
(1989) 01 KAR CK 0021

Karnataka High Court

Case No: Writ Petition No. 18734 of 1988

Sewing Systems Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Jan. 20, 1989

Acts Referred:

- Customs Act, 1962 - Section 126 (2), 49, 59, 63 (2), 72 (1)

Citation: (1989) 20 ECC 47 : (1989) 44 ELT 456 : (1990) ILR (Kar) 1441 : (1989) 1 KarLJ 462

Hon'ble Judges: H.G. Balakrishna, J

Bench: Single Bench

Advocate: V.K.K Nair, for the Appellant; Shailendra Kumar, Central Govt. Standing Counsel, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner has challenged the order dated 26-8-1988 (Annexure-B) passed by respondent-3 insisting upon the petitioner to clear both the consignments which are in the custody of the respondents if the petitioner wanted to release one of the two consignments for which he had already paid the charge demanded. The petitioner has also questioned the demand made by respondent-4 in its notice dated 15-10-1988 for payment of a total sum of Rs. 8,817.60.

2. It is necessary to set out the material facts of the case :

The petitioner is an importer of lining and interlining materials and other garment accessories which are permitted to be imported under the prevailing Import and Export Policy. The petitioner imported 3 consignments of materials covered by 3 separate bills of lading, under licence. The goods arrived at the Inland Container Depot, Bangalore on 15-4-1986. The petitioner filed 3 separate bill of entry before the Assistant Collector of Customs (Respondent-3) according to the particulars shown below :

Sl No.	Bill of Entry No and Date	Description	Value
1.	201/16-04-1986	Shoulder pads Lining material	Rs. 29,561.00
2.	317/16-06-1986	Garment Stay	Rs. 59,641.00
3.	316/16-06-1986	Lining material	Rs. 2,23,148.00

On account of possible delay in the clearance of the goods by the Customs Authorities, the petitioner applied for bonding of the goods in the Warehouse in accordance with Section 59 of the Customs Act 1962 ("the Act" for short) in order to avert payment of demurrage. After lengthy correspondence, the petitioner was orally informed that warehousing facility u/s 59 of the Act was not available and that the petitioner should apply u/s 49 of the Act for storage in the warehouse. Without alternative, the petitioner necessarily applied u/s 49 of the Act for storage of the consignments on 12-6-1986. The petitioner, at the same time, withdrew the bills of entry filed earlier for warehousing u/s 59 of the Act and filed fresh bills of entry dated 16-6-1988 in respect of 2 consignments. Despite repeated requests and correspondence with Customs Authorities, since the Collector of Customs (Karnataka Region) (Respondent-2) had refused to clear the goods on various technical grounds, the petitioner was constrained to approach this Court in W.P. No. 15868 of 1986 which culminated with separate orders passed by this Court in respect of each of the 3 consignments as follows :

1.	B.E. No. 201	Dated 16-4-1986	No. S8/30/86-ICD dated 6-4-1987
2.	B.E. No. 317	Dated 16-6-1986	No. S8/28/86-ICD dated 26-4-1987
3.	B.E. No. 316	Dated 16-6-1986	No. S8/29/86-ICD dated 23-4-1987

3. By virtue of the order passed in W.P. No. 15868 of 1986, the goods in all the 3 consignments mentioned above came under confiscation with an option to the petitioner to redeem the goods on payment of fine in respect of each of them.

4. Thereafter the petitioner cleared one consignment covered by order No. S8/29/86-ICD dated 23-4-1987 (Sl. No. 3 above), after payment of duty, fine and penalty. The other 2 consignments were stored in the Central Warehousing Corporation, Bangalore (Respondent-4) and the consignments continued to remain there as no today.

5. Out of the 2 consignments which are lying in the Warehouse, the petitioner desired to clear one of the consignments covered by bill of entry No. 201 dated

16-4-1986 (Sl. No. 1 above). The petitioner promptly paid on 5-8-1988 a total sum of Rs. 65,836.82 in respect of the said consignment towards duty, fine and penalty. Thereafter the petitioner repeatedly requested the Customs Authority of Bangalore for the issue of "Out of Charge Order" to enable the petitioner to clear the said consignment. However, the reminders were in vain. A copy of the letter of the petitioner addressed to respondent 3 in the context dated 8-8-1988 in Annexure-A. The reply dated 26-8-1988 in Annexure-B. In this reply, respondent-3 has demanded that the petitioner should clear both the consignments which are lying in storage together and then only the consignments in question will be allowed to be cleared. In the reply, it was also made clear to the petitioner that if the petitioner did not pay the duty, fine and penalty in respect of both the consignments, clearance will not be given until the appeals of the petitioner which are pending before the CEGAT are disposed of. The appeals relate to the 3 orders in respect of the 3 consignments imposing duty, fine and penalty on the petitioner.

6. Again the petitioner addressed a letter dated 14-9-1988 (Annexure-C) that the petitioner could not pay duty, fine and penalty in respect of both the consignments on account of narrow financial circumstances and urged that the consignment in respect of which the petitioner had already paid the charges on 5-8-1988 should be released and the petitioner be allowed to clear the consignment.

7. By letter dated 15-10-1988 (Annexure-D), respondent-4 issued a demand notice to the petitioner calling upon the petitioner to pay storage charges in a sum of Rs. 8,817.60 for both the consignments stored in the warehouse calculated upto 25-10-1988 together with insurance charges of Rs. 1,491.60 calculated upto 20-10-1988. In the said notice, the petitioner was notified that in default, action would be taken against the petitioner in accordance with Sections 63(2) and 72(1)(B) of the Act. The next result was that the petitioner was denied the clearance of the consignment covered by bill of entry No. 201 dated 16-4-1986 notwithstanding the full payment of the duty, fine and penalty amounting to Rs. 65,836.82 on 5-8-1988. Therefore, the petitioner is aggrieved.

8. The petitioner has sought for quashing of the order under Annexure-B as well as the demand made under Annexure-D.

9. The point for consideration is whether the denial of clearance of the consignment covered by bill on entry 201 dated 16-4-1986 is illegal.

10. The contention of the petitioner's learned Counsel Col. V. K. K. Nair is substance is that the respondents are not justified in denying the right of the petitioner to the release and clearance of the consignments in question since the petitioner had paid the entire amount payable towards duty, fine and penalty on 5-8-1988. The other contention is that the petitioner retrieved the ownership of the said consignment the moment the petitioner made full payment of the charge imposed upon the petitioner and that the withholding of the consignment amounts to illegal and

arbitrary detention. The other contention is that there is no legal warrant for the respondents to deny the clearance of the said consignment by imposing a condition that both the consignments which are in the custody of the respondents and are lying in storage should be together cleared by the petitioner.

11. According to the learned Standing counsel for the Central Government Sri Shailendra kumar representing the respondents, though it is true that the provisions of Sections 63(2) and 72(1)(B) of the Act cannot be invoked as mentioned in Annexure-D, the respondents have the necessary power to demand clearance of both the consignments together by virtue of Section 59 and that the provisions of Section 49 of the Act are not attracted to the facts of the case. It was also contended that Annexure-D cannot be quashed. The other contention is that if the petitioner had complied with the requirements of Section 126(2) of the Act, the financial liabilities would not have arisen and the petitioner would have had the benefit of storing the consignments instead of warehousing.

12. None of the provisions of the Act disclose any power or authority reserved with the respondents to withhold a consignment notwithstanding the payment of duty, fine and penalty levied in respect of the same. It is an undisputed fact that the petitioner has paid a total sum of Rs. 65,836.82 on 5-8-1988 in respect of one consignment covered by bill on entry No. 201 dated 16-4-1986 in full settlement of the duty, fine and penalty. The moment the amount is paid by the petitioner and accepted by the competent authority as in the instant case, the respondents are divested of the right of detention of the goods and simultaneously the right to possession and dominion of the goods became automatically vested in the petitioner. This right cannot be taken away by the respondents unless there is any legal warrant under the provisions of the Statute. During the period of divesting and vesting, in my opinion, there is no transfer of ownership, but there is only a transfer of dominion over the goods. Until duty, fine and penalty liable to be paid remains unpaid, the divesting of the goods from the petitioner and vesting in the respondents may amount to justified detention; but the moment the said charges are fully paid by the petitioner, the detention becomes illegal. Though it is not the case of the petitioner that the continued illegal detention of the consignment in question amounts to conversion. I am of the opinion that it would invariably have the effect of actionable conversion. Insistence of the respondents that both the consignments in respect of which duty, fine and penalty have been paid and the consignment for which such charges have not been paid should be together cleared after payment of the charges due to the respondents, in my opinion, amounts to justified refusal of release of the consignment in question. As long as the refusal persists, the legal position is that it is not only a case of illegal detention but also actionable conversion.

13. It has been contended by the learned Counsel for the petitioner in para 10 of the writ petition as follows :

"The Petitioner has already been put to great loss by making him pay demurrages by denying him the right to bond the goods u/s 59 of the Customs Act for which he had applied at the very outset. The Petitioner's business of manufacturing and exporting of garments has suffered serious set-back on account of the withholding of the Lining and Interlining materials and Shoulder Pads, covered by the consignment in question which is not being released in spite of paying all dues as directed under the second respondent's own order passed on the subject in the adjudication proceedings. The petitioner has thus been put to great hardship and inconvenience and loss in business on account of the arbitrary action of the Respondents in unlawfully withholding the consignment in question, of which the Petitioner has been the absolute owner, after he had paid all the dues."

14. There can be no doubt about the fact that the petitioner must have suffered material loss on account of unjustified withholding of the consignment as contended by the petitioner. However, since the petitioner has not quantified the loss and has not sought for payment of material reparation, it is not necessary for me to consider the question of material redress to the petitioner though actionable conversion would entail legal remedy-Ubi jus, ibi remedium. I am, therefore, of the opinion that the order passed under Annexure-B deserves to be quashed.

15. In the demand notice dated 15-10-1988 (Annexure-D), the petitioner is called upon to pay storage charges to the extent of Rs. 8,817.60 in respect of both the consignments stored in the warehouse upto 25-10-1988 together with insurance charges amounting to Rs. 1,491-60 calculated upto 20-10-1988. In my opinion, the demand made is neither fair, nor reasonable. The petitioner paid the duty, fine and penalty on 5-8-1988 and, on that date, he was entitled to the release of one of the two consignments. Though he was entitled to the release of the consignment covered by bill of entry No 201, dated 16-4-1986, the petitioner has been called upon to pay the charges alleged to be due for storage in the warehouse upto 25-10-1988 apart from insurance charges calculated upto 20-10-1988. It may be possible for the authorities to recover the charges only in respect of the consignment for which duty, fine and penalty have not been paid, but certainly not in respect of the one which has been paid for. The demand notice does not disclose separately what is payable in respect of the consignment for which duty, fine and penalty are yet to be paid. In these circumstances, it is not possible to sustain the demand made under Annexure-D. This does not, however, preclude the respondents from the right to recover, if any, in respect of the consignment not paid for in regard to duty, fine and penalty. In other words, the right to recover the charges due for storage in the warehouse together with insurance charges is available only in respect of the consignment covered by bill of entry No. 317 dated 16-6-1986 and nothing beyond. In these circumstances, I am of the opinion that the demand made under Annexure-D is unsustainable insofar as the consignment covered by bill of entry No. 201, dated 16-4-1986 is concerned.

16. The contention of the petitioner that the demand notice Annexure-D threatening coercive action under the provisions of Sections 63(2) and 72(1)(b) of the Act in default of the payment of the amount demanded in mis-conceived, has to be accepted and this legal position is not disputed by the learned Counsel for the respondents.

17. However, I cannot accept the contention of the learned Counsel for the respondents that Annexure-D cannot be quashed. The reasons in support of my opinion have already been given in the preceding paragraphs of my order.

18. The learned Counsel for the respondents attempted to support the order passed under Annexure-B by relying upon the provisions of Section 142(1) of the Act. It is necessary to extract the relevant portion of the provision of Section 142(1) of the Act :

"142. (1) Where any duty demanded from any person or any penalty payable by any person under this Act is not paid, -

(a) the proper officer may deduct or may require any other Officer of Customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other Officer of Customs; or

(b) the Assistant Collector of Customs may recover or may require any other Officer of Customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Collector of Customs or such other Officer of Customs; or

(c) *** **"

Obviously the provisions of Section 142(1)(a) of the Act is inapplicable to the facts of this case since the action of the authorities is not one of deduction of the amount payable from any money owing to the petitioner which may be under the control of the Proper Officer or such other Officer of Customs.

According to Section 142(1)(b) of the Act what could be recovered is the amount so payable by the petitioner by detaining and selling any goods belonging to such person which are under the lawful control of the Assistant Collector of Customs or such other Officer of Customs. In the instant case, the consignment in question is no longer under the lawful control of the Assistant Collector of Customs or such other Officer of Customs both by virtue of legal fiction and operation of law since in accordance with law the petitioner has paid the duty, fine and penalty for release of the consignment and has thereby acquired a right under the Statute which defeats the right of control of the statutory authorities. Therefore, I am of the opinion that the consignment which is covered under bill of entry No. 201, dated 16-4-1986 is not under the legal and lawful control of the Assistant Collector of Customs or such other Officer of Customs. The provisions of law relied upon by the learned Counsel for the respondents does not support the respondents.

19. I do not see anything in Section 126(2) of the Act which supports the case of the respondents.

20. It was also contended by the learned counsel for the respondents that what is applicable to the facts of the case is Section 59 and not Section 49 of the Act. Section 49 is in Chapter VII the Act and reads thus :

"Where in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Collector of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a public warehouse, or in a private warehouse if facilities for deposit in a public warehouse are not available; but such goods shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods."

It is, therefore, clear that when a case is made out that the imported goods cannot be cleared within a reasonable time, there is an obligation imposed on the Assistant Collector of Customs to permit storage of the goods in a public warehouse and, in the absence of such a facility, in a private warehouse pending clearance. This does not, however, mean that what is contemplated as warehouse facility is traceable to warehousing bond contemplated u/s 59(1) of Chapter IX of the Act which deals with warehousing exclusively. In other words, as clearly revealed in in Section 49 of the Act, the warehousing facility referred to in Section 49 is unrelated to the warehousing envisaged u/s 59(1) because in Section 49 of the Act it is explicitly made clear that such goods shall not be deemed to be warehoused goods for the purposes of the Act and accordingly the provisions of Chapter IX shall not apply to such goods. Therefore, I am unable to accept the contention of the learned Counsel for the respondents that Section 59 of the Act is applicable and not Section 49 of the Act. On the other hand, I am of the opinion that what is apposite is Section 49 of the Act to facts of this case.

21. The principle laid down in *Fould v. Willoughby* (1841) 8 M & W 540(548) is :

"Where a man has possession of another's chattel and refuses to deliver it, this is an assertion of a right inconsistent with his general dominion over it, and the use which at all times, and in all places, he is entitled to make of it, and consequently amounts to an act of conversion."

The well settled principle is that an unqualified refusal is generally conclusive evidence of conversion unless the detainer could substantiate that the refusal is not only qualified but also just and reasonable. The conditions precedent are that there is both demand by the owner and a refusal by the detainer.

In *Haryana Cotton Mill Co. Ltd v. B.B. & C.I. Railway Co.* - (1927) 28 P.L.R. 665, it was held that refusal or neglect by a railway company to deliver goods after demand

made amounts to conversion.

Detention by itself is held to be actionable as the weight of judicial opinion have it, when there is adverse withholding of the chattels of another wrongfully detained from the person who is entitled to the possession of them as well as for damages occasioned by wrongful detainer. The essence of action lay in the fact of detention and not in the misuse and appropriation of the goods, so long as the owner has a special and general property in the goods detained and a right to immediate possession.

Once the duty, penalty and fine have been paid, the respondents in the instant case have no lien over the goods detained by them. The respondents by detaining the goods of the petitioner in the warehouse of respondent No. 4, are deemed to have possession of the petitioner's chattel and by refusing to deliver back the chattel to the petitioner, have asserted a right which is inconsistent with the general dominion over it of the petitioner, and deprived him of the right to the use of it which at all times and in all places of his choice, he is entitled to make of it, have committed an act of conversion in tort.

22. In the result, for the reasons stated above, rule is issued and made absolute. The writ petition is allowed. The impugned order under Annexure-B and also the demand made under Annexure-D are quashed. However, it is made clear that the respondents are at liberty to recover whatever is lawfully due by way of storage and insurance charges in respect of the consignment covered by bill of entry No. 317 dated 16-6-1986 only.

23. The respondents shall pay the costs or Rs. 1,000/- to the petitioner for the reason that the consignment belonging to the petitioner has been unjustifiably detained.