

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
M/S. SANJEEV WOOLLEN MILLS

DATE OF JUDGMENT: 13/05/1998

BENCH:
SUJATA V. MANOHAR, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Mrs. Sujata V. Manohar, J.

Delay condoned.
Leave granted.
Heard both sides.

This is an appeal from the judgment and order of the Delhi High Court dated 15.7.1996 in Civil Writ Petition No. 3469 of 1994, and from an order dated 19.3.1997 in a Contempt Petition filed in connection with the order of 15.7.1996, being Contempt Petition No. 340 of 1996 before the Delhi High Court.

The respondent had filed four Bills of Entry bearing (1) No. 102619 dated 29.1.1991; (2) No. 102815 dated 15.2.1991; (3) No. 102878 dated 20.2.1991 and (4) No. 103166 dated 19.3.1991. The Bills of Entry were in respect of Synthetic waste (soft quality) imported by the respondent. The respondent claimed release of the goods free of duty in terms of valid import/export pass-book. The goods were examined and samples were drawn for testing. According to the appellants, the goods imported were prime fibre and not soft waste. The value according to the appellants was not commensurate with the quality of goods under import. Hence a show-cause notice was issued to the respondent in each case.

In the meanwhile, since the goods were not being released and were incurring heavy demurrage charges as also container charges, the respondent filed a writ petition in the Delhi High Court in respect of two Bills of Entry No. 102815 and No. 102878 being Civil Writ Petition No. 802 of 1991. In the interim application taken out by the respondent in the said petition bearing C.M. No. 1587 of 1991, learned counsel for the appellants asked for further time for testing the samples. He also made a statement which is recorded by the High Court in its order of 3.4.1991, that in case after inspection, the goods are found to be synthetic waste, the entire demurrage and container charges will be borne by the Customs Department and the Customs Department shall issue the requisite certificate.

Thereafter by another interim order, the High Court also directed the Principal Collector to adjudicate the issue within a time bound programme. Accordingly the

Collector, by his order dated 28.6.1991, decided the issue and imposed a redemption fine of Rs. 11,00,000/- and personal penalty of Rs. 1,32,00,000/- with a direction to clear the goods on payment of duty at enhanced price of Rs. 28.14 per kg. CIF. This was in respect of Bill of Entry No. 102815. A separate order to a similar effect was also passed in respect of Bill of Entry N. 102878 imposing a different redemption fine and penalty. The respondent filed appeals. In the meanwhile, because the Departmental remedies were available to the respondent, the High Court dismissed Civil Writ Petition No. 802 of 1991 by its order dated 24.7.1991. Ultimately the dispute went up to the Customs, Excise and Gold Control Appellate Tribunal, which remanded the matter pertaining to all the four Bills of Entry to the Principal Collector, subsequently designated as Chief Commissioner, for a fresh adjudication. The Chief Commissioner, by his order dated 11.8.1995, ordered the unconditional release of goods under all the four Bills of Entry.

In the meanwhile, in August 1994, because of the delay in disposal of Departmental proceedings, the respondent filed a fresh writ petition before the Delhi High Court being Civil Writ Petition N. 3469 of 1994 for release of goods under the four Bills of Entry. In the interim applications being C.M. Nos. 5113 of 1995 and 6401 of 1994, learned counsel for the respondent stated that the demurrage charges were so enormous that they were far in excess of the price of goods by that time. He also drew the attention of the Court to the order of 3rd of April, 1991 in Civil Writ Petition No. 802 of 1991 where, under similar circumstances, the Customs Department had stated that if the goods were found to be synthetic waste, the entire demurrage and container charges would be borne by the Customs Department; and the Customs Department would issue the requisite detention certificate. Counsel for the appellants wanted instructions in that regard. The interim applications were thereupon adjourned from 24th of August, 1995 to 6th of September, 1995. The documents before us do not indicate what happened thereafter in the interim applications.

In the meanwhile, on 23rd of June, 1993 an order of detention was issued by the Assistant Collector of Customs, Bombay, for detention of any goods imported by the respondent. The detention order was for recovery of a sum of Rs. 1,15,21,249/- claimed as due and payable by the respondent to the Customs in respect of certain consignments imported by them in 1983. In respect of these consignments a writ petition had been filed by the respondent before the Bombay High Court being Writ Petition No. 2463 of 1983. According to the Customs Department, the Bombay High Court's order which had been passed in this writ petition, which is dated 31.7.1991, was not complied with in so far as payment of interest was concerned, by the respondent. Hence the detention order was made. This detention order was in force when Civil Writ Petition No. 3469 of 1994 was filed by the respondent in the Delhi High Court.

Writ Petition No. 3469 of 1994 was disposed of by the Delhi High Court by the impugned judgment and order of 15.7.1996. Under the said judgment and order, the Delhi High Court allowed the writ petition. The High Court examined the plea of the appellants that the goods were not being released because of the detention order of 23.6.1993. The High Court in this connection, referred to an earlier detention order passed by the Customs authorities on 14.2.1992 was withdrawn on 11.3.1992 by the Customs Department. The order of 11.3.1992 withdrawing the detention order of 14.2.1992, in terms, stated that all the arrears of

revenue in respect of writ Petition No. 2463 of 1983 as per the terms and conditions of the Bombay High Court's order dated 31.7.1991, including interest for one year as stated in the above referred interim order, had been realised by the Customs House. The point whether the party (the present respondent) was required to pay interest from the date of clearance of the goods till the final disposal of the writ petition was yet to be got clarified from the Bombay High Court. Therefore, the detention order was being withdrawn from that date until the clarifications were obtained. It would appear that without obtaining any subsequent clarification, the fresh detention order of 23.6.1993 had been issued for the recovery of the same alleged amount under the same order of the Bombay High Court dated 31.7.1991 in Writ Petition No. 2063 of 1983.

The Delhi High Court, therefore, came to the conclusion that there was no justification for detention of the consignments covered by the four Bills of Entry. It also held that when the Chief Commissioner had ordered unconditional release of the goods on 11.8.1995, there was no justification for detaining the goods. The High Court also noted the statement earlier made in Civil Writ Petition No.802 of 1991 in the interim order dated 3.4.1991; and directed that the goods should be released without recovery of any demurrage or container charges. The present appellants were directed to issue the requisite certificate in terms of the undertaking given by it on 3rd of April, 1991 within a period of four weeks so that the present respondent could get the goods released.

Pursuant to this order, a detention certificate was issued on 15.10.1996. However, although the Container Corporation of India had waived 96% of their charges, the Shipping Corporation of India, out of a total amount of Rs. 13,11,00,4.63 said to be due to it, waived a substantial amount but was insisting upon payment of Rs. 56,43,470/-. Therefore, the entire demurrage and container charges were not being waived. In view, therefore, the contempt petition was taken out by the respondent being Contempt Petition No. 340 of 1996.

By the impugned order of 19.3.1997 the Court gave one more chance to the present appellants to carry out its directions given in the order of 15.7.1996. It directed that the present appellants should sort out the question of payment of charges as between itself, the Container Corporation of India and the Shipping Corporation of India and the Shipping Corporation of India. The goods should be released to the respondent within three weeks.

After the order of 19.3.1997, the present appellants, in compliance with the directions contained in the said two impugned orders, addressed a letter to the respondent dated 5.4.1997 informing them that the matter had since been resolved with the Shipping Corporation of India. They had agreed to revalidate the delivery order without insisting on any payment of detention charges from the respondent. M/s. Container Corporation of India had also agreed to give the delivery of the goods contained in the 38 containers containing the goods imported under the said four Bills of Entry, against a valid delivery order without insisting on payment of any demurrage charges. The letter also recorded that the Customs authorities had already released the said goods and hence the respondent could obtain delivery.

Despite this letter the respondent has not taken delivery of the goods. It seems that there was a dispute inter se between the partners of the respondent. In respect of these disputes a suit was filed in the Delhi High Court

by on of the partners being Suit No. 748 of 1997 in which initially on 11.4.197, and again on 27.1.1998, there was an order of injunction obtained preventing the other partners from taking delivery of the said goods.

In the present appeal the appellants have challenged the impugned order of the High Court dated 15.7.1996 and the second order in the contempt petition dated 19.3.1997. They have contended that they should not have been asked to issue a detention certificate or to bear demurrage and container detention charges. Obviously, both the orders of the Delhi High Court turn entirely upon the special facts of this particular case. It has noted that test reports confirmed the contention of the present respondent that the consignments imported by them under the four Bills of Entry were of synthetic waste soft quality and not prime fibre. Despite the test reports, on one pretext or the other, the goods were not being released by the Customs authorities. The respondent had complained of mala fides on the part of the Customs officers concerned with the handling of the four Bills of Entry in question. The respondent had even complained to the then Finance Minister about the Customs officers in question demanding a large amount as illegal gratification for releasing the goods.

Since this was a serious allegation we had directed the appellants to file an affidavit to explain what steps they had taken in connection with this complaint. They have now filed a detailed affidavit setting out that in accordance with the directions of the then Hon'ble Finance Minister as recorded on 19.10.1996 by the Chairman, Central Board of Excise and Customs, action against the officers responsible for delay in clearance of consignments was being contemplated. The affidavit sets out the considerable time taken in ascertaining the names of the officers concerned with the handling of these consignments. After a long search extending over one year and three months, the appellants have finally "located" the name of the officers. They have now called upon the officers to give their explanation.

Looking to the totality of circumstances pertaining to the import of the consignments under the four Bills of Entry and the inordinate delay of about six years for their release, the High Court has passed the impugned orders directing the appellants to issue a detention certificate and bear the demurrage and container detention charges. They are obviously orders passed in the special circumstances of the present case, and particularly the conduct of the Customs authority in not releasing the goods even after the order of unconditional release dated 11.8.1995 passed by their own Chief Commissioner. The conduct of the Customs officers concerned is also under investigation. We do not think that this is a case where any investigation at our hands is required. The apprehension of the appellants that this will constitute a precedent is not justified because it is clearly an order which is meant to do justice to the respondent looking to the totality of circumstances and the conduct of the appellants. Obviously, for any delay on the part of the respondent in taking delivery of the goods after 5.4.1997, the respondent will have to bear the consequences. For the period prior to 5.4.1997, however, the order of the High Court does not require any intervention from us. The appellants shall file a progress report relating to the departmental inquiry by 30th November, 1998.

The appeal is dismissed with no order as to costs.