(2005) 09 KAR CK 0086

In the Karnataka High Court

Case No : Writ Petition No. 22179 of 2005

Tata Advanced Materials Ltd. APPELLANT

Vs

Commissioner of Customs, Deputy Commissioner of Customs, Customs Division and Central Warehousing Corporation RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:
Customs Act, 1962 — Section 150, 72 (1) (b)

Citation : (2006) 193 ELT 134 : (2005) 4 KCCR 2899

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Raghuraman and Chythanya, for the Appellant;

Judgement

D.V. Shylendra Kumar, J.—Writ petition is by a company registered under the provisions of the Companies Act, which claims it had

imported certain goods which unfortunately for the petitioner instead of being released in the normal course to the petitioner by the Customs

Authority after realising the duty payable etc., came to be auctioned by the Customs Authorities and in such a sale the amount realised by the

customs authorities being far less than the value as indicated by the petitioner.

2. Petitioner is now seeking for issue of a writ of mandamus to direct the respondent - customs authorities and the 3rd respondent - Ware Housing

Corporation who acted as a custodian of the goods under the statutory provisions to pay the petitioner an amount of Rs. 3,75,781/- being the

value of goods disposed of by the respondents, without a proper notice to the petitioner.

3. Submission of Sri. Chythanya, learned Counsel for the petitioner is that the

goods in question have been put to suction sale even without such a

notice to the petitioner, that the authorities could not have taken such pre-emptive action affecting the interest of the petitioner and if they have

taken such, an action, the petitioner will definitely become entitled to the value of the goods which is worth Rs. 3,75,871/- and merely the amount

customs authorities have realised by auctioning the goods etc.

4. While no writ in the nature of a mandamus to pay a definite sum can be issued to any authority unless entitlement had been determined by any

competent forum and assessed to receive the amount by the petitioner which alone can possibly enable such a person to seek for issue of a writ of

mandamus.

5. The principles governing issue of a writ of mandamus is well known and settled; that the person claiming should have statutory right and a

corresponding duly of a public authority which has not been performed.

6. Even wider the provisions of the Customs Act, the goods which is due for clearance from the custody of the customs authorities if not cleared

within the stipulated period such non clearance enables the customs authorities to clear the goods by auction sale and in such an event it is not what

a person had imported to, but not cleared such a person becomes entitled to claim/receive but only the amount realised in the sale less the

expenses incurred by the customs department in terms of provisions of Section 72(1)(b) read with Section 150 of the Act.

7. The relief sought for in this writ petition is not in terms of such provisions, but for a direction to the respondents to pay the petitioner a sum of

Rs. 3,75,871/-. If the petitioner claims and is entitled to for this amount it will have to be determined, which is an exercise not undertaken in writ

jurisdiction. Writ jurisdiction is meant for enforcement of existing rights and not for determining the rights and thereafter for enforcing it. Moreover

the petitioner not having questioned such other action on the part of the respondent cannot straightaway seek for a mandamus for the amount he

has mentioned. It pre-supposes that the auction sale is bad. If the petitioner has to lay a claim for a sum of Rs. 3,75,871/- it is more by way of

damages or compensation being equivalent value of the goods that he had imported. In the circumstances, writ of mandamus as prayed for cannot

be issued.

8. However, it is open to the petitioner to pursue statutory remedies or other remedies, which may be available to him in law, if the petitioner seeks

to avail of.

9. Reserving such liberty this writ petition is dismissed.