

Witness duly sworn on 14.08.2024.

Cross Examination by Advocate Sri.PKB, for Plaintiff:

Now, I am doing Export business of Fly ash (thermal plant waste). I started Export business of Fly ash in the year 2016. I am aware of process, procurement and export of Fly ash. It is true to suggest that, every exporter need not be carrying and forwarding agent. To act as Carrying and Forwarding agent, he has to met some criteria. C and F agent is entrusted with storage, transportation, inter carting, custom clearance, penalties and warphage. Witness volunteers, C and F agent is the custodian of commodity meant for Export.

2. Unless exporter is the C and F agent, he is not permitted to do activities/responsibilities of C and F agent. Exporter has nothing to do with the commodities stored by C and F agent inside the premises/security area (Custom bounded area).

Question: C and F agent is obtaining license inside custom bounded area inside the port premises as per the requirement of Exporter ?

Answer : I disagree. Witness volunteers, C and F agent assess the volume, quality and arrive at a stowage area based on the volume of commodity and also taking into consideration of inter carting and stevedoring while assessing the area for stowage.

3. Exporter declares the volume of commodity to be exported to the C and F agent. On the said basis, C and F agent has to obtain custom clearance.

4. Inside the custom bound area there are two types of storage areas i.e., closed storage and open storage. In open storage, there are two types of storage areas they are paved and non paved storage areas. License fee is less in paved area compared to covered shed area and license fee is much less in non paved area compared to paved area.

Question : C and F agent will obtain storage area as per the requirement of the Exporter ?

Answer : I disagree. Selection of storage area is as per the terms of contract.

5. It is incorrect to suggest that, NMPT provides closed shed area free of cost for 21 days prior to export for storage of commodity. Witness volunteers, in consultation with port officers and vessel agent and we decide date of berthing and confirmation of berthing, after payment of berthing, traffic manager allot along side place for maximum limit of 21 days free of cost for the purpose of storage of commodity. C and F agent has no independent authority to decide date of export.

Question : Date of export of commodity is always subject to supply of commodity by the exporter and availability of berth in the port and decision of the Traffic Manager?

Answer : I partly disagree. Only after custom approval and based on the availability of berth in the port and decision of the traffic Manager, we will decide date of Export.

6. C and F agent is bound to pay license fee to the port authority as soon as commodity to be exported enters the custom bound area inside the port.

Question : C and F agent is bound to pay license fee to the port authority irrespective of payment of amount by exporter to C and F agent ?

Answer : I disagree.

Question : Port authority grant license to C and F agent for particular period ?

Answer : It depends on the contract between port and C and F agent.

7. Ex.P.18 is the agreement entered into between plaintiff and Defendant No.1. The responsibility of the plaintiff is limited to terms and conditions mentioned in agreement marked as Ex.P.18. Apart from Ex.P.18, there was no other agreement between plaintiff and defendant No.1.

8. Defendant No.1 installed ash packing unit in UPCL, Padubidri. Defendant No.1 has responsibility of packing and safety of the commodity packed at source. It is incorrect to suggest that, defendant No.1 availed services of plaintiff prior to execution of Ex.P.18 for the purpose of transportation of fly ash from padubidri to Baikampady. After execution of Ex.P.18, may be it is one week or fortnight we availed service of plaintiff for the first time.

Further cross examination is deferred.

(Typed to my dictation in the open court.)

R.O.I. & A.C.,

**I Addl. District & Sessions Judge,
Mangaluru, D.K.**