

(1991) 02 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Appeal No's. 2153 of 1990 and 468 of 1991

Trishul Impex

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

Customs Act, 1962 — Section 45

Citation : (1991) 32 ECC 342 : (1991) 34 ECR 161 : (1992) 58 ELT 182 : (1991) ILR Delhi 443

Hon'ble Judges : Milap Chand Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : P.K. Jain, Madan Lokur, B. Dutta and R.K. Joshi, for the Appellant;

Judgement

This Judgment has been overruled by : International Airports Authority of India and Others Vs. Grand Slam International and Others, (1995) 50 ECC 4 : (1995) ECR 209 : (1995) 77 ELT 753 : (1995) 2 JT 452 : (1995) 1 SCALE 859 : (1995) 3 SCC 151 : (1995) 2 SCR 149

M.C. Jain, J.—Heard counsel for the parties. This court by order dated November 12, 1990, allowed the petition and directed respondents 1 to 5 to release the goods without payment of demurrage charges in favor of the petitioner and also to issue a Detention Certificate in respect of these goods from February 27, 1988 when the Bill of Entries were filed until the date of actual clearance.

2. Respondent No. 5 has now filed this C. M. 468/91 in which a declaration is sought that the liability of any demurrage charges and ground rent charges will have to be borne by the petitioner. The petitioner's case is that in all 71 cartons were imported and the Bill of Entries were presented on February 27, 1988 and thereafter the Customs authorities instituted an inquiry and a show cause notice was issued on December 15, 1988. Ultimately however, by order dated March 15, 1990 the Assistant Collector Customs discharged the said show cause notice. The petitioner's case is that when the show cause notice has been discharged, the petitioner has no liability for payment on demurrage charges and/or the ground

rent charges. According to it, the Container Corporation of India is the custodian on behalf of the Customs authorities u/s 45(2) of the Customs Act and as such after issuance of the Detention Certificate by the Customs authorities the Inland Container Depot is under an obligation to release the goods without payment of demurrage charges and ground rent charges.

3. Counsel for the petitioner referred to two decisions in Support of his contention. One decision is of this Court dated July 28, 1987 in *Trans Asia Carpets v. Union of India*, Ccp No. 97/87(1). In that case this court had observed that the Bombay Port Trust as an agent of the Customs authorities was bound by the judgment of the court whereby the Customs Collector was to waive the demurrage or the detention charges and it was not open to the Bombay Port Trust to stress upon any alleged minor error in the detention certificate. It was observed that the Customs Collector had to obey the order of the court. It was necessary for the Bombay Port Trust to assist them in ensuring compliance with the order of the court. The Bombay Port Trust instead of assisting them questioned their authority and the detention certificate ordered to be issued by this court. The petitioner submitted that in the present case the Inland Container Depot is the custodian of the Customs authorities u/s 45 of the Customs Act and as such bound by any orders passed against the Customs authorities.

4. The other judgment referred to by the learned counsel for the petition is *Sri Tirupathi Plastics v. Assistant Collector of Customs & Others*, (1990) 27 Ecc 92. There, the goods were in the custody of the Railways. It was observed that as per notification, Notice No. 21/81 (Custom) dated August 7, 1981, Southern Railways are the approved custodian u/s 45 of the Customs Act, 1962. Reliance was placed in that case on an earlier decision in *Equipment Sales Corporation v. Assistant Collector of Customs*, (1990) 25 Ecc 145, wherein it was ruled that though there were no rules or regulations under which a detention certificate could be issued by the Department, it was by virtue of the decisions of the Courts that such detention certificates are being issued by the Customs and other authorities. It was observed in the course of the order that a demurrage waiver certificate must necessarily follow in all cases where detention certificate has been issued. The learned Judge observed that if correctly understood what the decision lays down is that when the goods are detained for whatever reason by the Customs authorizes and riven to the custody of the approved custodians of such detained good"s pending adjudication of rival claims between the Department and the importer, a detention certificate or an order detaining the goods must be furnished to the importer so that there is evidence of detention and the reason therefore. It was further held that if the Department succeeds in justifying its retention, then the burden of payment of demurrage will necessarily fall on the Importer. If it is otherwise, the Department must necessarily take on the liability of meeting the demurrage charges of the approved custodian. To hold otherwise would be unjust to the person who has met with success in his litigation with the Department.

5. Admittedly, in the present case, the Container Corporation of India through the Inland Container Depot is the custodian of goods u/s 45 of the Customs Act. As the Inland Container Depot is the custodian for the Customs authorities and the detention certificate has been issued by the Customs, then the Inland Container is bound to release the goods to the importer and with regard to the demurrage charges and ground rent charges, it is the Customs Department which is liable to the Container Corporation of India.

6. Counsel for the Container Corporation of India submitted that the Shipping Corporation of India Ltd. vide its letter dated January 28, 1991, has asked the Container Corporation not to release the goods although, they had issued delivery order earlier to the importer. The importer shall get the delivery order revalidated. The demurrage charges prior to the date February 27, 1988, will be borne by the importer on which date the Bill of Entries were submitted by the petitioner and after February 27, 1988, till the goods are released, the Customs Department would, be liable for the payment of demurrage charges and ground rent charges to Container Corporation.

7. We, Therefore, direct the Container Corporation of India respondent No. 5-Manager, Inland Container Depot to release the goods to the petitioner on submission of revalidated delivery order and on payment of the demurrage charges and the ground rent charges for the period prior to February 27, 1988. The goods would be released within four days from the date of the fulfillment of the above two conditions, by the petitioner. C.M. is disposed of.