

(2007) 10 CAL CK 0030

Calcutta High Court

Case No: Writ Petition No. 1298 of 2004

Spaceage Multiproducts Pvt. Ltd.
and Another

APPELLANT

Vs

Commissioner of Customs (Port)
and Others

RESPONDENT

Date of Decision: Oct. 9, 2007

Citation: (2008) 2 CALLT 169

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Judgement

Jayanta Kumar Biswas, J.

The petitioners in this writ petition dated July 20th, 2004 are seeking a mandamus commanding the authorities of the customs department to pay them Rs. 4,50,000/- with penalty and interest, since the authorities are unable to return the goods.

2. The petitioners imported 400 sets of UPS system from Taiwan. The goods arrived at Kolkata port on January 7th, 2000. The bill of entry was filed. On inspection the authorities of the customs alleged under valuation. The petitioners were called upon to take delivery of the goods after submitting requisite bond and bank guarantee. Feeling aggrieved they moved this Court by filing a writ petition. By an order dated May 19th, 2000 that writ petition was disposed of directing the authorities of the customs to release 50% of the goods keeping the balance 50% as security for duty that would be payable. They were directed to submit a bank guarantee for Rs. 50,000/-. In that order it was recorded that according to the petitioners value of 50% of the goods was around Rs. 4.5 lac, and that according to the authorities the duty payable for the goods was Rs. 5,00,000/-. In compliance with that Order 50% of the goods were released. The competent authority of customs gave decision against the petitioners. Feeling aggrieved they preferred an appeal before the tribunal. By an order dated October 24, 2002 the tribunal allowed the appeal and set aside all decisions of the authorities of the customs. Consequently the petitioners became

entitled to get delivery of the balance 50% of the goods. They, however, were liable to pay duty. In view of order of the tribunal by a letter dated April 23rd, 2003 the authority concerned informed the petitioners that they were entitled to get the goods released. When the petitioners were ready and willing to take delivery of the goods, on September 12th, 2003 the goods were sold by the authorities of the customs. As a result, the petitioners did not get delivery of the balance 50% of the goods. The customs authorities claimed that the balance 50% of the goods were sold at Rs. 1,77,786/-, and that after adjusting the duty payable nothing was found payable to the petitioners. Since the petitioners did not get the goods or the price thereof, they took out this writ petition for the principal relief noted hereinbefore.

3. On the strength of a Division Bench decision of this Court in Commissioner of Customs (Prev) West Bengal, Kolkata v. Ratan Kumar Saha 2005 (03) LCX 0274 counsel submits that the petitioners are entitled to get the value of the goods with interest. Her submission is that the value of the 50% of the goods sold by the authorities of the customs should be accepted as Rs. 4.5 lac as was mentioned in the order of this Court dated May 19th, 2000. She says that 50% of the total duty payable was paid by the petitioners, and hence only 50% of the duty could be adjusted from the sale proceeds. The position is disputed by counsel for customs. His submission is that towards duty payable for the goods the petitioners did not pay any amount. He says that there is no basis for accepting the case of the petitioners that value of the balance 50% of the goods was Rs. 4.5 lac. His further submission is that the petitioners were liable to pay rates payable to the warehouse. This claim has been disputed by counsel for the petitioners. She has said that the petitioners also paid a sum of Rs. 20,000/- in terms of directions of the authorities.

4. From all these, I find that though in view of the order of the tribunal the petitioners became entitled to get delivery of the balance 50% of the imported goods, today there is no scope to give them the goods, already sold by the authorities of the customs. There was no valid reason for the authorities to sell the goods after the order of the tribunal. Since the authorities were not in a position to return the goods, in my view, they were liable to pay the price therefor. What was the price at the date the petitioners became entitled to get delivery of the goods is a question that, in my view, requires adjudication by appropriate forum. Sitting in writ Court I am not in a position to determine the value of the goods. I do not find any reason to go by what was recorded in the order dated May 19th, 2000. Price of balance 50% of the goods noted therein was not on the basis of any determination through any process or by any forum. The price recorded in the order was the one claimed by the petitioners.

5. Hence, in my view, so long as the price of the goods at the date the petitioners became entitled to get them back is not determined by appropriate forum, and thus, loss suffered by them is not assessed and determined, there is no scope to exercise writ powers for making an order directing the authorities of the customs to

pay any particular amount to them. I think the parties should proceed on the basis of the value of the goods declared by the petitioners in the bill of entry concerned. According to the authorities of the customs that was an under valuation. So, if that value, what was the proper valuation according to the petitioners at the date of import, is taken into consideration for ascertaining whether for the balance 50% of the goods the petitioners are entitled to get any amount from the "authorities of the customs, I think, the parties cannot make any grievance. Needless to say that the question of making any payment to the petitioners is subject to adjustment of duty and other charges that they were liable to pay for importing the goods. In my opinion, on the facts the writ petition should be disposed of giving suitable directions to the authorities of the customs.

6. For these reasons, I dispose of the writ petition ordering as follows. Treating the value declared in the bill of entry concerned as the value of the imported goods the authorities of the customs shall determine the price of 50% of the goods. After adjusting duty and other charges payable by the petitioners, if it is found that any amount out of 50% of the value of the goods is payable to the petitioners, then such amount shall be paid to them by the authorities of the customs with interest @ 9% per annum from May 20th, 2000 till the date of actual payment. In the determination process while the authorities shall take into consideration the amount payable by the petitioners on account of duty and other charges, all payments made by them in connection with the matter shall also be taken into consideration.

7. If question arises regarding the petitioners' liability towards rates payable to the warehouse, then it shall be determined by the appropriate authority after considering the objection, if any, that may be raised by the petitioners. All exercises in terms of this order shall be carried out and completed by the authorities of the customs within four weeks from the date of communication of this order to the second respondent. It is made clear that nothing in this order shall prevent the petitioners from initiating appropriate proceedings before the appropriate forum in accordance with law claiming compensation for the loss, if any, they have suffered for failure on the part of the authorities of the customs to return the goods to them. Similarly, the authorities of the customs will be free to proceed in accordance with law, if the petitioners fail and neglect to pay any amount, though they are liable to pay it in law. There shall be no order for costs.

8. Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the section concerned.