
(1965) 06 CAL CK 0026

In the Calcutta High Court

Case No : Appeal from Original Order No. 210 of 1964

Assistant Collector of Customs

APPELLANT

Vs

Bilba Paper Private Ltd.

RESPONDENT

Date of Decision : 07-06-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 28(2)
Imports and Exports (Control) Act, 1947 — Section 3(1), 3(2)
Sea Customs Act, 1878 — Section 167(8), 39, 87

Citation : 69 CWN 972 : (1966) 2 ILR (Cal) 74

Hon'ble Judges : Bose, C.J.; B.C. Mitra, J

Bench : Division Bench

Advocate : G.P. Kar, for the Appellant; T.K. Basu, for the Respondent

Final Decision : Allowed

Judgement

B.C. Mitra, J.—This appeal is directed against a judgment and order of Banerjee, J. dated June 14, 1963, whereby a rule nisi, issued on January 5, 1961, was made absolute, a writ of certiorari was issued quashing the adjudication order hereinafter, mentioned and a further order was made restraining the Appellants from giving effect to the same. Liberty was given to the Respondent No. 1 to apply for refund of certain sums paid by it.

2. The Respondent No. 1 carries on business as a dealer and importer of paper and paper-boards. In November, 1952, it imported at Calcutta 163 bales of white Antique Laid printing paper and 143 bales of white glazed News printing paper. It is alleged that the imported goods contained not less than 70% of mechanical wood-pulp weighing more than 40 grams per square metre. These goods were imported under the then existing O.G.L. No. XXIV in the Import Trade Control Policy Book for the Licensing Period July/December, 1952. It is claimed that the said goods were covered by item No. 44, Pt. V of Appendix "A" of the said Book. This item No. 44 runs as follows:

44. Printing paper which contains mechanical wood pulp amounting to not less than 70% of the fibre content and which weighs not less than 40 grams per square metre (newsprint).

3. It is also alleged that the said goods were covered by entry No. 44 read with the foot-note to the same in the First Schedule to the Indian Customs Tariff, 36th Issue, which was in force at the material time. The said entry 44 in the First Schedule and the footnote thereunder are as follows:

44. Paper--all sorts not otherwise specified nature of duty--revenue, standard rate of duty--39.38% ad valorem.

Foot-note:

Under Government of India, Finance Department (Central Revenues), Notification No. 33, dated 22nd June, 1935 as amended subsequently, the following classes of printing paper containing mechanical wood pulp amounting to not less than 70% of the fibre content are exempt from payment of so much of the import duty as is in excess of the amount mentioned against each.

4. On November 8, 1952, the Respondent No. 1 filed two Bills of Entry claiming that the goods were assessable to duty under the said item 3 in the foot-note to entry 44 of the Indian Customs Tariff. The Customs authorities allowed the Respondent No. 1 to clear a lot of 82 bales out of the consignment of 163 bales and 92 bales out of the consignment of 143 bales, on the basis of the statements made in the Bills of Entry. Thereafter, samples were drawn by the Customs authorities from the remaining bales, for ascertaining the correctness of the description of the imported goods as set out in the Bills of Entry, by testing the percentage of mechanical wood-pulp and weight per square metre. On such test the goods were found to be according to the description in the Bills of Entry and were thereupon released on payment of duty in terms of item No. 3 of the foot-note to entry No. 44 of the Indian Customs Tariff.

5. On January 19, 1953, the Respondent No. 1 received a short-levy Notice of Demand for Rs. 10,892-3-0 (later changed to Rs. 9,655-2-0) in respect of the said consignment of 163 bales and a similar notice was also served demanding Rs. 8,787-6-0 in respect of 143 bales. On March 18, 1953, the Respondent was informed in writing that the reasons for the short-levy demand was that, on examination, the goods were found to be assessable to duty under item 44 as "paper other sort at 39.38% ad valorem". On August 11, 1963, the Respondent No. 1 was informed by the Customs authorities that the goods were found to be hard sized paper, suitable for writing. The Respondent No. 1 asked the Assistant Collector of Customs to supply it with the sample, on the basis of which the revised decision as to quality was arrived at. The Respondent No. 1 also furnished the Customs authorities with an affidavit from the shippers and a Test Report from the Institute of Pulp and Paper Technology, Grez, Austria, relating to the mechanical wood-pulp contents of the paper. On February 14, 1955, the Respondent No. 1 was served with a show-cause notice in which it was stated

that on test, the paper was found to be writing paper for the import of which an import licence was necessary. In this notice it was alleged that there was a misdeclaration involving a loss of Rs. 9,655 as the paper was assessable to duty at 39.38% ad valorem. This notice was with regard to 163 bales and a similar show-cause notice was also served with regard to 143 bales. Adjudication proceedings followed and the Respondent No. 1 was held guilty of misdeclaration of the said two consignments. It was found that the goods were assessable to duty at 39.38% ad valorem as writing paper. Personal penalties of Rs. 12,400 and Rs. 13,750 were imposed in respect of the two consignments imported.

6. The Respondent No. 1 paid the additional duty claimed, namely, Rs. 9,655-2-0 for the consignment of 163 bales and Rs. 8,787-6-0 for the consignment of 143 bales. The Respondent No. 1 also paid the personal penalties mentioned above. All the payments, however, were made under protest. Appeals were preferred to the Central Board of Revenue against the orders imposing duty at a higher rate and also the orders imposing personal penalties. By two orders dated October 18, 1956 and March 9, 1957, the Central Board of Revenue upheld the findings of the Customs authorities that the goods imported were writing paper and were assessable at the higher rate as such, but it directed refund of the personal penalties imposed on the Respondent No. 1. The Respondent No. 1 thereafter obtained licence for importing the goods and produced the same before the Customs authorities and obtained refund of the personal penalties which it had paid. The Respondent No. 1 thereafter moved a revision application before the Central Government against the orders of the Board of Revenue and the Central Government made the following order on this revision application:

The Government of India accept the contentions of the Petitioners that there has been a breach of the rules of natural justice because the second Test Report was not shown to them on the basis of which the demand notice for recovery of extra duty was issued. Collector's order and the order-in-appeal passed by the Central Board of Revenue in this connection are, therefore, set aside without going into the merits of the case. This order does not debar the Collector from adjudicating the case of the Petitioners de novo according to law.

7. The revision application before the Central Government was followed by fresh proceedings, which were initiated by two fresh show-cause notices dated October 6, 1958. By these notices the Respondent No. 1 was asked to show cause why penal action should not be taken against it for contravention of Section 3(1) of the Imports and Exports (Control) Act. In these notices it was stated that on a retest, the paper was found to be hard sized Cream Laid paper which could serve the purpose of writing paper. Such paper, it was stated, could not be allowed to be imported without a licence and was assessable to duty at the higher rate of 39.38% ad valorem. The Respondent No. 1 was called upon to show cause why penal action should not be taken against it u/s 167(8) of the Sea Customs Act, read with Section 3(2) of the Imports and Exports (Control) Act. On January 3, 1959, the Respondent No. 1 submitted its explanation in answer to the said show-

cause notice in respect of 163 bales of paper and on January 5, 1959, a similar explanation was submitted in respect of the show-cause notice in regard to 143 bales of paper. A personal hearing was given to the Directors of the Respondent No. 1 on May 5, 1959. The charges made against the " Respondent No. 1 in the said show-cause notices were disputed. On June 14, 1960, another personal hearing was given to the Respondent No. 1 by the Customs authorities. On November 22, 1960 the Respondent No. 2 passed an order with regard to the 163 bales, by which he held that the assessment of the said consignment as writing paper other sorts under item No. 44 of the Indian Customs Tariff at 39.38% ad valorem was in order and that the claim of the Respondent No. 1 for reassessment of the said paper as news printing paper was untenable. A similar order was made with regard to the 143 bales in the same terms.

8. By the said orders it was held that the tests originally made were found to be unsatisfactory, as the sizing of the paper was omitted to be determined. For that reason a sample was again sent for re-test and market enquiry was carried out to ascertain the trade usage of the paper, which was cleared as printing paper. It was held that the demand notices issued within three months from the date of payment of duty in terms of Section 39 of the Sea Customs Act, were in order and according to law. It was further held that on re-test and market enquiry, the paper was found to be hard sized Cream Laid paper used for writing. Hard size was a factor which made paper suitable for writing and printing paper was generally of soft size. On the authority of the late Commercial Department Resolution No. 202-T(3)/25 dated May 23, 1936, hard sized paper was classifiable as writing paper and the paper imported, being hard sized, was correctly assessable as writing paper other sorts. On these grounds it was held that the assessment of the said two consignments of paper, as writing paper other sorts, under item 44 of the Indian Customs Tariff at the rate of Rs. 39.38% ad valorem was correctly made. On these two orders being made, assessing duty at the higher rate, the Respondent No. 1 moved this Court under Article 226 of the Constitution, for appropriate writs for quashing the said two adjudication orders and obtained a rule nisi which was discharged by Banerjee, J. as hereinbefore mentioned. After the rule was issued, the Respondent No. 1 made an application for amendment of the petition on which the Rule was issued, by incorporating therein a prayer for a writ of mandamus restraining the Respondents from giving effect to the notice of demand dated January 19, 1963. This prayer for amendment of the petition, however, was rejected.

9. One of the points urged before the trial Court, on behalf of the Respondent No. 1 was that the adjudication orders should be set aside as there was violation of the principles of natural justice. The Customs authorities, it was argued, had taken into consideration certain market enquiries, the nature of which was not disclosed to the Respondent No. 1. This, it was argued, could not be done and the nature and the result of the enquiries should have been communicated to the Respondent No. 1. Learned Counsel for the Customs authorities had conceded that there was violation of the principles of natural justice for omission, on the

part of the Customs authorities, to communicate the nature and the result of the market enquiries to the Respondent No. 1. It was conceded, on behalf of the Customs authorities, that the adjudication orders ought to be set aside on that ground.

10. Learned Counsel for the Respondent No. 1, however, further contended before the trial Court, that the demand notices for short-levy were time-barred and therefore, the adjudication proceedings and the orders made thereon were bad and no adjudication proceedings should have been held at all. It was argued before the trial Court, that a notice u/s 39 of the Sea Customs Act should not be issued on an apprehension of short-levy of duty and that such notice could be issued only when short-levy of duty was factually established.

11. Banerjee, J. accepted the above contention of the Learned Counsel for the Respondent No. 1 and held that a notice u/s 39 of the Sea Customs Act could not be issued on an apprehension of short-levy of duty and that the occasion for the issue of such a notice was the factum of short-levy, through inadvertence, error, collusion, misconception or misstatement. It was further held that when short-levy of duty was factually established on any of the above grounds, then only the occasion arose for issue of a notice u/s 39 and as the notices u/s 39 were issued in anticipation of determination that customs duty had been short-levied, the notices dated January 19, 1953, u/s 39 of the Sea Customs-Act were premature and should be ignored and if these notices were ignored then the show-cause notices were issued beyond the period of limitation and the Respondent No. 1 could not be proceeded against on the basis of such belated notices.

12. Before proceeding any further, I should set out Section 39 of the Sea Customs Act as the contentions of the parties in this appeal depend on interpretation of this section which runs as follows:

When custom duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of the officers of Customs, or through misstatement as to real value, quantity or description on the part of the owner, or when any such duty or charge, after having been levied, has been owing to any such cause, erroneously refunded, the person chargeable with the duty or charge so short-levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess, on a notice of demand being issued to him within three months from the date of the first assessment or making of the refund; and the Customs Collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or re-paid.

Mr. G.P. Kar, Learned Counsel for the Appellants, submitted that the scope and effect of Section 39 were misconstrued by the trial Court. He argued that a demand notice u/s 39 was issued for the purpose of initiating proceedings, where customs duty or charge had not been levied or had been short-levied, through inadvertence, error or collusion etc. It was in the nature of a claim by the

Customs authorities, in cases of failure to charge customs duties or where such duties had been short-levied. Such a claim is followed by a show-cause notice, when the party charged is given the opportunity to produce materials against the claim of the Customs authorities. It was argued that a notice u/s 39 was not a final determination of the claim by the Customs authorities and that such determination was made upon a hearing on the show-cause notice issued by the Customs authorities. Mr. Kar further argued that the contention raised on behalf of the Respondent No. 1 before the trial Court that a notice u/s 39 could be issued only when the Customs Collector came to know or to possess materials showing that there was a short-levy, could not be sustained. The trial Court, Mr. Kar argued, had proceeded on the footing that the notices dated January 19, 1953, had been issued on a mere apprehension and were not issued upon a determination that there was a short-levy on the consignment imported, by the Respondent No. 1.

13. In this case two notices were issued both dated January 19, 1953, in respect of the said two consignments of paper. These notices, however, were not annexed to the petition, but they were produced before us at the hearing of this appeal and were tendered and marked as exhibits by consent of parties. In order to appreciate the contentions of Mr. Kar, it is necessary to refer to the material portion of the notices dated January 19, 1953, which is as follows:

I have to inform you that the customs duty in respect of the above consignment is found to have been short-levied, I therefore demand u/s 39 of the Sea Customs Act, 1878, that the deficiency amounting to Rs. 10,892-2 should be paid within fifteen days from the receipt hereof.

If you have any representation to make in regard to the above demand you should do so within the said period of fifteen days.

There is nothing in this notice to show that it was issued on an apprehension of short-levy of duty. On the contrary, there is a clear statement that customs duty was found to have been short-levied and there was a deficiency amounting to a specific sum, namely, Rs. 10,892-2 in respect of one consignment and Rs. 9,829-1 in respect of other. In our opinion, the contention of the Respondent No. 1 that the said notices dated January 19, 1953, u/s 39 of the Sea Customs Act, were issued on a mere apprehension of short-levy, cannot be sustained.

14. It was next argued by Mr. Kar that no challenge was made by the Respondent No. 1 in its petition, to the legality or validity of the said notices dated January 19, 1953. No relief had been asked for in the petition with regard to the said notices, which were neither set out in, nor annexed to the petition. An attempt was made by the Respondent No. 1 to amend the petition by incorporating a prayer for a writ of mandamus restraining the Customs authorities from giving effect to the notices of demand dated January 19, 1953. But this prayer, as has been noticed earlier, was rejected by the trial Court. In this state of affairs, Mr. Kar argued, it was not open to the Respondent No. 1 to

contend that the notices u/s 39 were invalid or illegal and should be ignored. Mr. Kar also referred to (sic) rule nisi issued in this matter in which, again, there is no refer-e (sic) to the said notices dated January 19, 1953.

15. In ground (b)(iii) set out under para. 24 of the petition, (sic) the legality of the said notices u/s 39 has been chall-(sic) by the Respondent No. 1 and it has also been alleged that the (sic) of the said notices is an abuse of the power vested in the (sic) authorities. In ground (b)(vii) it has been submitted that (sic) case did not come within Section 39 and that the condition precedent to (sic) applicability of the section had not been fulfilled. But although (sic) allegations and submissions have been made in the petition, no relief was asked for with regard to the said notices and the belated attempt to incorporate a prayer for relief with regard to the said notices was also rejected.

16. In our opinion, it was not open to the Respondent No. 1, in the facts of this case, to contend that the notices u/s 39 of the Sea Customs Act should be ignored. No relief could be asked for by the Respondent No. 1 with regard to the said notices and if the said notices remain valid notices, as they should, it could not be held by the trial Court that the show-cause notices were issued beyond the period of limitation prescribed in Section 39 of the Act. Section 39 of the Act has prescribed a period of limitation with regard to a notice of demand for short-levy on any of the grounds mentioned therein. The date of assessment in this case was November 21, 1952 and the demand notices for short-levy dated January 19, 1953, were issued clearly within the period prescribed u/s 39. The first show-cause notices were issued on February 14, 1955 and the second show-cause notices were issued on October 6, 1958. These show-cause notices could not be treated as barred by limitation as the demand notices, dated January 19, 1963, were issued within the time prescribed by the statute. No limitation has been prescribed for issuing show-cause notice after a demand notice has been issued. In this case the show-cause notices had been treated by the trial Court as the demand notices under s 39 of the Act and it was for that reason that it was held that these notices were beyond the time prescribed by the statute. In our opinion, Mr. Kar's contentions that the demand notices dated January 19, 1953, cannot be assailed or challenged by the Respondent No. 1, are well-founded. The demand notices were not issued on mere apprehension. These notices made it clear that duty was short-levied and claimed a specific sum for such short-levy. The demand notices should be treated as a claim of the Customs authorities for short-levy, which claim is liable to be revised after the party had shown cause upon a show-cause notice being issued thereafter. Indeed, if a demand notice u/s 39 of the Act is to be issued only after final determination of the amount of short-levy, a demand notice for short-levy u/s 39 can be seldom issued, if at all, as the final determination of the amount of short-levy can be made after the party is given an opportunity to make its represent (sic) and after he is heard on the same.

17. The next contention of the Learned Counsel for the Appellants, was that the

demand notices dated January 19, 1953, (sic) u/s 39 of the Sea Customs Act, were administrative orders (sic) was argued that it was for the Customs authorities to decide if (sic) had been a short-levy of customs duty on any of the grounds (sic) tioned in Section 39 of the Act. But though the issue of the notice was (sic) administrative act, all subsequent proceedings after the issue of (sic) notice, it was argued, were quasi-judicial in nature. The subsequent proceedings commenced with the show-cause notices issued to the Respondent No. 1. These notices were followed by personal hearing and the proceedings terminated with the order made by the Respondent No. 2, by which he held that the assessment of the goods as writing paper, other sorts, under item 44 of the Indian Customs Tariff at 39.38% ad valorem, was in order and that the claim of the Respondent No. 1 for reassessment of the said paper as newsprints was untenable and was, therefore, rejected.

18. Mr. Tarun Bose, Learned Counsel for the Respondent No. 1, also contended that the said notices dated January 19, 1953, were administrative orders. He, however, contended, that even though it was an administrative order, the grounds on which an order u/s 39 could be made as specified in the said section, were conditions precedent to the issue of a demand notice. I shall deal with the latter contention of Mr. Bose, namely, that the grounds were conditions precedent, which must be fulfilled before a demand notice could be issued, later. Mr. Bose, however, very fairly invited our attention to a decision of the Supreme Court in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, , in which it was held that the legal position was that the assessment of a tax on person or property was of a quasi-judicial character. In this appeal notices u/s 39 dated January 19, 1953, did not deal with the levy or realisation of a tax, as such, but it dealt with a statutory imposition, namely, a deficiency in customs duty arising from short-levy. These demand notices, however, were not a final, determination of the liability of the party. The demand notices were followed by show-cause notices and a personal hearing. All subsequent proceedings after the issue of the notice u/s 39 are in our view, quasi-judicial in nature. The issue of a notice u/s 39 is not a final determination of the liability of a party. This liability was determined after the proceedings arising out of the show-cause notices terminated in the order which was made by the Customs authorities. It is these subsequent proceedings, terminating with the determination of liability, which should be treated as quasi-judicial in nature and not the issue of the notice u/s 39 of the Act. In support of the contention that the notice u/s 39 was an administrative order and not a quasi-judicial order, Mr. Kar firstly relied upon a Bench decision of the Bombay High Court in Glaxo Laboratories (India) Private Ltd. v. Issue Venkateswaran AIR 1959 Bom. 373 in which it was held that when an assessment was made u/s 87 of the Sea Customs Act, the assessment order at the initial stage was not a quasi-judicial order. Mr. Kar also referred to a Bench decision of the Gujarat High Court in Ramnath Agarwal Vs. G.S. Iyer, Collector of Customs, Kandla and Another, . In that case a notice u/s 39 of the Sea Customs Act was issued on account of short-levy in respect of certain goods. It was held

that the action taken by the Customs authorities u/s 39 was an administrative or executive action and they could not be regarded as acting in a quasi-judicial manner. It was further held that before making the order u/s 39, the Customs authorities were not bound to hear the party. The contention of the Learned Counsel for the Appellants that the demand notices dated January 19, 1953, are administrative orders, is therefore well-founded.

19. Mr. Tarun Bose, however, contended that Section 39 of the Sea Customs Act lays down various conditions, which must be fulfilled before a notice under that section could be issued. He argued that the Customs authorities were required to come to a conclusion, objectively, that there had been a short-levy and that this short-levy had been due to inadvertence, error, collusion or misconstruction on the part of the officers of the Customs or through misstatement as to real value, quantity or description on the part of the owner. It was argued that these grounds should be treated as conditions precedent to the making of any order u/s 39 and unless these conditions precedent were fulfilled, no order could be made or notice issued u/s 39 of the Act. He further argued that there were no materials before the Customs authorities to come to a conclusion that there had been short-levy on any of the grounds mentioned in Section 39.

20. This contention of Mr. Bose is not well conceived. In the first place it cannot be said that the Customs authorities had no material before them, before the notices u/s 39 were issued. In para. 8 of the petition, the Respondent No. 1 stated that the Collector of Customs informed it, by a letter dated March 18, 1953, that on examination, the goods were found to be assessable to duty under item 44 as "paper other sort" at 39-38% quite plainly, the Customs authorities had materials before them to come to a conclusion that there had been a short-levy on the imported goods. As to whether the materials were sufficient to justify the issue of a notice u/s 39, is a different question altogether. It is to be remembered that the notices u/s 39 issued on January 19, 1953, were not treated as final determination of the liability of the Respondent No. 1. These notices were followed by show-cause notices and the Respondent No. 1 was given opportunities to make representations and also of a personal hearing. It is true that an assessing authority discharging administrative functions must act according to law as was held by a Bench decision of this Court in *Assistant Collector of Customs, for Appraisement and Others Vs. Mercantile Express Co. Ltd.*, . The duty to be assessed by the authorities, even if the order of assessment is an administrative order, must be assessed according to law. The notices issued u/s 39 made it plain that they were issued u/s 39 of the Sea Customs Act, 1878 and a demand was made for the deficiency as set out in the said notices. It is also true that the grounds on which the short-levy of duty had arisen were not mentioned in the notices, but it cannot be overlooked that the Respondent No. 1 was left in no doubt as to the nature of the demand. Section 39 does not require the Customs authorities to set out, in the notice of demand, the particular ground or grounds which occasioned the short-levy of customs duty. In our opinion, it cannot be said that the notices u/s 39 were issued in

violation of the requirement of that section or that they were illegal for not setting out therein the grounds for which duty was short-levied.

21. Turning now to Mr. Bose's argument that the grounds set out in Section 39 should be treated as condition precedent and that the Customs authorities should be objectively satisfied with regard to fulfilment of one or other of the grounds, it should be noticed that there is nothing in Section 39 which requires the Customs authorities to be objectively satisfied about the fulfilment of any or all the grounds before a notice can be issued under that section. But even if it is held that the satisfaction of the Customs authorities as to the grounds mentioned in Section 39 is a condition precedent, it cannot be said that the notices u/s 39 were issued contrary to the provisions in Section 39, as it is plain that before issuing the notices the goods were examined and on such examination, they were found to be assessable at the higher rate. In the facts of this case, it cannot be contended that the notices u/s 39 were issued without compliance with the requirement of that section. We cannot, therefore, accept Mr. Bose's contention that the conditions mentioned in Section 39 should be treated as condition precedent and the notices dated January 19, 1953, were issued without fulfilment of such conditions precedent.

22. Mr. Bose, however, raised a further contention, namely, that u/s 39 there was no scope for making any order on a prima facie case or for making a tentative finding, to be confirmed later by a thorough investigation after a show-cause notice was issued. He argued that the determination on the question of his client's liability u/s 39 must be a final determination and the proceedings following the issue of show-cause notices were not warranted by law. There is hardly any merit in this contention. If the issue of a notice u/s 39 is an administrative act, as was contended by Mr. Bose, the determination of his client's liability without giving it an opportunity of making representations, or of being heard, would have been clearly violative of the principles of natural justice. Even if the statute authorises impositions of a liability by an administrative order, such an order cannot be made by ignoring the principles of natural justice. Indeed, if the liability on the Respondent No. 1 was imposed without giving it an opportunity of making representations or of being heard, such an order would have been liable to be quashed on the ground of violation of the principles of natural justice.

23. It was next contended by Mr. Bose that comparison between Section 28(2) of the Customs Act, 1962 and Section 39 of the Sea Customs Act, 1878, made it clear that a notice under the latter should be a final determination of the liability of the party charged. He argued that there was nothing in Section 39 of the Sea Customs Act which justified treating the notices issued under that provision, as the starting point of the proceedings, to be followed by show-cause notices and a personal hearing. The notice issued u/s 39 of the Sea Customs Act should be, Mr. Bose argued, a notice of demand of an amount which has been determined to be due on account of short-levy. He next referred to Section 28(2) of the Customs

Act, 1962 and argued that the Customs Act, 1962, had provided for entertaining representations from a party charged and also for consideration of such representations. Such a provision for filing of representations and the consideration of the same, Mr. Bose argued, was expressly made in the Customs Act, 1962, but there was no such provision in Section 39 of the Sea Customs Act, 1878. There was, therefore, Mr. Bose argued, no justification for treating a notice u/s 39 of the Sea Customs Act as the notice of a claim, to be reconsidered and revised after receiving objections from the party charged and after having given him a personal hearing. Mr. Bose further argued that the procedure provided in Section 28(2) of the Customs Act, 1962, should not be read into Section 39 of the Sea Customs Act, 1878.

24. We are, however, not impressed by the above contention of the Learned Counsel for the Respondent No. 1. Section 39 of the Sea Customs Act provides for a notice of a demand by the customs authorities for a short-levy. If such a demand is to be treated as a final determination of the claim, as contended by Mr. Bose, failure, omission or neglect to give an opportunity to make representations against the demand or a personal hearing on such representations, would make such a demand bad on the ground of violation of the principles of natural justice. If the notice of demand u/s 39 of the Sea Customs Act, is a demand of duty for short-levy, which can be issued only on final determination of the liability of the party charged, the issue of the notice must be treated as a quasi-judicial act and in any such act the rules of natural justice must be strictly adhered to. The provision made in Section 28(2) of the Customs Act, 1962, for representations by the party charged and consideration of such representations, are nothing more than a statutory recognition of a practice which was rightly and properly followed and which should have been followed in cases where notices u/s 39 of the Sea Customs Act, 1878, were issued. There is nothing in the Sea Customs Act, 1878, which prevents or prohibits the Customs authorities from giving a show-cause notice to the party charged or hearing him on his objections, if any. Issue of a show-cause notice by the Customs authorities after the issue of a demand u/s 39 of the Sea Customs Act and the opportunity of being heard given to the party charged, where in accordance with the law established. If a show-cause notice was not issued and an opportunity of being heard was not given to the party charged, the order imposing a liability would have been manifestly laid bare to a charge of violation of the principles of natural justice. This contention of Mr. Bose, therefore, fails.

25. There remains only one other contention of Mr. Bose to be considered, namely, the order for refund of the sum of Rs. 8,787-6-0 paid on or about April 25, 1955 and the sum of Rs. 9,655-2-0 paid on or about June 16-, 1955, on account of short-levy. It was contended by Mr. Bose that the order of the Respondent No. 2 imposing the duty at the higher rate should be set aside and the Appellant should be directed to refund the said two sums to his client. He argued that it was now well-settled that an order for refund could be made by the Court in appropriate cases and in support of this contention he relied upon

the majority view of the Supreme Court in Universal Imports Agency and Another Vs. The Chief Controller of Imports and Exports and Others, and also a Bench decision of this Court in Deputy Collector of Customs v. Ramchand Jagadishchand 68 C.W.N. 974. This contention of Mr. Bose is well-founded. If the adjudication order is to be quashed, as it should be quashed, on the ground of violation of the principles of natural justice, the Respondent No. 1 should have the opportunity to obtain refund of the said two sums paid by the Respondent No. 1.

26. For the reasons mentioned above, this appeal is allowed in part. The judgment of the trial Court dated June 14, 1963, except to the extent that it has been held that the adjudication order was liable to be quashed on the ground of violation of the principles of natural justice, is set aside. The order, however, directing the issue of a writ of certiorari quashing the adjudication order and also the issue of a writ of mandamus restraining the Appellants from giving effect to the adjudication order, is upheld but only on the ground that in making the adjudication order there has been a violation of the principles of natural justice. The Appellants and the Respondent No. 2 are directed to act according to law in fresh proceedings, if any, that may be commenced in the matter of adjudication of the goods which were the subject matter of this appeal. The Respondent No. 1 will be at liberty to take appropriate steps for obtaining refund of the two sums of money, namely, Rs. 8,787-6-0 and Rs. 9,655-2-0. Each party is to pay its own costs. Certified for two counsel.

Bose, C.J.

27. I agree.