(1996) 12 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No. 6572 of 1986

D.B. Madan and Company APPELLANT

Vs

Government of India RESPONDENT

Date of Decision : 09-12-1996

Acts Referred:

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

Citation : (1997) 91 ELT 282

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Shri V. Aravamundan, for the Appellant; Shri S.R. Sundaram, Additional Central Government Standing Counsel, for the Respondent

Judgement

1. Petitioner is engaged in the business of steamer agency. In the course of its business, one of its vessels called at the Port of Madras in August,

1981 with about 12,300 bales of rubber and paper and 500 pallets for discharge at Madras. The vessel arrived at Madras on 10th August, 1981.

The import tally sheet duly signed by the trustees of the Madras Port Trust showed that 12,324 bundles and bales and 501 pallets were discharged

at the Madras Port. The cargo manifested for discharge at Madras about 12,300 bundles and bales and 500 pallets. Therefore, according to the

petitioner, in fact there were 24 excess bales discharged and one excess pallet discharged at the Madras Port. However, in the out turn statement

dated 3-11-1981, the Madras Port Trust showed that only 783 bales as against 900 bales were delivered to the consignees under Line No. 41 of

the Statement. A supplementary out turn statement dated 22-6-1982 was issued by the Port Trust declaring that 117 bales were short landed under Line No. 41 of the statement. The petitioner made efforts to trace the short landed bales and their attempts were in vain. On the basis of the

supplementary out turn statement, third respondent issued a show cause notice on 8-3-1983 calling upon the petitioner to account for 117 bales,

failing which the petitioner was liable to pay penalty of Rs. 61,192.88 u/s 116 of the Customs Act. The petitioner submitted its explanation, but an

order was passed on 18-6-1983 by the third respondent holding that the petitioner was liable to pay penalty of Rs. 61,192.88 for the short landing

of 117 bales of natural raw rubber.

2. It is to be noticed here that during the proceedings before the third respondent, the petitioner sought for a personal hearing and it was accorded

a personal hearing on 4-4-1983. In the personal hearing, the petitioner did not do anything, except to reiterate the explanation to the show cause

notice. The third respondent in his order pointed out that the short landing has been established by the Madras Port Trust by issuing the out turn

statement, which is an authentic document. Consequently, the submissions of the petitioner were rejected by the third respondent. The petitioner

filed an appeal before the second respondent. One of the arguments raised before the appellate authority was that the tally receipts do not indicate

any short landing and the same should have been accepted. The appellate authority gave a personal hearing as required by the petitioner. The

appellate authority has in particular referred to the photo copy of the tally sheets and asked the petitioner to approach the Madras Port Trust to get

the cut turn statement modified, if his claim was true. The petitioner was also asked to produce evidence as to how 117 bales could have been

cleared otherwise. After the hearing on 26-9-1989, the petitioner herein proceeded to pay the penalty. Again the next hearing was on 10-12-1989

and the petitioner only reiterated the points raised in the grounds of appeal. The petitioner did not choose to produce any documentary evidence

for the short landed goods. Consequently, the appellate authority passed an order confirming the order of the original authority.

3. The petitioner again filed a revision petition to the Government of India raising the very same grounds and seeking a personal hearing before the

Government of India. The Government of India rejected the request for the personal hearing on the ground that there were no complex issues involved in the case. On the question of authenticity of the out turn statement issued by the Port Trust, the Government pointed out that the

petitioner was requested to get out turn statement - amended, if its contention was proved. But, the petitioner did not avail of the opportunity.

Consequently, the authorities had to rely on the out turn return famished by the Port Trust and imposed penalty on the quantity of bales short

landed. To quash the said order of the Government dated 9-1-1986, the present writ petition has been filed.

4. The only argument of the learned counsel for the petitioner is that the Government of India should have given a personal hearing while disposing

of the revision petition. The argument is no doubt attractive, especially because the petitioner had asked for a personal heading even in the grounds

of revision. As against the said argument, Mr. S. R. Sundaram, learned counsel for the respondents pointed out that the petitioner had a personal

hearing before the original authority and two personal hearings before the appellate authority. The petitioner did not avail of these opportunities and

substantiate its case. Therefore, the Government of India was right in saying that no further personal hearing was required to be given at the hearing

of the revision petition. In support of this contention, learned counsel relied upon the judgment of the Supreme Court in F.N. Roy Vs. Collector of

Customs, Calcutta, . The following passages is apposite :

It was then stated that the petitioner had not been given personal hearing of the appeal that he preferred to the Central Board of Revenue and the

application in revision to the Government. But there is no rule of natural justice that at every stage a person is entitled to a personal hearing.

5. The argument of the petitioner that the supplementary out turn report of Port Trust, which was relied on by all the authorities had been issued on

22-6-1982, whereas the ship had arrived at Madras Port on 10-8-1981, does not appeal to me, because there is no reason why the Madras Port

Trust should furnish a false information. Even in the earliest out turn statement dated 3-11-1981, there is a clear indication as below :

Quantity

Line Bill of Marks and Description Balance Short Lying

No. lading Numbers lying landed

No.

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xxxx

41 MD1 Lee K-6697, Bare Out of 900 bales, only bales

CC 508 SS.72, backed 783 were delivered. The rest

STC. INTH. bales of 117 dues, disposal will be

RSS 1/900, given later.

MADRAS

In the supplementary out turn statement, it is clearly indicated that out of 900 bales only 783 bales were delivered and the rest of 117 bales were

not accounted. I am of the opinion that it cannot be said that the authorities below had committed any apparent error of law, warranting

interference under Article 226 of the Constitution.

6. For all the above reasons, the writ petition fails and is dismissed. There will be no order as to costs.

