IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2025:PHHC:046330-DB

CWP No. 9301 of 2023 **(O&M)**

Reserved on : 16th December, 2024

Date of Pronouncement: 4th April, 2025

M/s Prenda Creations Private Limited … Petitioner

Versus

Union of India and others …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Saurabh Kapoor, Advocate, for the petitioner.

Mr. Ajay Kalra, Senior Standing Counsel, for respondent Nos. 1 to 4.

None for respondent no. 5.

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SANJEEV PRAKASH SHARMA, J.

By way of present writ petition, the petitioner has sought writ in the nature of Certiorari/ Mandamus for cancellation of Import General Manifest (IGM) No. 2341578 Dated 22.04.2023 filed at the port of Mundra, thereby restraining the movement of goods from Sea Port of Mundra to ICD Ludhiana, further directions were sought for permission for filling of Manual Bill of Entry at the port of ICD Ludhiana for clearance of goods comprising of "KIWI" which are highly perishable in nature.

2. The petitioner being a Company incorporated under the Companies Act, 1956, having its Registered Office at 306, Industrial Area A, Ludhiana, Punjab, and also having its Offices at Ludhiana, Chandigarh Delhi & Kolkata and is engaged in the business of Import of "Food Items" at various Sea ports including "Mumbai" as well as "Mundra" and "Dry Ports at "New Delhi" and "Ludhiana" & "Pune".

3. The brief facts which have culled out after perusing the entire record of the case are that the petitioner is an importer of food items. During the course of its business one consignment comprising of Kiwi fruit was imported in four containers from its foreign suppliers, namely, R.A. Logistics & Distribution LLC, Dubai, UAE. The imported food items were to be imported at the port of ICD GRFL, Ludhiana and the import documents issued by the shipping company i.e. Bill of Lading dated 16.4.2023 mentioned final place of delivery at Ludhiana. A request was made by the petitioner online for filling of the bill entry under Section 46 of the Customs Act, 1962 (hereinafter to be referred as 'the Act') for clearance of the good items at port of ICD Ludhiana. Request was made for seeking permission to file manual bill of entry in terms of Section 46 of the Act and circular dated 04.05.2011. But the request was not acceded to. The said goods had been dispensed with vide invoice dated 10.4.2023 which mentioned the details of the goods as well as the material particulars. Request for permitting to file manual bill of entry was made by the petitioner on 25.04.2023 as well as the amendment of IGM filed by the shipping line at Sea Port of Mundra on 26.04.2023. Amendment of IGM was denied to the petitioner stating that the same can only be done by the shipping line. On 28.04.2023, a request was made by the petitioner as well to the shipping line that the goods being perishable in nature, they may be allowed to file manual bill of entry. However, the same was not allowed by the respondents. Since the imported goods were food items having limited shelf life, the petitioner approached this Court with a prayer to direct the respondents to permit filing of bill of entry under Section 46 of the Act manually.

4. The petitioner during the course of business, imported one consignment of ***"KIWI"*** from its foreign suppliers namely "R A Logistics" & Distribution LLC, Dubai UAE. Since the goods in the present case were accompanied with all the required export documents, the same were shipped in 4 Refrigerated Containers and transported by the Shipping Company namely M/s Transliner Marinetime Pvt. Ltd. having it office at 7 Ist Floor, Corporate Park, Sector 8, Gandhidham Kutch, Gujarat., who had issued Bill of Lading No. TRLJEAMUN9713241 Dated 16.04.2023, declaring the particulars in respect of the consignment in question, including the Port of Loading as well as Port of Discharge as well as Final Place of Delivery as "ICD Ludhiana".

5. In terms of the provisions of Section 30 of the Act, the goods imported and transported into India, the Shipping Line has to mandatorily mention the Final Place of Delivery of goods which as per the Bill of Lading was ICD GRFL, Ludhiana. Further in terms of Section 30 of the Act, the Shipping Company has to file "Import General Manifest" before arrival of the goods into India. Section 30 of the Act reads as under:-

"Section 30 of The Customs Act, 1962

"30. Delivery of import manifest or import report.

Delivery of [arrival manifest or import manifest] or import report.

(1) The person-in-charge of

(i) a vessel; or

(ii) an aircraft; or

(iii) a vehicle, carrying imported goods or export goods or any other person as may be specified by the Central Government, by notification in the Official Gazette in this behalf shall, in the case of a vessel or an aircraft deliver to the proper officer an arrival manifest or import

manifest] by presenting electronically prior to the arrival] of the vessel or the aircraft, as the case may be and in the case of a vehicle an import report in the Customs station, in such form and manner as may be prescribed] and the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified is satisfied that there was no sufficient cause for such delay, the person in charge or any other person referred to in this sub-section who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees;

Provided *that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to deliver arrival manifest or import manifest by presenting electronically, allow the same to be delivered in any other manner.*

(2) The person delivering the arrival manifest or import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the arrival manifest or import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented."

6. In light of the aforesaid documents i.e. the Bill of Lading, respondent No. 5 filed the Master as well as Local IGM of the goods at the port of Mundra Gujrat, however the Local IGM was to be filed at Ludhiana in view of the fact that the final place of delivery of the goods was mentioned as "ICG GRFL, Ludhiana" mentioning port code as **"IN5GF6"**.

7. Since the goods were highly perishable in nature, the petitioner preferred to file "Advance Bill of Entry" under Section 46 of the Act, at the

port of ICD GRFL Sahnewal Ludhiana, however the same was not permitted to be filed since the Shipping Company (i.e. Respondent No. 5) had filed Online Import General Manifest declaring Final Place of Delivery as Mundra instead of Port of ICD GRFL Ludhiana, thereafter, the goods imported were discharged by the Shipping Line at Mundra.

8. As the petitioner was required to file Online Bill of Entry for clearance of goods at Ludhiana and the Online EDI system which was linked with the Import General Manifest filed by respondent No.5, the petitioner was unable to file Bill of Entry for clearance of goods at Ludhiana and even shift its goods at its own risk and cost from the Port of Mundra to ICD GRDL Sahnewal, Ludhiana. The factum of petitioner having attempted to file Bill of Entry is evident from Email dated 25.04.2023 addressed to Respondent Customs Department, Ludhiana, however, respondent No. 4 i.e. Commissioner of Customs intimated that the amendment in respect of IGM can only be executed by the Shipping Company i.e. respondent No. 5.

9. The petitioner vide email dated 28.04.2023 requested the Consignor of goods as well as Shipping Line to get the Import General Manifest amended in order to enable the Petitioner to shift the goods from Mundra to Ludhiana and get the clearance executed in terms of the provisions of the Act.

10. Since the goods imported by the petitioner were “Perishable” in nature, further the respondent failed to permit filling of Manual Bill of Entry in view of the Circular dated 04.05.2011 and 12.05.2011, the petitioner approached this Court by way of filling of present writ petition.

11. This Court vide order dated 09.05.2023 directed the respondents to let the goods of the petitioner be transferred from Mundra Port to Ludhiana Port. The petitioner was permitted to file manual bill of entry at Ludhiana. The Court observed as under:-

> *"Learned counsel for the respondent has handed over a copy of letter dated 08.05.2023 from respondent No. 5 wherein Assistant Commissioner of Customs, MCD, Mundra Customs House was told to inform customer as well as to clear this cargo from Mundra without further delay as cargo is perishable in nature, line will not be responsible for any loss, cost or consequences in regard to said matter.*
>
> *Further as per Annexure P-2, the final delivery of the goods has been mentioned as Ludhiana.*
>
> *Since the respondent has not been able to correct the IGM, a direction is given to the respondents to let the goods of the petitioner be transferred from Mundra Port to Ludhiana Port. The petitioner shall file the Manual Bill of entry at Ludhiana."*

In terms of the order passed on 09.05.2023, the petitioner was allowed to take goods from custom areas of Mundra without insistence of NOC.

12. On the next date i.e. 16.05.2023, this Court after noticing the message received from the Deputy Commissioner, Mundra, directed that the petitioner shall file a departure manifest along with carrier bond and pan card of authorized carrier and after completion of the formalities, the goods would be shifted to ICD Ludhiana. On 31.05.2023, the respondents had amended the IGM for changing the port of destination from Mundra port to GRFL ICD, Sahnewal, Ludhiana. In view of the amendment IGM dated 30.05.2023, the petitioner took the goods from the Custom Area, Mundra without insistence of NOC from the shopping. However, although the petitioner was allowed to take the goods from the custom area of Mundra on

31.05.2023, the shipping company shifted the goods to Saurashtra Freight Private Limited. Accordingly, the Court restraint the shipping company from interfering in execution of the order and ordered the petitioner to take goods from Saurashtra Freight Private Limited by a private carrier to Mundra International Container Terminal. Help of local police was also provided.

13. This Court on the next date i.e. 07.06.2023 noticed that the shipping company, namely, respondent no.5 was not complying with the order and found such inaction to be contemptuous and, therefore, directed respondent nos. 3 and 5 to ensure the release of goods in favour of the petitioner without further insistence of NOC.

14. The samples of the Kiwis were taken and a report was submitted on 15.06.2023 that Kiwis were fit for human consumption as per the report of the Department of Food and Safety. While another sample had been sent on 19.06.2023 to Amritsar Plant and Quarantine Department but the report had not been received. The said report was noticed on the next date namely 05.07.2023 by the Court to have been uploaded on 04.07.2023, which reflected that it was found that Kiwi fruit is free from infection of plant pathogen and pathogenic symptom. The department made an apprehension at that stage that the origin of Kiwi fruit is from Iran and a fake phytosanitary certificate had been presented by the petitioner to show the Kiwi fruits were originated from Chile.

15. This Court took on record the Export Declaration Certificate issued by the United Arab Emirates, Dubai Customs Authority which reflected that the Kiwi fruits were imported from Chile and were cleared by Dubai Customs. However, the respondents insisted that the fruits have been

imported from Iran to which the respondents were directed to verify the Export Declaration Certificate issued by Dubai Customs.

16. On 06.07.2023, the Court directed the respondent nos. 1 to 4 to release the consignment of the petitioner forthwith and in the meanwhile conduct an enquiry with respect to certificate issued by United Arab Emirate, Federal Customs Authority, Dubai Customs. At the same time directions were given to return the containers in which the Kiwi fruits were lying. The respondents handed over an order dated 04.07.2023 passed by the Deputy Director (E), Plant Protection, Quarantine and Storage, RPQS, Amritsar, wherein it was ordered that the consignment/ container shall be deported within 10 days. However, this Court keeping in view the report dated 04.07.2023 issued by the lab website reflecting that the Kiwi fruit is free from infection of plant pathogen and pathogenic symptom directed respondent nos. 1 to 4 to release the consignment of the petitioner forthwith.

17. On 24.07.2023, the Court directed the department to accept bond and release the goods after accepting ₹ 20 lacs in cash which was to be paid by the petitioner as duty in relation to the other case whereas duty had already been paid with regard to the said goods. A direction was given to release the goods after doing inspection by associating a representative from Food Safety Department and Plant & Quarantine Department.

18. On 27.07.2023 a report was prepared which reflected that on visual inspection 20% to 25% of the consignment of fresh kiwis was damaged. The respondents were directed to release the consignment after accepting the full duty in cash and surety bond for 75% of the consignment. Further direction was given to the petitioner in respect of the damaged goods

and he will get a report from the registered dealers and thereafter he can claim refund in accordance with law.

19. On 07.08.2023, the Court noticed that the goods had been released to the petitioner but the report with respect to the damaged goods had not been received.

20. It is submitted by the petitioner that since the goods imported by the petitioner were ordered to be transshipped from Mundra Port to ICD GRFL, Ludhiana, it transpired that Shipping Company had shifted the goods from Mundra Sea Port to Saurashtra Freight Pvt. Ltd. making it impossible for the petitioner to get its goods transported from Mundra to Ludhiana, as there was no rail link from the port of Saurashtra Freight Pvt. Ltd.. It is significant to mention that this Court vide order dated 02.06.2023 directed Respondent No. 4 i.e. Customs Mundra to get the goods shifted from Saurashtra Freight Pvt. Ltd. to Mundra International Container Terminal, Mundra in order to enable the petitioner to get its goods shifted from Mundra to Ludhiana via rail link. It is relevant to mention that this Court being conscious of the fact that Respondent No. 5 did not permit movement of goods and had purposely shifted the goods from Mundra International Container Terminal to Saurashtra Freight Terminal Private Limited.

21. It is further submitted that the goods having been transhipped from Mundra International Container Terminal to Inland Container Terminal (GRFL) Ludhiana the subject goods were tested by the Plant & Quarantine Department who vide their report dated 04.07.2023 had informed that ***"Kiwi Fruit"*** is free from infection of plant pathogen and pathogenic symptom. However the Respondent Customs (Ludhiana) had informed that they had an apprehension that the Origin of ***"Kiwi"*** Fruits is from Iran instead of having

been declared to have originated from ***"Chile"***. The Petitioner having placed on record the Export Declaration Documents issued by UAE Customs evidencing the Origin of goods as Chile, the goods imported by the Petitioner were thereafter detained by the respondent Customs Ludhiana.

22. Thereafter, the petitioner filed C.M. Nos. 10885-86-CWP of 2023 for placing on record documents as well as praying for joint inspection of the goods, since at the time of inspection of the containers it transpired that the imported ***"KIWI"*** had already deteriorated, due to passage of time and for the reasons that the containers in which the KIWI was stuffed was discharging water. The petitioner vide the said application had sought direction for joint examination and compensation in respect of the value of imported KIWI having been rendered unfit due to delay on the part of the respondents.

23. It is submitted by learned counsel for the petitioner that despite consistent orders of release having been passed by this Court the goods comprising of ***"KIWI"*** Imported in the month of May 2023 were finally released to the petitioner only on 01.08.2023 after a delay of more than three months, which rendered the goods 'unfit' for consumption as the same were damaged due to efflux of time and delay in clearance caused by the Respondents Customs and Shipping Line from time to time. Copy of the Disposal Certificate issued by ***"VEER SINGH & BROTHERS"*** Fruits Dealer is as under:-

"TO WHOMSOEVER IT MAY CONCERN

This is to Certify that 8928 Packages of "KIWI" imported vide Invoice No. EXP100423 Dated 10.04.2023 belonging to ***M/s Prenda Creations (P) Ltd.*** *having total weight of 89,420 Kgs which were dispatched for sale in the Local market to us. The*

imported KIWI upon inspection was damaged and were discharging water and found to be Unfit for Sale in Market. The imported KIWI was thereafter destroyed in our presence being Unfit for Human Consumption."

24. The petitioner thereafter filed CM-18329-CWP-2024 for placing on record the photographs of the damaged goods along with the Video showing disposal of the imported Food items i.e. KIWI with the prayer for refund of Customs Duty deposited at the time of clearance of goods to the Petitioner.

25. In the aforesaid circumstances, the petitioner has now limited his prayer to the submission that the report thereafter had been prepared which reflected that the entire Kiwi was found to be totally damaged. The petitioner have to be paid damages as the imported food items had been got rotten due to delay in clearance of goods by the respondents. It was submitted that the delay in release of the goods was at the behest of the respondent nos. 1 to 5 inspite of the directions having been issued by the Court from time to time to release the goods. The same were not released on one pretext or the other.

26. Learned counsel for the petitioner further submitted that the respondents having filed their reply to the writ petition as well as the applications at no point in time have been able to rebut to the submission made by the petitioner in respect of amendment of Import General Manifest filed u/s 30 of the Act, wherein in terms of Sub Section 30 (3) the respondents were empowered to make amendment in the Import General Manifest filed by the Shipping Company. However to the contrary, the respondents have relied upon the circular dated 11.04.2017 which prescribed

amendment only at the behest of the Shipping Company. From the perusal of Section 30 (3) of the Act, it transpires that the proper Officer after recording his satisfaction may permit amendment or supplement the Import General Manifest. Since in the present case from the perusal of the Bill of Lading dated 16.04.2023 issued by respondent No.5 it was specifically mentioned that the Final Place of delivery of goods shall be “Ludhiana” the Respondent had erred in amendment of the Import General Manifest at the very first instance when the petitioner had requested for amendment vide email dated 24.05.2023.

27. It is further submitted that the Respondent Department has erred in appreciating that the goods imported by the petitioner were Perishable Food Items Comprising of “KIWI” which has limited shelf life, further the Act of the Respondent Customs in failure to amend the Import General Manifest is in the teeth of Section 30 (3) of the Act, which directs the Proper Officer to amend the Import General Manifest. Thus the perusal of the aforesaid provisions as well as directions issued by this Court in the interim orders passed from time to time demonstrate that the Respondents had failed to perform their duties in accordance with the provisions of Customs Laws. The Respondents cannot be permitted to take shelter of the Circular dated 11.04.2017 as the said circulars has been issued for the proper implementation of the provisions of the Customs Act, more so when in the present case the Import documents including the Bill of Lading issued by the Shipping Company had specifically mentioned in the said Bill of Lading as GRFL Ludhiana to be the final place of delivery of goods.

28. The respondents had miserably failed to act in accordance with the provisions of 30 (3) of the Act which specifically directs amendment of IGM where no fraudulent intention is apprehended, the present case the import document particularly “Bill of Lading” which finds mention of the Final Place of Delivery of goods to be Ludhiana had failed to carry on the requisite amendments at appropriate point in time rendering the goods to deteriorate. Further this Court vide Interim orders passed from time to time had directed the Customs to carry out the necessary amendments in IGM, the said officers failed to comply with the directions issued from time to time, rendering the goods unfit for Human Consumption.

29. The Customs Officers at Mundra had failed to implement the interim orders passed by this Court in so far despite passing of the interim order dated 02.06.2023 the goods were shifted by the Respondent No. 5 from Mundra International Container Terminal to Saurashtra Freight P Ltd. It is pertinent to mention that in terms of Section 141 of the Customs Act, 1962, the goods and conveyance shall be subject to control of the Customs Officers. Since the Bill of Lading found mention that the final place of delivery of goods was “ICD GRFL Sahnewal Ludhiana” the Customs had failed to perform their duties in permitting movement of goods to Saurashtra Freight Private Ltd, thereby further causing delay in movement of goods to its final place of Delivery i.e. ICD Ludhiana.

30. The act of respondent No. 5 in purposely filling Wrong Import General Manifest and failure to file correct IGM mentioning Final Place of Delivery of goods to be GRFL Ludhiana is in the teeth of the provisions of Section 30 of the Customs Act, 1962 which directs the incharge of the vessel

or the concerned person to file correct information at the time of filling of Import General Manifest. Further for failure to file correct information it was incumbent upon the Respondent Customs Officers to initiate action against the Shipping Company under the provisions of Section 30 of the Act, read with Regulation 11 of the Sea Cargo Manifest Regulations, 2020.

31. It is further submitted that the action of the respondent Shipping Company in filing wrong Import General Manifest is evident from the fact that the Respondent Shipping Company has placed on record annexure R5/3 which is an internal email communication dated 11.04.2023 and 12.04.2023, between the offices of the Shipping Company wherein it has been mentioned that the Final delivery shall be GRFL, ICD Sahnewal, Ludhiana INSGF6.

32. The delay in amendment of IGM and further filing of Manual/ Advance Bill of Entry for clearance of goods at Ludhiana was solely on account of Shipping Company as well as Customs Mundra who were not amending the Import General Manifest as evident from the emails dated 24.04.2024 wherein, it was advised that necessary amendments in IGM was to be carried out by Customs. Further the Shipping Company has referred to letter dated 19.05.2023 and 29.05.2023 wherein the Shipping Line had intimated that necessary amendments were to be carried out by the Customs Mundra, however due to delay in the necessary amendments in IGM the Respondent No.5 insisted that NOC for movement can only be issued subject to payment of Container Detention Charges amounting to ₹ 4,63,247.70, Detention Charges till 10.06.2023 amounting to ₹ 63,55,564.56, CFS Cost amounting to ₹ 10,57,160.00 and Security Deposit of ₹ 2,00,000.00 per container. It is pertinent to mention that all the aforesaid

charges were on account of fact that the Customs as well as Shipping Company failed to correct IGM details due to which online Bill of Entry could not be filed.

33. The respondents have failed to carry out the duty of amendment of Import General Manifest and permit filling of Bill of Entry at appropriate point in time leading to damage to the goods being highly perishable in nature as is evident from the fact that the email dated 03.06.2023 written by Shipping Company (i.e. Respondent No.5), wherein it has been informed that the NOC to customs was already issued for making necessary amendments in the IGM, however the Customs Department not only failed to make the said amendments at the appropriate time, but permitted shifting of goods from Mundra International Import Terminal to Saurashtra Freight Private Ltd.

34. Despite the fact that the goods were permitted to be transported from Mundra to ICD Ludhiana the Customs Ludhiana failed to act in accordance with the provisions of Customs Laws and failed to permit immediate clearance as evident from the letter dated 07.07.2023 (P-14) requesting the Customs Ludhiana for immediate compliance of the order dated 06.07.2023. Further the respondent-customs failed to draw samples and clear the goods despite issuance of NOC from FSSAI and Plant & Quarantine Department. The Petitioner informed the Customs Department that the goods have already deteriorated and the Customs Duty is being deposited under protest.

35. The Respondents had miserably failed to comply with the orders passed by this Court and had illegally detained the goods despite

NOC from FSSAI and Plant & Quarantine Department. The petitioner having preferred CM No. 10886 of 2023 seeking directions for joint inspection and payment of cost of the goods, the said Joint Examination was also not conducted for the reason that respondent No. 5 did not participate, also the part examination conducted revealed that the goods were already deteriorated. Relevant extracts of Joint Examination report issued vide Panchnamma dated 27.07.2023 reads as under:-

> *"It was explained by the Customs Officers that undamaged goods i.e. Fresh Kiwi has to be released and for that the segregation of the consignments is mandatory. The representative of the importer, however submitted that the consignment may be released in toto and they undertook to dispose off the damaged kiwi as per law and will provide the disposal certificate to this effect."*

It is pertinent to mention that the Joint inspection was conducted pertaining to crates of Fresh KIWI stored in front of the container and inspection of Fresh KIWI was not conducted in respect of 100% material stored in all the containers. Thus evidencing that at the relevant point in time, 100% examination of the goods i.e. Fresh "KIWI" was not conducted by the respondent Customs Officers.

36. Since the petitioner had specifically lodged protest vide letter dated 07.07.2023 before depositing duty and the respondent in joint examination report dated 27.07.2023 had permitted the petitioner to file proof of disposal, the petitioner having provided the relevant documents along with photographs and videography, the petitioner is entitled for refund of customs duty paid under protest.

37. As the petitioner was not permitted release of goods at the relevant point in time the goods imported by the Petitioner were illegally detained by the Customs. He relies on ***Gian Chand and Others Vs State of Punjab 1983 (13) ELT 1365 (S.C.),*** wherein it has been held as under:-

> "*Seizure' means to take possession of contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involves a deprivation of possession and not merely of custody of goods. Thus, the unilateral act of the person seizing is the very essence of the concept of seizure"*

38. Further reliance is placed on the judgment rendered in the case of ***S.J. Fabrics Pvt. Ltd. Vs Union of India*** 2011 (268) ELT 17 (Cal.), wherein it has been held as under:-

> *"**7.** We approve the observation of the learned Single Judge that do not there is no time limit for issuing order of seizure under Section 110. If the consignment of a person is detained, it should be presumed that the goods has been seized in terms of Section 110 of the Act even if no formal order has been issued by the Customs Authority and the time for issuing notice to show-cause in terms of Section 124(a) runs from the actual date of detention. In the case before us, it appears that the respondent authority has also treated the seizure to be operative and consequently, has started investigation by issuing summons under Section 108 of the Act and has also given show-cause notice for extension of time by further six months."*

Reliance has also been placed on the judgment of Calcutta High Court in ***E.S.I Ltd. Vs Union of India*** 2003 (156) ELT 344 (Cal.), wherein it has held as under:-

> "***20.*** *Having behalf of the respective considered the submissions made on parties we are inclined to accept Mr. Panja's submission that dominion over the goods initially detained on 9th November, 2000, went out of the hands of the appellant-company when on 22nd November, 2000, the rooms in which the goods had been kept were sealed by the Customs Officers, Varanasi Division. The facts of this case are squarely covered by the facts of the Hindustan Motors case (supra). Once the dominion over the goods passed out of the hands of the appellant-company it tantamounted to seizure for all practical purposes. It is one thing for the goods to be kept detained in a manner where the owner thereof has access to the same but is prevented by a prohibitory order from dealing with the same. The situation is radically altered when the owner of the goods no longer has access thereto and has no control over the same."*

Reliance is also placed on **Rajesh Arora Vs Collector of Customs 1998 (101) ELT 246 (Del.)** wherein this Court has held as under:-

> "*11. Thus the customs department never disputed the fact that the car in question was being detained by them. If they were not detaining the car they would have immediately responded to the notices of the petitioners and said that the car was not being detained by them and the petitioners was free to take away the same. The customs authorities thus are trying to be clever and in order to overreach the Court have how taken the stand that they never detained the car. The fact remains that the car even when it was kept at the premises of Bagla was impounded and the petitioner in any case was deprived of its possession or custody. Moreover the respondents have themselves admitted in sub-para (D) of the submissions about brief facts of the case that S.P. Bagla submitted a letter dated 22nd September, 1993*

> *wherein he submitted the keys of the car in question to the department with an undertaking not to use the car without the permission of the department. Thus admittedly the car was within the control and custody of the respondents. In law this is sufficient for purposes of treating it as a seizuring under Section 110 of the Customs Act."*

39. Relying on the aforesaid judgments, he submits that the petitioner is entitled for full refund of duty as well as costs of goods. He submits that since the goods were detained by the Respondent-Customs for failure on the part of the Respondent Shipping Company to file correct Import General Manifest, which the Respondent Commissioner of Customs Mundra were required to amend the same immediately when it was brought to the notice of the Customs Department vide letter dated 25.04.2023 (P-3). The Respondents collectively failed on more than one counts to permit timely filling of Bill of Entry, Amendment in IGM, shifting of Goods from Saurshtra to Mundra port and thereafter movement of goods to Ludhiana, thus, the goods imported by the petitioner got damaged and lost its shelf life. Further despite shifting of goods from Mundra to Ludhiana, the Customs Officers posted at Ludhiana failed to clear the goods within stipulated time, which is evident from the fact that the samples pertaining to goods were not permitted to be drawn immediately when the containers had reached Ludhiana. Thereafter the goods were ordered to be seized on the reasonable belief that the same had not originated from the Country of Origin declared as "Chile". The series of facts causing delay in every action by the respondents collectively at relevant time and continuous failure on the part of the Respondent Officers and Shipping Company in timely compliance of the interim orders leading to delay in clearance of goods for more than three

months, the respondents are required to be saddled with the cost of goods. Reliance is placed on ***Union of India vs M.D. Esa Ali*** 2011 (269) ELT 49 (Gau.), wherein it has been held as under:-

> *"**13.** It is apparent that a specific direction was issued to the respondent appellant authority to return the goods seized by them by obtaining a security bond of Rs. 15,000/-. However, the order passed by this Court was not carried out without any cogent reason. Over and above, the Commissioner of Customs, North Eastern Region, also passed an order on 26.02.2002, for releasing the goods and vehicle to the owner, which only reveals and reflects that the seizure was illegal. Indolence of the appellant authority in taking immediate necessary action to save the goods is writ large. Undeniably, the goods, in question, got damaged due to apathy on the part of the authority concerned. Apparently, if the goods would have been returned to the petitioner/respondent at the right earnest, in response to the direction issued by the learned single Bench of this Court, the goods would not have been damaged. Consequently, the respondent would not have suffered any loss. The loss suffered by the respondent is solely due to the irresponsible attitude of the appellant authority and blatant defiance of the direction issued by the learned Single Judge in WP (C) No. 3380 of 1999.*
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> ***14.** The grounds canvassed by the appellants counsel that the loss and damage to the goods was not caused due to the fault of the officers of the Department, but due to non-listing of the application filed by the Department, for clarification of the order passed in WP (C) No. 3380 of 1999, do not at all appeal to us. However, fact remains that due to mishandling of the entire situation and inaction on the part of the appellants, the goods got damaged and consequently, the respondent had to sustain loss and injury, for which he has been rightly held to be entitled to adequate compensation.*

15. *In Nagendra Rao v. State of A.P. reported in AIR 1994 SC 2663, 1994 SCC (6) 205 a question arose for consideration before the Hon'ble Supreme Court, as to whether seizure of the goods in exercise of statutory powers, under the Act, immunizes the State, completely, from any loss or damage suffered by the owner. Whether confiscation of part of the goods absolves the State from any claim for the loss or damage suffered by the owner for the goods, which are directed to be released or returned to it. While deciding the Issue in question Hon'ble Supreme Court, by discussing the decision rendered in Basavva Kom Dyamangouda Patil v. State of Mysore observed as follows :-*

> *"Similarly, in Basavva Kom Dyamangouda Patil v. State of Mysore [(1977) 4 SCC 358: 1977 SCC (Cri) 598 : AIR 1977 SC 1749 240], the question arose regarding powers of the Court in indemnifying the owner of the property which is destroyed or lost whilst in the custody of the Court. The goods were seized from the possession of the accused. They were placed in the custody of the Court. When the appeal of the accused was allowed and goods were directed to be returned it was found that they had been lost. The Court, in the circumstances, held : (SCC pp. 361-62, para 6) "It is common ground that these articles belonged to the complainant/appellant and had been stolen from her house. It is, therefore, clear that the articles were the subject-matter of an offence. This fact, therefore, is sufficient to clothe the Magistrate with the power to pass an order for return of the property. Where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.*

> *33. Therefore, where the goods confiscated or seized are required to be returned either under orders of the court or because of the provision in the Act, this Court has not countenanced the objection that the goods having been lost or destroyed the owner of the goods had no remedy in private law and the court was not empowered to pass an order or grant decree for payment of the value of goods. Public policy requires the court to exercise the power in private law to compensate the owner where the damage or loss is suffered by the negligence of officers of the State in respect of cause of action for which suits are maintainable in civil court. Since the seizure and confiscation of appellant's goods was not in exercise of power which could be considered to be act of State of which no cognizance could be taken by the civil court, the suit of the appellant could not be dismissed."*

16. *In State of Bombay (now Gujarat) v. Menon Mahomed Haji Hasam: AIR 1967 SC 1885, Hon'ble Supreme Court observed that "the power to seize and confiscate was dependent upon a customs offence having been committed or a suspicion that such offence had been committed. The order of the Customs Officer was not final as it was subject to an appeal and if the appellate authority found that there was no good ground for the exercise of that power, the property could no longer be retained and had under the Act to be returned to the owner. That being the position and the property being liable to be returned there was not only a statutory obligation to return but until the order of confiscation became final an implied obligation to preserve the property intact and for that purpose to take such care of it as a reasonable person in like circumstances is expected to take".*

17. *In Century Spinning & Manufacturing Co. Ltd. and Another v. The Ulhasnagar Municipal Council and Another, MANU/SC/0397/1970 : [1970] 3 SCR 854 it has been*

held by the Hon'ble Supreme Court that the High Court is at liberty to exercise its judicial discretion under Article 226 of to give effective relief especially when a party is claiming to be aggrieved by the action of a public body or authority and it need not relegate a party to seek "relief by a somewhat lengthy, dilatory and expensive process by a civil suit", merely because a question of fact is raised.

18. *In view of the above discussions, the petitioner/ respondent was entitled to all the seized articles, in question. However, admittedly, the seized goods, in question, got damaged and destroyed, consequently, it could not be returned to the petitioner/respondent. Therefore, the award of compensation made by the learned single Judge in the impugned order is reasonable and justified."*

40. Learned counsel for the petitioner also relies on the judgment of Hon'ble the Supreme Court in ***N Nagendra Rao & Co. Vs State of A.P.*** (1994) SCC (Cri) 1609, wherein it has been held as under:-

"30. In this case after conclusion of proceedings the authorities intimated the appellant to take the goods as they having not been confiscated, he was entitled for return of it. The appellant in response to the limitation went there but it refused to take delivery of it as, according to it, the commodity had deteriorated both in quantity and quality. This claim has been accepted by the lower courts. What was seized by the authority was an essential commodity within the meaning of clause (d) of sub section (2) [sic Section 2 (a)]. What the law requires under sub-section (2) of Section 6-C to be returned is also the essential commodity. Any Commodity continues to be so, so long as it retains its characteristics of being useful and serviceable. If the commodity ceased to be of any use or is rendered waste due to its deterioration or rusting, it ceases to be commodity much less essential commodity. Therefore, if the

commodity of the appellant which was seized became useless due to the negligence of the officers it ceased to be an essential commodity and the appellant was well within its rights to claim that since it was not possible for the authorities to return the essential commodity seized by them , it was entitled to be paid the price thereof as if the essential commodity was had been sold to the Government. The fiction of sale which is incorporated in sub-section (2) is to protect the interest of the owner of goods. It has to be construed liberally and in favour of the owner. The respondents were thus liable to pay the price of the Fertiliser with interest as directed by the Trial Court."

41. In ***Basavva Kom Dyamangouda Patil (SMT) Vs State of Mysore and Another*** (1977) SCC (Crl.) 598, the Supreme Court held as under:-

"*6. It is common ground that these articles belonged to the complainant/appellant and had been stolen from her house. It is therefore, clear that the articles were the subject matter of an offence. This fact, therefore, is sufficient to clothe the Magistrate with the power to pass an order for return of the property. Where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its Officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property. We do not agree with the view of the High Court that once the articles are not available with the Court, the Court has no power to do anything in the matter and is utterly helpless."*

42. Learned counsel for the petitioner also relies on the judgment of Hon'ble the Supreme Court in ***State of Guajrat Vs Menon Mahomed Haji Hasan (Dead) by his Legal Representative*** AIR 1967 SC 1885, wherein it has been observed as under:-

"*7. On the facts of the present, case, the State Government, no doubt seized the said vehicles pursuant to the power under the Customs Act. But the power to seize and confiscate was dependent upon a Customs offence having been committed or a suspicion that such offence had been committed. The order of the Customs Officer was not final as it was subject to an appeal and if the Appellate Authority found that there was no good ground for the exercise of that power, the property could no longer be retained and had under the Act be returned to the owner. That being the position and the property being liable to be returned there was not only a statutory obligation to return but until the order of confiscation became final an implied obligation to preserve the property intact and for that purpose to take such care of it as a reasonable person in like circumstances is expected to take. Just as a finder of property has to return it when its owner is found and demands, it so the State Government was bound to return the said vehicles once it was found that the seizure and confiscation were not sustainable. There being thus a legal obligation to preserve the property intact and also the obligation to take reasonable care of it so as to enable the Government to return it in the same condition in which it was seized, the position of the State Government until the order became final would be that of a bailee. If that is the correct position once the Revenue Tribunal Set aside the order of the Customs Officer and the Government became liable to return the goods the owner had the right either to demand the property seized or its value, if, in the meantime the State Government had precluded itself from returning the property either by its own act or that of its agents or servants. This was precisely the cause of action on which the respondent's suit was grounded. The fact that an order for its disposal was passed by the Magistrate would not in any way interfere with or wipe away the right of the owner to demand the return of the property or the obligation of the Government to return it. The order of disposal in any event was obtained on*

a false representation that the property was an unclaimed property. Even if the Government cannot be said to be in the position of a bailee, it was in any case bound to return the said property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by any of its agents and servants. In these circumstances it is difficult to appreciate how the contentions that the State Government is not liable for any torturous act of its servants can possibly arise."

43. In ***Century Spinning and Manufacturing Company Ltd. Vs Ulhasnagar Municipal Council & Another*** (1970) 1 Supreme Court Cases 582, the Supreme Court held as under:-

"*8. The High Court may, in exercise of its discretion, decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution. But the discretion is judicial if the petition makes a claim which is frivolous, vexatious, or prima facie unjust, or may not appropriately be tried in a petition invoking extraordinary jurisdiction the court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high handed , arbitrary or unjust is entitled to a hearing of its petition on the meris. Apparently the petition filed by the Company did not raise any complicated question of fact for determination, and the claim could not be characterized as frivolous, vexatious or unjust. The High Court has given no reasons for dismissing the petition in limine and on a consideration of the averments in the Petition and the material placed before the Court we are satisfied that the Company was entitled to have its grievance against the action of the Municipality which was prima facie unjust tried."*

44. Upon placing reliance on the aforesaid judgments, the petitioner's goods being perishable in nature, it was duty cast upon the

Officers of Customs to have acted promptly in ordering for amendment of Import General Manifest as evident from the Bill of Lading which described Final Place of Delivery of goods to be ICD GRFL Ludhiana. Thus, failure on the part of the Officers of Customs as well as Shipping Company for amending the IGM the goods imported by the petitioner stood detained for a considerable period of time rendering them unfit for use. Further, the respondents having agreed upon joint examination that the goods were rendered unfit, with directions to submit proof of disposal, the petitioner has placed all such documents on record.

45. Learned counsel for the petitioner submits that the delay in movement of the goods from Mundra to Ludhiana by the respondents as well as delay in clearance of goods by Ludhiana Customs has resulted in causing complete loss to the petitioner and, therefore, has prayed to direct the respondents to bear the cost of the goods which had got rotten and destroyed and refund the duty.

46. Written submission has been filed on behalf of respondent nos. 1 to 4. It is stated that as per Section 26A of the Act, requirements had not been completed because the goods had not been destroyed in presence of the proper officer. It is submitted that the application for refund under Section 26A of the Act has not been filed within the time line provided therein. The respondents by way of their written submission have also alleged that the phytosanitary certificate submitted by the petitioner is not genuine and is fabricated as they had received an email from Deputy Director, DRI, Nagpur, of the petitioner having imported Iranian origin Kiwi fruits.

47. Learned counsel for the respondents has also invited attention to provisions of Section 26A(3) of the Act to submit that no refund under

sub-section (1) shall be allowed in respect of perishable goods and goods which have exceeded in their shelf life or their recommended storage before use period. Therefore, there was no occasion to permit refund of duty. He relies on ***B. Premanand and others vs Mohan Koikal and others*** 2011 (4) SCC 266.

48. Learned counsel for the respondents further submits that on 27.07.2023, when the joint inspection was done, the Kiwis which were damaged from 20 to 25% while the application under Section 26A of the Act has been moved alleging 100% of kiwis being damaged. Claim of refund of 100% custom duty, therefore, is not maintainable. He further submits that disputed question is involved in the petition and this Court ought not entertain the plea of refund of the duty.

49. We have considered the submissions.

50. From the perusal of the facts which have come on record and the orders passed by this Court from time to time, we are satisfied that the respondent-Custom Department had wrongfully and illegally withheld the perishable food item i.e. Kiwi which has limited shelf life. We noticed that in import cases of perishable goods there is an inherent urgency which needs to be noticed and considered by the concerned stakeholders. In the facts of the present case, we find that there has been huge delay in compliance of the procedure. While initially the respondents did not issue the necessary orders, it is only with the direction of this Court that the respondents permitted the amendment of Import General Manifest (IGM) from Mundra port to GRFL ICD, Sahnewal, Ludhiana. This Court in its order dated 31.05.2023 noticed as under:-

> *"Pursuant to the letter dated 30.05.2023, the respondents have amended the IGM for changing Port of destination from Mundra Port to GRFL ICD Sahnewal (INSGF6), Ludhiana and they have allowed Transshipment of the cargo. Pursuant to letter dated 30.05.2023, petitioner to take the goods from the Customs area, Mundra without insistence of NOC because the dispute qua shipping is a private dispute.*
>
> *For compliance list on 02.06.2023.*"

51. But we find that in spite of the amendment of IGM, the goods were not actually released and were allowed to be shifted by the shipping company from Mundra Sea Port to Saurashtra Freight Private Limited. This Court had to again intervene by passing order dated 02.06.2023, as noticed above. It is only when the Court found that its orders were not being complied with and action amounted to committing contempt of Court that the goods were transshipped to Ludhiana. The respondents did not release the goods even thereafter and again raised a doubt with regard to the place of origin of import of Kiwi fruit inspite of there being documents issued by the UAE Custom evidencing the origin of the goods as Chile. Upon joint inspection conducted in terms of orders passed by this Court on 24.07.2023, 25% of the goods were only examined which reflected 25% of the said goods have been completely damaged.

52. We find that the goods were ultimately released on 01.08.2023 and the certificate which has been placed on record reflects that the entire goods weighing 89,420 Kgs were found completely damaged and were rendered being unfit for human consumption. A certificate has been placed by the petitioner along with the written statement which has been taken on record. We are, therefore, constrained to find the lackadaisical approach

adopted by the respondents, which has resulted in causing loss to the importer. It would, therefore, be a rule in the provisions of Section 26A(3) of the Act, which reads as under:-

> ***"26A. Refund of import duty in certain cases.*** *(1)Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if-*
>
> *(a) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:*
>
> *Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;*
>
> *(b) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;*
>
> *(c) the importer does not claim drawback under any other provision of this Act; and*
>
> *(d) (i) the goods are exported; or*
>
> *(ii) the importer relinquishes his title to the goods and abandons them to customs; or*
>
> *(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer,*
>
> *in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47:*
>
> *Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months:*

Provided further that nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(2) An application for refund of duty shall be made before the expiry of six months from the relevant date in such form and in such manner as may be prescribed.

Explanation.-For the purposes of this sub-section, "relevant date" means,-

(a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;

(b) in cases where the title to the goods is relinquished, the date of such relinquishment;

(c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

(3) No refund under sub-section (1) shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period."

However, in our opinion, provisions of Section 26A(3) of the Act would not be applicable in the facts of the present case where the goods perished on account of non-compliance of Court's order within time. It is a case where the respondents have themselves created hurdles in the release of the perishable goods. While 100% custom duty is imposed for import of perishable goods, if the goods itself are damaged and become completely un-useable for human consumption, in our opinion, the same deserves to be refunded. Import of Section 26A(3) of the Act cannot be understood to allow unjust enrichment from a justified, bonafide importer.

53. Thus, from the above provisions of Section 26A(3) of the Act, it is apparent that the aforesaid Section does not allow refund of duty in respect of perishable goods and the goods which have exceeded their shelf life or where the goods are found to have been damaged. However, at the same time it does not deal with the situations, as have arisen in the present case. Obviously, as noticed above, the department has issued several circulars from time to time sensitizing the need to deal with the import goods expeditiously, which are perishable in nature. But we find that even after intervention of this Court directing the respondents to take action expeditiously, the officers have put a lot of obstacles and hurdles in the release of perishable goods resulting the goods to be unuseable for human consumption. In the circumstances, the question arises as to whether the claim of import duty deposited by the importer/ petitioner under protest should be allowed to be returned by the Custom Authorities.

54. The interpretation of Section 26A(3) of the Act, as noticed above, cannot be held to mean the denial of a refund claim even where the goods have perished and the shelf life has ended after the goods have already touched the store. We have extensively noticed the order passed from time to time by the Court (supra). The same reflects the attitude adopted by the Custom Authorities that they were not ready to release the goods. The shipping company also did not cooperate in spite of directions by this Court, and an attitude of insensitivity to the goods being perishable was adopted.

55. The certificates placed on record duly satisfy us that the fruits-Kiwi had got rotten and destroyed, being unfit for human consumption. If the fruit would have been allowed to be sold in the market, it would have affected the health of large number of persons. Once we find that the goods

have been destroyed, the respondents cannot be allowed to retain the import duty as it would mean to unjust enrichment. In ***Ramrameshwari Devi vs Nirmala Devi*** AIR 2011 SC 3117, Hon'ble the Supreme Court has defined the principle of unjust enrichment. It was held that a party cannot be unjustly enriched at the expense of another and it is the duty of the Courts to prevent unjust enrichment.

56. It is also noticed that the Importer/ petitioner has not only suffered on account of the adamant approach of the respondents but has also suffered huge loss. His reputation in the business market would have also suffered as he must not have been able to supply the goods to the people to whom he had promised. As per the invoice placed before this Court, it is noticed that Kiwi weighing about 89,420 kilograms were imported to India which were of value amounting to 80,478 USD, which if calculated in rupees is approximately ₹ 66,79,674/-, @ ₹ 83 per USD.

57. In view of the above, we direct that the Importer should also be compensated for his loss proportionately. In ***D. K. Basu vs State of West Bengal*** 1997 (1) SCC 416, Hon'ble the Supreme Court has examined the aspect regarding granting of compensation while exercising writ jurisdiction and held as under:-

> "*Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is nor available and the citizen must revive the amount of*

compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do, That award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will. of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under he public law jurisdiction is, in addition to the traditional remedies and not it derrogation of them. The amount of compensation as awarded by the Court and paid by the State to redress The wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

58. In ***Nilabati Behera vs State of Orissa*** 1993 (2) SCC 746, the Apex Court held that High Court has power under Article 226 of the Constitution of India to award compensation.

59. In a recent judgment passed in ***Satyanand Singh vs Union of India and others*** 2024 INSC 236, the Apex Court held as under:-

"*18. The Constitution, through its Preamble, guarantees to all its people 'Justice', in the deliverance of which, the Courts of the land have developed a nuanced compensatory*

jurisprudence through a catena of judgments, for a wide compass of situations.

19. This Court, towards the end of the last century held in D.K. Basu v. State of West Bengal (1997) 1 SCC 416 that:

> *"54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life 2023 SCC OnLine SC 1220 (1997) 1 SCC 416 of a citizen by the public servants and the State is vicariously liable for their acts."*

20. In P.S.R. Sadhanantham v. Arunachalam (1980) 3 SCC 141, this Court while emphasising its power to do full and complete justice, ruminated:

> *"6. The jural reach and plural range of that judicial process to remove injustice in a given society is a sure index of the versatile genius of law-inaction as a delivery system of social justice. By this standard, our constitutional order vests in the summit Court of jurisdiction to do justice, at once omnipresent and omnipotent but controlled and guided by that refined yet flexible censor called judicial discretion. This nidus of power and process, which master-minds the broad observance throughout the Republic of justice according to law, is Article 136."*

21. While discussing award of 'just compensation' in a personal injury case, this Court in K. Suresh v. New India Assurance Co. Ltd. (2012) 12 SCC 274 had the occasion to observe that:

> *"10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities*

> *which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered."*

60. In another case ***Mahabir and others vs The State of Haryana*** 2025 INSC 120 relating to compensation under the criminal law where Hon'ble the Supreme Court set aside the order of conviction and compensation was awarded to the victim.

61. Hon'ble the Supreme Court recently in CA No. 004590 of 2025– ***Zulfiquar Haider vs The State of Uttar Pradesh***, decided on 01.04.2025 has awarded compensation to the victims whose houses were wrongfully demolished. The Courts in cases where there is deliberate and willful action of the State or its functionaries in depriving any person ought not shy away from granting compensation. Keeping in view that in spite of several orders passed by this Court for release of perishable fruit 'Kiwi', the respondents did not act promptly and the entire consignment of imported goods got perished. We find that huge loss has occurred to the importer which needs to be compensated.

62. In view of the above, **we allow the writ petition** and direct the respondents to release the amount paid as custom duty on the Kiwi for import into India along with interest @ 6% per annum. Taking note of the above, we further direct that the petitioner/ importer would be entitled to compensation calculated conservatively of ₹ 50 lacs as the Kiwi worth

weighing 89,420 kilograms were destroyed on account of delay in release by the respondents. We have granted the said amount as the Importer has already paid the same to the seller for the Kiwi and brought in India. Kiwi is a high valued fruit. The amount shall be recovered from erring officers as compensation to the Importer/ petitioner.

63. Before we close the case, we find that the present case is an example of red-tapism being followed by the government functionaries. The same needs to be creased out as it would result in discouraging the import of perishable goods. The Indian citizens also have a right to receive high-quality fruits which are available in different countries; however, if the approach, as adopted by the respondents, is allowed to continue, the importers would toe their line and release rotten fruits, vegetables, and perishable goods that have lost their freshness, and ultimately the public would be the main sufferer. A policy needs to be formulated by the concerned authorities so that testing labs, shipping companies, and Customs Authorities work in tandem and an atmosphere is created so that the imported goods reach the public as soon as possible.

64. All pending applications stand disposed of.

65. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

4th April, 2025 **(SANJAY VASHISTH)**
vs **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No