

M/S. GUJARAT CYPROMET LTD.

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v.

UNION OF INDIA AND ORS.

APRIL 7, 2005

[R.C. LAHOTI, C.J., G.P. MATHUR AND P.P. NAOLEKAR, JJ.]

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Major Port Trusts Act, 1963—Sections 61 to 63—Sale of unclaimed cargo by public auction—Port Trust in terms of its Board Resolution deducted 50% of the sale proceeds towards sale expenses—Such deduction challenged by way of writ petition—High Court holding that the controversy raised involved adjudication of facts which was not possible in a writ petition, advised pursuance of ordinary civil remedy—On appeal, held: The Board passed resolution to deduct 50% of the sale proceeds as sale expenses, as it was not possible to precisely determine the sale expenses in each case—The resolution has not been shown to be invalid on any ground—In fact, in two relevant years, the actual sale expenses exceeded the amount realized on basis of the impugned resolution and the Port Trust suffered loss—Hence, no case made out for interference under Article 136 of the Constitution—Constitution of India, 1950—Article 136.

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Appellant imported certain consignments of copper cathodes from Germany in August, 1998. The consignments were not cleared by the appellant from the Port Trust and were therefore sold in public auction in 2000. The Port Trust deducted 50 per cent of the sale proceeds towards sale expenses. Appellant filed writ petition in High Court challenging the deduction. It contended that the sale proceeds towards expenses of sale on actual basis only should be deducted and the balance amount should be paid to the appellant. High Court held that the controversy raised involved adjudication of facts which was not possible in a writ petition filed under Article 226 of the Constitution. The writ petition was accordingly disposed of permitting the appellant to pursue ordinary civil remedy for redressal of its grievance. Hence the present appeal.

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Dismissing the appeal, the Court

HELD : 1. Though the principal prayer made in the writ petition was to quash Resolution No. 624 dated 23.7.1999 of the Port Trust

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A whereunder it was resolved that 50 per cent of the sale proceeds in a consignment be appropriated towards expenses of the sale, the appellant has not been able to point out any ground as to how the said resolution is invalid. [343-B-C]

B 2.1. Section 61 of the Major Port Trusts Act, 1963 empowers the Board, after the expiry of two months from the time when any goods have passed into its custody (other than animals, perishable or hazardous goods), to sell by public auction, the goods so removed. Section 62 of the Act also empowers the Board to sell the goods by public auction which after landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody. In view of these statutory provisions, the Board was perfectly justified in selling the unclaimed cargo by public auction. [344-A-B]

C 2.2. Since it is not possible to precisely determine the expenses of sale in each case on account of various factors involved, the Board has passed a resolution to deduct 50 per cent of the sale proceeds as expenses of sale. It has to be borne in mind that sometimes the expenses of sale, which is conducted through public auction after a Gazette notification and wide publicity in newspapers, far exceed the actual amount recovered. In fact, the figures supplied in the counter affidavit show that in the year 2000-2001 and 2001-2002 the total cost incurred in holding the public auction exceeded the amount recovered on the basis of the impugned resolution i.e. 50 per cent of the sale proceeds and thus the Board has suffered a loss. [344-C-D]

D 3. The appellant has failed to make out any case for interference under Article 136 of the Constitution. [344-E]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2472 of 2005.

F From the Judgment and Order dated 16.9.2002 of the Bombay High Court in W.P. No. 2452 of 2001.

G Ms. Neeru Vaid for the Appellant.

R. Mohan and B. Datta, Additional Solicitor Generals, Ajay Sharma, Hemant Sharma and P. Parmeswaran with them for the Respondents.

H The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. Leave granted. A

2. This appeal, by special leave, is directed against the judgment and order dated 16.9.2002 of the Bombay High Court, by which the writ petition filed by the appellant was disposed of with certain directions.

3. The appellant imported certain consignments of copper cathodes from Germany in August, 1998. The consignments were not cleared by the appellant from the Port Trust and accordingly they were sold in a public auction on 13.1.2000 for Rs. 52,50,000. The Jawaharlal Nehru Port Trust, Mumbai deducted 50 per cent of the sale proceeds i.e. Rs. 26,25,000 towards sale expenses. The appellant filed a writ petition in the Bombay High Court challenging the deduction of 50 per cent of the sale proceeds as expenses and prayed that the sale proceeds towards expenses of sale on actual basis only should be deducted and the balance amount should be paid to the appellant. The High Court took the view that the controversy raised by the appellant involved adjudication of facts which was not possible in a writ petition filed under Article 226 of the Constitution. The writ petition was accordingly disposed of permitting the appellant to pursue ordinary civil remedy for redressal of its grievance. B
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4. In response to the notice issued, the respondents have filed a counter affidavit. It is averred therein that Jawaharlal Nehru Port Trust was incorporated under the Major Port Trusts Act, 1963 and it renders services in accordance with the aforesaid Act. The core function of the Port is to provide storage space for bulk and containerised cargo, which is stored in the Board premises. Such storage facilities are to facilitate international trade and to attract international shipping lines to the Port for promoting trade in the national interest. Any delay in clearing or removing the cargo attracts demurrage charges. The importers/consignees are given 15 free days to take delivery of the cargo. If the cargo is unclaimed for two months, it is put for sale under Sections 61 and 62 of the Major Port Trust Act, as the case may be. Congestion in Ports affects the free movement of ships and all essential goods. The Port does not do any business of warehousing and it performs statutory functions. The scheme of the Major Port Trusts Act is to frame the scale of rates of penalties, rent, charges, expenses in such a manner which will act as an incentive and compulsion for the expeditious removal of the goods/cargo from the transit area. Ships, wagons, containers, cargo have to be kept moving and that can happen only if there is some kind of pressure on the importer to remove the goods from the Board's premises with the utmost expedition. E
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A The rates and charges which the Board is entitled to recover have been framed under the Major Port Trusts Act so as to ensure that the Ports are congestion free, both for purposes of movement of ships and movement of cargo.

B 5. It is further averred that the Board of Trustees vide Item Nos.17 and 18 of the Agenda of the 92nd Board Meeting held on 31.1.1992 approved the formula for fixing of reserve price. The Board thereafter started disposal of the unclaimed cargo as per the said procedure, but the rate of disposal was not commensurate with the generation of longstanding containers, resulting in occupation of valuable space in the container yard by such longstanding containers. In order to find a solution to the problem, the matter was placed before the Board in its meeting held on 25.7.1997 for reconsideration of the method for fixing the reserve price. A revised formula was then adopted which also was not found to be working satisfactorily. Certain suggestions were received from the Commissioner of Customs and finally a resolution was passed in the meeting of the Board held on 23.7.1999, which reads as under :

E “Treating 50% of sale proceeds as sale expenses which shall be first charge on the sale proceeds and customs duty and other claims as per order laid down in MPT Act of 1963 and applying the formula as approved by the Board vide TR No. 492/97 dated 25.7.1997 in all the previous cases where auction has already been held.

Fixing of reserve price as the sum of Custom duty plus 4 months’ ground rent.”

F 6. It is further averred in the counter affidavit that as it is virtually impossible to ascertain the exact sale expenses in respect of each lot and, therefore, a decision has been taken to treat 50 per cent of the sale proceeds as sale expenses. The sale expenses normally vary from lot to lot and are dependent upon the amounts realized in each sale. For the purposes of auction, an auction hall, godown of 7000 sq. meters meant for storage of uncleared goods to container yards for keeping longstanding cargo of uncleared goods has to be arranged. A notification is published in the Government Gazette and advertisement is issued in all leading newspapers in English, Hindi, Marathi and Gujarati. The Port Trust has also to make available services of its officers and staff, such as Deputy Manager, Assistant Manager, Superintendent, Junior Engineers, Checkers, Clerks and Peons, etc.

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7. In the counter affidavit details have also been given regarding the actual expenses incurred by the Port Trust and the amount realized on the basis of the current formula of charging 50 per cent of the sale proceeds towards sale expenses, which show that the actual expenses exceeded the amount so recovered and the Port Trust suffered a loss. It is further averred that in most cases, the Port Trust is unable to recover its entire dues from the sale of cargo from longstanding containers. A B

8. Though the principal prayer made in the writ petition was to quash the Resolution No. 624 dated 23.7.1999 of the Port Trust whereunder it was resolved that 50 per cent of the sale proceeds in a consignment be appropriated towards expenses of the sale, learned counsel for the appellant has not been able to point out any ground as to how the said resolution is invalid. Section 63 of the Major Port Trusts Act, 1963 reads as under : C

“63.Application of sale proceeds - (1) The proceeds of every sale under Section 61 or Section 62 shall be applied in the following order— D

- (a) in payment of the expenses of the sale;
- (b) in payment, according to their respective priorities, of the lines and claims excepted in Sub-section (2) of Section 59 from the priority of the lien of the Board;
- (c) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof, including demurrage (other than penal demurrage) payable in respect of such goods for a period of four months from the date of landing;
- (d) in payment of any penalty or fine due to the Central Government under any law for the time being in force relating to customs;
- (e) in payment of any other sum due to the Board. E F

(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods or to his agent, on an application made by him in this behalf within six months from the date of the sale of the goods. G

(3) Where no application has been made under Sub-section (2), the surplus shall be applied by the Board for the purposes of this Act.” H

A 9. Section 61 of the Act empowers the Board, after the expiry of two months from the time when any goods have passed into its custody (other than animals, perishable or hazardous goods) to sell by public auction, the goods so removed. Section 62 of the Act also empowers the Board to sell the goods by public auction which after landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody. In view of these statutory provisions, the Board was perfectly justified in selling the unclaimed cargo by public auction. As explained in the counter affidavit filed by the respondents, it is not possible to precisely determine the expenses of sale in each case on account of various factors involved. Therefore, the Board has passed a resolution to deduct 50 per cent of the sale proceeds as expenses of sale. It has to be borne in mind that sometimes the expenses of sale, which is conducted through public auction after a Gazette notification and wide publicity in newspapers, far exceed the actual amount recovered. In fact, the figures supplied in the counter affidavit show that in the year 2000-2001 and 2001-2002 the total cost incurred in holding the public auction exceeded the amount recovered on the basis of the impugned resolution i.e. 50 per cent of the sale proceeds and thus the Board has suffered a loss.

E 10. On overall consideration of the matter, we are of the opinion that the appellants have failed to make out any case for interference by this Court in a Special Leave Petition filed under Article 136 of the Constitution. The appeal is accordingly dismissed with costs.

B.B.B.

Appeal dismissed.