(2001) 07 BOM CK 0096

In the Bombay High Court

Case No : Writ Petition No. 1122 of 2001

J.P. Electronics Pte. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:
Customs Act, 1962 — Section 48
Major Port Trusts Act, 1963 — Section 61, 62

Citation : (2001) 133 ELT 32

Hon'ble Judges : P.V. Kakade, J;P.S. Patankar, J

Bench : Division Bench

Advocate : S.N. Kantawala, instructed by Kantawala and Co., for the Appellant; R.C. Master, Preeti Shah, instructed by Mulla and Mulla, for the Respondent

Final Decision : Allowed

Judgement

1. Heard both sides by consent finally.

2. A small but subtle question under the provisions of the Customs Act, 1962 has arisen in this Writ Petition for our consideration, to the effect that when an exporter has sent goods from a foreign country, and an importer does not pay for the goods and abandons them, then whether the exporter continues to be the owner of the goods, and if he is entitled to ask for re-export thereof.

3. The facts involved in the dispute in a nutshell are thus :-

The petitioners are a company incorporated under the Laws of Singapore and are, inter alia, exporters of various types of electronic goods all over the world. The petition is moved through the said company''s constituted attorney in this Court.

Respondent No. 1 is Union of India and respondent Nos. 2, 3 and 4 are the authorities under the Customs Act. Respondent No. 5 is the Officer of Mumbai Port Trusts and exercises his powers under the jurisdiction under the Major Port Trusts Act, 1963.

It is the case of the petitioners that they had consigned a consignment of various types of electronic components to one M/s. Rahul Associates, which was shipped from Singapore vide Bill of Lading, dated 2-7-2000. Pursuant to the landing of the goods, since the IGM was filed by the shipping agent in the name of M/s. Rahul Associates, the office of respondent No. 3 issued various summonses to the proprietor of M/s. Rahul Associates requesting them certain documents. In the meanwhile, the 5th respondent issued a sale notice dated 19-9-2000 under Sections 61 and 62 of the Major Port Trusts Act, 1963. Subsequently, respondent No. 4 once again addressed a letter to M/s. Rahul Associates directing them to file necessary documents, failing which the goods were said to be dealt with under the provisions of Section 48 of the Customs Act, 1962. The said M/s. Rahul Associates placed on record of the 3rd respondent i.e. the Joint Commissioner of Customs by letter dated 17-1-2001 that since the petitioners were willing to bear the necessary charges and looking to bad financial condition of M/s. Rahul Associates, they were not interested in clearing the goods and hence had not filed any Bill of Entry for the one pallet which had arrived by steamer in a container. A similar letter was again issued by M/s. Rahul Associates on 17-1-2001 to respondent No. 4 as well as respondent No. 5 requesting that they were not interested in the goods and so the petitioners should persuade the matter for re-export of the goods with the respondents and had handed over the correspondence to the constituted attorney of the petitioners.

The petitioners, in turn, by letter dated 30-1-2000 addressed to the Customs authorities requested for re-export of the goods as the consignee mentioned in IGM, M/s. Rahul Associates clearly declared their intention not to clear the goods and since the petitioners continued to be the owners of the goods, it was, inter alia, requested that the goods may be allowed to be re-exported back to the petitioners and the petitioners were ready and willing to bear the necessary expenses for the same. However, respondent Nos. 2 to 4 did not pay any heed to the request of the petitioners and it was apprehended that steps would be taken for auction of the goods under the provisions of Section 48 of the Customs Act, 1962. According to the petitioners, M/s. Rahul Associates had neither filed a Bill of Entry/import documents nor claimed the goods from the date of detention i.e. July, 2000 and, therefore, the ownership of the goods vests in the petitioners and hence they have a right to claim re-export of the said goods. As the Customs authorities did not take any steps in that regard, the present petition came to be filed, inter alia, claiming ownership and/or setting aside the impugned actions purported by the respondents and seeking direction to the concerned respondents that re-export of the said goods be allowed on payment of legitimate dues of the 5th respondent herein.

4. We have heard the learned Counsel for both the sides. It is submitted on behalf of the petitioners that by not allowing the re-export of the petitioners, goods, which had been imported by one M/s. Rahul Associates of Mumbai, who have abandoned the goods and due to their bad financial condition they have not paid for the goods, the ownership lies with the petitioners and, therefore, re-

export should be allowed of the said goods.

5. On the other hand, it was submitted on behalf of the respondents, as averred in the affidavit-in-reply, that the dispute is nothing but a conspiracy and fraudulent plan between the petitioners and M/s. Rahul Associates to under value the goods and thereby deprive the state of the legitimate import duties. Further, it is submitted that once the goods were exported in the name of M/s. Rahul Associates, as can be seen from the record, the title of ownership to the goods vests in M/s. Rahul Associates, and when they are not coming forward to claim the goods, the respondents would be justified in taking steps under the provisions of Section 48 of the Customs Act, 1962.

6. With regard to the first contention raised on behalf of the respondents, as can be seen from the affidavit-in-reply, a case of under valuation was booked against M/s. Rahul Associates, who were engaged for import of various electronic goods in respect of consignment which was cleared on 30-6-2000, and necessary steps were taken and proceeding is going on in that respect. Subsequent to the arrival of the first consignment, on 10-7-2000 the impugned consignment of electronic items, which was shipped by the petitioners from Singapore in the name of M/s. Rahul Associates arrived at the Mumbai Port Trust. As IGM showed the name of the consignee as M/s. Rahul Associates and a case of under valuation was already under investigation against them, the second consignment was detained by the respondents under reasonable belief that the consignment in question would also have been undervalued by M/s. Rahul Associates. In other words, it is the case of the respondents that the earlier consignment was found to be undervalued, which was sent by the same exporter to M/s. Rahul Associates, the second consignment was also suspected to be undervalued and hence it is detained.

It is pertinent to note that in case of the first consignment which arrived on 30-6-2000, necessary steps were taken and proceedings are being held for the alleged under valuation against M/s. Rahul Associates. However, it seems that the second consignment which was sent to M/s. Rahul Associates is detained only on the assumption that it would have been undervalued. Significantly, it cannot be overlooked that M/s. Rahul Associates had not filed any Bill of Entry or import document, and in fact they expressed their intention to abandon the goods due to their bad financial condition. Hence, the second consignment which is in dispute, cannot be linked with the first consignment which was allegedly undervalued only because it was also sent in the name of M/s. Rahul Associates, especially when M/s. Rahul Associates have not claimed any right, title or interest to the goods nor have presented Bill of Entry or any import document claiming the goods from the date of detention and hence it would be not legal and proper on the part of the respondents to detain the goods which are abandoned by the consignee.

7. The second contention raised on behalf of the respondents is that of issue of ownership of the goods. According to them, once the Bill of Lading was sent in

the name of M/s. Rahul Associates, the ownership of the goods has been transferred from the exporter to the intended importer consignee and, therefore, the petitioner-exporter can neither claim the ownership of the goods nor can claim re-export on that basis. However, the documents filed on record tell a different story. The record shows that the Punjab National Bank has clearly certified that they have neither received any documents nor have remitted any amount to the petitioners on behalf of the consignee M/s. Rahul Associates at the foot of Bill of Lading. As seen earlier, M/s. Rahul Associates had neither presented the Bill of Entry nor any import document and have clearly expressed their intention to abandon the goods due to bad financial condition, there cannot be any question of transfer of the ownership of the goods from the exporter to the consignee.

This view is fortified by the ruling of the Supreme Court in the case of Union of India and another Vs. Sampat Raj Dugar and another, which is a case based more or less, on similar facts, and the Apex Court has held that if the goods are covered by a valid import licence at the time of the import, and subsequently the importer is not paying for the goods and abandoning them, then exporter continues to be the owner of the goods and is entitled to ask for their re-export unless proved to be a party to a fraud. In the present case before us, the possibility of fraud or conspiracy, though alleged by the respondents, cannot be established because M/s. Rahul Associates have abandoned their claim and have not presented the Bill of Entry and, therefore, it cannot be said that the goods in the impugned consignment were also intended to be undervalued, like the earlier consignment.

8. For the reasons recorded above we are of the considered view that the act of the respondents in detaining the goods and not allowing the re-export thereof to the petitioners is arbitrary and illegal.

9. The Writ Petition is allowed. Respondent Nos. 2, 3 and 4 are hereby directed to free the goods for re-export by the petitioners provided they pay the legitimate dues, if any, to the 5th respondent.

The learned counsel for respondent Nos. 1 to 4 prays for stay of this order. The order is stayed for four weeks.

Parties to act on the copy of this order duly authenticated by the Court Associate.