Moti Plastics Vs. Collector of Customs

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Court : Kolkata

Decided On : Nov-24-1992

Reported in : 1994(70)ELT212(Cal)

Judge : Suhas Chandra Sen, J.

Appeal No. : Matter No. 3464 of 1992

Appellant : Moti Plastics

Respondent : Collector of Customs

Advocate for Pet/Ap. : Mr. Bannerjee

Judgement :

Suhas Chandra Sen, J.

1. The only question in this case is whether the court shouldfollow its decision in the case of Everbright Plastics Private Ltd. and Anr. v. The Collector of Customs, Calcutta and Ors. and several other orders passed pursuant to that judgment on 3rd September, 1992.

2. The point of distinction drawn on behalf of the Customs Authorities is that the ship Tiger River had actually reached the Port of Calcutta long after 31st March, 1992, the date on which the Bill of Entry was lodged with the Customs Authorities. Actually, the date of arrival of the ship was 9th April, 1992 which was well beyond

the stipulated period of 7 days from the date of lodgement of the Bill of Entry. According to the bill of entry the ship was due to arrive on 6th April, 1992.

3. Mr. Bannerjee, appearing for the petitioner has pointed out that the Bill of Entry was lodged on 31st March, 1992 on the basis of the advice given by the shipping agent. To show the bona fide of his client, Mr. Bannerjee has drawn my attention to three journals, annexed to the affidavit-in-reply. In the two issues of 'Shipping Times', dated 30th March and 31st March 1992 the due date of arrival of the ship 'Tiger River' was shown as 6th April, 1992 and 'Daily Shipping Information' in its issue of 31st March, 1992 also gave 6th April, 1992 as the due date of arrival of the ship 'Tiger River'. Therefore, the contention of Mr. Bannerjee is that the information given by the Shipping Agent was the information supplied by the Shipping Journals and was not any special information given mala fide to help the importer.

4. Mr. Roy Chowdhury appearing on behalf of the respondents has stated that the Shipping Agent on 4th April, 1992 had made a communication which revealed that the said ship was to arrive on 8th April, 1992 and not on 6th April, as mentioned in the Bill of Entry. That information came to the shipping agent after 30th or 31st March, 1992. The Shipping Agent might have revised the dates mentioned in the journals on the basis of further materials received but it cannot be said that on 30th March or 31st March he had put the expected date of arrival as 6th April, 1992 mala fide and with ulterior motive.

5. Mr. Roy Chowdhury has argued that the expectation has been belied by the events. That may be true but that will not make the statement in bill of entry false or mala fide. It was expected that the ship would arrive on 6th April, 1992. The arrival of the ship might have been delayed for one reason or another but that will not have the effect of falsifying the expectation of the shipping agent.

6. The writ petition, therefore, must succeed.

7. There will be orders as prayed for in terms of prayers (a), (b) and (c) of the writ petition.

8. The writ petition is disposed of finally as above.

9. There will be no order as to costs.

10. All parties shall act on a signed copy of the operative part of this order on the usual undertaking.