

(2002) 03 DEL CK 0017
In the Delhi High Court
Case No : CWP 2753 of 2000

Kailash Ribbon Factory Ltd.

APPELLANT

Vs

The Commr. of Customs and Central Excise and Another

RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Citation : (2002) 4 AD 107 : (2002) 97 DLT 826 : (2002) 62 DRJ 697 : (2002) 81 ECC 678 : (2002) 143 ELT 60 : (2002) 4 RCR(Criminal) 124

Hon'ble Judges : Vikramajit Sen, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : L.P. Aasthana, Vivek Sood and Manoj Lahoia, for the Appellant; K.K. Sud, ASG and Nishakant Panday, for the Respondent

Judgement

Dalveer Bhandari, J.—The petitioner is approaching this Court not because it is aggrieved by the order of the Tribunal dated 20th August, 1999 but because the Tribunal could not give the desired relief to the petitioner despite its clear findings in its favor.

2. The petitioner imported one set of design workstation with flat bed scanner, floppy disc, etc. from M/s. Viable System Inc., USA. The breakup price shown in the invoice was US \$ 22,500.00 for hardware and US \$ 60,000.00 for software, which worked out at Rs. 7,16,974.00 for hardware and Rs. 19,11,930.00 for software. The officers of the Customs Department raided the premises of the importer. One of the documents seized was a proforma invoice dated 27.12.94. It showed a total price of US # 82,500.00 and discount of US \$ 39,325.00. The breakup value of hardware and software was not separately given. The Commissioner of Customs by his order dated 31.5.1995 rejected the discount of US \$ 39,325.00 and enhanced the value of the imported goods to US \$ 1,21,825.00. It is not disputed that these goods imported by the petitioner were evaluated by the Customs of the value of Rs. 34,65,000.00. These goods were confiscated by the respondents.

3. The order passed by the Commissioner was challenged before the Tribunal in

appeal. Admittedly, during the pendency of the appeal without obtaining the permission of the appellate court the respondents auctioned the goods of the petitioner.

4. The petitioner was not given any notice of auction of his goods. The auction notice reads as under:

"GRAND AUCTION SALE

In terms of directions of Govt. of India the AIRPORTS AUTHORITY OF INDIA, Delhi shall be auctioning accumulated unclaimed/uncleared imported Air Cargo landed on or before 31st March, 1997. The huge accumulated stock consists of Electronics, Computer Parts, T.V. Parts, Photocopier Parts, Peretonial Dialysis Equipment and other Medical/Dental items, Chemical, Printed matter, Ready made Garments, Spare Parts, Machinery, Leather items and many other attractive items."

5. The learned counsel for the petitioner submitted that the respondents could not have auctioned the confiscated goods. According to the rules and provisions of the Act such auction is clearly vocative of the provisions of the Customs Act, 1962.

6. The learned counsel has submitted that Section 150 of the Customs Act has no application to this case because that Section relates to goods which are not confiscated. According to the learned counsel this case is squarely covered by Section 126 of the Customs Act. Section 126 reads as under:

"126. On confiscation, property to vest in Central Government. -(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government."

Therefore, according to the submission of the learned counsel for the petitioner after confiscation, the goods became the property of the Central Government. During the pendency of the petitioner's appeal, without any permission of the court, the confiscated goods were auctioned in a clandestine manner by the respondents. The respondents are obviously under an obligation to compensate the petitioner for the grave loss which has been caused to him. The goods were evaluated by the petitioner at Rs. 19,11,930.00 and Rs. 7,16,974.00. The total amount worked out to be Rs. 26,28,904.00. This is the declaration of the petitioner though the respondents have evaluated the value of confiscated goods at Rs. 33.01 lakhs. While granting the order we deem it proper to take the value of goods declared by the petitioner otherwise it would be a case of unjust enrichment. The petitioner has placed reliance on Northern Plastics Ltd. (Now Merged With Consolidated Photo and Finvest Ltd.) Vs. Collector of Customs and Central Excise, and Shilps Impex Vs. Union of India, . In Shilps" case (supra) their Lordships of the Hon"ble Supreme Court observed that the petitioner became entitled to get back what he has paid. In Northern Plastics" case (supra) the Hon"ble Supreme Court observed:

"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 value of the goods as shown in the import documents was only Rs. 33.04 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 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 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 of 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 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 at 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 his 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 lacks. 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 applicants 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 illegal."

8. We are of the considered opinion that during the pendency of the appeal confiscated goods could not have been auctioned without the prior permission of the appellate court.

9. From various judicial orders we gather that this lapse is being repeated in a large number of cases, Therefore, we are constrained to observe that the respondents have not been diligent in discharging their duties. The respondents are directed to issue an official circular within four weeks to all the concerned officials that the confiscated goods which are the subject matter of appeal before any Tribunal or court shall not be auctioned or disposed of without prior written permission or order from the concerned Tribunal or the court.

10. After obtaining necessary permission if the authorities decide to auction the goods, then individual notice to the concerned parties is imperative. We are clearly of the opinion that the respondents have committed a serious blunder by auctioning the goods which were subject matter of appeal without prior permission of the concerned appellate court. The petitioner has to be compensated for this serious lapse of the respondents causing immense financial loss to the petitioner.

11. We accordingly direct the respondents to refund the amount of Rs. 26,28,940.00 declared as the value of the confiscated goods to the petitioner forthwith. The respondents are directed to return the said amount with interest at the rate of nine percent per annum from the date of unauthorised auction of the confiscated goods, i.e., 21.5.1998.

12. Mr. Mohd, Haneef, the Superintendent of Customs, (Disposal), AIR Cargo Unit, New Delhi gives undertaking to this court that the amount will be paid within six weeks from today.

13. No further directions are necessary in this petition.

14. The writ petition is accordingly disposed of.