IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Original Side)

APOT No. 131 of 2022
With
WPO 369 OF 2021
IA No. GA 1 OF 2022
GA 2 OF 2022

(Through Video Conference)

Reserved on : 09.09.2022
Pronounced on: 30.09.2022

Deputy Commissioner of Custom, Special Disposal Cell (Port)

...Appellant

-Vs-

Karan Kumar Arora & Ors. ...Respondents

Present:-

Mr. K. K. Maity,
Mr. Abhradip Maity, Advocates
.... for the Appellant

Mr. Sukumar Bhattacharya,
Mr. Dipendra Nath Chunder,
Ms. Oindrilla Chatterjee, Advocates

.... For the Respondent No.1

Mr. Pradeep Kumar Jewrajka,
Ms. Pooja Jewrajka,
Ms. Anajali Tulsian, Advocates

.... For the Respondent No.5

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA, CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ, JUDGE

Rajarshi Bharadwaj, J:

1. The Deputy Commissioner of Customs, Special Disposal Cell (Port), Kolkata, the appellant herein being aggrieved by and dissatisfied with the judgement dated 21.04.2022 passed by the Hon'ble Justice Hiranmay Bhattacharyya in WPO No.369 of 2022 (Karan Kumar Arora -v- Union of India & Ors) has preferred the instant appeal.

2. The facts in a nutshell are that the Century Plyboard (I) Ltd. (hereinafter referred to as the "Custodian") being the respondent No.5 submitted the Bill of Entry bearing no. Century/CFS/BEUG-JJP/2020-21/21 and Century/CFS/BEUG-JJP/2020-21/23 for clearance of un-cleared/unclaimed cargo. On 21st December, 2020 testimonies of witnesses were prepared by the examining officer against opening of the containers of imported unclaimed/uncleared cargo lying at the custodian's warehouse in JJP CFS, 3 Hide Rd, FCI Godown, Khidderpore, Kolkata- 700088 for inventory/valuation by the government approved valuer in presence of the Custom officer from JJP CFS. Subsequently, catalogues were circulated by Metal Scrap Trading Corporation of India Ltd. (hereinafter referred to as "MSTC Ltd.") being the respondent No.3 and 4 on their website with regard to the goods/lots offered for E-auction along with certain special terms and conditions as under clause VI of the Disposal Manual 2019 (hereinafter referred to as the "Manual") and the unclaimed/uncleared/time expired goods are sent to MSTC Ltd., for auction to ensure maximum outreach.

3. The writ petitioner, herein the respondent No. 1 took part in the e-auction and participated in tender notice with regard to the lots suitable for him, i.e., lot no.2.0, lot no.5.0 and lot no.19.0. On accepting the respondent No. 1's highest bid, MSTC Ltd. issued sale intimation letter in favour of him and requested to make security deposit for a sum of Rs. 14,88,250/-. The respondent No.1 duly deposited the amount and informed the authorities about the said deposit. On 11th March, 2021 MSTC Ltd. issued acceptance letter with

regard to all the lots and further requested the writ petitioner/respondent No. 1 to make the subsequent payments of Rs. 13,899,409/- and Rs. 98,841/- respectively. The amounts were duly deposited as per the terms and conditions of the authorities.

4. On 21st May, 2021 the respondent No. 1 was intimated by respondent No. 5 through an email that in order to receive lot no.19 a BIS certificate is to be provided. The respondent No. 1 objected to the contents of the said email as the e-auction catalogue did not provide any such conditions wherein the BIS certificate was required to be produced. Amidst the pendency of the objection to MSTC Ltd. order for delivery of lot no.2 and lot no.5 was issued following due procedures as envisaged in The Customs Act, 1962 leaving lot no.19. However, item no. 9, *i.e.,* 15 watt LED bulbs of lot no.2 was not sent as BIS certificate was required for those items, some of cosmetic items in lot no.5 were not sent as orders were received for destruction of those items since, they were not fit for 'human consumption' and certain items were waiting for No Objection Certificate (herein referred to as "NOC") from the Assistant Drug Controller. Thus, for want of Customs' release order, all the goods were released except the said items as mentioned above.

5. Owing to such refrainment from shipment of the disputed items the writ petitioner/respondent No.1 being aggrieved filed a writ petition before this Hon'ble Court in July, 2021 contending that once the bid was accepted by the authorities and full payment was made, there was no scope on the part of the authorities to withhold the consignment on any ground.

6. The learned Single Judge upon having considered the contentions of the counsel for respective parties held that "No other objection has been raised by the respondent authorities for withholding the release of the goods. Since the petitioner has complied with all formalities, the respondent authorities are obliged to release the goods in question to the petitioner. For the reasons as

aforesaid the objections raised for withholding the release of goods are set aside and quashed. This court holds that the authorities are obliged to release/deliver the balance items of lot no. 2 and 5 of the first delivery order dated June 11, 2021."

7. The Learned Counsel appearing for the appellant submits that:

I. Goods were put up for auction merely on the basis of NOC from Special Disposal Cell and as such Customs conformity was not obtained prior to auctioning of Lot no.2 and Lot no.5 by the custodian and without following the Disposal Mannual 2019. Moreover, the auctioning of the goods without obtaining the final NOC from customs came to light only when the manual bill of entry was presented to the Customs for assessment.

II. As per para 3 of the "Electronics and information Technology Goods (Requirements for Compulsory Registration) Order, 2012- Prohibition regarding manufacture, storage, sale and distribution etc. of Goods; -

(1) No person shall by himself or through any person on his behalf manufacture or store for sale, import, sell or distribute Goods which do not conform to the Specified Standard and do not bear the words "Self-declaration - Conforming to IS (Relevant Indian Standard mentioned in column (3) of the Schedule) on such Goods after obtaining Registration from the Bureau.

(2) The substandard or defective goods which do not conform to the specified standard mentioned in column (3) of the schedule shall be deformed beyond use by the manufacturer and disposed of as scrap."

Thus, irrespective of knowing about such criteria, the custodian had wrongly put up the disputed goods for auction without a mandatory BIS certificate that is required for the clearance of the goods for home consumption.

III. As per Rule 31 of the Drugs and Cosmetics Rule, 1945, no drug shall be imported unless it complies with the standard of strength, quality and purity. The Assistant Drug Controller vie letter dated 25.06.2021 had expressly mentioned that the cosmetic items may be treated as imitation cosmetics and the same are not fit for human consumption since the products/items did not have a manufacturing and expiring date. Thus, releasing the same shall be harmful for the Indian consumer. Despite not obtaining the registration with the Central Drug Standard and mandatory NOC from the Assistant Drug Controller the custodian went ahead with the auction.

IV. The appellant had issued NOC for disposal of the goods with the condition that necessary permission was required from the Participating Government Agency before proceeding with the auction and disposal proceedings and that the NOC would stand cancelled in case of any deviation observed. However, for both the disputed goods that were put up by the custodian for auction were without obtaining the mandatory final NOC from the Customs and hence delivery of the same would be in contravention of the Customs Act, 1962 as Participating Government Agency's (PGA) NOC has been rejected in the instant case. Thus, it was the custodian who failed to obtain the necessary PGA NOC and final Customs NOC before auctioning the goods.

8. The learned counsel for Century Ply Boards Ltd., the respondent No.5 and the custodian of the goods submits that goods can be handed over to the writ petitioner/the respondent No.1 only after clearance certificate is issued by the customs authorities.

9. The leanred counsel appearing for the writ petitioner/respondent No.1 submits :

I. MSTC Ltd. being respondent Nos.3 and 4 published the e-tender for e-auction of the unclaimed/uncleared cargo after complying with all the formalities to the interested parties and once such e-auction is held and e-tender of the highest bidder is accepted and the highest bidder deposits the entire consideration money for taking delivery fo the consignment, the authorities cannot withhold the consignment either in part or in full or on any gound whatsoever.

II. A specific procedure has been laid down in the Manual to sell the goods of unclaimed/uncleared cargos through MSTC Ltd. Withholding to deliver certain itmes of lot nos. 2.0 and 5.0 to the petitioner/respondent No.1 despite complying with all the formalities is against the provision and procedure led down in the Manual.

III. No restriction clause to deliver the lots were notified to the petitioner/respondent No.1 in the sell intimation letter. Thus, it is evident from the conduct of the authorities that their changing stand to deliver the goods after accepting the highest bid of the petitioner/respondent No.1 is clearly as per their own convenience and there is no consistency as such.

10. Having heard the learned counsels for parties and on perusal of the records this court is of the view that the Para 8.9 of the Manual categorically states that the Principal Commissioner/Commissioner may withdraw any lot from auction or tender at any time or cancel the same at any stage, prior to the delivery of the goods. Furthermore, Permission/NOC is required to be taken by the buyer from the concerned authorities, as specific for respective items. The respondent No.1 or the custodian in the present case were unable to furnish the required documents for the delivery of the disputed items.

11. As stated under section 48 of The Customs Act, 1962 "Procedure in case of goods not cleared, warehoused, or transhipped within thirty days after unloading. - If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within thirty days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof." Though the custodian can discharge/clear the uncleared items, it shall be permitted only by acquiring the permission of a proper authority. In the present case, despite not obtaining the BIS certificate and NOC from the Assistant Drug Controller declaring the goods fit for Human consumption and not hazardous for human health, the custodian moved ahead by auctioning the goods that were prohibited for sale making the entire process in contravention to The Customs Act, 1962. For the above reasons, the order dated 21.04.2022 passed by the Learned Single Judge is set aside and quashed.

12. With the above observations, the appeal is allowed. All pending applications are accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

<u>Kolkata</u>
30.09.2022
PA(BS)