

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2418 OF 2006

COMMISSIONER OF CUSTOMS (IMPORTS) BOMBAY

Appellant (s)

VERSUS

M/S. HICO ENTERPRISES

Respondent(s)

(With appln(s) for stay and office report)

WITH

SLP(C) NO. 17825 of 2006

(With appln. for c/delay in filing SLP)

Civil Appeal NO. 2447 of 2007

(With application for stay and office report)

Civil Appeal NO. 4009 of 2007

(With application for stay)

Civil Appeal NO. 4680 of 2006

(With application for stay and office report)

Civil Appeal NO. 645 of 2008

(With office report)

Civil Appeal No. 2529/2008

(with appln. for stay and with office report)

Date: 29/04/2008 These petitions were called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE P. SATHASIVAM

HON'BLE MR. JUSTICE MUKUNDAKAM SHARMA

For Appellant(s) Mr. V. Shekhar, Sr. Adv.  
Mr. Abhigya, Adv.  
Ms. Alka Sharma, Adv.

Mr. Arvind Kumar Shukla, Adv.  
Mr. P. Parmeswaran, Adv.  
Mr. B. Krishna Prasad, Adv.

For Respondent(s) Mr. T.R. Andhyarujina, Sr. Adv.  
Mr. D.A. Dave, Sr. Adv.  
Mr. Tarun Gulati, Adv.  
Mr. Jaiveer Shergill, Adv.  
Mr. Tushar Jarwal, Adv.  
Mr. Praveen Kumar, Adv.

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M94r. V.M. Dopiphode, Adv.  
Mr. Nitin Mehta, Adv.  
Mr. Rajesh Kumar, Adv.

Mr. S.K. Bagaria, Sr. Adv.  
Mr. Praveen Kumar, Adv.

Mr. Chandra Shekhar, Adv.

Mr. Himanshu Shekhar, Adv.

Mr. S. Ganesh, Sr. Adv.  
Mr. Arunabh Chowdhary, Adv.  
Mr. Anupam Lal Das, Adv.  
Ms. Ruby Singh Ahuja, Adv.

Mr. Javed Muzaffar, Adv.  
Mr. Pranav Sen, Adv.  
Mr. Umesh K. Khaitan, Adv.

UPON hearing counsel the Court made the following  
ORDER

Civil Appeal No. 2418/2006:

The appeal is dismissed in terms of the signed  
judgment.

Rest of the matters be listed on 30.04.2008.

(Shashi Sareen) (Vijay Aggarwal)  
Court Master Court Master  
(Signed reportable judgment is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2418 OF 2006

COMMISSIONER OF CUSTOMS (IMPORTS) BOMBAY ... Appellant(s)

Versus

M/S. HICO ENTERPRISES ... Respondent(s)

JUDGMENT

Dr. ARIJIT PASAYAT, J.

Heard.

Challenge in this appeal is to the order passed by Customs,  
Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai  
(in short 'CESTAT') allowing the appeal filed by the appellant.

Background facts in a nutshell are as follows:

Appellant acquired and/or purchased transferable Value Based  
Advance Licenses (in short 'VABAL') including a license dated  
19.1.1993 issued in the name of M/s. Amar Taran Exports, New

Delhi. Same was purchased on 20.4.1994. Appellant on the basis of that imported consignment vide Bill of Entry no. 881 dated 30.3.1994. Same was allowed duty free allowance. By show cause notice dated 04.03.1999 appellant was called upon to show cause why an amount of Rs. 16,74,702/- could not be recovered and demanded in terms of proviso to Section 28(1) of the Customs Act, 1962 (in short  
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the 'Act') for alleged contravention of certain conditions of Notification No. 203/92-Cus dated 19.05.1992. Noticee denied the allegations. However, Commissioner of Customs (Import) confirmed the demand along with interest and penalty of Rupees One lakh. Same was held to be jointly payable by the original license holder and licensee. It was held that goods were liable in confiscation under Section 111 of the Act. As the goods were not available penalties of Rs. 3 lakhs and Rs. 1 lakh were levied under Section 112 (a) of the Act.

In view of divergence of views, the matter was referred to a larger Bench of the Tribunal.

The Tribunal inter alia held as follows:

"Hence, the satisfaction arrived at in the above manner is final and binding on the customs department. The Customs department cannot compel the appellants importer, who are the transferee, to once again prove that the export obligation has been fulfilled by the original licence-holder in accordance with the notification and without availing input stage credit"

" The transferee cannot be called upon to fulfill the condition (v) (a) of the Notification No. 203/92-Cus. It is the original licensee, who has to satisfy the above referred condition, but not the transferee of the licence. In the result, the reference is answered accordingly".

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In this appeal challenge is to the aforesaid conclusions. Learned counsel for the respondent pointed out that no role was ascribed to it in the show cause notice.

It is seen that in view of the fact that in the show cause notice issued on 4.3.1999, there was no reference to the alleged infraction of M/s. Amar Taran Exports, the transferor of the license in question. The judgment of the CESTAT does not suffer from any infirmity to

warrant interference. The appeal is dismissed.

.....J.  
(Dr. ARIJIT PASAYAT)

.....J.  
(P.SATHASIVAM)

.....J.  
(Dr.MUKUNDAKAM SHARMA)

New Delhi,  
April 29, 2008.