IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 27TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.603 of 2015

In the matter of Arbitration & Conciliation act 1996

And

In the matter of award dated 7/3/2015 in Arb.Cl.No.1/2014 In arbitration proceedings under Fire Insurance Policy Nos.010804/11/10/14/00000148, 149 & 151

United India Insurance Company Ltd.,
No.70, NSC Bose Road,
Sowcarpet,
Chennai - 600 079. ... Petitioner

-Vs-

1. Continental Warehousing Corp. (Nhava Seva) Ltd.,
Container Freight Station,
NDR Estates, GNT Road, Kanakkanchatram,
Madhavaram, Chennai - 600 110.

2. Commissioner of Customs, Customs House,
No.60, Rajaji Salai, Chennai - 600 001.

3. Mr.Manivannan R.Rajan,
Sole Arbitrator, No.8, III Floor,
Bharathan Towers, Old No.973, New.No.36,
Lakshmanaswamy Salai, K.K. Nagar,
Chennai - 600 078. .... Respondents

Original Petition praying that this Hon'ble Court be pleased to set aside the award dated 7/3/2015 made in ARB.Cl.N.1 of 2014 by the 3rd Respondent under Standard Fire & Special Perils Police Nos.010804/11/10/14/00000148, 149 & 151.

This Original Petition along with O.P.No.920 of 2015 coming on this day before this court for hearing in the presence of Mr.M.B.Raghavan, advocate for the petitioner herein and Mr.K.Bajai Sundar, advocate for the 1st Respondent herein and Mr.V.Sundareswaran, advocate for he 2nd Respondent herein and the 3rd Respondent herein not appearing in person or by advocate and upon reading the petition and the award dated 07/03/2015 filed herein and this court is of the view that the Award passed by the Arbitrator is against the substantial law of India and it is nothing but perversity and the entire award passed by the Arbitrator is based on the equitable principles and **it is ordered as follows:-**

That the award passed by the Arbitrator dated 07/03/2015 in respect of customs duty alone be and is hereby set aside and for the same, the parties shall be at liberty to initiate Arbitration Proceedings, as per Law, particularly, section 23 of the customs Act and connected judicial proceedings in this aspect.

2) That in respect of other aspects, there is no dispute between the parties.

3) That there shall be no costs of this petition.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 27TH DAY OF SEPTEMBER 2021.

Sd/-
ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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ED
29.10.2021

O.P.No.603 of 2015

ORDER

DATED: 27.09.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 29.10.2021

APPROVED ON : 29.10.2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 27.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Original Petition Nos.603 and 920 of 2015

In O.P.No.603 of 2015

United India Insurance Co. Ltd.,
No.70, NSC Bose Road, Sowcarpet,
Chennai 600 079. ... Petitioner

Vs.

1. Continental Warehousing Corporation (Nhava Seva) Ltd., Container Freight Station, NDR Estates, GNT Road, Kanakkanchatram, Madhavaram, Chennai 600 110.

2. Commissioner of Customs, Customs House, No.60, Rajaji Salai, Chennai 600 001.

3. Mr.Manivannan R.Rajan, Sole Arbitrator, No.8, III Floor, Bharathan Towers, Old No.973, New.No.36, Lakshmanaswamy Salai, K.K. Nagar, Chennai 600 078. .... Respondents

In O.P.No.920 of 2015

M/s Continental Warehousing Corporation
(Nhavaseva) Ltd., Container Freight Station,
represented by its Manager, Mr.S.Gnanavelu,
NDR Estates GNT Road, Kanakanchatram,
Madhavaram, Chennai 600 110. ... Petitioner

Vs.

1. United India Insurance Co. Ltd.,
   No.70, NSC Bose Road, Sowcarpet,
   Chennai 600 079.

2. Commissioner of Customs, Customs House,
   No.60, Rajaji Salai, Chennai 600 001.

3. Mr.Manivannan R.Rajan,
   Project Technical and Risk Management
   Consultant, Insurance Surveyor,
   Sole Arbitrator, A-3, 3rd Floor, Vignesh Villa,
   No.56, 7th Avenue, Ashok Nagar,
   Chennai 600 083. .... Respondents

PRAYER in O.P.No.603 of 2015 : Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 to set aside the award dated 7.3.2015 made in Arb.Cl.N.1 of 2014 by the third respondent under Standard Fire & Special Perils Policy Nos.010804/11/10/14/00000148, 149 & 151.

PRAYER in O.P.No.920 of 2015 **:** Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 to (i) set aside the award dated 7.3.2015 passed by the third respondent in the above proceedings (ii) remit the matter for fresh arbitration, (iii) order costs of the petition.

<u>O.P.No.603 of 2015</u>

For petitioner : Mr.M.B.Raghavan

For respondents : Mr.K.Bijai Sundar for R1
Mr.V.Sundareswaran for R2
No appearance for R3

O.P.No.920 of 2015

For petitioner : Mr.K.Bijai Sundar

For respondents : Mr.M.B.Raghavan for R1
Mr.V.Sundareswaran for R2
No appearance for R3

COMMON ORDER

The original petition in O.P.No.603 of 2015 has been filed by the Insurer, challenging the Award passed by the Sole Arbitrator dated 07.03.2015, directing the Insurer to pay 20% of the Customs Duty. Similarly, the original petition in O.P.No.920 of 2015 has been filed by the Insured, challenging the same portion of the Award passed by the Sole Arbitrator by disallowing the remaining 80% of the Customs Duty. Hence, this court is inclined to dispose of both the original petitions by passing the common order.

2. For the sake of convenience, the petitioner in O.P.No.603 of 2015 is called as Insurer and the first respondent in the above O.P is called as Insured.

3. **The brief facts leading to file these original petitions is as follows.**

The first respondent (Insured) operates public bonded Warehouses and the second respondent issued license to them under the provisions of the Customs Act, 1962. The Insured availed an insurance policy namely " Standard Fire & Special Perils Policy " for the materials stored in a Public Bonded Warehouse for the period from 30.05.2010 to 29.05.2011, in the name of Commissioner of Customs, the second respondent herein, and the first respondent have the control and custody of such bonded goods.

3.1. As the bonded goods were destroyed in a fire accident that occurred on 14.04.2011, the Insurer appointed a Surveyor to assess the value of the goods. The surveyor submitted his final report dated 05.04.2013 and the loss was assessed as follows.

i) Value of the destroyed goods	-	Rs.22,00,43,770/-
ii) Customs Duty	-	Rs. 5,29,99,026/-

Total	-	Rs.27,30,42,796/-

According to the Insurer, in the light of the nature of insurance, coverage being provided only for the " Value of goods " and not for " Customs Duty " and statutorily, no Duty is chargeable on such goods, which are destroyed before any clearance order and where the owner had abandoned by issuing NOC. Finally, the Insurer admitted the claim for a sum of Rs.20,02,95,579/-. as indicated below and offered settlement.

a] Value of Goods ... Rs.22,00,43,770

b] Duty (already paid)	... Rs.	2,69,882
	....	Rs.22,03,13,652
Less: Salvage	...	Rs. 2,19,91,297
Total	...	Rs.19,83,22,355
Add: Removal of Debris (1% of claim)	... Rs.	19,83,224
Less: Excess	... Rs.	10,000
Net Loss payable	...	Rs.20,02,95,579

3.2. The contention of the Insurer is that they released various payments and totally paid a sum of Rs.19,59,06,237/- to the Insured. However, the Insured claimed to pay the Customs Duty also, as per the Surveyor Report. Therefore, by consent of both the Insurer and the Insured, the dispute was referred to the sole Arbitrator, the third respondent herein.

3.3. On the basis of the pleadings raised by both the parties, the learned Arbitrator framed the following issues.

1. Whether the claimant is entitled for any further amount towards the loss claimed other than the duty amount and if so, to what amount?
2. Whether the respondent is liable for the customs duty portion of the claim?
3. Whether the claimant is entitled to any interest and if so, on what amount and for what period?
4. To what relief?

3.4. Having framed issues and perused the materials, the learned

Arbitrator finally arrived at conclusion and passed the Award directing the Insurer to pay the following amounts to the Insured.

1. Balance amount towards value of goods	..	Rs. 43,89,342/-
2. Customs Duty	..	Rs.1,05,45,829/-
3. Interest	..	Rs. 24,80,952/-
Total	..	Rs.1,74,16,123/-

Feeling aggrieved that the Arbitrator directed the Insurer to pay 20% of the Customs Duty and disallowed the remaining portion of 80%, the Insurer as well as the Insured have filed the present original petitions.

4. The learned Arbitrator, while arriving at Rs.1,05,45,829/- towards Customs Duty, has stated as " to strike a balance, instead of as a mean or median, the Tribunal feels that it may suffice to pass an award for 20% of the Rs.5,27,29,144/- (5,29,99,026 - 2,69,882) being Rs.1,05,45,829/- towards Customs Duty.

5. The learned counsel for the Insurer submitted that as per the policy, the Customs Duty on the destroyed goods fell within the insuring clause " Value of goods" and it has been already paid by the Insurer. He further submitted that when the goods were destroyed before being cleared, there can be no claim for Customs Duty, since Section 23 of the Customs Act,

mandates remission and the Law itself abandons the Duty. Therefore, the findings of the Arbitrator, by invoking Principles of Equity, directing the Insurer to pay the discretionary amount of 20% towards 'Customs Duty' is contrary to law and is perverse.

6. The learned counsel appearing for the Insured (first respondent) submitted that the Arbitrator has erred in awarding only 20% towards 'Customs Duty' and disallowed the remaining 80%, based on the Principles of Equity and hence, such findings has to be set aside.

7. The learned counsel appearing for the Insurer as well as the Insured submitted that the Arbitrator has passed the Award based on the equitable grounds, which cannot be sustained in the eye of law and it is contrary to the Proviso to Section 28(2) of the Arbitration and Conciliation Act. Further, the learned Arbitrator has not taken note of Section 23 of the Customs Act to find out, whether the Customs Duty has to be paid or not on the destroyed goods. Therefore, it is submitted that the Award directing the Insurer to pay 20% of the Customs Duty and rejecting 80% on equitable grounds is against the Fundamental Policy of India.

8. As rightly pointed out by both the counsels, the Arbitrator in his judgment at paragraph 147, has fixed the liability on the Insurer to pay 20% of the Customs Duty and disallowed the remaining 80% of the Customs Duty, mainly on the ground of Principles of Equity and not on the basis of Law or Contract. Therefore, passing such Award, based on the Principles of Equity is arbitrary and perverse. Section 28(2) of the Arbitration and Conciliation Act makes it clear that unless the parties agreed, the Award cannot be on the basis of equitable principles. Further, learned Arbitrator has not discussed Section 23 of the Customs Act, which deals with the "Remission of Duty on lost, destroyed or abandoned goods". The learned Arbitrator not even discussed whether the goods were totally destroyed or salvaged, to invoke Section 23 for exemption of Customs Duty.

9. Such view of the matter, without expressing any opinion on merits in this context, particularly Section 23 of the Customs Act, this court is of the view that the Award passed by the Arbitrator is against the substantial law of India and it is nothing but perversity. The entire Award passed by the Arbitrator is based on the equitable principles. Accordingly, the Award passed by the Arbitrator in respect of Customs Duty alone is set aside. In respect of other aspects, there is no dispute between the parties.

10. Accordingly, both the original petitions in O.P.Nos.603 of 2015 and 920 of 2015 are allowed and the Award passed by the Arbitrator dated 07.03.2015 is set aside, with regard to the Customs Duty alone and for the same, the parties are at liberty to initiate Arbitration Proceedings, as per Law, particularly, Section 23 of the Customs Act and connected judicial proceedings in this aspect. No costs.

Sd./-N.S.K.J.,
27.09.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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