

(2010) 07 SC CK 0114

In the Supreme Court Of India

Case No : Civil Appeal No. 4905 of 2010 (Arising out of SLP (C) No. 7084 of 2007) and Civil Appeal No. 4951 of 2010 (Arising out of SLP (C) No. 9730 of 2007)

Kandla Port Trust

APPELLANT

Vs

Goodrich Maritime Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Customs Act, 1962 — Section 11, 111, 112

Major Port Trusts Act, 1963 — Section 4, 48, 49, 59, 61

Citation : (2010) 180 ECR 275 : (2010) 256 ELT 326 : (2011) 52 GLR 247 : (2010) 6 JT 406 : (2010) 11 SCC 789

Hon'ble Judges : G. S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Leave granted.

2. These appeals are directed against order dated 27.11.2006 passed by the Division Bench of Gujarat High Court whereby it allowed the letters patent appeals preferred by respondent No. 1 and quashed the demand of container storage charges and ground rent.

3. Respondent No. 1 is said to be an agent of international shipping line which is engaged in the business of carrying consignments in containers to various destinations. In 2004, respondent No. 1 transported goods belonging to different consignees in eight containers under 3 bills of lading in which the final place of destination was shown as Kandla Port. The description of the goods as given in the bills of lading was "Heavy Metal Scrap" (seven containers) and Hollow Section Tubes (eighth container), though, in fact, all the containers contained war material/explosives such as artillery shells, etc. The containers were shipped to Kandla Port on the vessel of M.V. Orient Patriot and were off-loaded in the months of October and December, 2004.

4. Since the goods were not as per the description given in the bills of lading, the same were confiscated by the Customs Department. Respondent No. 1 made representations to the appellant for release of the containers after de-stuffing the goods. The appellant sent communications to Superintendent of Police, Bhuj and General Staff Officer, 11 Infantry Division, APO, Ahmedabad to take possession of the war material/explosives but both the authorities declined to do so by citing the grounds of lack of power to do so or non availability of resources. On 6.6.2006, the appellant issued bills to respondent No. 1 for levy of container storage charges and ground rent. Respondent No. 1 challenged the same in Special Civil Application Nos. 17403/2006 and 17404/2006. The learned Single Judge summarily dismissed both the special civil applications by relying upon an order passed by the Division Bench in Letters Patent Appeal No. 104 of 2000, wherein it was observed:

...It is required to be noted that the goods arrived in containers which were loaded in the ship by the exporter. It was the duty of the importer to take the delivery of cargo in the container. There is no contract between the petitioner-appellant and the shipping company or the Kandla Port Trust. In absence of this, in our opinion, the learned Single Judge has rightly arrived at a conclusion that the dispute involved would require recording of evidence and cannot be summarily executed upon exercise of writ jurisdiction of this Court. In our opinion, the learned Single Judge has rightly observed that the proper remedy for the petitioner would be to approach the Civil Court for claim of containers....

5. Respondent No. 1 questioned the correctness of the order of the learned Single Judge by filing letters patent appeals. In response to the notice issued by the Division Bench, separate counter affidavits were filed on behalf of the appellant in both the appeals. For the sake of reference, paragraphs 4 and 5 of the counter affidavit filed by Shri P. Suresh Babu, Deputy Traffic Manager, Kandla Port Trust in Letters Patent Appeal No. 1107/2006 are reproduced below:

4. With reference to para-2(a) of the LPA, it is submitted that the learned Single Judge has passed the order after considering the order dated 05.04.2000 passed by this Hon'ble Court in LPA No. 104/2000 and also the order passed by the Hon'ble the Supreme Court in Civil Appeal No. 4537/2001. It is submitted that so far as the facts of the present case are concerned, on merits, they are different and, therefore, cannot be intermingled in this case. However, as in both the cases i.e. before the Hon'ble Single Judge in the present case and before the Hon'ble Division Bench, issue of disputed questions of fact is involved and, therefore, on that count, the petition is rightly rejected by the learned Single Judge after relying upon the above-referred decision. However, in the present, the consignee/importer of the involved containers have not abandoned and, therefore, the learned Single Judge has rightly appreciated the facts of the case on which the Hon'ble Apex Court passed the order dated 24.7.2001. In that case, the consignees of the cargo contained in the container issued a letter abandoning their cargo. Here in the present case, no such letter of abandonment has been

issued by the consignees. In that view of the matter, the learned Single Judge has rightly relied upon and interpreted the TAMP Order No. 120 dated 28 th August, 2000 issued through the Government Notification published in Part-III Section 4 of the Gazette of India, Extra Ordinary being Tariff Governing Body for all major ports. Therefore, it cannot be said that the learned Single Judge has ignored the order of the Hon'ble Apex Court. On the contrary, the Hon'ble Single Judge has come to the conclusion that the decision of the Hon'ble Apex Court is in different set of facts and has no application to the facts of the present case so far as it involves claim of abandonment of the container for the purpose of levy of ground rent by the Port Authority.

5. With reference to para 2(b) of the LPA, it is submitted that the learned Single Judge has considered the TAMP Notification referred to above and the order passed by Hon'ble Division Bench and Hon'ble Apex Court in its proper perspective. It is submitted that in the case of order passed by the Hon'ble Supreme Court dated 24.7.2001, the containers were abandoned by the consignees/importers whereas in the present case, container No. 1 i.e. YMLU 3101356 is lying in Port as un-cleared container since landing in port area and no abandonment letter is submitted by the consignee/importer in the present case. The appellant requested the port authority to de-stuff the container by their letter dated 30.9.2004 and 20.7.2005 within the port area for the purpose of auction of the cargo and for that shown their willingness to move the container within the port area, because the port authority is supposed to carry out its activity within the port area and not out side the port area. Therefore it is clear that the line has not shown their willingness to move the container outside the port area to the CWC/CFS-1 and never resume the custody to take back the container with cargo to the port originated, and therefore so long as the containers remain on the port land, the ground rent is chargeable, in absence of the compliance of the required formalities and in that view of the matter the letters are not at all abandonment letters, and also not in accordance with the guideline provided by the TAMP Notification, and clearly an eye wash and therefore Bill No. 244362 dated 6.6.2006 raised for port period i.e. from 3.8.2005 to 31.5.2006 stands in order and also in line with Issue No. (II) ii (a) (b) of TAMP Order dated 28th August, 2000 read with Sections 61 and 62 of the Major Port Trusts Act, 1963 (MPT Act for short) which provides Port Trust to start auction proceedings after expiry of 60/75 days in view of both sections i.e. MPT Act and TAMP Circular and it is not mandatory on the part of the Port Trust to auction the container within particular time and in such a case issue No. (V) of TAMP Order shall apply to shipping Lines which read as under:

ISSUE: (V) Actions to be taken by the Lines, if they want their containers back before the stipulated period.

CLARIFICATION: Since the Lines are not the owner of the Cargo, they cannot abandon the (containerized) cargo and take back their containers, whenever required. Since the consignees are to issue the letter of abandonment and such

instances are very rare, the lines may look for ways and means to take back their containers without waiting for the expiry of the stipulated period when only the Port Trust can release the containers after arranging for auction of the cargo. The Lines have two options. They can take back the (loaded) containers to the Port of Origin. Alternatively, the Lines can resume custody of the containers and move such containers to any outside private CFS and arrange for de-stuffing of cargo before taking back the empty container. (In such cases, the responsibilities of the Port Trust as a "bailee" will cease as soon as the Line resumes custody of the containers) there are many approved private CFS's available in the vicinity of a Port, and as per the contract carriage of goods a carrier can also dispose of the goods by auction under certain circumstances. That being so, the lines need not depend only on the ports to take action for release of the containers.

Annexed hereto and marked as ANNEXURE: "R-1" is the copy of the aforesaid TAMP Order dated 28th August, 2000.

It is submitted that based on the above clarification on Issue No. (V) of the TAMP Order, the KPT used to issue request letters to concerned Line Agent requesting to de-stuff long dwell containers (un-cleared containers) and release the empties. It is also further requested to de-stuff the container in the CWS-CFS and collect the empties, after complying with the required formalities as per TAMP Order dated 19.7.2000. However, in the present case, it seems that the duties on the part of the Line Agent are not performed timely and on getting pressure from their principal, the faults of their own are thrown on Port Trust. In that view of the matter, it is submitted that Bill No. 244362 dated 6.6.2006 issued on Line Agent is in order and is also in consonance with the provisions of the MPT Act.

6. The Division Bench did not avert to the counter affidavits filed on behalf of the appellant and allowed the appeals by simply making a reference to the order passed by this Court dated July 24, 2001 in Civil Appeal No. 4537 of 2001 - Kutch Shipping Agency Private Limited v. Board of Trustees, Kandla Port Trust and observing that there was no reasonable basis for levy of container storage charges or ground rent because letter addressed by respondent No. 1 to the Traffic Manager, Kandla Port Trust for permission to remove the containers to de-stuff the cargo was not attended by the concerned authority.

7. Shri P.H. Parekh, learned senior counsel appearing for the appellant relied upon Sections 48, 49, 59, 61 and 62 of Major Port Trusts Act, 1963 (for short, 'the 1963 Act'), Sections 11, 111(d) and 112 of the Customs Act, 1962 and orders dated 10.11.1999 and 19.7.2000 issued by the Tariff Authority for Major Port Trusts and argued that the Division Bench of the High Court committed serious error by quashing the demand of container storage charges and ground rent by relying upon order dated 24.7.2001 passed by this Court in Civil Appeal No. 4537 of 2001 - Kutch Shipping Agency Private Limited v. Board of Trustees, Kandla Port Trust ignoring that the containers were confiscated by the Customs officers on the ground that in the garb of Heavy Metal Scrap and Hollow Section

Tubes, the consignors and consignees had tried to smuggle used and unused ammunitions in the country. Learned senior counsel submitted that there is no provision in the 1963 Act under which the appellant can de-stuff the goods which are seized/confiscated by the Customs authorities and, therefore, respondent No. 1 cannot take advantage of the fact that representations made by it for release of containers after de-stuffing the goods were not entertained.

8. Learned Counsel for respondent No. 1 supported the impugned order and argued that the Division Bench of the High Court rightly quashed the demand for containers storage charges and ground rent because the appellant failed to take action for release of containers within a reasonable time after de-stuffing the goods. Learned Counsel emphasized that respondent No. 1 cannot be blamed for attempted import of war material/explosives because its functionaries had no knowledge about the clandestine operation, if any, carried out by the consignors and consignees.

9. We have considered the respective submissions and gone through the relevant statutory provisions as also the orders issued by the Tariff Authority for Major Port Trusts. Undisputedly, the special civil applications filed by respondent No. 1 were summarily dismissed by the learned Single Judge without calling upon the appellant and respondent No. 2 to file counter affidavits to admit or controvert the averments contained therein. This being the position, the appellant had a legitimate right to file counter affidavits in the appeals preferred by respondent No. 1 and the Division Bench of the High Court was duty bound to consider the contents of the counter affidavits and then decide the issue relating to liability of respondent No. 1 to pay container storage charges and ground rent in the backdrop of the fact that the containers together with their contents had been confiscated by the Customs Department on the ground that war material/explosives were smuggled in the country under the garb of importing Heavy Metal Scrap and Hollow Section Tubes. The question whether rule of not charging storage charges/ground rent for 75 days would apply if the goods are seized and later on confiscated by the Customs authorities or any other competent authority on the ground that war material/explosives were clandestinely brought in the country certainly called for serious consideration, but without examining the issue in a correct perspective the Division Bench of the High Court granted relief to respondent No. 1 only on the ground that representations made by the said respondent for release of containers after de-stuffing the goods were not decided. In *Kutch Shipping Agency Private Limited v. Board of Trustees, Kandla Port Trust* (supra), this Court did not consider a question like the one raised in the counter affidavits filed on behalf of the appellant. Therefore, the Division Bench was not justified in relying upon the order passed in that case for the purpose of quashing the demand of container storage charges and ground rent.

10. In the result, the appeals are allowed. The impugned order is set aside and the matter is remitted to the High Court for fresh disposal of the letters patent appeals in accordance with law.

11. Before parting with the case, we consider it appropriate to place on record our deep appreciation for the efforts made by the learned Solicitor General which made the concerned authorities of the Government of India to realize potential threat to the national security due to import of war material and explosives in the garb of heavy metal scrap etc., and a comprehensive decision has been taken by the Ministry of Home Affairs to ensure strict supervision of such imports.

12. The Registry is directed to send the sealed envelope containing a copy of the decision of the Government of India to the office of the learned Solicitor General.