

**1998-(BO1)-GJX-0305-BOM**

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**Santosh Marine Works**

Vs.

Union Of India & Ors.

**Court :**

**Decided On :**

October 16, 1998

**Equivalent Citation(s) :**

1999-(082)-ECR-0239-BOM

**Judge(s) :**

A P Shah, S Radhakrishnan

**Judgment :**

SANTOSH MARINE WORKS v. UNION OF INDIA & ORS.

Writ Petition No. 2908 of 1986, decided on October 16, 1998.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Ordinary Original Civil Jurisdiction

For the Petitioner(s) : Mr. Vivek Kantawala

For the Respondent(s) : Mr. M. I. Sethna

Petition allowed.

1. Heard the learned Counsel for the Petitioners and the Respondents.

2. The Petitioners carry on the business of collecting sludge oil, i.e. mixture of furnace oil with water and dirt and a mixture of lubricating oil with water and dirt. The Petitioners submit that this waste oil

is called "sludge oil" and classified under Customs Tariff entry 2710.06. The Petitioners say that for sludge oil no duty is payable, except a nominal duty at Rs. 127.10 per kilo litre.

3. In the instant case the Petitioners had agreed to collect 115 metric tonnes of sludge oil, from a vessel at Mumbai port, known as S. S. CAURICA, through its agents M/s. Dowgule Brothers.

4. The aforesaid 115 metric tonnes of sludge oil were to be removed from the said vessel, otherwise the same cannot be pumped into the sea to avoid sea pollution. After some process the said oil is converted into a lower grade oil with waster and the same is then sold to some small factories with furnaces, for being used as furnace oil.

5. After the said sludge oil was removed from the ship and the said 115 metric tonnes were loaded in 11 trucks. The said 11 trucks were not allowed to leave the Port precincts on the ground that proper customs duty has not been paid.

6. The Petitioners had approached this Court, by way of this Writ Petition, challenging the aforesaid detention of the sludge oil and for release of the same. This Court admitted the above Petition on 17.12.1986 and passed the following interim reliefs :-

"2. Respondents to forthwith allow clearance of goods in 11 tankers by taking out fresh samples as per I. S. I. method in presence of the petitioners. The petitioners agree to give an ITC bond for the entire consignment and a personal bond for differential amount of Customs duty as per final assessment and also give a Bank guarantee for a sum of Rs. 60,000/-, in favour of the Collector of Customs."

7. Pursuant to the above orders dated 17.12.1986, the consignment was released, after the Petitioners complied with all the conditions prescribed in the said order.

8. When the matter came up for final hearing on 5.8.1997, this court had directed the Respondents to produce the test results of the samples taken which would finally determine the case.

9. Again, we had directed by our order dated 24.9.1998, the concerned officer to produce before the Court the said test report. Now the learned Counsel Mr. Sethna for the Respondents, fairly stated before the Court, that the said test report is in favour of the Petitioners.

10. Under the aforesaid circumstances, we will have to allow the Petition. The consignment of sludge oil has already been cleared pursuant to the aforesaid interim order dated 17.12.1986. As per the aforesaid order, the personal bond for differential customs duty given by the Petitioners shall stand

cancelled. Similarly the Bank Guarantee in the sum of Rs. 60,000/- (Rupees Sixty Thousand only) furnished by the Petitioners shall stand discharged.

11. Rule accordingly made absolute, however with no order as to costs.

12. Issuance of certified copy expedited.

