
(2019) 08 CAL CK 0188
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 617 Of 2018

Fairfax Industries Ltd

APPELLANT

Vs

Commissioner Of Customs (Port) & Ors

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0188

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Utpal Bose, P.K. Jhunjhunwala, S. Rudra, Abhrajit Mitra, Ashok Kr, Anil Kr, Amitabrata Ray, Bhaskar Prosad Banerjee, Priyanka Chetlangia

Final Decision : Dismissed

Judgement

Debangsu Basak, J

The petitioner has sought a direction upon the respondents to act in terms of the instructions dated August 18, 2011 issued by the Central Board of Excise and Customs (C.B.E.C.) and the public notice No. 52/2011 issued by the Commissioner of Customs (Port), Kolkata.

Learned Senior Advocate appearing for the petitioner has submitted that, C.B.E.C. issued the instructions/directions dated August 18, 2011 to the effect that, all Customs Cargo Service Providers should get weighbridges installed at their facilities preferably near entry/exit gates and that, all containers must be weighed. He has referred to the instructions/directions dated August 18, 2011. In terms of such instructions/directions, Kolkata Port Trust (KoPT) is obliged to have weighbridges installed at the entry and exit gates for weighment of containers. KoPT granted five sites to Hindustan Steel Work Construction Limited (HSCL) for construction of the weighbridges at the Kolkata Dock of the Kolkata Port Trust. HSCL entered into an agreement dated October 21, 2009 by which, the petitioner was required to install weighbridge equipments at the Port Trust land and operate the same on revenue sharing basis with HSCL. By a letter dated

November 20, 2013, HSCL required the petitioner to deposit the upfront premium for the lease to set up the weighbridge facilities at Kolkata Port. On December 13, 2013 the petitioner deposited such sum with HSCL. According to the petitioner, HSCL in turn deposited the upfront lease premium with KoPT. By a letter dated February 25, 2014, HSCL informed KoPT that, HSCL appointed the petitioner as a contractor and that, the petitioner would be executing the job for installation and operation of the weighbridges. Thereafter, the petitioner set up five electronic weighbridges at Kolkata Dock of Kolkata Port and started operating the same in the name of HSCL on revenue sharing basis. According to the petitioner, five weighbridges are capable of weighing 100% of the containers in the port area.

Learned Senior Advocate appearing for the petitioner has submitted that, sometime in 2016, the petitioner observed that, Direct Port Delivery (DPD) and Direct Port Entry (DPE) containers passing through Kolkata Dock were not being weighed at the weighbridges of the petitioner. By a letter dated July 25, 2016, HSCL drew the attention of the Commissioner of Customs (Port) Kolkata, about the violations and requested remedial measures. By a letter dated August 2, 2016, the Customs authorities requested Kolkata Port Trust authorities to comply with the instructions contained in the public notice. However, Kolkata Port Trust authorities did not take any steps. HSCL complained to the Commissioner of Customs (Port) Kolkata whereupon, the Commissioner of Customs (Port) Kolkata issued a public notice dated October 7, 2016 reiterating that, in pursuance of the public notice bearing number 52/2011 all containers must be weighed. By the public notice bearing number 86/2016 the Commissioner of Customs (Port) Kolkata directed that, weighment of imported and export goods should be done in presence of a customs officer. Despite the customs authorities taking such a stand, Kolkata Port Trust authorities did not comply with the same. Kolkata Port Trust authorities allowed large number of DPD and DPE containers to pass through Kolkata dock of Kolkata port without the same being weighed at the weigh bridges installed by the petitioners.

Learned senior advocate appearing for the petitioners has referred to the data of movement of DPD and DPE containers and submitted that, the petitioners are suffering huge financial losses with such containers not being weighed at the weigh bridges of the petitioners. He has submitted that, the Customs authorities as well as the Kolkata Port Trust authorities are obliged to get all loaded DPD and DPE containers passing through the Kolkata dock of the Kolkata Port weighed at the weighbridges installed by the petitioners. The Customs authorities and the Port authorities are estopped from accepting the weight of the loaded DPD and DPE containers endorsed or certified by any other agency outside the port area.

Learned Senior Advocate appearing for the petitioners has referred to the Safety of Life at Sea (SOLAS) guidelines and submitted that, the customs and the port trust authorities are obliged to follow the guidelines of SOLAS. In the present case, none of the authorities are doing the same. He has referred to the various

clauses of the guidelines of SOLAS. He has submitted that, the petitioners are entitled to the reliefs as prayed for.

Learned Senior Advocate appearing for the Kolkata Port Trust authorities has submitted that, the petitioners have no locus standi to maintain the present writ petition. He has submitted that, there is no privity of contract between the petitioners and the Kolkata Port Trust authorities. The petitioners have no right other than the alleged right of possession in respect of the immovable property. He has drawn the attention of the Court to the fact that, Kolkata Port Trust granted lease in favour of HSCL. There is a settled standard operating procedure between the Kolkata Port Trust authorities and HSCL. According to him, there is no obligation on the part of Kolkata Port Trust authorities to have every cargo weighed on the Weighbridge of the petitioners. He has submitted that, the lease agreement between Kolkata Port Trust authorities and HSCL provides that, the land would be used exclusively by HSCL. HSCL did not obtain prior permission of Kolkata Port Trust authorities to put the petitioner into possession of the property. HSCL did not approach for subsequent permission also. At present, there is no permission of Kolkata Port Trust authorities in favour of HSCL for the petitioners to occupy any land belonging to the Kolkata Port Trust authorities. He has drawn the attention of the Court to the fact that, there is no privity of contract between Kolkata Port Trust authorities and the petitioners. Therefore according to him, the petitioners are not entitled to any relief as prayed for in the present writ petition.

Essentially, the petitioners have sought the relief that, the respondents should not permit any DPD and DPE containers to pass through Kolkata dock of the Kolkata Port without the same being weighed at the weighbridges installed by the petitioners. The two circulars that the petitioners have relied upon require weighment of the containers. The two circulars do not require that, the containers must be weighed at the weigh bridges installed by the petitioners. The containers, if weighed elsewhere, is acceptable by Custom. Customs authorities have not taken stand that, the containers must be weighed at the weighbridges of the petitioners. Their stand is that, the containers must be weighed in accordance with the two circulars. The two circulars cannot be read to specify that the weighment of containers are mandatory at the weighbridges of the petitioners. There is no privity of contract between the petitioners and the Kolkata Port Trust authorities. The petitioners are occupying land, taken on lease by HSCL from the Kolkata Port Trust authorities. There is nothing on record to suggest that, Kolkata Port Trust authorities had permitted HSCL to put the petitioners into possession of any part or portion of the lease area. There is no obligation on the part of Kolkata Port Trust authorities to ensure that, all DPD and DPE containers passing through Kolkata dock of Kolkata Port Trust must be weighed at the weighbridges installed by the petitioners. Customs authorities have not stated that, the containers passing through Kolkata dock of the Kolkata Port Trust are not being weighed, in accordance with law. Customs authorities cannot compel that, a person who has installed weighbridges on land belonging

to Kolkata Port Trust, without requisite permission from Kolkata Port Trust to do so, must have all containers passing through its dock, weighed at such weigh bridges.

In view of the discussions above, I find no merit in the present writ petition.

WP No. 617 of 2018 is dismissed. No order as to costs.