

(2014) 01 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 312 of 1998

M/s. Central Cables Limited, Govind Daga, Managing Director
of M/s. Central Cables Limited and Mrs. Manisha Pande,
Purchase Officer of M/s. Central Cables Limited

APPELLANT

Vs

The Union of India and The Deputy Commissioner of Customs
and Central Excise, Nagpur

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227

Customs Act, 1962 — Section 111 111(a) 111(d) 111(f) 111(h)

Citation : (2014) 201 ECR 307 : (2014) 304 ELT 63 : (2014) 28 GSTR 260

Hon'ble Judges : Z.A. Haq, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : P.N. Kothari, for the Appellant; S.K. Mishra, ASGI, for the Respondent

Judgement

B.P. Dharmadhikari, J.—By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners pray for quashing of an order dated 25.11.1997 passed by Respondent No. 3-Deputy Commissioner of Customs and Central Excise at Nagpur. By said order, Respondent No. 3 confiscated a machine (capital goods) Gravi Mix Magruire WSB 420, valued at Rs. 5,21,396/- u/s 111(d) and (f) of the Customs Act, 1962 (hereinafter referred to as the Act), and in terms of its Section 125, gave option to pay fine of Rs. 1,30,000/- in lieu thereof, in addition to payment of appropriate duty. He imposed penalty of Rs. 35,000/- on petitioner No. 1 u/s 112(a) of the Act, of equal amount on Managing Director personally and Rs. 15,000/- on Purchase Officer of Petitioner No. 1-Company. The Managing Director is Petitioner No. 2 before this Court while the Purchase Officer is Petitioner No. 3. Respondent No. 1 is the Union of India while Respondent No. 2 is the Commissioner of Customs and Central Excise. This Court issued notice before admission on 29.01.1998 and then issued rule in the matter on 18.02.1998. The petitioners were permitted to pay due customs duty and the respondents were directed to release machine. The petitioners gave an

undertaking to pay fine and penalty as imposed, in case they fail in the petition. On 19.03.1998, Division Bench of this Court modified that order and directed release of machine on payment of full amount of Customs duty and upon furnishing a Bank guarantee in the sum of Rs. 1,50,000/-; subject to the same, an interim order staying the operation and effect of impugned order came to be granted. This order and arrangement continues till date. The petition was dismissed in default on 03.07.2006 and was restored subsequently.

2. We have heard Shri Kothari, learned counsel for the petitioners and Shri Mishra, learned Assistant Solicitor General of India, for the respondents.

3. The fact that Petitioner No. 1 is an industrial undertaking manufacturing electric wires and cables at Nagpur or then that Petitioner No. 2 is its Managing Director and Petitioner No. 3 is Purchase Officer, is not in dispute. Putting of a purchase order by the petitioner upon a manufacturer at Frankfurt, Germany, for the above mentioned machine sometime in August 1997 is also not in dispute. The said machine reached Mumbai through aircraft of Indian Airlines on 31.08.1997. As per instructions of the petitioners and upon complying with necessary formalities, it was allowed to be transhipped to Nagpur Airport. It arrived at Nagpur Airport at about 9.30 P.M. on 01.09.1997. According to the petitioners, Airport Manager tried to contact officers of Respondents No. 2 & 3 after receipt of this dutiable machine and as nobody was available, on 02.09.1997 said Manager and petitioner No. 2 visited office of Respondent No. 3 and informed them. Respondent No. 3 thereafter took custody of that machine. After some inquiry, on 05.09.1997, an order detaining the said machine came to be passed. A show cause notice was then issued by Respondent No. 3 to the petitioners on 14.10.1997. The petitioners replied to it on 01.11.1997 and thereafter the impugned order came to be passed on 29.11.1997. Similarly, the fact that Airport at Nagpur came to be declared as Customs Airport on 16.05.1997 as per Section 7(a) of the Customs Act is also not in dispute. The issuance of a notification determining approved place for loading and unloading cargo by Respondent No. 2 on 28.10.1997 is also admitted.

4. In this background, Shri Kothari, learned counsel, submits that in the impugned order, independent operation of provisions of Section 7(a) of the Act has been overlooked. He submitted that the violation of Sections 33, 34 and 36 of the Customs Act, if any, is not by the petitioners but by the carrier i.e. Indian Airlines. He also submitted that the impugned order bases itself upon some material which did not form part of show cause notice and to that extent, is excessive. Lastly, he submitted that as value of machine exceeded Rs. Five lakh, the jurisdiction to take action was with the Commissioner of Customs at Mumbai and not with Respondent No. 3. However, the learned ASGI immediately pointed out that there is no such challenge in writ petition or even before Respondent No. 3 and a question which calls for verification of facts, cannot be allowed to be raised. We have, therefore, not permitted Shri Kothari, learned counsel, to advance arguments on this issue as there may be various delegations and

notifications empowering Respondent No. 3 in the matter. Even otherwise, as the material on record is not sufficient to decide this contention, we are not inclined to decide it without affording due opportunity to the respondents.

5. Shri Kothari, learned counsel has submitted that declaration of Customs Airport u/s 7(a) of the Act is sufficient to allow unloading of imported goods at Nagpur Airport and the reason that in the absence of declaration of an approved place in terms of Section 8(a) of the Act, the goods could not have been unloaded, is unsustainable. He contends that Section 7(a) of the Act is the power given to Central Government and its exercise cannot be controlled or curtailed in any manner by a subordinate like Respondent No. 2. He, therefore, states that goods have been rightly allowed to be transhipped to Nagpur Airport by the customs authorities at Mumbai. He has invited our attention to the provisions of Chapter VI relating to conveyance carrying imported goods. He submits that those provisions cast an obligation upon the carrier Indian Airlines and not upon the petitioners. Relevant definitions as contained in Section 2 are read out to buttress this submission. He points out that even in the absence of notification of approved place, entire Nagpur Airport becomes a Customs Airport and Customs Area and hence Section 33 has not been breached by the carrier. He further submits that Section 34 prohibiting unloading except under the supervision of Customs Officer is also not violated by the petitioners & for the same reasons, there is no violation of Section 36 of the Act. He has also invited our attention to the provisions of Chapter VIII dealing with goods in transit particularly to the provisions of Sections 54 and 55 of the Act. He contends that the machine arrived at Mumbai Airport first and thereafter upon instructions of the petitioners and after the necessary formalities were fulfilled, the Indian Airlines conveyed the goods to Customs Airport at Nagpur as per the law. This Transshipment has been permitted by the Customs authorities at Mumbai. The learned counsel states that because air port at Nagpur was, by said date, already recognized as Customs Airport, Indian Airlines as also responsible Customs Officers at Mumbai allowed this Transshipment. He invites attention to the impugned order to show that there is no finding of violation of Sections 33 and 34 by the present petitioners and hence machine is not confiscated in exercise of powers u/s 111(h) of the Customs Act. To show improvements in impugned order, the learned counsel has taken us through show cause notice as also through the impugned order. He contends that Section 111(d) is not attracted and Section 111(f) has been erroneously invoked as machinery is fully and properly described in import manifest. He further points out that for violation of Section 36, no confiscation is provided for in law. He contends that in this situation, the order of confiscation or direction to pay the amount of Rs. 11,30,000/- in lieu thereof is unsustainable. For same reasons, the order imposing penalty is also liable to be quashed and set aside.

6. Shri Mishra, learned ASGI invites attention to various definitions and thereafter to the provisions to Section 7(a), Section 8(a) and Section 45 of the Act, to urge that until and unless there is a notification of approved place u/s

8(a) and an officer is approved by the Commissioner of Customs for retaining custody in terms of Section 45, the Scheme of Customs Act cannot operate or be successful. It is in this background, he stressed importance of Section 33. The learned counsel states that though Central Government may declare an Airport to be a Customs Airport, that by itself is not sufficient to implement the other provisions of the Act and to control or supervise the movement or import of goods. He points out that the Managing Director of Petitioner No. 1 i.e. Petitioner No. 2 was aware of this Scheme and hence on 04.08.1997 sent a communication to the Competent Authorities to complete necessary formalities in this respect. He further contends that Section 33 which prohibits unloading except at approved place also carves out an exception and the petitioners could have sought permission of proper officer for unloading machine at a place which was not approved. He submits that the petitioners deliberately did not obtain such permission. He further contends that arrival of machine at Nagpur Airport in the night hours i.e. at 9.30 P.M. is admitted and hence, it is beyond office hours or working hours and hence in breach of Section 36 of the Act. He has invited our attention to the provisions of Section 30 to urge that it was necessary for the petitioners to deliver to proper officer an import manifest prior to arrival of aircraft and this has not been done as intimation of arrival itself has been admittedly given on 02.09.1997 i.e. after arrival. He points out that for violation of Section 30 of the Act, penalty of Rs. 50,000/- has been prescribed by the Legislature. He has also invited our attention to the provisions of Section 55 read with Section 46 of the Act to urge that permitting goods to be brought to Nagpur tantamounts to effecting import at Nagpur and hence compliance with the provision like Section 46 of the Customs Act at Nagpur was necessary. He submits that it is in this background that identification of a person to be placed in custody of such machine at Nagpur Airport in terms of Section 45 was/is essential. Inviting attention to the provisions of Section 111 of the Act, the learned counsel states that it is not a penal provision and various breaches/violations noted therein may in some cases overlap. The provisions of Section 111(d), (f) and (h) are rightly found to be violated. Section 124 of the Act is pressed into service to demonstrate that procedure as prescribed therein for confiscation of machine has been followed in the present matter and thereafter an option in lieu of confiscation, in terms of Section 125, has also been extended to the petitioners. He reads out show cause notice to urge that the petitioners were noticed about violation of Sections 30, 33, 34, 36 and 55 with Section 111(d), (f) and (h) of the Act. Section 112(a) and (b) which deals with imposition of penalty were also pointed out to the petitioners along with the communication dated 04.08.1997 which reveals knowledge with the Managing Director of Petitioner No. 1, of absence of notification of the approved place. Lastly, the learned counsel states that the provisions of Sections 128, 129, 130 and 130-E of the Customs Act show hierarchy of Tribunals and limited scope of appeal when matter comes to this Court ultimately u/s 130-A of the Act. He contends that in the light of law as laid down by the Hon"ble Apex Court in the case of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and

Others, , Division Bench of Madras High Court in the case of Nivaram Pharma Pvt. Ltd. Vs. The customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, The Commissioner of Central Excise (Appeals) and The Assistant Commissioner of Central Excise, Madras IV Division, and Division Bench of this Court in the case of Indoworth India Ltd. Vs. Customs, Excise and Service Tax Appellate Tribunal and Commissioner of Customs and Central Excise, , present writ petition cannot be and could not have been entertained. An order dated 10.09.2012 in Writ Petition No. 5410 of 2011 (M/s. GMMCO Limited vs. Union of India thr. Ministry of Finance, New Delhi & Ors.) is also pressed into service. Lastly, it is urged that if this Court finds that cognizance could have been taken directly, the scope available for scrutiny under Articles 226 and 227 of the Constitution of India, is very limited. The findings reached by Respondent No. 3 cannot be substituted until and unless the same are shown to be perverse. He further argues that admitted facts show the breaches and, hence, the impugned order cannot be interfered with.

7. In reply, Shri Kothari, learned counsel submits that in writ petition, initially only notice before admission was issued and the matter came to be admitted after hearing the respondents. The respondents did not raise any objection on account of availability of an alternate remedy at that juncture. The matter was heard again on interim orders and even at that juncture, no such objection was raised, hence entertaining such objection almost after 15 years will be travesty of justice. He relies upon the judgments in the case of Durga Enterprises (P) Ltd. vs. Principal Secretary, Government of Uttar Pradesh, reported at 2004 LS (SC) 971, Zuari Estate Development and Investment Co. Pvt. Ltd. Vs. J.R. Kanekar, Deputy Commissioner of Income Tax (Assessment) and Another, and in the case of Asmaco Plastic Industries and Another Vs. Municipal Corporation for City of Thane and Others, , to demonstrate how such preliminary objections raised belatedly have been discarded by the Hon"ble Apex Court as also by this Court. He submits that communication dated 04.08.1997 by Petitioner No. 2 was not in his capacity as Managing Director of Petitioner No. 2 but in a different capacity as a representative of an organization of the industrialists. That communication, therefore, cannot be used to the prejudice of the petitioners in present matter. He further contends that important provisions like Section 7(a), Section 8(a) and Section 111 of the Act need to be interpreted by this Court in present matter and hence writ petition has been rightly entertained.

8. We have noted that the provisions of the Customs Act, 1962, prevailing in 2012-13 were referred to by the Counsel. The attention was also not invited to the question of Transshipment permit and the Rules, regulating such Transshipment. Both the counsel then read out the Goods Imported (Conditions of Transshipment) Regulations, 1995. We have also taken note of the fact that in the impugned order, no action has been taken against the carrier but then Station Manager of Indian Airlines, Nagpur, has been cautioned to be more careful in future.

9. The communication dated 04.08.1997 sent by Petitioner No. 2 in the capacity of President of Vidarbha's Economic Development Council to the Commissioner, Central Excise, Nagpur, is mentioned in show cause notice as also used in the impugned order. The fact that copy of said communication was supplied to the petitioners along with the show cause notice is not in dispute. The show cause notice states that through this communication, said person requested the Commissioner to appoint Airport Authority of India as custodian to enable commencement of full fledged cargo operations at Nagpur. In the impugned order, this communication again finds mention to draw an inference that the Managing Director of Petitioner No. 1 was fully aware of the fact that the Airport at Nagpur was not approved for loading of export cargo and unloading of imported cargo, and still he issued the directive to deliver the goods in question at Nagpur Airport without taking prior permission u/s 34 of the Customs Act, 1962. The respondents have not produced this letter on record. The petitioners were duty bound to assail this finding and, therefore, produce that communication, however, they also have failed to do so.

10. The perusal of above mentioned 1995 Transshipment Regulations show that those Regulations are framed u/s 157 read with Section 54(3) and Section 158 of the Customs Act and notified in gazette on 28.09.1995. Thus, these Regulations were in force on 31.08.1997 when machine reached Mumbai Airport from Frankfurt or then at Nagpur on 01.09.1997. The petitioners, have in para 10 of their petition, referred to Transshipment permit issued by the Customs authorities at Mumbai. They have also contended that this was obviously done as authorities were aware that Nagpur Airport is a Customs Port for unloading the said imported machine.

11. Rule 2(a) of the Customs Act defines custodian to mean a person approved by the Commissioner of Customs Act for the purpose of Section 45 of the Act. Clause (b) defines declarant to mean the person in charge of the conveyance in which the goods are imported or his agent or then a person authorized to tranship the goods. Petitioners do not fit into this definition at all. Transporter means the owner of Aircraft. Rule 3 is on conditions governing Transshipment. Transshipment is permitted under 1995 Regulations upon an application made by the declarant to the proper officer of Customs seeking permission of Transshipment of goods imported. If a permission to tranship is to be refused, the Commissioner of Customs has to extend a reasonable opportunity of being heard to the declarant. Clause (d) of Rule requires Transporter like the petitioners to execute a bond in such form and with such surety or security as the Commissioner of Customs may specify. The declarant or the Transporter has to complete the formalities for import at the Customs station of destination. Rule 4 is on terms of bond to be executed. Rule 5 is about payment of fees. Rule 6 is about putting seal on imported goods to be transferred or transhipped. In present facts, issuance of Transshipment permission is not in dispute and obviously Indian Airlines, therefore, has to be & was the declarant. Phrase "conveyance" is defined in Section 2(9) of the Customs Act, to include an

aircraft. The petitioners, therefore, may have executed necessary bond as agent of the declarant. It, therefore, follows that machine has been permitted to be transhipped to Customs Airport at Nagpur by counter parts of Respondents No. 2 & 3 at Mumbai Airport. The carrier viz., Indian Airlines accordingly transhipped the machine from Mumbai to Nagpur. This movement, therefore, obviously is within knowledge of and with consent of the customs authorities. Thus, on one hand we get an assertion by the respondents of a knowledge with the petitioners that there was no declaration or notification of approved place in terms of Section 8(a) or approval of a competent person for retaining custody u/s 45 insofar as Nagpur Customs Airport is concerned, and on the other hand we get a Transshipment permit issued by the respondents themselves authorizing Transshipment and, therefore, allowing unloading of imported machine at Nagpur. This Transshipment permit is later in point of time & emanates from the competent authority. In the impugned order, this Transshipment permit or then implications flowing therefrom are totally lost sight of. At this stage, we feel that communication dated 04.08.1997 sent by Petitioner No. 2 needed to be evaluated in the impugned order in the background of this Transshipment permit which obviously is a later & more clinching document. That has not been done. In show cause notice itself, the respondent no. 2 & 3 mention that M/s. Indian Airlines have on 5.9.1997 forwarded a photocopy of a general bond executed by them for Transshipment & note that the machine in question was covered under the Transshipment permit. But then the impugned order does not evaluate or appreciate this fact.

12. During arguments, the learned ASGI has urged that for violations, which attract confiscation u/s 111 or penalty u/s 112, "mens rea" is not an essential ingredient. He relied upon Section 138A which presumes an culpable mental state in the accused in any prosecution for an offence under the Act. He has contended that thus, when prosecution is for offences as disclosed in Chapter XVI only, mens rea is an important ingredient and otherwise, it is not relevant at all. The learned counsel for the petitioners chose not to dispute this statement. Section 138A requires the Court to presume existence of such mental state and burden is cast upon the accused to prove that he had no such mental state with respect to act charged as offence in the prosecution. This provision, therefore, is not sufficient to conclude that in violations, as alleged in present matter, mens rea is not an important ingredient. In any case, bonafides or absence of any malafides may be one of the relevant factors while deciding whether to proceed to exercise power u/s 111 of the Act to confiscate the machine or then to proceed to impose penalty u/s 112(a) and (b) of the Act. However, in present matter, we need not dwell on this controversy.

13. Transshipment of machine at Nagpur, its unloading at Nagpur and efforts made by the petitioners on 02.09.1997 may rule out any intention to violate the provisions of either Section 30, Section 33, Section 34, Section 36 or Section 55 of the Customs Act on its part. Section 55 of the Customs Act is about entry of transhipped goods on arrival at Customs Airport. Such entry is presumed to be

first entry recording that the machine is liable to duty and has to be entered in like manner as goods are entered on first import thereafter i.e. in terms of Section 46. Section 54 is on Transshipment and stipulates that bill of Transshipment is to be presented to proper officer in prescribed form. Sub-section (3) enables proper officer to allow the goods to be transhipped without payment of duty subject to such conditions as may be prescribed i.e. in 1995 Regulations. The intention of the petitioners 2 & 3 needed to be gathered in this background.

14. Section 7 is about power of Central Government to notify and appoint Airport to be Customs Airport for unloading and loading. Section 8 enables the Commissioner of Customs to approve proper place in any Customs Airport for unloading and loading and to specify limits of customs area. The Customs Area is defined in Section 2(11) to mean the area of Customs Station and it includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities. The Customs station is defined in Section 2(13) to mean a customs port or customs airport or land customs station. Section 2(10) defines "customs airport" to mean airport appointed under clause (a) of Section 7. Section 8 employs the word "may" thereby giving discretion to the Commissioner of Customs to approve proper place in any customs airport for the purposes of loading and unloading. When all these provisions are harmoniously construed, it is apparent that on 16.05.1997, Airport at Nagpur became a customs airport and, therefore, customs area/customs station. Whether loading or unloading is to be allowed in the area of entire airport or then it should be restricted to its particular part/parts, is the decision which can be taken by the Commissioner of Customs in terms of Section 8. If airport is small, he may approve entire airport as a proper place for loading/unloading. If airport is large, he may restrict the loading and unloading of dutiable goods to more than one portions of its area as per operational demands.

15. It is in this perspective that Section 45 needs to be approached. Said section is in Chapter VII which is about clearance of imported goods. Section 45 places restriction on custody and removal of imported goods. It states that the imported goods unloaded in customs area shall remain in custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption. This is subject to any provision in any other law to the contrary as this section starts with the word "save or otherwise provided in any law for the time being in force". Section 33 contemplates unloading at approved place only. It also carves out an exception and hence goods can be unloaded at a place not approved u/s 8(a) with the permission of proper officer. In absence of proper arguments, we can not say whether in exercise of this power, permission to unload can be granted even at non-customs airport. Section 33, therefore, may not be construed as an embargo on unloading of imported goods at Customs airport. Section 111(a) lays down that any goods imported by air which are unloaded or attempted to be unloaded at any place other than customs airport appointed under clause (a) of Section 7 are liable to be confiscated. This has no reference to S. 33 or permission under it. The provisions of clause (h) state that

any dutiable goods unloaded or attempted to be unloaded in contravention of the provisions of Section 33 or section 34, are also liable to be confiscated. Thus, contravention of Section 7(a) is not ipso facto contravention of Section 8(a) of the Act. Section 33 will thus get attracted only when in a given case, in customs airport, imported goods are unloaded at a place other than the place approved u/s 8(a) for such unloading without taking prior permission u/s 33 of the proper officer. Section 33, therefore, does not bar unloading at customs airport.

16. If the contention of the respondents about impracticability of implementation of Customs Act, 1962, without mention of approved place in terms of Section 8(a) or without grant of recognition to a person as "proper officer" in terms of Section 45 are presumed to be correct: as there was no approved place for Nagpur customs airport till 28.10.1997, the area of entire airport may be required to be viewed as approved place. In any case in that event, bar contemplated u/s 33 will not be attracted. Section 33 can apply when there exists an approved place for unloading in customs airport and hence there is also a place which can be shown as non-approved place for such unloading within the very same airport. Section 34 is about unloading under the supervision of customs officer. Section 36 prohibits unloading after working hours. Looking to defence of the respondents, it is apparent that they had absolutely no arrangements & therefore, no officer to supervise such unloading and similarly they had no working hours for unloading at Nagpur customs airport. Their defence shows that all these arrangements have been made with effect from or after 28.10.1997. It can not be, therefore, said that S. 33 or S. 34 stand violated in present case, that too at the instance of or by the petitioners who were never in-charge of the aircraft. In any case, in the impugned order, the power to confiscate has been exercised only u/s 111(d) and (f) of the Customs Act, 1962. In other words, though in show cause notice Section 111(h) was also invoked, in the impugned order, confiscation is not effected under that provision. Section 111(h) permits confiscation for violation of provisions of Section 33 or Section 34. It is obvious that when confiscation is not u/s 111(h), it is not necessary for this Court to labour more on the scope or interpretation of the provisions of Section 33 or Section 34 or Section 8(a). The issue can be again delved into in detail when it squarely arises. Needless to mention that violation of Section 36 does not warrant measure of confiscation u/s 111 of the Act.

17. Section 111(d) of the Act reads as under:

any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force

It envisages goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under the Customs Act or under any other law for the time being in force. Thus, use of Indian customs waters as

defined in Section 2(28) of the Act for such import or attempt is an integral part of this clause. In present matter, the petitioners have not made any such effort. We are not in a position to accept the submission of the learned ASGI to the effect that words "imported or attempted to be imported" used in said clause, cannot be correlated with Indian customs waters.

Similarly, clause (f) of Section 111 reads as under:

any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned

Thus, only when the machine is found not mentioned in import manifest or import report, said clause gets attracted. This is not the fact here. Apparently, this provision, therefore, is not applicable at all in present matter. Confiscation ordered u/s 111(d) and (f) of the Customs Act, 1962, in the impugned order is, therefore, unsustainable.

18. Section 112 is about imposition of penalty for improper importation. Its clause (a) is about confiscation u/s 111 while clause (b) is about acquiring possession of or in any way carrying, removing, depositing the goods with knowledge that same are liable to be confiscated u/s 111. The impugned order imposes penalty u/s 112(a). As we have found that confiscation itself is not possible in present facts, order of imposing penalty is also unsustainable.

19. The provisions of Section 30 of the Act, to which our attention has been drawn by the learned ASGI while alleging its violation, show that it casts obligation upon a person in charge of an aircraft. The said section appears in Chapter VI which deals with conveyance carrying imported goods in which Sections 33, 34 & 36 are also placed. The perusal of all provisions in said Chapter show that the obligation is cast upon the person in charge of such conveyance. The petitioner before us was not a person in charge of aircraft carrying the machine to Nagpur. Section 30 read out to us requires person in charge of aircraft to deliver to the proper officer an import manifest prior to arrival of the aircraft. Subsection (1) of Section 30 containing this obligation is substituted with effect from 14.05.2003. Section 30 as it stood at the relevant time requires the person in charge to deliver to the proper officer such import manifest within 24 hours after arrival of an aircraft at customs station i.e. customs airport. Here, the aircraft arrived at the Nagpur customs airport at 9.30 P.M. on 01.09.1997 and the respondents were informed about arrival of said machine on 02.09.1997 itself. The impugned order, rightly, nowhere alleges violation of Section 30 of the Customs Act, 1962.

20. In this situation, taking overall view of the matter, merely because on 04.08.1997 Petitioner No. 2 had written to Respondent No. 2 to take necessary steps to enable commencement of full fledged cargo import-export operations from Nagpur customs airport, an inference as drawn in the impugned order cannot be sustained. Even otherwise, on merits also no confiscation could have been ordered u/s 111(d) and (f) of the Customs Act, 1962.

21. This brings us to the preliminary objection raised by the learned ASGI and reply arguments by Shri Kothari, learned counsel. The judgments cited by them are already mentioned by us (supra). It is apparent that preliminary objection is being raised for the first time, that too at the stage of final hearing and almost after 16 years. In this situation, we are not inclined to refuse to act upon the cognizance taken under Article 226 of the Constitution of India because of availability of alternate and equally efficacious remedy. Had the petitioners raised objection immediately, the situation would have been otherwise. We find the judgment in the case of Durga Enterprises (P) Ltd. vs. Principal Secretary, Government of Uttar Pradesh, (supra), sufficient to answer the objection raised by the learned ASGI. In this situation, we leave the question of scope & field occupied by Section 8(a) of the Customs Act, 1962, open for appropriate consideration in future. The impugned order dated 25.11.1997 is quashed and set aside. The respondents to appropriate amount of duty paid by the petitioners towards duty on imported machine. If on that count, they are entitled to charge any interest in accordance with law, they are permitted to claim the same from the petitioners and recover it. The order of confiscation and penalty is also set aside. Writ Petition is accordingly allowed. The undertaking and security/surety or bank guarantee furnished by the petitioners are discharged. The Registry to return the same to Petitioner No. 2. However, there shall be no order as to costs. Rule is made absolute in above terms.