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(1992) 03 CAL CK 0005

In the Calcutta High Court

Case No : Civil Rule No. 12676 (W) of 1983

Chowdhury Industries APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 30-03-1992

Acts Referred:

Citation : (1992) 1 ILR (Cal) 243

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : F.M. Rezack, for the Appellant;

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—This writ petition was moved on behalf of M/s. Chowdhury Industries and Anr., inter alia, praying for writ in the nature of mandamus, commanding the Respondents to act and proceed in accordance with law, more particularly, in accordance with Governmmcnt of India Com. D.O. 484 of June 21. 1923, and further commanding the Respondents to consider and dispose of the representations made by the Petitioners and/or writ in the nature of mandamus commanding the Respondents, to forbear from withholding clearance of the vessel, namely, M.V. JALADHRUV for the purpose of dismantling and removal of dismantled parts, without payment of customs duty and further to forbear from taking any step or further steps adverse to the rights and interests of the Petitioners, in the mailer of clearance of the said vessel and further commanding the Respondent Customs authorities, to allow clearance of the said vessel M.V. JALADHRUV for dismantling and removal of the diamantled parts, without payment of customs duty.

2. When, this writ petition was moved before this Court on October 22, 1983, after hearing Mr. Somnaih Chatterjee, Mr. R.N. Das and Mr. F.M. Rezack, A.K. Jana J. (as His lordship then was), was pleased to issue a Rule and granted an interim order of injunction pending disposal of the Rule, upon the Petitioner''s

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furnishing a bank guarantee in fabour of the Collector of Customs, Bombay, for a sum of Rs. 8 Lakhs, within fortnight from the said date.

3. The Rule was made returnable three weeks after the long vacation.

4. This Rule has been made ''Ready as regards service'' as for back on June 22, 1987, and was mentioned before me on January 27, 1992, when this Court after hearing Mr. F.M. Rezeck for the Petitioners, directed him to give notice in the Ministry of Law, Branch Secretariat, 4 Kiron Shankar Roy Road, drawing attention of the said Branch Secretariat about non-appearance of the Respondents.

5. Therafter, on February 28, 1992, the writ petition was heard in the presence of Mr. F.M. Rezack, learned Advacate for the Petitioners.

6. At the final hearing of the writ petition, this Court had recorded the submission of Mr. Rezack, learned Advocate for the Petitioners, who has placed strong reliance on the observations of the Division Bench judgment of this Court, in the case of the Union of India v. Ram Niwas Chowdhury 1983 (1) C.H.N 6 in particular, the observations made in para. 10 of the said judgment.

7. Mr. Rezack also placed much emphasis on the propriety of imposition of duty, after dismantling of the ship, as observed in another case, viz. Rani Niwas Chowdhmy v. M.S.T.C. 89 C.W.N. 363. On that date, it appears before me that the aforesaid judgments were delivered by the Bench presided over by Murari Mohan Dutt J. (as His lordship then was) and it further apears that the points raised in the instant writ petition have been decided, in no uncertain terms in the said two judgments, in favour of the present writ Petitioners.

8. After referring to the aforesaid two judgments, Mr. F.M. Rezack, learned Advocate appearing on behalf of the writ Petitioners at the final hearing of the writ petition, submitted that M/s. Chowdhury industries and Anr. (the writ Petitioners herein) and challenged the purported withholding of the customs duty free clearance of the vessel M.V. Jaladhruv, which was purchased by the Petitioners for the purpose of dismantling and removal of the dismantled parts, without payment of customs duties.

9. The subject vessel was imported in the year 1956 by M/s. Scindia Steam Navigation Co. Ltd., in terms of a contract entered into by and between M/s. Scindia Steam Navigation Ltd., and M/s. Lubecker Flender Works, West Germany. The said contract was duly approved by the Director-General of Shipping, in terms of his approval No. 13-CD(t4)/55 dated March 19, 1955. The import of the vessel in question from Germany was also sanctioned by the Reserve Bank of India, the sanction number being R.C. BY MISC 2658/63-55 dated March 20, 1955. The said vessel after its construction was delivered to M/s. The scindia Steam Navigation Co. Ltd. on October 23, 1956, and arrived into India on her maiden voyage flying in Indian Flag on December 12, 1956, at Bombay.

10. Before her entry into India, the vessel in question was registered in Indian Tonnage by the Registrar, Mercantile. Marine Department, Bombay, under No. 16

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of 1956 dated December 8, 1956. On her arrival at Bombay, the Customs authorities of Bombay had allowed her entry inwards under I.G.M. No. 1203 dajed December 13, 1956, After her import in India, the vessel in question continued to be an ocean-going one, for 24 years.

11. In February 1981 the subject vessel was sold by M/s. The Scindia Steam Navigation Co. Ltd. to M/s. Himalaya Shipping Co. Ltd., Calcutta. The said Himalaya Shipping Co. Ltd., Calcutta, went into liquidation'' shortly thereafter resulting in the said vessel being arrested by the Hon''ble High Court at Calcutta, under its Admiralty Jurisdiction and appointment of Receiver over it.

12. This Hon''ble Court on Junb 9, 1982, had directed the Receiver to sell the vessel by inviting Tender. Ultimately, the offer of the Petitioners for the purchase of the vessel was accepted and the vessel was sold to the Petitioners, in terms of an order of sale passed by His lordship, the Hon''ble D.K. Sen J. (as His lordship then was), dated May 23, 1983. The subject vessel was purchased by the Petitioners for the purpose of dismantling and removal of the dismantled parts for sale to different customers as the subject vessel in question was no longer sea-worthy and had outlived its utility as an ocean-going vessel.

13. After the purchase of the vessel, the Petitioners applied for ''duty-free clearance'' of the vessel, in terms of its letter dated September 14, 1983, but no action was taken by the Customs authorities and the Petitioners were not allowed to dismantle the ship and remove the dismantled materials, without payment of customs duty.

14. In such circumstances, the writ Petitioners filed this writ petition before this Court on December 22, 1983 and obtained interim order, as stated hereinabove.

15. Pursuant to the said interim order, the Petitioners executed ''a Bank guarantee'' for a sum of Rs. 8 Lakhs and also executed ''a personal bond'' for a sum of Rs. 24 Lakhs on Oriental Bank of Commerce, Liluah Branch, in favour of the Collector of Customs, Bombay, whereupon the Petitioners were allowed to dismantle the ship and clear the dismantled materials from the Customs control, without payment of any customs duties. The said Bank guarantee executed by the Petitioners and the personal bond have since been kept alive by the Petitioner No. 1 by renewing it every year.

16. Mr. Rezack further subumitted that the point which had arisen for consideration of this Court is whether ''the customs duty'' is payable, on the said vessel, which has been dismantled and removed by the Petitioners earlier.

17. We submitted that "no customs duty" was payable on the present ship, because the subject vessel was imported into India in the year 1956," by M/s. Scindia Steam Navigation Co. Ltd. in terms of a contract entered into by and between M/s. Scindia Steam Navigation Co. Ltd. and M/s. Lubecker Flender Works, West Germany, for the supply of 4 vessels, including the subject vessel. The said contract was duly approved by the Director-General of Shipping, vide

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approval No. 13-CD(14)/55 dated March 19, 1955, and Reserve Bank of India Sanction No. BC BY MISC 2658/63-55 dated March 20, 1955. The said vessel after its construction was delivered to the said M/s. Scindia Steam Navigation Co. Ltd. on October 23, 1956, and before her entry into India she was registered on Indian Tonnage by the Registrar,. Mercantile Marine Department, Bombay, under No. 16 of 1956 dated December 8, 1956. Thereafter, the vessel arrived under Indian Flag at Bombay on December 12, 1956, on her maiden voyage and the Bombay Customs had allowed her entry under I.G.M. No. 1203 dated December 13, 1956.

18. A letter dated August 25, 1956, in this behalf from M/s. The Scindia Steam Navigation Co. Ltd., addressed to the Petitioner No. 1 has been annexed to the writ petition, as Annex. E.

19. Mr. Rezack further submitted that from the history of the vessel, as stated hereinbefore, it would be evident that the importation of the vessel ''M.V. JALADHRUV'' had been completed by February 13, 1956. At that point of time there was total, absolute and unqualfied exemption from payment of customs duties in respect of "ocean-going vessel" in terms of the Government order, as contained in the Indian Customs Tariff Guide (6th Ed, 1957), and, as such, the said vessel when imported into India in the year 1956, was totally exempted from payment of customs duties and no customs duty could be levied on the same.

20. In this connection, Mr. Rezack referred to Indian Customs Tariff Guide (6th Ed., 1957), wherin, under item 76(1) the said exemption in respect of import of ocean-going vessel was given.

21. Mr. Rezack further referred to the Notification No. 262 Cus. which came into operation on October 11, 1958, which is set out below:

Ocean-going vessels other than vessels impoted to be broken up are exempt from the payment of customs duty leviable thereon provided that any such vessel subsequently broken up shall be chargeable with the duty which would be payable on her if she were imported to be broken up.

22. Thus, on the basis of the aforesaid notification, it would be evident that while continuing the earlier exemption as per Government directive as contained in the Tariff Guide (6th Ed.) for the first time, the Government laid down ''an embargo'' in the nature of a proviso, whereby ''ocean-going vessels'', if subsequently broken up were chargeable, with customs duty, at the rate prevalent on the date of import of such vessels.

23. Mr. Rezack, therefore, submitted that since the vessel in question had been imported in the year 1956, when there was unqualified and unconditional exemption from payment of customs duty in respect of the import of any ''ocean-going vessel'' prior to the promulgation No. 262-Cus. dated October 11, 1958, the subject vessel cannot be subjected to levy customs duly in terms of the

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proviso to the said Notification No. 262-Cus. dated October 11, 1958, inasmuch as the taxable event occurred in 1956, when there was no chargeability or taxability.

24. According to Mr. Rezack, the Notification No. 262-Cus. cannot have ''any retrospective operation'' for the purpose of levying customs duty, as it is not part of the legislation.

25. According to Mr. Rezack, if at the time of impotation no duty was leviable on particular goods or articles, no subsequent event or happenings to these goods or articles could make them chargeable with customs duty.

26. In the instant case, admittedly, the vessel in question entered into Indian Customs Water, on being imported by M/s. The Scindia Steam Navigation Co. Ltd. (the importer), in the year 1956, as an ''ocean-going vessel'' and, as such, the incident of import ceased at its arrival into India, registration being placed on Indian tonnage, the vessel''s entry inwards in import general manifest and acquisition of the Indian Flag.

27. Thus, the vessel in question ceased to be ''an imported one'' and became an Indian vessel.

28. According to Mr. Rezack, since there was no

chargeability and / or taxability of customs duty at the time of her import, in terms of the absolute exemption, the vessel in question could not be subjected to payment of customs duty by invoking the proviso to Notification No. 262-Cus. dated October 11, 1958.

29. In support of the contention, Mr. Rezack has placed strong reliance on the observation made by the Division Bench, presided over by M.M. Dutt J. (as His lordship then was) of this Court in the case of Union of India and Ors. v. Ram Niwas Chowdhwy (Supra) In para. 11 of the said judgment, it has been observed as follows:

The date of importation of the vessel is, therefore, very much relevant. The proviso in our opinion refers to the date of importation of the vessel for the purpose of calculation of the customs duty, which is apparent from the expression "which would be payable on her if she were imported to be broked up". If the vessel had been imported into India in 1963, for the purpose of breaking up, she would have been chargeable with duty that was prevalent on that date. The proviso refers to payment of such duty that was in force on the date of importation of the vessel. The vessel was undoubtedly imported in 1963 and, accordingly, the duty that was leviable on the vessel if she were imported for breaking up would be levied. Any other interpretation of the proviso is not possible.

In para. 12 (p. 13) the said decision, it has been further held by Their lordships as follows:

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In view of our finding that the rate of duty, which was in force on the date of importation of the vessel in 1963, treating the same as being imported for breaking up, will be applicable to the vessel concerned.

30. Therefore, it has been submitted by Mr. Rezack that the law laid down by Their lordships is that customs duty would be payable on the vessel at the rate prevalent on the date of her first import into India. Accordingly, customs duly was held to be payable at the rate prevalent in the year 1963, in respect of the subject vessel in the said case by Their lordships.

31. In the instant case, in the year 1956, since there was total absolute and unqualified exemption from payment of customs duty, and as such, no customs duty can be levied, inasmuch as, on the date of her import in 1956, there was no chargeability of customs duty in respect of the vessels for breaking up.

32. Mr. Rezack further submitted that being aggrieved by the aforesaid judgment of the Division Bench of this Court, the Union of India preferred ''Special Leave Petition'', being No. 10837 of 1982, before the Hon''ble Supreme Court of India and the Bench consisting of Hon''ble S. Murtaza Fazal Ali J. and the Hon''ble O.P. Chinappa Reddy J. by their judgment dated March 1, 1983 were pleased to dismiss the said Special Leave Petition.

33. Thus, according to Mr. Rezack, the judgment delivered by the Division Bench of this Court, in the case of Union of India v. Ram Niwas Chowdhury (Supra) has reached its finality. In this connection, he has also referred to another judgment of this Court, in the case of Ram Niwas Chowdhury v. Union of India 1984 (2) C.L.J. 212 In para. 22 (p. 222) of the said judgment the Division Bench, presided over by M.M. Dutt J. (as His lordship then was), relying on an earlier decision of Union of India v. Ram Niwas Chowdhury (Supra) held, as follows:

That the date of importation of the vessel is very much relevant for the purpose of calculation of customs duty. If a vessel is subsequently broken up, the exemption from duty is lost and the duty will be payable on the said vessel at the rate in force on the dale of importation of the vessel. No duty can be leived at the rate in force when the vessel is sold for breaking up. The importation is complete, when two vessels in this case have entered into Indian waters in 1968 and 1969. as the case may be, the customs duty will be payable at the rate which was prevalent at the time and not at the rate now in force. In that view of the matter, it is not possible to accept the argument of Mr. Dipankar Ghosh, learned Counsel for MSTC that there is a notional importation at or about the lime, when the vessels are sold for breaking up. So far as these two ships are concerned, M.S.T.C. cannot be trated as a canalising agency, because the importation is complete long ago, when admiltedly MSTC was not a canalising agent. At para. 13 of the aforesaid decision, the Bench consisting of Murari Mohan Dull J. (as His lordship then was) and myself held as follows:

that the date of importation of the vessel is very much relevant for the purpose of collection of customs duty. If a vessel is subsequently broken up, the

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exemption from duty is lost and the duty will be payable on the vessel at the rate in force on the date of importation of the vessel.

34. Mr. Rezack further submitted that being aggrieved by the judgment in Ram Niwas Chowdhury v. Union of India (Supra) the MSTC also preferred two Special Leave Petitions being Nos. 1601-02 of 1985 before the Hon''ble Supreme Court of India. The Bench consisting of Hon''ble V.D. Tulzapurkar J., the Hon''ble Ranganath Mishra J. and the Hon''ble V. Khalid J. on February 26, 1985, was pleased to dismiss the said Special Leave Petitions, filed by M.S.T.C. authorities.

35. Accordingly, Mr. Rezack submitted that because of the law laid down by the Division Bench of this Court, in the aforesaid judgments, no customs duly should be payable in respect of a vessel, which comes up for breaking at the rate prevalent on the date of her import into India.

36. No one appears on behalf of the Customs authorities and no affidavit-in-opposition has been filed by the Respondents, in spite of notice being served in the office of the Centra! Government Advocate. Calcutta.

37. Therefore, it has become necessary for this Court to arrive at the necessary conclusion as to whether any customs duties can be levied, on ''broken ships'', which has been imported in 1956.

38. After considering the relevant submissions made by Mr. Rezack on behalf of the Petitioner firm and after considering the decisions referred to by, him, as well as the pleadings adduced on behalf of the writ Petitioners, this Court is of the view that no customs duties are payable, in respect of the said vessel, which had been imported in the year 1956, when there was total unqualified and absolute exemption from payment of customs duties.

39. Accrodingly, the writ petition is entitled to succeed and the Rule is made absolute.

40. The writ Petitioners are, accordingly, discharged from the ''Bank Guarantee of Rs. 8 Lakhs furnished on Oriental Bank of Commerce, Lilluah Branch, Howrah, and ''Personal Bond of Rs. 24 Lakhs, which has been furnished in terms of the order dated October 22, 1983, of this Hon''ble Court forthwith.

41. The writ petition is allowed to the extent indicated above.

42. There will be no order as to costs.

43. Let a xerox copy of this order be made available to the Petitioner''s Advocate-on-record for compliance on complying with usual formalities.

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