CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20474 of 2016

(Arising out of Order-in-Appeal No.COC-CUSTM-000-APP-339/2015-16 dated 11.01.2016 passed by the Commissioner of Customs (Appeals), Cochin.)

Shri Anuj John
Kovattil House,
Giri Nagar,
Kadavanthra,
Kochi - 20.

Appellant(s)

VERSUS

The Commissioner of Customs
5th Floor, Catholic Centre, Broadway,
Kochi - 3682 031.

Respondent(s)

APPEARANCE:

Shri Aravind Sreekumar, Advocate for the Appellant.

Shri Maneesh Akhoury, Assistant Commissioner, Authorised Representative for the Respondent.

CORAM:

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20960 / 2026

DATE OF HEARING: 17.07.2026
DATE OF DECISION: 20.08.2026

PER : R. BHAGYA DEVI

Briefly the facts are that the appellant Shri Anuj John had purchased Yamaha R-1 motorbike with registration No. MH 06 AR 8899 from Shri Mohammad on 10.04.2013. On specific intelligence, this bike was recovered from the workshop and after verifying from the RTO authorities that their address shown was fake and on verification found that the Bill of Entry filed for the same was fake and no duty was paid, hence the same was confiscated. The original authority imposed a redemption fine of Rs. 50,000/- along with penalty of Rs. 20,000/- under Section 112 of the Customs Act, 1962 on the appellant. The Commissioner (Appeals) upheld the above order but dropped the penalty under Section 112 of Customs Act, 1962. Aggrieved by this order, the appellant is in appeal before the Bench.

2. The Learned Counsel for the appellant submits that the motorbike which was imported into India through the Indira Gandhi International Airport vide Bill of Entry No. 110190/29/5/2008 dated 29.05.2008 which was registered under the RTO Maharashtra with registration No. MH06 AR 8899. He further submits that the importer was M/s. Galaxy Trading as registered in the RTO records. He submits that he was in possession of Bill of Entry, insurance policy documents, challan No.99975892 dated 30.05.2008 and the sale letter signed by M/s. Galaxy Trading and he had purchased the bike from Mr. Mohammad in Bangalore on payment of Rs. 5,00,000/- in 2013 under *bona fide* belief since the above documents were made available to him. Hence, claims that no duty can be collected or redemption fine be imposed on him. Relies on the decision in the case of **Commissioner of Customs (Import), Bombay vs. VXL India Ltd. 2006 (193) ELT 396;** also relies on the decision in the case of **Shanoob M.S. vs. Commissioner of Customs, Cochin: 2017 (358) E.L.T. 538 (Tri. - Bang.)** and **HCL HP Ltd. Vs. Commissioner of Customs: 1999 (112) ELT 604** to state that the demand is beyond the normal period; hence, cannot be sustained.

3. The learned Authorised Representative (AR) reiterating the findings of the Commissioner (Appeals) submits that since the documents were found to be fake and the import had happened fraudulently, the question of limitation did not arise. Relies on

the decision of the Hon'ble Supreme Court in the case of **Commissioner of Customs (Preventive) vs. AAFLOAT Textiles (I) Pvt. Ltd. 2009 (235) ELT 587 (S.C.)** and the decision in the case of **Mercedes Benz India Pvt. Ltd. Vs. Commissioner of Customs, Delhi: 2022 (1) CENTAX 328 (Tri.-Del)**. He also submits that since duty was not paid at the time of import, the appellant was liable to pay duty and redemption fine; hence, the impugned order needs to be sustained.

4. Heard both sides. It is an admitted fact that the Motor Bike was smuggled illegally without payment of duty as the owner in the RTO records was found to be fictious and the Bill of Entry No.110190 dated 29.05.2008 was a fake/fabricated and no customs duty was discharged; hence, the goods were liable for confiscation under Section 123(5) of the Customs Act,1962. The only challenge by the appellant is that the notice is time-barred and he had purchased the bike online with the *bona fide* belief that if the documents produced to him were genuine and he cannot be made liable to pay the duty. On 17.04.2013 only, the Revenue got to know the fraudulent illegal import of the Yamaha bike and investigations also proved that the documents produced by the appellant were all fabricated and the bike was smuggled without payment of Customs duty; hence, the show-cause notice dated 19.08.2013 for confiscation of the bike was within the time limit. The Hon'ble Supreme Court in the case of **Commissioner of Customs (Preventive) vs. AAFLOAT Textiles (I) P. Ltd.** (supra) observed as follows:

> **"9.** "Fraud" means an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it

will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See *Dr. Vimla* v. *Delhi Administration* (1963 Supp. 2 SCR 585) and *Indian Bank* v. *Satyam Febres (India) Pvt. Ltd.* [1996 (5) SCC 550].

10. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chengalvaraya Naidu* v. *Jagannath* [1994 (1) SCC 1].

11. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void *ab initio*. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (See *Ram Chandra Singh* v. *Savitri Devi and Ors.* [2003 (8) SCC 319].

12. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In leading English case i.e. *Derry and Ors.* v. *Peek* (1886-90) All ER 1 what constitutes "fraud" was described thus : (All ER p. 22 B-C) "fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false". But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in *Khawaja* v. *Secretary of State for Home Deptt.* (1983) 1 All ER 765, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. "If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or *mala fide* exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive. (See *Shrisht Dhawan (Smt.)* v. *M/s. Shaw Brothers*, [1992 (1) SCC 534].

13. In that case it was observed as follows :

"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New

International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of the fact with knowledge that it was false. In a leading English case *Derry* v. *Peek* [(1886-90) ALL ER Rep 1 : (1889) 14 AC 337 (HL)] what constitutes fraud was described thus : (All Er p. 22 B-C)

'Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false'."

14. This aspect of the matter has been considered by this Court in *Roshan Deen* v. *Preeti Lal* [2002 (1) SCC 100] *Ram Preeti Yadav* v. *U.P. Board of High School and Intermediate Education* [2003 (8) SCC 311], *Ram Chandra Singh's* case (supra) and *Ashok Leyland Ltd*. v. *State of T.N. and Another* [2004 (3) SCC 1].

15. Suppression of a material document would also amount to a fraud on the court, (see *Gowrishankar* v. *Joshi Amba Shankar Family Trust* (1996 (3) SCC 310) and *S.P. Chengalvaraya Naidu's* case (supra).

16. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav's* case (supra).

17. In *Lazarus Estate Ltd.* v. *Beasley* (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity, (page 722).

18. These aspects were highlighted in the *State of Andhra Pradesh and Anr.* v. *T. Suryachandra Rao* [2005 (5) SCALE 621] and *Bhaurao Dagdu Paralkar* v. *State of Maharashtra and Ors.* [2005 (7) SCC 605].

19. It was for the buyer to establish that he had no knowledge about the genuineness or otherwise of the SIL in question.

20. The maxim *caveat emptor* is clearly applicable to a case of this nature. As per Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn. 2005 at page 721: Caveat emptor means "Let the purchaser beware." It is one of the settled maxims, applying to a purchaser who is bound by actual as well as constructive knowledge of any defect in the thing purchased, which is obvious, or which might have been known by proper diligence.

21. "*Caveat emptor* does not mean either in law or in Latin that the buyer must take chances. It means that the buyer must take care." (See *Wallis* v. *Russell* (1902) 21 R 585, 615).

22. "*Caveat emptor* is the ordinary rule in contract. A vendor is under no duty to communicate the existence even of latent defects in his wares unless by act or implication he represents such defects not to exist." (See *William R. Anson*, Principles of the Law of Contract 245 (Arthur L. Corbin Ed. 3d. Am. ed.1919) Applying the maxim, it was held that it is the bounden duty of the purchaser to make all such necessary enquiries and to ascertain all the facts relating to the property to be purchased prior to committing in any manner.

23. *Caveat emptor, qui ignorare non debuit quod jus alienum emit*. A maxim meaning "Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another. Hob. 99; Broom; Co., Litl. 102 a : 3 Taunt, 439.

24. As the maxim applies, with certain specific restrictions, not only to the quality of, but also to the title to, land which is sold, the purchaser is generally bound to view the land and to enquire after and inspect the title-deeds; at his peril if he does not.

25. Upon a sale of goods the general rule with regard to their nature or quality is *caveat emptor*, so that in the absence of fraud, the buyer has no remedy against the seller for any defect in the goods not covered by some condition or warranty, expressed or implied. It is beyond all doubt that, by the general rules of law there is no warranty of quality arising from the bare contract of sale of goods, and that where there has been no fraud, a buyer who has not obtained an express warranty, takes all risk of defect in the goods, unless there are circumstances beyond the mere fact of sale from which a warranty may be implied. {*Bottomley* v. *Bannister*, [1932] 1 KB 458: *Ward* v. *Hobbs*, 4 App Cas 13}. (Latin for Lawyers)

26. No one ought in ignorance to buy that which is the right of another. The buyer according to the maxim has to be cautious, as the risk is his and not that of the seller.

27. Whether the buyer had made any enquiry as to the genuineness of the license within his special knowledge. He has to establish that he made enquiry and took requisite precautions to find out about the genuineness of the SIL which he was purchasing. If he has not done that consequences have to follow. These aspects do not appear to have been considered by the CESTAT in coming to the abrupt conclusion that even if one or all the respondents had knowledge that the SIL was forged or fake that was not sufficient to hold that there was no omission or commission on his part so as to render silver or gold liable for confiscation.

28. As noted above, SILs were not genuine documents and were forged. Since fraud was involved, in the eye of law such documents had no existence. Since the documents have been established to be forged or fake, obviously fraud was involved and that was sufficient to extend the period of limitation."

4.1 In view of the above, the notice is not time-barred since Revenue got to know the fraudulent purchase of the Bike only on 17.04.2013 and the show-cause notice was issued on 19.08.2013 for confiscation of the vehicle under Section 111(d) and (m) of the Customs Act, 1962. Once confiscation is upheld, the owner of the goods who redeems the goods is liable to discharge duty along with interest on the same as is held by the Hon'ble Supreme Court in the case of **Navayuga Engineering Co. Ltd. vs. Union of India: 2024 (30) ELT 3 (SC)** dated 23-7-2024 wherein the Hon'ble apex court held as follows:

"5. *Confiscation of goods under Chapter XIV of the Act:* The third circumstance where duty is collected is when goods are improperly imported into or exported out of India. Chapter XIV of the Act provides for confiscation of such goods and imposition of penalties under Sections 111 to 114. Section 111(o) is the specific instance for confiscation of goods for violation of conditions of exemption from payment of duty after the importation. These goods were not subjected to levy and collection of duty as they enjoyed the benefit of exemption. Upon detection of a violation, the legal consequences must and will follow and Chapter XIV provides for confiscations and penalties.

5.1 Confiscation of goods is appropriation of property by the revenue. The right, title and interest in the property, if any, is transferred and vested in the state under Section 126. Considering the serious consequences of such an action, authority and process of law mandated Article 300A , Parliament prescribed the procedure under Section 122A, adjudicatory authority under Section 122, obligated issuance of a show cause notice under Section 124 before confiscation.

6. ***Section 125 of the Act:*** Alternatively, there is also the option of redemption of the confiscated goods under Section 125, the statute specifically empowers the owner of the goods to exercise an option of legitimising the importation by paying fine, duty and other charges. The procedure prescribed is simple; (i) confiscation must be authorised, (ii) those goods should not be prohibited goods, (iii) the officer shall give an option to redeem the goods in lieu of fine, (iv) the owner or the possessor must exercise the option and (v) pay the fine (vi) within 120 days. The purpose and object of Section 125 is to enable a transition from 'illegality' to 'compliance' of laws. It grants an opportunity to the owner or possessor of the confiscated goods to regularise the transaction by payment of fine. This provision is based on a public policy consideration that balances crime and punishment and achieves the twin objectives of enabling a citizen to remain on the right side of law by adopting a prescribed measure and amicable settlement of disputes through resolution. Section 125 is extracted herein below for ready reference:

> "**Section 125. Option to pay fine in lieu of confiscation.** —
> (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of Section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.
Explanation. — xx xx xx"

7. ***Issues :*** It is in the above referred 'context' that we will now interpret the 'text' of Section 125 to examine the following issues :

(i) Whether there is a liability to pay customs duty when confiscated goods are redeemed after payment of fine under Section 125 of the Act?

(ii) Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act?

7.1 While answering these questions, we will have to explain the decision of this court in *Jagdish Cancer* case as it is argued to have ruled that duty in confiscation proceedings is payable only under section 125 and not under section 28, and if Section 28 does not apply, Section 28AB also will not apply. Therefore, the third question is :

(iii) What is the true and correct ratio of the decision in Jagdish Cancer case?

8. *Re :* Whether there is a liability to pay customs duty, when the confiscated goods are redeemed after payment of fine under Section 125 of the Act?

8.1 This issue is no more res integra. The uncertainty about the liability to impose and collect duties in confiscation proceedings was resolved in 1976 by a decision of this Court in *Union of India* v. *M/s Security and Finance (P.) Ltd.* [(1976) 1 SCC 166 =1983 (13) E.L.T. 1562 (S.C.), hereinafter referred to as Security Finance case] while interpreting identical provisions, as they stood under the Sea Customs Act, 1878. In this case, the court was dealing with confiscation of goods that were imported without a proper license which was and is prohibited by law. Though the goods were confiscated, they were released to the importer, who exercised the option to redeem them under Section 183 of the repealed Act. Consequently, Customs Department sought to collect the duty payable on such goods. The High Court accepted the importer's challenge to imposition and collection of duty on the ground that Section 183 proceedings authorised only a fine and not customs duty. This court allowed the appeal of the Custom Departments by drawing a distinction between the power to impose or recover duty under Section 20 (Section 12/28 of our Act) on one hand, and the power to impose penalty and/or fine under Section 183 (Section 125 of our Act). This Court held that they are distinct and operate independently. The relevant portion of the judgment is as under:

> "5. Does the order under Section 183 preclude him from levying duty under Section 20? This is the short issue before us. A close study of the scheme of the relevant provisions, powers and levies discloses a clear dichotomy which has escaped the attention of the High Court. Import/Export duty is an obligation cast by Section 20 of the Act. It is a tax, not a penalty; it is an innocent levy once the exigible event occurs; it is not a punitive impost for a contravention of the law. Confiscation, penalty and fine provided for under Sections 167 (Item 8) and 183 are of the species of punishment for violation of the scheme of prohibition and control. Once this distinction and duality are remembered, the interpretative process simplifies itself.

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> 8. ….. In the present case, the Deputy Collector, the competent authority, has chosen to give the owner of the goods, the respondent, option to pay, in lieu of confiscation, a fine. He has not confiscated the goods and, therefore, Section 184 is not operational in this context. In short, the obligation under section 20 is independent of the liability under Section 183. The order, dual in character, although clubbed together in a single document, is therefore valid in entirety. Even so, the confusion has been caused by the Deputy Collector failing to keep distinct the two powers and the two liabilities and thereby leading to avoidable jumbling.
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> 10. However, we are prepared to gather from the order under attack two levies imposed in exercise of two distinct powers, as earlier explained. The import duty has been made a condition for the clearance of the goods. This is right and it is impossible to say that the said payment is not justified by Section 20. Likewise, the authority when it imposed a fine, was exercising its power under Section 183. We can readily see that he did not mean to confiscate the goods. He only proposed to confiscate and proceeded to fix a fine in lieu thereof. Non-felicitous and inept expressions used in the order are perhaps apt to mislead, but the intendment is clear that what was done was not confiscation but giving an option to pay a quantified fine in place of confiscation. The order was a composite one, when read in the sense we have explained, and is quite legal. Therefore, we reach the conclusion that the appellant is entitled to win and the High Court was in error."

8.2 The Act must always be read as a whole. Once the liability of confiscation is withdrawn after the option to pay fine is exercised and the goods are redeemed, it is natural for the goods to be subjected to duty. The power and the machinery provisions for imposition and collection of duty liability exist only under section 12 and/or Section 28 and not under Section 125. The essence of the judgment in Security Finance case is in the following sentence : "*The import duty has been made a condition for* *the clearance of the goods. This is right and it is impossible to say that the said payment is not justified by Section 20".*

8.3 The scope of enquiry in this judgment was limited to answering whether there is a liability to pay customs duty in confiscation proceedings when goods are redeemed upon payment of fine. This judgment is not concerned with instances like in the present case where goods are imported without payment of duty under an exemption notification.

8.4 The above referred judicial interpretation has attained statutory recognition in 1985 when the Parliament introduced sub-section (2) to Section 125 to clarify and declare that the owner of goods, in addition to payment of fine, shall also be liable to pay duty and other charges upon exercising the option to pay fine to redeem goods. *Thus, the owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine and other charges under Section 125 of the Act. This is the first principle.*

8.5 In our view, this position gleaned from *Security Finance* case has remained consistent with amendments introduced to Section 125 in the year 1985. The customs duty obligation on once exempted goods, liable to be confiscated for violation of conditions, arises only after the option to redeem them is exercised under Section 125. Once the option is exercised, the acceptance is subject to the conditions specified in Section 125. The primary condition is payment of fine in lieu of confiscation. Thus, this duty obligation is inextricably connected to the option to redeem the confiscated goods. In other words, it is a precondition for redemption.

8.6 The decision of this court in *Fortis Hospital Ltd.* v. *Commr. of Customs, Import* [(2015) 12 SCC 715 = 2015 (318) E.L.T. 551 (S.C.), hereinafter referred to as Fortis Hospital Case] affirms this position. In Fortis Hospital case, the owner of the confiscated goods chose not to exercise the option under Section 125. However, the revenue sought to recover the duty payable under Section 28 of the Act. Holding that this is impermissible, the court held that :

"9...... It may be seen from the bare reading of the aforesaid Section that under Section 125(1) of the Act, option is given to the importer whose goods are confiscated, to pay the fine in lieu of confiscation and redeem the confiscated goods. Before this action is taken, show cause notice is to be issued under the provision of Section 124 of the said Act. This provision pertains to confiscation of goods and provides procedural safeguards inasmuch as there cannot be any order of confiscating any goods or imposing any penalty on any person without complying with the procedure contained in Section 124. Section 124 mandates issuance of the show-cause notice before passing any such order and contemplates two actions: first, relating to confiscating of the goods and second, pertaining to imposition of penalty. Pertinently, this action does not deal with payment of import duty at all.

10. It is not in dispute that show cause notice in the instant case was issued under Section 124 of the Act. Once such a show cause notice was issued and as can be seen from the proposed action which was contemplated in this provision (as has been taken note of above), it was also confined to confiscation of the imported machinery and imposition of penalty. Nothing was stated about the payment of duty. However, in spite of the fact that show-cause notice was limited to confiscation of the goods and imposition of penalty, the final order which was passed included the direction to pay the customs duty as well. It is clear that when such an action was not contemplated, which even otherwise could not be done while exercising the powers under Section 124 of the Act, in the final order there could not have been direction to pay the duty.

11. Notwithstanding the aforesaid position, as pointed out above, the Department is taking shelter under the provisions of sub-section (2) of Section 125 of the Act. However, on a plain reading of the said provision, we are of the view that such a provision would not apply in case where option to pay fine in lieu of confiscation is not exercised by the importer. Trigger point is the exercise of a positive option to pay the fine and redeem the confiscated goods. Only when this contingency is met, the duty

> becomes payable. In the present case, admittedly, such an option was not exercised and the confiscated machinery was not redeemed by the Institute. As a matter of fact, thus, no fine has been paid."

8.7 This judgment also explains the position when the Customs Department wants to recover duty through ways, other than confiscation at the Chapter XIV. Explaining the alternative modes of recovery of customs duty, the court observed as follows :

> "16. It is not that the Department is without any remedy. We have gone through the provisions of notification No. 64 of 1988 dated 1-3-1988. As pointed out above, importer would be exempted from payment of import duty on hospital equipment only when the conditions contained in the said notification are satisfied. Some of the conditions, as pointed out above, are to be fulfilled in future. If that is not done and the importer is found to have violated those conditions, show-cause notice could always be given under the said notification on payment of duty, independent of the action which is permissible under section 124 and Section 125 of the Act. It is also important to mention that under certain circumstances mentioned in the notification, the importer can be asked to execute a bond as well. In those cases, action can be taken under the said bond when the conditions contained therein are violated. Therefore, if the Department wanted the Institute to pay the duty, which may have become payable, it could have taken independent action; de hors Section 124 of the Act, for payment of duty, simultaneously with the notice under Section 124 of the Act or by issuing composite notice for such an action. No doubt, it could have waited for option to be exercised by the Institute under Section 125(1) of the Act as well and in that eventuality, duty would have automatically become payable under Section 125(2) of the Act. But when such an option was not exercised, it could have taken separate and independent action by issuing a show-cause notice to the effect that the Institute had violated the terms of exemption notification and therefore, was liable to pay duty."

8.8 We can thus conclude the second principle that, when confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125(2) will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepting it.

8.9 An important principle that needs to be recognized is that, the customs duty obligation in confiscation proceedings does not occasion either under Section 12 or 28. It has arisen because of the option available and exercised under Section 125. This obligation should not be confused with the method and procedure by which that customs duty is assessed and determined, which is provided under Section 28. It is in this context that we need to consider and explain the decision of this court in *Jagdish Cancer case.*

9. *Re : What is the true and correct ratio of the decision in Jagdish Cancer case?*

9.1 The real contest in this case is about the correct ratio of the judgment in Jagdish Cancer case. According to the appellant, as this judgment holds that duty liability in confiscation proceedings arises because of Section 125 and not Section 28, there is no liability to pay interest on delayed payments under Section 28AB. The facts of this case are necessary to be recounted for a clear understanding of the ratio of this decision. In this case, the department issued a show-cause notice under Section 124 of the Customs Act demanding customs duty and proposed confiscation under Section 111(o) and penalty under Section 112.

9.2 The importer contended that as there is no notice under Section 28, the demand and collection of duty are impermissible. We will extract the submission as recorded by this court in para 9 of the judgment, as it is important to know what was argued and what was decided :

> "9. .... Section 28 of the Act which falls in Chapter V provides for notice for payment of duties which has been demanded by the notice in this case. Therefore, it is submitted on behalf of the Centre that demand of customs duty and the order for payment of the same is relatable to only Section 28(1) of the Customs Act, as

> also found by the CEGAT. That being the position, the notice was beyond time and not by a competent officer authorised to issue the same. The argument, as advanced, though seems to be attractive but on scrutiny, we find no merit in it ……….."

9.3 On the other hand, the Department defended its position by submitting as follows :

> "8. ……. It is submitted that the copy of the notice, as annexed, does not mention Section 28(1) of the Customs Act, in any case if it is taken to be there, as contended, that would make no difference. The submission is that sub-section (2) of Section 125 of the Customs Act provides that where any fine in lieu of confiscation of goods is imposed, the importer shall also, in addition, be liable to any duty and charges payable in respect of such goods."

9.4 It is in the context of the above-referred submissions, that the court considered the fact that an option under Section 125 was given and it was in fact exercised. Thus, the liability to pay customs duty arose under Section 125(2) and therefore, the court held that the separate notice under Section 28 is not required. This is exactly what the court ruled by holding:

> "12. Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall in addition be liable to any duty and charges payable in respect of such goods" ……..".

9.5 Again, in the same paragraph, the court notes that the occasion, origin, or the circumstance in which the liability to pay duty arose in the confiscation proceedings under Section 125(2). In this case, the court was considering and rejecting the submission made on a misplaced premise that the proceedings have originated under section 28. Payment of customs duty has not arisen either under Section 12 or Section 28, it has arisen because of Section 125(2). Therefore, a notice under Section

28 is not necessary. This is how the judgment needs to be understood, and it is in this perspective that the court has in fact rejected the importer's objection to the payment of duty.

> "12. Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall in addition be liable to any duty and charges payable in respect of such goods." A reading of sub-sections (1) and (2) of Section 125 together makes it clear that liability to pay duty arises under sub-section (2) in addition to the fine under sub-section (1). Therefore, where an order is passed for payment of customs duty along with an order of imposition of fine in lieu of confiscation of goods, it shall only be referable to sub-section (2) of Section 125 of the Customs Act. It would not attract Section 28(1) of the Customs Act which covers the cases of duty not levied, short-levied or erroneously refunded etc. The order for payment of duty under Section 125(2) would be an integral part of proceedings relating to confiscation and consequential orders thereon, on the ground as in this case that the importer had violated the conditions of notification subject to which exemption of goods was granted, without attracting the provisions of Section 28(1) of the Customs Act."

9.6 We conclude by holding that *Jagdish Cancer* case is not an authority for the proposition that when the liability to pay customs duty has occasioned under Section 125, the calculation, determination or the assessment of such duty cannot be made under section 28.

10. Re : Whether the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act?

10.1 The text of Section 125(2) clearly provides that, where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods shall be 'liable to any duty and charges payable with respect to such goods'. The sub-section provides that the liability to any duty and charges, that are payable, shall be paid in addition to the fine.

We have held that Section 28 would come into operation for assessing and determining the duty and other charges payable with respect to goods redeemed under Section 125(2). Once Section 28 applies for determination of duty obligation arising under Section 125(2), the interest on delayed payment of duty arises under Section 28AB. The said provision obligates payment of interest in addition to the duty. We thus answer the last issue by holding that the interest liability under Section 28AB is also attracted".

5. In the instant case, since it is proved beyond doubt that the documents were forged and no duty was paid on the bike that was imported fraudulently, the appellant is liable to pay duty along with interest. However, since the Commissioner (Appeals) considering the fact that the appellant had purchased the bike under *bona fide* belief in good faith, had set aside the penalty on the same; considering this, the redemption fine is Reduced to Rs.10,000/- (Rupees Ten Thousand Only) upholding the duty and interest.

Appeal is partially allowed.

(Order pronounced in Open Court on 20.08.2026.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv