

Northern Plastics Ltd.

Vs

Collector of customs & Central Excise

IAs Nos. 3 and 4 in Civil Appeals Nos. 4196 of 1989 and 3325 of 1990

(G. T. Nanavati, S. N. Phukan JJ)

17.09.1999

JUDGMENT

G. T. NANAVATI, J.:-

1. The applicant in both these applications is Northern Plastics Limited (now merged with consolidated Photo & 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 Rules 6 the Supreme Court Rules, 1966.

2. The applicant had imported 59 jumbo rolls of photographic colour films (unexposed) positives 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 and they had some doubt regarding its correct classification as entailment to the benefit for exemption of customs duty and countervailing 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 of classification and availing of exemption and the goods were not eligible for import under OGL. 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 give the applicant and option to redeem those goods on payment of redemption fine of Rs 5,00,000. He also imposed as penalty of Rs 10,00,000.

3. 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 SLPs (C) Nos. 8225 and 9012 of 1989 they were not release. Meanwhile on 16-8-1989 the 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 the sold by the Customs Authorities even while the above appeals were stillpending in this Court. Against the order of the 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 14-9-1989 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.

4. Setting aside the order dated 14-0-1989 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.

5. 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 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 21-12-1988 till payment thereof.

6. 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 a 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 lakhs. It is further be paid Rs 2,52,244 as storage charges. The customs duty payable on the goods was assessed at Rs 48.50 lakhs. The applicant is, therefore, not entitled to any amount at all.

7. 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 illegal by this court on the ground that there was no misdeclaration of the goods and that the applicant was entitled to import those goods on OGL, 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 Hindustan Photo films from redeeming /obtaining those goods. The goods having been sold away the respondent is now not in a position to respond 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.

9. 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 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 the Value of the goods as shown in the import documents was only Rs 33.04 lakhs and as the duty and the warehousing charges payable are more than the said amount, the applicant is not entitled to cover anything from the respondent. What is overlooked 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 home consumption. If the value of the goods as on the date or time when the goods ought to have been cleared by the respondent for home consumption. If the value of the goods in India after importation and payment of duty, in January 1989, was Rs 33.04 lakhs 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 the Indian market at the relevant time was more than the CIS value of the goods plus the duty payable thereon (Rs 33.04 lakhs + 47.07 lakhs = Rs 81.11 Lakhs). 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 lakhs - 47.07 lakhs, the amount of duty payable thereon. As the applicant has been deprived of the use of the goods worth Rs 33.04 lakhs 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 this wrong and contend that the value of the goods should be determined only at Rs 48.50 lakhs 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 lakhs. 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 lakhs with interest at the rate of 12% from 1-2-1989 till the date of payment as the collector by his order dated 31-1-1989 has held that the goods were properly described and the import was legal (sic).

10. In the result the applications are allowed. The respondent is directed to return the amount of Rs 33.04 lakhs with 12% interest from 1-2-1989 till the date of payment. No order as to costs.