

**(1998) 01 SC CK 0108**

**In the Supreme Court Of India**

**Case No : Civil Appeal No's. 1868-1870 of 1990**

Associated Traders and Others

APPELLANT

Vs

Collector of Customs, Bombay

RESPONDENT

**Date of Decision : 14-01-1998**

**Acts Referred:**

**Citation :** (1998) 6 AD 42 : AIR 1998 SC 2581 : (1998) AIRSCW 2612 : (1998) 60 ECC 258 : (1998) 77 ECR 231 : (1998) 98 ELT 296 : (1998) 4 JT 304 : (1998) 3 SCC 215

**Hon'ble Judges :** S. Rajendra Babu, J;S. C. Agrawal, J;G. B. Pattanaik, J

**Bench :** Full Bench

**Final Decision :** Allowed

## Judgement

1. The appellants in these appeals had imported "Gum Rosin" of Indonesian origin from Singapore. M/s. Prabhat General Industries and M/s. Associated Traders had each imported 90 m.t., while M/s. Sarvodaya Rosin Works had imported 54 m.t. In the invoices issued by the foreign suppliers, viz., M/s. Kapsco Private Limited, Singapore, the description of the goods imported by the appellants was given as "Gum Rosin FAQ Grade, Indonesian origin" and the price shown was US \$ 390 per m.t. A sample of the imported goods was tested by the Chemical Examiner. But in view of the intelligence report that certain importers were importing Gum Rosin and standard grades like 'WW', 'WG' and 'N' by labelling it as 'FAQ' Grade from Indonesian origin through M/s. Appolto International, Bombay, owned by Shri H.S. Saigal, indenting agents, the samples of the goods imported by the appellants were retested by the Customs House Laboratory. According to the report of the said retesting dated 9-12-1986 the goods were of 'WG' Grade. The statement of Shri H.S. Saigal, the proprietor of the indenting agent, M/s. Appollo International was also recorded and he admitted that out of 18 containers, 15 contained Gum Rosin of 'WG' Grade and 3 containers contained Gum Rosin of 'N' Grade. He stated that the first two consignments of 90 m.t. each were of 'WG' Grade and the third consignment of 54 m.t. was of 'N' Grade. He stated that 'FAQ' Grade is mixed and unsorted 'WG'

and inferior grade. He also stated that he had learned from his principals, M/s. Kapsco Private Limited, Singapore, the suppliers of the consignments, that the rate of 'WG' Grade was US \$ 450 to 460 per m.t. The telex message quoted in the order-in-original and seized from the office premises of the indenting agents also referred to Gum Rosin grade as 'WW/FAQ' Grade. M/s. R.R. Mewani Ltd., one of the leading indenting agents of Gum Rosin of Indonesian origin, by their letter dated 11-12-1986, confirmed that Department of Forestry of Government of Indonesia offers only Gum Rosin 'WW' Grade and the price normally varies between US \$ 450 to 460 per m.t. Invoices of imports of other importers of Gum Rosin during the material period indicated the price as US \$ 465 per m.t. After taking into consideration the material on record and the submissions urged on behalf of the appellants, the Collector of Customs passed the order dated 25-1-1988 wherein he found that the grade of the Gum Rosin imported by the appellants has been wrongly described as 'FAQ' and that the grade and the price has been wrongly declared as US \$ 390 m.t. and that the Gum Rosin imported by them was of 'WW' Grade and the price of the same was US \$ 465 per m.t. CIF. The Collector, therefore, ordered for confiscation of the goods and gave an option to the appellants to redeem the goods on payment of redemption fine. Redemption fine of Rs 2,65,000 each was imposed on M/s. Prabhat General Industries Pvt. Ltd. and M/s. Associated Traders and a fine of Rs 1,60,000 was imposed on M/s. Sarvodaya Rosin Works. In addition, personal penalty was also imposed on all the three appellants. Penalty of Rs 1,30,000 each was imposed on M/s. Prabhat General Industries and M/s. Associated Traders and penalty of Rs 80,000 was imposed on M/s. Sarvodaya Rosin Works. By the impugned judgment the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") has upheld the findings recorded by the Collector of Customs, but the redemption fine as well as the penalty imposed on the appellants have been reduced by half.

2. The main contention of Shri Rajiv Dutta, the learned counsel for the appellants, is that the Collector as well as the Tribunal have erred in placing reliance on the test report dated 9-12-1986 wherein the Gum Rosin imported by the appellants has been graded as 'WG' Grade since in the said test report it is stated as under:

"As Iovribond US Rosin standard sample and Gardner colour disc are not available in the laboratory it is not possible to determine the exact grade of Rosin here, as per I.S.I. 553.1984. Lovribond colour value of the sample were determined by Tint meter and approximately grade of Rosin were determined as per I.S.I. 353.1969. Both the samples have got characteristics similar to pale type of WG Grade of I.S.I."

3. Shri Dutta has submitted that in view of the fact that the proper facilities were not available in the laboratory for testing the sample on the basis of the Gardner colour disc, reliance should not have been placed on the said report. We are unable to agree. The finding in the test report was supported by other material

on record, viz., the statement of Shri Saigal, the proprietor of the indenting agents M/s. Appollo International, the telex message seized from the office of the indenting agents and the letter of M/s. R.R. Mewani Ltd. which show that the Gurn Rosin imported by the appellants was of 'WG', 'WW' and 'N' Grade and the price of the Gum Rosin of these grades was US \$ 465 per m.t. The finding recorded by the Collector of Customs which has been affirmed by the Tribunal is thus a finding of fact based on material on record. No ground is made out for interfering with the said finding.

4. In the circumstances, we find no merit in these appeals and the same are accordingly dismissed. There shall, however, be no order as to costs.