
(2000) 09 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5864 of 2000

Sujana Steels Ltd.

APPELLANT

Vs

Commr. of Cus. and C. Ex. (Appeals), Hyderabad

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Customs Act, 1962 — Section 129B, 49

Citation : (2002) 141 ELT 343

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : P.B. Vijay Kumar, for the Appellant; L. Narasimha Reddy, Senior Standing Counsel for Central Government and G. Ramachandra Rao, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The main question that arises for our consideration and decision in this Writ Petition is whether the Central Warehousing Corporation is obliged in law to release the goods in question stored in Inland Container Depot (I.C.D.), Hyderabad to the petitioner Company without payment of storage and demurrage charges by force of the Final Order No. 1568/99, dated 29-6-2000 2000 (90) ECR 776 of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), South Zonal Bench at Madras, wherein it was held that the Petitioner Company is not responsible for the detention of storage of goods from 16-10-1996 and as per the Certificate for Clearance dated 5-10-1999 issued by the Assistant Commissioner of Customs, Container Freight Station, Kukatpally, Hyderabad.

2. The background facts out of which the above question arises for decision be firstly noted in brief. They are : The petitioner-Company during the course of their trade activity, negotiated with M/s. Techno Imports & Exports, Dubai for import of 43.43 M.T. of M.S. Scrap valued at Rs. 10,857.50 U.S. Dollars (C&F) and the consignor has despatched the said goods to I.C.D., Hyderabad through

two containers as per the Invoice No. TTE/240/6-34996. On receipt of the said goods at the destination, the petitioner Company has filed a Bill of entry No. 486/16-10-1996 under Customs Tariff No. 7204.29 furnishing the particulars as per Bill of Lading received from the consignor which described the goods as M.S. Scrap and the same is intended for melting purposes in the Induction furnace and claimed concessional rate of duty exemption as per the notification No. 36/96, dated 23-7-1996 (Sl. Item No. 116) which envisages payment of 5% basic duty, additional duty (CVD) of 5% and special duty of 3% ad valorem. However, on visual examination of the said goods, the Customs authorities found that the goods in question are in the shape of pipes and in that view of the matter came to the conclusion that the said goods fall under Tariff Item 7306.90 and accordingly, the Customs authorities classified the goods as M.S. pipes resulting in confiscation of the goods worth Rs. 3,97,556/- (GIF) u/s 111(d) and (m) of Customs Act, 1962 (for short "the Act") for importing second hand goods without an import licence and mis-declaration of imported goods and in that view of the matter imposed a penalty of Rs. 40,000/- and allowed to redeem goods on payment of redemption fine of Rs. 2,00,000/- within one month from the date of receipt of the order vide proceedings F. No. S/8/Adjn/012/96-ICD/O.R. No. 24/96-CUS (Adjn) Order-in-Original No. CUS 37/96, dated 17-12-1996 of the Commissioner of Customs and Central Excise, Hyderabad, second respondent herein. The petitioner-Company preferred appeal A. No. 1/97(H) CUS to the Commissioner of Customs and Central Excise (Appeals), Hyderabad, first respondent herein, against the above adjudication order of the second respondent dated 17-12-1996. The first respondent by his proceedings dated 24-1-1997 dismissed the appeal while confirming the adjudication order of the second respondent dated 17-12-1996. The petitioner Company further preferred appeal to the CEGAT u/s 129A of the Act praying for restoration of classification of goods as claimed by the Petitioner Company and for extension of benefit of Notification No. 36/96, dated 23-7-1996 while seeking setting aside the order of confiscation, penalty and fine. In the said appeal, it was also prayed that the petitioner Company be granted Certificate of Detention for claiming waiver of demurrages. The CEGAT by its final order No. 1568 of 1999, dated 29-6-1999 opined that the declaration given by the Petitioner Company and the report of the physical examination showed the goods to be rusted and used pipes and as such it satisfies the definition of waste and scrap under Note No. 8 of Chapter XV of Customs Tariff Act. It is also held by the CEGAT that the goods in question are not new and fresh goods in terms of the value and, therefore, the second respondent ought to have accepted the declaration of the petitioner Company. The CEGAT further in its order held that the petitioner Company is entitled to Certificate for Clearance of the goods without payment of demurrages.

3. On receipt of the copy of the order of the CEGAT dated 29-6-1999, the petitioner Company vide its letter dated 10-8-1999 approached the third respondent requesting him to grant Certificate for non-imposition of demurrage charges. The third respondent vide his letter dated 5-10-1999 granted such a

Certificate. But, the Warehousing authorities represented by the Manager, CFS, Hyderabad, the fourth respondent herein did not release the goods, and on the other hand, insisted vide letter No. CWC/CFS/ KKP/Cus. Corresp. 99-00/599, dated 12-10-1999 that unless all storage charges are paid by the petitioner Company delivery of the goods cannot be made. In that view of the matter, the third respondent vide his letter C. No. S/8/Adjn./012/96-ICD, dated 20-11-1999 informed the petitioner Company that there is no provision in the Rules framed by the Central Warehousing Corporation for waiver of storage charges and directed the petitioner Company to clear the goods immediately. Thereafter wards, the petitioner Company vide its order dated 6-12-1999 informed the third respondent that the petitioner Company is not responsible for detention of the goods from 16-10-1996, and that it is entitled to the goods released without payment of demurrage charges in the light of the order of the CEGAT dated 29-6-1999 and also the Certificate for Clearance issued by the third respondent dated 5-10-1999 waiving the demurrage charges in obedience to the directions of the CEGAT. There was no response from the third respondent. Under those circumstances, this writ petition is filed by the petitioner Company praying for any writ, order or direction, particularly one in the nature of mandamus directing the respondents to give effect to the Final Order No. 1568/99, dated 29-6-1999 of the CEGAT and release the goods in question without payment of demurrage and storage charges or in the alternative to direct the respondents 1 to 3 to pay the demurrage and storage charges as the wrongful detention of the goods is solely attributable to the respondents 1 to 3 to the fourth respondent.

4. In response to Rule Nisi, respondents 2 and 3 have filed counter affidavit. As reflected in the counter affidavit, the respondents 1 to 3 do not oppose the writ petition and the legal remedy sought by the petitioner Company. On the other hand, respondents 1 to 3 support the claim of the petitioner Company. In paragraph (10) of the counter affidavit the respondents 2 and 3 have contended that as per paragraph (15) of the standard set of guidelines for appointing custodians u/s 45 of the Customs Act incorporated in Circular No. 128/95-Cus., dated 14-12-1995, the Central Warehousing Corporation being the custodian is bound to waive demurrages on the direction of the appropriate authority in the Customs Department.

5. The fourth respondent, The Manager Container Freight Station, Central Warehousing Corporation, Hyderabad has filed counter affidavit opposing the writ petition. In his counter affidavit, while not disputing the basic material facts and averments made in the affidavit filed in support of the writ petition, it is contended that the petitioner Company has deposited the goods in the Container Freight Station, Central Warehousing Corporation agreeing to pay the storage charges and, therefore, the petitioner Company cannot take delivery of the goods without payment of storage charges and other dues, and the fourth respondent cannot waive the storage charges merely because of some disputes between the petitioner Company and the respondents 1 and 3 Customs authorities. It is also contended that the respondents 1 to 3 Customs authorities

in law are not entitled to direct the fourth respondent to release the goods without payment of storage charges. It is claimed that the petitioner Company in law is obliged to pay the storage charges before taking delivery of the goods as per terms and conditions of storage. It is also contended that the Central Warehousing Corporation is not a party to the appeal filed by the Petitioner Company before the CEGAT and, therefore, the order made by the CEGAT dated 29-6-1999 does not bind the Central Warehousing Corporation, and that the CEGAT has not issued any direction to the fourth respondent to release the goods stored by the Petitioner Company without insisting payment of storage and demurrage charges. Further, it is contended by the fourth respondent that the Central Warehousing Corporation is a statutory authority created u/s 3 of the Warehousing Corporation Act, 1962 for providing storage of various goods in its godowns on payment of storage charges and that there is no provision either in the said Act or the Rules framed thereunder for waiving storage charges, and the respondents 1 to 3 have no legal authority to direct the fourth respondent to deliver the goods to the petitioner without insisting payment of storage and demurrage charges, the fourth respondent has also filed an additional counter affidavit wherein it is contended that reliance placed by the respondents 1 to 3 Customs Authorities on the guidelines contained in para (15) of the Circular No. 128/95, dated 14-12-1995 is totally misconceived and not applicable to the facts of the case. It is contended that those guidelines are applicable only to establishments in private sector but not establishments in public sector, the Central Warehousing Corporation is a public sector undertaking established u/s 3 of the Warehousing Corporation Act, 1962. The Container Freight Station at Sanathnagar, Hyderabad was set up by the Central Warehousing Corporation in the year 1990 as approved by the Collector, Customs under Public Notice No. 110/90 (Cus.) dated 17-12-1990 and operating the same as per the guidelines and the terms and conditions issued by the Collector, Customs and Central Excise, Hyderabad under Public Notice 12/91, dated 18-1-1991 and in the said Public Notice there is no clause for directing the Central Warehousing Corporation not to collect the storage charges for the period the goods are detained by the Customs Department. On the other and, under Clause 4.11 of the above Public Notice 12/91, dated 18-1-1991 it is clearly mentioned that the goods will be delivered by the person-in-charge of the Central Warehousing Corporation after necessary formalities.

6. Sri P.B. Vijay Kumar, learned Counsel for the petitioner Company would contend that the fourth respondent is bound to release the goods without payment of storage and demurrage charges in the light of the Final Order No. 1568/99, dated 29-6-1999 of the CEGAT and also in terms of the Certificate of Clearance dated 5-10-1999 issued by the third respondent. The learned Counsel for the petitioner would alternatively submit that if the Court ultimately finds that the fourth respondent is not obliged in law to release the goods without payment of storage and demurrage charges, then, the respondents 1 to 3 Customs authorities be directed to pay those charges since they are solely responsible for

illegal detention of the goods from 16-10-1996 as found by the CEGAT in its order.

7. Sri L. Narasimha Reddy, learned Senior Standing Counsel for Central Government appearing for respondents 2 and 3 Customs authorities would reiterate the same contention taken in paragraph (10) of the counter affidavit of the respondents 2 and 3 that the fourth respondent is bound to waive demurrages and release the goods to the petitioner Company in terms of the guideline contained in paragraph (15) of the standard set of guidelines in Circular No. 128/95-Cus., dated 14-12-1995. The learned Senior Standing Counsel would maintain that under no circumstance direction would go to the Customs authorities to pay the storage and demurrage charges at this stage, and only in the event of the petitioner Company paying storage and demurrage charges to the fourth respondent for seeking release of the goods, then, they may take appropriate legal action for reimbursement for those charges from the Customs authorities, if they are so entitled and advised.

8. Sri G. Ramachandra Rao, learned Counsel appearing for the fourth respondent while opposing the writ petition would contend that as per the decision of the majority in the case of International Airports Authority of India and Others Vs. Grand Slam International and Others, a statutory authority even if it is the custodian of the imported goods, because of the provisions of the Customs Act, would be entitled to charge demurrage for such goods in its custody and make the importer or consignee liable for the same even for periods during which he/it was unable to clear the goods from the Customs area, due to the fault on the part of the Customs authorities or of other authorities who might have issued detention certificates owning such fault. The learned Counsel would conclude that the issue that arises in the present case is no longer *res integra* and it is finally settled by the binding judgment of the Apex Court in the case of International Airports Authority (*Supra*), and in that view of the matter, no direction would lie to the fourth respondent to release the goods to the petitioner Company without insisting for payment of storage and demurrage charges.

9. In this case there is no controversy among the parties as regards basic facts. Admittedly and as per the judgment of the CEGAT, the detention of the goods of the petitioner Company by the Customs authorities is found to be unjust and illegal and on account of that the petitioner/importer is put to loss by having to pay demurrage charges for the period of such detention. It is also admitted case that in pursuance of the order of the CEGAT dated 29-6-1999, the third respondent herein issued the Certificate for Clearance dated 5-10-1999. There is also no controversy that the Central Warehousing Corporation is a statutory authority created u/s 3 of the Central Warehousing Corporation Act, 1962. If these basic facts are not in controversy, in our considered opinion, the judgment of the Supreme Court in International Airports Authority's case (*supra*) squarely covers the facts of the case. In that case, the first respondent in each of the Civil Appeals had imported goods by air and filed bills of entry with the Customs

Authorities at the Delhi Airport, which is the property of the Authority. The Customs Authorities detained the goods. The goods were ultimately released and the Collector of Customs issued detention-certificates for the periods of the detentions. The first respondents thereupon applied to the Authority for waiver of demurrage charges for the periods covered by the detention certificates. The first respondents calculated demurrage, granted for these periods waiver on a graded scale. The first respondents preferred writ petitions before the Delhi High Court, impleading the Union of India and the Authority, challenging the requirement to pay demurrage for the periods for which the detention certificates had been issued. The Delhi High Court took note of the decision of an earlier Division Bench of that Court in the case of Trishul Impex Vs. Union of India, and took the view that since the Authority was the custodian on behalf of the Customs authorities, the Authority was not entitled to recover any amount on account of demurrage charges for the periods for which detention certificates had been issued. The Authority being aggrieved by the Judgment of the Delhi High Court preferred Civil Appeals to the Supreme Court. The majority of the Supreme Court allowed the appeals and set aside the Judgment and order of the High Court. S.P. Barucha J. speaking for the majority on consideration of the relevant provisions of the Customs Act and the case law on the point observed as under :

"41. None of these provisions entitles the Collector of customs to debar the collection of demurrage for the storage of imported goods. They do not entitle him to impose conditions upon the proprietors of ports or airports before they can be approved as Customs ports or Customs airports. Section 45 provides that all imported goods imported in a customs area must remain in the custody of the person who has been approved by the Collector of Customs until they are cleared and such person is obliged not to permit them to be removed from the customs area or otherwise dealt with except under and in accordance with the permission of the customs officer. Section 45 does not state that such person shall not be entitled to recover charges from the importer for such period as the Customs Authorities direct.

42. The purpose of the Customs Act on the one hand and the Major Port Trusts Act and the International Air ports 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 thereat and the charges to be recovered therefore. An importer must land the imported goods at a seaport 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 seaport 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."

10. N. Venkatachala, J. also speaking for the majority in a separate but concurring opinion was pleased to observed as follows :

"66. From the above decisions of this Court it becomes clear that an authority created under a statute even if is the custodian of the imported goods because of the provisions of the Customs Act, 1961, would be entitled to charge demurrage for the imported goods in its custody and make the importer or consignee liable for the same even for periods during which he/it was unable to clear the goods from the customs area, due to fault on the part of the Customs Authorities or of other authorities who might have issued detention certificate owing such fault."

11. Therefore, the judgment of the Apex Court in International Airports Authority's case (supra) is an authority to state that a statutory authority even if it is the custodian of the imported goods, because of the provisions of the Customs Act or any other statute, would be entitled to charge demurrage for such goods in its custody and make the importer or consignee liable for the same even for periods during which he/it was unable to clear the goods from the Customs area, due to the fault on the part of the Customs Authorities or of other authorities who might have issued detention certificates owing such fault. In the case of International Airports Authority (supra) the Supreme Court has considered its earlier decisions in (i) The Trustees of the Port of Madras Vs. Aminchand Pyarelal and Others, ; (ii) Board of Trustees of the Port of Bombay Vs. Indian Goods Supplying Co., and Board of Trustees of the Port of Bombay Vs. Jai Hind Oil Mills Co. and Others, . In Aminchand Pyarelal's case (supra) the Customs authorities have detained the goods as the specifications in the import licence did not tally with the description of the imported goods. On a notice to show cause, the Customs authorities upon considering the explanation given, directed confiscation of the goods. In appeal, the Board of Trustees under the Madras Port Trust Act, 1905 reversed the order and the customs authorities thereupon issued a certificate stating that the goods were detained by the Customs authorities for the period in question for examination u/s 17(3) and (4) of the Customs Act, 1962, and on that basis the Port Trust Authorities waived the demurrage for the period covered by the certificate and the goods were cleared on payment of a nominal sum. It transpired subsequently that the Detention Certificate had been erroneously issued since the goods were detained in order to ascertain whether the Import Trade Control (I.T.C.) formalities had been complied with and not for the purposes of Section 17(3} and (4) of the Customs Act, 1962. In those circumstances, the Supreme Court was of the view that in cases where goods are detained by the Collector of Customs u/s 17 of the Customs Act or on account of Import Trade Control formalities or for compliance of formalities under the Drug's Act, on certification by the Collector of Customs that such detention was not due to any fault or negligence of the Importer, demurrage would either not be recoverable for the period during which the goods are detained for examination or be recoverable for the period of detention at the rate of 30% of the normal rate, for a period of 30 days and one working day, and, thereafter, at the full rate for detention beyond the said period. In the case

of Indian Goods Supplying Co. (supra) the Supreme Court reiterated its decision in the case of Aminchand Pyarelal (supra) regarding the right of the Port Trust Authorities to demurrage when the goods were detained on account of Import Trade Control formalities and the Importer/consignee was not responsible for such detention and resultant delay in lifting the goods. The Supreme Court observed that even though the delay in clearing the goods was not due to the negligence of the importer for which he should be held responsible, yet he cannot avoid the payment of demurrage as the rates imposed are under the authority of law, the validity of which cannot be questioned. In the case of Jai Hind Oil Mills (supra) the Supreme Court was of the opinion that before directing the Customs authorities to issue a Detention Certificate, the Court should have issued notice to the Port Trust which was vitally interested in securing its own interests as regards the demurrage charges recoverable by it under law.

12. The principles which emerge from the decisions of the Supreme Court in International Airports Authority (supra) and its earlier decisions would suggest that no mandamus would lie to the Central Warehousing Corporation and its authorities to release the goods to the petitioner Company without payment of storage and demurrage charges. This position is made very clear by the Supreme Court itself in the case of International Airports Authority (supra) in paragraph (45) of the judgment which reads as follows :

"The goods of the first respondent in this appeal were stored, pending their clearance by the Customs Authorities, at the Container Freight Station of the appellant, the Central Warehousing Corporation at Patparganj, Delhi. The Central Warehousing Corporation is established under the provisions of the Warehousing Corporations Act, 1962. The provisions of the Warehousing Corporations Act are substantially similar to those of the international Airports Authority Act, 1971 and the Major Port Trusts Act, 1963. What has been said above in regard to the International Airports Authority applies as well to the Central Warehousing Corporation."

13. In other words, the Central Warehousing Corporation authorities cannot be denied their statutory duties on account of demurrage and other charges. What has to be seen in the facts and circumstances of this particular case is whether the liability of the importer/petitioner Company to pay such dues is to be shifted to the Customs authorities as argued by the learned Counsel for the petitioner, since the petitioner Company was not responsible for detention of the goods in question as held by the CEGAT in its order dated 29-6-1999 and as reflected in the Detention Certificate issued by the third respondent dated 5-10-1999. The Supreme Court in Padam Kumar Agarwalla v. The Additional Collector of Customs, Calcutta - AIR 1972 S.C. 542 while quashing the order of confiscation passed by the Customs authorities opined that there would have been no difficulty in directing release of the goods had the same been in the custody of the Customs authorities. Since the goods were in the possession of the Port Commissioners who had a lien over the goods for rent and other charges, the

Supreme Court was pleased to observe that someone would have to pay the port charges before the goods could be removed and since the importer was not to blame for the delay in removal of the goods which had been illegally detained by the Customs authorities, it would be only fair and just for the Customs authorities, who were responsible for the situation, to bear the burden for paying port charges. The Customs authorities having accepted the order of the CEGAT dated 29-6-1999 and having issued Certificate for Clearance of the goods dated 5-10-1999 should own the responsibility of paying detention and storage charges for the goods from 16-10-1996. It will be totally unjust and unreasonable on the part of the Customs authorities to contend : "Let the petitioner Company pay storage and demurrage charges first and then they may initiate legal action against the Customs authorities seeking reimbursement of those charges, if they are so entitled and advised." Customs authorities are statutory/public authorities and the reasonableness of their actions is required to be tested on the touchstone of postulates of reasonableness and non-arbitrariness flowing from Article 14 of the Constitution of India. Therefore, the stand taken by the learned Senior Standing Counsel for the Central Government appearing for the respondents 1 to 3 Customs authorities in that regard is not tenable.

14. Reliance placed by the Customs authorities on the guidelines contained in paragraph (15) of the guidelines in Circular No. 128/95, dated 14-12-1995, in our considered opinion, is totally misconceived and that guidelines is not applicable to the facts of this case. The respondents 2 and 3 along with counter affidavit have produced a copy of the Circular No. 128/95, dated 14-12-1995. As could be seen from the preamble of the Circular itself, those guidelines are applicable only to establishments in private sector but not to the establishments in public sector. Secondly, as rightly contended by the fourth respondent in additional counter affidavit dated 21-8-2000, in the Public Notice No. 12/91, dated 18-1-1991 issued by the Collector, Customs and Central Excise, Hyderabad there is no clause which empowers the Customs authorities to direct the Central Warehousing Corporation and its authorities not to collect the storage charges and other dues for the periods the goods are detained by the Customs authorities. On the other hand, Clause 4.11 of the above Public Notice mandates that goods will be delivered by the person-in-charge of the Central Warehousing Corporation after necessary formalities. It is trite to state that the word "formalities" will cover not only all documentation but also realisation of storage charges and dues before effecting the delivery of goods.

15. Keeping in mind the various decisions of the Supreme Court referred to above, particularly the decisions of the Supreme Court in the case of International Airports Authority (*supra*) and in the case of Padam Kumar Agarwalla (*supra*) we are of the considered opinion that though the petitioner Company being the importer cannot be absolved of its liability to pay the storage and demurrage charges, the burden of paying such dues should be shifted to the Customs authorities who are found be responsible for the delay in lifting of the goods. Such a course of action is appropriate and necessary in order to respect

the postulates of reasonableness and non-arbitrariness flowing from Article 14 of the Constitution.

16. We, accordingly, allow the writ petition. A direction shall issue to the respondents 1 to 3 Customs authorities to pay the demurrage and other dues to the fourth respondent in respect of the goods in question within 15 days from the date of receipt of a copy of this order, and, therefore, permit the petitioner Company to lift the goods subject to it performing other formalities, if any. The fourth respondent is directed to make over the possession of the goods to the petitioner Company immediately upon receipt of payment of dues from the Customs authorities. No costs.