

(2012) 11 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 3377 of 2009

Ial India Ltd.

APPELLANT

Vs

Kandla Port Trust and Another

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Customs Act, 1962 — Section 45

Major Port Trusts Act, 1963 — Section 2(o), 48, 61, 62

Citation : (2013) 2 GLR 977

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : D.G. Shukla, for the Appellant; Dhaval D. Vyas, for the Respondent

Judgement

Harsha Devani, J.—The petitioner, a Company, has called in question the communication dated 13-10-2008 issued by the second respondent - Assistant Traffic Manager (Containers), Kandla Port Trust whereby, the petitioner had been requested to deposit sufficient ground rent/dwell-time charges before release of its container and seeks a direction to the respondents to release the container of the petitioner company immediately. The factual background which has given rise to the present petition is as follows:

1.1. The petitioner-Company is operating as a General Steamer Agent, and is inter alia, engaged in the business of shipping agency in whose containers goods are exported to other countries as well as imported from other companies. The petitioner is operating as General Steamer Agent for M/s. IAL Container Line (U.K.) Ltd., which operates its own liner shipping services as carrier, offering multimodal transportation of containerised cargo at various international locations including the Indian Sub-Continent. The said company operates in India through its appointed General Steamer Agent, that is, the present petitioner.

1.2. The respondent No. 1 - Kandla Port Trust is constituted as a custodian as Inland Container Depot (I.C.D.) under Sec. 45 of the Customs Act, 1962. One

long dwell container No. CLHU 2522813-20 arrived per M.V. Lamphun Navdee - 319 on 15-8-2003 along with certain items. The consignee of the said goods was immediately informed by the petitioner-Company. However, the consignee did not turn up for delivery despite repeated reminders, and thereby, abandoned the goods. Subsequently, several requests were made to the second respondent for de-stuffing of container, but to no avail. By a letter dated 17-5-2006, the petitioner-Company informed the first respondent that their container was lying idle for the last three years and the ground rent and other charges had been deducted from their P.D.A. account and that the petitioner was losing substantial revenue on account of non-utilisation of container. Request was, therefore, made to de-stuff the container at the earliest to enable the petitioner to update their principal. In the meanwhile, the respondent authority had deducted a sum of Rs. 1,56,000/- as ground rent from the P.D.A. account which was being maintained by the petitioner-Company with the respondent Port authorities to facilitate their daily routine commercial activities with the respondent-Port. Once again, by a letter dated 9-10-2006, the petitioner-Company informed the first respondent to de-stuff the container and release it as early as possible. It was also stated that the petitioner was ready to undertake the de-stuffing operations as and when required by the Kandla Port officials. The second respondent by a letter dated 28-10-2006, advised the petitioner-Company to deposit the ground rent charges till date, in respect of the long dwell container with the Containers Billing Section and further informed that the de-stuffing of the container would be done in the presence of the representatives of the Customs, C.I.S.F., Port and its line after payment of port charges.

1.3. Thereafter, much later, by a letter dated 22-1-2008, the second respondent informed the petitioner that before de-stuffing of cargo from the long dwell container, it would be required to deposit the ground rent charges in consultation with A.T.M. (Container Billing) and further informed that the de-stuffing of the container will be done in the presence of the above-referred persons and that the petitioner-Company would also be required to make necessary arrangements for labour, equipments etc. for de-stuffing of the container. By a letter dated 7-2-2008, the petitioner objected to the action of the respondents in deducting Rs. 1,56,346/- from the P.D.A. account without intimation. The notice of the respondent authorities was also drawn to the effect that the said amount exceeded the ground rent applicable for a period of 75 days as provided under the Tariff Authorities of Major Ports Regulations (hereinafter referred to as "the T.A.M.P. Regulations") for the abandoned containers. The respondent authorities were also informed that they should give prior intimation and an opportunity to examine the same and put forward their view-points before accepting the deductions.

1.4. By a letter dated 5-3-2008, the petitioner company was informed that its container is required to be de-stuffed inside W.H.-21 of K.P.T. which is meant for storage of e-auction cargo and the cargo thereafter will be listed for auction. The Customs authorities were requested to post their representative to supervise the

de-stuffing operations. It appears that the container was de-stuffed on 19-3-2008 in the auction yard of the Kandla Port Trust. The petitioner-Company by a letter dated 26-3-2008, thanked the first respondent for allowing de-stuffing of the container and requested that it be allowed to take out the empty container in C.W.C.C.F.S., Kandla so as to stuff the container as early as possible for exports. Once again, by a letter dated 1-7-2008, the petitioner-Company with reference to their letter dated 26-3-2008, requested the first respondent to hand over the container as the same had been de-stuffed on 19-3-2008.

1.5. The petitioner-Company, thereafter addressed communications dated 4-8-2008 and 30-9-2008 to the Chairman, Kandla Port Trust, informing him that the container had arrived on 15-8-2003 and as the consignee did not come forward for its delivery, the container was finally de-stuffed on 19-3-2008 and the goods were in the custody of the Port for disposal. Attention was drawn to the letter dated 17-7-2008 of the respondent-Port authorities whereby, the payment of ground rent accrued till date had been demanded, which according to the petitioner, they were not liable to pay as at best they could be made liable for a maximum of 75 days ground rent and the cost of de-stuffing in view of the T.A.M.P. Regulations. The petitioner-Company requested the Chairman to pass suitable instructions to the concerned Department to enable them to take delivery of their empty container at the earliest. It was also pointed out that G.N.P.T. and other C.F.S. were applying 75 days ground rent in similar cases.

1.6. The petitioner-Company thereafter made several representations and addressed various letters to the respondent authorities that in terms of the Tariff Authorities for Major Ports order dated 19-7-2000, ground rent on abandoned containers cannot be charged for more than 75 days. However, by the impugned letter dated 13-10-2008, the petitioner-Company was informed that as per the scale of rates under the said Regulations, the empty unit does not fall within the purview of charges leviable upto 75 days. The petitioner was also directed to deposit sufficient ground rent/dwell-time charges before the release of the container. Being aggrieved, the petitioner had filed the present petition challenging the impugned communication dated 13-10-2008.

1.7. Subsequently, by a notice dated 23-3-2009 of the second respondent, the petitioner-Company was informed to clear the empty container (which is subject-matter of this petition) within fifteen days of the issue of the said notice, failing which the said container would be auctioned under the provisions of Sec. 61/62 of the Major Ports Trusts Act, 1963. Apprehending that the respondents would auction the empty container of the petitioner company, the petitioner moved an amendment challenging such notice, which came to be granted.

2. By an order dated 28-8-2009, this Court took note of the fact that the cargo having already been de-stuffed on 19-3-2008, the only question that remained was of releasing the container, subject to payment of demurrage charges on the said container. The Court observed that it was not in dispute that de-stuffed cargo was lying in the custody of the respondents, who were authorised/entitled

to auction the same and appropriate the required amount from the proceeds thereof towards charges leviable by them. Excess, if any, was to be paid to the importer, subject to any other charges leviable from the amount received by any other person like in the present case, the petitioner-shipping line. The Court, accordingly, directed the respondents to undertake the exercise of auctioning the cargo as early as possible and to place the details of the amount realised in the auction along with the details of the amount leviable by the respondents and the amount leviable from the shipping line. Subsequently, by an order dated 1-10-2009, it was recorded that the learned Counsel for the respondents had submitted a sheet showing various amounts like payment for the charges on the container, sale proceeds of the de-stuffed cargo, deduction under the head of sale expenses, customs duty, demurrage on goods after de-stuffing, and had appraised the Court that there was a deficit of Rs. 29,868/- (approximately) towards various charges leviable on the de-stuffed cargo as the sale proceeds of the de-stuffed cargo fell short. This was without taking into consideration the amount payable as demurrage on the container. The learned Counsel for the respondents had clarified that the figures set out in the work-sheet were tentative.

3. Mr. D.G. Shukla, learned Counsel for the petitioner vehemently assailed the action of the respondents in seeking to recover charges beyond a period of 75 days. The attention of the Court was drawn to the order dated 19-7-2000 passed by the Tariff Authority of Major Ports, whereby the Major Port Trusts were directed to introduce the note stated therein in their Scale of Rates. Such note provided that storage charges on abandoned F.C.L. Containers/Shipper Owned Containers shall be limited upto the date of receipt of intimation of abandonment in the Harbour Office in writing or two months from the date of landing of the container, whichever is earlier, for such abandoned F.C.L. Containers/Shipper Owned Containers. It was submitted that under the above order, the authority has prescribed a time-limit of two months for levy of charges on the abandoned containers. The said order was reviewed and the time-limit was extended to seventy-five days for levy of storage charges on the abandoned containers by an order dated 19-7-2000.

3.1. Reference was made to the contents of the order dated 19-7-2000 and the clarifications issued thereunder to submit that the maximum period for which the respondents could levy storage charges for abandoned container was 75 days and that the charges recovered by the respondents by deducting the amount beyond such period from the P.D.A. account without intimation, was without authority of law. It was submitted that prior to deducting such a huge amount of Rs. 1,56,346/-, neither was any intimation given to the petitioner, nor was it afforded any opportunity of hearing.

3.2. Referring to the provisions of Sec. 62 of the Major Port Trusts Act, 1963 (hereinafter referred to as "the M.P.T. Act") it was submitted that where any goods placed in the custody of the Board upon the landing thereof are not

removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board is required to take steps as prescribed under sub-sec. (1) of Sec. 62 of the M.P.T. Act for removal of the goods and in default of compliance therewith, the goods are liable to be sold by public auction or by tender, private agreement or in any other manner. Under sub-sec. (3) of Sec. 62 of the M.P.T. Act, if the owner or person does not comply with the requisition in the notice served upon him or published under sub-sec. (1), it is open to the Board, at any time after the expiration of two months from the date on which such goods were placed in its custody, to sell the goods by public auction etc. after giving notice of sale in the manner specified under sub-secs. (2) and (3) of Sec. 61 of the said Act. It was submitted that in the present case, the goods in question were placed in the custody of the first respondent on 15-8-2003. The consignee did not turn up for delivery. Under the circumstances, the respondent authorities ought to have resorted to the provisions of Sec. 62 of the M.P.T. Act and auctioned the goods in question within the period specified under sub-sec. (3) thereof. It was submitted that if the respondents had resorted to the said provisions, there would have been no delay in disposing of the goods, leading to demurrage charges. It was argued that even after de-stuffing of the container, there was considerable delay in auctioning the cargo, thus, there was lethargy on the part of the Kandla Port Trust at every stage.

3.3. The learned Counsel drew the attention of the Court to a copy of the Bill of Lading, to point out that the consignee is one Rameshwar M.M. Charity Trust and the petitioner herein is only the delivery agent. It was submitted that it is a well settled position of law that it is the liability of the consignee to pay demurrage/storage charges accrued on the goods to the custodian, and as such, the impugned communication seeking to recover such charges from the petitioner deserves to be set aside. It was submitted that once the goods arrived in the Port premises, the consignee is the bailor and the Port Trust is the bailee. The contract to keep the goods in custody is between the Port Trust and the holder of the Bill of Lading, that is, the consignee who is the owner of the goods. It was argued that the consignee remains the owner of the goods irrespective of endorsement on the Bill of Lading or issue of delivery order by the Steamer Agent and that the respondent-Port authorities can recover the storage rent only from the owner of the goods, that is, the consignee and that the shipping agent is not liable for the same.

3.4. In support of his submissions, learned Counsel placed reliance upon the decision of the Supreme Court in the case of International Airports Authority of India and Others Vs. Grand Slam International and Others, , for the proposition that the custodian of the imported goods would be entitled to charge demurrage for the imported goods in its custody and make the importer or consignee liable for the same. Reliance was also placed upon the decision of the Madras High Court in the case of The Board of Trustees of the Port of Madras Vs. Southern Shipping Corporation Private Ltd., No. 2, Rajaji Road, Madras-1 and Another, , for

the proposition that the contract is between the Port Trust and the holder of the Bill of Lading, viz., the consignee and that it is the consignee who is recorded as the owner of the goods irrespective of the endorsement on the Bill of Lading or issue of the delivery order by the steamer agent. The Port Trust is entitled to recover charges under the Major Port Trusts Act in respect of the goods from the owner, viz., the consignee. In the said case, the Court held that the Port Trust was entitled to recover demurrage charges in respect of the goods only from the owner of the goods, and that the Shipping Agent was not liable for the same.

4. Opposing the petition, Mr. Dhaval Vyas, learned Counsel for the respondents invited the attention of the Court to the T.A.M.P. Order dated 19th July, 2000, to submit that what is sought to be charged is the dwell-time charged on the container. Under the Scale of Rates, the petitioners are agents of the owners. Firstly, they are in custody of the goods and secondly, they are owners of the containers. Referring to the definition of "owner" as defined under Sec. 2(o) of the Major Ports Trust Act (M.P.T. Act), it was submitted that in relation to goods, the expression "owner" includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods. It was submitted that the petitioner being an agent for sale of the Shipping Line, would fall within the ambit of the expression "owner" as defined under Sec. 2(o) of the M.P.T. Act.

4.1. Referring to the guidelines issued by the Tariff Authority of Major Ports and more particularly, Issue (iv) pertaining to the position regarding payment of ground rent after the expiry of 75 days if Lines do not take action for clearing the cargo out of the containers, it was submitted that as per the clarification issued by the said Authority, the Port Trust is only a facilitating agency for transportation of containers and de-stuffing. It is for the Lines to observe necessary formalities and bear the costs of transportation and de-stuffing. If the Lines do not take such action within the stipulated period, they cannot require the Port Trust to stop levy of ground rent on the container on the expiry of the stipulated period. In such cases, the ground rent will continue to be paid till such time when necessary actions are taken by the Shipping Lines for de-stuffing of the cargo. It was submitted that it was for the petitioner to observe necessary formalities and bear the costs of transportation and de-stuffing. Since, the container was filled with hazardous cargo, the de-stuffing required extra care and better supervision including pre-detection of the cargo therein.

4.2. It was contended that it is not permissible for the petitioner to contend that the liability for payment of ground rent is limited to a period of seventy-five days. It was submitted that from the record, there is nothing to indicate that the importer of the goods in question has ever issued a letter of abandonment and that in terms of the conditions of the T.A.M.P. Order, the petitioner was not only required to issue a letter of abandonment of the cargo, but also to resume the custody of the container along with cargo and to take it back or remove it from the port premises, upon payment of all the port charges accrued on the cargo and the container, before resuming the custody. That after abandonment of

cargo, the petitioner was required to follow specific procedure and make necessary declarations including the indemnifying the Kandla Port Trust which had not been done in the present case and as such, the petitioner is estopped from claiming anything to the contrary. According to the learned Counsel, for a period of around four years, the petitioner had not taken any serious steps for having its issues sorted out and as such, it cannot require the Kandla Port Trust to stop levy of ground rent of container on the expiry of the stipulated period.

4.3. It was further submitted that upon de-stuffing of the cargo, the Kandla Port Trust had no objection for permitting the petitioner to take over the actual custody of the container upon payment of the accrued arrears of ground rent. That despite the fact that it was well within the knowledge of the petitioner that it is liable for payment of the arrears of ground rent, it had conveniently not discharged its obligation of making such payment. It was, accordingly, submitted that the petitioner is not entitled to any relief as prayed for in the petition and that the petition deserves to be dismissed.

5. The undisputed facts of the present case are that one long dwell container containing imported cargo arrived at the port. However, the consignee did not turn up for delivery. According to the petitioner, it had made several requests to the Assistant Traffic Manager, Kandla Port Trust for de-stuffing of the container, but no such attempt was made by the respondents. Subsequently, by a letter dated 9th October, 2006, the petitioner requested the first respondent to de-stuff the container and release the same as early as possible. Pursuant thereto, the second respondent by a letter dated 28th October, 2006, asked the petitioner company to deposit the ground rent charges on the container and informed that the de-stuffing of the container would be done in the presence of the representative of Customs, C.I.S.F., Port after payment of port charges. It appears that thereafter, after about a period of more than one and half years, on 22nd January, 2008, the petitioner was again called upon to deposit the ground rent charges before the cargo could be de-stuffed from the long dwell container. Thereafter, the respondents deducted a sum of Rs. 1,56,346/- from the petitioner-Company's P.D.A. account without any intimation which was objected to by the petitioner vide communication dated 7-2-2008. It was the case of the petitioner that at best, the ground rent for a period of seventy-five days could be charged in terms of the above-referred T.A.M.P. Order and that no further ground rent charges could be recovered. Ultimately, the cargo was de-stuffed on 19th March, 2008. Upon such de-stuffing of the container, the petitioner by a letter dated 26th March, 2008, sought permission to take out the container so as to stuff the container for export. However, the petitioner was not granted such permission despite several representations. Hence, the petitioner filed the present petition, challenging the demand of excess amount of ground rent charges on the part of the respondent-Port authorities. Subsequently, by a notice dated 23rd March, 2009, the petitioner was informed to clear the empty container within a period of fifteen days from issue of said notice failing which the container would be put up for auction under the provisions of Secs. 61/62 of

the Act.

6. On behalf of the respondents, it has been contended that the petitioner is the owner of the cargo and as such, is liable for payment of all charges in respect thereof. In support thereof, reliance has been placed upon the provisions of Sec. 2(o) of the Act which defines "owner". According to the respondents, since the expression "owner" includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods, Shipping Line would also fall within the ambit of the said expression. In this regard, it may be germane to refer to the decisions on which reliance has been placed by the learned Advocates for the respective parties.

7. In the case of *The Board of Trustees of the Port of Madras Vs. Southern Shipping Corporation Private Ltd.*, No. 2, Rajaji Road, Madras-1 and Another, , the Madras High Court held that the contract is between the Port Trust and the holder of the Bill of Lading viz., the consignee. The consignee is the bailor and the Port Trust is the bailee and the consignee of the goods, named in the Bill of Lading for the purpose of Major Port Trusts Act, is regarded as owner of the goods irrespective of the endorsement on the Bill of Lading for issue of the delivery order by the steamer agent. The Port Trust is entitled to recover charges under the Major Port Trusts Act in respect of the goods from the owner, that is, the consignee. The Court held that the Port Trust is entitled to recover demurrage charges in respect of the goods only from the owner of the goods, and the Shipping Agent is not liable for the same. This decision is sought to be distinguished by the respondents on the ground that in the facts of the said case, the custody of the goods had passed on to the consignee as the delivery order has been issued, whereas in the facts of the present case, no delivery order has been issued, hence, the Shipping Line continues to be the owner of the cargo.

8. In *The Board of Trustees of The Port of Bombay and Others Vs. M/s Sriyanesh Knitters*, , the Supreme Court, in the context of the definition of "owner" as defined under Sec. 2(o) of the M.P.T. Act, held that reading the same along with the Bill of Lading Act, the consignee of the goods named in the Bill of Lading or every endorsee of the Bill of Lading, for the purpose of M.P.T. Act is regarded as the owner of the goods and it is from that owner that the Board is entitled to recover charges under the M.P.T. Act in respect of the said goods. The Court held that the High Court was not right in holding that the contract is between the Port Trust and the holder of the Bill of Lading, which, in that case, would be the consignee. It is the consignee which is the bailer with the Port Trust being the consignee.

9. In the light of the above-referred decisions, it is apparent that insofar as the invocation of Sec. 2(o) of the M.P.T. Act is concerned, the respondent Trust does not appear to be justified in contending that the Shipping Line is the owner of the cargo in question. Under the circumstances, the petitioner cannot be held liable for payment of the charges in respect of the cargo in question.

10. The next question that arises for consideration is the extent of ground rent payable by the petitioner under the T.A.M.P. Order. By virtue of T.A.M.P. order dated 19th July, 2000, issued vide Notification dated 28th August, 2000 in exercise of powers under Sec. 48 of the M.P.T. Act, the Tariff Authority has clarified various issues confronted by some Port Trusts while implementing its Order dated 10th November, 1999 prescribing a time-limit of two months for levy of storage charges on abandoned F.C.I. Containers/Shippers Owned Containers and other than Shipper Owned Containers etc. Various issues have been clarified thereunder. Considering the nature of the controversy involved in the present case, it would be necessary to examine the clarification in some detail. Issue (i) relates to the clarification made pursuant to a Court order relating to the obligation of issuing notice under Sec. 62 of the Act. It has been clarified that by the said order, the Port Trust is only directed to take timely action to sell the goods immediately after the period stipulated in the Act so that the Lines may get back their containers, which have been held up for no-fault of theirs. That the Order only requires the Port Trust to exercise the power given under Secs. 61 and 62 and act expeditiously to clear congestion at the ports and to minimise the loss suffered by the Shipping Lines. It was clarified that in the earlier Order the authority had prescribed a period of two months for levy of storage charges on abandoned F.C.L. containers because a Port Trust Board, on expiry of two months from the time when any goods had passed into its custody, could be sold by auction of such goods which had not been cleared by it. Under the said clarification, it was clarified that instead of the two months period prescribed under the earlier order, a time-limit of seventy-five days is prescribed including ten days for issuance of notice before such sale and a further grace period of five days. It is specifically stated therein that beyond such period, storage charges on container shall not accrue.

10.1. The second issue pertains to a clarification as to which party can issue a letter of abandonment, that is, whether the Lines or Importers? Under the said clarification, it has been clarified that it is for the consignee to issue a letter of abandonment. That the Shipping Line can also issue a letter of abandonment provided it is ready to take back the custody of the container and remove it from the port premises, in which case, the Line will have to pay all the port charges accrued on the container and the containerised cargo from the date of landing to the date of clearance from the port premises. Even without a letter of abandonment, a Line can resume custody of a container at any time before issuance of a delivery order. It is further clarified that if a Line does not choose to take back or remove the containers outside the port premises after paying all port charges, it has to wait till the expiry of the stipulated time period since a Port Trust cannot proceed to auction the goods inside the container before that. Thus, under this clarification, it is clarified that in case the Shipping Line is ready and willing to pay all port charges accrued on the container and the containerised cargo as specified thereunder, it can issue the abandonment letter and take back the custody of the container. However, if it does not choose to pay such charges,

it has to wait till the period of seventy-five days is over, because prior thereto, the Port Trust is not empowered to auction the goods contained in the container.

10.2. Issue (iii), which is more relevant for the purpose of present case, relates to a clarification as regards who will make arrangement for transportation and de-stuffing and bear the associated cost therefore. It has been clarified that the procedure of de-stuffing warrants an application of the container agents and booking of D.L.B. gang (wherever in existence) by the Lines or their appointed stevedores. The Port Trust can, therefore, arrange for the de-stuffing against a specific application of a Line or its Agents. In such cases, the Lines are required to observe the necessary formalities for de-stuffing and should bear the cost of de-stuffing also. From the above clarification, it appears that it is the Shipping Line which has to make an application for de-stuffing of the container and is required to bear the charges in respect of such de-stuffing.

10.3. Issue (iv) relates to position regarding payment of ground rent after the expiry of seventy-five days if the Lines do not take action for clearing the cargo out of the containers. The respondents have placed strong reliance upon this clause for the purpose of contending that it is permissible for them to recover charges from the Shipping Line beyond a period of seventy-five days and that their entitlement to recover container charges does not cease upon the expiry of seventy five days. In relation to such issue, it has been clarified that it is for the Lines to observe necessary formalities and bear the costs of transportation and de-stuffing. If the Lines do not take such action within the stipulated period, they cannot require the Port Trust to stop levy of ground rent on container on the expiry of the stipulated period. In such cases, the ground rent will continue to be paid till such time all necessary actions are taken by the Shipping Lines for de-stuffing of cargo.

10.4. Issue (v) pertains to actions to be taken by the Lines, if they want their containers back before the stipulated period, which is not relevant for the present purpose.

10.5. Issue (vi) relates to payment of demurrage on the de-stuffed containerised cargo, in relation to which, it has been clarified that the demurrage on the de-stuffed containerised (abandoned) cargo is to be met out of the sale proceeds of the de-stuffed cargo.

11. The facts of the present case are required to be examined in the light of the above-referred guidelines/clarifications issued under the T.A.M.P. Order.

11.1. In the present case, the cargo contained in the container reached the port on 15th August, 2003. The consignee did not take delivery of such cargo. Under the circumstances, in the light of the clarification issued vide Issue (i), the port authorities were required to take action under Secs. 61/62 of the M.P.T. Act as expeditiously as possible within the stipulated time period of seventy-five days. Beyond such time-limit of seventy-five days, storage charges on the container would ordinarily not accrue. In case the Shipping Line desired to obtain the

container prior to the expiry of the period of seventy-five days, it could have acted in terms of the clarification issued pursuant to Issue (ii) and could have issued an abandonment letter and taken the cargo back, in which case, it was required to pay all the port charges accrued on the container and the containerised cargo from the date of landing to the date of clearance from the port premises. Admittedly in the present case, the petitioner has not chosen to adopt such course of action. Under the circumstances, what the petitioner was required to do was to wait till the expiry of seventy-five days for the Port Trust to act under Sec. 61 of the M.P.T. Act. However, the clarification issued under Issue (iii), imposes an obligation upon the Shipping Line to make an application for de-stuffing of the container by observing necessary formalities for de-stuffing and also to bear the costs of de-stuffing. It is pursuant to such application, that the Port Trust would facilitate arranging transportation of containers and de-stuffing. Under Issue (iv), till such action is taken by the Lines, they cannot require the Port Trust to stop levy of ground rent on the containers on the expiry of the stipulated period, that is, seventy five days. The Shipping Line is required to continue to pay the ground rent till action is taken by it for de-stuffing of the cargo.

12. In this regard, from the averments made in the petition, it appears that the petitioner may have requested the second respondent to de-stuff the container. However, except for the bare say of the petitioner, there is no material in support thereof. It appears that for the first time, a written intimation was given vide letter dated 17th May, 2006. Thus, upon expiry of the period of seventy-five days from 15th August, 2003, though the petitioner company could have requested the respondents to de-stuff the container, no written application appears to have been made till 17th May, 2006. Since, there was no response to the letter dated 17th May, 2006, it appears that the petitioner addressed another letter dated 9th October, 2006 requesting the authorities once again to de-stuff the container and release the same as early as possible, expressly stating that the petitioner is ready to undertake the de-stuffing operations as and when required by the Kandla Port Officials. In response to such letter, the second respondent informed by a communication dated 28th October, 2006 that the de-stuffing of container unit will be done in the presence of the representatives of Customs, C.I.S.F., Port and the Line, after payment of port charges. The petitioner was also advised to "deposit the ground rent charges till date for the long dwell subjected container with Containers Billing Section/A/O. (C.D.C.)". Subsequently, pursuant to a letter dated 4th January, 2008 of the petitioner, the A.T.M. (e-Auction), Kandla Port Trust vide letter dated 22-1-2008, informed the petitioner to deposit the ground rent charges in consultation with A.T.M. (Container Billing), stating that the de-stuffing would be done in presence of the Customs, C.I.S.F. and the petitioner's representatives, and to make arrangement for labours, equipments, etc., for de-stuffing of the container. In response to the above letter, the petitioner informed the respondents that the maximum ground rent which could be recovered was for a period of seventy-five days and that the respondents had already deducted

Rs. 1,56,346/- from the petitioner's P.D.A. account which exceeded the ground rent for the period of seventy-five days. A request was also made to refund the balance amount in excess of seventy-five days. The petitioner also requested the respondents to inform it about the date of de-stuffing to enable its representative to remain present and accept the empty container. Thereafter, by a communication dated 5th March, 2008, the Assistant Traffic Manager (e-Auction), Kandla Port Trust requested the Assistant Commissioner of Customs (D.P.), Customs House, New Kandla - Kachchh to post its representatives to supervise the de-stuffing operation and to inform the date and time in order to enable him to intimate the Line Agent accordingly. Subsequently, by a communication dated 26th March, 2008, the petitioner requested the Traffic Manager, Kandla Port Trust to allow it to take out the container so as to stuff the container as early as possible for exports. It appears that thereafter, the container came to be de-stuffed on 19th March, 2008 whereafter, by a communication dated 1st July, 2008, the petitioner requested the Traffic Manager, Kandla Port Trust to hand over the container as the same had been de-stuffed.

13. In the above background, it appears that according to the respondents, the amount payable towards charges on the container is Rs. 1,41,600/- plus service tax. As noticed earlier, a sum of Rs. 1,56,346/- came to be deducted from the petitioner's P.D.A. account prior to 7th February, 2008. Thus, as on 7th February, 2008, the demand for ground rent charges stood satisfied. It appears that thereafter, the respondents carried out the de-stuffing on 19th March, 2008. At the time, when the de-stuffing was carried out, it appears that the amount due towards container charges was already recovered by the respondents. Under the circumstances, thereafter, there was no reason for the respondents not to permit the petitioner to remove the container. Subsequently, by a communication dated 23rd March, 2009, the petitioner had been called upon to clear the empty container within a period of fifteen days, failing which the same would be auctioned under Secs. 61/62 of the M.P.T. Act.

14. From the facts as appearing on record, it is not clear as to whether the respondents are demanding payment of ground rent charges or demurrage on goods after de-stuffing, customs duty, sales expenses, etc. From the affidavit-in-reply dated 13th November, 2009, filed by the Deputy Traffic Manager, Kandla Port Trust, it appears that the de-stuffed cargo was sold at a price of Rs. 2,80,000/- to the highest bidder. The said amount came to be appropriated at Rs. 10,000/- towards sale expenses, Rs. 80,000/- towards customs duty and Rs. 12,73,879/- towards demurrage charges payable on the cargo till 31st October, 2009, resulting in huge deficit which according to the respondents, they were entitled to recover from the petitioner in addition to the charges payable by the petitioner on the container. Thus, it appears that the container is not released by the respondents on the ground that the petitioner, in addition to ground rent charges, is liable to pay the deficit of the aforesaid charges.

15. As held hereinabove, the petitioner not being the owner of the cargo, would

not be liable for payment of sale expenses, customs duty and demurrage charges payable on the cargo, which charges can be recovered only from the consignee and not from the petitioner. Insofar as the liability of the petitioner is concerned, the same would be restricted to the payment of ground rent charges in respect of the container till the date the same came to be de-stuffed. As on the date the container was de-stuffed, apparently all charges payable towards the container already stood recovered by the respondent authorities. Under the circumstances, there was no reasonable ground for the respondents for not releasing the container thereafter. The respondents, therefore, cannot seek to recover the ground rent charges in respect of the container for the period beyond the date of de-stuffing.

16. Having regard to the fact that the container charges payable by the petitioner till the date of de-stuffing already appear to have been recovered, the respondents were required to release the container of the petitioner immediately thereafter.

17. By the impugned communication dated 13th September, 2008, the petitioner has been informed to deposit sufficient ground rent or dwell rent charges before release of the container. For the reasons stated hereinabove, in the opinion of this Court, the contention of the petitioner that it is liable to pay ground rent charges only upto seventy-five days, does not merit acceptance. However, the liability of the petitioner to pay ground rent would continue only till the date when the container came to be de-stuffed. If on such date the liability towards the ground rent charges stood satisfied, there was no valid reason for the respondents not to release the container thereafter. The action of the respondents in not releasing the container subsequent thereto, therefore, deserves cannot be sustained.

18. For the foregoing reasons, the petition partly succeeds and is, accordingly, allowed to the following extent:

The petitioner is liable to pay the ground rent charges in relation to the container till the date when the container came to be de-stuffed, which already appears to have been recovered from the petitioner's P.D.A. account. In case, there is any deficit in the amount recovered from the petitioner by the respondents (which does not appear to be the case), the respondents would be entitled to recover difference till the date of de-stuffing. In case there is any deficiency in the amount of ground rent, the respondents shall immediately release the container upon payment of such deficiency. In case, any excess amount is recovered by the respondents from the petitioner, the petitioner would be entitled to refund of such amount. Insofar as the demurrages in-respect of the cargo and other claims as reflected in Paragraph 12 of the affidavit in-reply dated 13th November, 2009 made by the Deputy Traffic Manager, Kandla Port Trust is concerned, needless to state that it shall be open for the respondents to pursue their claim against the consignee or the owner.

Rule is made absolute, accordingly, to the aforesaid extent. There shall be no order as to costs.