

(2007) 11 DEL CK 0084
In the Delhi High Court
Case No : LPA 1319 of 2007

Narayan International

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Customs Act, 1962 — Section 45

Citation : (2008) 225 ELT 54

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Pradeep Jain, for the Appellant; Dincur Bajaj, for R 1 and 2 and Ashmia Vaish, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the order dated 1st October, 2007 passed by the learned Single Judge dismissing the writ petition filed by the appellant with a further direction that the appellant would deposit the balance 20% of the demurrage charges with the International Airport Authority of India(for short the "IAAI") and upon deposit of the said amount the said authority would take steps to ensure that the bank guarantees furnished to it are returned for discharge.

2. The appellant herein imported a consignment of Y.K.K. Polyester zippers type LFC-32, No.3, size 8, of Japanese origin from Singapore through invoice dated 15.6.1990. The value declared was of Singapore dollars 12 per 100 pieces. The total value of the consignments was Singapore \$ 53,300/- C.I.F. The Bill of Entry was filled on 23.6.1990. The appellant did not insist on a show cause notice as it was incurring heavy demurrage. The Addl. Collector enhanced the value of the goods imported. The appellant, Therefore, approached the Customs, Excise and Gold Control Appellate Tribunal (CEGAT) by filing an appeal. The Tribunal set aside the order of the Collector and remanded the matter to the Addl. Collector. On such remand being made by the CEGAT, the Addl. Collector heard the parties

and thereafter passed his order wherein he relied on the invoice value of imports made by M/s Enterprises he enhanced the value from US \$ 13/- per piece to Rs. 151.36 he passed an direction for confiscation of the goods and gave option to the appellant to pay redemption fine of Rs.50,000/- and a penalty of Rs.1,50,000/- by order dated 15.1.1991. As against the aforesaid order, the appellant preferred an appeal to CEGAT. The CEGAT partly allowed the appeal by holding as follows:

From the above it follows that the value of identical goods right from 1989 to the relevant date viz, on which the impugned goods are imported is around 1159 Japanese yen per 100 pieces. We, Therefore, hold that the assessable value of the impugned goods should be fixed at 1159 Japanese Yen. Since, there is an under-valuation to the extent indicated above, the appellants are liable to pay the difference in duty on the enhanced value. We also direct the appellants to redeem the goods on payment of a redemption fine of Rs.25,000/-.

3. The appellant filed a rectification application before CEGAT to the extent as indicated in the order dated 20.12.1999 holding as under:

On a consideration of the material on record and the arguments advanced by the counsel during the course of the final hearing is noted in our books, we found that the appellants advanced an argument that if the goods are imported over and above a particular quantity they are entitled to quantity discount, this aspect we have by oversight not considered in the order. Therefore, we consider the said argument now. While holding the assessable value should be on the basis of 1159 Yen, we referred to the offer dated 5.6.90 made by M/s Bhalla and Co. to the appellants. In the said offer it is mentioned, "goods worth Japanese Yen 600000 per shipment, % of discount will vary upon the quantity over and above the minimum quantity.

Admittedly, the appellants have purchased more than the minimum quantity, i.e., 6 lakhs Japanese Yen. Therefore, they are entitled to discount as claimed by them. We accept the contention of the appellant that after giving the discount the price declared by them is more or less the same. Therefore, we accept the invoice price and set aside the redemption fine. We accordingly rectify the order No.293/91-A.

4. After the aforesaid order was passed by the CEGAT, the appellant sought for release of its goods. The Customs authorities issued the detention certificate on 6.2.1992 certifying that the goods were detained from 23.6.1990. However, the goods could not be released because the IAAI demanded demurrage charges which had by then accumulated to a substantial amount. Consequently, the appellant approached this Court by filing a writ petition contending, inter alia, that the goods should be released without payment of the demurrage amount. Our attention has been drawn to the claims made in the writ petition. On going through the same, we find that the only prayer that was sought for in the same was against the Air Port Authority of India. In the said writ petition no relief was

sought for as against the Customs authorities by the appellant.

5. Counsel appearing for the appellant has submitted before us that subsequently an application was filed before the learned Single Judge praying for amendment of the writ petition but he is not in a position to state if the aforesaid amendment was allowed. Be that as it may, we have heard the learned Counsel appearing for the parties on this appeal filed by the appellant being aggrieved by the order passed by the learned Single Judge dismissing the writ petition who have also taken us through the records in support of their submissions.

6. On going through the records we find that the IAAI has waived demurrage charges to the extent of 80% u/s 45 of the Customs Act. What was directed to be paid was 20% of the demurrage charges which according to the appellant was also exorbitant. It is also contended before us by the counsel appearing for the appellant that the appellant cannot be saddled with the liability of the demurrage charges which amounts to about Rs.10,57,000/- as against the value of the goods which is less than half that amount, i.e., Rs.4,88,991/-. It is also submitted by the learned Counsel appearing for the appellant that the Tribunal has held in favor of the appellant and, Therefore, the IAAI could not compel the appellant to pay demurrage charges for the detention period. We are, however, unable to accept the aforesaid contention of the appellant for the simple reason that the IAAI who is an independent statutory corporation although is an approved custodian u/s 45 of the Customs Act, exercises their independent power and jurisdiction in demanding payment of the demurrage charges which a party incurs for various reasons. Regulations framed also cast a duty upon the IAAI to charge demurrage for the period of detention of the goods and, Therefore, in our opinion demurrage charges shall be payable and at this stage in the appellate proceedings we are not required to ascertain as to whether the Customs Department was at fault or not. In support we may also appropriately refer to the decision of the Supreme Court in *International Airports Authority of India and Others Vs. Grand Slam International and Others*, wherein the Supreme Court has declared the law as follows:

66. From the above decisions of this Court, it becomes clear that an authority created under a statute even if it is the custodian of the imported goods because of the provisions of the Customs Act, 1961, would be entitled to charge demurrages for the imported goods in its custody and make the importer or consignee liable for the same even for periods during which he/it was unable to clear the goods from the Customs area, due to fault on the part of the customs authorities or of other authorities who might have issued detention certificates owing such fault.

7. We may also refer to the decision of the Supreme Court in *Trustees of the Port of Madras through its Chairman Vs. M/s. K.P.V. Sheikh of Mohd. Rowther and Co. Pvt. Ltd.* and another, wherein also the Supreme Court had occasion to deal with a similar contention. The Supreme Court in the said decision held that if an authority is the custodian of the imported goods because of the provisions of the

Customs Act, 1961, would be entitled to charge demurrage for the imported goods in its custody and make the importer or consignee liable for the same even for periods during which he/it was unable to clear the goods from the Customs area due to fault on the part of the Customs authorities or of other authorities who might have issued detention certificates owing such fault. The said decisions were followed in Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others, . In our considered opinion, the aforesaid decisions are squarely applicable to the facts of the present case.

8. On going through the records of the case we find that there is no specific allegation of malafide against the Customs Department. The learned Single Judge has considered the said aspect as to whether or not the Customs Department had acted malafidely and having considered the facts of the case and upon going through the records it has been held that there was no malafide on the part of the Customs Department. It was held that whatever action was taken by the Customs Department was an action taken in good faith and that it did not amount to abuse or misuse of their power. We, Therefore, find no reason to interfere with the findings recorded by the learned Single Judge. We find no merit in the appeal which is dismissed.