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**(2004) 01 DEL CK 0083**  
**In the Delhi High Court**  
**Case No : CW 2438 of 2001**

Agrim Sampada Ltd. and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 16-01-2004

**Acts Referred:**

**Citation :** (2004) 109 DLT 567 : (2004) 72 DRJ 783 : (2004) 93 ECC 434 :  
(2004) 114 ECR 1021 : (2004) 186 ELT 15

**Hon'ble Judges :** Badar Durrez Ahmed, J

**Bench :** Single Bench

**Advocate :** L.P. Asthana and Praveena Gautam, for the Appellant; Satish Aggarwal, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Badar Durrez Ahmed, J.—Rule.

2. With the consent of the parties the matter is taken up for final hearing and disposal.

3. The petitioner has, inter alia, prayed for an appropriate direction to be issued to the respondents to register the Bill of Entry of the petitioner and to permit the petitioner to clear the goods represented by the said Bill of Entry. It has also, inter alia, prayed that a direction be issued to the respondents to issue a detention certificate for the waiver of demurrage charges.

4. This petition is concerned with the import of zinc ingots from Singapore. The petitioner, a public limited company, placed an order for 300 MTs of special high grade zinc from Allied Deals (S) Pvt. Ltd., Singapore in March 2001. In response to the petitioner's said order, the said Allied Deals, Singapore offered to sell to the petitioner the said goods which had earlier been consigned to one Shiv Ganga Organic Chemicals Ltd on cash against delivery basis. The said Allied Deals, Singapore informed the petitioner that the said Shiv Ganga Organic Chemicals had not made any payment for the goods and the goods were already

lying in the container depot, Tuglakabad. The goods, had been imported into India in February, 2001. The original documents including the Bills of Lading in respect of the said goods had also been returned by the Bank to the said Allied Deals, Singapore. The petitioner agreed to the proposal. The petitioner paid for the goods and the original Bills of Lading were endorsed by the supplier in favor of the petitioner.

5. By a letter dated 23.3.2001 the petitioner applied to the Deputy Commissioner IGM (Import General Manifest) for a change in the name of the importer in the import general manifest. This application was necessitated because the original import general manifest had the name of the original consignee i.e. Shiv Ganga Organic Chemicals Limited. The Deputy Commissioner permitted the change in the name of the importer in the Import General Manifest. However, in the counter affidavit filed on behalf of respondents 1 to 3, it is stated that this permission for change the name of the importer was done as the Deputy Commissioner was not aware of the fact that the earlier consignee, i.e. Shiv Ganga Organic Chemical Ltd had already filed Bills of Entry against the said Import General Manifest. This aspect will be considered later. At this stage, it is relevant to note that no connection whatsoever had been established between the petitioner and the said Shiv Ganga Organic Chemicals Ltd.

6. Thereafter, the petitioner approached the Customs Authorities for registering the Bill of Entry in its name for clearance of the said imported zinc ingots from Singapore. The Customs Authorities refused to register the Bill of Entry on the intervention of the Department of Revenue Intelligence on the purported grounds that a Bill of Entry had already been filed by Shiv Ganga Organic Chemicals Ltd and the latter was involved in some customs offence case and investigations were going on in respect thereof. It is an admitted position that there was no restriction of import of zinc ingots, no allegation of under-valuation and the petitioner was through-out prepared to pay the full duty. However, the Bill of Entry was not registered in the name of the petitioner, treating the said goods as ""offending goods"" which were allegedly liable for confiscation. The reason for treating the said goods as offending goods indicated by the Respondents was that the goods were the subject matter of investigation anywhere, Therefore, prima facie, offending in nature.

7. Mr Asthana, learned counsel appearing for the petitioner submitted that the goods were initially imported, as aforesaid sometime in February, 2001. The amendment of the Import General Manifest was sought in March, 2001 and was permitted by the Deputy Commissioner on 25.3.2001. The Bill of Entry for clearance of the goods u/s 46 of the Customs Act, 1962 was sought to be filed on 28.3.2001. On the refusal of the respondents to register the Bill of Entry in the name of the petitioner, the petitioner, left with no alternative, filed the present petition in April, 2001. He submitted that despite the lapse of about two and a half years since then, neither the Directorate of Revenue Intelligence nor the Customs Authorities had issued any show cause notice to the petitioner or to

Shiv Ganga Organic Chemicals Ltd alleging that the goods in question were offending goods and were liable to confiscation under any provisions of the Customs Act, 1962. Learned counsel submitted that u/s 110(2) of the Customs Act, 1962, if in respect of seized goods a show cause notice is not issued within a period of six months such goods are liable to be returned. He further submitted that this period of six months can be extended by the Commissioner up to a maximum period of one year. Since no show cause notice had been issued in this case the goods are clearly liable to be returned to the petitioner who is the legitimate owner of the goods inasmuch the Bill of lading is endorsed in its name. The bill of Lading is a document of title and is in favor of the petitioner as aforesaid and, Therefore, the petitioner is the owner of the goods in question.

8. On the other hand, learned counsel for the respondents, Mr Satish Agarwal, submitted that it is not correct that no show cause notice had been issued. He referred to the show cause notice dated 1.3.2002 which had been issued to Shiv Ganga Organic Chemicals Limited. Therefore, he submitted that it is incorrect on the part of the learned counsel for the petitioner to state that no show cause notice was issued. However, a perusal of the show cause notice dated 1.3.2002 which had been issued to Shiv Ganaga Organic Chemicals Ltd itself indicates that in paragraph 8 thereof it is stated as under:-

""8. Meanwhile, it was gathered that M/s Shiv Ganga Organic Chemicals Ltd. had filed six Bills of Entry having Nos. 101497, 101499 both dated 06.02.2001 and 101827, 101831 all dated 13.02.2001 for duty free clearance of Zinc Ingots under DEEC Scheme against DEEC license No. 0510031327 dated 31.01.2001. The said containers were examined in the presence of Customs House Agent, DRI officers and Customs officers of ICD, Tughlakabad, New Delhi on 13.02.2001. However, nothing incriminating was noticed during examination. The proceedings of the examination report were recorded as a 'fact report' dated 13.02.2001.""

The aforesaid paragraph of the show cause notice clearly indicated that nothing incriminating was noticed during the examination of the goods in question when they were so examined on 13.2.2001. The learned counsel for the petitioner further submits that the show cause notice refers to certain export goods and has no relevance whatsoever to the imported goods under consideration.

9. It has further been submitted on behalf of the petitioners that Section 2(26) of the Customs Act, 1962 defines ""importer"" to include the owner of the goods and any person holding himself out to be the importer at any time between the importation of the goods and the clearance of goods for home consumption and, accordingly the refusal to register the Bill of Entry of the petitioner was contrary to law. He clearly stated that the amendment of the manifest u/s 30(3) of the Customs Act, 1962 was permitted by a competent authority and, this permission, being a quasi-judicial order, could not be withdrawn by the Deputy Commissioner of Customs without any appeal or review of the said order and the mere previous filing of a Bill of Entry could not be a valid ground for withdrawal of the

permission to amend the manifest. The learned counsel appearing on behalf of the petitioner also contended that as the goods were freely importable and as there was no allegation of under-valuation and that the petitioner would at the time of clearance pay the appropriate duty on the goods, there was no question of considering the goods as being ""offending"" goods. He lastly, submitted that there is no evidence or allegation to the effect that the petitioner and the said Shiv Ganga Organic Chemicals Ltd are related to each other in any manner.

10. Mr Asthana relied upon the following decisions:-

1. Union of India and another Vs. Sampat Raj Dugar and another,
2. 1992 (42) ECR 454 and
3. 2000 (120) ELT 169 .

The aforesaid decisions were cited by Mr Asthana for the proposition that if an importer does not pay for the goods the supplier continues to remain the owner of the goods and that he can transfer the document off title to another person and thereafter that other person will be entitled to clear the goods.

11. Mr Asthana also relied upon the decision of this Court in Om Petro Chemicals Vs. Union of India and Others, for the proposition that the demurrage charges and container charges ought to be borne by the Customs Authorities in the circumstances of the present case.

12. In the case of UOI v Sampat Raj Dugar (supra) the Supreme Court considered the question of title of the goods in the case of imports and particularly where the importer abandons such goods and does not pay for or receive the documents of title. The Supreme Court held that where an importer abandons the imported goods and does not pay for them he cannot be treated as the owner of the goods. The Supreme Court held as under:-

""19. We may first consider the question of title to the said goods. If we keep aside the provisions of law relied upon by the appellants viz., definition of 'importer' in Section 2(26) of the Customs Act, Clause 5(3)(ii) of the Imports (Control) Orders well as para 26(iv) of the Import-Export Policy, the position is quite simple. Since the second respondent did not pay for and receive the documents of the title she did not become the owner of the said goods, which means that the first respondent continued to be the owner.....

Xxxx xxxx xxxx xxxx xxxx .....The exporter is outside the country, while the importer, i.e. the licensee is in India. It is at the instance of the licensee that the goods are imported into this country. Whether or not he is the owner of such goods in law, the Imports (Control) Order creates a fiction that he shall be deemed to be the owner of the such goods from the time of their import till they are cleared through Customs. This fiction is created for the proper and effective implementation of the said order and the Imports and Exports (Control) Act. The fiction however cannot be carried beyond that. It cannot be employed to

attribute ownership of the imported goods to the importer even in a case where he abandons them, that is, in a situation where he does not pay for and receive the documents of title. It may be that for such act of abandonment, action may be taken against him for suspension/cancellation of license. May be, some other proceedings can also be taken against him. But certainly he cannot be treated as the owner of the goods even in such a case. Holding otherwise would place the exporter in a very difficult position; he loses the goods without receiving the payment and his only remedy is to sue the importer for the price of goods and for such damage as he may have suffered. This would not be conducive to international trade. We can well imagine situations where for one or other reason, an importer chooses or fails to pay for and take delivery of the imported goods. He just abandons them. (We may reiterate that we are speaking of a case where the import is not contrary to law). It is only with such a situation that we are concerned in this case and our decision is also confined only to such a situation. Condition (ii) in sub-clause (3) of Clause 5, in our opinion, does not operate to deprive the exporter of his title to said goods in such a situation.'"

In this view of the matter, applying this principle to the facts of the present case, we find that the goods were originally imported by Shiv Ganga Organic Chemical Ltd on cash against delivery basis. These goods landed in India sometime in February, 2001. The import of these goods was not contrary to law. However, the said Shiv Ganga Organic Chemicals abandoned these goods and did not make any payment for the same. Clearly, the title in the goods in such a situation remained with the foreign supplier, i.e. Allied Deals, Singapore and it was well within its rights to enter into the transaction with the petitioner. Since the goods were transferred to the petitioner and the petitioner held the document of title in respect thereof the petitioner was clearly within the definition of "importer" as provided u/s 2(26) of the Customs Act and was, Therefore, entitled to present the bill of entry and to have the goods cleared for home consumption. The goods did not belong to Shiv Ganga Organic Chemicals Ltd. In these circumstances, the bill of entry sought to have been registered in the name of the petitioner by the respondents and the petitioner ought to have been permitted to clear the goods on the filing of such bill of entry and on payment of appropriate duty of customs.

13. The other cases referred to by Mr. Asthana on this point were those of the Tribunal and need not be adverted to in detail inasmuch as they merely follow what has been held by the Supreme Court in the case of UOI v Sampat Raj Dugar (supra). It is clear that when an importer fails to pay for the goods and abandons them, the ownership of the goods continue to vest in the foreign supplier unless he is proved to be a party to any fraud or the payment for the goods stands guaranteed to him by virtue of a letter of credit or otherwise. As already indicated above there is no fraud alleged against the foreign supplier and, secondly the payment of the goods was to be on the basis of cash against delivery and did not stand guaranteed to the supplier by virtue of a letter of credit or otherwise. This being the position, it is clear that when Shiv Ganga

Organic Chemicals Ltd abandoned the goods and failed to pay for them the title in respect thereof vested in the foreign supplier i.e. Allied Deals Singapore, and the said Shiv Ganga Organic Chemicals Ltd had nothing to do with the goods thereafter. When these very goods were sold to the petitioner and the original bill of lading was endorsed by the supplier in favor of the petitioner, the petitioner became the owner of the goods and became entitled to clear the goods for home consumption. The respondents could not have prevented the petitioners from doing so. The fact that they did so, was in clear contravention of the aforesaid legal principles.

14. The learned counsel for the respondents, however, attempted to distinguish the case of *UOI v Sampat Raj Dugar* (supra) and submitted that the same would not be applicable to the facts of the present case. He submitted that the nature of imports by Shiv Ganga Organic Chemicals Ltd is different from that of the case of imports in the said Supreme Court decision. In that case the original importer simply abandoned the goods and did not try to get the goods cleared at all whereas, in the present case, Shiv Ganga Organic had even filed the Bill of Entry for clearance of the goods. This submission of the learned counsel for the respondents cannot be accepted. The fact of the matter remains that Shiv Ganga Organic Chemicals did not pay for the goods. The Bill of Lading which is the document of title had also been returned by the Bank to the foreign supplier, i.e. Allied Deals, Singapore. As such, Shiv Ganga Organic Chemicals Ltd was not the owner of the goods and the title in the goods vested in the foreign supplier. The position is the same as in the case before the Supreme Court and the said decision would clearly have application in the facts and circumstances of the present case.

15. Coming to the question of demurrage, having already held that the petitioner is entitled to clear the goods and that the import is valid in law the question arises as to who shall bear the burden of demurrage. Is it to be borne by the petitioner or is it to be borne by the Customs Authorities. A Division Bench of this Court while considering this very question in the case of *Om Petro Chemicals Vs. Union of India and Others*, , held as under:-

""23. Would that however mean that the petitioner must pay demurrage charges even though it is not at fault. Answer to the question must be rendered in negative. The decisions of the Apex Court Therefore are authorities for the proposition in certain situation, the court may direct the customs authorities to bear the demurrage charges. In the instant case the customs authorities still insisted that the goods were illegally imported. It sought to justify its stand even before this Court. This Court is not only a court of law but also a court of equity. In a situation of this nature we are of the opinion that this court may find that in place of the importer or the consignee, the customs authorities should bear the charges. Once it is held that the petitioner herein has not committed any illegality in importing the goods in question, in our opinion, it cannot ordinarily be saddled with the liability of payment of demurrage. The petitioner in the fact

situation of this case must be held to have been sinned against than sinning. In Union of India and Others Vs. M/s. Sanjeev Woollen Mills, , the Apex Court in the fact situation obtaining therein held that demurrage may not be paid by the importer.""

In the present case also, it is clear that the petitioner has not committed any illegality in ""importing"" the goods in question and, Therefore, it cannot be saddled with the liability of payment of demurrage. Therefore, as in the case of Om Paper Chemicals (supra), it is the Customs Department which should be directed to bear the demurrage.

16. In these circumstances, the writ petition is allowed. The respondents are directed that the order of amendment of the manifest by the Deputy Commissioner dated 25.3.2001 be restored and the goods be allowed to be cleared by the petitioner upon the Respondents' registering the Bill of Entry in the name of the petitioner and on payment of appropriate duty of customs. It is further directed that the Customs Department shall bear the demurrage charges in respect of the goods in question from 28.3.2001 viz. the date on which the petitioner sought to file the bill of entry) till the date permission to clear the goods is granted as aforesaid. There shall be no order as to costs.