

(1980) 01 MAD CK 0035
In the Madras High Court

National Industries

APPELLANT

Vs

Assistant Collector of Customs Madras

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Customs Act, 1962 — Section 144, 17, 17(1), 17(3), 45

Citation : (1980) 6 ELT 128

Hon'ble Judges : S. Ratnavel Pandian, J;Ramanujam, J;Padmanabhan, J

Bench : Full Bench

Judgement

Ramanujam J.

1. The appellants herein imported steel plates under an import licence dated 21.6.1971 from Japan and United Kingdom. On importation of the

goods, the necessary bills of entry were filed. But the goods were detained by the Customs authorities for customs purposes and after same delay,

the goods were allowed to be cleared by the appellants. For the period during which the goods were detained by the Customs authorities the

petitioner ought the issue of detention certificate so as to enable them to claim the concessional rate of demurrage from the Port Trust authorities.

The Customs authorities gave detention certificate in respect of certain period; but refused to give such a detention certificate for other periods on

the ground that the detention of the goods during the period was due to the fault of the appellants' clearing agents and that therefore the detention

certificate could not be issued for that period. The appellants thereafter moved this court for the issue of a Writ in the nature of mandamus directing

the first respondent, the Assistant Collector of Customs, to issue the detention certificate with respect of the consignment for the period for which

the certificate was refused by the Customs authorities, on the ground that the detention of the consignment during that period was not due to the

default committee by the appellants or their clearing agent. Though the said writ petition was admitted and rule nisi was issued, Koshal j. before

whom the matter came up for final disposal dismissed the same following a Division Bench decision of this Court in *The Collector of Customs Vs.*

Mehta Paint Works and Another, , which had held that there is no statutory or other public duty cast on the Customs authorities to issue a

detention certificate. The decision of Koshal J. has been challenged in this writ appeal.

2. The appellants even at the admission stage questioned the correctness of the Bench decision above referred to, and contended that the said

decision required a reconsideration. A Division Bench of this court which admitted the writ appeal was prima facie inclined to take the view that

the Bench decision of this court in *The Collector of Customs Vs. Mehta Paint Works and Another*, , that there is no public or statutory duty cast

on the Customs authorities to issue the detention certificate, may require reconsideration. It is in that view that the writ appeal has been posted

before us and the order of reference is as follows :-

Koshal j. as a single judge of this court was naturally bound by a pronouncement made by a Division Bench of this court, consisting of Kailasam,

Offg. C. J. and Balasubrahmanyam J. in the case reported in *The Collector of Customs Vs. Mehta Paint Works and Another*, . We are prima facie

of the view that this Division Bench decision requires reconsideration in public interest. Whilst, therefore, admitting this writ appeal, we direct that

this appeal be posted before a Full Bench.

3. Thus, the main question to be considered by us in this appeal is whether a Mandamus could issue to the Customs authorities to issue a detention

certificate when the consignment is detained for Customs purposes, and whether the Customs authorities are under a legal duty to issue the

detention certificate which can be enforced by a Writ of Mandamus.

4. The appellants had imported certain consignments of steel plates under a licence granted to them. The consignments were detained for customs

purposes for a certain period. for a portion of the period detention certificates were in fact issued and for the rest of the period, the said certificate

was refused on the ground that the detention of the consignment during that period was due to the fault of the appellants and their clearing agent.

The claim of the Customs authorities that the detention during the relevant period was due to the fault of the appellants or their clearing agents has

not been gone into by the learned single Judge, while dismissing the writ petition since the writ petition came to be dismissed on the short ground

that there is no statutory or public duty cast on the Customs authorities to issue the detention certificate and as such a Writ of Mandamus could not

issue.

5. The question before us is whether the decision of the Division Bench stated *supra*, can be held as good law.

6. In *The Collector of Customs Vs. Mehta Paint Works and Another*, , there was a licence for the import of pigment dyestuff and on the basis of

the import licence, paper bags of powdered whitening were imported and the bill of entry was filed for clearing consignment. when the consignment

was examined by the Customs authorities, it was found that the goods imported are not the licensed items and therefore, a show cause notice was

issued to the importer as to why the goods imported should not be confiscated. The importer gave an explanation to the show cause notice. The

Customs authorities were not satisfied with the explanation and referred the matter for the opinion of the Chemical Examiner. The examination of

the goods involved some delay and ultimately an order of adjudication followed whereunder the import of the goods were to be unauthorised and

against the import trade regulation. However, taking note of certain extenuating circumstances, the goods were allowed to be cleared as a special

case. But the Port Trust authorities called upon the importer to pay demurrage charges for the detention of the goods during the period between

10.1.1967 and 12.4.1967. The importer resisted the claim on the ground that the detention during that period was for customs purposes and that

therefore the customs authorities are bound to issue a certificate which they have not done. But when the Port Trust authorities refused to allow

clearance of the goods unless the demurrage is paid or a detention certificate is produced, the importer approached this court for the issue of a

Writ in the nature of Mandamus directing the authorities to issue the detention certificate so that he could claim that benefit of the concessional rate

of demurrage charges. The question whether the importer was entitled to the issue of a Writ in the nature of Mandamus directing the customs

authorities to issue a detention certificate came up for consideration ultimately before the Division Bench, and the Division Bench, after referring to

the various provisions of the Customs Act and the Madras Port Trust Act, as also Chapter IV of the Scale of Rates framed u/s 42 of that Act and

the terms of the Public Notice jointly published by the Port trust authorities and the Customs authorities, held that Customs authorities are not

under any obligation to grant the detention certificate either in discharge of a statutory duty or in discharge of a public duty and that therefore no

Writ of mandamus could issue against the Customs authorities for the grant of the detention certificate. It is this judgment of the Division Bench

which formed the basis for the dismissal of the writ petition by Koshal J.

7. the reasoning of the Division Bench for holding that there is no statutory or public duty on the part of the Customs authorities to issue a detention

certificate is that the public notice jointly by the port trust authorities and the Customs authorities proceeds on the basis that no statutory or public

duty is cast on the customs authorities to issue the detention certificate as it expressly says that the refusal to grant a detention certificate is not

appealable under the Customs Act. the reasoning of the Division Bench is contained in the following extracts -

Further, under rule 13(a) and (b) the rates that are to be charged are prescribed by the Port trust and concession is available on production of

detention certificate by the Customs authorities. As the public notice makes it clear, no statutory or other public duty is cast on the customs

authorities to issue a detention certificate. A detention certificate is given in order to confer an advantage on the consignee to clear his goods at a

reduced rate of demurrage charges. These rules are not enforceable under any statute and no public duty is cast on the customs authorities. As

already pointed out, rule 13(a) and (b) that are found in the scales or rates chargeable by the Port Trust are in the nature of contract between the

parties and cannot be enforced by the issue of a Writ of Mandamus. We do not see any basis for the issue of a Writ of Mandamus directing the

customs authorities to issue a detention certificate. Even according to rule 13(a) and (b), to which the customs authorities are not direct parties, the

customs authorities need not issue a certificate unless s the delay is not attributable to any fault or negligence on the part of the importers"".

8. The further reasoning given by the Bench in support of its view that no public duty is cast on the to customs authorities issue a detention

certificate is that the goods imported in that case are contraband goods and therefore there in no equity or any right on the part of the consignee to

obtain a concession in t6he payment of demurrage charges as he has attempted to import illegally prohibited goods. The above additional reason

given by the Division Bench may not appeal to the facts of the present case where the goods imported have not been found to be contraband

goods. We have to therefore see whether the reasoning given by the Division Bench that the petitioner can, if at all, claim the right to get a

detention certificate only under the provisions of the public notice and that public notice having specifically stated that the refusal to grant a

detention certificate only under the provisions of the public notice and that public notice having specifically stated that the refusal to grant a

detention certificate cannot be challenged under the provisions of the customs Act, it should be taken that the customs authorities are not under a

duty to issue the detention certificate, could be upheld.

9. On a due consideration of the relevant provisions of the Customs Act, and the madras Port Trust Act, also Chapter IV of the Scale of Rates

dealing with demurrage framed u/s 42 of that Act, we are clearly of he view that the importer's right to get a detention certificate, if the goods are

detained for customs purposes, flows from Section 17(1) of the customs Act, and not from the public notices jointly issued by the Port Trust and

the customs authorities as assumed by the Division Bench. Section 45(1) of the Customs Act, 1962, provides that all imported goods unloaded in

a customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home

consumption. The customs authorities are enjoined not to permit such goods to be removed from the customs area or otherwise deal with except

under and in accordance with the permission in writing of the proper officer. Section 46(1) requires that the importer shall present a bill of entry to

the proper officer. Section 17(3) of the Act enables the proper officer to require the importer to produce such documents as are necessary for the

due compliance of the import control order and to assess the duty payable thereon. Section 17(1) requires that the examination and testing by the proper officer will be conducted without undue delay. Section 47 says that where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty that has been assessed thereon, the proper officer may make an order permitting clearance of the goods for home consumption. Thus a duty is cast on the customs authorities to examine and conduct the test required without undue delay. The right to detain the goods u/s 45 and the right to conduct the necessary test and examination of the goods without undue delay u/s 17 imposes a corresponding duty on the customs authorities to issue a detention certificate if there is due delay on the part of the customs authorities. That the detention certificate has necessarily to be produced before the port trust authorities for grant of concessional rate of demurrage is clear from the rules framed by the Port Trust authorities under Sec. 42 of the Port Trust Act. Rule 13(a) and (b) of the rules dealing with the scales of rated of demurrage charges specifically provides for payment of demurrage at a concessional rate if the goods are detained by the customs authorities for the customs purposes. Rule 13(a) specifically says that periods during which goods are detained by the Collector of Customs for examination u/s 17(3) and (4) and for chemical test u/s 144 of the Customs Act, 1962, other than the ordinary processes of appraisal and certified by the Collector of Customs to be not attributable to any fault or negligence on the part of the importers, should be treated as a free period. Rule 13(b) says that where goods are detained by the Collector of Customs on account of Import Trade Control formalities, or for formalities prescribed under the Drugs Act and certified by the Collector of Customs to be not attributable to any fault or negligence on the part of the importers, demurrage shall be recovered for that period at the rate of 20 per cent of the normal rates. Thus, Rule 13 provides that the importer need not pay demurrage or pay a concessional rate of demurrage if a certificate is issued by the Collector of Customs that the goods were detained by the customs authorities on the part of the importer. The rule specifically contemplates the issuance of a certificate by the Collector of Customs for the purpose of enabling the importer to get the concession in the payment of demurrage. Such a right of the

importer to get the concession in the payment of demurrage cannot be taken away by the customs authorities by refusing to give a detention

certificate. As already stated, the right to detain the goods involves the corresponding obligation to issue a detention certificate if the detention of the

goods was not attributable to any fault or negligence on the part of the importer, so that the importer could have the benefit of concession and

exemption in the payment of demurrage charges in relation to the goods detained. If the customs authorities who have been empowered to detain

the goods are not bound to issue a detention certificate in cases where the detention was attributable to any fault or negligence on the part of the

importers, it is possible that the power of detention could be used in an arbitrary manner. It is for this reason we are inclined to infer a

corresponding duty on the part of the customs authorities to issue a detention certificate if there is an undue delay in examining the goods and

conducting the necessary tests and the delay is not attributable to any fault or negligence on the part of the importer. When a power is given by a

statute, that power should be taken to impose a corresponding duty to exercise the power in a reasonable manner.

10. We are of the view that the terms of the public notice on which reliance has been placed by the Division Bench in *The Collector of Customs*

Vs. Mehta Paint Works and Another, cannot be decisive on the question as to whether the customs authorities are under a duty to issue a

detention certificate or not. Even assuming that the public notice is in any way relevant, the terms of the public notice appears to contemplate a duty

on the part of the customs authorities to issue a detention certificate. It is true that paragraph 9 of the public notice states that detention certificates

are not granted under any of the provisions of the Customs Act so that a refusal by an officer of customs for the grant thereof is not appealable

under the Customs Act, though it is open to the party to make representation against any decision to the next higher authority. The above

paragraph, however, indicates that the grant or refusal of a detention certificate by the customs authorities is a decision and the party affected can

make his representation against such a decision to the next higher authority. It is no doubt true that the issue of a detention certificate is not under

any of the provisions of the Customs Act and it is on that basis paragraph 9 says that it is not a duty contemplated by the Customs Act and no

appeal could be preferred against the refusal under the Customs Act. that merely states the obvious. If the issue of a detention certificate is not under the provisions of the Customs Act, then the refusal cannot be challenged by way of an appeal under the Customs Act. Though it is not a duty performed under the provisions of the Customs Act, still it is a duty imposed under Sec. 17(1) of the Customs Act read with the public notice issued jointly by the Port Trust and the customs authorities. As already stated, the customs authorities have issued detention certificates for certain periods, and it is not their case that they are not bound to issue detention certificate at all. Therefore, we are not include to agree with the view expressed in The Collector of Customs Vs. Mehta Paint Works and Another, , that the customs authorities are not under a duty to issue detention certificate as there is no statutory duty cast on them. We are of the considered view that the customs authorities are under a public duty to issue a detention certificate in the circumstances contemplated under Rule 13(a) and (b) of the scale of rates fixed by the Port Trust, and that the above decision holding contra is not good law.

11. In this case, the customs authorities have refused to issue detention certificates for the reason that the detention of the goods was attributable to the fault of the appellants and their clearing agents. This assertion has not been gone into by the learned single Judge as the dismissal of the writ petition was on the ground that the customs authorities are under no statutory or public duty to issue the detention certificate. Now that the basis of the dismissal of the writ petition has been found to be not tenable, the writ appeal is allowed and the order of dismissal of the writ petition is set aside and the writ petition is restored to the file. The learned single Judge will dispose of the same on the merits. There will be no order ;on the costs in this appeal.