(2010) 03 CAL CK 0099

In the Calcutta High Court

Case No : Writ Petition No. 421 of 2007

Prakash Chandra Goyal APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Customs Act, 1962 — Section 48

Citation : (2010) 175 ECR 83 : (2010) 256 ELT 667

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : R.K. Chowdhury, for the Appellant; Tilak Bose and Aryak Dutta for Respondent No. 1, Soumya Majumdar and Debyundu Chatterjee, for the Respondent

Judgement

I.P. Mukerji, J.—This writ application challenges the action of the customs authorities in cancelling the sale of goods in lot No. 28/06, sold to the writ petitioner in an auction. The delivery order was issued on 23rd March 2007 but the delivery was not allowed by them.

2. The ground taken by the customs authorities is that the respondent No. 3, Central Warehousing Corporation, who conducted the sale had no authority to do so.

3. The goods in question are certain fabrics. They were confiscated by the customs authorities on 19th December 2005. By such act, the property in them was properly vested in the Central Government.

4. There appears to be no dispute that this sale was u/s 48 of the Customs Act. The goods were stored in a warehouse owned by the respondent No. 3. As a result of the confiscation order, they had to be sold.

5. The total price with duty paid by the writ petitioner on these goods was Rs. 48,10,000/-.

6. As the goods have not been delivered the writ petitioner filed this application for delivery of the goods. During the course of hearing the counsel for the respondent No. 3, the custodian of the goods has been unable to confirm whether the goods are available.

7. Now, the details.

8. Usually the goods which are imported and cannot be cleared for home consumption immediately are stored in a warehouse. This warehouse may be owned by the government or a public corporation as in this case or even by a private entrepreneur. In specified circumstances these goods have to be sold. The sale proceeds also have to be distributed among various claimants in accordance with law. But here, the goods were confiscated by the customs. Therefore, their title properly vested with the Central Government. The warehouse called the custodian, that is, the respondent No. 3 wrote a letter dated 20th November, 2006 to the Deputy Commissioner of Customs Dock Intelligence Unit (A/SIB) Customs House Calcutta mentioning the above goods and asking for their no objection to their sale. The customs by their letter dated 7th December 2006 wanted a more detailed description of the goods, in terms of bill of entry number, bill of lading number, importer?s name, IEC and CHNA. I do not find from the records that such list was furnished by the respondent No. 3 but I do find that three failed auctions were held and this was the fourth auction. Therefore, it is difficult to believe that the customs had no knowledge about the sale of these goods. By a letter dated 21st March 2997 the respondent No. 3 intimated the petitioner accepting their offer and also stating therein "the bill of entry has been processed by Customs House Calcutta for payment of customs duty." In that letter the respondent No. 3 called upon the petitioner to pay the balance value of the goods the break up of which is as follows:

1. Balance payment CWC Rs. 18,78,067/-

2. Customs duty to be paid Rs. 26,43,333/-

3. VAT Rs. 1,92,400/-

9. According to the petitioner they paid about forty eight lacs in aggregate. Delivery of the goods could not be obtained. The customs held up the goods. They said that they were the owners and they ought to have sold them. The respondent No. 3, warehouse had no authority to sell the goods. They did not deliver the goods to the petitioner and withheld or caused to be withheld the price paid by the petitioner.

10. On 10th April 2007 the writ petitioner filed this writ. By an interim order passed in the writ application they were permitted to take back the price paid subject to determination of this writ. They got back their money. But, they still pursue the writ for the goods.

11. The above conduct of the customs and Central Warehousing Corporation plainly show that the warehouse owner was acting as an agent of the customs.

In any event, the customs made full approval of their conducting the sale. Repeated auctions were allowed to be held. The bill of entry was processed and customs duty calculated by the customs. This duty was paid by the writ petitioner and accepted by the customs. Therefore, having permitted the respondent No. 3 to represent that they were authorised to carry out the sale or in any event having acquiescenced in the actions of the respondent No. 3, the customs authority will not be permitted today to deny their authority. Furthermore, such internecine dispute between the customs and the warehouse should not affect the right of the writ petitioner/buyer who is an innocent party.

12. At the hearing of this application the respondent No. 3 could not confirm that the goods were available. Therefore, it is very doubtful if those can be delivered to the writ petitioner. An extreme argument was made on behalf of the customs authority that any damage that the writ petitioner may have suffered due to disappearance of the goods should be recovered to a properly constituted suit.

13. Ordinarily, this writ application involving questions about alleged sale of goods by the government to a private party should not have been entertained in the writ jurisdiction. But, since the writ has been entertained and it is pending for a period of about three years, now the writ petitioner cannot be relegated to the remedy of a suit.

14. So in the circumstances, the respondents are under on obligation to deliver the goods to the writ petitioner upon his repayment of the price and duties originally paid. If the respondents are unable to deliver the goods to the writ petitioner, in my opinion, they have to compensate the writ petitioner for the losses suffered by him in not having delivery of the goods.

15. I have taken guidance from two decisions of the Supreme Court P.M. Paul Vs. Union of India (UOI), followed in Associated Construction Vs. Pawanhans Helicopters Pvt. Ltd., and a judgment of our Court Deo Kumar Saraf v. Union of India reported in 1988 (2) CLJ 325. In those cases the award of an arbitrator making an estimation of profit made by a works contractor was in issue. Considering normal business trends it was held that a contractor was expected to earn 15% to 20% profit on a works contract. Following those principles I think, that the writ petitioner participated in the auction sale for the purpose of reselling the goods in the market and would reasonably have made a profit of about 15% on the cost price, which is 15% of Rs. 48 lakhs, that is, Rs. 7,20,000/-. In my opinion, that is the loss to be suffered by the writ petitioner which is to be compensated by the government of India, if the respondents are unable to deliver the goods. Therefore, the Government of India through the Commissioner of Customs Calcutta is directed to pay a sum of Rs. 7,20,000/- to the writ petitioner within a period of three months from the date of communication of this order, in the event they are unable to deliver the goods to him.

16. The writ is allowed to that extent.

17. Urgent certified photocopy of this judgment/order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.