

(1998) 01 CAL CK 0001
In the Calcutta High Court
Case No : Writ Petition No. 1238 of 1996

M. Dutta Agency	Vs	APPELLANT
Commissioner of Customs		RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 112, 112A, 124, 129, 129A
Customs House Agents Licensing Regulations, 1984 — Regulation 10, 11, 12, 12(1), 12(2)

Citation : (1998) 101 ELT 581

Hon'ble Judges : Tarun Chatterjee, J

Bench : Single Bench

Advocate : Shaktinath Mukherjee, for the Appellant; Sanjoy Banerjee, for the Respondent

Judgement

Tarun Chatterjee, J.—The writ petitioner No. 1 is a firm registered under the Indian Partnership Act, 1932. The writ petitioner No. 2 is a partner of the writ petitioner No. 1. The writ petitioners were Customs House Agent duly licensed under the provisions of Customs House Agents Licensing Regulation, 1984 (hereinafter referred to as "the regulation"). By such regulation, they were empowered to act as agent for transaction of any business relating to the entry of import or export of goods at any customs house station. The writ petitioners have been carrying on business as a clearing agent since 1969. The writ petitioners obtained licence bearing No. M-22 under the said regulation. During the course of their business as agent relating to import and export of goods, they acted as agent for clearance of the goods imported by R.S.I. Engineering Pvt. Ltd. The said R.S.I. Engineering Pvt. Ltd. imported various consignments of [Polypropylene] (P.P.) and R.N.J. Export Pvt. Ltd. (hereinafter referred to as "R.N.J.") imported various consignments of [Polystyrene] (P.S.) under advance licences issued by the Controller of Imports and Exports under Duty Entitlement Exemption Certificate. After clearing consignment, imported by R.S.I.

Engineering Pvt. Ltd., the petitioners under instructions of the said R.S.I, kept the goods at the godown of the Central Warehousing Corporation and the goods were taken delivery and/or cleared by the importee R.S.I. who arranged for such delivery and/or clearance. In respect of the importation of 155 M.T. of P.P. by the R.S.I, under a bill of entry, the Authority initiated action against the said R.S.I. and their associates and implicated the writ petitioners in the said proceeding. The goods however, were cleared by the said R.N.J. export and the goods were taken delivery by R.N.J. from the docks of the Calcutta Port. The writ petitioners however, received a demand-cum-show cause notice dated 12th of August, 1994 from the Additional Collector of Customs (Preventive) u/s 112A of the Customs Act, 1962, in respect of the importation made by the R.S.I. under the Bill of Entry dated 18th January, 1994. In the said show cause notice, it was alleged that the writ petitioners had aided and abetted the said R.S.I. in violating the various provisions of DEEC scheme by allowing different parties to take delivery of the materials without any receipt/delivery challan and allowed one Chandranath Ghosh alias Chandan Ghosh, an employee of the writ petitioner No. 1 to sign on the challan of the writ petitioner No. 1. From the said show cause notice, it appears that the Additional Collector of Customs (Preventive) had issued summons to R.S.I. and their associates who had received raw materials covered by the said bill of entry. The Additional Collector of Customs (Preventive) came to an erroneous conclusion in the said show cause notice that the writ petitioners were responsible for delivery of the imported materials to different parties other than the importers and that supporting manufacturer endorsed DEEC book and had aided and abetted in violating the provisions of DEEC scheme under which raw materials were imported by R.S.I. On the basis of such erroneous conclusion, the Additional Collector of Customs (Preventive) had issued the show cause notice as to why penal action u/s 112(a) of the Customs Act, 1962 should not be taken against the writ petitioners. The writ petitioners also received another show cause notice dated 17th of August, 1994 issued u/s 124 of the Customs Act, 1962 by the Customs Authority with regard to seizure of 360 bags HDPE from the godown of the transporter known as Raipur Calcutta Road Carrier. Thereafter on or about 1st of November, 1994, the writ petitioners received a memo dated 1st of November, 1994 from the respondent No. 1 alleging that the writ petitioners had failed to discharge their responsibilities as clearing agent under Regulation 14 of the Regulation which amounted to gross misconduct and the respondent No. 1 suspended the writ petitioner No. 1 under Regulation 21(2) of the said regulation. Challenging the said order of suspension, the writ petitioner moved a writ petition in this Court. On the said writ application, a learned Judge of this Court had stayed the operation of the order of suspension passed by the Customs Authority in view of the fact that an order of suspension was passed by this Court, the Customs Authorities issued another notice dated 22nd March/1985 upon the writ petitioner to show cause as to why the licences of the writ petitioners issued by the Customs Authorities should not be revoked under Regulation 23 of the 1984 regulation. The validity of the licence of the writ petitioners was to expire on 2nd of December, 1995. For

renewal of the said licence for a further period of 5 years the writ petitioners made an application before the Customs Authority, a copy of which has been annexed to the writ petition. When the writ petitioners had applied for renewal of licence, the respondents by their letter dated 13th December, 1995 wrote the petitioners to submit reply to the complaints of misconduct made against them for non-compliance of the obligations under Regulation 14 as given in the annexures enclosed to the said letter. The writ petitioners submitted their representation by their letter dated 22nd December, 1995, 4th of January, 1996 and 7th of March, 1996. On or about 6th of May, 1996, the writ petitioners received the order dated 29th March, 1996 whereby the respondent No. 1 rejected the application for renewal of the licence of the writ petitioners. In the said order, the respondent No. 1 categorically stated that he was not adjudicating upon the allegations made in the show cause notice issued earlier by the Commissioner of Customs (Preventive) as also by the Commissioner of Customs. It is this order of the respondent No. 1 passed on 29th of March, 1996 is now under challenge in this writ application.

2. Before I proceed further, let me now first deal with the preliminary objection raised on behalf of the Customs Authority to the entertainability of the writ application at this stage in view of the availability of an alternative remedy to the writ petitioner by way of an appeal under the regulation. Mr. Banerjee, appearing for the Customs Authority raised such preliminary objection. According to Mr. Banerjee, the Tribunal is invested with the powers to hear appeals against a decision or order passed by the Collector of Customs as an adjudicating authority and according to Mr. Banerjee, since the present order being the order passed by the Additional Collector in the exercise of powers invested under the Act, he becomes the adjudicating authority by virtue of Section 129A(1)(a) of the Act, the appeal would lie to the Tribunal. Mr. Banerjee further contended that since the Customs House Agent Licensing Regulation, 1984 have been framed by way of replacement of Customs House Agent Licensing Regulation, 1965, where provisions did exist in Regulation 28 as regards the appeal against such order, and as the present regulation have been framed only thereafter and when the Government has thought it not necessary to insert provision regarding appeal under the present regulation though they very much existed in the earlier regulations, it provides a clear pointer that because of Clause 1A of Section 129, the appeal against any order of the Collector being entertainable by the Tribunal, it was not necessary to make any specific provision in the Regulation.

3. The submission of Mr. Banerjee was hotly contested by Mr. Saktinath Mukherjee, appearing on behalf of the writ petitioners. According, to Mr. Mukherjee, as there is no provision for filing an appeal against the order impugned in this writ application, no appeal against such an order is maintainable and, therefore, the Tribunal could not be the Authority competent to hear the appeal.

4. Having heard the learned Counsel for the parties and after carefully

considering the relevant provisions of the Act and the regulation and also keeping in mind the earlier regulation framed in the year 1965, I am of the view that the argument of Mr. Banerjee that an appeal lies u/s 129A(1)(a) of the Customs Act against the decision of the Additional Collector of Customs cannot be supported. In order to appreciate the rival submissions on this question, it would be necessary for me to deal with the provisions of the Act and also the regulations. Section 146 of the Customs Act provides that a Customs House Agent shall be licensed. Sub-section 2 of Section 146 empowers the Board to make regulations for the purpose of carrying out the provisions of this Section as regards :

- (a) licensing authority
- (b) forms of and fees for licence
- (c) qualifications of the holders of licence and his employee
- (d) restrictions and conditions for the licence
- (e) suspension and cancellation of licence
- (f) appeals against such suspension and cancellation.

Section 129A provides for filing appeals to the Appellate Tribunal against the orders passed by the Authorities, particulars of which have been mentioned in Sections 129A(1)(a) to (d) of the Act. In the exercise of the powers conferred by Sub-section 2 of Section 146 of the Customs Act, 1962, the Central Board of Excise and Customs made the Customs House Agents Licensing Regulation, 1984. Regulation 2 of this Regulation is a definition regulation. Regulation 2(e) defines the Customs House Agent which means a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of convenience or the import or the export of goods at any Customs station. Regulation 5 of the said regulation provides for making an application for licence. Regulation 6 deals with the conditions to be fulfilled by any applicant for grant of licence. Regulation 8 deals with grant of temporary licence. Regulation 10 deals with grant of regular licence. Regulation 12 fixes the period of validity of a regular licence. It says that a licence granted under Regulation 10 shall be valid for a period of 5 years, but may be renewed from time to time in accordance with procedure provided in sub-regulation 2. Sub-regulation 2 of Regulation 12 says that the Commissioner of Customs may, on an application made by the licensee, before the expiry of the validity of the licence under sub-regulation (1) renew the licence for a period of 5 years from the date of expiration of the original licence under Regulation 10 or the last renewal of such licence as the case may be, if the performance of the licensee is found to be satisfactory with reference, inter alia to the following effect :-

- (a) Quantity or value of cargo cleared by such licensee conforming the norms as may be prescribed by the Commissioner.

(b) absence of instances of delay either in the clearance of goods or in the payment of duty for any reason attributable to such licensee and any complaints of misconduct including non-compliance of any of the obligations specified in Regulation 14.

5. Regulation 14 deals with the obligations of Customs House Agent. Regulation 21 deals with suspension and revocation of licence. It says that the Commissioner may, subject to the provisions of Regulation 23, suspend or revoke the licence of Customs House Agent so far as the jurisdiction of the Commissioner is concerned and also the order for forfeiture of security of any of the following grounds :-

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under Regulation 11.

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, whether within the jurisdiction of the said Commissioner or anywhere else.

(c) any misconduct on his part whether within the jurisdiction of the said Commissioner or anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the customs station.

Regulation 23 prescribes the procedure for suspending or revoking licence under Regulation 21. Regulation 23(8) empowers an aggrieved Customs House Agent to make an appeal u/s 129A of the Customs Act to the Appellate Tribunal if such agent is aggrieved by any decision or order passed under Regulation 21 or sub-regulation 7 of Regulation 23. At this stage, it is also necessary to quote 23(7) of the regulation which is as follows :-

"The Commissioner shall after considering the report of the enquiry and the representation thereon, if any made by the Customs House Agent, pass such orders as he deems fit."

6. From a comparative analysis of the aforesaid provisions made in a regulation and also in the Act, let me now consider whether the order passed by the Additional Collector of Customs comes within the Regulation 23(8) of the Regulations or not. As noted herein earlier, Regulation 21 deals on suspension and revocation of licence and not with renewal of the licence. Regulation 23 as noted herein earlier, makes the procedure for suspending or revoking licence under Regulation 21. Therefore, in my view, the order passed by the Additional Collector of Customs cannot be said to have been passed in the exercise of power under Regulation 23(7) of the Regulations. As it deals with suspension and revocation of licence under Regulation 21, and an order of the Additional Collector of Customs cannot be said to have been made under Regulation 23(7) of the Regulations, in my view, the order passed under Regulation 23(7) of the Regulations deals with the order passed on the report of the enquiry and the representation thereon, where no written statement had been filed by the

Customs House Agent. Since by the impugned order, the Additional Collector of Customs have rejected the application for renewal of licence of the writ petitioner and has not proceeded to consider with revocation or suspension of licence, I am of the view that Regulation 23(8) has no manner of application in the present case. Since 23(8) has no manner of application to the facts and circumstances of this case, I am of the view that the writ petition is maintainable against the order passed by the Additional Collector of Customs. Mr. Banerjee, appearing on behalf of the respondent relied on a decision reported in 1990 (28) ECR 469 In my view, this decision of the Tribunal cannot have any manner of application to the facts and circumstances of this case. In that decision, the Tribunal was considering the order of suspension of a licence and was not considering the application for renewal of licence. There cannot be any dispute that any order of suspension or revocation of licence is appealable under Regulation 23(8) of the Regulation which clearly says that any order or decision for revocation or suspension of licence or under Regulation 23(8) of the Regulation is appealable u/s 129A(1)(a) of the Act. Therefore, in my view, this decision of the Tribunal cannot have any manner of application to the facts and circumstances of this case. Accordingly, the preliminary objection raised by Mr. Banerjee cannot be sustained in law, and is, therefore, overruled.

7. Let me now consider the merit of this writ application. As noted herein earlier, the order refusing to renew the agent's licence which had expired on 13th of November, 1995, by the Collector of Customs is under challenge in this writ application. There is no dispute that the application for renewal of the licence was admittedly made before the time that is to say before the expiry of the period of the licence of the writ petitioner. On 13th of December, 1995, first a show cause notice was issued in respect of the renewal application alleging misconduct and non-compliance with the obligations under Regulation 14 of the said Regulation. This show cause notice has been annexed to the writ petition. From a plain reading of the show cause notice, it appears that the allegations were founded in the following manner :-

- (a) The agent had acted without the authority.
- (b) The agent had made over to persons not entitled to receive without proper challans and documents.
- (c) The writ petitioner and Sri Dutta allowed one Chandan Ghosh who was admittedly not an employee of the concern to deal with the materials and the said Chandan Ghosh was an employee of an unauthorised buyer.
- (d) The writ petitioners abetted and aided the importer to dispose of the exempt imported materials.
- (e) The writ petitioner concealed the above activities from his employees.
- (f) The writ petitioner also manipulated the job files. In this connection, four specified and other undisclosed documents were sought to be relied on.

8. A reply to the show cause notice was filed by the writ petitioner on 22nd December, 1985 in which the following denials have been made.

1. The writ petitioner acted on behalf of the R.S.I. (importer) in filing and processing the bills of entry. Letters of authority were annexed.

2. The imported materials were handed over to the importer which was confirmed by the importer in course of enquiry conducted by the department.

3. Mr. Bhaya of R.S.I. had not even alleged that the writ petitioners were not authorised agents or that imported goods were not delivered to them.

4. Mr. Bhaya did not state anything to show that the petitioners had abetted.

5. Function of the agent was limited to clearance of goods from Customs Station and it was so done. The writ petitioners had no hand or knowledge with regard to subsequent action of the importer.

9. A further reply was also filed by the writ petitioner on 4th of January, 1996, in which the writ petitioners made the following additional statements :-

(a) On 17-2-1994, the writ petitioner No. 2 was not allowed to ascertain the facts from the concerned employees.

(b) No enquiry was made from importer to ascertain the existence or non-existence of authority.

(c) On the basis of imported documents, the writ petitioners prepared the relevant papers which were accepted and acted upon by the department.

(d) After clearance, the writ petitioners handed over to the importer and the goods were stored in Central Warehousing Corporation (Non-bonded Ware House).

Therefore, the duty of the agent ceased as soon as the goods were stored in the Central Warehousing Corporation (Non-bonded Ware House).

(e) The statements of Bhaya had confirmed that the writ petitioners acted as agents, cleared the goods and the goods were stored in C.W.C. Warehouse. Accordingly, it was asserted that thereafter the liability of the writ petitioners ceased. Bhaya had given details of deliveries made by them to other parties. Therefore, according to the writ petitioners, there was no question of abetting in the matter of delivery to others.

(f) Function of the agent was explained and the writ petitioners claimed that they had nothing to do with the alleged illegalities.

(g) Bhaya admitted that Chandan Ghosh was an employee of Damani and was engaged by them to act on behalf of the R.S.I. This admission was also made by Damani.

(h) It was not within the knowledge or control of the clearing agents (writ

petitioners) whether imported materials were delivered to supporting manufacturers.

(i) Central Warehousing Corporation did not make any allegation against the writ petitioners relating to mis delivery

(j) Use of Rubber Stamp by Chandan Ghosh was a mystery. It was alleged that anyone could make such Rubber Stamp,

(k) The writ petitioners were not agents for corresponding exports and had no opportunity to verify the discharge obligations.

(1) The writ petitioners had no obligation to ensure how, where and when and the way the importer dealt with the goods after they had cleared the goods properly from the Customs,

(m) The case of misconduct and non-compliance with regulations as made in the show cause notice were also denied by the writ petitioners.

On 1st of March, 1996, a further letter from the department alleging that deposits were made in the warehouse by authorised representative Sri K.C. Paul and deliveries were taken by Sri Chandan Ghosh for and on behalf of the writ petitioners, as an authorised representative of the writ petitioners, was received by them. From the letter, it further appears that the writ petitioners had in fact, authorised Chandan Ghosh to act on their behalf and pursuant to such authorisation. Sri Chandan Ghosh had acted on behalf of the writ petitioner and taken deliveries of the goods from the Warehouse. With the said letter, proper authorisation in favour of Jayanta Das and Krishendu Dhar to undertake bonding and exbonding of the import cargo in the warehouse was also enclosed. A letter of Jayanta Das to Warehouse Manager authorising Sri Chandan Ghosh to take delivery of the goods from the warehouse was also annexed. Specimen signature of Sri Dhar and Das were also annexed. A reply to this letter was also written by the writ petitioners on 7th of February, 1996. From the said letter, it appears that it was alleged that the staff or workers had no power to authorise or further delegate the power and that the concerned department having acted upon such further delegation was at fault as the staff or workers had no power to authorise or further delegate his power. It was reiterated by the writ petitioner that beyond Customs areas they had no responsibility. The writ petitioners further alleged that Jayanta Das was not examined to find out and ask him to find out and authorise Sri Chandan Ghosh. It was further repeated that only Jayanta Das and Sri Dhar were authorised by the writ petitioners. The writ petitioners, therefore, alleged that as none of their explanations tendered was proved to be incorrect and yet renewal was not granted by the authority. It was further alleged that none of the exporters had made any allegation and in fact, had confirmed in writing that the entire quantity was received by them. The importers had not alleged that the writ petitioners had any hand in the alleged diversion. In the order refusing renewal of licence of the writ petitioners passed on 29th of March, 1996 which is under challenge in this writ application, the Authorities referred to:

1. The Application for renewal filed by the writ petitioner on 30th November, 1995.

2. To the show cause notice dated 13th of December, 1995.

3. To the show cause notice dated 1st of March, 1996 and to the replies of the writ petitioners dated 22nd December, 1995 and 4th of January, 1996.

10. From a reading of the said order, it also appears that an observation was made by the Collector of Customs that in considering the application for renewal, he had not adjudicated the alleged contravention of provisions of law and considered only the question of renewal under the Regulation. The Authorities relied on the statement of Mr. Dutta made on 17th February, 1994 and also the statements made in the earlier petition were considered. It was found that the agents were in fact, authorised and also referred to several instances where Chandan Ghosh had been acting. It was further found that Jayanta Das had given the authority and that he had a competent officer of the Agents. The Authority also found that the rule of the agents in aiding and abetting the importer in disposal of the imported materials by allowing Chandan Ghosh, not an employee of the agent to operate for and on their behalf using their challans, Rubber Stamp and delivery order was fully established. The Authority also found that secret codes were explained by Sri Dutta and the petitioners had acted without any law of authority. By the above findings arrived at by the Authorities, it was found in the order under challenge in this writ application that it was fully established that the licence could not be renewed and the application for renewal of licence filed by the writ petitioner must be rejected. Now the question arises is whether in the exercise of my power under Article 226 of the Constitution, the findings arrived at by the Commissioner of Customs in the impugned order can be set at naught. From the order under challenge in this writ application, it is evident that the Commissioner of Customs in the impugned order itself has observed that while considering the application for renewal of the licence made by the writ petitioner, he was not adjudicating the allegations made in the show cause notices relating to contravention of the various provisions of law alleged therein. The Commissioner of Customs also observed in the impugned order that the scope of enquiry before him was confined as to whether the licence of the agent should be renewed under the provisions of the said regulation. The impugned order also discloses the ground by which the application for renewal was rejected. It says that the agents had acted for R.S.S. without having any authorisation and the imported goods were delivered to persons not entitled to receive them, delivery challans were made, persons not employed with the agents, but was employee of unauthorised buyer of imported materials was allowed to execute documents and represent himself as the employee of the agents and use their rubber stamps, proper records were not made, and secret goods were ascribed on job files and after investigation started, such secret goods were erased by applying fluid. In order to decide the issues arising in the present case, the Commissioner of Customs considered the necessary facts. In

the impugned order, the Commissioner of Customs came to a conclusion of fact that after considering the replies and the stand taken by the agents, enquiries were conducted at the Central Warehouse. As a result of such enquiry, it was found by a letter dated 13th September, 1993, that the agents had in fact, authorised Mr. Chandan Ghosh for taking delivery from non-bond account and also had supplied the said warehouse with the attested signature of Chandan Ghosh on a rubber stamp of the agents. The Commissioner of Customs also came to a conclusion of fact that on enquiry from the warehouse, it was found that Chandan Ghosh had signed for and on behalf of the agents as depositors of the goods on the stamp of the agents several delivery orders, the particulars of dates were mentioned in the impugned order itself. On consideration of the entire materials on record, the Commissioner of Customs came to a conclusion of fact that the goods made out by the agents as to their ignorance and as to their non-involvement relating to the storage of the goods at the warehouse and delivery therefrom through Chandan Ghosh could not be believed. On such consideration of facts, the Commissioner of Customs came to a conclusion that the agents had abetted in disposal of the imported goods by allowing Chandan Ghosh to function as their employee and to use their rubber stamp and give instructions on their behalf to the warehouse. This finding of fact, according to Mr. Mukherjee, was a perverse one. I am unable to agree with Mr. Mukherjee. In my view, the finding arrived at by the Commissioner of Customs was passed on consideration of the materials on record and the evidence adduced by the parties. By any stretch of imagination, this finding cannot be said to have been arrived either without consideration of the materials on record or without applying its mind. Since this finding, according to me, was arrived at on consideration of materials on record, it cannot be said that the finding was a perverse one. Therefore, the argument of Mr. Mukherjee on the question of the perversity of the findings of the Commissioner of Customs cannot be supported. Mr. Mukherjee, appearing for the writ petitioner contended that the duties and obligations of the agents came to an end with the delivery of the goods to the importer immediately after clearance from the Customs Area as the agent had mentioned that the goods were not deposited at the warehouse by them, nor were taken delivery from the warehouse by them. This argument was also advanced on behalf of the writ petitioner before the Commissioner of Customs. The Commissioner of Customs negatived such contention and came to a conclusion of fact that the goods were deposited in the warehouse by the agents and in their own name as depositor. The Commissioner of Customs in the impugned order further found that once this goods were deposited by the agents in their name, the order for delivery of such goods could only be issued by them or under their authority, otherwise, the warehouse could not honour any other instruction. The Commissioner of Customs took into consideration the case made out by the writ petitioner initially in their reply dated 22nd December, 1995 when Sri Mukti Prasad Dutta, a partner of the petitioner was interrogated. The Commissioner of Customs also came to a conclusion of fact that Sri Chandan Ghosh being not duly authorised to act on behalf of the agents who was provided

with their rubber stamp and who signed numerous documents for and on behalf of the agents, and therefore, it cannot be disputed now by and on behalf of the agents thus Chandan Ghosh being not authorised by them was allowed to operate under their instructions. The Collector of Customs also came to a conclusion of fact that agents had allowed Chandan Ghosh who was admittedly not an employee of the agents to operate on behalf of the agents by using their rubber stamp to conceal the facts relating to deliveries of the imported materials which was fully corroborated and supported by the subsequent documents, obtained from the warehouse. On consideration of the above factual matter, the Commissioner of Customs came to a conclusion of fact that the stand taken relating to complete ignorance as to Chandan Ghosh in the replies dated 22nd December, 1995, 4-1-1996 and 7-3-1996 was wholly unbelievable and cannot be accepted. Upon the aforesaid consideration, it was held by the Commissioner of Customs that the rule of the agents in aiding and abetting the importer in disposal of the imported goods by allowing Chandan Ghosh who was not an employee of the agents to operate for and on their behalf using their challans, rubber stamp and delivery orders was fully established. The Commissioner of Customs also came to a conclusion of fact that the general sweeping allegation that statements were made under duress or threat could not be taken into consideration in view of the facts and evidence and materials on record as discussed in the impugned order. From the discussion made in the impugned order and from the entire findings arrived at by the Commissioner of Customs, it was concluded in the impugned order that the question of renewal of the licence could not arise in view of the fact that the agents had aided and abetted the importer to dispose of the exempt imported materials. From the above, therefore it cannot be said that the findings of fact arrived at by the Commissioner of Customs in the impugned order is open to be challenged when I am of the view that such finding of fact was arrived at by the Commissioner of Customs on consideration of materials on record and also the evidence adduced by the parties. In my view, this finding of fact cannot be interfered with in the exercise of my power under Article 226 of the Constitution. Therefore, in my view, this writ petition is concluded by a finding of fact which cannot be interfered with in the exercise of my power under Article 226 of the Constitution, until and unless it could be shown that such finding was a perverse one. The Supreme Court in the case of State of West Bengal Vs. Atul Krishna Shaw and Another, , has clearly opined that High Court in the exercise of its power under Article 226 of the Constitution shall not interfere with the finding of fact arrived at by the Tribunal unless such finding is based on no evidence or beset with surmises and conjectures. In paragraph "7" of the said decision at page 2208, the Supreme Court has observed as follows :-

"It is indisputably true that it is a quasi-judicial proceeding. If the appellate authority had appreciated the evidence on record and recorded the findings of fact, those findings are binding on this Court or the High Court. By process of judicial review we cannot appreciate the evidence and record our own findings of

fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would on given facts and circumstances come to the conclusion reached by the appellate authority on the basis of the evidence on record, certainly this Court would oversee whether the findings recorded by the appellate authority is based on no evidence or beset with surmises or conjectures."

11. From the above observations of the Supreme Court, it is, therefore, clear that if the findings arrived at by the Tribunal are based on evidence and consideration of materials on record, question of interference with such finding of fact under Article 226 of the Constitution shall not at all arise. Again in the case of Mani Nariman Daruwala alias Bharucha (Deceased) through Lrs. and Others Vs. Phiroz N. Bhatena and Others, , the Supreme Court has observed that in the exercise of jurisdiction under Article 227 of the High Court can set aside or ignore the findings of fact of an inferior Court or Tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or Tribunal has come to, or in other words it is a finding which was perverse in law. Except to the limited extent indicated above, the High Court has no jurisdiction to interfere with the findings of fact.

12. In view of the aforesaid decisions of the Supreme Court and in view of the discussions made hereinabove that the findings of the Commissioner were not perverse one, it is not open to me to interfere with the said findings of fact in the exercise of my power under Article 226 of the Constitution.

13. For the reasons aforesaid, there is no reason to interfere with the order impugned in this application under Article 226 of the Constitution.

14. Accordingly, the writ petition fails.

15. There will be no order as to costs.

16. Let a xerox copy of this judgment duly countersigned by the Assistant Registrar of this Court be given to the parties upon their undertaking to apply for and obtain certified copy of the same on usual undertaking.