

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9039/2003

MODERN RUBBER INDUSTRIES

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(with office report)

WITH

C.A. No. 1307/2008

(With Office Report)

Date : 19/03/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. Gaurav Jain,Adv.
Ms. Abha Jain,Adv.
Mr. Jaivir Singh,Adv.Mr. G.Harishankar, Sr.Adv.
Mr. S.Sunil, Adv.
Mr. C.M.Jaya Kumar, Adv.
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Mr. Harsh Gopala, adv.
Ms. Neeru Vaid, Adv.

For Respondent(s)

Mr. Dhruv Mehta, Sr.Adv.
Mr. Arijit Prasad, Adv.
Mr. Surender Kumar Gupta, Adv.
Ms. Disha Singh, Adv.
Mr. B. Krishna Prasad, Adv.Mr. K.K.Tyagi, Adv.
Mr. P. Narasimhan, Adv.Mrs. Gunjan S.Jain, Adv.
Mr. Praveen Jain, Adv.
Mrs. Suchiti Chandra, Adv. for
M/s. M. V. Kini & Associates.

UPON hearing the counsel the Court made the following
O R D E R

In C.A.No.9039/2003

The appeal is dismissed in terms of the signed order.

In C.A.No. 1307/2008

The appeal is disposed of in terms of the signed order.

(SUMAN WADHWA)
AR-cum-PS

(SUMAN JAIN)
COURT MASTER

(TWO SIGNED ORDERS ARE PLACED ON THE FILE)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9039 OF 2003

Modern Rubber Industries

Appellant(s)

VERSUS

Union of India & Ors.

Respondent(s)

O R D E R

After hearing the learned counsel for the parties at length, we are of the opinion that case of the appellant is squarely covered by the three Judge Bench judgment of this Court in International Airports Authority vs. Grand Slam International And Others (1995) 3 SCC 151 which is followed in Union of India & Ors. vs. R.C. Fabrics (P) Ltd. & Ors. (2002) 1 SCC 718 and Trustees of Port of Madras vs. Nagavedu Lungi and Co. & Ors. (1995) 3 SCC 730. In view thereof, we find that the High Court has not committed any error in dismissing the writ petition of the appellant herein.

This appeal, thus, is bereft any merit and is accordingly dismissed.

We find that during the pendency of this appeal vide order dated 5.4.2004, followed by an order dated 5.7.2004 the goods which were kept with CWC were allowed to be

sold/auctioned. We are informed that the goods were auctioned at a price of Rs.10.19/- lakhs which amount was deposited with Central Warehousing Corporation (CWC), while raising its claim for demurrage, CWC would be entitled to the same.

.....J.
(A.K. SIKRI)

.....J.
(ROHNTON FALI NARIMAN)

New Delhi;
Date: 19.3.2015.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1307 OF 2008

M/s. Monito Enterprises

Appellant(s)

VERSUS

Union of India & Ors.

Respondent(s)

O R D E R

The facts in brief are as under:

Parts of diesel engines were imported by the appellant under Bills of Entry ["Bs/E"] dated 5.8.98, 10.2.99, 20.9.99 and 11.10.99. The classification thereof was disputed by the Revenue, and was held against by the appellant by the Assistant Commissioner of Customs ["the AC"]. However, the said decision was subsequently reversed by the Commissioner of Customs (Appeals) vide Order-in-Appeal dated 23.5.2000 which was upheld, in further, appeal, by the Hon'ble Custom, Excise and Service Tax Appellate Tribunal vide Final Order dated 16.7.01. The said decision was accepted by the Revenue, and the abovementioned Bs/E, which had been provisionally assessed, were finally assessed accordingly.

In the interregnum, the appellant had provisionally cleared the goods imported under the abovementioned 4Bs/E, on 20.7.2000, 29.9.2000 and 5.10.2000, paying, in the process, demurrage charges to the AAI.

Consequent to succeeding before the CC (A), the appellant applied to the CC for pursuing with the AAI for waiver, and consequent refund, of demurrage charges, whereupon the CC issued 4 Detention Certificates and directed the appellant to produce them to the AAI and claim waiver of demurrage charges, vide letter dated 15.11.2000.

The appellant, therefore, applied to the AI for waiver of demurrage charges and consequent refund of the demurrage charges collected, from the appellant, by it, in accordance with Clause 1.2.3(h) of AI's policy in this regard.

The respondent Airport Authority of India considered the claim of waiver of demurrage but rejected the same giving certain reasons. The primary reason which was given was that the goods were delayed by the Customs for clearance for the purpose of fixing of assessable value, obligation to duty and classification of goods and therefore as per the waiver policy clause 10.1.10 (b) demurrage charges could not be waived.

The appellant made another representation which was also rejected vide communication dated 24.8.2001. Under this Communication again reference was made to clause 10.1.10(b) of the waiver policy. This clause reads as under:

"Demurrage charges shall not be waived where delay arose by reason of dispute in the assessable value or for revalidating or correcting the license in ordinary course of appraisal".

The submission of the appellant was that the case does not fall under clause 10.1.10(b) but in fact it is clause 10.2.3(h) of the aforesaid policy which is applicable and that clause provides that if the importer succeeds in appeal, no demurrage charges would be payable.

Since the plea of the appellant was not accepted, the appellant approached the High Court of Bombay by way of writ petition filed under Art.226 of the Constitution. The said writ petition was dismissed relying upon its earlier judgment in case of Modern Rubber Industries vs. UOI 2003 (154) ELT 571 Bombay. The Revenue Petition was preferred which was also dismissed. Their orders are challenged in the present appeal.

We find from the reading of the judgment in the case of Modern rubber Industries that the said case pertains to the dispute between the customs authorities and the importer. Therefore, it has no application as far as instant case is concerned, inasmuch as in the present case there is a policy of the Airport Authority of India itself under which waiver is permissible under certain circumstances. As contended by the appellant, the dispute is

as to whether the goods would be covered by clause 10.2.3(h) of the said policy, or it is clause 10.1.10(b) of the said policy, which would be attracted. Therefore, the High Court was completely in error in dismissing the writ petition in limine by referring to the case of Modern Rubber Industries.

Accordingly, the impugned judgment is set aside and the case is remitted back to the High Court to decide the writ petition of the petitioner on merits.

The appeal is disposed of accordingly.

.....J.
(A.K. SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

New Delhi;
Date: 19.3.2015.