(1992) 11 SC CK 0003

In the Supreme Court Of India

Case No : Slp (C) No. 13973 Of 1992

Yogesh Kalidas Shah APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 17-11-1992

Acts Referred:

Citation : (1993) 64 ELT 162 : (1993) 4 SCC 349 Supp

Hon'ble Judges : S. C. Agrawal, J;M. N. Venkatachaliah, J;A. S. Anand, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. We have heard Sri Salve, learned senior counsel for the petitioner, Sri R.K. Jain, learned senior counsel for the Bombay Port Trust and Sri PH. Parekh, learned Counsel for the auction-purchaser (Respondent No. 5).

2. The grievance of the petitioner is that pending customs clearance, the goods which were held by the Port Trust, were put up by the Port Trust Authorities for sale on 22-11-1991 for the recovery of the port-charges. The sale elicited an offer of Rs. 32,22,000/- for the goods which in two lots "EE 4000" and "EE 4022" were said to contain "Ball-bearing". The sale was, however, not confirmed as in the meanwhile the petitioner appears to have cleared the port-charges then due. The goods were again put up for auction on 26th May, 1992 under what is called Walk-in Tender Scheme. This time Rs. 20,37,000/- was offered by Respondent No. 5. On 8th June, 1992, the customs authorities required the Bombay Port Trust to withdraw the goods from auction until further instructions from the Customs. But the Port Trust did not relent. On 2nd July, 1992, the Chairman of the Port Trust confirmed the sale.

3. The insistence of Sri Parekh, appearing for the auction purchaser, on retaining the benefit of the sale is quite understandable as the goods which fetched an offer of Rs. 32,22,000/- were knocked down in favour of Respondent No. 5 for Rs. 20,37,000/-. We do not want to go into the problems of lack of co-ordination

between the Customs Authorities on the one hand and the Port Authorities on the other whether the latter could ignore the intimation of the former for deferring the sale. It would appear that the sale dated 26-5-1992 under the "WITS was for the recovery of the port charges which, according to the petitioner, was in the neighbourhood of Rs. One lakh fifty thousand.

4. The auction purchaser has deposited Rs. 2,03700/- which represent 10% of the price of Rs. 20, 37,000/- and that sum of Rs. 2,03,700/- is lying with the Port Authorities from 26-5-1992. It would indeed be unconscionable to allow the sale to assume finality. It is difficult to appreciate as to how the Port Authorities found this offer acceptable to them.

5. We set aside the sale of lots EE 4000 and EE 4022 held on 26-5-1992 in favour of Respondent No. 5 and direct the Port Authorities to release the goods to the petitioner against payment of the port charges claimed by the port authorities. The goods will be released upon production of evidence of customs clearance. It is however proper that Rs. 2,03,700/- deposited by the auction-purchaser be refunded to him by the port authorities. Respondent No. 5 will also be entitled to a solatium which we quantify at a lump sum of Rs. 30,000/-which the petitioner shall pay by means of a crossed bank draft drawn on a nationalised bank in favour of respondent No. 5 and delivered to Sri Parekh, his learned Counsel, within two weeks from today.

The receipt for payment of this Rs. 30,000/- to Respondent No. 5 shall be produced before the port authorities at the time of the release of the goods. The goods shall be released by the port authorities within one week of payment of port-charges and tender of the requisite document.

The payment of the Port charges now shall be as claimed by the Port Trust. However, the petitioner is at liberty to make a claim for refund upon production of Petention Certificate. We, however, do not say anything on the merits of the proposed claim, which shall be dealt with in accordance with law.

6. The writ petition No. 1562/1992 pending in the High Court of Bombay is, at the request of the petitioner, withdrawn to this Court and disposed of finally as having become infructuous. The petitioner shall pay to Respondent No. 5 costs which we quantify at Rs. 2,500/-.

7. The SLP is disposed of accordingly.