

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION, UP  
C-1 Vikrant Khand 1 (Near Shaheed Path), Gomti Nagar Lucknow-226010**

**First Appeal No. A/1997/2155**

**( Date of Filing : 10 Nov 1997 )**

**(Arisen out of Order Dated in Case No. of District State Commission)**

1. Samart Shipping

A

.....Appellant(s)

Versus

1. M/S Uma Export

A

.....Respondent(s)

**BEFORE:**

**HON'ABLE MR. JUSTICE PRESIDENT**

**HON'BLE MR. SUSHIL KUMAR JUDICIAL MEMBER**

**HON'BLE MR. Vikas Saxena JUDICIAL MEMBER**

**PRESENT:**

**Dated : 15 Mar 2022**

**Final Order / Judgement**

**RESERVED**

**STATE CONSUMER DISPUTES REDRESSAL  
COMMISSION,**

**UTTAR PRADESH, LUCKNOW**

**APPEAL NO. 2155 OF 1997**

**(Against the order dated 22-09-1997 in Complaint Case  
No.165/1994**

**of the District Consumer Commission, Varanasi)**

1. Samrat Shipping Company Pvt. Ltd.

63, Jolly Maker Chamber No.2

Nariman Point

Bombay-400 021

2. M/s. Neptune Orient Liner Limited

Head Office : N.O.J. Building 456

Alexander Road, Singapore-D.511

...Appellants

Vs.

1. M/s. Uma Export, Ghosia Varanasi

Through Ravi Prakash Baranval C/o

Sri Umakant Baranval an Inhabitant

of Ghosia, Post Aurai,

District Varanasi

Partner, M/s Uma Exports Ghosia Aurai

Varanasi

2. M/s Hindustan Shipping Service

Station Road, Madohi, Post-Madohi

District Varanasi

3. M/s Hindustan Shipping Services

8/16, Fourth Floor, M. K. Amin Marg

Bora Bazar Street, Fort

Bombay-400001

...Respondents

**BEFORE:**

**HON'BLE MR. SUSHIL KUMAR, PRESIDING  
MEMBER**

**HON'BLE MR. VIKAS SAXENA, MEMBER**

For the Appellant : Smt. Suchita Singh holding brief of  
Sri Sanjeev

Singh, Advocate.

For the Respondent : None appeared

Dated : 27-04-2022

**JUDGMENT**

**PER MR. VIKAS SAXENA, MEMBER**

This appeal has been filed against the judgment and order dated 22-09-1997 of the District Consumer Commission, Varanasi in Complaint

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Case No. 165/1994 M/s Uma Exports V/s M/s Hindustan Shipping Services and others by which the learned District Consumer Commission has partly allowed the complaint filed by the complainant/respondent No.01 with a direction to the appellants and respondent Nos. 2 and 3 to pay a sum of Rs.3,93,627/- with 12% interest and an additional compensation for Rs.5,000/-.

The brief facts as stated by the complainant in the complaint are that the complainant is a firm engaged in the business of exporting carpets to the countries outside India. The complainant hired the services of respondent Nos. 2 and 3 M/s Hindustan Shipping Services, Bombay through its agent M/s Hindustan Shipping Services at District Varanasi for transporting eight roles Carpet to United State. The appellants M/s Samrat Shipping Company Private Limited are engaged in the business of transporting goods through ship in different countries and for this purpose they availed services of various shipping companies. The roles to be exported were packed in one container no. 2128652 and loaded on a ship at Bombay on 29-12-1991 which were intended to be delivered at USA on or about date 24-02-1992. The complainant alleged that the role did not reach the destination and their purchasers did not receive those and were misplaced.

It is further alleged by the complainant that the respondent No. 2 M/s. Hindustan Shipping Services and the appellant Samrat

Shipping Company loaded the goods in a ship of M/s Neptune Orient Lines Limited and both these companies obtained rent and other charges from the bank of complainant. After the prescribed time when the goods were not received by the purchasers, the complainant contacted with both these shipping companies and they were informed by letters dated 26-06-1992 and 15-07-1992 that the goods were not reached the destination and on arrival of the goods the complainant would be duly informed. Again on queries of the complainant, the respondent No.2 and the appellants again on date 29-09-1992 and 17-11-1992 assured the complainant that as soon as the goods would reach at the destination the complainant would be informed forthwith. Ultimately on date 27-09-1993 the opposite party

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No.4 Hindustan Shipping Services declined to deliver the goods as well as to refund the amount of fare and value of the goods. Consequently the complainant filed this complaint.

The appellants filed their written statement with the objection that there was no privity of contract between the complainant and the appellants, therefore, no liability of appellants arose. It is also alleged that the complainant did not comes within the definition of 'consumer' under the Consumer Protection Act 1986 nor the appellants fall within the definition of 'service provider', as such the complaint is wholly misconceived and liable to be rejected.

It is also alleged that the District Consumer Commission had no jurisdiction to entertain the complaint as the appellants did not carryout any business nor have any office within the jurisdiction of

the District Consumer Commission. The appellants also alleged that no cause of action accrued against them and the complaint is also barred by limitation as if at all any cause of action accrued then it is accrued on 28-11-1991 when consignment was booked or finally on 24-02-1992 when the consignment was delivered to consignee. The alleged transaction did not fall within the meaning of 'service' as defined in Section-2 of the Consumer Protection Act, 1986. Thus the complaint against the appellants was not maintainable.

The learned District Consumer Commission partially allowed the complaint. The appellants preferred this appeal inter-alia on the following grounds:-

That the District Consumer Commission erred to appreciate that the respondent No.01/complainant availed the services, if any, from respondent Nos. 2 and 3 alongwith appellants was for commercial use, therefore, the complaint for deficiency of service could not be maintained at its instance as the subject matter of the complaint was purely a commercial transaction and the complaint was not maintainable.

The appellants also alleged that the District Consumer Commission did not appreciate the point that as per 'The Indian Carriage of Goods Act 1924' the complaint can be instituted within one year of the default, therefore, the complaint is time barred also. The District Consumer

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Commission failed to appreciate that the appellants alongwith respondent Nos. 2 and 3 had been given the services without any defect because the consignment as per bill of lading has been delivered to the consignee. The learned District Consumer

Commission has wrongly drawn interference from the letter dated 27-09-1993 which was in fact a no liability communication which could not be made the basis for bringing of the complaint within limitation. The District Consumer Commission also erred by forming an opinion that respondent Nos. 2 and 3 were authorized agent of the appellants and, therefore, the appellants came within the jurisdiction of learned District Consumer Commission. The District Consumer Commission committed manifest error by failing to appreciate that while taking delivery of the cargo three bills of lading were duly issued at Bombay, cargo was declined to the custom authorities in the export manifest. The cargo was duly stuffed in container under the supervision of independent surveyor and was loaded on the ship and the same container was duly delivered to the purchaser on 24-02-1992, hence no deficiency or defect in service was committed by the appellants or respondent Nos. 2 and 3. On these grounds this appeal has been submitted by the appellants.

The appeal was instituted on 22-09-1997. Both the parties appeared but it could not be heard on various dates fixed. Ultimately on 15-03-2022 the appeal was called when Counsel for the appellant Smt. Suchita Singh was present while the Counsel for the respondents Sri Rajesh Chadha remained absent on repeated calls. The adjournment application submitted by the Counsel was rejected by this bench. Consequently the Counsel for the appellant was heard on appeal.

On hearing the Counsel present in the appeal the findings of this bench are the following.

-This complaint was decreed by the District Consumer Commission. Being aggrieved from the impugned judgment and order the appeal preferred by the appellants/opposite parties of the complaint mainly on the following grounds.

01. The District Consumer Commission has no jurisdiction to

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entertain the complaint as the alleged transaction did not fall within the meaning of 'service' as defined in Section 2(1)(d) of the Consumer Protection Act, 1986.

02. No liability of appellants arose as no privity of contract exists between the complainant and the appellants.

03. The complaint is time barred as the "Indian Carriage of Goods Act 1924, a complaint can be instituted within one year of the default, therefore, the complaint is time barred also.

The appellants in the memo of appeal have alleged that the transaction in question was for commercial use and not for the personal use of the complainant, hence any complaint for deficiency of service could not be maintained at the instance of respondent No.01/complainant as the subject matter of complaint was a purely commercial transaction.

Regarding this contention raised by the appellants it is worth mentioning that the transaction in question reportedly took place on date 29-12-1991 as the exported goods were loaded on a ship at Bombay on 29-12-1991 which were intended to be delivered at USA on or about date 24-02-1992, therefore, the existing Consumer Protection Act, 1986 would be applicable on the transaction. In the initial Consumer Protection Act, 1986 excluded a person from the ambit of definition of term 'consumer' whenever purchase of goods were made for



commercial purpose but such exclusion was not provided in the original Act for a service availed and the person availing services for commercial purposes was not excluded from the ambit of word 'consumer' and he was also considered as definition of the consumer.

The legislature amended the Act by Consumer Protection (Amendment Act) 2002 which brought exclusion of services availed for commercial purpose from purview of the Consumer Disputes Redressal Agencies. Such restriction was imposed after amendment of the Consumer Protection Act in 2002 while this transaction took place in the year 1991/1992, therefore, this argument cannot found force that the District Consumer Commission had no jurisdiction to entertain the

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complaint being the impugned transaction for commercial purposes.

The Hon'ble Apex Court in the case of Shrikant G – Mantri V/s Punjab National Bank Civil Appeal No. 11397 of 2016 judgment delivered on 22-02-2022 clarified the position of the services provided for the commercial purposes before the amendment Act 2002. In Para 28 and 29 the Hon'ble Apex Court has given .....

*28. It could thus be seen that by the 1993 [Amendment Act](#), insofar as services are concerned, wherever the word "hires" was used, the same was substituted by the words "hires or avails of". By the said 1993 [Amendment Act](#), insofar as [Section 2\(1\)\(d\)\(i\)](#) is concerned, an Explanation was provided to the effect that 'commercial purpose' does not include use by a consumer of goods bought and used by him exclusively for the purpose of*

*earning his livelihood by means of selfemployment. It could thus be seen that though the original Act of 1986 excluded a person from the ambit of definition of the term ‘consumer’ whenever such purchases were made for commercial purpose; by the Explanation, which is an exception to an exception, even if a person made purchases for ‘commercial purpose’, he was included in the definition of the term ‘consumer’, if such a person bought and used such goods exclusively for earning his livelihood by means of selfemployment. The legislative intent is clear, that though the purchases for commercial purposes are out of the ambit of the definition of the term ‘consumer’ in the said Act, if a person buys and uses such goods exclusively for earning his livelihood by way of selfemployment, he would still be entitled to protection under the said Act.*

*29. The legislature further noticed several bottlenecks and shortcomings in the implementation of various provisions of the said Act and with a view to achieve quicker disposal of consumer complaints, and to make the said Act more effective by removing various lacunae, the legislature amended the said Act by the [Consumer Protection \(Amendment\) Act](#), 2002 (hereinafter referred to as “the 2002 [Amendment Act](#)”). One of the objects for bringing out the 2002 [Amendment Act](#) was “exclusion of services availed for commercial purposes from the purview*

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*of the consumer disputes redressal agencies”. It could thus be seen that the legislature noticed the mischief, that though [Section 2\(1\)\(d\)\(i\)](#) of the said Act kept out of its purview the goods purchased for commercial purpose, the said restriction was not found in [Section 2\(1\)\(d\)\(ii\)](#) of the said Act. As such, in order to bring [Section 2\(1\)\(d\)\(ii\)](#) at par with [Section](#)*

2(1)(d)(i), the following amendment was effected to in clause (d):

“(c) in clause (d),

(i) in subclause (ii), the following words shall be inserted at the end, namely: “but does not include a person who avails of such services for any commercial purpose”;

(ii) for the Explanation, the following Explanation shall be substituted, namely: ‘Explanation.—For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of selfemployment’;”

Relying upon the aforesaid judgment of the Hon’ble Apex Court this Commission finds that the argument raised by the appellants that the service of insurance availed by the complainant for commercial purpose does not come within the ambit of Consumer Disputes Redressal Fora and the complaint was not maintainable before the District Consumer Commission.

The appellants raised second objection that there was no privity of contract between them and the complainant as the respondents No. 02 and 03 engaged them to ship the cargo to USA and there was no direct agreement or contract between them and the appellants. Regarding this objection it may be seen that the appellants are engaged in the business of transporting goods for hire from one place to another for all persons indiscriminately, therefore, they come in the definition of common carrier as per the Carriers Act, 1865 and they are liable for any loss during transit to the owner of the goods. The definition of common carrier is defined as under:-

Common carrier denotes a person, other than the

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Government, engaged in the business of transporting property under multimodal transport document or of] transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately.

Section-8 of the Carriers Act, 1865 provides as under.

***Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent .-Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any [property (including container, pallet or similar article of transport used to consolidate goods) delivered] to such carrier to be carried where such loss or damage shall have arisen from the [\* \* \*] Criminal Act of the carrier or any of his agents or servants and [shall also be liable to the owner for loss or damage to any such property other than property to which the provisions of section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants.]***

Although the Act defines the liability of common carrier operating within inland navigation but for the sake of principle of a carrier it may be taken that shiper who is transporting the goods of a person remains liable for safety of the goods and to deliver it safely to the destination. In this regard the Indian Carriage of Goods By Sea Act 1925 is squarely applicable to the present transaction of carriage of

the goods in question by ship to the destination in USA. The rules appended to the Act provides the provision governing the present transaction in Article-I Rule A defines carrier as :-

*“Carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper.*

In this transaction the owner of the goods the complainant although engaged respondents No. 3 and 4 who ultimately contacted the appellant the shipper. In this Act the carrier as well as the shipper carries the liability for the goods to be transported

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towards owner of the goods.

In Article-I Rule-5 provides liability of a shipper which is as below:-

*“The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.”*

Looking into the provisions of Indian Carriage Act 1925 it is apparent that as a shipper the appellant has liability towards

owner of the goods delivered, the goods shipped are delivered to the destination safely, therefore, this argument raised by the appellants that they did not have any liability towards the complainant as no privity of contract exists between them and the complainant.

Another point raised by the appellants is that according to the Rule-6 of Article-3 appended to the Indian Carriage of Goods By Sea Act 1925 any action against the shipper or carrier can be taken for non delivery or damages to the goods shipped within one year of the date of delivery or from the date when the goods should have been delivered. As per the complaint itself the goods shipped were destined to be delivered on 24-02-1992 and as per above rule any civil action or the complaint in Consumer Commission could have been brought within one year of 24-02-1992 but the complaint was brought in year 1994 after almost two years of the statutory period provided in Indian Carriage of Goods By Sea Act 1925. In light of the above argument Rule-6 of Article 3 of Indian Carriage of Goods By Sea Act 1925 is seen which is reproduced as below:-

*“Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof*

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*under the contract of carriage, or if, the loss or damage be not apparent, within three days, such removal shall be prima*

*facie evidence of the delivery by the carrier of the goods as described in the bill of lading.”*

As per the complaint the goods were delivered on 28-11-1991 and they were agreed to be delivered by 24-02-1992 but this complaint has been instituted in the year 1994 which may be within limitation as per Section 24A of the Consumer Protection Act 1986 but as per provisions of Indian Carriage of Goods By Sea Act 1925 it should have been brought within one year of the agreed date of delivery. It is settled law that the provisions of special act overshadow the general act, therefore, in this particular case the general Consumer Protection Act is overshadowed by the special act in the particular case i.e. the Indian Carriage of Goods By Sea Act 1925, therefore, the complaint should have been instituted within one year of the agreed date of delivery. The aforesaid Rule-6 provides for institution of a suit in matter of Indian Carriage of Goods By Sea Act 1925, an argument may be raised that the provision is meant for a suit in a civil matter only but the judgment of Hon'ble Apex Court in Economic Transport Organisation reported in 2010 (4) SCC Page 114 provides the answer. The Hon'ble Supreme Court had held in that case that filing a complaint before the Consumer Commission is also to be treated as a suit for the purpose of the Indian Carriage of Goods By Sea Act 1925. Therefore, in light of Rule-6 Article-3 of the Indian Carriage of Goods By Sea Act 1925 and the judgment pronounced by the Hon'ble Apex Court it may be concluded that in this particular case the complaint should have been brought within one year of the agreed date of delivery but the complainant filed this complaint after one year iwhich is definitely time barred and the complaint would fail on this score also.

The learned District Consumer Commission did not consider this aspect and considering the communication of letters

between

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the parties as basis of cause of action and in this way erred that the complaint was within limitation. Therefore, the impugned judgment is liable to be set aside and the appeal is liable to be allowed.

### ORDER

The appeal is allowed. The judgment and order of the District Consumer Commission is set aside and the complaint is dismissed.

There will be no order as to costs.

Let copy of this order be made available to the parties as per rules.

The Stenographer is requested to upload this order on the website of this Commission at the earliest.

**( SUSHIL KUMAR )**  
**SAXENA )**

**( VIKAS**

**PRESIDING MEMBER**  
**MEMBER**



**[HON'ABLE MR. JUSTICE PRESIDENT]  
PRESIDENT**

**[HON'BLE MR. SUSHIL KUMAR]  
JUDICIAL MEMBER**

**[HON'BLE MR. Vikas Saxena]  
JUDICIAL MEMBER**