

Goodwill Electronics Vs. Union of India (Uoi)

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Court : Mumbai

Decided On : Jul-30-2001

Reported in : 2002(142)ELT531(Bom)

Judge : P.S. Patankar and ;P.V. Kakade, JJ.

Acts : Mumbai Port Trust Act, 1963 - Sections 58

Appeal No. : Writ Petition No. 1670 of 2001

Appellant : Goodwill Electronics

Respondent : Union of India (Uoi)

Advocate for Def. : B.M. Chatterjee, Adv., ;S.V. Bharucha and ;Umesh Shetty, Adv. i/b., ;Mulla & Mulla

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

Judgement :

ORDER

1. A show cause notice dated 31-7-2000 came to be issued to the petitioners proposing to levy duty the on the goods imported by them under the Bill of Entry filed by them on 13-3-2000. The said show cause notice came to be adjudicated and order came to passed by the Commissioner of Customs (Adjudication) on 27-2-2001 and the proceeding initiated against the petitioners came to be dropped. In

view of this, on 4-4-2001, the petitioners for the first time wrote to the Commissioner of Customs (Import) to release the goods in compliance of the adjudication order passed. However, till today, they have not been released. The said order is not even challenged. Hence this petition.

2. The learned Counsel appearing for the Mumbai Port Trust is right in pointing out that under Section 58 of the Mumbai Port Trust Act, 1963, the Port Trust is entitled to recover the demurrage charges before release of the goods. The question is, who is responsible for the same, Prima facie, in view of the judgment of Apex Court reported in : 2001(129)ELT561(SC) , between Shipping Corporation of India Ltd. v. C.L. Jain Woolen Mills and Ors., the Supreme Court observed as under :

'The conclusion of the High Court to the effect that the detention of the goods by the Customs authorities was illegal and such illegal detention prevented the importer from releasing the goods, the Customs authorities would be bound to bear the demurrage charges in the absence of any provision in the Customs Act, absolving the Customs authorities from that liability. Section 45(2)(b) of the Customs Act cannot be construed to have clothed the Customs authorities with the necessary powers, so as to absolve them of the liability of paying the demurrage charges'.

The Customs authority is responsible for this as the detention is said to be illegal as the adjudication notice was decided on 27-2-2001 in favour of the petitioners and it is not challenged by the Department. The respondents ought to have released the goods immediately on 4-4-2001 when the petitioners applied.

3. In view of the above, we pass the following order :-

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