(1995) 05 DEL CK 0083

In the Delhi High Court

Case No : Civil Writ Petition No. 4799 of 1994 and Civil Miscellaneous Appeal No''s. 7680 of 1994 and 1734 of 1995

Shubham Enterprises and Another — APPELLANT

Vs

Collector of Customs and Others — RESPONDENT

Date of Decision : 26-05-1995

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1995) 60 DLT 8 : (1995) 61 ECR 29 : (1995) 80 ELT 250

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : O.L. Rawal, Kuljit Rawal, B. Babbar and Satish Aggarwal, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The petitioner, an importer, has filed this petition under Article 226 of the Constitution seeking a writ, order or direction requiring there respondents to produce its records relating to order dated 16/06/1994 of the Additional Collector of Customs, New Delhi, whereby he dropped the show cause notice dated 16 February, 1993 issued to the petitioner earlier under the provisions of the Customs Act, 1962. The show cause notice was issued to the petitioner requiring him to show cause as to why Fob and Cif value of the goods as declared in the Bill of Entry No. 240554 dated 7 August, 1992 for components and parts of photocopier machines be not enhanced and duty charged accordingly and why the goods be not confiscated u/s 111(m) of the Customs Act, 1962. The petitioner also seeks a writ of mandamus or any other appropriate writ, order or direction requiring the respondents to permit the clearance of the aforesaid goods to the petitioner without payment of any demurrage charges to the third respondent the International Airport Authority of India (IAAI). A prayer is also sought, in the alternative, that respondents 1 and 2 be also directed to issue detention certificate for the period from 6 August, 1992 till date as adjudication

proceedings had been dropped.

(2) We issued notice to show cause as to why rule nisi be not issued in the matter and at that time we recorded the submission of the Counsel for the petitioner that sought the show cause notice had been dropped the department had filed an appeal under the Customs Act which was pending before the Collector of Customs(Appeals), New Delhi, but the Appellate Authority had not granted any stay and that there was no reason why the goods should not have been released. The basic contention, however, was that the goods should not only have been released but released without payment of any demurrage charges to the third respondent.

(3) In its answer to show cause notice, the third respondent opposed the prayer that it should not charge any demurrage charges. The petitioner pleaded that since the goods had been detained by the Customs Authorities and after the adjudication proceedings had been dropped it was apparent that detention was not legal and would be termed as ''without any authority''.

(4) The claim of the third respondent should, however, not hold us long because in the meanwhile in view of the judgment of the Supreme Court in International Airports Authority of India and Others Vs. Grand Slam International and Others, , which has been delivered by majority (2:1), the third respondent would be entitled to claim demurrage charges as per its regulations [International Airport Authority (Storage and Preservation of Goods) Regulations, 1980, framed u/s 37 of the International Airport Authority Act, 1971] irrespective of the fact whether detention of the goods during the pendency of the adjudication proceedings under the Customs Act was valid or not. In this case the Court examined various judgments given under the Major Port Trusts Act and observed that the provisions of these Acts were same as that of the International Airports Authority Act for the purpose of claiming demurrage. S.P. Bharucha, J., who was in majority, said as under:-

"The purpose of the Customs Act on the one hand and the Major Port Trusts Act and the International Airports Authority Act on the other hand are different. The former deals with the collection of Customs duties on imported goods. The latter deals with the maintenance of seaports and airports, the facilities to be provided threat and the charges to be recovered therefore. An importer must land the imported goods at a sea-port or airport. He can clear them only after completion of Customs formalities. For this purpose, the seaports and airports are approved and provide storage facilities and Customs officers are accommodated therein to facilitate clearance. For the occupation by the imported goods of space in the sea-port or airport, the Board or the Authority which is its proprietor is entitled to charge the importer. That until Customs clearance the Board or the Authority may not permit the importer to remove his goods from its premises does not imply that it may not charge the importer for the space his goods have occupied until their clearance. "The prayer of the petitioner that the third respondent be directed not to charge any demurrage charges must, Therefore, fail.

(5) The question that still remains to be decided is if at all the petitioner is entitled to grant of detention certificate by the customs authorities for it to claim rebate in demurrage from the third respondent as per its rules. The Supreme Court in the case of Grand Slam International has said that where the rules of the third respondent provide for grant of relief from demurrage charges in case of detention certificate being granted by the customs authorities, the third respondent should be heard. In the present case, the petitioner has made the third respondent a party to these proceedings for the purpose of claiming relief from demurrage charges, but it has been deprived of the grant of detention certificate by the customs authorities on the plea that appeal of the department is pending before the Appellate Authority against the order of the Additional Collector of Customs dropping the show cause notice issued to the petitioner. The imported goods have been detained since the day of their import till this date.

(6) In answer to show cause notice issued, the customs authorities have also filed their answer and this is by Mr. N. Venketesh, Assistant Collector of Customs(Imports), Air Cargo Unit, Igi Airport, New Delhi. He gives the grounds for issuing show cause notice and said that the Customs Act, 1962, provides for seizure of the goods u/s 110 and confiscation thereof u/s 111(m) of the Act. He says that against the order of the Additional Collector of Customs dated 16June 1994 dropping the proceedings against the petitioner an appeal had been filed u/s 128 of the Act and is pending before the Collector of Customs(Appeals). He further states that question of payment of demurrage charges maybe taken up by the petitioner separately with the third respondent who is legal custodian of the imported goods and that if the goods are finally allowed to be cleared without payment of any penalty or additional duty after the order passed by the Collector of Customs (Appeals), the Collector of Customs, New Delhi, might issue a detention certificate for the period spent in adjudication proceedings and that the demurrage charges in that case may be waived by the third respondent.

(7) The petitioner is certainly aggrieved because it might take long time by the Collector of Customs (Appeals) to decide the matter inasmuch as, as we have seen above, the Bill of Entry was filed as far back on 7 August 1992. If no relief is granted the demurrage charges would be mounting day by day, and it says that a stage will come where demurrage charges would be much more than even the cost of the goods. The customs authorities have not sought any stay of the order of the Additional Collector of Customs dated 16 June, 1994 and, perhaps, there is no provision for stay of that order. Nevertheless, a question arises, how long the petitioner should wait particularly when he has succeeded before the first adjudicating authority. Could the customs authorities sit over the order of the first adjudicating authority till the matter is kept hanging in appeal? We must not forget there could be a second appeal as well before the Carat if the customs authorities failed before the first Appellate Authority.

(8) We required the customs authorities to tell us under what rules and regulations detention certificate is issued. Again an affidavit has been filed by

Mr.K.L. Meena, Assistant Collector of Customs (Imports). He said imported goods could not be released since the customs department had filed an appeal in the office of the Collector of Customs (Appeals). He said by way of interim order dated 8March 1995 the Collector of Customs (Appeals) had already ordered that the goods be released after drawing of representative samples by the department and that, therefore, the department was ready to release the goods after drawing there representative samples. It is then stated that since the petitioner had not been exonerated fully by the Appellate Authority it could not claim immunity from demurrage charges and other detention charges which are payable to the third respondent. It is submitted that the detention certificate can only be issued by the Collector of Customs if and when the importer is fully exonerated by the Appellate Authority, and that if an order is issued by the Collector of Customs (Appeals) in favor of the petitioner (without any warning or penalty against him) that the Collector of Customs will issue a detention certificate in favor of the petitioner, and that this detention certificate will form the basis of waiving the demurrage charges to the extent permissible by the third respondent as per its regulations. We are told that there are no rules and regulations under which detention certificate is issued by the customs authorities. However, the fact remains that detention certificate is issued when the goods are detained pending adjudication and that the fact of issue of detention certificate is noticed by the Supreme Court in the aforesaid judgment in Mis. Grand Slam International. We has also been shown the form in which the detention certificate is issued. It is, Therefore, an administrative order and has legal sanction behind it. A Single Judge of this Court in B.C. Mody Export Pvt. Ltd. Vs. Union of India, , was of the view that detention certificate could be issued by the customs authorities if the goods had been wrongly confiscated and not released to the petitioner on account of import license formalities. In that case the Court directed issuance of detention certificate to the petitioner. A Full Bench of the Madras High Court in National Industries v. Assistant Collector of Customs, Madras, 1980 E.L.T. 128 (Mad), said that the right to detain the goods u/s 45 of the Customs Act and right to conduct the necessary test and examination of goods without undue delay u/s 17 imposes a corresponding duty on the customs authorities to issue a detention certificate if there is undue delay on behalf of the customs authorities provided the delay is not attributable to any fault or negligence on the part of the importer. It was stated that the customs authorities were under a public duty to issue detention certificate in the circumstances contemplated under Rule 13(a) and (b) of the Scale of Rates fixed by the Port Trust. A Single Judge of the Kamataka High Court in Equipment Sales Corporation Vs. Asstt. Collector of Customs, , was of the view that where there was a direction issued by the Appellate Tribunal to release the goods on executing a personal bond or where the importer had succeeded before the Appellate Tribunal in relation to the detained goods, it follows as a consequence that the importers were entitled to a detention certificate so that they might get the goods released without payment of demurrage charges. The Court also said that the mere fact that an appeal had been filed against the Tribunal order and was pending before the Supreme Court was of no consequence. The Court noted that there were no rules or regulations under which detention certificate could be issued by the department and that it was by virtue of the decisions of the Courts that such detention certificates were being issued by the customs and other authorities. We were also referred to a short order of the Supreme Court in Collector of Customs v. Krishna Sales Pvt. Ltd., 1989 (41) E.L.T. 374 (S.C.), which is as under:-

"Having heard learned Counsel for the Collector of Customs, Bombay, and M/s. Krishna Sales Pvt. Ltd., we direct that the application made by the latter for a detention certificate should not be rejected on the ground that the appeal is pending in this Court against order of the Customs, Excise and Gold(Control) Appellate Tribunal, New Delhi."

In the present case before us, since the petitioner has succeeded before the adjudicating authority and the show cause notice has been dropped it would been titled to detention certificate for the period the adjudication proceedings had been pending. The order of the Additional Collector of Customs is dated 16 June,1994 and there are no interim orders from the Collector of Customs (Appeal)staying the operation of that order. That being the position, the petitioner will normally be entitled to grant of detention certificate. The fact, however, remains that an appeal is pending. If the petitioner is granted detention certificate he will claim relief in demurrage charges from the third respondent to which he will not be entitled to in case the appeal filed by the customs authorities is allowed. The brief order of the Supreme Court reproduced above is not helpful and does not lay any law for this Court to follow. In the circumstances of the present case, we direct that he appeal pending before the Collector of Customs (Appeals) be decided within a period of three weeks. In case it is not done or appeal is rejected the petitioner would be entitled to the grant of detention certificate as per prescribed procedure.

(9) In the result the writ petition stands partly allowed and we direct there respondents to issue a detention certificate to the petitioner in the prescribed form thin 3 weeks from today. There will, however, be no order as to costs.

