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A. KUMAR

v.

UNION OF INDIA

OCTOBER 11, 1996

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[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

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Customs Act, 1962—Section 124—Import of Goods—Wrong description—Confiscation and Penalty—Scope of—Claims of Port Trust, Purchaser and Income Tax Department—Directions for auction sale of the imported goods—Proceeds to be kept in fixed deposit—Directions for payment to Port Trust and Income tax Department—Issued Reserve Bank to inquire and find out whether the officials of the Bank concerned colluded with the party in the fraud—Notices issued to a persons against whom Income tax Department alleged cheating, fraud etc.—Income tax Act, 1961—Sec. 132-A.

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Some Bills of Entry were filed by a firm for the clearance of "stainless steel circles defective." The firm ISC was said to be a proprietary concern of one 'K'. On examination by customs authorities, it was found that the imported goods were of prime quality, whereas the licence of the importer was only in respect of "defective stainless steel circles". It was also found that the import licence had also not been validly transferred in favour of ISC or its proprietor. A show cause notice was issued under Section 124 of the Customs Act, 1962 proposing confiscation of the said goods and for levy of penalty. Appellant filed a writ petition before the High Court challenging its validity. He also filed a writ petition before this Court for a declaration that the "scale of rates" prescribed by the Port Trust were unconstitutional. He also filed writ petitions before the Delhi High Court challenging the order passed under Section 132-A of the Income Tax Act proposing to seize the goods lying with the Customs Department and questioning the rate of customs duty and valuation of goods imported by him. These two writ petitions were dismissed by the High Court.

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In the appeal/writ proceedings before this Court, it had come to light that a number of demands and proceedings had been pending against 'K' by various affected parties. In the face of these rival claims, this Court directed the sale of imported goods by auction and the sale proceeds to be put in fixed deposit in bank.

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Three statements of 'K' have been brought to the notice of this Court, in which he denied that he has anything to do with ISC or with the import of the goods. Even in the counter-affidavit filed on behalf of the Union of India, it was stated that the petitioner-appellant was merely a salaried employee and did not have the means to import the goods in question and that he signed the relevant papers at the instance of his employer 'V'.

Counsel for the Port Trust stated that the Port Trust was entitled to a specified sum towards demurrage charges, Counsel for the Bank stated that the Bank has filed a suit for recovery of the amount due to it.

Counsel for the purchaser of the said imported goods in auction, had also put forward a claim on three counts, viz., (1) As there had been inordinate delay in confirming the sale and delivering the goods to him, he was entitled to interest on the said earnest money for the period it was locked up; (2) that he was entitled to get the demurrage charges reimbursed; and (3) that he was also entitled to reimbursement of the sales tax paid by him.

Disposing of the appeals and the writ petitions, this Court

HELD : 1.1. The claims of the purchaser of the goods in auction, are not acceptable as they could not tell whether the goods in question were taxable at sale-point or purchase-point. They failed to bring to the notice of this Court the terms and conditions of the auction sale. They even failed to satisfy this Court why the burden of sales tax could not be passed on to it. Therefore its claim for reimbursement of sales tax is rejected. Its claim for interest on earnest money is equally unsustainable in law. It had also failed to explain in what circumstances demurrage was charged. Accordingly its claim for interest on earnest money is rejected. [586-B-D]

2. The claim of the Port Trust is found to be just and proper. It has to be honoured and paid from the auction sale proceeds lying with the State Bank of India, Madras. [586-F]

3. There is no reason not to accept the claim of the Income Tax Department. A sum of Rs. 1,23,86,591 shall be paid over to the Commissioner of Income Tax, Madras, towards the claim of the tax-arrears due from 'K' for the Assessment years 1982-83 and 1983-84. [586-G]

4. After payment of the said sums, the balance shall continue to be

A with the State Bank of India, Madras. [587-A]

B 5. However, the customs authorities shall be free to pass final orders forth-with pursuant to the show cause notice dated 15th/16th October, 1982. It shall be open to them to pass confiscation orders notwithstanding the fact that imported goods have been sold over. In case, they pass confiscation orders, the balance of the amount lying with the Bank shall be paid over to them. [587-B-C]

C 6. During the course of hearing, Laskhmi Vilas Bank chose to issue letters of credit on behalf of 'K', a mere low paid employee and a person of no means. There are also allegations of collusion and fraud against certain officials of the Bank. Reserve bank of India is requested to look into the matter and determine whether any irregularities have been committed in the matter and if so, to identify the officials and direct the Bank to take necessary disciplinary proceedings against them. [587-C-D, 588-A, 589-A]

D 7. The Income Tax Department has prayed for certain directions against the persons named by them. The interests of justice demand that the said persons are heard before this Court could decide whether any direction is needed be made against them for alleged fraud, cheating, etc. said to have been committed by them. Accordingly notices are issued to them. [589-C]

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ORIGINAL JURISDICTION : Writ Petition (C) No. 2 of 1983.

(Under Article 32 of the Constitution of India.)

F E.R. Kumar, P.H. Parekh and N.D. Garg for the Appellant/
Petitioner.

M. Gaurishankar Murthy, S.N. Terdol, A.T.M. Sampath, M.A. Krishnamoorthy, Ms. H. Wahi, H.J. Parihar, Balakrishnan and T.L. Garg for the Respondents.

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The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. These writ petitions and appeals unfold a curious set of events.

H On or about May 11, 1982, Bills of entry were filed by Indian Steel

Corporation, 19, Sembudoss Street, Madras-1, for the clearance of "stainless steel circles defective." Indian Steel Corporation was said to be a proprietary concern of "A. Kumar". On examination by customs authorities, it was found that the imported goods were of prime quality and not defective as declared by the importer. The licence of the importer was in respect of "defective stainless steel circles" only. It was also found that the import licence was not validly transferred in favour of A. Kumar/Indian Steel Corporation. A show-cause notice dated 15/16th October, 1983 was issued under Section 124 of the Customs Act, 1962 proposing confiscation of the said goods and for levy of penalty. Soon after receiving the show-cause notice, A. Kumar filed Writ Petition (C) No. 2 of 1983 in this Court challenging its validity.

Another Writ Petition (C) No. 8168 of 1982 was also filed by A. Kumar in this Court for a declaration that the "scale of rates" prescribed by the Madras Port Trust are unconstitutional and to restrain the Port Trust from collecting the charges in accordance with the said scale of rates and also for issuance of detention certificate.

A. Kumar also filed Writ Petition (C) No. 2689 of 1982 in the Delhi High Court challenging the order dated June 19, 1982 passed under Section 132-A of the Income Tax Act proposing to seize the goods lying with the customs authorities at Madras. The writ petition was dismissed on August 16, 1982 against which he preferred Civil Appeal No. 1693 of 1984.

A. Kumar filed yet another writ petition in the Delhi High Court being Writ Petition (C) No. 1812 of 1982 questioning the rate of customs duty and valuation of goods imported by him. This writ petition was also dismissed by the Delhi High Court against which Civil Appeal No. 1694 of 1984 has been preferred by him.

It appears that a number of demands and proceedings were pending or being taken against A. Kumar. The Income Tax department had a huge claim for arrears of income tax. The Madras Port Trust had a claim for its demurrage charges which too were substantial. Lakshmi Vilas Bank also put forward a claim contending that inasmuch as it had financed the said import, it is entitled to be repaid. In the face of these rival claims, this Court passed orders on June 21, 1983 directing the sale of the imported goods. For that purpose, it appointed three joint receivers, viz., Sri Jayaraman, Additional Collector of Customs, Madras, Sri Sridharan,

- A Deputy General Manager, Lakshmi Vilas Bank, Madras and Sri Rajsekharan, Deputy Traffic Manager [Commercial], Madras Port Trust. The joint receivers sold the goods by auction on July 27, 1983 and deposited the sale proceeds [in a sum of Rupees one crore and twenty seven lakhs] in the State Bank of India, Main Branch, Madras as a fixed deposit, as directed by this Court. The amount has been lying in the Bank since then.
- B As on May 8, 1986, the amount together with interest came to Rs. 3,88,44,929. As on today, it is certainly more than Rupees four crores.

- C When these matters came up for hearing on October 8, 1996, it was stated by Sri P.H. Parekh, learned Counsel for the petitioner- appellant that in spite of repeated letters and reminders, A. Kumar is not responding to him and, therefore, he has no option but to report no instructions in all these matters. We have heard learned counsel for the customs department, for the Madras Port Trust, for Lakshmi Vilas Bank and M/s. Madras Agencies, who are the purchasers of the said goods in public auction of
- D aforementioned.

- E Three statements of A. Kumar have been brought to our notice. One is the statement recorded under Section 131 of the Income Tax Act on June 10, 1983. This statement is filed as an annexure to C.M.P. No. 27299 of 1983 filed by the Income Tax department in Civil Appeal No. 1693 of 1984. In this statement, A. Kumar stated that he is only an employee of Vinod Kumar Didwania on a salary of Rupees one thousand and that he is a man of humble origins and practically of no means. He is a national of Sri Lanka. He stated that he has no connection with Indian Steel Corporation and that he is not concerned with its business in any capacity.
- F He stated that he signed various affidavits, applications and documents as directed by his employers, Vinod Kumar Didwania and Deen Dayal Didwania. He denied that he is the proprietor of the concern, Indian Steel Corporation. He denied any knowledge of certain accounts maintained in his name in Lakshmi Vilas Bank. He denied signing any document in connection with import of any goods. In short, he denied that he has
- G anything to do with the said concern or with the said import or with the said goods. According to him, everything was done by Vinod Kumar Didwania and Deen Dayal Didwania using his name. The second statement is dated December 2, 1983 recorded at the Income Tax office, Madras. In this statement also, he denied being the proprietor of the said concern. He
- H disowned any connection with the import of the said goods and stated that

he has no claim to the said goods. The third statement is contained in his affidavit dated February 24, 1984 in which again he repeated the very same averments. He denied engaging any advocate and stated that whatever affidavits he had signed were all at the instance of his employers, Didwanias. He stated that he was merely a helpless tool in the hands of Didwanias and that they did everything in his name and also resorted to forgeries on some occasions.

In the counter-affidavit filed on behalf of the Union of India [sworn to by Ranjana Jha, Under Secretary, Ministry of Finance, Department of Revenue, New Delhi], it is stated that the petitioner-appellant in these matters is "Prahlad Rai *Ashok Kumar* Goenka", that he is merely a salaried employee and did not have the means to import the goods in question and that he signed the relevant papers at the instance of his employer, Vinod Kumar Didwania. In view of the fraud played by Didwanias, it is stated, the Income Tax department had filed C.M.P. No. 27299 of 1983 in Special Leave Petition (C) No. 8780 of 1982 [which was subsequently re-numbered as Civil Appeal No. 1693 of 1984] for prosecuting the members of Didwania group together with certain officials of Lakshmi Vilas Bank for various offences under Indian Penal Code. It is also stated that pursuant to the show-cause notice, A. Kumar has categorically stated that he is not the proprietor of Indian Steel Corporation and that he was in no way connected with the import in question. Annexure-C to the said affidavit contains the particulars of claims of several departments against A. Kumar. It is stated that the claim of the Income Tax department is in a sum of Rs. 1,23,86,591.

Sri Balakrishnan, learned counsel for the Madras Port Trust, stated that the Madras Port Trust is entitled to sum of Rs. 32,72,626 towards demurrage charges. Sri A.T.M. Sampath, learned counsel for the Lakshmi Vilas Bank, stated that the Bank has filed a suit against Ashok Kumar Didwania, customs authorities and Income Tax department for recovery of the amount due to it.

Sri N.D. Garg, learned counsel for the Madras Agencies [purchaser of the said imported goods in auction] also put forward a claim on three counts, viz., (1) that after his bid was accepted, he deposited a part of the consideration by way of earnest money but there was inordinate delay in confirming the sale and delivering the goods to him. He is entitled to

A interest on the said earnest money for the period it was locked up; (2) that he was made to pay demurrage charges in a sum of Rs. 52,582, which he is entitled to be reimbursed; and (3) that he was made to pay sales tax of Rs. 5,47,719 which he is not liable to pay and which amount also should be reimbursed to him.

B We may first deal with the claim of Madras Agencies. We do not think that any of the claims are acceptable. Sri N.D. Garg could not tell us whether the goods in question were taxable at sale point or purchase point. He could not also bring to our notice the terms and conditions of the auction sale. He could not satisfy us why the burden of sales tax could not be passed on to him. In the circumstances, his claim for reimbursement of sales tax is rejected. His claim for interest on earnest money is equally unsustainable in law. There is no basis for the said claim. It is also not explained in what circumstances he was made to pay the demurrage charges. The claim of the said party [Madras Agencies] is accordingly rejected.

D So far as the claim of Lakshmi Vilas Bank [a Scheduled Bank] is concerned, we see no reason to pass any orders on the said claim. The Bank has already filed a suit and it has to work out its rights in that suit. There are also charges of collusion and fraud against the officials of the Bank upon which allegations also we express no opinion. We express no opinion on the maintainability or merits of the Bank's claim either. It is for the Bank to work out its rights in that suit.

E So far as the claim of Madras Port Trust is concerned, we think it just and proper to honour the said claim. Accordingly, a sum of Rs. 32,72,626 shall be paid over to the Madras Port Trust out of the aforesaid amount [auction sale proceeds of imported goods] now lying with the State Bank of India, Madras.

F So far as the claim of Madras Port Trust is concerned, we think it just and proper to honour the said claim. Accordingly, a sum of Rs. 32,72,626 shall be paid over to the Madras Port Trust out of the aforesaid amount [auction sale proceeds of imported goods] now lying with the State Bank of India, Madras.

G We see no reason not to accept the claim of the Income Tax department. Accordingly, a sum of Rs. 1,23,86,591 shall be paid over to the Commissioner of Income Tax, Madras, towards the claim of the tax arrears due from A. Kumar for the Assessment Years 1982-83 and 1983-84. [The above figure is taken from the record of the discussions between the Commissioner of Income Tax/Inspecting Assistant Commissioner, Central Range (I) and the Collector of Customs/Assistant Collector of Customs/Appraiser (SIB) which is appended as Annexure-C to the affidavit of

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Union of India filed in these matters on September 24, 1996 - Page 105 of Writ Petition No. 8168 of 1982.] The balance amount shall continue to lie with the State Bank of India, Madras. A

The customs authorities shall be free to pass final orders forthwith pursuant to the show-cause notice dated 15/16th October, 1982. It shall be open to them to pass confiscation orders notwithstanding the fact that the imported goods have been sold under the orders of this Court. In case, the customs authorities pass confiscation orders of the imported goods and produce the orders of confiscation before the State Bank of India, Main Branch, Madras, the balance of the amount lying with the State Bank of India, Madras, shall be paid over to the customs authorities. B C

During the course of hearing of these matters, it appeared rather strange to us that Lakshmi Vilas Bank chose to issue letters of credit on behalf of A. Kumar, a mere low paid employee and a person of no means. There are also allegations of collusion and fraud against certain officials of the Bank in this matter levelled by the Income Tax department. In the circumstances, we called upon Sri Sampath to indicate to us in what circumstances were the letters of credit issued by the bank in favour of A. Kumar. Sri Sampath has placed before us the following fax message sent by the Deputy General Manager of the Bank through the Manager of its New Delhi Branch. The fax message reads as follows: D E

"Ref: R&L/L/8/96-97

Dt. 08.10.1996

THE MANAGER.
NEW DELHI BRANCH. F

REF : INDIAN STEEL CORPORATION--SUPREME
COURT CASE.

Ref. : Your fax dt. 8.10.1996. G

A current account and L.C. were opened on 03.02.1982 on the mistaken identity and A. Kumar is Anil Kumar, Brother of Vinodkumar Didwania. H

The account was introduced by Vinodkumar Didwania who was our customer at that time. H

A The L.C. was guaranteed by Vinodkumar Didwania and Deendayal Didwania.

The goods received under L.C. were also securities for the transaction.

B The account was open and L.C. was extended in normal course and the only mistake which came to know after a long period regarding identity of the person.

C The Bank was not aware that A. Kumar was a different person with a Ceylon citizenship. This was found out after a long time when I.T. authorities took action. At that time the guarantors came to the branch one day and misusing the confidence of the bank had in them, took the file on the pretext of verifying and cancelled the guarantee documents.

D The bank acted only bonafide and the bank was not aware of the fraud played by Didwanias.

The bank has in the end to rely upon the security of the goods imported.

E From the sale of the goods imported a substantial amount has been realised and the same has been in the form of bank deposits as per the orders of the Court.

If further details are required, you may request your advocate to pray for further time.

F sd/-

Dy. General Manager"

G All we can say is, the matter appears to be strange and unusual. However, we cannot ourselves express any opinion on the question whether the bank acted in a business like fashion in extending the letters of credit or not. It may have been an error of judgment or a deliberate act. That is a matter which the Reserve bank of India should look into since it involves loss of depositors' monies. Sri Sampath told us that the Reserve Bank of india is already looking into the matter but he could not tell us with definiteness what is the stage of enquiry and what orders, if any, have been
H passed by the Reserve Bank of India. Accordingly, we request the Reserve

Bank of India to look into the said matter, if they have not already enquired into it, and determine whether any irregularities have been committed in the matter and if so, identify the officials responsible therefor. In case it finds that any officials had acted outside their authority or adverse to the interest of the Bank, it shall direct the management of the bank to take necessary disciplinary proceedings against them. A

Respondents No. 2, 3 and 4 [Director of Inspection (INV) Mayur Bhavan, New Delhi, Deputy Director of Inspection, Madras and Sri K. Sundaram, Assistant Director of Inspection, Madras] in Civil Appeal No. 1693 of 1984 have filed C.M.P. No. 27299 of 1983 for certain directions against the persons named in Para 29 thereof. We are of the opinion that the interests of justice demand that we should hear the said persons to decide whether any direction is needed to be made against them or any of them for the alleged fraud, cheating and other offences said to have been committed by them. Accordingly, we issue notices to the following persons in the said C.M.P.: B C

"1. Sri Prahlad Rai Ashok Kumar alias P. Ashok alias A. Kumar. D

2. Shri Vinod Kumar.

3. Shri Anil Kumar.

4. Shri Pawan Kumar. E

5. Shri Deen Dayal.

6. Shri Ram Gopal Didwania"

The petitioners in C.M.P. No. 27299 of 1983 shall furnish the address of the abovestated persons. F

We are not issuing notices to the officials of Lakshmi Vilas Bank in the C.M.P. for the reason that we have already directed the Reserve Bank of India to enquire into their conduct. G

The writ petition and civil appeals are disposed of with the aforesaid directions.

Post C.M.P. No. 27299 of 1983 after notice to the respondents.