(1983) 03 CAL CK 0029

In the Calcutta High Court

Case No : Matter No. 651 of 1982

Heilgers Limited APPELLANT

Vs

Deputy Collector of Customs and Another RESPONDENT

Date of Decision : 29-03-1983

Acts Referred:
Customs Act, 1962 — Section 116

Citation : (1985) 5 ECC 20 : (1986) 6 ECR 545 : (1985) 22 ELT 401

Hon'ble Judges : P.C. Barooah, J

Bench : Single Bench

Advocate : Pradip Kumar Ghosh, for the Appellant; S.K. Mitter, for the Respondent

Final Decision : Allowed

Judgement

P.C. Borooah, J.—The petitioner, Heilgers Ltd., carries on business as steamer agents for the Port of Calcutta and at all material time acted as such agents for the Japanese vessel "NORFOIK MARU" owned by M/s. Mitsui O.S.K. Lines Ltd. of Japan which arrived at the Port of Calcutta on or about 2nd September, 1979. Among the cargo brought by the vessel for discharge at the Calcutta Port, there was a consignment of 9 cartons of "FYH" brand ball-bearings, shipped at the Port of Kobe in Japan by M/s. Nippon Pillow Block Sales Co. Ltd. According to a declaration made by the shippers and inserted in the bill of lading, copy of which is annexure A to the petition, the weight of the consignment was 417.6 kilograms with identifying marks as mentioned in the bill of lading.

2. Upon arrival at Calcutta the vessel commenced discharging her cargo on 3rd September, 1979, and completed the discharge on 13th September, 1979. Upon discharge the cargo was taken charge of by the Calcutta Port Trust till the same was removed by the consignees.

3. By a letter dated 31st December, 1979, M/s. Export Claims Recovery Syndicate submitted a claim for Rs. 6,859.61 for 407 pieces of bearings alleged

to have been found short on purported survey of four cartons. The petitioner repudiated the said claim as no steamer survey was held immediately after discharge of the cargo and an application for steamer survey had been made a month after the landing of the cargo. It is stated in paragraph 4 of the petition that on or about 19th October, 1979, the insurer of the said cargo at the request: of the consignees caused a survey to be held on the cargo without any notice to the petitioner and without their knowledge.

On or about 17th November, 1980, the Assistant Collector of Customs, Manifest Clearance Department, Calcutta, issued a notice to the petitioner alleging inter alia that on an insurance survey held at 4, Netaji Subhas Docks on 10th October, 1979, 9 cartons valued at Rs. 6,716.11 were found short, and inasmuch as the shortage was detected in the insurance survey it was obvious that the shortage had occurred 6n board the vessel prior to landing. A copy of the notice is annexed to the petition and marked with the letter D. The petitioner submitted a reply, copy of which is annexure E to the petition and in the reply the petitioner pointed out in paragraphs 2 and 3 that the petitioner was not a party to the insurance survey which was held without their knowledge long after the discharge of the cargo and as such this survey could not reflect the actual physical condition at the time of discharge, and the fair and proper way to determine any shortage was to hold a joint survey immediately after discharge from the vessel in accordance with the Customs Department Public Notice No. 132.

4. In spite of such reply having been submitted Shri S.S. Jha, the Deputy Collector of Customs, Manifest Clearance Department by an order dated 18th August, 1981, copy of which is annexure F to the petition imposed a penalty of Rs. 10,280/-on the petitioner u/s 116 of the Customs Act, 1962, for the purported short landing. This order, copy of which is annexure F to the petition, is the subject-matter of challenge in this rule.

5. I have heard Mr. Pradip Kumar Ghosh for the petitioner and Mr. S.K. Mitter on behalf of the Customs authorities.

6. It appears from the impugned order that the Deputy Collector of Customs held that the petitioner is liable as according to him the petitioner ought to have arranged for an immediate survey of the cargo in accordance with the Public Notice No. 81, dated 17th June, 1971. As the steamer agents had failed to do so, the explanation for delay in survey is not applicable.

7. It appears that the Deputy Collector of Customs, completely overlooked the fact that in the instant case the ex parte insurance survey was conducted almost about a month after the landing of the cargo which was in violation of the instructions issued by the customs authorities in the Public Notice No. 132, dated 14th December, 1973. The Deputy Collector also overlooked the fact that the procedure laid down in Public Notice No. 132 was in modification of the Customs House Public Notice No. 81, which the Deputy Collector relied upon in coming to

the decision that the petitioner was liable to a penalty u/s 116 of the Customs Act, 1962.

8. For the reasons stated above I allow this application and set aside the impugned order. The customs authorities will, however, be at liberty to issue a fresh show cause notice on the petitioner if they consider that in spite of the Public Notice No. 132, the petitioner can be held liable on the basis of the ex parte insurance survey conducted almost a month after the discharge of the cargo. The penalty which has been deposited with the Collector of Customs be refunded to the petitioner within a period of eight weeks from the date of service of the signed copy of the ordering portion of the judgment.

9. The rule is, thus, made absolute without any order as to costs. All parties to act on a signed copy of the ordering portion of the judgment.

