

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 NOS. 826-829 OF 2001

The State of Tamil Nadu & Anr.

Appellant(s)

Versus

M/s. Lavanya Enterprises
(With office report)
With SLP(C) No. 20650/2005
(With prayer for interim relief and office report)

Respondent(s)

Date: 02/05/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant(s)

Mr. T.L.V. Iyer, Sr. Adv.
Mr. Gopalakrishnan, Adv. for
Mr. Subramonium Prasad, Adv.

Mr. R. Venkataramani, Sr. Adv.
Mr. R. Ayyam Perumal, Adv.
Mr. S. Vallinayagam, Adv.

For Respondent(s) Mr. C.A. Sundaram, Sr. Adv.

Mr. K.S. Natrajan, Adv.
Mr. Nikhil Nayyar, Adv.
Mr. Ankit Singhal, Adv.

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

Leave granted in the SLP.

The appeals are dismissed. No costs.

(J.S. Rawat)
AR-cum-PS

(Khushi Ram)
Court Master

[Two signed orders are placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 826-829 OF 2001

The State of Tamil Nadu & Anr.

Appellant(s)

Versus

M/s. Lavanya Enterprises

Respondent(s)

O R D E R

Forest Department of the State of Tamil Nadu (the appellants herein) invited tenders for sale of sandalwood. Respondent-company (for short "the respondent" herein) submitted a tender for 20 M.T. of sandalwood, the total value of which was Rs.76,50,000/-. The tender submitted by the respondent was accepted on 11th March, 1999. Similarly, the respondent had given bid for another 33 M.T. of sandalwood. He was adjudged the highest bidder in that auction as well. Respondent had purchased the sandalwood for export against pre-existing export orders. Appellant demanded sales tax on the value of the sandalwood which was resisted by the respondent on the plea that since the goods were purchased for export against a pre-existing export order no sales tax was leviable in view of the provisions of Section 5(3) of the Central Sales Tax Act, 1956 (for short "the Act"). Appellant refused to release the goods. Aggrieved against which, the respondent filed a writ petition in the High Court. High Court directed the release of the goods on payment of 50% of the sales tax and for the remaining on furnishing the bank guarantee. Appellant did not

release the goods which forced the respondent and filed a contempt petition, ultimately, the goods were released on 3rd of June, 2000 as per orders passed by the High Court.

The Division Bench while disposing of the writ appeal directed the respondent to establish before the concerned authorities that they were entitled to the benefit under Section 5(3) of the Act with respect to the sandalwood purchased by them in the auction held on 25th February, 1999. State of Tamil Nadu was directed to release the goods without claiming demurrage and penalty.

On the previous date of hearing i.e. on 21st March, 2006, counsel appearing for the respondent had brought to our notice that in pursuance to the directions given in the impugned order, the District Forest Officer passed an order on 22nd February, 2002 directing the release of the bank guarantee furnished by the respondent with regard to the purchase of 33 tonnes of sandalwood. He had also brought to our notice that the Commercial Sales Tax Officer had vide his order dated 10th March, 2003 accepted the fact that the respondent had exported the goods purchased by it in the auction and accepted their Form-H for the balance 20 M.T. of sandalwood. Pleading ignorance of the orders dated 22nd February, 2002 and 10th March, 2003 passed by the District Forest Officer and the Commercial Sales Tax Officer respectively, the counsel appearing for the appellants sought time to get instructions.

After getting instructions, learned counsel appearing for the appellants fairly concedes the fact that the orders dated 22nd February, 2002

and 10th March, 2003, as aforesaid, had been passed and the respondent is not liable to pay the sales tax and that the appellants had accepted those orders and the same have become final. He, however, insisted that the respondent was liable to pay demurrage charges for non-removal of the goods within the stipulated time. According to him, the goods kept on lying in the godown of the State between 25th May, 1999 and 3rd June, 2003 occupying the valuable space and they were liable to pay Rs.600/- per day as demurrage charges.

The High Court had rejected this plea by observing that no demurrage charges and penalty were leviable as it was the appellant who did not release the goods even on payment of 50% of the sales tax and furnishing of bank guarantee for the balance 50% as per the directions issued in WMP No.11782/99 in WP. 8343/99. Accordingly, the High Court directed the appellant to release the goods, if not already done so, without payment of any demurrage charges or penalty. The respondent was not responsible for the delay, the delay, if any, was caused due to the unreasonable stand taken by the appellant.

We agree with the view taken by the High Court that the respondent could not be fastened with the liability to pay the demurrage charges or penalty, as the respondent was not responsible for the delay. Delay, if any, was caused by the appellant in not releasing the goods in spite of the specific directions issued by the High Court to that effect. Accordingly, the appeals are dismissed with no order as to costs.

The appellants are directed to release the bank guarantee forthwith.

.....J.

.....
(ASHOK BHAN)

New Delhi;
.....J.
May 02, 2006.

.....
(Dr. AR. LAKSHMANAN)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2448 OF 2006
[Arising out of SLP(C) No. 20650 of 2005]

The State of Tamil Nadu & Anr.

Appellant(s)

Versus

M/s. Lavanya Enterprises

Respondent(s)

O R D E R

Leave granted.

The Division Bench of the High Court of has refused to interfere with the order passed by the Single Judge of the High Court relying upon the decision rendered by a Division of that High Court in W.A. Nos. 94-96/2000 [M/s. Lavanya Enterprises v. The State of Tamil Nadu & Ors.]. The appellant has been directed to release the goods on furnishing the bank guarantee in the sum of Rs.25,00,000/- which, according to the respondent-

company, has been duly furnished.

The State of Tamil Nadu filed Civil Appeal Nos. 826-829/2001 against the order passed in WA Nos. 94-96/2000 which, after hearing, have been dismissed today by us. The order passed by the High Court has thus been confirmed. In view of this, we are not inclined to interfere with the interim order passed by the Division Bench.

The appeal is dismissed accordingly. No costs

The appellant is directed to release the goods forthwith as the bank guarantee pursuant to the directions issued by the High Court has already been furnished by the respondent.

Nothing stated in this order or the interim order passed by the High Court should be taken as an expression of opinion on merits of the dispute and the Division Bench would be at liberty to decide the appeal on its own merits.

.....J.
(ASHOK BHAN)

New Delhi;J.
May 02, 2006. (Dr. AR. LAKSHMANAN)

While disposing of the writ appeal, the Division Bench of the High Court in the impugned order had directed the State of Tamil Nadu (the appellants herein) to release the goods without claiming demurrage and penalty. The High Court also directed the respondent-company (the appellant in the writ appeal) to establish before the concerned authorities that they are entitled to the benefit under Section 5(3) of The Central Sales

Tax Act, 1956 [for short "the Act"] with respect to the sandalwood purchased by them in the auction held on 25th February, 1999. Pursuant to the said direction, the respondent-company pursued the matter with the authorities. The authorities held that the respondent was not liable to pay the sales tax as the goods were purchased in the course of pre-existing export orders, in accordance with Section 5(3) of the Act.

On the previous date of hearing on 21st March, 2006, counsel appearing for the respondent had brought to our notice that one of the bank guarantees furnished by the respondent with regard to the purchase of 33 tonnes sandalwood has been released by the District Forest Officer vide his order dated 22nd February, 2002, and also that the Commercial Sales Tax Officer's order dated 10th March, 2003 wherein the Officer had accepted the fact that respondent had exported the goods purchased by the respondent in the auction and accepted their Form-H for the balance 20 M.T. sandalwood. Pleading ignorance of the orders dated 22nd February, 2002 and 10th March, 2003 passed by the District Forest Officer and the Commercial Sales Tax Officer respectively, the counsel appearing for the appellants sought time to have instructions to that effect.

Counsel appearing for the appellants today fairly concedes the fact that the orders dated 22nd February, 2002 and 10th March, 2003, as aforesaid, had been passed and the appellant has accepted those orders. As per those orders, the respondent is not liable to pay the sales tax, as has been

held by the Division Bench. He, however, insisted that the respondent was liable to pay the demurrage charges for non-removal of the goods within the stipulated period and for being kept the same with the appellant between 25th May, 1999 and 3rd of June, 2000. The delivery of the goods was taken only on the 3rd of June, 2000.

The High Court rejected the similar prayer and held that no demurrage charges and penalty were leviable as it was the appellant who did not release the goods even on payment of 50% of the sales tax and furnishing of bank guarantee for the balance 50% as per the directions issued in WMP No.11782/99 in WP 8343/99. Accordingly the High Court had directed the appellant to release the goods, if not already done so, without payment of any demurrage charges or penalty, as the respondent-company was not responsible for the delay and they were agitating their rights in regard to payment of sales tax.

Counsel appearing for the appellants addressed the arguments limited to the issue of demurrage charges and accepted the decision of the Division Bench insofar as it relates to the liability of the sales tax.

We agree with the view taken by the High Court that the respondent could not be fastened with the liability to pay the demurrage charges or penalty, as the respondent was not responsible for the delay.

Delay, if any, was on the part of the appellant in not releasing the goods in spite of the specific directions issued by the High Court to that effect.

Accordingly, the appeals are dismissed with no orders as to costs.

The appellants are directed to release the bank guarantee forthwith.