

Cus - Illegal detention of goods by Customs - Demurrage amounts to more than value of goods & container - Importer not liable to pay these charges; Customs liable - Costs imposed, can be recovered from guilty officers: HC

By TIOL News Service

CHANDIGARH, DEC 26, 2016 FACTS as noted by the Court:

The petitioner imported several packages of defective/secondary cold rolled steel between 4.12.2015 and 11.12.2015.

Vide letter dated 14.12.2015, DRI, Ludhiana directed the Port Trust to put on hold the imported consignments. These were to be examined 100% by DRI/customs.

Vide letter dated 22.12.2015, the petitioner sent a reminder to DRI, Ludhiana as well as customs requesting for provisional assessment of the imported consignments and release of the goods within 48 hours, as the consignments were incurring detention and demurrage charges.

Vide letter dated 28.12.2015, DRI, Ludhiana directed customs that it had put on hold the imported consignments on a specific intelligence input that import was being made to come out of the rigors of notification No. 2/2015-Cus (SG) dated 14.9.2015. It was further directed that imported consignments be examined 100% by customs officers with the assistance of local Chartered Engineer and a detailed report be prepared and sent to DRI, Ludhiana. On 30.12.2015, the petitioner sent another reminder to DRI, Ludhiana as well as customs informing that shipment has not been examined till date, as a result of which the party is facing heavy detention charges of shipping line and demurrage charges of the Port Trust. The petitioner is not liable to pay the same as the goods have been detained by DRI, Ludhiana and customs. A request was made for early examination of the material and release thereof within 48 hours. Another reminder was sent by the petitioner to the same effect on 1.1.2016, but no action was taken by the department.

Even though first bill of entry was filed by the petitioner on 4.12.2015 and the second was filed on 11.12.2015 and the letter of DRI, Ludhiana to put on hold the consignments for 100% examination was dated 14.12.2015, but no action for release of goods was taken by customs till such time Rajendra S. Tambi was appointed as a Chartered Engineer. Nothing from the record was pointed out to show as to when he was engaged.

The inspection report, as submitted by the Chartered Engineer clearly opined that the goods imported by the petitioner were cold rolled sheets/coils, as claimed by the petitioner in the bills of entry. It was not a case where the goods were prohibited, which could not be imported. In any case, release could be permitted after provisional assessment to avoid demurrage and detention charges.

As harassment of the petitioner was not to end here, vide letter dated 4.2.2016 from Commissioner of Customs (Export-I), Mumbai to Deputy Commissioner of Customs, Docks (Import), Mumbai giving reference to earlier two letters dated 3.2.2016, it was informed that DRI, Ludhiana had instructed on telephone to draw random samples of all the consignments and send the same for testing as to whether the subjected material is hot rolled or cold rolled, which should be done under the guidance of customs approved Chartered Engineer. The approved laboratory for testing of samples was to be informed after consultation with DRI, Ludhiana. The samples were to be kept in safe custody till further direction.

Vide communication dated 7.3.2016, customs informed the petitioner that on recommendations made by DRI, Ludhiana, the consignments are ordered to be released provisionally on payment of full customs duty of Rs. 73,44,970/-, preferential provisional safeguard duty of Rs. 45,75,661/- and on furnishing of bonds as per list attached. The goods were to be released after measurement of thickness by DRI office. The earlier communication dated 28.1.2016 requiring the petitioner to furnish PD bonds and bank guarantee was superseded. It was claimed by the petitioner that there was no power of review or re-call with the officers of the department, but still such an action was taken. The object was to harass the petitioner.

Vide order dated 4.4.2016 passed in the earlier writ petition filed by the petitioner, the High Court directed to de-stuff the disputed consignment as the petitioner was incurring demurrage and detention charges. The stand of the petitioner was that he was man-handled when went to customs office for de-stuffing. The fact that atmosphere there was not cordial is not in dispute, however, who was at fault cannot be made out.

As the stand of the petitioner from the very beginning was that the consignments contained cold rolled steel, the high Court further directed for drawing fresh samples.

In the present writ petition, after the service of the respondents was complete and the dispute still was as to whether the imported consignments were hot rolled or cold rolled steel sheets/coils, there being two contradictory opinions available with the department, vide order dated 3.6.2016, this court directed to send the samples freshly drawn to Bokaro Steel Plant, Jharkhand for testing. When the case was listed for hearing on 8.7.2016, report from Bokaro Steel Plant was received. Sealed envelope was opened in court. The report opined that the material was cold rolled steel. The report was furnished to counsel for the parties.

Vide order dated 12.7.2016, after hearing learned counsel for the parties, taking into consideration the report received from Bokaro Steel Plant and the only pending issue being the effect of thickness of the material imported, which could entail levy of small amount of additional duty on part of the consignments and further the claim of the Port Trust and the Shipping Line regarding detention and demurrage charges, this court directed that the goods be released to the petitioner on payment of duty after adjusting the duty already paid, as the material was found to be cold rolled steel/sheets/coils. The issue regarding detention and demurrage charges was to be considered later. For certain disputed amount of duty and interest, the petitioner was directed to furnish bank guarantee.

The order was not immediately complied with. Certain avoidable issues were raised by the department as they were caught on a wrong foot. The stand of the petitioner was vindicated. Vide order dated 2.8.2016, the court comprehensively recorded as to what all was to be done by each of the party before release of the goods. The order was challenged by Port Trust before Hon'ble the Supreme Court. The matter was remanded back vide order dated 15.9.2016 for the entire issue to be decided finally.

After passing of the order dated 2.8.2016 by the court, the imported consignments of the petitioner were finally assessed by customs vide order dated 8.8.2016. The petitioner paid the amount of duty assessed, **but still the goods were not released.**

Though customs had finally assessed the duty payable by the petitioner on the imported consignments, but still DRI, Ludhiana was not satisfied, as they are apparently inimical to the petitioner. As a result of the assessment, additional duty payable by the petitioner was found to be few thousand rupees in addition to the amount assessable as per the declaration made by the petitioner. DRI, Ludhiana directed customs to file appeal against the order of assessment before release of goods. The appeal filed by customs is stated to be pending.

Findings of the Court:

From the narration of facts, it is clear that stand of the DRI and customs had never been that the goods being imported by the petitioner were prohibited goods, which could not be imported. The only suspicion by DRI had that the consignments contained material, which is hot rolled steel and further the issue regarding thickness was also raised. For first consignment, bill of entry was furnished by the petitioner on 4.12.2015. For second and third consignments, bills of entry were furnished on 11.12.2015 and 29.12.2015, respectively. Such an issue could be resolved without any delay. For that purpose, the goods were not required to be detained for months together. It was not disputed that there was no facility available in the Government laboratory for testing as to whether a product is a hot rolled or cold rolled steel. The samples could very well be got tested from a laboratory of repute having testing facility. The report received from Rajendra S. Tambi, Chartered Engineer, along with test certificate from Perfect Laboratories Services Ltd. was ignored altogether without assigning any justifiable reason. TCR Engineering Services Pvt. Ltd., to which the samples were sent for testing again, did not have the facility for testing as to whether the goods were hot rolled or cold rolled steel. The authorities were expected to take immediate effective steps for testing of samples and even during the pendency thereof if the goods were not prohibited, order release thereof by provisional assessment.

The net result of the action/inaction of the authorities is that parties have been involved in avoidable litigation resulting in levy of detention and demurrage charges, part of which may go to Shipping Line, which is a foreign company. The action of the authorities had to be immediate taking into consideration that undue delay does not result in harassment to any party. Even on the other side, as is evident from various documents and communications produced on record, the officers of the department had also been indulging in avoidable correspondence resulting in delayed release of consignments. The time could have been better utilised for other pressing needs.

Responsibility for detention and demurrage charges

As far as the goods are concerned, those have been finally assessed by customs and detention certificate has also been issued. The amount of duty has been paid by the petitioner, however, the same are yet to be actually released for the reason that the issue regarding detention and demurrage charges demanded by Port Trust and the Shipping Line is to be settled. There are two aspects as to who shall be responsible to pay those charges and the second issue connected with this that arises for consideration is as to whether in terms of the ***Handling of Cargo in Customs Area Regulations 2009***, Port Trust charges can be waived off.

For detention of goods, the petitioner was not at fault. It was the illegal action of customs and DRI, Ludhiana on account of which goods remained in their custody. De-stuffing was not offered and allowed immediately, as a result of which detention and demurrage charges have accumulated, which are much more than even the value of the goods.

The case in hand is not in isolation, where the conduct of the department in delaying the process of release of goods despite the same for consideration before a Division Bench of this Court in ***Om Udyog v. Union of India***, wherein it was observed that the goods should be cleared without delay unless these are prohibited goods. Non-clearance of goods can be justified for minimum period required for assessment. Delay of months together cannot be justified, as non-clearance seriously affects rights of lawful importer and no authority can be permitted to plead unlimited power for delaying clearance for its own incompetence as a justification beyond reasonable period.

In view of the enunciation of law by different High Courts including this court,

once it is found that detention of goods was not on account of any fault of the petitioner, rather, found to be illegal action on the part of DRI and customs, the petitioner cannot be burdened for detention and demurrage charges and the liability has to be put on customs department, who shall be at liberty to seek waiver thereof.

Regarding mala fide of DRI officers.

The court is not going into much detail on this aspect, but it can safely be opined that the action was not bonafide, if not strictly mala fide. Things could have been taken in right perspective with positive attitude ensuring that neither the revenue suffers any loss nor the importer on account of merely delay of clearance of goods. The instructions issued by the department, time and again, were blatantly violated. The stand taken by the petitioner was vindicated when finally the goods were found to be cold rolled steel. It was never the case of the department that the goods imported were prohibited. The only issue raised about these being hot rolled or cold rolled steel or its thickness could be taken care of without any delay.

Payment of detention charges of Shipping Line

No doubt, the 2009 Regulations are not applicable on the Shipping Line, however, once it is found that detention of goods for inordinate period was not on account of any fault on the part of the petitioner, he is not liable to be burdened with that cost.

It is only the DRI and customs, who should bear the cost, demanded by the Shipping Line

. The DRI or customs may get those charges waived off or reduced from the Shipping Line, however, whatever is payable in addition to the freight agreed between the importer and the Shipping Line shall be borne by DRI or customs.

It was pointed out at the time of hearing that detention charges demanded by the Shipping Line has run into crores of rupees, which are even more than the value of the goods imported and may be even more the value of the container itself, which has been detained along with goods. The Department should examine the issue whereby the containers of the Shipping Line can be made free immediately by de-stuffing and the goods are shifted to other containers locally available in cases where the goods cannot be de-stuffed in a warehouse in open on account of fear of pilferage or damage, however, if not already dealt with, as nothing was pointed out in this regard at the time of hearing.

The writ petitions are allowed.

1. The amount of customs duty having already been paid by the petitioners, the respondents are directed to release the goods.
2. The Port Trust cannot charge any demurrage in view of Regulation 6(l) of the 2009 Regulations, customs having issued the detention certificate.
3. The detention charges demanded by the Shipping Line shall be borne by DRI and/or customs. However, they shall be entitled to get the same waived off or reduce from the Shipping Line.

4. The petitioners shall be entitled to cost of Rs. 50,000/- each to be paid by the department, however, with liberty to recover from the guilty officer/official(s).

(See [2016-TIOL-3106-HC-P&H-CUS](#))