(2003) 12 CAL CK 0012

In the Calcutta High Court

Case No : Writ Petition No. 3208 of 1994

Everett (India) Pvt. Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 166 ELT 315

Hon'ble Judges : Sengupta, J

Bench : Single Bench

Advocate : Tilak Bose and S. Banerjee, for the Appellant;Shibdas Banerjee R. Mukherjee, S.K. Roy Chowdhury and Pradip Ghosh, for the Respondent

Judgement

Sengupta, J.—The petitioner in this application has challenged the show cause notice issued by the Customs authorities on the ground of alleged short landing of materials. The petitioner is the steamer agent and, as such, carrier of the goods in question. It is not the case of the petitioner that the authority concerned has no jurisdiction. But the impugned show cause notice is based on outturn report purported to have been issued by the Port authority, who in his turn, has issued this notice on the basis of the tally sheet.

2. Mr. Tilak Bose, the learned Counsel while impugning show cause notice, submits that the basis of issuance of show cause notice is invalid and illegal. Since the tally sheets as disclosed by the Port authorities have no connection or correlation with the outturn report. The result is that the outturn report is a void document. Naturally, show cause notice being based on the report, is invalid.

3. It is settled position of law, he reminds me, that a proceeding cannot be proceeded lawfully unless there is some material. Here, in essence, there is no material. He further submits that the outturn report is without being accompanied by any tally sheet. So to say, in absence of any tally sheet no outturn report can be prepared, show cause notice pursuant to such report is also bad in law and liable to be set aside. In support of his submission he has

relied on a division Bench judgment of the Bombay High Court reported in Mackinnon Mackenzie and Co. Ltd. Vs. Board Trustees and others, in the case of Scindia Steam Navigation Co. Ltd. Vs. Collector of Customs, rendered in the case of Scindia Steam Navigation Co. Ltd. v. Collector of Customs wherein, according to him if the goods are properly accounted for, the shipper/carrier has no obligation for any alleged short landing.

4. He further submits that during pendency of this matter the respondent authority has not proceeded with hearing of show cause notice. As such, the show cause should be set aside taking into consideration of the totality of the matter and the material placed before this Court in the writ petition.

5. Mr. Roy Chowdhury, the learned Senior Counsel, appearing for the Port authorities, submits that at this stage the Writ Court will not interfere with the matter, as to whether there is short landing or not, are the factual aspect and can effectively be adjudicated by the Customs authority u/s 116 of the Customs Act, 1962. Whether tally sheet is a correct one or the same is the basis of the impugned outturn report or not are again the question of fact. The Writ Court following well-established principle of law shall not go into those aspect.

6. Mr. Shibdas Banerjee, the learned Senior Counsel, appearing with Mr. Mukherjee submits that the statutory authority in exercise of his power has issued a notice and such power is not questioned. The question raised by the petitioner as to whether on the facts and circumstances or on the materials whether the show cause notice should have been issued or not, can very well be taken care of by the aforesaid appropriate officials. At this stage when the question of jurisdiction of the office is not raised, the Writ Court will not usurp the jurisdiction of the aforesaid authority while adjudicating the matter on merit.

7. While countering argument of Mr. Banerjee, Mr. Bose contends that when the matter is being adjudicated by this Court, this matter should not be left unheard on merit. The theory of alternative remedy will not be applicable in this case.

8. Having heard the respective contentions of the learned Counsels for the parties I think Mr. Shibdas Banerjee is right in saying when no question of jurisdiction has been raised, and the Customs Act is an exhaustive statute and provides for complete machinery for adjudication of disputes, this Court should not in exercise of its extraordinary power, decide this matter. Mr. Bose submits that the outturn report is devoid of any material, as the tally sheets are not related to this report. I am of the view whether the tally sheet is a correct one or not or whether outturn report is based on any tally sheet or not are the question of fact, and can very well be adjudicated by the appropriate officials. Mr. Bose, however, entertains his apprehension that once this outturn report is placed before the Customs authority his client will have no remedy as this authority will accept this report as sacrosanct and conclusive one. I do not think there is any basis of such apprehension, because law is very well settled. The document issued by the statutory authority in usual course of business supplies

presumptive value relating to its execution not the correctness and truthfulness of the content. If it is established before the appropriate forum, that the contents of any document may be a statutory or otherwise, are incorrect, then certainly it will not look into that document. Moreover, Mr. Bose''s client is having special knowledge about the short landing or complete landing of the materials. They must have documents, papers and the register to elucidate correct position to rebut presumption.

9. Therefore, I direct the authority concerned to allow a written objection to be filed by the petitioner, if he choose within a period of four weeks from the date of communication of this order. The petitioner will be entitled to produce material evidence to rebut the evidence of the outturn report. It would be open for the petitioner to challenge the correctness of the contents of the outturn report as well as the tally sheets. The official concerned upon hearing the Port authority as well as the petitioner, shall examine the correctness of the tally sheets as well as the outturn report and will also decide the question of maintainability of the show cause notice itself. On this preliminary point if it is found that the outturn report is based on no tally sheets in real sense, then he will drop the proceedings taking note of Division Bench judgment of the Bombay High Court. Otherwise, he will decide this matter on merit and will consider the explanation of the writ petitioner.

10. With the above observation this matter is disposed of without any order as to costs.

11. I record that 1 have kept everything open for decision of the appropriate officials.

All parties are to act on xerox signed copy of this dictated order on the usual undertaking.

