(2007) 05 CAL CK 0007

In the Calcutta High Court

Case No : A.P.O. No. 608 of 2003 and W.P. No. 1802 of 2003

Sanjiv Kumar Agarwal APPELLANT

Vs

Assistant Commissioner of Customs and Others RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Citation : 111 CWN 840

Hon'ble Judges : Pranab Kumar Deb, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : J.P. Khaitan, Raibat Banerjee and S.S. Khanra, for the Appellant; Ashok Kr. Jena, Daya Sankar Mishra and S.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—Vessel R.S.V. Tribeni was imported from abroad by Calcutta Port Trust in 1965. According to Port Trust they duly paid appropriate customs duty to the extent of Rs. 7,94,800.35p at the time of import. The vessel was being used by the Port Trust for the purpose of river survey. In course of time the vessel became old and the Port Trust decided to sell it as a scrap. There had been a public notice inviting tender from the intending bidders. Ultimately the appellant became the successful bidder. As per the condition of tender any duty including customs duty, if payable, would have to be paid by the appellant. The appellant duly paid the price and took delivery of the vessel and thereafter dismantled it. The Customs Authority asked the appellant to file a bill of entry so as to enable the Customs Authority to impose customs duty on the dismantled ship. The appellant contacted the Port Trust. The Port Trust issued a certificate appearing at page 48 to the extent that they duly paid customs duty at the time of import of the ship in 1965. Relying on the said certificate the appellant refused to pay the customs duty which gave rise to the present litigation. The appellant approached the learned Single Judge inter alia for quashing the demand of the Customs Authority with regard to customs duty.

2. Before the learned Single Judge it was contended on behalf of the Customs

Authority that at the relevant period Ocean going vessels were exempted from customs duty so long it was not dismantled. Since the subject vessel was an Ocean going vessel it must have been permitted to be imported free of duty and as such the appellant was duty bound to submit bill of entry so that the Customs Authority could impose appropriate customs duty on the dismantled ship. The Customs Authority, however, could not produce any document in support of their contention to the extent that the subject vessel was exempted from duty.

3. The learned Single Judge considered the rival contentions of the parties. His Lordship was of the opinion that it was not physically possible for the Customs Authority to preserve records pertaining to 1965 to show that there had been exemption of payment of customs duty at the time of import of the concerned vessel in 1965. Hence Port Trust was duty bound to produce necessary document in support of payment of the customs duty. The certificate issued by the Port Trust appearing at page 48 of the Paper Book was not sufficient to avoid payment of duty. His Lordship ultimately came to a finding that since Port Trust was at fault the appellant being successor-in-interest should suffer for the fault on the part of the Port Trust. His Lordship dismissed the writ petition.

4. Being aggrieved by and dissatisfied with the judgment and order of the learned Single Judge the appellant preferred the instant appeal.

5. The appellant reiterated his stand as taken before the learned Single Judge, before us. The Port Trust also relied upon their certificate appearing at page 48 of the Paper Book.

6. Mr. Daya Sankar Mishra, learned Counsel appearing for the Customs Authority in addition to the submission made before the learned Single Judge contended that once an Ocean going vessel was purchased and imported into India, as per the notification no duty could be imposed at the relevant period. Existence of such notification is the conclusive proof of the fact that the vessel was imported by the Port Trust free from customs duty. Hence once the ship was allowed to be dismantled, the appellant being the successor-in-interest must pay the customs duty as per the said notification. In this regard reliance was placed on the Division Bench decision of this Court in the case of Union of India & Ors. vs. Ramniwas Chaudhury, reported in (1983) 1 CHN 6.

7. We have considered the rival contentions of the parties. We have also perused the Division Bench decision of this Court referred to supra. The subject notification referred to by Mr. Mishra was not called in question. The Division Bench in the case of Union of India (supra) observed that by the said notification the duty was not exempted. It was only deferred till the vessel was dismantled. If that be the situation, unless and until it is proved that the concerned vessel availed the benefit of the said notification by postponing the customs duty, further imposition of customs duty would be an unjust enrichment on the part of the Customs Authority.

8. Learned Judge was right in observing that it was not physically possible for the

Customs Authority to keep track of the records pertaining to 1965. The same analogy might be applicable in case of Port Trust being another wing of the Central Government, even then the Port Trust from their books of accounts issued a certificate appearing at page 48 of the Paper Book. There is no reason to disbelieve the same. If the certificate of the Port Trust is correct, the claim of the Customs Authority cannot stand as there cannot be imposition of duty twice on the self-same consignment which would amount to unjust enrichment which is not permissible in law.

9. We are of the view that since both the authorities being Port Trust Authority as well as Customs Authority are not in a position to come to a definite finding with regard to the fact as to whether duty was paid on the subject vessel in 1965 when it entered Indian Territorial water, benefit of doubt must go in favour of the appellant.

10. The appeal thus succeeds and is allowed. The order of the learned Single Judge is quashed and set aside. The impugned demand raised by the Customs Authority is quashed and set aside. The writ petition is allowed.

11. The operation of this judgment and order would remain stayed for a period of eight weeks from date.

12. After the period of stay is over if no SLP or appeal to the Supreme Court is filed, the appellant would be entitled to apply for discharge and return of the bank guarantee and cash security from the Customs Authority. Urgent xerox certified copy of this order, if applied for, be made available to the parties upon compliance of all requisite formalities.

Pranab Kumar Deb, J.

I agree.

