

Madras Port Trust

Vs

Hymanshu International by its Proprietor

Vs

Venkatadri (Dead) by L. R.S.

Civil Appeal No. 467 of 1969

(P. N. Bhagwati, A. D. Koshal JJ)

03.01.1979

JUDGMENT

BHAGWATI, J. -

1. The only question arising in this appeal by special leave is whether the claim of the respondent for refund of the amount of wharfage, demurrage and transit charges paid to the appellant was barred by Section 110 of the Madras Port Trust Act (II of 1905). The appellant lost in the High Court and a decree for Rs. 4838.87 was passed against the appellant. The appellant applied to this Court for special leave and by an order dated March 7, 1969 this Court granted special leave on the appellant agreeing to pay the amount of the refund irrespective of the result of the appeal and also to pay the costs of the appeal in any event. That is how the appeal has now come up before us for final hearing.

2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust (II of 1905).

3. We accordingly revoke the special leave granted to the appellant, and direct that the appellant do pay the cost of the respondents.

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