(2005) 10 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 5788 of 1997

Apollo Paper Mills Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 28-10-2005

Acts Referred:
Customs Act, 1962 — Section 111, 155, 17

Citation : (2006) 2 BomCR 108 : (2005) 107 BOMLR 683

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Soli Sorabjee and Amit Pawan, J.P. Dhanuka, K.R. Dhanuka and Bhupendra Singh, for the Appellant; A.J. Rana and S.V. Bharucha and R.C. Master for Respondent Nos. 1 to 4 and S.I. Shah, for the Respondent

Judgement

J.P. Devadhar, J.—Why the petitioner should be saddled with the warehousing charges for the inordinate delay on the part of the Customs authorities in finalising the assessment of the goods imported by the petitioner. In the alternative, why the Central Warehousing Corporation (C.W.C.) should not be directed to waive/bear the warehousing charges is the question raised in this petition. The petitioner, accordingly, seeks a writ directing the Customs department to bear the demurrage charges or in the alternative seeks an order directing the C.W.C. to waive the demurrage charges in respect of the goods imported by the petitioner.

2. The relevant facts are that in the year 1995, the petitioner wanted to set up a paper manufacturing unit at Gujarat Industrial Development Corporation, Jhagadia, District Bharuch, Gujarat by importing second-hand machinery from a company in U.K. at a concessional rate.

3. Under the prevailing Export-Import Policy, import of second hand machinery at a concessional rate of duty was permissible only if the project was cleared by the Ministry of Industry, Government of India (GOI) and the said project was registered under the Project Import Regulations framed under the Customs Act

1962.

4. With a view to import the second hand machinery and clear the same at a concessional rate by availing the benefit of exemption, the petitioner on 18th September, 1995 applied to the Central Government for Project Import Certificate. The said certificate was granted by the Ministry of Industry, GOI on 29th January, 1996.

5. In the meantime, the petitioner had finalised the purchase deal with the foreign supplier in U.K. and the consignment of second hand machinery valued at Rs. 1.07 crores loaded in 50 containers arrived by ship at the Jawaharlal Nehru Port Trust (JNPT) at Navi Mumbai in the second week of January, 1996. The said containers were unloaded on 18th January, 1996. Since the stevedore agents were on strike, the said 50 containers unloaded at JNPT were shifted from the port to the warehouse at Container Freight Station (CFS), Dronagiri in the second week of March, 1996.

6. On 2nd February, 1996 the petitioner applied to the Customs authorities seeking registration of the project under the Project Import Regulations. Along with the application, the petitioner enclosed the Project Import Certificate dated 29th January, 1996 and a certificate dated 23rd September, 1995 issued by M/s.Superintendence company of India (P) Ltd. regarding the residual life of the second hand machinery imported by the petitioner and the reasonableness of the price at which the said machinery were purchased. The certificate dated 23rd September, 1995 contained a clause to the effect that the said certificate is based on information and that the said certificate is issued with the usual waiver of responsibility on the part of the company issuing the certificate. In view of this clause in the certificate, the Customs authorities were not willing to accept the report and register the project. Thereupon, the petitioner agreed to furnish a fresh certificate from some other Chartered Engineer within 60 days of the registration of the project. That request of the petitioner was acceded to and the project was registered on 25th March, 1996.

7. On registration of the contract, the petitioner on 25th March, 1996 itself filed a bill of entry for clearance of the warehoused goods at concessional rate of duty. Three months after the filing of the bill of entry, the Assistant Commissioner of Customs, on 7th June, 1996 ordered 100 per cent examination of the consignment on first check basis. Accordingly, the goods were examined in the month of June-July, 1996 by the Appraising Officer of the Customs, however, for the reasons best known to him, the inspection report was not submitted by the said Appraising Officer. It appears that the said Appraising Officer was transferred in the meantime to some other section in the Customs department. Thus, in spite of belated examination of goods, no further steps were taken in the matter.

8. Ultimately, on 19th February, 1997, the Assistant Commissioner, Docks (CFS) once again ordered for re-examination of the goods. Accordingly, the goods were

re-examined by the Appraising Officer and a report was submitted on 25th March, 1997. Thereafter, the Assessing Officer passed the adjudication order on 9th June, 1997 accepting the valuation of the machinery as per the first report dated 23rd September, 1995 issued by M/s. Superintendence Co. of India (P) Ltd. It may be noted that initially the Customs authorities were not willing to accept the first report dated 23rd September, 1995 and, therefore, the petitioner was required to submit another report of SGS India Limited in July, 1996. After passing the assessment order, the amount payable by the petitioner was computed on the bill of entry on 18/19th June, 1997 and the petitioner paid the duty as computed on the same day.

9. In the meantime, in view of the delay on the part of the Customs authorities in assessing the goods, the petitioner had applied to the C.W.C. on 24th January, 1997 to waive the demurrage charges payable on the imported consignment, by exercising its discretionary powers vested in them under Clause 59 of the General terms and conditions of storage framed by the C.W.C. The petitioner addressed several letters in that behalf, however, the C.W.C. failed to dispose of the waiver application made by the petitioner. As a result, the petitioner could not clear the goods even after the goods were assessed and customs duty was paid as per the assessment order.

10. In view of the delay in disposal of the waiver application, the petitioner, with a view to minimise the recurring warehousing charges, by its letter dated 21st June, 1997 and 4th July, 1997 requested the C.W.C. to shift the 50 containers from C.F.S., Dronagiri to any nearby warehouse where the warehousing charges were very low. It may be noted that the warehousing charges on 50 containers at C.F.S., Dronagiri were Rs. 9 lakhs per month whereas the same containers if stored at a nearby warehouse, the warehousing charges could be Rs. 30,000 per month. The petitioner had clearly stated that the shifting of the 50 containers is sought only with a view to reduce the high recurring warehousing charges at CFS, Dronagiri and that even after shifting, the 50 containers shall continue to remain in the custody of the C.W.C. However, no steps were taken for shifting the goods from C.F.S., Dronagiri.

11. The application for waiver of the warehousing charges made by the petitioner in January, 1997 was ultimately rejected by the C.W.C. on 21st July, 1997 by merely stating that it is not possible to extend any concession for ground rent charges accrued on the containers in question. No reasons were given as to why the C.W.C. is declining to waive the warehousing charges. As regards the shifting of the containers from CFS, Dronagiri, the C.W.C. by its subsequent letters dated 8th August, 1997 and 22nd August, 1997 insisted on full payment of warehousing charges before the containers were shifted to some other warehouse. In these circumstances, the petitioner filed the present petition disputing the liability to pay the warehousing charges for the lapses committed by the Customs authorities and the C.W.C.

12. This Court while admitting the writ petition on 22nd December, 1997 directed

the C.W.C. to shift the 50 containers to their general warehouse at Ambernath on the petitioners paying the necessary transportation charges. Accordingly, the petitioner deposited the requisite transportation charges. Despite the Court order dated 22nd December, 1997 the C.W.C. authorities have shifted the 50 containers of the petitioner to their warehouse at Kalamboli in stead of their warehouse at Ambernath.

13. Mr.Soli Sorabjee, learned Senior Counsel appearing on behalf of the petitioner submitted that in view of the gross negligence on the part of the Customs authorities and the C.W.C., the ambitious project of the petitioner in setting up of a paper manufacturing unit has been grounded since 1995. He submitted that on account of the gross delay on the part of the Customs authorities and the C.W.C. which is an instrumentality of the State, the petitioner is saddled with warehousing charges amounting to Rs. 2.27 crores in respect of the consignment worth Rs. 1.64 crores. Accordingly, Counsel for the petitioner submitted that unless the warehousing charges are waived or borne by the Customs authorities, it will not be impossible for the petitioner to clear the goods valued at Rs. 1.64 crores.

14. Elaborating his arguments, Mr.Sorabjee submitted that at every stage there has been gross negligence on the part of the Customs authorities as can be seen from the following:

i) The petitioner had applied for registration of the project with the Customs authorities on 2nd February, 1996, but the same was registered belatedly on 25th March, 1996. The Customs authorities had delayed registration of the project on the ground that the certificate of the Chartered Engineer dated 23rd September, 1995 was not proper. However, in the assessment order 10 dated 9th June, 1997 the very same certificate dated 23rd September, 1995 has been accepted by the Adjudicating authority. Therefore, delay of 51 days in registering the project on the part of the Customs authorities was wholly unjustified.

ii) Even after the registration of the contract and the filing of the bill of entry for clearance of the goods on 25th March, 1996, there was delay in examining the goods immediately and the order for inspection of the goods on first check basis was passed only on 7th June, 1996 i.e. after a lapse of about 74 days. Section 17 of the Customs Act 1962 requires the Customs authorities to examine and assess the imported goods without undue delay. In gross violation of the statutory provisions, the Customs authorities took 74 days to order inspection of the goods which is wholly unjustified and the petitioner cannot be made to pay the warehousing charges for the delay on the part of the Customs authorities.

iii) After ordering 100 per cent examination of the goods on 7th June, 1996 there was further delay in assessing the goods. Although, the goods were examined in June-July, 1996 the concerned Appraising Officer failed to submit his examination report. As a result assessment order could not be passed. Ultimately re-examination of the goods was ordered by the Assistant Commissioner (Docks) on

19th February, 1997. Thus, there was delay of 291 days from the date of ordering examination of the goods on 7th June, 1996 till the date of ordering re-examination of the goods on 19th February, 1997. The explanation given in the affidavit in reply filed by the Customs is totally vague and does not give any cogent reason as to why the concerned Appraising Officer who inspected the goods initially failed to submit his report. The affidavit-in-reply filed by the Customs does not disclose the date and place to which the said Appraising Officer was transferred. Thus, there is gross negligence on the part of the Customs Officers in examining the imported goods.

iv) Even after ordering re-examination of the goods on 19th February, 1997, there was 12 further delay and the assessment order was passed belatedly on 9th June, 1997. Thus, according to Mr. Sorabjee, there has been gross delay at every stage and no explanation is given by the Customs authorities in their affidavit in reply regarding the inordinate delay in assessing the goods. Accordingly, the Counsel for the petitioner submitted that in the facts of the present case, in view of the gross and inordinate delay in assessing the goods, it is just and proper to shift the liability and order the Customs authorities to bear the warehousing charges payable on the goods imported by the petitioner.

15. Dealing with the lapses on the part of the C.W.C., Mr. Sorabjee submitted that in the present case there is total negligence on the part of the C.W.C. right from the inception. Firstly, as per Clause 59 of the ''General terms and conditions of storage'' framed by the C.W.C., it was obligatory on the part of the C.W.C. to dispose of the waiver application of the petitioner by passing a judicious order. In the present case, the waiver application of the petitioner filed in January, 1997 has been disposed of after about seven months on 21st July, 1997 and that too without assigning any reasons. Thus, the said order is passed in gross violation of the principles of natural justice. Secondly, during the pendency of the waiver application, the petitioner by its letters dated 21st June, 1997 and 4th July, 1997 had requested for shifting the 50 containers from C.F.S., Dronagiri under the supervision and control of C.W.C. to some other warehouse where the warehousing charges were very low. The petitioner had made it clear that even after shifting, the 50 containers shall continue to be under the control of C.W.C. However, the C.W.C. failed and neglected to shift the containers from C.F.S., Dronagiri. After rejecting the waiver application in August, 1997, the C.W.C. agreed for shifting, on payment of the warehousing charges. Thus, there was total lapse on the part of the C.W.C. in declining to exercise its discretionary power by passing a reasoned order on the waiver application made by the petitioner and there was total negligence on the part of the C.W.C. in considering the application of the petitioner to shift the goods to some other warehouse under the control of the C.W.C. Thirdly, in defiance of the Court''s order dated 22nd December, 1997, the C.W.C. has shifted the consignment to the warehouse at Kalamboli instead of the warehouse at Ambernath. The warehousing charges at Kalamboli are higher than the charges at Ambernath. For the breach of the Court''s order committed by the C.W.C., the petitioner cannot be made to pay the

higher warehousing charges. Fourthly, in spite of specific averments made in the present writ petition filed in the year 1997, to the effect that there has been gross negligence on the part of the C.W.C. in dealing with the consignment in question, the C.W.C. till date has not filed its affidavit-in-reply to contradict the statements made in the petition. Accordingly, it was submitted that in the light of uncontroverted facts set out in the petition, it must be held that the C.W.C. is guilty of gross delay and laches and, therefore, the C.W.C. must bear the warehousing charges by waiving the same.

16. Relying upon the decision of the Calcutta High Court in the case of Donald and Macarthy (P) Ltd. Vs. Union of India (UOI), , decision of the Madras High Court in the case of Anuma Precision Tool Pvt. Ltd. Vs. Collector of Cus., , decision of the Andhra Pradesh High Court in the case of Sujana Steels Ltd. Vs. Commr. of Cus. and C. Ex. (Appeals), Hyderabad, and the decision of the Delhi High Court in the case of Om Petro Chemicals Vs. Union of India and Others, , Mr. Sorabjee submitted that where there is delay on the part of the Customs authorities in examining/assessing the goods in contravention of Section 17 of the Customs Act, what is to be seen in the facts and circumstances of the case is whether the liability of the petitioner to pay the warehousing charges is shifted to the Customs authorities. He submitted that once it is established that there is gross delay on the part of the Customs authorities in examining/assessing the goods, the liability to pay the warehousing charges shifts to the Customs authorities and the petitioner cannot be burdened with the said warehousing charges.

17. Although the decision of the Apex Court in the case of Union of India and Others Vs. M/s. Sanjeev Woollen Mills, is in favour of the importer, Mr.Sorabjee fairly stated that the said decision was in the peculiar facts and circumstances of that case and he would not rest his case on the said decision. Referring to the judgment of the Apex Court in the case of Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others, , Mr.Sorabjee submitted that where the action of the Customs authorities in detaining the goods is illegal, the Customs authorities would be bound to bear the demurrage charges, in the absence of any provision in the Customs Act absolving the Customs authorities from that liability. Counsel for the petitioner further submitted that the decision of the Apex Court in the case of International Airports Authority of India and Others Vs. Grand Slam International and Others, is distinguishable on facts as that decision is an authority for the preposition that the Customs authorities under the Customs Act are not empowered to impose conditions upon the proprietors of ports or airports regarding the collection of demurrage for the storage of imported goods. Accordingly, Mr. Sorabjee submitted that in the facts of the present case in view of the inordinate delay on the part of the Customs authorities in examining/ assessing the goods imported by the petitioner, it is just and proper to order and direct the Customs authorities to bear the warehousing charges payable in respect of the goods imported by the petitioner. In the alternative, Counsel for the petitioner submitted that in view of the failure on the part of the C.W.C. to

pass an order in accordance with law on the waiver application filed by the petitioner and in view of the delay in shifting the goods to the warehouse at Ambernath, and for committing breach of the Court''s order, the C.W.C. be directed to waive the demurrage charges so as to enable the petitioner to clear the goods imported by them in the year 1996 without payment of warehousing charges.

18. Mr.Rana, learned Senior Counsel appearing on behalf of the Revenue fairly stated that in the present case there has been some delay on the part of the Customs authorities in examining and assessing the goods imported by the petitioner. However, in the absence of any mala fides on the part of the Officers of the Customs department it would not be proper to shift the liability of the petitioner to pay the warehousing charges upon the Central Government. He submitted that u/s 155 of the Customs Act, the acts done by the officers of the Customs Department in good faith and in pursuance of the Act or the rules or regulations made thereunder, no liability can be fastened upon the Customs authorities.

19. Relying upon the judgment of this Court in the case of Modern Rubber Industries v. Union of India reported in 2003 (154) E.L.T. 541 and the decision of the Apex Court in the case of Union of India and ors Vs. R.C. Fabrics (P) Ltd. and anr, , Mr. Rana submitted that even where the orders passed by the Customs authorities have been ultimately set aside, it is held that the liability to pay the warehousing charges would still be upon the importer and not on the Customs authorities and, therefore, in the facts of the present case, in the absence of any mala fides, liability to pay warehousing charges cannot be shifted upon the Central Government. Mr. Rana submitted that in view of the delay in assessing the goods imported by the petitioner, the Customs authorities are ready and willing to issue the requisite detention certificate to enable the petitioner to seek waiver of demurrage charges from the C.W.C. Accordingly, Mr. Rana submitted that the claim of the petitioner that the Customs authorities should be directed to pay the warehousing charges is legally unsustainable in law.

20. Ms. S.I. Shah, learned Counsel appearing on behalf of the C.W.C. submitted that although an affidavit-in-reply has not been filed in the present case, the C.W.C. had taken out a Civil Application bearing No. 2524 of 2005 seeking an order directing the petitioner to pay the outstanding warehousing charges. In the said Civil Application, relevant facts have been set out regarding warehousing charges payable on the goods imported by the petitioner. The Counsel for the C.W.C. submitted that the liability to pay the warehousing charges till the goods are assessed by the Customs authorities cannot be disputed by the petitioner. Even after the assessment, if the petitioner wanted to keep the goods in a nearby warehouse, it was obligatory on the part of the petitioner to pay the warehousing charges already incurred on the consignment. Therefore, no fault can be found with the C.W.C. in declining to waive the charges and permitting the shifting of the goods on payment of charges already incurred on the

consignment. As regards the shifting the containers to Kalamboli in stead of warehouse at Ambernath, Counsel for the C.W.C. submitted that at the time of admission of the petition, the C.W.C. had voluntarily offered to shift the goods to the warehouse at Ambernath. However, on the date on which the goods were shifted, sufficient space was not available at Ambernath and, therefore, the goods were shifted to the warehouse at Kalamboli. Accordingly, Counsel for the C.W.C. submitted that there can be no fault found with the C.W.C. in shifting the goods to a warehouse at Kalamboli. The Counsel for C.W.C. submitted that there is no merit in the contention of the petitioner that the C.W.C. must waive the warehousing charges and, accordingly, submitted that the petition is liable to be dismissed.

21. In rejoinder, Mr. Sorabjee submitted that the decisions relied upon by the learned Counsel for the Revenue do not lay down any proposition of law that, howsoever gross the delay, the Customs cannot be saddled with the liability to pay the warehousing charges. Therefore, in the present case in view of the serious lapse on the part of both the authorities, the petitioner must be absolved from payment of warehousing charges.

22. We have carefully considered the rival submissions. We have perused the records and also the authorities cited before us.

23. Liability to pay the warehousing charges is primarily on the importer who stores the goods in the warehouse. From the various decisions cited by the Counsel on both sides, it is evident that the liability to pay the warehousing charges may shift from the importer to some other person depending upon the facts of each case. In a given case, liability to pay the port charges may be shifted upon the Customs authorities if it is found that the said liability is attributable to the inaction or inordinate delay on the part of the Customs authorities in assessing the goods. However, there cannot be fixed period for finalising the assessment of the imported goods. Therefore, in a given case, whether the time taken for assessment is reasonable or not and whether the liability to pay charges has occassioned solely on account of the delay in assessment of the goods will have to be seen from the facts of each case.

24. In the present case, the petitioner had imported the goods even before the application of the petitioner for Project Import Certificate was processed by the Government of India. Having imported the goods in anticipation that the Project Import Certificate will be granted, it is not open to the petitioner to blame the Government for the delay in issuing the Project Import Certificate. Similarly, the time taken by the Customs authorities in registering the project under the Project Import Regulations in view of the clause contained in the certificate dated 23rd September, 1995 cannot be said to be unreasonable. The fact that the said certificate dated 23rd September, 1995 has been ultimately accepted by the assessing officer does not mean that the doubt entertained while registering the project was not bonafide. The very fact that the customs authorities have registered the project on the petitioner giving an undertaking to furnish a 22

fresh certificate within 60 days from the registration of the contract, clearly shows the reasonable approach of the Customs authorities. Therefore, the delay in registering the project cannot be attributed to the Customs authorities.

25. It is true that the bill of entry filed on 25th March, 1996 has been assessed belatedly on 9th June, 1997. However, from the facts on record, it can be seen that the Customs authorities are not solely responsible for the delay in assessment. In the first instance, the project itself was registered subject to the petitioner furnishing a fresh Chartered Eninggeer''s Certificate. Therefore, till the petitioner furnished a fresh certificate regarding the valuation, the question of assessing the goods at concessional rate did not arise at all. Secondly, the petitioner in spite of agreeing to furnish the certificate within 60 days of registration of the project failed to furnish the same within 60 days and the same was furnished belatedly on 30th July, 1996. Therefore, in the absence of the certificate, the delay in ordering examination of the goods cannot be said to be unjustified. Thirdly, the petitioner is guilty of importing goods in contravention of the Customs Act. In fact, by the order-in-original dated 9th June, 1997 it is held that the consumer goods and old and used spares imported by the petitioner valued at Rs. 1,98,000 are liable to be confiscated u/s 111(d) of the Customs Act 1962. The petitioner has not disputed the correctness of the said order. Therefore, the petitioner who is guilty of contravening the provisions of the Customs Act is not justified in accusing the department for the delay in assessment. Fourthly, the petitioner has not approached this Court expeditiously. If according to the petitioner, there was inordinate delay in assessing the goods, then the petitioner ought to have approached this Court expeditiously seeking appropriate orders. However, the petitioner who had imported the goods in January, 1996 was hoping to obtain an order for complete waiver of warehousing charges from the C.W.C. It is only after the C.W.C. declined to waive the warehousing charges, the petitioner has chosen to approach this Court. In these circumstances, in our opinion, the petitioner has not made a case for shifting the warehousing charges upon the Central Government.

26. Turning to the delay on the part of the C.W.C., we are totally dissatisfied with the manner in which the C.W.C. authorities have handled the present case. In the writ petition filed in the year 1997 serious allegations were made against the C.W.C. regarding the order passed on the waiver application filed by the petitioner, in gross violation of the principles of natural justice and the gross negligence on the part of the C.W.C. in deciding the application filed by the petitioner for shifting the goods from C.F.S., Dronagiri to a cheaper warehouse under the control of C.W.C. Even though the said writ petition was served seven years ago, till date the C.W.C. has not chosen to file its reply to the petition. This petition was taken up for hearing on 23rd June, 2005. Thereafter, the petition was again taken up for hearing on 14th October, 2005. Even on 14th October, 2005 when the petition was taken up for final hearing, the C.W.C. has not chosen to file its affidavit in reply to deny the allegations specifically made in the petition against the C.W.C. The Civil Application is filed by the C.W.C. to enforce the

demand and it does not deal with the charges levelled against the C.W.C. in the writ petition. There is total negligence on the part of the officials of the C.W.C., an instrumentality of the State in handling the present case and the conduct of the officers of the C.W.C. in taking the matter so casually is highly deplorable.

27. Even the impugned order dated 21st July, 1997 in rejecting the waiver application of the petitioner, has been passed casually and in gross violation of the principles of natural justice. Clause 59 of the General Terms and Conditions of Storage framed by the C.W.C. specifically empowers the C.W.C. to relax the terms in relation to storage charges. That discretionary power conferred upon the C.W.C. ought to have been exercised judiciously and in consonance with the principles of natural justice. However, by the impugned order dated 21st July, 1997, the C.W.C. has declined to exercise its discretionary power without assigning any reasons. Failure on the part of the C.W.C. to disclose the reasons for declining to exercise its discretionary power is in gross abuse of the process of law and the said order passed in contravention of the principles of natural justice, is liable to be quashed and set aside.

28. As the warehousing charges in respect of the consignment at C.F.S., Dronagiri were around Rs. 9,00,000 p.m., the petitioner, during the pendency of the waiver application was justified in seeking an order to shift the consignment to a cheaper warehouse under the control of the C.W.C. However, no decision was taken on the said application for a considerable time and after declining to waive the charges without assigning any reasons on 21st July, 1997, the C.W.C. authorities agreed to shift the goods from C.F.S., Dronagiri to any other warehouse, on the petitioner paying the warehousing charges already incurred on the goods. There is no explanation as to why the application for shifting the goods has been kept pending for considerably long period. Moreover, before this Court, the C.W.C. voluntarily agreed to shift the goods to their warehouse at Ambernath subject to the petitioner bearing the transportation charges. Accordingly, the petitioner paid the requisite charges. However, in breach of the Court''s order, the C.W.C. have chosen to shift the goods to their warehouse at Kalamboli instead of their warehouse at Ambernath as ordered by this Court. The explanation given by the C.W.C. that there was no space at Ambernath for storing the consignment of the petitioner cannot be accepted because in the first instance, it was the C.W.C. which had voluntarily represented to the Court that they are willing to shift the goods to their warehouse at Ambernath. Therefore, it was obligatory on the part of the C.W.C. to comply with the Court order. Even assuming that there was some difficulty, the C.W.C. ought have approached the Court and get the order modified. Instead of approaching this Court for modification of the order, the C.W.C. unilaterally and in breach of the order of this Court has stored the goods in their warehouse at Kalamboli where the charges are higher than the charges at Ambernath.

29. For all the aforesaid reasons and taking overall view of the matter, we are of the opinion that the interest of justice would be met by passing the following

order:

(a) The Customs authorities shall issue a detention certificate in respect of the goods imported by the petitioner for the period from the date of filing of bill of entry on 25th May, 1996 till the assessment of the goods on 9th June, 1997, within a period of two weeks from today.

(b) The order passed by the C.W.C. dated 21st July, 1997 declining to waive the warehousing charges is quashed and set aside and the C.W.C. is directed to dispose of the waiver application of the petitioner by passing a fresh reasoned order in accordance with law after giving an opportunity of hearing to the petitioner as expeditiously as possible and in any event within a period of six weeks from today.

(c) In the event of the C.W.C. declining to waive the warehouse charges, then the C.W.C. shall compute the warehousing charges payable on the consignment upto 22nd December, 1997 after taking into consideration the detention certificate to be issued by the Customs authorities.

(d) As regards the warehousing charges for the period from 23rd December, 1997 till clearance of the goods, the C.W.C. shall compute the same at the rate applicable to the goods stored at the warehouse at Ambernath and not at the rate prevailing at the warehouse at Kalamboli.

(e) It is made clear that in the event of the C.W.C. declining to waive the warehousing charges, the liability to pay the above charges as computed by the C.W.C. shall be on the petitioner and not on the Customs authorities.

30. Petition is disposed of, accordingly. Rule is made absolute in terms of this order with no order as to costs.