

(2002) 03 CAL CK 0004

Calcutta High Court

Case No: F.M.A. No. 193 of 1997

Board of Trustee for the Port of
Calcutta

APPELLANT

Vs

Wood Craft Products Ltd. and
Others

RESPONDENT

Date of Decision: March 13, 2002

Acts Referred:

- Constitution of India, 1950 - Article 265
- Major Port Trusts Act, 1963 - Section 13, 42, 48, 49

Citation: (2003) 1 CALLT 458

Hon'ble Judges: Ashok Kumar Mathur, C.J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: S. Roy Chowdhury, S.P. Majumdar and S. Sil, for the Appellant; Siddhartha Mitra, for the Respondent

Final Decision: Dismissed

Judgement

G.C. Gupta, J.

This appeal against an order dated 21-12-1993 passed by a learned single Judge of this Court allowing the writ petition. The operative portion of the order of the learned single Judge reads as follows :

"There being no justification for the levy of the hoisting charges, the demand of the respondents cannot be sustained and must be quashed. For the reasons stated the impugned demands of the respondents in so far as they relate to hoisting charges are quashed. The bank guarantee furnished by the petitioners to the respondents in terms of the interim order passed herein must be returned by the respondents to the petitioners duly discharged within a fortnight from the date of service of the operative, portion of this judgment upon them. The respondents must also dispose of the petitioner's application for refund being annexure C & E to the petition within

3 months of the date of service of the operative portion of this judgment upon them in the light of the observations in this judgment and after giving the petitioners an opportunity to be heard. At least 48 hours clear notice must be given."

2. The undisputed facts of the case briefly stated are as follows :

The respondent is an importer of logs. From time to time ships carrying logs imported by the respondent were berthed at the Calcutta Port. Portions of such logs were allowed to be unloaded by the cranes of the ship and were further allowed by the Calcutta Port, to be taken delivery of by the importer directly from the ship. On 12-12-1986 an agreement was verbally arrived at between the Deputy Dock Manager on the one hand and the importers on the other. The discussions were minute.. The agreement arrived at between the parties is as follows :

"He also stated that balance logs on board would be discharged at alongside berth at NSD mainly by ship's derricks. He added that logs discharged to the lighters also would be brought to Calcutta Docks for discharge at an alongside berth. He further stated that all CPT charges including traffic charges would be paid by them in time."

3. It appears that prior to 12-12-1986 claim for refund of a sum of Rs. 38, 850/- and a sum of Rs. 23,301/- had already been made, copies whereof are annexure C to the writ petition. It also appears that subsequent to 12-12-1986 during the period between 19-3-1987 and 21-3-1987 further claims for refund were made copies whereof are annexure E to petition. The basis for such claim in the writ petition is that the goods were unloaded by the cranes of the ship and no hoisting activity was at all undertaken by the respondent (appellant herein) irrespective of these goods."

4. With respect to the claim made by the importer/petitioner/respondent the Port authority replied as follows :

"You may be aware that loading and unloading charges are recovered u/s 13 of the schedule of charges on all export and import cargo irrespective of whether these are directly shipped or discharged from lorries/wagons and all user of port are paying this since 1975. Under the circumstances it is regretted that your claims for refund of loading charges do not stand admissible."

5. The importers thereafter presented the writ petition before this Court contending inter alia (a) that the refusal to refund the hoisting charges paid in advance when no hoisting operation has in fact been performed is without authority of law, (b) Sections 48 and 49 of the Major Port Trust Act authorise levy of charges for service actually rendered; (c) the charges recovered from the writ petitioners without rendering any service tantamounts to levying a tax in violation of Article 265 of the Constitution.

6. The Port authorities in paragraph 12 of their affidavit-in-opposition stated as follows :

"I state that the petitioners cannot claim any refund even if it is assumed that the petitioners did not make any use of the equipment of the Calcutta Port Trust. I state that in any event the Calcutta Port Trust had to keep its equipment and appliances ready for use and the petitioners could have availed of such equipment but they chose to take direct delivery to suit their own purpose."

7. The aforesaid contention of the Port authority has not been disputed by the respondent/writ petitioner. Therefore the question for determination is as follows :

Is the Port authority liable to refund the landing charges/hoisting charges because the importer did not choose to avail the services of the Port authority?

8. The Port authority is entitled to realise landing charges in terms of Section 13 of the Scale of Rates which provides as follows :

"A charge equal to 50 per cent of the landing or shipping charge is levied for loading or unloading goods other than tea Into or from carts, lorries or trailers and for loading or unloading cargo (L-condition) into or from foreign Railway wagons whether done mechanically and/or manually."

9. In pursuance of the aforesaid provision resolution No. 18 was adopted by the Port authorities in the first meeting of 1975 which reads as follows:

"10. Memorandum by the Chairman recommending that

(A) Loading and Unloading charges by recovered u/s 13 of the Schedule of Charges on all export and import cargo, irrespective of whether these are directly shipped or discharged from out lorries/ wagons.

(B) The landing charge recovered on heavy lifts, when landed ashore, may cover all handlings up to the point of rest in the shed or yard of the berth.

(ii) The proposal is designed to rationalise the existing procedure."

10. Under the provisions of Section 42 of the Major Port Trust Act the Board has the authority to undertake landing operation and under the provisions of Section 48 the Board has the authority to frame Scale of Rates for the services rendered u/s 42 of the said Act.

11. In the usual course of business the Port has to undertake landing operations. The Port has accordingly installed the required machinery and has employed persons for the purpose of carrying out the landing operation. For the purpose of carrying out landing operation the Port has stipulated charges u/s 13 of Scale of Rates (schedule of charges). In this backdrop, if any of the importers chooses not to avail the services offered by the Port, can he insist that the Board must refund the landing charges recovered from him ? Because he did not avail the services of the Port. The answer has to be in the negative. The Port on its part is ready and willing to render service for which it has recovered charges in advance. It is the importer

who refuses to avail the service in order to suit his own purpose. The Port has allowed him to do that but that does not mean that the Port is liable to refund the charges recovered from him. The Port has already incurred costs for rendering service to the importer. If the importer does not avail the service it is his choice. But he cannot by any stretch of imagination be heard to contend that the charges recovered by the Port amounts to levying a tax in violation of Article 265 of the Constitution or that the Port must refund the charges because it did not render any service. It is not a fact that the Port did not render any service. The fact is that the importer did not choose to avail the service of the Port. There is, in our view, sufficient quid pro quo and there is no lack of consideration for the charges recovered by the Port.

12. Moreover, here is a case where the importer promised to pay to CPT charges including traffic charges inspite of goods being discharged from the ship by the ships derricks. It was therefore not open to the importer to contend to the contrary.

13. The attention of the learned single Judge does not appear to have been drawn to the agreement dated 12-12-1986 or the same may have escaped the attention of the learned single Judge who posed the following questions for decision :

"The question involved in this writ application is whether the respondents Port authorities are entitled to levy hoisting charges without in fact rendering any service in the matter of such hoisting."

14. Whereas the real questions for determination in the facts of this case are as follows :

(a) Is the Port authority liable to refund the landing charges/hoisting charges because the Importer did not choose to avail the services of the Port authority ?

(b) Is it open to the importer to claim refund of the hoisting charges when it has agreed to pay the same without availing service of hoisting charges ?

(c) Is it open to the importer to challenge the refusal on the part of the CPT to refund hoisting charges in the facts of this case?

15. The answers to aforesaid questions are bound to be in negative for reasons given by us in the aforesaid discussions. The learned single Judge proceeded on the basis that the hoisting is usually done by the petitioners or the ship carrying the timber which is not the fact. The hoisting is done by the Port Trust in its usual course of business. The petitioner chose to have the goods hoisted by the cranes of the ship instead of the cranes of the Port Trust. The learned trial Judge evidently fell into an error in holding that "there is no basis found in the statute for charges as sought to be levied by the Port authorities in this case for keeping in readiness the machinery for hoisting".

16. For those reasons we are unable to sustain the order passed by the learned trial Judge. Accordingly the writ petition is dismissed and the appeal is allowed., we direct the respondents to restore all benefits received under the orders of this Court within a period of 3 months. There will be no order as to costs.

A.K. Mathur, C.J.

I agree.

13.03.2002

(Later)

In view of today's order, it will be open for the Calcutta Port Trust to withdraw the amount lying with the Nationalised Bank by the order of this Court dated 22nd March, 1994 and to appropriate the same.

Let xerox certified copy of this judgment be issued to the parties on urgent basis, if applied for.