(2012) 12 DEL CK 0013

In the Delhi High Court

Case No : LPA No. 519 of 2004

Commissioner of Customs and Others — APPELLANT

Vs

M/s. Agrim Sampada Ltd. and Others — RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:
Customs Act, 1962 — Section 111(O), 2(26), 46, 46(3)

Citation : (2012) 12 DEL CK 0013

Hon'ble Judges : D. Murugesan, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Sonia Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the judgment dated 16th January, 2004 of the learned Single Judge allowing W.P.(C) No. 2438/2001 preferred by the respondents no. 1&2 (respondent no. 2 being the Director of the respondent no. 1), by directing the appellant to register the Bill of Entry of the subject goods in the name of the respondent no. 1 and clear the same on payment of appropriate duty, it was further directed that the appellant shall bear the demurrage charges in respect of the goods. Notice of the appeal was issued and on the application of the appellant for interim relief, it was vide order dated 31st May, 2004 directed that the release of the consignment would be subject to the final outcome of the appeal. Though during the hearing on 19th August, 2004 it was pointed out that despite the order dated 31st May, 2004, the consignment in question had not been released, but it is recorded in the order dated 21st January, 2010 that the goods stood released to the respondent no. 1. in the subsequent order dated 18th March, 2010, it is also recorded that the goods have already been utilized by the respondent no. 1

2. None appeared for the respondents when this matter was called on 29th November, 2012. None appears for the respondents today also. Considering that the appeal is of the year 2004, it is not deemed expedient to await the

respondents any further and we have heard the counsel for the appellants.

3. The writ petition from which this appeal arises, was filed by the respondents No. 1 & 2 pleading:-

(a). that the respondent no. 1 had placed an order for 3000 MT of special high grade zinc from M/s. Allied Deals (S) Pte. Ltd. Singapore (foreign seller), who offered to sell the said goods lying in Inland Container Depot, Tuglakabad and which had earlier been consigned by the foreign seller to respondent no. 3 M/s. Shiv Ganga Organic Chemicals Ltd. and who had not retired the documents which were returned back to the said foreign supplier;

(b). that the said foreign seller thus drew fresh Bill of Lading and negotiated the same through the bank in the name of the respondent no. 1;

(c). that the respondent no. 1 on receipt of the said fresh Bill of Lading with respect to the goods aforesaid applied for amendment of the Import General Manifest which originally stood filed in the name of the respondent no. 3;

(d). that after getting the Import General Manifest amended, the respondent no. 1 filed the Bill of Entry u/s 46 of the Customs Act, 1962;

(e). that the appellant however did not register the Bill of Entry of the respondent no. 1 on the ground that the earlier Bill of Entry with respect to the same goods had been filed by respondent no. 3 and the said Bill of Entry had been picked up by the Directorate of Revenue Intelligence (DRI), as a sister concern of respondent no. 3 was found to be involved in some Customs offence case;

(f). that though it was the contention of the respondent no. 1 that it is the holder of the original Bill of Lading and as per law is the owner of the goods and is duty bound to file the Bill of Entry and should be allowed to file the Bill of Entry so that assessment could be made and duties could be paid on the said goods as they were suffering heavy demurrage, but the appellant did not allow the respondent no. 1 to file the Bill of Entry to get the goods assessed and pay the duties.

Impugning the aforesaid stand of the appellant, the writ petition was filed seeking direction to the appellant to register the Bill of Entry and to clear the goods and for waiver of demurrage.

4. The appellant contested the writ petition by pleading in its counter affidavit that Import General Manifest was amended as a matter of routine and on the correct facts of the earlier Bill of Entry having been filed in the name of the respondent no. 3, the amendment of the Import General Manifest was withdrawn. It was further pleaded that DRI had intercepted a consignment imported by M/s. Shivalik Impex Pvt. Ltd. and the respondent no. 3, a sister concern of M/s. Shivalik Impex Pvt. Ltd. was found to be indulging in importing zinc ingots under DEEC Scheme with an obligation to export 100% pure zinc

oxide but diverting imported goods to local market in violation of the said Scheme; thus the Bill of Entry filed by the respondent no. 3 with respect to the subject goods was seized to prevent evasion of Customs duty. It was also pleaded that the Directors of respondent no. 3 had been absconding. We may at this stage notice that the respondent no. 3 was ex parte before the learned Single Judge and has inspite of service through publication not appeared before us also. It was further the plea of the appellants in their counter affidavit that in view of the cancellation of the amendment to the Import General Manifest, the goods continued to belong to the original importer i.e. respondent no. 3 and the respondent no. 1 was nowhere concerned with the said import. It was further pleaded that the respondent no. 1 had gone into a non-bona fide deal and was trying to get the goods cleared which were actually liable for confiscation u/s 111 (O) of the Customs Act. It was yet further pleaded that the respondent no. 1 was in collusion with the foreign seller and the respondent no. 3 was trying to get the offending goods cleared fraudulently.

5. The learned Single Judge, in the impugned judgment found/observed held:-

(i). that the subject goods were originally imported by respondent no. 3 and reached India sometime in February, 2001;

(ii). the import of the goods was not contrary to law;

(iii). however the respondent no. 3 abandoned the goods and did not make the payment to the foreign seller for the same;

(iv). thus the title in the goods in such a situation remained with the foreign seller and it was within its rights to on such default of the respondent No. 3, sell the same to the respondent no. 1;

(v). since the goods were sold to the respondent no. 1 who held the documents of title in respect thereof, it was a importer within the meaning of Section 2(26) of the Customs Act and therefore entitled to present the Bill of Entry and to have the goods cleared for home consumption;

(vi). that since the title in the goods never stood transferred to the respondent no. 3, the appellants should have permitted the respondent no. 1 to clear the goods on filing of such Bill of Entry and payment of appropriate duty of Customs and the appellants ought not to have prevented the respondent no. 1 from doing so;

(vii). that once it was held that the respondent no. 1 was entitled to clear the goods and had been wrongly prevented from doing so, it is the appellant who should bear the demurrage.

6. Counsel for the appellant has confined the arguments only to the extent the liability for demurrage has been foisted on the appellant. With reference to Section 46(3) of the Customs Act, 1962, it is contended that the appellant was not at fault in not registering the Bill of Entry of the respondent No. 1 on the

ground that the earlier Bill of Entry with respect to the same goods, had been filed by the respondent No. 3 and since DRI enquiry was underway against the sister concern of the respondent No. 3. It is further contended that the matter is no longer res integra. Attention in this regard in invited to:

(i) International Airports Authority of India and Others Vs. Grand Slam International and Others, , holding that an authority created under a statute even if is the custodian of the imported goods because of the provisions of the Customs Act, 1962, would be entitled to charge demurrage for the imported goods in its custody and make the importer or consignee liable for the same even for the period during which he/it was unable to clear the goods from the customs area, due to fault on the part of the Customs Authorities or other authorities who might have issued detention certificate owning such fault;

(ii) Judgment dated 28th March, 2012 of the Division Bench of this Court in RFA (OS) Nos. 6-7/2006 titled Union of India Vs. Navshakti Industries P. Ltd., where reference was made to Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others, , which approved the law as laid down in Grand Slam International (supra) and the aspect of bona fide of the Customs Department was also taken into consideration.

7. We may in this regard notice that the respondents No. 1 & 2 have not pleaded the mala fides of the appellant in withholding the goods.

8. We thus find the matter to be no longer res integra and being covered by the judgments aforesaid. Resultantly, the judgment of the learned Single Judge cannot be sustained. Unfortunately, before the learned Single Judge, attention to Grand Slam International was not drawn and the same does not find mention in the impugned judgment. The appeal is accordingly allowed and the judgment dated 16th January, 2004, to the extent holding the appellant liable to bear the demurrage charges in respect of the goods in question, is set aside. The demurrage charges be accordingly recovered from the respondents No. 1 & 2. If the appellant has already paid the demurrage charges, the respondents No. 1 & 2 are directed to, within four weeks of a demand being made by the appellant together with proof of payment of demurrage charges, reimburse the same to the appellant. We also award costs of Rs. 20,000/- of these proceedings to the appellant against the respondents No. 1 & 2.

