
(2009) 12 KL CK 0062

In the High Court Of Kerala

Case No : M.A.C.A. No. 17 of 2009 in C.A. No. 17 of 2009 in C.P. No. 2 of 1996

Commissioner of Customs

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:

Companies Act, 1956 — Section 125(1), 125(4), 529, 529(1), 529A

Customs Act, 1962 — Section 15, 150, 17, 18, 47

Major Port Trusts Act, 1963 — Section 64

Citation : (2010) 3 KLT 254 : (2011) 1 RCR(Civil) 342 : (2011) 1 RCR(Civil) 342

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : John Varghese, for the Appellant; K. Moni, for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—The Commissioner of Customs, Cochin, has filed this Company Application for a direction to the Official Liquidator to pay to the Customs Department of Government of India the amount of Rs. 21,14,748/-, which was the amount received by them on sale of goods imported by the company in liquidation and warehoused as per the provisions of the Customs Act and not cleared within the time stipulated under law and handed over to the Official Liquidator under orders of this Court, on the ground that the Customs Department is entitled to appropriate the same towards customs duty and interest remaining unpaid on the goods, as authorised by the provisions of the Customs Act and cannot be added to the assets of the company in liquidation for distribution in accordance with the priority. He also seeks preferential payment of an amount of Rs. 2,08,209/- due to the Department as customs duty short levied, from the company in liquidation.

2. The company in liquidation imported certain consignments of "cross-linkable polyethylene" and warehoused them in the bonded warehouse of the Central Warehousing Corporation, after executing bonds for payment of twice the duty

assessed, if the conditions of the bond are not fulfilled under Sub-sections (a), (b) and (c) of Section 59(1) of the Customs Act. The company did not clear the goods, even within the extended time granted. Notices were issued to the company u/s 72(2) of the Customs Act for recovering the statutory dues under the Customs Act, by sale of the warehoused goods in public auction/tender. The company challenged the notices by filing O.P. Nos. 1300/92 and 3942/92 and this Court passed interim orders restraining the Department from selling the goods. While so in C.P. No. 2/1996 this Court ordered winding up of the company and the Original Petitions were disposed of holding that the grounds against sale of the goods do not survive for consideration. The Department sold the goods and the sale proceeds of Rs. 21,14,748/- was handed over the Official Liquidator as directed by this Court. Another amount of Rs. 2,08,209/- is also pending payment by the company in liquidation to the Department towards short levy of Customs Duty, demand for which was also challenged by the company in liquidation in O.P. No. 4957/1992, which Original Petition was also disposed of after the winding up order on an undertaking by the Official Liquidator to pay the amount in the liquidation proceedings. The Department, after getting the delay in filing condoned, filed proof of debt to the tune of Rs. 38,84,613/- towards statutory duties and interest. Because of delay on the part of the Official Liquidator in considering that claim the applicant filed W.P. (C) No. 37758/2008 which was disposed of directing him to approach the Company Court. C. A. No. 17/2009 was filed, in which the Company Court directed the Official Liquidator to adjudicate the claim Of the petitioner. The Official Liquidator adjudicated the claim and admitted the debt for an amount of Rs. 38,84,613/- towards duty on the goods, which remained uncleared after the expiry of the permitted time and short collection of duty, u/s 530 of the Companies Act and an amount of Rs. 24,32,249/- towards interest as an ordinary creditor, by Annexure A6 order. By Annexure A7 letter the Official Liquidator informed the applicant that the said amounts can be paid only after settling claims of secured creditors and workmen u/s 529A of the Companies Act. It is under the above circumstances the applicant has filed this company application for a direction to the Official Liquidator to give preferential payment of the said amounts to the petitioner, before meeting claims of secured creditors and workers.

3. The contention of the applicant is that by virtue of Sections 59, 61, 72, 73 and 150 of the Customs Act, 1962, the applicant has a statutory lien on the warehoused goods and the sale proceeds thereof, which is above the priorities fixed by Sections 529A and 530 of the Companies Act and therefore, the sale proceeds of the warehoused goods have first to be adjusted against the dues of the applicant, before the priorities of payment under the Customs Act can even be considered. It is also contended that since insolvency rules are applicable to winding up proceedings, going by the definition of "secured creditor" in the Provincial Insolvency Act, 1920, a person holding a charge or lien on the property of the company in liquidation is also a secured creditor and since this charge is not one enumerated in Section 125(4) of the Companies Act, the

requirement of registration of charges under Sub-section (1) thereof, is not applicable to this charge. It is the contention of the Senior Standing Counsel for Customs, Central Excise and Service Tax, appearing for the petitioner, that the customs authorities are entitled to realise the customs duty on those goods by sale of the goods before the goods can be validly treated as assets of the company in liquidation, in the liquidation proceedings. He relies on the decision of the Supreme Court in Board of Trustees, Port of Mumbai v. Indian Oil Corporation and Anr. 1998 (2) Com L. J. 337 (SC) and that of the Calcutta High Court in Collector of Customs Vs. Dytron (India) Ltd., in support of his contentions.

4. The Official Liquidator has filed a counter-affidavit disputing the contentions of the applicant. According to him, the claim of the applicant can be considered only after the dues of the secured creditors and workmen in accordance with Section 529A are fully paid off. He would argue that the claim towards customs duty would rank for payment only u/s 530 and for the claim for interest the applicant has to stand in the queue as an ordinary creditor. He relies on Annexure 7 judgment of the Supreme Court in Civil Appeal Nos. 6257-6259 of 2004 wherein in the liquidation proceedings of another company, the claim of Income Tax Department for preferential payment was rejected and the decision of the Supreme Court in AI Champdany Industries Limited Vs. The Official Liquidator and Another, :

5. Elaborate arguments were advanced by both sides, which I have considered in detail.

6. Facts are not in dispute. The goods in question were imported by the company in liquidation and were warehoused complying with the provisions of Chapter IX of the Customs Act. The company did not pay the duties payable, nor did they clear the goods. While so the company was ordered to be wound up The goods were sold by the Customs Department and the sale proceeds were entrusted with the Official Liquidator. The amount so entrusted is Rs. 21,14,748/-. The claim of the applicant has been admitted by the Official Liquidator for an amount of Rs. 38,84,613/- as customs duty on uncleared goods after expiry of period of warehousing and as short collection of duty and Rs. 24,32,249/- as interest. Therefore, the only question to be decided is the priority of claim, which is purely a question of law.

7. Sections 59 and 61 of Chapter XI of the Customs Act read thus:

59. Warehousing bond.- (1) The importer of any goods specified in Sub-section (1) of Section 61, which have been entered for warehousing and assessed to duty u/s 17 or Section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods,-

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

(b) to pay on or before a date specified in a notice of demand,-

(i) all duties, and interest, if any, payable under Sub-section (2) of Section 61;

(ii) rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at such rate not below eighteen per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette; and

(c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.

(2) For the purposes of Sub-section (1) the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to enter into a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect Of the warehousing of goods to be imported by him within a specified period.

(3) A bond executed under this Section by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to another warehouse:

Provided that where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee.

xxxx xxxx xxxx 61. Period for which goods may remain warehoused.-(1) Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed,-

(a) in the case of capital goods intended for use in any hundred per cent export oriented undertaking, till the expiry of five years;

(aa) in the case of goods other than capital goods intended for use in any hundred per cent export-oriented undertaking, till the expiry of three years; and

(b) in the case of any other goods, till the expiry of one year,

and the date on which the proper officer has made an order u/s 60 permitting the deposit of the goods in a warehouse:

Provided that:

(i) in the case of any goods which are not likely to deteriorate, the period specified In Clause (a) or Clause (aa) or Clause (b) may, on sufficient cause being shown, be extended:

(A) in the case of such goods intended for use in any hundred per cent export-oriented undertaking, by the Commissioner of Customs, for such period as he may deem fit; and

(B) in any other case, by the Commissioner of Customs, for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit;

(ii) in the case of any goods referred to in Clause (b), if they are likely to deteriorate, the aforesaid period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit:

Provided further that when the licence or any private warehouse is cancelled, the owner of any goods warehoused therein shall, within seven days from the date on which notice of such cancellation is given or within such extended period as the proper officer may allow, remove the goods from such warehouse to another warehouse or clear them for home consumption or exportation.

(2) Where any warehoused goods:

(i) specified in Sub-clause (a) or Sub-clause (aa) of Sub-section (1) remain in a warehouse beyond the period specified in that sub-section by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in Section 47 shall be payable, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of Section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods;

(ii) specified in Sub-clause (b) of Sub-section (1), remain in warehouse beyond a period of ninety days, interest shall be payable at such rate or rates not exceeding the rate specified in Section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of Section 15 on the warehoused goods, for the period from the expiry of the said ninety days, till the date of payment of duty on the warehoused goods:

Provided that the Board may, if it considers it necessary so to do in the public interest, by order and under circumstances of any exceptional nature, to be specified in such order, waive the whole or part of any interest payable under this Section in respect of any warehoused goods:

Provided further that the Board may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section.

Again Section 72 stipulates as to the mode of dealing with the warehoused goods which have not been removed from the warehouse on expiry of the permitted period and reads thus:

72. Goods improperly removed from warehouse, etc -(1) In any of the following

cases, that is to say,-

(a) where any warehoused goods are removed from a warehouse in contravention of Section 71;

(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted u/s 61 to remain in a warehouse;

(c) where any warehoused goods have been taken u/s 64 as samples without payment of duty;

(d) where any goods in respect of which a bond has been executed u/s 59 and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer,

the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

(2) If any owner fails to pay any amount demanded under Sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may select.

Section 73 details when the warehousing bond is to be cancelled, which reads as follows:

73. Cancellation and return of warehousing bond.- When the whole of the goods covered by any bond executed u/s 59 have been cleared for home consumption or exported or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

8. Section 150 of the Customs Act stipulates the procedure for sale of goods other than confiscated goods which are to be sold under the provisions of the said Act. The said Section lays down thus:

150. Procedure for sale of goods and application of sale proceeds.- (1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.

(2) The proceeds of any such sale shall be applied:

(a) firstly to the payment of the expenses of the sale,

(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given

to the person having custody of the goods,

(c) next to the payment of the duty, if any, on the goods sold,

(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,

(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs,

and the balance, if any, shall be paid to the owner of the goods.

Since Section 72(2) authorises the proper officer under the Customs Act to sell the warehoused goods which have not been removed within time for realisation of the amounts of duty, interest etc. for such sale the provisions of Section 150 apply for such sale.

9. The Calcutta High Court, in *Dytron (India) Ltd.* 's case (supra), had occasion to deal with an identical issue. There also after import and warehousing of the goods the company went into liquidation. In that case the said High Court summarised the contentions of the parties thus in paragraphs 10,11 and 20.

10. Before us it was contended by the Customs Authorities that by virtue of the provisions of the Customs Act, 1962, the goods could not have been removed from the warehouse at all without payment of the import duty and the interest accumulated thereon. It is said that any such removal was in contravention of law. It is further stated that the customs had a statutory right to confiscate the goods and to sell the same for the realisation of duty and interest and other charges which right has been taken away from the Customs Authorities by the orders under appeal. It is stated that until the duty was paid on the chemicals, the chemicals could not be treated as part of the assets of the company which was available for sale and disposal. Decisions of the Supreme Court have been relied upon in this context which will be referred to at an appropriate stage.

11. The learned Counsel on behalf of the Bank of India has stated that the claim of the customs authorities would have to be determined in terms of Section 529A and Section 530 of the Companies Act, 1956 which is a special statute dealing with priorities amongst creditors to the assets of the company. It is further stated that no copy of the assessment order had been made available to the Official Liquidator and that the claim of the Customs Authorities was lacking in material particulars. It is finally submitted that the amount of Duty claimed by the Customs Authorities should be paid by the purchaser;- as the purchaser had in effect stepped into the shoes of the company and was, therefore, liable to make payment of the dues of the company in respect of the chemicals.

xxxx xxxx xxxx 20. In this case the Customs Authorities have stated that it raised the claim against the company u/s 72(1) of the 1962 Act demanding duty and interest and issued a detention-cum-sale notice u/s 72(2). It is stated that

the proceedings before the Company Court for sale of the chemicals had been done without any notice whatsoever to the Customs Authorities, it is also stated by the Customs Authorities that it had requested Official Liquidator to pay an sum of Rs. 27,05,628/- towards the duties and interest leviable in respect of the 275 barrels of phenol cleared under the order dated 23rd June, 1995.

10. After noting the said contentions, the Court held thus in paragraphs 23, 24, 31 and 32:

23. The Customs Authorities are correct in their submission that until and unless their duties and statutory dues are paid under the provisions noted above, the chemicals were not available legally for sale to the purchasers at all. That is to say the assets would form a part of the assets of the company available for distribution by virtue of liquidation subject to payment of the Customs Duties and Interest etc. The provisions of Sections 529 and 530A of the Companies Act, 1956 apply to situations where the claim of creditors in respect of the sale proceeds of the assets of the Company sold in liquidation are to be determined. The Customs Authorities claim to the chemicals in question, in which the Customs Authorities had a statutory right of detention and confiscation, had to be met before the chemicals could be validly sold as assets of the company in liquidation. The claim of the Customs Authorities would, therefore, stand outside proceedings under Sections 529, 529A and 530 of the 1956 Act.

24. Regarding the claim of Interest by the Customs Authorities, Section 61(2) of the Customs Act, 1962 provides that warehoused goods may be kept in the warehouse for one year without payment of duty. Thereafter if the goods continue to remain in the warehouse interest would be payable at such rate as is specified in S.47 on the amount of duty on the warehoused goods for the period from the expiry of the period of one year till the date of the clearance of the goods from the warehouse. The claim for interest is also covered by the provisions of Sections 68 and 72. The calculation of interest has been made for the period only between the date of expiry of the bonding period and the date of delivery.

xxxx xxxxx xxxxx 31. In the circumstances, the appeal must be allowed. However, it must be stated that the appeal from the order dated 28th April, 1995 is misconceived as it did not directly affect the Customs Authorities. The orders dated 23rd June, 1995 and 28th June, 1995 have unfortunately been already given effect to. Nevertheless, the Customs Authorities cannot be deprived of their rights merely because the sale of the warehoused goods has taken place without payment of duty or their statutory claims. The learned Judge erred in not passing any order on 5th July, 1995 permitting the Customs Authorities at least to realise their statutory dues and thus regularize the sale ex post facto which was otherwise held in contravention of the clear provisions of the statute.

32. The Official Liquidator will, accordingly, make over to the Customs Authorities the amount as claimed including the interest. As the amount with the Official

Liquidator does not cover the entire dues of the Customs Authorities, the Customs Authorities will also be entitled to realise the balance claim from any further sums that the purchaser may pay on account of the sale of the chemicals. The creditors of the company will be entitled to the balance after the Customs Authorities' demands on account of Duty and Interest have been met. The Customs Authorities are at liberty to appropriate the sum of Rs. 35 lakh together with the Interest accumulated thereon against their claims in protanto satisfaction of their dues and without prejudice to their right to claim the balance. The Official Liquidator shall make the said payment within a period of two weeks from date.

11. In I.O.C's case (supra), before the Supreme Court, the ship of a company in liquidation was arrested for non-payment of charges due to the Mumbai Port under the Major Port Trusts Act 1963, and while litigation in respect thereof was pending, the High Court ordered winding up of the company. The Supreme Court noted the competing provisions of the Companies Act and the Major Port Trusts Act in paragraph 7 of the judgment thus:

7. u/s 529 of the Companies Act, in the winding up of the insolvent company, the same rules shall prevail and be observed with regard, inter alia, to the debts provable and the respective rights of secured and unsecured creditors as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent. The proviso to Section 529(1) sets out that the security of every secured creditor shall be deemed to be subject to a paripassu charge in favour of the workmen to the extent of the workman's portion therein, in the manner set out in that Section and Section 529A. The position, however, of the appellant Port Trust is somewhat different from the position of a secured creditor in winding up. The vessel which is one of the properties of the company in winding up, has been arrested by the appellant in the exercise of its statutory right to arrest the vessel for recovery of its rates and charges under the Major Port Trust Act, 1963, and the rules framed thereunder. Section 64 of the Major Port Trusts Act, 1963, provides as follows:

Section 64. Recovery of rates and charges by distraint of vessel.- (1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distraint or arrest such vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Board, together with such further amounts as may accrue for any period during which the vessel is under distraint or arrest, is paid.

(2) In case, any part of the said rates or penalties, or of the cost of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including

the costs or sale remaining unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs or sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

12. The Supreme Court settled the law on the subject thus in paragraphs 9,13,17 and 19:

9. The statutory right u/s 65 embodies this overriding right of the harbour authority over the vessel for the recovery of its dues. This right stands above the rights of secured and unsecured creditors of a company in winding up - in the present case, the shipping company which owns the vessel. The harbour authorities allow ships - national or foreign to anchor and avail of the services provided by them, For payment, they look to the vessel. The owner may be foreign or even unknown to the harbour authority. The latter's right to recover its due is not affected by any pending proceedings against the owner in any Court -" whether in winding up or otherwise. The harbour authority can arrest the vessel/while it is anchored in the harbour and recover its dues in respect of that vessel by sale of the vessel if the dues are not paid. This lien of the harbour authority over the vessel is paramount. The lien cannot be extinguished or the vessel sold by any other authority under the directions of the court or otherwise, unless the harbour authority consents to such sale. Thus, in the case of Ashoke Arya Vs. M.V. "Kapitan Mitsos", Board of Trustees of the Port of Bombay and Union of India (UOI), , the Bombay High Court relied upon the decision in The Emile Milton 1905 (2) KB 817 (C.A.) *infra*, and held that the lien given by statute to a dock or harbour authority cannot be extinguished by Court unless it be done with the authority's express or implied consent.

xxxx xxxx xxxx 13. Therefore, the lien of a harbour authority over the vessel is a paramount lien and realisation of its dues by the harbour authority by the sale of the vessel is above the priorities of secured creditors. In other words, the statutory lien of a harbour authority has paramountcy even over the claims of secured creditors in a winding up. In exercise of its right u/s 64 the appellant is, therefore, entitled to sell the vessel without the intervention of the Court. In exercise of that paramount right which overrides the claims of all other creditors including secured creditors, the appellant has a right to arrest the vessel and sell it. Without the consent of the appellant, this right cannot be transferred to the sale proceeds of the vessel.

xxx xxxx xxxx 17. In the present case, the appellant is objecting to the directions given by the Court in winding up directing the official liquidator to sell the vessel along with the appellant and to bring the sale proceeds into Court. The appellant has a supervening priority in respect of its claims against the vessel. It has a right to sell the vessel and realise the sale proceeds. The appellant cannot be divested of this statutory right without its consent or be subject to other

priorities under the Companies Act. The appellant has also objected to any global advertisement being issued in respect of the said vessel since the vessel is lying at anchorage since 1987 and is in a very dilapidated condition. It is unlikely to attract international bidding. The sale proceeds are not likely to cover even the full statutory charges of the appellant. The appellant has also objected to its being equated to other secured creditors in winding up.

xxx xxxx xxxx 19. The appellant shall be entitled to realise its statutory dues as per law from the sale proceeds of the said vessel and the balance, if any, of the sale proceeds shall be deposited by the appellant with the official liquidator in winding up. The appellant shall also file an account of its dues and the realisation of the same from the sale proceeds of the vessel in the winding up proceedings before the official liquidator. The appellant has no objection to doing so. In respect of any shortfall in the realisation of dues, the appellant may file its claim for the balance in winding up proceedings in accordance with law.

13. Neither in Annexure 7 judgment nor in Champdany Industries Ltd.'s case (supra) the facts were similar. In Annexure 7 judgment, the question that arose was as to whether for tax on the income received by sale of the assets of a company in liquidation, the Income Tax Department had preferential claim over the claim of the secured creditors and workmen u/s 529A of the Companies Act and the Supreme Court repelled the contentions of the Income Tax Department. In Champdany Industries Ltd. (supra) the Supreme Court was dealing with the question as to whether a local authority had preferential claim for property tax under the Municipalities Act. The Supreme Court held that the Municipality is only an unsecured creditor and not a preferential creditor. Facts of those cases not being similar to the facts of this case and the facts of the Calcutta High Court being on all fours with those of this case supported by the decision of the Supreme Court in I.O.C.'s case (supra) on facts very similar to both this case and the Calcutta case, I am inclined to follow the decisions of the Calcutta High Court and the Supreme Court relied upon by the Senior Standing Counsel for Customs Central Excise and Service Tax. By applying the ratio of those decisions, I hold that the Customs Department has exclusive right to appropriate the sale proceeds of the warehoused goods against the customs dues on the goods in view of the provisions of the Customs Act, as against even the secured creditors and workmen.

14. But the above findings are applicable only for appropriating the sale proceeds of the warehoused goods and not for recovery of the balance customs dues in respect of the warehoused goods and the short levy of duty amounting Rs. 2,08,209/-. In respect of those amounts, the applicant would rank only as a creditor u/s 530. In other words, the preferential claim of the applicant would be only on the sale proceeds of the warehoused goods and if on the same goods additional amounts are due as duty over and above the sale proceeds, for such amounts and for other duties of customs, the applicant can claim preference of payment only u/s 530.

15. Accordingly, I direct the Official Liquidator to release to the applicant, the sum of Rs. 21,14,748/- realised by the applicant by sale of the warehoused goods of the company in liquidation in exercise of their charge or lien over the same under the provisions of the Customs Act which is held in deposit by the Official Liquidator within one month from the date of receipt of a certified copy of this order. The adjudication orders of the Official Liquidator on the claim of the applicant would stand modified to this extent.

The Company Application is allowed as above.