
(1991) 07 BOM CK 0086
In the Bombay High Court
Case No : Writ Petition No. 2377 of 1991

Gokak Patel Volkart Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 40 ECR 17 : (1991) 56 ELT 56

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri D.C. Gomes, for the Appellant; Shri K.R. Bulchandani and Shri K.C. Sidhwa, for the Respondent

Judgement

Pendse, J.

Rule, returnable forthwith. Shri Bulchandani waives service on behalf of the respondents. Heard counsel.

1. The question which falls for determination lies in a very narrow compass. Only few facts are required to be stated to appreciate the grievance of the petitioners.

2. The petitioners were agents of a foreign flag vessel which had called in Bombay in or about middle of July 1984. The petitioners had filed Import General Manifest dated July 16, 1984. The vessel inter alia brought three full container load containers under three bills of lading. As declared by the shippers, the containers had 12 pallets stuffed in two containers, while 11 pallets in the third container. The vessel discharged the manifested quantity, including the three containers with their seals intact in the Bombay Port Trust Docks and thereafter the vessels sailed from Bombay.

3. The petitioners received show cause notice dated August 29, 1988 from respondent No. 1 alleging that under Item Nos. 75, 76 and 77 of the Import General Manifest three pallets were short-landed as indicated in the out-turn report of Bombay Port Trust. The petitioners replied to the show cause notice

pointing out that the three containers were discharged with their seals intact and therefore the penalty cannot be imposed on the petitioners.

Respondent No. 1 by his order dated September 6, 1988 imposed penalty of Rs. 93,828/- after recording a finding that the containers landed with seals intact as per the tally sheets produced by the petitioners. The appeal preferred by the petitioners before respondent No. 2 ended in dismissal and so also the revision application preferred before respondent No. 3. These orders imposing penalty are under challenge in this petition under Article 226 of the constitution of India.

4. Shri Gomes, learned Counsel appearing on behalf of the petitioners, submitted that as per the decision recorded by one of us (Pendse, J.) in Writ Petition No. 1226 of 1981 in cases where containers were discharged with seals intact, then penalty cannot be imposed on the agents of a foreign flag vessel. Shri Gomes submitted that even though the containers were discharged with their seals intact, the appellate authority and the revisional authority have made erroneous observations to somehow hold against the petitioners. There is considerable merit in the submission of the learned Counsel. The appellate authority and the revisional authority only to overcome the judgment of this Court observed that the tally sheets indicated that seals were not intact. The observations are totally misconceived. Respondent No. 1 in the original order had clearly observed that the tally sheets establishes that the containers landed with seals intact. Merely because the seals were rusted and the seal numbers were not visible is not enough to warrant a conclusion that the containers did not land with seals intact.

5. Shri Gomes also submitted that the destuffing tally sheets indicate that the full contents of the containers, that is 12 pallets from the two containers and 11 pallets from one container were destuffed. Shri Gomes submitted that merely because some of the pallets were lost in the Bombay Port Trust Docks are the penalty cannot be levied upon the petitioners by assuming that the seals were not intact. The submission is correct and deserves acceptance. In our judgment, the order passed by respondent No. 1 on September 6, 1988 and confirmed by the appellate and the revisional authorities cannot be sustained.

6. Accordingly, petition succeeds and rule is made absolute in terms of prayers (a) and (b). There will be no orders to costs.