

TRUSTEES OF PORT OF MADRAS

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v.

M/S. NAGAVEDU LUNGI AND COMPANY AND ORS.

APRIL 21, 1995

[KULDIP SINGH, N.VENKATACHALA AND
S. SAGHIR AHMAD, JJ.]

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Customs Act, 1962

Sea Port—Custom Area—Textile goods—Illegal detention of by Customs Officer—Exporter Consignor—Held liable to pay demurrage and other incidental charges.

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The appellants trustees of the Port of Madras - filed a suit against the respondent for recovery of demurrage charges and other incidental charges in respect of certain textile goods illegally detained in the Customs area of the Port of Madras by the Collector of Customs. The City Civil Court dismissed the suit on the ground that the consignor exporter of the goods could not be held liable to pay the charges when the goods had been illegally detained by Collector of Customs in exercise of his power under the Customs Act. The High Court affirmed the judgment and decree of dismissal passed by the City Civil Court. Against the decision of the High Court, an appeal was preferred before this Court.

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Allowing the appeal and setting aside the judgment and decree under appeal, this Court

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HELD: The ruling of this Court in *International Airports Authority of India v. M/s. Grand Slam International and Ors.* (1995) 1 Scale 859 as regards liability for demurrage charges and other incidental charges by importer- consignee of goods illegally detained in the customs area of the Airport by the Customs Authorities applies equally to the liability to pay demurrage charges or incidental charges by the exporter-consignor of goods illegally detained in the customs area of the sea-port by the Customs Authorities under the Customs Act, for such goods illegally detained by the Customs Authorities, the fact that they belonged to either the importer-consignee or exporter-consignor does not make any difference. [671-D]

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A *International Airports Authority of India v. M/s. Grand Slam International & Ors.*, (1995) 1 Scale 859, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1519 of 1982.

B From the Judgment and Order dated 1.7.77 of the Madras High Court in A.No. 494 of 1973.

C G. Viswantha Iyer, S. Venkatswaran, Dr. Shankar Ghosh, S. Balakrishnan, S. Prasad, Ms. Indu Malhotra, Ms. Ayasha Khatri, C.V.S. Rao, (NP), Rahul Dave, Arun Kathpalia, R.A. Perumal, Amit Thoppar, Manoj Pillai for D.N. Gupta, H.K. Dutt (NP), Ranjan Mukherjee, A.D. Sikri, E.R. Kumar, Ms. Shefali Fazl for P.H. Parekh, M/s. JBD & Co. (NP) and S.R. Setia for the appearing parties.

The Judgment of the Court was delivered by

D **VENKATACHALA, J.** The appellant was the plaintiff in suit - O.S. No. 3980/69 in City Civil Court at Madras, while respondents-1 to 5 were defendants-I to 5 therein. That suit had been instituted by the plaintiff—the trustees of Port of Madras against the defendants for recovery of demurrage charges and other incidental charges in respect of certain textile goods in their custody in the customs area of the Port of Madras. Defendant-I was the consignor-exporter of those goods. Defendant-2 was the shipping agent who had to put those goods on board the ship for their export. Defendant-5 is the alleged successor of defendant-2 firm. Defendant-4 is the Collector of Customs who, on behalf of the Union of India, defendant-3
 E was responsible for illegal detention of the goods in the customs area of the Port of Madras giving rise to the claim for demurrage charges and other incidental charges by the plaintiff.
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G The City Civil Court dismissed the suit against all the defendants as in its view consignor - exporter of those goods could not be held liable for demurrage charges and incidental charges payable for those goods when they had been illegally detained in the customs area of the Port of Madras by respondent- 4, purporting to exercise his powers under Customs Act. The plaintiff questioned the correctness of that judgment and decree of the City Civil Court dismissing its suit against all the defendants, by
 H presenting an appeal therefrom before the High Court of Madras in

Appeal No. 494/73. But, that appeal was also dismissed.

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It is the judgment and decree of dismissal of that appeal by which the judgment and decree of dismissal of the suit by the City Civil Court is affirmed, which is appealed against in this Court in the present appeal of the plaintiff.

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We have heard learned Counsel for the parties in the appeal. A three Judge Bench of this Court in *International Airports Authority of India v. M/s. Grand Slam International & Ors.*, [1995] 1 SCALE 859, has ruled that the importer- consignee of goods cannot avoid his liability to pay demurrage charges and other incidental charges in respect of its goods illegally detained in the customs area of the Airport by the Customs Authorities under the Customs Act. The said ruling of this Court as regards liability for demurrage charges and other incidental charges by importer-consignee of goods illegally detained in the customs area of the Airport by the Customs Authorities applies to the liability to pay demurrage charges or incidental charges by the exporter-consignor of goods illegally detained in the customs area of the sea-port by the Customs Authorities under the Customs Act, for such goods illegally detained by the Customs Authorities, the fact that they belonged to either the importer-consignee or exporter-consignor does not make any difference.

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In the said view of the matter, the judgments and decrees under appeal are liable to be set aside and the suit of the plaintiff calls to be decreed against exporter-consignor, defendant-1.

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In the result, we allow this appeal, set aside the judgments and decrees of the courts below and decree the suit O.S. 3980/69 against defendant-1 as prayed for, with costs.

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T.N.A.

Appeal allowed.