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(1986) 07 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 1810 of 1982

Firoz Haiderally Kachwalla APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 31-07-1986

Acts Referred:

Major Port Trusts Act, 1963 — Section 53

Citation : (1986) 10 ECC 288 : (1987) 10 ECR 675 : (1987) 28 ELT 206

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The Petitioner is a partner of the partnership firm of M/s. M.A. Kachwalla & Sons and the firm deals in mirrors and glasses and also processes them. The firm regularly imports Belgium made mirrors and glasses for home consumption for processing. In the month of June, 1982, the petitioner importer four consignments out of which two consignments were of float glass and bills of entry bearing Nos. 219 and 220 were lodged on June 1, 1982. It is the claim of the petitioner that the clearance was held by the Customs for I.T.C. purpose and on June 3, 1982, the case was marked to Customs Appraiser. The Petitioner claims that though all documents were produced before the Appraiser, no action was taken to appraise the goods since the Appraiser was under transfer. According to the Petitioner, goods were examined only on July 7, 1982 and were ordered to be released on July 17, 1982 after it was found that the import was in order for I.T.C. purposes. It is the claim of the petitioners that the goods were wrongly detained in the custody of the Customs authorities for a period of 47 days.

On July 17, 1982, the petitioners sought detention certificate from the Assistant Collector and the detention certificate was issued on August 7, 1982 for the period commencing from July 7, 1982 and ending with July 17, 1982. The petitioners thereupon applied to the Port Trust authorities for remission of demurrage charges in accordance with Section 53 of the Major Ports Act. It is the claim of the petitioner that all original documents were filed along with the applications made to the Bombay Port Trust. The petitioner was informed by the Bombay Port Trust by letter dated August 30, 1982 that the claim for waiver of demurrage charges cannot be granted. The petitioner claims that the action of the Port Trust authorities is wrong. The petitioner also claims that the Customs authorities ought to have granted detention certificate from June 1, 1982 till July 17, 1982 and not only for the period of 10 days, i.e. from July 7, 1982 to July 17, 1982.

2. On behalf of the Customs authorities, Shri S.K. Raizada, Assistant Collector of Customs, has filed return sworn on April 15, 1986. The Customs authorities claim that on presentation of the bills of entries on June 1, 1982, the necessary queries calling for necessary documents were made to the petitioners on June 3, 1982. The return further claims that the bills of entries were thereafter taken away by the petitioner''s Customs House Agent and were represented only on June 12, 1982 under a covering letter dated June 11, 1982. It is the claim of the Customs authorities that while representing the bills, the requisite documents were not produced. On June 17, 1982, the papers were put up to the Appraiser and, therefore, the bills of entries were again taken back by the petitioner''s Customs House Agent and were resubmitted on June 24, 1982 along with the documents which were called for. The petitioner also made a request that the goods should be sent for second check but that request was rejected and examination order on first check was issued. Bills of entries were again taken away and were resubmitted on June 29, 1982 for waiver of the second examination order. The goods were then examined on July 7, 1982 and the sample was forwarded to the Customs House for inspection. The bills of entries were then submitted on July 9, 1982 to the Assistant Collector for acceptance of the licence and the bills of entries were finally completed on July 17, 1982. The return, therefore, claims that the time required between June 1, 1982 till July 7, 1982 was only because the relevant bills of entries were taken away by the petitioner or his Customs House Agent and the requisite formalities were not completed.

On behalf of the Port Trust, return sworn by V.G. Amberdekar, Assistant Docks Manager, on March 21, 1983 is filed and it is claimed that the action of the Port Trust authorities in refusing to waive the demand for demurrage charges cannot be faulted with. The Port Trust authorities point out that though the petitioner was entitled to clear the goods on July 17, 1982, the petitioner did not bother to do so and on August 9, 1982 filed an application for remission of demurrage charges. The Port Trust authorities claim that the application was duly considered and rejected.

3. Shri Pochkhanwala, learned counsel appearing on behalf of the petitioner, submitted that the time required from June 1, 1982 till July 7, 1982 was only because the Customs authorities were not punctual in carrying out their duties. The learned counsel urged that the goods were not appraised because the Appraiser was under transfer and the Assistant Collector of Customs was not

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available in the office. The learned counsel urged that the claim made by the Customs authorities in the return is not correct. It is not possible to accept the submission of the learned counsel. I called upon Shri Bulchandani, learned counsel for the Customs authorities, to produce the original record for my perusal to ascertain whether the claim made in paragraphs 4, 5 and 6 of the return is correct or otherwise. Shri Bulchandani produced the entire file and on perusal of the various endorsements made on the bills of entries and the notings recorded by the Officer in the file from time to time, leaves no manner of doubt that the claim of the Customs authorities is correct. Shri Pochkhanwala submitted that the endorsements on the bills of entries do not indicate that the same were returned to the petitioner or his Customs House Agent and were re-submitted. Surely, the learned counsel does not expect that the Customs Officer who is dealing with hundreds of bills of entries every day is required to make endorsements that the bills were returned to a particular individual and were represented. One cannot overlook that the practice followed in the Customs Office was to return the bills of entries for compliance with the required formalities and it is well-known that the Customs House Agents used to take away the original bills for complying with the requirement of the Customs authorities. The practice of returning the original documents was stopped from the year 1985 onwards and the Customs House agents were given the query Memos. In these circumstances, it is difficult to expect that the bills of entries which were returned to the Customs House Agents in the month of June, 1982 onwards would bear an endorsement that they were returned for the purpose complying with the requirements of the Customs authorities. The Officers of the Customs were discharging their duties in the ordinary course of business and it is not possible to doubt their bona fides merely because the petitioner claims that what was stated in the return is false. After perusal of the original documents and the file, I have no hesitation in concluding that the claim of the Customs authorities is correct and their action in not granting detention certificate for a period earlier to July 7, 1982 cannot be faulted with.

4. Shri Pochkhanwala then submitted that the Port Trust authorities were not right in refusing to waive the demurrage charges. The learned counsel submitted that u/s 53 of the Major Ports Act, the authorities have discretion to waive the demurrage charges and taking into consideration the fact that the petitioner is a small concern, the demurrage should have been waived. There is no merit whatsoever in this submission. In the first instance, it is difficult to appreciate why the petitioner did not bother to clear the goods from July 17, 1982 when the Customs authorities permitted to do so. Secondly, the petitioner applied for remission of demurrage charges only on August 9, 1982 and that too without clearing the goods, the action of the Port Trust authorities in rejecting the claim cannot be faulted with on the facts and circumstances of the case. It appears that the petitioner was not interested in clearing the goods for the reasons best known to him and the petitioner desired to avoid demurrage by seeking discretionary relief from the Port Trust authorities. In my judgment, the

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petitioner is not entitled to any relief in the petition and the petition must fail.

5. Accordingly, rule is discharged with costs. The petitioner is liable to pay the demurrage charges of Rs. 32,124/- to the Bombay Port Trust authorities. The petitioner had initially deposited an amount of Rs. 40,000/- in this Court, but subsequently, it was withdrawn on furnishing Bank guarantee. Shri Chinoi, learned counsel appearing on behalf of the Port Trust authorities, informs and that fact is not disputed by Shri Pochkhanwala that the Bank guarantee was not renewed by the petitioner. The petitioner who is present in Court gives an undertaking through his counsel that the Bank guarantee would be renewed within one week from today, or in the alternative the amount will be deposited with the Prothonotary and Senior Master. In case, the amount is deposited with the Prothonotary and Senior Master, then the Port Trust authorities are at liberty to withdraw the same.

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