(1987) 02 CAL CK 0015

In the Calcutta High Court

Case No : CO. No. 8989 (W) of 1986

Dwarka Prasad Agarwal APPELLANT

Vs

Assistant Collector of Customs RESPONDENT

Date of Decision : 19-02-1987

Acts Referred:
Customs Act, 1962 — Section 132(3), 23

Citation : (1989) 43 ELT 273

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : D. Paul, Samir Chakraborty and A.K. Dey, for the Appellant;N.C. Roy Chowdhury and S.K. Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Suhas Chandra Sen, J.—It appears that the process of the court is being abused of this Writ petition. The petitioner claims to have entered into a contract with a foreign party in Singapore for import of 200 M.Ts. of HDPE. (High Density Polythelene). The petitioner has not given any date, but has stated generally that in the month of June, 1986 the petitioner received intimation from the foreign party that the said goods had been shipped by the foreign party. The petitioner has stated that documents in connection with the aforesaid shipment was thereafter presented for payment to the banker of petitioner M/s. Bank of Madura Ltd., Brabourne Road, Calcutta and the documents were duly retired by payment of a sum of Rs. 8,72,000/- from the account of the petitioner.

2. Here again the dates are not mentioned. Whether any letter of credit was opened, if so, when, in whose name the bill of lading was made out, particulars of the contract and the date of retirement of the document, have not been mentioned at all.

3. It, however, appears that the vessel in which the goods came, arrived at Calcutta Port on 26th May, 1986 and a bill of entry was presented on behalf of

Messrs. Inter Metal and Allied Co. on 27th May 1986. The goods had arrived by S.S. Virabhum and documents were produced by Messrs. Inter Metal and Allied Co. in support of its claim. On 28th May, 1986 the goods were unloaded from the vessels and customs duty was assessed on the goods that were unloaded.

4. Up to this date the petitioners were not in the picture. The difficulty in this case started by a letter received from the Income Tax Officer to the Customs Department stating that the goods had been bought by Inter Metal and Allied Co. with unaccounted money and directed the Customs Department not to release the goods. Formal notice u/s 132(3) was sent by the Income Tax Officer to the Customs Department and was received by the Customs Department on 2nd June, 1986.

5. The matter rested at that stage for a fortnight. On 17th June, 1986 the petitioner''s agent Messrs. Kapoor and Co. presented the bill of entry on behalf of the petitioners. Inter Metal and Allied Co. also addressed letter to the Customs Department stating that they were disclaiming all right, title and interest to the goods. It may be mentioned that the bill of entry lodged on behalf of the petitioner''s were not accepted as the petitioners'' names did not appear in the Manifest. On 23rd June, 1986 the shipping agent Kapoor & Co. filed an application before the Assistant Collector (Import) by which the petitioners'' name was sought to be incorporated in the Manifest in place of the said Inter Metal & Allied Co. On 25th June, 1986 Inter Metal & Allied Co. stated by a letter to the Customs Authority that they were giving up the title to the said imported goods u/s 23 of the Customs Act, 1962.

6. It has been stated on behalf of the Customs Authorities that an investigation has been launched by the Customs Authorities in respect of the importation of the goods and also to determine the question of whether the Manifest can be allowed to be corrected under the provision of the Customs Act, 1962.

7. The petitioners'' contention is that Inter Metal & Allied Co. is not claiming the title to the goods. The Income Tax Department has no claim against the petitioners. Therefore, the goods, being of the petitioners, cannot be detained by the Customs authorities.

8. I am entirely unable to accept the contention. Neither the Inter Metal & Allied Co., nor the Income Tax Department are parties to the proceeding. It appears that when the goods arrived the petitioners did not claim any title to the goods. It is Inter Metal & Allied Co. which lodged the Bill of entry and produced the necessary documents in respect of the goods and had the duty assessed on the goods. Only because of the intervention of the Income Tax Department, the goods could not be cleared. How the interest of the Inter Metal & Allied Co. ceased and how the petitioners'' claim title or interest to the goods, remain a mystery. Therefore, the suggestion made on behalf of the respondents that Inter Metal found that the goods could not be cleared by it, it purported to transfer the goods to the petitioner, cannot be brushed aside. In any event, these are the

questions which cannot be decided in this Writ petition. How the petitioners acquire title to the goods and why the Inter Metal & Allied Co. came to claim the goods and then disappeared from the scene, are matters which will have to be explained. Why the petitioners'' name did not appear in the Manifest has not been explained and, therefore there cannot be any question of passing any order on this Writ petition.

9. The Writ petition, therefore, is dismissed. If the petitioners are so advised the petitioners may file a suit and take any other proceeding. There will be no order as to the costs.