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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27th May, 2021
Pronounced on: 10thAugust, 2021

\+ W.P.(C) 3029/2020 and CM 10998/2020, 11044/2020, 11045/2020, 11046/2020, 11047/2020, 12389/2020, 18969/2020 and 18970/2020

POLYTECH TRADE FOUNDATION ..... Petitioner
Through: Mr. Abhishek Aggarwal, Advocate.

versus

UNION OF INDIA AND ORS. .... Respondents
Through: Mr. Chetan Sharma, ASG with Mr. Asheesh Jain, CGSC, with Mr.Amit Gupta, Mr.Vinay Yadav, Mr.Akshay Gadeock, Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Mr. Amrit Singh, and Mr.Sahaj Garg, Advocates for UOI.
Mr.Vikram S. Nankani, Sr. Adv. with Mr.Naresh Thacker, Adv. for R-3.
Mr. Naresh Thacker with Mr.Jitendra Motwani, Ms. Rinkey Jassuja and Mr.Kumar Visalaksh, Mr.Udit Jain and Mr.Archit Gupta, Advocates for R-4 to R-6.

AND

\+ W.P.(C) 10142/2020

SS ENTERPRISES ..... Petitioner
Through: Ms.Madhura MN, Mr.Ruchir Bhatia, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr.Anil Soni, CGSC with Mr.Devesh Dubey, Adv. for R-1.

AND

\+ W.P.(C) 3171/2020 and CM APPL. 11027/2020

UNICHARM INDIA PVT. LTD. ..... Petitioner

Through: Mr. Rupender Sinhmar, Mr. Prahlad Singh and Mr. Shyam Gopal, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Asheesh Jain, CGSC with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Ms. Anjana Gosain, Ms. Shalini Nair, Mr. Akshay Gadeock, Ms. Aditti Amitabh, Advocates for R-2 and R-5.

Mr.Vikram S. Nankani, Sr. Adv. with Mr.Naresh Thacker, Adv. for R-3

Mr. Naresh Thacker with Mr.Jitendra Motwani, Ms. Rinkey Jassuja and Mr.Kumar Visalaksh,

Mr.Udit Jain and Mr.Archit Gupta, Advocates for R-6 to R-12, R-14, R-15 and R-18.

Mr.Manu Sishodia and Mahinder Bairwa, Advs for R-19

Mr.K.K. Tyagi, Adv for CWC.

AND

\+ W.P.(C) 3195/2020 and CM APPL. 11336/2020

INDIAN AGRO AND RECYCLED PAPER MILLS ASSOCIATION ..... Petitioner

Through: Mr. Manav Vohra, Mr. Prateek

Khanna and Mr. Saumya Kaul, Advocates.

versus

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS & ORS. .... Respondents

Through: Ms.Sonu Bhatnagar, Ms.Mallika Joshi, Ms.Venus Mehrotra, Mr.Vaibhav Joshi and Ms.Kanak Grover, Advs. for R-1 & 5.

Mr. Chetan Sharma, ASG with Ms. Anjana Gosain, Ms. Shalini Nair, Ms. Aditti Amitabh, Advocates for R-2 to R-4.

Mr.Vikram S. Nankani, Sr. Adv. with Mr.Naresh Thacker, Mr.Jitendra Motwani, Ms. Rinkey Jassuja and Mr.Kumar Visalaksh, Mr.Udit Jain and Mr.Archit Gupta Adv. for R-6.

AND

\+ W.P.(C) 3561/2020

ATUL GOEL ..... Petitioner

Through: Mr.Rajesh Sonthalia, Advocate.

versus

THE DIRECTOR GENERAL O/O THE DIRECTORATE GENERAL OF SHIPPING & ORS. .... Respondents

Through: Mr.Ruchir Mishra with Mr.Mukesh K.Tiwari and Mr.Ramneek Mishra, Advocates for R1 to R5.

AND

\+ W.P.(C) 4184/2020 & C.M. Nos. 23827/2020, 23967/2020 23968/2020, 16043/2021 & 16044/2021

MATERIAL RECYCLING ASSOCIATION

OF INDIA AND ORS. ..... Petitioners

Through: Mr.Amit Sibal, Sr. Adv. with Ayush Aggarwala, Ms. Aditi Mittal, Mr. Aditya Narayan Mahajan, Mr.Suvaankoor Das, Mr. Siddhant Tripathi, Mr.Jatin Kumar and Mr. Harini Subramani, Advocates

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Asheesh Jain, CGSC, Mr. Amrit Singh, and Mr.Sahaj Garg, Advocates for UOI.

Mr.Vikram S. Nankani, Sr. Adv. with Mr.Naresh Thacker, Mr.Jitendra Motwani, Ms. Rinkey Jassuja and Mr.Kumar Visalaksh, Mr.Udit Jain and Mr.Archit Gupta, Advocates for R-6 and R-7.

Mr.C.U. Singh, Sr.Adv and Mr.Darpan Wadhwa, Sr.Adv with Mr.Prathamesh Kamat, Mr. Malhar Zayaria, Mr.Ankur Kashyap, Mr. Shiv Iyer, Ms. Ankita Sen and Mr. Osama Butt, Advs. for respondent No. 8

Mr.Uma Kant Mishra, Advocate for applicants.

AND

\+ W.P.(C) 4185/2020

RAJIV KUMAR AND BROTHERS ..... Petitioner

Through: Mr. Garvesh Kabra and Ms. Pooja Kabra, Advocates

versus

UNION OF INDIA AND ORS. ….. Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Asheesh Jain, CGSC, with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Mr. Amrit Singh, and Mr.Sahaj Garg, Advocates

for UOI.
Mr.Vikram S. Nankani, Sr. Adv. with Mr.Naresh Thacker, Mr.Jitendra Motwani, Ms. Rinkey Jassuja and Mr.Kumar Visalaksh, Mr.Udit Jain and Mr.Archit Gupta, Advocates for R-6 and R-7.

AND

\+ W.P.(C) 4186/2020

PRATISHTHA COMMERCIAL PVT LTD AND ANR.
….. Petitioners
Through: Mr. Garvesh Kabra and Ms. Pooja Kabra, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents
Through: Mr. Chetan Sharma, ASG with Mr.Asheesh Jain, CGSC, with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Mr. Amrit Singh, and Mr.Sahaj Garg, Advocates for UOI.
Mr.Vikram S. Nankani, Sr. Adv. with Mr.Naresh Thacker, Mr.Jitendra Motwani, Ms. Rinkey Jassuja and Mr.Kumar Visalaksh, Mr.Udit Jain and Mr.Archit Gupta, Advocates for R-6 and R-7.

AND

\+ W.P.(C) 4349/2020 and CM APPL. 15657-658/2020

INDIANO FERRO LIMITED ..... Petitioner
Through: Mr. Akshat Bajpai and Ms. Ishanee Sharma, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Chetan Sharma, ASG with Ms. Anjana Gosain, Ms. Shalini Nair, Ms. Aditti Amitabh, Advocates for R-1 and R-2.

Mr.Naresh Thacker, Mr. Jitendra Motwani, Mr. Kumar Visalaksh, Mr. Udit Jain, Ms. Rinkey Jassuja and Mr. Archit Gupta, Advocates for R-6.

AND

\+ W.P.(C) 4485/2020 and CM APPL. 16173/2020

CARRIER AIR CONDITIONING AND REFRIGERATION LIMITED ..... Petitioner

Through: Mr. Ajay Bhargava, Ms. Vanita Bhargava, Mr. Aseem Chaturvedi, Mr. Arvind Kumar Ray and Ms. Vansha Sethi Suneja, Advocates.

versus

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS & ORS. .... Respondents

Through: Ms.Sonu Bhatnagar, Ms.Mallika Joshi, Ms.Venus Mehrotra, Mr.Vaibhav Joshi and Ms.Kanak Grover, Advs. for R-1
Mr. Chetan Sharma, ASG with Mr. Asheesh Jain, CGSC, with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Mr.Amrit Singh and Mr.Sahaj Garg, Advocates for R-2 to R-4.

AND

\+ W.P.(C) 5532/2020 and CM APPL. 19921/2020

JAI SHREE KRISHNA IMPEX ..... Petitioner

Through: Ms.Vibha Narang and Mr.Akarsh Garg, Advocates.

versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr.Chetan Sharma, ASG with Mr.Vijay Joshi and Mr. Sahaj Garg,

Advocates for R-1.
Mr.Naresh Thacker, Mr. Jitendra Motwani, Mr. Kumar Visalaksh, Mr. Udit Jain, Ms. Rinkey Jassuja and Mr. Archit Gupta, Advocates for R-4 and R-5.

AND

\+ W.P.(C) 5675/2020 and CM APPL. 20533/2020

VOLTAS LIMITED ..... Petitioner
Through: Mr. Ajay Bhargava, Ms. Vanita Bhargava, Mr. Aseem Chaturvedi, Mr. Arvind Kumar Ray and Ms. Vansha Sethi Suneja, Advocates.

versus

UNION OF INDIA & ORS. .... Respondents
Through: Mr.Dev P.Bhardwaj, CGSC with Mr.Jatin Teotia, Advocate for UOI/R1 to R3 and R5.
Mr. Chetan Sharma, ASG with Mr. Asheesh Jain, CGSC, Mr.Amit Gupta and Mr.Sahaj Garg, Advocates for UOI.

AND

\+ W.P.(C) 7031/2020 and C.M. 26172/2020

WATINUKSUNG JAMIR .....Petitioner
Through: Mr.Debashis Mukherjee with Mr.Anand Shankar, Mr.Srijib Chakraborty, Mr.Pankaj Agarwal and Mrs. Ashnika Sharma Mukherjee, Advocates.

versus

UNION OF INDIA AND ORS. .... Respondents
Through: Mr. Asheesh Jain, CGSC with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Advocates for R-1.

Mr.Buddy A.Ranaganadhan with Ms.Stuti Krishn, Advocates for R-2.
Mr.Naresh Thacker with Mr.Jitendra Motwani, Mr.Kumar Visalaksh, Mr.Udit Jain, Ms. Rinkey Jassuja and Mr.Archit Gupta, Advocates for R-3.

AND

\+ W.P.(C) 8406/2020

BALDEV METALS PVT. LTD. ..... Petitioner
Through: Mr. Kumar Ankur, Mr. Karan Bindra and Mr. Bipul Kedia, Advocates.

versus

UNION OF INDIA & ANR. .... Respondents
Through: Mr. Asheesh Jain, CGSC with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi Advocates for R-1.

AND

\+ W.P.(C) 9066/2020

R.L. STEELS AND ENERGY LTD. ..... Petitioner
Through: None.

versus

UNION OF INDIA & ORS. .... Respondents
Through: None.

AND

\+ W.P.(C) 9067/2020

SAKTHI TARPAULIN COMPANY ..... Petitioner
Through: None.

versus

UNION OF INDIA & ORS. .... Respondents
Through: Mr. Asheesh Jain, CGSC with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Advocates for R-1 & 2.

AND

\+ W.P.(C) 9068/2020

CARE CENTRE PRIVATE LIMITED ..... Petitioner
Through: None.

versus

UNION OF INDIA & ORS. .... Respondents
Through: Mr. Asheesh Jain, CGSC with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Advocates for R-1 & 2.

AND

\+ W.P.(C) 9069/2020

GOLDEN IMPORTERS ..... Petitioner
Through: Mr.Yudhvir Dalal and Mr.Aswin Gopakumar, Advs.

versus

UNION OF INDIA & ORS. .... Respondents
Through: Mr. Asheesh Jain, CGSC with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Advocates for R-1 & 2.

AND

\+ W.P.(C) 9070/2020

RELIABLE CASHEW PVT. LTD. ..... Petitioner
Through: None.

versus

UNION OF INDIA .... Respondents

Through: Mr. Asheesh Jain, CGSC with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Advocates for R-1 & 2.

AND

\+ W.P.(C) 9819/2020 and CM No. 8006/2021

SINGHVI TRADELINK LLP & ANR. ..... Petitioners

Through: Mr.Naresh Thacker, Mr.Jitendra Motwani, Ms. Rinkey Jassuja and Mr.Kumar Visalaksh, Mr.Udit Jain and Mr.Archit Gupta, Advocates.

versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr.Yashvardhan, Ms.Smita Kant, Ms.Kritika Nagpal, Ms.Bhavya Bhatia, Advocates.

AND

\+ W.P.(C) 2707/2021

A.G. INDIA RETAIL PVT. LTD. ..... Petitioner

Through: None

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms.Sonu Bhatnagar, Ms.Mallika Joshi, Ms.Venus Mehrotra, Mr.Vaibhav Joshi and Ms.Kanak Grover, Advs. for R-4.
Mr.Naresh Thacker, Mr.Jitendra Motwani, Mr.Kumar Visalaksh, Mr.Udit Jain, Mr.Amit Laddha and Mr.Archit Gupta, Advs. for R-5, 6 & 7.

AND

\+ W.P.(C) 3649/2021 & CM No.11077/2021

CONTAINER SHIPPING LINES ASSOCIATION & ANR.

…..Petitioners

Through: Mr.C.U. Singh, Sr.Adv and Mr.Darpan Wadhwa, Sr.Adv with Mr.Prathamesh Kamat, Mr. Malhar Zayaria, Mr.Ankur Kashyap, Mr. Shiv Iyer, Ms. Ankita Sen and Mr. Osama Butt, Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Asheesh Jain, CGSC with Mr.Adarsh Kumar Gupta and Ms.Parul Panthi, Advs. for R-1

Ms.Sonu Bhatnagar, Ms.Mallika Joshi, Ms.Venus Mehrotra, Mr.Vaibhav Joshi and Ms.Kanak Grover, Advs. for R-4 & 5.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% 10.08.2021

C. HARI SHANKAR, J.

1. Between the time when imported goods land on Indian soil, and the Customs authorities release them from their charge so that they become part of the "commercial land mass" of the country, they suffer various financial exactions, statutory as well as contractual. It is not necessary for us, in these petitions, to enter into the intricacies of the procedures followed before the applicable duties or taxes are paid and the goods, are released by the Customs. We are concerned with the

amount which the importers (or exporters, in the case of export goods) pay, during this period, to the shipping lines, Inland Container Depots (ICDs) and/or Container Freight Stations (CFSs). ICDs and CFSs are Customs Cargo Service Providers, who permit storage of imported goods, prior to their being released by the Customs after payment of duty, against pre-fixed and pre-determined charges. These charges involve various elements with which, too, we need not concern ourselves. The petitioners in these petitions are concerned with the penal charges levied by ICDs/CFSs, for the period, beyond a certain number of "free days", during which the goods continue to remain in their premises, and levied by shipping lines, in the event the containers are not returned to them within a fixed number of "free days". Ordinarily, therefore, after containers are unloaded from the vessel in which they arrive, the containers are required to be returned to the shipping lines within a contractually stipulated number of days. If they are so returned, no additional charge is levied on the importer. If they are not returned to the shipping lines within such "free days", they suffer detention charges, levied by the shipping lines in accordance with the contract executed between the shipping lines and the importers. Similarly, ICDs and CFSs also permit the imported goods to be stored within their premises for a number of "free days", on payment of normal charges. If the goods remain in their premises beyond such "free days", they suffer penal charges, chiefly ground rent at much higher rates than is ordinarily charged.

2. The Central Board of Excise and Customs (CBEC; now rechristened "CBIC") issued, on 22nd December, 1995, a Circular,

simplifying the procedure for setting up ICDs and CFSs. We may reproduce paras 2 and 3 of the said Circular:

> "2. *The Container Freight Station (CFS) is not a Customs Station* but *it is to be declared as a Customs area under Section 8 of the Customs Act*[1] by the Commissioners of Customs concerned. Normally, every CFS is located in a Customs Station or in an adjunct to a Customs station. CFS may handle exclusively export cargo or import cargo or both. *Generally, CFS is taken to be an extended arm of the Port/ICD/ACC.* Depending upon its importance and volume of work it handles, it functions like a full-fledged Customs Station wherein the admission, processing and completion of all customs procedures are done. Alternatively, the processing of the Customs clearance documents is done in the Customs House and the CFS functions like 'Docks' where the examination and sealing of export cargo or examination and customs clearance of import cargo is done. Thus, depending upon the location, workload and other related factors, Commissioners of Customs can devise the Customs work in such CFS.
>
> 3. Commissioners of Customs are authorised to notify a CFS as a Customs area under Section 8 of the Customs Act in any place declared by the Central Government as a Customs station under Section 7 of the Customs Act[2].

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[1] "**8. Power to approve landing places and specify limits of customs area. –** The Principal Commissioner of Customs or Commissioner of Customs may –

(*a*) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;

(*b*) specify the limits of any customs area."

This provision is required to be read in conjunction with Section 33 of the Customs Act:

"**33. Unloading and loading of goods at approved places only. –** Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (*a*) of section 8 for the unloading of loading of such goods."

[2] "**7. Appointment of customs ports, airports, etc. –**

(*1*) The Board may, by notification in the Official Gazette, appoint –

(*a*) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;

(*aa*) the places which alone shall be inland container depots or air freight stations for the unloading of imported goods and the loading of export goods or any class of such goods;

(*b*) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;

> However, before declaring a CFS, the Commissioners may assess the requirements of such facility in each Port/ICD/ACC for creation of such additional Customs area (CFS). If need be, the Commissioners may discuss such feasibility in the Regional Advisory Committee meetings or meetings with the Trade. Commissioners are advised, however before notifying any new CFS as Customs area in a Customs Station, they should call for the proposals by wide publicity and grant such facility only after fully satisfying themselves on the need, security, credibility of the persons concerned, suitability of the condition and other details of the applicant."
>
> (emphasis supplied)

"Customs station" is defined, in clause (13) of Section 2 of the Customs Act, 1962 ("Customs Act", in short) as meaning "any customs port, customs airport, international courier terminal, foreign post office or land customs station". "Land customs station" is, in turn, defined, in clause (29) of Section 2, as meaning "any place appointed under clause (b) of section 7 to be a land customs station". From the above Circular, it is clear that a CFS is not a Customs Station, though it is declared as a Customs area under Section 8 of the Customs Act. This is underscored by the clarification, which follows in para 2 of the Circular, that the CFS "functions *like* a full-fledged Customs Station". This may, therefore, be analogised, at best, to a deeming fiction created by the statute.

(*c*) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land Customs station from or to any land frontier;
(*d*) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.
(*e*) the post offices which alone shall be foreign post offices for the clearance of imported goods or export goods or any class of such goods;
(*f*) the places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods."

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3. Consequent on the COVID-2019 pandemic, there was a considerable disruption in the movement of goods. To an extent, this also affected the movement of cargo. As a result, the petitioners in these petitions [barring WP (C) 3649/2021] contend that, for no fault of theirs, they were unable to remove the imported goods from the premises of the ICDs/CFSs, or return the containers to the shipping lines, within the permissible number of "free days". The petitioners' submission is that, by virtue of instructions, contained in Office Orders and Circulars issued by the Ministry of Shipping (MOS), Directorate General of Shipping (DGS) and Central Board of Indirect Taxes and Customs (CBIC), they were entitled to waiver of penal detention charges and ground rent, for the said period. Whether they were, or not, is required to be determined by us in these petitions.

4. WP (C) 3649/2021 is the odd man out in the group of petitions, as it challenges the Office Order and Circulars on which the petitioners, in the other writ petitions, rely. For ease of reference, however, this judgement would allude to the petitioners in all the writ petitions, except WP (C) 3649/2021, as "the petitioners".

5. The issue in a "nutshell": The petitioners, in these petitions, seek a writ of mandamus from this Court, under Article 226 of the Constitution of India, in a situation involving, as we would note hereafter, contractual rights between private individuals and the regulation, thereof, by statutory/Governmental authorities in public interest. The permissible extent, if at all, of such regulation, falls for consideration. The petitioners seek across-the-board amnesty from

paying penal charges to CFSs, ICDs and Shipping lines, during the entire period of lockdown enforced by the Government consequent on the COVID-19 pandemic. Inability to move or transport their export/import goods, during the said period, is pleaded as the justification. It is a matter of record that some importers did, in fact, clear their consignments even during this period. Assessment of the extent to which any particular importer or exporter was impacted would, by its very nature, involve, inherently disputed questions of fact. The petitioners' stand is that, irrespective of the individual facts of each case, orders and circulars issued by the MOS, DGS and CBIC entitle all importers and exporters to amnesty as sought, across the board. Whether they do, or not, is required to be determined by us in these petitions.

6. Without any further preliminaries, therefore, we may as well dive into the meat of the matter.

A chronological sequence of events

7. On 11th March, 2020, the World Health Organisation (WHO) declared COVID-19 as a pandemic.

8. On 22nd March, 2020, the Prime Minister of India announced a "*Janata* curfew", to curb the spread of the COVID-19 pandemic in India. This was followed by an Order, dated 24th March, 2020, issued by the Ministry of Home Affairs (MHA), consequent on directions issued by the National Disaster Management Authority (NDMA)

under Section 6(2)(i) of the Disaster Management Act, 2005[3] ("the Disaster Management Act", hereafter). The NDMA directed all

[3] "**6. Powers and functions of National Authority. –**

(*1*) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster Management for ensuring timely and effective response to disaster.

(*2*) Without prejudice to generality of the provisions contained in sub- section (*1*), the National Authority may –

*****

(i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;"

"Capacity building", "Central Government", "disaster", "disaster management", "mitigation", "National Authority", "preparedness" and "State Authority" are defined, in various clauses of Section 2 of the Disaster Management Act, thus:

"2. Definitions. – In this Act, unless the context otherwise requires, –

*****

(*b*) "capacity-building" includes –

(*i*) identification of existing resources and resources to be acquired or created;

(*ii*) acquiring or creating resources identified under sub- clause (*i*);

(*iii*) organisation and training of personnel and coordination of such training for effective Management of disasters;

(*c*) "Central Government" means the Ministry or Department of the Government of India having administrative control of disaster Management;

(*d*) "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence with results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

(*e*) "disaster management" means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for –

(*i*) prevention of danger or threat of any disaster;

(*ii*) mitigation or reduction of risk of any disaster or its severity or consequences;

(*iii*) capacity-building;

(*iv*) preparedness to deal with any disaster;

(*v*) prompt response to any threatening disaster situation or disaster;

(*vi*) assessing the severity or magnitude of effects of any disaster;

(*vii*) evacuation, rescue and relief;

(*viii*) rehabilitation and reconstruction;

*****

(i) "mitigation" means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation;

(j) "National Authority" means the National Disaster Management Authority established under sub-section (*1*) of section 3;

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(m) "preparedness" means the state of readiness to deal with a threatening disaster situation or disaster and the effects thereof;

*****

(q) "State Authority" means the State Disaster Management Authority established under sub- section (*1*) of Section 14 and includes the Disaster Management Authority for the Union Territory constituted under that section;"

Section 3(1) and (2) of the Disaster Management Act read thus:

Ministries and Departments of the Government of India, Governments of States and Union Territories and Disaster Management Authorities in the States and Union Territories to take effective measures to prevent the spread of the COVID-19 pandemic in the country. In compliance with the said directions, and in the exercise of the powers conferred on him by Section 10(2)(l) of the Disaster Management Act[4], the Order, dated 24th March, 2020 was issued by the Home Secretary, in his capacity as Chairperson, National Executive Committee, and guidelines were annexed for strict implementation by Ministries and Departments of the Government of India, Governments of States and Union Territories and Disaster Management Authorities in the States and Union Territories. The Order was to remain in force for 21 days, w.e.f. 25th March, 2020. As this order effectively

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"**3. Establishment of National Disaster Management Authority. –**

(*1*) With effect from such date as the Central Government may, by notification in the Official Gazette appoint in this behalf, there shall be established for the purposes of this Act, an authority to be known as the National Disaster Management Authority.

(*2*) The National Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the Central Government and, unless the rules otherwise provide, the National Authority shall consist of the following: –

(*a*) the Prime Minister of India, who shall be the Chairperson of the National Authority, *ex officio*;
(*b*) other members, not exceeding nine, to be nominated by the Chairperson of the National Authority."

[4] "**10. Powers and functions of National Executive Committee. –**

(*1*) The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster Management in the country.

(*2*) Without prejudice to the generality of the provisions contained in sub- section (*1*), the National Executive Committee may –

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(*l*) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster;"

imposed a condition of "lockdown" in the country, it is referred to, hereinafter, as the "first lockdown order".

9. The Annexure to the aforesaid MHA Order dated 24th March, 2020 enumerated restrictions on the functioning of various establishments and services, many of which were to remain completely suspended or closed. Clauses 5 and 6 of the Annexure read thus:

> "5. Industrial Establishments will remain closed.
> Exceptions:
> a. Manufacturing units of essential commodities.
> b. Production units, which require continuous process, after obtaining required permission from the State Government.
>
> 6. All transport services – air, rail, roadways – will remain suspended.
> Exceptions:
> a. Transportation for essential goods only.
> b. Fire, law and order and emergency services."

On the very next day, i.e. on 25th March, 2020, however, the MHA issued an "Addendum" to the Order dated 24th March, 2020, specifically to the Guidelines annexed thereto. Clauses 5 and 6 of the Annexure to the Order dated 24th March, 2020, were amended thus:

> "**H. Sub-clause (a) to clause 5 to read as:**
>
> a. Manufacturing units of essential goods, including drugs, pharmaceutical, medical devices, their raw material and intermediates.
>
> **I. Addition of sub-clause (c) & (d) to Clause 5:**
>
> c. Coal and mineral production, transportation, supply of explosives and activities incidental to mining operations.

d. Manufacturing units of packing material for food items, drugs, pharmaceutical and medical devices.

J. Addition of sub-clause (c) and (d) to Clause Sub-clause 6:

a. Operations of Railways, Airports and Seaports for cargo movement, relief and evacuation and their related operational organisations.
b. Inter-state movement of goods/cargo for inland and exports.

K. Addition of sub clause (c) in exceptions to clause 6:

c. Cross land border movement of essential goods including petroleum products and LPG, food products, medical supplies."

Clearly, therefore, as the respondents before us have pointed out, there was no restriction on the movement of cargo, during the lockdown. We may note that the first lockdown was extended, initially, till 3rd May, 2020, *vide* MHA Order dated 14th April, 2020 ("the second lockdown"), thereafter, till 17th May, 2020 *vide* MHA Order dated 3rd May, 2020 ("the third lockdown") and till 31st May, 2020 *vide* MHA's order dated 17th May, 2020 ("the fourth lockdown"). Throughout, however, movement of cargo remained unrestricted.

10. The petitioners have placed, on record, a communication, dated 27th March, 2020, addressed by the Commissioner of Customs (General), Jawahar Lal Nehru Custom House, Nhava Sheva, to the Container Freight Station Association of India (CFSAI), in the wake of complaints by the trade to the Customs authorities about slowness in operations in the CFSs, accompanied by a request that the CFSs "waive their relevant charges on this account". Paras 4 to 6 of the said communication read thus:

"4. You are aware that JNPT[5] F. No. JNPT/DyCh/2020/COVID 19 dated 26.03.2020 has made it clear that the Govt. of Maharashtra orders of exclusion from Lockdown also specify that any service connected with loading, unloading, movement or storage of goods at seaport is also an essential service. A copy of the letter is attached. *JNPT has stated that all agencies/CFSs shall put in maximum efforts to carry out smooth handling of all related activities.*

5. You would also note that JNCH[6] is continuously making available adequate number of Customs Officials keeping in view the instructions in this behalf for providing the Customs Clearance of import and export goods. Further, Customs is continuously maintaining its roster for the gates, scanning, parking plaza etc. to provide required facilitation.

6. In the light of the above *it is imperative for CFSs to follow the lawful position and ensure the discharge of the essential services attributable to CFS functions, without any delay. It is hoped that CFSs would also sensitively consider the request for waiver from their clients*."

(Emphasis supplied)

11. The DGS issued, on 29th March, 2020, *vide* Order No. 07 of 2020, which read thus:

"**DGS Order No. 07 of 2020**

Sub.: Advisory on non-charging of container detention charges on import and export shipments

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 epidemic.

2. Whereas, the Ministry of Home Affairs has vide its order No 40-3/2020-DM-I(A) dated 25.03.2020 issued an addendum to the Guidelines annexed to the said order,

[5] Jawahar Lal Nehru Port Trust
[6] Jawahar Lal Nehru Custom House

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, some delays in evacuation of goods from the ports have become inevitable due to the disturbance of the downstream services.

4. Whereas, the result of these developments some cargo owners have either suspended their operations or are finding it difficult to transport goods/cargo and complete the paperwork, 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 charges 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 to 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."

On its plain terms, the afore-extracted order of the DGS was only "advisory" in nature.

12. The petitioners have placed on record Facility Circular No. 26/2020, dated 30th March, 2020, issued by the Commissioner of Customs, Chennai-IV, to "all importers, exporters, Customs Brokers,

Custodians of CFSs, Port Terminal Operators, Shipping lines/Shipping Agents, PGAs, members of the Trade and all persons concerned", which notes the fact that, due to the lockdown announced by the Government, many import containers could not be cleared from the port, leading to congestion. In order to decongest ports, the Facility Circular communicated the decision of the Commissioner to allow movement of the containers *en bloc* to the CFSs and ICDs mentioned in Annexure A thereto. "As part of trade facilitation", CFSs and ICDs were directed not to charge more than the tariffs specified in the Facility Circular, which envisaged free storage of containers at CFSs and ICDs during the period of lockdown and 5 working days thereafter, and levy of transportation charges up to a maximum of ₹ 6000/– per 20 containers and ₹ 8,000/– per 40 containers. Interestingly, we may note even at this juncture, the stand of the respondents before us – including the MOS and the CBIC – that the Customs authorities did not possess the jurisdiction to direct CFSs and ICDs to mandatorily permit storage of containerised cargo in their premises free of charge during the period of lockdown. We may also note that no similar Circular, issued by any other Customs Commissionerate, has been placed on record in any of the petitions.

13. On 31st March, 2020, the MOS issued "Guidelines", to major ports, the relevant portion of which may be extracted as under:

> "To,
>
> Chairperson & CMD
> All Major Ports
>
> Sub: **Guidelines to Major Ports on**
> **1) Exemptions/Remission on penalties etc. and**

2) 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-I (A) dated 24.03.2020 to impose lockdown for a period of 21 days to contain COVID-19 pandemic in the country.

2. Further, Ministry of Home Affairs, Government of India had vide its order No. 40-3/2020-DM-I (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 imports 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 fulfil obligations by various parties/stakeholders due to the effect 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-I(A) dated 25.03.2020 and by invoking power under Section 53 of Major Port Trust Act, 1963[7]; 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,

[7] "**53. Exemption from, and remission of, rates or charges.** – A Board may, in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale in force under this Act or remit the whole or any portion of such rate or charge so levied."

"Board" is defined in clause (b) of Section 2 of the Major Port Trusts Act thus:

"(*b*) "Board", in relation to a port, means the Board of Trustees constituted under this Act for that port;"

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."

"Major Port" is defined, in clause (m) of Section 2 of the Major Port Trusts Act, 1963 ("Major Port Trusts Act", in short) as having the same meaning as in the Indian Ports Act, 1908 ("the Indian Ports Act" in short). The Indian Ports Act defines "major port", in Section 3(8) as meaning "any port which the Central Government may by notification in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port". As on date, it is not in dispute that the only major ports in India are Chennai Port, Cochin Port, Deen Dayal Port Trust, Jawaharlal Nehru Port, Kandla Port, Kolkata Port, Mormugao Port, Mumbai Port, New Mangalore Port, Visakhapatnam Port, V. O. Chidambaranar Port and Kamrajar Port.

14. On the same day, i.e. 31st March, 2020, the DGS issued Order No. 08 of 2020 in similar terms. Paras 5, 6 and 7 of the Order read thus:

"**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-containerised cargo during the period of effect of Covid-19 pandemic

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5. Whereas, the Ministry of Finance, Government of India has directed all the Major ports vide F. No. PD-14300/4/2020-PD VII dated 31.03.2020 to consider the 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 lockdown measures i.e. from 22nd March to 14th April, 2020.

6. Whereas, 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-containerised 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 charges, 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 22nd 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 to 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."

(Emphasis supplied)

This, again, was, therefore, only an advisory.

15. The Commissioner of Customs, JNCH, Nhava Sheva issued, on 9th April, 2020, the following communication, to CFSs at the Jawahar Lal Nehru Port and to the CFSAI:

> "**Sub: Ministry of Shipping Order No. PD-14300/4/2020-PD VII dated 31.03.2020 – reg.**
>
> Ministry of Shipping Order cited in subject above refers. It is self-explanatory. In view of the situation referred therein, its para 4 makes specific directions related to not levying penalties, demurrage, charges, fee, rentals for any delay inter-alia evacuations of cargo caused by the reasons attributable to lockdown measures from 22nd March to 14 April 2020. It also directs exemption or remission in certain regards. These are discussed in para 9 thereof by the Ministry of Shipping Order under section 111 of the Major Port Trust Act, 1963[8].
>
> 2. This office is receiving complaints that CFSs are insisting for full payments of ground rent and other charges for the delay in clearance of containers which could not be cleared due to reasons attributable to nation-wide lockdown.
>
> 3. In this regard your attention is drawn to this office letter No. S/5-Gen/45/2019-20/CCSP Cell/JNCH dated 27.03.2020 inter-alia *advising that CFSs sensitively consider the request for waiver from their clients. Now your attention has also been drawn to the Orders dated 31.03.2020 of the Ministry of Shipping.*

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[8] "**111. Power of Central Government to issue directions to Board. –**

(*1*) Without prejudice to the foregoing provisions of this Chapter, *the Authority and every Board* shall, in the discharge of its functions under this Act be bound by such *directions on questions of policy* as the Central Government may give in writing from time to time:

Provided that the Authority or the Board, as the case may be, shall be given Opportunity to express its views before any direction given under this sub- section.

(*2*) The decision of the Central Government whether a question is one of policy or not shall be final."

(Emphasis supplied)

The definition of "Board", as contained in the Major Ports Trust Act, already stands reproduced *(supra)*. "Authority" is defined in clause (aa) of Section 2 as meaning "the Tariff Authority for Major Ports constituted under Section 47-A."

> 4. As laid down in GOI, CBIC Circular No. 133/95-Cus dated 22.12.95, *a CFS is taken to be an extended arm of the Port and it functions as the Docks. Hence you are requested to follow the lawful position that is in public domain and is specifically brought to your notice as well*."
>
> (Emphasis supplied)

16. The CFSAI responded to the above communication of the Commissioner, on 10th April, 2020. In its response, the CFSAI intimated that it had advised its members CFSs to consider 10 days' waiver of ground rent. It was also impressed on the Commissioner, by the CFSAI, that various safety measures had been put in place, to facilitate taking of delivery, by importers, of their containers, and that CFS operators were extending all help. The response also highlighted the concerns of the CFSs, including the requirement of functioning throughout the lockdown. It was pointed out that, if blanket waiver from ground rent and penal charges was granted, as demanded by the importers, the importers would not take delivery of their containers at all, which would result in choking of the CFSs. Even so, it was pointed out that waivers, sought by importers, were being considered on a case to case basis. On account of their being required to continue to function, the CFSs, it was pointed out, were incurring huge expenses, substantially affecting their cash flow. In conclusion, the CFSAI reiterated the fact that, on bilateral basis, discounts in tariff were being extended by the CFSs to the importers.

17. Advisories, to CFSs and Shipping Lines, to "adopt a sympathetic and humanitarian approach while levying container detention charges/ground rent", and to consider the request of the trade for waiver of container detention charges, demurrage and ground

rent beyond the free period, during the period of lockdown from 25th March to 14th April, 2020, were also issued by the Commissioner of Customs, Patparganj, on 10th April, 2020, the Commissioner of Customs, Mundra on 12th April, 2020 and the Commissioner of Customs, Chennai IV, on 15th April, 2020.

18. On 21st April, 2020, a communication was addressed by the MOS to Chairpersons and CMDs of all Major Ports, paras 2, 3, 10, 11 and 12 of which read thus:

> "To
>
> Chairperson & CMD
> All Major Ports
>
> **Sub: Issues at Major Ports relating to:**
> **1) Exemptions/Remission of charges**
> **2) Force Majeure**
>
> *****
>
> 2. Ministry of Home Affairs, Government of India issued Order No. 40-3/2020-DM-I(A) dated 24.03.2020 and subsequent order dated 15/4/2020 along with its amendments to impose lockdown from 22nd March to 3rd May, 2020 **(hereafter "Lockdown Period")** to contain COVID-19 pandemic in the country. The lock-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 and exports volumes, delays in evacuation of cargo, cash flow issues etc. resulting in inability of port users, concessionaires and other stakeholders to fulfil their obligations to port authorities and banks/lenders. In the view of this extraordinary situation and after considering the representations received from various stakeholders, all Major Ports are directed that:
>
> 3. **<u>Remission of charges to Port Users</u>**

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

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

(iii) *Other Charges, penalties etc.*: Ports shall ensure that no penal charges, demurrages, detention charges, dwell time charges, anchoring 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.

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10. Ports shall ensure strict implementation of this order by port users including PPP concessionaire
s, CFS, ICD, Shipping lines etc. If required, ports shall invoke relevant provisions of the agreements and take appropriate action.

11. This order supersedes the Order No. PD-14300/4/2020-PD VII dated 31st 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 Kamrajar Port Limited."

19. As night follows the day, on 22nd April, 2020, the DGS issued similar directions, "to maintain the continuity", *vide* Order No. 11 of 2020, paras 4 to 8 of which read thus:

"4. Whereas, the Ministry of Shipping Govt. of India vide its letter no. PD-14033/4/2020-PD VII dated 21st April, 2020 has superseded its earlier order No. PD-14300/4/2020-PD VII dated 31st March, 2020 and now has issued comprehensive directions to the Major ports to remit penal charges, demurrages, detention charges, dwell time charges, anchorage charges, penal berth higher charges, performance relate penalties, etc. levied on the Port users including the shipping lines.

5. Now, therefore to maintain the continuity, the DGS Order No. 07 of 2020 dated 29.03.2020 relating to non-charging of container detention charges on import and export shipments will continue to remain in force from 22nd March, 2020 to 3rd May, 2020 (both days inclusive).

6. Further, the exemptions under the DGS Order No. 08 of 2020 dated 31.03.2020 were in force from 22nd March, 2020 to 14th April, 2020 (both days inclusive), over and above free time arrangements that is currently agreed and availed as part of any negotiated contractual terms.

7. It is now decided, that for the second lockdown period, the shipping companies or carriers (and their agents by whatever name called) shall not charge, levy or recover any penal charges, demurrage, ground rent, storage charges in the port, detention charges, dwell time charges, additional anchorage charges, penal berth higher charges, vessel demurrage or any performance related penalties on cargo owners/consignees of non-containerized cargo (i.e. bulk, brake bulk and liquid cargo) whether LCL or not for the period from 15th April, 2020 to 03rd May, 2020 (both days inclusive), due to delay in berthing, loading/unloading operations or evacuation/arrival of cargo.

8. The above exemption/remissions 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 or carriers (and their agents) are also advised not to impose any new or additional charge. This decision is a onetime measure to factor in the present situation arising out of COVID-19 pandemic."

20. On 23rd April, 2020, the CBIC issued the following Circular to all Principal Chief Commissioners/Chief Commissioners of Customs, Customs (Preventive) and CGST and Customs:

"To,

All Principal Chief Commissioners/
Chief Commissioners of Customs,

All Principal Chief Commissioners/
Chief Commissioners of Customs (Preventive),

All Principal Chief Commissioners/
Chief Commissioners of CGST & Customs

Madam/Sir,

Subject:COVID-19 Pandemic – waiver of Demurrage Charges levied by ICDs/CFSs/Ports/Terminal Operators during lockdown – reg.

The Ministry of Home Affairs, Government of India has issued order No. 40-3/2020-DM-1(A) dated 24.3.2020 and subsequent order dated 15/4/2020 along with its amendments to impose lockdown from 22nd March 2020 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 stakeholders (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 seaports, carriers, shipping lines not to impose any container detention charges on import and export shipments for the lockdown period on cargo owners/consignees of non-containerized 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 attributable 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 demurrages, detention charges, dwell time charges, etc. shall be levied and ports shall ensure strict implementation by port users including ICDs, CFSs, Shipping Lines etc.
>
> 3. Accordingly, the aforementioned orders issued by the Ministry of Shipping and Director General of Shipping are brought to your attention for strict compliance by all the ICDs/CFSs of your zone."

21. Circular dated 23rd April, 2020, issued by the Commissioner of Customs, JNCH, Nhava Sheva to all CFSs at Jawaharlal Nehru Port, as well as the ICDs located at Mulund and Tarapur, which refers to the CBIC letter dated 23rd April, 2020 *supra* and forwards, "for strict compliance", the Order issued by the MOS and DGS, has also been placed on record by the petitioners. A similar Circular, issued by the Principal Commissioner of Customs, Mundra, on 24th April, 2020, has also been placed on record.

22. The above communications provoked a response, dated 23rd April, 2020, addressed by the CFSAI to the Chairman, JNPT. The CFSAI reiterated the fact that, even during the lockdown period, they had been functioning uninterruptedly, albeit with limited resources. As many as 1,04,000 containers had, it was pointed out, been evacuated from Terminals during the lockdown period, which itself

stood testimony to the manner in which the CFSs were functioning. Even so, the CFSs voluntarily granted 10 days waiver of ground rent from 22nd to 31st March, 2020. They also considered, favourably, additional requests for waiver for essential cargo related to COVID-19 on a case-to-case basis. Despite this, against the 1,04,559 containers evacuated by CFSs in the JNPT alone, it was pointed out that importers had taken delivery only of 30,259 containers. The continued storage of the unclaimed containers had resulted in exponentially mounting costs on the CFSs. It was further pointed out that CFSs were employing almost 25,000 skilled and unskilled labour, and had been supporting them through the lockdown. In these circumstances, the CFSAI submitted that the advisories issued by the MOS and DGS were turning out to be counter-productive, as they incentivised importers not to take delivery of their consignments, which would be lying with the CFSs free of cost. CFSs were, in the process, overstocked with cargo. This, it was submitted, would result in a cascading adverse effect on the entire export-import trade. The CFSAI further submitted that CFSs functioned in accordance with the Handling of Cargo in Customs Area Regulations, 2009 ("the HCCAR") and that they were not bound by the instructions issued by the CBIC or other authorities. The tariff of CFSs – except for those located within the premises of Major Ports, which were a mere handful – were, it was submitted, not governed by the Tariff Authority for Major Ports (hereinafter "TAMP"), constituted under the Major Ports Act. The directions, to Major Ports, not to levy charges could not, therefore, it was submitted, be extended to CFSs, or impact the ground rent or demurrage charges lawfully chargeable by them. The

CFSAI further pointed out that ground rent was charged only at the rates prefixed and predetermined, to which the importers were parties.

23. On 1st May, 2020, a meeting was convened, under the chairmanship of the Director General of Shipping, to review the implementation of the DGS Order No. 11 of 2020 *supra*. Representatives of the Container Shipping Line Association and the CFSAI were also co-opted in the meeting. The minutes of the meeting concluded with the decision, of the Director General Shipping, that "the DGS order number 7, 8 and 11 will be implemented uniformly by everyone so that the adverse impact of lockdown on EXIM trade is minimised".

24. On 8th May, 2020, the Commissioner of Customs, JNCH, again wrote to the CFSs, in the wake of grievance emails from importers regarding non-compliance, by CFSs, of the MOS Order dated 21st April, 2020 and the orders issued by the DGS, regarding non-levying and non-charging of penalties, demurrage charges, fee and rentals for the delay in evacuations of cargo caused by reasons attributable to lockdown measures implemented by the Government effective from 22nd March, 2020. Para 2 of the said letter read as under:

> "2. Guidance has been given to CFS under communications dated 27.03.2020, 09.04.2020, 23.04.2020, 24.04.2020, 27/28.04.2020 by this Office, conveying, inter alia, that the Lockdown Orders and containment of Covid-19 Directives under specific Acts issued by the GOI and the Govt. of Maharashtra result in goods/containers being detained by force of circumstances created by Law. As the logistics chains of businesses adjust to these measures, the said type of confinement eases. CFS was requested to view the situation in perspective and as akin to when goods detained per

> HCCAR, 2009. It was informed that CFS is part of the lay-out and business plan of the individual Ports/Terminals at Jawahar Ports. The CBIC Circular 133/1995-Customs mentions that CFS is to be taken as an extended arm of the Port and as a Docks. It is further highlighted that Comptroller and Auditor General (CAG) of India's Report No. 16 of 2018 confirms that CFS are called dry ports as they handle all customs formalities related to import and export of goods at these locations, and that in a multi modal transport logistics system, CFS act as hubs in the logistics chain. The CFS as being with public authority described in the Guidelines for setting up CFS was highlighted. It was conveyed that such status cast inherent duty on CFS to implement the directions to not levying/not charging the relevant charges etc."

Following this exhortation, the communication "once again guided to make full and strict compliance of the said directions".

25. The petitioners rely on the above communications, Office Orders and Circulars to justify their prayer for a mandamus to CFSs, ICDs and Shipping Lines not to charge any penal detention, demurrage, ground rent or other charges for the delay, on the part of the importers, in either releasing their containers from the ICDs/CFSs, or in returning the containers to the shipping lines, during the period of lockdown imposed by the Government consequent on the COVID-19 pandemic.

26. The CFSAI issued, on 11th May, 2020 and 18th May, 2020, Advisories to its member-CFSs. The Advisory dated 11th May, 2020 requested the member-CFSs to consider, over and above the ground rent waiver already granted during the period 22nd to 31st March, 2020, further 50% waiver of ground rent, prospectively, to customers who had not taken delivery of containers which arrived in the CFSs

between 1st and 15th April, 2020, provided the containers were cleared on or before 20th May, 2020. The Advisory took stock of the contribution of CFSs in continuing to function, with strict protocol, even during the period of lockdown. The second Advisory, dated 18th May, 2020, was essentially in the nature of a request to the Trade to appreciate the disruptions caused in functioning of CFSs, especially in the wake of workers' exodus to their hometowns following lockdown restrictions.

27. Our task, in these petitions, is to examine whether the above noted official Orders, Circulars and Advisories entitle the petitioners to a mandamus to CFSs, ICDs and shipping lines not to charge any penal charges from the petitioners, by whatever name called, for the delay in clearing the petitioners' containers from the ICDs and CFSs and returning the containers to the shipping lines, beyond the "free days" provided by the CFSs, ICDs and shipping lines. As the recital above discloses, some relaxations were, *suo motu*, granted, especially by the CFSs, but these, according to the petitioners, are insufficient. Like Oliver Twist, the petitioners want more.

The decisions in ***Small Scale Industrial Manufacturers Association v. U.O.I.*** and ***Indian School v. State of Rajasthan***

28. Before proceeding to analyse the merits of the petitioners' claims, we intend to examine the recent decisions of the Supreme Court in ***Small Scale Industrial Manufacturers Association v.***

U.O.I.[9] and ***Indian School v. State of Rajasthan***[10]**,** the former by a Bench of three Hon'ble Judges and the latter by a bench of two Hon'ble Judges. These decisions opine, in some detail, on the provisions of the Disaster Management Act, in the wake of the COVID-19 pandemic. They are of considerable significance in appreciating the submissions of Mr. Amit Sibal, learned Senior Counsel who led the submissions on behalf of the petitioners.

29. *Small Scale Industrial Manufacturers Association*[9]

29.1 Mr. Sibal placed exhaustive reliance on this decision, going to the extent of submitting that, even if the later judgement in ***Indian School***[10] did not support the petitioner, his arguments were supported by the decision in ***Small Scale Industrial Manufacturers Association***[9] which, having been authored by a Bench of greater numerical strength, and therefore was entitled to precedential preference over ***Indian School***[10].

29.2 The petitioner-Association in ***Small Scale Industrial Manufacturers Association***[9] ("the Association", in short) petitioned the Supreme Court, under Article 32 of the Constitution of India, in the wake of the financial strain being faced by Micro, Small and Medium Enterprises (MSMEs) consequent on the COVID-19 pandemic. The ameliorative steps taken by the Reserve Bank of India (RBI) *vide* notification dated 27th March, 2020, it was urged, were insufficient. Other writ petitions, which also exhorted the Supreme

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[9] 2021 SCC OnLine SC 246
[10] 2021 SCC OnLine SC 359

Court to issue directions to the RBI, chiefly to extend the moratorium granted in respect of interest payable on loans beyond the date till which it had been granted by the RBI. Para 20 of the report enumerated the claims in the writ petitions before the Supreme Court into four categories, "namely, (1) waiver of compound interest/interest on interest during the moratorium period; (2) waiver of total interest during the moratorium period; (3) extension of moratorium period; and (4) there shall be Sector-wise economic packages/reliefs". Para 120 of the report again summarised the reliefs sought by the petitioners, and the submissions advanced in support thereof, thus:

> "**120.** Having heard learned counsel appearing on behalf of the respective petitioners and the reliefs sought in the respective petitions, the reliefs/submissions on behalf of the petitioners can be summarized as under:
>
> i) a complete waiver of interest or interest on interest during the moratorium period;
>
> ii) there shall be sector-wise relief packages to be offered by the Union of India and/or the RBI and/or the Lenders;
>
> iii) moratorium to be permitted for all accounts instead of being at the discretion of the Lenders;
>
> iv) extension of moratorium beyond 31.08.2020;
>
> v) whatever the relief packages are offered by the Central Government and/or the RBI and/or the Lenders are not sufficient looking to the impact due to Covid-19 Pandemic and during the lockdown period due to Covid-19 Pandemic;
>
> vi) the last date for invocation of the resolution mechanism, namely, 31.12.2020 provided under the 6.8.2020 circular should be extended."

29.3 It becomes necessary, now, to set out, *in extenso*, paras 121 to 141 of the report in ***Small Scale Industrial Manufacturers Association***[9], as they set out certain basic principles to be followed in such cases, which the writ court has necessarily to bear in mind:

"**121.** While considering the aforesaid submissions/reliefs sought, the scope of judicial review on the policy decisions in the field of economy and/or economic policy decisions and/or the policy decisions having financial implications which affects the economy of the country are required to be considered.

122. In catena of decisions and time and again this Court has considered the limited scope of judicial review in economic policy matters. From various decisions of this Court, this Court has consistently observed and held as under:

> i) The Court will not debate academic matters or concern itself with intricacies of trade and commerce;
>
> ii) It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review;
>
> iii) Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

123. In ***R.K. Garg***[11], it has been observed and held that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It is further observed that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this particularly true in case of legislation dealing with economic matters.

[11] **R.K. Garg v U.O.I., (1981) 4 SCC 675**

124. In the case of ***Arun Kumar Agrawal***[12], this Court had an occasion to consider the following observations made the Supreme Court of the United States in the case of ***Metropolis Theatre Co. v. Chicago, 57 L.Ed. 730 : 228 US 61 (1913):***

> "*…The problems of Government are practical ones and may justify, if they do not require, rough accommodation, illogical, if may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible*; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void…"

125. This Court in the case of ***Nandlal Jaiswal***[13] has observed that the Government, as laid down in ***Permian Basin Area Rate Cases, 20 L Ed (2d) 312***, is entitled to make pragmatic adjustments which may be called for by particular circumstances. *The court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide.*

126. In the case of ***BALCO Employees' Union (Regd.)***[14], this Court has observed that wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. *In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved.*

127. *It is further observed that in the case of a policy decision on economic matters, the courts should be very circumspect in conducting an enquiry or investigation and must be more reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself.*

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[12] **Arun Kumar Agrawal v. U.O.I., (2013) 7 SCC 1**
[13] **State of M.P. v Nandlal Jaiswal, (1986) 4 SCC 566**
[14] **BALCO Employees' Union (Regd.) v U.O.I., (2002) 2 SCC 333**

128. In the case of ***Peerless General Finance and Investment Co. Ltd.***[15], it is observed and held by this Court that the function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is further observed that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. *Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ.* Courts cannot be expected to decide them without even the aid of experts.

129. It is further observed that *it is not the function of the Court to amend and lay down some other directions. The function of the court is not to advise in matters relating to financial and economic policies* for which bodies like RBI are fully competent. *The court can only strike down some or entire directions issued by the RBI in case the court is satisfied that the directions were wholly unreasonable or in violative of any provisions of the Constitution or any statute. It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies. This Court has repeatedly said that matters of economic policy ought to be left to the government.*

130. In the case of ***Narmada Bachao Andolan***[16], in paras 229 & 233, it is observed and held as under:

> "229. It is now well settled that *the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that*

[15] **Peerless General Finance & Investment Co. Ltd v. R.B.I., (1992) 2 SCC 343**
[16] **Narmada Bachao Andolan v. U.O.I., (2000) 10 SCC 664**

in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

233. At the same time, *in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicial permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere.* When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law."

131. In ***Prag Rice & Oil Mills***[17], this Court observed as under:

"We do not think that it is the function of the Court to set in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."

132. In ***P.T.R Exports (Madras) P. Ltd.***[18], this Court observed as under:

[17] **Prag Rice & Oil Mills v. U.O.I., (1978) 3 SCC 459**
[18] **P.T.R. Exports (Madras) P Ltd v. U.O.I., (1996) 5 SCC 268**

> "*In matters of economic policy, it is settled law that the Court gives a large leeway to the executive and the legislature-Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country-The Court therefore would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same."*

133. *What is best in the national economy and in what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government* and RBI on the aid and advise of the experts. *The same is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions, unless such policy could be faulted on the ground of mala fide, arbitrariness, unfairness etc.*

134. There are matters regarding which Judges and the Lawyers of the courts can hardly be expected to have much knowledge by reasons of their training and expertise. *Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.*

135. *The correctness of the reasons which prompted the government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the government as it alone can adopt which policy should be adopted after considering of the points from different angles*. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the government.

136. *Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.* The scope of judicial review of the governmental policy is now well defined. *The courts do not and cannot act as an*

appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate.

137. *Government has to decide its own priorities and relief to the different sectors. It cannot be disputed that pandemic affected the entire country and barring few of the sectors. However, at the same time, the Government is required to take various measures in different fields/sectors like public health, employment, providing food and shelter to the common people/migrants, transportation of migrants etc. and therefore, as such, the government has announced various financial packages/reliefs*. Even the government also suffered due to lockdown, due to unprecedented covid-19 pandemic and also even lost the revenue in the form of GST. Still, the Government seems to have come out with various reliefs/packages. *Government has its own financial constraints. Therefore, as such, no writ of mandamus can be issued directing the Government/RBI to announce/declare particular relief packages and/or to declare a particular policy, more particularly when many complex issues will arise in the field of economy and what will be the overall effect on the economy of the country for which the courts do not have any expertise and which shall be left to the Government and the RBI to announce the relief packages/economic policy in the form of reliefs on the basis of the advice of the experts. Therefore, no writ of mandamus can be issued*.

138. *No State or country can have unlimited resources to spend on any of its projects. That is why it only announces the financial reliefs/packages to the extent it is feasible. The court would not interfere with any opinion formed by the Government if it is based on the relevant facts and circumstances or based on expert advice. It is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, only where it is arbitrary and violative of any Constitutional, statutory or any other provisions of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its*

resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits.

139. *No right could be absolute in a welfare State. Man is a social animal. He cannot live without the cooperation of a large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of the public at large. Not every fundamental right under Part III of the Constitution is absolute and it is to be within permissible reasonable restriction.* This principal equally applies when there is any constraint on the health budget on account of financial stringencies.

140. It is the cardinal principle that *it is not within the legitimate domain of the court to determine whether a particular policy decision can be served better by adopting any policy different from what has been laid down and to strike down as unreasonable merely on the ground that the policy enunciated does not meet with the approval of the court in regard to its efficaciousness for implementation of the object and purpose of such policy decision*.

141. *With the limited scope of judicial review on the policy decisions affecting the economy and/or it might have financial implications on the economy of the country, the reliefs and submissions stated hereinabove are required to be considered. Whether there shall be a waiver of interest during the moratorium period or whether there shall be sector-wise relief packages and/or RBI should have issued directions which are sector specific and addressing such sector specific issues and/or whether the moratorium period should be extended beyond 31.08.2020 or the last date for invocation of the resolution mechanism, namely, 31.12.2020 provided in the 6.8.2020 circular should be extended are all in the realm of the policy decisions. Not only that, if such reliefs are granted, it would seriously affect the banking sectors and it would have far reaching financial implications on the economy of the country*."

(Italics and underscoring supplied)

29.4 Following the discussion in the afore-extracted passages, the Supreme Court went on to hold (in para 142 of the report) that "when a conscious decision has been taken not to waive the interest during the moratorium period and a policy decision has been taken to give relief to the borrowers by deferring the payment in instalments and so many other reliefs are offered by the RBI and thereafter by the bankers independently considering the Reports submitted by Kamath Committee consisting of experts, the interference of the court is not called for."

29.5 The Supreme Court went on, thereafter, in paras 143 to 145 of the report, to pronounce on three allied submissions of the petitioners before it, viz. that the RBI should have provided Sector specific reliefs, that the notifications and circulars issued by the RBI and the Ministry of Finance ought not to have left the final decision regarding relief to bankers and that the relief packages offered by the Central Government, RBI, bankers and lenders were insufficient, thus:

> "**143.** Now so far as the submission on behalf of the petitioners that the RBI should have issued directions which are sector specific and addressing such sector specific issues is concerned, at the outset, it is required to be noted that as such the Committee headed by Shri K.V. Kamath had gone into such sector specific issues and gave its recommendations. The recommendations of the Kamath Committee have been substantially accepted by the RBI in its circular dated 7.9.2020 which provides for separate threshold for 26 sectors including power, real estate and construction. Even otherwise, it is required to be noted that *every sector might have suffered differently and therefore it will not be possible to provide sector specific/sector-wise reliefs. The petitioners cannot pray for sector specific relief by either waiver of interest or restructuring by way of present proceedings under Article 32 of the Constitution of India and the question of such financial*

stress management measures requires examination and consideration of several financial parameters and its impact.

144. Now so far as the submission on behalf of the petitioners that as per the notifications/circulars/reliefs offered by the RBI and/or Finance Department of the Union of India ultimately it is left to the bankers and it should not have been left to the bankers and the Government/RBI must intervene and provide further reliefs is concerned, at the outset, it is required to be noted that *as such the bankers are commercial entities and since the customer profile, organizational structure and spread of each lending institution is widely different from others, each lending institution is best placed to assess the requirements of its customers and therefore, the discretion was left to the lending institutions concerned. Any borrowing arrangement is a commercial contract between the lender and the borrower. RBI and/or the Union of India can provide for broad guidelines while recommending to give the reliefs.*

145. *Now so far as the submission on behalf of the petitioners that the relief packages which are offered by the UOI/RBI/Bankers/Lenders are not sufficient and some better and/or more reliefs should be offered is concerned, it is not within the judicial scope of the courts to issue such directions. No mandamus can be issued to grant some more reliefs/packages. As observed hereinabove, the court cannot interfere with the economic policy decisions on the ground that either they are not sufficient or efficacious and/or some more reliefs should have been granted. The Government might have their own priorities and the Government has to spend in various fields and in the present case like health, medicine, providing food etc. Even as per the case of the Union of India and so stated in the counter filed on behalf of the Union of India and the RBI, so many policies have been announced to mitigate the impact of Covid-19 pandemic, which are referred to hereinabove*."

(Italics and underscoring supplied)

29.6 On the sustainability of the claims of the petitioners before it, the Supreme Court went on to rule as under, in paras 147 to 149 of the report:

"**147.** From the various steps/measures/policy decisions/packages declared by the Union of India/RBI and the bankers, *it cannot be said that the UOI and/or the RBI have not at all addressed the issues related to the impact of Covid-19 on the borrowers. As such, none of the petitioners have specifically challenged the various circulars/policy decisions taken by the UOI/RBI. From the submissions made by the learned counsel appearing for the respective parties, it appears that the borrowers want something more than the reliefs announced. Merely, since the reliefs announced by the UOI/RBI ither may not be suiting the desires of the borrowers, the reliefs/policy decisions related to Covid-19 cannot be said to be arbitrary and/or violative of Article 14 of the Constitution of India. It cannot be said that any of the fundamental rights guaranteed under the Constitution are infringed and/or violated. Economic decisions are required to be taken keeping the larger economic scenario in mind.*

148. *Similarly, the relief sought that the moratorium period should be extended and/or the last date for invocation of the resolution mechanism namely 31.12.2020 provided under the 06.08.2020 circular should be extended are all in the realm of policy decisions.* Even otherwise, almost five months were available to eligible borrowers when circular dated 6.8.2020 was notified providing for a separate resolution mechanism for Covid-19 related stressed assets. Therefore, sufficient time was given to invoke the resolution mechanism.

149. Therefore, *the petitioners shall not be entitled to any reliefs, namely,*

(i) total waiver of interest during the moratorium period;

(ii) to extend the period of moratorium;

(iii) to extend the period for invocation of the resolution mechanism, namely 31.12.2020 provided under the 6.8.2020 circular;

(iv) that there shall be sector-wise reliefs provided by the RBI; and

(v) that the Central Government/RBI must provide for some further reliefs over and above the relief packages already offered which, as observed hereinabove, can be said to be in the realm of the economic policy decisions and for the reasons stated hereinabove and as observed hereinabove granting of any such reliefs would have a far-reaching financial implication on the economy of the country. It

> *appears, whatever best can be offered has been offered for the different fields and to the common people as well as those persons who are affected due to Covid-19 pandemic.* However, the relief/prayer not to charge the penal interest/interest on interest/compound interest during the moratorium period is concerned, it stands on different footing which shall be dealt with herein below.
>
> (Emphasis supplied)

29.7 The only prayer of the petitioners before it, which the Supreme Court deemed to possess some merit was, therefore, the prayer for a direction to the authorities not to charge penal interest, interest on interest or compound interest during the moratorium period. All other prayers, including the prayer for waiver of interest during the moratorium period, extension of the period of moratorium and grant of Sector-wise reliefs, were rejected. This, as we shall presently observe, has obvious ramifications on the sustainability of the prayers of the petitioners in the petitions before us.

29.8 On the plea of waiver of charging of interest on interest, or compound interest, for all entities during the entire period of moratorium, the Supreme Court observed and held, in paras 162 to 166 of the report, as under:

> "**162.** Now so far as the charging of penal interest/interest on interest/compound interest during the moratorium period is concerned, it stands absolutely on a different footing. At this stage, it is required to be noted that in fact the Central Government has come out with a policy decision subsequently by which it is decided not to charge the interest on interest on the loans up to Rs. 2 crores. However, such relief is restricted to the following categories:
>
> (i) MSME loans up to Rs. 2 crore
> (ii) Education loans up to Rs. 2 crore
> (iii) Housing loans up to Rs. 2 crore
> (iv) Consumer durable loans up to Rs. 2 crore

(v) Credit card dues up to Rs. 2 crore
(vi) Auto loans up to Rs. 2 crore
(vii) Personal loans to professionals up to Rs. 2 crore
(viii) Consumption loans up to Rs. 2 crore

163. There is no justification shown to restrict the relief of not charging interest on interest with respect to the loans up to Rs. 2 crores only and that too restricted to the aforesaid categories. What are the basis to restrict it to Rs. 2 crores are not forthcoming. Therefore, as such, there is no rational to restrict such relief with respect to loans up to Rs. 2 crores only. Even otherwise, it is required to be noted that the scheme dated 23.10.2020 granting relief/benefit of waiver of compound interest/interest on interest contains eligibility criteria and it provides that any borrower whose aggregate of all facilities with lending institution is more than Rs. 2 crores (sanctioned limit or outstanding amount) will not be eligible for ex-gratia payment under the said scheme. Therefore, if the total exposure of the loan at the grant of the sanction is more than Rs. 2 crores, the borrower will be ineligible irrespective of the actual outstanding. For Example, if the borrower has been sanctioned a loan of Rs. 5 crores and has availed of the same, even though he might have repaid substantially bringing down the principal amount of less than Rs. 2 crores as on 29.02.2020, but because of the sanction of the loan amount of more than Rs. 2 crores, he will be ineligible. It also further provides that the outstanding amount should not be exceeded to Rs. 2 crores and for this purpose aggregate of all facilities with the lending institution will be reckoned. Therefore, if a borrower, for example, MSME Category has availed and has outstanding of business loan of Rs. 1.99 crores and also has dues of its credit card of Rs. 1.10 lakhs, thereby making the aggregate to Rs. 2.10 crores, it stands ineligible. Therefore, the aforesaid conditions would be arbitrary and discriminatory.

164. Even otherwise, it is required to be noted that compound interest/interest on interest shall be chargeable on deliberate/willful default by the borrower to pay the installments due and payable. Therefore, it is in the nature of a penal interest. By notification dated 27.03.2020, the Government has provided the deferment of the installments due and payable during the moratorium period. Once the payment of installment is deferred as per circular dated

27.03.2020, non-payment of the installment during the moratorium period cannot be said to be willful and therefore there is no justification to charge the interest on interest/compound interest/penal interest for the period during the moratorium. Therefore, we are of the opinion that there shall not be any charge of interest on interest/compound interest/penal interest for the period during the moratorium from any of the borrowers and whatever the amount is recovered by way of interest on interest/compound interest/penal interest for the period during the moratorium, the same shall be refunded and to be adjusted/given credit in the next instalment of the loan account.

165. In view of the above and for the reasons stated hereinabove, the present petitions seeking reliefs, namely, (i) total waiver of interest during the moratorium period; (ii) to extend the period of moratorium; (iii) to extend the period for invocation of the resolution mechanism, namely 31.12.2020 provided under the 6.8.2020 circular; (iv) that there shall be sector-wise reliefs provided by the RBI; and (v) that the Central Government/RBI must provide for some further reliefs over and above the relief packages already offered stand dismissed. Connected IAs stand disposed of.

166. However, it is directed that there shall not be any charge of interest on interest/compound interest/penal interest for the period during the moratorium and any amount already recovered under the same head, namely, interest on interest/penal interest/compound interest shall be refunded to the concerned borrowers and to be given credit/adjusted in the next instalment of the loan account. All these petitions are partly allowed to the aforesaid extent only and as observed for the reliefs, the petitions are dismissed. Interim relief granted earlier not to declare the accounts of respective borrowers as NPA stands vacated. However, there shall be no order as to costs."

In acceding to the prayer of the petitioners, before it, for waiver of interest on interest/compound interest/penal interest, and for extension of such benefit to all borrowers, the Supreme Court, clearly, did not proceed on the basis of a qualitative assessment that greater benefits

were due to the petitioners than had been extended by the RBI on the Governmental authorities. Rather, it proceeded on the principle of discrimination and arbitrariness. It is important to notice this distinction. It is not as though the Supreme Court fashioned a benefice (metaphorically speaking) in favour of the petitioners before it, in excess of the beneficial dispensations already extended by the Governmental authorities. The Supreme Court, instead, proceeded on the premise that, while extending such beneficial dispensations, the Government could not act arbitrarily or in a manner which would discriminate between entities similarly situated. This, in turn, would also follow from the hallowed principle that, even in distribution of largesse, the Government cannot act in a manner which is arbitrary or discriminatory in nature.[19] Additionally, the Supreme Court proceeded on the basis of the elementary principle that penal interest could be charged only for wilful default. It was, therefore, according to the Supreme Court, incongruous to, on the one hand, waive the requirement of payment of instalments during the moratorium period and, simultaneously, charge penal interest for the same period. The three principles on which the Supreme Court granted, to the petitioners before it, the aforesaid limited relief were, therefore, that (i) given the very nature of penal interest, there was no justification for restricting waiver, from the liability to pay such penal interest, to loans which were below ₹ 2 crores, (ii) penal interest being chargeable only for wilful default, no penal interest could be charged for the moratorium period, during which the Government authorities/RBI had themselves granted the relief of waiver from the requirement of

[19] **Bharti Airtel Ltd v. U.O.I., (2015) 12 SCC 1, Akhil Bhartiya Upbhokta Congress v. State of M.P., (2011) 5 SCC 29, City Industrial Development v. Platinum Entertainment, (2015) 1 SCC 558**

paying instalments and (iii) in extending these benefits, the Government could not discriminate between borrowers identically situated, so that the benefit would enure to some borrowers, and stand denied to others.

29.9 All other reliefs stood denied by the Supreme Court, on the basic principle that Courts could neither arrogate, to themselves, the exercise of formulation of policy for granting relief in the wake of the COVID-19 pandemic, nor interfere with the policy formulated in that regard by the Government or the RBI, save and except where the policy was vitiated by arbitrariness, discrimination or *mala fides*.

30. *Indian School*[10]

30.1 Two sets of appeals were decided by the Supreme Court in this judgement, of which we are, presently, essentially concerned with one. The first set of appeals challenged the provisions of the Rajasthan Schools (Regulation of Fee) Act, 2016 ("the 2016 Act", in short), on the ground that it interfered with the autonomy of private unaided schools to fix the fees chargeable by them. The second set of appeals – with which we are more concerned – assailed executive orders passed by the State of Rajasthan on 9th April, 2020, 7th July, 2020 and 28th October, 2020, reducing the tuition fees chargeable by schools affiliated with the Central Board of Secondary Education by 30% and by schools affiliated with the Rajasthan Board of Secondary Education by 40%, and deferring collection of the reduced fees by the

schools, in the wake of the lockdown imposed by the Government consequent on the COVID-19 pandemic.

30.2 The Supreme Court, in the first instance, upheld the 2016 Act, and rejected the challenge to its validity.

30.3 Apropos the second challenge, the State Government chose to defend the executive orders issued by it as within the jurisdiction vested in it by the Disaster Management Act. The Supreme Court rejected this defence in the following terms:

> "**105.** In the present case, we need not dilate on the factum as to whether the Director, Secondary Education could have issued such a policy document in exercise of executive power under Article 162 of the Constitution, which power exclusively vests in the State Government alone. *The fact remains that the direction issued in terms of impugned order dated 28.10.2020, on the face of it, collide with the dispensation specified in the Act of 2016 in the matter of determination of school fees and its binding effect on all concerned for a period of three academic years, without any exception.* The fact that in the proceedings before the High Court the State Government had ratified the impugned order, does not take the matter any further. In that, there can be no ex post facto ratification by the State Government in respect of subject, on which, it itself could not issue such direction in law.
>
> **106.** Even the exposition in ***Rai Sahib Ram Jawaya Kapur v. State of Punjab***[20] and ***Secretary, A.P.D. Jain Pathshala v. Shivaji Bhagwat More***[21] will not come to the aid of the respondents for the same reasons. Notably, not only the subject of finalisation of fee structure and the matters incidental thereto have been codified in the form of the Act of 2016, but also a law has been enacted to deal with the matters during the pandemic situation in the form of Central Act,

[20] **AIR 1955 SC 549**
[21] **(2011) 13 SCC 99**

namely, the Act of 2005 including the State legislation i.e., the Act of 2020. In fact, the State legislation deals with the subject of epidemic diseases and its management. *Even those enactments do not vest any power in the State Government to issue direction with regard to commercial or economic aspects of matters between private parties with which the State has no direct causal connection*, which we shall examine later at the appropriate place. In other words, the power of the State Government to deal with matters during the pandemic situation have already been delineated by the Parliament as well as the State legislature.

107. *As such, it is not open to the State Government to issue directions in respect of commercial or economic aspects of legitimate subsisting contracts/transactions between two private parties with which the State has no direct causal connection, in the guise of management of pandemic situation or to provide "mitigation to one" of the two private parties "at the cost of the other". This is akin to - rob Peter to pay Paul. It is a different matter, if as a policy, the State Government takes the responsibility to subsidise the school fees of students of private unaided schools, but cannot arrogate power to itself much less under Article 162 of the Constitution to issue impugned directions (to school Management to collect reduced school fee for the concerned academic year). We have no hesitation in observing that the asservation of the State Government of existence of power to issue directions even in respect of economic aspects of legitimate subsisting contracts/transactions between two private parties, if accepted in respect of fee structure of private unaided schools, is fraught with undefined infinite risk and uncertainty for the State*. For, applying the same logic the State Government may have to assuage similar concerns in respect of other contractual matters or transactions between two private individuals in every aspect of life which may have bearing on right to life guaranteed under the Constitution. *That would not only open pandora's box, but also push the State Government to entertain demands including to grant subsidy, from different quarters and sections of the society in the name of mitigating measures making it financially impossible and unwieldy for the State and eventually burden the honest tax payers - who also deserve similar indulgence. Selective intervention of the State in response to such demands may also suffer from the vice of discrimination and*

also likely to impinge upon the rights of private individual(s) — the supplier of goods or service provider, as the case may be. The State cannot exercise executive power under Article 162 of the Constitution to denude the person offering service(s) or goods of his just claim to get fair compensation/cost from the recipient of such service(s) or goods, whence the State has no direct causal relationship therewith.

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110. *Reverting to the provisions of the Act of 2005, no doubt Section 72 thereof predicates that the provisions of the Act will have overriding effect on other laws for the time being in force or anything inconsistent in any instrument having effect by virtue of any law other than the Act of 2005. This provision, however, would come into effect only if it is to be held that the Statutory Authorities under the Act of 2005 have power to deal with the subject of school fee structure of private unaided schools.*

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112. Going by the scheme of the Act of 2005, the State Authority established under Section 14 known as State Disaster Management Authority is expected to formulate policies and plans for disaster management in the State. *Indeed, such policies and plans may include mitigation measures in respect of persons affected by disaster. The mitigation measures, however, are aimed merely for reducing the risk/impact or effects of a disaster or threatening disaster situation. Considering the sphere of functions of the State Authority including the State Executive Committee or different Authorities established at concerned level within the State, there is not even a tittle of indication that in the name of mitigating measures, the disaster management plan may comprehend issue of direction in respect of economic aspects of legitimate subsisting contracts or transactions between two private individuals with which the State has no direct causal relationship, and especially when the determination of compensation/cost/fees is the prerogative of the supplier or manufacturer of the goods or service provider of the services. The scheme of the Act of 2005 obligates the State Authority to assuage the concerns of the persons arising from "direct*

impact" of the disaster and to take mitigation measures to minimise the impact of such disaster and for that purpose, resort of capacity-building including of its own resources to wit, manpower, services, materials and provisions as noted in Section 2(p), and preparedness measures referred to in Section 2(m). It is not possible to countenance the persuasive argument of the respondents that expansive meaning be assigned to the provisions of the Act of 2005 so as to include power to reduce school fees of private unaided school albeit fixed under the Act of 2016 and which by law is to remain in force until academic year 2020-21.

113. *As is noticed from the preamble of the Act of 2005, it is to provide for the effective management of disasters and for matters connected therewith or incidental thereto.* It extends to the whole of India. *The Act is to establish Statutory Committees at different level for carrying out the purposes for which the Act has been enacted. It is essentially for effective management of disasters and for matters connected therewith or incidental thereto.*

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119. Having regard to the purport of the Act of 2005, *it is unfathomable as to how the State Authorities established under the stated Act can arrogate unto themselves power to issue directions to private parties on economic aspects of legitimate subsisting contractual matters or transactions between them inter se.* It is not enough to say that the same was issued under the directions of the Chief Minister of the State. For, the Chief Minister is only the Chairperson (Ex officio) of the State Disaster Management Authority established under Section 14 of the Act of 2005. *Suffice it to observe that there is no provision in the Act of 2005 which concerns or governs the subject of interdicting the school fee structure fixed under the Act of 2016.*

120. *Section 72 of the Act of 2005 was pressed into service. However, that cannot be the basis to justify the impugned order dated 28.10.2020.* Section 72 reads thus:

> "**72. Act to have overriding effect.** – The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for

> the time being in force or in any instrument having effect by virtue of any law other than this Act."
>
> **121.** *The Act of 2005 is not a panacea for all difficulties much less not concerning disaster management [Section 2(e)] as such.* As noted earlier, there is no express provision in the Act of 2005 which empowers the Director, Secondary Education (or the State Government) to issue order and directions in respect of school fee structure because of the pandemic situation."
>
> (Italics and underscoring supplied)

Additionally, the Supreme Court also held that the executive order issued by the State of Rajasthan was *ultra vires* the powers vested in the Director, Secondary Education of the State of Rajasthan and also that the exactions, contemplated thereby, commercialised education. These aspects do not, however, concern the present dispute.

30.4 The Supreme Court has, in its decision in ***Indian School***[10], therefore, clearly delineated the contours of the Disaster Management Act, and has warned against treating the beneficial covenants thereof as panacea for every evil, so as to allow the Governmental authorities to run amok. Particularly, the Supreme Court has disapproved interference, by orders seeking to draw power from the Disaster Management Act, with private contracts, or with "commercial or economic aspects of matters between private parties with which the State has no direct causal connection". This clarification, to be found in para 106 of the report in ***Indian School***[10], in fact, largely obviates the necessity of examining, in detail, the "contracts" between the CFSs or ICDs, and the importers in the present case. Even in the absence of any written contract, it can hardly be gainsaid that the CFSs or ICDs and the importers are private parties. Any

Governmental interference with commercial or economic aspects of matters between the CFSs or ICDs, and the importers, even under the Disaster Management Act, has, therefore, to be limited to the confines demarcated by para 106 of the decision in ***Indian School***[10]. As to whether the Office Orders and Circulars issued by the MOS, the DGS and the CBIC do, or not, we shall examine presently.

30.5 The Supreme Court has also clarified that benefits, under the Disaster Management Act, cannot be extended to one party at the cost of the other, so as to permit Paul to profit at the cost of Peter. One may legitimately, in our view, extend the principle to holding that, while putting, in place, ameliorative measures under the Disaster Management Act – or, for that matter, under the Epidemic Diseases Act – the Governmental authorities had to be circumspect and have to balance the interests of all stakeholders who would be affected, one way or the other, by such dispensations. It is not permissible, in short, for the Government to play Robin Hood. Nor, for that matter, can the Court do so, at the instance of the petitioners before it, or otherwise.

30.6 Another, and especially significant, takeaway from the decision in ***Indian School***[10], is the aspect of "mitigation". Mr. Amit Sibal, learned Senior Counsel for the petitioners, laid great stress on the concept of "mitigation" as envisaged by the Disaster Management Act, and sought to contend that the ambit of the expression, especially given the beneficial nature of the legislation, was wide and expansive in character. Para 112 of the report in ***Indian School***[10], however, disabuses such a contention. The Supreme Court has held, clearly,

that "mitigation measures", under the Disaster Management Act, "are aimed merely for reducing the risk/impact or effects of a disaster or threatening disaster situation". There is, according to the Supreme Court, "not even a tittle of indication that in the name of mitigating measures, the disaster management plan may comprehend the issue of direction in respect of economic aspects of legitimate subsisting contracts *or transactions between two private individuals with which the State has no direct causal relationship, and especially when the determination of compensation/cost/fees is the prerogative of the supplier or manufacturer of the goods or service provider of the services*". What may be assuaged, by measures adopted under the Disaster Management Act, holds the Supreme Court (in para 112 of the report) are "the concerns of the persons arising from "direct impact" of the disaster and for that purpose, the sort of capacity building including its own resources to wit, manpower, services, materials and provisions as noted in Section 2(p), and preparedness measures referred to in Section 2(m)". The argument of the respondents, before the Supreme Court, for according, to the provisions of the Disaster Management Act, an "expansive meaning… so as to include power to reduce school fees of private unaided schools", though "persuasive", was found, by the Supreme Court, to be unworthy of acceptance. In fine, the Supreme Court, after extracting, in *extenso*, Sections 22, 38 and 39 of the Disaster Management act, which set out the "functions of the State Executive Committee", "measures" which the State Government could take under the Disaster Management Act and "responsibilities of departments of the State Government", held (in para 119 of the report)

that it was "unfathomable as to how the State Authorities established under the stated Act can arrogate unto themselves power to issue directions to private parties on economic aspects of legitimate subsisting contractual matters or *transactions between them inter se*".

30.7 At the cost of repetition, we deem it appropriate to reiterate that the proscription against trespass, by ameliorative measures taken under the Disaster Management Act by the Governmental authorities extends, as per the judgement in ***Indian School***[10], not only to private "contractual matters", but also to economic and financial transactions between private parties *inter se*, with which the State has no direct causal connection. This, in fact, addresses one of the contentions advanced by the petitioners before us in their written submissions – though no serious submissions to that effect were made by Mr. Sibal at the Bar – that there were no express written contracts between the CFSs or ICDs and the petitioners. More on that, however, later.

Relevant Statutes

31. The statutory enactments, within which the dispute in the present case peregrinates, are, essentially, the Disaster Management Act, the Major Port Trusts Act, the Merchant Shipping Act and the Customs Act (along with the Handling of Cargo in Customs Areas Regulations, 2009, issued thereunder). Various provisions of these statutes have been pressed, into service, by both sides, and, before proceeding further, it would be as well that the air, on that count, is cleared.

32. The Disaster Management Act

32.1 The legal position, regarding many aspects of the Disaster Management Act, stands authoritatively exposited in the decisions in ***Small Scale Industrial Manufacturers Association***[9] and ***Indian School***[10]. A brief overview of the provisions of the enactment is, nonetheless, in place.

32.2 The avowed preambular object of the Disaster Management Act is "to provide for the effective management of disasters and for matters connected therewith or incidental thereto". The opening recital, in the Statement of Objects and Reasons in the Bill which preceded the Disaster Management Act, delineates its objectives, in greater detail, as "to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of Government for prevention and mitigate the effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation".

32.3 That the COVID-19 pandemic is a "disaster", as defined in Section 2(d) of the Disaster Management Act, is obviously not in dispute. "Disaster management", even as defined in Section 2(e) has, however, to achieve one of the objectives which find enumeration in sub-clauses (i) to (viii) therein. Any "disaster management" measures have, as per the said definition, to be "necessary or expedient" for achieving the said objectives.

32.4 Interpreted in their widest possible etymological connotations, the words used in the various sub-clauses of Section 2(e) may, possibly, be of unlimited scope. We are, however, spared the exercise of any detailed discussion in that regard, the law having been authoritatively enunciated in ***Small Scale Industrial Manufacturers Association***[9] and ***Indian School***[10], which also delineate the precise contours of judicial intervention in such matters. The relevant passages from these decisions, which already stands extracted, elucidate the following clear propositions:

(i) In the matter of interference with commercial contracts, under the Disaster Management Act, the Government "can provide for broad guidelines while recommending to give the reliefs".

(ii) Any exhortation, seeking interference with such Governmental decisions under the Disaster Management Act has, however, to be examined within strictly well-defined parameters. The Court has to appreciate the practical problems faced by the Government which may, on occasion, require rough accommodation, at times illogical and at others unscientific. Courts should not easily criticise such decisions. Nor can such decisions be struck down on the ground that other, and better, alternatives are possible. Interference would be justified only if the decision is patently arbitrary, discriminatory or *mala fide*. These decisions are confined exclusively within

the realm of policy, and the scope of judicial review thereof is, by necessity, extremely constricted. We may also note, in this context, the recent decision of the Supreme Court in ***Reepak Kansal v. U.O.I.***[22], which specifically proscribes judicial interference with policy decisions, particularly in economic matters. Nor can the Court, in purported exercise of its power of judicial review of administrative action, run the Government. All that the Court can do is to ensure that the executive decision does not violate the law or transgress upon fundamental rights, save and except to the extent permissible under the Constitution of India.

(iii) It would be chimerical to expect that such policy decisions, even if ameliorative in nature, would satisfy everybody. The mere fact that one, or the other, sector or sectors may not be agreeable to, or satisfied with, the policy decision, cannot justify interference by way of judicial review. The court is concerned only with the legality of the policy, and not with its wisdom or soundness. Nor can the court act as advisor to the Government in framing policies, ameliorative or otherwise.

(iv) While announcing the rehabilitative or restorative measures consequent on the COVID-19 pandemic, the Government has various competing interests to keep in mind, apart from its own priorities. The considerations of public

[22] **Reepak Kansal v U.O.I., 2021 SCC OnLine SC 443**

health, employment, food and shelter, transportation of migrants, etc., have all to be factored into the schemes framed for providing succour to those affected. Financial constraints have also to be recognised.

(v) In view thereof, no mandamus can issue to the Government to announce or declare particular relief packages or a particular policy, or to extend a policy beyond the extent to which it has been announced. It would be dangerous if the Court is asked to test the utility or beneficial effect or to appraise the policy based on affidavit evidence. The sequitur would, therefore, be that a writ court cannot frame the policy, modify the policy or extend the policy beyond its existing peripheries.

(vi) Where, however, the policy is starkly discriminatory in nature, and secures preferential reliefs in favour of select citizens or categories of citizens to the exclusion of others who are identically situated, the Court would undoubtedly interfere. Similarly, where the policy is manifestly arbitrary, the court can step in.

(vii) Directions, in respect of commercial or economic aspects of legitimate subsisting contracts or transactions between private parties, in the absence of any causal connection by the State, cannot be issued in the guise of ameliorative measures under the Disaster Management Act.

(viii) Similarly, ameliorative measures, under the Disaster Management Act, cannot serve the interests of one class of persons who are affected by the disaster, at the expense of the other. There cannot be "selective intervention".

(ix) "Mitigation", as an ameliorative measure under the Disaster Management Act, has to be aimed merely at reducing the risk, impact of the effect of the disaster or threatening disaster. In the guise of mitigation, the Disaster Management Authorities, or the Government, cannot issue directions in respect of economic aspects of legitimate subsisting contracts or transactions between two private individuals with which the State has no direct causal relationship, especially when the determination of compensation/cost is the prerogative of the supplier or manufacturer of the goods or provider of services.

(x) The Disaster Management Act is not a panacea for all difficulties, much less difficulties which are not directly concerned with disaster management as such.

32.5 Beyond this, for the purposes of the controversy in issue, it is not necessary to discuss, further, the provisions of the Disaster Management Act.

33. <u>The Major Port Trusts Act</u>

33.1 The preamble to the Major Port Trusts Act states that it is "an Act to make provision for the constitution of the Port authorities for certain Major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith". Clearly, therefore, the provisions of the Major Port Trusts Act relate only to Major Ports.

33.2 "Port" is defined, in Section 2(q) of the Major Port Trusts Act as "any Major Port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act". "Major port" is defined, in Section 2(m) of the Major Ports Trust Act as having "the same meaning as in the Indian Ports Act. The "Indian Ports Act" is, in turn, defined, in Section 2(j) as the Indian Ports Act, 1908. Section 3(8) of the Indian Ports Act defines "Major Port" as "any port which the Central Government may by notification in the Official Gazette declared, or may under any law for the time being in force have declared, to be a major port". The Chennai Port, Cochin Port, Deen Dayal Port Trust, Jawaharlal Nehru Port, Kandla Port, Kolkata Port, Mormugao Port, Mumbai Port, New Mangalore Port, Visakhapatnam Port, V. O. Chidambaranar Port and Kamrajar Port stand notified as "Major ports", as on date.

33.3 Section 111, whereunder the Orders of the MOS, on which the petitioners place reliance, have been issued, empowers the Central

government to issue directions to "the authority and the Board". "Authority" is defined, by Section 2(aa) as the Tariff Authority for Major Ports (TAMP). "Board" is defined, in Section 2(b) as the Board of Trustees constituted for any particular port under the Major Port Trusts Act.

33.4 Powers, function and authority of the Board and the TAMP

33.4.1 Sections 17, 28, 29, 31, 32, 34, 35, 35-A, 36, 37, 38, 39, 41, 42, 44, 45, 46, 47, 55, 56, 59, 60, 61, 62, 63, 64, 73, 81, 82, 83, 84, 85, 88, 93, 94, 95, 96, 97, 98, 100, 102, 103, 107, 116, 123, 127 and 130 of the Major Ports Trusts Act confers powers on the Board. Suffice it to state that none of these provisions empower the Board to regulate the collection of charges, by ICDs, CFSs or shipping lines, towards storage of export, or import, goods.

33.4.2 Sections 42 (4), 48, 49, 49-B, 50, 50-A, 54 and 123-A confer powers on the TAMP. These provisions read as under:

> "**42. Performance of services by Board or other person-**
>
> (1) A Board shall have power to undertake the following services: –
>
> (a) landing, shipping or transhipping passengers and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the Board;
>
> (b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;

(c) carrying passengers by rail or by other means within the limits of the port or port approaches, subject to such restrictions and conditions as the Central Government may think fit to impose;

(d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or vice versa, as a railway administration under the Indian Railways Act, 1890 (9 of 1890);

(e) piloting, hauling, mooring, remooring, hooking, or measuring of vessels or any other service in respect of vessels; and

(f) developing and providing, subject to the previous approval of the Central Government, infrastructure facilities for ports.

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(3) Notwithstanding anything contained in this section, the Board may, with the previous sanction of the Central Government, authorise any person to perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon.

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(4) No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount specified by the Authority, by notification in the Official Gazette."

"**48. Scales of rates for services performed by Board or other person.** – The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under Section 42 at or in relation to the port or port approaches –

(a) transhipping of passengers or goods between vessels in the port or port approaches;

(b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;

(c) cranage or porterage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods."

"**49. Scale of rates and statement of conditions for use of property belonging to Board. –**

(1) The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder :–

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board."

"**49-B. Fixation of port-dues.** –

(1) The Authority shall from time to time, by notification in the Official Gazette, fix port-dues on vessels entering the port.

(2) An order increasing or altering the fees for pilotage and certain other services or port-dues at every port shall not take effect until the expiration of thirty days from the day on which the order was published in the Official Gazette."

"**50. Consolidated rates for combination of services. –** The Authority may, from time to time, by notification in the Official Gazette, frame a consolidated scale of rates for any combination of service specified in Section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in Section 49 or the fees to be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels as specified in Section 49-A or the port dues to be fixed on vessels entering the port and for the duration of such dues as specified in Section 49-B."

"**50-A. Port-due on vessels in ballast. –** A vessel entering any port in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Authority and not exceeding three-fourths of the rate with which she would otherwise be chargeable."

"**54. Power of Central Government to require modification or cancellation of rates. –**

(1) Whenever the Central Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct the Authority to cancel any of the

> scales in force or modify the same, such period as that Government may specify in the order."

33.4.3 Neither does the Board of Trustees, nor does the TAMP, possess the power or authority to regulate, or interdict, the collection of charges by ICDs, CFSs or shipping lines, against storage of goods or failure to return the goods within the free period. The fixation of rates by the TAMP does not include, as a sequitur, the power to regulate collection of charges at such prefixed rates.

33.5 Section 111 of the Major Port Trusts Act empowers the Central Government to issue directives to the Board or to the TAMP. Such directives cannot, however, require the Board or the TAMP to perform any act which, by law, it is not authorised to perform. The jurisdiction vested by Section 111 is strictly delimited to issuance of directions to the Board of a Major Port or to the TAMP. The Central Government is *not* empowered, by Section 111, to issue directions to CFSs, ICDs or shipping lines.

34. The Merchant Shipping Act

34.1 The Merchant Shipping Act, as per its preamble, is "an act to foster the development and ensure the efficient maintenance of an Indian Mercantile marine in a manner best suited to serve the national interests and for that purpose to establish a National Shipping Board to provide for the registration, certification, safety and security of Indian ships and generally to amend and consolidate the law relating to merchant shipping". The Merchant Shipping Act applies essentially

to vessels. "Vessel", is defined, in Section 3(55), as including "any ship, boat, sailing vessel, or other description of vessel used in navigation".

34.2 Section 7 of the Merchant Shipping Act[23] empowers the Central Government to appoint a Director General of Shipping, for the purpose of exercising the powers conferred on the Director General (DG) under the Merchant Shipping Act. Section 7(2) empowers the Central Government to delegate any power, authority or jurisdiction exercisable by it under the Merchant Shipping Act to the DG or any other Officer, and Section 7(3) empowers the DG, with the previous approval of the Central Government, to delegate any power or authority conferred on or delegated to, him, to such other Officer or authority as he may specify. The remaining sections in Part I, II and III of the Merchant Shipping Act are of no particular significance to the dispute at hand. Part IV was later omitted. Part V deals with "Registration of Indian ships", Part VI with "Certificates of Officers such as Masters, Mates, Engineers and Shippers, etc.", Part VI-A with "Obligations of certain certificate holders to serve Government or in Indian ships, Part VII with "Seaman and apprentices", Part VIII with "Passenger ships", Part IX with "Safety", Part IXA with "Nuclear

[23] "7. **Director General of Shipping**. –
(1) The Central Government may, by notification in the Official Gazette, appoint a person to be the Director-General of Shipping for the purpose of exercising or discharging the powers, authority or duties conferred or imposed upon the Director-General by or under this Act.
(2) The Central Government may, by general or special order, direct that any power, authority or jurisdiction exercisable by it under or in relation to any such provisions of this Act as may be specified in the order shall, subject to such conditions and restrictions as may be so specified, be exercisable also by the Director General or by such other officer as may be specified in the order.
(3) The Director-General may, by general or special order, and with the previous approval of the Central Government, direct that any power or authority conferred upon or delegated to, and any duty imposed upon, the Director General by or under this Act may, subject to such conditions and restrictions as he may think fit to impose, be exercised or discharged also by such officer or other authority as he may specify in this behalf."

Ships", Part IXB with "Security and Port Facilities", Part X with "Collisions, accidents at sea and liability in respect thereof", Part X-A with "Limitation of such liability", Part X-B with "Civil liability for oil pollution damage", Part XI with "Navigation", Part XI-A with "Prevention and containment of pollution of the sea by oil", Part XI-B with "Control of harmful anti-fouling system of ships". Part XII with "Investigations and Inquiries", Part XIII with" Wreck and Salvage", Part XIV with "Control of Indian ships and ships engaged in coasting trade", Part XV with "Sailing Vessels", Part XV-A with "Fishing Boats", Part XVI with "Penalties and Procedure relatable to other provisions of the Merchant Shipping Act", Part XVII with "Other Miscellaneous Operations" and Part XVIII with "Repeals And Savings".

34.3 There is *no provision,* in any of these Parts in the Merchant Shipping Act, which deals with the charges collected by shipping lines from their customers or which deal with penal detention charges levied by shipping lines on failure to return the unloaded containers within the free period.

34.4 Section 7 of the Merchant Shipping Act empowers the DGS to exercise the power, authority or jurisdiction vested in the Central Government under the said Act. No provision to interfere with the levy or collection of charges, penal or otherwise, by CFSs or ICDs, for storage of the goods of importers or exporters in their premises, being vested on the Central Government by the Merchant Shipping Act, Section 7 could not, *a fortiori*, vest any such power in the DGS, either.

35. The Customs Act and the HCCAR

35.1 The provisions of the Customs Act, which have been pressed into service are Sections 7, 8, 45, 141, 143-AA and 151-A.

35.2 Section 7 empowers the CBIC to, by notification, appoint (i) ports and airports which alone shall be Customs ports or Customs airports and (ii) places which alone shall be ICDs or Air Freight Stations and places, for unloading of imported goods and loading of export. Section 8 empowers the Commissioner of Customs to approve proper places in any customs port for the unloading and loading of goods and to specify the limits of any customs area. "Customs area" is defined in Section 2 (11) as meaning the area of a customs station or a warehouse and as including any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities. "Customs Port" is defined, in Section 2 (12) as meaning any port appointed under Section 7(a) to be a customs port and including a place appointed under Section 7(aa) to be an ICD. Section 2 (29) defines "land customs station" as meaning any place appointed under Section 7(b) to be a land customs station.

35.3 ICDs and CFSs, therefore, exercise authority to permit unloading of imported goods or loading of export goods within their premises by virtue of the premises having been delimited as customs areas under Section 8 or the ICD/CFSs themselves having been notified under Section 7. They, therefore, owe their very identity, in a

sense, to Sections 7 and 8 of the Customs Act. Clearly, however, the purpose of notification under Section 7, approval under Section 8(a) or specification of limits as customs area under Section 8(b) is "for the unloading and loading of goods or for any class of goods", or for keeping of goods, ordinarily, before clearance by the customs authorities.

35.4 Section 45[24] of the Customs Act stipulates that all imported goods, unloaded in a customs area, shall remain in the custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or transshipped. Sub-section (2) of Section 45 sets out the responsibilities of the person having custody of the imported goods in the customs area. The person notified under Section 45 is, therefore, the custodian of the imported goods. CFSs and ICDs are notified custodians, of imported and export goods, under Section 45.

[24] **"45. Restrictions on custody and removal of imported goods. –**

(1) Save as otherwise provided in any law for the time being in force, all imported goods~~,~~ unloaded in a customs area shall remain in the custody of such person as maybe approved by the [Commissioner of Customs] until they are cleared for home consumption or are warehoused or are transshipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force,-

(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer [or in such manner as may be prescribed].

(3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilferred after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an arrival manifest or import manifest or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried."

35.5 Section 141[25] subjects all conveyances and goods in a customs area to the control of Customs officers *"for the purpose of enforcing the provisions of the Customs Act."* Sub-section (2) of Section 141 requires imported or export goods to be handled only in the manner prescribed. "Prescribed", is defined in Section 2(32) as prescribed by regulations made under the Customs Act, and "Regulations" are defined, under Section 2(35), as regulations made by the CBIC under any provision of the Customs Act.

35.6 Section 143-AA empowers the CBIC to take measures or prescribe a separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of mode of transport thereto for the purposes of facilitation of trade. The provisions reads thus:

> "**143-AA. Power to simplify or provide different procedure, etc., to facilitate trade**. – Notwithstanding anything contained in any other provision of this Act, the Board may, for the purposes of facilitation of trade, take such measures or prescribe separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of the modes of transport of goods, in order to-
>
> (a) maintain transparency in the import and export documentation; or
>
> (b) expedite clearance or release of goods entered for import or export; or

[25] **"141. Conveyances and goods in a customs area subject to control of officers of customs. –**
(1) All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of customs.
(2) The imported or export goods may be received, stored, delivered, despatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed."

(*c*) reduce the transaction cost of clearance of importing or exporting goods; or

(d) maintain balance between customs control and facilitation of legitimate trade."

35.7 Section 151-A of the Customs Act empowers the CBIC to issue orders, instructions and directions to officers of customs "for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon or for the implementation of any other provisions of the (Customs) Act or of any other law for the time being in force, insofar as they relate to any prohibition, restriction or procedure for import or export of goods". The power under Section 151-A is, therefore, specifically to be exercised in respect of any prohibition, restriction or procedure for import or export of goods.

35.8 The HCCAR

35.8.1 The HCCAR were notified *vide* Notification 26/2009-Cus.(N.T.) dated 17th March, 2009, under Section 141(2) of the Customs Act. Regulation 3 made the HCCAR applicable to handling of imported and export goods in ports, airports, ICDs, land customs stations and in customs areas approved or specified under Section 8 of the Customs Act.

35.8.2 That the HCCAR, therefore, applies to the handling of import or export goods in ICDs cannot, therefore, in our view, be gainsaid. Regulation 2(b) defines "Customs Cargo Services Provider" as meaning "any person responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods

and includes a custodian as referred to in section 45 of the Customs Act". Learned counsel before us are *ad idem* that CFSs and ICDs are "Customs Cargo Service Providers" within the meaning of Regulation 2(b).

35.8.3 Regulation 5 delineates the conditions to be fulfilled by Customs Cargo Service Providers. Of the various sub-regulations under Regulation 5, Sub-Regulation (5), which alone is of relevance, requires the Customs Cargo Services Provider "to comply with the provisions and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder." This requirement is reiterated in clause (q) of Regulation 6(1), which sets out the "responsibilities" of Customs Cargo Service Providers. Regulation 6(1)(q) requires every Customs Cargo Service Provider to "abide by all the provisions of the (Customs) Act and the rules, regulations, notifications and orders issued thereunder".

35.8.4 Sub-regulation 6(1) may, for ready reference, be reproduced as under:

> "**6. Responsibilities of Customs Cargo Service provider**. –
>
> (1) The Customs Cargo Service provider shall –
>
> (a) keep a record of imported goods, goods brought for export or transshipment, as the case may be, and produce the same to the [Inspector of Customs or Preventive officer or Examining officer] as and when required;
>
> (b) keep a record of each activity or action taken in relation to the movement or handling of

imported or export goods and goods brought for transhipment;

(c) display or make available in any other manner, information of process or movement or handling of imported or export goods and goods brought for transhipment;

(d) demarcate separate areas for unloading of imported goods for their storage with respect to the category of importers, nature of goods, place of destination, mode of transportation or any other criterion as the Commissioner of Customs may specify having regard to the custody and handling of imported goods in a customs area;

(e) demarcate separate areas for loading of export goods for their storage with respect to categories of exporters, nature of goods, examined and sealed containers other criterion as the Commissioner of Customs may specify having regard to the custody and handling of export goods in a customs area;

(f) not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the [Superintendent of Customs or Appraiser];

(g) not permit any export cargo to enter the customs area without a shipping bill or a bill of export having been filed with the [Deputy Commissioner of Assistant Commissioner of Customs];

(h) not permit any import cargo to enter the customs area or be unloaded therein without the import report or the import manifest having been filed with the [Deputy Commissioner of Assistant Commissioner of Customs];

(i) be responsible for the safety and security of imported and export goods under custody;

(j) be liable to pay duty on goods pilfered after entry thereof in the customs area,

(k) be responsible for the secure transit of the goods from the said customs area to any other customs area at the same or any other customs station in accordance with the permission granted by the [Deputy Commissioner of Assistant Commissioner of Customs];

(l) subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained or confiscated by the [Superintendent of Customs or Appraiser or Inspector of Customs or Preventive officer or examining officer, as the case may be];

(m) dispose off in the manner specified and within a time limit of ninety days, the imported or export goods lying unclaimed, uncleared or abandoned :

Provided that the period of ninety days may be extended by the Commissioner of Customs by such further period as may be allowed, on sufficient cause being shown for delay in the disposal;

(n) not make any alteration in the entry or exit points or boundary wall without the permission of the Commissioner of Customs;

(o) shall bear the cost of the customs officers posted by the Commissioner of Customs on cost recovery basis and shall make payments at such rates and in the manner specified by the Government of India in the Ministry of Finance unless specifically exempted by an order of the said Ministry;

(p) shall observe the Central Government holidays as followed by the jurisdictional Customs formations and in case of any variation in the working days, intimate the same to Commissioner of Customs and the trade, at least seven days in advance, and

(q) abide by all the provisions of the Act and the rules, regulations, notifications orders issued thereunder."

35.8.5 Regulation 6(3) requires a Customs Cargo Service Provider to publish and display, at prominent places including its website, the schedule of charges for the various services provided by him in relation to the imported goods or export goods in the customs area.

35.8.6 Of all the responsibilities envisaged by Regulation 6, therefore, the only responsibilities which have any bearing at all on levying of charges on goods are contained in Regulations 6(1)(l) and (6)(3). Regulation 6(1)(l) proscribes Customs Cargo Service Providers from charging any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive officer. This clause has no application to the present case, as we are not dealing with any goods which are seized, confiscated or detained. Regulation 6(3) requires the Customs Cargo Service Provider to publish and display, at a prominent place, including its website, the schedule of charges for the services provided by the Customs Cargo Service Provider in relation to the imported goods or export goods in the customs area. Clearly, therefore, an importer or exporter availing the services of the Customs Cargo Service Provider is aware, in advance, of the charges levied by

the Customs Cargo Service Provider, including the penal charges which would be levied in the event of failure, on the part of the importer or exporter, to remove the goods from the premises of the Customs Cargo Service Provider within the free period.

35.8.7 Regulation 7 which deals with power to relax and regulate, reads thus:

> "**7. Power to relax and regulate.** –
>
> (1) If the Commissioner of Customs is satisfied that in relation to the custody and handling of imported or export goods in a customs area, the Customs Cargo Service provider, for reasons beyond his control, is unable to comply with any of the conditions of regulation 5, he may for reasons to be recorded in writing, exempt such Customs Cargo Service provider from any of the conditions of regulation 5.
>
> [Provided that no exemption shall be granted in respect of any of the conditions referred to in regulation 5, where the overall safety and security of the premises are likely to be affected thereby.]
>
> (2) The Commissioner of Customs may regulate the entry of goods in a customs area for efficient handling of such goods."

35.8.8 Regulation 8 prohibits a Customs Cargo Service Provider from commencing any operation in the customs area for the first time unless the Commissioner is satisfied that the requirements of the Act have been fulfilled and grants permission to commence the operations. Regulation 9 sets out the particulars of the approval to be submitted by the Customs Cargo Service Provider for being permitted custody of imported or export goods and for handling of such goods in a customs area. Where the Commissioner of Customs is satisfied that the

applicant fulfils the conditions prescribed in Regulation 5, the Commissioner is empowered, by Regulation 10(1), to approve the applicant as a Customs Cargo Service provider for a period of two years.

35.8.9 Regulations 11, 12 and 13 deal with suspension or revocation of the approval of Customs Cargo Service provider, the procedure stipulated in that regard and renewal of the approval for appointment of Customs Cargo Service provider. These Regulations are of no particular significance in the present case.

35.8.10 It is apparent, from a reading of the HCCAR, that they do not regulate charging of detention charges or any other charges by the Customs Cargo Service provider from its customers, except to the extent of Regulation 6(1)(l), which prohibits charging of rent or demurrage by the Customs Cargo Service provider on goods which are seized, detained or confiscated. All that the HCCAR otherwise require is that the schedule of charges, for the service provided by the Customs Cargo Service provider, be displayed prominently on its website.

36. With this background, we proceed to examine the claims of the petitioners, predicated as they are on the executive instructions issued by the MOS, DGS, CBIC and Commissioners of Customs. In the process, we also intend to deal with the rival contentions advanced before us, relating to these instructions, so as to avoid repetition.

37. <u>Orders issued by the MOS</u>

37.1 The petitioners rely on the Orders dated 31st March, 2020 and 21st April, 2020 issued by the MOS. Both the Orders expressly state that they have been issued under Section 111 of the Major Port Trusts Act.

37.2 The Orders dated 31st March, 2020 and 21st April, 2020 both purports to issue "directions" to "Major Ports". Section 111 of the Major Port Trusts Act does not, in terms, empower the Government to issue directions to the Major Port *per se*. Directions, under the said provision, can be issued either to the Board of Trustees of the Major Port or to the TAMP. Both Orders communicate, in express terms, "directions", and are *not*, therefore, advisory in nature. To that extent, we agree with Mr Sibal.

37.3 The Order dated 31st March, 2020 directs each Major Port to (i) ensure that no penalties, demurrage, charges, fee or 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 the lockdown measures in place from 22nd March to 14th April, 2020 and (ii) 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. The directions in the Order dated 31st March, 2020, therefore, pertain to levy of penalties, demurrage,

charges, fee and rentals by the Major Port and to exemption or remission, by the Major Port, of the said charges over and above the provided free period. The Order does not deal with any charges levied or collected by CFSs, ICDs or shipping lines. This Circular cannot, therefore, come to the assistance of the petitioners.

37.4 Even otherwise, the Major Port Trusts Act does not empower the Central Government to issue directives to CFSs, ICDs or shipping lines, not to charge any component of the charges otherwise realisable by them from importers or users of their facilities. Power, with the Central Government under Section 111 is restricted to issue of directives to the Board of Trustees of the Port or to TAMP.

37.5 It has been sought to be contended, before us, that Section 111 of the Major Port Trusts Act does empower the Central Government to issue directives, to waive penal charges, to CFSs/ICDs located within the Major ports. We doubt the correctness of this contention. In the first place, except for one CFS at Kandla, we are informed that there is no CFS located within the premises of any Major Port. That apart, a CFS, even if located within the premises of the Major Port, cannot be treated either as the Board or the TAMP, to be amenable to directives issued by the Central Government under Section 111 of the Major Port Trusts Act.

37.6 The powers and authority conferred on the Board and the TAMP by the Major Port Trusts Act do not extend to controlling or regularising charging of penal charges by CFSs, ICDs or shipping lines from exporters or importers. Section 48 of the Major Port Trusts

Act[26] empowers the TAMP to, by notification, frame a scale of rates, and to stipulate conditions relating to providing of services by any person authorised under Section 42 or in relation to the port or port approaches including "wharfage, storage or demurrage of goods on any such place" and "any other service in respect of vessels, passenger or goods". These rates, however, may be framed, by the TAMP, only in respect of the services to be performed "by a Board or any other person authorised under Section 42". The Board is empowered, by Section 42(1)(a), to "land, ship or transship passengers and goods between vessels in the Port and the wharves, piers, quays or docks belonging to or in the possession of the Board" and, by Section 42 (1)(b), to "receive, remove, shift, transport, store or deliver goods brought within the Board's premises". In either case, the movement of the goods, or the storage thereof, have to be to, or in, the premises of the Board. These would not, therefore, include transport of the goods to, or storage of the goods in, premises of CFSs, or ICDs, located *outside* the port area. Section 42(3) empowers the Board to, with the previous sanction of the Central Government, authorise any person to perform any of the services enumerated in Section 42(1), on terms and conditions to be agreed upon, and Section 42(3-A)

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[26] "**48. Scales of rates for services performed by the Board or other person –**

(1) The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and the statement of conditions under which, any of the services specified hereunder shall be performed *by a Board or any other person authorised under Section 42* at or in relation to the Port or port approaches –

(a) transhipping of passengers or goods between vessels in the Port or put approaches;

(b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;

(c) cranage or porterage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods.

(2) Different scales and conditions may be framed for different classes of goods and vessels."

empowers the Board to, with the previous approval of the Central Government, enter into any agreement or other arrangement (whether by way of partnership, joint venture or in any other manner) with any body corporate or any person to perform any of the services and functions assigned to the Board under this Act on such terms and conditions as may be agreed upon." The CFSs have, on affidavit, confirmed that no agreement or arrangement, under Section 42(3-A), has been executed or entered into, between the Board and the CFSs, and Mr. Sibal, for the petitioners, does not dispute this position. Nor have the petitioners sought to aver that the CFSs are "authorised service providers" within the meaning of Section 42(3).

37.7 The inevitable sequitur is that Section 48 cannot even authorise framing, by the TAMP, of the scale of rates at which services are to be provided by CFSs or ICDs located outside Major Ports, as learned Senior Counsel for the CFSs and ICDs have correctly contended. The provisions of the Major Port Trusts Act do not, therefore, provide for any measure of control, whatsoever, over the tariff at which CFSs or ICDs located outside Major Ports would charge importers or exporters for storage of the goods, nor can they monitor, or injunct, collection of recovery of such charges, whether in the nature of penal exactions or otherwise.

37.8 This contention, as advanced by Mr. Vikram Nankani, learned Senior Counsel for the CFSs, we may note, also stands echoed by the Ministry of Finance as well as the Ministry of Shipping and the Director General of Shipping. All, except the petitioners are,

therefore, *ad idem* that Section 48 – as, indeed, the Major Port Trusts Act in its entirety – does not apply to entities which are outside the geographical limits of major ports. The tariff of CFSs and ICDs located in or around minor ports or near major ports but outside the port area, cannot be governed by Section 48 of the Major Port Trusts Act. We may refer, in this context, to the following passages from the written submissions of the Ministry of Shipping:

> "6. Coming to the Inland Container Depots (ICDs) and Container Freight Stations (CFS), which are custom bonded in-transit facilities, (the only difference being that a Container Freight Station is mostly located near the Port, while an Inland Container Depot is located in the hinter land). *The tariff for the various services provided by the CFSs/ICDs are charged as per the private arrangement between them and their customers. Respondents No.3 to 5 are neither privy to the terms the private contract executed by the CFS and/or ICDs with Customers nor can regulate the tariff rates that are charged by the CFS. In fact, save and except, single CFS facility and operator located at Kandla Port, Respondents 3-5 do not have any control or supervision over activities or practices or cost structures of the CFS or ICD service providers.*
>
> It is pertinent to mention that as per information available, none of the ICDs in India are operating or utilizing land that is belonging to any Major Port. Also, only a handful of CFS operators are situated within port limits of Major Ports, which is not representative of all CFS operators or service providers situated within India.
>
> *****
>
> 8. Therefore, it is submitted that orders passed by Respondent No.3 are binding only all Major Ports or other facilities such as CFS, ICD, etc. located at any of the Major Ports or on the land owned by Major Port that to in respect of the charges specifically directed to be exempted for the actual use of the port and for the period stated in the two orders.

> 9. Therefore, as submitted above, certain specific exemptions/remissions have been directed *to be provided by the Major Ports to the actual Major Port users and users of Private facilities outside the Major Ports.* It is not the case of the Petitioners that any of the Major Ports or any of the ICDs/CFS either operating on the major port or on the land owned by or provided by any of the Major Ports has either not provided the exemptions/remission directed to be provided by way of the two orders issued by the MoS or having availed of such exemptions/remission has failed to pass on the benefit of the same to the end consumer, leading to any sort of unjust enrichment on the part of any of the ICDs/CFS. That being the case, the reliance placed by the Petitioners on the orders dated 31.3.2020 and 21.4.2020 would not in any manner advance the case of the Petitioners."
>
> (Emphasis supplied)

37.9 Even otherwise, the TAMP, under Section 48, merely fixes and approves the scales of rates for services to be performed by the Board or other persons. Even in respect of any CFS which may be located within the area of a Major Port and may, therefore, conceivably be amenable to Section 48 of the Major Port Trusts Act, all that the Section regulates are the scales of rates for the services to be performed by the CFSs or ICDs. There is no provision, in the Major Port Trusts Act, which can regulate the levying, charging or recovery, by the CFSs or ICDs, from their customers, of charges payable against storage of goods – which would include penal charges in the event of the goods remaining in the premises of the CFSs or the ICDs beyond the free period.

37.10 There is a fundamental difference, in basic fiscal jurisprudence, between fixation of a tariff and levy and collection of charges in terms

thereof. The TAMP has no concern with the recovery and collection of penal charges, whether in the name of ground rent, demurrage or detention charges, by ICDs, CFSs or shipping lines.

37.11 A conjoint reading of para 3(iii) and 10 of the MOS Circular dated 21st April, 2020 would seem to indicate that the Major Ports have been directed to ensure non-recovery of penal charges, demurrage and detention charges on any port user *including importers and exporters*, CFSs, ICDs and shipping lines. This circular, has, however, been expressly issued under Section 111 of the Major Port Trusts Act. We have already seen that Section 111 empowers the Central Government to issue directives only to the Board or to the TAMP. The direction for non-recovery of penal charges, by ICDs, CFSs and shipping lines from the importers or exporters obviously has no link with the TAMP, as the authority of the TAMP, under the Major Port Trusts Act, extends only to fixation of the tariff and not to regulation of collection of charges in accordance therewith.

37.12 We have also observed hereinabove that the Board, too, is not invested by the Major Port Trusts Act, to regulate, much less interdict, the levy, recovery and collection of charges by the CFSs, ICDs or shipping lines from the importers or exporters. Section 53 of the Major Port Trusts Act does authorise the Board to, "in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof *according to any scale in force under this Act* or remit the whole or

any portion of such rate of charge so levied". The scales at which CFSs and ICDs, located outside Major ports, charged importers or exporters, for storage of goods in their premises, are not fixed or framed under the Major Port Trusts Act. The Order dated 21st April, 2020, of the MOS cannot, therefore, seek support from this provision.

37.13 Directions, issued by an executive authority in exercise of the power invested in such authority to do so, have necessarily to be such as would be amenable to compliance by the authority *to whom the directions are issued*. The authority issuing directions, in exercise of powers conferred by statute in that regard, has also to ensure that the body to whom the directions are issued is empowered to comply with such directions. It is as much folly, in law, to issue directives in excess of the authority vested in the one, as to issue directives to perform acts in excess of the authority vested in the other.

37.14 The Order dated 21st April, 2020 directs "ports" to ensure strict implementation of the circular by, *inter alia*, CFSs, ICDs and shipping lines. Neither the Board of Trustees of the port, nor the TAMP, is empowered by the Major Port Trusts Act, to regulate levy, collection and recovery of penal charges from the importers or exporters, by the CFSs, ICDs or shipping lines. At best, the *framing* of the tariff, in the case of ICDs or CFSs located *within major ports*, may be said to be required to conform to Section 48. This directive is, therefore, impossible of compliance.

37.15 The tariff charged by CFSs and ICDs which are not within the premises of any Major Port are not regulated by Section 48 of the

Major Port Trusts Act. Rather, the only responsibility of such CFSs or ICDs (as Custom Cargo Service Providers), in the matter of the charges levied by them from importers or exporters, is circumscribed by Regulation 6(3) of the HCCAR, which requires the schedule of charges to be published and displayed at prominent places including the website or webpage of the CFS or ICD. Save and except in the cases of goods which are detained, seized or confiscated (which may attract Regulation 6(1)(l) of the HCCAR), there is no other statutory control, in any parliamentary enactment or subordinate legislation, on the levying, charging or collection of charges, penal or otherwise, by CFSs or ICDs from importers or exporters. There is no other statutory control, in any Parliamentary enactment or subordinate legislation, on the levy, charging or collection of charges, penal of otherwise, by CFSs or ICDs, from importers or exporters. No provision, for regulating such levy and collection is to be found in the Major Port Trusts Act, the Merchant Shipping Act or the Customs Act (including the HCCAR). The direction to the "Port" to ensure implementation of the Circular dated 21st April, 2020 of the MOS, as contained in para 10 of the Circular was, therefore, abortive and ineffective *ab initio*. The port could not have ensured such implementation, for the simple reason that the levying and collection of charges by the concessionaires from the importers or exporters are not regulated by the port, i.e. by the Board of Trustees of the Port or by the TAMP.

37.16 Mr. Amit Sibal, learned Senior Counsel for the petitioners, emphasized, more than once, that the Circulars of the MOS and of the CBIC had not been challenged, and were, therefore, binding. We are

unable to agree. In our opinion, the Circulars of the MOS, insofar as they direct the Ports to ensure that CFSs, ICDs and shipping lines do not charge penal charges from importers and exporters, is, in our view, in excess of the jurisdiction vested in the MOS. No such direction can be issued by Section 111 of the Major Port Trusts Act. An order passed in excess of jurisdiction is a nullity *ab initio*. No mandamus can issue for enforcement of such an order, irrespective of whether the order has been challenged or not. In this regard, the Supreme Court has held, in para 17 of the report in ***Deepak Agro Foods v. State of Rajasthan***[27], thus:

> "**17.** All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. *Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties.* (See: **Kiran Singh vs. Chaman Paswan**[28]). However, exercise of jurisdiction in a wrongful manner cannot result in a nullity - it is an illegality, capable of being cured in a duly constituted legal proceedings."
>
> (Emphasis supplied)

In a similar vein, it was held in para 54 of the report in ***DLF Universal Ltd. v. Director, Town and Country Planning Department, Haryana***[29], as under:

> "**54.** It is thus clear that there is no provision in the Act, the Rules or in the licence that empowers the Director to fix the sale price of the plots or the cost of flats. The impugned directions issued by the Director are beyond the limits

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[27] **(2008) 7 SCC 748**
[28] **AIR 1954 SC 340**
[29] **(2010) 14 SCC 1**

> provided by the empowering Act. The directions so issued by the Director suffer from lack of power. *It needs no restatement that any order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of its legal effect. An order which is not within the powers given by the empowering Act, it has no legal leg to stand on. The order which is ultra vires is a nullity, utterly without existence or effect in law*."
>
> (Emphasis supplied)

In the context of a decree passed without jurisdiction, the Supreme Court held, in ***Ajudh Raj v. Moti*** [30], that "if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eye of law and *it is not necessary to set it aside*".

37.17 The mere fact that the respondents might not have challenged the Circular dated 21st April, 2020 issued by the MOS cannot, therefore, maintain a prayer for a mandamus, to compel compliance with the Circular, by authorities who are not bound to so comply.

37.18 Mr. Sibal also sought to contend that the orders of the MOS were valid if they were to be treated as having been issued under the Disaster Management Act. This, however, appears us to be an argument of desperation. It is clear that the Circulars dated 31st March, 2020 and 21st April, 2020 of the MOS, have *not* been issued under the DMA. The MOS is itself on affidavit, vouchsafing this fact. It is not possible, therefore, for a Court, dealing with enforcement of a Circular under the Major Port Trusts Act, to direct such enforcement on the premise that it *could have been* validly issued under the Disaster Management Act. This would amount to rewriting the

[30] **1991 AIR SC 1600**

Circulars, especially in view of the express recital contained in the concluding paragraphs of the Circulars specifically stating that they were issued in exercise of the power conferred by Section 111 of the Major Port Trusts Act.

37.19 That apart, even under the Disaster Management Act, the decision of the Supreme Court in ***Indian School***[10] completely unseats the submissions of Mr. Sibal. The collection of charges, whether regular or penal, from importers or exporters, for storing goods in the ICDs and CFSs, or by the shipping lines, for delay in return of the containers, is clearly contractual in nature, even if the tariff has to be published in accordance with Regulation 6(3) of the HCCAR. ***Indian School***[10] has clarified, beyond any scope of doubt, that the Government, as well as the Disaster Management Authorities, cannot, in exercise of the powers conferred by the Disaster Management Act, issue directions "*in respect of economic aspects of legitimate subsisting contracts or transactions between two private individuals with which the State has no direct causal relationship, especially when the determination of compensation/cost/fees is the prerogative of supplier or manufacturer of the goods or service provider of the services*". In view of this unequivocal declaration of the law by the Supreme Court in ***Indian School***[10], the submission of Mr. Sibal, that, in exercise of the powers conferred by the Disaster Management Act, the Government could interdict collection of penal charges by ICDs, CFSs or shipping lines, beyond the permitted "free periods", is completely unacceptable. Irrespective of whether there existed, or did not exist, express written contracts between CFSs and ICDs and their

customers, the relationship between the CFSs, ICDs and shipping lines, with the importers/exporters, was undoubtedly contractual in nature or, at the very least, *related to financial transactions between two private individuals*. *It cannot be said that the State has any direct causal relationship with these transactions. We understand the expression "causal relationship", in this context, as intending a relationship of cause and effect, between the instrumentality of the State and the impugned imposition on the citizen. There is, thus viewed, clearly no "causal relationship" between the charging of demurrage, detention charges, or ground rent, by the ICDs, CFSs or shipping lines from the importers or exporters, and the State, i.e. the Government, even if the tariff charged were required to be pre-approved, or even framed (in the cases of those few CFSs to which Section 48 of the Major Port Trusts Act applied) by the Customs authorities, or the TAMP. Detention charges, or ground rent, were not levied or collected on account of any statutory compulsion, but because of the occupation, by the goods of the customer, of the premises of the CFS or ICD – and, in the case of shipping lines, because of the delay in returning the empty containers*. The amounts charged by the ICDs, CFSs or shipping lines from the importers/exporters was in the nature of recompense for storage of the goods (in the case of ICDs and CFSs) and the tangible or intangible losses suffered as a result of delay in return of empty containers (in the case of shipping lines). These were matters between the ICDs/CFSs, and shipping lines, and the concerned importers/exporters and was, therefore, their "prerogative", within the meaning of the expression as used by the Supreme Court in para 112 of the report in

Indian School[10]. Exercise of the powers vested by the Disaster Management Act, to interfere with this prerogative is, therefore, clearly and unequivocally disapproved by the said decision.

37.20 We are, therefore, of the view that even under the Disaster Management Act, the directions contained in paras 3(iii) and 10 of the Circular/order dated 21st April, 2020, issued by the MOS, could neither be sustained nor enforced by issue of a mandamus

37.21 Resultantly, the reliance, by the petitioners, on the Circulars/Orders dated 31st March, 2020 and 21st April, 2020 of the MOS cannot support the prayers contained in the petitions.

38. Orders issued by the DGS

38.1 The petitioners also rely on Order No 07 of 2020 dated 29th March, 2020, Order No. 08 of 2020 dated 31st March, 2020 and Order No. 11 of 2020 dated 22nd April, 2020, respectively. The jurisdiction of the DGS extends only to shipping lines, and not to CFSs or ICDs. Of these, Order No 07 of 2020 and Order No. 08 of 2020 are, expressly, mere "advisories".

38.2 Where the authority issuing the order has itself chosen only to advice, rather than to direct, we are of the opinion that the Court cannot, by judicial fiat, transmute the advisory into a directive. Of course, the Court is empowered to, on its own account, issue directions in terms of advisories issued by executive authorities. The enforceability of such directions would, however, owe its origin not to

the advisories issued by the authorities, but to the directive issued by the Court. Issuance of such a mandatory directive would, however, in the first instance, require clear evidence of the existence of a corresponding duty, on the authority to whom the mandamus is issued, to comply with such directive.

38.3 The third DGS Order No 11 of 2020, dated 22nd April, 2020 is, however, somewhat differently worded. The logic of wording this third Order differently from the Orders dated 29th March, 2020 and 31st March, 2020, is forthcoming even from the recitals in the Order themselves. Paras 1 and 2 of the order records the fact that the earlier Order No 07 of 2020 and 08 of 2020 were "issued as advisories". Thereafter, the Order goes on to observe that the MOS had, vide its Order dated 21st April, 2020, superseded its earlier Order dated 31st March, 2020 and had "issued comprehensive directions to the Major ports to remit penal charges, demurrages, detention charges, dwell time charges, anchorage charges, penal berth hire charges, performance -related penalties, etc. levied on the Port users including the shipping lines". In view thereof, while continuing the applicability of its earlier Order No 07 of 2020 and 08 of 2020, the DGS proceeded to record that it was "now *decided*, that for the second lockdown period, the shipping companies or carriers (and their agents by whatever name called) shall not charge, levy or recover any penal charges, demurrage, ground rent, storage charges in the Port, detention charges, dwell time charges, additional anchorage charges, penal berth hire charges, vessel demurrage or any performance related penalties on cargo owners/consignees of non-containerised cargo (i.e. bulk,

brake bulk and liquid cargo) whether LCL or not for the period from 15th April, 2020 to 3rd May, 2020 (both days inclusive), due to delay in berthing, loading/unloading operations or evacuation/arrival of cargo". These directions, however, apply only to non-containerized cargo. That apart, unlike the Order issued by the MOS, Order No 11 of 2020, of the DGS is not worded *as an express directive* to the shipping companies or shipping lines. Rather, para 7 of the Order merely communicates the "decision" taken by the DGS. Insofar as compliance with such decision, by shipping companies or shipping lines is concerned, para 8 of the Order proceeds, once again, to merely *advise*:

> "The above exemption/remissions 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 or carriers (and their agents) are *also advised* not to impose any new or additional charge. This decision is a one-time measure to factor in the present situation arising out of the COVID-19 pandemic."
>
> (Emphasis supplied)

Even while vouchsafing, by this concluding passage in its Order, that the relationship between shipping lines and importers/exporters was contractual in nature, the DGS proceeds to "also advice" shipping companies or carriers not to impose any new or additional charge. The word "also", in this passage is, in our considered opinion, of significance. It indicates that para 7 of the Order, though it purports to record the decision of the DGS, *is also to be treated as an advisory*, insofar as compliance with the said decision is concerned. We are unable, therefore, to construe Order No 11 of 2020 as being in the

nature of a mandatory directive to shipping lines, as Mr. Sibal would seek us to hold.

38.4 The stark distinction between Order No 11 of 2020 of the DGS and the MOS Order dated 21st April, 2020 – which was expressly worded in the form of a mandatory directive – makes it appear that, unlike the MOS, the DGS was somewhat ambivalent about its authority or its jurisdiction to interdict levy or collection of penal charges by shipping lines from their customers, such charges being relatable to "negotiated contractual terms". We endorse this sentiment. We have already had occasion to observe, hereinbefore, that the provisions of the Merchant Shipping Act – under which the DGS purports to have issued its three Orders – do not contain any provision permitting interference with the levy, collection or recovery of penal detention charges, by shipping lines, from their customers, for failure to return containers in time. Section 7 of the Merchant Shipping Act empowers the DGS only to exercise such functions, as may be exercised under the Merchant Shipping Act by the Central Government, and to authorise any other officer or officers to exercise such functions. Mr. Sibal has been unable to draw attention to any provision in the Merchant Shipping Act, which entitles the Central Government to interdict shipping lines from charging penal detention charges from their customers. The written submissions, filed by the petitioners, too, while citing Section 7 of the Merchant Shipping Act, do not draw attention to any such provision. We have scanned the Merchant Shipping Act threadbare, and find ourselves in a *cul de sac*. No such provision has come to our notice.

38.5 We are constrained, therefore, to hold that no directive, restraining shipping lines from charging penal detention charges from their customers for failing to return containers in time, could have been issued by any authority, including the MOS and the DGS. A juxtaposed reading of paras 7 and 8 of Order No 11 of 2020, of the DGS, indicates, *prima facie*, that the DGS also thinks so.

38.6 Mr. Sibal chose, even in the case of the Orders issued by the DGS, to contend that they were issued under the Disaster Management Act and, therefore, mandated implicit compliance by the shipping lines. For the reasons already adduced by us in respect of the Orders issued by the MOS, we are unable to sustain this submission. The relationship between shipping lines and their customers was expressly contractual in nature, and the prerogative to decide on the charges leviable from the customers for continuing to retain the containers beyond the "free period" vested in the shipping lines, is governed by negotiated contract *ad idem*. The State has no direct causal connection with these charges. The powers exerciseable under the Disaster Management Act could not, therefore, be so exercised as to restrain collection thereof, by the shipping lines.

38.7 The Orders issued by the DGS, too, therefore, cannot benefit the petitioners**.**

39. Circular issued by the CBIC

39.1 The petitioners rely on a Circular, dated 23rd April, 2020, issued by the CBIC. The CBIC, interestingly, contends, before this Court, that the Circular was never intended to be mandatory or even directory in nature, and was merely by way of an inter-departmental communication from the CBIC to the Chief Commissioners and Principal Chief Commissioners of Customs under it, to ensure compliance with the Orders issued by the MOS.

39.2 To our mind, this is apparent from a reading of the Circular. The only "mandate", if any, is to be found in the concluding para of the Circular, which merely requires the Chief Commissioners and Principal Chief Commissioners to ensure compliance with the order of the MOS by the ICDs and CFSs in their respective zones. The Circular cannot, therefore, be invested with any compulsive element, in excess of that contained in the Orders of the MOS or the DGS. We have already held that the petitioners are not entitled to capitalise on the Orders of the MOS and the DGS, to maintain a plea for issuance of a mandamus to ICDs, CFSs or shipping lines, not to charge penal charges from exporters and importers beyond the "free period". Per corollary, no such rights can inure, in favour of the petitioners, even from the circular issued by the CBIC.

39.3 Mr. Sibal sought to draw upon Sections 7, 8, 45, 141 and 143AA of the Customs Act, as well as the provisions contained in the HCCAR, to contend that CFSs and ICDs were bound by all executive instructions issued by the CBIC. We have already examined these provisions, in detail, earlier in this judgement. We are unable to

sustain the submission of Mr. Sibal. CFSs and ICDs are notified as "customs areas", and as "extensions" of the Port, for a specific purpose, viz., to permit unloading and loading of goods. If at all, therefore, the situation may be analogised to the creation of a deeming fiction by the legislature for a particular purpose. In such a case, the consequence of creation of the deeming fiction cannot extend beyond the purpose for which it was created.[31] We find ourselves unable to hold, as Mr. Sibal would exhort us to do, that, merely because, for this limited purpose, CFSs and ICDs are to be treated as customs areas and notional extensions of the Port, they would, *ipso facto*, be mandatorily subject to every executive direction issued by the CBIC.

39.4 CFSs and ICDs are not *creatures* of the Customs Act, as the petitioners would seek to contend. They are, essentially, in the nature of godown facilities – whether privately owned or managed by governmental agencies such as the Central Warehousing Corporation or the Container Corporation of India (which, as on date, manages all ICDs in the country) – *which owe their entitlement to operate as CFSs and ICDs (for the purpose of loading and unloading of export, and imported, goods) to the notifications issued under Section 7 or Section 8 of the Customs Act*. That, by itself, cannot render the collection of charges by CFSs or ICDs from their customers, penal or otherwise, subject to control by the CBIC. The CBIC, therefore, has wisely not chosen to issue any mandatory directive, on its own accord, to CFSs or ICDs, not to charge penal charges from importers or exporters

[31] Refer **Indore Development Authority v. Manoharlal, (2020) 8 SCC 129; State of W.B. v. Sadan K. Bormal, (2004) 6 SCC 59; Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society, (2016) 11 SCC 313**

against storage of containers in their premises beyond the "free period".

39.5 The HCCAR, too, cannot advance the case of the petitioners. We have already dealt with this aspect in some detail, and do not propose to reiterate our findings. Suffice it to state that the only mandate, on CFSs or ICDs, under the HCCAR, is to prominently publish the rates at which they charge their customers, including on their website or webpage, and, *subject to any other law for the time being in force*, not to charge demurrage and detention on goods which are seized, detained or confiscated by the Customs authorities.[32] We are unable to countenance the submission that the responsibilities cast on CFSs or ICDs by the HCCAR, in their capacity as "Customs Cargo Services Provider" would, per sequitur, make all executive instructions issued by the CBIC binding on them. The submission, to the said effect, as advanced by Mr. Sibal and other learned Counsel for the petitioners is, therefore, rejected.

39.6 Nor can Regulation 6(1)(q) of the HCCAR come to the aid of the petitioners in that regard. All that the said sub-regulation requires is for the Customs Cargo Services Provider is to "abide by all the provisions of the (Customs) Act and the Rules, Regulations, Notifications and Orders issued thereunder". We have already held that there is no provision in the Customs Act or in the HCCAR which permits interference with the collection of penal charges from importers or exporters by CFSs or ICDs. No such mandate is to be

[32] A detailed discussion on this aspect may be found in the judgement of this Court in **Global Impex v. Manager, Celebi Import Shed, MANU/DE/4351/2019**.

found even in the Circular dated 23rd April, 2020, issued by the CBIC. That apart, the obligation under Regulation 6(1)(q) obviously applies only to the extent that the Customs Cargo Services Provider are subject to control by the CBIC, and not beyond that. Mr. Sibal sought to contend that, by virtue of Regulation 6(1)(q), all instructions issued by Customs authorities were binding on CFSs and ICDs.

39.7 We are unable to agree. Regulation 6(1)(q) obligates CFSs and ICDs (as Customs Cargo Services Provider) only to abide by the provisions of the Customs Act and the Rules, Regulations, Notifications and Orders issued *thereunder*. Instructions issued by Customs Commissioners cannot be treated as "Rules, Regulations, Notifications" or "Orders" issued under the Customs Act. They are in the nature of administrative directions, issued by Commissioners in exercise of the supervisory jurisdiction over ICDs are CFSs. Moreover, in the present case, the communications by the Commissioner of Customs, JNCH, to ICDs/CFSs within his jurisdiction merely purported to direct compliance with the Circular issued by the CBIC.

39.8 Assuming, *arguendo*, that the CBIC were to issue directives, for compliance, to the Customs Cargo Services Provider, which they are not empowered to issue, such directives cannot be enforced, least of all by a mandamus by the Court.

39.9 Shipping lines, we may note, are not even Customs Cargo Services Provider within the meaning of the HCCAR and are, therefore, entirely outside the purview of the said Regulations.

39.10 As in the case of the Orders issued by the MOS and the DGS, Mr. Sibal sought to contend, even in the case of the Circular of the CBIC, that it had been issued under the provisions of the Disaster Management Act and was, consequently, enforceable at law. There is nothing, in the Circular of the CBIC, to indicate that it has been issued in exercise of the powers conferred by the Disaster Management Act. The CBIC has specifically disabused this contention, on affidavit. Our findings, with respect to the sustainability of the Order of the MOS and the DGS, even under the Disaster Management Act, in the wake of the judgement of the Supreme Court in ***Indian School***[10], would apply, *mutatis mutandis*, to the Circular of the CBIC.

39.11 Mr. Sibal also sought to submit that the tariff charged by CFSs or ICDs was required to be pre-approved by the Customs authorities, thereby indicating control, of the CBIC, over the recovery of charges by the CFSs or ICDs from the exporters or importers. We have already pointed out that there is a distinction between fixation of tariff and collection of charges in accordance with the tariff. The argument of Mr. Sibal is really irrelevant to the issue at hand, as the petitioners are not seeking any change in the tariff charged by ICDs or CFSs for storage of goods. What they are seeking is, essentially, interference with the right of ICDs, or CFSs, to recover charges, from importers, in accordance with the tariff so fixed, even where the goods continue to remain in their premises beyond the "free period". Any accommodation, by us, to this request of the petitioners would, we are afraid, be in the teeth of the law enunciated by the Supreme Court in ***Indian School***[10] which, in no uncertain terms, proscribes the issuance

of any directions, under the Disaster Management Act, which would interfere with private contracts *or with commercial arrangements between private parties*.

39.12 Mr. Sibal has also relied on Circular No 18/2009-Cus, dated 8th June, 2009, issued by the CBIC , the relevant portions of which read thus:

> "Government of India
> Ministry of Finance
> (Department of Revenue)
> Central Board of Excise & Customs
>
> ***Subject : Designation of customs clearance facilities as ICDs or CFSs - Clarification –reg.***
>
> Sir/Madam,
>
> It has been brought to the notice of the Board that in certain cases, the distinction between the functioning of Inland Container Depots (ICDs) and Container Freight Stations (CFSs) has not been properly appreciated by ICD/CFS operators, and this has been resulting in non-compliance of/or deficiency in adherence to the procedures prescribed for import/export of goods, provisions of the Customs Act, 1962, and the rules and regulations made thereunder.
> Certain field formations have also sought clarification in a few such cases.
>
> 2.1 While guidelines broadly specifying the distinction between ICDs and CFSs have been included in the Customs Manual issued by the Board in September, 2001, the legal provisions are indicated below to further clarify the matter.
>
> 2.2 Under Section 7 of the Customs Act, 1962 (hereinafter referred to as the said Act), Board may appoint the ports, airports or the Land Customs Stations (LCS) as 'customs ports or customs airports or land customs stations', respectively, *for the purpose of unloading of imported goods*

and loading of export goods or any class of such goods.

2.3 Section 8 of the said Act provides that the Commissioner of Customs may approve the landing places for unloading and loading of goods [clause (a)] and specify the limits of the customs area [Clause (b)] within a notified customs port or customs airport or any other category of customs station. Container Freight Stations are specified as customs areas under Clause (b) of the said Section 8 *wherein imported goods or export goods are ordinarily kept before clearance by customs.* With the increase in volume of international trade and the bottlenecks/lack of sufficient infrastructure at the ports, a number of CFSs have been developed around the seaports over the years.

2.4 Section 4 of the said Act empowers the Board to appoint such persons as it thinks fit to be officers of Customs. The Board has, vide several notifications issued under the said Section, appointed Commissioners, Additional Commissioners, Joint Commissioners, Deputy Commissioners and Assistant Commissioners to be officers of customs within the area specified in the said notification. Accordingly, *a Commissioner of Customs can notify a Container Freight Station as a customs area* only within his prescribed jurisdiction.

3. Similarly with widespread industrialization and growth of industrial centres in the hinterland of the country, facility of customs clearance of imported/export goods has been made available at the doorsteps of importers/ exporters by way of opening of a large number of ICDs across the country. Necessary changes have been made in section 2(12) and 7(aa) of the said Act, specifically incorporating the term 'Inland Container Depot' on par with other customs port/airport/Land Customs Station, etc. Accordingly, ICD is a place that <u>*acts*</u> *as a 'self contained customs station' like a port or air cargo unit where filing of customs manifests, bills of entry, shipping bills and other declarations, assessment and all the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transhipment, etc., take place.*

4. From the analysis of the aforesaid legal provisions it

follows that a port, an airport, a Land Custom Station or an Inland Container Depot *is a customs station* and each facility has to be treated at par with the other. ICDs are thus self sufficient customs stations and *for all practical purposes* a Custom House in the same way as any port or airport. On the other hand, *a Container Freight Station is only a custom area located in the jurisdiction of a Commissioner of Customs exercising control over a specified custom port, airport, LCS/ICD. Container Freight Station by itself cannot have an independent existence; it has to be linked to a customs station within the jurisdiction of the Commissioner of Customs. It is an extension of a customs station set up with the main objective of decongesting the ports. It is a place where only a part of the customs process mainly the examination of goods is normally carried out by Customs and goods are stuffed into containers and de-stuffed therefrom and aggregation/segregation also takes place at such places. Given the aforesaid status of CFSs being extension of port/airport/ICD/LCS, Custom's function relating to processing of manifest, import/export declarations that are filed by the carrier/Importer or exporter and assessment of bill of entry/shipping bill are performed in the Custom House/Custom Office that exercises jurisdiction over the parent port/airport/ICD/LCS to which the said CFS is attached.* In the case of Customs Stations where automated processing of documents has been introduced, terminals have been provided at such CFSs for recording the result of examination, etc. In some CFSs, extension of service centers have also been made available for filing documents, amendments etc. However, the assessment of the documents etc. is carried out centrally. *An ICD on the other hand would have an automated system of its own with a separate station code [such as INTKD 6, INSNF6 etc.] being allotted by the Directorate General of Systems and with the inbuilt capacity not only to enter examination reports but also to enable assessment of documents, processing of manifest, amendments, etc.*

*****

7. *A standalone customs clearance facility in an inland Commissionerate cannot be approved by the Commissioner as a CFS, if there is no ICD or seaport within its jurisdiction to which the said CFS can be attached. Such a facility can,*

however, be notified as an ICD *i.e., as an independent customs station with provision for filing and assessment of documents and examination of goods*. A customs clearance facility could be established as a CFS at a port city for examination of imported/export goods, since the CFS would fall under the jurisdiction of Commissioner of Customs, having jurisdiction over the customs port with which the CFS would be attached. Further, in a seaport city such as Chennai or Mumbai, it may be possible to develop an ICD also within the territorial jurisdiction of the concerned Customs Commissionerate in addition to existing CFSs. In case of such an ICD, it should be capable of providing full-fledged customs services, independent EDI system, and all procedures meant for transhipment of cargo have to be followed for movement of goods from the port of import to the ICD. Further, such an ICD would function as an independent Customs Station in all respects and would not be attached to any other port or airport.

8. It is accordingly advised that at the time of initial examination of the proposals received for setting up of ICD/CFS from prospective operators, the jurisdictional Commissioners may take due care to see that whether the proposed facility is required to be approved as an ICD or CFS and *whether such facility fulfills the laid down guidelines, infrastructure requirements specified in the Handling of Cargo in Customs Areas Regulations, 2009* while forwarding the comments to the Board for consideration during Inter Ministerial Committee meeting.

9. In view of the above, the concerned jurisdictional Commissioners of Customs who are competent authority for regulation of ICDs/CFSs are requested to verify the existing position in various ICDs/CFSs under their jurisdiction and inform the Board about the deviations, difficulties, if any, so that the matter may be taken up for appropriate action by the Board."

(Italics and underscoring supplied)

39.13 Superficially read, this Circular may appear to bolster the submissions of the petitioners; however, in our opinion, it has to be understood in context. Contextual and purposive, rather than textual,

interpretation, it is settled by the Supreme Court in ***Shailesh Dhairyawan v. Mohan Balkrishna Lulla***[33] and ***Richa Mishra v. State of Chhatisgarh***[34], is the new "golden rule". This principle would apply with additional force to executive instructions which, even otherwise, are required to be understood in a pragmatic and purposive manner. So viewed, the intent and purpose of the Circular becomes apparent even from para 2.2, which underscores the position that notification of ports on landing places, under the said provisions, is "for the purpose of unloading of imported goods and loading of export goods". Para 2.3 goes on to note that CFSs are specified as customs areas under clause (b) of Section 8 "wherein imported goods or exported goods are ordinarily kept before clearance by Customs". Para 3 explains the *raison d' etre* for the very establishment of ICDs, as facilitating customs clearance of imported/export goods at the doorstep of the importers/exporters. In order to facilitate such clearance, ICDs have also been treated as Customs ports and land customs stations, within the meaning of Section 2(12) and 7(aa) of the Customs Act. All infrastructure, required for assessment and clearance of goods, including filing of Customs manifests, filing of bills of entry and shipping bills and other declarations, assessment of the imported goods to duty and other activities related to clearance of imported goods for home use, warehousing, temporary admissions, re-export, etc., therefore, take place at ICDs. Para 4 clarifies that, in view thereof, ICDs are self-sufficient Customs stations and, "*for all practical purposes* a Custom House, in the same way as a port or airport". The Circular, therefore, distinguishes between ICDs, which

[33] **(2016) 3 SCC 619**
[34] **(2016) 4 SCC 179**

are "Customs stations", and CFSs, which are "Customs areas". The CFS, as a customs area is, by para 4, treated as "an extension of the Customs Station", to decongest the ports. Part of the functions performed by the Customs Station, of unloading and loading of the goods and application/segregation thereof, takes place at CFSs. CFSs, therefore, are extensions of the Port/ICD. Even so, assessment of documents takes place centrally.

39.14 It would be unwise, in our opinion, to read more, in Circular 18/2009-Cus, than is contained therein. What the Circular seeks to clarify is the distinct role performed by ICDs and CFSs in the matter of clearance of imported consignments in the hinterland. Each of these entities is, as the Circular clearly explains, possessed of requisite infrastructure, to facilitate loading and unloading of goods, filing of Bills of Entry and other related documents, and assessment of the goods to duty. It would be fallacious, in our view, to treat the Circular as subjecting CFSs and ICDs to the control of the CBIC, even in the matter of recovery of detention charges or ground rent from importers or exporters, for storage of goods in their premises. The aspect of the charges recovered, by ICDs of CFSs, from importers or exporters was, clearly, not even remotely in the contemplation of the authorities while issuing the aforesaid Circular dated 8th June, 2009. The Circular has been issued for a very specific purpose and to clarify certain specific aspects relating to the functioning of ICDs and CFSs and the distinction between the two and cannot, therefore, be used as a ground to seek waiver, or exception, from payment of penal charges to ICDs, CFSs or shipping lines, beyond the "free periods". Nor can

this Circular be used to support the contention that all instructions issued by the CBIC are, *ipso facto*, binding on ICDs and CFSs.

40. Instructions issued by the Commissioner of Customs to ICDs/CFSs

40.1 The petitioner has also placed on record, and relied upon, communications, chiefly by certain Commissioners, to ICDs and CFSs under their jurisdiction. To our mind, we are not required to dilate on these communications, as they are, even on their very terms, in the nature of sequelae to ensure compliance with the Circular issued by the CBIC. As the Circular issued by the CBIC does not result in any enforceable right in the petitioners' favour, to seek exemption from, or remission of, penal charges levied by ICDs, CFSs or the shipping lines, no such right can be traced to the instructions issued by the Commissioner of Customs, either.

Other Contentions

41. Mr. Sibal also sought to press, into service, Article 14 of the Constitution of India. It was contended that ICDs and CFSs were themselves extended various ameliorative benefits, by way of waiver of penal charges, by the Port authorities. Refusal to extend such benefits to the importers and exporters, it was sought to be submitted, would, therefore, be discriminatory and violative of Article 14.

42. Discrimination, under Article 14, would be invidious only if it is hostile, and among persons identically situated. We are unable to

hold that ICDs and CFSs, on the one hand, and importers and exporters, on the other, are identically situated. Learned Senior Counsel for the ICDs and CFSs have waxed, eloquently, on the near-insurmountable difficulties that their clients faced during the lockdown, consequent on the services rendered by ICDs and CFSs being declared as "essential services" and the issuance of Governmental directives to ICDs and CFSs to continue to perform during the said period. As a result, contended learned Counsel, that the ICDs and CFSs had to incur huge amounts of infrastructural and other expenses, including payments which were required to be disbursed to the workmen and employees. Even so, it was pointed out, the ICDs and CFSs did grant discounts, both across the board as well as in individual instances on a case-to-case basis, to importers and exporters who faced genuine difficulties. To expect the ICDs and CFSs to continue in this fashion, without any earnings by way of recovery of the amounts, contractually payable for the periods during which imported or exported goods continued to remain in their premises it was submitted, is unrealistic as well as oppressive to the ICDs and CFSs.

43. We entirely agree.

44. There is another, more empirical, reason, why we are disinclined to grant of benefit to the petitioners. The ICDs and CFSs have come on record to state that many importers did actually have the goods released, even during the period of lockdown, at times availing the discounts provided by the ICDs and CFSs. This

indicates, to our mind, that there was no inherent impossibility, even during the lockdown period, in securing the release of the imported goods. The fact that some importers did manage to secure such release indicates that, if other importers were unable to do so, the reason for such inability would have to be assessed on a case-to-case basis. Apart from the fact that the ICDs and CFSs themselves had, in place, a mechanism for such aggrieved importers and exporters to approach them, this exercise cannot be conducted by a writ court, exercising jurisdiction under Article 226 of the Constitution of India. Each case would depend on its own facts, and disputed issues of fact are bound to arise. Even for this reason, it is not possible for this Court to accede to the petitioners' request to, across the board, direct waiver or remission of the penal charges, levied by ICDs and CFSs for continuing to store imported or exported goods beyond the permissible "free period".

45. Yet another submission, advanced by learned Senior Counsel for the CFSs and ICDs, which finds favour with us, is the fact that, were CFSs, ICDs and shipping lines to be directed not to charge any penal charges from the importers and exporters, for the period during which the goods continued to remain stored in their premises during lockdown, it would completely disincentivise the importers and exporters from seeking release of the consignments. Any such direction would also be intrinsically opposed to public interest, as it would result in clogging of the ICDs and CFSs by importers and exporters who, without having to pay any penal charges, would continue to enjoy the facility of storing their goods. This, in turn,

would be contrary to the very objective of establishing CFSs, which was to unclog the ports.

46. These are all issues involving disputed questions of fact, not amenable to adjudication under Article 226 of the Constitution of India. It is not open to the Court – just as it was not open to the executive authorities – to approach the matter solely from the point of view of the importers or exporters, unmindful of the difficulties which were faced by the ICDs and CFSs during the lockdown, and the constraints under which they operated. Equity inherently inheres in the exercise of jurisdiction under Article 226, and we are not persuaded to hold that the equities of the present case are entirely in favour of the petitioner importers/exporters, and to the prejudice of the respondent ICDs/CFSs/shipping lines, as would warrant our inference under Article 226 of the Constitution of India.

Conclusion

47. We regret, therefore, our inability to accede to the prayers in these petitions (except WP (C) 3649/2021).

48. In view of the aforesaid findings and decisions, the individual writ petitions are disposed of thus:

W.P.(C) 2707/2021

49. The prayer clause in the writ petition reads thus:

"The Petitioner, therefore, prays that this Hon'ble Court be pleased:

(a) Issue a writ of Mandamus and/or any other appropriate writ, order or direction to the Respondent No. 1 to 4 to take appropriate penal action against the Respondent No. 5 to 11 for not complying with the Orders and Advisories issued for waiving all charges pertaining to ground rent, demurrage, container detention charges or any other ancillary charges imposed during the lockdown period and release the containers and/or its contents to the owners/purchasers;

(b) To direct the Respondent No. 5 to 11 to waive all charges pertaining to ground rent, demurrage, container detention charges or any other ancillary charges imposed during the lockdown period and release the containers and/or its contents to the Petitioner in view of the advisories and orders issued time to time by respondent No. 1 to 4;

(c) Pending admission, hearing and final disposal of this petition, direct the Respondent No. 5 to 11 to release the containers/goods belonging to the Petitioner lying with them on payment of usual charges as per the advisories and orders;

(d) To pass any other and further orders as may be deemed fit and proper;

(e) To provide for the costs of this petition."

50. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P.(C) 3029/2020

51. The prayer clause in the writ petition reads thus:

"It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to:

a) Issue an appropriate writ, order or direction in the nature of Mandamus thereby issuing directions to the respondent numbers 1 and 2 for issuance of strict orders/directions to be complied with by the respondent nos. 3 to 6 and other CFS qua non charging of ground rent, demurrage, container detention charges, dwell time charges, anchorage charges or any other ancillary charges during the lockdown period.

b) Issue an appropriate writ, order or direction in the nature of mandamus thereby directing the respondent nos. 3 to 6 to waive all charges pertaining to ground rent, demurrage, container detention charges or any other ancillary charges imposed during the lockdown period and release the containers and/or its contents to the owners/ purchasers; award exemplary costs in favour of the petitioner and against the respondents.

c) award exemplary costs in favour of the petitioner and against the respondents.

d) pass such other and further orders as this Hon'ble Court may deem to be fit and proper under the facts and circumstances of the present case."

52. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P. (C) 3171/2020

53. The prayer clause in the writ petition reads thus:

"In view of the fact and circumstances of the case, it is respectively prayed that this Hon'ble Court may he pleased to:

a) Issue an appropriate writ, order or direction in the nature of Mandamus thereby issuing directions to the Respondent numbers 1, 2 and 4 for issuance of strict orders/ directions to be complied with by the Respondent nos. 6 to 23 and other CFS qua non charging of ground rent, demurrage, container detention charges or any other ancillary charges during the lockdown period in a time bound manner and report the compliance thereof to this Hon'ble Court;

b) Issue an appropriate writ, order or direction in the nature of Mandamus thereby issuing directions to the Respondent numbers 1, 2 and 4 to ensure compliance of the notifications and orders, directions issued by them qua non charging of ground rent, demurrage, container detention charges or any other ancillary charges by the Respondent nos. 6 to 23 and other CFS during the lockdown period in a time bound manner and report the compliance thereof to this Hon'ble Court;

c) Issue an appropriate writ, order or direction in the nature of mandamus thereby directing the Respondent nos. 6 to 23 to refund the charges already collected pertaining to ground rent, demurrage, container detention charges or any other ancillary charges imposed during the lockdown period;

d) award exemplary costs in favour of the Petitioner and against the Respondents;

e) Issue any other appropriate writ or directions as may be deemed fit and proper by this Hon'ble Court in the facts and circumstances of the case."

54. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P. (C) 3195/2020

55. The prayer clause in the writ petition reads thus:

"In the facts and circumstances of the present case, it is prayed that this Hon'ble Court may be pleased to:

a) Issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondents No. 1, 2, 3 to forthwith ensure the compliance of the Order No. PD-14033/4/2020-PD VII dated 21.04.2020 & notification F.No.394/46/2020-Cus (AS) dated 23.04.2020 such that no detention charge, demurrage, ground rent or any other charges and, or penalties are levied by any Shipping Line, Ports/ICDs or CFSs till the operations are normalized.

b) Issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondent No. 1 to permit the Petitioner and the Members to clear their consignments that are being held at any ports/ICDs or CFDs in accordance with the requisite procedure.

c) Issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondent No. 1 to ensure that the amounts paid by the Members of the Petitioner Association towards detention charge, demurrage, ground rent or any other charges and, or penalties are levied under protest to any Shipping Line, Ports/ICDs or CFSs in violation of the Order No. PD-14033/4/2020-PD VII dated 21.04.2020 & notification F.No.394/46/2020-Cus (AS) dated 23.04.2020 is refunded in full.

d) Issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondent No. 1 to ensure that the normal free period to clear the consignments is allowed over and above the lockdown period i.e. from the date operations are normalized.

e) Issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondent No.1, 2 & 3 to ensure that powers under Section 48 of the Major Port Trust Act be not exercised on the goods stuck at ports during the lockdown period.

f) Issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondent No. 5 to respond appropriately to the representation of the Petitioner seeking the grant of a government stimulus package for the industry and directions to banks and NBFCs to take a lenient and proactive policy by providing adequate financial support to the Members.

g) Pass any other or further order(s) that this Hon'ble Court may deem to be just, fair and equitable."

56. Prayers (a) to (e) stand covered by the above findings and have, therefore, to be rejected.

57. Prayer (f) seeks directions to the Ministry of Finance to respond to the representation of the petitioner to grant of a stimulus package for the industry and directions to the banks and Non Banking Financial Corporations to take a lenient and proactive policy and provide adequate financial support to the members of the petitioner association.

58. This prayer is disposed of with a direction to the Union of India to take a decision on the petitioners' representation and communicate the decision to the petitioner as expeditiously as possible.

59. It is made clear that this Court has not expressed any opinion on the merits of the claims contained in the representation.

60. The writ petition stands disposed of accordingly.

W.P. (C) 3561/2020

61. The prayer clause in the writ petition reads thus:

"It is prayed this Hon'ble court may be pleased:

> (i) For the issuance of a writ in the nature of mandamus directing the Respondents to waive off and reimbursement all charges of demurrage, ground rent and others on containers lying for customs clearance at ICD Loni and others ICD for the period lockdown and further sixty days after lockdown over in the wake of COVID-19 epidemic.
>
> (ii) To pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case."

62. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs

W.P. (C) 3649/2021

63. The prayer clause in the writ petition reads thus:

"It is therefore prayed that this Hon'ble Court may be pleased to:

> (a) That this Hon'ble Court be pleased to declare that the First and Second MoS Orders (**Annexure "P-**

2" and "P-3") do not apply to shipping lines such as the Petitioner or its members;

(b) That this Hon'ble Court be pleased to declare that the said First, Second and the Third Advisories (**Annexure "P-4", "P-5" and "P-6"**) being advisories in nature are neither mandatory nor binding on the Petitioner's members i.e. the shipping lines;

(c) That this Hon'ble Court be pleased to declare that the letters dated April 23, 2020 issued by Respondent Nos. 4 and 5 (**Annexure "P-7", and "P-8"**) seeking enforcement of the Advisories are neither mandatory nor binding on the Petitioner's members i.e. the shipping lines;

(d) That this Hon'ble Court be pleased to declare that Respondent No.3 has no power to issue the said First, Second and the Third Advisories (**Annexure "P-4", "P-5" and "P-6"**) either in the form of advisories or as mandatory directions;

(e) That this Hon'ble Court be pleased to declare that Respondent No.3 under the said First, Second and the Third Advisories (**Annexure "P-4", "P-5" and "P-6"**) cannot override or interfere with private contracts between the shipping lines (Petitioner's members) and its customers (importers/exporters);

(f) That this Hon'ble Court be pleased to issue a Writ of Mandamus and/or any other appropriate writ, order or direction, thereby quashing and setting the First, Second and the Third Advisories (**Annexure "P-4", "P-5" and "P-6"**) issued by Respondent No.3;

(g) That pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court be pleased to stay the effect, implementation, operation and execution of the First, Second and the Third Advisories (**Annexure "P-4", "P-5" and "P-6"**);

(h) Pass any other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case."

64. In view of the discussion hereinabove, the prayers (a) to (e) in the writ petition are allowed.

65. Prayer (f) does not survive for consideration. No occasion arises to quash and set aside the advisories/orders issued by the DGS, in view of the grant of prayers (a) to (e), as we have already held that they do not entitle the petitioners (in the other writ petitions) to the reliefs they seek.

66. Prayer (g) is in the nature of an interim prayer which does not survive for consideration and is disposed of as such.

67. The writ petition stands disposed of with the aforesaid terms with no orders as to costs.

W.P. (C) 4184/2020

68. The prayer clause in the writ petition reads thus:

> "In the facts and circumstances above mentioned the Petitioner most respectfully prays that this Hon'ble Court may graciously be pleased to:
>
> a. Issue a writ of mandamus, or any appropriate writ, order or direction to Respondent Nos. 1 to 4 and/or other appropriate authorities directing them to issue necessary directions thereby extending the directions in orders/circulars mentioned in paragraphs 7 to 9 of the Petition for the entire period of the lockdown (as may be extended from time to time) and further recovery period of 30 days;
>
> b. Declare that the directions issued in circulars/ orders mentioned in Paragraphs 7 to 9 of the Petition

and such other circulars and orders issued by government and public authorities, are mandatory and binding on all shipping lines/shipping companies/shipping carriers (whether registered in India or not), Inland Container Depots and Container Freight Stations and that they have violated the said directions;

c. Issue a writ of mandamus, or any appropriate writ, order or direction to Respondent Nos. 1 to 4 and/or other appropriate authorities including members of Respondent No. 5 directing them to take necessary actions against all shipping lines/shipping companies/shipping carriers (whether registered in India or not), Inland Container Depots and Container Freight Stations violating the directions issued in orders/ circulars mentioned in paragraphs 7 to 9 of the Petition and such other circulars and orders issued by government and public authorities;

d. Issue a writ of mandamus, or any appropriate writ, order or direction to the Respondents to allow importers in India clear/take delivery of their consignments/goods/containers without payment of any storage charges, demurrages, detention charges, ground rent and any other penal charges or charges of such nature (on all uncleared containers) during the entire period of the lockdown (as may be extended from time to time) plus another 30 days as recovery period;

e. Issue a writ of mandamus, or any appropriate writ, order or direction to Container Freight Stations, Inland Container Depots and shipping lines/shipping companies/shipping carriers (whether registered in India or not) directing them to refund all such amounts that they have collected (for the period from March 22, 2020 till lifting of the nationwide lockdown, as the case may be, plus another 30 days as recovery period) from the members of Petitioner No. 1 Association as storage charges, lease rentals and license fees related charges, demurrages, detention charges, ground rent, dwell time charges, anchorage charges and any other penal charges or charges of such nature;

f. Issue a writ of mandamus, or any appropriate writ, order or direction to Container Freight Stations, Inland Container Depots and shipping lines/shipping companies/shipping carriers (whether registered in India or not) directing them to levy tariffs (on non-penal charges) as were applicable to respective importers as on March 21, 2020 with regards to such charges which are not penal in nature; and

g. Pass such other further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case."

69. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P. (C) 4185/2020

70. The prayer clause in the writ petition reads thus:

"In the facts and circumstances above mentioned the Petitioner most respectfully prays that this Hon'ble Court may graciously be pleased to:

a. Issue a writ of mandamus, or any appropriate writ, order or direction to Respondent Nos. 1 to 4 and/or other appropriate authorities directing them to issue necessary directions thereby extending the directions in orders/circulars mentioned in paragraphs 7 to 9 of the Petition for the entire period, of the lockdown (as may be extended from time to time) and further recovery period of 30 days;

b. Declare that the directions issued in circulars/ orders mentioned in Paragraphs 7 to 9 of the Petition and any such other circulars and orders issued by Government and public authorities, are mandatory and binding on all shipping lines/shipping companies/shipping carriers (whether registered in

India or not) Inland Container Depots and Container Freight Stations and that they have violated the said directions;

c. Issue a writ of mandamus, or any appropriate writ, order or direction to Respondent Nos. 1 to 4 and or other appropriate authorities including members of Respondent No. 5 directing them to take necessary actions against all shipping lines/shipping companies/ shipping carriers (whether registered in India or not), Inland Container Depots and Container Freight Stations violating the directions issued in orders/ circulars mentioned in paragraphs 7 to 9 of the Petition and such other circulars and orders issued by government and public authorities;

d. Issued a writ of mandamus, or any appropriate writ, order or direction to the Respondents to allow importers in India clear delivery of their consignments/goods/ containers without payment of any storage charges, demurrages, detention charges, ground rent and any other penal charges of charges of such nature (on all uncleared containers) during the entire the lockdown (as may be extended from time to time) plus another 30 days as recovery period;

e. Issue a writ of mandamus, or any appropriate writ, order or direction to Container Freight Stations, Inland Container Depots and shipping lines/shipping companies/shipping carriers (whether registered in India or not) directing them to refund all such amounts that they have collected (for, the period from 3 March: 22, 2020 till lifting of the nationwide lockdown, as the case may be, plus another 30 days as recovery period) from various importers including petitioner herein as storage charges, lease rentals and license fees related charges, demurrages, detention charges, ground rent, dwell time charges, anchorage charges and any other penal charges or charges of such nature;

f. Issue a writ of mandamus, or any appropriate writ, order or direction to Container Freight Stations, inland Container Depots and piping lines/shipping companies/shipping carriers (whether registered in

India or not) directing them to levy tariffs (on non-penal charges) as were applicable to respective importers as on March 21, 2020 with regards to such charges which are not penal in nature.

g. Pass such other further orders(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case."

71. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P. (C) 4186/2020

72. The prayer clause in the writ petition reads thus:

"In the facts and circumstances above mentioned the Petitioner most respectfully prays that this Hon'ble Court may graciously be pleased to:

a. Issue a writ of mandamus, of any appropriate writ, order or direction to Respondent Nos. 1 to 4 and/or other appropriate authorities directing them to issue necessary directions thereby extending the directions in orders/circulars mentioned in the Petition for the entire period of the lockdown (as, may be extended from time to time) and further recovery period of 30 days;

b. Declare that the directions issued in circulars/ orders mentioned in Paragraphs 7 to 9 of the Petition and any such other circulars and orders- issued by government and public authorities, are mandatory and binding on all shipping lines/shipping companies/shipping carriers (whether registered in India or not), inland Container Depots and Container Freight Stations and that they have violated the said directions;

c. Issue a writ of mandamus, or any appropriate writ, order or direction to Respondent Nos. 1 to 4 and/or other appropriate authorities including members of Respondent No. 5 directing them to take necessary, actions, against all shipping lines/shipping companies/ shipping carriers (whether registered in India or not), inland Container Depots and Container Freight Stations violating the directions issued in orders/ circulars mentioned in paragraphs 7 to 9 of the Petition and such other circulars and orders issued by government and public authorities;

d. Issue a writ of mandamus, or any appropriate writ, order or direction to the Respondents to allow importers in India clear/take delivery of their consignments/goods/ containers without payment of any storage charges, demurrages, detention charges, ground rent and any other penal charges or charges of such nature (on all uncleared containers) during , the entire period of the lockdown (as may be extended from time to time) plus another 30 days as recovery period;

e. Issue a writ of mandamus, or any appropriate writ, order or direction to Container Freight Stations, inland Container Depots and shipping lines/shipping companies/shipping carriers (whether registered in India or not) directing them to refund all such amounts that they have collected (for the period, from March 22, 2020 till lifting of the nationwide lockdown, as the case may be, plus another days as recovery period) from various, importers including petitioners herein as storage charges, lease rentals and license fees related charges, demurrages, detention charges, ground rent, dwell time charges, anchorage charges and any other penal charges or charges of such nature;

f. Issue a writ of mandamus, or any appropriate writ, order or direction to Container Freight Stations, inland Container Depots and shipping lines/shipping companies/shipping carriers (whether registered in India or not) directing them to levy tariffs (on non-penal charges) as were applicable to respective

importers as on March 2, 2020 with regards to such charges which are not penal in nature; and

g. Pass such other further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case."

73. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P. (C) 4349/2020

74. The prayer clause in the writ petition reads thus;

"It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to:

(a) Issue an appropriate writ, order or direction in the nature of Mandamus Writ Petition Under Articles 226 of the Constitution of India Seeking a Writ, Order or Direction in the nature of Mandamus Directing the Respondent No. 1, 2, 3, 4, 5 to ensure compliance by Respondent no. 6 qua non charging of container detention charges, extending of remaining free days after the lockdown period as stipulated under the contract and waiver of ground rent by Respondent no.7 as the same was caused by Respondent no.6.;

(b) Issue an appropriate writ, order or direction thereby directing the Respondent nos. 1, 2, 3, 4, 5 to initiate strict action against Respondent no.6, 7 for wilfully disobeying the orders passed by them.

(c) Pass such other and further orders as this Hon'ble Court may deem to be fit and proper under the facts and circumstances of the present case."

75. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P.(C) 4485/2020

76. The prayer clause in the writ petition reads thus:

> "In the facts and circumstances of the present case, it is prayed that this Hon'ble Court may be pleased to:
>
> > (a) Issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondents No. 1, 2, 3 to forthwith ensure the compliance of the Order No. PD-14033/4/2020-PD VII dated 21 April 2020, and notification F.No.394/46/2020- Cus (AS) dated 23 April 2020, such that no detention charge, demurrage, ground rent or any other charges and or penalties are levied by any Shipping Line, Ports/ICDs or CFSs;
> >
> > (b) Issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondent No. 1 to ensure that the amounts paid by the Petitioner towards detention charge, demurrage, ground rent or any other charges and, or penalties are levied under protest to any Shipping Line, Ports/ICDs or CFSs in violation of the Order No. PD- 14033/4/2020-PD VII dated 21 April 2020, and notification F.No.394/46/2020-Cus (AS) dated 23 April 2020 is refunded in full;
> >
> > (c) Pass any other or further order(s) that this Hon'ble Court may deem to be just, fair and equitable."

77. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P.(C) 5532/2020

78. The prayer clause in the writ petition reads thus:

> "In view of the submissions made above and in the circumstances of the case, the petitioner most respectfully prays that this Hon'ble Court may kindly be pleased to:
>
> (i) Issue a writ in the nature of Mandamus or any other appropriate writ or an order directing Respondent No. 1 to 3 to ensure strict compliance and implementation of their Orders and Directions issued granting relief to Importers from the undue charges of Demurrages during lockdown period and to take appropriate steps against Respondents CFS for disobeying their Orders and Directions;
>
> (ii) Issue a writ in the nature of Mandamus or any other appropriate writ or an order directing Respondents not to waive demurrage charges in the wake of the pandemic COVID-19;
>
> (iii) Direct refund of Rs. 9,11,802/- unjustly recovered as Demurrage from Petitioner by the Respondent No. 4;
>
> (iv) Award exemplary costs in favour of the petitioner and against the respondents.
>
> (v) Pass such other and further orders as this Hon'ble Court may deem to be fit and proper under the facts and circumstances of the present case."

79. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P.(C) 5675/2020

80. The prayer clause in the writ petition reads thus:

"In the facts and circumstances of the present case, it is prayed that this Hon'ble Court may be pleased to:

> (a) Issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondents No. 1, 4, and 5 to forthwith ensure the compliance of the Order No. PD-14300/4/2020-PD VII dated 31 March 2020, Order No. PD-14033/4/2020-PD VII dated 21 April 2020, and notification F.No.394/46/2020-Cus (AS) dated 23 April 2020, such that no detention charge, demurrage, ground rent or any other charges and or penalties are levied by any Shipping Line, Ports/ICDs or CFSs;
>
> (b) Issue a writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order or direction to the Respondent No. 4 to ensure that the amounts paid by the Petitioner (under protest) towards detention charge, demurrage, ground rent or any other charges and, or penalties are levied by any Shipping line, Ports/ ICDs or CFSs in violation of the Order No. PD-14033/4/2020-PD VII dated 21 April 2020 and notification F.No. 394/46/2020-Cus(AS) dates 23 April 2020 is refunded in full;
>
> (c) Pass any other or further order(s) that this Hon'ble Court may deem to be just, fair and equitable."

81. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P.(C) 7031/2020

82. The prayer clause in the writ petition reads thus:

"In view of the submissions made above, it is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(a) Issue a Writ of and/or in the nature of Mandamus be issued commanding the Respondent authorities, particularly the Respondent No. 2 and its men, agents, subordinates and associates to forthwith take steps against the Respondent No. 3 in terms of clause 10 of the circular dated 21st April, 2020, bearing No. PD-14033/4/2020-PD VII issued by the Director, Ministry of Shipping, Government of India and to forthwith ensure that the petitioner's articles which are lying in the custody of the Respondent No. 3 and in the lands of the Kolkata Port Trust are released upon payment of admitted rent and other charges for the period from 20th February, 2020 till 24th March, 2020;

(b) Issue a Writ of and/or in the nature of Mandamus be issued commanding the Respondent authorities, particularly the Respondent Nos. 2 and 3 and each one of them, their men, agents, subordinates and associates to forthwith take steps so as to ensure that the provisions of the circular dated 21st April, 2020 issued by the Ministry of Shipping and circular dated 23rd April, 2020 issued by the Ministry of Finance are complied;

(c) Issue a Writ of and/or in the nature of Certiorari do issue directing the Respondent authorities, particularly the Respondent Nos. 2 and 3 and each one of them to forthwith certify and transmit to this Hon'ble Court all the records and documents pertaining to this instant case so that conscionable justice may be administered by passing necessary orders and issuing necessary directions in favour of the Petitioner;

(d) Rule NISI in terms of prayers above and in the event no cause or insufficient cause is shown, to make the said Rule absolute;

(e) Costs of and incidental to this Petition and applications be borne by the Respondents;

and pass any such other and further orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

83. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P.(C) 8406/2020

84. The prayer clause in the writ petition reads thus:

"In view of the submissions made above, it is therefore, prayed:-

(a) Pass a writ, order or direction in the nature of direction or mandamus or any other writ for the implementation the directorate general of shipping, Mumbai vide its DGS order no. 07/2020 dated 29.03.2020 and modifications of its order vide DGS order no. 08/2020 dated 31.03.2020 for non charging of detention/demurrage/any penalty on any cargos for the entire period of lockdown i.e. from 22.03.2020 till 03.05.2020.

(b) Pass any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(c) Grant cost for the present petition."

85. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P.(C) 9066/2020

86. The prayer clause in the writ petition reads thus:

"PETITIONER, THEREFORE, PRAYS THAT:

(A) This Writ Petition may kindly be allowed.

(B) To issue a writ of mandamus or any other appropriate writ, order or directions commanding the Respondent nos. 1 & 2 to extend the validity of DGS Order no. 11 of 2020 dtd. 22nd April, 2020 (Exh. D) till 31st May, 2020 or till such time the Nationwide Lockdown is Lifted.

(C) To issue writ of mandamus or any other appropriate writ, order or directions commanding the respondents to permit the petitioner to clear the imports covered by extending the benefit.

(D) To direct the Respondent nos. 3 to 8 to refund an amount of Rs.1,620,150.24 paid by the petitioner as against the detention charges within a period of two weeks.

(E) Pending hearing and final disposal of this Writ Petition, direct the Respondent Nos. 3 to 8 to refund the amount of Rs. 1,620,150.24 paid by the petitioner as against the detention charges within a period of two weeks.

(F) Pending hearing and final disposal of this Writ Petition, this Hon'ble High Court be pleased to direct the respondents to permit the petitioner to clear the imports covered by the Bill of Ladings (Exh. E) provisionally by extending the benefits of DGS Order 11 of 2020 dtd. 22nd April, 2020 (Exh. D) in the interest of justice and direct the Respondent nos. 3 to 10 to issue the final delivery order and to allow free period as per contractual terms agreed with Respondent Nos. 3 to 10.

(G) Any other suitable relief may kindly be granted in favour of the petitioner."

87. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P.(C) 9067/2020

88. The prayer clause in the writ petition reads thus:

> "For these reasons and other reasons that may be urged at the time of hearing, it is most humbly prayed that this Hon'ble Court may be pleased to:
>
> > (i) Issue a writ of mandamus or any other appropriate writ, direction or order commanding the 1st and 2nd Respondents to ensure strict compliance of Order No. PD-14033/4/2020-PD-VII dated 21.04.2020 (Ext P5) and DSG Order No. 11 of 2020 dated 22.04.2020 (Ext P6).
> >
> > (ii) Extend the validity of DSG Order No. 11 of 2020 dated 22.04.2020 (Ext P6) till 30.06.2020 or till such date that this Hon'ble Court deems fit and proper in the peculiar facts and circumstances of the case;
> >
> > (iii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to permit the Petitioner to clear the imports covered by Ext P-l(b) Bill of Lading by extending the benefit of Ext P6 and to reimburse any amounts already paid thereto;
> >
> > .
> >
> > (iv) Issue any other appropriate writ, direction or order which this Hon'ble Court may deem fit and just in the peculiar circumstances of this case."

89. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P.(C) 9068/2020

90. The prayer clause in the writ petition reads thus:

> "For these reasons and other reasons that may be urged at the time of hearing, it is most humbly prayed that this Hon'ble Court may be pleased to:
>
> (i) Issue a writ of mandamus or any other appropriate writ, direction or order commanding the 1st and 2nd Respondents to ensure strict compliance of Order No. PD-14033/4/2020-PD-VII dated 21.04.2020 (Ext P5) and DGS Order No. 11 of 2020 dated 22.04.2020 (Ext P6).
>
> (ii) Extend the validity of DGS Order No. 11 of 2020 dated 22.04.2020 (Ext P6) till 30.06.2020 or till such date that this Hon'ble Court deems fit and proper in the peculiar facts and circumstances of the case;
>
> (iii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to permit the Petitioner to clear the imports covered by Ext PI Bill of Lading by extending the benefit of Ext P6 and to reimburse any amounts already paid thereto;
>
> (iv) Issue any other appropriate writ, direction or order which this Hon'ble Court may deem fit and just in the peculiar circumstances of this case."

91. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P. (C) 9069/2020

92. The prayer clause in the writ petition reads thus:

"For these reasons and other reasons that may be urged at the time of hearing, it is most humbly prayed that this Hon'ble Court may be pleased to:

(i) issue a writ of mandamus or any other appropriate writ, direction or order commanding the 1st and 2ndRespondents to ensure strict compliance of Order No. PD-14033/4/2020-PD-VII dated 21.04.2020 (Ext P5) and DGS Order No. 11 of 2020 dated 22.04.2020 (Ext P6);

(ii) extend the validity of DGS Order No. 11 of 2020 dated 22.04.2020 (Ext P6) till 30.06.2020 or till such date that this Hon'ble Court deems fit and proper in the peculiar facts and circumstances of the case;

(iii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to permit the Petitioner to clear the imports covered by Ext P-1 series Bills of Lading by extending the benefit of Ext P6 and to reimburse any amounts already paid thereto;

(iv) issue any other appropriate writ, direction or order which this Hon'ble Court may deem fit and just in the peculiar circumstances of this case."

93. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P. (C) 9070/2020

94. The prayer clause in the writ petition reads thus:

"For the reasons stated in the accompanying affidavit it is most humbly prayed that this Hon'ble Court may be pleased to direct the respondents 1 & 2 to forebear the 3rd Respondent from claiming any demurrages till 30th June 2020 for releasing the consignment of writ petitioner relating to Bill No. AEV0156559 dated 13th June, 2020 by implementing the government order

passed by Union of India dated 21st April 2020 within the time limit fixed by this Hon'ble court by issuing Writ of Mandamus or pass any other appropriate Writ, Order or Direction as this Hon'ble court may be fit in the circumstances of the case and thus render justice."

95. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

W.P. (C) 9819/2020

96. The prayer clause in the writ petition reads thus:

"In the above premises, the Petitioners most respectfully pray as under:-

(A) That Your Lordships maybe pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction to Respondent No. 2 (The Principal Commissioner of Customs , Mundra) to ensure release and clearance of the goods Imported by the Petitioner as detailed in Annexure K, without recovery of ground rent charges for such goods for the period of lockdown (i.e. 22-24/03/2020 to 17/05/2020, or the extended period of lockdown);

(B) That Your Lordships maybe pleased to issue a Writ, Order of direction quashing and setting aside invoices / bills issued by Respondent No's 4 and 5 in respect of ground rent and Taxes payable thereon; and be further pleased to direct Respondent No's 4 and 5 to release and allow clearance of the goods imported by the petitioner (as detailed in Annexure K) without recovery and collection of any amount as ground rent and Taxes thereon;

(C) That Your Lordships maybe pleased to issue a Writ of Prohibition or any other appropriate Writ, Order or direction completely and permanently prohibiting Respondent Nos 4 and 5 from charging and recovering any ground rent and storage charges from

the petitioner for custody of the Petitioner's goods during the period of lockdown;

(CC) That your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction directing Respondent Nos. 4 and 5 to return/restitute to the Petitioner amounts charged and recovered as ground rent charges and taxes thereon, and also directing Respondent Nos. 6 to 8 to return/restitute to the Petitioner amounts charged and recovered as container detention charges/demurrage and taxes thereon for the goods and containers detailed in Annexure K and M to the petition;

(CCC) Pending hearing and final disposal of the present petition, your Lordships may be pleased to direct Respondent Nos. 4 to 8 to forthwith payback/ return to the Petitioner the amounts charged and recovered by them as ground rent charges, container detention/ demurrage charges and taxes thereon on the conditions that may be deemed fit by this Hon'ble Court;

(D) Pending hearing and final disposal of the present petition, the Respondent No. 2 may be directed to ensure release and clearance of the Petitioners goods (as listed in Annexure K) from the custody of Respondent Nos 4 and 5 , and Respondent Nos 4 and 5 may be directed to release and allow clearance of such goods for the Petitioners without payment and recovery of any ground rent charges and Taxes thereon to the period of lockdown;

(E) That on ex-parte ad-interim Order in terms of Para (D) above may be please be granted;

(F) That any other relief that maybe deemed fit in the facts and circumstances of this case may also be granted in the interest of justice."

97. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

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98. The prayer clause in the writ petition reads thus:

> "It is, therefore, respectfully prayed that in view of the above facts and circumstances, this Hon'ble Court may be pleased to:
>
> (i) Issue a writ of mandamus or any other writ, order or direction in the nature thereof directing the Respondents to ensure compliance of orders dated 29.03.2020, 31.03.2020, 21.04.2020 & 23.04.2020 issued by them;
>
> (ii) Issue a writ of declaration or any other writ, order or direction in the nature thereof declaring that order dated 21.04.2020 issued by Respondent No. l is applicable upto 31.05.2020 i.e. the last date the lockdown of the country implemented by the Government of India was in force;
>
> (iii) Issue a writ of mandamus or any other writ, order or direction in the nature thereof directing Respondent No.3 to refund the detention changes of Rs. 13,98,357/- paid by the Petitioner under protest;
>
> (iv) Pass such other order or orders as may be deemed fit and appropriate under the facts and circumstances of the case."

99. It is not possible, in view of the discussion and conclusions at which we have reached, to grant these prayers. The writ petition is dismissed with no orders as to costs.

100. The above decision shall not stand in the way of all or any of the official respondents taking a sympathetic or favorable view on any representation which may have been preferred before such respondent/ respondents by the petitioners in these petitions.

101. All these petitions stand disposed of accordingly.

C. HARI SHANKAR, J.

RAJIV SAHAI ENDLAW, J.

AUGUST 10, 2021
kr/r.bararia/dsn/ss