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**(2013) 05 P&H CK 0252**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 1825 of 2011**

Dewan Steel Industries

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 13-05-2013

**Acts Referred:**

**Citation :** (2014) 304 ELT 520

**Hon'ble Judges :** Ritu Bahri, J; Hemant Gupta, J

**Bench :** Division Bench

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## Judgement

Hemant Gupta, J.—The petitioner has invoked the extra ordinary writ jurisdiction of this Court claiming writ of mandamus directing the respondents to return the goods or pay the value of the goods along with interest. The petitioner is engaged in the import and trading of Heavy Melting Scrap. The petitioner imported a consignment and filed Bill of Entry dated 25-4-2002 at Container Freight Station (C.F.S.), Ludhiana. The consignment consisted of 133.573 MT Heavy Melting Scrap. The goods were imported in seven containers.

2. The officers of the Revenue physically examined all the containers and found that out of seven containers, one container contains serviceable material and consequently seized the container on 20-6-2000 alleging misdeclaration of description and value with intent to evade payment of duty. The petitioner was served with a show cause notice dated 20-6-2000 so as to show cause as to why the goods should not be classified as MS Rounds falling under Heading 72.14 of the 1st Schedule; the goods should not be assessed (a) Rs. 8.82 per Kg u/s 14 of the Customs Act, 1962 (for short "the Act") read with Rules 8 & 10 of the Customs Valuation Rules, 1988; the goods valued at Rs. 24,32,275/- should not be confiscated u/s 11 of the Act; and penal action should not be taken against them u/s 112 of the Act.

3. After considering the reply to the show cause notices, an order was passed on 12-9-2002 by the Adjudicating Authority ordering the goods to be classified as MS Rounds valued at Rs. 7.67 per Kg. as well as confiscation of 16.500 MT of

goods, however, redemption of the same on payment of redemption fine of Rs. 25,000/- and penalty of Rs. 15,000/- was allowed. The Commissioner of Customs (Appeals) rejected the appeal on 30-11-2004, whereas the Tribunal allowed the appeal filed by the petitioner on 6-2-2008 [2008 (226) E.L.T. 722 (Tri.-Del.)] setting aside the imposition of redemption fine and penalty. The Tribunal directed the respondents to release the goods after effecting mutilation. The Revenue's appeal before this Court bearing CUSAP No. 19 of 2008 remained unsuccessful vide order dated 28-8-2008. The petitioner claims that the goods in question are scrap and value of scrap has substantially increased during the last ten years, therefore, the petitioner is entitled to the value of the goods. The petitioner has also averred that the material is not available with the respondents.

4. In reply dated 10-3-2011 to a miscellaneous application, it is inter alia asserted that the goods are lying with the custodian and the payment of ground rent is pending against the petitioner. The petitioner is firstly required to discharge appropriate rent liability to the custodian and take the release of the goods. It is also stated that the petitioner never approached the respondents for getting the goods mutilated to get the goods released after payment of ground rent.

5. Subsequently, an additional affidavit of Shri Sukhchain Singh, Assistant Commissioner, C.F.S., Ludhiana has been filed. It has been mentioned that the seized goods were allowed to be cleared on provisional basis immediately after seizure on 30-6-2000 on the request of the petitioner itself. But the petitioner has not got the goods released. Therefore, he has to suffer the consequences. It is also pointed out that the Customs Authorities have no authority to waive the demurrage charges. The imported goods were misdeclared by the petitioner and the same were seized and confiscated. It is pointed out that the order of Tribunal that the goods should be released after mutilation shows that seizure as well as confiscation of the Department was justified, as the goods were misdeclared.

6. Before we examine the issue raised in the present writ petition, the relevant provisions of the Circular dated 14-12-1995 (for short "the Circular") and Handling of Cargo in Customs Areas Regulations, 2009 (for short "the Regulations") need to be extracted. The same are as under:

Circular dated 14-12-1995

Circular No. 128/95-Cus.Dated 14-12-1995 (From F. No. 434/12/92-Cus.IV)  
Government of India Ministry of Finance Central Board of Excise & Customs, New Delhi

Subject: Standard set of guidelines for appointment of custodians of E.P.Zs./ICDs/C.F.Ss.

The Government have decided that the private sector would also be involved in infrastructure development. Accordingly this sector has been allowed to open C.F.Ss./I.C.Ds./F.P.Zs. in addition to public sector agencies. The other intention of

the Government has been to bring the Customs facilities to the doorstep of the exporting and importing community; therefore, many C.F.S.s/I.C.Ds./E.P.Zs. have been allowed to be opened in the interior, apart from port towns so as to decongest the ports.

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Guidelines on undertaking to be given by the custodians before being appointed as custodians of C.F.Ss./I.C.Ds./E.P.Zs.

(1) The custodian should provide safe, secure and spacious premises for loading/unloading/storing of the cargo. The infrastructure for loading/unloading and storage operations should be designed to handle a minimum traffic of at least 10 TEU per day (two-way). The premises should be so designed that there should be provision for expansion of storage space, office accommodation, handling space, etc. for a period of 10 years;

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(15) Custodian shall not charge any rent/demurrage on the goods detained by Customs Department under the Customs Act or any other Act for the time being in force. However, the Customs Department shall pay the rent to the custodian after the ownership of the goods vests in the Government after confiscation. The rate of rent for such goods shall be fixed by the Commissioner in consultation with C.P.W.D. or Local Revenue or Rent Control authorities;

Handling of Cargo in Customs Areas Regulations, 2009

1. Short title and commencement.--(1) These regulations may be called the Handling of Cargo in Customs Areas Regulations, 2009..

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.--(1) In these regulations, unless the context otherwise requires -

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(b) "Customs Cargo Services provider" means any person responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods and includes a custodian as referred to in Section 45 of the Act and persons as referred to in sub-section (2) of Section 141 of the said Act;

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6. Responsibilities of Customs Cargo Service Provider.--(1) The Customs Cargo Service provider shall -

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(1) subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained or confiscated by the proper

officer;

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7. Learned counsel for the petitioner referred to Circular No. 128/95-Customs, dated 14-12-1995 i.e. guidelines for appointment of Custodian of I.C.D. and C.F.S.. It is contended that clause 15 of the said Circular is to the effect that Custodian shall not charge any rent/demurrage on the goods detained by Customs Department under the Customs Act or any other Act for the time being in force. However, the Customs Department shall pay the rent to the custodian after the ownership of the goods vests in the Government after confiscation. It is further contended that the Central Board of Excise & Customs in exercise of powers conferred made the Handling of Cargo in Customs Areas Regulations, 2009. Regulation 6(1) of the said Regulations contemplates a Customs Cargo Service provider shall not charge any rent or demurrage on the goods seized or detained or confiscated by the proper officer. Therefore, in terms of such Regulations, on account of seizure of the goods in the year 2000, which has been found to be unjustified, disentitles the Customs Authorities to claim demurrage from the petitioner.

8. On the other hand, learned counsel for the Revenue relies upon three Judges' Bench judgment of Supreme Court in International Airports Authority of India and Others Vs. Grand Slam International and Others, and in Trustees of Port of Madras Vs. Nagavedu Lungi and Co. and Others, as well as a Division Bench judgment of Andhra Pradesh High Court reported as Sujana Steels Ltd. Vs. Commr. of Cus. and C. Ex. (Appeals), Hyderabad, to contend that even if seizure is found to be not proper, the demurrage charges had to be paid by the importer.

9. In International Airports Authority of India case (supra), the Customs Department has issued Detention Certificate and informed International Airports Authority of India and the Central Warehousing Corporation that no demurrage be charged for the period during which the goods were in their custody due to pendency of adjudication proceedings. But such entities refused to treat the entire period as free period but granted rebate and calculated demurrage in accordance with Rate Schedule framed by them. The amount of demurrage in each case came to be two or three times more than the value of the goods. It is said action, which was challenged in the writ petitions filed by the importers. The writ petitions were allowed. It is the said order, which was challenged by the International Airports Authority of India and the Central Warehousing Corporation before the Supreme Court. The Supreme Court after considering all the applicable provisions of law held to the following effect:

39. In any event, the provisions of the Customs Act under which the said Customs public notice was issued may be examined. Section 8 empowers the Collector of Customs to approve proper places in any Customs port of Customs airport for the unloading and loading of goods and to specify the limits of any Customs area. Section 33 debars the unloading of imported goods at any place

other than a place approved u/s 8. Section 34 states that imported goods shall not be unloaded from any conveyance except under the supervision of a proper officer. Section 45 reads thus : "Restrictions on custody and removal of imported goods -

(1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area whether under the provisions of sub-section (1) or under any law for the time being in force -

(a) shall keep a record of such goods and send a copy thereof to the proper officer.

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with except under and in accordance with the permission in writing of the proper officer.

40. None of these provisions entitles the Collector of Customs to debar the collections of demurrage for the storage of imported goods. They do not entitle him to impose conditions upon the properties of ports or airports before they can be approved as Customs ports or Customs airports. Section 45 provides that all imported goods imported in a Customs area must remain in the custody of the person who has been approved by the Collector of Customs until they are cleared and such person is obliged not to permit them to be removed from the Customs area or otherwise dealt with except under and in accordance with the permission of the Customs Officer. Section 45 does not state that such person not be entitled to recover charges from the importer for such period as the Customs authorities direct.

41. The purpose of the Customs Act on the one hand and the Major Port Trusts Act and the International Airports Authority Act on the other hand are different. The former deals with the collection of Customs duties on imported goods. The latter deals with the maintenance of seaports and airports, the facilities to be provided thereat and the charges to be recovered therefore. An importer must land the imported goods at a sea-port or airport. He can clear them only after completion of Customs formalities. For this purpose, the sea-ports and airports are approved and provide storage facilities and Customs officers are accommodated therein to facilitate clearance. For the occupation by the goods of space in the sea-port or airport, the Board or the Authority which is its proprietor is entitled to charge the importer. That until Customs clearance the Board or the Authority may not permit the importer to remove his goods from its premises does not imply that it may not charge the importer for the space his goods have occupied until their clearance.

10. Following the said judgment, the Supreme Court in Trustees of Port of Madras case (supra), observed as under:

We have heard learned Counsel for the parties in the appeal. A three Judge Bench of this Court in International Airports Authority of India and Others Vs. Grand Slam International and Others, , has ruled that the importer-consignee of goods cannot avoid his liability to pay demurrage charges and other incidental charges in respect of its goods illegally detained in the customs area of the Airport by the Customs Authorities under the Customs Act. The said ruling of this Court as regards liability for demurrage charges and other incidental charges by importer-consignee of goods illegally detained in the customs area of the Airport by the Customs Authorities applies to the liability to pay demurrage charges or incidental charges by the exporter-consignor of goods illegally detained in the customs area of the sea-port by the Customs Authorities under the Customs Act, for such goods illegally detained by the Customs Authorities, the fact that they belonged to either the importer-consignee or exporter-consignor does not make any difference.

11. In Sujana Steels Ltd. case (supra), the detention of goods by the Customs Authorities were found to be unjustified and illegal, but the importer was called to pay demurrage charges for the period of such detention. Considering the judgments, referred to above, a Division Bench of Andhra Pradesh High Court held to the following effect:

11. Therefore, the judgment of the Apex Court in International Airports Authority's case (supra) is an authority to state that a statutory authority even if it is the custodian of the imported goods, because of the provisions of the Customs Act or any other statute, would be entitled to charge demurrage for such goods in its custody and make the importer or consignee liable for the same even for periods during which he/it was unable to clear the goods from the Customs area, due to the fault on the part of the Customs Authorities or of other authorities who might have issued detention certificates owning such fault. In the case of International Airports Authority (supra), the Supreme Court has considered its earlier decisions in (i) The Trustees of the Port of Madras Vs. Aminchand Pyarelal and Others, ; (ii) Board of Trustees of the Port of Bombay Vs. Indian Goods Supplying Co., and Board of Trustees of the Port of Bombay Vs. Jai Hind Oil Mills Co. and Others, ....

12. The principles which emerge from the decisions of the Supreme Court in International Airports Authority (supra) and its earlier decisions would suggest that no mandamus would lie to the Central Warehousing Corporation and its authorities to release the goods to the petitioner Company without payment of storage and demurrage charges....

13. In other words, the Central Warehousing Corporation authorities cannot be denied their statutory duties on account of demurrage and other charges. What has to be seen in the facts and circumstances of this particular case is whether

the liability of the importer/petitioner Company to pay such dues is to be shifted to the Customs authorities as argued by the learned counsel for the petitioner, since the petitioner company was not responsible for detention of the goods in question as held by the C.E.G.A.T. in its order dated 29-6-1999 and as reflected in the Detention Certificate issued by the third respondent dated 5-10-1999. The Supreme Court in *Padam Kumar Agarwalla Vs. The Additional Collector of Customs and Others*, while quashing the order of confiscation passed by the Customs authorities opined that there would have been no difficulty in directing release of the goods had the same been in the custody of the Customs authorities. Since the goods were in the possession of the Port Commissioners, who had a lien over the goods for rent and other charges, the Supreme Court was pleased to observe that someone would have to pay the port charges before the goods could be removed and since the importer was not to blame for the delay in removal of the goods which had been illegally detained by the Customs authorities, it would be only fair and just for the Customs authorities, who were responsible for the situation, to bear the burden for paying port charges. The Customs authorities having accepted the order of the C.E.G.A.T. dated 29-6-1999 and having issued Certificate for Clearance of the goods dated 5-10-1999 should own the responsibility of paying detention and storage charges for the goods from 16-10-1996. It will be totally unjust and unreasonable on the part of the Customs authorities to content : "Let the petitioner company pay storage and demurrage charges first and then they may initiate legal action against the Customs authorities seeking reimbursement of those charges, if they are so entitled and advised." Customs authorities are statutory/public authorities and the reasonableness of their actions is required to be tested on the touchstone of postulates of reasonableness and non-arbitrariness flowing from Article 14 of the Constitution of India. Therefore, the stand taken by the learned Senior Standing Counsel for the Central Government appearing for the respondents 1 to 3 Customs Authorities in that regard is not tenable.

12. Learned counsel for the petitioner could not refer to any provision under which the Customs Authorities can direct the Warehouse to waive off the demurrage charges. Admittedly, there was provisional release of goods on payment of redemption fine and penalty. The petitioner has not availed such option. Once the provisional release of goods ordered at the request of the petitioner itself has not been availed, therefore, the petitioner has taken a calculated risk of incurring demurrage charges as in the absence of release of goods, the Customs Authorities had to store the goods in safe custody.

13. The guidelines framed vide Circular dated 14-12-1995 are in respect of allowing to open C.F.Ss. and I.C.Ds. in private sector, which were called as "Custodian". It was the Custodian, who was not to charge any rent or demurrage on the goods detained by the Customs Department. But the Customs Department was required to pay the rent to the Custodian after the ownership of the goods vested in the Revenue after confiscation. Such provision though is between the Custodian and the Revenue; still it does not absolve the petitioner

to pay the demurrage charges. The payment of demurrage charges is not a pre-condition for storage of goods as per clause 15. But after the goods vests with the Revenue, the rent of the goods has to be paid by it. It does not contemplate the situation where after adjudication process the goods do not vests with the State, but vests with the importer. In such a situation, the importer would be liable to pay demurrage charges, as owner of the goods stored in the Warehouse. The guidelines do not provide for demurrage free storage even for the Revenue.

14. The scope of the Regulations is wider than the Circular, as it prohibit the Customs Cargo Service Provider to charge any amount on the goods seized or detained. But since the goods were seized in the year 2000, such Regulations will not come to the rescue of the petitioner. Even the said Regulations are to determine the relationship between the service provider and the Revenue and not in respect of services availed by the importer. In view of the precedents of the Supreme Court in International Airports Authority of India and Trustees of Port of Madras cases (*supra*), we do not find any merit in the present petition. The same is accordingly dismissed.