



United Maritime Law Chambers

MARITIME LAWYERS & NOTARIES

Opinion

The Honourable Supreme Court in the judgement dated 05/08/2020 in *Chairman, Board of Trustees, Cochin Port Trust v Arebee Maritime Agencies Private Limited & Ors* which originated from the decision of the Honourable High Court of Kerala rendered on 27/09/2011 has decided several pertinent legal issues with reference to the liability of a steamer agent to pay ground rent/ demurrage in respect of goods which are stored in the custody of port trust beyond a period of 75 days on account of the owner of the goods failing to come forward to take delivery of the same or clear the port charges.

Incidentally the Supreme Court also considered the larger question as to whether a ship owner or his agent can be considered as an 'owner' in terms of the definition contained under section 2(o) of the Major Port Trust Act with reference to goods.

The Supreme Court also considered the impact of Section 61 and 62 of the Major port Trust Act in so far as it lays down an obligation on the part of the Port Trust to sell goods not removed from its premises within an outer time limit of 2 months and whether such a stipulation is mandatory or directory.

While considering the question as to whether a steamer agent can be construed as an "owner" in relation to goods under section 2(o) of the Major Port Trust Act, the court has drawn a distinction with reference to the ownership of goods until the stage of landing and removal to a place of storage, and when the goods are actually taken by port trust for storage. But at the same time, by treating the definition of Owner as an inclusive one, and that loading and unloading can take place at the instance of steamers agent also, the Court refused to declare that the steamer agent is not included within the definition of Owner under the Major Port Trust Act. As far as

the 1st scenario is concerned, the Supreme Court held that until the stage of landing and removal to a place of storage, the steamer agent or the vessel may be held liable for charges in respect of services rendered qua unloading of goods. However in respect of the 2nd scenario it has been made clear by the Supreme Court that the point of time from which the port trust takes charge of the goods, then it is only the Importer, consignee, agent or owner of the goods or those entitled to the delivery of the goods who are liable for payment of storage or demurrage charges. In the light of the above declaration of law it can be safely concluded that a ship owner or a steamer agent in so far as it relates to the payment of storage or demurrage charge demanded by the port trust is not liable for payment of such charges.

As regards the question with reference to the obligation of Port Trust to sell those goods which are not taken delivery by the consignee within a reasonable time it was held by the Court referring to Sec. 61 & 62 of the Major Port Trust Act that, it is the duty of Port Trust to destuff every container entrusted to it and return the destuffed containers within a short period of time as is feasible and what is the 'short period' has to be determined on the facts of each case. To that extent the Court set aside the judgment of the High Court treating the expression "may" used in Sec.61 & 62 to be read as "shall" subject to a caveat that the Port Trust must act reasonably to sell the goods within a reasonable period once the goods comes into its custody.

In view of the above Judgement more particularly the undertaking given by the steamer agents admitting their liability for payment of ground rent up to 75 days before the High Court it is now clear that the steamer agents are not liable to pay any ground rents to the port beyond the period of 75 days as admittedly they do not come within the purview of definition of 'owner' as provided under S 2(o) of the Major Port Trust Act in relation to goods which are in the custody of the Port Trust for storage.

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