(1991) 12 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 10611 of 1991

Tirumala Tirupati Devasthanam APPELLANT

Vs

Madras Port Trust RESPONDENT

Date of Decision : 17-12-1991

Acts Referred:

Customs Act, 1962 — Section 11, 111, 124, 6

Citation : (1994) 46 ECC 48 : (1995) 79 ELT 387 : (1992) 2 MLJ 159

Hon'ble Judges : K.S. Bhakthavatsalam, J

Bench : Single Bench

Judgement

1. The prayer in the writ petition is as follows :-

"to issue a writ of mandamus or any other order or direction of like nature of a writ, directing the second respondent to reship the consignment of 20 Tonnes each of raisins lying with the first respondent back to the supplier at Turkey after complying with the proceedings of the first respondent dated 11-7-1991 in U.G. No. 8/CM/CAT 890/1189/91/TC ......"

2. The petitioner-Devasthanam obtained an import licence for the import of dried grapes (raisins) vide licence No. 0348730 dated 30-1-1989 for a value of Rs. 40 lakhs. The raisins to be imported by the petitioner-Devasthanam is for preparing prasadams like laddus, etc. As per the licence, the import has to be routed through the State Trading Corporation, the second respondent herein, and as such, the petitioner-Devasthanam had to import the dried grapes through the second respondent herein. The Execution Officer of the petitioner-Devasthanam sent a telex on 28-8-1990 to the second respondent requesting quotations from overseas supplier for the supply of two containers of 20 tonnes each of dried grapes. The second respondent replied by telex dated 7-9-1990 stating that they have asked for fresh quotations for further import of raisins from overseas suppliers by inviting samples. This was followed by another telex by the second respondent dated 17-9-1990 stating that only two suppliers from Turkey who had earlier supplied raisins to the petitioner-Devasthanam have quoted prices and

sent samples. It was also communicated in the said telex that fresh samples of certain type of raisins are being sent by air parcel for approval by the petitioner-Devasthanam. On 3-10-1990, the petitioner-Devasthanam wrote a letter to the second respondent that among the samples received it favoured Standard 9 Natural Sultana and as the price seemed to be high, it requested the rate to be negotiated with the supplier. Later on, on 11-10-1990, the petitioner-Devasthanam accepted the re-negotiated rate of US $ 1070 metric tonne for Standard 9 Sultana and placed orders for two containers of 20 tonnes each. The second respondent informed the petitioner by telex dated 19-10-1990 that they have placed an order for 20 tonnes of raisins as required by the Devasthanam. It is stated in the affidavit filed in support of the petition that the sale of the consignment of dried grapes by the second respondent to the petitioner-Devasthanam was made on the high seas by endorsing the shipping documents, and that the second respondent informed the petitioner that the consignment has reached Madras Harbour on 24-12-1990. When the petitioner''s clearing agent Shaw Wallace Company Limited took the original documents to process the clearance of the goods on behalf of the petitioner-Devasthanam, it was not cleared by the Port Health Authorities and on enquiry the petitioner was informed that the consignment of raisins did not conform to the standards laid down for raisins under the Prevention of Food Adulteration Act, 1954 and the final report of Central Food and Technological Research Institute, Mysore (in short "C.F.T.R.I.") is awaited. On the basis of this information, the petitioner informed the second respondent on 29-1-1991 that the goods were rejected by Port Health Authorities and that the clearance was held up for want of final report from C.F.T.R.I., Mysore. It is also stated in the affidavit that the petitioner-Devasthanam informed the second respondent that in the event of the outcome of the final report being adverse, the goods may have to be shipped back to the party in Turkey requesting the second respondent to advise the procedure to be followed. On 31-1-1991, the fourth respondent informed the petitioner that the consignment of grapes does not conform to the standards laid down for raisins under the Prevention of Food Adulteration Act and Rules thereof according to the analysis report received from C.F.T.R.I., Mysore. Therefore, the delay of two months occurred between the date of discharging of cargo at Madras harbour and the date of rejection of the goods by the Port Health Authorities. It is alleged in the affidavit that the petitioner has remitted the entire purchase consideration to the second respondent herein, that thereafter the second respondent asked the report of the C.F.T.R.I., Mysore in order to take up the matter with the foreign supplier and that the second respondent has subsequently been corresponding with the foreign supplier from time to time. It is further alleged in the affidavit that on 17-2-1991, the petitioner-Devasthanam wrote a letter to the second respondent stating that as the consignment has not been cleared under the Prevention of Food Adulteration Act, 1954, the goods will have to be reshipped back to Turkey. In that letter it has also been stated that immediate action for reshipment has to be taken as the containers are incurring demurrages. It is also stated in the affidavit that the petitioner-Devasthanam has not accepted the goods, that it has also made it clear to the State Trading Corporation, the second respondent herein that the goods would be reshipped and that it had also called upon the second respondent not to delay the matter further. A telex was also given on 6-3-1991 asking the second respondent to take immediate action regarding reshipment or dispose of the cargo. At this point of time, a notice u/s 124 of Customs Act, 1962 was issued to the second respondent, with a copy marked to the petitioner''s agent Shaw Wallace Company Limited, stating that as the goods appear to have been imported contrary to the prohibitions imposed by Section 5 of the Prevention of Food Adulteration Act, 1954 read with Sections 6 and 11 of the Customs Act, 1962, the goods are rendered liable for confiscation u/s 111(d) of the Customs Act, 1962 besides liability u/s 16 of the Prevention of Food Adulteration Act, 1954. A show cause notice was forwarded by Shaw Wallace Company, the clearing agent of the petitioner, to the petitioner on 12-3-1991. On 14-3-1991 the petitioner-company (sic) informed the second respondent to take necessary steps to return the goods and get refund of the purchase consideration and demurrages, port charges, etc., in the light of the confiscation notice issued by Customs and requested the second respondent to appear before Customs to settle the issue. However, the Petitioner was informed by the second respondent by telex, dated 23-4-1991 that subsequent to the hearing and pursuant to the show cause notice issued, the Additional Collector of Customs had agreed that the fresh samples for conformation of fitness for human consumption may be sent to a recognised test house like C.F.T.R.I. Again the petitioner was informed by telex dated 16-5-1991 that the second respondent had taken up the matter with the Director General of Health Services. On 11-7-1991, the first respondent issued a show cause to the petitioner and the clearing agent of the petitioner Shaw Wallace Company, the clearing agent of the petitioner stating that the aforesaid consignment of raisins will be sold by auction if the port charges recoverable thereon have not been paid and the goods were not cleared. Subsequently, Shaw Wallace and Company informed the second respondent to look into the matter and take necessary steps by its letter dated 24-7-1991. On the same day, the second respondent has sent a telex to the petitioner stating that as the goods have been sold in High Seas it is the responsibility of the petitioner-Devasthanam to take suitable action. At this stage, the petitioner-Devasthanam has come to this Court with the prayer as stated supra.

3. It is alleged in the affidavit that the petitioner-Devasthanam is a premier religious institution in the country, it has been put to unnecessary financial hardship as the petitioner has already paid for the consignment of raisins imported and that it has not been able to take delivery and put to further hardship to clear the port dues such [as] wharfages, demurrages, etc., for no fault of the petitioner. It is also alleged in the affidavit that the petitioner has paid the second respondent the entire purchase consideration for goods, that it has been unable to take possession of the goods as the goods have not been cleared by the Port Health Authorities and that the said fact had been brought to

the notice of the second respondent. It is further alleged in the affidavit that the invoice for the purchase of goods is made in the name of the second respondent, that the order was placed on the foreign supplier by the second respondent and as such, it is only the second respondent who can take action against the foreign supplier. The petitioner refers to the bill of lading which states that in case cargo has been rejected by the Port Health Authorities in the discharge point the reshipment expenditure and freight charges are on the shippers account and as such, the second respondent has to reship the goods as they were not cleared by the Port Health Authorities. It is further alleged in the affidavit that as early as 17-2-1991 the petitioner had written to the second respondent to reship the goods, back to the supplier, and that the second respondent did not take prompt action which it was legally bound to do. It is further alleged in the affidavit that in c.i.f. contract, the purchaser is entitled to reject the goods if the goods are not in accordance with terms and conditions of the conduct notwithstanding the fact that the property in the goods has passed to the purchaser by delivery of bills of lading if the purchaser had no opportunity to inspect the goods before. It is further alleged in the affidavit that since the goods have not been cleared by the Port Health Authorities there is no question of petitioner-Devasthanam inspecting the goods and that the petitioner has already stated to the respondent to dispose the cargo and get free replacement or obtain refund of the amount from the foreign supplier. It is further alleged in the affidavit that in every contract to supply goods of a specified description which the buyer has no opportunity to inspect, the goods must not only in fact answer the specific description but also be merchantable, that the second respondent is aware from the very nature of the import that the raisins are imported by the petitioner for the purpose of consumption, that the goods are unmerchantable as the Port Health Authorities have not cleared the consignment as it was not in accordance with the specifications provided in the Prevention of Food Adulteration Act and that the mere fact that the second respondent has sold the goods to the petitioner on the High Seas does not amount to an acceptance of the goods by the petitioner. It is further alleged in the affidavit that admittedly the goods imported are not fit for human consumption and that it was a breach of condition of the contract and more so the petitioner was not aware of the standard and quality of the goods. It is further alleged that the second respondent had a legal duty to reship the goods, that it is allowed the first respondent to bring the goods for auction placing the petitioner in such a situation.

4. Notice of motion has been ordered by me on 1-8-1991.

5. The main contesting respondent, the second respondent herein, has filed a counter affidavit. The fact relating to the import are not disputed in the counter-affidavit. It is further claimed in the counter-affidavit that the sale of consignment of raisins by the second respondent to the petitioner-Devasthanam was made on High Seas basis by endorsing the shipping documents. It is also explained in the counter-affidavit that how the second respondent requested the Turkish Shipper that for the supply of raisins Sultana Standard 9 Natural they

should produce quality inspection certificates, that the shipper should confirm that they will ship the raisins of same quality as requested by the petitioner by its telex dated 11-10-1990 and that it is clear that the second respondent had merely acted upon the order placed by the petitioner-Devasthanam by its telex dated 11-10-1990 and as such, the second respondent cannot be held responsible for any consequences. It is further claimed in the counter-affidavit that after endorsing the shipping documents in favour of the petitioner-Devasthanam, the second respondent lost control over the goods, that the title to the goods passed on to the petitioner for all purposes, and as such the clearance of the consignment has to be made only by the petitioner-Devasthanam. It is further claimed in the counter-affidavit that the invoice for the purchase of raisins was made in the name of second respondent by over-seas supplier since the import licence dated 30-1-1989 was issued in favour of the petitioner-Devasthanam for importing raisins through the second respondent. It is further stated in the counter-affidavit that in the bill of lading No. 129-001185 dated 31-10-1990 issued by the carrier in Column No. 3 under the heading "Consignee" the following words are incorporated :

"To order of State Trading Corporation of India Ltd. and account M/s. Tirumala Tirupati Devasthanam, Tirupati, A.P."

It is further claimed in the counter-affidavit that after endorsing the shipping documents in favour of the petitioner-Devasthanam, the second respondent is in no way responsible for reshipment of the goods, that the fact that the insurance policy stands in the name of the second respondents does not stand in the way for getting goods cleared by the petitioner-Devasthanam, that the second respondent though not legally bound to take up the matter with the overseas supplier/shipper for reshipment of the goods for which the shipper through the message dated 4-3-1991 informed that it has no right to claim anything on the merchandise after more than 45 days. It is further claimed in the counter affidavit that in Paragraph 13 of the counter-affidavit, the reply of the foreign supplier is extracted. It is further stated in the counter-affidavit that in the meanwhile, the Assistant Collector of Customs had issued a show cause notice u/s 124 of the Customs Act stating that the samples for the consignment were drawn by the fourth respondent and that the fourth respondent commented that the goods, namely raisins do not conform to the standards laid down for raisins under the provisions of Prevention of Food Adulteration Act and the Rules thereof. It is stated that the second respondent and the clearing agent of the petitioner-Devasthanam, viz. M/s. Shaw Wallace and Company participated in the enquiry and after hearing the views of the parties present and on mutual concurrence of the parties, the Additional Collector of Customs on 18-4-1991 referred the matter once again for fresh opinion to the Central Food Technical Research Institute, Mysore for the specific purpose of ascertaining whether the goods are fit for "human consumption". In pursuance of the said decision, the second respondent wrote a letter to the petitioner-Devasthanam requesting to render its assistance and co-operation in drawing fresh samples from the consignment lying at Madras Port Trust, that the petitioner has not co-operated in drawing the fresh samples for the purpose of obtaining fresh opinion from the Central Food Technological Research Institute, Mysore and that the Additional Collector of Customs has not passed any final orders and that the confiscation proceedings are still continuing. It is further claimed in the counter-affidavit that when the proceedings are pending before the Additional Collector of Customs, the first respondent herein issued a notice on 11-7-1991 for auctioning the consignment for non-payment of the dues, that the petitioner is not justified in asking the second respondent to bear the expenses in connection with the drawal of fresh samples, that by letter dated 7-8-1991 the Assistant Collector of Customs has concluded that the petitioner-Devasthanam is the ultimate buyer and the user of the goods, that as buyer and owner of the goods the petitioner-Devasthanam has a right even to relinquish the goods at any time, that the second respondent is not the owner of the goods, that it is not liable to incur any expenses in this regard, and that in view of the stand taken by the foreign shipper the petitioner-Devasthanam is not entitled to get refund of the purchase money and other expenses. It is further stated that the matter is purely of a civil nature based on contract, that the civil Court has ample jurisdiction to go into the issue and the petitioner-Devasthanam cannot invoke the extraordinary jurisdiction of this Court. It is further claimed in the counter-affidavit that the writ petition is directly (sic) mainly against the second respondent and that nearly 11 months are over since the arrival of the goods and, therefore, the overseas supplier/shipper is not interested in taking back the goods and as such, it is not possible to reship the goods without concurrence of the overseas shipper. It is categorically claimed in the counter-affidavit that since the second respondent sold the goods on high seas basis, it has lost its control over the goods and as such, the second respondent should not be compelled to re-sale (sic) the goods.

6. The first respondent-Madras Port Trust has filed a counter affidavit claiming that as per the declaration in the ship''s manifest filed by the agents through the Collector of Customs, the consignee is the petitioner herein, that as consignee, the Port Trust has to look out the petitioner-Devasthanam only for all the dues to the Trust. It is further claimed in the counter-affidavit that the second respondent is only a canalising agent and that the Port Trust cannot look to them for its dues since the cargo has been sold on high sea sale to the petitioner-Devasthanam. It is further claimed in the counter-affidavit that the entire transaction is purely commercial in nature and that the Port Trust had to look to the petitioner-Devasthanam for realisation of its legitimate dues. It is further claimed in the counter-affidavit that the total demurrage charges from 3-1-1991 to 31-8-1991 amounts to Rs. 4,61,239 and further demurrage accrues at Rs. 2,088 per day. It is further claimed in the counter-affidavit that the petitioner-Devasthanam is unable to pay the dues and that the Madras Port Trust may be directed to clear the goods or to auction the goods and realise the dues as contemplated under the Major Port Trusts Act, 1963.

7. Mr. George Cherian, the learned Counsel appearing for the petitioner-Devasthanam contends that the State Trading Corporation, the second respondent herein has failed in its duty to re-ship the goods. The learned counsel argues that there is no privity of contract between the petitioner-Devasthanam and the foreign seller. Referring to Sections 16(2) and 17 of the Sale of Goods Act with regard to sale by samples, the learned counsel contends that in such matters the question has to be considered along with c.i.f. contract and the goods should revest with the seller. The learned counsel relies upon the decision in K. Jagannatham Chetty Vs. V. Parthasarathy Iyengar (dead) and Others, . According to the learned counsel for the petitioner, if goods are rejected after inspection it revests with the seller. He further relies upon the decision in Sha Thilokchand Poosaji Vs. Crystal and Co., and In Re: Beharilal Baldeoprasad Firm of Merchants by partner Tagoor Prasad and Others, and in Sorabji Hormusha Joshi and Co. Vs. V.M. Ismail and Another, . The learned counsel further relies upon Chalmers "Sale of Goods" and refers to Section 40 of the Sale of Goods Act to substantiate his contention. The sum and substance of the argument of the learned counsel appearing for the petitioner-Devasthanam is that insofar as there is no privity of contract between the petitioner and the second respondent, even though the title of the goods is vested on the petitioner by endorsing the bill of lading when once it is rejected after inspection, it revests with the seller. The learned counsel further contends that even though the petitioner was informed to take immediate action, the State Trading Corporation failed to take action at the appropriate time and as such, the properly is being brought to auction by the Madras Port.

8. Per contra, Mr. N. Sridharan, the learned counsel appearing for the State Trading Corporation, the second respondent herein, relying upon the decision in J.V. Gokal and Co. (Private) Ltd. Vs. The Assistant Collector Sales-tax (Inspection) and Others, contends that the petitioner-Devasthanam can abandon the goods and that the title does not re-vest with the second respondent on the fact of the case. The learned counsel refers to the effect of Section 45 of the Sale of Goods Act and contends that since the goods are routed out through the State Trading Corporation, the contract is made by the State Trading Corporation with foreign seller and it is done only after the orders placed by the petitioner-Devasthanam and as such it cannot be contended that the State Trading Corporation is the owner of goods and it has to take action for the re-shipment of the articles. According to the learned counsel for State Trading Corporation, once bill of lading is endorsed in high seas in favour of the petitioner, the State Trading Corporation lost its control over the goods and as such, there is no legal duty cast upon the State Trading Corporation to reship the goods. The learned counsel further contends that if at all the petitioner-Devasthanam is aggrieved the petitioner has to approach the civil forum and that the petitioner cannot come up to this Court praying for a writ of mandamus directing the State Trading Corporation to reship the consignment, especially when the foreign seller is not reply to take back the goods. He further contends that since the entire

consideration has been paid by the petitioner to the State Trading Corporation, it is always open to the petitioner to file a civil suit, if it is so advised, for damages, against any of the respondents or against the foreign seller.

9. I have carefully considered the arguments of Mr. George Cheriyan, the learned counsel appearing for the petitioner-Devasthanam, Mr. N. Sridharan, the learned counsel appearing for the main contesting respondent, the second respondent herein, Mr. A. E. Chelliah, the learned counsel appearing for the first respondent and of Mr. V. Aravamudan, the learned counsel appearing for the third respondent. The facts are not disputed. An order was placed by the petitioner-Devasthanam for the purchase of raisins from the foreign seller and due to canalising it has been routed through the State Trading Corporation, the second respondent herein. As such, the State Trading Corporation has placed orders with the foreign seller to the account of petitioner-Devasthanam. It is true that the import licence and insurance stand in the name of the State Trading Corporation. But, it is to be noted that it is only to the account of the petitioner-Devasthanam. It is also not disputed that when a sale was concluded by high seas by endorsing the bill of lading by the petitioner-Devasthanam. The only question to be decided is who is the owner of goods, when the goods arrived at Madras Port and when it is rejected, whether the petitioner-Devasthanam or the S.T.C. A Division Bench of this Court in Muthukrishna v. Madhavji Devichand and Company AIR 1953 Mad 8 has considered the scope of Sections 42 and 59 of the State of Goods Act, 1930 has held that :

"In a c.i.f. contract the purchaser is entitled to reject the goods as not being in accordance with the terms of the contract notwithstanding that the properly in the goods has passed to him by delivery of the bills of lading if he had no opportunity to inspect the goods before. It is only when buyer does any act which is inconsistent with the ownership of the seller that buyer loses his right of rejecting u/s 42, Sale of Goods Act."

"When a purchase rejects the goods after inspection, the ownership would revest in the seller and the purchaser has no right to have the goods sold at the risk of the seller. If the purchaser sells the goods by public auction on ground that the seller had repudiated any liability, his right is only to damages for breach of warranty ......"

In In Re: Beharilal Baldeoprasad Firm of Merchants by partner Tagoor Prasad and Others, , while considering the scope of Sections 15 and 16 of Sale of Goods Act with regard to implied condition as to goods being of merchantable quality a Division Bench of this Court has observed as follows :-

"The sale of goods by description may have reference to the quality of the goods. To that extent the goods must satisfy the conditions as to quality. In the case of foodstuffs where they are purchased by description an implied conditions as to their being sound and of merchantable quality may also arise. The condition of the article being reasonably fit for a purpose may be implied from the nature of description of the article itself as in the case of ''dal''.

Held, that only the goods corresponding to the quality stipulated for by the plaintiff''s firm could sell as ''dhall''. Therefore, the seller was bound to supply goods in conformity with the contract and of merchantable quality and this was not found to be the case on examining the goods ... Sections 41, 16 and 17 show that even after the buyer had a reasonable opportunity of examining the goods of the purpose of ascertaining whether they are in conformity with the contract and even when such an examination has taken place, it might still be open to the buyer to reject the goods where they are not in conformity with the contract, because of some defect, which was not apparent on such examination. In other words, Section 41 gives the buyer a right of inspection and unless he has had an opportunity of exercising that right, he is not deemed to have accepted the goods and has a right to reject them and therefore till the goods are inspected and accepted, it cannot be stated that the relationship of buyer and seller has become extinguished and the relationship of debtor and creditor or of principal and agent alone remained to be considered. In other words, contract to buy does not immediately transfer ownership but only when goods are found by buyer to be in good condition or when he has accepted them ...."

Again, in the very same judgment, the Division Bench, considering the scope of provision of Sale of Goods Act with regard to sale by description, considered the remedies of the buyer and observed as follows :-

"On rejection of the goods as not answering to description the buyer, if he has paid for them, is entitled to recover from the seller the price as money had and received for his use. Ordinarily when there is a dispute between a buyer and a seller with reference to quality, it would be the duty of the seller to prove that the goods were of the quality contracted for."

In Sorabji Hormusha Joshi and Co. Vs. V.M. Ismail and Another, a Division Bench of this Court has held that where goods are bought by description there is an implied condition that the goods shall be of merchantable quality. In that case, the Division Bench has held that though reasonable opportunity was given for inspection, that opportunity was not availed of and as such, the seller is not liable for any subsequent damages. It is further held that the inspection and rejection must be without practicable delay. It is further held in that case that whether a defect is latent or patent will depend on the nature of the goods and the nature of the defect and the extent of examination needed for its discovery and it is a question of fact in each case. Section 41 of the Sale of Goods Act reads as follows :-

"(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the

buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract."

However, it is to be seen that in this case the goods were found to be not in conformity with the provisions of Prevention of Food Adulteration Act and a show cause notice has been issued to the Customs Authorities for confiscation. This is based upon a sample taken by C.F.T.R.I., Mysore. So, it is very clear that according to the report of C.F.T.R.I., Mysore, the raisins are useless and cannot be used for human consumption. On the basis of the said report of the Port Health Authorities, when the petitioner-Devasthanam informed the second respondent herein to take action to reship the goods to the authorities in Turkey, no action seems to have been taken by the second respondent. The argument of the learned counsel for the second respondent that since the petitioner-Devasthanam endorsed the bill of lading, the Corporation lost its control over the goods cannot be accepted. On the basis of the certificate of analyst for the purpose of the customs clearance the goods were rejected by the Devasthanam by asking the second respondent to reship the goods and as such, it cannot be said that the petitioner has to let in oral evidence. It is settled position of law, as has been decided by this Court, mentioned supra, considering the provisions of Sale of Goods Act with regard to c.i.f. contract, since all the goods are rejected. The other question is who has got the privity of contract with the foreign seller. It has been decided in Mohd. Serajuddin v. State of Orissa 36 (1975) STC 136, when considering the issue "in the course of export" u/s 5 of the Central Sales Tax Act, 1956, that the privity of contract was only between the Corporation and the foreign buyer in that case. It has been held in the above-mentioned case that the appellant therein was under no contractual obligation to the foreign buyer either directly or indirectly. Here, it is a converse case. The State Trading Corporation, the second respondent herein, is the buyer, and the seller is in Turkey. As such, the contention of the learned counsel for the petitioner that the petitioner-Devasthanam had no privity of contract with the foreign seller has to be accepted on the principles laid down by the Supreme Court in Mohd. Serajuddin v. State of Orissa [Vol. 36 (1975) STC 136. The decision relied upon by the second respondent in J.V. Gokal and Co. (Private) Ltd. Vs. The Assistant Collector Sales-tax (Inspection) and Others, is with regard to the question "in course of import". I do not think that the facts of the said decision will help the second respondent herein. The said decision is an authority for the proposition that in commercial ...... that a bill of lading represents the goods and the transfer of it operates as a transfer of the goods. That is all. It is true that u/s 43 of Sale of Goods Act, that the buyer is not bound to return rejected goods, but it is sufficient to intimate the seller that he refused to accept the same. But, in view of the provisions of Sale of Goods Act, with regard to the sale of goods on sample and with regard to the position of law laid down by this Court with regard to C.I.F. contract and rejection of goods, I am not inclined to accept the argument of the learned counsel appearing for the State Trading Corporation that it has no duty and that the petitioner-Devasthanam alone has to look after the same. Considering the facts of the case as a whole, in my view a public authority like the State Trading Corporation, the second respondent herein cannot, and should not be allowed to evade its duties on the pretext that the Devasthanam, the petitioner herein, is the owner of the goods and the second respondent has lost the title over the goods. On a consideration of the cases cited by the learned counsel for the petitioner, on this aspect I am of the opinion that the State Trading Corporation, the second respondent herein, has to take steps to reship the goods if possible, otherwise to face the proceedings taken by the Customs Authorities as well as by the Port Trust Authorities. As on date, in my view, the State Trading Corporation is the owner of the goods and the petitioner-Devasthanam cannot be compelled to answer either to the first respondent or the third respondent. So, though the relief asked for in the writ petition is for re-shipment of goods, considering the facts and circumstances of the case on hand, I am of the view that a direction is to issue to the second respondent to face the proceedings before the Customs Authorities as well as the Port Trust Authorities. The first respondent herein, the Port Trust, Madras, is also directed to issue notice to the second respondent, the State Trading Corporation with regard to dues and proceed as if the second respondent is the owner of the goods. It is also made clear that it is open to the second respondent herein to take any appropriate action for reshipment and against the petitioner-Devasthanam for damages, if so advised, on the basis of the contentions raised before me in a civil Court. The writ petition is allowed to the extent stated above. There will be no order as to costs.