government may by notification in the official Gazette declare, or may under law for the time being in force, have declared to be a "Major Port". It was submitted that Mudras and Jam Nagar Ports are not declared as Major ports. It was next submitted by learned ASG that reliance placed by petitioner/Foundation upon various Circulars/Letters/Communications issued by Ministry of Shipping for its impleadment in this petition is totally uncalled for, as only policy directives are issued under the Major Ports Trust Act, 1963, which are binding on Major Ports and that the Circulars/Letters/Communications issued by Director General of Shipping apply to the shipping lines.

14. It was reiterated by learned ASG appearing on behalf of second respondent that communication of 21st April, 2020 applies only on "Major Ports" and upon those CFSs /ICDs who operate from Major Ports and that there are no ICDs located within the port limits of Major Ports and only a select few CFSs operators are located at Major Ports, except two out of Kandla Port and Jawaharlal Nehru Port, whose tariff are determined by TAMP which is situated in Mumbai and not by Respondent No.2/Ministry of Shipping. It was also stated on behalf of second respondent that none of the Major Ports have any ability to influence or be privy to the tariffs/ charges levied by the CFS

and ICD operators upon their respective customers/ clients/users.

15. It was further submitted by learned ASG that respondent No.2 as well as Major Ports have no information on record of the operational cost and expenses of any CFSs/ICDs, except that those which are situated within the port limits of Major Ports and consequently pay rent onto the Major Ports and that the respondent No.2 as well as Major Ports have no administrative control over respondents No.3 to 6 and it has no idea about the cost and expenses or rent and charges levied by any CFS/ICD, which is entirely a private arrangement executed by CFS and ICD with its customers.

16. Learned Senior Counsel appearing for respondents No. 3 to 6 questioned the genuineness of petitioner/Foundation as well as question of jurisdiction of this Court to entertain this petition. He submitted that situs of office of an authority framing statutory rule or issuing an executive order, would not by itself constitute any cause of action.

17. Learned Senior Counsel for respondents No.3 & 6 had further submitted that CFS is a common user facility with public authority status equipped with fixed installations and offering services for handling and temporary storage of import/export laden and empty containers carried under customs control and other agencies. It was submitted that respondents No. 3 to 6 being facilitator to render services, have contractual arrangement with independent third party contractors for rendering these services.

18. It was submitted by the learned senior counsel that the various guidelines and advisories, relied upon by petitioner /Foundation, and issued by first and second respondent or the Ministry of Home Affairs under Section 10(2)(l) of the Disaster Management Act, 2005 are applicable to the secretaries of ministries and the departments of Government of India and direction cannot be issued to a private establishment to give up their rights in a contractual arrangement with the customers, so as to reduce the financial impact of the disaster on the customers.

19. Learned senior counsel appearing for respondents No. 3 to 6 further submitted that reliance placed by petitioner/Foundation upon communication dated 21st April, 2020 issued by second respondent/Ministry of Shipping is entirely misplaced, as the same has been issued in respect of "Major Ports" and CFSs operating under them and, therefore, the letter of 23rd April, 2020 issued by the first respondent in furtherance thereto is binding on all the CFSs operating under Major Ports and CFSs operating under them, whereas respondents No.4 to 6 are operating from Mudra and Jam Nagar ports in Gujrat, which are not Major Ports. It was, thus, categorically stated that the Major Ports Act, 1963 is applicable only on Major Ports and does not regulate the activities of CFS.

20. Learned Senior Counsel for respondent No.3 to 6 also submitted that the petition involves disputed question of facts. It was submitted that each consignment of container deal with matter of contract and the facts of each case are different. However, it was submitted that in all the cases charges / rates levied are either published or posted on websites and available on public domain, which are already discounted rates and the choice of shipping line is with the cargo interest and hence, the cargo owner chooses them with full knowledge of rates charged by these respondents and only after the CFS members obtain the delivery order from the shipping line/ company, after

payment of necessary charges qua freight, custom clearance including custom duty, fine and penalty, if any, etc., that the CFS members give delivery.

21. Learned senior counsel submitted that an importer also has the option to take direct delivery from the shipping line at the port itself immediately on discharge within 48 hours and in case the importer does not avail of this facility, such importer cannot thereafter claim any benefit or waiver or exemption from CFS charges. It was stated that a few traders have themselves chosen to keep their goods at CFSs at their own risk and, therefore, they cannot avoid the circumstances and claim benefit.

22. Learned senior counsel pointed out that to provide service to their customers/ clients, respondent No.3 and its members incur various fixed and operating expenses viz. transportation charges for movement of cargo/containers from port to their facilities and vice versa; labour charges for stuffing, de-stuffing, loading, unloading, lease rent for the facility along with cost of the availability of space for storing empty containers/ additional cargo in case of congestion, power and fuel charges for handling of cargo/ containers through equipment, staff costs for handling their operations, survey activities, up-keeping security and safety of cargo/containers, terminal ground rent for use of port infrastructure, container repairs and other administrative costs for running the facilities. It was submitted that petitioner/Foundation's prayer seeking to lift / de-stuff the containers/ material without payment of ground rent, demurrage, detention charges, anchorage charges from the traders, importers, exporters, CFS etc. after payment of usual valid charges, is highly arbitrary in view of the fact that there is a clear liability of GST on the members of the respondent No.3/association, which if exempted, will be a cost on respondent No.3/association.

23. Learned senior counsel further contended that the claim of petitioner/Foundation to be manufacturers of PPE kits or other COVID- 19 related essential goods, is blatantly false as the goods like PP, PET, LDPE, HDPE are multi-use and multi-purpose raw materials having general uses and there is nothing which makes them specially meant for PPE kits or other COVID-19 related 'essential goods'.

24. Learned senior counsel further submitted that understanding the gravity of Covid 19, members of respondent No.3 had by virtue of advisory of 24th March, 2020 waived off the ground rent from 22nd to 31st March, 2020. Attention of this Court is drawn to a credit note of the members of the respondent No.3 viz. 'Honeycomb Logistics Pvt. Ltd.' to one 'R. K. Trading Company', admittedly member of petitioner/Foundation reads an endorsement that 'Due to COVID-19 pandemic, storage charges for the period of 22.03.2020 to 31.03.2020 has been waived'. It is submitted that even after grant of waiver of ground rent for ten days, many importers have not come forward to take delivery.

25. Learned senior counsel for respondents No. 3 to 6 submitted that respondent No.3 has issued an advisory dated 11th May, 2020 directing its members to offer discounts on the ground rent and quite a many importers have already availed of its benefit.

26. It is submitted that if any container/ material of any of the member of petitioner/Foundation is lying at any facility of respondent No.3, the said relationship between the consignee/consignee/

cargo interest is purely contractual and that of a bailor and bailee. It is submitted that respondents No.1 & 2 cannot in any way govern or modify the terms of arrangement between the two private parties under a contract and that the term "disaster management" under Section 2(e) of the Disaster Management Act, 2005, nowhere empowers the Government or concerned authorities to regulate the relationship between two private parties.

27. Learned senior counsel for respondents No. 3 to 6 also submitted that only ground rent remains with respondents No. 3 to 6, rest of the payments are made to the contractors.

28. Lastly, learned senior counsel for respondents No.3 to 6 has relied upon Hon'ble Supreme Court's decisions in Navodya Vidyalaya Samiti & Anr. Vs. Afshan Khan & Ors. (2019) 11 SCC 548 and State of U.P. & others Vs. Ram Sukhi Devi (2005) 8 SCC 733, to submit that the final relief sought in the writ petition, cannot be granted as an interim measure. Reliance is also placed upon Hon'ble Supreme Court's decision in Union of India and Others Vs. Modiluft Ltd. (2003) 6 SCC 65 to submit that the courts shall not grant interim relief which is actually the final relief, without deciding the issues involved in the writ petition. Reliance is also placed upon decision in Federal Bank Ltd. Vs. Sagar Thomas and Others (2003) 10 SCC 733 to submit that the Supreme Court has clearly stated as to in what circumstances a writ will lie. Reliance is also placed by learned senior counsel upon Supreme Court's decision in K.K. Saxena Vs. International Commission on Irrigation And Drainage and Others (2015) 4 SCC 670 and Energy Watchdog Vs. CERC & Ors. (2017) 14 SCC 80.

29. In rebuttal, learned counsel for the petitioner has relied upon decision of this Court in Sterling Agro Industries Ltd. Vs. Union of India ILR (Del) 2011 (6) and decision dated 19th February, 2018 in W.P.(C) No.2916/2017, titled as Devender Kumar Vs. Union of India & Ors., to submit that this Court is well within its jurisdiction to entertain this petition. Attention of this Court is drawn to the Affidavit filed along with reply by respondent, which is signed by Commissioner (Customs), ICD, Patparganj, Delhi. Learned counsel for the petitioner submits that the guidelines issued under various Notifications passed by respondents No.1 & 2 are general in nature and are mandatorily required to be adhered to by respondents No.3 to 6. In addition, respondents No. 3 to 6 are also bound under Regulation 5(5) of Handling of Cargo in Customs Area Regulations, 2009, in addition to Regulation 6(1) (q) of the said Regulations.

30. On the aspect of deliberate delay by the traders/members of petitioner/Foundation in de-stuffing/ lifting the consignment/material from ports, it has been stated on their behalf that pursuant to lockdown due to Covid 19, CFS had to reduce their labour by 33% and they themselves are also unable to cater the services to fulfill the basic responsibility of cargo movement and are arbitrarily putting the burden of ground rent on traders/importers. It is submitted that CFS are the extended arm of Ports by virtue of Circular No. 133/95-cus. dated 22.12.1995 and fall under "State" within the meaning of Article 12 of Constitution of India. It is stated that stand of respondents No.1 & 2 that respondents No. 3 to 6 cannot be bound by the order dated 21st April, 2020, is highly arbitrary as the Director General of Shipping in his order dated 31st March, 2020 has specifically directed that Major Port shall ensure that benefit of waiver/ remission are extended to the end customer by the ports.

31. It is further submitted by petitioner's counsel that petitioner/Foundation is not seeking complete waiver of charges levied by CFS on importers/ traders for handling and clearance of cargo, but is praying for waving off of ground rent penal charges, demurrage, Container Detention Charges etc., especially when they themselves have been exempted from paying Port ground rent charges during the lock down. It is submitted that respondents No.3 to 6 are bound to follow the directions/ advisories/ notifications issued by second respondent under Section 111 of the Major Port Trust Act, 1963.

32. Lastly, it is submitted by counsel for the petitioner that the various decisions relied upon by learned senior counsel for respondents No. 3 to 6 do not apply in the case, as in those cases interim relief was not denied under extra ordinary circumstances falling under Disaster Management Act, Epidemic Disease Act.

33. This Court has heard the Ld. Counsels for the parties at length and gone through the documents appearing on record and carefully considered the rival submissions. The petitioner has sought interim relief on the basis of circulars/ directions/ guidelines issued by Respondent nos. 1 & 2. It is submitted that respondent nos. 3 to 6 cannot charge ground rent i.e. penal charges & demurrage etc. because of the clear directions of Ministry of Shipping i.e. Respondent no.2 and UOI, Respondent no.1. Thus, the whole case of the petitioner is based upon various guidelines/ directions as well as advisories issued by Respondent nos.1& 2.

34. However, perusal of record and submissions of Ld. ASG for respondent no.2 and Ld. CGSC for respondent no.1 reveals that they have not supported the petitioner's version that by virtue of Circulars issued by them, petitioner is not liable to pay penal charges. Ld. ASG on behalf of respondent no.2 has categorically submitted that tariff for the various services provided by CFS is in fact a private arrangement agreed between the CFS and its customers. Respondent no.2 i.e. Ministry of Shipping is not privy to the terms of the private contract executed by CFS and is also not the regulator of the tariff rates that are charged by CFS. The Ld. ASG has further submitted that respondent no.2 does not exercise any direct control over the CFS regarding tariff unless CFS is actually located on land that may have been leased or granted on concession basis by a Major Port onto a CFS operator. It was further submitted by Ld. ASG that respondent No.2 has the power to issue various directions to various Major Ports in the country and accordingly directions have been issued to Major Ports for not charging demurrage, ground rent beyond allowed free period, penal anchorage/berth hire charges, etc. based on the representations of various associations. Ld. ASG has categorically submitted that the directions issued by respondent no.2 applies to Major Ports and their concessionaires i.e. CFS established on the land owned by Major Port and respondent no.2 cannot intervene or govern the private arrangements between CFS or and their customers such as petitioner. It is vehemently submitted that respondent no.2 does not have any control or supervision over activities or cost structure of CFS. The letters/ guidelines/ instructions dated 31.03.2020 and 21.04.2020 are addressed to the Major Ports and were issued under Section 111 of the Major Port Trusts Act, 1963 and any reliance placed upon them by Ld. Counsel for the petitioner is, therefore, misplaced.

35. Guidelines dt. 31.03.2020 were issued by Ministry of Shipping to Major Ports regarding Exemptions /Remission on penalties etc. and issues relating to Force Majeure and it runs as follows:

No. PD-14300/4/2020-PD VII Government of India Ministry of Shipping 31.03.2020
To, Chairperson & CMD All Major Ports.

Sub.: Guidelines to Major Ports on

(i) Exemptions/Remission on penalties etc. and

(ii) Issues relating to Force Majeure Part A- Exemptions/Remission of Penalties etc. Ministry of Home Affairs, Government of India had issued order No 40-3 /2020-DM-1 (A) dated 24 .03.2020 to impose lockdown for a period of 21 days to contain C'COVID- 19 pandemic in the country.

2. Further, Ministry of Home Affairs, Government of India had vide its order No. 40-J/2020-DM-1 (A) dated 25.03.2020 issued an addendum specifically giving exceptions to the operations of seaports for cargo movement and inter-state movement of goods/cargo for inland and exports to ensure regular supply of goods in the country. Through the above, the Central Government has made it clear that the smooth functioning of the Ports remain vital for the country as Ports are the main source for import and exports of goods.

3. However, given the nation-wide lockdown, there is an inevitable impact in the form of delays in evacuation of cargo and inability to fulfill obligations by various parties /stakeholders due to the affect on the downstream services.

4. In view of the situation arising because of the lockdown and after considering the representations received from various stakeholders, Major Ports are directed that -

(i) In the light of the MHA order No. 40-3/2020-DM-1 (A) dated 25.03.2020 and by invoking power under Section 53 of Major Port Trust Act 1963; each Major Port shall ensure that no penalties, demurrage, charges, fee, rentals are levied by the Major ports on any port user (traders, Shipping lines, concessionaires, licensees etc.) for any delay in berthing, loading/unloading operations or evacuation/arrival of cargo caused by the reasons attributable to lockdown measures from 22nd March to 14th April, 2020.

(ii) Therefore, each Major Port shall exempt or remit demurrage ground rent over and above the free period, penal anchorage/berth hire charges and any other performance related penalties that may be levied on port related activities including minimum performance guarantee, wherever applicable.

Part B- Issues relating to Force Majeure

5. The Ministry of Finance vide OM No.18/4/2020-PPD dated 19111 March, 2020 infer alia citing "A Force majeure (FM) means extraordinary events or circumstances beyond human control such as an event described as an Act of God (like natural calamity.)" has clarified that spread of corona virus

should be considered as a case of natural calamity and Force Majeure may be invoked.

6. The Ministry of Shipping, Government of India through Order No PD-13/33/2020-PPP/c-339106 dated 20.03.2020 and letter dated 24th March, 2020 has already intimated the Major Ports that the COVID-19 pandemic can be considered as a 'natural calamity' that would entitle invocation of 'force majeure' provisions inasmuch as obligations under various contracts (involving the Major Ports) are concerned.

7. The aforesaid orders do not impact or dilute the fact that each Major Port needs to remain operational during the COVID-19 pandemic and continue cargo operations in all respects.

8. In view of the situation arising because of the COVID-19 pandemic and after considering the representations received from various stakeholders, Major Ports are directed that -

(i) The period for completion of any Project under implementation in PPP mode or otherwise, can be extended by the Ports.

(ii) For existing and operational PPP projects, the Major Ports can permit waiver of all penal consequences on a case-to-case basis along with deferment of performance obligations as per relevant provisions of Concession Agreement.

(iii) The period of Force Majeure starts from the date of order of Ministry or Finance referred above and will end when the competent authority so orders.

9. The above order issues under Section 111 of Major Port Trusts Act, 1963 with the approval of Hon'ble Minister of State for Shipping (IC) and to be implemented with immediate effect.

(Arvind Chaudhary) Director.

Copy to:

(i) PS to Hon' ble Minister (IC)

(ii) PS to Secretary(S)

(iii) PS to AS(S)

(iv) PS to JS(P)/JS (S)/JS(SM)/JS (PPP)

(v) PS to Sr. Advisor(E)

(vi) All Director/DS in Ministry of Shipping

36. Similarly vide another letter dt. 21.04.2020 guidelines were issued by respondent no.2 regarding non charges of penal charges, demurrages, detention Charges etc and it runs as follows :

"No. PD-14033/4/2020-PD VII Government of India Ministry of Shipping Transport Bhawan, 1, Parliament Street, New Delhi-11 0001 Dated 21st April, 2020 To Chairperson & CMD Sub: Issues at Major Ports relating to;

1) Exemptions/Remission of charges

2) Force Majeure Due to COVID 19 pandemic and lockdown measures in several countries, the logistic chain has been severely disrupted and associated production & consumption centres have been affected. The logistic chains are going through an unusual and massive shock from the disruptions on supply side as well as the demand side. The logistic chain related businesses including traders, importers, exporters, port operators, shipping lines, transporters are facing huge challenge in maintaining their businesses due to lower trade volume as well as cash flow issues. Therefore, it is required that some relief measures are taken to support and rebuild the logistic chain.

2. Ministry of Home Affairs, Government of India had issued order No 40-3/2020-DM-1 (A) dated 24 .03.2020 and subsequent order dated 15/4/2020 along with its amendments to impose lockdown from 22 nd March to 3rd May, 2020 (hereafter "Lockdown Period") to contain COVID-19 pandemic in the country. The Jock-down measures and associated disruptions in logistic chains have impacted the Indian ports and port users. There is an impact in the form of drop in imports & exports volumes, delays in evacuation of cargo, cash flow issues etc. resulting in inability of port users, concessionaires and other stakeholders to fulfill their obligations to port authorities and banks/lenders. In view of this extraordinary situation and after considering the representations received from various stakeholders, all Major Ports are directed that:-

3. Remission of charges to Port Users

(i) Storage Charges: Ports shall allow free storage time to all port users for the Lock-down Period.

(ii) Lease rentals, licence fees related charges: Ports shall allow deferment of April, May and June months, annual lease rentals/licence fees on pro-rata basis, without any interest, if requested by lessee/licensee. This shall be applicable only for the annual lease rentals/licence fee to be received by port for year 2020.

(iii) Other Charges, penalties etc.: Ports shall ensure that no penal charges, demurrages, detention charges, dwell time charges, anchorage charges, penal berth hire charges, performance related penalties etc. are levied on any port user (traders,

importer, exporters, shipping lines, concessionaires, licensees, CFS, etc.) for any delay in berthing, loading/unloading operations or evacuation/arrival of cargo during the Lock-down Period plus 30 days recovery period.

(iv) Additional land for storage: If requisite additional land is available within port area, the port shall make all efforts to provide the additional storage land to port users, on temporary basis, without any charges, rentals, fee etc upto 30th June 2020 on 'as is where is' basis.

4. Remission of charges to PPP concessionaire Due to the impact of COVJD and lockdown measures, there is drop in cargo volume at several Public Private Partnership (PPP) berths/terminals in Major Ports. Therefore, ports shall extend the following to such PPP concessionaires;

(i) Revenue share, royalty and equipment hire related charges: Ports shall allow deferment of April, May and June months' revenue, royalty and equipment hire charges without any interest, if requested by concessionaire. The said deferred amount shall be paid by concessionaire after interest free period of three months(reckoned month to month i.e. the charges due in April 2020 shall be paid in month of August 2020)or alternatively, through six monthly equated installments at interest rate equal to RBI's 91-days Treasury Bill (Primary) yield rate (as on the due date of initially deferred amount) after expiry of interest free period.

(ii) Lease rentals, licence fees related charges: Ports shall allow waiver of lease rentals, licence fees and similar charges for three months (April, May and June '2020) to the extent the volume of cargo dropped compared to monthly average cargo volume of last calendar year i.e. 1st Jan 2019 to 31st Dec 2019. For example, the 'average monthly volume' is 10,000 TEUs based on the cargo handled by concessionaire from 1st Jan 2019 to 31st Dec 2019. If the cargo volume for the month of April'20 is 6000 TEUs (i.e. drop of 40% by volume compared to last year's average monthly volume), the ports shall waive off 40% of lease rentals, licence fees and similar charges for the month of April 2020. If such waived amount has already been received by port, adjustment of the same shall be provided in the forthcoming from concessionaire.

(iii) Minimum Guaranteed Throughput (MGT) obligations: The MGT obligations (wherever existent in concessionaire agreements) shall be computed, for the respective year, without considering the Lockdown Period and cargo volume handled during said period.

(iv) Performance standard related obligations: Ports shall not levy any penalty or charges for any shortfall in any performance standards such as gross berth output, transit storage dwell time, turnaround time for delivery store receipt operations, non-transshipment requirements 'etc. for the Lockdown Period plus 30 days recovery

period.

(v) Additional Land for storage: If requisite additional area is available within port, the port shall provide additional storage area to PPP concessionaires, on temporary basis, without any charges, rentals, fee etc. for upto 30th June 2020 on 'as is where is' basis.

5. Vessel related charges from Shipping Lines: Marine Due/Vessel related charges: Ports shall allow interest free 60 days deferment of marine dues/ vessel related charges to Indian coastal vessels, if requested by vessel operators. Ports shall obtain requisite Bank Guarantee, as security, from coastal vessel operators for the same. Only deferment requests received by 30th May 2020 shall be considered.

6. Force Majeure:

The Ministry of Finance vide OM No.18/4/2020-PPD dated 19th February, 2020 inter alia citing "A Force majeure (FM) means extraordinary events or circumstances beyond human control such as an event described as an Act of God (like natural calamity)" has clarified that spread of corona virus should be considered as a case of natural calamity and Force Majeure may be invoked.

The Ministry of Shipping, Government of India through Order No PD-13/33/2020-PPP/e-339106 dated 20.03.2020 and letter dated 24'h March, 2020 has already intimated the Major Ports that the COVID-19 pandemic shall be considered as a 'natural calamity' that would entitle invocation of 'force majeure' provisions inasmuch as obligations under various contracts (involving the Major Ports) are concerned.

The aforesaid orders do not impact or dilute the fact that each Major Port needs to remain operational during the COVID-19 pandemic and continue cargo operations in all respects.

In view of the situation arising because of the COVID-19 pandemic and after considering the representations received from various stakeholders, Major Ports are directed that -

(i) The period for completion of any Project under implementation in PPP mode or otherwise, shall be extended by the Ports.

(ii) For PPP projects under implementation, the Major Ports can permit waiver of all penal consequences on a case-to-case basis along with deferment of performance obligations as per relevant provisions of Concession Agreement.

(iii) The period of Force Majeure starts from the date of order of Ministry of Finance referred above and will end when the competent authority so orders.

7. The aforementioned point 3(i) and (ii) shall not be applicable to Mumbai Port Trust and Mormugao Port Trust.

8. All Major Port Trusts shall issue relevant applicable orders for both remission and Force Majeure in their respective ports and forward the copy of port's order to the Ministry of Shipping within 7 working days from the date of issue of this order.

9. The remissions/waivers/deferments stipulated in this order shall be extended to only port related activities, industries and commercial establishments. This order shall not be applicable on any captive user, Central or State govt entities, local bodies, PSUs, CPSEs.

10. Port shall ensure strict implementation of this order by port users including PPP concessioners, CFS, LCD, Shipping lines etc. If required, ports shall invoke relevant provisions of agreements and take appropriate action.

11. This order supersedes the Order No. PD-14300/4/2020-PD VII st dated 31 March 2020

12. This order is issued under Section 111 of Major Port Trusts Act, 1963 with the approval of Hon'ble Minister of State for Shipping (IC) and to be implemented with immediate effect. This order shall also be followed by Kamarajar Port Limited.

Copy to,

- | | |
|--------------------------------------|---|
| (i) Secretary, Revenue | |
| (ii) Secretary, Ministry of Commerce | With a request to issue |
| (iii) Chairman CBIC | appropriate directions to CFS
and ICs. |

Copy also to:

- (i) PS to Hon'ble Minister (IC)
- (ii) PS to Secretary(S)
- (iii) PS to Chairman, IWAJ
- (iv) PS to AS(S)
- (v) PS to Sr. Advisor(E)
- (vi) PS to DG(S)

- (vii) PS to JS(P)/JS(S)/JS(SM)/JS(PPP)/JS(A)

- (viii) MD, IPA

- (ix) All Director/DS in Ministry of Shipping

37. Perusal of the above letters/circulars reveals that these only apply to Major Ports and since cargo of the petitioner is lying at Mudra and Jam Nagar ports, the petitioner cannot derive any benefit on the basis of the same and, therefore, reliance placed upon these letters by Ld. Counsel for the petitioner is misplaced and does not help the petitioner in any manner.

38. Let this court now examine the advisories issued by Director General of shipping which is a regulatory body authorized by the Central Govt., Ministry of Shipping under the Merchant Shipping Act, 1958 regarding waiver of ground rent and penal charges. The advisories dated 29.03.2020 and 31.03.2020 are quoted below for ready reference:-

GOVERNMENT OF INDIA MINISTRY OF SHIPPING DIRECTORATE GENERAL OF SHIPPING, MUMBAI F.NQ.,.MJO/Review Schedule-II (1)/2019 Dated 29.03.2020 DGS Order No. 07 of 2020 Sub.: Advisory on non-charging of container detention charges on import shipments

1. Whereas, the Ministry of Home Affairs, Government of India has issued order No 40-3/2020-DM-1 (A) dated 24.3.2020 to impose a complete lockdown in India for a period of 21 days in view of the threat posed by the spread of COVID-19 epidemic.

2. Whereas, the Ministry of Home Affairs has vide its order No 40-3/2020-DM-1 (A) dated 25.03.2020 issued an addendum to the Guidelines annexed to the said order, exempting seaports and its operational organisations from this lockdown to ensure regular supply of goods in the country.

3. Whereas, the Government is working towards smooth functioning of the Ports and its operational organizations, some delays in evacuation of goods from the ports have become inevitable due to the disturbance of the downstream services.

4. Whereas, as a result of these developments some cargo owners have either suspended their operations or are finding it difficult to transport goods/cargo and complete the paper work, resulting in detention of containers without their fault.

5. Whereas, some shipping lines have on their own volition decided to suspend imposition of any container detention charges for a limited period to give relief to the importers and exporters. There is, however, a need for more clarity in this respect for smooth functioning of the trade and maintenance of supply chain in the country.

6. Now therefore, in order to maintain proper supply lines at the Indian seaports the shipping lines are advised not to impose any container detention charge on import and export shipments for the period from 22nd March, 2020 to 14th April, 2020 (both days inclusive) over and above free time arrangement that is currently agreed and availed as part of any negotiated contractual terms. During this period the shipping lines are also advised not impose any new or additional charge. This decision is purely a onetime measure to deal with the present disruptions caused by

spread of COVID-19 epidemic.

(Amitabh Kumar) Director General of Shipping To I. All stakeholders concerned, through DGS Website.

2. Shipping Corporation of India, Mumbai.
3. Indian Ports Association, New Delhi.
4. Indian Private Ports & Terminal Association, Mumbai.
5. Container Shipping Lines Association, Mumbai.
6. INSA, Mumbai
7. ICCSA, Mumbai.
8. Inland Importers and Consumer Association, Delhi.
9. Timber Importer Association, Maharashtra.
10. Association of Multimodal Transport Operators Association of India, Mumbai.

Copy to:

Secretary to the Government of India, Ministry of Shipping, Transport Bhawan, I, Parliament Street, New Delhi-11000 1 (Attn.: Shri P. Chhabra, Deputy Chief Controller of Chartering).

The letter dated 31.03.2020 issued by Ministry of Shipping runs as follows:-

GOVERNMENT OF INDIA MINISTRY OF SHIPPING DIRECTORATE GENERAL OF SHIPPING, MUMBAI F.No. MTO/Review Schedule-II(1)/2019 Dated 31.03.2020 DGS Order No. 08 of 2020 Sub.: Advisory on non-charging of any demurrage, ground rent beyond the allowed free period or any performance related penalty on non-containerized cargo during the period of effect of Covid-19 pandemic.

1. Whereas, the Ministry of Home Affairs, Government of India has issued order No 40- 3/2020-DM-I (A) dated 24.03.2020 to impose a complete lockdown in India for a period of 21 days in view of the threat posed by the spread of COVID-19 pandemic.
2. Whereas, the Ministry of Home Affairs has vide its order No 40- 3/2020-DMJ (A) dated 25.03.2020 issued an addendum to the Guidelines annexed to the said order, exempting seaports and its operational organisations from this lockdown to ensure

regular supply of goods in the country.

3. Whereas, the Government is working towards smooth functioning of the Ports and its operational organisations, given the nation-wide lockdown some delays in evacuation of goods from the ports have become inevitable due to the affect on the downstream services.

4. Whereas, as a result of these developments some cargo owners have either suspended their operations or are finding it difficult to transport good/cargo and complete the paper work, resulting in imposition of demurrage, ground rent beyond the allowed free period penal anchorage/berth hire charges and other performance related penalties due to reasons beyond their control.

5. Whereas, the Ministry of Shipping, Government of India has directed all the major ports vide F. No. PD -14300/4/2020 PD VII dated 31.03.2020 to consider exemption or remission of demurrage, ground rent beyond allowed free period, penal anchorage/berth hire charges and any other performance related penalties that may be levied on port related activities for the reasons attributable to lock down measures i.e. from 22nd March to 14th April,2020

6. Whereas, a DGS Order No. 07 of 2020 dated 29-03.2020 has been issued advising on non-charging of container detention charges on import and exports. Since it has been decided to grant exemption or remission on the charges indicated at para 5 above by the major ports, there is a need to ensure that the benefits extended by the ports are passed on to the end customer, for the period mentioned above, in the EXIM trade in non-containerized cargo also (i.e. bulk break-bulk and liquids cargo) for smooth functioning of the trade and maintenance of supply chain in the country.

7. Now therefore, in order to maintain proper supply chain at the Indian seaports, shipping companies or Carriers (and their agents by whatever name called) are advised not to charge, levy or recover any demurrage, ground rent beyond allowed free period, storage charges in the port, additional anchorage charge, berth hire charges or vessel demurrage or any performance related penalties on cargo owners/consignees of non-containerized cargo (i.e. bulk brake bulk and liquids cargo) whether LCL or not, for the period from 22 nd March, 2020 to 14th April, 2020 (both days inclusive), due to delay in evacuation of cargo caused by reasons attributable to lockdown measures since 22nd March, 2020. The above exemption/remission shall be over and above free time arrangement that is currently agreed and availed as part of any negotiated contractual terms. During this period the shipping companies (and their agents) are also advised not impose any new or additional charge. This decision is a onetime measure to factor-in the present situation arising out of the COVID-19 pandemic.

(Amitabh Kumar) Director General of Shipping To I. All stakeholders concerned, through DGS Website.

2. Shipping Corporation of India, Mumbai.
3. Indian Ports Association, New Delhi.
4. Indian Private Ports & Terminal Association, Mumbai.
5. Container Freight Station Association of India.
6. Container Shipping Lines Association, Mumbai. 7 INSA, Mumbai
8. ICCSA, Mumbai.
9. Inland Importers and Consumer Association, Delhi.
10. Timber Importer Association, Maharashtra.
11. Association of Multimodal Transport Operators Association of India, Mumbai.

Copy to:

Secretary to the Government of India, Ministry of Shipping, Transport Bhawan, I, Parliament Street, New Delhi-11000 1 (Attn. : Shri P. Chhabra, Deputy Chief Controller of Chartering).

39. Ld. ASG has submitted that the above circulars or communications issued by Director General of shipping applies to shipping lines only and not to CFS. It was further submitted that the aforementioned circular/order and notifications are specifically targeting a relevant category or group/entities/persons that excludes CFS. These circulars also, therefore do not help the petitioner in release of goods without payment of ground rent. Ld. ASG has also categorically submitted that respondent no.2 does not have administrative control over the respondent no. 3 to 6. In view of the above facts and submissions of Ld. ASG, it is clear that respondent no. 2 cannot issue any directions to the effect that certain benefits/waiver of penal charges should be granted by CFSs who do not fall within their domain. It is, therefore, clear from the circulars as well as submissions of Ld. ASG that respondent no. 2, cannot intervene/control/supervise/interfere or adjudicate matters that emanate out of a private arrangement between CFS with the petitioner. Thus, the letter/guidelines/advisories quoted above in detail do not help the petitioner in furtherance of their cause.

40. Let this court now examine the directions/guidelines/advisories issued by respondent no. 1 i.e. Secretary, (Revenue), Ministry of Finance, Department of Revenue to port authorities. It is submitted by Ld. Counsel for respondent no. 1 that on account of lockdown, the Ministry of shipping, vide order dated 21.04.2020 directed that no penal charges, dwell time charges, detention

charges etc. shall be levied on import and export of shipments. The same was directed to be strictly implemented by the major port users including CFS and shipping Line etc. Respondent no. 1 had therefore, issued a letter dated 23.04.2020 to all Principal Chief Commissioners/Chief Commissioners of Customs for strict compliance of order of Ministry of shipping by CFS. The said letter runs as follows:-

F.No. 394/46/2020-Cus (AS) Government of India Ministry of finance Department of Revenue Central Board of Indirect Taxes and Customs Anti-Smuggling unit Room No.501, 5th Floor, Hudco Vishala Building Bhikamaji Cama Place, new Delhi-110066 Dated 23.04.2020 To, All Principal Chief Commissioner/Chief Commissioner of Customs, All Principal Chief Commissioner/Chief Commissioner of Customs (Preventive), All Principal Chief Commissioner/Chief Commissioner of CGST & Customs, Madam/Sir, Subject: Covid-19 Pandemic- waiver of Demurrage Charges levied by ICDs/CFSs/Port/Terminal Operators during lockdown-reg.

The Ministry of Home Affairs, Government of India had issued order no. 40-3/2020-DM-I (A) dated 24.03.2020 and subsequent order dated 15.04.2020 along with its amendments to impose lockdown from 22nd March to 3rd May, 2020 to contain COVID-19 pandemic in the country. On account of lockdown measures, the logistics chain of businesses have been most adversely impacted. The chain includes the activities of all stockholders (Importers, Exporters, Customs Brokers, Transporters, Labour, etc.) dealing with the clearance of cargo from Customs facilities viz. Ports, ICDs and CFSs. As a result, importers are not able to clear the import of consignments in many parts of the country for reasons that are beyond their control. In the circumstance, numerous importers and trade associations have requested for the waiver of penal charges, which are collected by the custodians on the imported goods lying at various ports, ICDs, CFSs beyond the normal free period.

2. In this context, it is seen that the Director General of Shipping, M/o Shipping vide Order no. 7/2020 dated 29.03.2020 and vide Order no. 8/2020 dated 31.03.2020 has advised the Indian seaport, carriers, shipping lines not to impose any container detention charges on import and export shipments for the lock down period on cargo owners/consignees of non-contianerized cargo (i.e. both brake bulk and liquid cargo) whether LCL or not for the lock down period due to delay in evacuation of cargo caused by reasons attributed to lockdown measures. Ministry of Shipping has again in its order vide no. PD- 14033/4/2020-PD VII dated 21st April, 2020 (copy enclosed), directed inter alia that no penal charges demurrage, detention charges, dwell time charges etc. shall be levied and ports shall cause strict implementation by port users including ICDs, CFSs, Shipping Lines etc.

3. Accordingly, aforementioned orders issued by Ministry of Shipping and Director General of Shipping are brought to your attention for strict compliance by all the ICDs/CFSs of your zone.

Yours sincerely, Encl: As Above.

(Sharad Srivastava) (Director AS)

41. Ld. Counsel for respondent no. 1 has submitted that Since the letter dated 21.04.2020 issued by the Ministry of shipping is in respect of all major ports and CFS operating under them, therefore, the above letter dt. 23.04.2020 issued by petitioner no. 1 is also binding on all CFS operating under Major ports only. It is obvious also for the reason that letter dated 23.04.2020 issued by respondent no. 1 which is based upon letter dated 21.04.2020, of Ministry of shipping cannot go beyond the direction/guidelines/directions conveyed by the same.

42. Ld. Counsel for the petitioner has, however, relied upon various advisories issued by Commissionerates of Customs to the ports falling under their jurisdiction and which contemplate a humanitarian and sympathetic approach and advises for waiver of ground rent charges, detention charges etc. These advisories bearing no. 01.2020 dated 10.04.2020 and bearing no. 02/2020 dated 24.04.2020 runs as follows:-

OFFICE OF THE COMMISSIONER OF CUSTOMS, INLAND CONTAINER DEPOT, PATPARGANJ & OTHER ICDs, NEAR GAJIPUR, DELHI-110096 C. No. VIII/6/HQ/ICD/PPG/Reg. Comp/Public Notice/03/ Date:- 10.04.2020 ADVISORY NO. 01/2020 To, The Custodians of ICD-PPG and Haryana ICDs under Commissioner of Customs ICD PPG & Other ICDs. [As per Annexure-A] Sub: Advisory for non-charging of Container detention charges and Ground rent charges for the COVID-19 related lockdown period -reg.

1. In the context of the national effort to battle COVID-19, the Ministry of Home Affairs, Govt. of India has issued Order No. 40- 3/2020 DM-I(A) dt. 24.03.2020 to impose a complete lockdown in India for a period of 21 days.

2. Whereas, Ministry of Home Affairs, Govt. of India, vide order No. 40-3/2020 DM-I(A) dt. 25.03.2020 issued an addendum and included Customs clearance at ports/airports/land border in the exemption to Clause 1. Further, operations of Railways and sea ports and their related organizations for cargo movement were also added in the exemption list.

3. This complete lockdown in the country has put the trade, particularly importers, under a very difficult situation, as considering the prohibitory orders, transport of goods along with movement of Importers/Customs Brokers and their staff, is not feasible to secure the release of imported goods. Moreover, due to ongoing lockdowns and prohibitory orders loading and transportation of goods to the importers premises is also very difficult.

4. Apprehending that, delays in securing release of goods from the ICD/CFS may result into containers detention charges levied by shipping lines along with container

ground charges levied by CFS/ICDs, Importers and Custom broker associations have requested the undersigned to look in to the matter.

5. In view of above, Ministry of Shipping vide Order No. PD- 14300/4/2020-PD VII dated 31.03.2020 at para-4 has made specific directions related to not levying penalties, demurrage, charges, fee, rentals for any delay inter-alia in evacuations of cargo caused due to the reasons attributable to the lock down measures from 22nd March 2020 to 14th April 2020. It also directs exemptions and remissions in certain regards as discussed in para 9 thereof by the Ministry of Shipping Order under Section 111 of the Major Port Trust Act, 1963. The CFS being extended arms of the Ports also get covered under this Order.

6. In view of the above and extra ordinary current scenario and nation's effort to contain the spread of COVID-19, Shipping Lines and Custodians of ICDs are hereby advised to adopt a sympathetic and humanitarian approach while levying the container detention charges/ground rent and may not impose any container detention charges/ ground rent charges on import cargo for the COVID-19 related lockdown period, over and above the free time arrangement. In this regard, it is worth appreciating that M/s CONCOR vide Public Notice CON/NR/TKD/EXIM/Public Notice/2020/19 dated 04.04.2020 has waived HNP charge, Ground rent on Cargo, Auction Charges, Terminal Service charge on container and late payment surcharge etc. during the Lock down period.

7. Customs cargo charges collected under regulation 6(3) of Handling of Cargo in Customs Areas Regulations, 2009 may be suitably amended and a public notice issued by Custodian at each port.

8. In order to provide better facilitation to importers/ exporters in this extra ordinary situation, this Commissionerate, in public interest, has also issued Public Notice No. 21/2020, 22/2020, 23/2020, 24/2020 and 25/2020 dated 25.03.2020, 28.03.2020, 30.03.2020, 04.04.2020 and 04.04.2020 respectively.

9. This issues with the approval of Commissioner of Customs, ICD PPG & other ICDs.

(Dr. Abhishek Chandra Gupta) Additional Commissioner ICD-PPG & other ICDs
Copy forwarded to:-

1. The Chief Commissioner of Customs(DZ), New Custom House, New Delhi-110037
2. The Commissioner of Customs, ICD, PPG, Delhi.
3. All the Shipping Lines and other stakeholders through Delhi Customs website.

4. All Custodians: ICD PPG, ICD BBG, ICD Piyala, ICD Palwal, ICD Garhi Harsaru, ICD Patli, ICD Rewari, ICD Pali, ICD Bawal, ICD Sonepat, ICD Barhi, ICD Jhattipur.

5. The Deputy/Assistant Commissioner of Customs, ICD, PPG, ICD BBG, ICD Piyala, ICD Palwal, ICD Garhi Harsaru, ICD Patli, ICD Rewari, ICD Pali, ICD Bawal, ICD Sonepat, ICD Barhi, ICD Jhattipur

6. The President, Delhi Customs Clearing Agents Association, 260-61, Anarkali Bazar, Jhandewalan Extension, DDA Shopping Complex, New Delhi-110055.

7. Notice Board

8. Guard File.

43. The other advisory bearing no.2/2020 dt. 24.04.2020 runs as follows:

OFFICE OF THE COMMISSIONER OF CUSTOMS, INLAND CONTAINER DEPOT, PATPARGANJ & OTHER ICDs, NEAR GAJIPUR, DELHI-110096
C.No.VIII/6/HQ/ICD/PPG/Reg.Comp/Instructions/15/2020 Date: 24.04.2020
ADVISORY NO. 2/2020 To, The Custodians of ICD-PPG and Haryana ICD under Commissioner of Customs ICD-PPG & other ICDs (As per Annexure A) Sub.: Advisory for COVID-19 Pandemic- Waiver of Demurrage Charges levied by ICDs/CFSs/Ports/Terminal Operators during lockdown - Ministry of Shipping.

Order vide No. PD-14033/4/2020-PD VII dated 21.04. 2020-reg.

Attention of the importers, Customs Brokers and all other stakeholders is invited to CBIC letter F. No. 394/46/2020-Cus(AS) dated 23.04.2020 issued by Director(AS) on the above subject (copy enclosed).

2. The Ministry of Home Affairs, Govt. of India vide order No. 40- 3/2020-DM-1(A) dated 24.03.2020 and subsequent order dated 15.04.2020 along with its amendments directed to impose lockdown till 3rd May, 2020 to contain COVID-19 pandemic in the country.

3. On account of lockdown measures the logistics chain of businesses have been most adversely impacted. The chain includes the activities of all stakeholders (Importers, Exporters, Custom Brokers, Transporters, Labour etc.) dealing with the clearance of cargo from Customs facilities viz. Ports, ICDs, and CFSs. As a result, importers are not able to clear the import of consignments in many parts of the country for reasons that are beyond their control. In the circumstance, numerous importers and trade associations have requested for waiver of penal charges, which are collected by the custodian on the imported goods lying at various ports, ICDs, CFSs beyond the normal free period.

4. In the above context, Director General of Shipping, M/o Shipping vide Order No. 7/2020 dated 29.03.2020 advised the Indian seaports, carriers, shipping lines not to impose any container detention charges on import and export shipments for the lock down period (22.03.2020 to 14.04.2020) over and above free time arrangements. Also during the period shipping lines have been advised not to imposed any new or additional charge. Further, Ministry of Shipping has again in its order no. 11 of 2020 dated 22.04.2020 has extended the time period upto 03.05.2020.

5. The above is brought to the notice of all concerned ICDs for strict compliance.

6. This issues with the approval of Commissioner of Customs, ICD PPG & other ICDs.

Encl.: As Above (Dr. Abhishek Chandra Gupta) Additional Commissioner ICD-PPG & other ICDs Copy forwarded to:-

1. The Chief Commissioner of Customs (DZ), New Custom House, New Delhi-110037

2. The Commissioner of Customs, ICD, PPG, Delhi.

3. All the Shipping Lines and other stakeholders through Delhi Customs website.

4. All Custodians: ICD PPG, ICD BBG, ICD Piyala, ICD Palwal, ICD Garhi Harsaru, ICD Patli, ICD Rewari, ICD Pali, ICD Bawal, ICD Sonepat, ICD Barhi, ICD Jhattipur.

5. The Deputy/Assistant Commissioner of Customs, ICD, PPG, ICD BBG, ICD Piyala, ICD Palwal, ICD Garhi Harsaru, ICD Patli, ICD Rewari, ICD Pali, ICD Bawal, ICD Sonepat, ICD Barhi, ICD Jhattipur

6. The President, Delhi Customs Clearing Agents Association, 260-61, Anarkali Bazar, Jhandewalan Extension, DDA Shopping Complex, New Delhi-110055.

7. Notice Board

8. Guard File.

44. Perusal of the above advisories reveals that these are not mandatory or directory. Vide these advisories shipping lines and Custodians of ICDs are advised to adopt a sympathetic and humanitarian approach while levying the container detention charges/ground rent charges on import cargo for the lockdown period. Thus, it is very clear from the above circulars that these are in the form of advisories and are not directory in nature and do not mandate respondent no.3 to 6 not to charge ground rent, penal charges/ demurrage etc.

45. The question which now arises for consideration is whether the above guidelines/letters which are only advisory in nature and contain no directions under any statute can bind CFS and direct

them not to charge ground rent etc. Ld. Sr. Counsel for the respondent no. 3 to 6 has vehemently argued that they have their containers located on a land which is outside the land/territory of the port and they are not deriving any kind of concession from port authorities in any kind or in any manner and, therefore, the advisories/ guidelines which do not have statutory force cannot bind them. It is further submitted that since respondent no. 1 and 2 are not privy to the contract between them i.e. respondent no. 3 to 6 and their customers, they cannot, therefore, in any manner govern or modify the terms of agreement between petitioner and respondent no. 3 to 6 as the same would be in violation of Article 19(1)(g) of the Constitution of India and the same is the stand of respondent no. 1 and 2 in their counter affidavits as well.

46. Ld. Counsel for respondent no. 3 to 6 however submitted that understanding the gravity of the situation which the country is facing, it has suo moto advised its members by an advisory dated 24.03.2020 for granting waiver of ground rent for 10 days i.e. from 22.03.2020 to 31.03.2020.

47. It is further submitted by Ld. Counsel for the respondent no.3 that with a view to support the Govt. in its fight against the Pandemic, it has issued another advisory dt. 11.05.2020 thereby directing its members to offer discount or the ground relief. The copy of the advisory dt. 11.05.2020 runs as follows:

CONTAINER FREIGHT STATIONS ASSOCIATION OF INDIA (CIN: U63031MH2006PTC162883)
306, 3" Floor, Anchorage, Ship Agents Premises Co-op Society, Plot No. 2, Sec 11, Dronagiri, Dist. Raigad, Navi Mumbai - 400 707.

Tel/Fax: 022- 2747 1649 Email: sg@cfsai.in Web: cfsai.in CFSAI /Advisory/27/2020-21 11th May, 2020 CFSAI Advisory to Members By our last Advisory on 24th March 2020, the Association had requested all members to consider 10 days waiver of ground rent from 22nd March 2020 to 31st March 2020 due to the impact of outbreak of pandemic COVID19 on EXIM Trade. The Association and most of its members have again been approached by several importers / trade bodies and Associations to consider additional waiver as the lockdown was further extended.

Whereas, as part of partial relaxation even during the Lockdown, the Government of India permitted essential services including Ports and Terminals and Customs Houses to operate as essential services to ensure that supply chain is not disrupted. As part of these essential services all Member CFSs despite operational constraints & challenges kept their respective facilities open and remained functional albeit with reduced staff as per the directives of the Government, notwithstanding that the members did incurred huge extra cost in mobilizing TTs, labour, surveyors, staff and other resources.

Whereas in this hour of crisis, it was with tremendous proactive facilitation measures initiated by Shipping Ministry, Special Secretary (Logistics), JNPT, JNCH & other Custom Houses, Nhava Sheva Police, District Collector Raigad, Gram Panchayat and several other Governmental agencies, that import deliveries commenced significantly by first week of April and got normalized to a large extent by 15th April 2020. Our members played a significant role in this process.

Whereas the Association has been invited by Government of India through different Ministries/ agencies/ authorities and based on the interactions and discussions held, the Association has shared Government advisories and sensitized all members from time to time. Most of member CFSs recognizing the difficulties faced by the trade have been considerate and on their own accord, when approached by the importers/shipping lines/CHAs have been extending substantial waivers either in form of additional number of days or in percentage reduction at mutually agreed terms with Importers/shipping lines/CHAs.

At the same time the members are also concerned about their rising and additional costs including payment to employees, loaders and other workers and service providers, besides rent, taxes, bank liabilities etc. and the livelihood of about 25,000 workers and their families depend directly on our members, apart from lakhs of others who are indirectly gainfully dependent. As suggested by few members, the Association has also obtained a legal advice.

In view of the aforesaid, and with a view to balance the cash flow and fund management of the members, in deference to the Government and to support the Government in its fight against the unprecedented pandemic, several Member CFSs have further expressed willingness to consider further concessions in following manner:- That over and above the ground rent waiver already accorded between 22nd March to 31st March (10 days) members will consider a further waiver on the Ground rent of up to 50% prospectively, to the customers who have not taken delivery for the containers that have arrived in their CFSs between 1 st April and 15th April 2020.

This advisory will have no bearing on the containers already cleared by Importers from respective CFSs on mutually agreed terms prior to issuance of this Advisory.

The provisions of this advisory would be applicable to containers mentioned above that are cleared by Importers on or before 20th May 2020. The handling, transportation and other CFS charges would be as per respective CFSs published tariffs.

In view of above concessions proposed by several Members of CFSAI, it is requested that Importers/CHAs and other customers be directed to come forward and take deliveries of Import laden containers from CFSs expeditiously. It may please be noted that CFSs are functional and Documentation/ Delivery/ payment counters are open throughout the day.

The trade may also be sensitized that CFSs have taken utmost care and initiated several Safety and Health related precautionary measures keeping in mind the health of their staff and also for the persons visiting CFSs for clearance of goods to contain the spread of pandemic COVID-19.

This Advisory is not a directive but is issued so as to assist Members to take an informed decision.

48. The above advisory issued by CFS Association shows that it is also alive to the situation and taking a sympathetic view and giving considerable discount in ground rent/ penal charges.

49. Now coming to the letters issued by the concerned Ministries, the facts narrated in the earlier paras and detailed discussions clearly point out that circulars/guidelines/advisories issued by respondent no. 1 and 2 prima facie do not bind respondent no. 3 to 6 who are not availing any concession from port authorities and who have their containers located outside the Port Land. Moreover, the letters/guidelines/advisories also cannot intervene or interfere in a private contract which respondent no. 3 to 6 have with their customers i.e. petitioner. Respondent no. 3 to 6 on their own have given considerable relaxation/waiver of ground rent and are sympathetically considering the request of cargo owners in view of the Covid-19. On careful examination of all the facts and submissions made by the Ld. Counsels for the parties, this Court is of the opinion that petitioner has failed to make out a prima facie case for grant of injunction. As discussed earlier, the circulars/guidelines and advisories issued by respondent no.1 and 2 are not binding upon respondent no. 3 to

6. Some of the advisories only contemplate that authorities concerned should adopt sympathetic and humanitarian approach and has advised them not to charge ground rent or penal charges. In these circumstances, there is no material on record which prima facie suggests that any right of the petitioner has been violated by the respondents. This Court is further of the opinion that since respondent no.3 to 6 are not bound by various guidelines/ letters/ advisories issued by respondent no.1 & 2, the balance of convenience also does not lie in favour of the petitioner.

50. In the end, it may be noted that even no irreparable loss is going to be caused to the petitioner if injunction/restrained order is not granted for the reason that if this court finally comes to a conclusion that these letters were not in the form of advisories/guidelines but were in fact binding directions, the petitioner can recover the ground rent/penal charges paid by them to respondent no.3 to 6.

51. In view of the above detailed discussions, no grounds for grant of injunction/restrain order in favour of the petitioner and against the respondents are made out at this stage. The application filed by petitioner under Section 151 CPC for injunction is, therefore, dismissed.

W.P.(C) 3029/2020 & CM No. 10998/2020 & CM No. 11044/2020 & CM No. 11045/2020 & CM No. 11046/2020 & CM No. 110047/2020 (under Order 1 Rule 10 (2) CPC r/w Sec. 151 CPC)

1. Various question of facts and law have been raised in this petition which require detailed affidavit by respondent no. 1 and 2 as they had filed short affidavits in view of the fact that there was an urgency as an application u/s 151 Cr.P.C. for injunction/restrain order was filed and Ld. Counsel for the petitioner wanted it to be disposed of at the earliest. The said application has been dismissed today vide a detailed order. The respondents are now directed to file their detailed counter affidavits within four weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.

2. List on 23.07.2020.

3. The applications for impleadement will be considered at the time of hearing of the writ petition.

BRIJESH SETHI, J MAY 22, 2020 r