

NORTHERN PLASTICS LTD. (NOW MERGED WITH  
CONSOLIDATED PHOTO AND FINVEST LTD.)

v.

COLLECTOR OF CUSTOMS AND CENTRAL EXCISE

SEPTEMBER 17, 1999

[G.T. NANAVATI AND S.N. PHUKAN, JJ.]

*Customs :*

*Customs authorities—Liability to refund value of goods confiscated and sold—Import of goods—Confiscation—Pending appeal before Supreme Court customs authorities selling the goods—Order of confiscation held illegal—Application filed by importer seeking direction to customs authorities to return to the applicant value of the goods with interest—Held, applicant is entitled to value of goods, less the duty payable thereon—Applicant is also entitled to 12% interest—Plea that importer should file an action in tort if it suffered loss and this Court cannot order payment, rejected—Constitution of India—Article 142 r/w Rule 6 of Order 47 of Supreme Court Rules, 1966.*

The applicant imported certain goods and, on 11.1.1989, filed a bill of entry for their clearance. The customs authorities were of the opinion that the goods were not correctly classified and were not entitled to exemption from excise duty and countervailing duty. By an interim order dated 27.4.1989 the Gujarat High Court ordered release of the goods, but as the said order was challenged before this Court, the goods could not be released. On 14.9.1989 the Collector of Customs ordered confiscation of the goods. The applicant after unsuccessfully challenging the order before the Customs, Excise and Gold (Control) Appellate Tribunal, filed an appeal before this Court.

Meanwhile the customs authorities sold the goods. This Court ultimately set aside the order dated 14.9.1989 passed by the Collector as also that passed by the CEGAT, holding that the goods were not misdeclared and were eligible for import under OGL. It further held that the goods were not liable to confiscation.

Since the customs authorities had sold the goods, the applicant filed the present applications for a direction under Article 142 of the Constitution

A read with Order 47 Rule 6 of the Supreme Court Rules, 1966 to the respondent to return the value of the goods with interest.

B It was contended for the applicants that during the pendency of the appeals, the respondents should not have sold the goods without obtaining orders of this Court; that the respondents had wrongfully prevented clearance of the goods for consumption of the applicants and wrongfully confiscated and sold them away; and that since the order of confiscation had been set aside, the respondents were liable to return the value of the goods with 21% interest from 21.12.1988 till payment thereof. The respondents, on the other hand, contended that the goods had specific expiry date and were required to be stored in an airconditioned place; that on failure of the applicant to clear the goods inspite of the time having been given to it, the goods were sold by negotiations for Rs. 48.50 Lacs; that the customs duty payable on the goods was assessed at Rs. 48.50 lacs, which was to be paid by the applicants, besides Rs. 2,52,244 to be paid to the Central Warehousing Corporation as storage charges; and, therefore, the applicant was not entitled to any amount at all.

D Allowing the application, the Court

E HELD: 1. The order of confiscation of goods having been held to be bad, the goods were required to be returned to the owner thereof. But, since the goods have been sold away by the respondents, they are liable to return to the appellant the money value of the said goods. Having made all attempts to prevent the release of the goods in favour of the applicant, the respondents cannot now contend that the applicant, and not they, was really responsible for deterioration of the goods and the consequent less realisation of price.

[683-D-E, G]

F 2. Since the import of the goods was by the applicants, as soon as the goods landed on the land mass of India, proper amount of duty became payable thereon. The applicant has become entitled to the value of the goods as on the date or time when the goods ought to have been cleared by the respondents for home consumption. Though the value of the goods as shown in the import documents was only Rs. 33.04 lacs, it would be reasonable to presume that an importer would have imported the goods of the value of Rs. 33.04 lacs if its value in Indian Market at the relevant time was more than the value of the goods plus the duty payable thereon (i.e. Rs. 33.04 lacs + Rs. 47.07 lacs = Rs. 80.11 lacs). As the applicant has been deprived of the use of the goods H it is the obligation of the respondents to return at least Rs. 80.11 lacs less

**Rs. 47.07 lacs, the amount of duty payable thereon i.e. Rs. 33.04 lacs to the applicant. [684-D, F-G]** A

**3. It cannot be said that if the applicant has suffered any loss as a result of the wrongful act of the respondents then it should file an action in tort and this Court cannot order payment of any amount in these applications. No doubt it would be open to the applicant to initiate such an action if it feels that the loss suffered by it is more than Rs. 33.04 lacs but it would not be just and proper to refuse the claim made in these applications, as, in any case, the applicant is entitled to the money value of the goods which were illegally confiscated by the respondents. Considering the facts and circumstances, the respondent is directed to return to the applicant the amount of Rs. 33.04 lacs with 12% interest thereon from 1.2.1989 till the date of payment. [685-B-C]** B C

**CIVIL APPELLATE JURISDICTION: I.A. Nos. 3 and 4 in Civil Appeal Nos. 4196/89 and 3325 of 1990.**

**From the Judgment and Order dated 14.8.89 of the Central Excise Customs and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. 2092/89-C (Order No. 388/89-C)** D

**Dushyant Dave, Parag Tripathi, A.T. Patra and Gautam Khaitan for M/s. Khaitan & Co., for the Appellants.** E

**C.S. Vaidyanathan ASG, P. Parmeswaran, Ms. Shobha and S.K. Mehta for the Respondents.**

**The Judgment of the Court was delivered by**

**G.T. NANAVATI, J.** The applicant in both these applications is Northern Plastic Limited (now merged with Consolidated Photo and Finvest Ltd.). It was the appellant in the above civil appeals which have been allowed by this Court by its decision dated 14.7.1998. These applications have been filed for direction under Article 142 of the Constitution read with Order 47 Rule 6 of the Supreme Court Rules, 1966. F G

**The applicant had imported 59 jumbo rolls of Photographic Colour Films (Unexposed) Positive in January, 1989. He filed the bill of entry on 11.1.1989 for clearance of the said goods. The goods were not cleared by the customs authorities as they had some doubt regarding its correct classification and entitlement to the benefit of exemption of customs duty and countervailing** H

A duty under the notifications mentioned in the bill of entry. That ultimately led to issuance of show cause notice on 14.8.1989 for confiscation of the said goods on the grounds that there was misdeclaration of description in the bill of entry for the purpose of classification and availing of exemption and the goods were not eligible for import under the O.G.L. By an order dated 14.9.1989 the Collector of Customs ordered confiscation of those goods. However, taking into account the entire facts and circumstances of the case he gave the applicant an option to redeem those goods on payment of redemption fine of Rs. 5,00,000. He also imposed a penalty of Rs. 10,00,000.

C The goods were earlier ordered to be released by an interim order dated 27.4.1989 passed by the Gujarat High Court. But as the said order was challenged both by the Union of India and by Hindustan Photo Films in this Court by filing S.L.P.© Nos. 8225 of 1989 and 9012 of 1989 they were not released. Meanwhile on 16.8.1989 Delhi High Court had also passed an order restraining the applicant to deal with or sell the said goods in any manner even if released in their favour by the customs authorities. The goods thus could not be obtained by the appellant and they came to be sold by the customs authorities even while the above appeals were still pending in this Court. Against the order of Collector dated 14.9.1989 the applicant had preferred an appeal to CEGAT. The appeal was virtually dismissed except that the fine of Rs. 10,00,000 was reduced to Rs. 5,00,000. Aggrieved by the Collector's order dated 14.9.89 as confirmed by CEGAT the applicant had filed Civil Appeal No. 3325 of 1990. Civil Appeal No. 4196 of 1989 was filed against the earlier order of the Collector.

F Setting aside the order dated 14.9.89 and the order passed by CEGAT this Court held that the goods were not misdeclared by the appellant and they were also eligible for import under OGL. This Court further held that for these reasons the goods imported by the appellant were not liable to confiscation and the impugned orders passed by the Collector and CEGAT were illegal. Both the appeals were therefore allowed.

G What is now contended by learned senior Counsel Mr. Dave in these applications is that the order of confiscation having been set aside the respondent is liable to return the goods to the applicant. He also submitted that the respondent should not have without obtaining the order of this Court sold away the goods during the pendency of the appeals. Since the respondent had wrongfully prevented clearance of the goods for consumption by the H applicant and as the respondent had wrongfully confiscated the goods and

sold them away he should be held liable to return the value of the said goods with 21% interest from December 21, 1988 till payment thereof. A

In the counter affidavit filed on behalf of the respondent by the Under Secretary to the Government of India, Ministry of Finance, opposing these applications it is stated that as the goods had specific expiry date and were also required to be stored in an air conditioned place, the Collector of Customs had informed the applicant on 28.5.1990 to clear the goods within seven days. As the applicant did not clear the goods they were sold by negotiations to M/s Hindustan Photo Films for Rs. 48.50 lacs. It is further stated therein that the Central Warehousing Corporation was also required to be paid Rs. 2,52,244 as storage charges. The customs duty payable on the goods was assessed at Rs. 48.50 lacs. The applicant is, therefore, not entitled to any amount at all. B  
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As the order of confiscation of goods was held to be bad the goods were required to be returned to the owner thereof. As the order of confiscation was declared as illegal by this Court on the ground that there was no mis-declaration of the goods and that the applicant was entitled to import those goods on the O.G.L., the confiscated goods, if they had not been disposed of, would have been required to be released in favour of the applicant and the applicant could have claimed damages for the damage to the goods and loss caused to it as a result of illegal retention of the goods by the respondent. We have referred to above how the applicant was prevented by the respondent and the Hindustan Photo Films from redeeming/obtaining those goods. The goods having been sold away the respondent is now not in a position to return the goods to the applicant. As this situation has been brought about by the respondent by his own acts he cannot now escape from the liability of returning to the applicant the money value of the said goods. If without challenging the first order passed on 31.1.1989 and the interim order passed by the Gujarat High Court in favour of the applicant on 27.4.1989 the respondent had returned the goods on the terms and conditions imposed by the Gujarat High Court then he would not have landed himself in this situation. It should have been realised by the respondent while challenging the said orders and retaining the goods in his possession that the goods were of perishable nature and that they required air conditioned accommodation. Having made all attempts to prevent the release of goods in favour of the applicant the respondent cannot now contend that the applicant and not he was really responsible for deterioration of the goods and the consequent less realisation of price. D  
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A Rightly the respondent in the counter affidavit has not disputed the liability to return money value of the goods in view of the order passed by this Court. What is contended therein is that as the goods were of perishable nature and were required to be kept in an air conditioned storage place they had to be sold even though the appeals were pending in this Court. It is further stated that the duty payable comes to Rs. 47.07 lacs and Rs. 2,52,244  
B were required to be paid to the Central Warehousing Corporation as storage charges and as only Rs. 48.50 lacs were realised by sale of the goods nothing remains payable to the applicant.

C It was contended by Mr. Dave that the applicants are not liable to pay any duty as the goods were not cleared by the respondent and they were subsequently confiscated and sold by the respondent and, therefore, the applicants cannot be said to have imported the goods. On the other hand, it was contended by Mr. C.S. Vaidyanathan, learned Additional Solicitor General that the import of the goods was by the applicants and as soon as the said goods landed on the land mass of India proper amount of duty  
D became payable thereon. In our opinion, Mr. Vaidyanathan is right in his submission particularly when full impact has to be given to the order passed by us declaring retention and confiscation of the goods to be illegal. Mr. C.S. Vaidyanathan, learned Additional Solicitor General, however, further submitted that value of the goods as shown in the import documents was only Rs. 33.04  
E lacs and as the duty and the Warehousing charges payable are more than the said amount the applicant is not entitled to recover anything from the respondent. What is over-looked by the learned counsel is the consequence of setting aside the order of confiscation on the ground that it was illegal. The applicant has become entitled to the value of the goods as on the date or time when the goods ought to have been cleared by the respondent for  
F home consumption. If the value of the goods in India after importation and payment of duty, in January 1989, was Rs. 33.04 lacs only then the applicant, and for that matter any sensible person would not have imported the goods at all. It would be reasonable to presume that an importer would have imported the goods of the value of Rs. 33.04 lacs if its value in Indian market at the  
G relevant time was more than CIS value of the goods plus the duty payable thereon (Rs. 33.04 lacs + 47.07 lacs = Rs. 80.11 lacs). It is also not the stand of the respondent that such goods were available in the Indian market at that time at a lesser price. Therefore, it is now the obligation of the respondent to return at least Rs. 80.11 lacs - 47.07 lacs, the amount of duty payable thereon. As the applicant has been deprived of the use of the goods worth  
H Rs. 33.04 lacs the respondent is under a legal obligation now to refund that

amount to the applicant. The respondent cannot now be permitted to take the advantage of his own wrong and contend that the value of the goods should be determined only are Rs. 48.50 lacs inclusive of its value and the amount of duty payable thereon because they could be sold at that price only. We also cannot accept the contention of the learned counsel for the respondent that if the applicant has suffered any loss as a result of the wrongful act of the respondent then he should file an action in tort and this Court cannot order payment of any amount in these applications. No doubt it would be open to the applicant to initiate such an action if it feels that the loss suffered by it is more than Rs. 33.04 lacs. Merely because it is open to the applicant to initiate such an action it would not be just and proper to refuse the claim made in these applications as in any case the applicant is entitled to return of the money value of the goods which were illegally confiscated by the respondent. Even though the applicant has claimed interest @ 21% we do not think it proper to award interest at such a high rate and considering the facts and circumstances of the case it would be in the interest of justice if the respondent is directed to return the amount of Rs. 33.04 lacs with interest at the rate of 12% from 1.2.1989 till the date of payment as the Collector by its order dated 31.1.1989 had held that the goods were properly described and the import was legal.

In the result the applications are allowed. The respondent is directed to return the amount of Rs. 33.04 lacs with 12% interest from 1.2.1989 till the date of payment. No order as to costs.

R.P.

I.As allowed.