
(2012) 02 DEL CK 0534

In the Delhi High Court

Case No : Writ Petition (Civil) No"s. 17976-77 of 2004

M/s Monika India and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Contract Act, 1872 — Section 170

Customs Act, 1962 — Section 45(2)

Citation : (2012) 194 ECR 12 : (2012) 190 ECR 196 : (2012) 283 ELT 33

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Rajiv K. Garg, for the Appellant; Ritesh Kumar, for Respondents 1-3, Mr. R.K. Joshi, Advocate for Respondent 5, for the Respondent

Judgement

Sanjiv Khanna, J.—Mr. S.P. Goel, partner of Monika India and the partnership firm Monika India, have filed the present writ petition under Articles 226 and 227 of the Constitution of India for direction to the respondents viz. Commissioner of Customs, ICD, Tughlakabad, Shipping Corporation of India Ltd and the Container Corporation of India Ltd., to deliver goods mentioned in the 3 bills of entry bearing Nos. 102948, 103165 and 103182 dated 23rd February, 1991, 19th March, 1991 and 21st March, 1991, respectively, without payment of detention and demurrage charges. The second prayer made in the writ petition is for award of exemplary costs.

2. The petitioner had imported 40,000 kg., 97642 kg. and 96208 kg. of synthetic wastes soft quality against the bills of entry nos. 102948, 103182 and 103165 from parties in Taiwan and Korea. The aforesaid goods arrived at ICD, New Delhi between 21st February, 1991 and 21st March, 1991. After the goods were imported, the petitioner firm filed the bills of entry for release of the consignment on payment of duty on 23rd February, 1991, 19th March, 1991 and 21st March, 1991.

3. On 19th April, 1991, Assistant Commissioner of Customs drew samples and these were sent for testing to Central Revenue Control Laboratory (CRCL, for short), New Delhi. The test report of CRCL dated 8th July, 1991, indicated that the imported material was staple fibre and not synthetic waste, as declared by the Petitioner. For the present, we may just know that there was delay in drawing the samples, in sending the drawn samples, and then in getting the report from CRCL. We may also record the contention of the petitioner that customs authorities were empowered to release the goods, pending the execution of Test Bond, on provisional basis.

4. On 29th August, 1991, a show cause notice was issued by the customs authorities to the petitioner. The petitioner has highlighted the delay between 8th July, 1991 and 29th August, 1991, on the part of the respondents, being the delay between the date of receipt of the test report and the date of issue of the show cause notice.

5. The petitioner submitted a reply to the show cause notice after more than six months on 5th March, 1992. In the reply, they had relied on a test report conducted by SASMIRA Association, affiliated and linked to the Ministry of Textiles. As per the said report, the imported material was synthetic waste soft quality and accordingly in conformity with the declaration in the bills of entry. The contention of the petitioner is that this delay was occasioned because the samples were wrongly, at first instance itself, not sent to SASMIRA. This contention, however, is not supported on the basis of any notification or circular etc. Notification No. 7139, wherein SASMIRA was notified as a competent testing center was issued on 17th July, 1995.

6. The petitioner had filed Writ Petition (C) No. 3277/1992 in this Court, against the customs authorities, seeking direction against them to withdraw the show cause notice and further direction to clear the goods for home consumption. On an interim application, on 5th February, 1993, the High Court passed the following order:-

C.W.3277 and C.M. No. 6115/1992

The goods arrived in February/March, 1991 are still lying and have not been released to the petitioner. The appeal in Sanjeev Woolen Mills is stated to be pending before the C.E.G.A.T., whose decision is awaited by the respondents so as to apply the same to the petitioner's goods.

We direct the C.E.G.A.T. to decide the appeal with expedition not later than three months from the receipt of the order of this Court.

Keeping in view that the goods are still lying with the respondents, we directed the respondents to place before us the terms and conditions on which the goods can be released to the petitioner, in the meanwhile.

To come up on 16th February, 1993.

7. Thereafter, another order was passed on 23rd February, 1993. The same reads:-

Counsel for the petitioner suggested that goods in dispute be tested from:

1. South India Textile Research Association Coimbatore
2. I.P.C.L. Baroda

Counsel for the respondents on the other hand suggested that the reports should also be called from:

1. B.T.R.A., Bombay
2. CRCL, Madras.

In the interest of justice we order that the samples of the goods in dispute be sent to the aforesaid 4 laboratories for the test. The reports be submitted within 3 weeks of the receipt of this order.

The samples may be taken and sent to the four laboratories in the presence of the parties. Taking of the samples and sending thereof to the aforesaid four laboratories and getting the reports would be the duty of the respondents.

To come up on 02.04.1993.

8. It is apparent that to resolve the controversy, as suggested by the parties, it was directed that fresh samples would be drawn and would be sent to four laboratories for their reports. On 23rd April, 1993, the following order was passed:-

WP 3277 CM No. 6115/92

Counsel for respondent placed on record six reports. He submits that out of six reports three are in favour of petitioner one is favouring the respondent and two reports are unequivocal. Counsel for petitioner, however, states that these two reports are also in favour of the petitioner.

Counsel for respondent also says that the method of taking sample was not correct and consequently the reports which were in favour of the petitioner were also not correct and he wants another opportunity to draw the samples properly in the presence of the petitioner and the officers of the textile commissioner & The Technical Expert before the matter is finally adjudicated by the Collector Customs. In the interest of justice, we grant another opportunity to the respondent to take samples and after taking the samples in the manner suggested assure the matter is adjudicated upon by the Collector of Customs in accordance with law. Since prima facie 3 reports produced on record before, are in favour of the petitioner, we direct that the sample be taken within 2 weeks from today and the goods be released forthwith on furnishing P.D. Bonds and by also granting Detention certificate to the petitioner.

In case the Collector of Customs finds that Customs duty & redemption duty are payable by the petitioner, learned counsel states that the petitioner undertakes to pay the same subject to the right of the petitioner to appeal.

With this order the Writ Petition stands disposed of.

9. It is clear from the said order that six reports had been received. Three reports were in favour of the petitioner and one report was in favour of the respondent Revenue and about two reports there was a dispute. The customs authorities were not satisfied with the method of taking samples and made a request for drawing of fresh samples. The customs authorities were permitted to draw fresh samples in the manner indicated. However, keeping in view the fact that there were three reports in favour of the petitioner, the goods were directed to be released forthwith on furnishing of provisional duty bond. Customs authorities were directed to issue detention certificate. The writ petition was accordingly disposed of. It was further recorded that incase customs duty and redemption fine were payable at a later date, the petitioner shall pay the same. The prayer for quashing of the show cause notice etc. was not granted by the court.

10. Thereafter, an application was filed by the Customs Authorities before the High Court, which was disposed of on 28th May, 1993, inter alia recording as under:-

WP No. 3277 CM No. 4374/1993

Mr. Lokur states that samples from two consignments have already been taken and the sample for the third consignment could not be taken for which fault is placed on the writ petitioner. Learned counsel for the petitioner disputes this position. Under the circumstances we appoint Ms. Shashi Kala Warriar, Advocate as a local commissioner to go to ICD, Pragati Maidan, New Delhi and in her presence the sample will be taken preferably tomorrow, the 29th May, 1993 at 11.00 A.M. and in case it is not possible due to Saturday, being non working day, then on Monday, the 31st May, 1993 at 11.00 AM. She will be paid Rs. 3000/- as her fee to be borne by the parties in equal shares.

As far as the first two consignments, the goods of the petitioner should be released forthwith on petitioner's furnishing P.D. bonds which according to the petitioner they have already filled in on the format supplied by the respondents. As regards the third consignment as soon as the sample is taken the same be released on petitioner's furnishing P.D. bonds on the format supplied by the respondents.

C.M. stands disposed of.

11. Thus, in respect of first two consignments, the goods belonging to the petitioner were directed to be released forthwith on furnishing provisional duty bond on the format supplied by customs authorities. The third consignment was also to be released on the petitioner furnishing provisional duty bond in the

prescribed format after samples were drawn. The dates for drawing of samples were specified.

12. After the aforesaid orders were passed, the petitioner claims that they had executed provisional duty bonds but the goods were not released for want of detention charges. The stand of the customs authorities is that they accepted the provisional duty bonds and the goods were cleared for home consumption. Detention certificates were issued by the Commissioner of Customs for the period 22nd March, 1991 to 29th May, 1991. There is no dispute that the Detention certificates for the said period were issued.

13. In the meanwhile, inter-se dispute and differences arose between the partners of Monika India. The Container Corporation of India and the Shipping Corporation of India, inspite of detention certificates had reservations and were not agreeable to complete/entire waiver of container charges/demurrage charges. A number of applications were filed by the petitioner, erstwhile partner, and were disposed of vide order dated 16th February, 1994. The said order reads as under:-

CMs 5340, 6295, 7530, 7005 and 7116/93

On consideration of the matter we are of the opinion that only order which can be passed today, after the writ was disposed of on 23.04.1993 would to make it clear that the P.D. Bond which is to be furnished by the petitioner should be the satisfaction of the Assistant Collector of Customs Delhi.

After the order dated 24.04.1993 one of the partners, who takes to be a partner on whose behalf also P.D. Bond was furnished has come by way of an application saying that the bond furnished by the petitioner firm is bogus/insufficient. Whether it is bogus/insufficient or not, is for, is for the Assistant Collector of Customs, Delhi, to decided. If he finds it bogus/insufficient, he will call upon the petitioner to make good the P.D. Bond.

As regards other applications filed by the petitioner or the erstwhile partner of the petitioner are concerned, impleading the CONCOR India and Shipping Corpn. of India as parties, we are of the opinion that these two corporations may proceed to decided in accordance with law and make claim against the petitioner. As and when they raise a demand the affected party may come by way of fresh writ. At this stage, we do not make any observation on these applications, with this order all CM's stand disposed of. The interim orders stand vacated subject to order passed above.

14. It may be noted that the petitioner vide letters dated 29th May, 1993 and 8th June, 1993, had written to the Container Corporation of India and the Shipping Corporation of India to clear the goods without detention charges/container charges. It was also stated in these letters that the amount demanded by them towards demurrage charges was much more than the value of the goods. The Container Corporation of India, vide their letter dated 2nd April, 1994, informed

the petitioner that they have agreed to reduce detention and demurrage charges but were not to agreeable complete waiver, which according to the petitioner was still 10 times the CIF value. Aggrieved, the petitioner filed Writ Petition No. 3057/1995 against the Container Corporation of India and Shipping Corporation of India. The customs department was not made a party to the said writ petition. The contention of the customs authorities is that the petitioner was not aggrieved by their conduct or action/inaction as they had already issued detention certificates. It is further their contention that they were not made a party to the writ petition because the customs authorities had fully complied with the orders/directions passed in the Writ Petition (Civil) No. 3277/1992, referred to above. There is merit in the contention of customs authorities in this regard. In case, the petitioner had any grievance against the customs authorities in 1995, they would have certainly made them a party and objected to and challenged their conduct or misdeeds.

15. The said Writ Petition (C) No. 3057/1995 was dismissed by the Division Bench of this Court on 24th August, 1995, with the following observations:

C.W. No. 3057/1995

In this case the petitioner had imported certain goods and the bills of entry were filed way back in 1991. Respondents 1 and 2 are demanding demurrage charges. It is the contention of the petitioner that goods were wrongfully detained by the Customs Department and that for the fault of the Customs Department the petitioner should not be cause to suffer. As we see the prayers, the petitioner seeks release of the consignment by waiving demurrage charges. This would perhaps be not permissible in view of the decision of the Supreme Court in International Airports Authority of India and Others Vs. Grand Slam International and Others, . In this view of the matter Mr. Jaitley wishes to amend the petition. We are however, of the view that it would be better for the petitioner to file fresh petition stating the claim against the Customs Department. So the request of the claim could be granted. We dismissed the petition.

16. The petitioner thereafter filed Writ Petition (Civil) No. 3916/1995, impleading the customs department as a party, with the following prayers:

(a) Issue writ of mandamus of any other appropriate writ, order or direction quashing the show cause notice dated 29.08.1991 issued by the respondents and permit the petitioners to collect their consignment in connection with 3 Bills of entry being Bill of Entry No. 102448 dated 23.02.1991, Bill of Entry No. 103165 dated 19.03.1991 and Bill of Entry No. 103182 dated 21.03.1991, without there being any liability on the petitioner towards any demurrage charges etc.

(b) Issue a further writ, order or directions to respondent Nos. 1 to 4 to make the payment of any demurrage/detention charges if any, to the Shipping Corporation of India and CONCOR i.e. respondents No. 5 and 6 herein.

(c) Pass such other or further orders as this Hon''ble Court may deem fit and

proper in the circumstances of the present case."

17. This writ petition remained pending in the High Court for some time and was disposed of vide order dated 19th March, 1997, which reads as under:-

CW 3916 and CM 6571/95 and CM 3924/96

Learned counsel for the petitioner seeks leave to withdraw the petition with liberty to approach the court again, if need be. Dismissed as withdrawn.

18. At this point, it may be relevant to note that an appeal filed by an associate partnership firm M/s Sanjeev Woolens Mills was pending before CEGAT. This was noted in the order dated 5th February, 1993, passed in Writ Petition (Civil) No. 3277/1992. This appeal of M/s Sanjeev Woolens Mills was disposed of by the CEGAT with an order of remit. Vide order dated 11th August, 1995, the Chief Commissioner of Customs ordered unconditional release of goods under all four Bills of Entry in the case of M/s Sanjeev Woolens. It may also be noted that the objections raised by customs authorities against M/s Sanjeev Woolen Mills was of a similar nature and the consignment imported by M/s Sanjeev Woolens Mills was also detained on account of misdescription on the allegation that the goods imported were not synthetic waste soft quality but were staple fiber. The contention of M/s Sanjeev Woolens Mills that the goods imported were synthetic waste soft quality, was thus, accepted by the customs authorities.

19. Contrary to what was held in the case of M/s Sanjeev Woolen Mills, the Commissioner of Customs in the case of the petitioner passed an order dated 30/31.1.2001, whereby it was held that the goods imported were liable for confiscation and the duty demands were confirmed and penalties were imposed. It was held that the goods imported were not synthetic waste soft quality. The said order was set aside by the Customs, Excise and Services Tax Appellate Tribunal vide order dated 6th February, 2004. The tribunal recorded that the core issue was whether or not the imported consignment was synthetic waste soft quality. Reference was made to the test reports of different laboratories and observed that the burden was on the customs authorities to come to a positive finding that the goods imported were not synthetic waste. At best, it was observed that the evidence on record would show that the goods might not be synthetic waste but this was not sufficient. It was further noted that the findings recorded in several test reports indicated that the goods were synthetic wastes soft quality. The operative portion of the finding and the reasoning given by the tribunal is reproduced below:-

8. In terms of the Customs law and procedure, the burden is on the customs department to come to a positive finding to the effect that the imported goods are not synthetic waste but good quality or virgin quality material, such as synthetic fibre or tow. Even by reaching a conclusion that it is not possible to classify the material as waste, the same does not mean that, it is doubtful that the goods may not be waste and in situation of such doubt, it has been held by the Courts that, the benefit must go to the importer.

9. However, as we have noted that, the predominant findings emerging out of the test reports of various independent laboratories which are dedicated for test a textile materials, as also from the laboratory of Deputy Chief Chemist, Madras, reveal that the goods have been opined to be waste. Under these circumstances, the order of the learned Commissioner holding the goods to be other than waste and subjecting them to duty as done in the impugned order, is without any basis.

10. We, therefore, hold that there was no justification to either subjecting the imported goods in question to import duty by denial of duty free exemption under Pass book Scheme. Therefore, we allow the appeals of the party appellants and set aside the impugned order.

20. The contention of the petitioner, in these circumstances, is that the goods should be released without payment of demurrage or container charges. Secondly, it is submitted that the liability to pay demurrage/container charges should be fastened and if payable should be the liability of the customs authority. Reliance in this regard has been placed by the petitioner on the decision of the Supreme Court in the case of Union of India and Others Vs. M/s. Sanjeev Woollen Mills, and decisions of this Court in Gulab Impex Enterprises Ltd. vs. International Airport Authority of India, (1992) 48 DLT 515 (DB - Del); Om Petro Chemicals Vs. Union of India and Others, ; Agrim Sampada vs. UOI, 2004 (168) ELT 15 (Del.); and Sonia Overseas (P) Ltd. Vs. Asst. Commr., Customs, .

21. The decision in the case of Sanjeev Woolen Mills (supra) was explained and elucidated by the Supreme Court in Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others, . Reference was made to a larger Bench, as it was perceived that there was difference of opinion in the ratio descendi of the decisions in Sanjeev Woollen Mills (supra) and International Airports Authority of India and Others Vs. Grand Slam International and Others, . The Supreme Court in the case of C.L. Jain's case (supra) clarified the position observing as under:-

7. Before examining the correctness of the rival submissions, one thing is crystal clear that the relationship between the importer and the carrier of goods in whose favour the Bill of Lading has been consigned and who has stored the goods in his custody, is governed by the contract between the parties. Section 170 of the Indian Contract Act engrafts the principle of bailee's lien, namely, if somebody has received the articles on being delivered to him and is required to store the same until cleared for which he might have borne the expenses, he has a right to detain them until his dues are paid. But it is not necessary in the case in hand to examine the common law principle and the bailee's lien inasmuch as the very terms of the contract and the provisions of the Bill of Lading, unequivocally conferred power on the appellant to retain the goods, until the dues are paid. Such rights accruing in favour of the appellant cannot be nullified by issuance of a certificate of detention by the Customs Authorities unless for such issuance of detention certificate any provisions of the Customs Act authorise. We had not been shown any provisions of the Customs Act which would enable the Customs Authorities to compel the carrier not to charge

demurrage charges, the moment a detention certificate is issued. It may be undoubtedly true that the Customs Authorities might have bona fide initiated the proceedings for confiscation of the goods which however, ultimately turned out to be unsuccessful and the Court held the same to be illegal. But that by itself, would not clothe the Customs Authorities with the power to direct the carrier who continues to retain a lien over the imported goods, so long as his dues are not paid, not to charge any demurrage charges nor the so-called issuance of detention certificate would also prohibit the carrier from raising any demand towards demurrage charges, for the occupation of the imported goods of the space, which the proprietor of the space is entitled to charge from the importer. The importer also will not be entitled to remove his goods from the premises unless customs clearance is given. But that would not mean that demurrage charges could not be levied on the importer for the space his goods have occupied, since the contract between the importer and the proprietor of the space is in no way altered because of the orders issued by the Customs Authorities. The learned Additional Solicitor General vehemently argued and pressed sub-section (2)(b) of Section 45 in support of his contention that the imported goods have to be dealt with in accordance with the permission in writing of the proper officer of the Customs Department and in exercise of such power when the Customs Authorities initiate adjudication proceeding and ultimately confiscate and levy penalty, when such order is struck down and a detention certificate is issued, the said issuance of detention certificate would come within the expression "otherwise dealt with" used in Section 45(2)(b), and therefore, the proprietor of the space would be bound not to charge any demurrage charges. We are unable to accept this contention inasmuch as the expression "otherwise dealt with" used in Section 45(2)(b), in the context in which it has been used, cannot be construed to mean, it authorises the Customs Officer to issue a detention certificate in respect of the imported goods, which would absolve the importer from paying the demurrage charges and which would prevent the proprietor of the space from levying any demurrage charges. Having scrutinized the provisions of the Customs Act, we are unable to find out any provision which can be remotely construed to have conferred power on the Customs Authorities to prevent the proprietor of the space from levying the demurrage charges and, thereby absolving the importer of the goods from payment of the same. In fact the majority decision in *Grand Slam International* case clearly comes to the aforesaid conclusion with which we respectfully agree.

8. We have also examined the decision of this Court in *Union of India v. Sanjeev Woollen Mills* and we do not find any apparent inconsistency between the decisions of this Court in *Grand Slam* and that of *Sanjeev Woollen Mills*. In *Sanjeev Woollen Mills* the imported goods were synthetic waste (soft quality), though the Customs Authorities detained the same, being of the opinion that they were prime fibre of higher value and not soft waste. On account of non-release, the imported goods incurred heavy demurrage charges but the Customs Authorities themselves gave an undertaking before the High Court that in the

event the goods are found to be synthetic waste, then the Revenue itself would bear the entire demurrage and container charges. Further the Chief Commissioner of Customs, later had ordered unconditional release of the goods and yet the goods had not been released. It is under these circumstances and in view of the specific undertaking given by the Customs Authorities, this Court held that from the date of detention of the goods till the Customs Authorities intimated the importer, the importer would not be required to pay the demurrage charges. But in that case even subsequent to the orders of the Customs Authorities on a suit being filed by one of the partners of the importer firm, an order of injunction was issued and, therefore it was held that for that period, the importer would be liable for paying the demurrage and container charges. The judgment of this Court in Sanjeev Woollen Mills therefore, was in relation to the peculiar facts and circumstances of the case and the Court had clearly observed that the order in question is meant to do justice to the importer, looking to the totality of the circumstances and the conduct of the Customs Authorities. Thus, we see no inconsistency between the ratio in Sanjeev Woollen Mills and the judgment of this Court in Grand Slam. That apart, the judgment in Grand Slam was a three-Judge Bench judgment. In the case in hand, as has already been stated earlier, the earlier judgment of the Delhi High Court dated 9-9-1994 in CWP No. 1604 of 1991 has become final, which entitles the importer to get the goods released without payment of the detention and demurrage charges. In the contextual facts, notwithstanding the judgment of the High Court, the goods not having been released, the impugned order and direction dated 18-1-1999, cannot be held to be infirm in any manner. In the absence of any provision in the Customs Act, entitling the Customs Officer to prohibit the owner of the space, where the imported goods have been stored from levying the demurrage charges, levy of demurrage charges for non-release of the goods is in accordance with the terms and conditions of the contract and as such would be a valid levy. The conclusion of the High Court to the effect that the detention of the goods by the Customs Authorities was illegal and such illegal detention prevented the importer from releasing the goods, the Customs Authorities would be bound to bear the demurrage charges in the absence of any provision in the Customs Act, absolving the Customs Authorities from that liability. Section 45(2)(b) of the Customs Act cannot be construed to have clothed the Customs Authorities with the necessary powers, so as to absolve them of the liability of paying the demurrage charges. In the aforesaid premises, we see no infirmity with the directions given by the Delhi High Court on 18-1-1999. The goods in question, having already been directed to be released, without the payment of the demurrage charges, the importer must have got the goods released. Having regard to the fact situation of the present case, it would be meet and proper for us to direct Shipping Corporation and Container Corporation, if an application is filed by the Customs Authorities to waive the demurrage charges. The appeal is disposed of accordingly.

22. The aforesaid paragraphs are clear. It been held by the Supreme Court that

the customs authorities can issue a detention certificate but they cannot compel the carrier/shipping line or the Container Corporation of India to waive off or not charge demurrage/container charges. The importer would be liable to pay demurrage charges in case any space was occupied by the imported goods and issue of detention certificate ipso facto does not mean and mandate waiver of demurrage charges by the carrier/corporation. Case of Sanjeev Woollen Mills (supra) was distinguished on two grounds. Firstly, the customs authorities had given an undertaking before the High Court that if the goods were synthetic waste soft quality, the Revenue would bear the demurrage/ container charges and secondly the Chief Commissioner of Customs had ordered unconditional release of goods yet the goods are not released by the Customs authorities. The judgment in Sanjeev Woollen Mills (supra), it was observed, was confined to the peculiar facts and circumstances of the said case.

23. In Om Petro Chemicals (supra), another Bench of this Court held in the following terms:

23. Would that however mean that the petitioner must pay demurrage charges even though it is not at fault. Answer to the question must be rendered in negative. The decisions of the Apex Court therefore are authorities for the proposition in certain situation; the court may direct the customs authorities to bear the demurrage charges. In the instant case the customs authorities still insisted that the goods were illegally imported. It sought to justify its stand even before this Court. This Court is not only a court of law but also a court of equity. In a situation of this nature we are of the opinion that this Court may find that in place of the importer or the consignee, the customs authorities should bear the charges. Once it is held that the petitioner herein has not committed any illegality in importing the goods in question, in our opinion, it cannot ordinarily be saddled with the liability of payment of demurrage. The petitioner in the fact situation of this case must be held to have been sinned against than sinning. In UOI v. Sanjeev Woollen Mills JT 1998 (4) 124 the Apex Court in the fact situation obtaining therein held that demurrage may not be paid by the importer.

24. In Sonia Overseas (P) Ltd. (supra), while referring to Om Petro Chemicals (supra), it has been observed as under:-

6. A consummate reading of these precedents thus reveals that the Customs Department is not completely insulated from any liability in instances of an illegal detention. In a case where imported goods are detained to the financial detriment of the importer, liability of the Customs Department will have to be determined by looking at the facts and circumstances of each case on merits.

Learned counsel for the petitioner has also relied upon a judgment of Single Judge of this Court in Agrim Sampada (supra), which is a judgment, which has again relied on Om Petro Chemicals (supra).

25. Revenue has pointed out that the decision in the case of Om Petro Chemicals (supra) has been made subject matter of challenge before Supreme Court and

has been stayed. The respondent No. 5 has relied on an order passed by a Division Bench of this Court in WP(C) No. 2235/2002, Yang Ming Marine Transport Corporation & Anr. Vs. Commissioner of Customs & Ors., dated on 31st May, 2002, and the order passed by the Supreme Court in appeal filed by Yang Ming Marine Transport Corporation. Reliance has also been placed on an order passed by a Division Bench of this Court in Modern Overseas vs. Union of India (2006) (204) ELT 218 (Del.).

26. Respondents have relied upon decision of a Single Judge of this Court in Narain International vs. UOI & Ors., in WP(C) No. 777/1992, decided on 1st October, 2007, and the order passed in appeal bearing LPA No. 1319/2007, dismissing the appeal against the Single Judge's order. 27. On examination of the aforesaid decisions, the following legal propositions emerge:

(1) The customs authorities are entitled to examine the goods and draw samples to verify and determine the duty liability.

(2) The customs authorities can issue detention certificate or for good reasons may be called upon and directed by the Courts to issue detention certificate in respect of imported goods.

(3) Detention certificate issued by the customs authorities is not a mandate on the shipping company or warehousing companies. These corporations/companies are entitled to claim demurrage/container charges. These corporations cannot be compelled and mandamus cannot be issued to waive demurrage on the ground that the importer/consignee was unable to clear the goods due to fault of the custom authorities.

(4) Whether and in what circumstances customs authorities can be compelled and asked to pay demurrage to the warehousing companies/shipping companies, is a matter of considerable debate. Decision in the case of Sanjeev Woolen Mills (supra) states that in some cases customs authorities can be asked to pay demurrage to the warehousing company or shipping company. However, for this exceptional relief, grounds are required to be made out and established.

28. Keeping in view the aforesaid legal position, we have to examine whether, in the facts of the present case, the respondents No. 1 to 3 can be compelled or asked to pay the demurrage charges. The factors which are in support of the petitioner may be noted first.

(i) There was delay in drawing the samples and getting report from the test laboratories. The 3 consignments had arrived on 23rd February, 1991, 19th March, 1991 and 21st March, 1991. The samples were drawn on 19th April, 1991 and sent to CRCL in June, 1991. The report from CRCL was received on 8th July, 1991.

(ii) Show cause notice was issued on 29th August, 1991 i.e. nearly six months from the filing of the bill of entries.

(iii) Petitioner had repeatedly requested for verification/testing of samples by SASMIRA, Government approved laboratory but the same were only sent in January, 1992 and in March, 1992.

(iv) In spite of favourable report from SASMIRA, goods were not released.

(v) On 23rd April, 1993, this Court in Writ Petition (Civil) No. 3277/1992, had directed to issue detention certificates but the same were issued on 29th May, 1993. There was delay of over one month in issue of detention certificates.

(vi) There was delay of about 5 years in passing the adjudication order and only on 30th December, 2000, the Commissioner passed an order imposing a total penalty of Rs.25 lakhs on the petitioner and its partners and a redemption fine of Rs.7,50,000/- was imposed.

(vii) The Chief Commissioner had ordered unconditional release of goods in the case of M/s Sanjeev Woolen Mills on 11th August, 1995. Despite the imported goods being identical, an adverse order was passed by the Commissioner in the case of the petitioner.

(viii) There is no justification or reason for the customs authorities to differentiate between the consignments imported by M/s Sanjeev Woolen Mills and the petitioner.

(ix) Department proceedings have been initiated against the customs officers for their malafide conduct and wrongful action in the case of M/s Sanjeev Woolen Mills. The same officers were involved and were responsible for detaining the goods in the case of the petitioner.

(x) Customs authorities despite favourable test reports kept on insisting that the goods imported by the petitioner were not Synthetic wastes soft quality but staple fibre. Orders, passed in WP(C) No. 3277/1992, are relied upon.

29. There is some merit in the aforesaid points and issues. To some extent, customs authorities are guilty and responsible for the delay. It may be also true that some customs officers may have deliberately acted to put obstacles and to prevent a fair adjudication. However, there are several factors and grounds on which we feel that the petitioner cannot and is not entitled to the relief as prayed for in the present petition viz. direction to the customs authorities to pay the entire demurrage/container charges to the shipping company i.e. Shipping Corporation of India and to the warehousing company i.e. Container Corporation of India. Our reasons and grounds are stated below:-

(i) The petitioner submitted their reply to show cause notice dated 29th August, 1991, only on 5th March, 1992. Even if the petitioner was relying upon and wanted a copy of the test report by SASMIRA, the delay is not justified.

(ii) The petitioner had filed WP(C) No. 3277/1992 and vide order dated 23rd April, 1993, it was directed that the goods shall be released on furnishing provisional duty bond and the customs authorities shall issue detention

certificates. Detention certificates were issued on 29th May, 1993/8th June, 1993. It was the obligation of the customs authorities to only issue detention certificates. To what extent demurrage could, and should, be waived was not in the hands of the customs authorities. Respondent No. 4, Shipping Corporation of India, reduced the claim from Rs. 10.27 crores to Rs. 83,29,000/- by limiting the detention charges. The Container Corporation also reduced the charges as per their policy. The petitioner, however, did not pay the reduced demurrage charges and get the goods released.

(iii) Order dated 23rd April, 1993, has been quoted above. The said order was just, fair and balanced equities between the parties. The court was conscious of the fact that samples had to be tested and the appeal in the case of M/s Sanjeev Woolen Mills was still pending before the tribunal. The show cause notice was not quashed by the Court. The petitioner did not take advantage and benefit of the order dated 23rd April 1993 in W.P. (C) No. 3277/1992.

(iv) There were differences between the partners of the petitioner firm. This is apparent from the application filed by one of the partners in WP(C) No. 3277/1992 alleging that he had not furnished the provisional duty bond. This explains the delay and reluctance on the part of the petitioner to take delivery of the consignment, as someone had to bear and pay reduced demurrage charges etc. It appears that none of the partners were willing to bear and pay the demurrage charges etc. as there was no certainty when, how and who would be entitled to sell the goods and how the profits or the sale consideration would be distributed. Court orders on inter se disputes between the parties were passed subsequently.

(v) Probabilities indicate that the petitioner did not take advantage of the order dated 23rd April, 1993 on account of inter-se disputes between the parties. There was reluctance on behalf of partners of the petitioner firm.

(vi) Writ petition (Civil) No. 3057/1995 was filed by the petitioner against Shipping Corporation of India and Container Corporation of India and not against the customs authorities. The Customs authorities had already issued detention certificates and therefore no prayer or direction was required against them. The writ petition was dismissed with the observations made in the order dated 24th August, 1995, relying upon the decision in the Grand Slam International (supra). The order of unconditional release in the case of M/S Sanjeev Woolen Mills was passed by the Chief Commissioner of Customs on 11th August, 1995.

(vii) Writ petition (Civil) No. 3916/1995 was subsequently withdrawn by the petitioner on 19th March, 1997. Though Customs authorities were parties to the said writ petition, it is apparent that the petitioner was unable to make out a case for immediate release of goods. This order, dated 19th March, 1997 was passed after the order was passed in the case of M/s Sanjeev Woolen Mills for release of the goods.

(viii) Shipping Corporation of India has filed a Civil Suit bearing CS(OS) No.

1397/2000, in which the petitioner, customs authorities are defendants. The disputes/issues raised in the civil suit cannot be decided in the writ petition. This civil suit is filed before/prior to the filing of the present writ petition.

(ix) There is considerable delay and laches in filing this writ petition. The contention of the petitioner that there is no delay as the tribunal had passed a favourable order in favour of the petitioner, in the year 2004, does not have any merit. The petitioner had earlier also filed writ petitions.

(x) The action of the customs authorities cannot be substantially faulted, once they had issued detention certificates in 1993, except to the extent of passing of the adverse assessment order. If the petitioner had made payment of reduced demurrage charges on the basis of the detention certificates, the position may have been different. The inter se disputes between the partners, it is apparent, had prompted and prevented the petitioner firm from making the payment of reduced demurrage/detention charges etc. to get the good released. It may be noted here that even in the case of M/s Sanjeev Woolen Mills, part payment of demurrage was directed to be made by the partners of that firm because of delay on their part. The delay on their part was occasioned because of the inter se disputes. [See last portion of the judgment in Sanjeev Woolen Mills (supra).]

(xi) We do not think that the factual matrix of the present case can be compared with the factual matrix in the case of M/s Sanjeev Woolen Mills. We have already noted the two distinguishing factors. Firstly in the case of M/s Sanjeev Woolen Mills, there was an undertaking given to the court that the customs authorities would bear and pay demurrage charges in case the goods were found to be synthetic waste soft quality. Secondly, in the said case, customs authorities had failed to release the goods in spite of the order of unconditional release passed by the Chief Commissioner. In the present case, detention certificates were issued by the customs authorities.

30. We must deal with one contention of the petitioner separately. The petitioner has vehemently submitted that delivery of the consignment on the payment of reduced demurrage charges was not taken after the issue of detention certificates, as it was not economically viable. It was submitted that the reduced demurrage charges should be entirely borne and paid by the customs authorities as they had wrongly detained the consignment.

31. It is not possible to agree with the said contention for the reasons set out above in paragraph 29. Specific reference is required to be made to the disputes inter se the partners. This apart, the allegation that the reduced demurrage charges exceeded the market value of the consignment in India is a mere ipse dixit. As noticed above, the petitioner had filed W. P. (C) No. 3277/1992 and an order dated 23rd April, 1993 was passed balancing out the equities. The petitioner did not take advantage of the said order. The petitioner filed W. P. (C) No. 3057/1995, against the two corporations, which was dismissed. Subsequently W. P. (C) No. 3916/1995 was filed and this was withdrawn in 1997.

Accordingly, the said orders were not negated or violated by the customs authorities.

32. It is, therefore, clear that the petitioner had failed to take delivery of the consignment even after order dated 23rd April, 1993. In such circumstances, we do not think respondent- custom authorities can be, and should be, directed to pay the demurrage or container charges.

33. The writ petition is accordingly dismissed. It is clarified that dismissal of this writ petition will not adversely affect the contentions or defence taken by the petitioner and other parties in C. S. (OS) No. 1397/2000 filed by the Shipping Corporation of India. The said suit is to be decided after recording the oral evidence and examining the same. We have disposed of the present writ petition on the basis of evidence and material available on record but without oral evidence being recorded.

34. In the facts and circumstances of the present case there will be no orders as to cost.