

HIGH COURT OF MADHYA PRADESH:
MAIN SEAT AT JABALPUR

(DIVISION BENCH: HON. SHRI S.K.
SETH AND HON. SMT. ANJULI PALO, JJ)

WRIT PETITION NO.11586/2014

Petitioner : Ideal Carpets Ltd.

V E R S U S

Respondents : Union of India &
others

Shri Preetam Jaiswal with Shri Shreyash Pandit, Advocates for the petitioner.

Shri Gautam Prasad, Advocate for the respondent Nos.1 to 6 & 10.

Shri Manoj Sharma with Shri Deepak Kumar Raghuwanshi Advocates for respondent Nos. 7, 8 & 9.

O R D E R

(09.08.2017)

Per Seth, J.

Is the Petitioner Company liable to pay the demurrage charges to ICD for the consignments not cleared by custom authorities? This

is the short question which arises for our consideration in this petition.

2. Shorn of verbiage and the resultant smoke screen, case of the petitioner in short is that it is a company incorporated and registered in India. It is engaged, amongst other things, in the business of Import and Export under Code No. IEC 1591001382.

3. It imported two consignments of handmade carpets from M/s. Imperial Rugs, United States of America at I.C.D., Mandideep, District Raisen (M.P.) vide Bill of Entry dated 24.2.2011 and 11.5.2011 respectively. They were illegally kept in the Custom, Inland Container Depot (for short ICD) at Mandideep in District Raisen (M.P.) therefore petitioner Company is not liable to pay demurrage charges.

4. In the reply, contesting respondents denied averments in the petition and submitted imported consignments in question were not cleared by Custom Authorities on the basis of intelligence received from

the officers of Directorate of Revenue Intelligence, Mumbai Zonal Unit that cargos were of the Indian origin, exported out of India which was re-imported into India by mis-declaring Country of Origin and also resorting to under-valuation. Since the consignments were not cleared by Custom authorities, naturally therefore, they were kept in the Custom, Inland Container Depot (for short ICD) at Mandideep in District Raisen (M.P.) and as such petitioner Company is liable to pay the demurrage charges.

5. After having heard the rival submissions and considering the material available on record, it is clear before the duty could be assessed and paid for clearance of goods, matter was taken up for examination and goods were detained. By the order dated 12.10.2011 and order dated 16.12.2011 petitioner company was called upon to furnish the Bond and Bank Guarantee for provisional release of consignments, but petitioner challenged same by filing Writ Petition No. 378 of 2012

in this Court. The said Writ Petition was decided by order dated 10.05.2012 and respondents were directed to reconsider the matter and pass order after hearing the petitioner.

6. Petitioner was heard for clearance of consignments on 21.05.2012 and an order was passed on 20.06.2012. Again being aggrieved by the order petitioner Company filed Writ Petition No.16467 of 2012 and the Court while disposing of the said Writ Petition passed the following order on 28.1.2013 :-

"(1) The petitioner herein is directed to deposit 20% of the provisional assessment duty Rs.9,65,585/- in cash or by way of demand draft as the case may be. For remaining amount of duty of Rs. 9,65,585/-, petitioner shall furnish a bond along with bank guarantee to the respondents. For Rs.38,25,658/- petitioner shall furnish a bond to the respondents that in case such duty is imposed, the petitioner shall deposit aforesaid amount with the respondents.

(2) Petitioner shall further execute a bond that in case some penalty is also imposed upon the petitioner in respect of undervaluing the goods, petitioner shall make payment of such amount within a period of 30 days from the date of such order subject to appeal, if any. With the aforesaid directions, this petition is finally disposed of, with no order as to costs."

7. In compliance of the order dated 28.01.2013, petitioner deposited draft of Rs.1,93,117/- towards the provisional duty and executed a bank guarantee dated 15.03.2013 and the respondents released the consignments. Consignments were not detained for confiscation for which impugned show-cause notice has now been issued and without giving a reply to the said show-cause notice; petitioner has rushed to this Court to challenge the show-cause notice in the garb of questioning its liability to pay demurrage charges. We do not wish to say anything about the show-cause notice as the matter is *sub judis*

before the custom authorities for adjudication.

8. The question regarding liability to pay the demurrage charges, in the considered opinion of the Court, is no longer *res integra* in view of decision in the Case of **Trustees of the Port of Madras Vs. K.P.V. Sheikh Mohd. Rowther & Co. Pvt. Ltd. and another** (1997) 10 SCC 285, wherein it has been held by the Supreme Court that once consignment is handed over to the Port Trust by the steamer agents, duly endorsing the bill of lading or issuing the delivery order but the goods detained at Port Trust for want of clearance from Customs authorities, the demurrage has to be collected by the Port Trust only from the consignee and not from the steamer agents.

9. Their Lordships also followed the earlier decision referred to in the case of **International Airports Authority of India Vs. M/s. Grand Slam International** 1995 AIR SCW 1802. In the International Airports

Authority of India (**supra**), it has been held as under:-

"An authority created under a statute even if is the custodian of the imported goods because of the provisions of the Customs Act, 1961, would be entitled to charge demurrages for the imported goods in its custody and make the importer or consignee liable for the same even for periods during which he/it was unable to clear the goods from the Customs area, due to fault on the part of the Customs authorities or of other authorities who might have issued detention certificates owning such fault."

10. Thus, in view of the law laid down by the Supreme Court in the cases of International Airports Authority of India Vs. M/s. Grand Slam International and Trustees of the Port of Madras Vs. K.P.V. Sheikh Mohd. Rowther & Co. Pvt. Ltd. and another (**supra**), we have no hesitation to hold that in the

facts and circumstances of the present case, the respondents were justified in claiming the demurrage charges from the petitioner Company and the petitioner Company is liable to pay the said demurrage charges till the goods were released from the ICD.

11. In view of foregoing discussion, we find no merit and substance in the present Writ Petition. Same is accordingly **dismissed.**

12. Ordered accordingly.

(S.K. SETH)
JUDGE

(SMT. ANJULI PALO)
JUDGE

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