

JK International Pty Limited vs The Union Of India And Others on 16 August, 2023

Author: Sabyasachi Bhattacharyya

Bench: Sabyasachi Bhattacharyya

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 18200 of 2023

JK International Pty Limited
Vs.
The Union of India and others

For the petitioner : Mr. Jaydip Kar,
Mr. Sabyasachi Chaudhuri,
Mr. Sanjay Bansal,
Mr. Rohit Mukherjee,
Mr. Ramanuj Ray Chaudhuri

For the respondent nos.2 to 6 : Mr. Kaushik Dey,

Mr. Tapan Bhanja For the respondent no.8 : Mr. Soumya Basu For the respondent no.9 : Mr. Paritosh Sinha, Mr. Amitava Mitra, Mr. Subhadeep Banerjee Hearing concluded on : 02.08.2023
Judgment on : 16.08.2023 Sabyasachi Bhattacharyya, J:-

1. The petitioner is a company incorporated in Australia. Pursuant to a contract with one M/s. Trimurti Group of Companies, the petitioner entered into an agreement with the buyers nominated by the said Group and brought a cargo of red lentils. Respondent no.8, M/s. Uma Exports Limited, signed and forwarded its contract through Trimurti on January 20, 2023. To perform its obligations under the Sale Contracts, the petitioner chartered the vessel M.V. Darya Ganga and informed via e-mail message dated March 20, 2023 to its Indian buyers through their dealing broker about the said vessel having been chartered to perform the carriage of the designated cargo.

Accordingly, the cargo was sent to Kolkata. On or about May 24, 2023, the respondent no.10, the shipping agent filed „Import General Manifest (IGM) and Cargo Declaration with the Kolkata Customs in anticipation of the arrival of the vessel, in compliance of Section 30 of the Customs Act, 1962.

2. The respective buyers, that is, respondent nos.7, 8 and 9 had also filed their Bills of Entry as per the provisions and regulations of the Customs Act with respect to the above IGM, to complete the requirements for import of the cargo with the Customs Authorities between May 24 and May 30, 2023.

3. However, on June 6, 2023 and after the vessel had already carried the cargo safely up to the Sandheads of the Haldia Dock Complex on June 5, the broker M/s. Trimurti Group sent an email message to the petitioner, 2023, informing that they would not be able to sell the cargo and raised a quality dispute.

4. Again, on June 7, 2023, the said broker, on behalf of respondent no.7, sent another email to the petitioner, repeating similar allegations. On June 17, 2023, the broker intimated the petitioner that no buyer was ready to accept the cargo. The petitioner, as such, is allegedly in serious distress and is incurring huge losses on a daily basis. Thus, the petitioner has decided to mitigate the enormous losses by taking the cargo elsewhere for the purpose of selling, at least for a salvage price. Thus, the petitioner pleads extreme urgency and seeks directions on the respondent-Authorities to permit the vessel to sail out of the Haldia Anchorage for discharging cargo at Tuticorin, another destination where the petitioner has had preliminary negotiations for sale of the cargo. Since the nature of the goods is perishable, the petitioner is in further risk of losing huge amounts of money if the vessel is not immediately permitted to leave the Haldia Anchorage.

5. The learned Senior Advocate appearing for the petitioner argues that the Customs Authorities have not raised any claim against the petitioner to justify the withholding of permission to the petitioner's vessel to leave the Haldia Dock Complex. It is argued that the rejection of the petitioner's request for such permission was on an absolutely frivolous ground. The Customs Authorities have indicated to the shipping agent of the petitioner that there are 20 Line Numbers and Bills of Entry have been filed against each and every such Line Number by three importers, against the IGM. In such factual position, the IGM cannot be cancelled, as per the Customs Authorities.

6. It is argued that such an argument is baseless, since the petitioner has annexed to the writ petition „no objections“ given by all three of the said importers, at whose behest the Bills of Entry were filed, for the petitioner to leave the Sandheads with the cargo.

7. It is argued that, in the absence of any monetary claim on the part of the Customs Authorities, the said Authorities acted without jurisdiction in withholding permission to the petitioner. In the event the importers had any claim against the petitioner, it was for the proposed importers to have raised such complaint. The proposed importers having not done so, rather, having given „no objections“, the Customs Authorities have acted de hors the law in withholding permission.

8. Learned counsel appearing for the Customs Authorities submits that after filing of the IGM, the Customs has a right to examine the goods sought to be imported.

9. It is argued that, within the contemplation of Section 17 of the Customs Act, the Authorities can test the goods sought to be imported.

10. It is argued that, under Section 23(2) of the said Act, the owner of the imported goods may relinquish title at any time before an order of clearance for home consumption is granted. However, the proviso thereto carves out an exception if an offence appears to have been committed under the Customs Act or any other law. In the present case, it is argued, there is an apprehension of the quality of the goods sought to be imported by the petitioner being inferior and in violation of the Food Safety and Standards Act, 2006 as well as The Plant Quarantine (Regulations of Import into India) Order, 2003.

11. Learned counsel for the Customs Authorities places reliance on Section 46(4A), Clause (c) to argue that an importer presenting a bill of entry shall ensure compliance with restrictions/prohibitions under any law for the time being in force.

12. Learned counsel also places reliance on Sections 111 and 112 of the Customs Act, which provide for confiscation of improperly imported goods and penalty for improper importation of goods.

13. Under Section 141 of the said Act, it is argued, conveyances and goods in a Customs area are subject to control of officers of Customs.

"Customs Area", as defined in Section 2(11) of the Customs Act, means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

14. Hence, it is argued, the petitioner does not have any right to insist upon permission to leave the shores of the Haldia Dock Complex.

15. Upon hearing learned counsel for the parties, certain Sections of the Customs Act, 1962 acquire relevance to the adjudication.

16. Section 2(23) defines "import" to mean bringing into India from a place outside India.

17. Section 2(25) defines "imported goods" as goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

18. Section 2(26) defines "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, to include any owner, beneficial owner or any person holding himself out to be the importer.

19. In such context, Section 17 of the said Act provides for assessment of duty. Under sub-section (1) thereof, an importer entering any imported goods under Section 46, shall self-assess the duty, if any, leviable on such goods.

20. Under sub-section (2), the proper officer may verify the entries made under Section 46 and Section 50 and the self-assessment of goods referred to in sub-section (1) and, for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary. Thus, it is evident that the scope of examination or test of any imported goods by the proper officer is only for the purpose of verifying the entries made under Section 46 or Section 50 and the self-assessment of goods referred to in sub-section (1). In the present case, since the petitioner does not want to import the goods into the country any more from Haldia or to put the goods into course of being routed into India, but seeks to leave the Haldia Port, whether for Tuticorin or elsewhere, the scope of such examination or test for the purpose of verifying the entries made under Section 46 or self-assessment of goods is not applicable.

21. Section 46 provides for entry of goods on importation. The importation contemplated in sub-section (1) of Section 46 is for home consumption or warehousing.

22. The entire ambit of Section 46 is in such context. The Customs Authorities place reliance on sub-section (4A) of Section 46, in particular sub-clause (c) thereof. As per the said provision, the importer who presents a bill of entry shall ensure compliance with the restriction/prohibition, if any, relating to the goods under the Customs Act or under any law for the time being in force.

23. Notably, the Bill of entry is presented at the behest of the importers.

In the present case, the petitioner has annexed to the writ petition „no objections issued by all the three importers, who filed the Bills of entry. In each of such no objections, annexed between pages 122 and 124 of the writ petition, the respective proposed importers clarify that they are unable to take delivery of the subject cargo due to unforeseen circumstances. As such, if the shipper wants to sell the cargo of the subject BL and Line numbers to any other party, they have no objection to the same. Hence, the importers themselves are agreeable to cancel the Bills of exchange.

24. Thus, the refusal of the Customs Authorities to grant permission to the petitioner on the ground of 20 Line numbers and Bills of Entry having been filed by the said three importers is patently invalid.

25. In any event, the Customs Authorities have no business to take up the cudgel on behalf of the importers insofar as the commercial considerations are involved, where the said importers themselves have no axe to grind with the petitioner. In the absence of any complaint by the said importers themselves and/or any specific allegation of contravention of any law, nothing in law empowers the Customs Authorities to withhold the vessel containing goods which are not put in the course of home consumption or warehousing.

26. Section 23(2) clearly provides that the owner of any imported goods may, at any time before an order for clearance of goods for home consumption or deposit in a warehouse has been made, relinquish his title to the goods and thereupon shall not be liable to pay the duty thereon. The proviso to the said sub-section stipulates that the owner of any such goods shall not be allowed to relinquish title to such goods regarding which an offence appears to have been committed under the

Customs Act or any other law for the time being in force.

27. Conspicuously, the Customs Authorities have not alleged the commission of any specific offence by the petitioner, in its refusal dated June 22, 2023, which is under challenge in the present writ petition. The only ground, of subsistence of 20 Line numbers and Bills of Entry, is invalid and flimsy in the context and cannot be sustained.

28. Insofar as Section 46(4A)(c) is concerned, it is the importer, who presents a Bill of entry, who has to ensure compliance of restrictions/prohibition under any law. No liability can be cast on the petitioner, who is not the importer even as per the Customs Authorities, to comply with any such restriction/prohibition. In any event, no such prohibition/restriction has been argued, to have been violated by the petitioner, by the Customs Authorities.

29. Section 47 pertains to clearance of goods for home consumption. In the present case, the goods are not intended any more to enter for home consumption or warehousing through Haldia Port. As such, the said provision is not applicable at all.

30. The reliance placed by the Customs Authorities on Sections 111 and 112 of the Customs Act is entirely misplaced, since there is no allegation of the goods being improperly imported, which rules out the confiscation or imposition of penalty on such goods. Even in their refusal, the respondent-authorities do not utter any whisper in that regard.

31. In any event, an adjudication procedure in case of violation of law has been provided in Section 122A of the Customs Act, under which the adjudicating authority shall, in any proceeding under the concerned chapter of the Act, give an opportunity of hearing to a party if the parties so desires. No such process having been initiated in the present case, the reliance on the said Sections is entirely out of place and frivolous.

32. Under Section 149 of the Act, the proper officer may, in his discretion, authorize any document after it has been presented in the customs house to be amended. No amendment of a Bill of entry or shipping bill or bill of export shall be so authorized to be amended after the imported goods have been cleared for home consumption or deposit in a warehouse under the proviso to the said Section. Since there is no clearance in the present case for home consumption or deposit in warehouse, reliance on the said provision by the Customs Authorities is also misplaced.

33. As discussed above, the refusal to grant permission to the petitioner to leave the Sandheads of Haldia and/or the anchorage of the Haldia Dock Complex are entirely misplaced and de hors the law.

34. It is required to be mentioned here that Section 30 of the Act empowers the issuance of Import Manifest. Although there is no specific provision in the Act for cancellation of the same, it is well-settled that in the absence of power of cancellation having been vested in the authorities, the same has to be read into the powers of the issuing authority. The delivery of import manifest or import report and issuance of the same, since it takes place under Section 30, the power of cancellation of

the same under appropriate conditions has to be read into the said Section as well.

35. The Bills of Entry are to be proceeded on by the importer. Since they themselves gave „no objections permitting the cargo to be sold elsewhere, thus giving a go-bye to the goods being imported through Haldia, there is no bar to the Bills of Entry elapsing or being cancelled.

36. Since there is no other allegation of any violation of law or any claims of dues or charges made by the Customs Authorities till date against the petitioner, and as the shipping agent and all importers have been impleaded in the present writ petition and have issued their consent by way of „no objections , there cannot be any further impediment of releasing the vessel of the petitioner.

37. The petitioner cites an unreported judgment of a coordinate Bench of this Court in WP No.388 of 2003 [Hongkong & Shanghai Banking Corporation Ltd. Vs. Union of India], on the argument of violation of Articles 14 and 21 being applicable to foreign citizens as well. The said proposition is well-settled and, as such, is applicable in the present case as well.

38. The petitioner also cites Chairman, Railway Board and others vs. Chandrima Das (Mrs) and others, reported at (2000) 2 SCC 465. In the said case, a similar proposition was reiterated by the Supreme Court. It is well-settled that Articles 14 and 21, the right to equality and life and liberty, are fundamental rights which are available not only to Indian citizens but, within the constitutional scheme of India, are available to any human being setting foot on Indian soil. As such, the said provisions are also applicable to the present case.

39. The petitioner cites Marie-Emmanuelle, Verhoeven vs. Union of India and others, reported at (2016) 6 SCC 456 for a similar proposition that Article 21 of the Constitution benefits all persons in India, including non-citizens. In view of such proposition being accepted and well- settled, the same need not be deliberated upon further.

40. In Kiran Spinning Mills vs. Collector of Customs, reported at (2000) 10 SCC 228, the Supreme Court observed that the import would be completed only when the goods are to cross Customs barriers and that is the time when the import duty has to be paid.

41. In the present case, in any event, the Customs officials have not claimed any import duty from the petitioner till date. The ground of refusal was mere pendency of certain Bills of entry which have been waived by the importers themselves, by way of their no objections as discussed above.

42. Here, a public notice, bearing no.06/2013 dated November 7, 2013 issued by the Government of India, Office of the Commissioner of Customs, has been cited by the respondents. Clause 29 thereof speaks about short shipment, shut out, cancellation and back to town permission. Clause 29.1 stipulates that AC/DC (LCS) will give permission for issuance of short shipment certificate, shut out or cancellation of Bill of entry on the basis of an application made by the importer. The Bill of import particulars would need to be cancelled/deleted/modified in the system before such permission. AC/DC would check the status of goods before granting permission.

43. In the present case, it is undisputed that the goods have not been put into the course of home consumption or warehousing and are still on board the petitioner's vessel. Hence, the status of the goods is admitted. The „no objections“ given by the importers have also not been challenged, despite service of notice of the writ petition on the importers. Hence, it cannot be argued that the said Clause overrides the provisions of the Customs Act, 1962 itself or creates any embargo on the petitioner to remove its vessel from the Haldia Dock Anchorage.

44. Accordingly, WPA No.18200 of 2023 is allowed, thereby directing the respondent nos. 2 to 5 to take immediate steps for issuing necessary permit for the petitioner's vessel M.V. Dariya Ganga to sail out of the Haldia Anchorage for her present location, that is, the Tuticorin Port or elsewhere.

45. However, it is made clear that nothing in this order shall operate as necessary permission, as required under the Customs Act, 1962, for the petitioner to unload its goods at the Tuticorin Dock/Port and the petitioner's vessel and goods shall be subject to scrutiny as contemplated in law afresh at the Tuticorin Port or any other Port where the petitioner seeks to take its goods, if the petitioner intends to sell its cargo there.

46. There will be no order as to costs.

47. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)