BEFORE THE ADDITIONAL MASTER – III
HIGH COURT MADRAS

C.S. No.79 of 2011

Date:25.06.2024
Time:01.05 P.M

Name: Radwan Mohamed Azam (PW1) (Re call)

Continuation of cross Examination: Mr.K.Chandrasekaran, Learned Counsel for the 1st defendant.

Solemnly affirmed:

Q78: In all the invoices which you have filed, the intended goods is shown as rubber processing oil?
A: Yes.

Q79: That means, the invoice shows that the 1st defendant has placed order for import of rubber processing oil?
A: Yes.

Q80: These imports detained by DRI on the ground that the import goods were not rubber processing oil but Base oil according to DRI?
A: Yes.

Q81: So is there any differential duty between rubber processing oil and Base oil?
A: I do not know. Maybe correct or may not be correct.

Q82: Do you know that the 1st defendant has been asked to pay the differential duty for clearance of the goods?
A: May be. I am not sure of it.

Q83: I put it to you that is because of your action, not exporting the intended goods namely rubber processing oil but only base oil the 1st defendnat has to pay the differential duty of Rs.1,27,58,195/-.

A: No.

Q84: The goods have been detained by DRI in three containers in stationed. Is it correct?
A: I am a supplier. I am not concerned with it.

Q85: I put it to you that your father was arrested because of the illegal export made by the plaintiff ocmpany to the 1st defenant.
A: I am a supplier, my father was increminated by the defendant by misleading and hiding the facts. As we are supplier We have no involvement.

Q86: (Reply statement is shown to the witness) You have stated in your reply statement "the plaintiff submits that they did not ask them to clear goods. Not only that the managing director of first defendant Mr. Raja Anandan also implicated the plaintiff's another Director Mr. Mohammed Azam and he was arrested by the DRI and he was also inside the prision for almost 65 days. Further his passport also detained and thereby they incurred heavy loss". Is it correct?
A: Yes.

Q87: I put it to you that your father given a statement before DRI.
A: Yes. Witness adds: he was forced he was physically tortured and he underwent turmoil under the custody of DRI.

Q88: Will your father come to witness box?
A: He is bedridden, so he will not be able to come to the witness box.

Q89: Would you consented to examine your father through commissioner?
A: He is not physically fit in the medical ground and it is irrelevant to call him as awitness in this case.

Q90: Before this court, you have prayed for reexport of seven flexi bags?
A:Yes.

Q91: Do you know whether that has been re exported or customs sold the seven flexi bags?
A: Cargo was not re exported and I have no knowledge about the sale by customs.

Q92: Do you know that the 1st defendant paid the custom duty for the seven flexi bags?
A: I am a supplier and I do not have any concern or requirement to track whether the consignee is paying duty or not paying duty, as my role ends only by supplying the right goods as per the invoice.

Q93: Do you know the business of the first defendant?
A: Yes.

Q94: As far you know what is his business?
A: He has got multiple business, manufacturing and trading business in different types of oils.

Q95: I put it to you that because of your illegal action he was forced to closedown his factory because the DRI sealed the factory.
A: I deny.

Q96: Do you know that the 1st defendant has approached customs settlement commissioner and paid the settlement fees?
A: I am not aware and it is not my concern.

Q97: Do you know that your father has approached customs settlement commissioner and paid the settlement fees?
A: This is not relevant to this case.

Q98: I put it to you that because of your illegal act, the 1st defendant has undergone mental agony and pain and he was incarcinated, he has faced action by the enforcement Directorate and because of this he is claiming damages against you.
A: It is wrong.

Q99: I put it to you that 1st defendant was suffered business loss.
A: I deny.

Re-Examination: Nil.

Time: 01.45 P.M

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be true and correct and signed before me.

ADDITIONAL MASTER-III.

BEFORE THE ADDITIONAL MASTER – III
HIGH COURT MADRAS

C.S. No.79 of 2011

Date :26.06.2024
Time :12.55 P.M

Name : J. Raja Ananthan (DW1)

Age : 52 years

Father's Name : Mr. Jesudasan

Office Address : No.887/12, 13th Main Road, J Block, 1st Block,
1st street, Anna Nagar West, Chennai – 600 040.

Chief Examination by Mr. K. Chandrasekaran, Learned Counsel for the 1st defendant.

Solemnly affirmed:

I am the Managing Director of the 1st defendant company herein and as such I am well acquainted with the facts of this case. I am filing my proof affidavit stating the facts of this case and the same may be treated as part of my evidence in chief. The following documents are marked as exhibits.

Ex.D1 is the printout of the Remittance challan by Tamil Nadu Mercantile Bank dated 31.03.2010. (The plaintiff counsel objected that the invoices and the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D2 is the photocopy of the Invoice No. AZPC/DXB/CHN/000639 for 4 containers dated 20.04.2010.(The plaintiff counsel objected that the invoices and the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D3 is the photocopy of the Invoice No. AZPC/DXB/CHN/000640 for 4 containers dated 20.04.2010.(The plaintiff counsel objected that the invoices and the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D4 is the photocopy of the invoice for 9 containers dated 12.05.2010.(The plaintiff counsel objected that the invoices and the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D5 is the photocopy of the Invoice No.AZPC/DXB/CHN/000648 for 20 containers dated 12.05.2010.(The plaintiff counsel objected that the invoices and the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D6 is the photocopy of the invoice for 10 containers dated 30.08.2010.(The plaintiff counsel objected that the invoices and the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D7 is the photocopy of the invoice for 6 containers dated 06.09.2010.(The plaintiff counsel objected that the invoices and the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D8 is the original Remittance challan by Tamil Nadu Mercantile Bank dated 17.09.2010.(The plaintiff counsel objected that the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D9 is the original Remittance challan by Tamil Nadu Mercantile Bank dated 21.09.2010.(The plaintiff counsel objected that the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D10 is the original Remittance challan by Tamil Nadu Mercantile Bank dated 24.09.2010.(The plaintiff counsel objected that the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D11 is the original Remittance challan by Tamil Nadu Mercantile Bank dated 28.09.2010.(The plaintiff counsel objected that the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D12 is the photocopy of the bill of entry with receipt for payment of Rs.4,86,709/- customs duty as claimed in the counter claim dated 18.11.2010.

Ex.D13 is the original Remittance challan by Tamil Nadu Mercantile Bank dated 29.09.2010. (The plaintiff counsel objected that the invoices and the remittance challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D14 is the photocopy of the invoice for grease oil 5 containers dated 04.10.2010.(The plaintiff counsel objected that the invoice is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document).

Ex.D15 is the certified copy of the remand application with endorsement by CMM, Egmore, Chennai dated 16.12.2010.

Ex.D16 is the photocopy of the letter dated 22.12.2010 by 1st defendant along with DD for Rs.1,27,58,195/- the value of differential duty paid by the 1st defendant as per orders of court. (The plaintiff counsel objected that the D1 has cleared the suit cargo as per the order of this Hon'ble Court by making the payment of duty and demurrage charges and delivery order charges which is nothing to do with this suit).

Ex.D17 is the photocopies of the receipts for payment of detention charges paid to liner MSC India Pvt. Ltd by 1st defendant as stated in the counter claim for the period 03.02.2011 to 05.04.2011.(The plaintiff counsel objected that the D1 has cleared the suit cargo as per the order of this Hon'ble Court by making the payment of duty and demurrage charges and delivery order charges which is nothing to do with this suit).

Ex.D18 is the photocopies of receipts for payment paid to MAERSK India liner by 1st Defendant stated in the counter claim dated 04.02.2011 to 16.03.2011.(The plaintiff counsel objected that the D1 has cleared the suit cargo as per the order of this Hon'ble

Court by making the payment of duty and demurrage charges and delivery order charges which is nothing to do with this suit).

Ex.D19 is the photocopy of the paid to All Cargo as stated in the counter claim dated 14.02.2011.(The plaintiff counsel objected that the D1 has cleared the suit cargo as per the order of this Hon'ble Court by making the payment of duty and demurrage charges and delivery order charges which is nothing to do with this suit).

Ex.D20 is the photocopy of Demurrage Concord Cargo dated 19.02.2011. (The plaintiff counsel objected that the D1 has cleared the suit cargo as per the order of this Hon'ble Court by making the payment of duty and demurrage charges and delivery order charges which is nothing to do with this suit).

Ex.D21 is the photocopy of Satva Cargo dated 19.03.2011. (The plaintiff counsel objected that the D1 has cleared the suit cargo as per the order of this Hon'ble Court by making the payment of duty and demurrage charges and delivery order charges which is nothing to do with this suit).

Ex.D22 is the Served copy on the 1st Defendant of Counter filed by DRI in Crl.M.P.6507/2011 in Crl.O.P.No.15459/2011 dated July 2011. (The plaintiff counsel objected that the defendant and plaintiff is not the party to the document and it is not at all authorized DRI. So, this document is not relevant to this case).

Ex.D23 is the Original of the Remittance Challan by Tamil Nadu Mercantile Bank Limited dated 12.10.2011. (The plaintiff counsel objected that the Remittance Challan is nothing to do with this suit. This is pertaining to different suit. The cause of action in this suit is noway related to this document. It does not contain any relevance to this suit and any invoice).

Ex.D24 is the Original of the order by the Settlement Commission dated 24.08.2012. (The plaintiff counsel objected that it is pertaining to the Customs departmental proceedings as well as criminal proceedings).

Ex.D25 is the Original of Receipts (2 Nos.) issued by the Customs paid by the 1st defendant as per order of Settlement Commission dated 21.09.2012 and 06.09.2012.

Ex.D26 is the photocopy of the Statement given by the father of PW1 before Enforcement Directorate dated 27.01.2015. (The plaintiff counsel objected that it is a statement given before the enforcement department by one Mohammed Azam and it is nothing to do with this suit).

Ex.D27 is the Original of Notice to produce document given by D1 to Plaintiff with endorsement of plaintiff's counsel dated 14.08.2021.

Ex.D28 is the printout of the Consolidated statement filed by the 1st defendant for reference. (Plaintiff side objected that it is an unsigned document and related with defendant's suit).

Most of the documents is computer generated document. There is no 65B Affidavit of Indian Evidence Act, produced. Hence, objected by plaintiff counsel.

Subsequent to that 65B Affidavit filed by the 1st Defendant counsel.

<u>Cross examination by Mr.A.Ganesh, Learned Plaintiff counsel.</u>

Q1: Are you the Director of Lubecon Petro Products Pvt., Limited?
A: Yes.

Q2: In this case you have placed an order for Rubber processing and Extender Oil before the plaintiff. Is it correct?
A: No.

Q3: How many containers of Rubber processing and Extender Oil was imported?
A: 52 containers.

Q4: Before filing of this suit you have filed a Bill of Entry to clear the 52 containers

subject cargo of the plaintiff. Is it correct?
A: Yes, I have filed a Bill of Entry.

Q5: In Ex.D15 (Remand Report) The DRI the complainant has extracted the statement of yours in para.6, line 12 and stated that "they placed order with M/s.Al Zahara Petro Chemical LLC, UAE for supply of rubber extender and processing oil, they gave order".
A: I deny. I am not disclosed any such statement before the DRI.

Q6: I put it to you that in order to get Counter Claim you are coming and stating a lie before this court that you have not placed an order before the plaintiff for supply of Rubber processing and Extender Oil. When you gave the statement before DRI?
A: I deny.

Time: 01.50 P.M

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be true and correct and signed before me.

ADDITIONAL MASTER-III

BEFORE THE ADDITIONAL MASTER – III
HIGH COURT MADRAS

C.S. No.79 of 2011

Date :27.06.2024
Time :01.00 P.M

Name : J. Raja Ananthan (DW1)

Chief Examination by Mr. A.Ganesh, Learned Counsel for the plaintiff.

Solemnly affirmed:

Q7: (Ex.P2 to Ex.P7, Ex.P11 to Ex.P19 are shown to the witness). Pertaining to the Ex.P2 to Ex.P7, Ex.P11 to Ex.P19 belongs to the suppliers and on that basis you filed Bill of Entry.No.687671, 687672, 687673 dated 13.11.2010 Bill of Entry.No.665811, 685812 dated 21.11.2010 to clear the Rubber processing and Extender Oil and also Ex.P8 and Ex.P9 Invoice and packing list you have filed a Bill of Entry Viz., No.691593 dated 18.11.2010 for clearing the fuel oil. Is it correct?
A: These documents are related to clearing 52 containers for the Rubber processing and Extender Oil and 7 containers for clearing the fuel oil. They are seized by DRI.

Q8: On 11.11.2010, 25.11.2010 and 29.11.2010 directorate of Revenue Intelligence detained the consignment in Bill of Entry No.687671, 687672, 687673 dated 13.11.2010 and Bill of Entry No.665811 and Bill of Entry No. 665822 dated 28.11.2010 and drew samples and seized the consignment under Mahazar. Is it correct?
A: Yes.

Q9: (Ex.D15 is shown to the witness). In Ex.D15 which you filed is a Remand Application to remand you to the Judicial Custody. Is it correct?
A: Yes.

Q10: (Ex.D15 is shown to the witness). In the said report para 6 line no.16 and 17 it is stated that 'then the suppliers had sent a certificate of analysis dated 23.10.2010 mentioning the goods as Rubber processing and Extender Oil". Is it correct?
A: Yes.

Q11: (Ex.D15 is shown to the witness). In the said report para 6 line no.18 and 19 and 20 it is stated that he finds from the test reports C.No.35/CRCL/2010/CL6034, 35/CRCL/2010/CL-6036, and 35/CRCL/2010 CL6040, all dated 26.11.2010 pertaining to Bill of Entry No. 665811 dated 21.10.2010 as per the three test reports, the goods are having the characteristics of base oil. Is it correct?

A: Yes, but not only this Bill of Entry No. 665811 dated 21.10.2010 but related to 52 containers.

Q12: As per the Remand Application the DRI test report pertaining to Bill of Entry No. 665811 dated 21.10.2010 not for other Bill of Entry No.687671, 687672, 687673 and 665812. Is it correct?
A: No.

Q13: (Ex.D15 is shown to the witness). In the said report para 6 page no.6, line no.5 you have stated that on 01.12.2010 you sent a Email to the plaintiff after DRI found out it is Base Oil. Is it correct?
A: Yes, But, now I do not remember.

Q14: Have you produced of marked the said Email dated 01.12.2010 before this Hon'ble Court?
A: No. Witness adds:- it is produced before DRI.

Q15: (Ex.D15 is shown to the witness). In the said report para 6 page no.6, line no.6 you have stated that in his further statement dated 16.12.2010 the accused stated inter alia that he contacted the supplier on phone in this connection, they asked him to send back the goods it the same was not as per his requirement. Is it correct?
A: I deny.

Q16: (Ex.D15 is shown to the witness). In the said report page no.1 the Magistrate written that I was produced before the Magistrate for remand at 10.40 p.m and no complaints of ill treatment but he would say that he wrote the 3rd page of the statement as dictated by one of the four officers. Therefore, you are now before the Court you are incorrectly stated that you retracted the entire statement.
A: I deny.

Q17: Have you tried to re-export the goods 52 containers in 5 Bill of entries stated above as requested by the suppliers?
A: No, since the goods were seized by the DRI there is no possibility for re-export.

Q18: Is it correct to state that DRI arrested you on 16.12.2010 for mis declaration of the description of goods and valuation?
A: Yes. But, they sent the wrong materials and not sent the materials asked by us. For that reason they remanded me.

Q19: As per Customs Act if anything received as wrong shipment the importer can deny the shipment and give a letter for re-export?
A: No. since the goods were seized by the DRI there is no possibility for re-export. So, I did not give any letter.

Q20: Did you abandon the wrong shipment of goods by the supplier?
A: DRI immediately arrested me and prior to that no chance given to me for that.
Witness further says that :- But, after the arrest I have paid the differential duty amount of Rs.1 Crore 27 Lakhs.

Q21: You are dealing in Petroleum Oil business and you have two companies. One is D1 and another one is Quality Lube Products Pvt. Ltd?
A: Yes.

Q22: Do you have knowledge about the Oil products?
A: Yes.

Q23: Am I correct to state that Base Oil is costlier than Rubber Processing extender oil?
A: Yes, little higher.

Q24: As per the invoice of the supplier the Rubber Processing extender oil was supplied to D1 for 262 U.S dollars per metric ton. Is it correct?
A: Yes.

Time: 01.55 p.m

Continuation Time: 03.00 p.m.

Solemnly affirmed:

Q25: As per Ex.D15, Remand application, Para No.4, the DRI valued the Rubber Processing extender oil based on similar import through Tuticorin port during the same period, the price declared as Rubber Processing extender oil at unit price of 930 USD per Metric Ton from M/s. Success Spare Parts LLC, UAE to M/s. Cochin Petromins Pvt. Ltd, Kochi.

A: I deny.

Q26: Whether you have taken any steps to collect the sample of the oil and send it to chemical analysis to any government lab?

A: No. They are not allowed for that since goods are seized and I was also arrested.

Q27: You have not taken any steps before this Hon'ble court or Magistrate to retest the sample to show it is a Rubber Processing extender oil not a base oil?

A: No, I have not taken any steps.

Q28: Even after DRI assessed the consignment 930 USD per MT (Metric Ton), you have not taken any steps to abandon the goods?

A: They are valued as 930 USD as MT on assumption but it is not the actual value.

Q29: You meant to say that DRI has arrested you on an assumption?

A: No. They arrested on the basis of characteristics of base oil.

Q30: As per Ex.D15, para 8 it is stated that 1020.61 MT base oil an actual assessable value of Rs.5,24,38,985/- based on unit price of USD 930 per MT with consumption duty of Rs.1,66,24,930/- as against the supplier value of Rs.1,21,96,602/- . You did not

deny that valuation?
A: No. I denied the DRI valued for higher price.

Q31: But the plaintiff in this suit claimed Rs.1,21,96,602/- for 52 containers as a invoice value. Is it correct?
A: Yes. But there is a running account, my advance payment of Rs.78 Lakhs is with the plaintiff.

Q32: As per Ex.D16, you said that you denied the valuation of the DRI but you paid Rs.1,27,58,195/- as a differential duty.
A: I paid the differential duty because of my arrest.

Q33: As per Ex.D16, you have sent a letter to the Additional Director General, DRI from the prison.
A: Yes.

Q34: As per Ex.D16, in that letter you have agreed to pay Rs.1,27,58,195/- and you also given a demand draft.
A: Yes.

Q35: While in the bail application you did not contradict the report of the DRI that they have only examined the consignment pertaining to one bill of entry and they left out 4 bills of entries.
A: It is wrong. They have examined all the containers.

Q36:I put it to you that as per Ex.D15 they have done the test only for one bill of entry consignment and not for all the bill of entries consignment .
A: I deny.

Q37: I put it to you that filing of the bill of entry for 59 containers, DRI drawing samples from the containers, sending the samples to the chemical analysis, after chemical analysis report, DRI seized the consignment, your statement on 10.12.2010 and 16.12.2010 and your arrest is on 16.12.2010 and your bail application and payment

of differential duty on 22.12.2010, all the above happened much prior to filing of this suit.
A: Yes.

Q38: From your action, it is clear that you are very much desperate to clear the goods from customs while you are in prison.
A: No. I have taken steps only after released on bail.

Q39: You stated that you did not place order to the supplier, that is so why you are interested to clear the goods.
A: The goods are imported in the name of Redsun Lubricants and through high sea sale my seal and my name are forged and converted into my company name. After that they have approached me and asked me you purchase very same kind of oil and this oil is very much useful to you, you also pleased to purchased this oil. For that reason I filed bill of entries.

Q40:Did you state the above said facts on 10.12.2010 and 16.12.2010 statement before the DRI enquiry?

A: No, at that time I am not known the above said facts.

Q41: (Ex.P28 and Ex.P29 Statements of D1 are shown to the witness) Is this your hand writing and your signature is also there. This statement given under section 108 of customs Act.
A: Yes.

Q42: In that statement, what you have stated now in answer to question no.39, nothing you stated in the statement given under section 108 of customs Act about Redsun Lubricants etc.
A: No. At that time I do not know about the facts.

Q43: (Ex.P30 is shown to the witness) In order to settle the case, did you go to customs

settlement commission?
A: Yes. Because of avoiding the punishment.

Q44: (Ex.P30 is shown to the witness) Is this the order of the settlement commission?
A: Yes.

Q45: In that settlement commission, no where it is stated what you stated answer to the Q. No.39?
A: Yes.

Q46: I put it to you that it is an after thought that now only you are coming and stating to claim relief in the counter claim, your answer in Q.No.39?
A: I deny.

Q47: As the importer you know that all the consignments is subject to the scrutiny of customs and DRI before clearance?
A: Yes.

Q48: Like wise the customs and DRI detained the goods if there is mis declaration of classification of goods, valuation of goods?
A: Yes.

Q49: Do you have an import and export code?
A: At that time I have. Now company is closed.

Q50: Did you have license to import the oil at that time?
A: Yes.

Q51: Did you produce the certificate of import and export code and license before this court?
A: No.

Q52: Even you did not plea before Magistrate or before this court to abandon the goods

and claimed the refund of money of Rs.1,27,58,195/- after release from prison.
A: No. the reason is that the advance money Rs.78 Lakhs with the plaintiff and also I paid the differential duty of Rs.1,27,58,195/-. And on that hope I took the delivery of goods.

Q53: I put it to you that it is incorrect to say that you paid an advance of Rs.78 Lakhs to the supplier on that basis you cleared the goods without abandoning the goods.
A: I deny.
Q54: I put it to you that you cleared the goods to earn more profit as the value of goods is higher as against the invoice value.
A: I deny.

Q55: In your Written Statement you have stated in para.6 'It is alleged by the DRI that what is contained that the said 7 containers is not fuel oil as alleged by the Plaintiff but Kerosene which is a restricted item'. Is it correct?
A: Yes, DRI only stated it is Kerosene and they also arrested me again.

Q56: In your Written Statement you have stated in para.6 'DRI has filed a petition in Application No.2315/2010 and DRI was permitted to auction the goods and the proceeds directed to the deposited into court and adjusted towards the suit claim. Is it correct?
A: Yes.

Q57: Do you know DRI could not able to auction the 7 containers since, Indian Oil Corporation refused to buy since it was not kerosene?
A: I do not know.

Q58: Thereafter again the plaintiff filed an Application.No.3914/2013. You were also the party to the petition as respondent. Is it correct?
A: Yes.

Q59: Before this Hon'ble Court you said no objection and the DRI also said no objection and this Hon'ble Court allowed the plaintiff to re-export the 7 containers since it was not kerosene vide Order dated 25.09.2013.

A: Yes.

Q60: Did you take any action against DRI for arresting you based on wrong chemical analysis?
A: No, I do not know the Chemical Analysis Report.

Q61: (Ex.P26 is shown to the witness). You do not know subsequently, the value of the 7 container goods has been reduced by the DRI since it was not Kerosene.
A: I do not know.

Q62: (Ex.P26 is shown to the witness). In para.6 it is stated that 'Therefore, on this premise, the Department made attempts to sell the containers to the Indian Oil Corporation. But the Indian Oil Corporation refused to buy the product'. Is it correct?
A: Yes.

Time: 05.00 P.M

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be true and correct and signed before me.

ADDITIONAL MASTER-III

BEFORE THE ADDITIONAL MASTER – III
HIGH COURT MADRAS

C.S. No.79 of 2011

Date :28.06.2024
Time :02.40 P.M

Name : J. Raja Ananthan (DW1)

Chief Examination by Mr. A.Ganesh, Learned Counsel for the plaintiff.

Solemnly affirmed:

Q63: Rubber Processing and Extender Oil, Base Oil are derived from the petroleum crued oil. Is it correct?
A: Yes, all the products are petroleum products.

Q64: Whether the same was explained to DRI regarding characteristics of petroleum

products?
A: I do not remember.

Q65: In this case the DRI detained the suit consignment on 13.11.2010 under Mahazar the clearance was not stopped by you or plaintiff.
A: Yes.

Q66: The delay in clearance is due to DRI's detention.
A: Yes.

Q67: In this case you paid a differential duty on 22.12.2010, injunction was obtained by the plaintiff on 02.02.2011. Is it correct?
A: Yes.

Q68: In between 22.12.2010 and 02.02.2011 there were 40 days. In these 40 days you did not cleared the goods from customs.
A: I paid the differential duty of Rs.1,27,58,195/- on 22.12.2010. After around 20 days DRI permitted me to clear the material. At the time of clearance demurrage amount comes around Rs.40 lakhs. Then detention amount comes around Rs.40 lakhs. The delay was caused due to arranging all these amounts.

Q69: You have given a letter to DRI on 11.11.2010 for the purpose of provisional release of the consignment. Is it correct?
A: Yes, but they denied.

Q70: (Ex.D24 is shown to the witness). In Ex.D24 page.no.3, para no.1.5 it is stated that the applicant vide letter 11.11.2010, 24.11.2010 in F.No.VIII/26/309/2010 DRI dated 16.11.2010 gave clearance to the provisional release of goods in Bill of Entry No.665811 and 665812 even though they got the chemical analyst report dated 21.10.2010. Am I correct?
A: No such permission granted for clearance to the provisional release of goods in Bill of Entry No.665811 and 665812.

Q71: I put it to you that you are not telling the truth now. As you have already stated before the settlement commission about the letter for provisional release of goods.
A: I deny. If permission granted for provisional release of goods I need not be arrested at that time.

Q72: The consignment was not stopped by you it was only detained by DRI. You did not make any representation to DRI to direct the D5 and D6 to waive the demurrage charges. Is it correct?
A: I gave letter to D5, D6 and also DRI. But they are not considered my letter.

Q73: Did you filed those letters before this Hon'ble Court?
A: No.

Q74: I put it to you that you did not give any such letter neither to DRI nor to D5 and D6.
A: I deny.

Q75: After clearance of the consignments how much did you sell it for?
A: Now I do not remember the amount. I may peruse the file.

Q76: You did not produce the accounts regarding sale of suit consignment such as receipts of the buyer, Bank accounts to this Court?
A: No.

Q77: I put it to you that you did not file the delivery order, documents for sale of suit consignment because it was sold for more than Rs.12 crores.
A: I deny. It is an exaggerated amount. The amount will be below Rs. 3 crores.

Q78: Did you produced the documents related to sale amount of Rs.3 crores?
A: No.

Q79: I put it to you that in your proof affidavit you have not stated about the non-clearance of the consignment from 22.12.2010 to 02.02.2011.
A: No. That is not necessary.

Q80: I put it to you that in your written statement you have stated that you have two companies namely Lubecon Petro Products Pvt. Ltd and M/s. Quality Lube Petro Products Pvt. Ltd.
A: Yes.

Q81: I put it to you that in your written statement para.14 you have stated that your companies have been flourishing in business and the combined turnover stands at Rs.80 crores.
A: It is wrong. Turnover stands only at Rs.8 crores. It is only a typographical error.

Q82: In your additional written statement you have not corrected the typographical error.
A: Yes.

Q83: Is it correct to state that the Invoice, Packing list and Bill of Lading filed by plaintiff side in Ex.P2 to Ex.P19 contains defendant's name and the details of the consignment and the invoice amount.
A: Yes.

Q84: As per the additional written statement you have stated that the value of the Rubber processing oil is 2 lakhs 67 thousand 399.72/- U.S dollars.
A: Yes.

Q85: You have taken delivery of the RPO pertaining to the Ex.P1 to Ex.P19. Is it correct?
A: Yes.

Q86: (Ex.D26 is shown to the witness). Ex.D26 is a statement of Mohammed Azam one

of the Directors of the plaintiff's company who gave the statement before the enforcement department. Is it correct?
A: Yes.

Q87: (Ex.D26 is shown to the witness). In Ex.D26 Pg.No.7, Q.No.2.7 it is stated that the DRI case against you in this instant was mis-declaration of Base Oil as Rubber Processing Oil and under invoicing the consignment by an amount of nearly 700 (U.S Dollars) per M.T for a consignment of 1062.61 M.T and the answer given by Mohammed Azam was "our company had send 1062.61 of Rubber Processing Oil to M/s. Lubecon in 2010 from which many kinds of Base Oils can be processed by distillation, I feel that DRI has misinterpreted it as Base Oil". Is it correct?
A: Yes. Mohammed Azam stated that he has sent only RPO and DRI has misinterpreted it as Base Oil.

Q88: (Ex.D8 to Ex.D11, Ex.D13 are shown to the witness). In Ex.D8 to Ex.D11, Ex.D13 amount and invoice numbers had been mentioned. Is it correct?
A: Yes. The amounts are mentioned. All the amounts are sent through Proforma invoice. Invoice Numbers were not mentioned in these documents.

Q89: (Ex.D23 is shown to the witness). Compare the same with Ex.D8 to Ex.D11, Ex.D13. In Ex.D8 to Ex.D11, Ex.D13 the beneficiary name, amount, invoice numbers is mentioned whereas in Ex.D23 only amount is mentioned and rest of the details are not there. Is it correct?
A: Yes, it is correct. But, Ex.D8 to Ex.D11, Ex.D13 are SWIFT Receipts for advance payments.But, Ex.D23 is the payment of final bill amount.

Q90: (Ex.D23 is shown to the witness). Where the beneficiary name is mentioned in the document and to whose account the amount has been transferred?
A: Yes, the beneficiary name is mentioned as 'Alzahara Petro'.

Q91: (Ex.D23 is shown to the witness). The font and text of 'Alzahara Petro' in Ex.D23 is different from all the other texts and fonts in Ex.D23.
A: Yes, it is different.

Q92: I put it to you that this receipt is pertaining to somebody else you cooked up the document and manually typed 'Alzahara petro'.
A: I deny. Witness further says:- Related to this document I filed my Bank Accounts and I also asked the very same details from the plaintiff's bank account particulars.

Q93: Have you stated about that you are asked the said plaintiff's bank account particulars in your written statement or additional written statement?
A: Yes.

Q94: (Ex.D27 is shown to the witness). In that letter dated 14.08.2021 by your counsel you have requested for bank statement for the period from 01.03.2010 to 31.10.2011 and the reply of the plaintiff's counsel was 'the bank statement cannot be obtained since the period which you are asking is 01.03.2010 to 31.10.2011 which is not possible moreover in pandemic period it is highly impossible. Hence, I am objecting moreover there is no such averments made in your client's written statement and did not ask it for the past 10 years'.
A: Yes.

Q95: Have you produced your bank accounts pertaining to for the period of 2010-2012?
A: No.

Q96: (Ex.D23 is shown to the witness). In Ex.D8 to Ex.D11, Ex.D13 it is stated that it is customer credit transfer and whereas in Ex.D23 it is only stated that Foreign Bill Transaction Advise.
A: No, it is a payment receipt. Transaction ID is also mentioned in Ex.D23.

Time: 04.00 P.M

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be true and correct and signed before me.

ADDITIONAL MASTER-III