(1986) 08 MAD CK 0015

In the Madras High Court

Case No : Writ Miscellaneous Petition No''s. 5466 and 9850/86 in Writ Petition No. 3674/86

John F. Fidele and Co. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 14-08-1986

Acts Referred:
Customs Act, 1962 — Section 46

Citation : (1994) 53 ECR 255 : (1992) 58 ELT 498

Hon'ble Judges : Shanmukham, J

Bench : Single Bench

Advocate : R. Thiagarajan, for M. Dhamodharan, for the Appellant; P. Narasimhan, Central Govt. Standing Counsel, for the Respondent

Judgement

Shanmukham, J.—These petitions coming on for hearing on Thursday the 31st day of July 1986 and this day upon perusing the petitions and

the respective affidavits filed in support thereof, and the order of this court dated 25-4-1986 and made in W.M.P. No. 5466 of 1986 and upon

hearing the arguments of Mr. R. Thiagarajan, for Mr. M. Dhamodharan, advocate for the petitioner in both the petitions and Mr. P. Narasimhan,

Central Government Standing Counsel on behalf of the respondent in both the petitions, the court made the following Order :-

The petitioner in both the W.M.Ps is the petitioner in the Writ Petition.

When I admitted the Writ Petition, I passed the following order in W.M.P. No. 5466 of 1986 on 25-4-1986.

In view of the similar orders passed in W.P. No. 8376 of 1982 [D. Narasingamurthy v. The Collector of Madras, Madras-1 and Another] and

confirmed in W.A. No. 319 of 1983 [D. Narasingamurthy v. The Collector of

Madras, Madras-1 and Another] there will be interim injunction on

the petitioner furnishing a bank guarantee for a sum of Rs. 50,00,000/- (Rupees fifty lakhs) within two weeks from today.

Notice.

In Writ Petition No. 9850 of 1986, the petitioner would seek extension of time for furnishing bank guarantee as per the order in W.M.P. No.

5466 of 1986. It is thus obvious that the order passed on 25-4-1986 in W.M.P. No. 5466 of 1986 is an ex parte order, and therefore, the

respondent is entitled to contest the very application W.M.P. No. 5466/1986.

2. The point involved in the writ petition is, whether the ship sold in distress, under orders of this court in its Admiralty Jurisdiction, will be subject

to any customs duty on the basis that such a vessel is imported into India. Neither of the learned counsel, could bring to my notice any decision on

this issue, and therefore, it appears to be res integra.

3. The learned counsel for the petitioner would submit that as he is furnishing bank guarantee to the tune of Rs. 50,00,000/- (Rupees fifty lakhs)

and as he is also ready and willing to offer personal guarantee for a further sum of Rs. 30,00,000/- (Rupees Thirty lakhs), the petitioner may be

permitted to break the vessel and deal with the dismantled articles as it likes. He further submits that when there is enough bank guarantee, no

prejudice will be caused to the respondent in his breaking the ship and disposing of the dismantled materials. After all, assuming that the ship is

liable to customs duty, yet, there is bank guarantee. On the contrary, Mr. P. S. Narasimhan, learned Central Government Senior Counsel, would

submit that the writ petition itself is not maintainable. For, only after notice to the petitioner, the ship is liable to customs duty, until then no cause of

action will arise for the petitioner to resort to Article 226 of the Constitution of India. According to him, the petitioner had to submit Bill of Entry,

and the customs authorities will have to take an inventory of the ship, and unless such an inventory is made, there is no guarantee that the petitioner

would disclose the real content of the distress vessel. Therefore, he would submit that till the petitioner files the Bill of Entry and inventory is

completed; he shall not be permitted to break the vessel.

4. It is true that the sale certificate issued by this court provides that the vessel has been sold free from all lien, encumbrances and liabilities, but

then it is also indicated that liability, if any, as regards the said vessel towards any duty or levy, subsequent to the date of sale certificate, shall be

borne by the said purchaser. It is possible to contend, therefore, that after the sale is effected in his favour, the vessel is liable to customs duty. For

the present, I am only concerned as to how the rights of both parties could be preserved, without affecting the interest of one or the other as far as

possible. As a purchaser of the distress vessel, the petitioner has a right to break the same and dispose of the dismantled materials. But then at the

same time in order to avoid any controversy as to the contents of the distress vessel, there should be an inventory. Such an inventory is possible

only after the petitioner files a Bill of Entry.

5. Thus, I am of the view, it would not be in the interest of the respondent, to permit the petitioner to break the vessel on its mere furnishing bank

guarantee. On the other hand, his interest should not be prejudiced in any manner if the Bill of Entry is filed and inventory is made thereafter.

6. Accordingly, the petitioner is directed to file the Bill of Entry within two weeks from this date and the respondent is directed to complete the

inventory within four weeks thereafter. After such an inventory is completed, the petitioner is permitted to break the vessel on its furnishing bank

guarantee in the sum of Rs. 50,00,000/- (Rupees Fifty lakhs) and immovable property security in the sum of Rs. 20,00,000/- (Rupees Twenty

lakhs) within four weeks, but subject to the condition that the petitioner shall deposit the sale proceeds, till it reaches the outer limit, of a sum of Rs.

20,00,000/- (Rupees Twenty lakhs) in Standard Chartered Bank, N.S.C. Bose Road, Madras to the credit of W.P. No. 3674 of 1986 pending

on the file of this court.

7. As the principal challenge is that there is no import in this case and that therefore this vessel is not liable to customs duty, I am unable to hold that

the main petition is premature.