

(2015) 03 SC CK 0111

SUPREME COURT OF INDIA

Case No: Civil Appeal No. 1307 of 2008.

Monito Enterprises - Petitioner
@HASH Union of India

APPELLANT

Vs

RESPONDENT

Date of Decision: March 19, 2015

Citation: (2015) 318 ELT 365 : (2015) 14 SCC 675

Hon'ble Judges: A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench: Division Bench

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

1. The facts in brief are as under :

2. Parts of diesel engines were imported by the appellant under Bills of Entry ["Bs/E"] dated 5-8-98, 10-2-99, 20-9-99 and 11-10-99. The classification thereof was disputed by the Revenue, and was held against by the appellant by the Assistant Commissioner of Customs ("the AC"). However, the said decision was subsequently reversed by the Commissioner of Customs (Appeals) vide Order-in-Appeal dated 23-5-2000 which was upheld, in further, appeal, by the Hon'ble Custom, Excise and Service Tax Appellate Tribunal vide Final Order dated 16-7-2001. The said decision was accepted by the Revenue, and the abovementioned Bs/E, which had been provisionally assessed, were finally assessed accordingly.

3. In the interregnum, the appellant had provisionally cleared the goods imported under the above-mentioned 4Bs/E, on 20-7-2000, 29-9-2000 and 5-10-2000, paying, in the process, demurrage charges to the AAI.

4. Consequent to succeeding before the CC (A), the appellant applied to the CC for pursuing with the AAI for waiver, and consequent refund, of demurrage charges, whereupon the CC issued 4 Detention Certificates and directed the appellant to

produce them to the AAI and claim waiver of demurrage charges, vide letter dated 15-11-2000.

5. The appellant, therefore, applied to the AI for waiver of demurrage charges and consequent refund of the demurrage charges collected, from the appellant, by it, in accordance with Clause 1.2.3(h) of AI's policy in this regard.

6. The respondent Airport Authority of India considered the claim of waiver of demurrage but rejected the same giving certain reasons. The primary reason which was given was that the goods were delayed by the Customs for clearance for the purpose of fixing of assessable value, obligation to duty and classification of goods and therefore, as per the waiver policy clause 10.1.10(b) demurrage charges could not be waived.

7. The appellant made another representation which was also rejected vide communication dated 24-8-2001. Under this Communication again reference was made to clause 10.1.10(b) of the waiver policy. This clause reads as under :

"Demurrage charges shall not be waived where delay arose by reason of dispute in the assessable value or for revalidating or correcting the license in ordinary course of appraisal".

8. The submission of the appellant was that the case does not fall under clause 10.1.10(b) but in fact it is clause 10.2.3(h) of the aforesaid policy which is applicable and that clause provides that if the importer succeeds in appeal, no demurrage charges would be payable.

9. Since the plea of the appellant was not accepted, the appellant approached the High Court of Bombay by way of writ petition filed under Article 226 of the Constitution. The said writ petition was dismissed relying upon its earlier judgment in case of **Modern Rubber Industries v. UOI - 2003 (154) E.L.T. 571 Bombay**. The Revenue Petition was preferred which was also dismissed. Their orders are challenged in the present appeal.

10. We find from the reading of the judgment in the case of Modern Rubber Industries that the said case pertains to the dispute between the Customs authorities and the importer. Therefore, it has no application as far as instant case is concerned, inasmuch as in the present case there is a policy of the Airport Authority of India itself under which waiver is permissible under certain circumstances. As contended by the appellant, the dispute is as to whether the goods would be covered by clause 10.2.3(h) of the said policy, or it is clause 10.1.10(b) of the said policy, which would be attracted. Therefore, the High Court was completely in error in dismissing the writ petition in limine by referring to the case of Modern Rubber Industries.

11. Accordingly, the impugned judgment is set aside and the case is remitted back to the High Court to decide the writ petition of the petitioner on merits.

12. The appeal is disposed of accordingly.