
(1983) 03 CAL CK 0013
In the Calcutta High Court
Case No : Matter No. ... of 1983

Angus Co. Ltd.

APPELLANT

Vs

Deputy Collector of Customs

RESPONDENT

Date of Decision : 23-03-1983

Acts Referred:

Customs Act, 1962 — Section 116

Citation : (1988) 36 ELT 241

Hon'ble Judges : P.C. Barooah, J

Bench : Single Bench

Advocate : Ajit Ray Mukherjee, for the Appellant; S.K. Mitter, for the Respondent

Judgement

P.C. Barooah, J.—The petitioner M/s. Angus Company Ltd. act as Steamer Agents for vessels of M/s. Waterman Steamship Corporation of U.S.A. in the Port of Calcutta. On or about April 22, 1981, "M.V. Robert Elee." of the said Steamship Corporation arrived the Haldia Docks within the Port of Calcutta carrying imported cargo to be discharged at the said Port. The vessel being a LASH vessel carried several LASH barges in which the vessels cargo had been loaded. At Haldia the said LASH barges were unloaded from the vessel and were then towed to the Port of Calcutta for discharging their cargo at the Calcutta Docks. The said vessel carried inter alia eight consignments of brass scrap long pales in 286 bundles which had been loaded in three LASH barges. Particulars thereof have been set-out in paragraph 2 of the petition.

2. A continuous survey was arranged by the petitioner on behalf of their foreign principal in respect of the discharge of the said Consignments of brass scrap and such survey was conducted by M/s. Inspection & Testing Company (India) Private Ltd. The said Surveyors maintained a Barge Unloading Report or Cargo landed from the said barges including the cargo relating to the said eight consignments. The Surveyors submitted a final report of the survey dated May 22, 1981, prepared on the basis of the Barge Unloading Report. A copy of this certificate is annexed to the petition and marked with the letter "A". It appears from the said

Survey Report that all the cargo representing the said 286 bundles were discharged from the said three barges in the Docks at Calcutta including 46 bundles under Line No. 103. This will also be apparent from the chart set-out in paragraph 4 of the petition. The Calcutta Port Trust also issued landing receipts in respect of the said cargo copies of which are annexed to the petition and marked with the letter "B".

3. On October 26, 1981 the Port Trust issued its Outturn Report in respect of the said consignment of 46 bundles under Line No. 103. This Outturn Report copy of which is Annexure "D" to the petition did not tally with the Survey Report submitted by the petitioner's Surveyors as well as the landing receipts of the Calcutta Port Trust.

4. Relying on the Outturn Report the Assistant Collector of Customs, Manifest Clearance Department, issued a notice dated November 13, 1981 alleging that 43 bundles of brass scrap pales manifested under Line No. 103 had been short-landed and asked the petitioner to show cause why penalty u/s 116 of the Customs Act, 1962 should not be imposed. A copy of the show cause is Annexure "E" to the petition. The petitioner gave a reply and thereafter the Deputy Collector of Customs, Manifest Clearance Department, adjudicated the matter and by an order No. 4/81 dated August 30, 1982 held that 26 bundles had been short-landed and imposed a penalty of Rs. 3,58,798/- on the petitioner. A copy of this order, which is Annexure "H" to the petition is the subject-matter of challenge in this application.

5. I have heard Mr. Ajit Ray Mukherjee on behalf of the petitioner and Mr. S.K. Mitter on behalf of the respondents. I have also gone through the impugned order. It appears from the Outturn Report of the Calcutta Port Trust. Copy of which is Annexure "D" to the petition that a quantity of loose brass scrap pales had also been landed. It further appears that the petitioner sought permission from the Public Relation Officer of the Calcutta Port Trust by a letter dated May 21, 1982. Copy of which is Annexure "K" to the petition to take photographs of brass scrap discharged into the "B" shed of the Netaji Subhas Docks which remained uncleared by the consigners. This permission was refused by a letter dated June 2, 1982. Copy of which is included in the same Annexure. Therefore whether or not this quantity of loose brass pales formed part of the original consignment has not been gone into by the Deputy Collector of Customs. It further appears from the impugned order that the Survey Report submitted by the petitioners has also not been taken into consideration.

6. Under the circumstances, I dispose of this application on the following terms.

7. The order dated August 30, 1982 passed by Shri S.K. Roy, Deputy Collector of Customs, Manifest Clearance Department is quashed and this order and the consequent demand for penalty shall not be given effect to. The Deputy Collector will re-hear the matter afresh in accordance with law, in the light of the observations made in this judgment and after giving the petitioner an

opportunity of being heard and also an opportunity to adduce such evidence as the petitioner may desire.

8. Mr. S.K. Mitter submits that inasmuch as no affidavit-in-opposition has been filed on behalf of his clients. The averments made in the petition are not admitted. All the points urged in the writ petition are also left open.

9. The Deputy Collector will dispose of the matter as expeditiously as possible preferably within a period of four weeks from receiving the signed copy of the ordering portion of the judgment and till the matter is disposed of the petitioner will not dispose of its fixed assets except in the usual course of business.

10. All parties to act on a signed copy of the minutes of this order.