(1987) 03 CAL CK 0007

In the Calcutta High Court

Case No : Matter No. 146 of 1987

Hindustan Products APPELLANT

Vs

Collector of Customs and Others RESPONDENT

Date of Decision : 13-03-1987

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 14, 59

Citation : (1988) 34 ELT 13

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Advocate : ;P.K. Dutt, for the Respondent

Judgement

Ajit Kumar Sengupta, J.—In this application under Article 226 of the Constitution, the petitioner has challenged the refusal of the Customs Authorities to make redetermine the assessable value on the Bill of Entry in respect of 76 Coils of defective C.R.C.A. sheets which arrived in vessel S.S. Viswa Bandhen on the basis of the corrected freight shown by the Shipping Corporation of India. The facts are stated hereinafter.

2. The said goods arrived sometime in November, 1986. Upon the arrival of the said goods the Customs Authorities allowed the petitioner to keep the said goods in the Warehouse u/s 59 of the Customs Act, 1962. The Shipping Corporation of India, the carriers of the said goods, issued a freight bill dated 29th October, 1986 in respect of the said goods for Rs. 4,75,350.03p to the petitioner. In view of the said freight bill raised by the Shipping Corporation of India, the petitioner at the time of filing the bill for Warehousing mentioned the freight paid in respect of the said goods as Rs. 4,75,350.03p. The bill of entry was filed and the petitioner was assessed on the basis of the aforesaid freight bill.

3. On or about 25th November, 1986 the Shipping Corporation of India however, raised the correct freight bill on the petitioner in respect of the said goods at Rs. 2,60,081.98p. and stated that the freight bill was re-calculated and the Shipping

Corporation of India requested the petitioner to treat the previous freight bill for Rs. 4,75,350.03p. as cancelled. Upon receipt of the correct bill, the petitioner''s clearing Agents, Messrs. J.C. Bose & Sons addressed a letter to the Assistant Collector of Customs pointing out the correct freight bill in respect of the said consignment and requested him to re-assess the Bill of Entry on the basis of the correct freight bill. By an undated letter issued in December 1986, the Assistant Collector of Customs, Appraisement Group III informed the clearing agents that the petitioner''s request for amendment of the assessable value of the goods could not be acceded to as it was not clear why the reduction in freight was made and whether it was so made by way of a special concession to the petitioner or whether it was open to all others. The petitioner was advised to take recourse to refund claim procedure in due course. By a letter dated 25th December, 1986 the petitioner made it quite clear that no special concession was given to the petitioner and the correct freight bill was Rs. 2,60,081.98p. and consequently the Bill of Entry should be re-assessed.

4. The contention is that the respondents have no authority to levy duty on incorrect freight bill after correction had been made by the Shipping Corporation of India. The Shipping Corporation has filed an affidavit. Sasanka Kumar Ghosal, Deputy Manager of the Shipping Corporation of India affirmed an affidavit on 20th February, 1987. In the said affidavit reasons have been given why the correction in freight was made. In paragraphs 6 to 12 of the said affidavit, it has bean stated as follows :

"6. I say that SCI is a Government of India Undertaking and has an extensive network of carriage of cargo from India to and from different parts of the world. In foreign countries the business of SCI is conducted through appointed agents.

"7. I say that in the present case the cargo in question was carried on board the vessel ''Vishva Bandhan'' (Voidable No. 39) from the Port of Yokohama to the Port of Calcutta under Bill of Lading No. 1. The cargo was carried on freight to pay basis, that is to say, freight to be collected at the port of destination, namely, Calcutta. On the basis of the instructions given by M/s. HongKong & Fastern (Japan) Ltd. the agent of SCI at Japan, a total freight of Rs. 4,75,350.03p. was charged as would be evident from the Freight Bill dated 29th October, 1986, a copy whereof is annexed hereto and marked with the letter A. The said freight bill was cancelled on the basis of a communication received from the said Agent of SCI at Japan wherein it was indicated the correct freight to be collected would be US Dollar 19,987.30 instead of US Dollar 36,530.65 as shown originally. A copy of the said communication received from the said agent of SCI at Japan is annexed hereto and marked with the letter ''B''.

"8. I say that on the basis of the said correction, a fresh freight bill was issued by the SCI on 25th November, 1986 for a sum of Rs. 2,60,081.98p. A copy of the said revised freight bill dated 25th November, 1986 is annexed hereto and marked with the letter ''C''.

"9. I say that the Assistant Collector of Customs, Appraising GP III, Custom House, Calcutta on 15th January, 1987 wrote to the SCI asking clarification as to the manner of charging freight. A copy of the said letter is annexed hereto and marked with the letter ''D''.

"10. On the same date, that is to say, 15th January, 1987 the SCI wrote to the Assistant Collector of Customs informing him that the freight and other charges collected on the basis as shown in the home manifested available from the Port of Shipment and in the present case the freight bill was amended as per the corrector No. 1 dated 29th September, 1986. In the said letter it has been stated that two telexes were sent to the Japanese Agent of SCI and reply of the same was awarded. A copy of the said letter as also the telexes sent to the Japanese Agent are included in Annexure ''E'' hereof.

"11. I say that the Japanese Agent replied to the said ''Telex, a copy whereof is annexed hereto and marked ''F''.

"12. I say that the SCI has acted in accordance with the uniform practice prevalent in the shipping trade. Furthermore the rates of freight are fixed by the conference of Shipping Lines and the freights are charged in accordance with the rate fixed by the Conference Lines and accepted world over."

5. No affidavit has, however, been filed by the Customs Authorities. Having regard to the affidavit filed by the Shipping Corporation of India and the correspondence that passed by and between Shipping Corporation of India and the only agent in Japan and the Collector of Customs and having regard to the facts and circumstances of this case, I have no hesitation in accepting the statements made by the Shipping Corporation of India as to the correctness of the freight bill. There is nothing mala fide on the part of the Shipping Corporation of India. No special concession was given to the petitioner in this particular case. It has been categorically stated that the rectification has been made in accordance with the uniform practice prevalent in the Shipping Trade. It may be mentioned that in or about December, 1986 the petitioner imported 37 coils of detective CRCA sheets in the said vessel S.S. Bishva Bandhan. The Shipping Corporation of India, the carriers of the said goods issued a bill of lading dated 23rd December, 1986 in respect of the said goods showing the freight in US Dollar at 16840. 10 equivalent to Rs. 2,33,018.45. On 7th January, 1987 the Shipping Corporation of India raised a correct freight bill in respect of the said goods at Rs. 1,29,232.03 and stated in the correct freight bill that the said figure of Rs. 2,22,018.45 had been recalculated and requested the petitioner to treat the previous bill for Rs, 2,22,018.45 as cancelled. The clearing agents once again wrote to the Officer concerned for rectification. Thereupon the Assistant Collector of Customs, Appraisement Group III being the respondent No. 2 assessed the said goods on the invoice value taking into account the correct figure charges in respect thereof. Thereafter the Collector of Customs purported to reassess the assessable value of the said goods alter scoring the assessment earlier made on 9th January, 1987 and included the incorrect freight bill earlier raised by the

Shipping Corporation of India in determining the assessable value of the said goods.

6. In any judgment the Customs Authorities have no jurisdiction to reassess the assessable value on the basis of the incorrect freight. The rates of freight are fixed by the Conference of shipping lies and the freights are charged in accordance with the rate fixed by the conference lines and accepted world-over. That is the reason why the Shipping Corporation of India corrected freight bill on the basis of the instructions received from the Japanese agent. There is nothing to suggest that amendment in the freight was made contrary to the rate fixed by the conference lines. The Customs Authorities, are, therefore, under an obligation to proceed on the basis of the correct freight as shown by the Shipping Corporation of India for determining the assessable value.

7. For the reasons aforesaid this application is allowed. The respondent Customs Authorities shall proceed to assess or reassess the Bill of Entry or Bills of Entry on the basis of the amended freight shown by the Shipping Corporation of India and shall determine" the assessable value in accordance with the amended freight. If any, assessment has been made on the basis of the incorrect freight such assessment should be redone on the basis of corrected freight. Where no assessment has been made, such assessment shall be made strictly in accordance with the corrected freight as shown by the Shipping Corporation of India.

8. Pursuant to the orders dated 22nd January, 1987 and 28th January, 1987 passed by this Court. the goods have already been released. The petitioner furnished a bond for Rs. 2,74,000/-. The said bond shall stand discharged. The Bank Guarantee furnished by the petitioner for a sum of Rs. 1 lakh shall also stand discharged and shall be returned to the petitioner forthwith. Since the amount of duty has been paid by the petitioner on the basis of the corrected freight bill the petitioner is not required to make any further payment.

9. Mr. P.K. Dutt, learned Advocate appearing on behalf of the Customs Department has fairly submitted that no affidavit was required to be filed by the Customs Authorities because it was for the Shipping Corporation of India to explain the reason for amendment in the freight bill. In that view of the matter, Mr. Dutt submits the Customs Authorities do not admit the allegations made in the petitioner which are contrary to the records.

10. Mr. Dutt, however, asks for a stay of this order. In the facts and circumstances of this case the stay asked for is refused.

11. There will be no order as to costs.

All parties to act on a signed copy of the operative part of this judgment.