

## **2009 (2) SUPREME COURT**

Other Citation: 2009 (235) , 2009 (3) SCC 365

### **VARSHA PLASTICS PVT. LTD. VERSUS UNION OF INDIA**

Mis-declaration of imported goods in terms of description, value and quality – rejection of transaction value - challenging the constitutional validity of S. 151A of Customs Act, 1962 - legality and validity of the Standing Order issued by the Chief Commissioner of Customs in light of Platt's weekly report with regard to valuation - burden is on revenue to prove mis-declaration of goods – to determine the value, reference to foreign journals indicating international prices is not unreasonable

No.- 835-836 of 2002

**Dated.- February 5, 2009**

Citations:

1. [COMMISSIONER OF CUSTOMS, CALCUTTA Versus SOUTH INDIA TELEVISION \(P\) LTD. - 2007 \(7\) - Supreme Court](#)
2. [RABINDRA CHANDRA PAUL Versus COMMISSIONER OF CUS. \(PRV.\), SHILLONG - 2007 \(2\) - Supreme Court](#)
3. [EICHER TRACTORS LTD. Versus COMMISSIONER OF CUSTOMS, MUMBAI - 2000 \(11\) - Supreme Court](#)
4. [COLLECTOR OF CUSTOMS, BOMBAY Versus SHIBANI ENGINEERING SYSTEMS - 1996 \(8\) - Supreme Court](#)
5. [BASANT INDUSTRIES Versus ADDL. COLLECTOR OF CUSTOMS, BOMBAY - 1995 \(1\) - Supreme Court](#)
6. [PADIA SALES CORPORATION Versus COLLECTOR OF CUSTOMS - 1993 \(3\) - Supreme Court](#)
7. [SHARP BUSINESS MACHINES PVT. LTD. Versus COLLECTOR OF CUSTOMS - 1990 \(8\) - Supreme Court](#)
8. [ORIENT PAPER MILLS LTD. Versus UNION OF INDIA - 1970 \(3\) - Supreme Court](#)
9. [VARSHA PLASTICS PVT. LTD. Versus UNION OF INDIA - 2001 \(4\) - HIGH COURT OF GUJARAT AT AHMEDABAD](#)

**MARKANDEY KATJU and R.M. LODHA JJ.**

**Ms. Meenakshi Arora, Advocates, for the Appellant.**

**S/Shri K. Radhakrishnan, Sr. Advocates, G. Prakash for B. Krishna Prasad, Advocates, for the Respondent.**

**[Judgment per : R.M. Lodha, J.]** - These two appeals by special leave are directed against the judgment and order of the High Court of Gujarat disposing of Special Civil Application and Miscellaneous Application for review.

2. The first appellant M/s Varsha Plastics Pvt. Ltd., is engaged in the business of importing various goods like plastic materials. They imported a consignment of 18.45 metres of LDPE/HDPE mix granules/powder (floor sweeping) from USA in the month of July, 2000. These goods are claimed to have been purchased from M/s Pexim International of USA under Invoice No. 2827 at the total price of US \$ 4151.25. The importer declared these goods as freely importable item under para 5.1. of the EXIM Policy 1997-2000. The goods were subjected to examination. Some of these goods were found to be mis-declared goods in terms of value and some were found mis-declared in terms of description, value and quality. In view of mis-declaration of goods in terms of description and value, the Customs Authority was of the view that these were liable to be confiscated and importer was liable for penal action. A show cause notice was sought to be given but the importer waived issuance of show cause notice and personal hearing. The Additional Commissioner of Customs, Kandla vide order in original dated 29.11.2000 rejected the invoice price as was found to be very low as compared to prevalent international market price and in view of misdeclaration of goods in terms of value and description, enhanced the value of the goods for the assessment purpose as set out in the order. The Additional Commissioner of Customs ordered confiscation of under-invoiced goods as well as goods mis-declared in description but gave an option to the importer to redeem the same by payment of fine. In his order, the Additional Commissioner of Customs, Kandla also imposed a personal penalty of Rs. 2,50,000/-on the importing firm and its directors.

3. The present appellants, instead of assailing the order in original in a statutory appeal approached the High Court of Gujarat by filing a Special Civil Application inter alia challenging the constitutional validity of the provision of Section 151A of The Customs Act, 1962 (for short 'the Act' ) and also put in issue the legality and validity of the Standing Order No. 7493/99 issued by the Chief Commissioner of Customs, Mumbai with regard to valuation of plastic items.

4. It appears that few other Special Civil Applications raising identical issues were pending before the High Court of Gujarat. These Special Civil Applications were heard together by the Division Bench and disposed of vide Order dated 04.04.2001. The Division Bench did not find any merit in so far as the constitutional validity of Section 151A of the Act was concerned. As regards the power of the Chief Commissioner of Customs to issue the impugned Standing Order to the subordinate Assessing Authorities on the question of assessment of value of the concerned goods for imposing customs duty, the Division Bench held that the impugned Standing Order was not rigid direction or mandate but was only instructions containing flexible guidelines. The High Court held that the impugned Standing Order is to be taken only as assistance in exercise of quasi-judicial power of determining the value for the purpose of levy of customs duty by the concerned authorities. Having read down the Standing Order, the High Court held that the impugned Standing Order was not liable to be struck down.

5. An application seeking review of the order dated 04.04.2001 was made by the present appellants which came to be disposed of on 25.04.2001. It is from these orders that these two appeals arise.

6. In view of the limited leave granted by this Court, the controversy in these appeals is confined to the legality and validity of the Standing Order No. 7493/99.

7. Ms. Meenakshi Arora, learned counsel, appearing for the appellants, relying upon a decision of this Court in the case of ***Eicher Tractors Ltd., Haryana v. Commissioner of Customs, Mumbai*** (2001) 1 SCC 315, strenuously urged that the transaction value i.e., price actually paid for imported materials alone can be considered to be the assessable value and, therefore, the impugned Standing Order which directed the assessing authorities to discard such transaction value and take the price published in magazine like PLATT's Weekly Report, as the assessable value was unsustainable in law. The learned counsel referred to two more decisions of this Court viz., (1) ***Rabindra Chandra Paul v. Commissioner of Customs (Preventive) Shillong*** (2007) 3 SCC 93; (2) ***Commissioner of Customs, Calcutta v. South India Television (P) Ltd.*** (2007) 6 SCC 373 wherein Eicher Tractors has been followed. In challenging the Standing Order as invalid and ultra vires, the learned counsel submitted that no instructions could be issued as to how assessable value of imported goods should be determined and as to how a consignment of waste like floor sweepings should be classified. She placed reliance on ***Orient Paper Mills Ltd. v. Union of India***, AIR 1970 SC 1498.

8. Before we advert to the impugned Standing Order, it would be appropriate to refer to few provisions of law, relevant for the purposes of the controversy raised in these appeals.

9. Section 14 of the Act provides for valuation of goods for purposes of assessment which reads thus:-

**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 for sale;

[Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50;]

[(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.]

(2) Notwithstanding anything contained in sub-section (1) [or sub-section (1A)] if the Central Government is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where

any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(3) For the purposes of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Central Government, or

(ii) ascertained in such manner as the Central Government may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973)

**10.** Section 151A empowers the Board to issue orders, instructions and directions to officers of Customs for the purpose of uniformity in the classification of goods or with respect to levy of duty thereon. The said provision is as follows:-

**[151A. Instructions to officers of customs** - The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all the other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :

Provided that no such orders, instructions or directions shall be issued -

(a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of his appellate functions.]

**11.** Section 156 of the Act empowers the Central Government to make rules consistent with the Act for carrying out its purposes. In exercise of the power conferred by Section 156 of the Act read with Section 22 of the General Clauses Act, 1896, the Central Government has made the rules called the Customs Valuation (Determination of Price of Imported Goods) Rules 1988 (for short 'Customs Valuation Rules'). Rule 2(f) defines inter alia transaction value, the value determined in accordance with Rule 4 of the Rules. Rule 3 and 4 of the Customs Valuation Rules read thus:-

**3. Determination of the method of valuation-** For the purposes of these rules, - (i) the value of imported goods shall be the transaction value;

(ii) if the value cannot be determined under the provisions of clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules.

**4. Transaction value** - (1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.

(2) The transaction value of imported goods under sub-rule (1) above shall be accepted :

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules ; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time -

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods.

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 9 of these rules and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

**12.** Section 14(1) of the Act prescribes a method for determination of the value of the goods. It is a deeming provision. By legal fiction incorporated in this Section, the value of the imported goods is the deemed price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation in the course of international trade. The word 'ordinarily' in Section 14 (1) is a word of significance. The ordinary meaning of the word 'ordinarily' in Section 14(1) is 'non-exceptional' or 'usual'. It does not mean 'universally'. In the context of Section 14(1) for the purpose of 'valuation' of goods, however, by use of the word 'ordinarily', the indication is that the ordinary value of the goods, is what it would have in the course of international trade at the time of import. Section 14(1), thus, provides that the value has to be assessed on the basis of price attached to such or like goods ordinarily sold or offered for sale, in the ordinary course of events in international trade at the time and place of transportation.

**13.** Customs Valuation Rules have been framed by the Central Government in exercise of the powers conferred by Section 156 of the Act to maintain uniformity and certainty in the matter of valuation of goods which are matters of procedure, substantive provision being contained in Section 14(1). Rule 3 and 4 of the Customs Valuation Rules provide for transaction value method. Rejection of transaction value of goods by the Customs Authority being totally an un-realistic value has been found to be proper by this Court in the case of **Collector of Customs, Bombay v. Shibani Engineering Systems, Bombay** (1996) 10 SCC 42.

**14.** In *Eicher Tractors* (supra) this Court held that the value, according to Section 14, 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 in the course of international trade. It was further held that by Rule 4(1) mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value but this mandate is subject to certain exceptions specified in Rule 4(2). It was also held by this Court in *Eicher Tractors* (supra) that both Section 14(1) of the Act and Rule 4 provide that the price paid by the importer to the vendor in the ordinary course of commerce shall be deemed to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularized in Rule 4(2). However, when the transaction value under Rule 4 is rejected, the value shall be determined proceeding sequentially through Rule 5-8 of the Rules. In *Eicher Tractors* it cannot be said to have been laid down that even in a case of invoice manipulation or under-invoicing or ridiculously low price or misdeclaration in respect of valuation of goods or description or non-

commercial considerations or in such like circumstances, the transaction value cannot be rejected by the assessing authority. The observations in *Eicher Tractors*, "...In the case before us it is not alleged that the appellant has mis-declared the price actually paid. Nor was there a mis-description of goods imported as was the case in *Padia Sales Corporation*", leave no manner of doubt in what we have noticed above. As a matter of fact in ***Eicher Tractors, Padia Sales Corporation v. Collector of Customs*** (1993) Supp. 4 SCC 57, ***Basant Industries Nunhai, Agra v. Additional Collector of Customs, Bombay*** (1995) Supp 3 SCC 320 and ***Sharp Business Machines v. Collector of Customs*** (1991) 1 SCC 154; were found distinguishable as in these cases the rejection of transaction value was found justified being covered by special circumstances and/or mis-description of the imported goods to defraud revenue.

**15.** Rabindra Chandra Paul (supra) and South India Television (P) Ltd.,(supra) also recognize the legal position that transaction value can be rejected if invoice price is not found to be correct but it is for the Department to prove that the invoice price is incorrect.

**16.** Rule 11 of Customs Valuation Rules also provide that in case of dispute between importer and the officer of the Customs valuing the goods it shall be resolved consistent with the provisions contained in sub-section 1 of Section 14 of the Act.

**17.** It has to be kept in mind that once nature of goods has been mis-declared, the value declared on the imported goods becomes unacceptable. It does not in any way affect the legal position that the burden is on the Customs Authorities to establish the case of misdeclaration of goods or valuation or that the declared price did not reflect the true transaction value.

**18.** Section 151A of the Act confers upon the Board the power to issue orders, instructions and directions to the authorities for proper administration of the provisions of the Act. It also provides that all such authorities and all other persons employed in the execution of the provisions of the Act shall observe and follow such orders, instructions and directions of the Board. Proviso appended thereto states that no such orders, instructions or directions shall be issued - (a) so as to require all such officers of Customs to make a particular assessment or to dispose of a particular case in a particular manner or; (b) so as to interfere with the discretion of the Collector of Customs (Appeals) in exercise of his appellate functions. The proviso to Section 151A makes it abundantly clear that the Customs Officer who has to make a particular assessment is not bound by such orders or instructions or directions of the Board. An Assessing Authority under the Act being a quasi-judicial authority has to act independently in exercise of his quasi-judicial powers and functions. Section 151A does not in any manner control or affect the independent exercise of quasi-judicial functions by the Assessing Authority.

**19.** By the impugned Standing Order No.7493/99 dated 03.12.1999, the Chief Commissioner of Customs has given detailed guidelines and directions for the determination of valuation of plastic items in the light of international prices contained in the foreign finance journals. The directions issued to the assessing authorities is to

apply what is described as PLATT rate, which is explained as rates and prices maintained in the internationally reputed finance journal PLATT's WEEKLY REPORT. It has also given direction as to how classification of mixed material like floor sweeping should be made.

**20.** The question now is whether the impugned Standing Order in any manner interferes with the independent quasi-judicial function to be discharged in the assessment of duty by the Assessing Officer. Whatever be the language employed in the Standing Order which may suggest that the said instructions are in the nature of a mandate or command, High Court has read down the impugned Standing Order purely as instructions or guidelines and not mandate or command for being obeyed in each individual case of assessment before them. The High Court further held that Standing Order is to be taken only as an assistance in exercise of the quasi-judicial power of determining value for the purpose of levying of customs duty. We agree with the view of the High Court. As a matter of fact, it is the case of the Department as well that the impugned Standing Order is not binding; it is just in the nature of guidelines to streamline the functioning of Customs Officers at various field formations. According to the Department, the impugned Standing Order was issued for the smooth functioning of assessment and examination work and to bring about uniformity in the work and it prescribes only pattern of assessment and in no way, interferes with the discretion of the Assessment Authority. In view of the categorical stand of the Department that the impugned Standing Order is just in the nature of guidelines and it does not in any way interfere with the discretion of officers, the impugned Standing Order has to be read and understood accordingly.

**21.** In so far as the reference to PLATT's Price Report or other reputed financial journals which are indicators of international prices for the value of imported goods for the purpose of Section 14(1) is concerned, suffice it to observe that once transaction value is rejected on valid grounds, the Customs Authority has to proceed to determine the value of goods by following Customs Valuation Rules and on the basis of contemporaneous import. However, in the absence of any evidence with regard to contemporaneous import, reference to foreign journals that may indicate the correct international price for the purposes of Section 14 may not be irrelevant and relying upon such journal cannot be said to be altogether unreasonable. As to whether in a given case such foreign journal or for that matter PLATT's Price Report indicate correct international price of the concerned goods for the purpose of Section 14(1) would depend on facts of each case and that would be for the department to establish. The valuation of the imported goods where the transaction value in the opinion of Assessing Authority is liable to be rejected because of invoice manipulation or under-invoicing or un-realistic price or mis-declaration in respect of valuation of goods or description or where transaction value of the goods declared is ridiculously low, which of course the Assessing Authority has to justify, he must proceed to determine valuation of goods by following Customs Valuation Rules. The availability of evidence of contemporaneous import of the same goods obviously provides the best guide for determination of value of the import of goods but in the absence of evidence of contemporaneous import, reference to foreign journal for finding out correct international price of imported goods may not be irrelevant because ultimately the Assessing Authority has to determine value of the imported

goods, at which such goods are sold or offered for sale in the course of international trade at the time of importation.

**22.** Paragraph 7 of the impugned Standing Order which provide as to how classification of mixed waste material like floor sweeping should be made also has to be read only as guidelines to the Assessing Authority. The Assessing Authority in his quasi-judicial function has to take independent view in this regard as well.

**23.** We do not intend to go into the facts as to whether the Assessing Authority was justified in his findings in respect of imported goods having been mis-declared in terms of value and some of the imported goods mis-declared in terms of description, value and quality as these are the aspects which have to be challenged by filing a statutory appeal. The High Court has already kept these aspects open to be agitated by the appellants before the competent authority under the Act.

**24.** In the result, we find no merit in these appeals and same are dismissed with no order as to costs

## **2020 (10) TMI 1142 - BOMBAY HIGH COURT**

### **THE SUPREME INDUSTRIES LTD., VERSUS THE CBIC & OTHERS**

**Valuation - Detention of goods - Petitioner contended that, Authorities have raised frivolous queries - Manner in which adjudication order has been passed - Expiry of free time allowed by the shipping line and container freight station for clearance of imported cargo - vires of the Standing Order No.7493/99 dated 3rd December, 1999 and its subsequent amendment in Standing Order No.44/2016 dated 8th July, 2016, regarding PLATT Valuation of the Petitioner's goods as being contrary to the Customs Act, 1962.**

**HELD THAT:-** Despite exercising complete restraint, we cannot help but say that the entire conduct of the officer suggests a complete non-application of mind which to say the least must be deprecated. We feel that this entire saga was wholly avoidable. When the Court had issued notice on 10th September, 2020 and had passed the order on 22nd September, 2020 stating that the interim application would be taken up for consideration on 24th September, 2020, the concerned officer ought to have informed the Court about the status of the adjudication process and ought to have sought the leave of the Court for issuance of the order-in-original.

Even a bare perusal of the file which has been produced before the Court clearly shows that the order-in-original was signed on 24th September, 2020. It is only the date on which the order is signed, is the date on which the order is passed. Revenue authority cannot at their own whim and fancy, split an order viz. first pass the operative part of the order without any discussion or finding or reasons and then pass the speaking order with discussion and findings and conveniently choose dates such as in this case.

If this Writ Petition had not been filed and if this Court had not passed the order dated 06th October 2020, requiring the Officer to clear the confusion of the dates, neither this Court nor the Petitioner would have ever known the manner in which the Revenue- Authority pass orders.

We are left with no choice but to set aside the order in original dated “4th September, 2020 signed on 24th September, 2020 and issued on 24th September, 2020” in toto. Also in view of the above discussion, we direct the Respondent No.2 to depute another Officer in place and instead of the present Officer to hear the case of the Petitioner and after giving an opportunity of personal hearing pass a speaking order with reasons in accordance with law within a period of two weeks from the date of this order - Petition disposed off.

No.- WRIT PETITION (ST.)NO. 92578 OF 2020 WITH INTERIM APPLICATION NO. 92972 OF 2020 IN WRIT PETITION (ST.)NO. 92578 OF 2020

**Dated.- October 27, 2020**

Citations:

1. [STATE OF PUNJAB AND PUNJAB STATE LEATHER DEVELOPMENT CORPORATION & ORS. Versus M/s. BANDEEP SINGH & ORS. - 2015 \(8\) - Supreme Court](#)
2. [Ram Kishun & Ors Versus State of UP. & Ors. - 2012 \(5\) Supreme Court](#)
3. [KRANTI ASSOCIATES PVT. LTD. Versus MASOOD AHMED KHAN - 2010 \(9\) Supreme Court](#)
4. [VARSHA PLASTICS PVT. LTD. Versus UNION OF INDIA - 2009 \(2\) Supreme Court](#)
5. [Jagdish Mandal Versus State of Orissa and others - 2006 \(12\) Supreme Court](#)
6. [Mr. B.S.N. Joshi & Sons Ltd. Versus Nair Coal Services Ltd. & Ors. - 2006 \(10\) Supreme Court](#)
7. [AIR INDIA LTD Versus COCHIN INTERNATIONAL AIRPORT LTD & ORS - 2000 \(1\) Supreme Court](#)
8. [TATA CELLULAR Versus UNION OF INDIA - 1994 \(7\) Supreme Court](#)
9. [Sterling Computers Limited Etc Versus M & N Publications Limited And Ors - 1993 \(1\) Supreme Court](#)

**UJJAL BHUYAN & ABHAY AHUJA, JJ.**

**Mr. Ashwin Gopal Kumar i/b. Mr. Ankit Kulkarni, for the Applicant/ Petitioner.**

**Mr. Pradeep S. Jetly, Sr. Advocate with Mr. Jitendra B. Mishra, for the Respondents.**

**(THROUGH VIDEO CONFERENCING)**

**P.C:- (Per Abhay Ahuja, J.)**

Heard. Rule. Rule made returnable made forthwith. With the consent of the learned Counsel for the parties, this Writ Petition is being heard finally.

2. This Petition dated 4th September, 2020 has been moved by the Petitioner vide Advocate's praecipe dated 6th September, 2020, for the following reliefs:-

*“(a) That this Hon’ble Court be pleased to issue a writ of certiorari or any other appropriate writ, direction or order and quash the impugned Standing Orders;*

*(b) That this Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order commanding the Respondents its agents, officers and servants to forthwith release the goods imported by the Petitioner by accepting the price of the goods indicated in the invoice and declared in the Bill of entry, for the purposes of valuation in Customs law;*

*(c) That this Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order commanding the Respondents to pay to the Petitioner, the aggregate of ascertainable costs and losses suffered by the Petitioner, including the detention charges and the CFS ground rent charges, which arose due to the gross inaction and culpable actions of Respondent No.4 and other concerned Officers;*

*(d) That, pending the hearing and final disposal of this writ petition, this Hon’ble Court be pleased to stay the operation of the impugned Standing Orders.”*

3. The Petitioner is in the plastics industry with a variety of applications in moulded furniture, storage and material handling products, XF films and products, performance films, industrial moulded products, protective packaging products, composite plastic products, plastic piping system and petrochemicals and offers wide range of plastic products in India manufactured at its various plants. It is the case of the Petitioner that it has imported various inputs required for its manufacturing units. In respect of one such import of PVC resin suspension grade under CTH 39041020 imported from USA, the Petitioner filed Bill of Entry No. 8389492 dated 6th August, 2020 for home consumption by making self-declaration of the value. However, according to the Petitioner, the Respondent-Authorities have raised frivolous queries noting that unit price for the imported cargo in the commercial invoices is lower than the rates found in the website of 'S&P Global Platts' and that on such untenable grounds, the goods of the Petitioner were withheld at Nhava Sheva Port, Mumbai.

4. The Petitioner is aggrieved by the expiry of free time allowed by the shipping line and container freight station for clearance of imported cargo attracting huge penal charges in the form of container detention charges, ground rent etc. due to the alleged failure of the Respondent-Authorities to clear for home consumption the goods imported by the Petitioner under Bill of Entry No.8389492 dated 06th August 2020.

5. The Petitioner has, therefore filed this Writ Petition, not only challenging the action/ omission as above, but also the vires of the Standing Order No.7493/99 dated 3rd December, 1999 and its subsequent amendment in Standing Order No.44/2016 dated 8th July, 2016, regarding PLATT Valuation of the Petitioner's goods as being contrary to the Customs Act, 1962 (the "Customs Act").

6. On 10th September, 2020, when this matter was listed, this Court passed the following order in the Writ Petition:-

*"[1] Heard learned counsel for the parties.*

*[2] Issue notice returnable three weeks.'*

*[3] Mr. J. B. Mishra, learned counsel assisting Mr. Pradeep Jetly, learned senior counsel waives notice for all the Respondents.*

*[4] Respondents to file affidavit.*

*[5] Stand over to 06.10.2020."*

7. By an Interim Application dated 18th September, 2020, the Petitioner has prayed that the imported goods be provisionally released in accordance with Section 18 of the Customs Act.

8. On 22nd September, 2020, this Court has passed the following order in the Interim Application:-

*"In the related writ petition, notice was issued on 10th September, 2020 making it returnable on 6th October, 2020.*

*[2] Now the present interim application has been filed seeking interim direction to the respondents for provisional release of the goods in accordance with Section 18 of the Customs Act, 1962.*

*[3] Mr. Jetly may obtain instructions.*

*[4] This interim application will be taken up for consideration on 24th September, 2020."*

9. Thereafter, the Revenue has filed its affidavit in reply notarized on 23rd September, 2020, inter alia, stating that pursuant to the letter dated 27th August, 2020 whereby the Petitioner had requested for waiver of show cause notice and personal hearing with a request to load the value as per PLATT rate by giving 10% variation as per Standing Order No.7439/99 dated 3rd December, 1999 and subsequent Standing Order No.44/2016 dated 8th July, 2016, the bill of entry No. 8389492 dated 6th August, 2020 filed by the Petitioner was adjudicated by the Additional Commissioner of Customs, Nhava Sheva on 4th September, 2020, rejecting the declared value under Section 12 of the Customs Valuation Rules and

re-determined the same at ₹ 2.63 crore with a fine of ₹ 8 lakhs under Section 125 of the Customs Act and penalty of ₹ 80,000/- under Section 112 (a) of the Customs Act. By the said affidavit, it was also stated that the bill of entry has been finally assessed on 9th September, 2020 after query reply given by the Petitioner on 9th September, 2020. Interestingly, a copy of the order of the adjudicating authority was not annexed to the reply.

10. Thereafter, when the matter was taken up on 25th September, 2020, as there was no Court working on 24th September, 2020 on account of heavy rains and flood, the following order was passed by this Court.;

*“Mr. Jetly, learned Sr. Counsel appearing for the Respondents submits that he has filed affidavit in reply.*

*[2] However, the said affidavit in reply is not on record. Learned Counsel for the Petitioner submits that he has also not received a copy of the same.*

*[3] Registry to place the affidavit in reply on record. Mr. J. B. Mishra, shall ensure that copy of the said affidavit is served on learned Counsel for the Petitioner.*

*[4] Considering the urgency expressed by learned Counsel for the Petitioner, we will take up this matter on 29th September, 2020 under the caption ‘high on board’.*

*[5] Stand over to 29th September, 2020.”*

11. On 29th September, 2020, the learned Counsel for the Respondents placed before this Court a copy of the order in original dated 4th September, 2020, whereby declared value of the goods had been rejected as the same had been re-determined and the goods confiscated. The order dated 29th September, 2020 of this Court is reproduced as under:-

*“During the course of hearing today, Mr. Jetly, learned Sr. Counsel for the Respondents has placed before us a copy of order-in-original dated 4th September, 2020 issued on 24th September, 2020 whereby declared value of the goods has been rejected and the same has been re-determined. Further the goods have been confiscated after re-determination of the value at ₹ 2,63,75,328/-. However, adjudicating authority has given option to the Petitioner to redeem the goods on payment of redemption fine of ₹ 8,00,000/- under Section 125(1) of Customs Act, 1962 (the “Act”) besides imposing penalty of ₹ 80,000/- under Section 112(a) of the said Act.*

*[2] In view of the aforesaid development, we grant liberty to learned Counsel for the Petitioner either to bring on record the aforesaid order-in-original or to take instructions as to the future course of action which the Petitioner would like to pursue if aggrieved by the aforesaid order.*

*[3] At this stage, Mr. Jetly, learned Sr. Counsel for the Respondents submit that if the Petitioner is aggrieved by the order in original, he may prefer appeal as provided under Section 128 of the said Act.*

*[4] However, we express no opinion today.*

*[5] Stand over to 6th October, 2020.”*

12. By additional affidavit dated 1st October, 2020, Petitioner has brought on record the order in original dated 4th September, 2020.

13. When the matter was listed on 6th October, 2020, this Court passed the following order:-

*“[1] Heard learned counsel for the parties.*

*[2] We have also perused our previous order dated 29.09.2020.*

*[3] Though Petitioner has filed an additional affidavit, for the moment we are concerned only with the order in original which was brought to our notice on the previous date by Mr. Pradeep Jetly, learned senior counsel for the Respondents.*

*[4] On a perusal of the order in original, we find that the date of the order is mentioned as 04.09.2020 and the date of issue is mentioned as 24.09.2020. But we find that the adjudicating authority had signed the order on 24.09.2020, which prima facie means that the order was passed on 24.09.2020. However, in paragraph 6 of the affidavit in reply filed by the Commissioner, it is mentioned that the bill of entry was finally assessed on 09.09.2020 after query reply was given by the Petitioner on 09.09.2020. This means that the assessment was after 04.09.2020 i.e. on 09.09.2020. If that be so then the order in original could not have been passed on 04.09.2020.*

*[5] From the above it appears that there is some confusion as to the exact date of passing of the order and issuance of the order. We feel that this needs to be clarified by the adjudicating authority by filing an affidavit. Besides, Mr. Pradeep Jetly shall also produce the record pertaining to passing of the order in original physically before us. Let the affidavit and record be produced by the next date.*

*[6] Stand over to 13.10.2020.*

*[7] In the meanwhile Petitioner may amend the Writ Petition if so advised.”*

14. Pursuant to our order dated 6th October, 2020, the adjudicating authority – Mr. Kamlesh Kumar Gupta, Addl. Commissioner, has filed an affidavit and also the original record was placed before us.

15. Accordingly, on 13th October, 2020, we passed the following order:-

*“[1] Pursuant to our earlier order, an affidavit has been filed by Mr. Kamlesh Kumar Gupta, Additional Commissioner. The original record has also been produced which we have retained.*

*[2] Order reserved.”*

16. We have perused the aforementioned papers and record and also heard the learned Counsel for the parties.

17. At the very outset, it is pertinent to first refer to paragraphs 8 and 11 of the affidavit of Mr. Kamlesh Kumar Gupta, which for the sake of convenience are reproduced as under:-

*“8:- I say that the operative part as recorded on 04-09-2020 on the file is reproduced below:-*

*“ I find that the Importer is regularly importing this item and is fully aware of the S.O. 7493/99 dated 03.12.1999 and prevailing PLATT price. In one more case of their imports, Out of charge Officer has pointed out the valuation issue and accordingly the value was enhanced the importer paid the differential duty accordingly. Despite this fact, they knowingly attempted to clear the goods of the said B/E at below PLATT price and Standing Order on the issue. Had it not been detected by the Out of Charge Officer, it would have remained unnoticed causing loss to the exchequer. In view of this, I hold that it is a case of mis-declaration of value to evade duty to the tune of ₹ 8.15 lac (approx). Accordingly, I pass the following order:-*

*(i) I reject the declared value (unit price USD 600 PMT) U/S 12 of CVR 2007 and re determine the same as USD 666.5 PMT. The B/E be re-assessed accordingly and the importer shall pay the differential duty fore with.*

*(ii) I confiscate the goods 520 MT PVC resin suspension grade 1230 p covered by bill of entry No. 8389492 dated 06.08.2020 having re-determined value of ₹ 2.63 crore (Two Crore Sixty three lac) U/S 111 (m) of Customs Act, 1962. However, I give option to redeem the same on payment of redemption fine of ₹ 8,00,000/- (eight lac only) under Section 125 of Customs Act, 1962.*

*(iii) I also impose penalty of ₹ 80,000/- (Eighty Thousand only) under Section 112 (a) of Customs Act, 1962.”*

*(11) I say that a draft of the typed speaking order with discussion and finding was put up on 17.09.2020. I say that after due corrections, fair copies of the Order-in-Original were signed on 24.09.2020 and issued on 24.09.2020 itself under DIN No.20200978NW00002059EI.”*

18. The statement made in the aforementioned paragraphs quite surprises us to say the least. To say that on 4th September, 2020, the operative part of the order was recorded and that the reasons/ discussion and findings would come later is to put the cart in front of the horse rather than behind it. We are unable to comprehend as to how without dealing with the facts and without giving reasons, the operative part of a quasi judicial order can be arrived at or even recorded. According to us, this kind of approach by a quasi judicial authority is not only shocking but also against the basic tenets of conduct by quasi judicial authorities.

19. Further more, it is stated in paragraph 9 of the said affidavit of Mr. Gupta that the adjudication was done on 4th September, 2020 and the Petitioners were informed of the said adjudication on 8th September, 2020. The said paragraph is also reproduced as under:-

*“9:- I say that the fact of the adjudication done on 04-09-2020 was informed to the Petitioners vide letter dated 08-09-2020 issued by the Deputy Commissioner of Customs Group II G, a copy whereof is hereto annexed and marked as Exhibit 2. I say that the same was received under due acknowledgment by the authorized representative of the Petitioners on 08-09-2020, which is available/ recorded on the office copy of the same.”*

20. Further in paragraph 10, it is stated that the concerned bill of entry was finally assessed on 9th September, 2020 as per adjudication order after reply to the query was given by the importer in ICES System on 9th September, 2020. For the sake of convenience, paragraph 10 of the said affidavit is also quoted as under:-

*“10:- I say that Bill of Entry No.8389492 dated 06-08-2020 was finally assessed on 09-09-2020 as per adjudication order after reply to the query was given by the importer in the ICES system on 09-09-2020.”*

21. From the above, we note that the Commissioner concerned has made contradictory statements; on the one hand, he submits that the operative part was recorded on 4th September, 2020 and the typed speaking order with discussion and findings was signed on 24th September, 2020, on the other hand, he says in paragraph 10 that the bill of entry was finally assessed on 9th September, 2020 as per adjudication order. We are unable to comprehend as to how after an order is signed on 24th September, 2020 that an assessment could be done on 9th September, 2020.

22. As if that was not enough, in paragraph 13 of the said affidavit, it is stated that the re-assessment under Section 17 (4) of the Customs Act, was completed on 9th September, 2020 and that he has issued a speaking order under Section 17(5) of the Customs Act on 24th September, 2020 which is well within the 15 days period from the date of 9th September, 2020. Paragraph 13 of the said Affidavit is quoted as under:

*“13:-I say that in the present re-assessment under Section 17(4) of the said Act, was been completed by the proper officer on 09-092020 and the*

*competent adjudicating authority [Deponent] has issued speaking order under Section 17(5) of the said Act, on 2409-2020 which is well within the period of 15 days from the date of re-assessment, provided under Section 17(5) of the said Act.”*

23. At this stage, for the sake of convenience, we reproduce section 17 of the Customs Act as under:-

**“17- Assessment of duty –** (1) *An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

(2) *The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in subsection (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.*

*[Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]*

3 *For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.*

(4) *Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*

(5) *Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper office shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.”*

23.1 It is clear from the high lighted portion of sub-section 5 above, that the proper officer shall pass a speaking order within 15 days of the re-assessment of the shipping bill; there is no language to suggest that he shall issue the speaking order within 15 days. There is difference between passing of an order and issuance of an order. We would have expected that an officer of the rank of Additional Commissioner who is discharging quasi judicial function under the Customs Act to have atleast read the section before stating what has been stated in paragraph 13 of his affidavit.

24. Despite exercising complete restraint, we cannot help but say that the entire conduct of the officer suggests a complete non-application of mind which to say the least must be deprecated. We feel that this entire saga was wholly avoidable. When the Court had issued notice on 10th September, 2020 and had passed the order on 22nd September, 2020 stating that the interim application would be taken up for consideration on 24th September, 2020, the concerned officer ought to have informed the Court about the status of the adjudication process and ought to have sought the leave of the Court for issuance of the order-in-original. It needs no reiteration that an officer conferred adjudicatory authority exercises quasi-judicial powers while passing adjudication order. He has to discharge his duties in a fair, proper and judicious manner befitting his status as an adjudicating authority. We say this much and no more.

25. Even a bare perusal of the file which has been produced before the Court clearly shows that the order-in-original was signed on 24th September, 2020. It is only the date on which the order is signed, is the date on which the order is passed. Revenue authority cannot at their own whim and fancy, split an order viz. first pass the operative part of the order without any discussion or finding or reasons and then pass the speaking order with discussion and findings and conveniently choose dates such as in this case, where the operative part of the order is claimed to have been passed without discussion or findings or reasons on 4th September, 2020 whereas the order with discussion and findings in respect of the same operative order was passed / signed on 24th September, 2020 and the same was also issued on 24th September, 2020. In fact, in said order-in-original there are also two dates mentioned on the top right hand corner of the first page i.e. – the date of order - 4th September, 2020, the date of issue -24th September, 2020 and on the last page under the signature of the officer the date is 24th September 2020. It is due to this confusion that we had passed our order dated 06th October 2020 reproduced above requesting for an affidavit of the adjudicating authority and production of the original record. It is only in the affidavit of Mr. Gupta that an explanation has been given that there is also a date of signing. According to us, this type of conduct is not acceptable in conducting the affairs of the Revenue. If this Writ Petition had not been filed and if this Court had not passed the order dated 06th October 2020, requiring the Officer to clear the confusion of the dates, neither this Court nor the Petitioner would have ever known the manner in which the Revenue- Authority pass orders.

26. In this context, it would also be pertinent to refer to a Master Circular No.1053/02/2017 – CX dated 10th March, 2017 issued by the Central Board of Excise and Customs. Paragraph 14.5 which refers to adjudication order is quoted as under:-

***“14.5- Adjudication order:- The adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reasons at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.”***

27. This circular binding on the field formations clearly states that the adjudication order must be a speaking order which speaks for itself. It further goes on to say that a good adjudication order is expected to stand the test of legality, fairness and reasons at higher appellate forums and that such order should contain all the details of the issue, clear findings and a reasoned order.

28. Not only that, the Government of India vide its Instruction No.7 dated 5th April, 2017 with reference to Section 17(5) of the Customs Act, has high lighted the need to pass a speaking order and to ensure compliance with the provisions of the Customs Act. The said Circular issued by the CBIC is also quoted as under:-

*“Section 17(5) of the Customs Act provides that ‘where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued thereof under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.’*

*2. It has been observed that officers exercising the powers under the above mentioned sub-section are not issuing a speaking order in each and every case particularly where the importer or exporter, as the case may be, does not confirm his acceptance of the reassessment. It may be appreciated that an importer or an exporter has an inalienable right to know the reasons for loading of value, change of classification, any decision regarding entitlement to an exemption notification etc. Omission to issue speaking orders in matters of re-assessment, may not prejudicially affect the right of the importer or exporter to appeal as such, but nevertheless deprives him of knowing the grounds of such re-assessment. At the same time, any such re-assessment without the support of a speaking order could be perceived as legally questionable. Time and again, courts have frowned upon the instances of non-issuance of speaking orders under the said subsection.*

*3. In view of the above, all Chief Commissioners are requested to take stock of the prevailing practice in their zones so as to ensure compliance with the provisions of the Act.”*

29. There are several judgments of the Apex Court that give guidance on the manner in which Revenue Authorities have to pass orders.

30. The decision of the Supreme Court in the case of **State of Punjab v/s. Bandip Singh and others reported in (2016) 1 SCC 724** is relevant. It has been held by the Supreme Court that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. In the same judgment in paragraph 7, the Supreme Court clarifies that the Government does not have carte blanche to take any decision it chooses to; it cannot take a capricious,

arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons. Paragraph 7 of the said decision is quoted as under:-

*“7. The same principle was upheld more recently in **Ram Kishun v. State of U.P. (2012) 11 SCC 511 : (2013) 1 SCC (Civ) 382.** However, we must hasten to clarify that the Government does not have a carte blanche to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons. This has already been discussed threadbare in several decisions of this Court, including in **Sterling Computers Ltd. v. M & N Publications Ltd (1993) 1 SCC 445, Tata Cellular v. Union of India (1994) 6 SCC 651, Air India Ltd. v. Cochin International Airport Ltd. (2000) 2 SCC 617, B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. (2006) 11 SCC 548 and Jagdish Mandal v. State of Orissa (2007) 14 SCC 517”***

31. Also the decision of the Supreme Court in the case of **Kranti Associates Pvt. Ltd. and another v/s Masood Ahmed Khan and others cited in (2010) 9 SCC 496** also highlights this point. The Supreme Court in paragraph 15 opined that the face of an order passed by a quasi judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the inscrutable face of a sphinx.

In paragraph 47 the Supreme Court summarised its discussion. The relevant subparagraphs of the said summary are quoted as under:-

*“47. Summarising the above discussion, this Court holds: (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

*(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*

*(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

*(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See **Ruiz torija v. Spain (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford 2001 EWCA Civ 405 (CA)**, wherein the Court referred to Article 6 of the European Convention of Human Rights*

*which requires, "adequate and intelligent reasons must be given for judicial decisions".*

32. In view of the above discussion and the circumstances of the case, we are left with no choice but to set aside the order in original dated "4th September, 2020 signed on 24th September, 2020 and issued on 24th September, 2020" in toto. Also in view of the above discussion, we direct the Respondent No.2 to depute another Officer in place and instead of the present Officer to hear the case of the Petitioner and after giving an opportunity of personal hearing pass a speaking order with reasons in accordance with law within a period of two weeks from the date of this order. In the meanwhile, parties to maintain status-quo in respect of the goods under Bill of Entry No. 8389492 dated 6th August, 2020.

33. We express no opinion on the merits of the matter.

34. Also since the ***Supreme Court in the case of Varsha Plastics Pvt. Ltd. v/s. Union of India [2009 (235) ELT 193 (SC)]*** has dealt with the impugned Standing Order No.7493/99 dated 3rd December, 1999 while confirming the view of the Gujarat High Court that the impugned Standing Order is not binding but it is just in the nature of guidelines to streamline the functioning of Customs Officers at various field formations and in view of the Petitioner's letter dated 27th Authority, 2020 to the Respondent-Authorities referred to above, we do not consider it necessary to deal with the challenge to the vires of the said Standing Order.

35. Accordingly, Writ Petition is disposed of in the above terms. Record produced is returned herewith. However, there shall be no order as to costs.

36. In view of the disposal of the Petition itself, nothing survives in the interim application and the same is also disposed of as above.

37. This order will be digitally signed by the Private Secretary of this Court. Sheristedar of this Court is permitted to forward to the Petitioner copy of this order by e-mail. All concerned to act on a digitally signed copy of this order.

1. [STATE OF PUNJAB AND PUNJAB STATE LEATHER DEVELOPMENT CORPORATION & ORS. Versus M/s. BANDEEP SINGH & ORS. - 2015 \(8\) - Supreme Court](#)
2. [Ram Kishun & Ors Versus State of UP. & Ors. - 2012 \(5\) Supreme Court](#)
3. [KRANTI ASSOCIATES PVT. LTD. Versus MASOOD AHMED KHAN - 2010 \(9\) Supreme Court](#)
4. [VARSHA PLASTICS PVT. LTD. Versus UNION OF INDIA - 2009 \(2\) - Supreme Court](#)
5. [Jagdish Mandal Versus State of Orissa and others - 2006 \(12\) Supreme Court](#)
6. [Mr. B.S.N. Joshi & Sons Ltd. Versus Nair Coal Services Ltd. & Ors. - 2006 \(10\) Supreme Court](#)
7. [AIR INDIA LTD Versus COCHIN INTERNATIONAL AIRPORT LTD & ORS - 2000 \(1\) - Supreme Court](#)
8. [TATA CELLULAR Versus UNION OF INDIA - 1994 \(7\) Supreme Court](#)

Sterling Computers Limited Etc Versus M & N Publications Limited And Ors - 1993  
(1) Supreme Court