(2009) 09 MAD CK 0042

In the Madras High Court

Case No : Writ Petition No. 39229 of 2004

Austin Engineering Co. Ltd. APPELLANT

Vs

The Commissioner of Customs (Exports) and The Assistant Commissioner of Customs RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Customs Act, 1962 — Section 155, 2(26), 22, 45, 45(2)
Major Port Trusts Act, 1963 — Section 111, 53

Citation : (2010) 1 MLJ 1273

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Hari Radhakrishnan, for the Appellant; Thirumavalavan, for the Respondent

Judgement

V. Dhanapalan, J.—What is sought for in this Writ Petition is a mandamus, directing the respondents 1 and 2 to pay the demurrage charges

till the date of clearance of the goods covered under Bill of Entry No. 34129, dated 30.06.1997.

2. The petitioner company imported Bearing Seamless Tubes of SAE 52100 grade from Germany valued at USD 310/MT and filed Bill of Entry

No. 34129, dated 30.06.1997, before the respondents and sought for clearance of the said goods under Duty Exemption Entitlement Scheme

(DEES) with duty benefit and additional duty of 15% as per Customs Notification No. 79/95. But, the second respondent rejected the contention

of the petitioner company and passed Order-in-Original, dated 27.09.1997, by enhancing the value of the goods to USD 1800/MT.

3. Aggrieved over the said order, the petitioner preferred an appeal on

03.10.1997 before the Commissioner of Customs (Appeals), who, by his

Order-in-Appeal, dated 09.10.1997, set aside the order dated 27.09.1997 and held that the value determined by the petitioner under Rule 4 of

the Valuation Rules is correct.

4. Peeved at that, the Department preferred an appeal vide No. C941 of 97 before the Customs, Excise and Gold (Control) Appellate Tribunal,

Madras (in short, ""the Tribunal""). As the imported goods were lying idle and the petitioner company was not able to clear the goods in view of the

pendency and delay in disposal of the appeal before the Tribunal, the petitioner filed a Writ Petition No. 13914 of 1998 before this Court for

speedy disposal of the appeal, pursuant to which, this Court, by an order dated 09.09.1998 directed the Tribunal to dispose of the appeal within

six weeks from the date of receipt of the order. In compliance of the said order, the Tribunal remanded the matter to the second respondent for de

novo consideration.

5. Following the said remand, the second respondent passed the Order-in-Original, dated 10.12.1998, confirming the value of consignment at

USD 1800/MT at the merit rate of duty applicable to the imported goods. The petitioner again preferred an appeal to the Commissioner

(Appeals), who, by his order dated 04.03.1999, further remanded the matter to the second respondent for fresh consideration in accordance with

law, directing the second respondent to specifically examine with reference to the submissions made by the petitioner regarding the quality of the

goods and then enter a finding for arriving at the valuation. Thereafter, the second respondent again adjudicated the matter by giving a personal

hearing to the petitioner and passed the Order-in-Original No. 557/1999, dated 22.08.1999, and accepted the transaction value declared by the

petitioner company as per the Bill of Entry dated 30.06.1997, under Rule 4 of the Valuation Rules.

6. In pursuance of the order passed by this Court in W.P. No. 19632 of 1999, the first respondent issued a Detention Certificate, dated

13.12.2004, for the period from 30.06.1997 to 27.02.2004 and the validity of the certificate was further extended from 30.06.1997 to

04.08.2004.

7. After obtaining the Detention Certificate from the first respondent, the

petitioner approached the Traffic Manager, Chennai Port Trust, to waive

the demurrage charges and release the goods. However, the said authority, vide his letter dated 02.11.2004, informed the petitioner, that remission

of demurrage under Detention Certificate was available only on slab basis for specific period of maximum of 90 days as per the scale of rates of

Chennai Port Trust and, accordingly demanded demurrage charges of Rs. 88,98,989.50 till 21.10.2004. Under the said circumstances, the

petitioner has filed this Writ Petition.

8. Respondents have filed a counter, stating the factual position, as stated above, and contending inter alia as follows:

8.1. The petitioner company had imported 82,293 Kgs. of Bearing Seamless Tubes and filed a Bill of Entry No. 34129 on 30.06.1997 with a

declared value of DM 42134 C&F. Originally, the petitioner had claimed assessment under Duty Exemption Entitlement Certificate, which was

rejected by the Department on the ground that nexus was not established between export and import products. The petitioner later agreed to clear

the goods on merits and on payment of duty. The Bill of Entry was assessed after enhancement of the declared value of USD 310/MT to USD

1800/MT, which was the record value of identical goods imported from Japan and accordingly an order was passed by the second respondent.

The goods which arrived by the Vessel M.V. Attica, Rotation No. 592/97 Line No. 6, are still available in the Port without being cleared by the

petitioner. The petitioner, by a letter dated 29.02.2004, has requested the Assistant Commissioner Group 7 to direct the Proper Officer to modify

the working sheet and issue the order for the amount of duty together with extension in remission period in demurrage after 27.02.2004 and up to

date of communication of order by providing some days for early clearance of long delayed consignment. The petitioner, by his letter dated

15.03.2004, enclosing a letter of representation made to Chairman, Central Board of Excise and Customs, New Delhi, requested to recommend

to Board for waiver of interest. Again on 15.05.2004, the petitioner wrote another letter, requesting for reassessment of Bill of Entry per the final

de novo order in Original No. 557/1999, dated 22.08.1999, and also stated that the original Bill of Entry was not with them since the same was

not returned to them after assessment.

8.2 In consideration of the petitioner''s request, the second respondent has reconstructed the Bill of Entry and reassessed the same on 14.06.2004,

accepting the declared value and finally arrived at the duty at Rs. 4,77,264.48 and communicated the same to the petitioner vide letter dated

24.06.2004, requesting them to collect the reassessed Bill of Entry. The petitioner, by letter dated 28.06.2004, has requested for abatement in

duty for deterioration of goods in Chennai Port for seen years. The petitioner also stated that there may be a loss of 30% in weight and therefore

requested Deputy Commissioner Group 7 to reassess the goods allowing abatement u/s 22 of Customs Act on urgent basis, which was rejected

by the Department. The goods are lying from 30.06.1997. The petitioner is liable to pay interest from 24.06.2004 till the payment of duty. The

petitioner has paid duty and interest of Rs. 4,84,522 on 28.07.2004. The petitioner requested for remission of duty u/s 22 of the Act for less of

approximately 30% by weight on the ground that the goods deteriorated after seven years of storage, which was rejected by the department. After

issuance of an extended detention certificate by the Assistant Commissioner, Group 7, up to 04.08.2004, the petitioner approached the Traffic

Manager, Chennai Port Trust, and requested for waiver of demurrage charges, which was also rejected by the said authority, which resulted in

filing of this Writ Petition.

8.3. Since the petitioner has challenged the enhancement of value for assessment of customs duty and he did not agree to it, the subject issue was

gone through various appellate legal courses, which are available both to the petitioner and to the Department under the provisions of the Customs

Act. Therefore, the allegation levelled by the petitioner against the second respondent is not tenable in law. The mater relating to condonation of

demurrage charges is purely dealt with by the Chennai Port Trust, with which the respondents have no concern. The allegation that the delay was

caused by the second respondent and that led to the liability of the petitioner to pay demurrage charges to Chennai Port Trust is absolutely not

tenable. The delay is mainly attributable to the petitioner and also the delays, which are caused at different appellate stages, are inevitable in this

case, as the petitioner and the Department had chosen to seek the remedies provided under the Act. Therefore, the Department is not liable for payment of demurrage on behalf of the petitioner, who is primarily responsible for all the delays, on account of which demurrage charges have

mounted up to Rs. 88,98,989/-. As such, this Writ Petition is liable to be dismissed.

9. Learned Counsel for the petitioner would submit that the respondents have caused unreasonable delay in adjudicating the matter and taken

about six years to finalise the issue and, therefore, they alone are responsible to bear the demurrage charges. He has cited the following decisions:

(i) Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others, :

2. ...According to the owner, under the licence, thus issued by the Controller of Imports and Exports, entitling import of raw materials without

payment of duty, the Customs Authorities committed error in proceeding with the confiscation proceedings and ordering confiscation as well as

levying penalty. The Customs Authorities as well as the Controller of Imports and Exports had been arrayed as party-respondents in the writ

petition. Both of them as well as the Union of India resisted the claim of the owner, who had imported the goods in question. The High Court

disposed of the writ petition by the judgment dated 9-9-1994, quashing the order of the Additional Collector of Customs dated 10-8-1990 as well

as the order of the Customs, Excise and Gold (Control) Appellate Tribunal dated 21-3-1991 and directed the Collector of Customs to release the

goods forthwith. The High Court also further held that since the action of the Customs Authorities is illegal, the goods in question will have to be

released to the owner without payment of any detention or demurrage charges by the owner. Needless to mention, Shipping Corporation of India,

the appellant in the present appeal, which was the carrier and which under the Bill of Lading had a lien over the goods, until the dues are paid, had

not been made a party to the aforesaid writ petition. At this stage it may also be noticed that during pendency of the writ petition in the High Court,

an interim order had been passed, entitling the owner to take release of the goods on payment of Rs. 5 lakhs to the Customs Authorities and a

bank guarantee of Rs. 5 lakhs but the owner had not taken advantage of the said interim order and the goods continued to remain in the custody of

the present appellant and demurrage charges went on accruing. The order of the Delhi High Court was assailed in this Court by filing a SLP by the

Customs Authorities but that SLP however stood dismissed on 13-11-1995 in SLP No. 5671 of 1995. The owner of the goods having failed in

his attempt to get the goods released, notwithstanding the orders of the High Court in CWP No. 1604 of 1991, filed an application for initiating a

contempt proceeding, which was registered as CCP No. 120 of 1995. The High Court however came to hold that the authorities cannot be held

to be guilty of disobeying the orders of the Court and accordingly, dismissed the contempt petition. While dismissing the contempt petition, the

learned Judge, granted liberty to the owner to move the Division Bench of the High Court for appropriate directions regarding payment of

demurrage/detention charges. Pursuant to the aforesaid observations in the contempt proceedings, an application being filed by the owner, the

same was registered as CM No. 4829 of 1996. That application was disposed of by the Division Bench of the Delhi High Court by order dated

18-1-1999. The Division Bench, while disposing of the petition, came to hold that the entitlement of the carrier of the goods to charge demurrage

charges and if so, whether the Customs Authorities would be liable to pay the same or not is not required to be answered and is a matter which

should be sorted out between those two Corporations and the Customs Authorities. But so far as the owner of the goods is concerned, he having

been absolved of any liability to pay the demurrage charges by virtue of the judgment of the Delhi High Court dated 9-9-1994 in CWP No. 1604

of 1991, he would be entitled to get the goods released without payment of the detention and demurrage charges.

8. ...On account of non-release, the imported goods incurred heavy demurrage charges but the Customs Authorities themselves gave an

undertaking before the High Court that in the event the goods are found to be synthetic waste, then the Revenue itself would bear the entire

demurrage and container charges. Further the Chief Commissioner of Customs, later had ordered unconditional release of the goods and yet the

goods had not been released. It is under these circumstances and in view of the specific undertaking given by the Customs Authorities, this Court

held that from the date of detention of the goods till the Customs Authorities intimated the importer, the importer would not be required to pay the

demurrage charges. But in that case even subsequent to the orders of the Customs Authorities on a suit being filed by one of the partners of the importer firm, an order of injunction was issued and, therefore it was held that for that period, the importer would be liable for paying the

demurrage and container charges. The judgment of this Court in Sanjeev Woollen Mills1 therefore, was in relation to the peculiar facts and

circumstances of the case and the Court had clearly observed that the order in question is meant to do justice to the importer, looking to the totality

of the circumstances and the conduct of the Customs Authorities.... In the case in hand, as has already been stated earlier, the earlier judgment of

the Delhi High Court dated 9-9-1994 in CWP No. 1604 of 1991 has become final, which entitles the importer to get the goods released without

payment of the detention and demurrage charges. In the contextual facts, notwithstanding the judgment of the High Court, the goods not having

been released, the impugned order and direction dated 18-1-1999, cannot be held to be infirm in any manner. In the absence of any provision in

the Customs Act, entitling the Customs Officer to prohibit the owner of the space, where the imported goods have been stored from levying the

demurrage charges, levy of demurrage charges for non-release of the goods is in accordance with the terms and conditions of the contract and as

such would be a valid levy. The conclusion of the High Court to the effect that the detention of the goods by the Customs Authorities was illegal

and such illegal detention prevented the importer from releasing the goods, 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. Section 45(2)(b) of the Customs

Act cannot be construed to have clothed the Customs Authorities with the necessary powers, so as to absolve them of the liability of paying the

demurrage charges. In the aforesaid premises, we see no infirmity with the directions given by the Delhi High Court on 18-1-1999. The goods in

question, having already been directed to be released, without the payment of the demurrage charges, the importer must have got the goods

released. Having regard to the fact situation of the present case, it would be meet and proper for us to direct Shipping Corporation and Container

Corporation, if an application is filed by the Customs Authorities to waive the demurrage charges. The appeal is disposed of accordingly.

(ii) Donald and Macarthy (P) Ltd. Vs. Union of India (UOI), :

63. Keeping in mind the various decisions cited on behalf of the parties, particularly the decision in the International Airports Authority Case and in

the case of Padam Kumar Agarwalla (supra) and the guidelines issued by the Central Government u/s 111 of the Major Port Trust Act, 1963, I

am of the view that, although, the importer/consignee cannot be absolved of his liability to pay the demurrage and port charges, actual burden of

payment of such dues should be shifted to the person or authority responsible for the delay in lifting of the goods.

(iii) Sujana Steels Ltd. Vs. Commr. of Cus. and C. Ex. (Appeals), Hyderabad, :

13. In other words, the Central Warehousing Corporation authorities cannot be denied their statutory duties on account of demurrage and other

charges. What has to be seen in the facts and circumstances of this particular case is whether the liability of the importer/petitioner company to pay

such duties is to be shifted to the Customs authorities as argued by the learned Counsel for the petitioner, since the petitioner company was not

responsible for detention of the goods in question as held by the CEGAT in its order dated 29-6-1999 and as reflected in the Detention Certificate

issued by the third respondent dated 5-10-1999. The Supreme Court in Padam Kumar Agarwalla v. The Additional Collector of Customs,

Calcutta AIR 1972 S.C.542 while quashing the order of confiscation passed by the Customs authorities opined that there would have been no

difficulty in directing release of the goods had the same been in the custody of the Customs authorities. Since the goods were in the possession of

the Port Commissioners who had a lien over the goods for rent and other charges, the Supreme Court was pleased to observe that someone

would have to pay the port charges before the goods could be removed and since the importer was not to blame for the delay in removal of the

goods which had been illegally detained by the Customs authorities, it would be only fair and just for the Customs authorities, who were

responsible for the situation, to bear the burden for paying port charges. The Customs authorities having accepted the order of the CEGAT dated

29-6-1999 and having issued Certificate for clearance of the goods dated 5-10-1999 should own the responsibility of paying detention and

storage charges for the goods from 16-10-1996. It will be totally unjust and unreasonable on the part of the Customs authorities to contend : ""Let the petitioner Company pay storage and demurrage charges first and then they may initiate legal action against the Customs authorities seeking

reimbursement of those charges, if they are so entitled and advised."" Customs authorities are statutory/public authorities and the reasonableness of

their actions is required to be tested on the touchstone of postulates of reasonableness and non-arbitrariness flowing from Article 14 of the

Constitution of India. Therefore, the stand taken by the learned Senior Standing Counsel for the Central Government appearing for the

respondents 1 to 3 Customs authorities in that regard is not tenable.

15. Keepig in mind the various decisions of the Supreme Court referred to above, particularly the decisions of the Supreme Court in the case of

International Airports Authority (supra) and in the case of Padam Kumar Agarwalla (supra) we are of the considered opinion that though the

petitioner company being the importer cannot be absolved of its liability to pay the storage and demurrage charges, the burden of paying such dues

should be shifted to the Customs authorities who are found to be responsible for the delay in lifting of the goods. Such a course of action is

appropriate and necessary in order to respect the postulates of reasonableness and non-arbitrariness flowing from Article 14 of the Constitution.

16. We, accordingly, allow the writ petition. A direction shall issue to the respondents 1 to 3 Customs authorities to pay the demurrage and other

dues to the fourth respondent in respect of the goods in question within 15 days from the date of receipt of a copy of this order, and, therefore,

permit the petitioner Company to lift the goods subject to it performing other formalities, if any. The fourth respondent is directed to make over the

possession of the goods to the petitioner Company immediately upon receipt of payment of dues from the Customs authorities...

(iv) Agrim Sampada Ltd. v. Union of India 2004 (168) E.L.T.15 (Del.):

The goods were originally imported by Shiv Ganga Organic Chemicals Ltd. on cash against delivery basis. These goods landed in India in

February,2001. The import of these goods was not contrary to law. However, Shiv Ganga Organic Chemicals Ltd. abandoned the goods and did

not make any payment for the same. Clearly, the title in the goods in such a situation remained with the foreign supplier i.e. Allied Deals, Singapore,

and it was well within its rights to enter into the transaction with the petitioner.

Since the goods were transferred to the petitioner and the petitioner

held the document of title in respect thereof the petitioner was clearly within the definition of ''importer'' as provided u/s 2(26) and was, therefore,

entitled to present the Bill of Entry and to have the goods cleared for home consumption.

(v) Union of India and others Vs. Kamlakshi Finance Corporation Ltd., :

8. ...utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need

for giving effect to the orders of the higher appellate authorities which are binding on them.

(vi) Nanavati Speciality Chemicals Pvt.Ltd. v. Union of India and Ors. 2008 (11) BOMLR 2831:

Once the matter is admitted under Article 226 in support of contractual obligations and pending for long period in High Court, the Court can

consider undisputed portion of facts under Article 226.

10. On the other hand, learned Counsel for the Department would submit that the decision cited by the learned Counsel for the petitioner in

Shipping Corporation of India''s case is applicable to the goods, which are wrongly detained by the customs authorities, which is not the case here,

and hence the said decision is not applicable to the case on hand. He relied upon the following decisions:

(i) Vidyt Metallics Ltd. v. Board of Trustees of the Port of Mumbai 2006 (206) E.L.T. 131 (Bom.) :

15...There is no case of mala fide pleaded in the petition nor the same is argued before me. Thus the provisions of Section 155 of the Act will

apply with full force. Though the view taken by the various Division Benches is not in conformity with the view taken by this Court, however, in the

light of the fact that the judgment of the Division Bench of this Court which is holding the field is relevant and binding upon me, it is not possible for

me to accept the contention of the petitioners by relying upon the various judgments of the various High Courts to direct the Customs Authorities to

pay demurrage and wharfage charges. The reliance placed on the judgment of the Apex Court in the case of Padam Kumar Agarwalla (supra) is

misconceived. In fact the judgment makes it very clear that the demurrage and wharfage charges are to be paid before taking delivery of the goods and in fact the Court has held that in a writ petition no such relief can be granted and the same is left to the Customs Authorities for taking

appropriate steps or to file further litigation. The judgment is not an authority on the proposition of law that in cases where the goods are detained

by the authorities and such detention having been set aside by the Courts or Tribunals then in every such case the Court should grant a relief of

making payment of demurrage charges by the Customs Authorities. In fact the judgment holds that the writ jurisdiction is not an appropriate

remedy for granting such relief. In the light of the aforesaid position of law, it is also not equally possible to pass any order directing the Authorities

to make payment of any demurrage or wharfage charges to the Port Trust Authorities....

(ii) Narayan International Vs. Union of India (UOI) and Others, :

6. ...the IAAI who is an independent statutory corporation although is an approved custodian u/s 45 of the Customs Act, exercises their

independent power and jurisdiction in demanding payment of the demurrage charges which a party incurs for various reasons. Regulations framed

also cast a duty upon the IAAI to charge demurrage for the period of detention of the goods and, therefore, in our opinion demurrage charges shall

be payable and at this stage in the appellate proceedings we are not required to ascertain as to whether the Customs Department was at fault or

not....

(iii) Sabari Exim Pvt. Ltd. v. Commissioner of Customs, Chennai 2006 (199) E.L.T.188 (Tri.-Chennai) :

4. ...It was on the basis of these test reports that the Customs authorities proceeded to allow clearance of the goods. It appears that there is a total

delay of 76 days in the release of the goods, with reference to the date of filing of the Bill of Entry. I am unable to attribute this delay to any fault of

the Customs authorities inasmuch as a part of the delay was on account of samples of the goods having to be tested by NML in accordance with a

lawful and well established procedure and the rest of the delay was on account of re-test of samples by two other agencies at the instance of the

importers themselves. On these facts, it is not possible to hold that the Customs authorities occasioned demurrage. Hence no liability can be

fastened on the Department to compensate the appellant for the demurrage.

Admittedly, the demurrage charges were paid to the Port Trust (said

to be the custodian of the goods during the relevant period) and it is up to the Port Trust to consider any application of the importer for refund of

such charges. The refund claim filed with the Customs Department was only liable to be rejected as not maintainable. It is noticed that the lower

authorities rejected the claim as time-barred as if they would have allowed the claim, had it been within the period of 6 months from the date of

payment of demurrage charges. Obviously, the authorities have acted under a grossly erroneous perception, but, woefully enough, the Department

has not chosen to challenge their orders. This, however, would not entitle the importer to get the benefit, which is not due to them from the

Customs Department.

(iv) Apollo Paper Mills Ltd. v. Union of India 2006 (206) E.L.T.106 (Bom.):

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 September

23,1995 cannot be said to be unreasonable. The fact that the said certificate dated September 23,1995 has been ultimately accepted by the

assessing officer does not mean that the doubt entertained while registering the project was not bona fide. The very fact that the Customs

authorities have registered the project on the petitioner giving an undertaking to furnish a 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.

29 (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.

(v) Modern Rubber Industries Vs. Union of India (UOI), :

10. The narration of the above facts would clearly show that the legal battle from original authority to appellate authority and from appellate

authority to the original authority went on for almost five years, though, ultimately, the petitioner was successful in canvassing his contention. This

delay of about five years caused in the litigation giving rise to the delayed adjudication proceeding; which, ultimately, resulted in mounting heavy

warehousing charges of the CWC, compelled the petitioner to invoke writ jurisdiction of this Court under Article 226 of the Constitution of India,

to seek declaration that the Customs Department has by way of prolonged and legally unsustainable adjudication proceedings prevented release of

the goods of the petitioner for over five years since passing of the final order by the CEGAT for no fault of the petitioner, as such the Customs

Department should be directed to bear the warehousing charges payable to CWC.

16. The Apex Court in the case of Board of Trustees of the Port of Bombay Vs. Indian Goods Supplying Co., , has held that even though the

delay in clearing the goods was not due to negligence of the importer for which he could be held responsible, yet he cannot avoid the payment of

demurrage as the rates imposed are under the authority of law, the validity of which cannot be questioned. The Apex Court has reiterated the

above proposition of law in the later decisions in the case of International Airports Authority of India and Others Vs. Grand Slam International and

Others, and in the case of Trustees of Port of Madras Vs. Nagavedu Lungi and Co. and Others, . In this view of the matter, we are of the opinion

that the delay in clearance of the goods cannot be attributed to the Customs Department and the petitioner cannot be absolved of their obligation

to pay the demurrage charges payable on the goods imported by the petitioner.

(vi) Padam Kumar Agarwalla v. Additional Collector of Customs, Calcutta 2004 (177) E.L.T.18 (S.C.):

14. Now, coming to the question of issuing a writ of mandamus directing the respondents or any of them to deliver possession of the seized dal, we

would have found no difficulty in issuing the mandamus asked for if the seized goods had been in possession of the customs authorities. But,

admittedly, those goods are in possession of the Port Commissioners. In law, they have a lien over the goods for the rent and other charges due to

them. Someone has to pay those charges before taking possession of the goods.

Consequently we cannot issue a writ of mandamus to the Port

Commissioners to deliver the goods in question nor can we issue a writ to the other respondents to deliver possession of those goods as they are

not in possession of the same. This is undoubtedly a hard case. The appellant has been unlawfully deprived of the possession of his valuable goods

because of the illegal action of the customs authorities and thereby he could not fulfil the terms of his contract with the Cairo firm as a result of

which he must have suffered considerable loss. In addition, he cannot now take possession of the goods which were seized from him without

paying the charges due to the Port Commissioners. We are given to understand that the charges due to the Port Commissioners amount to more

than the value of the goods themselves. It is only fair and just that the customs authorities who are responsible for this situation should bear the

burden; but in this writ petition we cannot give any relief in that regard. We can only leave the matter to the good sense of the customs authorities

to take the appropriate steps and avoid possible further litigation.

(vii) The Commissioner of Customs (Sea Port Import) and The Additional Commissioner of Customs Vs. Unistar World Trade, :

13. ""Writ of Mandamus"" lies on the principle ""request and denial"", which means, there should be a request by an individual and subsequent denial

by the statutory authorities. In the present case, only one element, namely, ""request"" exists and the other, namely, ""denial"" absents. To put it

differently, a request was made by the respondent and the same was under consideration by the appellants, but, there was no denial or rejection of

the said request by the appellants. So, when the said request made by the respondent was under consideration by the authorities, it was unfair for

the respondent to approach the writ court. At the same time, it was also not the case of the respondent that there was an inordinate delay in

considering his request by the appellants. In such circumstances, the learned single Judge ought to have primarily looked into the maintainability of

the Writ Petition itself. Instead, he ordered release of the goods, which, in our view, is not justiciable.

11. I have heard the learned Counsel for the parties and also gone through the records, coupled with the authorities.

12. The whole controversy in this case arose at the time when the petitioner

sought for assessment of the imported goods viz., Bearing Seamless

Tubes under Duty Exemption Entitlement Certificate (DEEC), which was rejected by the respondents/Department on the ground that nexus was

not established between export and import products. Later, the petitioner agreed to clear the goods on merit and on payment of duty. When the

petitioner presented the Bill of Entry, dated 30.06.1997, to the respondents, declaring the value of the said goods at USD 310/MT, the said value

was enhanced to USD 1800/MT by the second respondent.

13. After many trials and tribulations, the value of the goods was finalised at USD 310/MT by the second respondent vide his Order-in-Original

No. 557/99, dated 22.08.1999, accepting the declared value under Rule 4 of the Valuation Rules, 1998. The said order has attained finality, as

the same has not been challenged. Therefore, as per the said order, the petitioner has to clear the goods on merit by paying appropriate duty.

Pursuant to the said order, the petitioner, vide his representations dated 27.08.1999 and 22.09.1999, requested the respondents to issue

Detention Certificate for waiver of demurrage. Since the said representations remained unattended to, the petitioner filed W.P. No. 19632 of

1999, praying for a direction to the respondents to dispose of the representations, whereupon this Court, on 17.12.2003, directed the respondents

to consider the representations of the petitioner and pass appropriate orders. In compliance to the said order, the first respondent issued a

Detention Certificate, dated 13.02.2004, for the period from 30.06.1997 to 27.02.2004 and, by proceedings dated 28.07.2004, the said period

was extended from 30.06.1997 to 04.08.2004.

14. Pursuant to the issuance of Detention Certificate by the Department, the petitioner submitted a letter, dated 21.10.2004, to the Traffic

Manager, Chennai Port Trust, for remission of demurrage, whereupon, the Traffic Manager, by his letter dated 02.11.2004, informed the

petitioner that as per the Trust''s Scale of Rates, the remission of demurrage under the Detention Certificate was available only on slab basis for a

specific period i.e., to a maximum limit of 90 days. Accordingly, remission of demurrage amount had been calculated for 90 days on slab basis and

the same deducted from the total accrued charges. By the said letter, the Traffic Manager also informed that the balance demurrage charges payable by the petitioner till 21.10.2004 were Rs. 88,98,989.50 and, therefore, the petitioner was advised to clear the cargo immediately in order

to avoid future accumulation of demurrage charges.

15. Admittedly, the said order, dated 02.11.2004, passed by the Traffic Manager, Chennai Port, has not been challenged by the petitioner and,

therefore, it has become final. At the same time, the petitioner did not also make any request to the Customs authorities for payment of demurrage

charges. In other words, without challenging the order passed by the Traffic Manager and without bringing the matter to the notice of the Customs

authorities, the petitioner has directly approached this Court by filing this Writ Petition, for a direction to the Customs authorities to pay the

demurrage charges till the clearance of the goods covered under the Bill of Entry No. 34129, dated 30.06.1997. What was all sought for by the

petitioner before the Customs authorities was the Detention Certificate, which was issued, pursuant to the direction of this Court.

16. It is a well settled proposition of law that ''writ of mandamus'' lies on the principle ""request and denial"", which means, there should be a request

by an individual and subsequent denial by the statutory authorities. In this case, though a request was made by the petitioner to the Port authorities

and the same was rejected, the petitioner had not challenged the said order of rejection. Instead, he filed this writ petition, seeking for a direction to

the Customs authorities, which, strictly speaking, is not maintainable.

17. However, since the respondents have stated in the Detention Certificate that the detention is due to no fault or negligence on the part of the

petitioner, in order to give equitable remedy, I feel, the respondents have to be mulcted with liability for the period of detention.

18. Though Section 155 of the Customs Act, 1962, provides protection of action taken under the Act i.e., no suit, prosecution or other legal

proceedings shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended

to be done in good faith, in pursuance of this Act or the rules or regulations, in view of the admission of the Customs authorities in the Detention

Certificate that the detention of the goods was due to no fault of the petitioner/ importer, the Department cannot escape the liability.

19. A perusal of the Detention certificate, dated 13.02.2004, issued by the first

respondent, speaks to the effect that ""the detention is due to no

fault or negligence on the part of the importers and other than the ordinary process of appraisement."" From this, it is clear that the detention of the

goods is not due to any fault or negligence of the petitioner and it is only due to the process of the respondents. This is a crucial factor, which goes

in favour of the petitioner.

20. When the Detention Certificate issued for the period from 30.06.1997 to 04.08.2004 is categorical to the effect that the detention of goods is

due to no fault of the petitioner, it is not fair on the part of the authorities to throw the burden of payment of duty on the petitioner, for no fault of

him. At the same time, the petitioner cannot escape the liability from 05.08.2004 i.e., after the expiry of detention period, till the date of clearance

of the goods.

21. Section 53 of the Major Port Trusts Act, 1963, provides exemption from, and remission of, rates or charges. Under this Section, the 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.

22. The Supreme Court, in Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others, , has held that when the goods are wrongly

detained by the Customs authorities, they are liable to pay the demurrage charges to the Port Trust authorities and, thereafter, the Port Trust

authorities may consider for waiver of demurrage charges, if the Department makes an application.

23. In this case, as the fault, as admitted, is on the Department for wrongly detaining the goods from 30.06.1997 to 04.08.2004, in my considered

opinion, the Department alone has to pay the demurrage charges for the said period. For the rest of the period i.e., from 05.08.2004 till the date of

clearance of the goods, the petitioner is liable.

24. For the foregoing reasons and the conclusion arrived at, the relief sought for in this Writ Petition cannot be granted in its entirety. The claim of

the petitioner in respect of the demurrage charges is allowed only for the period from 30.06.1997 to 04.08.2004. As such, the petitioner is directed to pay the demurrage charges for the rest of the period i.e., from 05.08.2004 till the date of clearance of the goods. As already stated

above, the Department shall pay the demurrage charges for the period of detention of the goods i.e., from 30.06.1997 to 04.08.2004. On

realisation of the entire dues, the Port authorities shall hand over the goods to the petitioner. Thereafter, the Board may consider for refund/waiver

of demurrage charges u/s 53 of The Major Port Trusts Act, if the Department makes any application therefore. It is also made clear that if the

petitioner has already made any payment, the same shall be adjusted towards the amount due from him.

25. Writ Petition is disposed of in the above terms. No costs.

