

**(1993) 08 BOM CK 0076**

**In the Bombay High Court**

**Case No : Writ Petition No. 2641 of 1989**

Rico Gems Corporation

APPELLANT

Vs

Bombay Port Trust

RESPONDENT

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**Date of Decision :** 10-08-1993

**Acts Referred:**

**Citation :** (1994) 2 BomCR 544 : (1994) 96 BOMLR 486 : (1993) ECR 582 : (1993) 68 ELT 562

**Hon'ble Judges :** B.P. Saraf, J

**Bench :** Single Bench

**Advocate :** Mr. J.C. Patel and Mr. N.M. Shah, for the Appellant; Mr. U.J. Makhija and Mr. J.P. Deodhar, for the Respondent

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## **Judgement**

1. The petitioners in this case are aggrieved by the orders of the Port Trust Authorities refusing to grant remission of demurrage charges. The facts are very brief. The petitioners imported certain goods. The release of the same took some time due to customs formalities. A detention the certificate was issued by the Assistant Collector of Customs, Appraising Group II-B, which is Exhibit-A to the petition, for a period from 7-11-1988 to 28-11-1988. The petitioners submitted the same to the Port Trust Authorities with a request to refund the amount already deposited by them,. The request was turned down by the Deputy Docks Manager (Refunds) by his order dated 13th June 1989. The ground for rejection was that the request for waiver on the strength to the Deputy Docks Manager Refunds who by his order dated 10th August 1989 upheld the rejection of the claim of the petitioners. The operative portion of the above order is as follows :

"It is observed from the Public Notice dated 29-7-1985 that the reason "due to Bona fide Operation of the Customs formalities" is not incorporated anywhere in the said Public Notice. Hence your claim has correctly been rejected."

2. The learned Counsel for the petitioners submitted that the Port Trust Authorities were not justified in rejecting the claim of the petitioners for waiver of demurrage charges on the above ground because detention "due to bona fide

operation of customs formalities" is also one of the grounds for waiver. The contention on behalf of the Port Trust Authorities was that the issue of detention certificates was governed by Public Notice dated 29-7-1985 which provided for issue of detention certificates in cases "where the goods are detained by the Custom House for bona fide operation of Import Control formalities". It does not provide for issue of detention certificates on account of "bona fide operation of customs formalities" and, as such, the claim of the petitioners was not tenable at all.

3. I asked Mr. Deodhar, learned Counsel appearing for the Customs, as to how the detention certificate, in question, could be issue by a responsible officer of the Customs Department in contravention of the guidelines. Mr. Deodhar took time to obtain instructions and on the next date he produced a Public Notice No. 13 of 1987, dated 5-2-1987 by which the notification dated 29-7-1985 had been amended to provide for issue of detention certificate also in cases of detention "due to bona fide Customs Formalities". I asked Mr. Makhija, learned Counsel for the Port Trust Authorities whether the authorities under the Port Trust Act were not aware of the relevant rules, circulars or public notifications which operated in the field. The case was again adjourned and it has come up today. The learned Counsel fairly submits that the Public Notice by which the earlier Public Notice dated 29-7- 1985 was modified does in fact exist and rejection was made in ignorance thereof. It is highly regrettable that senior officers holding responsible posts in important departments of the Government of the India do not care even to keep track of the very few enactments, rules or notifications which directly govern their activities and act in violation thereof. It is this act of the officers which has forced the petitioners in this case to come to this court to seek relief. Even before this court, I am constrained to say that it is not the Port Trust Authorities who produced the notification, as modified, which was applicable to the case of the petitioners but it was at the instance of this court that the counsel for the customs department produced the same in support of their action of issuing a detention certificate. Such a situation needs drastic measures. In any event, it is agree by learned counsel for the Port Trust Authorities that his clients are prepared to re-examine the claim of the petitioners in the light of the revised Public Notice.

4. Mr. Makhija, learned Counsel for the Port Trust Authorities, submits that though the concerned authorities have committed a mistake in this case in rejecting the claim of the petitioner on the basis of the a wrong public notice, the detention certificate is defective even under the modified Public Notice because, according to him, under the revised guidelines the detention certificate in such cases is to be issued by the Deputy Collector and not by the Assistant Collector, and that the said certificate should contain specific reasons. In reply, the learned Counsel for the petitioners submits that all these guidelines are just new to him. They were never brought to his notice earlier. He is not aware whether the authorities themselves were aware of such guidelines and if they were really aware and acted in disregard thereof their action itself should be taken seriously

and they should not be allowed to raise such objection at this juncture. The learned Counsel for the petitioner submits that the public notice No. 13 of 1987 dated 5-2-1987 which has modified the earlier Public Notice No. 111 dated 29-7-1985 clearly provides for issue of detention certificates by the Assistant Collector i/c Approg. Groups. I find force in the submission of the learned Counsel for the petitioners. It is evident that the petitioners were never apprised of fresh guidelines and even those who were administering were not aware of them. As such, in the fitness of thing, it is not proper for them to raise such objections at this juncture. The learned Counsel for the Customs Authorities, however, fairly stated that the Customs Authorities are prepared to issue a fresh certificate under the signature of the Deputy Collector within four weeks from today. That makes the task still simple as it also takes care of the technical objection sought to be raised by the Port Trust in regard to the authority competent to issue the detention certificate, even on merits.

5. In view of the foregoing, I direct respondent No. 1 to reconsider the claim of the petitioners for waiver of demurrage charges in accordance with Public Notice dated 29-7-1985 as modified by Public Notice No. 13 of 1987, dated 5-2-1987 and Port Trust Resolution No. 58, dated 8th March 1988.

6. In the course of hearing it was indicated on behalf of the Port Trust Authorities that though the original application for refund filed by the petitioners was beyond time, the delay was not taken into account and the application was examined and disposed of on merits. I do not think that having themselves done so, now when a fresh certificate is submitted in lieu of the original one, the authorities will venture to reject the claim of the petitioners on the ground of limitation and push them back to this court. However, to obviate any such possibility, I make it clear that it will not be open to the Port Trust to raise the plea of limitation and they will reconsider the application on merits. It is stated on behalf of the port trust that once a fresh certificate is filed the claim for refund will be considered on merits within eight weeks thereof.

7. This writ petition is accordingly, disposed of in the above terms. No order as to costs.

8. Certified copy expedited.