

Brief Note on Judgment dated 28th February, 2017 of the Supreme Court of India in

**RASIKLAL KANTILAL & CO. v BOARD OF TRUSTEE OF PORT OF BOMBAY &
ORS.**

Civil Appeal No. 5968 of 2011

India based consignees imported 78 shipments of zinc ingots and copper iron bars from M/s Metal Distributors UK Ltd. Between November 1991 and January 1992 where discharge port was the port of Bombay. Shipments were done on CAD (cash against documents basis) where the title of the goods would remain with the exporter till the time the importer would furnish/retire documents against payment. The consignees initially filed Bill of Entry against 37 consignments out of 78 and could not furnish documents which lead to accumulation of demurrage charges on the cargo. In the meanwhile the customs initiated inquiry into the validity of import and the advance licenses held by the consignees. Since the property in goods was with the exporter M/s Metal Distributors UK Ltd., and the re-export of the goods was not commercially viable, the present appellant who agreed to purchase the goods, was roped in by M/s Metal Distributors UK Ltd. Accordingly, the appellant applied for substitution of Bill of Entry in respect of 37 consignments and at the same time applied to file bills of entry for the remaining 41 consignments which were lying unclaimed. Customs authorities granted permission to the appellant to amend the Import General Manifest (IGM) for the 41 consignments and subsequently Customs also issued Detention Certificates for the 41 consignments. A total of Rs. 2,81,67,333/- was levied as Demurrage out of which Remission of Rs. 90,52,535/- was granted and the balance of Rs. 1,91,14,798/- was demanded from the appellant. Appellant sought remission of demurrage charges imposed by the Respondent in view of the detention certificates issued by the Customs. First Respondent on 16.09.1995 rejected the request of the petitioner for remission of demurrage inter alia on the ground that the remission could not be given for the period prior to the date of noting in the Bill of Entry.

Appellant challenged the order dated 16.09.1995 before the Bombay High Court where it was contended that once Custom authorities had issued detention certificates the respondents were not justified in refusing benefit of remission of demurrage charges in view of guidelines providing remission and; the act of rejection was in violation of section 53 of Major Port Trusts Act. Appellants also cited a similar case where remission was granted by the respondents. On the other hand, respondent contended that remission was not the right of the petitioner and had been granted to the extent permissible under the guidelines and the appellants could not be permitted to claim remission for the period during which they had no right, title or interest in the goods. The writ petition was dismissed by the High Court vide judgment dated 12.04.2010.

Appellant moved the Supreme Court against the judgement, where it was contended that since the appellant acquired title in the goods at a later stage, therefore demurrage relating to period prior to the appellants acquiring title should be collected from the Steamers Agent and; the appellant did not incur any liability to pay demurrage as the respondent did not render any service to the appellant during that period. It was further contended that appellant was also entitled for complete remission of demurrage on account of delay which occurred primarily due to non-clearance of goods by the Customs.

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Supreme Court partly allowed the appeal and set aside the judgment dated 12.04.2010 and order dated 16.09.1995 and directed the respondent to take appropriate decision on the application for remission by recording the decision. However the contentions of the appellant regarding collection of demurrage by the appellant and remission of demurrage were rejected. It was observed as follows;

- a. The Court examined the obligations of the respondent and its authority to collect demurrage and looked at various sections of Major Port Trusts Act including Chapter VI dealing with imposition and recovery of rates at the ports. The court categorized services rendered by the port into 3 categories 1) services rendered to the vessels entering the port 2) services rendered to the goods either imported by the vessels or to be exported through vessel and 3) services rendered to the passengers arriving or departing from vessels in the port.
- b. The Court examined the definition of Demurrage, as mentioned in International Airport Authority (Storage and Processing of Goods) Regulation, 1980 and Madras Port Trust Act, 1905 and the definition as mentioned in the judgment of the Supreme Court in *Port of Madras v Aminchand Pyarelal* 1976 3 SCC 167. Further the court noted that in terms of section 59 of Major Port Trusts Act, the first respondent had lien on the goods for rates levied and the authority to seize and detain goods and the power of the first respondent under section 60 and 62 to sell the goods seized and detained without the need to file a suit for recovery.
- c. The Court rejected the contention of the appellant that the question of time of passing of title of goods was relevant for determining the authority of the Port to collect demurrage from the appellant. The court agreed with the judgment in the cases of *Port of Madras v K.P.V Sheikh Mohd. Rowther & Co.* 1997 10SCC 285 and *Forbes Forbes Campbell & Co Ltd. v Port of Bombay* 2015 1 SCC 228 and held that the board could recover the rates from either the steamer agent or the consignee. One the issue of recovery of demurrage charges from the steamer agent or the consignee, in *Rowther* it was held that once the goods are handed over to the port and the Bill of Lading is endorsed then upon endorsement the property in the goods vests with the consignee and therefore the consignee is liable for the payment as the responsibility of the steamer agent for the custody of the goods ceases. In *Forbes*, it was held that liability to pay demurrage charges and port rent would accrue on steamer agent if there is a contract of bailment between the steamer agent and the port trust under section 42(2) of the Major Port Trust Act. Further the Court referred to the judgment in *Forbes* and held that though there is no relationship of bailor and bailee between the port and the appellant but such a relationship exists between the port and the owner of the vessel. The court then referred to the situation at hand and observed that “*It is possible in a given case where the consignee or any other person (such as the appellant herein) claiming through the consignor, eventually may not come forward to take the delivery of the goods for a variety of reasons- consideration of economy or supervening disability imposed by law etc. Therefore in such cases, to say that merely because the bill of lading is endorsed or the delivery order is issued, the consignor or his agent is absolved of the responsibility for payment (of rates or rent or services rendered with respect to goods) would result in situation that the Board would incur expenses without any legal right to recover such amount from the consignor and be*

driven to litigation for recovering the same from the consignee who did not take delivery of the goods with whom the board has no contract of bailment and consequently no contractual obligation to pay rates or rent.

- d. The Court held that the right of the board to recover rates or rent for services rendered is unquestionable and the only question is from whom the board can recover? The Court then answered that “*depending upon the nature of relationship between the consignor and consignee the liability may befall on any of them.* Referring to section 158 of Contract Act regarding obligation of the bailor to pay the necessary expenses incurred by the bailee, the court held that obligation of the bailee to return the bailed and the obligation of the bailor to pay the necessary expenses incurred for the purposes of bailment would not only cover a bailment by contract but every kind of bailment. Further it was held that “*if the bailor has such an obligation to pay the bailee, any person claiming through the bailor must necessarily be bound by such an obligation unless the bailee releases such person from such an obligation..*” Further the Court referred to the Bills of Lading Act 1856 and held that delivery of goods pursuant to a bill of lading creates bailment between the owner and shipper and in terms of the legal fiction in the act, after the property in goods passes to the consignee, the liability of the consignee would be the same as those of the consignor. The terms and conditions of the contract between the consignor or the person claiming delivery of the goods are irrelevant for determining the right of the first respondent to recover its dues. The Court held that the right to demand enables the port to claim various amounts from any person claiming delivery of goods including a bailor or a person claiming through the bailor. While rejecting the first contention of the appellant, it was held that “*Denying such a right on the ground that person claiming delivery of the goods acquired title to the goods only towards the end of period of the bailment of the goods with the first respondent would result in driving the first respondent recover the amount due to it from the bailor or his agent who may or may not be within the jurisdiction of the municipal courts of this country (by resorting to cumbersome procedure of litigation).*”
- e. On the issue of entitlement of the appellant to claim complete remission, it was held that “*The fact that the appellant was not permitted to clear the goods because of the pendency of some proceedings initiated by the Customs Authorities by itself does not create a right of remission in favour of the appellant. Though it may constitute a relevant circumstance for considering granting remission if the first respondent so chooses as a matter of policy. As a matter of fact, remission of a part of the demurrage was granted by the first respondent.* On the issue of the authority of the board to decline or grant remission of charges payable, the court held that such an authority must be based on rational consideration and a sound policy as the first respondent was a statutory body discharging important statutory obligations.

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