COLLECTOR OF CUSTOMS, BOMBAY

v.

M/S. HARDIK INDUSTRIAL CORPORATION

DECEMBER 10, 1997

[S.P. BHARUCHA AND A.P. MISRA, JJ.]

Customs Act, 1962—Sections 24, 108—Import of Polyethylene scrap—Clearance sought—Customs authority on examination found that goods imported were serviceable material—Order of Collector—Goods to be assessed as serviceable material by enhancing the value—Imposition of fine and penalty—On appeal, Tribunal setting aside order of Collector—Direction for mutilation of goods—Held, Tribunal erred in setting aside the order of Collector and directing mutilation of goods without going into the merits of the case—Offer for mutilation made only after the offence was discovered—Matter remanded to Tribunal for fresh hearing and disposal on merits.

The Respondent-assessee imported polyethylene scrap and sought clearance for home consumption. The customs authorities examined the goods and found that the goods imported were serviceable material ready for use. The goods were seized and statements were recorded under the provisions of Section 108 of the Customs Act, 1962. The Collector of Customs found that the respondent had sought to clear serviceable material as scrap. The Collector thus passed an order for assessing the goods as serviceable material by enhancing the value and to confiscate the goods with an option to the respondent to redeem them on payment of a fine and personal penalty. On appeal, the Tribunal set aside the order of the Collector and directed that the goods should be mutilated in such a manner that they would be used only for recycling and not for any other purpose.

In appeal to this Court, Revenue contended that the Tribunal did not go into the merits and relying upon Section 24 of the Customs Act, has wiped out that order of the Collector, though the purpose of Section 24 was not to condone or erase the consequences of an offence that had been committed.

A **Allowing the appeals, setting aside the order of the Tribunal and remanding the matter to the Tribunal, this Court**

HELD : 1. The Tribunal erred in setting aside the Collector's order and directing mutilation of goods without discussing the merits of the case. The Tribunal did not hold as a fact that the goods were scrap or that the
B **respondent had not sought to clear as scrap what was really serviceable material or that the confiscation, redemption fine and penalty were uncalled for. Without so finding, the Tribunal could not have set aside the Collector's order and directed merely the mutilation of the goods.[366-G-H]**

C **2. The point of time at which the assessee made the offer of mutilation is relevant. If it was made at the very outset, that might have been a different matter. It was only upon the examination of the seventh container that it was noticed that a part of what it contained was serviceable material. Thus the assessee's offer of mutilation was made only after the offence had been discovered. [366-E-F]**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10411-13 of 1996.

From the Judgment and Order dated 20.10.95 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. C- 481/94-A,
E 327-28/95-A) Against Final Order Nos. 586-588 of 1995- A.

M.S. Usgaoncar, Additional Solicitor General, Dhruv Mehta and V.K. Verma for the Appellants.

F B.M. Singhvi for Brij Bhushan for the Respondent in C.A. No. 10411-13/96.

S.S. Misra for Uma Nath Singh Respondent in C.A. No. 432/97.

The Judgment of the Court was delivered by

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BHARUCHA, J. The Revenue is in appeal from an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal.

The respondent filed, for clearance for home consumption, seven bills of entry purporting to relate to polyethylene scrap. By reason of
H intelligence received that serviceable material was likely to be cleared by

the respondent as scrap, the goods covered by the seventh bill of entry were examined by the Customs authorities. It was found that what had been imported were plastic rolls of LDPE films of continuous printed jumbo size bags, plain carry bags and printed carry bags, all ready for use. The goods were seized. Statements were recorded under the provisions of Section 108 of the Customs Act, 1962, and an order was made on 8th March, 1994 by the Collector of Customs, Bombay. The order noted the correspondence between the respondent and its foreign suppliers, the statements that had been made and other material on record. It found that the respondent had sought to clear serviceable material as scrap. It required that the goods be assessed as serviceable material; that the value thereof be enhanced; that they be confiscated, with option to the respondent to redeem them on payment of a fine; and that the respondent pay a personal penalty.

Against the Collector's order the respondent preferred an appeal to the Tribunal. The judgment and order thereon is the subject matter of this appeal. In its judgment the Tribunal referred to the submission made on behalf of the respondent that the goods had been imported for the purpose of recycling in the manufacture of mono filament yarn and the respondent was not interested in using the goods for any purpose other than as scrap. In order to establish the respondent's *bona fides*, its counsel submitted that the respondent was willing to have the goods mutilated at its own expense, and, in that context, referred to Section 24 of the Customs Act. The Tribunal observed that the purpose of the said provision was to ensure that where imported goods had more than one purpose, they were rendered unfit for use except for one purpose. In other words, the Tribunal said, where imported goods could be used as scrap or as serviceable material, it should be open to an importer who contended that the import was only for use as scrap to seek mutilation so that the goods could be used only as scrap and not as serviceable material. The Tribunal referred to the practice of permitting mutilation of serviceable garments which were claimed to have been imported as rags. The Tribunal was satisfied that the same procedure could be followed in the instant case, notwithstanding that rules had not been made under Section 24. Setting aside the order of the Collector, the Tribunal directed that the goods should be mutilated in such a manner that they could be used only for recycling and not for any other purpose.

Section 24 of the Customs Act reads thus :

A "*Power to make rules for denaturing or mutilation of goods.* - The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they B shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form."

Mr. Usgaocar, learned Additional Solicitor General, submitted that the respondent had attempted to clear serviceable material as scrap. The goods had been, *inter alia*, confiscated and a redemption fine and penalty C had been imposed. The order under appeal had wiped out all this, without going into the merits, only by relying upon Section 24. The purpose of Section 24 was not to condone or erase the consequences of an offence that had been committed.

D Learned counsel for the respondent pointed out that the order of the Collector had noted that it had been argued before him on behalf of the respondent that the goods had been offered for mutilation, and submitted that this offer should have been accepted because it proved the *bona fides* of the import. Learned counsel submitted that the Tribunal was, therefore, E justified in invoking Section 24 and basing its judgment upon it.

The point of time at which the respondent made the offer of mutilation is relevant. If, at the very outset, the respondent had asked for mutilation of the goods, that might have been a different matter. The F Collector's order suggests that it did not. It sought to clear the goods. It was only upon the examination of the seventh container that it was noticed that a part of what it contained was serviceable material. If that be so, the respondent's offer of mutilation was made only after the offence had been discovered.

G The order of the Tribunal does not discuss the merits of the case. It does not hold as a fact that the goods were scrap or that the respondent had not sought to clear as scrap what was really serviceable material or that the confiscation, redemption fine and penalty were uncalled for. Without so finding, the Tribunal could not have set aside the Collector's H order and directed merely the mutilation of the goods.

We are, thus, unable to uphold the order of the Tribunal and must set it aside. At the same time, the respondent should not be deprived of the opportunity of satisfying the Tribunal upon the merits of its appeal; the appeal must, therefore, be remanded to the Tribunal for being heard and disposed of on merits, uninfluenced by the judgment and order that we have set aside.

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The appeals are allowed. The judgment and order under appeal is set aside. The appeal (No. C. 481/94-A, 327-328/95-A) is restored to the file of the Tribunal (New Delhi) to be heard and disposed of on merits.

The respondent shall pay to the appellant the costs of the appeal.

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S.V.K.I. Appeals allowed.