**(2002) 09 BOM CK 0051**

**In the Bombay High Court**

**Case No :** Writ Petition No. 1394-1395 of 2002

Premium Intertrade Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

**Date of Decision :** 11-09-2002

**Acts Referred:**
Civil Procedure Code, 1908 (CPC) — Section 11

**Citation :** (2003) 153 ELT 513

**Hon'ble Judges :** Ranjana Desai, J;A.P. Shah, J

**Bench :** Division Bench

**Advocate :** R.S. Mehta and N. Yajnik, instructed by Purnima C. Bhatia, for the Appellant; M.I. Sethna and P. Jetley, for the Respondent

## Judgement

A.P. Shah, J.—Rule. Respondents waive service. By consent of the parties petitions are taken up for final hearing.

2. These writ petitions under Article 226 of the Constitution seek to challenge the order dated 6-4-2002 passed by the Commissioner of Customs, Mumbai directing attachment of the premises bearing Nos. 6/1 and 6/2 situated at Lloyds Garden, Prabhadevi, Mumbai, purchased in the name of M/s. Premium Intertrade Pvt. Ltd. and Vinita Lakhotia respectively towards pending recovery of Government dues from M/s. Om Traders, M/s. Tropical Exotics and M/s. Prime Agricom under Sub-clause (ii) of Clause (c) of Section 142(1) of the Customs Act, 1962 read with Customs (Attachment of Properties of Defaulters for Recovery of Government Dues) Rules, 1995. Writ Petition No. 1394 of 2002 is filed by M/s. Premium Intertrade Pvt. Ltd. and its Director Vinita Lakhotia. Writ Petition No. 1395 of 2002 is filed by Vinita Lakhotia in her individual capacity.

3. Briefly stated the facts of the case are that on the basis of the information CIU/ ACC detected a duty drawback fraud to the tune of Rs. 50.14 crores committed by one Nawal Kishore Bangad through three firms viz. M/s. Om Traders, M/s. Prime Agricom and M/s. Tropical Exotics. Nawal Kishore Bangad and Shri Giriraj Das Bangad are two partners of M/s. Om Traders and M/s. Prime Agricom while

 

Smt Sangeeta Bangad is wife of Nawal Kishore Bangad the sole proprietor of M/s. Tropical Exotics. Vinita Lakhotia is the sister of Sangeeta Bangad and sister-in-law of Nawal Kishore Bangad. The statement of Nawal Kishore Bangad was recorded u/s 108 of the Customs Act on various dates. Nawal Kishore Bangad admitted that he had forged documents and rubber stamps which were used for certification of invoices for advance payment and making of shipping bills. He admitted that on the basis of the forged shipping documents duty drawback was claimed by the said three firms as follows :

Accordingly on 10-11-1997 show cause-cum-demand notice under Rule 16 of the Customs and Central Excise Duties (Drawback) Rules, 1995 were issued by the department demanding the duty drawback amount along with interest @ 20% p.a. towards the payments made to the above said three firms. Pursuant to the show cause notices Nawal Kishore Bangad appeared before the Customs Department and in his statement recorded on 20-11-1997 u/s 108 he had admitted that he had given Rs. 4.50 crores to Vinita Lakhotia and her firms/ companies, out of Rs. 50.14 crores which he claimed fraudulently by submitting forged shipping documents, from the Customs Department. He also admitted that Vinita Lakhotia utilised this money to purchase two flats at Lloyds Gardens, Prabhadevi, Mumbai in her name and in the name of her company M/s. Premium Intertrade Pvt. Ltd. She also paid Rs. 90.93 lacs towards the purchase price of office premises at 125 Free Press House, Nariman Point, Mumbai 400021 out of the fraudulent drawback money given by him to her. He showed his willingness to transfer the said amount to Customs and to write a letter to Vinita Lakhotia to transfer the said money to the Customs Department.

4. In view of the above statement made by Nawal Kishore Bangad, the bank accounts of Vinita Lakhotia and her firms/companies were verified to check transactions with firms of Nawal Kishore Bangad. On verification it was found that Vinita Lakhotia and her firms/companies had received the amount of Rs. 6.40 crores approximately, from the account of the bogus firms of Nawal Kishore Bangad, and his wife Sangeeta Bangad. It was also found that Vinita Lakhotia had two bank accounts abroad Singapore and Maccau. Both the bank accounts were opened in joint names of Vinita Lakhotia along with Nawal Kishore Bangad. In the light of the above evidence Customs summons were issued u/s 108 of the Customs Act, 1962 to Vinita Lakhotia who failed to respond to the summons for nearly one month. She finally appeared before the Customs authorities on 19-11-1997. Her statement was recorded on 19th, 20th and 22nd November 1997 and 12th December 1997 wherein she admitted purchase of two flats in Lloyds Gardens in the name of M/s. Premium Intertrade Pvt Ltd. where she is a director and in her own name respectively out of the money received from Nawal Kishore Ban-gad. She admitted that she received Rs. 4.50 crores approximately from Nawal Kishore Bangad. She also admitted to have transferred Rs. 1.8 crores to M/s. Woolen Textile Industries and the cheques for the said amount were handed over to her father H.D. Behati. She stated that "This part of money given to me by Naval Kishore Bangad by way of favour and I am willing to return the

 

said amount back to the Customs by way of ''pay order'' on behalf of Nawal Kishore Bangad".... Today I have received a letter from Mr. Naval Kishore Bangad stating that he has given me Rs. 4.5 crores and asking me to transfer the entire amount to the Customs department". She further agreed to surrender the two flats and requested the Customs Department to take charge of the properties with all rights towards the settlement of drawback amount repayable to the department by Nawal Kishore Bangad. During personal hearing given to him on 10-12-1997 Nawal Kishore Bangad confirmed the correctness of demand against M/s. Om Traders and M/s. Prime Agri-corn. He requested that opportunity may be given to his family members especially to Vinita Lakhotia to surrender the properties, which were purchased in her name from the drawback money received by him fraudulently. Vinita Lakhotia vide her letter dated 10-12-1997 addressed to the Asstt. Commissioner of Customs/Drawback, stated that on the, instructions of Nawal Kishore Bangad she is willing to transfer both the above flats which are in the name of her company M/s. Premium Intertrade P. Ltd. and her personal name respectively. By orders dated 27-12-1997 and 25-3-1998 and 6-4-1998 demands made against M/s. Om Traders, M/s. Prime Agricom and M/s. Tropical Exotics were confirmed. On the basis of adjudication orders, order of attachment dated 19-6-1998 came to be issued prohibiting M/s. Premium Intertrade P. Ltd. and Vinita Lakhotia from transferring and charging the properties surrendered by them voluntarily during personal hearing.

5. M/s. Premium Intertrade Pvt Ltd and Vinita Lakhotia filed a writ petition being Writ Petition No. 2068 of 1998 before this Court challenging order of attachment, which was allowed to be withdrawn on the ground that alternative efficacious statutory remedy of appeal is available to the petitioners u/s 128 of the Customs Act, and they should avail of the same. The appeals filed by M/s. Premium Intertrade Pvt Ltd and Vinita Lakhotia were dismissed vide order dated 8-7-1999. The appeals preferred before the CEGAT were also dismissed on the ground that the appeals were not as contemplated u/s 129A of the Customs Act, 1962 but were covered by Sub-clause (c) of the said section and hence the CEGAT did not have jurisdiction to decide the Appeal. Revision Application filed before the Joint Secretary, Ministry of Finance, Department of Revenue, Government of India was returned on 23-12-1999 on the ground that the issue involved therein was regarding attachment of movable and immovable properties and the said orders are not of the nature referred to in the provisions of Sub-section (1) of Section 129A of the Customs Act and thus the revision was dismissed as not maintainable.

6. M/s. Premium Intertrade Pvt Ltd. and Vinita Lakhotia then filed Writ Petition No. 671 of 2001 which was disposed by the Division Bench vide order dated 10-4-2001. The court prima facie observed that the petitioners are not defaulters of any tax dues and the power of the respondents to attach properties would follow only upon a finding that the petitioners are defaulters of tax dues found payable by them. The Court set aside the attachment orders and directed the department to issue proper show cause notices on the petitioners and hearing be

 

given to them. The attachment was continued pending the adjudication by the Customs Department.

7. Pursuant to order of the Division Bench fresh show cause notices were issued to M/s. Premium Intertrade Pvt. Ltd. and Vinita Lakhotia. The Dy. Commissioner of Customs granted personal hearing to them and vide order dated 6-4-2002 attachment of the premises in question i.e. 6/1 and 6/2 situated at Lloyds Garden. Prabhadevi, Mumbai was confirmed. The Dy. Commissioner upon examination of the bank accounts and other records came to the conclusion that the aforesaid premises were purchased from the fraudulently received drawback amount by Nawal Kishore Bangad. It was held that Vinita Lakhotia colluded with Nawal Kishore Bangad in diverting the ill-gotten drawback money obtained on the basis of forged documents. Vinita Lakhotia and her firms were used as extended accounts of Nawal Kishore Bangad for parking the drawback money and properties purchased in the name of Vinita Lakhotia and her companies/ firms are nothing but benami transactions. She was used as a tool by Nawal Kishore Bangad for creating and maintaining benami properties acquired out of the defrauded drawback money. The legality and propriety of the said order of the Dy. Commissioner is questioned in these petitions.

8. Mr. Mehta learned Counsel appearing for the petitioners strenuously contended that the present proceedings are barred by the principles of constructive res judicata. He submitted that while issuing the show cause notices reliance was placed merely upon the letter dated 10-12-1997 purportedly written by Vinita Lakhotia to the department. The said letter has been dealt with by this court in its order dated 10-4-2001 and this court found it insufficient for directing attachment of the properties of the petitioners. He submitted that fresh notices issued to the petitioners as per the order of this court are identical. There is nothing new in the fresh notice and reliance is placed on the same letter dated 10-12-1997. Therefore, according to the learned counsel the department has no power to take any action pursuant to the such notice. The learned counsel submitted that the entire material which has been relied upon in the impugned order was extraneous to the present proceedings inasmuch as the material was neither disclosed nor relied upon in the said notice issued to the petitioners pursuant to the order dated 10-4-2001. He submitted that the impugned order has been passed on the basis which is opposed to and radically and completely different to the basis adopted in the said notice issued to the petitioners. He submitted that the order of the Dy. Commissioner is clearly perverse and illegal inasmuch as it travels beyond the said notice and it is plainly opposed to the basis adopted in the said notice issued to the petitioners, Mr. Mehta placed reliance on the decisions of the Supreme Court in GTC Industries Ltd. v. Collector of Central Excise, New Delhi 1997 (94) E.L.T. 9 . Board of Trustees of the Port of Bombay Vs. Indian Goods Supplying Co., .

9. Mr. Sethna, learned counsel appearing for the respondents has fairly conceded that the show cause notices were issued to the petitioners on the basis of the

 

letter of Vinita Lakhotia dated 10-12-1997. He conceded that there was no reference to the material relied upon by the Dy. Commissioner in the impugned order. On instructions he stated that the department is ready to issue fresh show cause notices to the petitioners and after receipt of the reply fresh orders will be passed in accordance with law. Mr. Sethna submitted that the question of proceedings being barred by constructive res judicata does not arise as the order passed by this court specifically permitted the department to issue fresh show cause notice and accordingly show cause notice has been issued. He submitted that there is ample material to show that Vinita Lakhotia and her firms/ companies received money from Nawal Kishore Bangad which was fraudulently obtained on the basis of forged and fabricated export orders. He submitted that in fact Vinita Lakhotia had agreed to surrender two flats towards the dues of Nawal Kishore Bangad.

10. We have given our anxious thought to the submissions of the learned counsel for the petitioners. We are unable to accept the contention that the proceedings are barred by constructive res judicata. There is prima facie material to show that Nawal Kishore Bangad has defrauded the Customs Department and had transferred part of the money to Vinita Lakhotia and that money was utilised for the purpose of acquiring the said flats/properties. This position was admitted by both Nawal Kishore Bangad and Vinita Lakhotia in their statements recorded u/s 108 of the Customs Act 1962. Further both of them had issued letters to the department whereby they had agreed to surrender the flats to the Customs department. In the circumstances, it is not possible to hold that the department has no power to initiate proceedings against Vinita Lakhotia and her firms/ companies or that proceedings are barred by constructive res judicata. The decisions relied upon by the counsel for petitioners have no application to the facts of the present case. The impugned order is quashed and set aside. The department is directed to issue fresh show cause notice to the petitioners within three weeks from today and furnish copies of the documents relied upon by them. Replies shall be filed within four weeks from the date of receipt of such show cause notices. The competent authority shall thereafter grant personal hearing to the parties and pass appropriate orders in accordance with law. We clarify that the observations made in this order are only tentative and prima facie observations and the competent authority shall not be influenced by the same.

11. Petitions are disposed of in terms of aforesaid order.

12. Pending issuance of the show cause notices and the adjudication proceedings the order of attachment shall be continued.