

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10823 OF 2017

(Arising out of SLP (C)No. 6878 of 2016)

M/S. CONTINENTAL CARBON INDIA LTD. ... Appellant

VERSUS

UNION OF INDIA & ORS. ... Respondents

O R D E R

Leave granted.

We have heard the matter finally at this stage.

Only those facts which are material for the purpose of deciding this appeal are taken note of as because of the events which have taken place during the pendency of the proceedings before the High Court as well as this Court, the issue involved today is in a very narrow campus.

The appellant herein had imported 2296.50 metric tonnes of Carbon Black Feed Stock (hereinafter referred to as 'CBFS' for short) from one M/s. Koppers Carbon and Chemical Limited Company sometime in the beginning of the year 2014. The aforesaid material was imported through three invoice bills and it reached Inland Container Division (ICD) at Dadri, in between June-September, 2014. On inspection, the customs authorities detained these goods on 06.09.2014 on the ground that the goods appeared to be hazardous in nature and for the clearance of the goods the appellant was supposed to bring clearance certificate to the effect that

the goods are not hazardous in nature. Though the appellant had made requests from time to time for provisional clearance of the goods, the said requests were not accepted. Some time in November, 2014, the Central Revenue Control Laboratory (CRCL) New Delhi, gave report that the goods are hazardous and directed the appellant to get NOC from Ministry of Environment and Forest (MoEF). The MoEF ultimately gave clearance after inspection of these goods with the opinion that the goods are not hazardous in nature. After receiving the said clearance, the custom authorities assessed the goods and permitted the appellant to clear the goods by order dated 12.01.2015. Thereafter, the appellant approached respondent No. 4, which is the Custom Cargo Service Provider appointed under the Customs Act by the Customs Authorities, for clearance of the goods as the goods in the meantime were warehoused with respondent No. 4. Respondent No.4, however, demanded the demurrage charges for getting those goods, from the date of its arrival till the date of clearance. According to the appellant, no such demurrage charges were payable inasmuch as it was not its fault that it could not clear the goods earlier as, according to it, the goods were seized by the Customs Authorities. The appellant in these circumstances, filed writ petition in the High Court of Judicature at Allahabad challenging the action of the Customs Authorities as well as the demand raised by respondent No. 4. It is this writ

petition in which the impugned orders have been passed by the High Court. The High Court has come to a categorical conclusion that there was a seizure of goods by the Customs Authorities and the said seizure was not proper. After giving these findings, the High Court went to the question of payment of warehouse charges for intervening period. Taking note of Section 63 of the Customs Act as well as regulations framed and, particularly, regulation 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009, the High Court came to the conclusion that when the goods are seized by the customs authorities, the customs cargo service provider is not entitled to charge any rent or demurrage on such goods seized or detained or confiscated by the proper officer. On that basis, the High Court also found that the appellant was not liable to pay any demurrage charges. However, this relief is given to the appellant till 15.01.2015. This date is taken into consideration because of the reason that in the order dated 12.01.2015, the goods were assessed and the appellant was allowed to clear the goods on payment of custom duty. The grievance of the appellant is against this part of the order.

We may record that insofar as the respondents are concerned, they have accepted the judgment and, thus, there is no challenge to the findings of the High Court that the goods were wrongly detained/seized by the Customs Authorities. It is in this backdrop that the question is to

be decided as to whether relief of non-payment of charges should have been restricted till 15.01.2015.

It may be mentioned here that when the appellant had approached respondent No.4 for clearance of goods after assessment orders were passed on 12.01.2015, respondent No.4 had stated that a sum of Rs.7.67 crores is payable as demurrage charges on the said goods. The value of the goods so imported was Rs.7 crores. The appellant, thus, found the aforesaid demurrage charges which respondent No. 4 claimed to be quite excessive and, in any case, as noted above, according to the appellant no such charges were payable. It is in these circumstances that the appellant had challenged orders of the Customs Authorities as well as respondent No.4 by filing writ petition in the High Court.

In the High Court, the stand of the appellant has been vindicated. However, the judgment is given by the High Court only on 14.10.2015. Thus, the proceedings were pending before the High Court from 15.01.2015 till 14.10.2015. It is during the pendency of these proceedings and in the absence of any interim order passed by the High Court allowing the appellant to clear the goods, it was not possible for the appellant to clear those goods. In these circumstances, we are of the opinion that the High Court should have held that no charges towards any rent or demurrage are payable till the date of the judgment of the High Court instead of 15.01.2015.

However, we may point out that the matter does not rest on that. As the appellant challenged the order of the High Court and during the pendency of these proceedings, when this Court had indicated that the appellant can now get the goods cleared, the appellant had inspected those goods. It is stated by the appellant that the goods are stale and rotten now and are of no use to the appellant. Therefore, no purpose would be served, insofar as the appellant is concerned, in getting those goods cleared. The appellant has even filed an affidavit to this effect in this Court.

Having regard to these subsequent developments, we are of the opinion that the ends of justice would be subserved by directing that no demurrage charges or rent is payable on the aforesaid goods by the appellant to respondent No. 4. At the same time, respondent No. 4 would be entitled to auction those goods and whatever money is received as a result of that auction, can be appropriated by respondent No.4.

The appeal stands disposed of.

....., J.  
[ A.K. SIKRI ]

....., J.  
[ ASHOK BHUSHAN ]

New Delhi;  
August 24, 2017.

ITEM NO.1

COURT NO.7

SECTION III-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 6878/2016

(Arising out of impugned final judgment and order dated 14-10-2015 in CMWP No. 205 of 2015 passed by the High Court of Judicature at Allahabad)

M/S. CONTINENTAL CARBON INDIA LTD.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 24-08-2017 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. Upender Thakur, Adv.  
Mr. Virender Singh, Adv.  
Mr. Gaurav Sharma, AOR

For Respondent(s) Mr. A. K. Verma, Adv.  
Mr. Siddhartha Yadav, Adv.  
Mr. Vibhu Verma, Adv.

Mr. Sarvam Ritam Khare, AOR

Ms. Pinky Anand, ASG.  
Mr. A. K. Panda, Sr. Adv.  
Mr. H. P. Rao, Adv.  
Ms. Aruna Gupta, Adv.  
Mr. Sumit Teterwal, Adv.  
Mr. Hemant Arya, Adv.  
Mr. B. Krishna Prasad, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal stands disposed of in terms of the signed  
order.

(NIDHI AHUJA)  
COURT MASTER

(MADHU NARULA)  
COURT MASTER

[Signed order is placed on the file.]