(2001) 12 DEL CK 0060

In the Delhi High Court

Case No : CCP 127 of 2000 in S. No. 1900 of 2000

Marut Nandan Overseas Ltd. APPELLANT

Vs

S.K. Shingal, Commissioner of Customs RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:

Citation : (2002) 95 DLT 843 : (2002) 61 DRJ 441 : (2002) 80 ECC 61 : (2002) 141 ELT 14

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : N.M. Sharma and Ashish Kumar, for the Appellant; Jayant Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

J.D. Kapoor, J.—Admittedly by way of ex-parte injunction order dated 31.8.2000, respondent/defendant No. 2 who happens to be Commissioner or Customs was directed to release the goods covered by B/E No.224675 dated 25.4.2000 after deposit of the customs duty as assessed and without demurrage/detention charges. Defendants 2 and 6 were further directed to pay the demurrage and detention charges severally and jointly to defendant Nos. 3 & 4. Defendant Nos. 3 & 4 were restrained from auctioning the consignment covered by the aforesaid bill.

2. However, in order to ascertain whether goods in question were of hazardous nature, separate laboratory tests by three separate agencies namely Central Revenue Control Laboratory, AES Testing & Research Laboratory & Indian Institute of Technology were ordered.

3. Vide report dated 16.11.2000, following observations were made by ACES Testing & Research Laboratories :-

"The oil sample has also been tested for other contaminates as specified in report to determine, if it is hazardous in nature. The other contaminates have been found to be present in oil sample but their values are well within the limits specified for hazardous waste by MOF Circular No. 60/97-CUS dated 12.11.97.

From the analysis results it appears that oil is contaminated by other waste oils."

4. Another agency i.e. Central Revenues Control Laboratory (in short CRCL) came to the following conclusion:-

"The above test findings indicate that all the four samples under reference do not tally with the standard physico-Chemical requirements of Fuel Oil/Furnace oil as given in the technical literature, however, the presence of polychlorinated biphenyl/tripheynls and chlorinated solvents as mentioned above could not be detected in all the four samples.

In view of the above test findings the samples under reference does not have the characteristics of standard manufactured product with quality specifications, thus the samples pertain to off specification product."

5. As regards remaining 12 samples, CRCL gave the following report :-

"The above test findings indicate that all the twelve samples under reference do not tally with the standard physico-Chemical requirements of Fuel Oil/Furnace oil as given in the technical literature, the presence of only above mentioned polychlorinated biphenyl and chlorinated solvents could not be detected in all the twelve samples.

In view of the above test findings the samples under reference do not have the characteristics of standard manufactured product with quality specifications, thus the samples pertain to off specification product."

6. As is apparent from the above tests, the products in question do not have the characteristics of standard manufactured product and the samples pertain to off specification product because they contain several containers.

7. The third agency i.e. Indian Institute of Technology, Delhi gave the report which is as under:-

"the level of polyaromatic Hydrocarbon is definitely higher than the acceptable limit.

Physical Appearance

The oils are exceptionally sticky even on very smooth glass surfaces.

Water said to be present in these samples is not separable. The samples are not homogeneous The results are averages of three estimates.

The higher Polyaromatic Hydrocarbon contents suggest that these oils have probably been used as coolant. This is corroborated by various metal contents also."

8. However, defendant Nos. 1 & 2/respondent did not comply with the order

dated 31.8.2000 in view of the order passed by the Supreme Court on 6.2.1998 as well as re-test ordered by this court, reports of which have been referred above. The Supreme Court order relied upon by the defendants was passed in Writ Petition (c) No. 657/95 which is to the following effect:-

"The High Power Committee on Management of Hazardous Wastes constituted in pursuance of the directions contained in the order dated October 13, 1997 has submitted its interim report as on 31.1.1998. In the said report, it is stated that containers containing the hazardous nature waster material including oil wastes were found lying at the Inland Container Depot, New Delhi as well as in the yard of the Bombay Port Trust, Bombay.

In the Order dated December 15, 1997 this Court has observed that the Committee should consider the question to examine the quantum and nature of hazardous waste stock lying at the docks/ports/ICDS and recommend a mechanism for its safe disposal or re-export to the original exporter. It appears that the Committee has asked for the information in this regard from the concerned Government authorities. The concerned authorities are directed to furnish the requisite information to the Committee within 10 days. The Committee is requested to submit its report with regard to the aforesaid matter by March 16, 1998. The Customs Authorities and other authorities having custody of the hazardous wastes are directed neither to release nor auction the said waste till further orders are passed by this Court in that regard.

9. As is apparent from the aforesaid facts and circumstances, the authorities i.e. defendant Nos. 1 & 2 by virtue of the order of the Supreme Court were not obliged to release the goods which are hazardous in nature.

10. Learned counsel for defendant/respondent has referred to rules known as Hazardous Waste (Management and Handling) Rules, 1989. Schedule I of Appendix II of these rules provides that the import of hazardous waste is permitted against a license and only for the purpose of processing and reuse. Waste oil and oil emulsions have been categorised as hazardous in Sub-clause (j) of Clause 2 of the rules whereas off specification and discarded products have been categorised as hazardous waste in Sub-clause (2) of Clause 2.

11. As is apparent from the aforesaid reports and contentions of counsel for defendant No. 2/respondent the goods in questions are being treated by defendant No. 2 as hazardous waste mainly on account of their off specification and on account of being waste oil as categories of both such oils come within the definition of hazardous waste. However, the emphasis of the contention of the counsel for the applicant/petitioner is that defendant Nos. 1 & 2 are withholding the release of goods merely on the inference drawn by their law officer from the reports of the laboratories whereas none of the reports has specifically categorised or held the goods in question as hazardous waste or hazardous articles in spite of directions of the court to give the opinion.

12. I am afraid the contention of the counsel for the petitioner is difficult to

accept as the function of the expert is only to provide data and analytical report and not to provide the conclusion. The Conclusions are to be drawn by the court in view of the relevant provisions or rules by examining the analytical data of the expert on the anvil of those guidelines and rules. Merely because the analytical datas of the laboratories did not specifically mention that goods are off specification or presence of several other containers in the goods were not of hazardous nature does not mean that the goods were not of hazardous nature or waste.

13. As is apparent from the aforesaid rules, any oil which is off specification and has waste material does come within the category of hazardous waste. The contention of the learned counsel for the petitioner that even if the goods are hazardous waste and contain several containers, it is the problem of the buyer and not of defendant Nos. 1 & 2 has no substance whatsoever and does not hold any water. There was specific observation of the Supreme Court in the aforesaid order that no authority shall release hazardous waste or hazardous articles having been imported in India.

14. It is apparent from the aforesaid conspectus facts and circumstances that defendant Nos. 1 & 2/respondent had neither intentionally nor deliberately disobeyed the orders of the court. They have rather brought it to the notice of the court as to the chinks in the ex-parte order obtained by the petitioner/ plaintiff. It was on their representation that samples were sent to three laboratories. All the three laboratories were unanimous on the plaint that goods were off specification and contained several containers and waste.

15. Schedule I of the aforesaid rules which are relevant and governing rules do bring such goods within the ambit and list of hazardous waste. Even otherwise such goods which are of hazardous nature and suffer from various containers cannot be allowed to be floated in the market.

16. A party can be held guilty for contempt if it has intentionally, deliberately or malafidely disobeyed the orders of the court. Not otherwise. In the instant case, the bonafides of defendant Nos. 1 & 2/respondent are writ large and Therefore I abjure them from the accusation of contempt.

17. The application has no merit and is hereby dismissed.

