
(1976) 03 MAD CK 0051

In the Madras High Court

Case No : W.A. No. 471 of 1971, against order of Ramaprasada Rao J. in W. P. No. 1706 of 1967 etc. D/- 7-9-1970

The Collector of Customs

APPELLANT

Vs

Mehta Paint Works and Another

RESPONDENT

Date of Decision : 25-03-1976

Acts Referred:

Customs Act, 1962 — Section 144, 17(3), 17(4), 45(1), 51
Madras Port Trust Act, 1905 — Section 42, 43, 43

Citation : AIR 1977 Mad 61 : (1977) 1 MLJ 15

Hon'ble Judges : Kailasam, O.C.J.; Balasubramaniam, J

Bench : Division Bench

Judgement

Kailasam, Offg. C.J.

1. The Collector of Customs, Madras, who was the first respondent in the writ petition, is the appellant in the writ appeal. The first respondent

herein, Mehta Paint Works, filed W. P. 1706 of 1967 impleading the Collector of Customs, and the Port Trust, Madras, for the issue of a Writ of

Mandamus directing the Collector of Customs, to issue a detention certificate in favour of the first respondent herein and permitting the first

respondent to clear the consignment without paying the demurrage charges. The learned Judge allowed the writ petition and directed the issue of a

rule in the nature of mandamus directing the Collector of Customs to issue a detention certificate for the period from 10-1-1967 to 12-4-1967.

The learned Judge further directed that the first respondent herein, on the basis of the said certificate, would be entitled to the necessary

adjustments in the matter of payment of demurrage charges to the Port trust on the goods in question, Against this order, the Collector of Customs

has preferred this writ appeal.

2. The first respondent-firm was issued a licence for the import of pigment dyestuff. A consignment of 2999 paper bags of powdered whiting of the

C. I. F. value of Rs. 25371-24 was imported against the said licence. A bill of entry was filed by the first respondent herein on 3-1-1967, for

clearing the consignment. After certain returns, the first respondent properly presented the Bill of Entry on 11-1-1967. When the goods were

examined by the Customs authorities on 11-1-1967, the first respondent made an endorsement on the bill of entry to the effect that the import

licence duly covered the import of powdered whiting. The first respondent also stated that two consignments of similar nature were cleared by it.

The ship completed the discharge of all its cargo on 16-1-1967. After checking the goods on 19-1-1967, the customs authorities issued a show

cause notice on 20-1-1967 to the first respondent calling upon it to explain why the goods should not be confiscated on the ground that the import

licence produced was for pigment dyestuffs and the import of powdered whiting under the said licence was not permitted. On 24-1-1967, the first

respondent complained that it was not allowed to clear the goods. On 25-1-1967, the first respondent received the show cause notice and gave a

reply on 28-1-1967, reiterating the plea that the article imported was permissible under the import licence. The customs authorities were not

satisfied with the explanation and referred the matter for the opinion of the Chemical Examiner on 7-2-1967. The report was received on 14-2-

1967. As there was some delay, the first respondent issued a reminder. After a joint meeting of the Chief Controller and Collector of Customs on

10-3-1967, a notice for adjudication was put up on 15-3-1967. On 25-3-1967, the first respondent received a letter fixing the date of personal

hearing on 1-4-67. On 1-4-1967, the first respondent attended the personal hearing and on 6-4-1967, an order of adjudication was passed. On

12-4-1967, the goods were directed to be released and were in fact cleared on that day itself. The order of adjudication was to the following

effect:

Powdered whiting is banned item for actual users as per April, March Policy 1966-67 Red Book and to import this item a specific endorsement is

necessary in the licence. Since the licence produced does not bear specific

endorsement, it is not valid for the goods under reference. As such the importation is unauthorised and against Import Trade Control Regulations.

2. However, having regard to the circumstances of the case, the goods in question have been allowed clearance as a special case.

3. There has been breach of law, but in view of the extenuating circumstances no penal action is being taken on the present occasion, but this leniency may not be repeated".

When the goods were cleared on 12-4-1967, the Port Trust authorities called upon the first respondent to pay demurrage charges for the

detention of the goods from 10-1-67 to 12-4-67. The main contention on behalf of the first respondent consignee was that detention of the goods

between 10-1-67 to 12-4-67, was due to the customs authorities and that they are bound to issue a certificate, which would enable the first

respondent to obtain the clearance of the goods at a concessional rate.

3. Section 45(1) of the Customs Act, 1962 provides that all imported goods unloaded in a customs area shall remain in the custody of such person

as may be approved by the Collector of Customs until they are cleared for home consumption. The customs authorities also are enjoined not to

permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of

the proper officer. Section 46(1) requires that the importer shall present a bill of entry to the proper officer. Section 17(3) of the Act enables the

proper officer to require the importer to produce such documents as are necessary for the due compliance of the import control order and to

assess the duty payable thereon. Sec. 17(1) requires that the examination and testing by the proper officer will be conducted without undue delay.

u/s 47, where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the

import duty that has been assessed thereon, the proper officer may make an order permitting clearance of the goods for home consumption.

4. So far there is no difficulty. But the difficulty arises when the goods are detained by the customs authorities for examination. it may take some

time for the examination to be completed and ultimately it may turn out to be that the goods are contraband goods, required to be confiscated and

proceeded with under the Customs Act or they are goods which could be

imported without any prohibition. The question that arises is whether demurrage charges are leviable under such circumstances and if so, at what rate.

5. Section 42 of the Madras Port Trust Act, 1905, enables the Board of the Madras Port Trust to frame a scale of rates at which and a statement of the conditions under which any of the services specified thereunder shall be performed. It also enables the levy of service charges on wharfage, storage or demurrage of goods on any such place. Section 43 enables the Board to frame a scale of rates on payment of which and a statement of conditions under which any property belonging to or in the possession or occupation of the Board or any place within the limits of the Port may be used for the purposes mentioned in that section. Under Sections 42 and 43, the Port Trust Board has framed scale of rates. Chapter IV of the Scale of Rates deals with demurrage. Rules 13(a) and (b), as they then stood, are relevant and they may be extracted in full-

13. The following free periods are allowed in addition to the free periods applicable as per description of goods--(a) Periods during which goods are detained by the Collector of Customs for examination u/s 17(3) and (4) and for chemical test u/s 144 of the Customs Act 1962, other than the ordinary processes of appraisement and certified by the Collector of Customs to be not attributable to any fault or negligence on the part of the importers plus one working day. The customs holidays will also be treated as free days in addition.

(b) Where goods are detained by the Collector of Customs on account of Import Trade Control formalities, or for compliance of formalities prescribed under the Drugs Act, and certified by the Collector of Customs to be not attributable to any fault or negligence on the part of importers, demurrage shall be recovered for this period at the rate of 30% of the normal rates i.e. the rate at which the goods would incur demurrage had there been no detention by the customs. The concession in demurrage shall be limited to a period of 30 days plus one working day and demurrage shall be recovered at the full rate, i.e. (third slab) for detention beyond the above said period"".

6. In addition to the rules we also have a public notice published jointly by the Port Trust authorities and the Customs authorities for the benefit of the general public. We are concerned with the issue of detention certificate by

the customs authorities which would enable the consignee to clear the goods at a reduced rate. Paragraphs 7 and 8 of the Public Notice No. 157/66 deal with the issue of detention certificate, which run as follows-

7. Detention certificates will not be issued in the following types of cases--(i) Detention due to the default or error of the consignee, (ii) Delay in

clearance necessitated by the non-compliance with the Import Trade Control and / or other regulations; (iii) Goods reported for offences and

where it is finally decided that an offence was committed.

8. The issue of detention certificate will be limited to the following types of cases only-

(i) Delay for examination (Section 17(3) and (4) of Customs Act, 1962); (ii) Delay for chemical test (Section 144 Customs Act, 1962); (iii) delay

for I. T. C. formalities; (iv) delay for compliance of provisions of the Drugs Act.

It may be noted that paragraph 9 of the public notice ultimately states that the detention certificates are not granted under any of the provisions of

the Customs Act, so that a refusal by an officer of customs for the grant thereof is not appealable under the Customs Act, though it is open to the

party to make representation against any decision to the next higher authority.

7. The answer to the question that arises in this writ appeal, namely whether the first respondent-consignee is entitled to a detention certificate, will

depend upon the construction to be placed on rules 13(a) and 13(b) of the scale of Rates framed by the Port Trust and public notice referred to

above. The scope of rules 13(a) and 13(b) fell to be considered by the Supreme Court in a recent decision reported in *The Trustees of the Port of*

Madras Vs. Aminchand Pyarelal and Others, . In dealing with the power of the Board to frame a scale or rates and statement of conditions, the

Supreme Court observed-

The Board's power to frame the scale of rates and statement of conditions is not a regulatory power to order that something must be done or

something may not be done. The rates and conditions govern the basis on which the Board performs the services mentioned in Sections 42, 43 and

43-A. Those who desire to avail of the services of the Board are liable to pay for those services at prescribed rates and to perform the conditions

framed in that behalf by the Board..... In such matters, where services are offered by a public authority on payment of a price, conditions

governing the offer and acceptance of service are not in the nature of by-laws. They reflect or represent an agreement between the parties, one offering its services at prescribed rates and the other accepting the services at those rates.....

If the services are not paid for, the Board can exercise its statutory lien on the goods u/s 51 and enforce that lien u/s 56 of the Act; or else, the Board may take recourse to the alternative remedy of a suit provided for by Section 62.

8. From the decision of the Supreme Court cited above, it is very clear that the duty, if any, which the Port Trust is enjoined to discharge, is in the nature of a contract and cannot be enforced by recourse to the issue of a writ of mandamus.

9. Further, under rule 13(a) and (b), the rates that are to be charged are prescribed by the Port trust and concession is available on production of detention certificate by the customs authorities. As the public notice makes it clear, no statutory or other public duty is cast on the customs

authorities to issue a detention certificate. A detention certificate is given in order to confer an advantage on the consignee to clear his goods at a

reduced rate of demurrage charges. These rules are not enforceable under any statute and no public duty is cast on the customs authorities. As

already pointed out, rules 13(a) and (b), that are found in the scales of rates chargeable by the Port Trust, are in the nature of contract between the

parties and cannot be enforced by the issue of a writ of mandamus. We do not see any basis for the issue of writ of mandamus directing the

customs authorities to issue a detention certificate. Even according to rule 13 (a) and (b), to which the customs authorities are not direct parties, the

customs authorities need not issue a certificate unless the delay is not attributable to any fault or negligence on the part of the importers. If the

goods are contraband, and necessarily have to be detained by the customs authorities for making sure whether they are non-prohibited or

contraband goods, the detention cannot be said to be not attributable to the fault or negligence of the consignee. Further, we do not see any equity

or any right on the part of the consignee first respondent, to obtain concession when it attempted to do an illegal act, namely, importing of

prohibited goods. In this case, as already stated, in the order of adjudication it was clearly found that the goods were not permitted to be imported

by the Import Control Order. But the customs authorities allowed it with a warning to the consignee taking into account the various circumstances.

Under the circumstances, we do not see any legal or moral obligation on the part of the customs authorities to issue a detention certificate. The

petition for the issue of a writ of mandamus ought to have been dismissed on the ground that the customs authorities are not under an obligation to

grant a detention certificate either in discharge of a statutory duty or in discharge of a public duty cast on them. In this view, we allow the writ

appeal and set aside the order of the learned single Judge directing the issue of a writ of mandamus.

10. In disposing of the writ appeal, we may also point out that the interest of the consignee has become only academic, as the Port trust authorities

contend themselves with filing a suit for the lesser amount due as demurrage. But then the writ appeal has to be disposed of, as the customs

authorities are anxious to challenge the correctness of the issue of a writ of mandamus.

11. The writ appeal is allowed; but in the circumstances, there will be no order as to cost.

12. Appeal allowed.