

case, even at the cost of repetition it may be reiterated that neither the deceased nor the present petitioners got an opportunity of hearing before their share in the disputed land was declared surplus. That can certainly be styled as deprivation of the property of the deceased and now of the present petitioners without any authority of law. Such action on the part of the concerned authority cannot be sustained in law even for a moment. If that means putting the hands of the clock to the original position, it has to be done unless an irreversible situation had arisen by allotment of the entire area of the disputed land in favour of other persons on account of default, lapse, laches or negligence on the part of the landholder. As aforesaid, in the instant case, the petitioners are not found guilty of delay or laches in any manner. As pointed out hereinabove, Shri Dave for the respondents on instructions has clearly stated that the entire land has not come to be allotted so far.

6. In view of my aforesaid discussion, there is no escape from the conclusion that the share of the petitioners in the disputed land could not have been declared surplus under the impugned order at Annexure-C to this petition. That part of the order *qua* the share of the petitioners in the disputed land to the extent of 33% of the area has to be quashed and set aside. It is clarified that the entire order at Annexure-C to this petition is not disturbed. It will remain operative except the share of the petitioners in the disputed land to the extent of 33% of its area.

7. In the result, this petition is accepted. The declaration of the disputed land as surplus *qua* the share of the petitioners to the extent of 33% of the area thereof in the impugned order at Annexure-C to this petition is quashed and set aside. It is clarified that the impugned order at Annexure-C to this petition, except with respect to the share of the petitioners in the disputed land to the extent of 33% of its area, is not disturbed and would remain in operation. The notification under Sec. 10(3) and the notice under Sec. 10(5) of the Act with respect to the share of the petitioners in the disputed land to the extent of 33% of its area are also quashed and set aside. The revised notification under Sec. 10(3) of the Act with respect to the subject-matter of the impugned order at Annexure-C to this petition may be issued in the light of this judgment of mine unless the impugned order at Annexure-C to this petition is otherwise under challenge or is disturbed in any other proceeding. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

(ATP)

Rule made absolute.

* * *

SPECIAL CIVIL APPLICATION

*Before the Hon'ble Mr. Justice A. P. Ravani and
the Hon'ble Mr. Justice Rajesh Balía.*

GARDEN SILK MILLS PVT. LTD & ANR. v. UNION OF INDIA & ORS.*

Customs Act, 1962 (LII of 1962) — Sec. 14 — Customs duty is payable on the invoice value of goods as are sold in the market — That would include the value of packages or bobbins — An importer cannot contend that duty would be payable separately on the value of yarn at the rate applicable to yarn and the value of bobbins at the rate applicable to bobbins.

* Decided on 29-6-1994. Special Civil Application No. 1115 of 1983 etc. for a writ for quashing the notice of demand of Customs duty.

According to the said provisions, for the purpose of the Act, where duty of customs is chargeable *ad valorem* on any import, the value of such imported goods shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery *at the time and place of importation or exportation as the case may be in the course of international trade*. This necessarily means that price is to be taken of the goods in the condition as are ordinarily sold or delivered at the place of importation. If the goods cannot be sold except in packages then value of goods at the time of importation will be ordinarily that which is price of goods in packages. The value of the goods in packed form has to be taken into consideration for assessing the value of goods so imported for the purpose of levying duty. (Para 5)

Hind Plastic v. Collector of Customs, Bombay (1), relied on.

K. S. Nanavati, for the Petitioners.

H. M. Mehta, Senior Counsel with *K. A. Dave*, for the Respondents.

BALIA, J. All these eight petitions raise common questions and therefore, they are disposed of by this common judgment.

2. All the petitioners are importing Polyester Filament Yarn. The yarn is wound on bobbins which are made either of iron or aluminium or paper. The yarn so imported is subject to levy of duty of customs under the Customs Act. The articles made of iron or aluminium or paper are also subject to duty of customs under separate items prescribed in the Schedule at different rates when imported. The precise question which is raised in these petitions is that when Polyester Filament Yarn is imported wound on bobbins whether customs duty is leviable on the entire invoice price or be subjected to levy of customs duty under respective tariff items by dividing the invoice value of goods according to net value of yarn and bobbins independently.

3. Learned Counsel for the petitioners contends that bobbins are of durable character and can be refused or returned. Therefore, the bobbins, being an independent dutiable article, whether made of aluminium, or iron or paper, subject to levy of customs duty under the Act, are liable to be taxed separately and not as a part of yarn of its full invoice price. In other words, the petitioners contend that from the value of articles imported, shown in the invoice, that much value that may be attributable to the bobbins should be separated and the customs duty leviable on yarn should be levied only on the remainder of the invoice price and the value attributable to bobbins be taxed under respective tariff items applicable to them depending on the fact of which material they are made. This contention is founded on the premises that the entire invoice price is not attributable to cost of yarn, but part of it is attributable to cost of bobbins which is packing material. If the course suggested by the petitioners is not adopted, says the learned Counsel, it will result in double taxation of packing material and will result in fixing of packing material at a higher rate at which yarn is taxable.

4. Learned Counsel for the revenue Mr. H. M. Mehta, refuting the above contentions, urged that importing or selling of yarn without bobbins, is neither practical or possible. It is a general trade practice that the yarn is sold and delivered wound on bobbins and it is one whole transaction. In such cases, value of packing material for the purpose of levy of duty of customs cannot be separated from the

(1) JT 1994 (3) SC 258

invoice price of the goods imported. That would amount to construing the one transaction of importing yarn into two transactions of import of two articles, instead of one yarn permitted to be imported.

5. We have carefully considered the contentions raised before us and are of the opinion that the petitions have no merits. Section 14 of the Customs Act provides for valuation of goods for the purpose of assessment of duties leviable under the Act. Relevant part of Sec. 14 reads as under :

"14. *Valuation of goods for purposes of assessment:-* (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be *the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade*, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer the sale....."

According to the said provision, for the purpose of the Act, where duty of customs is chargeable *ad valorem* on any import, the value of such imported goods shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery *at the time and place of importation or exportation as the case may be in the course of international trade*. This necessarily means that price is to be taken of the goods in the condition as are or ordinarily sold or delivered at the place of importation. If the goods cannot be sold except in packages then value of goods at the place of importation will be ordinarily that which is price of goods in packages. The value of the goods in packed form has to be taken into consideration for assessing the value of goods so imported for the purpose of levying duty.

6. There is no dispute between the parties that the transaction of yarn cannot be carried in an unwound state. It is in the ordinary course of business that the yarn is transacted only as wound on bobbins or caps. In fact, it cannot be transacted separately. The yarn is imported in the shape and form as wound on bobbins and not free of bobbins. The position of bobbins is not different from that of package. The invoice value of the goods imported also is one whole price for the yarn wound on bobbins and not separate sale of yarn and package as two different transactions. It may be noticed that the invoices the petitioners have produced along with the petitions invariably show one price of the entire consignment, though in some of the cases, after showing one common rate for the entire consignment, note has been appended dividing the invoice price relating to yarn and bobbins separately but without disclosing the rates of yarn or bobbins. To illustrate Annexure C1, in Special Civil Application No. 1731 of 1983, invoice dated February 18, 1982 discloses that it is for 92 cartons of yarn weighing 2484 kgs. at the rate of 990 yen per kg, totalling 24,49,168 yens, after invoicing the entire consignment in this manner, it has further shown value of yarn and bobbins separately without assigning separate rates for yarn and bobbins. In some cases, even these particulars have not been shown. The fact remains that the entire consignment has been invoiced at one rate per kg. without any separate valuation of the bobbins and yarn. This is only for the purpose of illustrating that there is only one price shown in the invoice for the whole

consignment of yarn on bobbins with reference to the rate of yarn and invoice is not for yarn and bobbins separately.

7. Keeping in view the provisions of Sec. 14 of the Customs Act for valuing the goods imported, which provides for valuing the goods at a price at which goods are already sold or offered for sale, at the palce of importation, the price of whole consignment as one, has to be taken into account as is obtaining at the time of importation and at the palce of importation and for the purpose of leying of duty of customs, the cost attributable to packing material cannot be separated for the purpose of valuing the commodity, which has been imported.

8. We are fortified in our aforesaid conclusion of the Supreme Court in *Hind Plastic Anr. v. The Collector of Customs, Bombay*, reported in JT 1994 (3) SC 258. It was a case where P.V.C. was imported in packages. The question raised in that case was whether the petitioners are entitled to exemption from paying customs duty on the value of package in terms of notification No. 184 dated 2-8-1976 issued by the Central Government under Sec. 25 of the Customs Act. The notification granted exemption from payment of excise duty on packing material on certain conditions, one of which was that invoice must show separately the value of packing material of imported goods separately. The invoice did not show such separate value. Customs duty on import of P.V.C. was levied on full invoice. Thereafter, assessee's claim for exemption from customs duty on import of packing material was rejected on that ground. Assessee had contended that the import otherwise fulfilled all conditions and *that invoice value includes the cost of packing material*, therefore, he is entitled to exemption. It was also contended that otherwise it will result in double taxation of packing material, once as part of cost included in the invoice price of P.V.C. and then as packing material separately. The revenue defended its stand on the anvil of Sec. 14 providing principles for valuing the imported goods for the purpose of levy of duty. While a learned single Judge of Bombay High Court has accepted the contention of assessee, a Division Bench reversed the judgment. On appeal, Their Lordships agreeing with Division Bench observed that :-

"15. After giving anxious consideration to the rival points of view, we are inclined to agree with the view taken by the Division Bench of the Bombay High Court. It may, however, be that taxing of packing material twice, once at the rate applicable to the contents and then at the rate applicable to container, which would be the result if levy of duty on packing material were not to be exempted, may appear harsh, but it cannot be said to be illegal. What should be taxed is a matter not be decided by the Courts, but by appropriate instrumentalities or functionaries. The opposite view-point adopted by Pendse, J, (in his orders aforementioned) has the effect of deducting the value of packages from the value of the imported goods, i.e., P.V.C. in this case, which is not provided either by the Act or by the Notification. Such an approach presupposes that while levying duty, proper officer will separate the values of the contents and the packages and levy the duty separately at the rates applicable thereto. The Act, however, does not contemplate such course and that does not also appear to be the practice. There appears another difficulty in the way of accepting the assessee's contention as stated above, duty/additional duty is charged on the entire invoice value of P.V.C. (imported goods) at the rate applicable to P.V.C. ; now if the assessee's contention is accepted, it means that the proper officer should separate the value of packages, calculate the duty/additional duty leviabale thereon at the rate

applicable to packages separately and give deduction (exemption) of such amount from the total amount; this "two-rates" theory is inconsistent with the rule of value in Sec. 14(1)."

The principle is fully applicable to the petitions before us.

9. In view of the aforesaid clear pronouncement of their Lordships of the Supreme Court, we are of the opinion that the goods imported, namely, Polyester Filament Yarn has to be assessed at the rate applicable to yarn at the entire invoice price and the petitioners are not entitled to set off the value of the packages from the invoice price of yarn for the purpose of levy of customs duty. We may make it clear that we are not expressing any opinion on the question whether customs duty is payable on value of bobbins also and if so, whether petitioners are entitled to any benefit of exemption as a result of levy of customs duty on yarn at full invoice price, as the same are not subject-matter of these petitions. Accordingly, these petitions are dismissed with no order as to costs. Rule discharged.

10. Interim relief granted earlier in each petition stands vacated.

(ATP)

Rule discharged.

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CRIMINAL REVISION APPLICATION

Before the Hon'ble Mr. Justice K. R. Vyas.

M/S. PATEL FILTERS LTD. v. MOHANLAL N. SHAH & ANR.*

(A) Criminal Procedure Code, 1973 (II of 1974) — Secs. 313 & 391 — Every omission to ask a question to an accused under Sec. 313 would not be fatal to the prosecution — The appellate Court can under Sec. 391 permit fresh evidence to be produced.

Every error or omission in this behalf does not necessarily vitiate a trial because the errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. (Para 10)

Section 391 of Cr. P. C. clearly authorises the appellate Court to take evidence even at the appellate stage. The mere fact that the applicant-Company kept the resolution with them and did not produce till the arguments of the accused were over is no ground for refusing the production in order to promote the interest of justice. (Para 13)

(B) Companies Act, 1956 (I of 1956) — Sec. 630 — The section is intended to protect the properties of companies and furnishes a summary procedure — Every dispute cannot be accepted as a civil dispute of a bona fide nature.

The object of Sec. 630 of the Companies Act is to provide speedy relief to the Company when its property is wrongfully detained or withheld by an employee or ex-employee and the dispute between them when amounts to a *bona fide* dispute be adjudicated upon by a Civil Court and not by a Criminal Court will always depend upon the facts of each case and even if there is a civil dispute, the Criminal Court is not debarred from proceeding further with the complaint. (Para 9)

*Decided on 12-10-1994. Criminal Revision Application No. 359 of 1989 against the order of acquittal passed by the Addl. Sessions Judge, Ahmedabad City in Cri. A. No. 77 of 1988 reversing the order of conviction recorded by the Addl. Chief Metropolitan Magistrate, in Cri. Case No. 527 of 1987.