

(2007) 10 DEL CK 0019
In the Delhi High Court
Case No : Writ Petition (C) 777 of 1992

Narayan International

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 161, 162, 171
Customs Act, 1962 — Section 14(1), 155, 45
General Clauses Act, 1897 — Section 3(20)
International Airports Authority Act, 1971 — Section 35
Major Port Trusts Act, 1963 — Section 111, 2

Citation : (2007) 122 ECC 235 : (2007) 148 ECR 235 : (2008) 221 ELT 183 :
(2007) 7 ILR Delhi 91

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Pradeep Jain, for the Appellant; Sewa Ram, for R-1 to R-3, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The Petitioner claims a direction against the respondents, i.e. Collector of Customs and the International Airports Authority of India, (IAAI) for release of its goods imported from Singapore, for which Bill of Entry was filled on 23.06.1990, without payment of ground rent demurrage etc.

2. The Petitioner imported a consignment of Y.K.K. Polyester zippers type LFC-32, No.3, size 8, of Japanese origin from Singapore through invoice dated 15.06.1990. The total number of zippers imported were 4,10,000 pieces. 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 filed on 23.06.1990.

3. The Petitioner did not insist on a show cause notice as it was incurring heavy demurrage. The Addl. Collector enhanced the value of the goods imported

without hearing it. The petitioner, Therefore, approached the Customs, Excise and Gold Control Appellate Tribunal (CEGAT) by an appeal. The Tribunal set aside the order of the Collector and remanded the matter to the Additional Collector. The latter heard the petitioner, furnished them the materials on which the department relied, and passed his order. Relying 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 directed confiscation of the goods and gave option to the petitioner to pay redemption fine of Rs.50,000/- and a penalty of Rs.1,50,000/-, by order dated 15.01.1991.

4. Against the said order, the Petitioners preferred an appeal to CEGAT. The CEGAT disposed the appeal, by its order of 23.05.91 holding that the price of goods imported by M/s. Durga Enterprises could not be the basis for valuing the petitioner's goods. It modified the valuation and held as follows:

15. We have rejected the invoice of M/s. Durga Enterprises. The next question for consideration is whether the price declared by the appellants should be accepted for the purpose of determining the assessable value u/s 14(1) of the Act. The appellants declared the price at the rate of Singapore dollars 13 per hundred pieces. The appellants themselves produced the invoice dt. 29.5.89 which indicates the price of identical goods at 1159 Japanese Yen. The price lists filed by the appellants, namely, the price list dated 1st Jan, 1987 and 1st Jan. 1990 respectively shows the price of the impugned goods at 1159 Japanese Yen. The price lists indicate that there is no substantial change in the value of the impugned goods. The Department also issued a show causes notice in the case of M/s. Honesty Traders wherein they have mentioned the price of identical goods at Japanese Yen 1159 per hundred pieces. Further there is an offer from M/s. Bhalla and Co., who are the agents of J.K.K. zippers offering the goods at 1159 Japanese Yen for 100 pieces. The identical goods imported under Bill of Entry No.0318 dt. 12th June, 1990 at Madras indicate the price of goods at Rs.125 for 100 pieces. The total quantity also is 3 lakh pieces. The collector himself in his order observed that the prices in the import invoice No.1914/90 dt. 30th June, 1990 and the B/E No.3318 dt. 12th June, 1990 can both be held more contemporaneous as compared to that of - M/s. Durga Enterprises if the comparative dates of the invoices are taken into consideration, although he rejected the invoice No.1914/90 on the ground that No.32 is not mentioned. The material referred to above indicates that there is a uniformity in the price of identical goods. Further these are the documents produced by the appellants. In other words, their own evidence indicates the price of the goods, uniformly sold at the rate of 1159 Japanese Yen.

16. 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/-.

5. The petitioner filed a rectification application before CEGAT, contending that its plea regarding discount available for the imported articles and its impact on valuation, through urged in the proceeding, had not been dealt with. The CEGAT allowed the application, by its order 20.12.1991, holding that:

4. 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 quantify 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. too 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."

5. 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.

6. After the CEGAT made its order, the petitioner sought for release of its goods. The Customs authorities issued the detention certificate, on 06.02.1992, certifying that the goods were detained from 23.06.1990. The goods could not, however, be released because the IAAI demanded demurrage charges which had by then accumulated to a substantial amount. The petitioner Therefore approached this Court, claiming that the goods should be released without the amounts, as the customs authorities were at fault.

7. A Division Bench of this Court, after hearing counsel for the parties, issued Rule on 26.02.1992, and by an interim measure, permitted clearance of the imported goods in the following terms:

26.02.92

CW 777/92

Rule.

CM 1118/92

Mr. Jain, the learned Counsel for the petitioner submits that in view of the Division Bench decision of this Court in M/s. Trishul Impex v. Union of India 1991 (2) Del Law 1, respondent No.4 is not entitled to recover any amount from the petitioner on account of demurrage charges for the period for which the

detention certificate, copy of which is at page 48 of the paper book, has been issued by the Customs authorities. Mr. Aruneshwar Gupta, the learned Counsel for respondent No.4, however, submits that under the statutory rules, respondent No.4 may consider the waiver up to 80% of the demurrage charges. He also submitted that the question whether the ceiling for waiving the demurrage charges should be 80% or above is pending before the Supreme Court. After hearing the learned Counsel for the parties, we direct respondent No.4 to release the goods of the petitioner on payment of demurrage charges and ground rent charges for the period prior to 23.06.1990 and on furnishing a bank guarantee for 20% of the amount of demurrage charges for the period 23.06.1990 onwards. CM stands disposed of.

Sd/-

Chief Justice

Sd/-

Sat Pal, J

26th February, 1992

8. The Petitioner contends that it cannot be saddled with the liability to pay demurrage charges, which amount to a colossal Rs.10,57,000/- as against the value of the goods which is less than half that amount, i.e. Rs.4,88,991/-. The petitioner was innocent of any wrong-doing; it had not misdeclared the value, or was guilty of any amounting to willful conduct which could justify the customs "authorities" action in insisting upon payment of full duties, on the basis of their valuation. The Tribunal's orders completely vindicated its stand. Therefore, the IAAI could not compel the petitioner to pay demurrage charges for the detention period. That liability should be borne by the Customs authorities.

9. The Respondents denied liability. The Commissioner of Customs states that no liability can be fastened on it to pay the demurrage charges because it had invoked quasi-judicial powers conferred upon it further to legitimate exercise of jurisdiction. The Petitioner could not ask the Customs Authorities to seek waiver of the demurrage charges, as that was within the domain of the IAAI, an independent statutory Corporation. It is also contended that soon after the final order of CEGAT the detention certificate was issued enabling the Petitioner to have the goods released, on 6.2.1992. The position of IAAI is that waiver to the extent of 80% of the demurrage charges has been given; it is an approved custodian u/s 45 of the Customs Act. It is also averred that the relationship between the Petitioner and the IAAI is that of bailment governed by Section 161, 162 and 171 of the Contract Act. It is further averred that the Regulations framed by 1980, cast a duty upon it to charge demurrage for the period of detention of the goods. It cannot, Therefore, act contrary to those regulations. It is lastly contended that demurrage charges are payable irrespective of the fault of one or the other party i.e importer or consignee or the Customs Authorities as

they are towards services rendered by the IAAI.

10. Mr. Pradeep Jain, learned Counsel contended that having regard to the principles of law declared by the Supreme Court in *International Airports Authority of India and Others Vs. Grand Slam International and Others*, ; *Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others*, the Division Bench judgment of this Court in *Om Petro Chemicals Vs. Union of India and Others*, and judgment of this Court in *Agrim Sampada Ltd. and Another Vs. Union of India (UOI) and Others*, . It is now well-settled that if the Customs Authorities are at fault in detailing the goods wrongly, the Court would be justified in exercising power under Article 226 of the Constitution, to direct that payment of demurrage charges should be made by such authorities and not by innocent importer/consignee. Learned Counsel contended that in the facts of this case the Customs Authorities initially made an adjudicatory order, which was in reach of principles of natural justice; the matter was accordingly remanded by the CEGAT. The Additional Collector of Customs, again, by his adjudicatory order, rejected the valuation and directed payment of duty on the higher valuation determined by him. He further imposed penalty. That order was carried in appeal to the CEGAT which set aside the direction to pay penalty. Later it rectified its order and accepted the valuation initially made by the Petitioner.

11. Learned Counsel contended that in the circumstances of this case, the initial stand of the Petitioner stood vindicated and it was established beyond doubt to be the innocent party. Having regard to the fact that the value of the goods were less than Rs.5 lakhs whereas the demurrage charges worked out to Rs.10.7 lakhs, having regard to the law declared in the *Grand Slam International* case, the Court should direct the Customs Authorities to bear the liability to pay demurrage charges. Learned Counsel contended that the judgment in *Grand Slam* had to be read in the context of the facts that the High Court had not made a direction to the Customs Authorities to pay the amount. However, in the *Shipping Corporation* case, the Supreme Court upheld the High Court's directions imposing liability on the Customs Authorities. These were duly taken note of by the Division Bench of this Court in *Om Petro Chemicals* where it was held that the decisions of the Supreme Court were authorities for the proposition that in certain situations, the Court may direct Customs Authorities to bear demurrage charges. Counsel also relied on the judgment, to say that the Division Bench had held that once it was established that an importer had not committed any illegality in bringing the goods, it cannot ordinarily be saddled with liability for payment of demurrage.

12. Learned Counsel for the respondents contested the claim. It was urged that in the present case 80% of the demurrage charges have already been waived. Mr. Sewa Ram learned Counsel for the Customs Authorities, contended that the adjudication order had imposed penalty upon the Petitioner. The CEGAT did not in its basic order, unambiguously set aside the valuation arrived at by the Adjudicating Authority. Having regard to the differential duty, this was not a case

that the Petitioner was unable to mitigate the demurrage charges by clearing the goods and then in the final event of succeeding, claiming refund of the differential amounts. He chose not to clear the goods. The Customs Authorities in bona fide exercise of their powers, held against the Petitioner. It was only in the rectification proceedings that the valuation preferred by the Petitioner was upheld. In such circumstances, having regard to the fact that IAAI have waived 80% off demurrage charges, the Customs Authorities cannot be saddled with liability.

13. Learned Counsel contended that the law declared in *Grand Slam International* case is clear i.e that even if an importer is innocent of any wrongdoing and is established to be so in appropriate proceedings finally, nevertheless to pay the demurrage charges, its liability cannot be extinguished. In the facts of a given case, however, it is open to the Airport or Port Authority or Warehouse Corporations, to remit or waive the demurrage. Having regard to the facts in this case that power was exercised reasonably.

14. Learned Counsel also contended that invocation of undoubted jurisdiction in bona fide exercise of the adjudicatory power cannot, unless a litigant proves mala fide or shows palpable unreasonableness, lead to liabilities on the Customs Authorities. Reliance was placed on *Grand Slam International* as well as the judgment in *Shipping Corporation of India*. It was submitted that in the latter case the Supreme Court upheld the order casting liabilities on the Customs Authorities since there was an express undertaking given by them before the High Court to pay demurrage charges, in the event of their not succeeding on the merits. Such directions cannot be construed as laying down a universal proposition that wherever an importer finally succeeds in the adjudication proceedings, or before establishing its innocence, yet not chosen to clear the goods, till then the Customs Authorities would have to necessarily pay the demurrage charges.

15. The stand of the Customs Authorities was supported by IAAI. It was also urged that being a statutory body rendering specific services, it could not be deprived of the charges legitimately due to it for rendering such services. Reliance was placed again on *Grand Slam International* case to say that IAAI could not be deprived of the 20% balance demurrage charges claimed.

16. The order of the Customs authorities is not the subject matter of controversy here. The validity of the said order has been adjudicated upon by CEGAT. That order has attained finality. What legal consequences flow from the order passed by the CEGAT are the subject-matter of consideration in these proceedings. According to the respondent the liability to pay demurrage charges is that of the importer. Both parties had placed reliance on judgments of the Supreme Court.

17. In *Grand Slam International and Ors*, in para 36, of Justice Bharucha's judgment, (who delivered the main judgment for the majority), stated:

The judgments aforementioned do not only hold that the importer is liable to pay

demurrage though he is not responsible for any delay in clearing his goods."`

Venkatachala, J concurred with this in para 66 of his judgment.

18. Grand Slam International's case was followed by the Supreme Court in Trustees of Port of Madras v. Nagavedu Lungi and Co., 1995 (3) SCC 241. In para 4 of the judgment, the court referred to the Grand Slam International case and stated that:

...that the importer-consignee of goods cannot avoid liability to pay demurrage charges and other incidental charges in respect of its goods illegally detained in the customs area of the Airport by the Customs Authorities under the Customs Act. The said ruling of this Court as regards liability for demurrage charges and other incidental charges by the importer-consignee of goods illegally detained in the customs area of the airport by the Customs Authority applies to the liability to pay demurrage charges or incidental charges by the exporter-consignor of the goods illegally detained in the customs area....

In Sun Export Corporation and Another Vs. Board of Trustees of the Port of Bombay, , the Supreme Court construed the definition of "owner" in Section 3(5) of the Bombay Port Trust Act and Section 2(o) of the Major Port Trust Act to include a "consignee". There, the consignment had to be cleared from the warehouse of docks at the Port of Bombay, which was not done. The Customs authorities confiscated the goods. The Port Trust demanded demurrage charges till the date of confiscation. The right of the Port Trust to recover the demurrage charges was upheld. The submission that since the goods stood already confiscated they could have been sold to offset the demurrage charges were rejected.

19. It is thus clear from the above judgments of the Supreme Court that port, airport authorities and warehousing corporations are entitled to demurrage for the imported goods in their custody. The importer/consignee is liable for those charges even for periods during which it was unable to clear the goods due to fault of the Customs authorities and even when goods have been confiscated by the Customs authorities. These judgments, however have not dealt with the liability of the Customs authorities for reimbursement of the said charges for detention of the goods with respect to post adjudication period.

20. Grand Slam International's case was considered by the Supreme Court along with a bunch of appeals. In those cases, the Customs department had issued detention certificate (which in effect certifies the period of detention and directing that no demurrage may be charged for the specified period goods were subject-matter of adjudication proceedings). Such detention certificate had been issued to IAAI, Central Warehousing Corporation (for short CWC) where the goods had been in their custody. The IAAI or the CWC, instead of treating the entire period as "free" period granted rebate and calculated demurrage in accordance with the tariff schedule framed by them. The amount of demurrage in each case amounted to several times more than the value of the goods. The

respondent- importer/consignee in that bunch of cases thereupon approached this Court through writ petitions. The petitions were allowed and it was held by this High Court that the IAAI or the CWC, being custodian of the Customs department could not ignore the detention certificate, Therefore, no demurrage could be charged for the period the proceedings were pending with the Customs authorities. This Court relied upon *Trishul Impex Vs. Union of India*, . That decision had relied on an earlier ruling in *Trans Asia Carpets v. Union of India*, where the basis was that Airport Authority being an agent of the Collector of Customs was bound by the detention certificate granted by the Collector of Customs. In *Trishul Impex* it was held that the container depot where the goods were deposited, being custodian for the Customs authorities, was bound by the certificate and was Therefore liable to release the goods without any demurrage.

21. The judgments of this Court were subject-matter of the appeals before the Supreme Court. In the leading majority judgment of Bharucha, J, after referring to and considering previous judgments of the Court in *Board of Trustees of the Port of Bombay Vs. Indian Goods Supplying Co.*, *The Trustees of the Port of Madras Vs. Aminchand Pyarelal and Others*, held as follows:

32. This Court in the cases aforementioned, Therefore, held that the Board of Trustees of a port was, under the statute that created it, entitled to charge demurrage even in respect of periods during which the importer was unable to clear goods from its premises for no fault or negligence on his part. It was held that the Boards were entitled to charge demurrage even in respect of periods during which the importer was unable to clear goods because of the detention thereof by the Customs Authorities or the authorities under the Import Trade Control Regulations, which detention were thereafter found to be unjustified. This Court also recognized that the Boards were entities in their own right so that the courts could not direct the Customs Authorities to issue a detention certificate without hearing the Board concerned. This was because the issuance of a detention certificate had the effect of reducing the amount of demurrage that the Board would otherwise have charged.

The judgment, after considering the various contentions including the policy for the waiver of demurrage declared as follows:

... An importer must land the imported goods at a seaport or airport. He can clear them only after completion of customs formalities. For this purpose, the seaports and airports are approved and provide storage facilities and Customs officers are accommodated therein to facilitate clearance. For the occupation by the imported goods of space in the seaport or airport, the Board or the Authority which is its proprietor is entitled to charge the importer. That until customs clearance the Board or the Authority may not permit the importer to remove his goods from its premises does not imply that it may not charge the importer for the space his goods have occupied until their clearance."` further in para 44 (SCC), it was held it was held that:

44. It cannot be gainsaid that, by reason of unjustified detention of his goods by the Customs Authorities, the importer is put to loss by having to pay demurrage charges for the periods of such detention. The Central Government is empowered by Section 35 of the International Airports Authority Act, 1971 and Section 111 of the Major Port Trusts Act, 1963 to issue to the Authority and Board of Trustees, respectively, directions on questions of policy after giving them an opportunity, as far as practicable, of expressing their views. The Central Government can, if so advised, after giving to the Authority and the Board of Trustees the opportunity of expressing their views, direct them, under the aforementioned provisions, not to levy demurrage charges for periods covered by detention certificates.

22. Justice Venkatachala, in his concurring judgment held that the importer or consignee is liable to pay demurrage for the imported goods even for the periods during which he 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 default. The judgments of this Court were not sustained, including the judgment in the case of Trishul Impex.

23. In Shipping Corporation of India, a three Judge Bench observed that there was no apparent inconsistency between the decision of the Supreme Court in Union of India and Others Vs. M/s. Sanjeev Woollen Mills, . It was observed that ``in view of the specific undertaking given by the Customs Authorities'' the Supreme Court had held (in Sanjeev Woollen Mills" case) that from the date of detention of the goods till the Customs Authorities intimated the importer, importer would not be required to pay the demurrage charges.

24. It is no doubt correct, as contended by Counsel for the petitioner, the Supreme Court in Shipping Corporation of India did not interfere with the order of the High Court absolving the importer of the liability to pay demurrage charges. The reasons for that are as stated in para 4 of the judgment namely, that there was a specific direction of this Court in that regard and that decision having reached finality by the dismissal of the special leave petition, the liability of the importer to pay the demurrage charged ceased and that question, it was held, cannot be reopened.

25. Thus, on the authority of Grand Slam International, Sun Export Corporation, and Shipping Corporation, it can be stated that the law laid down by the Supreme Court is that the importer/consignee of goods cannot avoid liability to pay demurrage charges to the warehousing/ port or airport authorities even though the goods may have been illegally detained in the Customs Area/Bonded Warehouse by the Customs authority. The judgments in Om Petro Chemicals and in Agrim Sampada Ltd, in my respectful view, too broadly state the law; as the above extracts in Grand Slam International, a larger three judge Bench decision would show, the importer has the primary liability. There cannot be an invariable assumption of customs - departments liability to pay such demurrage or charges, in every case where the detained goods are eventually cleared, upon the

importer succeeding. The contentions of the respondents have, Therefore, to be upheld in so far as the liability of the petitioner to pay demurrage charges are concerned for the period up to adjudication process, the petitioner can have no cause of action.

26. Here, the petitioner was aware about a possibility of mounting demurrage engulfing it. Nevertheless, it chose to waive notice to show cause, contest the proceedings. No doubt, ultimately, on 21-12-1991, the CEGAT upheld its valuation. Yet what cannot be completely lost sight of is that the Tribunal, in its initial order of May, 1991 did not unambiguously accept the petitioner's valuation; it only set aside the penalty order. The petitioner's contention regarding valuation was accepted on the ground of availability of discount to it, in rectification proceedings. In these circumstances, there can be no conclusion that the customs authorities abused or misused their power or jurisdiction in valuing the imported goods at a higher price than the petitioner's declared value.

27. Section 155 of the Customs Act reads as follows:

155. PROTECTION OF ACTION TAKEN UNDER THE ACT.

(1) No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.

It is apparent from the above provision that ordinarily, the Customs authorities are afforded immunity from civil action or proceedings for acts performed in good faith, in exercise of powers.

28. What then is "good faith" in the context of Section 155, needs to be explored. The expression has not been defined. However as a guidance, one can look at other sources.

Law Lexicons:

Stround's Judicial Dictionary, 3rd edition (1953).

`In good faith' Bankruptcy Act, 1883, would seem to mean innocent of the knowledge, and of the means of knowledge, that there is an adverse bankruptcy.

A thing is to be deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

That section is obviously founded on the distinction pointed out in Jones v.

Gordon (1877) L. R. 2 App. Cas. 616, by Lord Blackburn, between the case of a person who was "honestly, that is, not necessarily with the intention to defraud, but not with an honest belief that the transaction was a valid one, and that he was dealing with a good bill.

Sale of Goods Act, 1930: A thing is done "in good faith" when it is, in fact done honestly, whether it be done negligently or not.

Black's Law Dictionary (Eighth Edition):

A state of mind consisting of:

- (1) honesty in belief or purpose,
- (2) faithfulness to one's duty or obligation;
- (3) observance of reasonable commercial standards of fair dealing in a given trade or business or
- (4) absence of intent to defraud or to seek unconscionable advantage

Under the Limitation Act

nothing shall be deemed to be done in good faith which is not done with due care and attention.

This is a narrower definition than the one adopted in Section 3(20) of the General Clauses Act, 1897. That enactment states:

a thing shall be deemed to be done in "good faith" where it is in fact done honestly; whether it is done negligently or not.

29. Thus, to conclude that an official did not act in good faith, though motive is irrelevant, what should be shown is that due care and attention was not bestowed to the subject matter, and that there was an element of dishonesty (i.e bad faith). Another way of looking at this aspect could be to examine the action, within the parameters whereby the Supreme Court has permitted an adjudicating authority, empowered under law, to be proceeded against for disciplinary action. The court declared, in Union of India and Others Vs. K.K. Dhawan, that:

28. (i) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favor a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great"."` The above declaration was recently approved and followed in a subsequent judgment, i.e Union of India v. Duli Chand 2006 (5) SCC 680.

30. It is Therefore, clear that when an adjudicatory authority exercises its powers, unless the aggrieved party can establish collateral motive or purpose, or show bad faith and ill motive, the mere fact that the order was wrong and later reversed in appeal, cannot lead to a conclusion that such order ought to be cast aside, and the government saddled with vicarious or other liability.

31. In the facts of this case, as observed earlier, the value declared and the differential duty has not been shown to be onerous to such an extent as to have led to impossibility for clearance of the goods in the first instance. That would have been the proper course, to mitigate payment of huge demurrage charges. The petitioner did not clear the goods. There is nothing suggestive of complete lack of jurisdiction or bad faith by the adjudicating authority or any officer of the Customs, in this case. Therefore, I am not persuaded to direct the customs authorities to pay the balance amount of demurrage.

32. In view of the above findings, the petition has to fail. The petitioner shall deposit the balance 20% of the demurrage charges with the IAAI, within four weeks. Upon deposit of the said amounts, IAAI shall take steps to ensure that the bank guarantees furnished to it are returned for discharge. Rule discharged, but subject to the above terms. No costs.