

Uttar Pradesh, (3). We do not agree with the submission of Shri Brar. The Supreme Court, in arriving at the conclusion that the dismissal of a petition under Article 226 barred a petition under Article 32, invoked the general rule of *res judicata* which they held was founded on considerations of public policy. We do not think that there is any scope for the application of the principles of *res judicata* in the present case. We, therefore, overrule the preliminary objection and hold that the applications are maintainable.

(3) In the case of Avtar Singh and Bohar Singh, the record discloses that the Magistrate has issued bailable warrants only. That means that as soon as they are arrested or as soon as they appear before the Magistrate, they are entitled to be released on bail. In their case, the application for anticipatory bail is misplaced and is, therefore, dismissed.

N. K. S.

MISCELLANEOUS CIVIL

Before Rajendra Nath Mittal and K. S. Tiwana, JJ.

MESSRS LAMBA INDUSTRIES,—Petitioner.

versus

THE UNION OF INDIA, ETC.,—Respondents.

Civil Writ No. 4709 of 1975.

July 14, 1976.

Constitution of India 1950—Articles 12 and 226—Imports and Exports (Control) Act (XVIII of 1947)—Section 3—Import Trade (Control) Order 1955—Clauses 2(aaaa), 3(i), 5(3) (ii) proviso, 8 and 8-A—Import Trade Control Hand Book of Rules and Procedure—Paragraph 97(3)(c)—Sale of Goods Act (IX of 1930)—Section 39—State Trading Corporation of India, a company registered under the Companies Act—Whether an “authority” and amenable to writ jurisdiction—Disputes arising out of contractual obligations—Aggrieved party—Whether can invoke the jurisdiction under Article

(3) A.I.R. 1961 S.C. 1457.

Messrs Lamba Industries v. The Union of India, etc. (Tiwana, J.)

226—*Import licences for canalised goods in the name of the Corporation—Corporation—Whether an agent of release order holders—C.I.F. contract—Property in—When passes.*

Held, that the word “authority” has not been defined in the Constitution of India 1950. Before a writ can be issued against a corporate body, three things are required to be proved namely; (i) that it is a statutory body and owes its creation to a statute with powers and obligations arising out of it and its functions are governed by the statute or the rules framed thereunder; (ii) that it discharges governmental functions and (iii) that a statutory rule has been violated. Corporations which are created by the statutes and carry out the statutory functions are subject to the writ jurisdiction under Article 226 of the Constitution of India. State Trading Corporation is not a statutory body. It is not the creation of the Companies Act nor of the Imports and Exports (Control) Act, 1947. It is created under the Companies Act, has its own memorandum and articles of association, is governed by a Board of Directors and is doing its own business. There is a corporate veil around it which cannot be pierced. It is neither a statutory body nor its functions are governmental or public. It keeps a check on surreptitious deals so that these do not result into any loss of the foreign exchange. It lacks colour and trappings of an authority as contained in Article 226 of the Constitution of India and consequently a writ against it does not lie.

(Paras 26 and 27).

Held, that any violation of contractual obligations does not give to the aggrieved party a right to invoke the discretionary jurisdiction of the High Court under Article 226 of the Constitution.

(Para 32).

Held, that the rules contained in the Import Trade (Control) Order 1955 contemplate two types of licenses; one is for those items which are not canalised and the other is for the canalised items. In the case of the former the import licenses are issued directly in the names of the applicants and in the case of the latter, because of the import policy as contained in paragraph 97(3)(c) of the Import Trade Control Rules and Procedure, it is issued in the name of the canalising agency. Proviso to Rule 5(3)(ii) of the Imports (Control) Order 1955 excludes the State Trading Corporation from the operation of Rule 5(3)(ii) of the 1955 Rules. Similarly Rules 8 and 8-A of the order make a distinction between a licensee and the State Trading Corporation by the insertion of the word ‘through’ the State Trading Corporation. The State Trading Corporation is not meant to be understood as a licensee in the general sense of the word and it is for this reason that it represents in the indents, etc., that it acts

on behalf of the release order holders. *Pro forma* as contained in appendix 34 of the Rules leaves no room for doubt that licensees in reality are release order holders and the State Trading Corporation is given this name only because of fiction of law of the Import Trade Control Orders. The State Trading Corporation is, therefore, not owner of the goods which it imports. The State Trading Corporation acts as the agent of the release order holders.

(Paras 46 and 47).

Held, that in the case of C.I.F. contracts, whenever the customary documents, i.e., bill of lading, etc., are prepared and delivered to the purchasers, the property in the goods passes to them.

(Para 54).

Petition under Article 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable writ, direction or order be issued, directing the respondents:—

- (i) to produce the complete records of the case ;
- (ii) the respondents be directed to deliver the material imported to the petitioner ;
- (iii) it be held that the petitioner is not liable to pay any demurrage, etc., and that he is entitled to the possession of the goods imported ;
- (iv) the petitioner be exempted from filing the originals of Annexures 'P-1' to 'P-37' ;
- (v) it be held that the petitioner is also entitled to the possession of the goods imported.—vide Indent No 7015/72 or in the alternative he is entitled to refund of the money paid by the petitioner in this behalf.
- (vi) this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case and grant all the consequential reliefs to which the petitioner may be found entitled to ;
- (vii) the costs of this petition may also be awarded to the petitioner.

J. L. Gupta, Advocate with G. C. Gupta, Advocate, for the Petitioner.

Kuldip Singh, Advocate, for respondent Nos. 1 and 3.

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R. C. Dogra, Advocate, for respondent No. 2 and 4.

Jawala Parshad Chopra, Senior Advocate Supreme Court
(R. M. Suri, Advocate with him) for respondent No. 6.

Gurbachan Singh, Advocate for respondent No. 7.

JUDGMENT

Kulwant Singh Tiwana, J.

(1) This judgment will dispose of Civil Writ Petition No. 4709 of 1975, filed by Messrs Lamba, Industries, and Civil Writ Petition No. 238 of 1975 filed by Messrs Harbans and Co., against Union of India through Secretary to Government of India, Ministry of Commerce, respondent No. 1, State Trading Corporation of India Limited, respondent No. 2, and others, as the common question of law and facts are involved in these:

(2) Messrs Lamba, Industries, Ludhiana, which is a partnership concern and is engaged in the manufacture of textile and hosiery goods has filed Civil Writ Petition No. 4709 of 1975 against Union of India, respondent No. 1, State Trading Corporation of India, Limited, respondent No. 2 and others stating that,—*vide* section 3 of the Imports and Exports (Control) Act, 1947 (hereinafter referred to as the Act) the Government of India has made provision for prohibiting and restricting or otherwise controlling the import and export of quality goods. In the year, 1960, Government of India launched a scheme known as “the Export Promotion Scheme” to encourage the manufacture and export of quality goods. According to this scheme a person, who exported goods to a foreign country was to be allowed import of goods into the country of an equal value. The petitioner-firm also availed of this opportunity. In the year 1956, the State Trading Corporation of India Limited (hereinafter called as the S.T.C.) was registered with a purpose of organising and undertaking trade generally with the state trading countries and for the promotion of export, etc. with the President of India and the Secretaries Ministries of Commerce and Industries as its shareholders. In the year 1967, the Government of India decided to canalise the import of foreign goods through the State Trading Corporation. This was notified,—*vide* Public Notice No. 172-ITC(PN)/67, dated November 25, 1967, copy of which is attached as Annexure P-1 to the petition, stating that the Government of India has decided

to "canalise all imports of wool raw, wool tops etc." as given at serial No. 47 in Part V of the Import Trade Control Policy Schedule 1 for the year 1967. This policy was implemented immediately after the issuance of the above-said order. After this decision it was decided that the concerned exporters would be entitled to import goods to the extent of 60 per cent of the F.O.B. value of the goods exported. Out of the import entitlement of 60 per cent the petitioner-firm was entitled to import 30 per cent directly on the basis of the letter of authority issued by the concerned authorities and the remaining 30 per cent through S.T.C. In the years 1969 to 1971 the petitioner exported the goods worth about 5 to 6 lakhs and thus earned the import entitlement of Rs. 3½ lakhs. Out of this, goods worth Rs. 20,299 were to be imported through the S.T.C. The procedure laid down and followed was that the petitioner was given the railway receipts by the S.T.C. and on deposit of the money in the Bank the goods were released to the petitioner-firm. So far as the clearance etc. of the imported goods were concerned the procedure was to be complied by the S.T.C. Whenever the money was paid by the petitioner the goods were released to it. In January, 1972, a representative of the petitioner-firm was summoned to Delhi to select the material out of the samples available for import on the basis of various release orders. The material was selected by the representative of the petitioner-firm and the order was placed for import by the S.T.C. with the recognised local agents of the suppliers abroad. Indent No. 7014/72, dated February 15, 1972, was placed for the purchase of goods worth Rs. 20,299 copy of this indent is Annexure P-2 to the petition. This order was for the import of woollen rags. This indent was received by the petitioner-firm on February 15, 1972 with a letter, copy of which is Annexure P-3 to the petition, from S.T.C. Amongst the various documents received later on the petitioner-firm received letter from the foreign supplier, copy of which is Annexure P-4 to the petition, with a certificate that "the goods are duly cut, mutilated which cannot be used for wearing purposes." The S.T.C. placed a similar order for the import of rags for Messrs Camel Knitting and Textile Mills, Ludhiana, respondent No. 7,—vide indent No. 7015/72. Messrs Mohan Lal and Sons, agents of the foreign-suppliers in India informed the petitioner-firm that through an oversight the principles have shipped 66 bales jointly against Indents Nos. 7014 and 7015. Copy of this letter is Annexure P-5 of the petition. The petitioner-firm was asked to make payment for the 66 bales jointly and arrange for their clearance. A similar service was received by the petitioner-firm

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through its Bankers, copy of which is Annexure P-6. The petitioner-firm however, expressed its inability to pay for the goods imported by respondent No. 7. On telephone the petitioner was requested by the S.T.C. to honour the documents on the stipulation that respondent No. 7, would pay, its share of the money. On August 16, 1972, the petitioner-firm received letter, copy of which is Annexure P-7, from the S.T.C. to the same effect. On the representation made by the S.T.C. the petitioner-firm made the payment of Rs. 38,957.40 for goods ordered by it and also on behalf of respondent No. 7. But, inspite of the demands made and insistence by the petitioner-firm neither respondent No. 7 made the payment nor made any effort towards the clearance of the goods. The petitioner-firm insisted on the S.T.C. to get the amount paid by it on behalf of respondent No. 7. A good deal of correspondence took place between the petitioner-firm and the S.T.C. in that behalf.

(3) In the meantime the Collector of Customs, Bombay respondent No. 5, intimated the petitioner-firm,—vide letter copy of which is Annexure P-13 to the petition, that on examination it was found that the goods were not woollen rags, but serviceable woollen garments. On receipt of this notice the petitioner-firm sent a reply to the Collector of Customs and offered to get the goods mutilated and nominated Messrs Oswal Spinning and Weaving Mills, Ludhiana for this purpose. The Customs authorities intimated the petitioner-firm that because of lack of space with Messrs Oswal Spinning and Weaving Mills, Ludhiana, they had not mutilated the goods of some other concern and insisted for the nomination of any other mutilator. The petitioner-firm then contacted the Marketing Manager, State Trading Corporation of India, Limited, respondent No. 4, at Ludhiana and impressed upon him to make the payment of the money paid for respondent No. 7. The S.T.C. had also written letters to respondent No. 7 to make the payment to the petitioner-firm. The representative of the petitioner-firm was asked by the S.T.C. to see its Director and in consequence thereof the representative of the petitioner-firm met the Director who directed Shri M. M. Gupta to look into the matter and decide the same within a week. But the matter was not decided. On September 5, 1974, the petitioner-firm received an intimation from the Docks Manager, Bombay Port Trust, respondent No. 6, copy of which is Annexure P-23, that as the goods have not been cleared the same were being disposed of by public auction. The petitioner-firm immediately represented to the Port Trust Authorities against this action. Respondent No. 6 asked the petitioner-firm to pay demurrage, which,

according to respondent No. 6, had accumulated to the tune of Rs. 1,70,000. The petitioner-firm, since then, has been continuously writing to the authorities to settle the matter, but nothing was done. On February 24, 1975, the representative of the petitioner-firm met Shri M. N. Mishra, Director of S.T.C. with a request to refund the money. Shri M. N. Mishra accepted the submission of the petitioner-firm and ordered for the adjustment of the extra amount paid by it on behalf of respondent No. 7. After meeting Shri M. N. Mishra, the petitioner-firm submitted application, copy of which is Annexure P-27 to the Chief Marketing Manager, S.T.C., respondent No. 4. The petitioner-firm again represented for the implementation of the order of Shri M. N. Mishra. The petitioner-firm also represented to respondent No. 6 for the waiver of the demurrage,—vide litter, copy of which is Annexure 24. The petitioner-firm had been representing to respondent No. 2, for the release of the goods imported,—vide Indent No. 7014/72 and also adjustment of the amount paid by it for the goods imported on behalf of respondent No. 7.

(4) The petitioner-firm claims that S.T.C. is the agent of Union of India, respondent No. 1 and is to import various goods against the import entitlement earned by various persons. The amount of nearly Rs. 40,000 paid by the petitioner is lying blocked and he is entitled for the delivery of the goods and the action of the S.T.C. respondent No. 2, in not delivering the goods was absolutely illegal and without jurisdiction. The S.T.C., respondent No. 2, having undertaken to import the goods and the petitioner-firm having paid the money in good faith on the representation made by it is entitled to the delivery of the goods and the rule of promisory estoppel/equitable estoppel is attracted to the circumstances of the case. The non-delivery of the goods by the S.T.C. has resulted into the miscarriage of justice. The action of respondent No. 6 in asking the petitioner-firm to pay demurrage amounting to Rs. 3 lakhs is absolutely illegal. The goods were imported by the S.T.C., the description of which was given by the petitioner-firm. The petitioner-firm is not at all responsible for any infirmity found in the description of the goods and is entitled to the possession of those goods without being called upon to pay any thing more. The petitioner-firm has been put to heavy and recurring loss by the failure of the authorities to deliver the goods to it inspite of the fact that it has paid the full money thereof and he had exported the goods on the faith that it would get raw material against the goods exported. Since the petitioner-firm has paid the share of the money of respondent No. 7 on the representation made to it by the S.T.C. it is,

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therefore, liable to pay back that sum of money to it or to adjust it against other imports.

(5) The petitioner-firm on the above stated facts has prayed for a writ of *certiorari*, *mandamus* or any other suitable writ, against the respondents for a direction to deliver the imported material to the petitioner-firm and for a declaration that the petitioner-firm was not liable to pay any demurrage etc. and it is entitled to the possession of goods imported and that the petitioner-firm be also declared entitled to the possession of the goods imported,—vide Indent No. 7015 or in the alternative to be entitled to the refund of the money paid by the petitioner in that behalf.

(6) The State Trading Corporation, Limited, respondent No. 2, and its Marketing Manager, respondent No. 4, in their return raised preliminary objections that the writ petition was not maintainable against the S.T.C. which is incorporated as a Company under the Companies Act, 1956; that the petition was bad for non-joinder of the foreign suppliers as one of the respondents since the goods were to be supplied by the foreign suppliers to the petitioner-firm; that the matter in dispute was purely of a civil nature arising out of the contract and civil writ petition is not a remedy to enforce contractual obligation; that the petitioner made misrepresentation and had made concealments in the petition and on that ground it is liable to be dismissed; that there are many disputed questions of fact in the writ petition which are not conveniently determinable in the present proceedings in this Court; that the writ petitioner-firm has no legal right which was enforceable through this writ petition.

(7) On merits, the policy of the Government of India to prohibit, restrict and control the imported items and also the order passed by the Chief Controller of Imports and Exports, copy of which is Annexure P-1, was admitted. The goods in the contract, in this case, were stated to be old woollen rags. The procedure indicated by the petitioner-firm in para 7 of the writ petition about the delivery of the goods through railway receipt was denied. It was averred that the answering respondents transferred the goods through the transfer of the shipping documents received from the foreign suppliers. The shipping documents in this case were retired by the petitioner-firm on presentation through its bankers. The contract provided the delivery by transfer of documents and the clearing and handling of the goods imported was to be arranged by the importers concerned, that is, the petitioner-firm. The summoning

of the representative of the petitioner-firm by the answering respondents to Delhi for selecting the material was denied and it was submitted that the answering respondents did not make available the samples of the woollen rags for selection to the petitioner-firm. The release order-holders attend the periodical purchase meetings held in the office of the answering respondents at Delhi and select the material offered by various foreign-suppliers. No samples are shown at those meetings. The contract, copy of which is Annexure P. 2 to the petition, was executed by the answering-respondent on behalf of the petitioner-firm as stated in its letter, copy of which is Annexure P-3. The shipping documents for Indents Nos. 7014 and 7015 were erroneously prepared by the foreign suppliers in the name of the petitioner-firm in spite of the fact that S.T.C. had established its letter of credit, copy of which is Annexure R. 2/2 in favour of the foreign suppliers specifically enclosing therewith a statement indicating that the shipping documents may be made in the name of S.T.C., on account of the end users mentioned in the statement. It was at the specific request of the foreign suppliers through their local agents that this respondent retired these documents and presented to the Bankers of the petitioner-firm who actually made the payment in October, 1972. In order to avoid complications, the answering-respondents prepared separate invoices indicating the separate amounts payable by the petitioner-firm and respondent No. 7. The petitioner-firm accepted these documents without any compulsion and volunteered to recover the share amount from respondent No. 7. In spite of this the S.T.C. requested and reminded respondent No. 7 to make the payment of its share amount to the petitioner-firm. Any telephonic direction or conversation in this regard was denied. The S.T.C. made efforts to get the amount paid from respondent No. 7. It was a C.I.F. purchase under which the transfer of document when the goods are at the high seas is a sufficient evidence for the transfer of ownership and the petitioner-firm having accepted the documents was responsible for the clearing of the consignment. It was denied that it was an import by the S.T.C. but was at the request of the petitioner-firm on the basis of a specific indent and the liability of the S.T.C. for the clearance of the goods too was denied. Any representation made to Shri M N. Mishra for adjustment of the amount paid by the petitioner-firm on behalf of respondent No. 7 was also denied although it was admitted that the representative of the petitioner-firm had been meeting the said Director. In spite of the attitude of the petitioner-firm the S.T.C. allowed him the fresh purchase of greasy wool which has not so far been cleared by it. Shri M. N. Mishra filed an

affidavit denying the allegation of allowing any adjustment or any assurance.

(8) The Port Trust, Bombay, respondent No. 6, in the return raised preliminary objection regarding the jurisdiction of this Court to hear the petition as no cause of action against it arose within the jurisdiction of this Court. On merits it was averred that in place of 66 bales only 60 bales were delivered by s.s. State of Andhra at the Port at Bombay. As the petitioner-firm's clearing agent did not remove the bales from the dockyard, a notice was issued to it for auction,—vide letter, dated 12th June, 1974, copy of which is Annexure 'A' to the written statement of respondent No. 6. The petitioner-firm was asked,—vide letter, dated 23rd September, 1974, copy of which is Annexure 'D' to pay to the Port Trust charges and apply for remission of the demurrage along with the following documents:—

- “1. Formal application from the importer. Letter of authority authorising the Clearing Agents to apply for remission on behalf of the petitioner.
2. Bombay Port Trust Receipt in original.
3. Customs check invoices and specifications.
4. Logged entry if the goods were untraceable at any stage.
5. Railway Manager's certificate in case of late placement of wagons.”

The petitioner, however, failed to furnish these documents. Respondent No. 6 again asked the petitioner-firm to furnish the bill of entry passed by the Customs Authorities, customs checked invoices showing gross weight and confiscation order issued by Customs. There was no response from the petitioner-firm to this correspondence. Respondent No. 6, however, submitted that it has no objection to the clearance of the goods if payment of Rs. 2,49,716.65 as demurrage was made up to 18th August, 1975.

(9) Respondent No. 7, admitted the placing of the order and also the payment of the money by the petitioner-firm for the goods of Indent No. 7015 of 1972. It, however, insisted that in case the petitioner-firm delivered to it (respondent No. 7) the goods without any extra charges of demurrage etc., the respondent-firm was willing to

pay the amount. The respondent-firm admitted the correspondence of the petitioner-firm and the S.T.C. with it and stated that the respondent-firm had never refused to make the payment and was still willing to do so provided the goods are delivered to it.

(10) The facts in Civil Writ Petition No. 238 of 1975 filed by Messrs Harbans and Company are common with the civil writ petition filed by Messrs Lamba Industries about the floating of the scheme by Government of India, imposing restrictions on the imports and also about the issuance of the order by the Chief Controller of Imports and Exports, canalising the import of wool raw, wool tops, etc. through the State Trading Corporation of India. The case of the petitioner-firm about the transfer of the goods is also common with the firm-Messrs Lamba Industries. Regarding the import of goods, to the extent of 60 per cent of the F.O.B. value of the goods exported, on the same principle as in the case of Messrs Lamba Industries, this petitioner-firm claims to have earned import entitlement of Rs. 32,806 in the year 1970 for which different release orders were issued in its favour. The petitioner-firm claims that it was summoned on 15th January, 1972, telegraphically by the State Trading Corporation of India Limited (respondent No. 2) to select the material out of the samples available for import. The representative of the petitioner-firm selected the material and placed an order for its import by the S.T.C. with the recognised agent of the suppliers abroad. The first order was placed,—vide Indent No. 618 on 16th February, 1972, for goods worth Rs. 16,403 and the second order,—vide indent, No. 625 dated 17th February, 1972, was placed for an amount of Rs. 16,240. These orders concern the import of woollen rags. Copies of the indents are Annexures P-2 and P-3 to this petition. On May 23, 1972, the S.T.C. sent documents relating to Indent No. 618 and asked the petitioner-firm to make the payment within 7 days. The petitioner-firm deposited the requisite amounts and various charges and then sent the documents to its clearing agents at Bombay to get the goods cleared from the Customs for its onward transmission to Ludhiana. In spite of the fact that the petitioner-firm complied with all the formalities the goods were not received by it. The S.T.C. on 30th January, 1973 sent a copy of the notice issued by the Assistant Collector of Customs, Bombay, which is Annexure P-5 to this petition, to the effect that the consignment consisted of wholly serviceable woollen garments which was dutiable item and the import of the same was prohibited except in accordance with a valid permit. The Customs authorities took the position that the goods were liable for confiscation. After some time the petitioner-firm

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also received documents for the goods imported through Indent No. 625. As the petitioner-firm did not have good experience about the goods against Indent No. 618 of 1972, which inspite of the payment were not being released, it (petitioner-firm),—vide letter, dated 2nd January, 1973 requested the S.T.C. to get the goods cleared before the money was deposited by it relating to Indent No. 625. Copy of this letter is Annexure P-7 to this petition. This letter was not replied to by the S.T.C. The petitioner-firm sent a reply to the Customs authorities, copy of which is Annexure P-8 to this petition, that the goods had been imported through the S.T.C. (respondent No. 2) and as such it (petitioner-firm) was not responsible if the goods did not tally with the description given in the indent. On May 8/9, 1973, the petitioner-firm received a telegram from the S.T.C. (respondent No. 2) to clear the goods before May 12, 1973, failing which those were to be auctioned. The petitioner-firm sent a telegraphic reply informing that it (petitioner-firm) was willing to make the payment if the S.T.C. (respondent No. 2) undertakes to clear the goods and hand over the documents with the railway receipt to its Bankers. The S.T.C., vide letter, dated 9th May, 1973, copy of which is Annexure P-11, informed the petitioner-firm that it (S.T.C.) will not render any service in future in pending matters if the goods were not cleared before 12th May, 1973. Further correspondence was then exchanged between the petitioner-firm and the S.T.C. (respondent No. 2). The S.T.C., however, reiterated that in case the goods were not cleared by the petitioner-firm it will not attend to the pending indents unless the payment was made. The petitioner-firm then, through its Partner, met the officers of S.T.C. on 1st September, 1973, who promised to do the nedeful, but nothing was done in that regard. The petitioner-firm had been exporting goods and had been continuously earning fresh entitlement and the goods which it was entitled to import were not actually being imported. The petitioner-firm, therefore, wrote a letter, copy of which is Annexure P-18 to the petition, to revalidate the import licence issued on different dates and also for the supply of the material in accordance with the decision taken during the discussion. Inspite of the reminders nothing was heard by the petitioner-firm from respondent No. 2. A notice was served by it through its counsel, copy of which is Annexure P-21. On a discussion with the officers of the S.T.C. at Ludhiana, a decision was arrived at according to which the petitioner-firm was asked to give an undertaking that it will be willing to accept greasy wool, etc, in place of the goods, imported against Indent No. 625 and that it would also be willing to pay the interest as well as sales-tax, if any. The requisite undertaking was given by

the petitioner-firm,—vide letter, dated 30th November, 1973, copy of which is Annexure P-22 to this petition. In spite of that no action was taken, by the S.T.C. and on personal discussion by the Partner of the petitioner-firm with the Chief Marketing Manager S.T.C. and other officers he was assured of all help, but nothing substantial was done. Even the Chief Marketing Manager informed the Chairman of the Export Promotion Council that the matter of the petitioner-firm was being looked into by him. The petitioner-firm averred that Union of India, respondent No. 1, has canalised the imports through the S.T.C. The powers to impose restrictions vest in the Central Government and the S.T.C. has no powers for imposing any restrictions. The action of the S.T.C. in refusing to allow the import of the goods to the petitioner-firm in accordance with the policy of the Government of India is absolutely without jurisdiction and cannot be sustained. The petitioner-firm had deposited the said amount with regard to the goods imported against Indent No. 618 of 1972 in accordance with the directions of the S.T.C., which is lying blocked for the past more than two years. The S.T.C. has done nothing to procure the release of the goods to the petitioner-firm. If the petitioner-firm makes any other deposit of the money the goods may not again be released. It was in view of these facts that the petitioner-firm had requested the S.T.C. to guarantee that the goods imported would tally with the description given in the documents. The S.T.C. refused to give such a guarantee. In such circumstances the insistence of the S.T.C. is arbitrary and in excess of the powers conferred on it. Its action being absolutely equitable cannot be sustained. Under Article 19 of the Constitution of India the petitioner-firm has a fundamental right to run the business which has been completely frustrated in the present case. It is entitled to import goods in proportion of the goods exported by it. The principle of equitable/promissory estoppel is attracted in the circumstances of the case as the S.T.C. had undertaken to import goods of a certain description and having charged the money from the petitioner-firm on the basis thereof is bound to supply those goods to the petitioner-firm. The petitioner-firm has been put to a heavy and recurring loss. It has earned the import entitlement to the tune of Rs. 1,07,817.15 besides another amount of Rs. 32,806 regarding which the controversy is going on. Action of the S.T.C. in not permitting the import to the petitioner-firm has resulted in a virtual closure of its business which besides affecting the firm financially has even resulted in a loss of foreign exchange to the country. On these facts the petitioner-firm has approached this Court under Article 226 of the Constitution of India for a writ of *mandamus* against the respondents

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either to issue the import licence or to import material which had fallen due to the petitioner-firm. It has also prayed for a declaration that it is the responsibility of respondent No. 2, to get the material imported in pursuance of Indent Nos. 618 and 625 released to the petitioner-firm. It was further prayed that the action of the respondents being *ultra-vires* of the Constitution cannot be sustained.

(11) Only State Trading Corporation, respondent No. 2, has filed a written statement through its Deputy Marketing Manager. This respondent has raised preliminary objections—(i) that the S.T.C. is not amenable to the writ jurisdiction under Article 226 of the Constitution being a Company incorporated under the Companies Act; (ii) that the petitioner-firm has no legal right and cannot maintain this petition for relief against the respondent as the matter was contractual in nature; (iii) that the petition is vague *qua* the relief sought for and (iv) no cause of action has arisen within the jurisdiction of this Court.

(12) On merits the reply to the paragraphs relating to the policy of the Government and the mode of the placing of the orders, indents etc. is the same which has been filed in C.W.P. No. 4709-1975. It was averred that the goods were never delivered by the S.T.C. to the petitioner-firm nor any railway receipt was ever given by it. S.T.C. always transfers the shipping documents when received from foreign suppliers when the goods are still on the high seas and the sales were high-seas sales. The shipping documents were retired by the petitioner-firm on presentation against the payment of the price contracted along with the service charges etc. The contract provided that the delivery was to be made of the imported goods by transfer of the shipping documents when the goods were on the high seas against full payment and the sales would be of raw wool, woollen rags on the high seas, the clearing and handling of which was to be arranged by the importer concerned. It was the petitioner-firm, who committed a breach of contractual obligation. It was trying to back out from its obligations by writing letters which were not called for and those were ignored and not replied. Since the sale was a C.I.F. sale the delivery was to be effected by the transfer of the shipping documents, the petitioner-firm accepted the documents of Indent No. 618/72 and filed the bill of entry thereby claiming itself to be the owner of the goods imported. About Indent No. 625/72, it was stated that the petitioner-firm was required to open an internal letter of credit in favour of S.T.C. which

it failed to do. Since it did not open in the internal letter of credit it was the responsibility of the petitioner-firm to make payment on presentation of the shipping documents and the petitioner-firm committed breach of the contract by refusing to honour those documents. The S.T.C. was thus well within its rights not to render service to the petitioner-firm regarding its import entitlement. Sufficient amount of money of S.T.C. is blocked because of the failure of the petitioner-firm to retire the negotiable documents of the goods which have been imported against its specific indent and selection. Any verbal assurance alleged by the petitioner-firm by the officers of the S.T.C. was denied. It was, however, averred that in order to accommodate the petitioner-firm it was informed that if it were prepared to honour the documents on full payment due from it (petitioner-firm) the S.T.C. may effect the purchase of wool against valid release orders and allocations standing unutilised and un-serviced with the petitioner-firm. But the petitioner-firm took no action in the matter. The S.T.C. defended its action in not serving the petitioner-firm for the pending release orders and took the position that it was the responsibility of the petitioner-firm to get the goods cleared from the customs authorities.

(13) During the arguments an affidavit of Shri P. R. Sawhney, Deputy Marketing Manager, State Trading Corporation of India, was filed in Civil Writ Petition No. 4709 of 1975, to clarify certain points and procedure about the imports concerning the canalised items. In view of the policy statement of 25th November, 1967, the import of wool raw, wool tops etc. could only be through the S.T.C. By exporting the goods the exporter manufacturers become entitled to import the raw material to the extent permissible under the export incentive policy of the Government and the extent is determined by the Chief Controller of Imports and Exports. Release order is issued by the Chief Controller of Imports and Exports to the exporter manufacturer to the extent of his entitlement and a copy of it is sent to the S.T.C. The form of the release order is provided in Appendix 34 of the Import Trade (Control) Order, 1955. It shows the description of the goods to be imported, quantity of the goods and their C.I.F. value. The S.T.C. on the basis of these release orders obtains bulk license for import from the Chief Controller of Imports and Exports. The original copy of the license known as "customs purpose copy" is sent to the S.T.C. and its carbon copy known as "Exchange control copy" is sent to the branch office of the S.T.C. at the Port. Weekly purchase meetings are held in

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the office of the S.T.C. at New Delhi where the release order holders, local agents of the foreign sellers and the officers of the S.T.C. are present. The foreign sellers and the release order holders are confronted to have more competitive purchases and to conserve the foreign exchange. The foreign seller is selected by the release order holders which is approved by the S.T.C. Thereafter the release order holder submits a duly signed purchase requisition authorising the S.T.C. to negotiate a sale on his behalf and also surrenders the release order to it. The S.T.C. then on the basis of the purchase requisition enters into a formal contract with the foreign supplier selected by the release order holder on the account of the release order holder and the terms of the contract are on C.I.F. basis. Copy of the contract is sent to the release order holder with a covering letter intimating him that the contract is made on his behalf and he will be responsible for fluctuations and variations in the rate of foreign exchange. The service charges, interest and the Bank charges to be charged by the S.T.C. are also intimated to him. The S.T.C. opens a foreign letter of credit which is normally backed by an internal letter of credit in its name by the release order holder. The foreign letter of credit gives the details of the contract, name of the parties for whom shipping documents are prepared and other necessary details. After the shipping of the goods the foreign seller sends the documents which are 'negotiable documents' through the medium of Bank. The documents include (i) Bill of lading, (ii) Bill of exchange, (iii) Invoices prepared by the foreign supplier containing the details of the goods, (iv) Insurance policy, (v) Certificate regarding the specification of the goods and (vi) Packing list. The other carbon copies of these documents known as non-negotiable documents are sent to the S.T.C. and the release order holder. The S.T.C. collects the negotiable documents from its Bankers and along with the freight bill and the invoice prepared by it, which includes C.I.F. value of the goods, service charges, Bank charges including the interest and sends those to the Bankers of the release order holder with a specific direction to release the documents only after the recovery of money in cases where internal letter of credit has not been established in its favour by the release order holder. The release order holder then sends the negotiable documents, to his clearing agent at the port of destination and a bill of entry is entered before the Customs authority by the owner of the goods. The original shipping documents were retired by the petitioner-firm, that is, Messrs Lamba Industries, on 3rd August, 1972, when the goods were still in transit. The goods actually arrived at the Port on 9th August, 1972. The

negotiable documents were returned to the S.T.C. by the petitioner only on 9th August, 1975 along with bill of entry and custom checked invoice with a request that it may take up the matter for waiver of demurrage.

(14) A counter-affidavit was filed on behalf of Messrs Lamba Industries. The procedure of the determination of the imports entitlement was accepted. Copies of the release order produced as Annexures P. 38 and 39 contained that the goods were sent to the petitioner-firm out of the goods imported by the S.T.C. The petitioner-firm also filed a copy of the license, copy Annexure P-39, in the name of the S.T.C. and contended that the property in the goods imported was to remain of the S.T.C. till those were cleared by the Customs. The procedure at the purchase meetings as stated by the S.T.C. was denied and it was stated that the release order holders are not confronted with the agents of foreign suppliers. Quotations with samples are supplied by the S.T.C. and the release order holder selects the material, and, thereby the foreign supplier, with whom the S.T.C. has to place the order. In spite of the fact that such meetings are held the S.T.C. is the final authority to accept or reject the goods. The import is done exclusively by the licensee. The contract is C.I.F. so far as S.T.C. is concerned. The S.T.C. has been issuing railway receipts to the representatives of the petitioner-firms on the basis of which material has been supplied. A copy of the letter dated October, 6, 1970, by the S.T.C. was attached. The procedure about the shipping of the goods by the foreign suppliers, sending of the negotiable document and their retiring was admitted. It was added that the original bill of exchange sent by the foreign supplier was never sent to the petitioner-firm. The goods are cleared from the Customs by the licensee, that is, the S.T.C. Some time the goods are cleared by the S.T.C. and some time to lessen its own burden it gives authority to the clearing agent to get the goods released. The clearing agent can get the goods released only on the receipt of authority and the clearing agent is the agent of the S.T.C. The Bill of entry filed by the petitioner-firm could only be entertained after the issue of the letter of authority by the owners of the goods, that is, the S.T.C. It was further stated that at the time of retiring the documents the petitioner-firm did not have the knowledge if the goods had been received at the Port or not.

(15) The S.T.C. wanted to file a rejoinder to the reply of the petitioner-firms but this request was not allowed by us.

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(16) In both the civil writ petitions, on behalf of the respondents, the following preliminary objections were pressed during the course of argument :—

- (i) That the State Trading Corporation is a Company registered under the Companies Act and a writ against it is not maintainable under Article 226 of the Constitution of India;
- (ii) That the matters involved are civil disputes arising out of the contractual obligations for which writ is not the appropriate remedy;
- (ii) That the foreign suppliers or their agents in India who are necessary parties have not been impleaded as parties;
- (iv) That this Court does not have territorial jurisdiction to hear the matter against Port Trust Bombay, respondent No. 6 in Civil Writ Petition No. 4709/1975; and
- (v) That the petition is vague inasmuch as the relief claimed is not specific.

(17) Annexure R-2/1, in Civil Writ Petition No. 7409/75 is a printed booklet containing the memorandum and articles of association of the S.T.C. It is not disputed by the petitioners that it is a Company registered under the Companies Act, 1956. Basing argument on the articles of association, Shri R. C. Dogra, learned counsel for the S.T.C., respondent No. 2, has urged that the Company is neither a statutory body created under the statute nor discharges any statutory functions but is simply a company registered under the Companies Act, 1956, and thus is not amenable to the writ jurisdiction of the High Court. Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms on the other hand has urged that under section 3 of the Act the Central Government has restricted the import and export of certain items. It has enacted Import Control Order, 1955 and all the rules and notifications under the Act are consolidated in the book titled as "Import Trade Control Handbook of Rules and Procedure 1973-74". These rules and procedure have been amended from time to time. In Schedule I of Part V of this Import Trade Control Order, at serial No. 47, wool raw, wool tops including wool waste shoddy and woollen rags are included.

The Chief Controller of Imports and Exports issued Public Notice, copy of which is Annexure P-1 to both the writ petitions. This notice reads—

“Government of India
Ministry of Commerce
Import Trade Control.

Public Notice No. 172-ITC (PN)/67.
New Delhi, the 25th November, 1967.

Subject.—Import Policy for (i) Wool raw, wool tops etc. (S. No. 47/V) and (ii) staple fibre including synthetic proteinous cut fibres [S. No. 122(XV)/V]—April, 1967—March, 1968.

Attention is invited to the policy indicated for import of the above mentioned item in Part ‘A’ of Section III of the Import Trade Control Policy (Red Book) for the period April, 1967—March, 1968.

2. It has now been decided to canalise all imports of wool raw, wool tops etc. (S. No. 47/V) and all synthetic non-cellulose fibres including Poly-ester fibre [S. No. 122 (XV)-V] through the State Trading Corporation, New Delhi including the imports made under the policy for registered exporters.
3. The import of raw wool will, however, continue to be allowed to combing units as at present against C.C. : Ps. issued for import of raw wool for purpose of export in the form of wool tops after combing.
4. The import policy for these items may be deemed to have been amended accordingly.

(Sd.) P. D. KABESKAR,
Chief Controller of Imports and Exports”.

After this order, according to Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, it is only the S.T.C., which can get a licence for importing raw wool, wool tops, rags etc. As the S.T.C.

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is the only agency under the canalising scheme of the Central Government to import rags, raw wool, wool tops, etc., it is discharging governmental functions under the statute. In that situation the S.T.C. will fall, according to Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, within the definition of "authority" as contained in Articles 12 and 226 of the Constitution of India. He has further argued that S.T.C. is a Government-owned body in which all the shares are held by the Government of India and is also managed by the Government.

(18) In *Sabhajit Tewary v. Union of India, etc.* (1), the Council of Scientific and Industrial Research was a party which is a society registered under the Societies Registration Act. The Prime Minister of India is the ex-officio President of the Society and the members of the governing body are appointed by the Government of India. The Government of India can terminate the membership of any member or all of them at a time other than the ex-officio members of the governing body. All matters relating to the Council of Scientific and Industrial Research are under the Department of Science and Technology. On these facts the point raised in the case was whether the Council of Scientific and Industrial Research is an authority as contained in Article 12 of the Constitution of India. Their Lordships of the Supreme Court (in para 4) observed as under:—

"Extracting the features as aforesaid, it was contended that these would indicate that the Council of Scientific and Industrial Research was really an agency of the Government. This contention is unsound. The Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions

or departments of the existing institutions for scientific study of problem affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner."

(19) In *Praga Tools Corporation v. C. V. Imanuel and others* (2), on similar facts, it was held as under:—

"The company being a non-statutory body and one incorporated under the Companies Act, there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company."

It was also held in that judgment as under:—

"An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official or a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities."

The judgment in *Praga Tools' case* was followed in *Subhajt Tewary's case* (supra). Referring to *Heavy Engineering Mazdoor Union v. State of Bihar* (3), and *S. L. Aggarwal v. General Manager, Hindustan*

(2) A.I.R. 1969 S.C. 1306.

(3) A.I.R. 1970 S.C. 82.

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Steel Ltd. (4), it was observed in *Sabhajit Tewary's case*, that these companies were held in those cases to have existence independent of the Government and by law relating to the corporation, these could not be held to be the departments of the Government. The Council of Scientific and Industrial Research was held not an authority under Article 12 of the Constitution of India.

(20) Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, referred to *Sukhdev Singh and others v. Bhagatram Sardar Singh Raghwanishi and another etc.* (5), in which Oil and Natural Gas Commission was held to be an authority as referred to in Articles 12 and 226 of the Constitution of India. The Oil and Natural Gas Commission, according to the observations in *Sabhajit Tewary's case*, could not be equated with a company. *Sukhdev Singh's case* cited by the learned counsel for the petitioner-firm is distinguishable and does not extend any help to him. *Even in Sukhdev Singh's case*, in Para 25 distinction between a company and a statutory body was drawn as under :—

“A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body on the other hand makes rules and regulations by and under the powers conferred by the Statutes creating such bodies.

* * * * *

A company cannot come into existence unless it is incorporated in accordance with the provisions of the Companies Act. A company cannot exercise powers unless the company follows the statutory provisions.

* * * * *

The source of the power of making rules and regulations in the case of Corporation created by a statute is the statute itself. A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.”

(4) A.I.R. 1970 S.C. 1150.

(5) A.I.R. 1975 S.C. 1331.

(21) Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms cited a decision of the Supreme Court in *Rajasthan State Electricity Board, Jaipur v. Mohan Lal and others* (6) in which Rajasthan Electricity Board was held to be a "State" as contained in Article 12 of the Constitution of India. The distinguishing features of *Mohan Lal's* case were noticed in *Sukhdev Singh's* case (supra) and it was held as under :—

"In the *Rajasthan Electricity Board* case, it was said that the power to give directions, the disobedience of which must be punishable as a criminal offence would furnish one of the reasons for characterising the body as an authority within the meaning of Article 12. The power to make rules or regulations and to administer or enforce them would be one of the elements of authorities contemplated in Article 12. Authorities envisaged in Article 12 are described as instrumentalities of State action."

The decision in *Mohan Lal's* case is, therefore, not attracted for application to this case.

(22) In *Dharam Pal Soni v. State of Punjab and others* (7), a writ petition was filed against the Jullundur Central Co-operative Consumers' Store Limited which was registered as a society under the Punjab Co-operative Societies Act, 1961. It was held by a Division Bench of this Court as under :—

"Respondent No. 2, Society as any other ordinary Co-operative Society is not created by the Punjab Co-operative Societies Act, but is merely registered under the Act. Such a Corporation cannot be said to have been created by a statute. Nor is respondent No. 2 a constitutional or statutory authority."

(23) Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, conceded that he could not lay his hands on any case of the Supreme Court or of this Court having a direct bearing on a Company in support of his contention. The only case he could cite was a decision of the Kerala High Court in *K. L. Mathew and another*

(6) 1967 S.L.R. 573.

(7) 1973 (2) Service Law Reporter 845.

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v. *Union of India and another* (8). In this case on similar grounds as in the case in hand Cashew Corporation of India Limited was created as a subsidiary company to the State Trading Corporation Limited for the import of cashewnuts and then its allotment to the end users. The petitioners in that case were denied the allotment on the ground that they were not importing cashewnuts on the dates mentioned in the relevant notification and orders. The main point under contest, in that case, was that the allotment system was arbitrary, beyond the powers of Cashew Corporation and discriminatory. The Cashew Corporation raised a plea that it was a Company registered under the Companies Act and no writ could lie against it.

(24) The Government had undertaken under the Import and Export Control Act and under the Import Order to discharge certain duties in the matter of import of cashewnuts and its distribution after withdrawing the open general licensing system of import of this commodity. This function which it has to statutorily perform was delegated to the Cashew Corporation. The Cashew Corporation thus, according to the view of the learned Judge, in the matter of import and allotment was performing a governmental function under the statute. The administration of the affairs of the Cashew Corporation is a concern of the Government of India. The legal and the beneficial ownership of the Corporation vests in the Government of India. It was held that in the discharge of this duty of allotment of raw cashewnuts the respondents, in that case, had to conform to Import and Export Control Act and Import Control Order and the policy statement and if there was any violation of the provisions in the discharge of this duty then the aggrieved party could approach the High Court under Article 226 of the Constitution of India.

(25) The point of distinction in *K. L. Mathew's case* and the case in hand is that in the instant case no allotment of rags or wool is being made by the S.T.C. The allotment is done by some other agency on the basis of exports made by the applicants. It is the licensing authority and not the S.T.C. which determines the import entitlement for the issue of the release order and makes the allotment. After the issue of the release order of canalised items the

(8) A.I.R. 1974 Kerala 4.

S.T.C. only imports from the foreign suppliers the material chosen by the release order holders against their import entitlement determined by the Chief Controller of Imports and Exports. It acts only to bring the buyer and sellers together and acts as a conduit pipe for the import of selected goods. It has, however, to make certain safeguards against the wastage of the foreign exchange etc. by examining the nature of the deal and intention of the parties. Like Cashew Corporation it does not import nor discharges the functions of the Government in making the allotment to the persons in business or to reject their claims for import entitlement. It only works for those persons who possess genuine release orders issued by the Central Government and realises $2/2\frac{1}{4}$ per cent as service charges. The facts of K. L. Mathew's case (supra) being such, in my view, are not similar and the present case is covered by the judgment of the Supreme Court in *Sabhajit Tewary's case* (supra). The other point in the case that the S.T.C. is managed by Government of India is again covered by *Sabhajit Tewary's case*. In view of that judgment it cannot be held that the S.T.C. in reality discharges Governmental, statutory or public functions.

(26) Corporations which are created by the statutes and carry out the statutory functions are subject to the writ jurisdiction under Article 226 of the Constitution of India. S.T.C. is not a statutory body. It is not the creation of the Companies Act nor of the Imports and Exports (Control) Act, 1947. It is created under the Companies Act, has its own memorandum and articles of association, is governed by a Board of Directors and is doing its own business. In that capacity it does an additional duty of handling the import of raw wool, tops, rags etc. and many other allied items as entrusted to it by the Chief Controller of Imports and Exports. In *M/s Daruka & Co. v. The Union of India and others*, (9), Minerals and Metals Trading Corporation of India, Limited, was a party. In that case under the impugned notice the export of mica was decided to be under the scheme, to canalise the export of all grades and variety of mica, excepting manufactured and fabricated mica, micanite, reconstituted mica, mica powder and mica paper through Minerals and Metal Trading Corporation of India Limited. In that case the challenge against the impugned notice was six-folds; firstly that it was not a canalisation scheme; secondly that the scheme imposed an unreasonable restriction in so far as it results into the loss of foreign exchange,

(9) A.I.R. 1973 S.C. 2711.

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loss of profits and enables contracting foreign buyers to avoid the contracts and sue the petitioners for breach of the contract; thirdly after the proclamation of emergency it had to be found whether the canalisation scheme had to be made under the Imports and Exports (Control) Act, 1947; fourthly the scheme violated Article 14 of the Constitution of India; fifthly fixing of 24th January, 1972, as the date for the coming into force of the scheme was arbitrary and sixthly the levy of charge of one per cent of F.A.S. value without conferring any corresponding benefits was an unreasonable restriction and was in fact a tax. None of these grounds of attack has been raised by the petitioner-firms in this case and this case is not attracted for application to the case in hand.

(27) The word "authority" has not been defined in the Constitution of India. Before a writ, as prayed for in this case, is issued against the S.T.C. three things are required to be proved by the petitioner-firms: (i) that it is a statutory body and owes its creation to a statute with powers and obligations arising out of it and its functions are governed by the statute or the rules framed thereunder; (ii) that it discharges governmental functions and (iii) that a statutory rule has been violated. In this case none of these things is to be found. S.T.C. is not created by any statute. It does not exercise any statutory power nor discharges any obligation emanating from a statute. It simply imports the material selected by release order-holders, at the purchase meeting arranged by it and charges service charges which are 2.25 per cent. No governmental functions are being discharged by it. Its failure even as alleged by the petitioners to clear the goods from the Customs authorities after those were transferred as in C.W.P. No. 4709/75 and as against Indent No. 618/75 in C.W.P. No. 238/75, does not have the effect of any violation of any statutory duty or rule. The first two requirements given above give the person or a body the colour of authority as contained in Article 12 of the Constitution of India. The third, normally, flows from the first two, and I do not find if any statutory violation is made by the S.T.C. The S.T.C. is a Company registered under the Companies Act, 1956 with a memorandum and articles of association. There is a corporate veil around it which cannot be pierced. It is neither a statutory body nor its functions are governmental or public. It keeps a check on surreptitious deals so that these do not result into any loss of the foreign exchange. It lacks colour and trappings of an authority as contained in Article 226 of the Constitution of India and consequently a writ against it does not lie.

(28) The argument of Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms that the S.T.C. discharges governmental and public functions and is financed and controlled by the Government of India is answered by *Sabhajit Tewary's case* (supra). The memorandum and articles of association, Exhibit R. 2/1 attached with C.W.P. No. 4709/1975, show that dealing with the imports and exports and canalising articles is not the only work or business done or intended to be done by the S.T.C. The first preliminary objection raised by the respondents is weighty and is sustained in this case.

(29) The next preliminary objection is that the matters involved are civil disputes arising out of the contractual obligations and do not fall within the writ jurisdiction of this Court. Release order holder is to import goods of his choice through the S.T.C. The contract, according to the respondents was a C.I.F. contract and is so shown by copy of Indent and annexures R. 2/2 to C.W.P. 4709/75 and R. 2/3 in C.W. No. 238/75. The delivery was to be a high seas delivery. Messrs Lamba Industries in C.W.P. No. 4709/1975 and Messrs Harbans and Co. in C.W.P. 238/1975 (in case of Indent No. 618/72) retired the documents when the goods were still on the high seas. During the course of arguments, though it was not taken as a ground in the writ petitions, a claim was made by the petitioner-firms that they had a right to reject the goods on inspection as these did not conform to the specifications. The right has been contested by the S.T.C. There is another disputed question of fact (though it can be determined on the basis of material available in these petitions), whether the S.T.C. was acting as the agent of the petitioner-firms or not. In Messrs Lamba Industries there is yet another disputed question of fact as to from whom, that is, S.T.C. for Messrs Camel Knitting and Textile Mills, the petitioner-firm is to charge the money paid on behalf of Messrs Camel Knitting and Textile Mills, respondent No. 7. Disputed questions of facts have arisen out of the purchase requisitions of the goods placed by the petitioner-firms on the S.T.C. for import.

(30) In *Harshankar and others v. Deputy Excise and Taxation Commissioner and others* (10), certain liquor contracts were auctioned in the State of Punjab. The bids of the petitioners were accepted and the liquor contracts were allotted in their names. After carrying the business for sometime the contractors challenged the powers of the

(10) A.I.R. 1975 S.C. 1121.

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Financial Commissioner to impose certain conditions, etc. On appeal in the Supreme Court a preliminary objection about the maintainability of the writ petition was raised on the ground that no writ can be filed to enforce a contractual obligation. Upholding the objection it was observed—

“The writ jurisdiction of the High Court under Article 226 of the Constitution of India, is not intended to facilitate avoidance of obligations voluntarily incurred.”

Similarly in *D.L.F. Housing Construction (P) Ltd. v. Delhi Municipal Corporation and others* (11), the writ petition was dismissed because it had raised complicated question of law and fact depending on evidence with an observation that writ Court is not the proper forum for seeking such relief.

(31) Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms has cited Supreme Court decision in the *D.F.O. South Kheri and others v. Ram Sanehi Singh* (12). In that case the facts were as under :—

“At an auction held by the Forest Officer, Ram Sanehi Singh—respondent in this appeal—purchased the right to cut timber for the period November 1, 1965 to October 31, 1966 from forest lots in the Mailani and Gola Ranges of South Kheri. On January 10, 1967, the Divisional Forest Officer, South Kheri Division, passed an order that the sleepers “against the tally” dated October 29, 1966 in the allotment of 1965-66 season being “wrong” since they were cut in the month of November, 1966, do stand cancelled and that the sleepers be “passed against” the tally after getting the hammer-marks cancelled and be “re-inspected against the allotment for 1966-67 season.” By that order the timber which the respondent claims was actually removed by him with the sanction of the forest authorities under the tally dated October 29, 1966 was to be treated as if it was removed in November, 1966.”

On these facts it was held:—

“Where the action of a public authority invested with statutory powers is challenged, the writ petition is maintainable even

(11) A.I.R. 1976 S.C. 386.

(12) A.I.R. 1973 S.C. 205.

if the right to relief arises out of an alleged breach of contract.”

(32) In the case in hand the S.T.C. does not exercise statutory powers nor has it been invested with such powers. *Ram Sanehi Singh's case* (supra) on this point is distinguishable and is not attracted for application to this case. The S.T.C. is, in my view, not even an authority as contemplated by articles 12 and 226 of Constitution of India. Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, argued that there are no contractual obligations, but the petitioners are enforcing their right of import for which they held the release order as they cannot import any thing except through the S.T.C. The petitioner was not denied or refused the release order against the import entitlement but the goods have not been actually released by the Customs, which were imported against the indent. As the amount of the S.T.C. in case of goods of Indent No. 625/72 has been blocked the S.T.C. declined to serve Messrs Harbans & Co. for the pending release orders. The dispute with the S.T.C. arose after the goods landed at the Port of Bombay and the rights asserted by the petitioner-firm arose out of the contract. The petitioner-firms, thus, are not enforcing their right to import but the matters arising out of the contract. Any violation of the contractual obligation by the S.T.C. in this case, if there is any does not give the petitioner-firms a right to invoke the discretionary jurisdiction of the High Court under Article 226 of the Constitution of India. Regarding the reluctance of the S.T.C. to serve the petitioner-firms for import of the goods in the pending release order no writ can be issued as it is a Company registered under the Companies Act.

(33) The third objection is whether the foreign suppliers are a necessary party? It is argued that the S.T.C. does not contract the goods on the stock and sale basis but only transmits the documents of title which, according to Shri R. C. Dogra, counsel for the respondents, is not a sale. Shri R. C. Dogra further added that if the goods do not answer the description of the goods ordered by the petitioner-firms then the foreign-suppliers or their agents in India, from whom purchases were made, are the necessary parties and their non-joinder is fatal to the petition. Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms has contested the aforesaid argument. The petitioner-firms have not demanded any relief against the foreign sellers or their agents in India. Since the point of rejection of the goods was not raised by the petitioner-firms in the writ petitions and

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no relief was claimed by the petitioner-firms against the foreign suppliers of their agents in India in the petition they were not necessary parties for a proper adjudication of these petitions.

(34) On behalf of the Port Trust Bombay, respondent No. 6, in Civil Writ Petition No. 4709/75, an objection was raised that against this respondent no cause of action arose within the jurisdiction of this High Court. The Court, where part of the cause of action arises has jurisdiction to try the cause. In this case the payment by both the petitioner-firms was made at Ludhiana by retiring the documents through their Bankers. This Court has thus jurisdiction to entertain and decide the petition.

(35) Nothing was pointed out to us during the course of the arguments to show the vague nature of the petition or the relief sought. Though on the narrow preliminary grounds the writs are to be dismissed but as we have heard the parties fully we will decide these on merits.

(36) Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms has argued that the import of the wool raw, wool tops and rags, etc., were canalised through the S.T.C. by the Chief Controller of Imports and Exports,—*vide* order copy Annexure P-1 to the petition, in 1967, exercising authority under section 3 of the Act prescribing prohibition and restricting imports and exports. Under this statutory enactment and orders no one except the S.T.C. can import canalised wool items. With definitions of "license" and "licensee" and clause 3(1) of the Import Trade (Control) Order, 1955 (hereinafter called the order), the S.T.C. is the licensee and on this basis it imports these items as principal or owner and not as an agent. Shri Kuldip Singh, learned counsel appearing on behalf of respondent Nos. 1 and 3, has contested this argument. His contention is that S.T.C. is an agency which, according to the scheme of the Act and Orders and rules promulgated thereunder and the practice established, does not import canalised goods at its own but as the agent of the release order holders who, after selecting the material offered by the foreign suppliers at the purchase meetings, indent those to be purchased from the foreign suppliers and imports it in the country.

(37) Under section 3 of the Act the Central Government has been given powers to prohibit or impose restriction on the import, export or movement or control of certain specified goods by notification subject to exceptions. Public Notice canalising all imports of wool raw,

wool tops, etc., copy Annexure P-1. has been reproduced earlier. The definition of the words "license" and "licensee" as given in section 2 (aaaa) and section 2(b) of the Order are as under :—

“ ‘licence’ includes a customs clearance permit issued under this order;

‘licensee’ means a person to whom a licence or a Customs clearance permit is granted under this Order”.

Clause 3(1) of the Order is also reproduced as under for reference:—

“Save as otherwise provided in this Order, no person shall import any goods of the description specified in Schedule I, except under, and in accordance, with a licence or a customs clearance permit granted by the Central Government or by any officer specified in Schedule II.”

According to Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, no private release order holder can directly import the goods unless the customs clearance permit is issued in his name.

(38) Every manufacturer of woollen goods who exports his produce gets his import entitlement from the Central Government according to the rules, against his actual export. The import entitlement in the form which is issued to the exporter on the S.T.C. is known as the release order and its holder is known as the release order holder. The S.T.C. arranges the purchase-meetings where the foreign sellers through their local agents offer the goods for sale. The release order holders under the supervision of the officers of the S.T.C. select the material and place the purchase requisition with the S.T.C. for importing. The S.T.C. then purchases the goods selected through indent from the foreign sellers after establishing irrevocable letters of credit in their names through their Bankers. The purchase requisition on the basis of which the contract for purchase of goods is entered is a C.I.F. contract. This is the procedure which I have understood from the counsel for the parties as stated at the bar during the course of arguments and which is being followed by the release order holders and the S.T.C.

(39) In 1972 Messrs Lamba Industries (in C.W.P. No. 4709 of 1975) attended such a purchase meeting, selected the goods and

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placed purchase requisition with the S.T.C., copy of which is Annexure R-2/4 for the purchase of woollen rags. The delivery which was suggested in this purchase requisition was a 'high seas' delivery and shipment period was insisted 'as early as possible.' The S.T.C. placed indent No. 7014/72 on 5th February, 1972, on Messrs Y. Nishida and Co. Ltd., Okchama, Japan (copy Annexure P-2 to the petition). The description of the goods given in this indent was "old woollen rags. Mostly light colours. Commercially all wool." Besides other particulars the buyer was mentioned as S.T.C. A/C, M/s Lamba Industries, Ludhiana. The copy of this indent was sent by S.T.C. to Messrs Lamba Industries,—*vide* letter dated 15th February, 1972 (copy Annexure P-3 to the petition). It was mentioned in this letter that "the purchase has been made on your behalf." It was further added "please note that for any variation in rate of the foreign exchange liability for payment of difference, if any, shall be yours."

(40) Similarly, on 15th February, 1972, Messrs Harbans and Co. (C.W.P. No. 238/1975) attended the purchase meeting arranged at the instance of the S.T.C. and after selecting the material placed the order for purchase of goods, i.e., woollen rags. Out of these purchase requisition on Indent No. 625/72 (copy of which is Annexure R. 2/3) was produced by the respondents on record. It was a C.I.F. contract for high seas delivery. The S.T.C. placed Indent No. 618, dated 16th February, 1972, on Messrs Soc. Bartat via Valentini 3-5-7 Prate (Italy) for the purchase of woollen rags. The other Indent No. 625, dated 7th February, 1972, was placed on Messrs Minneapolis Export Co., Minneapolis, Minnesota—U.S.A., for woollen rags. The description of the goods was "old original woollen garments pastel colours". In both these indents buyer was mentioned as the Chief Marketing Manager, S.T.C., New Delhi A/C; Messrs Harbans and Co., Ludhiana, February, 1972, on Messrs Soc. Bartat via Valentini 3-5-7 Prate as in the case of Messrs Lamba Industries.

(41) The goods of Indents Nos. 7014/72 and 618/72 were despatched by the foreign sellers. The documents, i.e., (i) bill of lading, (ii) bill of exchange, (iii) invoice, (iv) insurance policies, (v) certificate regarding the specification of the goods (copy Annexure P-4) and (vi) packing lists to make the goods identifiable were sent to the S.T.C. by the foreign suppliers. The S.T.C. on receipt of these documents further transmitted these to Messrs Lamba Industries, Ludhiana, and Messrs Harbans & Co., Ludhiana, through their

Bankers. These documents were retired by the respective firm on payment. Later on both these petitioners entered the required bills of entry with the Assistant Controller of Customs, Bombay, for the release of goods in their favour. To this extent the facts of both the sides are admitted.

(42) The import licenses about canalised items are no doubt issued in the name of the S.T.C. It is argued by Shri Jawahar Lal Gupta, learned counsel for the petitioner firms that as the S.T.C. imports the goods; according to Clause 5(3) (ii) of the Order it remains the property of the licensee, which, according to him, is the S.T.C., at the time of the import and thereafter till the clearance by the Customs. Clause 5(3) (i) and (ii) of the order is as under :—

“It shall be deemed to be a condition of every such licence that :—

- (i) no person shall transfer and no person acquires by transfer any licence issued by the licensing authority except under and in accordance with the written permission of the authority which granted the licence or of any other person empowered in this behalf by such authority;
- (ii) that the good for the import of which a licence is granted shall be the property of the licensee at the time of import and thereafter up to the time of clearance through Customs:

Provided that the conditions under items (i) and (ii) of this sub-clause shall not apply in relation to licences issued to the State Trading Corporation of India and other similar institutions or agencies owned or controlled by the Central Government and which are entrusted with canalisation of imports.”

In view of the definition of the licensee and license given above, according to Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, the ownership of the goods cannot be deemed to vest in the release order holder till the goods are finally cleared from the Customs. Clause 8 of the Order contains provisions for debarring licensee or importer or any other person from receiving licenses or

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allotment of goods through the S.T.C. or the Minerals and Metals Trading Corporation of India in certain cases and clause 8A of the Order contains provisions for suspension of licenses to the same type of persons. The relevant portions of these clauses, for the proper appreciation of the Order, are reproduced as under:—

“8. The Central Government or the Chief Controller of Imports and Exports may debar a licensee or importer or any other person from receiving licences or allotment of imported goods through the State Trading Corporation of India, the Minerals and Metals Trading Corporation of India, or any other similar agency, and direct, without prejudice to any other action that may be taken against him in this behalf, that no licence or allotment of imported goods shall be granted to him for a specified period under this Order.

* * *

8-A. The Central Government or the Chief Controller of Imports and Exports may suspend the grant of licences or allotments of imported goods through the State Trading Corporation of India, the Minerals and Metals Trading Corporation of India, or any other similar agency, to a licensee or importer or any other person, pending investigation into one or more of the allegations mentioned in Clause 8, without prejudice to any other action that may be taken against him in this behalf.”

Both these clauses of the order show that the goods are to be imported “through” the S.T.C.

(43) The goods are to be imported on the basis of the release order, as per appendix 34, issued in the name of the person, who has earned the entitlement for it on the basis of goods exported. It is argued that the S.T.C. being a non-exporter is not entitled to import the goods. Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, referred to release orders, copies Annexures P-38 and P-39, which are in the name of M/s Lamba Industries, Ludhiana issued on earlier occasions. He has laid stress on the words—“that it had been decided to allow the following items out of the imported stocks of the S.T.C.” appearing in these Annexures. In the form of

release order, as given in Appendix 34 of the Order, these words are not to be found. Since the S.T.C. does not import the goods it cannot import these as owner. The definition of "licensee" as given in the rules is not exhaustive. It also means "a person to whom a license or a customs clearance permit is granted under the order." The tenor of the argument of Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, is that license is issued in the name of S.T.C. It falls within the ambit of the definition of "licensee". In his additional affidavit, submitted during the course of arguments by Shri P. R. Sawhny, Deputy Marketing Manager of the S.T.C. he stated that the exporters filed application with the licensing authority for allowing them to import goods against their import entitlement. After consideration of the application the licensing authority in place of issuing direct license in their favour issued a release order. This is warranted by paragraph 97(3)(c) of the Import Trade Control Hand Book of Rules and Procedure, which is to the effect—

".....
The licensing authority will consider the application on merits in terms of the import policy in force. In respect of canalised items, instead of issuing a direct licence to the applicant, the licensing authority will issue release order in favour of the applicant on the canalising agency concerned, in the *pro forma* appearing in Appendix 34."

The proforma of the release order is as under:—

APPENDIX 34

(para 97 of Chapter IV)

FORM OF RELEASE ORDER

Original for applicant	Category of allottee
Duplicate for STC/MMTC	REP (Merchant-Exporter)
Triplicate for Sponsoring authority	REP (Export-House)
Quadruplicate for office record	AU (SSI)
	AU (DGTD)
	AU (Non-SSI-Non-DGT)
	Priority/Non-Priority
	IDA/Non-IDA
	End Product.
	Exporting/Non-exporting Units.
	AU (lower preference)
	AU (higher preference)
	AU (non-exporting)

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GOVERNMENT OF INDIA

MINISTRY OF COMMERCE

Office of the

Release Order No. 73

To _____

M/s (Name and address of the Allottee)

Subject:—Allotment of through the MMTC/STC Gentlemen.

With reference to your application/letter, dated on the above subject, I write to say that you may approach the S.T.C./MMTC for obtaining the allotment of the goods mentioned below:—

S. No.	Description of the goods	Qty. limit if any
		c.i.f. value Figures Words.

2. This release order should be produced in original to the S.T.C./M.T.M.C.

3.

4.

5.

6.

Yours faithfully,

Controller of Imports and Exports

for Seal"

(44) Vide this release order allotment is made to the applicant but through the S.T.C. because of the import policy of the Government. One copy of the release order is sent to the S.T.C. which obtains from the licensing authority a license for the bulk. The S.T.C. then adjust the import quota of release order holders against these licenses after they select the goods at the purchase meetings.

(45) During the course of arguments two import licenses were produced one is No. P/A/1315117 cxx 30D27/28/3 P, dated 29th March, 1969, for importing goods of the approximate value of Rs. 42759 and the other is No. K/2621173/q/xx/39/D/31-32, dated 28th June, 1971, for the approximate value of Rs. 6016151 only. If these licenses were not issued to the S.T.C. on the basis of release order sent to it the amounts could not be so.

(46) The rules contemplate two type of licenses; one is for those items which are not canalised and the other is for the canalised items. In the case of the former the import licenses are issued directly in the names of the applicants and in the case of the latter, because of the import policy as contained in paragraph 97(3)(c) of the Import Trade Control Rules and Procedure it is issued in the name of the canalising agency. Proviso to Rule 5(3)(ii) of the Imports (Control) Order 1955, excludes S.T.C. from the operation of Rule 5(3)(ii) of 1955 Rules. Similarly Rules 8 and 8-A of the Imports (Control) Order 1955, reproduced above, make a distinction between a licensee and the S.T.C. by the insertion of the word "through" the S.T.C. If the S.T.C. was meant to be understood as a licensee in the general sense of the word then the words 'through the 'State Trading Corporation' in these two Rules would be superfluous. It is for this reason that the S.T.C. had been representing in the indents, etc., that it was acting on behalf of the release order holders. Proforma as contained in Appendix 34, when viewed in the light of the above referred provisions of the Rules leaves no room for doubt that the licensees in reality are the release order holders and S.T.C. is given this name only because of fiction of law of the Import Trade Control Orders. The argument of Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, that S.T.C. being licensee is the owner of the goods does not have any weight.

(47) The next question which arises and was mooted by the counsel for the parties is, if the S.T.C. has not imported the goods as owner then in what capacity it acted. According to Shri Kuldeep

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Singh, learned counsel for respondents, it acted as the agent of the petitioner-firms, who are release order holders. Section 182 of the Indian Contract Act (1872) defines "agents" and "principal" as under:—

"An 'agent' is a person employed to do any act for another or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'."

In his book on Agency in 12th Edition. Bowstead defines agency as under:—

"Agency is the relationship that exists between two persons one of whom, the principal, expressly or impliedly consents that the other, the agent, similarly consenting, should represent him or act on his behalf."

The agency can be express as well as implied. In Halsbury's Laws of England, 3rd Edition, Volume 1 (p. 152) creation of agency is described as under:—

"The contract of agency is created by the express or implied agreement of principal and agent, or by ratification by the principal of the agent's acts done on his behalf.

* * *

Implied Agency arises from the conduct or situation of the parties or from necessity."

Agency can also be created by estoppel. Halsbury, in the same book (p. 158) has recorded as under:—

"Agency by estoppel arises where one person has so acted as to lead another to believe that he has authorised a third person to act on his behalf, and that other in such belief enters into transactions with the third person within the scope of such ostensible authority. In this case the first-mentioned person is estopped from denying the fact of the third person's agency under the general law of estoppel, and it is immaterial whether the ostensible agent had no authority whatever in fact, or merely acted in excess of his actual authority."

(48) In the case in hand, the documents put in form of Annexures show that the S.T.C. was acting on behalf of the petitioner-firms. The petitioner-firms being the exporters of the woollen good got release orders on the basis of their import entitlement determined by the licensing authority. After selection of the goods at the purchase meetings, they placed purchase requisitions on S.T.C. for the purchase of the material on their behalf for import. In the indents the S.T.C. is shown as a buyer on account of the petitioner-firms. In the covering letter, copy of which is Annexure P-3,—vide which the indent was sent to Messrs Lamba Industries, Ludhiana, it was mentioned that the goods were purchased on its behalf and it will be responsible for the fluctuations and variations in the rate of exchange. Copies of the documents were directly sent by the foreign sellers to Messrs Lamba Industries. There is no margin of profit claimed by the S.T.C. and it only gets 2.25 per cent as service charges. Shipping documents were sent by the S.T.C. to the petitioner-firms which were retired by them. In the invoices and freight letters to Messrs Lamba Industries is mentioned as a purchaser. Clause 5(3) (ii) of the Order does not apply to the S.T.C. more so, after retiring the documents. These were C.I.F. contracts. All these factors when considered conjointly lead to one and only one inference that the S.T.C. acted as the agent of the petitioner-firms release order holders and they accepted its position as such. This agency was created by the implementation of law, situation of the parties as well as estoppel. The petitioner-firms are now estopped from challenging this position. Whatever the petitioner-firms could do as release order holders they did in selecting the goods and asking the S.T.C. to import through its agency. The S.T.C. was thus a conduit pipe between the release order holder and the foreign suppliers. It had brought both these persons together to negotiate a deal which culminated into a contract for the purchase of the goods. It did not import the goods as principal.

(49) In a Calcutta High Court decision in *Gambhirmull Mahibirprasad v. The Indian Bank Ltd. and another* (13), the plaintiff had asked the Bank at Calcutta which had its branch at Rangoon and had the shipping documents with it to re-ship the goods to Calcutta or get those insured. The bank defendant No. 1, wrote to defendant No. 2, who agreed to ship the goods to Calcutta in case a deposit was made in its favour. The defendant-bank paid the amount to defendant No. 2 and issued instructions to its agent for re-shipment. It was

(13) A.I.R 1963, Calcutta, 163.

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held in this case that through the conduit of the Bank, which was acting as an agent of the plaintiff privity of contract was established between the plaintiff and defendant No. 2. The defendant No. 2 was an agent for purposes of arranging the re-shipping.

The principle of this judgment is applicable to the case in hand and helps me to return a finding with the other circumstances referred to above that the S.T.C. had imported the goods only as an agent of the petitioner-firms and not as principal. The relationship between the petitioner-firms and the S.T.C. was that of principal and agent and not of principal to principal.

(50) It is also disputed on behalf of the petitioner-firms that the ownership of the goods had not passed to them. In the purchase requisitions they had asked for a C.I.F. contract and the parties had agreed for it. In a Division Bench decision of Punjab High Court in *Messrs Raj Spinning Mills v. Messrs A. and G. King Ltd. Raglan Mills, England* (14), the principles laid down by Lord Atkinson in *Johnson v. Taylor Bros. and Co. Ltd.* (15), were followed, which read—

“According to this rule the vendor is bound by his contract to do six things. First, to make out an invoice of the goods sold. Second, to ship at the port of shipment goods of the description contained in the contract. Third, to procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract. Fourth, to arrange for an insurance upon the terms current in the trade, which will be available for the benefit of the buyer. Fifthly, with all reasonable despatch to send forward and tender to the buyer these shipping documents, namely, the invoice, bill of lading and policy of assurance delivery of which to the buyer is symbolical of delivery of the goods purchased, placing the same at the buyer's risk and entitling the seller to payment of their price.”

The foreign sellers complied with all these conditions and performed their part of the obligations and despatched the documents to the S.T.C. for inward transmission to the petitioner-firms. The S.T.C. in its turn passed these documents to the petitioner-firms through their Bankers. By retiring the documents in case of Indents Nos. 7014 and

(14) A.I.R. 1959, Pb. 45.

(15) 1920, A.O. 144.

618 of 1972 the petitioner-firms discharged their part of the obligations of the contract. In England as far back as 1882 the title of the goods was recognised to have passed to the purchaser on the transfer of the bill of lading and other documents of title, when the goods were still on the high seas. This principle as laid down in *Sanders Brothers v. Maclean and Co.*, (16) of the reporter is as under :—

“A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage, the bill of lading by the law merchant is universally recognised as its symbol, and the indorsement and delivery of the bill of lading operates as a symbolical delivery of the cargo. Property in the goods passes by such indorsement and delivery of the bill of lading, **whenever it is the intention** of the parties that the property should pass, just as under similar circumstances the property would pass by an actual delivery of the goods. And for the purpose of passing such property in the goods and completing the title of the indorsee to full possession thereof, the bill of lading, until complete delivery of the cargo has been made on shore to some one rightfully claiming under it, **remains in force** as a symbol, and carries with it not only the full ownership of the goods, but also all rights created by the contract of carriage between the shipper and the shiowner. It is a key which in the hands of a rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be.”

(51) In *E. Clemens Horst Company v. Biddell Brothers* (17) it was held:—

“But when is there delivery of goods which are on board ship? That may be quite a different thing from delivery of goods on shore. The answer is that delivery of the bill of lading when the goods are at sea can be treated as delivery of the goods themselves, this law being so old that I think it is quite unnecessary to refer to authority for it.”

(52) In *Arnhold Karberg and Co. v. Blythe, Green Jourdain and Co.* (18), it was held:—

“It is true that in the contract in question in this case the goods must usually arrive to fix the price, but they clearly need

(16) O.B.D. (1882-83), page 341.

(17) 1912 A.C. 18, page 22.

(18) (1915) 2 K.B. 379, page 388.

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not when the ship is posted as lost, and I think, if they have not arrived by expiration of three months after the bill of lading date, the price is payable against the tender of proper documents, whether the goods will ever arrive or not."

(53) In *Manbre Saccharine Company, Limited v. Corn Products Company Limited* (19), the ship carrying the goods had been sunk and the sellers had the knowledge of its loss. In this case it was held:—

"I conceive that the essential feature of an ordinary C.I.F. contract as compared with an ordinary contract for the sale of goods rests in the fact that performance of the bargain is to be fulfilled by delivery of documents and not by the actual physical delivery of goods by the vendor. All that the buyer can call for is delivery of the customary documents. This represents the measure of the buyer's right and the extent of the vendor's duty. The buyer cannot refuse the documents and ask for the actual goods, nor can the vendor withhold the documents and tender the goods they represent. The position is stated with weight and clearness in the treatise on charter-parties by Scrutton L.J., 8th Ed. p. 167, in the notes to article 59 as follows: "The best way of approaching the consideration of all questions on C.I.F. sales is to realise that this form of the sale of goods is one to be performed by the delivery of documents representing the goods, i.e., of documents giving the right to have the goods delivered or the possible right, if they are lost or damaged, of recovering their value from the ship-owner or from underwriters. It results from this that various rules in the Sale of Goods Act, 1893, which is primarily drafted in relation to the sale and delivery of goods on land, can only be applied to C.I.F. sales *mutatis Mutandis*. And there may be cases in which the buyer must pay the full price for delivery of the documents, though he can get nothing out of them, and though in any intelligible sense no property in the goods can even pass to him, i.e., if the goods have been lost by a peril excepted by the bill of lading, and by a peril not insured by the policy, the bill of lading and the policy yet being in the proper commercial form called for by the contract.' "

(19) (1919) 1 K.B. 198, page 202.

The principles of the English cases were followed in *Messrs Raj Spinning Mills' case* (supra). In *J. V. Gokal and Co. (Private) Ltd. v. The Assistant Collector Sales-Tax (Inspection) and others, etc.* (20), following *Sanders Brothers' case* (supra), it was observed:—

“It is well settled in commercial world that a bill of lading represents the goods and the transfer of it operates as a transfer of the goods.”

(54) The law on C.I.F. contract is well settled in England as well as in India and in the case of these contracts whenever the customary documents, i.e., the bill of lading, etc., are prepared and delivered to the purchasers the property in the goods passes to them. To use the language of Bowen, L.J., in *Sander Brothers' case* (supra) “it is a key which in the hands of a rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be.” The petitioner-firms in Indent Nos. 7014 and 618 of 1972 retired the documents. After that retirement they entered the bill of entry with the Assistant Collector of Customs, which according to clause 10-A of the Order is to be entered by an owner for release of the goods. The argument of Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, that the petitioner-firms were acting as the agents of the S.T.C. in entering the bill of entry on the basis of the authority issued by it in their favour is inconsistent with the title of a buyer under C.I.F. contract after the retiring of the customary documents. Even the insurance policy which was a part of the documents was endorsed in blank in favour of Messrs Lamba Industries, Ludhiana. They even nominated the mutilators for mutilating the goods to meet the objection raised by the Customs authorities. Their conduct was consistent with the vesting of the ownership in the goods and they did not do any act inconsistent or derogatory to the rights of an owner of the goods. Bill of entry, after the Customs, remained with the petitioner-firms for a very long time. They cannot now turn round to say that ownership in the goods did not pass to them. If there is any breach of conditions of the C.I.F. contract, which they have not spelt out in the writ petitions, that has no bearing on the goods. In that case it being a disputed question of fact cannot be permitted to be raised in a petition under Article 226 of the Constitution of India. The ownership of the goods of these two indents, therefore, bested in the petitioner-firms.

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(55) The position of Indent No. 625/72 is not different. In that case Messrs Harbans and Co. did not retire the documents when presented to it. This, in a C.I.F. contract, does not pose any difficulty. As soon as the seller discharges the obligation, which he is required to and despatches the goods and transfers the documents, the title in the goods is considered to have passed to the purchaser. This is the ratio of the cases referred to above. In a Bombay High Court case in *Rustamji A. Dubash v. Haji Hussein Lari and others* (21), in similar circumstances it was held:—

“But although as regards the C.I.F. contract between the buyer and the person importing the goods the property would pass when the goods were shipped.”

Letter, regarding Indent No. 625/72 (copy Annexure P-3) shows that the purchase was made by the S.T.C. on account of Messrs Harbans and Co., Ludhiana. If the petitioner-firm did not have good experience of the past transactions with the S.T.C. or was put to inconvenience or even to loss because of the conduct of its Officers then disowning of the bills and the other documents was not the proper remedy. Whatever rights accrue to the firm by the alleged breach of confidence in the S.T.C. or even contract, should be exercised by it under the ordinary civil law.

(56) The S.T.C. cannot be equated with a Pucca Arhtia as the characteristics of the Arhtia are not to be found in the functioning of the S.T.C.

During the course of arguments it was urged by Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, that the petitioner-firms had a right to reject the goods as these were not according to the specifications, that is, these were not rags as stated by Custom authorities. In Indents No. 7014 and 618 of 1972, they, in order to meet the objections of the Customs authorities after a long time of the retiring of the documents and entering the bills of entry, offered to get the goods mutilated to satisfy the objections. It was too late for them now to turn round and say that they have rejected or want to reject the goods. The right of rejection is also available in a C. I. F. contract, but has to be exercised at the earliest possible opportunity. No plea about such rejection was taken in any of the writ petitions and it was raised during the course of arguments to meet the exigencies of the situation arising out of the stand taken by the S.T.C. On

(21) A.I.R. 1920, Bombay, 181.

the other hand a reading of the writ petitions reflects the eagerness of the petitioner-firms to get the goods even now. In Indent No. 625 documents were refused to be honoured not on the plea of their non-conformity with the contract, but on the ground of a sad experience of Messrs Harbans and Co., in their dealings with the S.T.C. in their previous contract, that is, in Indent No. 618 of 1972. Whether these were future goods, ascertained or unascertained goods or in a deliverable state are all questions of fact which cannot be gone into in this writ petition as they are to be proved by evidence. The question of right to reject, whether available to the petitioners or not? If so, when and under what circumstances, is again a mixed question of law and fact and is out of the purview of Article 226 of the Constitution of India. From the rejection of the goods a cause of action for damages shall accrue which, again is a matter for civil Courts to decide.

(57) In Civil Writ Petition No. 4709/1975, since the ownership of the goods had passed to the petitioner-firm the S.T.C. cannot redeliver the goods to the petitioner-firm. So far as the Customs authorities are concerned the undertaking given to them by the petitioner-firm for supplying the mutilators for mutilating the goods was not kept up. Messrs Oswal Spinning Mills in view of the Customs authorities, because of the paucity of the space at their premises could not carry out the job. After that the matter was not pursued by the petitioner-firm. An unreported judgment of Bombay High Court in *Messrs Nagesh Hosiery Mills v. M. R. Ramachandran and others* (22), by R. P. Bhatt, J., is to the effect that the goods which had been certified by the sellers as duly cut, unserviceable and unwearable are rags. It was argued by Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, that the description of the rags as prevalent in the country of despatch is to be taken into consideration of and the Customs authorities cannot withhold the goods. The Bombay High Court judgment does not apply to the facts of the case in hand as the petitioner-firms had undertaken to get those mutilated themselves. On the material placed before us in Writ Petition No. 4709/1975, no direction can be issued to the Customs authorities for the release of the goods.

(58) Bombay Port Trust is holding the goods, according to its rules, till those are cleared from there by the rightful owner. If the clearance is delayed then the owner of the goods is required to pay

(22) C.W. 92/74 decided on January 15, 1975.

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the charges which are known as demurrage. Messrs Lamba Industries had been negotiating with the Port Trust Authorities on its own to get those waived off but in spite of the repeated demands by the Port Trust Authorities it failed to submit the documents demanded. The Port Trust Authorities took the position that if the documents are submitted to it then it would consider the case of remission of demurrage sympathetically. During the course of arguments the learned counsel for the S.T.C. also assured its full support to Messrs Lamba Industries for getting the demurrage remitted. In any case the demurrage has to be paid by the owner of goods.

(59) The other prayer of Messrs Lamba Industries is that it is entitled to the possession of the goods of Indent No. 7017/1972, which were imported on the purchase requisition of Messrs Camel Knitting and Textile Mills, Ludhiana, respondent No. 7. It had paid the money on behalf of respondent No. 7, at the suggestion of the S.T.C. Respondent No. 7 says that it is willing to pay the money if the goods are delivered to it. Why and under what circumstances Messrs Lamba Industries, Ludhiana, had paid the money is again a disputed question of fact, unless Messrs Camel Knitting and Textile Mills, Ludhiana, with the permission of the Licensing authority, transfer the goods, or the licensing authority at its own motion allocates the goods imported against Indent No. 7015/1972 to Messrs Lamba Industries it cannot be held entitled for it. This matter again is not within the jurisdiction of this Court exercising its writ jurisdiction.

(60) In Civil Writ Petition No. 238/1975, the S.T.C. conveyed that it will not serve the release orders of the petitioner in future in case it did not make the payment of the goods against Indent No. 625/1972. This, according to Shri Jawahar Lal Gupta, learned counsel for the petitioner firms, amounts to virtually a refusal of the release order as he cannot import against his right to import recognised by the Central Government. The S.T.C., according to him, is the only agency through which he can materialise the release order. Clauses 8, 8-A and 8-B of the Order are the only provisions under which a person can be debarred from importing any canalised item or his licence can be suspended or his import entitlement can be put in abeyance. The powers under these Clauses vest in the Central Government, and the S.T.C., according to the learned counsel, is no authority to refuse to work for his import entitlement. The argument of Shri Jawahar Lal Gupta, learned counsel for the petitioner-firms, on the face of it appears to have some force. The S.T.C. in compliance with the purchase requisition of the material selected

by the release order holder makes the purchase and makes the payment to the foreign seller. It cannot avoid the payment to the foreign-seller as it has to open a irrevocable letters of credit in his favour in a foreign bank. Shri Kuldip Singh, learned counsel for respondents Nos. 1 and 3, has argued that the S.T.C. cannot afford to block the money paid by it as in the case of Indent No. 625/1972, by leaving the payment of money to the vagaries of the minds of the release order holders. If it happened in a number of cases then the very purpose of conserving the foreign exchange for which canalising of the imports through the S.T.C. was done is likely to be defeated as the foreign exchange would remain tied up in such like bargains. This situation was created because of the lack of anticipation by the officers of the S.T.C. in not insisting for the establishing of irrevocable letters of credit in favour of the S.T.C. from the release order holder, that is, Messrs Harbans and Co. Whatever be the position of the S.T.C. about the financial advantages or disadvantages in blocking its money in such cases it cannot negate the orders issued by the Central Government in the form of release order. It should not have adopted such a stance to defeat the release orders by refusing to serve the petitioner-firm. The difficulty again would be that the S.T.C. being a Company registered under the Companies Act is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India and the difficulty and hardship of the petitioner-firm arising from the refusal of the S.T.C. to import on its behalf cannot be solved. Messrs Harbans and Co., also does not have equity in its favour because of the refusal to honour the documents under a C.I.F. contract of Indent No. 625/1972 and this Court cannot order the release of the goods of both the indents in its favour. In view of this discussion the prayers of the petitioner-firm in Civil Writ Petition No. 238/1975 cannot be granted.

(61) Before parting with the judgment, I would like to say a few words for the consideration of the Management of the S.T.C. The voluminous correspondence attached with these writ petitions in the form of Annexures by the petitioner-firms shows that the attitude of the officers including the highly placed ones of the S.T.C., was more or less non-cooperative and they did not render much help to the petitioner-firms to get out of the difficulties. With some effort of the S.T.C. the consignments of Indent Nos. 7014/1972 and 618/1972 could be cleared at an early date and the accumulation of demurrage charges could be avoided. The S.T.C. should take more humane attitude to co-operate with the people to achieve the purpose of conserving the foreign exchange for which it was created. The

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attitude of the S.T.C. does not reflect credit to its officers in achieving this laudable object. I feel that some drive and initiative of its officers could have saved this unfortunate litigation if they had used their good offices and influence with the agencies concerned in the clearance of the goods. The benefit of technicalities of the law which the S.T.C. got in these writ petitions should not embolden its officers to present a volte-face to its constituents.

(62) In view of what has been said and discussed above both the writ petitions are dismissed. In view of the nature of the case the parties are left to bear their own costs.

R. N. Mittal, J.—I agree.

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