

(2007) 09 MAD CK 0196

In the Madras High Court

Case No : W.A. No's. 195 and 402 of 2005

The Manager, Central Warehousing Corporation

APPELLANT

Vs

Rita Enterprises and The Assistant Commissioner of Customs

The Commissioner of Customs (Sea-Import), The
Deputy Commissioner of Customs and The Assistant
Commissioner of Customs Vs Rita Enterprises and The
Manager, Central Warehousing Corporation

RESPONDENT

Date of Decision : 13-09-2007

Acts Referred:

Customs Act, 1962 — Section 48
General Clauses Act, 1897 — Section 27

Citation : (2007) 122 ECC 321 : (2007) 148 ECR 321 : (2008) 221 ELT 28

Hon'ble Judges : S.J. Mukhopadhaya, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : V. Raghavachari, in W.A. No. 195/2005 and P. Wilson, Assistant Solicitor General in W.A. No. 402/2005, for the Appellant; A.J. Abdul Razak in W.A. No. 402/2005 and S.S. Radhakrishnan and P. Wilson, Assistant Solicitor General for RR-2 to 4 in W.A. No. 195/2005, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—These writ appeals are directed against the order passed by the learned single Judge in W.P. No. 20799 of 2003 dated 8.10.2004, allowing the writ petition filed by the first respondent. The first respondent in the writ petition/Warehousing Corporation being aggrieved by the order of the learned single Judge preferred W.A. No. 195 of 2005 and the respondents 2 to 4/ Customs Department in the writ petitions preferred W.A. No. 402 of 2005.

2. For convenience, the parties in this Judgment will be referred to according to their ranks in the writ petition.

3. The case of the writ petitioner is that it imported 20,000 pieces of Glass Shell with fluorescent powder welding and 20,000 pieces of PCB plus cap plus base

with wires from China after obtaining permission from the Customs Department and the same were warehoused in the Warehousing Corporation at Chennai, on 19.2.2002 and 21.2.2002. The writ petitioner also filed bill of entry on 6.3.2002 bearing No. 382146 to clear 20,000 pieces of Glass Shell and declared the assessable value of the goods as Rs. 1,14,755/- and the Customs Duty payable as Rs. 65,217.70. However, the Customs Department refused to give clearance on the ground that the Glass Shells may be Compact Fluorescent Lamps and are liable for anti-dumping duty. The Deputy Commissioner of Customs, Chennai/ third respondent in the writ petition, on 4.6.2002 sent the samples to SQTC Directorate, New Delhi, seeking their opinion to see whether the materials can be considered as Compact Fluorescent Lamps or not. As there was no reply, a reminder was sent to SQTC Directorate, New Delhi on 29.10.2002. On 13.5.2003 the third respondent in the writ petition sent samples to the Central Electrical Testing Laboratory, Kakkalur, for opinion. The 4th respondent sent the samples to the Electronics Regional Test Laboratory, New Delhi, on 27.5.2003 and on 29.5.2007 to the SQTC Directorate, New Delhi. Opinion was not given for more than an year and therefore the writ petitioner requested the Department to permit clearance of goods, which was negated by stating that the investigation is not over. The respondents 3 and 4 having refused to clear the first consignment covered under the bill of entry dated 6.3.2002, the writ petitioner has not filed bill of entry for the second consignment of PCB plus caps. On 2.6.2003, writ petitioner's agent Freight Master visited the godown of the Warehousing Corporation to inspect the goods and he came to know that the goods were not available and the first respondent informed that the goods were sold in auction. On 25.6.2003 legal notice was sent to the Warehousing Corporation as well as Customs Department Officers stating that the sale is illegal as no notice was issued to the writ petitioner before the materials were sold in auction pending investigation.

4. The writ petitioner having not received any reply, filed W.P. No. 20799 of 2003 and prayed for direction to the respondents to pay compensation at the rate of 20% of the value of the goods and interest at the rate of 24% from the date of warehousing the goods on 19.2.2002 on the ground that Section 48 of the Customs Act, 1962, has not been complied with before conducting the sale and no permission was given to the first respondent to sell the goods.

5. The first respondent Warehousing Corporation resisted the writ petition by filing counter affidavit stating that the writ petition is not maintainable as it is a money claim. If at all the writ petitioner is aggrieved, it can file only a suit for recovery of money, if it is permissible.

6. (a) Without prejudice to the above contention it is stated in the counter affidavit that the Freight Systems (I) Private Limited, Chennai-1, who is the Steamer Agent, de-stuffed the goods on 19.2.2002 and 21.2.2002 and delivered the goods to the first respondent, pending determination of proper duty by the Customs for the imported goods and as the goods were lying with the first

respondent for more than 30 days, Warehousing Corporation sent separate notice to the writ petitioner for taking delivery of the Cargo within 15 days, failing which it was informed that the Cargo would be put up for auction without any further intimation. Copies of the notices were marked to the Customs Department, Regional Manager, CWC and the Steamer Agent and notices were despatched on 25.1.2003 by registered post. The first respondent not received any claim from the Steamer Agent towards freight charges nor any information towards any adjustment of the amount due from the owner of the goods to the Central Government. No reply having been received, sale was effected for a sum of Rs. 3,01,000/- on which auction expenses of Rs. 650/-, Customs Duty of Rs. 1,01,398/- and Warehousing charges of Rs. 31,320/- were adjusted and balance of Rs. 1,67,632/- alone is payable to the writ petitioner by handing over the stamped receipt for the said amount.

(b) Insofar as 20,000 pieces of Glass Shell with Fluorescent Powder Welding only, the writ petitioner filed the bill of entry and for other consignment viz., 20,000 pieces of PCB plus cap plus Base, the writ petitioner has not produced the bill of entry and therefore the writ petitioner was not interested in taking release of the same and abandoned the said goods. The notice having been despatched on 25.1.1993 under Sl. No. 3107 and 3108 and since there was no response from the writ petitioner, the Cargos were put up for auction in Lot No. 44/2003 and goods were sold for Rs. 3,01,000/- in the public auction held on 26.3.2003.

(c) It is further stated in the counter affidavit that for the lawyer's notice of the writ petitioner dated 25.6.2003, the first respondent sent a reply through their counsel on 1.7.2003 and repudiated the claim. The first respondent followed the procedures and since there was no response from the writ petitioner and having complied with Section 48 of the Customs Act, writ petitioner is not entitled to any other amount except the balance amount of Rs. 1,67,632/-. The first respondent also addressed a letter on 8.1.2004 to the Sub-Post Master, Virugambakkam, Chennai-92, and sought for confirmation of delivery of the registered post addressed to the writ petitioner, for which reply was given on 21.1.2004 by stating that the registered letter under the said reference had been returned to the Sender on 29.1.2003 and the same was delivered on 1.2.2003.

7. The learned single Judge came to the conclusion that the auction was conducted without prior intimation to the writ petitioner and therefore Section 48 of the Customs Act, 1962, was violated by the respondents. The learned single Judge also held that proof of service of notice was not filed and without retaining the authenticated proof, respondents cannot plead that the procedures contemplated u/s 48 of the Customs Act, 1962, is complied with and allowed the writ petition as prayed for.

8. The said order of the learned single Judge is challenged in the above writ appeals by the respondents.

9. The learned Counsel for the appellants/respondents in the writ petition

submitted that Section 48 of the Customs Act, 1962, has been complied with and the writ petitioner has not given change of address and notice was given in the address given in the cargo and that the address given in the writ petition varies and therefore the non-receipt of the notice by the writ petitioner cannot be put against the respondents as no communication for address change was ever intimated.

10. The learned Counsel for the writ petitioner contended that no notice having been served, there is violation of principles of natural justice and Section 48 of the Customs Act and the learned Judge is right in allowing the writ petition.

11. We have considered the rival submissions made by the learned Counsel for the appellant as well as the first respondent.

12. The point for consideration is whether the appellants complied with Section 48 of the Customs Act, 1962, and issued notice prior to the auction of the goods.

13. The fact of stuffing the articles in the warehousing Corporation on 19.2.2002 and 21.2.2002 are not in dispute. Filing of Bill of Entry to only one item/consignment alone is admitted. Section 48 of the Customs Act, 1962, reads as follows,

48. Procedure in case of goods not cleared, warehoused or transhipped within thirty days after unloading.- If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within thirty days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof:

Provided that-

(a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;

(b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Explanation.- In this section, "arms" and "ammunition" have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959).

From the perusal of the said section it is clear that if the imported goods are not cleared within 30 days or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may be sold after giving notice to the importer with the permission of the proper officer. The permission granted by the Proper Officer on 22.1.2003 to the Warehousing Corporation is filed in the typed set of papers filed by the Commissioner of Customs, Chennai-1. The notice issued by the Warehousing Corporation to the writ petitioner, which was returned unserved is proved through the letter of the postal department dated 21.1.2004. The learned Counsels for the appellants

submitted that there is a change in the address given by the Importer as per the bills and the change of address has not been communicated. In the absence of any communication about the change of address by the writ petitioner and the Warehousing Corporation having issued registered notice furnished by the writ petitioner, the mandatory procedure contemplated u/s 48 has been complied with in view of Section 27 of the General Clauses Act.

14. It is not in dispute that Warehousing Corporation issued notice on 21.1.2003 and the same was sent by registered post as per the despatch register dated 25.1.2003 and the same was returned due to non-availability of correct address. The same is made clear as per the postal department reply dated 21.1.2004. The endorsement made is, "THE RL UNDER REFERENCE HAD BEEN RETURNED TO SENDER (YOU) ON 29.1.2003 AND THE SAME WAS DELIVERED TO YOU BY VIRUGAMBAKKAM PO ON 01/02/03". The reason for returning the letter by the Postal Department is change of address of the writ petitioner and admittedly the new address has not been intimated to the respondents. Thus the fault lies with the writ petitioner. Therefore there is a presumption u/s 27 of the General Clauses Act, as the conditions contained in the said section are complied with viz., sending the letter by registered post; letter being properly addressed; letter being pre-paid; and the letter contains the document. It is deemed that the letter contains proper address as notice was sent only to the address furnished by the writ petitioner. In the above circumstances, if at all the notice is not served, the writ petitioner alone should be blamed for non-communication of the change of address. Hence we are of the view that the respondents satisfied the procedures contemplated u/s 48 of the Customs Act, 1962.

15. The contention of the learned Counsel for the respondents/appellants herein that the claim in the writ petition is for repayment of money and the same is not maintainable and the sale effected having not been questioned, the prayer made in the writ petition should not have been granted are well founded. It is well settled in law that if the quantum is in dispute, the remedy open to the person is to file a civil suit and establish the claim. However, in this case, admittedly a sum of Rs. 1,67,632/- is the balance payable to the writ petitioner even as per the counter affidavit filed by the first respondent after deducting the auction expenses, customs duty and warehousing charges. The said amount is payable to the petitioner from the date of auction i.e, from 26.3.2003.

16. We also noticed that by an interim order in W.A.M.P. No. 324 of 2005, dated 2.4.2007, this Court directed the respondents in the writ petition/appellants herein to refund the amount of Rs. 1,67,632/- as admitted in the counter affidavit and we are informed that the said amount is also refunded to the writ petitioner as of now. It is not the case of the respondents that the said amount was refunded to the writ petitioner in the year 2003 and the writ petitioner refused to receive the same. Hence the writ petitioner is entitled to get 9% interest per annum from 26.3.2003 till the date of refund. The said interest amount has to be calculated and paid to the writ petitioner within four weeks

from the date of receipt of copy of this order.

17. In view of our above findings, we allow both the writ appeals on the above terms and set aside the order of the learned single Judge dated 8.10.2004 in W.P. No. 20799 of 2003. There will be no order as to costs.