

Customs, Excise and Gold Tribunal - Calcutta

The Scindia Steam Navigation Co. ... vs Collector Of Customs on 1 June, 1983

Equivalent citations: 1983 ECR 1400 D Tri Kolkata

Bench: K G Hegde, R T K.L.

ORDER K.L. Rekhi, Member (T)

1. This is an appeal under Section 129(1) of the Customs Act, 1962 (hereinafter referred to as 'the Act') arises out of and is directed against the Order No. Cal-Cus 535/81 dated 27.5.81 passed by the Appellate Collector of Customs, Calcutta, by which he confirmed the levy of penalty of Rs. 11,000/- passed by the Deputy Collector of Customs, M.C.D., Calcutta on short landed goods under Line No.

2. The facts necessary for disposal of this appeal may be stated as under:

2. The appellants, M/s. The Scindia Steam Navigation Co. Ltd. are the owners of the vessel M.V. "JALAPANKHI". A consignment of 1,90,236 bags of Urea were shipped on board the vessel at the port of Odessa for discharge at any Indian Ports. The said vessel discharged 83,200 bags of Urea at the port of Madras on 6th May, 1977. On September 20, 1977, the said vessel discharged 1,06,882 bags of Urea inclusive of sweepings at the port of Calcutta. In the out turn report, the Port Trust Authorities showed short landing of 1574 bags. On the basis of the said out turn report, a show cause notice was issued to the appellants as to why penalty should not be levied under Section 116 of the Act. Before the Deputy Collector the appellants contended that by mistake 1320 bags were manifested in excess and they further contended that 160 bags of sweepings cleared by the consignee at Madras and 200 bags of sweepings cleared by the consignee at Calcutta were not taken into account and thus the short landing "would be only one bag and not 1574 bags as shown in the show cause notice. The Deputy Collector accepted the explanation regarding excess manifestation and also the clearance of sweepings at Calcutta but rejected the claim of clearance of sweepings at Madras. He imposed a penalty of Rs. 11,000/-. Feeling aggrieved by the order of the Deputy Collector, the appellants preferred an appeal before the Appellate Collector unsuccessfully and hence this appeal.

3. The appeal was taken up for hearing this day. Shri Subratha Roy, Advocate appeared for the appellants and urged the following grounds.

(1) The Deputy Collector as well as the Appellate Collector have not complied with the provisions of Section 116 of the Act.

(2) As the appeal before the Appellate Collector was in continuation of the proceedings, the appellants had the legal rights to adduce fresh evidence and the fresh evidence adduced by them was neither considered nor rejected by the Appellate Collector and, therefore, the order of the Appellate Collector is vitiated.

(3) There is no finding recorded by the Deputy Collector and the Appellate Collector that the appellants have failed to account for the short landed goods to the satisfaction of the Assistant Collector of Customs and lastly the shortage was in respect of the cargo to be discharged at Madras and, therefore, the Calcutta Customs did not have jurisdiction to initiate proceedings under Section

116 of the Act.

4. Shri A.K. Chatterjee, J.D.R. for the respondent, however, supported the orders of the Deputy Collector as well as of the Appellate Collector and he contended that the appellants have not accounted for the short landing of Urea to the satisfaction of the Assistant Collector of Customs and, therefore, the authorities below are justified in imposing the penalty. It was further urged that the question of jurisdiction was not taken up by the appellants either before the Deputy Collector or even their Memorandum of Appeal before this Tribunal.

5. Having regard to the rival contentions the points that fall for determination in this appeal are :

(i) Whether the Calcutta Customs have no jurisdiction to initiate proceedings under Section 116 of the Act ?

(ii) Whether the orders passed by the Deputy Collector and the Appellate Collector are required to be interfered with ?

(1) It was vehemently argued by Shri Subratha Roy, Advocate that the short landing was at Madras port and, therefore, Calcutta Customs have no jurisdiction to initiate proceedings under Section 116 of the Act. As has been rightly pointed out by Shri Chatterjee, J.D.R. this contention was not taken up either before the Deputy Collector or before the Appellate Collector or even in the Memorandum of Appeal before us. Shri Roy urged that it is a question of law and he should be permitted to urge that ground. Though we did not agree that it is purely a question of law yet we permitted him to argue on this point also. During the argument, Shri Roy contended that the Deputy Collector and the Appellate Collector have proceeded on the footing that there was short landing of 154 bags at Madras port and, therefore, he urged that Calcutta Customs have no jurisdiction to initiate proceedings under Section 116 of the Act. We requested Shri Roy to point out from the orders of the two authorities to the effect that they proceeded on the footing that the short landing was at Madras port, Shri Roy was unable to point out any sentence to that effect in the two orders. Hence this contention has absolutely no basis. As a matter of fact, it was admitted by Shri Roy that the quantity required to be discharged at Madras port was 83,200 bags and that quantity had been discharged at that port. When that is so, the authorities below could not proceed on the footing that there was short landing at Madras port. Shri Roy could not place any other material from which it could be established that short landing was at Madras port and, therefore, we reject this contention of Shri Roy.

(2) It is not in dispute that the total number of bags that were shipped at the port of Odessa was 1,90,236 bags. It is also not in dispute that the vessel discharged 83,200 bags at the port of Maoras. Then at the port of Calcutta the vessel should have discharged 1,07,036 bags of Urea but it actually discharged only 1,06,882 bags including the sweepings. Thus there was short landing of 154 bags. It was this quantity that has been taken into consideration by the Deputy Collector and the Appellate Collector for imposing the fine.

6. For the appellants Shri Roy contended that the Deputy Collector and the Appellate Collector did not take into consideration the letter of the consignee viz., Fertiliser Corporation of India and the survey report which establish that at Madras the consignee collected 153 bags of Urea and, therefore, the shortage is only one bag. It is no doubt true that the Deputy Collector and the Appellate Collector did not place any reliance on the letter of the consignee and the survey report. The Deputy Collector in his order has stated that the appellants were requested to forward the landing certificate from the Madras Customs, home manifest and the bill of lading in support of their claim but they did not produce those documents. He, therefore, based his order on the out turn report given by the Port Trust Authorities and imposed the penalty as in his opinion the appellants could not account for the short landing satisfactorily. The reasons given by the Deputy Collector cannot be considered as improper. In spite of an opportunity being given the appellants did not produce the required documents. The Appellate Collector, no doubt, did not say in so many words that the appellants have failed to satisfactorily account for the shortage. He also did not state in so many words as to why he did not place reliance on the consignee's letter. He had, however, placed reliance on the photo copy of the letter from Madras Customs which did not indicate clearance of the sweepings at Madras. In the circumstances, it could not be said that his order was not passed on any &6C, eptable evidence. Both the orders in our opinion do not suffer from any illegality.

7. Significantly the appellants did not choose to produce the landing certificate from Madras Customs, home manifest and bill of lading even before us. We may recall that the Deputy Collector had called upon the appellants to produce those documents. If these documents had been produced it would have been clear as to what was the quantity that was required to be cleared at Madras Port and what quantity had been discharged. For reasons best known to the appellants they did not choose to produce those documents. During the hearing of the appeal it was admitted on behalf of the appellants that according to the manifest the ship was required to discharge 83,200 bags of Urea at Madras and it had discharged that quantity. It was also admitted by them that the consignee is not entitled to claim or clear more than the manifested quantity. Therefore, an inference can be drawn that 83,200 bags discharged includes the sweepings collected by the Fertiliser Corporation of India. The letter written by the Fertiliser Corporation of India, on which the appellants had placed reliance, nowhere states that 160 bags of Urea shed sweepings collected by the Fertiliser Corporation of India were in addition to 83,200 bags discharged by the ship. It is quite probable that 83,200 bags included this 160 bags. Whatever it may be the appellants have not chosen to establish satisfactorily that the consignee had cleared 153 effective bags of Urea by way of sweepings in excess of dischargable quantity mentioned in the out turn report.

8. The contention of the appellants that the Deputy Collector and the Appellate Collector have not complied with the provisions of Section 116 of the Act or that their orders suffer from any illegality, cannot be accepted. The Deputy Collector has specifically stated that in spite of an opportunity being given for production of documents the appellants herein did not avail of the opportunity and they could not account satisfactorily for the short landing.

9. For the reasons stated above we reject all the contentions of the appellants and we hold that this appeal deserves to be dismissed. Accordingly, we dismiss the appeal.