(2000) 07 CAL CK 0019

In the Calcutta High Court

Case No : Writ Petition No. 1536 of 2000

Hari Har Chowdhury APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:

Customs Act, 1962 — Section 45(1), 63
International Airports Authority Act, 1971 — Section 37(1)

Citation : (2001) 74 ECC 81 : (2000) 122 ELT 23

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Judgement

Amitava Lala, J.—This is an application in the form of writ petition for the purpose of waiver of demurrage charges towards the processing period. Under an order of the Airports Authority of India, International Airports Division, being letter No. AAC/CARGO-40 (03J/547 dated 7.9.1998, the Authority concerned waived demurrage charges amounting to Rs. 1,85,000 for the period from 8.5.1998 to 7.9.1998, which is condoned towards processing period.

2. According to the petitioner, as per powers relating to remission/waiver of the demurrage charges (Cargo), the processing period of waiver application shall be regulated as under:

(a). In cases where demurrage is waived in full and/or part total processing period shall be considered as free period.

(b). In case where application is rejected, the processing period beyond ten working days after receipt of complete details/documents/explanations should be treated as free period.

(c). Maximum three working days free period shall be allowed from the date of communicating the decision, beyond which full demurrage charges shall be levied.

3.I find there is also a provision of an appeal against the decision of rejection of the application for waiver which can be made to the next higher authority than the deciding authority. The appeal shall be filed within a period of fifteen days from communication of such decision. The decision of the appellate Authority, however, will be treated as final.

4. Mr. Dhar, learned Advocate appearing on behalf of the respondent Authority, has contended before this Court that there is no scope of adjudication of demurrage by Writ Court when the alternative remedy, by way of an appeal, is available to the petitioner. This is a case of re-export and the Chairman, Authority is the appropriate Forum for appeal. He has also cited a decision reported in International Airports Authority of India and Others Vs. Grand Slam International and Others, Upon relying on paragraph 60 of the said judgment Mr. Dhar contended before this Court that in fact, when the International Airports Authority of India in exercise of powers conferred by Sub-section (1) of Section 37 of the International Airports Authority Act, 1971 and with the prior approval of the Central Government have made regulations called the International Airports Authority (Storage and Preservation of Goods) Regulation, 1980, regulating levy of charges or surcharges, scale of charges and waiver of charges payable by the owner in case of warehouse goods with the IAAI, those Regulations not only do not come in conflict with the Act or its Regulations or its Rules but conform to the requirement of the provision of Section 63 of the Act.

5. He has further contended that if condition (vii) of Clause (d) of the Customs Public Notice No. 30/86 is regarded as that that imposed by the Collector of Customs without authority of law, it having been imposed ultra vires his powers under the Act or Rules or Regulations, no Court can direct the IAAI to release the goods of the consignee without collecting from him demurrage charges levied according to its Regulations in respect of the goods, which it had taken care of as the custodian merely because there was a detention certificate of the Collector of Customs or his delegate issued to the IAAI which had been approved as the custodian of such goods by the Collector of Customs under Sub-section (1) of Section 45 of the Act.

6. He has also relied upon paragraph 65 of the said judgment to establish that it is clear that an authority created under a statute even if is the custodian of the imported goods because of the provisions of the Customs Act, 1962, would be entitled to charge demurrages for the imported goods in its custody and make the importer or the consignee liable for the same even for periods during which he/it was unable to clear the goods from the Customs area, due to fault on the part of the Customs Authorities or of other authorities who might have issued detention certificates owning such fault.

7. The petitioner appearing in person has contended-that this judgment has no face value so far as the present case is concerned, where on numerous occasions several representations were made before various Authorities and no plea was taken and rejected summarily by such Authorities.

8. I can understand from the argument advanced before this Court by the parties that there might be a process of consideration of the case by way of an appeal. But this Court deprecates the stand of the Authority concerned about rejecting the plea summarily without giving any reasons whatsoever. Therefore, delay, if any, in preferring appeal before the Authority is condoned by this Court.

9. The writ petition can be treated as appeal before the appropriate Authority concerned, who in turn, will decide this issue finally upon giving fullest opportunity of hearing and by passing a reasoned order thereon within a period of three weeks from the date of communication of this order by the petitioner without fail.

10. For the purpose of effective adjudication, a copy of the writ petition as well as other annexures as also affidavits in connection thereto will be treated as part of appeal.

11. Thus, the writ petition stands disposed of.

12. No order is passed as to costs.

13. However, this order will not prevent from withdrawing the goods without any condition whatsoever.

14. Xeroxed certified copy of this order will be supplied to the parties by the department within seven days from the date of putting in requisition for drawing up and completion of the order as well as the certified copy thereof.

15. All parties are to act on the operative part of this Judgment upon usual undertaking and as per the satisfaction of the officer of this Court.

