

(1996) 08 BOM CK 0059

Bombay High Court

Case No: Writ Petition No. 371 of 1992

Akbar Badrudin Jiwani

APPELLANT

Vs

Union of India and Others

RESPONDENT

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 :-

"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.