**(2003) 3 BomCR 427 : (2003) 4 MhLj 498**

**Bombay High Court**

**Case No:** Writ Petition No. 2011 of 1989

Alpa Laboratories — APPELLANT

Vs

Deputy Collector of Customs and Another — RESPONDENT

**Date of Decision:** Dec. 3, 2002

**Acts Referred:**
Customs Act, 1962 â€” Section 111#Imports and Exports (Control) Act, 1947 â€” Section 3

**Citation:** (2003) 3 BomCR 427 : (2003) 4 MhLj 498

**Hon'ble Judges:** V.C. Daga, J; J.P. Devadhar, J

**Bench:** Division Bench

**Advocate:** K.R. Bulchandani, J. Patel, J.P. Shah and L.K. Bulchandani, instructed by C.R. Patel, for the Appellant; R.V. Desai and N.V. Masurkar, for the Respondent

**Judgement**

1. In this petition, two orders passed by the Customs authorities u/s 111(d) of the Customs Act read with Section 3 of the Imports and Exports

(Control) Act, 1947 seeking to confiscate the imported Oxytetracycline Hydrochloride have been challenged. By the impugned orders, the

Petitioners have been given the option to redeem the confiscated goods on payment of redemption fine of Rs.1,65,000/ ( Rs.1,50,000/ +

Rs.15,000/).

2. The facts relevant for the present petition are as follows:-

The Petitioners inter alia manufacture Oxytetracycline capsule for which Oxytetracycline Hydrochloride is a raw material. On or about the 3rd

February, 1989, the Petitioners entered into a contract with a foreign supplier for import of 1000 kgs. of Oxytetracycline Hydrochloride (the said goods for short). In April 1989, the foreign supplier air shipped 100 kgs of the said goods and on arrival of the said goods, the Petitioners filed a

bill of entry on 6/4/1989, seeking clearance of the said goods as OGL item, being raw material (not covered under Appendix 2,3,5 and 8)

required for the manufacture of the drug Oxytetracycline Capsule. Alternatively the Petitioners claimed clearance of the said goods as drug

intermediate under the import licence bearing No. 3192069 dated 27/11/1987 which licence was acquired by the Petitioner from the market as it

was freely transferable.

For all the aforesaid reasons, we hold that the Custom Authorities were justified in confiscating the goods imported by the Petitioners as the

importation was in violation of the import policy. The Petitioners have exercised option of redeeming the goods on payment of redemption fine and

have obtained clearance of the goods under the interim orders of this Court, by furnishing bank guarantee to the extent of redemption fine levied.

As we have upheld the order of confiscation, the Respondents shall be entitled to recover the amount of redemption fine with interest @ 12% p.a.

from the date of clearance of the goods till date.

Accordingly, the petition fails. Rule stands discharged. The Respondents are at liberty to encash the bank guarantees for the sum of Rs.1,65,000/

furnished by the Petitioners. The Petitioners shall pay to the Respondents, interest on the said sum of Rs.1,65,000/- from the date of clearance of

goods till date @ 12% p.a. by 31.12.2002. If the Petitioners fail to pay the said amount of interest by 31.12.2002, then the said amount of interest

shall be recoverable from the Petitioners with interest @18% p.a. from 1st January 2003 till the date of recovery.

The petition stands disposed of accordingly. However, there will be no order as to costs. At this stage the learned Counsel appearing for the

Petitioner requested to issue directions to the Revenue not to enforce the bank guarantee for the period of eight weeks. Accordingly, we direct the

Revenue not to encash the bank guarantee for the period of eight weeks from today.

Certified copy expedited.