

(2019) 08 CAL CK 0235

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 1602 Of 2016

Bimal Kumar Modi

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Foreign Trade (Development And Regulation) Act, 1992 — Section 5
Customs Act, 1962 — Section 111(d), 111(l)

Citation : (2019) 08 CAL CK 0235

Hon'ble Judges : I.P. Mukerji, J;Md. Nizamuddin, J

Bench : Division Bench

Advocate : Mainak Bose, Shokeel Akhter, Rishabh Karnani, Somnmath Ganguli, Manasi Mukherjee

Final Decision : Allowed

Judgement

The real grievance of the appellant-writ petitioner is this. He imported a large consignment of betel nuts which arrived in the port of Kolkata sometime towards the end of 2013. Six years have passed. The goods are still lying there. According to the latest report of a food laboratory in Ghaziabad made on 6th October 2015, the goods are below standard.

Mr Bose, learned counsel appearing for the appellant, submits that the report, to which this court will refer later on in this judgment, made contemporaneously to the time of importation, said that the goods were fit for human consumption. He alleges that if the goods have deteriorated in quality, it is due to the laches and negligence on the part of the respondents, and that they should be made liable in damages for that.

In the instant writ [WP No.9124(W) of 2015, Shri Bimal Kumar Modi v. Union of India & Ors.] the appellant-makes an attempt to prove that the goods at the time of importation were fit for human consumption, and that the action of the respondents in seizing and confiscating the goods was bad in law.

Now, we refer to the facts, as shortly as possible. On 13th May 2013, the Director General of Foreign Trade issued a notification under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 that only betel nuts having a minimum import price of Rs.110/- per kilogram could be permitted to be imported. This notification was obviously made to protect the domestic market.

The appellant filed a Bill of Entry with the Customs on 2nd September 2013. Soon thereafter, samples of the said goods were drawn. The goods were got tested by an expert inspection agency, a government accredited laboratory. They found them to be fit for human consumption. The Customs did not release the goods.

A writ application was filed by the appellant in this court [WP No.26409(W) of 2013] in which, on 9th October 2013, an interim order for provisional release of the goods was passed upon, inter alia, on the condition that the appellant would have to furnish a bank guarantee and a PD bond. On appeal by the respondents on 27th November 2013, a Division Bench of this court directed provisional release of the goods upon furnishing a PD bond only.

Thereafter, on 5th December 2013, a formal show-cause notice was issued by the Customs to the appellant asking him to show cause why the goods should not be confiscated under sections 111(d) and 111(l) of the Customs Act, 1962. This time the Customs referred the goods to a food laboratory in Mysore for testing. On 2nd April 2014, they opined that the goods were not fit for human consumption. On 10th July 2014, a second show-cause notice was issued by the Customs asking the appellant to show cause why the goods should not be re-exported or destroyed.

On 12th November 2014, Referral Food Laboratory, Kolkata opined that the goods were fit for human consumption.

Nevertheless on 13/15th March 2015, the Customs passed an order confiscating the goods.

The appellant preferred the instant writ [WP No.9124(W) of 2015].

As an interim order on 15th May 2015 this court directed the goods to be tested by Central Food Laboratory, Kolkata upon the samples being drawn in the presence of the appellant's representative. The impugned adjudication order dated 13/15th March 2015 was virtually stayed.

The respondents preferred an appeal (MAT No.1091 of 2015) challenging this order. As an interim measure in the said appeal on 16th September 2015, a Division Bench of this court directed testing of the goods by the Referral Food Laboratory, Ghaziabad. On 6th October 2015 this laboratory reported that the samples did not conform to the prescribed standards.

The final order in appeal passed by the Division Bench on 13th January 2016 is

most relevant and important for the purposes of this writ. It observed that the Customs had been "knocked out" by the Ghaziabad report. The appellant was entitled to take an exception to this report. The writ was to be heard upon exchange of affidavits.

In those circumstances, it is absolutely plain that the observation of the Division Bench that the respondents had been "knocked out" was to be taken as prima facie. The Ghaziabad report along with all other evidence, which the appellant had produced to prove that the goods were fit for human consumption at the time of importation and thereafter, were to be considered by the Hon'ble first court on the basis of the affidavits to be filed and the exception to the report. The case in the writ application as a whole was also to be considered by the Hon'ble first court upon exchange of affidavits. We do not find from the said order dated 13th January 2016 that any point taken in the writ application was closed by it.

In the judgment and order under appeal dated 8th April 2016, the learned judge seemed to have taken the above observation of the Division Bench that the respondents had been "knocked out" to be a final finding on facts. The learned judge went one step ahead by pronouncing that the Customs had gained "a walk over" in the proceedings, proceeded to, inter alia, confirm the confiscation order and to dismiss the writ.

With respect, the writ was hanging in a fine balance after disposal of the appeal on 8th April 2016. Most certainly, neither the appellant had been "knocked out" nor the Customs got "a walk over" in the proceedings. The main issues in the writ remained undecided.

Therefore, we think it fit to set aside the impugned order dated 8th April 2016 and remand the writ to the Hon'ble first court with a request to decide the same as early as possible, especially considering the fact that six years have passed since importation of the goods. All points taken in the writ petition are kept open. We order accordingly.

The appeal (MAT No.1602 of 2016) is allowed to the above extent.