

Selfshine Industries Vs. Board of Trustees of Port of Bombay

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Court : Mumbai

Decided On : Dec-14-1990

Reported in : 1992(38)ECC124

Judge : D.R. Dhanuka, J.

Appeal No. : Writ Petition No. 2719 of 1988

Appellant : Selfshine Industries

Respondent : Board of Trustees of Port of Bombay

Advocate for Def. : Shri Nakhija, Adv., i/b., ;Mulla &Mulla &Craigie Blunt &Caroe and;Shri Pankaj Kansara, Adv., i/b.,;Kansara &Thanekar

Advocate for Pet/Ap. : Shri N.R. Kantawala, Adv., i/b.,;Kantawala & Co.

Judgement :

1. By this petition filed under Article 226 of Constitution of India, the petitioner is complaining of detention of 189 bags of HDPE by Respondent No. 1 and seeking consequential reliefs in that behalf. The facts and circumstances leading to the filing of the Petition are as under :-

2. The Petitioner is an importer of HDPE. The Petitioner had appointed M/s. Harshad Clearing Agencies, the 2nd Respondent, as his clearing agent in relation to clearance of consignments of raw materials like HDPE.

3. On 20-8-1981 the Petitioner had lawfully cleared the said goods. The Petitioner had cleared 189 bags of the above referred imported goods in ordinary course after the payment of custom duty and after filing their bill of Entry No. 7083, dated 21-4-1981.

4. M/s. Climax Pipe Pvt. Ltd., Calcutta appears to have made a complaint with Yellow Gate Police Station to the fact that goods taken delivery of by the Petitioner through their clearing agent belonged to the said party. The said clearing agent had taken delivery of 665 bags of the said goods for different customers including 189 bags belonging to the Petitioner.

5. The Port Trust authorities called upon the Petitioner and the 2nd Respondent to re-bring the said goods in the Docks in view of the pending investigation at Yellow Gate Police Station and the complaint of M/s. Climax Pipe Pvt. Ltd. The Petitioner complied with the said request. The said goods are kept in the safe custody of the Port Trust.

6. Thereafter the Deputy Manager, Indira Dock by his letter dated 22nd April, 1982, called upon M/s. Climax Pipe Pvt. Ltd. to take delivery of the said goods which were brought back to the Dock and which had been stored in the warehouse with effect from 21st April, 1982. M/s. Climax Pipe Pvt. Ltd. refused to take delivery of the said goods on the ground that the goods in question were not theirs. M/s. Climax Pipe Pvt. Ltd. also obtained a short lending certificate in respect of clearance of their goods.

7. In these circumstances M/s. Harshad Clearing Agencies called upon the Deputy Docks Manager of Indira Docks to deliver back the said goods to them without payment of demurrage inasmuch as M/s. Climax Pipe Pvt. Ltd. had not accepted the said bags and had obtained a short lending certificate and it was obvious that the Petitioner and Respondent No. 2 were not at fault. It was thus in substance contended by the said letter that the entire complaint filed by M/s. Climax Pipe Pvt. Ltd. was unfounded and the Petitioner could not be deprived of the goods lawfully imported by them. The Port Trust authorities agreed to return back the said goods to the Petitioner or the Respondent No. 2 producing no objection certificate from the Inspector of Police, Yellow Gate Police Station. A letter was written in this

respect seeking the view of the Yellow Gate Police Station by the Deputy Docks Manager on 21st September, 1984. By his letter dated 20th March, 1985 the Senior Inspector of Police, Yellow Gate Police Station informed the Port Trust authorities that since the party concerned viz. M/s. Climax Pipe Pvt. Ltd. was not willing to take the delivery of these goods as these goods were not their goods, the Police has no objection to hand over the said consignments to M/s. Harshad Clearing Agencies. By their letter dated 16th May, 1985, the Deputy Manager, Indira Docks informed the 2nd Respondent that the investigation of the Police was still inconclusive and unless the Police complete the investigation, the goods could be delivered back. This was not correct attitude on the part of the Port Trust. Correspondence continue and the goods continued to remain detained. After serving the usual notice of the demand for justice, the Petitioners filed the present petition.

8. It is obvious that the action of the Port Trust authorities in detaining the goods was unlawful throughout and at any rate it become unlawful from the date when Yellow Gate Police Station recorded its no objection. Accordingly there can be no objection to the said goods being returned to the Petitioner. Perhaps the Respondent No. 1 have adopted an attitude of over precaution by requiring the Petitioner to move this Court and get an order of the Court before the goods can be released. By this petition, the Petitioner have also sought reliefs to the effect that the reasonable compensation be awarded to the Petitioner for illegal detention of the said goods for a long period of 6 years prior to the date of filing of the Petition. Mr. Kantawala has agreed not to press for the said relief and the controversy can thus be put an end to forthwith. In view of the above discussion, Rule is made absolute in terms of prayer (a). The Respondent No. 1 shall not claim any demurrage or any other amount from the Petitioner. By consent no order as to costs.

9. The Respondent No. 1 is directed to implement this order latest within 2 weeks from today.