

(1989) 05 DEL CK 0048
In the Delhi High Court
Case No : L.P.A. No. 28 of 1989

Union of India and another		APPELLANT
	Vs	
M/s. Northern Plastics Ltd.		RESPONDENT

Date of Decision : 08-05-1989

Acts Referred:

Citation : AIR 1990 Delhi 129 : (1989) 24 ECC 1

Hon'ble Judges : S.B. Wad, J;P.N. Nag, J

Bench : Division Bench

Advocate : G.L. Sanghi, A.K. Ganguli and Rattan Lal, for the Appellant; G.L. Rawal and Ms. Neeraja, for the Respondent

Judgement

S. B. Wad, J.—The respondents herein claim that they are inter alias carrying on business of confectioning/ slitting of jumbo rolls of photographic colour paper, graphic art films, cinematographic colour films and X Ray films. They claim to be a small scale industry registered in Uttar Pradesh. They applied for what is known as the COB (Carry on Business) license on 8-12-1986. The Government of India had announced on 18-7-86 that six months after the notification importation of photo sensitised material would not be allowed except under a license under the I.D.R. Act. Since the application of the respondents was still under consideration and they had imported some photographic material, they applied on 4-4-87 for its clearance as an interim measure. On 8-4-1987 Mr. K. C. Kapoor, Desk Officer in the Department of Industrial Development informed the respondents that pending disposal of their application for license they may carry on business with their small scale registration of manufacture of slitting / confectioning of photo sensitised material and that the Ministry had no objection to the Customs Department clearing the consignment of the jumbo rolls as per prescribed rules.

2. On 7-12-1988 the petitioners issued the COB license to the respondents in respect of photographic colour paper only. Before issuance of the regular COB license the petitioner filed the writ petition, bearing No. 2021 of 1988, out of

which the present LPA's arise, In the original writ petition the petitioner has inter alias complained that M/s. Hindustan Photo Films Ltd., a Government of India undertaking was given favorable treatment in the matters of duty concession while the same was being refused to the petitioner. They complained of the violation of Art. 14. It was prayed that all record regarding the exemption notification dated 7-7-88 along with papers regarding M/s. Hindustan Photo Films Ltd. should be produced. They also prayed that the respondent should issue COB license in favor of the petitioner for all the four items of photographic material mentioned in their application dated 8-12-1986. After the COB license was issued on 7-12-1988 the petitioner amended the writ petition challenging the refusal of the respondents to grant COB license for the rest of the three items, viz. jumbo rolls of X Ray films, graphic arts film cinematographic colour films. It was further prayed that the respondents be directed to issue COB license for all the four photographic items mentioned in their application.

3. During the pendency of the writ petition the petitioners moved applications being CM.4405/88, CM.5180/88 and CM.252/89 for the release of various items of photographic material at concessional rate of customs duty. The orders on the said applications were passed on September 26, 1988 (D.B.), October 12, 1988, December 8, 1988 and February 9, 1989. These appeals arise out of the last three interim orders passed by the learned single Judges.

4. After the first order dated October 12, 1988, passed by the learned single Judge for the release of graphic art films at concessional rate of customs duty, M / s. Hindustan Photo Films Co. Ltd. filed an application being CM.5461/80 for impleading them as parties in the writ petition. That application was rejected by the learned single Judge on 1-12-1988, holding, "The applicant is neither a necessary party nor a proper party." M/s. Hindustan Photo Films Ltd. preferred L.P.A., which was rejected by the D.B. They went to the Supreme Court against the LPA order and the Special Leave was granted in Civil Appeal No. 2376/89. The Order of the Supreme Court while disposing of the said appeal by its order dated 4-4-89 reads:-

Special leave is granted. Heard learned counsel for the parties.

We are told that an appeal has been filed by the Union of India against the orders dated December 8, 1988 and Feb. 9, 1989 of the Delhi High Court which are interim orders in favor of the respondent Northern Plastic Ltd. We are further told that the Union of India proposes to file an application for an interim order before the Division Bench within a week from today after serving copies on the writ petitioners, In our opinion, the application for interim order and the connected appeal preferred by the Union of India should be disposed of as expeditiously as possible. In the circumstances, we request the High Court to dispose of the interim application filed by the Union of India as also the appeal as early as possible, preferably within two weeks from today. Pending disposal of the appeal, the parties are directed to maintain status quo as on this day.

So far as the order of the High Court rejecting the application of the appellant, Hindustan Photo Films Ltd. for being added a party respondent in the writ petition is concerned, we do not find any reason to interfere with the said order. However, if in the course of the proceedings, the High Court considers that the appellant should be made a party respondent it will be open to the High Court to add the appellant as a party in the Writ Petition. The Union of India will be entitled to rely upon any affidavit that has been filed or may be filed by the appellants, either in the Writ Petition or in the appeal pending before the Division Bench, as part of its own affidavit in support of its case.

The learned counsel appearing on behalf of respondent Northern Plastic Ltd., undertakes to withdraw the allegations made against the appellant, Hindustan Photo Films Ltd., in paragraph 50 and ground No. "R" and in the prayer (i) in the Writ Petition before the High Court.

The appeal is disposed of as above. There will be no order as to costs."

5. It would be seen from the order of the Supreme Court that the Supreme Court had not only noted the present LP As (which were not directly the sub-matter of the appeal before the Supreme Court), but requested the High Court to dispose of the appeals preferably within two weeks from the said date of its decision. The Supreme Court further noted that applications for interim orders in regard to release of the petitioner's goods at concessional customs duty were to be filed by the Union of India in the High Court. Therefore, the Court directed that the said interim applications should also be disposed of with the main appeals. As regards the clearance of the goods on concessional duty by the respondents here the Supreme Court ordered, "pending disposal of the appeal the parties are directed to maintain status quo as on this date. " As regards impleading Hindustan Photo Films Ltd. in the writ petition, the Supreme Court left it to the High Court to consider whether they should be imp leaded as party respondent in the writ petition. But, assuming that they were not imp leaded as parties the Union of India would be entitled to rely upon the said affidavit of Hindustan Photo Films Ltd. as apart of its own affidavit in support of its case. The Supreme Court .itself did not make Hindustan Photo Films Ltd. a party respondent and in that sense said, "We do not find any reason to interfere with the said order" (of not impleading Hindustan Photo Films Ltd. as a party, passed by the High Court.)

6. Counsel for the respondent Northern Plastics Ltd. submitted that there cannot be one appeal in regard to two orders of December 8, 1988 and February 9, 1989. He then submitted that the Supreme Court had directed writ court to consider whether Hindustan Photo Films Ltd. (HPL) should be made a party respondent in the writ petition and the LPA Court cannot do the same. As regards the clearance of the photographic material at concessional rate of customs duty the counsel submits that they are entitled to clearance of all the items of photographic goods imported by them from time to time and awaiting clearance pursuant to the letter dated 8-4-87. The counsel vehemently argued that immediate orders should be passed for the clearance of goods as the

photographic material (involving very huge amount) is highly sensitive and prone to early decay.

7. As against these submissions, counsel for the appellant has submitted that on the basis of wrong interpretation of the letter dated 8-4-87 issued by the Desk Officer, respondent Northern Plastics Ltd. has tried to import large quantities of photographic material and have illegally tried to secure customs duty concessions. He has further submitted that it was for the LPA Court to decide as to whether Hindustan Photo Films should be joined as a party-respondent. Of course, according to the counsel, whenever an appeal Bench passes such an order the party is joined as a party in the writ petition itself. In other words, the Supreme Court direction is for reconsideration of the earlier decision of the Bench of this Court in regard to impleading of Hindustan Photo Films Ltd. in the writ petition. According to the counsel, since the respondent Northern Plastics Ltd. has based its claim on the said letter of 8-4-87 and sought urgent orders for the release of goods, all orders passed by the learned single Judge interpreting the said letter are to be considered by the LPA Court for passing an appropriate order.

8. During the course of the arguments respondent Northern Plastics Ltd. has filed an affidavit along with some documents. The same be taken on record.

9. We have carefully considered the documents record, the submissions of the counsel and the order of the Supreme Court dated 4-4-89. We are of the opinion that presence of Hindustan Photo Films Ltd. as a party-respondent is vital from the point of view of effectively resolving the controversy and for doing full justice to the parties. Hindustan Photo Films Ltd. is a Government of India concern in which more than 400 crores of rupees have been invested by the Government of India for the manufacture of photographic material in India. The object is to save valuable foreign exchange required to be spent for importing photographic films, the demand for which has shot up very high and would continue to do so in future. It was inevitable during the teething trouble of the Public Corporation that certain concessions in customs duty should be given to the said Corporation. If indiscriminate and large scale imports of the said material is permitted to the private industry in collaboration with the multinationals the large investment in the public sector undertaking will be rendered useless and the nation will not be able to achieve self-sufficiency and to save foreign exchange. Hindustan Photo Films Ltd. have, thus, vital stakes in the decision in the writ petition. They cannot be called as busy bodies officious inter-meddlers or mere self-seekers of private interest. They cannot be dubbed as mere competitors of the petitioners. As a matter of fact, the respondent Northern Plastics Ltd. have themselves dragged Hindustan Photo Films Ltd. in the controversy by alleging that they are given favored treatment as against the said respondent. Counsel for the said respondent could not tell us how in any manner a prejudice would be caused to them. We, Therefore, direct that Hindustan Photo Films Ltd. should be impleaded as a party respondent in the writ petition No. 2021/ 88 and the cause title

be amended accordingly.

10. We have given anxious consideration to all the submissions before us and we are prima facie of the view that the erroneous interpretation, unwittingly made by the learned single Judges, of the letter dated 8-4-87 has created a complex and highly prejudicial impact on the foreign exchange and economy. Huge quantities of imported photographic films of various description are being brought in the internal market which are being sold at a premium. We have also considered the earnest prayer of the counsel for the respondent Northern Plastics Ltd. that the matter brooks no delay. If the impugned orders are allowed to sustain the respondent company and the importers similarly situated would create a major upheaval in the internal market by their imports made under the alleged permission by letter dated 8-4-87. Once the goods are cleared and find their way into the market the situation could not be retrieved even if the petitioners ultimately fail in the petitions. Therefore, it is necessary that the writ Court should finally dispose of the writ petition early after hearing the parties, including the Hindustan Photo Films Ltd. This will also answer the present plea of the writ petitioner to dispose of the matter early.

11. We may, however, indicate as to how the learned Judges were misled in their interpretation of the letter dated 8-4-87 and unwittingly erroneous orders were passed.

12. The petitioner's submission in the writ petition and the various miscellaneous applications referred to above had been that the letter dated 8-4-87 is equivalent to the COB license and that the said letter permits them to import all the four items of the photographic films at concessional rates of customs duty. But apart from the letter dated 8-4-87, there is another letter issued by the same Desk Officer on 9-8-87 whereby it was clarified by the Department of Industrial Development that the Ministry had no objection to the Customs Department exempting their consignments of photographic colour paper only on certain conditions. This letter was brought to the notice of the D.B. of this Court, who issued Rule Nisi, and passed an interim order in CM. 4405 / 88 and permitted clearance of photographic colour paper consignments which had arrived at that time. As regards the prayer of the writ petitioner to release graphic art films also, the D.B. did not pass any order for clearance, but adjourned the matter for further affidavit in reply. In the order dated 12-10-1988, passed by the learned single Judge it was held, "I find that these goods are also covered in the letter dated 8-4-87. I, Therefore, see no reason why graphic art films should not be allowed to be released." The said material was, Therefore, directed to be released. The order does not disclose that the letter dated 9-8-87 was brought to the notice of the learned Judge, which was the duty of the counsel for both the parties. It is quite clear that if the said letter was brought to the notice of the learned Judge the learned Judge would have passed an order similar to the order of the D.B. releasing only photographic colour paper pursuant to the said letter dated 9-8-88. The said error was repeated in the order of the learned single

Judge dated 8-12-88. The learned Judge observed, "By letter dated 8-4-87, however, the petitioner was allowed to clear jumbo rolls of not only photographic colour paper but also graphic art films, cinematographic colour paper (unexposed) and X Ray films In my view, since the goods which are imported by the petitioner, mentioned in para 12(i) and (ii) of this application, were imported before the application for COB license was decided by the respondent and in pursuance of the temporary permission given by the Ministry by its letter dated 8-4-87, the petitioner must be allowed to clear these goods." It may be noted that this order was passed on 8-12-88 in CM. 5180/ 88 after the COB was issued to the writ petitioner on 7-12-1988. There is no mention of the letter dated 9-8-88 in, this order.

13. The next order of the learned single Judge dated 9-2-89 has been passed on CM. 252/ 89 In this application the petitioner had stated that it had already imported graphic art films and that the letters of credit were opened on 18-6-88 and 20-10-88, i.e. before 7-12-88 when the COB license was granted to the writ petitioner. The license Judge relied on the letter dated 8-4-87 for clearance of the graphic art films and medical X Ray films at concessional rate of customs duty. The learned Judge interpreted the granting of the COB license on 7-12-88 in respect of one item to mean that in respect of three other items the application for license was still pending. The letter dated 9-8-88 does not find any mention or consideration in this order also.

14. The respondents had only produced the letter dated 8-4-87, which was in reply to their letter dated 4-4-87. They have not filed, a copy of the said letter of 4-4-87. In that letter apparently there was only a limited request for mitigating the hardship caused to the respondents as their consignment of jumbo rolls was held up in the Customs. But, taking advantage of the letter dated 8-4-87 the respondents went on importing illegally the cinematographic films, graphic art films and medical X Ray films. The subsequent letter of the Department dated 9-8-88 in which only the import of photographic colour paper was permitted was a letter written in response to the respondents letter dated 18-7-88. In the said letter the respondents had referred to the customs notification of 7-7-88 regarding concessional duty on import of jumbo rolls for confectioning/ slitting of photo sensitised goods by actual users holding an industrial license under the I.D.R. Act for getting its benefit. Similar to the letter of 8-4-87, the respondents again informed that the graphic art films and photographic colour paper imported by them had arrived at the port, which would incur heavy demurrage and will decay because of its limited life. They requested that the Department should issue a letter to them stating that, "Ministry has no objection if jumbo rolls are allowed to be cleared by the Customs at concessional duty rates as applicable to the importers holding an industrial license under, the I.D.R. Act for slitting/ confectioning of photo sensitised material from the jumbo rolls. "The respondents were, thus, quite clear in their mind that they were not entitled to duty concession on the four items of photo sensitised material as they had no industrial license. Although the respondents' letter was in relation to all the four

varieties of the paper, the Department allowed only the importation of colour paper at concessional rates of customs duty. The respondents' letter dated 12-8-88, after the Department's letter dated 9-8-88, also throws light on the contemporaneous understanding of the respondents. After referring to the Department's letters of 8-4-87 and 9-8-88, a request was made to the Department to issue a letter "for clearance of graphic art films jumbo rolls till the issuance of COB license together with the letter revising the colour paper quantity." In spite of these letters the respondents went on representing before the Court that they have not, only the permission for importing all the four varieties of photo sensitised paper, but also at concessional rates of duty. It appears that Kripal J. was misled by the said submission of the respondents.

15. The respondents state that the letters of credit were opened by them prior to the granting of the COB license on 7-12-88, but it is also correct that the letters of credit for graphic art films and medical X Ray films were opened after 9-8-88 when the concessional import was restricted only to the photographic colour paper. We must add that if the respondents had failed to bring to the notice of the Court all the relevant facts, it was the duty of the counsel for Union of India to do so.

16. One reason for not having the proper facts before the two learned Judges was that Hindustan Photo Films Ltd. was not allowed to be impleaded at the earlier stage when they had made an application. As a Corporation specially created for this purpose, it had a better day-to-day information regarding the manufacture and trade of photo sensitised material and its import. They also knew the companies and concerns engaged in this activity and their manufacturing and financial background. If Hindustan Photo Films Ltd. were impleaded as a party, they could have pointed out that the respondents had only an S.S.I. Certificate from Uttar Pradesh and that, as a matter of fact, they are not really an SSI Unit, but are part of the big Jindal Group empire. They were also not the actual user and did not have the industrial license under the I.D.R. Act. They could have also pointed out that no industrial license for the four items of photographic paper was issued to any other manufacturer/ dealer in India and that there was no discrimination. If these pleas were before the learned Judges they could have called on the parties to prove/ disprove them. This information was vital because the alleged concession under letter dated 8-4-87 was conditional on the concern being a genuine SSI Unit. Secondly, the concessional duty rate under the notification dated 7-7-88 could be permitted only to the actual users with industrial license.

17. The impugned orders passed by the two learned Judges, Therefore, must be quashed and set aside.

18. After the hearing was over the counsel for the respondents filed a brief note of their submissions. The appellants, Union of India, was also, Therefore, permitted to do the same. Both the written notes are taken on record.

19. In the written note submitted by the respondents it is submitted that the X Ray films and graphic art films being very sensitive in nature are getting deteriorated every day due to high temperature. They being of sensitive nature are required to be kept at a temperature of 10 Degree Centigrade. It was, Therefore, prayed that the goods be allowed to be released on furnishing a bank guarantee/ surety, as the Court deems fit and proper. The appellants have contested all these submissions. It is stated that the packing of the said material comprises of photographic inert cardboard, black polythene and paper. The covered jumbos are placed in wooden crates and, hence, there is no deterioration in transit or storage. The packing is such that neither moisture nor light can reach inside. It was also claimed that it was not necessary to keep the jumbo rolls at the temperature of 10 Degree Centigrade. Since there is such a wide dispute on facts, it cannot be said that the respondents have made out a case for immediate release of goods. Further, as contended by the appellants, if the import is itself illegal, as being contrary to COB license or industrial license policy or the unit, not being a genuine SSI Unit, it would be impermissible to order release of the goods in question as the law would take its own course to deal with the said situation. We do not, Therefore, think it necessary to pass any order for the release of the respondents goods till the disposal of the writ petition.

20. The impugned orders are set aside. However, the learned single Judge is requested to dispose of the writ petition itself within a fortnight after giving fresh hearing to all the parties, including Hindustan Photo Films Ltd., and also permitting them to file such other and further documents and affidavits as they are advised, The appeals are allowed. There shall be no order as to costs.

21. Appeals allowed.