

**(2001) 10 BOM CK 0070**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 3570 of 2001**

Icon Line

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

**Date of Decision :** 09-10-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2002) 143 ELT 528

**Hon'ble Judges :** D.B. Bhosale, J;A.P. Shah, J

**Bench :** Division Bench

**Advocate :** V.R. Rambhadran, for the Appellant; P.S. Jetly, instructed by H.D. Rathod, Amin Kharada, instructed by Advani and Co., S.I. Shah and S.N. Kantawala, instructed by Kantawala and Co., for the Respondent

## Judgement

1. Heard the learned Counsel.
2. Rule. Hearing expedited.
3. The petitioners are the ship owners and shipping agents respectively and the 4th respondent is the consignee of the consignment of furnace oil. The customs have initiated investigation in respect of the said consignment to identify whether has to be obtained by them which they have not done before import. The Customs want to carry out further tests in order to find out whether the waste oil is hazardous. This is supposed to be done in view of the orders passed by the Supreme Court in a PIL.
4. By an order dated 5-2-2000 passed in Writ Petition No. 5496 of 2000, statement of the learned Counsel for the Customs was recorded to the effect that a show cause notice will be issued within a period of 3 weeks and the petitioners therein i.e. 4th respondent will file reply thereto within 1 week and the final adjudication will be done within a period of 2 weeks therefrom. The show cause notice has been issued and replies have been filed. Mr. Jetly, the learned Counsel appearing for the Customs, however, stated that further tests will have to be

carried out in order to ascertain whether the waste oil is hazardous in nature. He stated that for the said purpose samples will be taken in the presence of consignees and necessary tests will be carried out by the Indian Institute of Oceanography at Goa and Shriram Institute of Industrial Research at New Delhi and after receipt of the reports from the said two institutions, a corrigendum to the show cause notice, if necessary, will be issued and in that event further opportunity of hearing will be given to the 4th respondent and after taking the same into consideration, appropriate orders will be passed within 4th weeks from the date of the reply. Mr. Jetly stated that the sample will be taken within a period of two days in presence of the respondent No. 4 and/or their representatives.

5. As far as petitioners are concerned, their prayer is for return of the containers. Our attention is invited to the decision of the Apex Court in the case of Trustees of the Port of Madras through its Chairman Vs. M/s. K.P.V. Sheikh of Mohd. Rowther and Co. Pvt. Ltd. and another, wherein it was held that the liability of the warehouse charges is that of the consignee and not of the ship owners or shipping agents. Our attention is also drawn to the circular dated 19-11-1999 issued by the Ministry of Finance, Govt. of India, whereby it has been provided that in case the goods are required to be detained for detailed examination, investigation, etc. the goods shall be destuffed from the containers and stored in bonded warehouses and containers shall be released. The learned Counsel appearing for the petitioners stated that the petitioners will deposit the warehouse charges for the period from 1-8-2000 to 1-10-2000 as per the circular. Upon payment of such charges the 3rd respondent is directed to destuff the goods from the containers and return the containers to the petitioners and store the goods in bonded warehouse. As regards warehouse charges from 1-10-2000, the 4th respondent is directed to deposit with respondent No. 350% of such charges for the period from 1-10-2000 till date within 2 weeks and continue to pay the charges till the goods are cleared. Respondent No. 4 shall bear the charges for transport of the goods to bonded warehouse.

Parties to act on an ordinary copy of this order duly authenticated as true copy by the Court Sheristedar/Associate of this Court.