
(1988) 06 CAL CK 0016
In the Calcutta High Court
Case No : Matter No. 1210 of 1986

Suresh Kumar

APPELLANT

Vs

Board of Trustees for The Port of Calcutta

RESPONDENT

Date of Decision : 01-06-1988

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Customs Act, 1962 — Section 49
Major Port Trusts Act, 1963 — Section 53, 55, 62

Citation : (1988) 17 ECC 348 : (1989) 39 ELT 248

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sengupta, J.—In this application under Article 226 of the Constitution the petitioner claims for refund from the Port Trust authorities for having paid demurrage charges for delay in taking delivery of the goods in spite of the Wharf Rent Exemption Certificate issued by the Customs authorities.

2. The facts of the case are shortly stated as under:

The petitioner carries on business of, inter alia, manufacture of shoddy woollen goods under the name and style of Messrs National Carpet Industries, G.T. Road, Dhariwal, Punjab as a sole proprietor thereof. The said concern of the petitioner is a small scale industrial unit duly registered as such with the Government of Punjab. Under the Import Policy of the Government of India, issued from time to time, several items are importable under the Open General Licence Scheme of the respective Import Policies. During the Policy period April, 1984 to March, 1985 woollen rags containing more than 50% wool content by weight were importable under the OGL Scheme of the Government of India

3. In terms of the said provisions of the Import Policy, 1984-85 the petitioner purchased from Messrs Electrometal (India) Private Limited of 3C, Camac Street,

Calcutta 320 M/Tons of the said goods as per terms and conditions agreed by the parties.

4. The goods were sent by the foreign seller on C.I.F. basis to Calcutta pursuant to contract being entered into in this regard by the foreign seller with the Indian party from whom the petitioner purchased, as aforesaid, the said goods. The said goods arrived at the Port of Calcutta in five consignments per vessels "Vishwa Yash" and "Betara Dua" respectively in or about January, 1985 and November, 1984. Thereupon the petitioner, through his clearing agents Messrs Sheikh and Pandit of Calcutta, filed bills of entry for home consumption along with the relevant import licence to the Customs authorities in respect of the said five consignments of the said goods seeking clearance thereof against appropriate additional import licences under the OGL Scheme as per the Import Policy of the Government of India for the year 1984-85.

5. Because of the inordinate delay [in] the release of the said goods after completing all Customs formalities, the said goods suffered heavy demurrage charges. Accordingly the petitioner represented before the Customs authorities for allowing warehousing of the said goods, pending completion of the Customs formalities by the Customs authorities, u/s 49 of the Customs Act, 1962. The Customs authorities thereafter allowed the petitioner to warehouse the said goods u/s 49 of the Customs Act, 1962 after drawing samples thereof for special examination and chemical test.

6. The customs authorities were ultimately satisfied that the subject goods imported by the petitioner contained more than 50% wool content and as such importable as an OGL item in terms of the Import Policy, 1984-85 on the basis of the aforesaid additional licence and allowed the said consignment to be cleared on or about December 24, 1985 upon payment of customs duties thereon as assessed by the Customs authorities. This fact would be evident from the endorsement made on the bill of entry for home consumption filed by the petitioner.

7. Due to the aforesaid delay in allowing clearance of the said goods by the Customs authorities, the said goods incurred heavy demurrage due to no fault of the petitioner. In the circumstances, the petitioner prayed before the Customs authorities for issuance of necessary wharf rent exemption certificate in order to enable the petitioner to clear the consignment without payment of demurrages from the Port authorities. After several reminders on or about March 25, 1985 the Customs authorities handed over a wharf rent exemption certificate dated March 23, 1985 to the petitioner covering part of the period of detention, that is from November 28, 1984 to March 1, 1985 in respect of consignment arrived per Vessel "Batara Dua" and from January 22, 1985 to March 1, 1985 in respect of the consignments arrived per vessel "Vishwa Yash".

8. Thereupon the petitioner again requested the Customs authorities for issuance of wharf rent exemption certificate for the entire period of detention, that is, upto

March 25, 1985. Meanwhile, however, as the goods were continuing to incur demurrage, the petitioner had no other alternative but to make payment of the demurrage charges to the Port authorities under protest and take clearance of the said goods. In respect of the said consignments, the petitioner paid a total sum of Rs. 8,43,995 as purported demurrage charges for the period November 28,1984 to March 25,1985 in respect of vessel "Batara Dua" and for the period January 15,1985 to March 25,1985 in respect of vessel "Vishwa Yash".

9. Thereafter, on or about February 3, 1986 the Customs authorities issued another wharf rent exemption certificate for the uncovered period from March 2,1985 to March 25, 1985 in respect of the said goods.

10. In the premises, by a letter dated 15th February, 1986, the petitioner filed an application before the Financial Adviser and Chief Accounts Officer, Post and Railway Audit Section, Calcutta Port Trust enclosing therewith the bills issued by the Port Trust authorities levying and realising demurrage charges as also the said wharf rent exemption certificates. By the said application the petitioner claimed refund for the sum of Rs. 8,43,995 paid by him under protest as aforesaid as purported demurrage/wharf rent charges. The petitioner drew the attention of the said Financial Adviser and Chief Accounts Officer to the fact that in view of the said Wharf Rent Exemption Certificate the petitioner was not/could not be made liable for payment of the said demurrage/wharf rent charges.

11. In or about March 1986 the petitioner's representative received a purported communication dated 22nd February, 1986 issued by the Financial Adviser and Chief Accounts Officer whereby the petitioner was informed that "no refund was due" to the petitioner as all claims were "time-barred as per Section 55 of the Major Port Trusts Act, 1963".

12. This decision has been challenged in this application.

13. It is contended by the learned counsel for the Port Trust Authorities that on the basis of Wharf Rent Exemption Certificates issued by the Customs authority covering the period of detention of cargo carried by the vessel, s.s. "Batara Dua" between the period 28th November, 1984 and 1st March, 1985 and one certificate for the period between 22nd January, 1985 and 1 st March, 1985 for the cargo carried by the vessel "Vishwa Yash" the Calcutta Port Trust had duly granted concession of wharf rent and/or demurrage charges in terms of the notification dated 30th August, 1975. The question of refund of any amount paid by the petitioner could not and does not arise. The Port Trust Authority can only grant remission and/or concession in respect of the port charges and/or demurrage in accordance with the Port Rules and/or notification which were duly granted.

14. It is also contended that the petitioner could have and should have submitted the refund claim within the time limit prescribed u/s 55 of the Major Port Trust Act, 1963 but the claim for refund was submitted by the petitioner on 26th March, 1985 and 27th March, 1985. The claim for refund of the petitioner is

statutorily time-barred.

15. The contention is that while taking delivery of the said consignments the petitioner paid the port charges, that is to say, wharf rent and demurrage and did not produce any certificate from the Customs authority covering the period between the 2nd March, 1985 and 25th March, 1985 to the concerned shed of the Calcutta Port in order to enable himself to obtain the concession on any rent charges in accordance with the scale of rates. The port rent and demurrage were paid in full and the wharfage exemption certificate was produced subsequently for refund. The payment made to the Port Trust while taking delivery of the cargo from its custody was an overcharge for which a claim should have been preferred within the time prescribed in Section 55 of the said Act.

16. The first question which calls for determination is whether Section 55 of the Major Port Trusts Act, 1963 has any application on the facts and in the circumstances of this case. Section 55 provides as follows :

"No person shall be entitled to a refund of an overcharge made by a Board unless his claim to the refund has been preferred in writing by him or on his behalf to the Board within six months from the date of payment duly supported by all relevant documents. Provided that a Board may of its own motion remit overcharges made in its bills at any time."

17. It is contended by the learned counsel for the petitioner that in the instant case there is or can be no "overcharges" being made by the Port Trust Authorities. In the absence of Wharf Rent Exemption Certificate, the Port Trust Authorities had sought to realise Wharf Rent payable in respect of the subject goods. In view of the said Wharf Rent Exemption Certificate no wharf rent is payable by the petitioner and/or realisable by Port Trust Authorities from the petitioner. Thus the entire realisation of wharf rent in respect of the said goods is without authority of law as the said amount is not payable by the petitioner at all. Seeking of refund of such money cannot come within the purview of Section 55 of the said Act.

18. This contention has substance. Section 55 will only apply to a case where payment and overcharging would synchronise. In other words, on the facts and in the circumstances prevailing at the date of payment, Board should have overcharged the rent. In this case, on the date payment was made by the petitioner, the payment did not and could not assume the character of overcharging. It only assumed such character when the second set of exemption certificates had been issued on 3rd February, 1986.

19. It is contended that a perusal of the said Wharf Rent Exemption Certificates dated March 25, 1985 and February 3, 1986 would show that it has been categorically certified by the Customs authorities that the said goods were detained at the Port of Calcutta for special examination for assessment of duty and that the detention was not attributable to any fault or negligence on the part of the petitioner or its representative. Thus it is apparent that the petitioner was

not or could not be made liable for payment of any Wharf Rent or Demurrage charges in respect of the said goods for the period November 28, 1984 to March 25, 1985 and January 15, 1985 to March 25, 1985.

20. But the wharf exemption certificate issued by the Customs authorities would not entitle the petitioner to get refund of entire amount paid by him for the period covered by the exemption certificate. Under Notification No. 412 dated 30th August, 1979 issued by the Port Trust Authorities amendment has been made to the charges u/s 6 of the Trustees Scale of Rates. The said notification, inter alia, provides as follows :

"It is hereby notified under the provision of Section 62 of the Major Port Trust Act, 1963 (Act 38 of 1963) that the following alterations in the Scale of Rates have been approved by the Central Government and shall have effect from the date of publication in the Gazette. In the said Scale of Rates, in Section 6 Rent-A Imports (1) Substitute the following for the third paragraph below the note appearing immediately after the table of charges (Page 14). On goods detained in the Port on account of special examination and/or chemical test by the Customs authorities rent will be levied at 25% of the normal rent for the first sixty days and 50% of the normal rent for another sixty days thereafter. Further rent will be charged at the normal rate after expiry of one hundred and twenty days, provided the detention is certified by the Collector of Customs to be not attributable to any fault or negligence on the part of the importers."

21. Thus, wharf rent is leviable even if wharf rent exemption certificate is issued by the Customs authorities. But it will be at a concessional rate for certain period. Accordingly it cannot be contended that the entire money paid by the petitioner for the period covered by the exemption certificates is refundable to the petitioner. As a matter of fact Mr. Pronab Roy, learned counsel for the petitioner has fairly submitted that the petitioner is not entitled to claim the entire sum of Rs. 8,43,995 as and by way of refund and according to the calculation made in terms of the said notification dated 30th August, 1979 a sum of Rs. 4,07,640 is only refundable. Thus the entire levy of demurrage for the period covered by the exemption certificates cannot be said to be illegal. A part of the levy is illegal having regard to the wharf rent exemption certificates issued by the Customs authorities and is refundable to the petitioner in terms of the said notification dated 30th August, 1979. As a matter of fact at the date when the goods were delivered by the Port Trust Authorities, one set of exemption certificates up to 1 st March, 1985 [were] with the Port Trust and accordingly the relief under the said notification was granted upto that date. But on the basis of the second set of exemption certificates issued on 3rd February, 1986, there was an overcharge of the rent which although on the date of levy was not unauthorised or illegal became unauthorised and illegal subsequently.

22. The question, however, is even if Section 55 applies to a case like this where the petitioner is liable to pay rent at a concessional rate for the period covered by the wharf rent exemption certificate issued by the customs authorities,

whether claim preferred by the petitioner for the refund is barred by limitation. It is, therefore, necessary to find out the date when the right to obtain refund of the overcharged amount accrued to the petitioner. The subject goods had been detained by the Customs authorities for special examination and the Customs authorities certified that the detention was not due to any fault or negligence on the part of the petitioner or his representative. But the exemption certificates were issued on 25th March, 1985 certifying that the subject goods were detained from 28th November, 1984 to 1st March, 1985. The petitioner upon payment of the rent and charges to the Port Trust Authorities upto 25th March, 1985 obtained delivery of the goods. There was no reason why did the Customs authorities not issue exemption certificate from 28th November, 1984 to 25th March, 1985 when the goods were released to the petitioner by the Customs authorities. The petitioner thereafter made representation. On 3rd February, 1986 further exemption certificates were issued in respect of the detention of the subject goods from 2nd March, 1985 to 25th March, 1985. Accordingly, the petitioners became entitled to the concessional rate in accordance with the said notification from 28th November, 1984 till 25th March, 1985. The right to claim refund on the basis of the wharf exemption certificate accrued to the petitioner only when second set of exemption certificates was issued on 8th February, 1986 and the petitioner thereafter on 15th February, 1986 made refund claim which was rejected on 22nd February, 1986. The only ground on which claim was rejected is that the said claim was barred u/s 55 of the said Act. In my view the claim for refund was not barred by limitation u/s 55 of the said Act. Unless a right to claim refund accrues, limitation cannot run. When the second set of wharf rent exemption certificates was issued on 3rd February, 1986, the original levy on the basis of the first set of wharf rent exemption certificates dated 25th March, 1985 became erroneous and the petitioner became entitled to a refund of the overcharge or unauthorised levy. The wharf rent exemption certificate does not as the name suggests allow exemption of wharf rent in full. The extent of exemption or rebate depends on the provisions of Major Port Trusts Act, 1966 and the rules and notifications made and issued thereunder. As I say, in this case the question of refund of the entire amount of demurrages of wharf rent could not arise as under the notification even where the wharf exemption certificate is issued by the Customs authorities, the importer is to pay rent but at a concessional rate. If the importer pays the entire rent and thereafter the Customs authorities issue wharf exemption certificate, then the right accrues to the importer to claim refund of the amount which has been overcharged or collected in excess in absence of the wharf exemption certificate. Accordingly such right can only accrue if and when exemption certificate is issued by the Customs department. Unless the Customs authorities had issued the certificate on 3.2.1986, the petitioner could not have made any claim for the period 2nd March to 25th March, 1985. The limitation in such a case will not run from the date of payment of rent on 25th March, 1985 but from the date when such right accrued, i.e., on 3.2.1986 when the second set of exemption certificates had been issued. As a matter of fact the Port Trust Authorities while giving delivery of

the goods allowed the benefit of first set of exemption certificates upto 1st March, 1985. The second set of exemption certificates issued on 3rd February, 1986 would entitle the petitioner to get the benefit of the concessional rate from 2nd March to 25th March, 1985. Thus the right to get refund of the overcharged amount or unauthorised levy accrued to the petitioner only on 3rd February, 1986 and the respondents fell in error in rejecting the claim of the petitioner on the ground of limitation. Thus the claim was not barred by limitation as contended by the respondent. Reference may be made in this connection to the decision of the Bombay High Court in the case of Hamilton Industries (Pvt.) Ltd. Vs. Board of Trustees of the Port of Bombay, . In that case one of the questions which fell for determination was when the cause of action accrued to the plaintiff. The claim of the plaintiff in that case was for recovery of demurrage and wharfage charges illegally recovered from the plaintiff by the Port Trust Authorities. There the learned Judge held that the cause of action accrued only when the claim of the plaintiff for refund was categorically rejected by the defendant and not when the payment was made, in other words the date when the defendant had refused to exercise the discretion u/s 53 of the Major Port Trusts Act, 1963, the cause of action accrued. In that view of the matter the question of limitation does not arise at all.

23. Even otherwise the public authorities should not defeat the claim of a person, who is legally entitled to a refund, solely on the ground of limitation. The Customs authorities acted illegally In not issuing the wharf rent exemption certificates on 25th March, 1985 for the entire period of detention from 28.11.1984 to 25.3.1985. The failure on the part of the Customs authority compelled the petitioner to make payment as demanded by the Port Trust, a part of which was not at all payable by the petitioner. The delay in release of goods was not attributable to the petitioner. The Customs authority took time to complete the examination and release of the goods. They failed to issue certificate for the entire period of detention until 3rd February, 1986. Because of the laches and default on the part of an authority of the Government, another authority controlled by the same government ought not to reject the claim, which is otherwise sustainable, solely on the ground of limitation. Such conduct on the part of the public authority has been deprecated by the Supreme Court.

24. Reliance has been placed in the case of Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, . In that case claim of the respondent for refund of the amount of wharfage, demurrage and transit charges supported by recommendation of the Assistant Collector of Customs was rejected on the ground that the claim was barred by limitation u/s 110 of Madras Port Trusts Act. The Division Bench held against the Port Trust and SLP was filed. The Supreme Court granted special leave on the Port Trust agreeing to pay the amount of refund irrespective of the result of the appeal and also to pay the costs of the appeal. Thereafter the appeal came before the Supreme Court for hearing when the Supreme Court observed as follows:

"We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the Court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and If the plea is well founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905)."

25. Krishna Iyer, J. in *Dilbagh Rai Jarry Vs. Union of India (UOI) and Others*, quoted his own observation in a judgment rendered by His Lordship when he was a Judge of the Kerala High Court as follows:

"The State under our Constitution undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and the other lesser motivations which move private parties to fight in Court. The lay out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957. This second appeal strikes me as an instance of disregard of that policy."

26. In my view, the principles laid down by the Supreme Court in the aforesaid decisions would equally apply to the facts of this case. There is no delay in preferring the claim for refund in this case. The claim of the petitioner was not said to be unjust. The only ground was that such claim was barred by limitation. The public authorities should act fairly and reasonably in dealing with such refund claim. The claim was based on wharf rent exemption certificates issued by the customs authorities. There is, therefore, no reason to reject the claim of the petitioner.

27. A contention was also urged as to whether refund can be directed to be issued in an application under Article 226 of the Constitution of India. The Supreme Court has set at rest such controversy. The refusal of the Port Trust authorities to refund the amount of wharf rent paid by the petitioner which the petitioner was not at all liable to pay in view of the wharf rent exemption certificates given by the Customs authorities and the retention of such amount by the Port Trust must be held to be illegal and unauthorised. Even though when the initial levy was made it was not illegal or unauthorised but because of the subsequent events, that is to say, after the issuance of exemption certificates for the entire period of detention of the subject goods on 3rd February, 1986, a part of levy became unauthorised and in any event there was over payment to that extent by the petitioner.

28. Reference may be made to the decision of the Supreme Court in the case of *Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others*, . There the Supreme Court held as follows: The only question that calls for consideration here is whether in an application under Article 226 of the Constitution the Court should have directed refund. It is the case of the appellant that It was after the judgment in the case of *Loong Soong Tea Estate* the cause of action arose. That judgment was passed in July, 1973. It appears thus that the High Court was in error in coming to the conclusion that it was possible for the appellant to know about the legality of the tax sought to be imposed as early as 1963 when the Act in question was declared *ultra vires* as mentioned hereinbefore. Thereafter the taxes were paid in 1968. Therefore the claim in November, 1973 was belated. We are unable to agree with this conclusion. As mentioned hereinbefore the question that arises in this case is whether the Court should direct refund of the amount in question. Courts have made a distinction between those cases where a claimant approaches a High Court seeking relief of obtaining refund only and those where refund is sought as a consequential relief after striking down the order of assessment etc. Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally as a corollary of the said statement of (aw it follows that taxes collected without the authority of law as in this case from a citizen should be refunded because no State has the right to receive or to retain taxes or monies realised from citizens without the authority of law." "The High Court in the instant case after analyzing the various decisions came to the conclusion that where a petitioner approached the High Court with the sole

prayer of claiming refund of money by writ of mandamus, the same was normally not granted but where the refund was prayed as a consequential relief the same was normally entertained if there was no obstruction or if there was no triable issue like that of limitation. We agree that normally in a case where tax or money has been realised without the authority of law, the same should be refunded and in an application under Article 226 of the Constitution the Court has power to direct the refund unless there has been avoidable laches on the part of the petitioner which indicate either the abandonment of his claims of which is of such nature for which there is no probable explanation or which will cause any injury either to respondent or any third party. It is true that in some cases the period of three years is normally taken as a period beyond which the Court should not grant relief but that is not an inflexible rule. It depends upon the facts of each case. In this case, however, the High Court refused to grant the relief on the ground that when the section was declared ultra vires originally that was the time when refund should have been claimed. But it appears to us, it is only when the Loong Soong case was decided by the High Court in 1973 that the appellant became aware of his crystal right of having the assessment declared ultra vires and in that view of the matter in October 1973 when the judgment was delivered in July 1973 the appellant came to know that there is mistake in paying the tax and the appellant was entitled to refund of the amount paid. That was the time when the appellant came to know of it. Within a month in November 1973 the present petition was filed. There was no unexplained delay. There was no fact indicated to the High Court from which it could be inferred that the appellant had either abandoned his claims or the respondent had changed his position in such a way that granting relief of refund would cause either injury to the respondent or anybody else. On the other hand refunding the amount as a consequence of declaring the assessment to be bad and recovery to be illegal will be in consonance with justice, equity and good conscience. We are, therefore, of the view that the view of the High Court in this matter cannot be sustained."

"Similarly it appears to us that this was a tax realised in breach of the section, the refund being of the money realised without the authority of law. The realisation is bad and there is a concomitant duty to refund the realisation as a corollary of the constitutional inhibition that should be respected unless it causes injustice or loss in any specific case or violates any specific provision of law."

29. Thus in a case where tax or money has been realised without the authority of law, there is a concomitant duty to refund the realisation as a corollary of the constitutional inhibitions that should be respected unless it causes injustice or loss in any specific case or violates specific provisions of law. If the money has been collected without jurisdiction or without authority of law, the concerned authority had no right to retain the said money collected and was liable to refund the same and the statutory provision of limitation for filing a refund claim can have no application whatsoever in such a case. In such cases, the High Court, in its writ jurisdiction under Article 226 of the Constitution of India, is competent to direct the refund unless there has been avoidable laches on the part of the

petitioner, which is not the case here.

30. In the case of Commissioner of Sales Tax, U.P. Vs. Auriaya Chamber of Commerce, Allahabad, quoted with approval the observation of the Supreme Court in Hindusthan Sugar Mills Vs. State of Rajasthan and Others, there is the Supreme Court after directing payment of certain sales tax collected from the assessee, the Supreme Court observed:

"Though there was no legal liability on the Central Government but as we are living in a democratic society governed by the rule of law and every Government which claims to be inspired by ethical and moral values must do what is fair and just to the citizen, regardless of legal technicalities, this Court hoped and trusted that the Central Government would not seek to defeat the legitimate claim of the assessee for reimbursement of sales tax in that case on the amount of the freight by adopting a legalistic attitude but would do what fairness and justice demanded."

The Supreme Court then proceeded to hold :

"Where indubitably there is in the dealer legal title to get the money refunded and where the dealer is not guilty of any laches and where there is no specific prohibition against refund, one should not get entangled in the cobweb of procedures but do substantial justice."

31. There is another aspect of the matter. u/s 55, the Board of Trustees may of its own motion remit overcharges made in its bill at any time. Then the question of limitation will not arise at all. It was a case where the Board should have on its own motion remitted the overcharges in view of the exemption certificates Issued by the Customs authorities on 3rd February, 1986. That apart Section 53 of the Act provides that a Board may, in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods from the payment of any rate or of any charge leviable in respect thereof according to any scale in force under the Act or remit the whole or any portion of such rate or charge so levied. When it was known to the Port Trust Authorities that the goods had been detained by the Customs authorities for special examination and no fault was attributable to the petitioner, the Board failed to exercise the discretion vested in it for remission of a part of the rent or charges as leviable. Apart from the exemption certificates, the Board had the discretionary power to remit in a case where the importer is not liable at all for any delay in taking delivery of the goods. The Board failed to exercise the discretion vested in it.

32. For the reasons aforesaid, this application is allowed. The petitioner is entitled to refund of a part of the rent and demurrage charges paid by the petitioner for the period from 28th November, 1984 to 25th March, 1985, but the petitioner is not entitled to the sum of Rs. 8,43,995 as claimed in the petition. Accordingly, the respondent No. 4, the Financial Adviser & Chief Accounts Officer, Post and Railway Audit Section, Calcutta Port Trust, is directed to determine the amount refundable to the petitioner on the basis of the wharf rent exemption

certificates issued on 25th March, 1985 and 3rd February, 1986 covering the entire period of detention of the subject goods from 28th November, 1984 to 25th march, 1985. The respondents shall, within two weeks from the date of communication of this order, refund the amount due to the petitioner to be determined in terms of this order.

33. There will be no order as to costs.