

Vikram Jain Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Aug-29-2003

Reported in : (2003)(158)ELT205Tri(Bang.)

Judge : G B Deva, S T S.S.

Appellant : Vikram Jain

Respondent : Commissioner of Customs

Judgement :

1. A show cause notice dated 24-11-2000 was issued to the following persons :
(vii) Shri Vikas, Calcutta, holder of Mobile phones No. 98310-62986 and 98310-76959 (viii) Shri Ashok, Calcutta, holder of Mobile phones No. 98310-39005 and 98310-89073 (i) The seized 1569.40 Kgs. of raw silk/silk yarn contained in 25 bales valued at Rs. 23,54,100/- should not be confiscated under Section 111(d) of the Customs Act, 1962, (ii) The packing material namely the gunny bags and the cloth bags in which the seized goods were packed should not be confiscated under Section 118 of the Customs Act, 1962, (iii) Customs duty of Rs. 4,58,122/- along with interest due, if any, payable on 17 bales (1067.19 Kgs.) of smuggled silk yarn seized should not be demanded from Shri Vikram Jain under Section 28(1) read with 28AB of the Customs Act, 1962, (iv) Customs duty of Rs. 2,15,584/- along with interest due, if any, payable on 8 bales (502.20 Kgs.) of smuggled silk yarn seized should not be demanded from Shri Ashok Kumar Shroff under Section 28(1) read with Section 28AB of the Customs Act, 1962, (v) The customs duty of Rs. 27,13,548/- is liable to be paid along with interest due on the

111 bales of smuggled silk yarn, valued at Rs. 23,24,000/- received by Shri Vikram Jain and sold by him in the past shall not be demanded from him under Section 28(1) of the Customs Act, 1962 read with Section 28AB of the Customs Act, 1962, (vi) The customs duty of Rs. 19,55,710/- liable to be paid along with interest on the 80 bales of smuggled silk yarn, valued at Rs. 67,20,000/- received by Shri Ashok Kumar Shroff and sold by him in the past, shall not be demanded from him under Section 28(1) read with Section 28AB of the Customs Act 1962, (vii) The amount of Rs. 11 lakhs deposited vide TR 6 Challan dated 8-6-2000 should not be adjusted towards customs duties, fines, penalties and interest, if any, which would become payable on adjudication, and (viii) Penalty shall not be imposed on Shri Vikram Jain, Shri Lalit Jain, Shri Bheemraj Jain, Shri Ashok Kumar Shroff, Shri S. Muralidhara, Shri Rahul K. Dharmashi all of Bangalore and Shri Vikas and Shri Ashok of Calcutta on each one of them, under Section 112 of the Customs Act, 1962 for their roles in smuggling and subsequent disposal of the subject goods.

2. (a) The notice emerged consequent to what has been termed in the notice as specific intelligence on which the godown premises of M/s.

Deluxe Roadlines Pvt. Ltd. (hereinafter referred to as Deluxe Roadlines) Bangalore was searched on 30-5-2000 and 15 bales of what was alleged as smuggled mulberry raw silk yarn (hereinafter referred to as MRS) of Chinese origin were found to have been transported on three lorry receipts from Bhiwandi (Maharashtra to Bangalore) showing the consignor as Jhunjhunwala and Co., the consignee as Samsuddin along with an invoice describing the number of articles as five bundles of old waste cloth and the other GC note was a photocopy where the consignor and the consignees details were not legible. However, it described the goods as five bales of waste old cloth. A notice pertaining to one of the lorry receipts in this case was also recovered which was a notice issued under Section 28A of Karnataka Sale Tax Act, 1957, dated 28-5-2000 which was for demanding a penalty of Rs. 49,140/- for non-declaration of foreign origin silk yarn along with a receipt dated 28-5-2000 which was for payment of Rs. 41,550/- to the Karnataka Sales Tax Department and also a release order dated 28-5-2000 of Commercial Tax Officer, Nelamangala check post for the release of the lorry and the goods in respect of the said lorry receipt which was covering the GC notes in this case.

During the course of examination, the officers noted in the Mahazar the contents on two types of labels found inside the bales, which read as follows :- (i) BLOSSOMS, white steam filature, China National Silk Import & Export Corp., Made in China, (ii) JINGING, China National Silk Imp. & Exp. Corp., Sichuan Branch.

Since the custodian of the goods at the premises of M/s. Deluxe Roadlines could not show licit import for the silk yarn of foreign origin, the said goods were seized by the officers, after drawing mahazars thereof. Enquiries were thereafter made at Bombay, Calcutta and other places and statements of the truck movement clerk-in-charge, Shri Muralidharan of M/s. Deluxe Roadlines, various other employees of the transport company were recorded and it transpired that noticees, Shri Vikram Jain, Shri Lalit Jain, Shri Bheemraj D. Jain and Shri Ashok Kumar Shroff were the recipients of the said bales whereas out of the seized 25 bales, Vikram Jain was to receive the 17 bales under seizure, Ashok Kumar Jain was to receive 8 bales.

(b) On 1-6-2000, the officers again searched the godown of M/s. Deluxe Roadlines and recovered 10 additional bales of smuggled silk yarn for which GC No. 121030, dated 27-5-2000 was produced indicating the consignor as M/s. Tropical Textiles, Mumbai and consignee as Abdul Gafor and description of the goods was shown as 'waste old chindi', while GC No. 12050, dated 27-5-2000 showed the consignor as Sanghrajka Enterprises, and consignee as Niyaz Mohammed with the description of the goods as 'old waste (chindi)'. These goods were examined and found that they also contained mulberry silk yarn of Chinese origin with the same two types of labels as found earlier and samples thereof were taken in the goods that were seized.

(c) Enquiries also revealed, as appears from the show cause notice, that earlier, 191 bales of silk yarn were received, out of which 111 bales were taken delivery of by Vikram Jain and or his brother Lalit Jain and his father Bheemraj Jain and 80 bales were alleged to be received by Shri Ashok Kumar Shroff, all appellants before us.

(i) Liability and Confiscation of the seized goods under Section 111(d) of the Customs Act, 1962 i.e. 15 bales on 30-5-2000 and 10 bales on 1-6-2000, and

gave an option to the owner of the goods to redeem the same on payment of redemption fine of Rs. 5,00,000/-under Section 125 of the Customs Act, 1962.

(ii) Packing material viz. Gunny bags and cloth bags used for packing the seized goods, liable for confiscation under Section 118 of the Customs Act, 1962 were confiscated.

(iii) Duty demand of Rs. 4,58,122/- along with interest on 17 bales of smuggled silk yarn under Section 28(1) read with Section 28AB of the Customs Act, 1962 from Shri Vikram Jain.

(iv) Duty demand of Rs. 2,15,584/- along with interest on 8 bales of smuggled silk yarn under Section 28(1) read with Section 28AB of the Customs Act, 1962 from Shri Ashok Kumar Shroff.

(v) Duty demand of Rs. 27,13,548/- along with interest on earlier receipts of 111 bales of smuggled silk yarn valued at Rs. 93,24,000/-under Section 28(1) read with Section 28AB of the Customs Act, 1962 from Shri Vikram Jain.

(vi) Duty demand of Rs. 19,55,710/- along with interest on earlier receipts of 80 bales of smuggled silk yarn valued at Rs. 67,20,000/-under Section 28(1) read with Section 28AB of the Customs Act, 1962 from Shri Ashok Kumar Shroff.

(vii) Amount of Rs. 11 lakhs deposited vide TR 6 challan dated 8-6-2000 paid by Shri Vikram Jain was appropriated towards duty, interest and penalty.

(viii) Penalty of Rs. 3,00,000/- each on Shri Vikram Jain & Shri Lalit Jain and Rs. 1,00,000/- on Shri Bheemraj Jain, Rs. 2,00,000/ on Shri Ashok Kumar Shroff and Rs. 1,50,000/- on Shri Muralidhar, Rs. 75,000/- on Shri Rahul Dharmashi, Rs. 3,00,000/- on Shri Vikas of Calcutta and Rs. 3,00,000/- on Shri Ashok of Calcutta was imposed under Section 112(b) of the Customs Act, 1962.

3. After hearing both sides and considering the material on record and after waiver of pre-deposit, the appeals are taken up for disposal by this common order. It is found :- (a) (i) MRS yarn is not notified under Section 123 of the Customs Act, 1962. As regards the 25 bales under seizure, the show cause notice in Para 47

reads as under :- "47. From the above, it is decisively arrived at the conclusion that the 15 bales of raw silk yarn of Chinese origin, weighing 954.45 Kgs., valued at Rs. 14,31,675/-, seized on 30-5-2000 and the 10 bales of raw silk yarn of Chinese origin, weighing 614.95 Kgs., valued at Rs. 9,22,425/- seized on 1-6-2000 from the godown of M/s.

Deluxe Roadlines Pvt. Ltd., No. 79, 4th Cross, Narasimha Raja Road, Bangalore-2; totalling to 25 bales of raw silk yarn, totally weighing 1,569.40 Kgs. and totally valued at Rs. 23,54,100/- were smuggled into India since the said goods were transported without any importation documents, the goods were misdeclared as old waste/cloth chindi, the consignors and consignees were fictitious; that interception and physical examination of Sales Tax Check Post, Tumkur road (in), Nelaman-gala, revealed the contents as 300 Kgs. of Chinese origin raw silk yarn, issue of Sales Tax demand for Rs. 49,150/- which was sought to be evaded, payment of sales tax and penalty thereon by Shri Vikram Jain, in the name of lorry driver, substantiated that the goods in the said 25 bales was raw silk yarn of Chinese origin, the test report of the seized goods also confirmed that the goods were mulberry silk (MRS) raw and twisted yarn of foreign origin. The goods were smuggled into India and clandestinely transported from Calcutta to Mumbai and from Mumbai to Bangalore, and is liable for confiscation as per the provisions of Section 111(d) of the Customs Act." (ii) Para 61 of the Show Cause Notice brings out the confiscation liability of these 25 bales under seizure on the following grounds :- "61. Whereas mulberry raw silk is classified under Customs Tariff heading No. 5002 and subject to 35% basic customs duty, 10% special additional customs duty, 4% SAD and a cess of 0.05% and is classifiable under EXIM code 5002.00 of ITC (HS), classification of import and export items April, 1997 to March, 2002 and is restricted. For the period upto March 31, 2000, the item, was canalized and not freely importable. Subsequently, i.e., from 1-4-2000 onwards it requires an SIL for import. Silk yarn of foreign origin requires this SIL, in the absence of which it is prohibited for import under Import Trade Control Order 17/55, dated 7-12-55 issued under Section (2) of Foreign Trade (Development & Regulation) Act, 1992 and by virtue of Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992 it deemed to have been prohibited under Section 11 of the Customs Act, 1962, thereby rendering illegally imported raw silk yarn liable for

confiscation under Section 111(d) of the Customs Act, 1962. In view of the above, the 25 bales of raw silk yarn seized under Mahazars dated 30-5-2000 and 1-6-2000 totally valued at Rs. 23,54,100/- are liable to confiscation under Section 111(d) of the Customs Act, 1962. The customs duty evaded on these 25 bales works out to be Rs. 6,73,706/- at the rate of Rs. 973.20 per Kg. of silk yarn (CIF value) and at the cumulative duty rate (35% customs duty, 10% surcharge, 4% SAD and 0.05% cess) of 44.11%. The amount of Rs. 11 lakhs paid vide TR6 Challan dated 8-6-2000 stands to be adjusted towards customs duty, fine, penalties and adjudication levies." (iii) It can therefore, be concluded that imported MRS yarn is freely available and can be traded in the markets in India without molestation from the Customs Preventive Officers. The strict onus of proving that the MRS impugned is on the Department.

(iv) From the findings, as recorded and arrived at by the Id. Commissioner, it is apparent that a contention was made before him that the goods had been released at Calcutta Port and they had not been imported and cleared at Bombay. The 'proper officer' and the adjudicating authority of the case would be therefore by Customs Authorities at Calcutta. The Commissioner has recorded this submission in Para 235 and thereafter in Para 237, he has found that since in the facts of this case, goods were seized at Bangalore and the action proposed in this show cause notice and for his consideration was in respect of the seized goods (i.e. 25 bales) and since the proceedings of the confiscation of the seized goods was an action in rem, which pertains to the goods per se and the proper officer having territorial jurisdiction over the situs of the seized goods had the authority to initiate proceedings and since no document had been produced for having licitly imported the goods through Calcutta Port, the contention on jurisdiction raised before him was found to be of no avail. Thereafter, noticing that there was enough material in the show cause notice that the goods but for the seizure would have been received by Shri Vikram Jain and Shri Ashok Kumar Shroff and that Vikram Jain had addressed a letter dated 10-6-2000 to the Joint Director, DRI seeking provisional release of the seized goods since he had paid Rs. 11 lakhs towards duty and adjudication levies and the Joint Director, DRI had informed him that the Commissioner of Customs was the proper authority for provisional release and in view of the fact that Ashok Kumar Shroff had addressed a letter dated 13-2-2001

to Commissioner of Customs seeking provisional release of the seized goods (viz. 8 bales), he concluded that it was evident that the seized goods were to be collected by Shri Vikram Jain and Shri Ashok Kumar Shroff who had claimed ownership for provisional release and therefore, they were liable for confiscation under Section 112(b). In Para 242, the Commissioner further held :- "the goods had been detained by the Sales Tax Officer as the goods viz., 5 bales of silk yarn were being attempted to be brought in the guise of old chindi cloth. Had the goods been licitly imported then there would not have been any necessity to misdeclare it as chindis/waste cloth." Thereafter, he concluded that the burden cast on the Department to prove that the goods had been illicitly imported, had been discharged in the facts and circumstances of this case. He held : - "all that a quasi-judicial proceedings requires is the establishment of such a degree of probability that a prudent man, may on its basis believe in the existence of the fact in issue. Further, the Hon'ble High Court of Gujarat in the case of Maganlal Gulabchand Shah reported in 1992 (5) E.L.T. 235 Gujarat has held that in cases of smuggling, many facts relating to the illicit business remain in the special or peculiar knowledge of the person concerned and the burden to establish or explain those facts is cast on him." (v) As regards the MRS yarn being not notified under Section 123 of the Customs Act, he concluded as follows :- "264. I have also considered the submission made by the noticee that silk yarn being not notified under Section 123 of the Customs Act, 1962 burden of proof is on the Department to prove that the goods have been illicitly imported, I find from the records that the goods were brought into India in violation of the Customs Act, 1962 without filing Bill of Entry, making a declaration and obtaining clearance under Section 47 etc. which renders the impugned goods as prohibited goods provided under Section 2(33) of the Customs Act, 1962. Such goods are liable for confiscation under Section 111(d) of the Customs Act, 1962 and also become smuggled by virtue of the definition of "smuggling" provided under Section 2(39) of the Customs Act, 1962, according to which "smuggling in relation to any goods means any act or omission which will render the goods liable for confiscation under Section 111 or 113. As per Section 11A(a) of the Customs Act, 1962, "illegal import" means import of any goods in contravention of the provisions of this Act or any other law for the time being in force. The impugned goods also get covered under the above definition and

become illegally imported. The goods also become prohibited due to the restriction placed under the Import Control Order 17/55 for the reason that Condition 10A of the said order stipulates that an importer has to declare his goods in a Bill of Entry. In view of the foregoing discussions, the argument put forth that the goods are freely importable and not subject to any prohibition or restriction to attract the provisions of Section 111(d) and that the noticee is also not liable for penalty under Section 112(b) of the Customs Act, 1962 does not merit any consideration."

(vi) On considering the findings of the Id. Commissioner in the facts of this case and the case law on Section 123, the above findings of the Commissioner cannot be upheld in view of the law on the subject. MRS yarn are admittedly not goods covered by Section 123 of the Customs Act, 1962. Therefore, the burden to prove that they were not smuggled goods does not lie or does not shift to the person from whose custody they were seized i.e. Deluxe Roadlines in this case and or their employees or on the person who is claiming/found to be seeking possession of the goods i.e. Vikram Jain and Ashok Kumar Shroff as held by the Commissioner. This Bench in the case of Rajat Gupta and Bechan Mishra [2001 (138) E.L.T. 519 (T) = 2001 (75) ECC 773] vide its Final Order Nos. 750-751/2001, dated 12-4-2001 in the case of similar goods i.e. MRS yarn of Chinese origin, seized at Bangalore, had held as follows :- "3a. Mulberry Raw Silk Yarn or Silk Yarn mentioned in the impugned notice are not goods covered by Section 123 of the Customs Act, 1962. Therefore, the burden to prove that they were not smuggled goods, does not lie or does not shift to the person from whose possession they were seized i.e. A-2; who is claiming/ found to be the owner i.e. A-1. We find the provisions of Section 123 are very clear viz., i.e., (i) The goods must be one to which Section 123 applies (ii) The goods are seized under the Act (iii) The goods must be seized on the reasonable belief that they are smuggled As pointed by the Supreme Court in J.K. Bardoline Mills [1994 (72) E.L.T. 813 (S.C.) = (1994) 5 SCC 332] in the case of Gian Chand & Others [1983 (13) E.L.T. 1365 = 1984 ECR 105 SC] the Supreme Court held that if the seizure was not under Section 178A of the Sea Customs Act, (predecessor and pari materia Section 123 of Customs Act, 1962), that case being made by Police on July 16/17, 1958, they could not uphold the order of the Division Bench of the High Court, which proceeded on the basis that burden had shifted on the owner of the Gold and they

remitted the matter back to the High Court to reconsider the conviction based on the findings of the Id. 'Session Judge', the prosecution had positively established that the goods were smuggled. The Supreme Court again on an appeal, by the same Gian Chand, for the very same seizure of Gold, held that 'Collector, therefore could not invoke any assistance from that Section, the burden of proof that the gold was smuggled gold, lay on the Customs' (Gian Chand etc. 1985 ECR 2232 SC). The Supreme Court in the later case ordered the release of the Gold under seizure, while it upheld the confiscation of the currency based on a findings of voluntarily and genuine nature of the statements recorded. In the present order impugned before us, we find the Adjudicator has recorded in Para 44 of the impugned order :- "..... Here it is pertinent to mention that the Department is not required to prove the case with mathematical precision to demonstrate absolute certainty and exactness. In case pertaining to smuggling, which shades and wrecks the entire natural economy, absolute proof being unattainable, the law accepts for probability as a working substitute. In other words, the law does not require the department to prove the impossible. All that is required is to establish a degree of probability that a prudent man may believe the existence of fact in issue. Thus, legal proof is not necessary perfect proof because smuggling is clandestine carrying of goods to avoid legal duties. Secrecy and stealth are its covering guards. It is impossible for the investigating agency to unravel every link of the process, which remain on the special, or a particular knowledge of the persons concerned. "The oral evidences adduced by the department would rebut the presumption of innocence in favour of that person and in the result prove him guilty. So in effect, the department would be deemed to have discharged its burden, if it relies on both direct and circumstantial evidence which are sufficient to raise a presumption in its favour, with regard to the existence of the facts." The Id. DR has relied on the Supreme Court decision in the case of C.C., Madras v. D. Bhoormul [1983 (13) E.L.T. 1546 (S.C.) = 1985 ECR (22) 84 SC], wherein Paras 30 and 31 of the reported decision are almost verbatim, appear to have been extracted as found above, by the Id. Adjudicator, without even mentioning this decision. However, the Adjudicator failed to notice, that in the facts of that case, there was not only a disclaimer of ownership, but also all knowledge about the contents. (Para 36 of the reported decision refers) and other facts and conduct

subsequent to the proceedings before the Collector. In the case before us there is no shadow of figure as 'D. Bhoormul' talking through Solicitors A-1 and A-2, are very much present and producing documents of possession and duty payments as made over to them in the course of normal trade in the goods. While applying the law as in 'D. Bhoormul's case, the Id. Adjudicator not only overlooked these important facts but also what the Supreme Court in D. Bhoormul's case stipulated, before advertng to the contentions raised in that case. In Para 26 of the reported decision, the Hon'ble Supreme Court has laid down :- "..... But with regard to any other goods, the rule in Sub-section (1) of Section 178A would not apply unless the Central Government had specifically applied the same by notification in the official gazette. It is a common ground that to the material time, no such notification applying the Section to the categories in question had been issued. In respect of such goods the provisions of the Evidence Act and the Code of concerned procedure do not in term, govern the onus of proof in proceeding under Section 167(8) of the Act. In conducting these penal proceedings, therefore Collector of Customs is to be guided by the basic canons of criminal jurisprudence and natural justice." We would find that the Basic Canon of Criminal jurisprudence has been held by the Supreme Court in the case of Ambalal v. U.O.I. [1983 (13) E.L.T. 1321 (S.C.) = 1983 ECR 1935 SC] to be :- "8. We cannot also accept the contention that by reason of the provisions of Section 106 of the Evidence Act, the onus lies on the appellant to prove that he, brought the said items of goods into India in 1947. Section 106 of the Evidence Act in term does not apply to a proceeding under the said Acts. But it may be assumed that the principles underlying the said Section is of universal application. Under the said Section, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The court in Shambu Nath Mehra v. State of Ajmer - 1956 SCR 199 [(S) AIR 1956 SC 404] after considering the earlier Privy Council decision on the interpretation of Section 106 of the Evidence Act, observed at P. 204 (of SCR) : (at 406 of ACR) thus : "the Section cannot be used to undermine the well established rule of law that save in a very exceptional class of case, the burden is on the prosecution and never shifts." If Section 106 of the Evidence Act is applied, then, by analogy, the fundamental principles of Criminal jurisprudence must equally be invoked. If so, it follows that the onus to prove the case against

the appellant is on the customs authorities and they failed to discharge that burden in respect of Items 1 to 5. The order of confiscation relating to Items 1 to 5 is set aside." Therefore, in the present case, as in all such cases, of goods not covered by Section 123 of the Customs Act, 1962, the onus is in on the Department to prove the case as a fundamental principle of Criminal jurisprudence, or basic canons of jurisprudence, the phrase used in D. Bhoormul's case (supra) which the Adjudicator is relying upon." Following the same, it has to be held that the onus cast on the Department to prove and trace out the place where the customs barrier has been breached and or violated was imperative on the part of the DRI. The premier Anti-smuggling Intelligence Agency, had launched enquiries through Mumbai and Calcutta offices. They have questioned various persons and have obtained lot of statements. When the appellants are making a submission that the goods were imported and were cleared through Calcutta port. Then, it was imperative on part of the DRI authorities, the august investigating body under the CBEC, to have located the persons concerned at Calcutta and questioned them. In fact, they have located and questioned one person namely Shri Subrota Mondal in Calcutta. However, they have been found to be enthusiastic in their pursuit to locate the premises of the owners of the mobile phones which Shri Subrota Mondal was volunteering and informed that one of the mobile phones in his use, calls on to, which are material relied was under use, by a tenant, one Shri Rajib Saraf, who was residing near his residence. Why that house was not located and lead pursued, is not evident? Why Subrota Mondal not confronted with the material on record and questioned further? It leads to a conclusion that investigators have not pursued the investigations, with due diligence to prove or disprove the claim that the goods were cleared or not cleared from Calcutta port. Merely sending a summon and not visiting the premises of Rajib Saraj with the assistance of Shri Subrota Mondal, who knows the residence, is fatal to the enquiries, it shows lack of interest in pursuing same, is indicating and an effort or desire not to link the goods under seizure with imports cleared through Calcutta. On incomplete enquiries, confiscation cannot be upheld.(vii) The findings of the Commissioner that the action of confiscation of the goods was under his territorial jurisdiction as action in 'rem' and support from the Tribunal decisions in the case of Engee Industrial Services Pvt. Ltd. [1996 (87) E.L.T. 152], Ram Nath Jayanth

[2000 (119) E.L.T. 312] and Road Star Carriers [2000 (124) E.L.T. 913] as relied upon by the Id. DR are found to be that these decisions were based on the findings of the facts in those cases, arrived at after considering that the nexus between clearances by a proper officer under Section 47 of the Customs Act, 1962 at a Custom House and the goods seized elsewhere in these cases, the identity of the goods being in dispute could not be established with the Section 47 order; in the present case, no efforts have been made to locate the original importers and thus the original Section 47 order by the Department, viz., Vikas and Ashok and the identities thereof which were required to be established has not been pursued. Merely by issuing the parties at Calcutta a notice, thereafter to hold that nexus is not established with Section 47, order and resort to the reliance on the above case law and confiscation powers under action in 'rem' theory cannot be held to be permissible in the facts of this case. More so, when that the Apex Court in the case of Union of India v. Ram Narain Bishwanath [1997 (96) E.L.T. 224] in a case where goods were cleared illegally from Paradip Port and thereafter were seized by Customs authorities in West Bengal held that the jurisdiction would have been with the customs authorities at Paradip port and they remitted the matter back to the appropriate authority. Following this law, as laid down by the Apex Court, in this case also the confiscation by Commissioner, Bangalore cannot be upheld under the theory of 'action in rem'. The order confiscating the 25 bales under seizure is required to be set aside and matter remanded back for adjudication by the competent authority after due investigation of the facts.

(b) The MRS yarn in about 190 bales, alleged to have been taken charge of by the appellants herein and demand of duties from them by the territorial Commissioner at Bangalore by invoking the powers under Section 28 of the Customs Act, 1962 cannot be upheld. The duties under Section 28 are to be determined by a 'proper officer' on the persons chargeable with duty. These goods, if at dutiable, have been proved at the best to have transmitted through Bangalore, where they were allegedly taken charge of for subsequent disposal by Vikram Jain and or Ashok Shroff. The Commissioner's order in demanding duty on these persons handling the goods in Transit, who have alleged to have transmitted them further, cannot be accepted under Customs law. Duty under Customs Act, 1962 is fixed by the levy under Section 12, thereof, on goods. Only it has to be discharged by the importer

or the person having custody or and possession or and consumer of the goods. It has therefore to be conclusively arrived at in the finding as to why Import Duties in this case are being fastened on to Transit handlers i.e., consignment agents at Bangalore. Since there is no finding on this aspect, the order on duty demand is also required to be set aside.

(c) Before parting with the case, it would be relevant to observe that the misdeclarations on the lorry receipts are evidently made to escape the Karnataka State Sales Tax liability that ipso facto cannot be the fulcrum to rest the assumption that the MRS yarn is smuggled. There is no law that requires the duty paying documents to accompany imported goods at all times within the mass of goods in Indian Market. Chapter IVA of the Customs Act, 1962 is not applicable to MRS yarn.

(d) Since the matter is being remitted back to the appropriate authority no, findings are being arrived at, on the other issues. They are left open to be determined in the remand proceedings.

3. In view of the findings arrived at, these appeals are allowed as remand to the appropriate authority.

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