(2021) 01 P&H CK 0446

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1624 Of 2021

Resource Reutilization Limited APPELLANT

Vs

Union Of India & Others RESPONDENT

Date of Decision : 25-01-2021

Acts Referred:
Customs Act, 1962 — Section 46, 47, 48, 149

Citation : (2021) 01 P&H CK 0446

Hon'ble Judges : Augustine George Masih, J;Ashok Kumar Verma, J

Bench : Division Bench

Advocate : Vijay Lath, Sunish Bindlish

Final Decision : Dismissed

Judgement

Augustine George Masih, J

This writ petition has been filed by the petitioner, which is engaged in the business of manufacturing, exporting papers, recovered fiber/waste paper

products. A company known as Maruti Papers Limited, Uttar Pradesh, has placed an order dated 05.03.2020 for supply of 3000 metric tons of waste

paper with the petitioner company. In pursuance to the said order, petitioner shipped the goods under four bills of lading dated 14.04.2020, 20.04.2020,

25.04.2020 and 10.05.2020 (Annexures P-3 to P-6). Similarly, Suchi Papers Mill Limited, Uttar Pradesh, placed an order for supply of 2500 metric

tons of waste paper, which was shipped by the petitioner under three bills of lading dated 08.03.2020, 16.04.2020 and 19.05.2020 (Annexures P-8 to

P-10). Another company known as Dynamic Kraft Papers Private Limited, Mumbai, placed an order for supply of 5000 metric tons of waste paper

with the petitioner, which was shipped under bill of lading dated 11.04.2020 (Annexure P-12). One more company known as Silverton Pulp & Papers

Private Limited, Muzaffarnagar, U.P., placed an order for supply of 3500 metric tons of waste paper with the petitioner, which was shipped by the petitioner under six bills of lading dated 08.04.2020, 08.04.2020, 10.04.2020, 10.04.2020, 10.04.2020 and 10.04.2020 (Annexures P14 to P-19). Goods in the containers were shipped on different dates by the petitioner from the ports of United States of America, which were unloaded at Mundra Port at Gujarat, a notified port of the Custom Department, from where these containers were loaded in rail and delivered at Inland Container Depot (for short 'ICD'), Sonepat.

2. As per the procedure, the consignees have to take the delivery on reaching of the consignments in containers from ICD, Sonepat, after taking clearance from Custom Department and completion of other formalities. The consignees, because of COVID-19 pandemic which led to nationwide lockdown as imposed by the Government of India upto 8. 06.2020 resulted in the paper mills being non-functional and therefore, could not complete the legal formalities to honor the delivery from the ICD, Sonepat. As a matter of fact, the consignees, till date, have not come forward to take the delivery of consignments. The result thereof is that the buyer/consignees have abandoned the goods resulting in the containers lying in the ICD, Sonepat. Petitioner has also not received the payment from the consignees and because of this act of the consignees, petitioner had to suffer great hardship and losses.

3. To mitigate the losses suffered by the petitioner, search for new buyer was made and one Kailashi Devi Pulps & Paper Products came forward and placed an order of 4500 metric tons of the nature of the goods lying in ICD, Sonepat. Copy of the order dated 21.09.2020 is Annexure P- 20. The entire stock in 118 containers is 2727.11 metric tons. Thus the petitioner is having a new buyer of the entire containers lying with the ICD, Sonepat.

This new buyer has given an undertaking to take delivery of consignment from ICD, Sonepat, within seven days of grant of relevant permissions and it has further undertaken to pay all custom duties and dues on the amended consignment.

The procedure which is required to be followed for the said process is to first get the no objections from the old consignees for amendment followed by no objections from the shipping line so that they could amend the Import

General Manifest (for short 'IGM'), for which the petitioner has put its best

efforts. Out of the 14 bills, 11 bills of lading have been amended in the name of new customer i.e. Kailashi Devi Pulps & Paper Products and the

remaining three bills are under process of amendment. The said process is likely to complete soon.

4. Petitioner had come to know that after issuing notice to the consignees and without intimating the consignor/petitioner, the goods have been

auctioned by the respondents but the delivery thereof has yet not been made to the auction purchasers. Petitioner asserts that a letter to the

respondents was immediately written submitting that the consignees have abandoned the consignments contained in the 14 containers, so the title of

the goods remains with the consignor/petitioner and therefore, some time is required to be granted to the petitioner for completing all legal formalities

so that the new customer (Kailashi Devi Pulps & Paper Products) may be in a position to take delivery of containers. Petitioner wrote another letter

to the respondents on 05.01.2021 requesting to hold the delivery of goods upto 31.01.2021 so that the requisite formalities could be completed and the

goods may be released to the new customer. The Deputy Commissioner (Customs), ICD, Sonepat â?" respondent No.3, on consideration, partly

accepted the request dated 05.01.2021 and conveyed a letter dated 08.01.2021 that the time for delivery has been extended upto 15.01.2021 and

thereafter, no further time would be extended. On 14.01.2021, another request letter was sent to the Commissioner of Customs, ICD, Sonepat, New

Delhi â?" respondent No.2 , to which no response has been received. Petitioner is aggrieved and dissatisfied with the letter dated 08.01.2021

(Annexure P-23) received from the Deputy Commissioner (Customs), ICD, Sonepat â?" respondent No.3, which has not extended the time upto

31.01.2021 to complete the procedural formalities despite the request letter dated 14.01.2021. This has led to the filing of the present writ petition.

5. Learned counsel for the petitioner has asserted that there was no fault on the part of the petitioner but the petitioner is suffering because of the

COVID-19 pandemic, which had led to the complete lockdown in the country and therefore, the strict requirement of the provisions of Sections 46, 47

and 48 of the Customs Act, 1962, would not be applicable to the case of the petitioner. Petitioner is suffering because of the inaction on the part of the original consignees, who had not come forward firstly to submit bills of entry followed by the non-clearance of the goods for home consumption or

warehousing or transhipping within 30 days from the date of unloading the containers at the custom station, as required under Section 48 of the said

Act. Petitioner has been putting all efforts to mitigate its all losses and searched a new customer, namely, Kailashi Devi Pulps & Paper Products,

which is ready to get released the containers within seven days from the grant of relevant permissions, with a further undertaking that all the custom

duties and dues on the amended consignment would be paid by it. The amount due towards the revenue has been, therefore, protected in the light of

the undertaking. There was no reason as to why the respondents could not extend the period upto 31.01.2021 for fulfilling the requisite formalities for

amendment of requisite papers on the name of new customer. There was no reason as to why the period which the petitioner had sought could not be

extended upto 31.01.2021. Thus, a prayer has been made for extending the period upto 31.01.2021 for the petitioner to complete the legal formalities

and to get released the 118 containers to the new customer i.e. Kailashi Devi Pulps & Paper Products and further, not to deliver the consignment

under Section 48 of the Custom Department to anybody except the new customer of the petitioner.

6. On the other hand, learned counsel for the respondents has brought to the notice of the Court that the total number of containers, for which bills of

entry have been filed and for which only bill of lading is available, are 113 containers. Five remaining containers which also contain waste paper out of

charge has been given by the Department but the importer has not yet cleared the goods from the port, thus, there are total 118 containers. The bills of

entry for 113 containers were filed in the months of May and June of 2020. Four bills of lading, for which the bills of entry have yet not been filed,

have bills of lading for the months of April and May of 2020. As the importers did not show up for clearing the imported goods contained in 113

containers lying in the ICD, Sonepat. Notices were issued to the importers after one month of the arrival of the goods at the port as per Section 48 of

the Customs Act, 1962. Custodian i.e. M/s DICT, ICD Sonepat, had sent three notices to each of the importers in due course of time but without any

response.

Thereafter, on 19.09.2020, the Custodian informed that the importers have not shown up to clear the goods and therefore, permission be granted for

cutting the seal of 113 containers, which was so granted by the Deputy Commissioner (Customs), ICD Sonepat â?" respondent No.3 on 23.09.2020.

The examination of containers was conducted by the Examining Officer in due course of time and thereafter, the Custodian, vide letter dated

14.10.2020, as per the no objection certificate for valuation given by the Deputy Commissioner (Customs), ICD Sonepat â?" respondent No.3,

submitted valuation report for 113 containers containing waste paper. On receipt of the complete valuation report, Deputy Commissioner (Customs),

ICD Sonepat â?" respondent No.3 granted no objection certificate for auctioning of the imported goods on 21.10.2020 to the Custodian. All 113

containers were auctioned to the highest bidders i.e. M/s Meenu Paper Mills Private Limited and M/s Dev Priya Products Private Limited through

online process, as required by the law/regulations/ norms/advisories for auctioning of the imported goods on 05.11.2020 through MSTC by the

custodian.

7. Petitioner, vide its letter dated 06.11.2020, requested for cancellation of the auction process and sought time to submit documents required for

amendment in IGM and for permitting them to change the buyers' name other than the importers. This request was received on

10. 11.2020. Respondent No.3, vide letter dated 17.11.2020, informed the petitioner that the auction has already taken place as per Section 48 of the

Customs Act, 1962 and denied the request for stopping of auction process. Despite that, petitioner vide letter dated 08.12.2020 and Kailashi Devi

Pulps & Paper Products vide letter dated 07.12.2020, requested for seven days time to submit documents required for amendment in IGMs, to which

respondent No.3, vide letter dated 01.01.2021 granted them time till 8. 01.2021 for submitting the documents as required for amendment in IGMs.

Another letter was received from the petitioner on 05.01.2021 seeking additional time till 31.01.2021 for doing the needful. On 8. 01.2021, respondent

No.3 sent a letter to the petitioner informing that the petitioner has time upto 15.01.2021 to submit the complete documents/NOCs as required for

amendment of the bills of entry and for filing bills of entry against the imported goods contained in 113 containers. It was further informed that in case of failure to do so, no further request would be entertained. In response thereto, notice through counsel dated 15.01.2021 was received from M/s KPS

Legal on behalf of the petitioner for stopping the auction process and giving them additional time to submit documents required for amendment in the

IGMs.

8. On the basis of the above facts, it has been asserted by the respondents that the provisions as laid down in Section 48 of the Customs Act, 1962,

have been fully complied with. Directions, as contained in the Disposal Manual-2019 available on CBIC website and as per the norms laid under

CBIC Circular No.49/2018-Customs, dated 03.02.2018 for disposal of imported goods, has been followed and fully complied with. Reference has been

made to Section 46 of the Customs Act, 1962, to contend that the bills of entry and IGMs respectively have been filed by the importer. As the

importer has filed the bills of entry/IGMs either itself or through its Customs House Agent (CHA), it is apparent that the importer is the owner of the

goods and the same belongs to it. Thus, it is the importer, who is liable for the payment of the custom duty and other taxes to the Department and not

the supplier i.e. the petitioner. Petitioner being not the importer of the goods nor has it filed bills of entry for importing the above-mentioned goods is

only a supplier and is requesting for change of IGMs so that the goods can be imported by the other buyers other than the importers, which cannot be

accepted at the outset. However, Section 149 of the Customs Act, 1962, clearly states that any amendment can only be allowed by the Competent

Authority, if a bill of entry or a shipping bill or bill of export shall be so authorized to be amended after the imported goods have been cleared for home

consumption or deposited in a warehouse or the export goods have been exported, except on the basis of documentary evidence which was in

existence at the time the goods were cleared, deposited or exported, as the case may be. It is, on this basis, asserted that the petitioner has failed to

submit complete documents for change in IGMs in 30 days after the goods have arrived at the ICD, Sonepat.

9. Relying upon Section 48 of the Customs Act, 1962, the stand of the respondents is that the imported goods outside India, if not cleared for home

consumption or warehoused or transhipped within 30 days from the date of unloading thereof at the custom station or within further such time as the proper officer may allow or if the title of any imported good is relinquished, the same can be sold by the person in custody with the permission of the

proper officer after notice to the importer. Petitioner, who is not the importer of the goods nor has any right of ownership of goods was firstly not

required to be given any notice as per Section 48, which envisages notice to the importer only, cannot be granted any relief. Petitioner has also not

been able to submit the complete documents for change in the IGMs despite twice the period having been extended. It is apparent from the

communications of the petitioner that it is only to delay the sale of the goods to the bidder as the imported goods are lying at the port for more than six

months and therefore, the writ petition deserves to be dismissed.

10. Having considered the submissions made by the learned counsel for the parties, we are unable to accept the contentions of the learned counsel for

the petitioner. The grounds which have been taken by the petitioner are not acceptable in the light of the stand, which has been taken by the

respondents.

11. The facts are not in dispute and therefore, are not being referred to again for brevity. The admitted position is that the goods in 113 containers

reached at ICD, Sonepat, in the months of May and June, 2020. After the nationwide lockdown because of COVID-19 pandemic, the unlocking of the

said lockdown started w.e.f. 08.06.2020. Thereafter, there was ample time for the importers to respond and get cleared the goods. Despite three

notices having been sent to each of the importers over a period of time, none of them turned up to clear the goods. Thereafter, the Custodian of the

goods proceeded to comply with the requirement of statute and got the proper no objection certificate and clearances with regard to opening of the

seal, inspection of the goods, valuation thereof and ultimately no objection for auctioning of the imported goods i.e. waste paper contained in 113

containers. The process of online auctioning through MSTC was conducted on 05.11.2020 by the Custodian. It is, thereafter, the petitioner who is the

consignor, for the first time, wrote a letter dated 06.11.2020, which was received in the office of respondent No.3 on 10.11.2020 requesting him for

cancellation of the auction process. This clearly shows that the petitioner had been sitting over the matter. That apart, in this letter dated 06.11.2020, it

had further been requested to grant them time to submit the documents required for amendment of IGMs and for permitting the change of buyers'

name to other buyers than the importers, which request was declined through letter dated 17.11.2020 by respondent No.3 in the light of the fact that

the goods contained in 113 containers have already been auctioned as per Section 48 of the Customs Act.

12. Thereafter, petitioner again on 08.12.2020 as also the proposed new buyer i.e. M/s Kailashi Devi Pulps & Paper Products on 07.12.2020,

requested seven days time to submit the documents required for amendment in IGMs, which request was received on 07.12.2020, a response to the

same was sent on 01.01.2021 by respondent No.3. Despite more than three weeks having been passed when the petitioner and the proposed buyer

had sought seven days time, granted them another seven days upto 08.01.2021 for submitting the documents as required for amendment in IGMs.

Petitioner again wrote a letter dated 05.01.2021 and sought more time till 31. 01.2021 for submitting complete documents, to which response was sent

by respondent No.3 vide letter dated 08.01.2021 addressed to the petitioner that the time available to the petitioner was upto 15.01.2021 to submit

complete documents/NOCs as required for amendment in the bills of entry and against the imported goods contained in 113 containers. All this clearly

indicates that ample opportunities and time has been granted by the respondents to the petitioner to fulfill the requirement of amendment in IGMs.

Unfortunately, the petitioner, admittedly, has failed to submit the requisite documents till date. These facts do not leave any doubt that the petitioner

has been dealt with very fairly by the respondents and a lenient view has been taken by the Competent Authority.

13. The contention of the counsel for the petitioner that the petitioner was required to be informed or intimation was required to be sent prior to

proceeding with auction of the goods contained in 113 containers is not based upon any statutory right conferred upon the petitioner, who admittedly is

a consignor. Section 48 of the Customs Act, 1962, makes it amply clear that notice for selling the goods has to be sent to the importer prior to the

auction of the goods. For ready reference, Section 48 of the Customs Act, 1962, is reproduced herein below:- â??48. Procedure in case of goods not

cleared, warehoused, or transhipped within [thirty days] after unloading.â?"If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped {within [thirty days]} from the date of the unloading thereof at a customs station or within such

further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with

the permission of the proper officer be sold by the person having the custody thereof: Provided that â?

(a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;

(b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Explanation.â?" In this section, â??armsâ? and â??ammunitionâ? have the meanings respectively assigned to them in the Arms Act, 1959 (54 of

1959).â??

In view of the above, it cannot be said that the auction of the goods, as carried out by the respondents, is not in accordance with law especially when

the same has been so carried out as per the directions given in the Disposal Manual-2019 and the norms laid down under CBIC Circular No.49/2018-

Customs, dated 03.12.2018, which relates to the disposal of the imported goods.

14. This Court is of the firm view that the action, which has been taken by the respondents, is in accordance with the provisions of the Customs Act,

1962 and therefore, no interference in exercising extraordinary writ jurisdiction of this Court is called for. Rather the petitioner has approached this

Court with an intention to further delay the process of disposal of the goods and to impede the process of collection of revenue which is to be received

after the disposal of the imported goods contained in 113 containers which have been auctioned. The writ petition being devoid of merit, therefore,

stands dismissed.

