
(1987) 03 BOM CK 0045
In the Bombay High Court
Case No : Appeal No. 322 of 1987

Niranjan Jayantilal Tolia

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 25-03-1987

Acts Referred:

Major Port Trusts Act, 1963 — Section 120, 48

Citation : (1988) 36 ELT 40

Hon'ble Judges : S.P. Kurdukar, J;S.K. Desai, J

Bench : Division Bench

Judgement

Desai, J.—This is an appeal from the decision of the Single Judge rejecting the Writ Petition in limine. The appellant's main contention has been based upon the provisions contained in Section 48 of the Major Port Trusts Act, 1968. It has been submitted that Section IIIA of the scale of rates charged at the Docks, which was applied by the Single Judge and perhaps could be applied in the manner indicated in the impugned order, would, if the interpretation which was approved by the Single Judge be accepted, be ultra vires of Section 48. We find some merit in the contention. At any rate, it is a legal submission which is required to be examined in depth. It may be true, as submitted by Mr. Chinoy, that this argument was not advanced before the Single Judge and hence not reflected in the impugned order. However, we have gone through the petition and it cannot be accepted that the argument is not reflected in the submissions and/or in the grounds indicated in the petition, although it has not been set out precisely in the very terms in which oral submission was made before us.

2. It was also urged that the original Writ Petition was preferred after considerable delay and beyond the special period of limitation prescribed u/s 120 of the Major Port Trusts Act, 1963. This section prescribes a special period of limitation in respect of the things done under the Act. Our attention was drawn by Mr. Chinoy in this connection to the observations in Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others, , particularly to those

contained in para 9 thereof. Broad guidelines only have been indicated in the said decision and there is no hard and fast rule. In the matter before us the goods were cleared and payments made, though under protect, in December, 1984/January, 1985. On 19th July, 1985, the appellant (Writ Petitioner) addressed a letter to the respondents claiming remission on a particular footing, viz. that the detention certificate ought to have been issued to them expeditiously and for the proper period. Even before that the appellant had been constrained to move the High Court on a number of occasions to get relief, which ultimately resulted in release of the goods. Bearing the entire factual background in view and the argument that the necessary submission has not been specifically mentioned in the Writ Petition, it does not appear that the Writ Petition is required to be rejected in limine on the ground of delay, although certainly there is delay at both the stages, viz. delay of few months in filing the Writ Petition and delay of about nearly an year in moving the appeal Court against the impugned order, which is the one dated First April, 1986.

3. Bearing the aforesaid circumstances in mind, we propose to dispose of the appeal at the stage of admission itself.

Accordingly the Appeal is admitted.

Mr. Chinoy and Mr. Dalal on behalf of the respondents waive service. By consent the Appeal is taken up for hearing forthwith.

4. For the reasons, which are earlier indicated, the Appeal is allowed and the order rejecting the Writ Petition, passed by the Single Judge, is set aside and will stand substituted by the following order :-

Rule. Respondents waive service.

Return to be filed on or before 30th June, 1987. Rejoinder, if any, to be filed by the petitioner within four weeks thereafter.

Writ Petition to appear for hearing in regular course.

Costs of the appeal to be costs in the Writ Petition.

Any observations made by us regarding the merit in the contention in respect of Section 48 or even as regards the question of delay, are tentative and prima-facie observations, and at the hearing of the Rule, the Single Judge or the Bench hearing the matter will dispose of same after fuller arguments and having the return before it.

Sd/- R. R. Ajinkya.