
(1988) 04 CAL CK 0009
In the Calcutta High Court
Case No : C.R. 815 to 819 (W) of 1980

Bhailal Mukherjee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-04-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 116

Citation : (1989) 22 ECC 61 : (1992) 41 ECR 641 : (1988) 35 ELT 629

Hon'ble Judges : Sudhir Ranjan Roy, J

Bench : Single Bench

Advocate : R.N. Das, for the Appellant; Uma Sanyal, for the Respondent

Judgement

Sudhir Ranjan Roy, J.—These five Civil Rules were taken up for analogous hearing and disposal since they involve practically common questions of fact and law and this common judgment will govern all the said Civil Rules. It would be convenient to state the relevant facts only relating to C.R. No. 815(W) of 1980.

2. The petitioner No. 1 is a Steamer Agent and the petitioner No. 2 is the Chief Accountant of the petitioner No. 1 Company and holder of the Power of Attorney on its behalf.

3. The petitioner No. 1 acted as a Steamer Agent for M/s. Shinwa Katun Kaisha Ltd. Tokyo, representing their vessel M.V. Golden Wistaria.

4. The said vessel carrying Ammonium Sulphate and Urea arrived at the Port of Calcutta on September 23, 1977.

5. In the matter of unloading of the ships of the cargo, M/s. J.B. Boda, Marina & General Survey Agencies (P) Ltd. (in short, the Surveyor) was appointed to arrange off hire Survey of the said vessel (Annexure "C").

6. M/s. Asian Agency worked as clearing agents for clearance of the cargo (Annexure "C/I")-

7. The Manifested cargo which the concerned ship carried comprised 24,000 bags of Urea and 1,12,427 bags of Ammonium Sulphate.

8. So far the Urea is concerned, there was neither any short nor excess landing as per report of the Surveyor dated 30-9-1977 (Annexure "E"). However, there was short landing to the extent of 110 bags of Ammonium Sulphate inasmuch as out of the 1,12,427 bags, in which 1,12,317 bags were delivered (Vide Survey report Annexure "F" dated 19-11-1977). According to the said Survey report, the contents of 110 bags of Ammonium Sulphate were filled into 115 local gunny bags and were declared as Sweepings. The said bags were lying in Shed awaiting clearance by the claiming agent.

9. The petitioners were served with a purported Outturn Report issued by the Calcutta Port Trust showing short landing to the extent of 110 bags of Ammonium Sulphate against Line No. 13. In the said Outturn Report, the contents of the said 115 bags of Sweepings were stated to be Urea instead of Ammonium Sulphate (Annexure "G").

10. Due to the said alleged shortlanding of 110 bags of Ammonium Sulphate the Assistant Collector of Customs, the respondent No. 3 here, issued a purported show-cause notice dated 29-5-1978 (Annexure "N").

11. The petitioner replied to the said show-cause notice, on 5-6-1978, a copy of which is annexed to the writ petition and marked Annexure "O".

12. According to the petitioners, the contents of 110 bags of Ammonium Sulphate were filled in 115 local gunny bags and the said quantity of Ammonium Sulphate Sweepings were to be adjusted against 110 bags of Ammonium Sulphate alleged to have been short landed.

13. However, the Customs authorities on an alleged finding of the shortlanding of cargoes have sought to invoke jurisdiction u/s 116 of the Customs Act, 1962, which according to the petitioners is not only unwarranted in view of the facts and circumstances of the case, but was also not in accordance with the requirements of the provision of Section 116 of the Customs Act, 1962.

14. However, having failed to obtain any redress from the concerned authorities, the petitioners have come up before this Court under Article 226 of the Constitution praying for the issuance of a writ in the nature of Mandamus directing the respondents to forbear from giving any effect or further effect to the purported show-cause notice and for certain other consequential reliefs.

15. The respondent Nos. 1, 2 and 3, namely, the Customs authorities in their affidavit-in-opposition, have controverted all the material averments contained in the writ petition.

16. According to the said respondents, the relevant Outturn Report issued by the Calcutta Port Trust having shown shortlanding of 110 bags of Ammonium Sulphate, the Customs authorities had no other alternative but to take action

against the petitioners u/s 116 of the Customs Act, 1962 and, consequently, the petitioners are not entitled to the reliefs prayed for.

17. The Port Trust authorities were represented by Mr. Majumdar, the learned Counsel, but no affidavit-in-opposition was filed by the said authorities. Mr. Majumdar, however, controverted all the material averments made by the petitioners in the writ petition.

18. Now, indisputably the concerned ship arrived at the Port of the Calcutta with the manifested cargo of 24,000 bags of Urea and 1,12,427 bags of Ammonium Sulphate.

19. The report of the Surveyor (Annexure "E") shows that all the 24,000 bags of Urea were duly discharged from the ship along with four bundles containing 240 spare empty bags and there was neither any short nor excess landing so far Urea is concerned.

20. As regards to Ammonium Sulphate, the Survey report (Annexure "F") shows that out of the manifested quantity of 1,12,427 bags, 1,12,317 bags were delivered in sound condition. Along with the said bags 1125 empty spare bags were delivered. Significantly, the Survey report does not indicate that out of these 1125 bags, 110 bags previously contained Ammonium Sulphate, which somehow was drained out of the said bags. As a matter of fact, 1125 have been described as "empty spare bags". Strangely, however, these 1125 bags were added to 1,12,317 bags which were delivered in sound condition, to make the figure 1,13,442 and the said 1125 bags were again added to the manifested quantity of 1,12,427 bags to make the figure 1,13,542 and subtracting 1,13,442 from 1,13,542, the figure of 110 was arrived at. Significantly, this procedure was not adopted in the case of Urea though along with the 24,000 bags of urea, 240 spare empty bags were discharged from the ship.

21. The Survey report (Annexure "F") further shows that the contents of 110 bags were filled into 115 local gunny bags and were declared as Sweepings and those 115 bags were lying in Shed awaiting clearance.

22. In my judgment, however, the figure of 110 arrived at by the Surveyor by the addition of 1125 empty spare bags without disclosing that the said 110 bags previously contained Ammonium Sulphate, is ex-facie not acceptable. Similarly, the Note added to the Surveyors report that the contents of 110 bags were filled into 115 local gunny bags and were declared as Sweepings, is also not acceptable on the basis of the calculation arrived at by the Surveyor.

23. The fact remains that out of the manifested quantity of 1,12,427 bags of Ammonium Sulphate, only 1,12,317 bags were discharged from the ship indicating thereby a clear shortlanding to the extent of 110 bags. Along with the same 1125 bags were delivered as empty spare bags. The word "spare" clearly indicates that the said 1125 bags were supplied in addition to the total number of 1,12,427 bags and were empty from the very beginning.

24. It is not at all discernible how, without any indication that the contents of 110 bags were somehow drained out, it could be said that the contents of 110 bags were filled into 115 local gunny bags declared as Sweepings.

25. It is apparently clear that 1125 spare empty bags were supplied with the object of using the same in case some of the bags containing Ammonium Sulphate gave way and their contents were spilled out or drained out. Those empty bags could not be added to the consigned bags containing Ammonium Sulphate to arrive at a figure.

26. Thus, the Survey report (Annexure "F") makes it clear that out of the manifested bags of Ammonium Sulphate, 110 bags were delivered short and the said shortlanding was shown by the Calcutta Port Trust in its Outturn Report.

27. Significantly, the spare bags containing Sweepings were described as containing Urea.

28. It was contended by Mr. Das, the learned Counsel representing the petitioners, that the description of the contents of the spare bags so given in the Outturn Report, was apparently wrong since there was no excess landing of Urea.

29. However, the fact remains that the contents of the said 115 bags were never put to Chemical Test to find out whether the said bags contained Urea or Ammonium Sulphate and there is also no indication that the petitioners even took any firm step to have the contents so analysed.

30. So far the Survey report (Annexure "F") is concerned, it cannot be accepted as a reliable document to substantiate the contention of the petitioners that 115 local gunny bags contained Ammonium Sulphate Sweepings, for reasons already stated hereinbefore.

31. It is true that the petitioners had been pressing the Port Trust authorities hard for issuing an amended Outturn Report, which the said authorities failed to do. But from the facts and circumstances disclosed earlier, there can be no escape from the conclusion that 110 bags of Ammonium Sulphate were delivered short out of the total manifested cargo and since it was never established that the contents of 115 local gunny bags were Ammonium Sulphate, the shortlanding cannot be said to have been explained.

32. The Surveyor was engaged by the petitioners and it was the duty of the petitioners to establish that the said 115 local gunny bags contained Ammonium Sulphate and timely action not having been taken in that regard, it would be nothing but an exercise in futility to attempt after the lapse of long 11 years to establish that the said bags contained Ammonium Sulphate Sweepings.

33. So far the Customs authorities are concerned, it is not disputed that they are bound by the Outturn Report issued by the Port Trust authorities and the said Outturn Report indicated shortlanding of 110 bags of Ammonium Sulphate. The petitioner No. 1, as such, cannot escape its liability as the shipping agent of the

consignor to be proceeded against for penalty u/s 116 of the Customs Act, 1962.

34. Incidentally, reference may be made in this connection to the other four Civil Rules, which also relate to short delivery of different consignments.

35. C.R. No. 816(W) of 1980 relates to the shortlanding of two Steel Envelopes. The petitioners sought to connect the said shortlanded goods with two Bundles of unmanifested rolled steel sheets.

36. In C.R. No. 817(W) of 1980 four Bundles of Steel sheets were found to have been shortlanded and the petitioners tried to explain such

shortlanding by attempting to connect the shortlanded goods with four other bundles of unmanifested steel sheets with no marks.

37. In C.R. No. 818(W) of 1980, out of the total consignment, 54 bags of Copra were shortlanded and the petitioners attempted to connect 33 bags of unmanifested Copra lying at No. 1 N.S. Docks with the said shortlanded cargo.

37. Similarly, in C.R. No. 818(W) of 1980 13 bundles of cargo were shortlanded as per the Outturn Report issued by the Calcutta Port Trust and the petitioners attempted to connect the same with 7 other unmanifested bundles landed with mark and/or no marks.

38. In all the aforesaid cases the consignee refused to accept the unmanifested cargo as part of the manifested cargo shortlanded as per Outturn Reports.

39. It is true that such non-acceptances by the consignee is not a sure proof of shortlanding, but the fact remains that in none of the five cases the petitioners attempted seriously to connect the shortlanded cargo with the unmanifested goods lying in the Dock.

40. It appears that the petitioners had all along been insisting upon the Calcutta Port authorities to issue amended Outturn Reports, which the said authorities failed to do.

41. But so far the petitioners are concerned, they relied mainly on the Survey reports without trying to take appropriate steps for connecting the unmanifested cargo with the shortlanded goods.

42. Mr. Das, the learned Counsel representing the petitioners, in this connection, relied upon the decision of this Court in *Scindia Steam Navigation v. Joint Secretary* 1982 E.L.R. 93, where a learned Single Judge of this Court held that the fact of shortlanding has to be established like any other fact. The Outturn Report and the manifest are relevant pieces of evidence and are to be taken in conjunction with other pieces of evidence, namely, the Survey report, the conduct of the parties, the Chemical analysis report etc. The Outturn Report is certainly a piece of evidence that should be taken into consideration, but that by itself is not conclusive evidence which thrown the burden of proof on the other side that the goods in question were shortlanded.

43. In the instant Rules, however, it does not appear that the petitioners at the material time drew the attention of the Customs authorities to any other document to prove that there was in fact no shortlanding of the consignments as shown in the Outturn Reports. They, as already stated, mainly insisted upon the Port authorities to issue amended Outturn Reports without trying to establish by proper evidence that the unmanifested cargo tallied with the manifested goods. The fact that the consignees did not agree to accept the unmanifested cargo in any one of the cases, may at least, be considered to be a piece of evidence, though not conclusive, to prove that the said unmanifested cargo did not tally with the manifested cargo.

44. Mr. Das, the learned Counsel representing the petitioners, urged that in the circumstances of the cases, the Rules should be made absolute and the Customs authorities should be directed to dispose of the matters taking into consideration other documents as might be produced by the petitioners.

45. I am, however, not in a position to accept this contention of Mr. Das since the petitioners at the material time did not, as already stated, take appropriate steps for connecting the unmanifested cargo with the manifested consignments.

46. Sending the cases back on remand, in my view, will not serve any useful purpose at this stage after a lapse of so many years.

47. It may also be mentioned in this connection, that Mr. Majumdar, the learned Counsel representing the Port authorities, also contended that after the lapse of so many years it is not possible for the Port authorities to produce any document which may be of any assistance to the parties in coming to a different conclusion. As a matter of fact, in spite of opportunities being given to him, Mr. Majumdar could not produce any document from the custody of his clients, namely, the Calcutta Port authorities.

48. Considering the facts and circumstances above and considering particularly the fact that no useful purpose would be served at this stage by sending cases back on remand, the Rules issued in all the five cases are discharged and interim orders, if any, do stand vacated.

49. The respondents authorities may now proceed against the petitioners in accordance with law.

50. In this connection, the Customs authorities while disposing of the adjudication proceedings, where such proceedings are still pending, may take into consideration any relevant document that may be produced by the petitioners in support of their contention that there has actually been no shortlanding of the consignments.

51. The Port authorities should also assist the Customs authorities to come to a right decision by producing all relevant documents that may be found to be in their possession.

52. No order is made for costs.

53. This order,, as already stated, will govern all the five Civil Rules hereby disposed of analogously.