

**2002-(BO1)-GJX-0464-BOM**

Modern Rubber Industries

Vs.

Union Of India.

**Court :**

**Decided On :**

December 02, 2002

**Equivalent Citation(s) :**

2003-(154)-ELT-0571-BOM

**Judge(s) :**

Devadhar J P, V C Daga

**Judgment :**

MODERN RUBBER INDUSTRIES v. UNION OF INDIA.

Writ Petition No. 3056 of 2001, decided on December 2, 2002.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Counsel : S/Shri S. N. Kantawala, V. N. Kantawala - Petitioner.

S/Shri A. C. Singh, D. A. Dube, T. C. Kaushik, Ms. S. I. Shah - Respondent.

[Order per : V. C. Daga, J.]. - The petitioner is a sole proprietary concern, inter alia, engaged in the business of retailing and retreading of tyres. The petitioner has filed this petition seeking declaration and consequent direction holding Customs Department liable to bear entire charges of the Central Warehousing Corporation ("CWC" for short) payable in respect of the petitioner's goods as and from the date of the final order of Customs, Excise and Gold (Control) Appellate Tribunal ("CEGAT" for short) dated 4th September, 1996 relying upon the judgment of the Apex Court in the case of Shipping Corporation of India Ltd. v. C.L. Jain Woolen Mills, 2001 (129) E.L.T. 561 (S.C.) = AIR 2001 SC 1806.

The Facts :

The facts, in nut shell, leading to the present petition, are as under :

The petitioner filed Bill of Entry dated 20th May, 1994 seeking clearance of a consignment of 127.90 MT of scrap used rubber tyres for retreading valued at Rs. 4,07,599/- claiming assessment under Chapter Heading 4012.90 of the Customs Tariff Act, 1975.

The Customs Department loaded the value of the goods from Rs. 4,03,524/- to Rs. 87,51,269/- and refused to release the said goods and issued show cause notice calling upon the petitioner to show cause as to why duty should not be charged on the loaded value. It was also proposed to confiscate the goods and impose penalty on the importer, the petitioner.

On receipt of show cause notice, the petitioner filed reply. By order dated 20th July, 1995 the Respondent No. 2 adjudicated upon the said show cause notice and imposed fine of Rs. 20,00,000/- and penalty of Rs. 15,00,000/- on the petitioner.

Being aggrieved by the order passed by Respondent No. 2, the petitioner preferred statutory appeal along with application for stay before the CEGAT. The final order came to be passed by the CEGAT reducing the fine from Rs. 20,00,000/- to Rs. 15,00,000/- and penalty from Rs. 15,00,000/- to Rs. 5,00,000/-. Pursuant to the order of the CEGAT when the petitioner approached respondent No. 3 for clearance of the goods, the Respondent No. 3 vide his order dated 7th November, 1996 sought to demand Countervailing Duty ("CVD" for short) in the sum of Rs. 1,70,47,688.50.

Being aggrieved by the aforesaid order dated 7th November, 1996 demanding CVD, the petitioner preferred appeal before the Commissioner of Customs (Appeals), Mumbai, who, by a well reasoned speaking order, set aside the order dated 7th November, 1996 passed by Respondent No. 3 and remanded the matter for de novo adjudication on merits.

The Respondent No. 3, after remand passed order dated 26th June, 1998 holding that CVD was payable but did not quantify the liability in terms of money. The Revenue was required to prefer an appeal against the aforesaid order dated 26th June, 1998 before the Commissioner of Customs (Appeals), Mumbai who once again directed Respondent No. 3 to decide the matter afresh on its own merits.

The Respondent No. 3 despite the order dated 26th June, 1998, once again demanded CVD

approximately, in the sum of Rs. 1.70 crore vide his order dated 3rd January, 2000. With the result, the petitioner was again forced to file an appeal before the Commissioner of Customs (Appeals), Mumbai against the said order dated 3rd January, 2000. Once again, by order dated 25th September, 2000 passed by the Commissioner of Customs (Appeals), Mumbai, the matter came to be remanded to Respondent No. 3 for de novo adjudication.

The Respondent No. 3, ultimately, by an order dated 16th October, 2001, appears to have appreciated the legal submissions made, and finally dropped the demand for CVD. In the meanwhile, the warehousing charges continued to mount and went to the extent of Rs. 25 lakh (approximately) till the date of the above order. The order dated 18th October, 2001 passed by Respondent No. 3 does not contain any direction that warehousing charges should be borne by the Customs Department. This order of Respondent No. 3 has attained finality.

The narration of the above facts would clearly show that the legal battle from original authority to appellate authority and from appellate authority to the original authority went on for almost five years, though, ultimately, the petitioner was successful in canvassing his contention. This delay of about five years caused in the litigation giving rise to the delayed adjudication proceeding; which, ultimately, resulted in mounting heavy warehousing charges of the CWC, compelled the petitioner to invoke writ jurisdiction of this Court under Article 226 of the Constitution of India, to seek declaration that the Customs Department has by way of prolonged and legally unsustainable adjudication proceedings prevented release of the goods of the petitioner for over five years since passing of the final order by the CEGAT for no fault of the petitioner, as such the Customs Department should be directed to bear the warehousing charges payable to CWC.

#### The Submissions :

Mr. Kantawala, learned Counsel appearing for the petitioner emphasised that although the CEGAT in its final order reduced fine and penalty and the petitioner was ready and willing to discharge its obligation as per the said order, the Respondent No. 3 illegally raised issue of CVD requiring the petitioner to pay Rs. 1.70 crore (approximately) and, ultimately, after three rounds of repeated appeals, by order dated 18th October, 2001; he himself dropped the demand of CVD realising his mistake. In the submission of the learned Counsel for the petitioner, it is a clear case of mala fide adjudication of the dispute by the Revenue Authorities constituting sheer abuse of process of law, as such the petitioner should not be made to pay the warehousing charges which have mounted over Rs. 47 lakh. The petitioner cannot be held liable to pay warehousing charges since the delay caused cannot be attributed to any fault on the part of the petitioner. The entire blame has to be put on the Revenue looking to the mala fide attitude adopted by the adjudicating authority. The petitioner further urged

and pressed into service the principles of judicial discipline and contended that the principles of judicial discipline require that the orders of the higher Appellate Authorities have to be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department is an objectionable phrase. The learned Counsel for the petitioner urged that the petitioner was legitimately entitled to get the goods released without payment of any other cost save and except the reduced fine of Rs. 15 lakh and penalty of Rs. 5 lakh determined by the CEGAT. The customs duty as applicable on the valuation of the goods as declared in the invoice and the bill of entry was already paid by the petitioner. The delay and/or refusal on the part of Respondent Nos. 2 and 3 in complying with the orders passed by the CEGAT as well as by the Commissioner of Customs (Appeals) was unwarranted, as such petitioner should be relieved of the warehousing charges and same should be saddled on the Customs Department. The Revenue should be made to pay these charges for which the petitioner cannot be held responsible. He relied upon the judgment of the Apex Court in the case of C.L. Jain Woolen Mills (supra) in support of his submissions.

Per contra, learned Counsel appearing for the revenue refuted all the submissions made by the petitioner and relying upon Section 155 of the Customs Act, 1962 ("Act" for short) contended that none of the authorities have recorded any finding to the effect that any action of any of the authorities was mala fide or constituted abuse of process of law. All the orders were passed by the authorities in the course of adjudication proceeding in discharge of their duty under the Act. All orders were bona fide orders passed by the authorities below, as such the orders even though set aside in the appeal were the orders in accordance with law and the delay which is caused in this process cannot be allowed to work to the prejudice of the Revenue. The petitioner cannot be allowed to make capital of it so as to claim the warehousing charges from the Customs Department. He submitted that by a letter dated 2nd June, 1997, the Customs Department had called upon the petitioner to pay the balance penalty amount of Rs. 1 lakh (Rs. 5 lakh penalty as ordered by CEGAT less Rs. 4 lakh already deposited as per CEGAT's stay order dated 26th September, 1995) and the redemption fine of Rs. 15 lakh and to clear the goods from the warehouse. He submitted that the petitioner has suppressed this letter from the Court and hence, the petitioner is not entitled to any relief in the present petition.

He further submitted that all the acts done by the authorities under the provisions of the Act are presumed to be in good faith in pursuance of the Act and Rules or Regulations. In the submission of the learned Counsel for the Revenue, this protection provided under Section 155 of the Act cannot be whittled down in absence of any adverse finding by the higher forum. The learned Counsel for the Revenue further submitted that so far as the Apex Court judgment delivered in the case of C.L. Jain Woolen Mills (supra) is concerned, the said judgment nowhere lays down that even if the bona fide action though erroneous is taken by the authorities below, the Customs Department should bear the liability of the warehousing corporation. He submitted that in the case of C.L. Jain Woolen Mills

(supra), the earlier order passed by the Delhi High Court in the writ petition filed by the importer of the goods had become final and conclusive between the parties. Consequently, the Apex Court in the second round of litigation on the touchstone of doctrine of res judicata held that the order of the Delhi High Court, which was adverse to the Revenue having reached finality with dismissal of the special leave petition filed by the Union of India, the liability of the importer to pay the demurrage charges had ceased. Consequently, the Apex Court was required to saddle the liability of warehousing charges on the Customs Department. The learned Counsel for the revenue, therefore, reiterated and submitted that the ratio of the C.L. Jain Woolen Mills case (supra) cannot be applied to the present case as the same was decided in the peculiar facts and circumstances of that case. He thus contends that the petition filed by the petitioner is liable to be dismissed with costs.

Consideration :

Having considered the rival submissions, we find much substance in the submission advanced by the learned Counsel for the Revenue. Under Section 155 of the Act, all the actions of the officers of the Government or Local Authorities for anything done, or intended to be done in good faith, in pursuance of the Customs Act and Rules or Regulations are protected. None of the authorities have recorded any finding saying that the orders passed by the authorities below were mala fide and that they were actuated by malice. If none of the orders were mala fide and if each of the orders of the authorities below can be justified on the ground of bona fide action, then, in that event we are of the opinion that the Customs Department cannot be saddled with the warehousing charges.

It is the case of the Customs Authorities that by a letter dated 2nd June, 1997, they had called upon the petitioner to pay the balance penalty amount and the redemption fine and clear the goods from the warehouse. This contention of the Revenue has not been denied by the petitioner. In this view of the matter, it cannot be said that the Customs Authorities deliberately or with a mala fide intention had declined to clear the goods. In the order dated 4th September, 1996, the CEGAT had reduced the fine and penalty imposed upon the petitioner. There was no issue of CVD before CEGAT. Therefore, if the Customs Authorities had agreed to clear the goods on payment of penalty and redemption fine as determined by the CEGAT and on payment of CVD, it cannot be said that the Customs Authorities were declining to clear the goods in spite of the order of CEGAT. It may be that, ultimately, the Customs Authorities accepted the contentions and held that the CVD is not leviable on the goods imported by the petitioner. That itself cannot be a ground for claiming warehousing charges from the Customs Department.

The Apex Court in the case of Board of Trustees of the Port of Bombay v. I.G. Supplying Co. reported in AIR 1977 SC 1622, has held that even though the delay in clearing the goods was not due

to negligence of the importer for which he could be held responsible, yet he cannot avoid the payment of demurrage as the rates imposed are under the authority of law, the validity of which cannot be questioned. The Apex Court has reiterated the above proposition of law in the later decisions in the case of International Airport Authority of India v. Grand Slam International, 1995 (77) E.L.T. 753 and in the case of Trustees of Port of Madras v. Nagavedu Lungi & Co., 1995 (80) E.L.T. 241. In this view of the matter, we are of the opinion that the delay in clearance of the goods cannot be attributed to the Customs Department and the petitioner cannot be absolved of their obligation to pay the demurrage charges payable on the goods imported by the petitioner.

The learned Counsel for the Revenue has rightly contended that the case in C.L. Jain Woolen Mills (supra) was decided in the peculiar facts of that particular case. The ratio of that judgment cannot be extended to the facts of the present petition.

In the result, petition is dismissed in limine with no order as to costs.