
(1994) 10 BOM CK 0067
In the Bombay High Court
Case No : Writ Petition No. 1575/86

Roopchand Meghraj and Co.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-10-1994

Acts Referred:

Citation : (1994) 55 ECR 438 : (1994) 74 ELT 519

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

Bench : Division Bench

Advocate : Shri J.P. Patel and Mr. Anil Balani, for the Appellant; Shri L.S. Vyas, Ms. Preeti Shah and Shri U.J. Makhija, instructed by M/s Mulla and Mulla and Craigie Blunt and Caroe, for the Respondent

Judgement

Pendse, J.—The petitioner imported a consignment of "Copper Scrap Berry" weighing 20.216 Metric Tons and filed Bill of Entry on March 8, 1985 for home clearance. The goods on examination were found to be as declared except for 3.032 Metric Tons which were reported to be serviceable copper wire. The petitioners agreed to mutilate the said serviceable wire before taking delivery. However, the Deputy Collector of Customs confiscated the goods and imposed redemption fine of Rs. 75,000/- by order dated July 22, 1985.

The petitioners preferred appeal before Collector of Customs and by order dated September 19, 1985, the order passed by the Deputy Collector of Customs was set aside. The appellate authority came to the conclusion that examining officer had not analysed about the gauge of the imported wire and since the imported wire was conforming to the Standard for Berry Copper wire scrap as described in Nari Circular specification, the order passed by the Deputy Collector of Customs was erroneous. The appellate authority further observed that in any event, the Deputy Collector of Customs ought to have permitted the petitioners to mutilate the copper wire and allow the consignment under Open General Licence.

2. The petitioners, in pursuance of the order passed by the appellate authority, cleared the goods and sought Detention Certificate for the period for which the

goods could not be cleared. The refusal of the detention certificate has given rise to the filing of this petition. Shri Patel, learned counsel appearing on behalf of the petitioners, submitted that once the order of the Deputy Collector of Customs was set aside, the respondents were bound to issue detention certificate. The submission is correct and deserves acceptance. Shri Vyas, learned counsel appearing on behalf of the respondents, submitted that the detention certificate was not issued but a recommendatory certificate was given to the Bombay Port Trust. In our judgment, such a recommendatory certificate is of no assistance because the Port Trust is not bound to rely upon the same. Shri Vyas made a faint submission claiming that the imported item was not scrap wire. It is not open for Shri Vyas to advance the submission in face of the order passed by the appellate authority. In our judgment, the petitioners are entitled to the relief claimed.

3. Accordingly, rule is made absolute in terms of prayer (a). By interim order passed by this Court, the petitioners have deposited 40% of the demurrage charges with Port Trust and furnished Bank guarantee for the balance. The respondents are directed to issue detention certificate in accordance with the Rules within a period of six weeks from today. The Port Trust authorities are directed to determine the concession available to the petitioners in pursuance of the detention certificate within a period of four weeks from the date of submission of the certificate. The Bank guarantee furnished by the petitioners to stand discharged at the end of four weeks from the date of submission of the certificate. The Port Trust will obviously refund the amount deposited, in case such amount is not required to meet the charges. The respondents Nos. 1 and 2 shall pay the costs.