Supreme Court of India
M/S Northern Plastics Ltd vs Hindustan Photo Films Mfg.Co. Ltd on 20 February, 1997
Author: J O Mitter
Bench: S.P. Bharucha, S.B. Majmudar

PETITIONER:
M/S NORTHERN PLASTICS LTD.

Vs.

RESPONDENT:
HINDUSTAN PHOTO FILMS MFG.CO. LTD

DATE OF JUDGMENT: 20/02/1997

BENCH:
S.P. BHARUCHA, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B. Majumdar.J, M/s Northern Plastics Ltd. is the common appellant in these two appeals moved by it after obtaining special leave to appeal from this Court against a common judgement dated 9th March 1990 passed by the High Court of Delhi in two Civil Writ Petitions, one moved by M/s Hindustan Photo Films Mfg.Co.Ltd. ('HPF' for short), respondent no.1 in C.A. No. 2035 of 1990, and the other the Union of India, respondent no.1 in the companion Civil Appal No. 2036 of 1990. The question companion Civil Appeal No. 2036 of 1990. The question posed for our consideration is as to whether 1st respondents in these Civil writ appeals could be said to be 'persons aggrieved' within the meaning of Section 129-A of the Customs Act, 1962 (hereinafter referred to as 'the Act') so that they could challenge before the customs, Excise and Gold (Control) Appellate Tribunal ('CEGAT' for short) the order passed by the Additional Collector of Customs, Bombay dated 5th June 1989 agreeing with the notings made by the Assistant Collector of Customs dated 31st May 1989 recommending release of the imported goods to the common appellant on payment of full customs duty. The CEGAT took the view the respondent no.1 in both these appeals had no locus standi to prefer appeals against the said order. The High Court of Delhi by the impugned judgment has taken a contrary view and has ruled in favour of the locus standi of these respective respondents.

Before we deal with the aforesaid question it will be necessary to not the relevant background facts

leading to the present controversy between the parties. The project a chequered history. The common appellant, Northern Plastics Ltd., which will hereinafter be referred to as 'the appellant' for the sake of convenience, is said to have obtained Small Scale Industries Registration (SSI Registration) on 24th August 1985 for slitting and confectioning of jumbo rolls of various types of films. The said registration, according to the appellant, was obtained under The Industries (Development & Regulation) Act, 1951 ('IDR Act' for short). A notification was issued by the competent authority under the said Act on 18th July 1986 effectively taking away the exemption fro requirement of licence in respect of Item 20 of 1st Schedule to the IDR Act thus making it obligatory for owner of industrial undertaking to have licence within six months. It is the case of the appellant that although it was not the owner of industrial undertaking as defined by the IDR Act, under a mistaken belief it applied for COB licence on 8th December 1986. On 7th July 1988 a notification was issued by the Central Government in exercise of its powers under sub- section (i) of Section 25 of the Act exempting jumbo rolls of graphic art films and jumbo rolls of photographic colour paper, of width 1 meter or more and of length 600 meters or more, falling within Chapter 37 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from so much of that portion of the duty of customs leviable thereon under the said First Schedule as was in excess of the amount calculated at the rate of 60 per cent ad valorem, subject to the following conditions:

> (i) the importer undertakes conversion of the said jumbo rolls by slitting confectioning into finished products;
>
> (ii) the importer holds an industrial licence under the Industries (Development and Regulation) Act, 1951 (65 of 1951), for slitting and confectioning of photo-sensitised materials from jumbo rolls.

According to the appellant the benefit of the this concession in import duty on the jumbo rolls of various types of films which were being imported by the appellant was available to it. The appellant had imported various consignments of articles of X-Ray films and graphic art films through the port at Bombay between January 1989 and May 1989. The shipments concerned for the same consignments were made in favour of the appellant by the foreign exporters between 15th December 1988 and 20th April 1989. According to the appellant the goods were worth Rs. 246 lacs approximately in foreign exchange. That the appellant had paid customs duty amounting to Rs. 196 lacs on these consiqnments and the additional duty if the exemption was not available to the appellant on these consignments would have become payable to the extent of Rs. 130 lac. The total value of the goods imported at Bombay port by the appellant during the aforesaid period worked up to Rs.572 lacs according to the appellant. The Assistant Collector of Customs (Bombay) had not granted the requisite relief of concessional import duty payable for the imported consignments of the appellant. Hence a writ petition being Civil Writ Petition No. 2021 of 1988 was moved by the appellant in the High Court of Delhi where principal relief sough was for the grant of benefit of the aforesaid customs exemption notification. A prayer was also made for issuance of COB licence by the competent authorities under the IDR Act. Initially the appellant had not joined M/s. 'HPF', a public sector undertaking in the said writ petition as a respondent as it was merely a business rival of the appellant. However on an application by the HPF a Division Bench of the High Court by its order dated 8th May 1989 allowed it to be a party-respondent in the appellant's petition. In the

aforesaid writ petition filed by the appellant before High Court of Delhi initially an order was passed by a learned Single Judge directing removal and release of the jumbo rolls imported by the appellant at Bombay at concessional rate of customs duty. However this interim order set aside by a Division Bench of the High Court by its order dated 8th May 1989. Pending this writ petition on the Delhi High Court, upon an application by the appellant, an order was proposed to be passed by the Assistant Collector of Customs (Bombay) on 31st May 1989 permitting the clearance of the imported consignment of the appellant upon payment of full rate of customs duty. The said proposed order was placed for approval before the Additional Collector of Customs (Bombay). Below the said proposal the Additional Collector of Customs (Bombay) put his endorsement agreeing to the said proposal on 1st June 1989. The said order which came to be communicated to the appellant on 5th June 1989 entitled the appellant to clear the imported goods on payment of full customs duty without availing of the benefits of the concessional rate of import duty pursuant to the earlier referred notification dated 7th July 1988.

Having come to know about the order of the Additional Collector of Customs, HPF which is a public sector undertaking wholly owned by Government of India, which was already joined as a party, at its own request, to the appellant's pending, petition, moved an interim relief application in that petition for staying the clearance and removal of the goods imported by the appellant. The High Court by its order dated 9th June 1989 in vacation granted ex-parte stay of the Collector's order. The interim relief application of HPF was subsequently heard another Vacation Judge in the High Court on 21st June 1989 and after completion of the arguments on behalf of the HPF on 26th June 1989 a request was made for not pronouncing the judgment in the said interim relief application. However the said request was not granted and the interim relief application of HPF was dismissed on 26th June 1989 by the high Court. That thereafter HPF filed a writ petition in the High Court of Bombay on that very day, that is, 26th June 1989 praying for similar interim relief against release of the imported goods to the appellant. The High Court rejected the request for exparte interim relief. A Special Leave Petition was also moved by the HPF before this Court against the Delhi High Court order dated 26th June 1989 vacating the exparte stay granted against the releases of imported goods in favour of the appellant. The said Special Leave Petition was dismissed as withdrawn by this Court. After HPF's Special Leave Petition was dismissed as withdrawn by this Court on 27th June 1989 a writ appeal was moved by the HPF before a Division Bench of the Bombay High Court against the order of learned Single Judge refusing to grant ex parte stay in writ petition of HPF, but no interim relief was granted by the High Court even in this writ appeal. Under these circumstances HPF filed an appeal to CEGAT on 28th June 1989 against the order of Additional Collector of Customs (Bombay) dated 5th June 1989. An exparte interim order was obtained from CEGAT for a week up to 6th July 1989. HPF then withdrew the writ petition before the Bombay High Court. In the meantime the status quo order granted by CEGAT expired on 6th July 1989 and it was not extended. HPF then filed a writ petition before the High Court of Delhi being Writ Petition No.1932 of 1989 against the order dated 7.7.1989 passed by CEGAT and the Division Bench of the High Court passed an ex parte stay of the order of the Additional Collector of Customs dated 5th June 1989 on 12th July 1989. The High Court of Delhi by its order dated 17th July 1989 disposed of Writ Petition No. 1932 of 1989 moved by the HPF against the Additional Collector's order and directed CEGAT to dispose of the appeal of the HPF. The High Court, however, further directed that till the final disposal of the appeal by the CEGAT the stay granted on 12th July 1989 would continue. Before HPF's appeal could be heard by

the CEGAT an appeal being No. 2072 of 1989 was filed by the Ministry of Industries, New Delhi before CEGAT under Section 129-A of the Act against the very same order of Additional Collector dated 5th June 1989. A Bench of CEGAT by its order dated 31st July 1989 dismissed the appeal of HPF against Collector of Customs on the ground that HPF being a business rival of the appellant was not 'person aggrieved' as contemplated by Section 129-A of the Act and hence the appeal was not maintainable. Thereafter on 8th August 1989 the other appeal filed by Ministry of Industries against the very same order of Additional Collector of Customs was also dismissed as not maintainable, the Ministry of Industries being held not an 'aggrieved person' within the meaning of Section 129-A of the Act. Under these circumstances HPF filed another Writ Petition No. 2286 of 1989 in the Delhi High Court on 9th August 1989 challenging two orders- (i) the order of CEGAT dated 31st July 1989 holding its appeal as not maintainable; and (ii) the order of Additional Collector of Customs (Bombay) ordering release of the imported goods to the appellant. A Division Bench of the High Court while admitting the writ petition restrained clearance of the goods in favour of the appellant pending the writ petition. In the said writ petition Ministry of Industries was also permitted on its application to be impleaded as party-respondent. The Union of India representing Ministry of Industries in its turn filed another write petition being Civil Writ Petition No. 3023 of 1989 on 24th October 1989 before the High Court of Delhi against the order dated 8th August 1989 passed by CEGAT against it. That petition was also admitted by the High Court of Delhi. Both these writ petitions were heard together and by a common order dated 9th March 1990 a Division Bench of the High Court took the view that the appeals filed by the respective first respondents i n these appeals were maintainable before the GEGAT as they could be said to be 'persons aggrieved' within the meaning of Section 129-A of the Act and that they had sufficient locus standi in public interest to maintain their appeals. In the result the Division Bench of the High Court partly allowed the writ Petition of both the first respondents in these appeals moved by the Union of India as well as HPF and passed the following order:

> "We have held that the Union of India and M/s. Hindustan Photo Films Ltd. are 'aggrieved person' and can maintain an appeal under Section 129-A of the Customs Act. The main question in the writ petition at the root of the entire controversy between the parties is whether the said importation of the photo-sensitized material at Bombay was legal or not would now be decided by the Appellate Tribunal. But assuming that M/s. Northern Plastics Ltd. takes an appeal against our order to the Supreme Court and our decision is reversed, still the question of the legality of the importation would be open to the parties to be argued in this writ petition before us. Thus, till the main question of legality of importation is finally disposed of, in the interests of justice, it is necessary that the subject-matter, of the controversy, viz. the imported goods, are preserved in the custody of the Customs Authorities and are not released. Since the goods are now stored under the suitable conditions of storage with M/s. Northern Plastics Ltd. there is no likelihood of their deteriorating. No variation in our order dated 9.8.89 in regard to the release of goods is, therefore, called for.
>
> The writ petition is partly allowed to the extent indicated above."

As already noted the aforesaid common order of the Division Bench of the High Court of Delhi has resulted in present two appeals on grant of special leave by this Court. Pending these appeals it was felt by this Court that the imported goods in question were likely to deteriorate with passage of time and if the happened the contesting parties would stand to suffer irretrievably. Consequently by an order dated 25th April 1990 a Bench of two learned Judges of this Court was pleased to direct that Chief Controller of Imports and Exports may be appointed as Court Receiver for disposing of the goods in question by sale in auction as expeditiously as possible and at the maximum price they will fetch in the market. It was further directed that the amount of the sale proceeds of the auction shall forthwith be deposited by the receiver in this court to the credit of these appeals. Accordingly the goods were auctioned. By a further order dated 21st September 1990 another Bench of two learned Judges of this Court accepted the offer of four purchasers who had offered to purchase all the disputed goods for a total sum of Rs. 1,40,00,000/-. Four action sales were confirmed in favour of the concerned auction purchasers. By the same order it was directed that the auction amount shall be deposited by this Court in a Fixed Deposit Account and the amount so deposited shall remain in the custody of the Court and shall be disposed of in accordance with the final judgment in the appeals pending before the Customs, Excise and Gold (Control) Appellate Tribunal. The aforesaid order was passed for the obvious reason that by that time under the common judgment under appeal CEGAT was directed by the High Court to dispose of the appeals of Union of India as well as HPF pursuant to its judgment. However as these appeals are being disposed of finally by us by the present judgment appropriate order will have to be passed by us in connection with this deposited amount. We shall do so after considering the main question involved in controversy between the parties in these appeals.

For the purpose of these appeals we shall assume that the order of Assistant Collector of Customs (Bombay), as approved by the Additional Collector of Customs (Bombay), of 1st June 1989 was in itself appealable to CEGAT under Section 129-A of the Act being a decision and order passed by an adjudicating authority under Section 122 of the Act. We assume as aforesaid for the simple reason that Shri Dave, learned senior counsel for the appellant has vehemently contended that the said endorsement of the Additional Collector of Customs was of an administrative nature and was not appealable. Neither CEGAT nor the High Court of Delhi has considered that question and as that question strictly does not arise for our consideration in the present appeals for deciding the controversy between the parties we have assumed as aforesaid.

Rival Contentions Shri Dave, learned senior counsel for the appellant has vehemently contended that the Division Bench of the High Court had patently erred in taking the view in the impugned common judgment that HPF as well as Industries Ministry of the Union of India were 'aggrieved person' within the meaning of Section 129-A of the Act. According to Shri Dave, the only parties which could prefer appeal to CEGAT could be either the aggrieved importer or the Collector of Customs after following the procedure of Section 129-D of the Act. That save and except these two parties no third party had a right to appeal under the Act. That right of appeal under the appeal under the Act. That right of appeals under the Act is a creature of statute. Therefore, we have to look at the relevant provisions of the statute with a view of finding out whether an appeal lies at the instance of any third parties like the present first respondents in both these appeals. Shri Dave in this connection placed strong reliance on Section 129-A sub-section (1) as well as sub- section (3)

thereof. In support of his submission he placed reliance on judgment of this Court to which we will make a reference at an appropriate stage. Shri Dave submitted that the concept of locus standi as expanded be decisions of this Court in connection with public interest litigations moved before this Court under Article 32 or before the High Court under Article 226 of the Constitution of India had no application to the statutory right of appeal to be culled out for the express language of the statute creating the appellate forum and also confirming the right of appeal to the parties mentioned therein. In the alternative submitted Shri Dave, neither the Industries Ministry nor the HPF, which is a rival commercial concern, can be said to be aggrieved by the order of the Assistant Collector of Customs (Bombay) directing release of the imported goods in favour of the appellant on payment of full customs duty. Shri Dave also tried to submit that it could not be urged by the contesting respondents that the import of the goods in question was unauthorised as for additional import licence purchased by the appellant actual user test was not applicable. For resolving the present controvesy it is not necessary to consider this alternative contention of Shri Dave. We will confine our decision to the limited question whether appeals moved by each of the first respondents in these appeals before CEGAT were maintainable or not.

Learned counsel Shri Subba Rao appearing for the Union of India as well as learned counsel appearing for HPF on the other hand tried to support the decision rendered by the High Court of Delhi and submitted that on the express language of Section 129-A sub-section (1) of the Act the Industries Ministry of the Union of India as well as HPF could be said to be 'persons aggrieved'. That according to the Industries Ministry of Union of India the appellant had imported goods which were liable to confiscation under the Act and, therefore, the order of the Additional Collector of Customs (Bombay) was patently erroneous. That it affected the public revenue as well as the effective implementation of IDR Act and, therefore, it could not be said that the Industries Ministry did not represent sufficient public interest to maintain the appeal before CEGAT. Learned counsel for HPF in his turn submitted that HPF which is wholly owned Government company where more than Rs. 400 crores are sunk by Central Government from public coffers is a limb of the Union of India itself and when such large extent of public funds are involved in the working of HPF it cannot be said that it did not represent sufficient public interest to maintain the appeal against the order of Additional Collector of Customs by which huge quantity of illegally imported goods were sought to be released in favour of the appellant. That such goods, if permitted to be imported, would result in flooding the local market and would severely prejudice the working of HPF which is a public concern that has now gone sick and hence the High Court had committed no error in holding that the HPF had sufficient locus standi to maintain its appeal before CEGAT.

In the light of these rival contentions we now proceed to consider the question posed for our decision.

At the outset it must be kept in view that appeal is a creature of statute. The right to appeal has to be exercised by persons permitted by the statute to prefer appeals subject to the conditions regarding the filing of such appeals. We may in this connection usefully refer to a decision of four learned judge of this Court in the case of The Anant Mills Co. Ltd. etc. etc. v. State of Gujarat & others etc. etc. [AIR 1975 SC 1234 = (1975) 2 SCC 175]. In that case Khanna, J., speaking for the Court had to consider the question whether the provision of statutory appeal as per Section 406(2)(e) of the

Bombay Provincial Municipal Corporation Act, 1949 which required the appellant to deposit the disputed amount of tax before appeal could be entertained could be said to be in any way violative of Article 14 of the Constitution of India. Repelling the aforesaid challenge to the vires of the said provision the following pertinent observations were made in para 40 of the Report :

> "...The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fall to under stand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income-tax Act, 1922. The proviso to the section provided that '.....no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax had been paid'. Such conditions merely regulate the exercise of the right of appeal so that the same is not abused difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it ....."

It has also be noted that the wider concept of locus standi in public interest litigation moved before this Court under Article 32 of the Constitution of India which itself is a fundamental right or under Article 226 before High Courts which also offers a constitutional remedy cannot be imported for deciding the right of appeal under the statutory provisions contained in the Customs Act. Whether any right of appeal is conferred on anyone against the orders passed under the Act in the hierarchy of proceedings before the authorities has to be judged from the statutory settings of the Act and not before them. Therefore, in our view, the High Court in the impugned judgment had erred in drawing the analogy from the more elastic concept of locus standi under Article 32 of Article evolved by this Court by its decisions on the subject. It is also to be appreciated that the decision of this Court in Bar Council of Maharashtra v. M.V. Dabholkar etc. etc. AIR 1975 SC 2092 was based on an entirely different statutory scheme. For judging the competence and locus standi of the Union of India or the HPF for moving appeals before CEGAT against the order of Additional Collector of Customs passed under Section 122 of the Act the answer must be found from within the four corners of the Act itself.

We have, therefore, to turn to the Scheme of the Act providing for appeals. Provision of appeals is found in Chapter XV of the Act. Section 128 deals with 'Appeals to Collector (Appeals)' and Section 128-A deals with 'Procedure in appeal'. The Appellate Tribunal is constituted as per Section 129 of

the Act. Sub-section (1) thereof lays down that, 'the Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Gold (Control) Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act'. It is, therefore, obvious that the Appellate Tribunal CEGAT is a creature of statute and derives its jurisdiction and powers only from the statute creating it and not outside the same. Then follows Section 129-A dealing with 'Appeals to the Appellate Tribunal'. The relevant provisions thereof read us under :

> "129-A. Appeals to the Appellate Tribunal.- (1) Any person aggrieved by any of the following orders may appeals to the Appellate Tribunal against such order _
>
> (a) a decision or order passed by the Collector of Customs as an adjudicating authority;
>
> (b)... ... ...
>
> (c)... ... ...
>
> (d)... ... ..."

Sub-sections (2) and (3) of Section 129-A are relevant for our present purpose. The read as under :

> "129-A(2). The Collector of Customs may, if he is of opinion that an order passed by-
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> (a) the Appellate Collector of Customs under Section 128, as it stood immediately before the appointed day, or
>
> (b) the Collector (Appeals) under Section 128-A, is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order. (3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Collector of Customs, or as the case may be, the other party preferring the appeal."

Section 129-D(1) of the Act also deserves to be noted at this stage. It reads as under:

> "129-D. Powers of Board or Collector of Customs to pass certain orders.-(1) The Board may, of its own motion, call for and examine the record of any proceeding in which a Collector of Customs as an adjudicating authority has passed any decision or order under this Act for the propose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Collector to apply to the Appellate Tribunal or, as the case may be Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise revenues Appellate

> Tribunal Act, 1986, for the determination of such points arising out of the decision or order as may be specified by the Board in its order."

Section 129-DA gives powers of revision to Board or Collector of Customs in certain cases and as we are concerned here with further proceedings against the order of Collector of Customs sub-section (1) of Section 129-DA would be relevant. It reads as under:

> "129-DA. Powers of revision of Board or Collector of Customs in certain cases.- (1) The Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which a Collector of Customs has passed any decision or order not being a decision or order passed under sub-section (2) of this section of the nature referred to in sub-section (5) of Section 129-D for the purpose of satisfying itself as to the correctness, legality or propriety or such decision or order and may pass such order thereon as it thinks fit."

Similarly Section 129-DD gives powers of revision to Central Government to entertain revision petitions against certain orders of the Collector (Appeals). It provides as under:

129-DD. Revision by Central Government.-

(1) The Central Government may, on the application of a person aggrieved by any order passed under Section 128-A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 129-A, annul of modify such order.

Explanation .-for the purposes of this sub-section, 'order passed under Section 128-A' includes an order passed under that section before the commencement of Section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement to the Appellate Tribunal."

The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers. It is axiomatic that the importer against whom the collector has passed the impugned order of adjudication and who is called upon to pay the customs duty which, according to him, is not payable an appeal under Section 129-A(1) of the Act. So far as departmental authorities themselves are concerned including the Collector of Customs no direct right of appeal is conferred on Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection. Similarly a statutory remedy is provided to the Collector of Customs in connection with orders of the Appellate Collector of Customs passed immediately before the appointed day and also in connection with the orders passed by Collector of Customs under Section 128-A, to direct proper

officer to appeal on his behalf as laid down by Section 129-DA(1) as well as on the Central Government under contingencies contemplated by Section 129-DA(1). These are the only statutory modes contemplated by the Act by resort to which the orders of Collector (Customs) could be brought in challenge before higher statutory authorities including the CEGAT. In the light of this statutory scheme, therefore, it is not possible to agree with the contention of learned counsel for the contesting respondents that sub-section (1) of Section 129-A entitles any and every person feeling aggrieved by the decision or order of the Collector of Customs as an adjudicating authority, to prefer statutory appeal to the Appellate Tribunal. Neither the Central Government, through Industries Department, nor the rival company or industry operating in the same field as the importer can as a matter or right prefer an appeal as 'person aggrieved' is wider than the phrase 'party aggrieved'. But in the entire context of the statutory scheme especially sub-section (3) of Section 129-A it has to be held that only the parties to the proceedings before the adjudicating authority Collector of Customs could prefer such an appeal to the CEGAT and the adjudicating authority under S.122 can prefer such an appeal only when directed by the Board under Section 129-D(1) and not otherwise. It is easy to visualise that even a third party may get legitimately aggrieved by the order of the Collector of Customs being the adjudicating authority if it is contended by such a third party that the goods imported really belonged to it and not to the purported importer or that he had financed the same and, therefore, in substance he was interested in the goods and consequently the release order in favour of the purported importer was prone to create a legal injury to such a third party which is not actually arraigned as a party before the adjudicating authority and was not heard by it. Under such circumstances such a third party might perhaps be treated to be legally aggrieved by the order of the Collector of Customs as an adjudicating authority and may legitimately prefer an appeal to the CEGAT as a 'person aggrieved'. That is the reason why the Legislature in its wisdom has used the phrase 'any person aggrieved' by the order of Collector of Customs as adjudicating authority in Section 129-A(1). But it order to earn a locus standi as 'person aggrieved' other than the arraigned party before the Collector of Customs as an adjudicating authority it must be shown that such a person aggrieved being third party has a direct legal interest in the goods involved in the adjudication process. It cannot be a general public interest or interest of a business rival as is being projected by the contesting respondents before us. In this connection we may refer to a Constitution Bench judgment of this Court in the case of Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, Bombay [(1970 (2) SCC 484]. Question before the Constitution Bench in that case was as to whether Advocate General of the High Court who was be to issued a notice in disciplinary proceedings by the Bar Council as per the provisions of Section 35(2) of the Advocate Act, 1961 had locus standi to prefer an appeal against the order of the disciplinary authority under Section 37 of the Advocates Act before Bar Council of India. A majority of the Constitution Bench took the view that the Advocate General had no such locus standi. He could not be said to be a 'person aggrieved' by the decision of the disciplinary authority exonerating the concerned delinquent advocate. Mitter, J., speaking for the majority considered the question in the light of the statutory settings of the Act and observed that to decide the question one had to look at the proceedings of this kind. We may refer to the pertinent observations in this connection made in paras 9 and 10 of the Report of the said judgment of Mitter, J.:

> "Generally speaking. a person can be said to be aggrieved by an order which is to his detriment. pecuniary or otherwise or causes him some prejudice in some form or

other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But it has been held in a number of cases that a person who is not a party to a suit may prefer an appeal with the leave of the appellate court and such leave would not be refused where the judgment would be binding on him under Explanation 6 to Section 11 of the Code of civil procedure. We find ourselves unable to take the view that because a person has been given notice of some proceedings wherein he is given a right to appear and make his submissions, he should without more have a right of appeal from an order rejecting his contentions or submission. An appeal is a creature of statute and if a statute expressly gives a person a right to appeal, the matter rests there.

Innumerable statutes both in England and in India give the right of appeal to 'a person aggrieved' by an order made and the provisions of such statutes have to be construed in each case to find out whether the person prefering an appeal falls within that expression. As was observed in Robinson v Currey [7 QBD 465] the words 'person aggrieved' are 'ordinary meaning put upon them'. According to Halsbury's Laws of England (Third Edition, Vol.25), page 293, footnote 'h':

'the expression is nowhere defined and must be contrued by reference to the context of the enactment in which it appears and all the circumstances.' Attempts have however from time to time been made to define the expression in various cases. In Ex parte Sidebotham In re Sidebotham [14 Ch D 458 at 465] it was observed by James.L.J.: 'But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something."

A Bench of four learned Judges of this Court in the case of Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed and others [(1976) 1 SCC 671] had to examine the scheme of Bombay Cinemas Regulation Act 1953 and a rule therein with a view of finding out whether a rival cinema owner could appeal against a No objection Certificate grated to an applicant who wanted to establish a cinema theatre of his own. Sarkaria, J., speaking for the Court observed that under the relevant provisions of the Regulations no right was conferred by way of special interest on such a rival cinema owner as he did not satisfy the test of 'person aggrieved'. Nor could he be treated to be a valid objector being resident of the locality or person to whom any special right of objection was conferred by the statutory scheme. Thus he was merely a rival cinema owner who was likely to be adversely affected in his commercial interest if another cinema theatre got established and came to be run in the light of the No objection Certificate. That such an interest was considered to be too remote to clothe the objectors with a right to object to the No Objection Certificate to run a cinema under the Rules. Paras 47 and 48 of the Report in this connection deserve to be noted:

"Thus, in substance, the appellant's stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity.

Juridically, harm of this description is called damnum sine injuria, the term injuria being here used in its true sence of an act contrary to law [Salmond on Jurisprudence, 12th Edn. by Fitzgerald, p.357, para 85]. The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large.

In the light to the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest.

In fact, the impugned order does not operate as a decisions against him, much less does it wrongfully affect his title to something. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore he is not a 'person aggrieved' and has no locus standi to challenge the grant of the no-objection certificate."

Shri Subba Rao, learned counsel for Union of India contended that the Central Government through the Industries Ministry had interest in the litigation in question as large public revenue was involved and the protection to be conferred on the local manufactures and those dealing in local markets had to be guarded against the onslaught of mushroom importers. That this public interest was sought to be vindicated by the Union of India by raising the present dispute. If the concerned import was found to be illegal the goods would be liable to confiscation. That when more than Rs.400 crores were sunk by the Union of India in its company HPF it could not be said that the Union of India through the Ministry of Industries was a total stranger and had no locus standi whatsoever to challenge the order of the Additional Collector of Customs. So far as the Union of India is concerned we may proceed on the basis that it may have to subserve a larger public interest by raising the present dispute and may legitimately feel aggrieved by the order of the Additional Collector of Customs. But even if it is so, the statutory procedure laid down by the Parliament in its wisdom for enabling the challenge to the adjudication order of the Collector of Customs by way of appeals or revisions, to which we have made a mention, has got to be followed in such an eventuality. Bypassing the said statutory procedure a direct frog leap to CEGAT is contra-indicated by the statutory scheme of the Act. If such direct appeals are permitted the very scheme of Section 129-D(1) would get stultified. It must, therefore, be held that direct appeal filed by the Union of India through Industries Ministry to CEGAT under Section 129-A(1) was clearly incompetent. It may by added that the Union of India could have used the mode set out in section 129D, but it did not do so.

So far as the appeal filed by HPF is concerned it is still on a weaker footing. Even though HPF may be a public limited company wholly owned by the Central Government and even if Central Government might have sunk more than Rs.400 crores in constituting it, its function would still remain in the domain of commercial enterprise. It may be a limb of the Central Government or its

alter ego so far as Article 13 of the Constituting is concerned and may be treated end to answer challenges about violation of constitutional guarantees or statutory provisions under which it may be acting, but that would not clothe it with a legal locus standi to prefer a statutory appeal before CEGAT under Section 129-A(1). From the point of view of that provision it is no more than a business rival and cannot be said to be a 'person aggrieved' by the adjudicatory order of the Collector of Customs releasing imported goods to the appellant on payment of full customs duty. It has also to be noted that the Customs Act nowhere provides for any special interest of such public concerns which may be operating as rivals in the same commercial field in which the importer may be operating. In the absence of any special statutory provision for protecting the interest of such Government concerns or public sector undertakings no statutory locus standi can be called out in their favour on the express language of the relevant provisions of the Act noted by us earlier. It must, therefore, be held that HPF was a mere business rival operating in the same commercial field and carrying on the same commercial activities as the appellant. Its locus standi to challenge the order of Additional Collector of Customs in favour of the appellant, therefore. gets squarely ruled out by the ratio of the decision of this court in the case of Jasbhai Motibhai Desai (supra). Learned counsel for the HPF in this connection submitted that if imported goods of the appellant were allowed to enter the market HPF's commercial interest would be materially prejudiced and by now it has already become a sick unit. That is neither here nor there. The said grievance would still be in the realm of damnum since injuria as indicated in Jasbhai Motibhai Desai's case (supra) by this Court. Consequently the appeal filed by HPF before the CEGAT also must be treated to be incompetent and could not be covered by the sweep of Section 129-A(1) of the Act.

Learned counsel for HPF invited our attention to a decision of a two-member Bench of this court in the case of K.Ramadas Shenoy v. The Chief Officers. Town Municipal Council. Udipi and others [(1975 (1) SCR 690]. In that case a resident in a locality wherein a cinema building was being constructed contrary to be binding Town Planning Scheme, was held to be entitled to challenge the said building. Said decision is rendered on its own facts. The statutory Scheme was for the benefit of persons residing in the locality. Under the said Scheme the Municipal authorities owed a public duty and obligation under the statute to see that the residential area is not spoiled by unauthorised construction. Under these circumstances it was held that the aggrieved party had sufficient locus standi under Article 226 of the Constitution of India of move the High Court against the violation of the statutory scheme by the municipal authorities. It is easy to visualise that in that case this Court was concerned with the locus standi of an 'aggrieved party' under Article 226 of the Constitution of India which is of a wider nature as compared to the statutory right of appeal under a given statutory scheme before a statutory authority created by that very statute. The said decision is, therefore, of no avail to HPF.

As a result of the aforesaid discussion it must be held that the High Court had committed a patent error of law in taking the view that the concerned writ petitioners before it had sufficient locus standi to prefer appeals before CEGAT. The decision of CEGAT holding that they had no such locus standi was perfectly justified on the scheme of the Act and it was wrongly set aside by the High Court. Consequently the appeals will be required to be allowed.

However a further question survives for our consideration. As the High Court has noted in the impugned judgment, the other contentions in the writ petitions filed by the contesting respondents were not considered by it in view of its decision on the right of appeal which was made available to the concerned writ petitioners before the CEGAT. We have, however, to observe in this connection that the High Court was not at all justified in presuming what it should do in case the appellant's appeal succeeded before the Court. Proper direction in that connection should have been left to be given by this Court in such an eventuality. High Court could not have been pre-empted the same by the impugned judgment. However in view of the fact that other contention in the writ petitions were not examined by the High Court in any case they will now have to be examined by it. As the decision on the right to appeal to CEGAT made available to the contesting respondents by the High Court is being set aside by us, the question remains as to what further appropriate orders can be passed in the connection. So far as this question is concerned it may be noted that tow writ petitions were moved, one by Union of India being Civil Writ Petition No. 3023 of 1989 and another by HPF being Civil Writ Petition No.2286 of 1989. As we have taken the view that HPF being a business rival of the appellant had no right to challenge the order of Additional Collector of Customs, Bombay passed in favour of the appellant its writ petition being Civil Writ Petition No.2286 of 1989 filed before the High Court will stand dismissed. However writ Petition No.3023 of 1989 will have to be permitted to proceed further on remaining controversy before the High Court in so far as Union of India seeks of challenge the order of Collector of Customs, Bombay dated 1st/5th June 1989. As we have taken the view that Union of India could legitimately challenge the said order before appropriate forum in public interest and as it has wider locus standi at least in proceedings under Article 226 of the Constitution of India if not before CEGAT, its challenge in the writ petition under Article 226 against the said order cannot be told off the gates. That challenge will have to be examined by the High Court under Article 226 on its own merits. It is obvious that it will be open to be appellant as contesting respondents to try to support the impugned order of the Assistant Collector/Collector of Customs on all legally permissible grounds. In short the said controversy between the Union of India on the one hand and the appellant on the other in Union of India's Writ Petition No.3023 of 1989 will have to be examined by the Division Bench of the High Court on its own merits. AS the proceedings are pending since long before the High Court so far as the aforesaid challenge is concerned it would be in the interest of justice to request the High Court to decide the said writ petition on the merits of the question regarding the legality and propriety of the order of Collector/Assistant Collector of Customs dated 5th June 1989 as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order at its end.

Now remains the last question as to what is to be done about the amount fetched in auction of the goods pursuant to the interim order of this Court dated 24th September 1990. We cannot accede to the request to the learned counsel for the appellant that the said invested amount with accrued interest may be permitted to be withdrawn by the appellant at this stage by furnishing bank guarantee. In our view as the amount is lying deposited and invested by this Court since more than six and half years by now and as we are requesting the High Court to decide the pending writ petition of Union of India on the surviving question as aforesaid within four months from the date of receipt of copy of the present order it would be in the interest of all concerned to continue the investment of the deposited amount of the auction price by this Court and to direct that the withdrawal of that amount shall abide by the final result of the writ petition of the Union of India

before the High Court and shall also remain subject to the result of further appeal, if any, against the High Court's judgment in the said writ petition.

The appeals are accordingly allowed. The common judgment under appeal as rendered by the High Court is quashed and set aside with a direction to the High Court to decide on merits the Union of India's Writ Petition No.3023 of 1989 on the remaining grounds in the light of the observations made in this judgment. There will be no order as to costs in the facts and circumstances of these cases.