

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S).8636-8638/2012**

**COMMISSIONER OF CUSTOMS
(EXPORTS) & ANR.**

...APPELLANT(S)

VERSUS

**M/S. AUSTIN ENGINEERING
CO. LTD. AND ANR.**

...RESPONDENT(S)

ORDER

1. The revenue in these appeals is calling in question the correctness and legality of the judgment rendered in Writ Appeal Nos.1643/2009 and 73/2011 and M.P. No.1/2011 whereby, the appellants are directed to pay demurrage charges for the period from 30.06.1997 till the date of the clearance of the goods to the Port Trust Authorities.

The facts in brief which has led to the filing of these appeals can be crystallized as under:

- 1.1** The first respondent imported certain steel tubes from Germany and in the Bill of Entry filed the goods were valued at USD 310

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per metric ton and sought for clearance of the same claiming Duty Exemption Entitlement Scheme (DEES) with duty benefit and additional duty of 15% as per Customs Notification No.79/1995. The Assistant Commissioner of Customs rejected the said Bill of Entry and passed an Order-in-Original dated 27.09.1997 by enhancing the value of the goods to USD 1800 per metric ton.

- 1.2** Being aggrieved by the said order, appeals came to be filed before the appellate authority, which set aside the order-in-original and held the value determined by the importer was correct. The Department preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (“CEGAT”) which remanded the matter back to the original authority for fresh consideration. It is thereafter the Assistant Commissioner once again confirmed the value of the consignment at USD 1800 per metric ton by order dated 10.12.1998. Not being satisfied with the same, the importer filed an appeal before the Commissioner Appeals who by order dated 04.03.1999 remanded the matter to the Assistant Commissioner

for consideration afresh and on such remand, the Assistant Commissioner of Customs by order dated 22.08.1999 accepted the value declared by the importer under Rule 4 of Valuation Rules. It is thereafter the importer made a representation to the Customs to issue detention certificate for waiving the demurrage charges incurred by the importer for storing the material with the port trust authorities, Chennai. On account of there being no response, representation came to be submitted for issuance of detention certificate and on reply not being received, Writ Petition came to be filed before the High Court which came to be disposed of on 17.12.2003 directing the Customs Authorities to dispose of the representation submitted by the importer. It is thereafter the detention certificate came to be issued on 13.02.2004 reiterating that detention was due to no fault or negligence on the part of the importer. The representation made by the importer to waive the demurrage charges to the Chennai Port Trust was rejected by the Port Trust on 02.11.2004 on the ground that such waiver is impermissible beyond 90 days. In the Writ Petition which came to be filed by the importer in W.P. No.39229/2004 was allowed, and it was observed as under:

“23. In this case, **as the fault, as admitted, is on the Department** for wrongly detaining the goods from 30.06.1997 to 04.08.2004, in my considered opinion, **the Department alone has to pay the demurrage charges for the said period.** For the rest of the period i.e., from 05.08.2004 till the date of clearance of the goods, the petitioner is liable”

(emphasis Supplied by us)

1.3 Writ Appeal No.1643/2009 which came to be filed by the importer challenging the aforesaid order came to be allowed and Writ Appeal No.73/2011 which came to be filed by the Department came to be dismissed by the impugned order, directing the Department to waive the demurrage charges. Hence, the present appeals.

2. Having heard the learned counsels appearing for the parties and on perusal of the judgment of this Court rendered in ***Mumbai Port Trust Vs. Shri Lakshmi Steels And Others, reported in (2018) 14 SCC 317,*** wherein it has been clearly held that even if the fault is laid at the doors of the Department, the Customs Authorities cannot be directed to pay the demurrage charges. The said issue is no more res integra. In the aforesaid case, it has been held to the following effect:

“36. The next issue which arises is whether any direction could be issued to the DRI/Customs Authorities to pay the demurrage charges to the Port Trust and the detention charges to the

shipping line.

37. We have already referred to a number of decisions wherein the law has been clearly laid down that even if the importer is not at fault, it is the importer alone who is liable to pay the demurrage charges. As far as detention charges are concerned, this is a private contract between the importer and the carrier i.e. shipping line. The DRI/Customs Authorities can be directed to pay the demurrage/detention charges only when it has proved that the action of the DRI/Customs Authorities is absolutely mala fide or is such a gross abuse of power that the officials of the DRI/Customs should be asked to compensate the importer for the extra burden which he has to bear. Even if an importer feels that it has been unjustly dealt with, it must clear the goods by paying the charges due and then claim reimbursement from the Customs Authority.

38. In the present case of mala fides ... xxx ...

Therefore, there is no specific finding of mala fides. However, the High Court held that the respondent importers suffered a loss because of delay on the part of the Revenue staff to clear the goods and the executive instructions of the Department were violated.”

3. In fact, this Court had an occasion to consider the similar plea in the matter of ***Union of India And Other Vs. R.C. Fabrics (P) Ltd. And Another, reported in (2002) 1 SCC 718***, whereunder it came to be held that the direction issued by the jurisdictional High Court therein directing the Customs Department to pay demurrage, container charges and ground rent to the Corporation was contrary to the decision in ***International Airports Authority of India Vs. Grand Slam International, reported in (1995) 3 SCC 151*** and had absolved

the Department from payment of such demurrage charges or in other words, such direction issued came to be set aside.

4. In the light of the *aforestated* principles enunciated by this Court to which we are in complete agreement and the facts obtained in the instant case disclosing that there was no effort made by the importer to get the goods released, we are of the considered view that appellants herein cannot be mulcted with the demurrage charges which the importer alone would have been liable to pay.
5. Having said so, this Court cannot lose sight of the fact that on account of the importer at many stages as well as the Department at one stage had assailed the order of determination in the hierarchy of appeals as prescribed under the statute, the fault cannot be laid at the doors of the Customs Department and so also the importer. However, the importer having not taken reasonable steps as is expected of a prudent person viz., no steps having been taken to get the goods provisionally released, it cannot be gainsaid that the importer should be absolved of the entire liability. In other words, to strike the balance between the two competing equities as has arisen in the instant case, we deem it proper to balance the same. Undisputedly the goods which were imported wayback in the year 1997, namely, the steel pipes are still

lying with the Port Trust Authorities Godown and it is in its effective control.

Though Mr. S. Thananjayan, learned AOR appearing for the Port Trust Authority would vehemently oppose absolving the importer by contending that the source of revenue to the Port Trust is from collection of rental and demurrage charges and the said space having deprived from being utilized by the Port Authorities, there would be financial loss to the Port Trust if the Department or importer is discharged of liability also cannot be ignored. Yet, the fact remains on account of pendency of litigation the goods were not released.

6. Hence, taking into consideration the interest of the Port Trust Authorities also into consideration, we deem it proper to permit the Port Trust Authorities to auction the goods stored in its premises which is in its effective control either by way of scrap or otherwise and as they (Port Authorities) deem fit and appropriate the proceeds of such auction towards the demurrages and there shall be no further demand raised by the Port Trust Authorities against the importer or Department of Customs and in terms of Section 53 of the Act Port Trust shall exempt or waive the remaining demurrages which has to be fastened on the importer by passing appropriate orders in that

regard.

7. With the aforesaid observations, the appeals stand allowed by setting aside the impugned order and modify the same as aforesaid. No order as to costs. Pending application(s), if any, stands consigned to records.

.....J.
(ARAVIND KUMAR)

.....J.
(PRASANNA B. VARALE)

**NEW DELHI;
FEBRUARY 26, 2026.**

ITEM NO.107

COURT NO.16

SECTION XII-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).8636-8638/2012

COMMISSIONER OF CUSTOMS (EXPORTS) & ANR.

Appellant(s)

VERSUS

M/S. AUSTIN ENGINEERING CO.LTD. AND ANR.

Respondent(s)

Date : 26-02-2026 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARAVIND KUMAR
HON'BLE MR. JUSTICE PRASANNA B. VARALE

For Appellant(s) : Mr. Raghvendra P Shankar, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. V.C. Bharathi, Adv.
Ms. Nisha Bagchi, Adv.
Mr. Piyush Beriwal, Adv.

For Respondent(s) : Mr. Hari Radhakrishnan, Adv.
Ms. Deepika Nandakumar, Adv.
Mr. Mohamed Uvaisullah, Adv.
Ms. Kanimozhi J, Adv.
Mr. V. N. Raghupathy, AOR

Mr. S. Thananjayan, AOR

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

1. Appeals are allowed in terms of the Signed Order placed on the file.
2. Pending application(s), if any, shall stand disposed of.

(NEHA GUPTA)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)