

PETITIONER:
M/S.RISHI TRADE CENTRE ETC.

Vs.

RESPONDENT:
COLLECTOR OF CUSTOMS & ORS.ETC.

DATE OF JUDGMENT: 16/09/1996

BENCH:
B.P.JEEVAN REDDY, K.S. PARIPOORNAN

ACT:

HEADNOTE:

JUDGMENT:
O R D E R

Delay condoned in S.L.P.(C) No.19051 of 1996 (cc.No.2966/96).

Leave granted in both the appeals.

Civil appeal No. 12036 of 1996 @ S.L.P. (C) No. 19051 of 1996 (CC. No. 29660) (Narayani Trading Concern (p) Ltd.)

This appeal is preferred against the judgment of a Division Bench of the Calcutta High Court dismissing the appeal preferred by the respondent-collector of customs,calcutta port & others.

The appellant says that he is engaged in the business of importing of various articles from foreign countries for consumption in Nepal and that he holds necessary Licences and permits in that behalf from the Government of Nepal.He imported white poppy seeds from Pakistan. They were imported by sea. The goods arrived at Calcutta port, from where they were to be taken to be Nepal along he route prescribed in the Indo-Nepal Treaty of trade, Transit and Clearance. The goods were detained by the customs authorities at calcutta port. Since the goods were not released for quit some time,the appellant (and other similarly placed importers) approached the Calcutta High Court by way of writ petitions for issuance of an appropriate writ, order or direction to the customs authorities to release the said goods. The learned single judge allowed the writ petitions by his judgment and order dated May 19, 1995. The learned judge directed the respondents "to forthwith release the consignment of poppy seeds forming the subject matter of this writ application,and to allow the petitioner concerned to transit the same to Nepal in accordance with and in the manner provided for in the provisions of the treaty of transit and Treaty of trade between the Government of India and the Government of Nepal and the improcedure forming part thereof on the route mentioned in the Customs Transit Declaration (Import), being Annexure 'A' to writ petition, in the manner indicated below."

The learned single judge also appointed,rather curiously, an advocate of the High Court as a receiver to ensure against pilferage of goods enroute and also to guard against diversion of good for use in India.

Against the judgment of the learned single judge, the respondents filed appeal which have been dismissed by the Division Bench. Following that judgment, the application for intervention filed by the appellant in civil appeal arising from S.L.P.(C) No.10287 of 1996 was also dismissed.

In this appeal, it is submitted by Sri Joseph Vellapally, learned counsel for the appellant, that the action of the customs authorities in retaining the innocuous goods like poppy seeds for an inordinately long time at Calcutta port is clearly a mala fide action. He submitted that on account of the long period of detention, the goods have deteriorated completely and have become valueless. He, therefore, submits that the respondents must be directed to compensate the appellant in full for the loss and damage suffered by the appellant on account of the unlawful seizure and detention of the appellant's goods. Learned counsel also attacks the findings recorded by the two learned judges (constituting the Division Bench) to the effect that the action taken by the customs authorities was not a mala fide one.

In our opinion, however, the appellant is not entitled to claim such a relief in this appeal for the following reasons: the writ petition filed by the appellant was allowed by the learned single Judge merely directing the release of the goods. So far as the claim for reimbursement of demurrage and port charges are concerned, the learned Judge merely observed that the matter is left to the good sense of the customs authorities to take appropriate steps to avoid further litigation. In his order, there is no reference to any claim of compensation for loss or damage to goods. No appeal was preferred by the appellant against the judgment of the learned single Judge. Only the respondents had preferred appeals, which have been dismissed by the Division Bench as stated above. In the circumstances, it is not open to the appellant to claim in this appeal not merely the reimbursement and demurrage and port charges but also compensation for the alleged loss and damage to his goods.

Secondly, there is no proof of extent of damage or loss to the goods.

The appellant is, therefore, not entitled to claim any compensation or damages in this appeal. It is accordingly dismissed. No costs.

C.A.No.12035 of 1996 @ S.L.P.(C) No.10287 of 1996
(M/s.Rishi Trade Centre)

For the reasons given hereinabove, this appeal is dismissed. No costs.