

12. **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) No. 1865 of 2008**

PIL MUMBAI (INDIA) LTD ..... Petitioner  
Through: Shri Manoj Khanna, Advocate.

versus

UNION OF INDIA & ORS. .... Respondents  
Through: Mr. R.K.Joshi with Mr. Jyotindra  
Kumar, Advocate for R-3.

**CORAM:**  
**HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be  
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in  
Digest? Yes

**ORDER**  
**06.01.2010**

1. The Petitioner PIL Mumbai (India) Ltd. acts as agent for various international lines and facilitates import and export of goods in containers in the course of international trade. The Petitioner states that it ensures that the containers of various shipping lines, of which it acts as agent, are shipped to the destination shown in the bill of lading. After delivery of the consignment the empty containers, for the import of which the Petitioner executes a bond in favour of the local customs authorities, are required to be re-exported by it within a reasonable time.

2. The Petitioner states that it has nothing to do with the liabilities attaching to the actual import or export of the consignments carried in the containers. Those obligations are of the respective consignors and consignees, as the case may be, and are governed by the contract entered into between those parties.

3. As far as the present case is concerned, two containers (PCU 3686070/20 and TTNU 3868181/20) were shipped into India against combined transport bills of lading issued by PIL Pacific International Lines (Pte) Ltd., (the shipping line of which the Petitioner here is an agent) from Lagos in Nigeria (port of loading) to Tuglakabad (the place of delivery). The consignor/shipper mentioned in the bills of lading was Don-Capo Afro Asia Ltd. and, the State Bank of India, Maharajpur, District Ghaziabad was shown as the consignee. PGR Overseas, New Raj Nagar was the party to be notified. The consignment in question consisted of aluminium ingots.

4. It is stated that the containers were shipped on two vessels and arrived at the Mundhra port on vessel on 24<sup>th</sup> September 2004. The containers after being discharged from the vessel at the Mundhra port with their seals intact, were in the custody of customs authority through the Container Corporation of India Ltd. (CONCOR) (Respondent No.3 herein). They were thereafter transported from Mundhra to Tuglakabad, the port of delivery, by rail. A transship permit to that effect was issued by the customs authority. The

containers arrived at Tuglakabad on 22<sup>nd</sup> October 2004.

5. It appears that the consignee failed to take delivery of the consignment within the time offered by the shipping line. The consignee also failed to pay the inland haulage charges. The containers were found to be weighing much less than the weight shown in the bills of lading furnished by the shippers. It appears from the affidavit filed by the CONCOR, in these proceedings, that due to shortage of material found in the containers the police in Delhi, at the instance of the consignee, registered FIR No. 460 of 2005 dated 16<sup>th</sup> July 2005 under Sections 406, 420 and 120B IPC against the consignor. The goods in the two containers were inspected by the police in the presence of the customs authorities, the representatives of the Petitioner, CONCOR, the CHA, the importer etc. After inspection a seizure memo was prepared and the goods were given in *superdari* to the representative of CONCOR. The containers were re-sealed by the police.

6. The Petitioner was however concerned about the delay in unloading of the consignment from the containers and about re-exporting the two containers in accordance with the bonds, furnished by it to the customs authorities.

7. Meanwhile, the Petitioner was questioned by the Anti Forgery

Branch of the Economic Offence Wing ('EOW'), Crime Branch of the Delhi Police in relation to the aforementioned FIR filed by the consignee alleging cheating against the consignor. In relation to the shortage of goods in the containers, the Petitioner informed the Investigating Officer that the containers have been de-stuffed and sealed by the shipper at its godown at the port of loading (Lagos) itself and that the bills of lading were prepared on the shipper's declaration. The containers reached the customs authorities in India at the Mundhra port with the seals intact. Consequently, no fault or liability could be attributed to the Petitioner for any alleged shortage in the consignment.

8. Aggrieved by the continued detention of the containers by the Respondents, the Petitioner filed the present petition seeking, inter alia, a direction to the Respondents to forthwith release the two containers in question and to compensate the Petitioner for loss of business and loss of profits on account of the detention of the containers. According to the Petitioner the detention charges, if any, are to be paid by the consignee and, therefore, there was no justification for not releasing the containers to the Petitioner.

9. Learned counsel for the Petitioner has in addition relied upon the judgment of this Court in *Kawasaki Kisen Kaisha Ltd. v. Union of India 1996 (82) ELT 27 (Del)* where in similar circumstances a direction was issued by this Court to release the containers in

question to the shipping line in that case. Further, reliance is placed upon the order dated January 2007 passed by a learned Single Judge in Writ Petition (C) No. 8792 of 2006 where, in the background of shipment of similar consignments of similar aluminium ingots from Lagos in Nigeria, a direction was issued to release the containers to the shipping line.

10. An affidavit has been filed on behalf of Respondent No.2, Assistant Commissioner (Preventive), Department of Customs on 5<sup>th</sup> December 2008 in which it is stated as under:

“It is submitted that the containers bearing Nos. PC-3686070 and TINU-3868181 have never been seized/detained by the answering respondent. The answering respondent had already intimated the Assistant Commissioner of Customs (SIIB), ICD, TKD, New Delhi vide its office letter dated 12.9.2005 that since the investigation undertaken in this Commissionerate in respect of subject empty container from Lagos had already been completed and no customs angle was involved and as such the Commissionerate had no objection for release of two subject containers to the Petitioner. Copy of the letter dated 12.09.2005 has been Annexed herewith and marked as Annexure R-1.”

11. On its part Respondent No.3 CONCOR has filed an affidavit on 6<sup>th</sup> July 2009 where apart from certain technical objections, it is stated in para 6 as under:

“6. Contents of paragraph 6 are denied. It is denied

that the containers have been detained by the answering respondent. It is denied that the services of the principle of the petitioner were engaged for the limited purpose. It is denied that the petitioner has the right to exercise lien over the consignment as alleged. The detention charges mentioned in the paragraph under reply are denied. In any case, the same has to be recovered from the importers/consignees by the petitioner as per their contract(s) with them. Due to shortage of the material found in the containers, the police had registered FIR No. 640/05 dated 16.7.2005 under Section 406, 420 and 120 B of IPC and the goods were inspected in the containers by the police in the presence of Customs, CHA, importer etc. After inspection a seizure memo was prepared and the goods were put under the superdari of the representative of the answering respondent and the container was re-sealed by the police. The goods are lying in the container. The answering respondent has no objection if the goods are taken either by the importer or Customs to their bounded warehouse and the containers are released after making their payments.”

12. At the previous hearing on 28<sup>th</sup> August 2009 this Court had impleaded the Anti Forgery Branch, Economic Offence Wing, Crime Branch of Delhi Police as a Respondent. However, despite service none appears on behalf of the said newly added Respondent No.4.

13. Mr. Joshi, learned counsel appearing for Respondent No.3 while no disputing the stand taken by it as contained in para 6 of the affidavit, submits that the consignor and consignee would have to be

made parties to this petition and a comprehensive order passed in lines of the order dated 12<sup>th</sup> September 2008 passed by the Division Bench of this Court in Writ Petition (C) No. 22731 of 2005 permitting the consignment in question to be auctioned for recovering the detention charges. A reliance is also placed on an order passed by the Supreme Court in *Board of Trustees Port of Mumbai v. Transworld Shipping Service (1998) 9 SCC 610* where it was directed that the goods in question should be auctioned after being de-stuffed from the containers in question.

14. The submissions of Mr. Joshi have been considered.

15. It is plain that as far as the Petitioner is concerned, it is merely a shipping line that facilitates the carriage inward of goods in the process of import. There is no liability attached to the shipping line itself for either payment of haulage charges or detention charges to the port authority or to CONCOR. At all times it was understood by the parties that the liabilities, if any, arising out of the import was governed by the terms of the contract between the consignor and the consignee. As far as the shipping line is concerned, it has furnished a bond to the customs authorities for importing the containers, and after unloading the goods carried therein at the destination indicated in the bill of lading, to re-export the containers to the country of origin.

16. The customs authorities in this case have no objection to the release of the containers to the shipping line. The customs authority has made it clear that the investigations undertaken by the Department of Customs has already been completed, that “no customs angle is involved” and that there can be no objection to release of the two containers to the Petitioner. Therefore as far as the customs department is concerned, they have no objection to the prayer of the petition being granted.

17. As far as the CONCOR is concerned, it has categorically stated on affidavit that it too has no objection to the empty containers being returned to the Petitioner, “after the goods are taken either by the importer or customs to their warehouses and the containers are released after making their payments.” However, learned counsel for the CONCOR repeatedly insisted that this Court should pass an order directing the auctioning of the goods seized and for that purpose urged that the consignor and consignee should be impleaded as parties. The relevant paragraph of the affidavit of CONCOR as extracted hereinbefore makes clear that the goods in question have been sealed pursuant to the investigation undertaken by the EOW in FIR No. 640 of 2005. It is difficult to appreciate how when the said goods have been seized pursuant to a criminal case, and have been entrusted in superdari to the representative of the CONCOR, this Court can simply direct that the goods be auctioned off. At the same time, there appears to be no justification for denying release of the

containers, which per se do not constitute the case property, to the Petitioner. A distinction has necessarily to be drawn between the consignment contained in the containers and the containers themselves. While the consignment certainly forms subject matter of the criminal case, and of the contract between the consignor and the consignee, it is nobody's case that the containers constitute case property and are required to be detained for the purposes of a criminal case. It has already been noticed that even the customs authorities have no objection to the release of the containers to the Petitioner.

18. Learned counsel for the CONCOR was unable to show to the Court any provision in the Major Ports Act, 1963 that obligates the Petitioner, as a shipping line, to pay the rent for the containers. Even the order passed by the Supreme Court in *Board of Trustees Port of Mumbai v. Transworld Shipping Service* in para 4 notes the contention of learned counsel for the Petitioner in that case that “there is no liability on the client's part to pay ground rent because the containers are being detained due to non-performance of the statutory duty of the customs authority and also the Port Trust.” After noting the said submission, the Supreme Court observed that “all these questions must be finally decided by the High Court.” Therefore the said order cannot be an authority for the proposition that in a case like the present one, the liability to pay the detention charges or the rent should be fastened on to the shipping line.

19. The order passed by the Division Bench of this Court in Writ Petition (C) No. 22731 of 2005 also does not help the case of the CONCOR. In that case it happened that the consignor and the consignee were parties to the petition and a comprehensive order could therefore be passed by the Court directing the auctioning of the consignment. That case did not involve seizure of goods pursuant to the registration of a criminal case. The two cases are therefore not on the same footing.

20. For the aforementioned reasons, this Court finds no merit in the contentions of the learned counsel for the CONCOR that this Court should pass an order directing the auctioning of the consignment in question for recovering the detention charges. It is nevertheless clarified that it would be open to CONCOR to proceed in accordance with law to recover the detention charges without insisting that the containers should not be released to the Petitioner.

21. For the aforementioned reasons, this petition is allowed. A direction is issued to Respondents 1 to 4 to release the two containers in question to the Petitioner, within six weeks from today, after unloading the consignment contained therein and retaining the said goods in a sealed condition. It will be open to Respondent No.3 to take appropriate steps in accordance with law to require the keeping of the goods in a bonded warehouse and recover the detention charges from the importer/consignor or the consignee, as the case

may be. The other prayer of the Petitioner for damages cannot be decided in the present proceedings. It would be open to the Petitioner to avail of any other remedy for that purpose in accordance with law.

22. A copy of this order be given dasti to the learned counsel for the parties.

**S. MURALIDHAR, J**

**JANUARY 06, 2010**  
**dn**