CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20487 of 2022

(Arising out of Order-in-Original No. COC-CUSTM-PRV-COM-01-2022-23/772/22 dated 05.04.2022 passed by the Commissioner of Customs (Preventive), Cochin.)

M/s. Plus Max Duty Free Pvt. Ltd.
86/18, Royal Complex,
Shankari Road,
Seetharamapalayam,
Tiruchengode,
Namakkal - 637 209.

Appellant(s)

VERSUS

The Commissioner of Customs (Preventive)
5th Floor, Catholic Center,
Broadway,
Cochin - 682 031.

Respondent(s)

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant

Shri K. Vishwanatha, Authorised Representative for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20497 /2024

DATE OF HEARING: 04.04.2024
DATE OF DECISION: 14.06.2024

PER : R. BHAGYA DEVI

The appellant, M/s. Plus Max Duty Free Pvt. Ltd., was issued with a Special Warehouse Licence No.1/2017-18 dated 31.08.2017 under Section 58A of the Customs Act, 1962, in respect of Special Warehouse located at New International Airport Terminal at Trivandrum International Airport for storage of goods for the purpose of supply to Duty Free Shops in the Customs Area. The above licence was issued for a space measuring 35.89 sq. meters at the International Terminal building at the Trivandrum International Airport, subject to the terms and conditions specified in the Special Warehouse Licensing Regulations, 2016 issued vide Notification No.72/2016 dated 14.05.2016.

2. On receipt a specific complaint against the appellant alleging illegal sales of foreign made foreign liquor imported duty-free, a search operation was conducted at the special bonded warehouse and sales outlet at the duty-free shop where certain discrepancies were noticed from the stock of foreign made foreign liquor in the Special Warehouse; hence an offence case was registered by the Commissionerate of Customs (Preventive), Cochin. Further enquiries brought out the following discrepancies.

(i) Operating duty-free shop without possessing a Special Warehouse licenced premises.
(ii) Sale of duty-free goods directly from the duty-free shop without warehousing the same in the Special Warehouse.
(iii) Transferring a special warehouse licenced premises without the knowledge of the Department.

2.1 Based on detailed investigations and from the statements of various persons, notice dated 13.08.2018 was issued for violation of various conditions of the Special Warehouse licence and on adjudication the Commissioner in the impugned order cancelled the Special Warehouse Licence No. 01/2017-18 dated 31.08.2017 issued to the appellant in terms of Section 58B (1) of the Customs Act, 1962.

3. The learned counsel submits that the Airport Authority of India had awarded a contract to the appellant for running the duty-free shop at the International Airport Trivandrum. To run the duty-free shop at an International Airport, a Special Warehouse Licence is necessary to store the goods and accordingly, the appellant applied for a Special

Warehouse Licence under Section 58A of the Customs Act, 1952 which provides a Licence along with a place (warehouse) where dutiable goods are to be deposited and all the goods in the warehouse are to be brought into and removed only with the permission of the Customs officers.

3.1 It was further submitted that the appellants were originally allotted with the space of 35.89 Sq. mtr. by the Airport Authority of India to enable commencement of their operations and the Commissioner of Customs had issued Special Warehouse Licence No.1/2017-18 dated 31.08.2017 for the said space. The larger space of 154 sq. mtr. which was occupied by M/s. Flemingo was vacated and this space was allotted to the appellant on 13.09.2017. Though, the appellants occupied the new space, they did not amend the licence issued by the Custom officer for 38.59 sq. mtr. However, the goods were being stored and removed from the new premises with the knowledge of the Customs Officers. It is also submitted that the new space occupied by the appellant was under the Customs supervision and was always administered by the Customs. The Customs had recognized the new premises of 154 sq. mtr. as Special Warehouse and an inspection was carried out on 21.12.2017. Even, the suspension order dated 19.04.2008 recognizes this as a warehouse and therefore, non-mentioning of physical boundaries of 154 Sq. mtr. in the licence No.01/2017-18 dated 31.08.2017 is an inadvertent error. Referring to the order date 21.12.2018 of the Hon'ble High Court of Kerala, he submits that the Hon'ble High court observed that the department is making a heavy weather of this issue. It is further submitted that when the new space of 154 sq. mtr. was allotted, the appellant surrendered 35.89 sq. mtr. but later along with the 154 sq. mtr. they got 35.89 sq. mtr. space also allotted back to them from the Airport Authority of India which is already approved by the department and duly endorsed in the licence. Since both the premises are approved by the Customs, the question of operating from any unsecured premises does not arise.

3.2 He further submits that once a Duty-Free Shop (DFS) is allotted by the Airport Authority of India (AAI) based on a global tender, appellants are entitled to a special warehouse and the customs department supervises the entire operation of movement of goods into the warehouse, keeping warehouse under its lock and movement of goods from warehouse to DFS. Based on the Hon'ble High Court's directions, appellant represented to the Chief Commissioner/Commissioner of Customs for permitting them to continue their operations in terms of the licence granted to the premises measuring 35.89 sq.mtrs. and to validate the licence dated 31.08.2017 by incorporating 154 Sq.mtrs. space. This application was rejected by way of communication by the Assistant Commissioner vide his letter dated 28.06.2019. Later, a show-cause notice dated 13.08.2018 was issued and the Commissioner vide impugned order No.93/2022 dated 05.04.2022 cancelled the Special Warehouse Licence No. 1/2017-18 dated 31.08.2017. Hence this appeal.

3.3 The learned counsel also relied upon the following decisions:

- Union of India vs. Paras Laminates (P) Ltd.: 1990 (8) TMI 140 – SC
- Commissioner of Income Tax, Madras vs. Mahalakshmi Textiles Mills Ltd.: MANU/SC/0142/1967
- Commissioner of Income Tax, Bombay vs. Walchand and Co. Pvt. Ltd.: MANU/SC/0127/1967
- Associated Cement Companies Ltd. vs. P. N. Sharma and Ors.: MANU/SC/0215/1964
- Additional Director General (Adjudication) vs. Its My Name Pvt. Ltd.: MANU/DE/1823/2020

4. The learned Authorised Representative for the Revenue reiterating the findings of the Commissioner and relying upon the various statements, submits that the Commissioner was justified in cancelling the licence as the conditions laid down

therein were violated and the premises occupied by them was without any approved licence.

5. Heard both sides. The admitted facts are that the Airport Authority of India had awarded a contract to the appellant for running the Duty-Free Shop at the International Airport Trivandrum and to run the Duty-Free Shop at an International Airport, a Special Warehouse Licence is necessary to store the goods and accordingly, the appellant was issued with a Special Warehouse Licence under Section 58A of the Customs Act 1952 which provides a Licence along with a place (warehouse) where dutiable goods are to be deposited and all the goods in the warehouse are to be brought into and removed only with the permission of the Customs officers. The appellant was provisionally allotted space measuring 35.89 sq.mtrs. at the International Terminal Building at Trivandrum Airport by the Airports Authority of India vide their letter dated 28.08.2017, which is placed below:

आई. एस. ओ प्रमाणित एयरपोर्ट
ISO CERTIFIED AIRPORT

भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

No.AAT/COM/2(3)/2017/ 326

28.08.2017

Annexure-III

To

The C.E.O
M/s Plus Max Duty Free Pvt Ltd
86/18, Royal Complex, Sankari Road
Seetharampalayam, Tiruchengode
Namakkal, Tamil Nadu – 637 209

Sub: Provisional allotment of space Adjacent to Restaurant Cum Staff Canteen (under the flyover) at the International Terminal at Trivandrum Airport – reg.

Sir,

Please refer to your letter dated 28.08.2017 on the subject cited above.

2. In this regard, the Competent Authority is pleased to allot the space as per the details given below at the space adjacent to Restaurant-cum-Staff canteen (under the flyover) at International Terminal at Trivandrum Airport to M/s Plus Max Duty Free Pvt Ltd provisionally on the following terms and conditions:-

i)	Licence	Space admeasuring 35.89 Sqm. (Non A/c area) adjacent to Restaurant-cum-staff canteen (under the flyover) at International Terminal Building at Trivandrum Airport.
ii)	Period	3 (Three) years w.e.f the date of taking over of the space.
iii)	Purpose	Special Customs Bonded Warehouse.
iv)	Licence fee	Space rental @ Rs.1,140/- per Sq.Mtr. per month for the non-AC area plus tax as applicable (i.e.Rs.40,915/- p.m.+ applicable taxes & Govt. levies) is payable by the licensee. The space rent shall have escalation w.e.f 1st of April every year @10%or as decided by AAI. Advance licence fee for an amount of Rs.48,280/- (including 18% GST) is to be paid in advance before taking over the space. The rates are subject to revision from time to time at the discretion of the authority. The Licence fee for space shall always be paid in advance on or before 10th of every month
v)	Security Deposit	i) Rs.2,45,490/- (Rupees Two lakhs forty five thousand four hundred ninety only) i.e. equivalent to six months licence fee in the form of Demand Draft/Pay Order drawn on any nationalized bank in absolute favour of Airport Director, AAI, Trivandrum Airport within 15 days of receipt of this letter. ii) Rs.81,830/- (Rupees Eighty one thousand eight hundred and thirty only) i.e. equivalent to two months licence fee is to be furnished in the form of Demand draft/pay order drawn in favour of Airport Director, AAI, Trivandrum Airport as Security Deposit towards electricity charges within 15 days of receipt of this letter.

Contd....2

29/06/18

PLUS MAX DUTY FREE PRIVATE LIMITED TIRUCHENGODE

त्रिवेन्द्रम अंतर्राष्ट्रीय हवाई अड्डा
Trivandrum International Airport

तिरुवनन्तपुरम - 695 008
Thiruvananthapuram - 695 008

दूरभाष : 2702600
Phone : 2702600

फैक्स : 0471-2500428
Fax : 0471- 2500428

(33)

आई. एस. ओ प्रमाणित एयरपोर्ट
ISO CERTIFIED AIRPORT

भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

-2-

vi)	Electricity charges	Electricity charges are payable as per consumption. The rates are subject to revision from time to time.
vii)	Water charges	Water charges are payable as per consumption. The rates are subject to revision from time to time.
viii)	Facilitation/Utility charges	The agency has to pay 10% of space rent as facilitation/utility charges in addition to the normal space rent which is subject to revision as per the discretion of AAI.
ix)	Service Tax/GST	The present rate GST is 18%. GST at applicable from time to time during the currency of the licence shall be payable by you.
x)	Agreement	An agreement is to be executed in the enclosed format on non-judicial stamp paper of Rs.200/- within 15 days of receipt of this letter.

3. **OTHER TERMS & CONDITIONS:-**

i) All rates, assessments, outgoings and other terms & conditions wherever applicable including the service charges in respect of the said premises will be payable by the licensee. In addition, the licensee shall pay the cost, if any, for drawing electrical lines for the purpose of providing connection. The decision of the licensor for fixing such cost shall be final and binding on the licensee.

ii) The licensee shall use the said premises only for the purpose mentioned in the agreement and for no other purpose whatsoever, unless permission from the Airport Director, AAI Trivandrum, is obtained in writing.

iii) No structural additions and alterations whatsoever to the said premises are permissible without prior written approval of the Airport Director, AAI, Trivandrum Airport.

iv) The licensee shall not, unless with the written consent, as aforesaid, assign or transfer this present licence or any part thereof.

v) AAI will allot only bare space. The licensee shall bear the cost of covering the area, interior works of the space allotted, the drawing of which may be got approved from AAI before execution. However, the exterior shall match with the aesthetics of the building to maintain uniformity. **In case of excess area in occupation as per actual measurement at site at any time after Handing/Taking over of the space, the licensee is liable to pay the space rent & security deposit for the additional area occupied by them.**

vi) No branding/hoarding/sticker/logo etc. to be affixed without the prior approval of Airport Director.

vii) In case the space allotted is required by AAI, the licensee has to vacate/shift his office to the newly identified/allocated location at his own cost at short notice.

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29/06/18
(Sasikumar KM)

PLUS MAX DUTY FREE PRIVATE LIMITED

29/6/18

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आई. एस. ओ प्रमाणित एयरपोर्ट
ISO CERTIFIED AIRPORT

भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

-3-

4. This allotment letter will form part of agreement.

5. Kindly return a sealed & signed copy of this letter within 7 days from the date of this letter as a token of your acceptance of provisional allotment of the space in the mezzanine floor (departure area) at the International Terminal.

वाणिज्य विभाग
DEPARTMENT OF COMMERCE
AAI, TRIVANDRUM AIRPORT

Yours faithfully,

(K.M. SASI KUMAR)
Asst. Gen. Manager (F&A/Comml)
for Airport Director

29/06/18
(Sasikumar KM)

PLUS MAX DUTY FREE PRIVATE LIMITED

29/6/18

On 31.08.2017, the Commissioner of Customs issued a Special Warehouse Licence No.01/2017-18 under Section 58 of the Customs Act, 1962, which is placed below:

Annexure - I

भारत सरकार GOVERNMENT OF INDIA
वित्त मंत्रालय MINISTRY OF FINANCE
राजस्व विभाग DEPARTMENT OF REVENUE
आयुक्त का कार्यालय OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क
CENTRAL GST & CENTRAL EXCISE
पी.बी.नं.13, आई.सी.ई भवन,प्रेस क्लब रोड
P.B.No.13, I.C.E.BHAVAN, PRESS CLUB ROAD
तिरुवनंतपुरम , THIRUVANANTHAPURAM, 695001

www.cenexcisetvm.gov.in E-mail: thiruvan@nic.in — फैक्स/Fax: 0471-2325252
टेलीफोन/Telephones 0471 - 2337040 /41/42/45/46, 2337552/2337553

SPECIAL WAREHOUSE LICENCE NO:01/2017-18

(Issued under Section 58-A of the Cusoms Act,1962)

License No: 01/2017-18 is hereby granted to **M/s Plus Max Duty Free Pvt Ltd**, New International Terminal Building, International Trivandrum-695024 (having its registered office at No.86/18, Royal complex, Shankari Road, Seetharampalayam, Trichengode-637 209, Namakkal, Tamil Nadu, India) under Sec 58 –A of the Customs Act 1962 in respect of Special Warehouse situated at New International Airport at Thiruvanathapuram for storage of goods for the purpose of supply to Duty Free shops in a Customs Area.

The grant of License is subject to the terms and conditions specified herein and at the reverse. It is not transferable to any person or persons and shall remain valid until and unless it is cancelled in terms of provisions under Sec 58(B) or sub-regulation (2) of Regulation 8.

The details of the Special Warehouse read as follows:

Location: Space: measuring 35.89 Sq mtr (non A/c area) adjacent to Restaurant-cum staff canteen (under the flyover) at International Terminal Building , Trivandrum Airport

(Dr. V. SANTHOSH KUMAR)
COMMISSIONER

Issued from file C. No: VIII/40/01/2017Cus Tech
Dated: 31.08.2017

On 13.09.2017 i.e. within 15 days of provisionally allocation of space, the Airport Authority of India allotted larger space measuring 154 sq.mtrs. at the International Terminal Building, Trivandrum Airport, which is placed below:

आइ. एस. ओ प्रमाणित एयरपोर्ट
ISO CERTIFIED AIRPORT

भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

No: AAT/COM/2(3)/2017/337

13.09.2017

Annexure - II

The Chief Executive Officer
M/s Plus Max Duty Free Pvt Ltd
66/18, Royal Complex, Sankari Road
Seetharampalayam, Tiruchengode
Namakkal, Tamil Nadu – 637 209

Sub : Allotment of space admeasuring 154 Sqm (Non-A/C Area) below the Bridge on the Exit Side of International Terminal Building (Operating Ware House) – reg

Sir,

Please refer to your letter dated 28.08.2017 on the above cited subject.

In this regard, the approval of Competent Authority is hereby conveyed for allotment of 154 Sqm (Non-A/C Area) below the Bridge on the Exit Side of International Terminal Building at Trivandrum Airport to M/s Plus Max Duty Free Pvt Ltd on the following terms & conditions:

i)	Licence	Space admeasuring 154 Sqm below the Bridge on the Exit Side of International Terminal Building (Operating Ware House)
ii)	Period	The period of allotment will be co-terminus with the licence for Exclusive Concessional to Develop, Operate, and Maintain Duty Free (DFS) at Trivandrum International Airport i.e upto 29.10.2024.
iii)	Licence Fee	Space rental @ Rs.1,140/- per Sqm per month for AC Area plus GST as applicable (i.e, Rs: 1,75,560/- p.m + applicable taxes & Govt levies) is payable by the licensee. The space rent shall be subject to annual escalation on 01st of April every year @ 10% or as decided by AAI. One month licence fee amounting to Rs. 2,07,161/- (including 18% GST) is to be paid as Advance Licence Fee before taking over the space. The rates are subject to revision from time to time at the discretion of the authority. The Licence fee for space shall always be paid in advance on or before 20th every month.
iv)	Security Deposit	I) Rs. 20,53,128/- (Rupees twenty lakhs fifty three thousand one hundred and twenty eight only) equivalent to six months licence fee of the seventh year in the form of Demand Draft/Pay Order drawn on any nationalized bank in absolute favour of Airport Director, AAI, Trivandrum within 15 days of receipt of this letter. II) Rs. 3,51,120/- (Rupees Three lakhs fifty one thousand one hundred and twenty only) i.e, equivalent to two months licence fee is to be furnished in the form of Demand Draft/pay order drawn in favour of Airport Director, AAI, Trivandrum as Security Deposit towards electricity charges within 15 days of receipt of this letter.

29/06/18
(Sentkumar KM)

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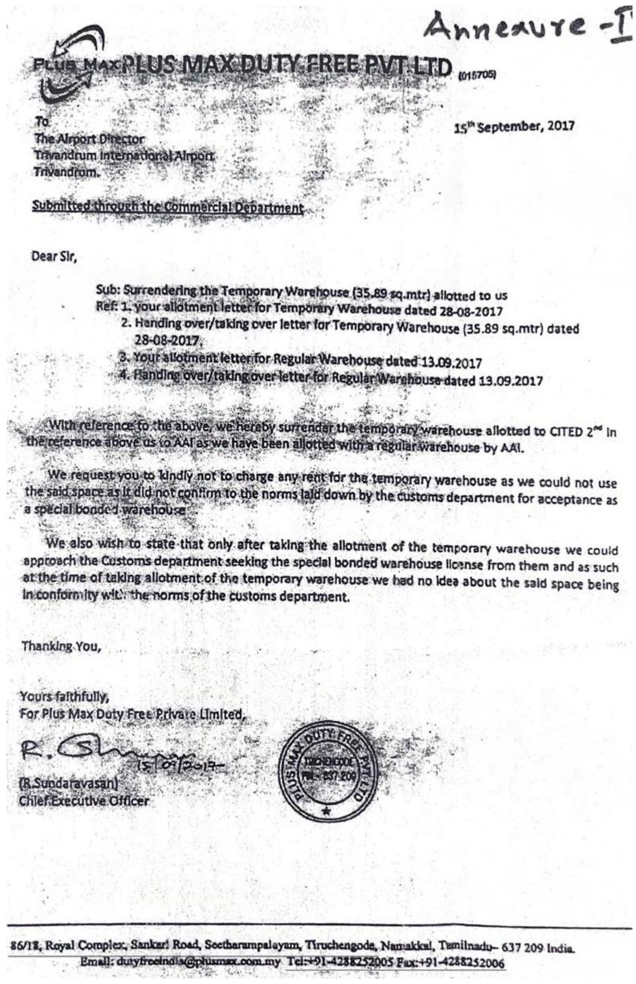
त्रिवेन्द्रम अंतर्राष्ट्रीय हवाई अड्डा — Trivandrum International Airport
तिरुवनन्तपुरम - 695 008 — Thiruvananthapuram-695 008
दूरभाष : 2702600 — Phone : 2702600
फैक्स : 0471-2500429 — Fax : 0471-2500429

On 15th September 2017, the appellant surrendered the temporary warehouse (35.89 Sq.mtr.) allotted to them, which is placed below:



Annexure -I

PLUS MAX PLUS MAX DUTY FREE PVT LTD (015705)

To
The Airport Director
Trivandrum International Airport
Trivandrum.

15th September, 2017

Submitted through the Commercial Department

Dear Sir,

Sub: Surrendering the Temporary Warehouse (35.89 sq.mtr) allotted to us
Ref: 1. your allotment letter for Temporary Warehouse dated 28-08-2017
2. Handing over/taking over letter for Temporary Warehouse (35.89 sq.mtr) dated 28-08-2017,
3. Your allotment letter for Regular Warehouse dated 13.09.2017
4. Handing over/taking over letter for Regular Warehouse dated 13.09.2017

With reference to the above, we hereby surrender the temporary warehouse allotted to CITED 2nd in the reference above us to AAI as we have been allotted with a regular warehouse by AAI.

We request you to kindly not to charge any rent for the temporary warehouse as we could not use the said space as it did not confirm to the norms laid down by the customs department for acceptance as a special bonded warehouse.

We also wish to state that only after taking the allotment of the temporary warehouse we could approach the Customs department seeking the special bonded warehouse license from them and as such at the time of taking allotment of the temporary warehouse we had no idea about the said space being in conformity with the norms of the customs department.

Thanking You,

Yours faithfully,
For Plus Max Duty Free Private Limited,

R. S[illegible] 15/09/2017

(R.Sundaravasan)
Chief Executive Officer

PLUS MAX DUTY FREE PVT LTD TIRUCHENGODE PIN - 637 209

86/11, Royal Complex, Sankari Road, Seetharampalayam, Tiruchengode, Namakkal, Tamilnadu– 637 209 India.
Email: dutyfreeindia@plusmax.com.my Tel:+91-4288252005 Fax:+91-4288252006

5.1 The Customs Officers conducted an audit at the Duty-Free Shop at the Trivandrum International Airport and noticed certain irregularities in the sales of foreign made foreign liquor imported duty-free and finding *prima facie* case of violations of the conditions of the Special Warehouse Licence, the Commissioner vide order dated 19.04.2018 under Section 58B(2) of Customs Act, 1962 suspended the Special Warehouse Licence No.1/2017-18 dated 31.08.2017 issued to the appellant pending enquiry. A writ was filed against this order by the appellant and the same was disposed by the Hon'ble High Court of Ernakulam vide order dated 21.12.2018 observing as follows:

> "103. But the question is, could the Department have done without suspending the licence? Possessing power does not justify using it always. Possessing is a matter of statute, but its use is a matter of discretion. And that

discretion must be animated by reason and justification. The investigation, it seems, began in December 2017, and licence suspension took place in April 2018. Besides a bald assertion, that the Company officials have been uncooperative, I fail to see any other major compelling reason for the authorities to suspend the licence. And that allegation of non-cooperation remains unconvincing, for the record presents a different picture.

104. Besides that, the Airport Authority of India laments the loss of revenue; it asserts that the licence suspension, interim though, is entirely avoidable; it could have been done without. It cites numerous complaints from the international passengers about the airport's inability to provide a basic amenity for them. True, Airport Authority's contract with the Company does not consider the interim suspension; it may not, in that sense, affect the revenue to be collected from the Company. But here revenue is not the only question. It is much more. It is about the facility to be enjoyed by the commuters.

105. I reckon the Customs Department has an efficacious mechanism to impose sufficient checks on the Company to ensure that pending the inquiry, it accounts for every sale transaction. In fact, the Department has not alleged, as I could see, that the Company has been guilty of any malpractice pending investigation. So it is a question of balancing the equities. That apart, the Customs Department has informed the Court during the arguments that almost the entire investigation has been completed. Pitted against an apprehension of the Company's fudging the account is the public interest: customer W.P.(C) No.21063/2018 63 convenience and revenue earning. The public interest must prevail. VI. Conclusion:

106. I therefore set aside both the Ext.P18 (suspension order issued by the commissioner) and P19 and direct the Customs Department to allow forthwith the Company to carry on its business operations, of course, under the

strict supervision of the departmental officials, as the Chief Commissioner of Customs deems proper".

5.2 The above order of the Hon'ble High court was appealed against by the Revenue and the Hon'ble High Court vide order dated 18.03.2019 observed as follows:

"6. Section 58A(1) of the Customs Act, 1962 deals with licensing of special warehouses. It empowers the Commissioner of Customs to licence a special warehouse, wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the 'proper officer' and no person shall enter the warehouse or remove any goods there from without permission of the 'proper office'. Sub-section(2) of Section 58A empowers the board to issue notification specifying the class of goods which shall be deposited in the special warehouse licenced under sub-section(1). It is not in dispute that by virtue of a notification issued under Section 58A(2), the goods to be supplied at the 'duty free shops' in any customs area is included within the purview of Section 58A. Therefore, it is clear that the business operations in the duty free shops conducted by the 1st respondent can be permitted only if they possess a licenced special warehouse, coming within the purview of Section 58A. Ext.P5 (special warehouse licence No.01/2017-189 dated 31.08.2017) is the licence issued by the Competent authority to the 1st respondent under Section 58A for establishment of a special warehouse within the premises of the new international Airport at Thiruvananthapuram, for the purpose of storage of goods to be supplied at the duty free shops conducted by them in the terminals. The licence contains the terms and conditions specified there in and it is mentioned that it will remain valid until cancelled in terms of Section 58B read with the relevant regulations. In Ext.P5, the details of the special warehouse are shown as follows:

"Location Space; measuring 35.89 sq. mtr (non A/C area) adjacent to Restaurant cum staff canteen (under the flyover) at International Terminal Building, Trivandrum Airport."
Ext.P5 licence was issued on 31.08.2017.

7. It is conceded by both sides that the premises of the special warehouse licenced under Ext.P5 is not occupied by the 1st respondent at present, because the said space was surrendered to the Airport Authority of India on 15.09.2017. Referring to Ext.R1 (P) (notice dated 13.08.2018) document the 1st respondent pointed out that , surrender of the premises licenced under Ext.P5 was on the basis that the Airport Authority of India had allotted another space having an area of 154 sq.

mtrs., below the bridge for the purpose of establishing the special warehouse, with effect from 13.09.2017; and since than the said area was being used as the special warehouse. But the fact remains that the 1st respondent has not obtained any licence for the special warehouse in the said area of 154 sq.mtrs. It is evident from Ext.P13 (representation dated 28.12.2017) series documents that, the officers of the customs department at various level had issued certificates required for transport and deposit of beverages to be supplied to the duty free shops, as if there existed a licenced bonded warehouse (Special warehouse). But it is a fact that the 1st respondent was not holding any valid licence for the special warehouse after surrender of the licenced premises on 15.09.2017. Learned counsel appearing for the 1st respondent contended that, all the records would reveal that the authorities of the Customs department had permitted usage of the warehouse allotted by the Airport Authority of India (154 Sq. mtrs.) and had issued various requisite certificates for transportation and deposit of beverages in the warehouse. Therefore, the direction issued by the learned single judge to permit continuance of the business operations has to be implemented, is the contention. Further, it is pointed out that, suspension of the licence was not on the ground that there occurred a change in the premises of the warehouse.

8. While considering the question of staying the operation of the judgment, the question assumes importance as to whether the 1st respondent is legally entitled to continue their business activity. It cannot be disputed that the 1st respondent is not entitled to operate the Duty-Free Shops without a licenced special warehouse, under Section 58A. Only if the dutiable goods are deposited and released from the special warehouse under strict surveillance of the 'proper officer', the business can be permitted to continue. The relevant provisions specifically prohibit any person from entering such warehouse or from removing the goods there from without permission of the proper officer. It is 'Sine qua non' that supply to the duty-free shops can be made only from a licenced special warehouse. So, the question is as to whether the 1st respondent is in possession of a licenced special warehouse under Ext.P5. From the relevant provisions it is cleared that the special warehouse is licenced only on a specified premise. So, the subject matter of such licence is the permission to establish a special warehouse at a particular premise. It cannot be accepted the contention that, any change in the premises will not invalidate the licence. Unless specific licence is issued with respect to the new premise or necessary changes are effected in the existing licence with respect to the shifting of the premise, we cannot hold that *the licence continues to be valid and that the 1st respondent is entitled to continue business on the basis of Ext.P5 licence.*

9. Since the 1st respondent is not legally entitled to carry on the business in the duty-free shop, without a properly licenced special warehouse, allowing such business to be carried on based on the direction contained in the impugned judgment, will definitely result in breach of the statutory provisions and in turn will be permitting an illegality to be perpetrated.

10. Under the above-mentioned circumstances, we are inclined to grant an interim stay with respect to the direction contained in the impugned judgment permitting the 1st respondent company to carry on its business operations, pending disposal of the above writ appeal.

11. xxxxx

12. It is pointed out by learned counsel appearing for the 1st respondent that, they have already approached the Chief Commissioner of Customs with the request for incorporating the premise admeasuring 154 sq. mtrs., situated below the bridge at the exit side of the international airport, into the licence of the special warehouse (Ext.P5). We are of the considered opinion that, it is for the said authority to consider such request and to take an appropriate decision on such request or on request if any made to issue licence for a special warehouse in the new premise. We make it clear that, if any licence under Section 58A is granted in favor of the 1st respondent, the appellants shall permit the 1st respondent to carry on the business activities as directed in the impugned judgment, without prejudice to the appellants pursuing the investigation and taking steps as contemplated under the act and under the relevant rules and regulations.

13. Learned counsel appearing for the 1st respondent although submitted that they may approach the Airport Authority of India for getting back possession of the 35.89 sq. mtrs. Area specified in Ext.P5 for the purpose of housing the special warehouse and once they get back possession of the said premises, they may be permitted to continue the business activities as directed on the strength of Ext.P5. We make it clear that it is for the authority consider such request if any made and to take appropriate decision in that respect".

5.3 Meanwhile, show-cause notice dated 13.08.2018 was issued to the appellant for cancellation of the Special Warehouse Licence which was issued under Section 58A of the Customs Act, 1962 for having violated the conditions stipulated under the Special Warehouse (Custody and Handling of goods) issued by the Government of India vide Notification No.69/2016 Customs (NT) dated 14.05.2016. The same was adjudicated by the Commissioner vide Order No. 93/2022 dated 05.04.2022 who cancelled the Special Warehouse Licence No.01/2017-189 dated 31.08.2017 issued to the appellant. Thereafter, the appellant filed a writ appeal with the High Court of Kerala and the Hon'ble High Court of Kerala vide Order dated 23.06.2022 observed that:

> *"6. by preserving all the rights available to the 1st respondent against the order dated 05.04.2022 and granting liberty to the 1st respondent to work out the remedies in accordance with law within a week from today and in the interregnum the order dated 05.04.2022 is kept in abeyance the writ appeal stands in dispose of".*
>
> *"11. All the questions and consequences that may arise or answered, pursuant to any of the steps taken in this behalf, are matters for adjudication before the Tribunal or the Court. They are to be independently considered on their own merit, uninfluenced by the impugned judgment. This court has not examined or expressed a view on any of the issues or merit in this behalf".*

Hence, the appeal before us against the Commissioner's order No. 93/2022 dated 05.04.2022. In the impugned order the Commissioner alleged the following violations:

i. Operating duty-free shop without possessing a Special Warehouse licenced premises and transferring a special warehouse licenced premises without the knowledge of the Department.

ii. Sale of duty-free goods directly from the duty-free shop without warehousing the same in the Special Warehouse.

iii. Non appointment of a warehouse keeper and noncompliance of Regulation 6(2) and 10 of Special Warehouse (Custody and Handling of goods) 2016.

5.4 It is a fact that a Provisional premises was allotted to the appellant for storing the duty paid goods for running the Duty-Free Shop at the International Terminal at Trivandrum Airport as is seen from the letter dated 28.08.2017 (Para 5). It is also on record that a new premises 154 sq.mtrs was allotted on 13.09.2017 within 15 days from the date of provisional allocation. The Special Warehouse Licence was issued on 31.08.2017, based on the original allocation of space of 35.89 sq.mtrs. The appellant started functioning from the new premises from 15.09.2017 onwards. Its an admitted fact that the licence was not amended to give effect to the new premises. The Special Warehouse Licence is given under Section 58A which reads:

> **SECTION 58A. Licensing of special warehouses. –**
>
> (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

The above Section clearly stipulates that the entry and exit of the goods within the special warehouse are being monitored and supervised by the Customs Officers. As seen from the records produced before us the Bond Officer has signed the application form for release of goods as is required as per Circular No. 32/2016-Customs dated 13.07.2016. The Mahazar drawn on 21.12.2017, it is stated that "the practice followed is that on arrival of the bonded goods from outside are unloaded in the presence of the Customs Officer on duty and accounted in the Bond Register maintained in the Duty-Free Shop. On requirement, goods are again transferred to the godown in the arrival hall of the terminal under cover of 'Arrival/Departure release application form' which is duly signed by the customs officer and the process of transfer from outside the warehouse to inside the warehouse is supervised by the proper officers of customs, necessary entries are made in the registers, it shows the closing balance of the items in the warehouse behind the Airport Canteen". Therefore, as rightly observed by the Hon'ble High court of Kerala in its order dated 18.03.2019 supra

> "It is evident from Ext.P13 (representation dated 28.12.2017) series documents that, the officers of the customs department at various level had issued certificates required for transport and deposit of beverages to be supplied to the duty-free shops, as if there existed a licenced bonded warehouse (Special warehouse)".

5.5 Thus, as observed by the Commissioner in the impugned order since the new premises was allotted within 15 days of the original allocation the appellant started operating only from the new premises but without getting the Licence amended. But the fact remains that the goods were stored and removed from the new premises under the Customs supervision. Therefore, the appellant cannot be alleged with any illegality in as much as there is no evidence to prove that goods were not stored or removed without the customs supervision.

5.6 With regard to the fact that the receipt and movement of goods from the new premises was done under the supervision and knowledge of the Customs officers, the Commissioner in the impugned order observes that necessary action will be taken against the concerned officers. Thus, the fact that the new premises was being operated and the movement of goods in and out were done under the supervision of the Customs officers is not denied.

5.7 With regard to the allegation that warehouse keeper was not appointed, it is on record that Shri. P. Madhan was appointed as a location Manager for the entire operations from the Warehouse to the Duty-Free Shop. However, based on the statement that no warehouse keeper appointed, the Commissioner confirms the violation of one of the conditions of the licence. There is no dispute that Shri. P. Madhan was appointed as a location Manager who was responsible for the Warehouse.

5.8 Other allegations are with regard to the statutory returns and documents not being filed, all relate to the Duty-Free Shop, it is nothing to do with the goods deposit and cleared from the Special Warehouse. Separate proceedings have been initiated for the irregularities at the Duty-Free Shop.

5.9 The Hon'ble High Court of Kerala in the order dated 18.03.2019 held that:

> "Unless specific licence is issued with respect to the new premise or necessary changes are effected in the existing licence with respect to the shifting of the premise, we cannot hold that the licence continues to be valid and the appellant is not legally entitled to carry on the business in the duty-free shop, without a properly licenced special warehouse."

5.10 With regard to amendment to the licence the High Court also observed that:

> "We are of the considered opinion that, it is for the said authority to consider such request and to take an appropriate decision on such request or on request if any made to issue licence for a special warehouse in the new premise."

5.10.1 Further, it was observed that:

> "Learned counsel appearing for the 1st respondent although submitted that they may approach the Airport

> Authority of India for getting back possession of the 35.89 sq. mtrs. Area specified in Ext.P5 for the purpose of housing the special warehouse and once they get back possession of the said premises, they may be permitted to continue the business activities as directed on the strength of Ext.P5. We make it clear that it is for the authority consider such request if any made and to take appropriate decision in that respect."

5.11 Thereafter, the appellant vide letter dated 19.03.2019 requested for reallotment of 35.89 Sq. mtr. and the Airport Authority of India vide letter dated 22.03.2019 (reproduced below) allotted the space for the purpose of the special warehouse.

आइ. एस. ओ प्रमाणित एयरपोर्ट
ISO CERTIFIED AIRPORT

भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

No: AAT/COM/2(3)/2019/ 89

22.03.2019

The Chief Executive Officer
M/s Plus Max Duty Free Pvt Ltd
86/18, Royal Complex, Sankari Road
Seetharampalayam, Tiruchengode
Namakkal, Tamil Nadu – 637 209

Sub : **Temporary Allotment of space admeasuring 35.89Sqm (Non-A/C Area adjacent to Restaurant-cum-Staff Canteen) of International Terminal Building (Operating Ware House) – reg**

Sir,

Please refer to your letter no.PM/DFS/TVD/2018-19/04 dated 19.03.2019 regarding allotment of premises for operating special warehouse linked to M/s Plus Max Duty Free shop in Trivandrum International Airport.

In this regard, the approval of Competent Authority is hereby conveyed for allotment of 35.89 Sqm (Non-A/C Area - adjacent to Restaurant-cum-Staff Canteen) in the International Terminal Building of Trivandrum Airport to M/s Plus Max Duty Free Pvt Ltd on the following terms & conditions:

i)	Licence	Space admeasuring 35.89 Sqm (Non-A/C Area - adjacent to Restaurant-cum-Staff Canteen) in the International Terminal Building (Operating Ware House)
ii)	Period	Three (3) months with effect from the date of taking over.
iii)	Licence Fee	Space rental @ Rs.1,255/- per Sqm per month for Non AC Area plus GST as applicable (i.e, Rs. 45,042/- p.m + applicable taxes & Govt levies) is payable by the licensee. The space rent shall be subject to annual escalation on 01st of April every year @ 10% or as decided by AAI. The rates are subject to revision from time to time at the discretion of the authority. The Licence fee for space shall always be paid in advance on or before 10th every month.
iv)	Security Deposit	i) **Rs. 99,416/- (Rupees Ninety nine thousand four hundred sixteen only)** equivalent to Two months licence fee in the form of Demand Draft/Pay Order drawn on any nationalized bank in absolute favour of Airport Director, AAI, Trivandrum **within 15 days of receipt of this letter.** ii) **Rs. 49,708/- (Rupees Forty nine thousand seven hundred eight only)**i.e, equivalent to One month licence fee is to be furnished in the form of Demand Draft/pay order drawn in favour of Airport Director, AAI, Trivandrum as Security Deposit **towards electricity charges within 15 days of receipt of this letter.** nationalized bank in absolute favour of Airport Director, AAI, Trivandrum within 15 days of receipt of this letter.

......./2

तरर्राष्ट्रीय हवाई अड्डा तिरूवनन्तपुरम–695 008 दूरभाष : 2702600 फैक्स : 0471-2500428
International Airport Thiruvananthapuram-695 008 Phone : 2702600 Fax : 0471-2500428

As has been already discussed, the re-warehousing certificate before us clearly shows that the entry of goods into the Special Warehouse and exit were all done with the knowledge of the Customs Officers and therefore, there is no irregularity in storing of the goods at the special warehouse at the new premises. From the facts of the case as already discussed above, the alleged irregularities were actually noticed at the Duty-Free Shop at the Trivandrum Airport which resulted in cancellation of the Special Warehouse Licence. It is a fact that the Duty-Free Shop cannot function without the goods being stored at the special warehouse allotted to the appellant and it is essential to operate the special warehouse to run the Duty-Free Shop. However since, the original space has now been reallocated which was part of the licence already issued to the appellant and stands cancelled needs to be restored. From the records, it is seen that the original smaller space was provisionally allotted and within 15 days the larger space of 154 sq. mtr. which was allotted and in use under the supervision of the Customs Officers need to be included in the licence. Therefore, in the interest of justice, we set aside the impugned order and direct the Commissioner to restore the original Licence and to consider amending the licence to incorporate the space of 154 sq. mtr., if otherwise, in accordance with the provisions of law.

6. In view of the above discussions, the impugned order is set aside and the appeal is allowed by way of remand to Commissioner with a direction to restore the original Special Warehousing Licence.

(Order pronounced in Open Court on 14.06.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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