



**SUPREME COURT REFERS THE QUESTION TO DETERMINE THE LIABILITY OF THE CONSIGNEE OR STEAMER AGENT IN RESPECT OF GROUND RENT CHARGES TO BE PAID TO THE PORT TRUST TO A LARGER BENCH**

**Nihal Shaikh**

Senior Associate



In the case of *The Chairman, Board of Trustees, Cochin Port Trust Vs. M/s Arabee star Maritime Agencies Pvt. Ltd & Ors*, the matter purported to a batch of writ appeals and original petitions, preferred by various shipping agents against the judgment of a Division Bench of the Kerala High Court.

The question before the High Court was whether the liability to pay ‘ground rent’ on containers unloaded at Cochin Port, but not cleared by the consignees or importers and refused to be de-stuffed by the Port, on the ground of inadequate storage space, can be imposed on the owners of the vessel/steamer agents beyond the period of 75 days, fixed by the Tariff Authority of Major Ports (“TAMP”), a statutory body constituted under Section 47A of the Major Port Trust Act, 1963 (“MPT”).

The facts of the case have been briefly summarized by the High Court as:

The sequence of events that led to the stalemate refers to the incidents which happened in 1998 when there (sic) imports synthetic woolen rags (in containers) in the Cochin Port Trust premises. The said containers were de-stuffed to facilitate Customs examination and to return the empty containers to the Steamer Agents. The de-stuffed cargo occupied much larger space and was not promptly cleared by the consignees in view of the hurdles placed by the Customs stating that the cargo actually did not constitute old woolen rags as declared, but mostly were brand new clothes which could not have been cleared. The ‘*modus operandi*’ of the consignees/importers attracted wide attention of all concerned and taking note of the probable extent of liability to be imposed by the Customs Department, and the liability to be satisfied to the Port and others concerned, the consignees did not turn up to clear the goods and they were lying idle in the Port premises for quite long.

The High Court however held that there was no justification for the Port Trust to collect ‘ground rent’ charges in respect of the containers indefinitely. It further stated that the authority and power to prescribe the scale of rates and conditions under Sections 48 and 49 of the MPT stood vested exclusively with TAMP with effect from 9 January 1997. It held that the Port Trust could demand ‘ground rent’ only for a maximum period of 75 days, under the orders issued by TAMP. The High Court rejected the contention of the Port Trust, that there was no obligation cast upon it, to have de-stuffed the goods when the containers landed.

Aggrieved by the order the Port Trust filed series of appeals before the Apex Court.



In order to decide the present appeals, the Apex Court analyzed the following judgement:-

1. **The Trustees of the Port of Madras Vs. KPV Sheikh Mohamed Rowther & Co. [Rowther-II] (1997)10 SCC 285** a three –judge bench of Madras Court was dealing with the question “whether the demurrage charges, harbour dues etc. payable to the Port Trust of Madras were to be recovered from the consignee of the goods or from the steamer agent”. The Court held as follows:-

*“Once the goods are handed over to the Port Trust by the steamer and the steamer agents have duly endorsed the bill of lading or issued the delivery order, their obligation to deliver the goods personally to the owner or the endorsee comes to an end... Even though the consignee is not a party to the contract of carriage once the property in the goods had passed to him, he becomes liable to pay the storage or demurrage charges as owner of the goods to the shipowner.”*

2. **Forbes Campbell & Co. Ltd. Vs. Board of Trustees, Port of Bombay (2015) 1 SCC 228 [Forbes-II]** dealt with the liability of the Steamer Agent to pay demurrage and port charges to the Port Trust in respect of goods brought into the port and warehoused by the Port Trust Authority. This Court opined that

*“[T]he position of law which appears to emerge is that once the bill of lading is endorsed or the delivery order is issued it is the consignee or endorsee who would be liable to pay the demurrage charges and other dues of the Port Trust authority. In all other situations the contract of bailment is one between the Steamer Agent (bailor) and the Port Trust Authority (bailee) giving rise to the liability of the Steamer Agent for such charges till such time that the bill of lading is endorsed or delivery order is issued by the Steamer Agent.”*

3. In **Rasiklal Kantilal & Co v Board of Trustee of Port of Bombay [Rasiklal]** while considering the scheme of the MPT Act, a Bench of two Judges of this Court observed

*“As rightly opined in Forbes [II] case, there is no bailor and bailee relationship between the Board (the 1st respondent) and the consignee (the appellant); either voluntarily or statutorily compelled but such a relationship exists between the 1st respondent and the owner of the ship (through the steamer agent). It is possible in a given case where the consignee or any other person (such as the appellant herein) claiming through the consignor, eventually may not come forward to take delivery of the goods for a variety of reasons - considerations of economy or supervening disability imposed by law etc. Therefore, in such cases to say that merely because the bill of lading is endorsed or the delivery order is issued, the consignor or his agent is absolved of the responsibility for payment (of rates or rent for services rendered w.r.t goods) would result in a situation that the Board would incur expenses without any legal right to recover such amount from the consignor and be driven to litigation for recovering the same from the consignee who did not take delivery of the goods with whom the Board had no contract of bailment and consequently no contractual obligation to pay the ‘rates or rent’.”*

The Bench of two judges in Rasiklal opined that it agrees with the conclusions recorded in Rowther-II and Forbes-II that a Port Trust could recover the rates due, either from the steamer agent or the consignee. However, the holding in Rowther-II finds only the consignee to be liable.

After taking note of the above inconsistencies in the judgements, the Hon'ble two Judge bench referred the following questions to a Larger Bench:

- Whether in the interpretation of the provision of Section 2(o) of the MPT, the question of title of goods, and the point of time at which title passes to the consignee is relevant to determine the liability of the consignee or steamer agent in respect of charges to be paid to the Port Trust;
- Whether a consignor or a steamer agent is absolved of the responsibility to pay charges due to a Port Trust, for its services in respect of goods which are not cleared by the consignee, once the Bill of lading is endorsed or the delivery order is issued;
- Whether a steamer agent can be made liable for payment of storage charges/demurrage, etc. in respect of goods which are not cleared by the consignee, where the steamer agent has not issued a delivery order; if so, to what extent;
- What are the principles which determine whether a Port Trust is entitled to recover its dues, from the steamer agent or the consignee; and
- While the Port Trust does have certain statutory obligations with regard to the goods entrusted to it, whether there is any obligation, either statutory or contractual, that obliges the Port Trust to de-stuff every container that is entrusted to it and return the empty containers to the shipping agent.

The Court further added that the Larger Bench may deal with any additional issues relevant to the context, as it deems necessary.

## Our Offices

**New Delhi**  
**14<sup>th</sup> Floor, Dr. Gopal Das Bhawan**  
**28, Barakhamba Road**  
**New Delhi 110 001**  
**T: +91 11 4213 0000**  
**F: +91 11 4213 0099**

**Mumbai**  
**1<sup>st</sup> Floor, Bajaj Bhawan**  
**226, Nariman Point**  
**Mumbai 400 021**  
**T: +91 22 49100000**  
**F: +91 22 49100099**

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