(1990) 03 DEL CK 0046

In the Delhi High Court

Case No : C.W.P. No''s. 2286 and 3023 of 1989

Union of India (UOI) APPELLANT

Vs

Customs, Excise and Gold (Control) Appellate Tribunal and Others RESPONDENT

Date of Decision : 09-03-1990

Acts Referred:

Advocates Act, 1961 — Section 38
Constitution of India, 1950 — Article 12, 14, 21
Customs Act, 1962 — Section 11, 11(2)(i), 11(2)(j), 11A, 128(1)(a)
Imports and Exports (Control) Act, 1947 — Section 3

Citation : (1990) 29 ECR 152

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

Bench : Division Bench

Judgement

S.B. Wad, J.—CW. 3023/89 is filed by the Union of India, while CW. 2286/89 is filed by M/s. Hindustan Photo Films Manufacturing Co. Ltd., a Government of India concern. They have challenged the legality and validity of the order of Customs, Excise and Gold Control Tribunal dated 8.8.1989, holding that neither the Union of India nor Hindustan Photo Films Manufacturing Co. Ltd. are ''aggrieved persons'' for filing an appeal u/s 129A of the Customs Act, 1962. The appeal was filed by the said two petitioners against the order of the Collector of Bombay dated 1.6.1989 clearing the imported consignment of 59 jumbo rolls for M/s. Northern Plastics Limited of what they described as "Cinematographic Colour Films (Unexposed) Positive". The said petitioners had submitted before the Tribunal that the said importation was Itself illegal, they have also prayed in these writ petitions that this Court should declare that the importation is illegal and contrary to the provisions of the Customs Act and the notifications there under. The second prayer, as was submitted at the time of arguments, is an alternate prayer in case we hold that the petitioners could not file an appeal u/s 129A of the Customs Act. We are inclined to hold that the Union of India and M/s. Hindustan Photo Films Manufacturing Co. Ltd. are ''aggrieved persons'' and can maintain an appeal u/s 129A of the Customs Act, We do not propose to pronounce on the merits and legality of importation at this stage.

2. The Customs, Excise and Gold (Control) Appellate Tribunal (for short the Appellate Tribunal) considered various decisions of the High Courts and the Supreme Court and held that the Appellate Tribunal was a creature of law and was, Therefore, required to confine itself to the specific provisions of the Customs Act regarding the provisions of appeal. The Appellate Tribunal made a distinction between the original proceedings such as the writ petitions in the High Court and the Supreme Court and the appeal proceedings and held that their powers are not as wide as the High Court and the Supreme Court and that they must confine to the provisions of Chapter XV of the Customs Act and the procedure for appeals laid down in the said chapter.

3. The counsel for the petitioners submit that the words "any persons" used in Section 129A should be liberally construed considering the object and the scope of the Customs Act, 1962. They have referred to Section 11 where the Central Government has the power to prohibit, absolutely or subject to conditions, import inter alias with the object of establishment of any industry, [Section 11(2)(i)]; prevention of serious injury to domestic production of goods of any description [Section 11(2)(j)]: the carrying on of foreign trade in any goods by the State or by a Corporation owned or controlled by the State, to the exclusion, complete or partial, of citizen of India. They have also referred to Section 11A which defines illegal import to mean import of any goods in contravention of the provisions of the Customs Act or any other law, for the time being in force. It is submitted that the Government of India or any of its Ministry which is of the opinion that the said prohibitions of import u/s 11 of the Customs Act or any other law for the time being in force were breached by any importation, they are aggrieved persons and have a right to file an appeal against such importation u/s 129A of the Act. The considerations of the national economy, foreign trade, protection of the indigenous industries are matters of high public duty and any threat to them by an alleged prohibited import is a matter of vital concern for the State. This being the scope of the powers and functions of the Central Government under the Customs Act, the Appellate forum created under Chapter XV cannot and should not be denied to it. It is then argued that the opinion of the Appellate Tribunal (and the submission of the respondents) that the appeal can be preferred only by the Collector of Customs on the direction of the Board u/s 129D of the Act was erroneous. Powers of the Board u/s 129D are more in the nature of the revisional powers and are not same as that of the powers u/s 129A of the Act. It is argued that the Board as well as the Collector of Customs have a very limited function under the Act and they are not entrusted with the wider functions and duties, as mentioned in Section 11, and Section 11A of the Act. The next submission of the petitioners is that the principles of locus standi are widely extended by the recent decisions of the Supreme Court keeping in view the public interest. Public interest in the control of foreign trade and indigenous industries are patently obvious in the Customs Act and similar enactments and the duty to enforce the same is cast on the Central Government and its

instrumentalities. The words "any person aggrieved" in Section 129A should be liberally construed in the light of the extended meaning of locus standi in public law.

4. Counsel for the respondent M/s. Northern Plastics limited has challenged these submissions. He submits that what is crucial in Section 129A is that a person must be an ''aggrieved'' person. As to who is an aggrieved person is clear from Section 129A(3). That sub-section states that it is the Collector of Customs or the Importer who can alone be said to be aggrieved by the order clearing or non-clearing of the imported goods. A person running a business or an industry generally or a competitor of the importer might feel that their interests are harmed, but they cannot be treated as persons ''aggrieved'' within the provisions of the Act. If the words "any person" are given very wide interpretation every Ministry or Department of the Government might keep on filing appeals to the Appellate Tribunal on the pretext of the violation of any law. The counsel then submits that the procedure to be followed by the Collector of Customs on the direction from the Board u/s 129D of the Act is that of an appeal and that is the only provision in regard to appeal available to Government. We are to examine the correctness of these rival contentions.

5. Chapter XV substitutes the original Chapter X in regard to appeals in the Finance Act of 1980. The Act established for the first time the Appellate Tribunal for Customs, Gold Control and Excise. Similar to Chapter XV in the Customs Act, new changes were introduced in the Gold Control Act and the Excise Act. In Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , the four Judge Bench of the Supreme Court posed a question as to who is an aggrieved person and what are the qualifications requisite for such 3 status? The Bench held, "The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner''s interest, and the nature and extent of the prejudice or injury suffered by him.". English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". The Supreme Court has reviewed all its earlier decisions including the (famous) decision in Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, , and many other English decisions. In that case it was held that the proprietor of a cinema theatre is not entitled to invoke certiorari jurisdiction ex debito justitiae to get a no-objection certificate issued in favor of the rival in the trade under Bombay Cinema Rules, 1954, quashed on the ground that it suffers from the defect of jurisdiction. The Supreme Court held that the rules in question regulate the exercise of only a private right of an individual to carry on a particular business on his property, the words "person aggrieved" must receive a strict construction in such cases. The Court categorised the applicants for certiorari in

three categories, viz., (1) persons aggrieved; (2) strangers; and (3) busy body or meddlesome interlopers. As regards the third category the Court held that they can never be treated as ''aggrieved persons''. There is no difficulty in identifying a ''person aggrieved'' in the strict sense of the term. Where a person is in the second category, viz. that of a stranger, the Court has held that they may be ''aggrieved persons'' in certain cases, their efficacy varying according to the statutory context in which the matter falls.

6. In Dabholkar the question raised before the Supreme Court was whether the Bar Council of Maharashtra was an ''aggrieved person'' to maintain an appeal u/s 38 of the Advocates Act. The question was answered in affirmative. The court inter alias held that the Bar Council is vitally concerned with the decision in the context of the functions of the Bar Council. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics. In his separate but concurrent judgment Krishna Iyer, J. has cited with approval in para 54 of the judgment the decision of the American Federal Court in Simon of Banqor v. Banqor Punta Operations 482 E2D 865. In that case it was held that public interest in the financial health of the rail-road company provided a separate and sufficient interest in bringing the action. The Court observed, "It must be remembered that railways are public corporations organized for public purposes....They all primarily owe duties to the public of a higher nature than even that of earning large dividends for their shareholders."

7. The question of locus standi and "aggrieved person" has been fully and elaborately stated by the decision of the Supreme Court in S.P. Gupta Vs. President of India and Others, . In tracing the history of the doctrine of locus standi the Supreme Court has referred to the traditional rule of locus standi. According to this rule, judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right to property, body or reputation. It is then pointed out that this rule is of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. The Supreme Court has referred to the decision ex parte Side bothan 1880 14 Ch. D. 458, which is the starting point in every discussion on locus standi. Although the case related to the right of appeal the definition of words "persons aggrieved" laid down by the decision has substantially influenced the law of locus standi even in case of writ petitions, as is demonstrated by several decisions of the English Courts in the last 100 years.

8. The law on locus standi has now been substantially liberalised in England and except in cases where the person is found to be a busy body or a meddlesome interloper, free access is given to the Court if a person or a group is able to show legitimate interest in contesting the matter before the Court. The Supreme Court has then traced the evolution of the law of locus standi in India in the context of new interpretation of Articles 14 and 21 and the new remedies in public law such as public interest litigation. However, the Supreme Court has also made clear that the individual who moves the Court for judicial redress must be acting bona

fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold.

9. The problem in the present case is not of whether a private citizen or their Association aggrieved by the arbitrary action of the State are to be treated as aggrieved persons or not. The consideration here is a reverse consideration as to whether in an action filed by a private citizen the State or the instrumentality of a State can be treated as an ''aggrieved person'' for maintaining an appeal in the appropriate forum. With respect, we hold that the principles of law laid down by the Supreme Court apply with greater vigour in such a case.

10. The Tribunal was in error in distinguishing the said decisions of the Supreme Court. Although right of appeal is a creature of statute the question has to be answered on general principles unless the statute clearly and unmistakably denotes the persons who can file an appeal. That precisely is the difficulty in the present case. The words used in Section 129A(1) are "any person aggrieved". The Tribunal further overlooked the legal position that when we are inquiring on a question as to who is a person aggrieved, we are, in fact, asking a wider question as to who has the locus standi. As a true logical concept it is locus standi which is required to be analysed in each case, whether it is an original proceeding such as a writ petition or an appeal. Indeed in Desai the entire question of locus standi for claiming a writ petition or certiorari in a writ petition has been analysed and answered by the Supreme Court on the question as to who is an "aggrieved person". In S.P. Gupta the Supreme Court has pointed out as to how the original decision on a ''person aggrieved ''in Sidebotham is a starting point for the entire evolution of the law of locus standi. The Appellate Tribunal was, Therefore, not quite correct in distinguishing between original remedies and the remedy of appeal in this regard. The Appellate Tribunal has unfortunately brushed aside the decision of the Supreme Court in Dabholkar by stating that in the present case there is no question of professional misconduct as in the Dabholkar case. So also the Appellate Tribunal unwittingly followed a wrong direction in appreciating S.P. Gupta when it held that in the present case the question of independence of judiciary is not involved. It is not the professional misconduct at the Bar or the independence of judiciary which are alone the matters of public interest. National economy and foreign trade are equally high matters of public interest. What was crucial for the Tribunal was to find out whether the Union of India or M/s. Hindustan Photo Films Manufacturing Co. Ltd. had vital interest in the protection of national and public interest in matters of illegal importation of certain goods which may have pernicious impact on internal production of the said goods and control of internal market by outside agencies.

11. Even on the traditional and narrow view of the concept of ''aggrieved person'', it was recognised in England that the Government has a special

obligation to contest the proceedings in the Court as the protector of public interest. The Attorney General of England is charged with this function. The Supreme Court has further noted that there is this machinery in the United Kingdom for judicial redress for public injury and protection of social, collective or diffused rights and interests, while in India we have no such machinery. Therefore, in matters of original remedies and also in the appeal remedies the locus standi of the Government or the instrumentalities of the Government has to be recognised. If in case of private citizen or an Association the locus standi can be conceded if "sufficient interest" is established, in case of government and its instrumentalities where protection of public rights is a primary duty, no difficulty should really arise in the matter of standing in an original proceeding or an appeal. As pointed out by the Supreme Court in S.P. Gupta the areas of public interest are enormously increased now that the State has taken over very large welfare and economic functions.

12. If public interest is a guiding star in deciding as to whether a person is an ''aggrieved person'' then the legal position becomes quite obvious if the provisions of Sections 11 and 11A of the Customs Act are taken into account. The Central Government has an absolute right to prohibit/impose if it finds that the importation of certain goods would seriously injure domestic production or would hamper/prejudice the carrying on of foreign trade by the State or the corporation established by it. It can similarly impose prohibitions in order to establish and develop indigenous industry. But the State has higher obligations not only in regard to the industry or trade, but maintenance of public order, decency and morality, prevention of smuggling, conservation of foreign exchange and conservation of natural resources. It has an ominous power to prevent imports if they are not conducive to the interest of general public and for prevention of contravention of any law for the time being in force. An import is an illegal import u/s 11A if the same is done in contravention of the provisions of the Customs Act or any other law for the time being in force. Except the Union of India (and its various Ministries) and the instrumentalities of the State which are established for performing some of the functions of the State, which other person or authority can have the overall view of the public interest and prohibitions of imports and exports u/s 11 of the Act? The submission on behalf of respondent Northern Plastics is that the Board or the Collector of Customs can alone file an appeal by virtue of the provisions of Section 129A(3) read with Section 129D of the Act. Apart from the untenable results that would flow from this interpretation, it is quite clear that they are not the authorities which are charged with the function of the protection of public interest mentioned in Section 11 of the Act. The Board or the Collector of Customs has a much narrower and simpler function under the Act, viz. to collect the Customs Duty and to see that they are not evaded. From the Scheme of the Act it is, thus, clear that unless the Union Government and its instrumentalities are included in the words "person aggrieved", there would be no agency left to stand up before the Appellate Tribunal for vindication of the prohibitions imposed on import and exports for

various head of public interest, mentioned in Section 11 of the Act.

13. It may be noted that Section 129A does not talk of "aggrieved parties", but used the words of wider import viz. "any person aggrieved". Counsel for the respondent has referred to Sub-section (3) of Section 129A so as to cut down the meaning of the words ''any person'' in Sub-section (1). He submits that it is only the Collector of Customs or the other party who has suffered because of the prohibition or confiscation or imposition of penalty who can prefer any appeal to the Appellate Tribunal. This submission is based on the communication of the order and the period of limitation of three months mentioned in the sub-section. If the appeal is to be filed within three months the date of communication is important. The sub-section obliges the communication of the order only to the Collector of Customs and other party. The argument is that there is no communication of the order to the Central Government or its instrumentality and, Therefore, the section does not contemplate an appeal to be filed by any person except the Collector of Customs or the other private party, The next question posed is if the Central Government or its instrumentality can file an appeal u/s 129A, what is the period of limitation within which they should file an appeal? We cannot accept this submission as it is based on erroneous interpretation of Sub-section (3) of Section 129A. First of all, to restrict the right of appeal to the Collector of Customs or to other party would be tantamount to re-writing Section 129A(1). By substituting the word ''party'' in place of ''any person'', the communication of the order shall be to the Collector of Customs. If the section is to be literally interpreted there cannot be any communication of the order to the Collector of Customs who has himself decided the matter. If it means Collector of Customs who looks after the appeals the sub-section does not make it clear. It is only the Collector of Customs who can file the appeal but not the Board which is an authority under which the Collector of Customs functions. Who will advise the Collector of Customs to file an appeal and what would be the considerations weighing with the Collector for filing an appeal? The provision in regard to ''party'' referred to in the said sub-section is equally ambiguous. The query is as to which ''party'' can file an appeal, but the wording is that the other party preferring an appeal shall file an appeal. The section should have, as a matter of fact, provided as to who can be treated as ''aggrieved parties'', In any case neither the Collector of Customs nor the other party mentioned in the subsection are concerned with the high powered functions of the State mentioned in Section 11 of the Act. If the sub-section, Therefore, has to be given some meaning, it would mean that the Collector of Customs or ''other party'' can file appeal in certain cases, but the enumeration does not exhaust the persons aggrieved for filing an appeal,

14. Counsel for the respondent Northern Plastics Ltd., however, submits that the important consideration is whether the Union of India or the Hindustan Photo Films Ltd. can be called ''persons aggrieved''. He submits that they are not directly affected by the release of goods by the Customs Collector. This argument is based on the private law concept where granting of a benefit to a person might

mean the deprivation of the said benefit to another. If there is illegal importation of goods or if the goods have secured the duty free concession to which they are not entitled the public interest suffers directly. It would not only defeat the objects of the Act and the import policy, but the national economy is also endangered if illegal importation is permitted to go on. In terms of the public interest the Union of India and its instrumentalities are, thus, necessarily aggrieved.

15. Section 129D confers power on the Board or on the Collector of Customs to pass certain orders. This section does not fall either in the category of appeal or revision, but provides for a peculiar procedure which is sui generis. The section empowers the Board to call for the record of any proceedings before the Collector of Customs as an adjudicating authority to examine legality or propriety of any decision or order. If the Board is satisfied, it can direct the Collector to apply to the Appellate Tribunal for determination of such points arising out of the decision or the order, as may be specified by the Board in its order. The Board can exercise the power not later than two years from the date of the decision or order. After receiving such a direction the Collector makes an application to the Appellate Tribunal within three months from the date of communication of the order of the Board. The Appellate Tribunal hears such an application "as if such application were an appeal" and the procedure to be followed is that of Section 129A regarding appeals. Counsel for M/s. Northern Plastics Ltd. submits that the appellate power, thus, can be exercised only by the Board or the Collector u/s 129D. This appears to be also the basis on which the Appellate Tribunal has passed the impugned order. The very terminology of the section makes it clear that this is not a provision regarding appeal and is no substitute for Section 129A, which is specifically meant for appeals to the Appellate Tribunal. Section 129D was introduced in 1980 as a part of the new Chapter XV regarding appeals. The legislative history of Chapter XV, particularly in regard to appeals and revisions will clearly, bring about the object in enacting Section 129D.

16. Chapter XV as it stood before the amendment in 1980 was titled "Appeals and Revisions". Sections 130 and 131, as they stood before the amendment in 1980, provided for the revisional powers of the Board and the Central Government, The revisional powers of the Central Government are now abolished. In place of the Central Government now an Appellate Tribunal is created and that is why Section 129A has been introduced. The plenary powers of the Board to revise the orders on its own motion or application by the "aggrieved person" u/s 130 are no more available to the Board after the amendment. So also the appellate power of the Board u/s 128(1)(a) is also abolished. The object of the amending Act appears to be to cut down one ladder of appeals and revision at the level of the Board because the full-fledged right of appeal has now been made available to the Appellate Tribunal. The Legislature, while abolishing these powers of the Board, thought it expedient to leave some powers of the Board to examine the legality and propriety of certain orders from the point of view of public revenue. That appears to be the reason why a novel

provision of Section 129D is introduced. Under the said section the Board cannot itself revise the orders even where it is prima facie satisfied that the orders are not legal or proper, but it can direct the Collector of Customs to make an application to the Appellate Tribunal for securing an appropriate order so as to set right the illegality and impropriety. The Appellate Tribunal shall hear such application by following the procedure of appeal u/s 129A. In the context of this legislative history it is difficult to agree, with the submission of the counsel for the respondent M/s. Northern Plastics Ltd. that it is the Board or the Collector of Customs, who alone have the power to file an appeal

17. Counsel for M/s. Northern Plastics Ltd. then submits that if the words ''any person'' used in Section 129A are to be liberally construed, as claimed by the petitioners, it would open the flood-gates and every Ministry and the instrumentality of the State might keep on filing appeals, A similar submission was made in Dabhalkar and S.P. Gupta before the Supreme Court when it liberalised the concept of locus standi and the same has been squarely rejected by the Supreme Court as being imaginary and without any factual basis.

18. Counsel for M/s. Northern Plastics Ltd, vehemently argued that M/s. Hindustan '' Photo Films Manufacturing Co. Ltd. is merely a competitor of Northern Plastics Ltd. and, Therefore, cannot be called an ''aggrieved person'' to file an appeal. Hindustan Photo Films Manufacturing Co. Ltd. is a government company established especially for the purpose of manufacture and sale of photo-sensitized material and the Central Government has invested about Rs. 400 crores in the company. The statutory corporations and government companies are the instrumentality of the State. They are established for the specific purpose of discharging the governmental functions of establishing and running industries and trade. They are the alter ego of the State. That is the reason they are covered by Article 12 of the Constitution. Since the Airports Authority case these instrumentalities are subjected to the rigour of acting in public interest, eschewing arbitrariness and ad hocism. Although they perform the commercial functions such as manufacture and trading and are supposed to contribute their profit to the national wealth, they are not simply commercial undertakings like companies or partnerships. They are always tied up with the public interest. As quoted above the Supreme Court has cited with approval the decision of the Federal Court of America in Simon of Banqor wherein it is held that rail-road Corporations are public Corporations organized for public purposes and they primarily owe duties to the public of higher nature than of earning large dividends for their shareholders. Thus, it is erroneous to consider government companies, such as Hindustan Photo Films Manufacturing Co. Ltd., as mere commercial competitors. There is no merit in the submission on behalf of the said respondent and the same is, Therefore, rejected.

19. For the reasons stated above the Union of India (and its Ministries) and M/s. Hindustan Photo Films Manufacturing Co. Ltd. are "aggrieved persons" within the meaning of Section 129A and are fully competent to maintain and file an appeal

before the Appellate Tribunal.

20. Apart from the interpretation of Section 129A and the other provisions of the Act, we are of the opinion that the Appellate Tribunal ought to have permitted Union of India and M/s. Hindustan Photo Films Manufacturing Co. Ltd. to contest the appeals filed by M/s. Northern Plastics Ltd., M/s. Northern Plastics Ltd, tried to import the photo-sensitized material from different ports of India, such as Bombay, Madras and Calcutta. After the import, they claimed the benefit of government notification regarding duty exemption. The Collectors Bombay, Madras and Calcutta did not allow the duty exemption. M/s. Northern Plastics Ltd, thereafter filed the writ petitions in the High Courts of Madras, Calcutta and Delhi. M/s. Hindustan Photo Films Manufacturing Co, Ltd., which is a company established by the Government for the specific purpose of manufacture of photo-sensitized material, applied before the said High Courts for being imp leaded as party-respondents in the writ petitions. The Single Judge of this Court rejected their application for impleadment. But, in appeal, the Division Bench of this Court allowed the contentions of M/s. Hindustan Photo Films Manufacturing Co. Ltd. and joined them as respondents in the writ petitions. The Division Bench observed, "We have carefully examined the documents on record, the submissions of the counsel and the order of the Supreme Court dated 4.4.1989. 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 manufacture of photographic material in India. The object is to save valuable foreign exchange required to be spent far importing photographic films the demand for which has shot up very high and will 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 multi-nationals, the large investment in the public sector undertaking will be rendered useless and the nation wilt 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 petitioner. 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 treatments against the said respondents. Counsel for the said respondent (M/s. Northern Plastics Ltd.) could not tell us how in any manner prejudice would be caused to them. We, Therefore, direct Hindustan Photo Films Ltd. should be imp leaded as party-respondent in writ petition No. 2021/88 and the cause title be amended accordingly.".

21. Similar orders for impleadment were passed in favor of M/s. Hindustan Photo

Films Ltd. by the High Courts of Calcutta and Madras. M/s. Northern Plastics Ltd. filed a SLP to the Supreme Court against the said order of the Division Bench of this Court, but the SLP was dismissed by the Supreme Court, thus, confirming that Hindustan Photo Films Ltd. are ''aggrieved persons'' and should be heard as respondents in the pending writ petition.

22. M/s. Northern Plastics Ltd. attempted one more import of the similar material from Gujarat. The Collector of Customs, Rajkot held by his order dated 30.6.1989/3.7.1989 that "M/s. Northern Plastics Ltd. are not entitled to import jumbo rolls of cinematographic colour films (unexposed) under OGL as they do no possess/hold industrial license and are also not entitled to exemption of customs duty under notification 52/86-Cus and 50/88-CE and there has been attempted import as actual user (industrial) on the basis of misdeclaration. Therefore, I find that the goods under importation have been imported without any valid license in contravention of Section 3 of the Imports and Exports (Control) Act, 1947, read with Import Control Order, 1955". The Collector further ordered absolute confiscation and imposed penalty of Rs. 4.50.000/-. M/s. Northern Plastics Ltd. filed an appeal against the said order before the Appellate Tribunal. The Appellate Tribunal permitted the intervention application filed by M/s. Hindustan Photo Films Ltd.

23. It is thus clear that not only the three High Courts in India, viz. Madras, Calcutta and Delhi had found that Hindustan Photo Films Ltd. has vital stakes in the matter and should be permitted to contest the writ petitions, but the Supreme Court has confirmed the said position. The Appellate Tribunal, however, rejected the claim of the Hindustan Photo Films Ltd. (and also of the Union of India) on the ground that there is a difference between original proceedings in the High Court and the Appeal before the Appellate Tribunal u/s 129A of the Customs Act. We have already held that this approach of the Appellate Tribunal was erroneous, The principal question to be answered in both the original as well as the appeal remedy is whether the party in question has vital interest and stakes by virtue of its powers and functions. In other words, the Appellate Tribunal should examine whether the party in question is merely a stranger or meddling interloper or a busy body. The Appellate Tribunal has recognised that in original proceedings both Hindustan Photo Films Ltd, and Union of India have vital stakes and, Therefore, can be imp leaded as parties in their own right. It is well settled law that statutory tribunals are bound by the decision of the High Court within whose territorial jurisdiction the Tribunal is located. But even if the Tribunal like the Appellate Tribunal under the Customs Act is to be treated differently, as being a national Tribunal, it is bound by the decisions and the law laid down by the Supreme Court,

24. Counsel for M/s. Northern Plastics Ltd. however, submits that no public interest would be served by joining Hindustan Photo Films Ltd. in the appeal because the said company is being mismanaged and is continuously running in losses. The submission is contested by the counsel for Hindustan Photo Films Ltd.

But whether the government Corporation is running in losses or is making profit is of no relevance to a question whether they should be allowed to file the appeal before the Tribunal. If the argument of the Counsel for Northern Plastics Ltd. is to be accepted even Government of India will have to be denied the right to file the appeal because it is being continuously run on deficit financing. The Appellate Tribunal ought to have addressed itself to the principal question involved in the appeal as well as the other pending writ petitions that whether the import of photo-sensitized material done by M/s. Northern Plastics Ltd. is illegal and in contravention of Import-Export Control Act, 1947 and the Import Control Order, 1955, read with Industries (Development and Regulation) Act, 1951. If the illegal importation of the said material in large quantities is allowed, the multinationals would be able to scuttle the indigenous effort in its manufacture, requiring closure of the government company which is especially incorporated for that purpose, by investing over Rs. 400 crores of public money.

25. While issuing Rule D. B. in these writ petitions on 9.8,1989 the Bench had directed that the goods in question should not be released until further orders. This interim order was challenged by M/s. Northern Plastics Ltd. before the Supreme Court in SLP (Civil) No. 10907/89. On September 15, 1989, the Supreme Court dismissed the Special Leave Petition. The Supreme Court further requested the High Court to consider the application, if any, moved by M/s. Northern Plastics Ltd. for the vacation of the ex pane stay order within two weeks of the filing of the application. When the matter came up for hearing on the application for the vacation of stay before us, counsel for both the parties agreed that instead of passing an order on the release of goods only, we should dispose of the question as to whether the Union of India and M/s. Hindustan Photo Films Ltd. are "aggrieved persons" for the purpose of filing the appeal u/s 129A before the Appellate Tribunal. Hence, we heard the matter on that question only.

26. Before the Supreme Court both the parties had agreed that the goods in question may be stored in the godowns of M/s. Northern Plastics Ltd. under the supervision and control of the Customs Authorities. On that basis the Division Bench had passed an order on October 3, 1989, incorporating the said submission of the parties before the Supreme Court.

27. We have held that the Union of India and M/s. Hindustan Photo Films Ltd, are "aggrieved persons" and can maintain an appeal u/s 129A of the Customs Act. The main question in the writ petition at the root of the entire controversy between the parties is whether the said importation of the photo-sensitized material at Bombay was legal or not would now be decided by the Appellate Tribunal. But assuming that M/s. Northern Plastics Ltd. takes an appeal against our order to the Supreme Court and our decision is reversed, still the question of the legality of the importation would be open to the parties to be argued in this writ petition before us. Thus, till the main question of legality of importation is finally disposed of, in the interests of justice, it is necessary that the subject matter of the controversy, viz., the imported goods, are preserved in the custody

of the Customs Authorities and are not released. Since the goods are now stored under the suitable conditions of storage with M/s. Northern Plastics Ltd. there is no likelihood of their deteriorating. No variation in our order dated 9.8.1989 in regard to the release of goods is, Therefore, called for.

28. The writ petitions partly allowed to the extent indicated above.