

Akbar Badrudin Jiwani Vs Union of India and Others

Court: Bombay High Court

Date of Decision: Aug. 20, 1996

Acts Referred: Major Port Trusts Act, 1963 & Section 111

Citation: (1997) 1 BomCR 160 : (1997) 68 ECR 399 : (1997) 92 ELT 483

Hon'ble Judges: M.B. Shah, J; J.N. Patel, J

Bench: Division Bench

Advocate: Mr. O.J. Menezes, Mr. I.S. Mecwan and Mr. R.S. Tripathi, for the Appellant; Mr. J.P. Deodhar, for the Respondent

Judgement

M.B. Shah, C.J.

It is the case of the Petitioner that though the petitioner validly and legally imported the goods in question namely slabs of

calcareous stones far back in January, 1989, the validity came to be challenged by the Customs Officers and have wrongfully detained the goods

leading to incurring of heavy recurring demurrage charges and container charges for no fault of the petitioner. The petitioner was required to litigate

the matter right upto the Supreme Court and the Supreme Court finally allowed the matter by judgment rendered on 14th February, 1990. The

petitioner submitted that in view of the following operative order passed by the Supreme Court in Akbar Badrudin Jiwani of Bombay Vs. Collector

of Customs, Bombay, the Respondents are required to refund the detention charges and demurrage charges paid by him to the Bombay Port Trust

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62. In the instant case, even if it is assumed for argument's sake that the stone slabs imported for home consumption are marble still in view of the

finding arrived at by the Appellate Tribunal that the said product was imported on a bona fide belief that it was not marble, the imposition of such a

heavy fine is not at all warranted and justifiable.

63. In the premises aforesaid, we allow the appeal and set aside the judgment and order passed by the Appellate Tribunal and direct the Tribunal

to release the goods to the appellant forthwith. We also direct the Tribunal to release the personal bond given by the appellant or a sum of Rs.

2,50,000/- on the basis of which one container was released as per order of this Court dated October 25, 1989 and also to release the appellant

from payment of detention charges and demurrage for retaining the goods. In the facts and circumstances of the case there will be no order as to

costs.

It is, therefore, prayed in this petition that the Respondents be directed to refund the amount of Rs. 17,20,562.20/- being demurrage charges and

Rs. 3,43,746/- being container detention charges along with interest thereon.

2. This petition is opposed by the Respondents and the Id. Counsel for the Respondents submitted that no direction is issued by the Supreme

Court that the Customs Authority should refund the demurrage charges and detention charges. He further pointed out that the Petitioner

approached the Supreme Court for clarification of the aforesaid order by filing I.A. No. 2 in Civil Appeal No. 3655 of 1989. That application

was rejected by the Court by holding as under :-

We have also very carefully and minutely considered our judgment and order. It is quite clear that in the appeal there was no prayer regarding

refund of detention charges and demurrage nor the same was argued before us. In that view of the matter we are not inclined to clarify our order in

the manner, prayed for, in the instant application. In the circumstances, we are not inclined to interfere in the order made by us. We, therefore,

dismiss the application. The appellant may, however, take recourse to any action, if he is so legally entitled and so advised.

3. In our view, from the aforesaid findings given by the Supreme Court it is clear that the Court has not directed refund of detention charges and

demurrage charges. On the contrary, the Court has observed that the said contention was not even urged before them. Therefore, there was no

question of clarifying the order in the manner prayed by the petitioner. Further, the operative portion of the aforesaid judgment also nowhere

provides that the detention charges or demurrage charges are to be refunded. It only set aside the judgment and order passed by the Appellate

Tribunal and directed to release the goods to the Petitioner forthwith and to release the personal bond given by the petitioner or a sum of Rs.

2,50,00/- on the basis of which one container was released. The Court has further directed to release the petitioner from payment of detention

charges and demurrage for retaining the goods.

4. Apart from the aforesaid clarification by the Supreme Court it is clear from the operative portion of the judgment that no directions were given

by the Supreme Court that the Bombay Port Trust would refund the detention charges and/or demurrage charges recovered by it as Bombay Port

Trust was not party in the said proceedings. In the present petition also the Bombay Port Trust which has recovered the demurrage charges is not

joined as party. Therefore, it will be difficult for us to grant any relief to the petitioner. Admittedly, the aforesaid charges are not recovered by the

Customs Authority.

5. However, the Id. Counsel for the petitioner relied upon the decision rendered by the Supreme Court in the case of International Airports

Authority of India and Others Vs. Grand Slam International and Others, wherein the Court has observed as under :-

43. It cannot be gainsaid that, by reason of unjustified detention of his goods by the customs authorities, the importer is put to loss by having to

pay demurrage charges for the periods of such detention. The Central Government is empowered by Section 35 of the International Airports

Authority Act, 1971, and Section 111 of the Major Port Trusts Act, 1963, to issue to the Authority and the Boards of Trustees, respectively,

directions on questions of policy after giving them an opportunity, as far as practicable, of expressing their views. The Central Government can, if

so advised, after giving to the Authority and the Boards of Trustees the opportunity of expressing their views, direct them, under the

aforementioned provisions, not to levy demurrage charges for periods covered by detention certificate.

The aforesaid observation of the Supreme Court nowhere directs the Board of Trustees of the Bombay Port Trust to refund the demurrage

charges or detention charges recovered by it. Further, the Id. Counsel for the Respondents pointed out that in the case of Trustees of Port of

Madras Vs. Nagavedu Lungi and Co. and Others, the Court has decreed the suit filed by the Board of Trustees of the Port of Madras against the

Defendants for recovery of demurrage charges and other incidental charges in respect of certain textile goods in the customs area of the Port of

Madras by holding that the importer of goods cannot avoid his liability to pay demurrage charges and incidental charges in respect of the goods

illegally detained in customs area.

6. Considering the aforesaid facts, in our view there is no substance in this petition and is, therefore, dismissed. Rule discharged with no order as to

costs.