(1995) 06 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 73 of 1987

Niranjan Jayantilal Tolia APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 22-06-1995

Acts Referred:

Major Port Trusts Act, 1963 — Section 2, 48, 49, 50, 51

Citation : (1995) 60 ECR 400 : (1995) 80 ELT 31

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Judgement

S.H. Kapadia, J.—Two consignments of White Cement arrived by vessel ''S. S. Bronge Bell'' in Bombay on May 23, 1984. The consignments landed at Victoria Docks. The goods were detained by Customs for Chemical Tests. Samples were drawn accordingly. In the meantime goods were stored by B. P. T. at Vidyavihar. At that time the premises at Vidyavihar were in occupation of B. P. T. On 31-10-1984, the Customs Authorities issued Detention Certificate for the period 8-8-1984 to 9-10-1984. The goods in respect of the first consignment were cleared on November 18, 1984 on the Petitioner paying Rs. 1,99,306.08 as demurrage. The second consignment was cleared by the Petitioner on November 15/16, 1984 on payment of demurrage of Rs. 3,45,604. By this petition the Petitioner seeks refund of Rs. 5,60,000/- from B. P. T. on the ground that the said demurrages were recovered by B. P. T. without authority of law. Secondly, Petitioner seeks a direction against Customs to issue Detention Certificate from the period 8-8-1984 upto 31-10-1984, on the ground that the Detention Certificate is issued on 31-10-1984 and therefore Customs erred in giving the benefit of Detention Certificate only upto 9-10-1984.

2. Shri Dhakephalkar, learned counsel for the Petitioner contended that the Resolution of Bombay Port Trust bearing No. 394 of December 1981 shows that in December 1981, there was a proposal to acquire a covered shed of 31,000 sq. ft. from Nathani Handling Warehousing at Vidyavihar; that in the meantime it

was proposed by the B. P. T. to bring the said area within the purview of Docks Bye-Laws and Docks Scale of Rates. Resolution No. 394 further recites that the sanction of the Government was required to be obtained to the amendment of the Bye-Laws and the Docks Scale of Rates. That the Resolution further indicates that it was subject to sanction of the Central Government. At this indicates that it was subject to sanction of the Central Government. At this stage, it may be mentioned that in November 1986 the Central Government sanctioned the said Resolution No. 394. Shri Dhakephalkar contended that at the relevant time, therefore, the premises at Vidyavihar which premises were at a distance of 15 kilometers from the Port of Bombay did not fell within the ambit of Docks Scale of Rates. Shri Dhakephalkar contended that Docks Scale of Rates prior to the amendment lays down the extent of its application. Shri Dhakephalkar contended that on going through the Docks Scale of Rates it is clear the B. P. T. could levy charges under various Scales on all traffic dealt within the areas mentioned in the Docks Scale of Rates. Since the premises at Vidyavihar did not fall within the ambit of the clause dealing with "extent of application" in the Docks Scale of Rates, B. P. T. was not entitled to levy demurrage charges on the Petitioner for the storage of goods at Vidyavihar. In support of his contention the learned Advocate placed reliance on Sections 48 and 52 of Major Port Trusts Act, 1963 and contended that the Docks Scale of Rates can come into force after they are sanctioned by the Government and since in 1984 the sanction of the Government did not exist B. P. T. was not entitled to store the goods of the Petitioner at Vidyavihar and levy the charges of such storage. Shri Dhakephalkar further contended that u/s 48(1)(d) B. P. T. is required to charge for services rendered at or in relation to port or port approach and since at the relevant time the premises at Vidyavihar did not fell within the ambit of Scale of Rates for want of sanction by the Government, the B. P. T. was not entitled to charge demurrage because the purported services were not rendered at or in relation to the port. We do not find any merit in the above contentions advanced on behalf of the Petitioner. Firstly, on facts, it may be noted that Petitioner got the benefit of the storage of his goods pending clearance by customs during the relevant period. Petitioner did not object to the storage of his goods at Vidyavihar by B. P. T. in 1984. In the circumstances, it is not open to the Petitioner now to contend that the premises at Vidyavihar did not come within the ambit of the Scale of Rates. Secondly, the Scheme of the Act indicates that B. P. T. is empowered to levy toll, rent or any charge u/s 2(v) of the Act read with Section 48(1) and Section 49 in respect of any of the services rendered at or in relation to the port. Right to levy a charge is different from the basis on which the charge or rate shall be calculated. Similarly, the right to levy a charge on Rate is different from the conditions on which the levy is effected. Sections 48 to 52 of the Act deal with the basis on which and the conditions on which the rate shall be levied. This will not affect the right of B. P. T. to levy and recover the charges. Acquisition of premises by B. P. T. is not the subject covered by Section 52 of the Act. Section 52 lays down that prior sanction of the Central Government shall be obtained by B. P. T. with regard to Scale of Rates and statement of conditions. In other words, acquisition of open place at Vidyavihar does not require prior sanction of the Central Government. It is a matter of Administration of B. P. T. The above Resolution amended Dock Bye-Law which is done by obtaining approval of the B. P. T. Acquisition of open place does not come within the ambit of Section 52. Therefore, there is no merit in the first contention advanced on behalf of the petitioner. Moreover, services are rendered at or in relation to port or port approaches and for such services B. P. T. is entitled to levy the rate. At what rate the charge is to be calculated is basis requires sanction of the Central Government. However, Section 52 will not apply to acquisition of open place by B. P. T. for storing goods. In the circumstances, there is no merit in the first contention.

3. Shri Dhakephalkar next contended that premises at Vidyavihar do not fall within the definition of the word port or port approaches and, therefore, services rendered by way of storage of goods at Vidyavihar cannot attract demurrage charges. We do not find any merit in the said contention. In the present matter the goods have been Traffic dealt at Victoria Docks and stored thereafter at Vidyavihar. B. P. T. have therefore rendered service at port or in relation to the port. In the circumstances, there is no merit in the second contention advanced on behalf of the Petitioner.

4. Shri Dhakephalkar next contended that, in the present case, B. P. T. was not entitled to charge demurrage at the same rate as if the goods were stored inside the port because goods were stored at Vidyavihar which is 15 kilometres away and, therefore, the same rate cannot be extended. B. P. T., in the present case, has stored the goods after the goods were traffic dealt inside the docks. In the circumstances, they were not entitled to charge demurrage. We do not find any merit in this contention also of the Petitioner.

5. As regards the Detention Certificate issued by the Customs, it is contended on behalf of the Petitioner that the Detention Certificate is dated October 31, 1984. However, the Collector had issued Detention Certificate only for the period 8th August, 1984 upto 9th October, 1984. Therefore, the Petitioner claim that he was entitled to benefit of Detention Certificate for the entire period from 8th August, 1984 upto 31st October, 1984. In the present case, it may be mentioned that the Certificate annexed to the Petition indicates the period of detention of the goods from 8th August, 1984 to 9th October, 1984. It is further mentioned that the goods were ready for final release from Customs on 9th October, 1984. The original of Detention Certificate is not produced. It is not clear as to from which documents the Petitioner has prepared Detention Certificate dated 31-10-1984. It is pointed out on behalf of the Respondents that in the present case there is no averment in the Petition to show the date on which Petitioner applied for Detention Certificate. It is also pointed out on behalf of the Respondents that it is the general practice that the Certificates are kept ready by the Customs Authorities and it is for the agent of the Petitioner to collect the same from the Office of the Collector of Customs and on several occasions these Certificates are

signed when the agent comes to collect the Certificate. In the above circumstances, we do not find any merit in the contention of the Petitioner that the Petitioner was entitled to get benefit of Detention Certificate from 8th August, 1984 upto 31st October, 1984.

6. For the foregoing reasons there is no merit in the writ Petition. Writ Petition fails. Rule is discharged with no order as to costs.

