

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.8273 OF 2001

UNION OF INDIA & ORS.

Appellant (s)

VERSUS

M/S. KUMAR TRADING CO. LLC & ANR.

Respondent(s)

[With office report]

Date: 09/10/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Appellant(s) Mr. T.S. Doabia, Sr. Adv.

Ms. Binu Tamta, Adv. for
Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. V.A. Mohta, Sr. Adv.
Mr. S.V. Deshpande, Adv.
Mr. Naveen Malhotra, Adv.
Mr. Pramit Saxena, Adv.
Mr. Amit Yadav, Adv.UPON hearing counsel the Court made the following
ORDERThe appeal is allowed in terms of the signed order with no order
as to costs.(Subhash Chander)
Court Master(Kanwal Singh)
Court Master[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8273 OF 2001

Union of India & Ors.

.....Appellants

Versus

M/s. Kumar Trading Co. LLC & Anr.

.....Respondents

ORDER

Pursuant to an agreement said to have been entered into
between M/s. Nitu Enterprises, Kalimati, Kathmandu, Nepal and the

respondent no.1 herein M/s. Kumar Trading Co. LLC shipped two consignments of ball bearings, the particulars whereof were disclosed in the writ petition filed by the respondents. From the materials, as disclosed in the writ proceedings and before us, the respondent no.1 is said to have received Letters of Credit No.BNR/T/32/629 for U.S.\$ 3100 and BNR/T/32/630 for US\$ 3500 from the said M/s. Nitu Enterprises of Nepal. It also appears that in the original Customs Transit Declaration which was filed by the Customs Clearing Agent the said Letters of Credit and the amount indicated therein had been duly indicated. Subsequently, however, what was sought to be imported was 10 times the amount of the value of the two Letters of Credit. The same having been discovered on inspection by the Customs authorities, the goods were seized as being fraudulently imported into India in contravention of the documents and statements made in the Customs Transit Declaration.
C.A.No.8273/2001 (Contd.)

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It appears further that an application was made on behalf of the respondent no.1 for release of the goods so that the same could be re-exported to its place of origin, viz., Dubai. Since no steps were taken on the said application, the respondent no.1 filed a writ petition, being W.P.No.1650 of 1998, before the Calcutta High Court, inter alia, praying for a writ in the nature of mandamus to command the respondents therein and its officers and agents to permit the writ petitioner (respondent no.1 herein) to re-export the goods which had come in the two containers mentioned in prayer (a) of the writ petition and also to cancel the impugned order of seizure of the said containers by the Customs authorities.

The case, as made out, appears to be that the said goods were covered by the Indo-Nepal Transit Treaty whereunder M/s. Nitu Enterprises which was based in Nepal had contracted for the import of certain quantity of ball bearings through the respondent no.1 herein.

Be that as it may, in its counter affidavit to the writ petition, the Union of India brought on record before the Court the fact that in the meantime a show cause notice had been issued to the respondent no.1

and various other individuals who were said to have been connected with the import of the said ball bearings. In fact, a copy of the show cause notice issued under Section 124 of the Customs Act, 1962 was also annexed to the counter affidavit.

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Having regard to the above, the writ petitioner (respondent no.1 herein) also questioned the validity of the show cause notice and, accordingly, the same was also brought within the ambit of the writ petition.

At this juncture, it may not be out of place to mention that neither at that stage nor even now, that is, even after almost nine years, has any cause been shown to the said show cause notice which had been issued on 14th August 1998.

There is no dispute that except for the show cause notice, nothing further appears to have been done in the proceedings and no enquiry or adjudication has taken place therein. Without such enquiry and without any evidence apart from the documents available having been brought on record, the learned Single Judge of the Calcutta High Court, upon observing that there was no iota of evidence to the effect that the petitioner (respondent no.1 herein) was in collusion with M/s. Nitu Enterprises who imported the goods for consumption of goods in India or for any other purpose, held that the Customs authorities could not have come to the conclusion that the goods were imported for consumption in India. Such an observation, in our view, could have been after the authorities had been given an opportunity to conduct an enquiry and to adjudicate into the allegations indicated in the show cause notice.

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Unfortunately, even the Division Bench, in the appeal preferred by the appellants herein before us, appears to have lost sight of the said fact and merely on the averments made in the various affidavits

submitted before it, affirmed the decision of the learned Single Judge by coming to an independent finding that the goods were covered by the Indo-Nepal Transit Treaty and hence were outside the scope of Section 111(o) of the aforesaid Act.

In our view, the findings, both of the learned Single Judge as also the Division Bench appear to be premature in the absence of any proper enquiry by the Customs authorities.

For the aforesaid reasons and having heard learned counsel for the respective parties, we are of the view that the matter should be sent back to the Customs authorities for adjudication on the basis of the show cause notice issued to the various parties, after giving the respondent no.1 herein and the other parties an opportunity of responding to the show cause notice, if the same has not yet been replied to.

We, accordingly, set aside the orders, both of the learned Single Judge as also that of the Division Bench and remit the matter to the Customs authorities for enquiry and adjudication in terms of the show cause notice issued on 14th August 1998. Since about nine years have passed since the initial order of seizure as also confiscation was passed, we would request the said authorities to dispose of the matter at an early date. We extend the time for filing the reply to the

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show cause notice by a period of two months from date. The authorities should complete the enquiry and adjudication within four months thereafter.

We make it clear that we have not gone into the merits of the matter ourselves and we leave it to the authorities to adjudicate upon the matter on its merits without being either prejudiced or influenced by any of the observations made in our order or in the orders passed both by the learned Single Judge as also the Division Bench of the High Court.

During the hearing of the matter, a prayer was made on behalf of the respondent no.1 that since the goods have been seized and are lying with the Customs authorities and the Port Trust authorities, the respondent no.1 is being saddled with heavy demurrage costs and that to avoid further liability the seized goods could be sold by the Customs

authorities themselves and the sale proceeds could, thereafter, be kept in a security deposit to be disbursed after the final conclusion of the adjudication proceedings.

Mr. Mohta, learned senior counsel appearing for the respondents, has also submitted that during the period of nine years, the condition of the seized goods may have also deteriorated thereby debasing their value.

The prayer made by Mr. Mohta is not opposed by the learned counsel appearing on behalf of the Union of India and also appears to be pragmatic. In such circumstances, we also direct that the Customs authorities will be at liberty to

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arrange for sale of the seized goods but in the presence of the Port Trust authorities as also a representative of the respondent no.1 so that the best price of the said goods can be secured. After sale of the said goods, the sale price is to be invested by the Commissioner of Customs, Calcutta, Customs House, Calcutta (appellant no.2 herein) in a term deposit in any nationalised bank and the same is to be kept renewed till the disposal of the adjudication proceedings before the Customs authorities. The said amount shall thereafter be disbursed in keeping with the order that may be passed in the adjudication proceedings keeping in mind the lien of the parties, including that of the respondent no.1 herein, to receive the said amount while disbursing the amount.

In the event, the adjudication proceedings cannot be completed within the time stipulated by us, the parties will be at liberty to approach this Court for extension of time, but this observation should not be taken as a liberty to delay the proceedings.

The appeal is allowed accordingly with no order as to costs.

Sd/-

.....J.
[ALTAMAS KABIR]

Sd/-

.....J.
[V.S. SIRPURKAR]

New Delhi.
October 09, 2007.