

(1960) 07 CAL CK 0023

In the Calcutta High Court

Case No : A.F.O.O. No. 114 of 1958 (Matter No. 155 of 1955)

Assistant Collector of Customs, for Appraisalment and Others	APPELLANT
Vs	
Mercantile Express Co. Ltd.	RESPONDENT

Date of Decision : 29-07-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Sea Customs Act, 1878 — Section 188

Citation : AIR 1961 Cal 636 : (1961) 1 CALLT 1 : 65 CWN 153 : (1961) 2 ILR (Cal) 265

Hon'ble Judges : S.C. Lahiri, C.J;R.S. Bachawat, J

Bench : Division Bench

Advocate : G.P. Kar and D. Pal, for the Appellant; Subimal Roy, S. Sen and S.B. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Bachawat, J.—This is an appeal from an order under Article 220 of the Constitution. The respondents imported a quantity of Armco Nestable Steel Culverts complete with accessories required by the Government of Assam under an import license issued to the Chief Engineer, Public Works Department, Assam. The respondents duly submitted a bill of entry in accordance with Section 29 of the Sea Customs Act, 1878 (Act VIII of 1878) stating the real value, quantity and description of the goods. They contend that the goods are assessable to customs duty under item 63(9) of the first schedule to the Indian Tariff Act, 1934 (Act XXXII of 1934). By an order dated the 30th June, 1955 the Assistant Collector of Customs for Appraisalment rejected the respondents' contention and assessed the duty under item 63(28) of the first schedule to Act XXXII of 1934. The duty so assessed amounts to Rs. 73315/8/-. The respondents appealed to the Collector of Customs, Calcutta. Pending the appeal they deposited the sum of Rs. 73315/8/- with the Collector of Customs under protest as required by Section 189 of the Sea Customs Act. By an order dated the 11th July, 1955, the Collector of Customs dismissed the appeal.

2. On the 8th September, 1955, the respondents applied to D. N. Sinha, J., under Article 226 of the Constitution for appropriate writs setting aside the orders of the customs authorities and for consequential reliefs and obtained a rule calling upon the Assistant Collector of Customs for Appraisement, the Collector of Customs, Calcutta and the Union of India to show cause why the reliefs prayed for should not be granted. By an order dated the 30th April, 1958, P. B. Mukharji, J., made the rule absolute, set aside both the orders dated the 30th June, 1955 and the 11th July, 1955, issued a writ in the nature of certiorari quashing the two orders and a writ in the nature of mandamus directing the appellants to forbear from giving effect to those orders and directed the customs authorities to proceed according to law to assess the goods under item 63(9) and to make a refund to the respondents, if on such assessment any money becomes refundable to them. The customs authorities and the Union of India have preferred an appeal from this order.

3. In this Court Mr. Kar contended that the impugned orders are administrative, and not quasi-judicial orders and as such the Court has no power to issue a writ in the nature of certiorari to quash them. This contention was not raised in the trial court.

4. The classic test of a quasi-judicial body to whom a writ of certiorari or prohibition may be issued is thus laid down by Atkin, L. J. in *Rex v. Electricity Commissioners*, (1924) 1 KB 171.

"Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs,"

5. The original order of assessment was passed u/s 87 and the appellate order confirming the assessment was made u/s 188 of the Sea Customs Act. There can be no doubt that in making these orders the Sea Customs authorities were exercising legal authority to determine questions affecting the right of citizens. The important question is whether they had the duty to act judicially.

6. By Section 29 of the Sea Customs Act on the importation or exportation of any goods the owner of the goods is required to submit his bill of entry or shipping bill and to declare therein the real value, quantity and description of the goods. In case of doubt the Customs Collector is given the power to require the owner and other persons to produce documents and to furnish information whereby the real value, quantity and description of the goods may be ascertained. Section 29-A provides for assessment of duty prior to examination of goods. Section 29-B enables provisional assessment of duty. Section 30 gives the basis of the computation of the real value. Section 31 requires the examination of ad valorem goods for the purpose of finding out their real value. In case of under-valuation of the goods by the owner, Section 32 provides for retention of the goods for the use of the Central Government on payment of the value stated in the bill of entry

or shipping bill. Sections 33, 34, 34-A and 35 provide for abatement of duty on goods which have sustained damage or deterioration before delivery of the bill of entry. Section 87 provides that "on the delivery of such bill the duty "if any" leviable on such goods shall be assessed." Section 182 provides for adjudication of confiscation, increased rate of duty or penalty. Section 188 provides that any person aggrieved by any decision or order passed by an officer of Customs under the Act may within three months of the date of the decision or order appeal to the prescribed authority and such authority may thereupon make such further enquiry and pass such order as he thinks fit confirming, altering or annulling the decision or order appealed against. Under this section an appeal lies against an order or decision as to the rate of duty applicable to the goods and the category in the tariff classification into which the goods fell. See AIR 1940 105 (Privy Council) . Section 191 provides that the Central Government may on the application of any person aggrieved by any decision or order passed under the Act by any officer of Customs or Chief Customs authority, and from which no appeal lies, reverse or modify such decision or order. By a rule made u/s 9(c) every appeal u/s 188 and every application for revision u/s 191 is required to be accompanied by a copy of the impugned order or decision. By a notification issued u/s 188 certain officers including the Collector of Customs, Calcutta, are empowered to hear appeals from decisions and orders of officers of Customs subordinate to them, provided that if between the date of the order or decision and the date of the hearing of the appeal the officer who passed the order or decision has been promoted to be the officer by whom the appeal would otherwise be heard, the appeal shall lie to the Central Board of Revenue.

7. Where the duty on the goods is assessed on the basis of the statements contained in the bill of entry or shipping bill, ordinarily no dispute arises and the assessment is made as a matter of course. But those statements may not be accepted and disputes may arise in course of the assessment proceedings; there may be disputes as to the real value and quantity of the goods, there may be disputes as to the correct description of the goods, the category to which they belong and the rate of duty leviable on them. The assessing authority must then ascertain the relevant facts, determine the real value, quantity and description of the goods and the rate of duty leviable and assess the duty according to law.

8. In the case of Glaxo Laboratories (India) Private Ltd. Vs. A.V. Venkateswaran and Another, , the Bombay High Court has held that the order of assessment made u/s 87 of the Sea Customs Act is an administrative, and not a quasi-judicial act and the writ in the nature of certiorari cannot issue to set it aside. We do not propose to decide that question in this case. For the purposes of this case we shall assume that the order of assessment is an administrative act, nonetheless, we are satisfied that the appellate authority deciding an Appeal under S. 188 from the order of assessment discharges a quasi-judicial function.

9. At the appellate stage a definite controversy in the nature of a lis arises between the assessee and the Revenue. There is a proposal in the form of an

assessment by an officer of customs and an opposition by the assessee appellant. The dispute concerns the liability of the assessee to pay the customs duty according to law. The dispute must be decided by an appellate authority who must be an officer other than the assessing officer, solely, on the evidence before him and according to the laws in force. The appellate authority may make such further enquiry as he thinks fit for the purpose of deciding the dispute. All these considerations show that the appellate authority deciding the appeal u/s 188 from an order of assessment discharges a quasi-judicial function. In AIR 1940 105 (Privy Council) Lord Thankerton observed that the Statutory Tribunal must observe the fundamental principles of judicial procedure. The appellate authority is under a duty to act judicially even though the order appealed from is an administrative order. In *Glaxo Laboratories (India) Private Ltd. Vs. A.V. Venkateswaran and Another*, Chagla, C. J. observed that this conclusion is consistent with the ruling given in that case.

10. In the context of the duty imposed on it by statute, the appellate tribunal may be under a duty to act judicially even though the order appealed from is an administrative order. See *Local Government Board v. Arlidge* 1915 AC 120 . In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , the Supreme court held that the appellate authority hearing an appeal u/s 9 of the Eastern Bengal and Assam Excise Act 1910 (E. B. and Assam Act I of 1910) from an order of selection of a tender for settlement of a country spirit shop exercised a quasi-judicial function and was amenable to an order in the nature of certiorari. Section 9 of the E. B. and Assam Act I of 1910 and the rules framed thereunder are noted at pages 584 and 587 (of SCA): (at pp. 405 and 406-407 of AIR) of the Report and may be usefully compared with Section 188 of the Sea Customs Act and the rules and notifications made or issued under it. The selection of a particular tenderer under E. B. and Assam Act I of 1910 was more Or less a matter of administrative discretion with the officer making the settlement, yet the authority hearing an appeal from the order of selection was held to be a quasi-judicial body. The instant case is a stronger case; the assessment of duty is not a matter of administrative discretion but has to be made solely on the basis of the facts of the case and the law applicable to it. In *Nundo Lal Bose v. Corporation for the town of Calcutta* ILR 11 Cal 275, this Court held that the decision of the Commissioners of the town of Calcutta on appeal from an assessment of municipal rates by the municipal assessor acting under the Calcutta Municipal Consolidation Act, 1876 (Bengal Act IV of 1876) was a quasi-judicial act and could be quashed on certiorari for excess of jurisdiction. It is well settled that the same proceeding may be administrative at one stage and quasi-judicial at another, *Errington v. Minister of Health* (1935) 1 KB 249; *Province of Bombay Vs. Kusaldas S. Advani and Others*, , It was thus decided in *R. v. City of Westminster Assessment Committee; Ex parte Gos-venor House (Park Lane) Ltd.* (1941) 1 KB 53 that the function of an assessment committee hearing an objection to a provisional list or a valuation list under the Valuation and Metropolis Act, 1869

(32 and 33 vict. c. 67) is quasi-judicial though at other stage of the assessment proceedings its function is ministerial and executive.

11. Mr. Kar contended that the effect of the decision of the Supreme Court in *Maqbool Hussain Vs. The State of Bombay*, is that the decisions of the Sea Customs authorities are not quasi-judicial. This contention is baseless. The Supreme Court decided in that case that the order of confiscation passed by the Sea Customs authorities u/s 167(8) of the Sea Customs Act did not bar a subsequent prosecution for an offence u/s 23 of the Foreign Exchange Regulation Act in respect of the same act. The proceeding before the Sea Customs Authorities was not a prosecution and the order of confiscation was not a punishment inflicted by a court Or judicial tribunal within the meaning of Article 20(2) of the Constitution. The bar of Article 20(2) of the Constitution is not attracted unless there has been a prosecution and" a punishment before a court of law or a judicial tribunal. The Sea Customs Authorities are not courts of law nor judicial tribunals and the adjudging of confiscation, increased rate of duty or penalty do not constitute a judgment or order of a court or judicial tribunal. The question whether the Sea Customs authorities were under a duty to act judicially was not in issue in that case. Though the adjudication of confiscation, increased rate of duty or penalty are not judgments of a court or judicial tribunal, such an adjudication is a quasi-judicial order amenable to the remedy of certiorari and prohibition : see *Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others*, , *Leo Roy Frey Vs. The Superintendent, District Jail, Amritsar and Another*, , *F.N. Roy Vs. Collector of Customs, Calcutta*, , *Assistant Collector of Customs for appraisement and Another Vs. Soorajmull Nagarmull and Another*, .

12. Since the appellate order is a quasi-judicial order, it is amenable to the remedy of certiorari. The further question whether the respondents are entitled to any relief even assuming that the appellate order is an administrative order therefore does not arise. It is plain however that an assessing authority discharging an administrative function is-not above the law. The assessing authority is bound! to assess the duty according to law and if the very-basis of. the assessment is illegal, a writ of mandamus may well issue commanding the authority to forbear from enforcing the illegal order : see *Glaxo Laboratories (India) Private Ltd. Vs. A.V. Venkateswaran and Another*, .

13. Mr. Kar next contended that since the appellate order is by Section 188 made final and since the Sea Customs Act contains a precise and self-contained code of appeal and revision the High-Court has no power to quash the order on certiorari. For this purpose he relies on the decision in AIR 1940 105 (Privy Council) . In this case the Privy Council decided that the Sea Customs Act excludes, the jurisdiction of the civil courts to entertain a-. suit challenging the merits of an appellate order passed on appeal from an order of assessment and subsequently confirmed on revision, adjudging the rate of duty leviable on the goods; the Privy Council observed however that the appellate order could be challenged in a suit in cases where the provisions of the Act have not been

complied with or where the tribunal has not complied with the fundamental principles of judicial procedure. This decision is entirely distinguishable. The Privy Council was not called upon to consider the question whether the orders were open to challenge on certiorari for excess of jurisdiction or for error of law apparent on the face of the record.

14. Section 188 no doubt provides that "every order passed in appeal under this section shall be subject to the power of revision conferred by Section 191, be final." Though the section makes the appellate order final, it does not take away the power of the High Court to quash the order on certiorari. The remedy of certiorari is not taken away, save by express and clear words. A statute providing that the decision of the statutory tribunal shall be final does not on its true construction prohibit an application for certiorari and in spite of that provision the remedy of certiorari is available to quash the decision: see ILR 11 Cal 275 at p. 278, *R. v. Medical Appellate Tribunal*; *Ex parte, Gilmore* (1957) 1 QB 574. In the latter case Denning, L. J. observed at page 583 of the Report: "on looking at the old books I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words. The word "final" is not enough. That only means "without appeal". It does not mean "without recourse to certiorari." It makes the decision final on the facts, but not final on the law. Notwithstanding that the decision is by a statute made "final", certiorari can still issue for excess of jurisdiction or for error of law on the face of the record.

15. Similarly in this case in spite of the decision of the appellate authority being made final by section 188 of the Sea Customs Act certiorari may still issue to quash the decision for excess of jurisdiction or for an error apparent on the face of the record.

16. I should add that in this country the power of the High Court to issue an order in the nature of certiorari under Article 226 of the Constitution cannot be taken away even by express words. The Constitution is paramount. Any law which curbs or fetters or restricts the power of the High Court under Article 226 of the Constitution is repugnant to that article and to that extent void : see *Assistant Collector of Customs for appraisement and Another Vs. Soorajmull Nagarmull and Another*, .

17. Mr. Kar next contended that as the order of assessment and the appellate order were passed in the exercise of the power conferred by laws which are valid and constitutional, the assessee cannot complain of the infraction of a legal right and is not entitled to ask for the issue of a writ under Article 226 of the Constitution quashing those orders. For this purpose he relied on the decision in *Gulabdas and Co. and Another Vs. Assistant Collector of Customs and Others*, . In that case an order of assessment levying duty on certain imported goods on the basis that they were coloured pencils assessable under item 45(4) and were not crayons or stationery not otherwise specified assessable under item 45(a) of the first schedule to the Indian Tariff Act, 1934 as also the appellate and revisional orders confirming the assessment were challenged by a writ petition

under Article 32 of the Constitution. The Supreme Court held that there was no infraction of any fundamental right and as such the writ petition under Article 32 of the Constitution was not maintainable. They found (a) that the impugned orders were made under laws which were valid and constitutional and were not in excess of jurisdiction and that whether they be right or wrong on the merits there was no infraction of a fundamental right under Arts. 19 (1) (f) and (g) of the Constitution, (b) that it was for the Customs Authorities to decide what constitutes the distinction between a coloured pencil and a crayon, a distinction which required an investigation into disputed facts and materials and that the court could not embark on the investigation under Article 32 of the Constitution, (c) that there was no equal treatment and (d) that there was no violation of the principles of natural justice. This decision is entirely distinguishable. Under Article 226 of the Constitution the High Court has the power to issue writs and directions not only for the enforcement of fundamental rights but also for other purposes. The High Court may issue writs and directions for the enforcement of a legal right Or the performance of a legal duty even though there is no infraction of a fundamental right.

18. The question is whether the appellate order of the Collector of Customs dated the 11th July, 1955 discloses an error of law apparent on the face of the record or is in excess of the jurisdiction and powers conferred upon him by the Sea Customs Act, 1878 and the Indian Tariff Act, 1934. The appellate order states:

"The appellants contend that the culverts in question are fabricated steel structures made of steel sheets and they will be used for construction of bridges or similar other structures and as such these should be assessed under item 63(9) of the Indian Customs Tariff. It appears from the Descriptive literature produced that "Armco" Nestable Culverts in question are made of fabricated corrugated steel sheets. These are used as tunneled drain for the passage of water under road bridges. The main function of these culverts is to divert water in a particular channel. These therefore cannot be considered to fall within the purview of "Steel Structures" for construction of bridges assessable under item 63(9) of the Indian Customs Tariff as contended by the appellants- The goods in question were therefore correctly assessed to duty under item 63(28) of the Indian Customs Tariff. I see no reason to interfere with the Assistant Collector's order in original. The appeal is accordingly rejected."

19. The description of the goods assessable to duty under items 63(9) and 63(28) of the first schedule (Import Tariff) to the Indian Tariff Act, 1934, respectively is as follows :

63(9). "Iron or steel structure, fabricated partially or wholly, not otherwise specified, if made mainly or wholly of iron or steel bars, sections, plates or sheets, for the construction of buildings, bridges, tanks, well curbs, trestles, towers and similar structures or for parts thereof, but not including builders' hardware or any of the articles specified in Items Nos. 72, 72(3), 74(1), 75(3)

75(4) or 76(1)."

63(28). "All sorts of Iron and Steel and manufactures thereof not otherwise specified."

20. Item 63 and sub-items 63(1) to 63(28) prescribe the import duty leviable on iron or steel and on articles made therefrom. They are included in Section XV headed "Base metals and articles made there from" The items specifically excluded by item 63(9) are item Nos. 72 (Machinery of certain types not otherwise specified), item 72(3) (component part of machinery as defined in items 72, 72(1) and 72(2)), item. 74(1) (Tram cars), item 75(3)(Motor, omnibuses), item 75(4) (carriages and carts not mechanically propelled), and item 76(1) (Ships and other vessels including steamers, launches, boats and barges). Items 72 and 72(3) are placed in Section XVI (machinery and apparatus; electrical material. Items 74(1), 75(3), 75(4) and 76(1) are placed in Section XVII (Transport Material).

21. The dispute is under which of the two categories specified under items 63(9) and 63(28) the goods in question belong. The point is important. Under item 63(9) the duty payable would be about Rs. 7900/- whereas under item 63(28) the duty would be Rs. 73315/8/-.

22. It is common case that the culverts in question fall either within item 63(9) or within item 63(28) and not under any other item. Item 63(28) is the residuary item. If the culverts satisfy the description of item 63(9) the Customs Authorities must levy the duty specified against that item; they cannot levy the duty payable under item 63(28). By Section 2(1) of the Indian Tariff Act, the Customs Authorities can levy on the imported goods only the duty specified in the first schedule to the Act.

23. The appellate authority ruled that the culverts "cannot be considered to fall within the purview of "steel structures" for construction of bridges assessable under item 63(9)." This ruling means either that the culverts are not steel structures or that though they are steel structure they are not used for construction of bridges. The meaning however is made plain by the affidavit of Sri B.N. Dutt filed on behalf of the respondents. In paragraph 7(c) of his affidavit Sri Dutt stated, "In the view of the customs authorities these Armco Nestable Culverts are not structures. The customs authorities were of the view that these Armco Nestable Culverts were not designed to carry loads and are not considered structures and that they are therefore assessable under item 63(28) and not under item 63(9). of the Indian Customs Tariff." In ruling that the culverts are not steel structures the appellate authority erred in law and completely misdirected himself. The expression "structure" is not a technical term of art. The plain and popular import of the expression furnishes the true rule of its interpretation. The expression "structure" means some construction, or fabrication some production artificially constructed and fashioned in some definite manner. The descriptive literature relied on by the appellate order

describes the culverts as structures. The appellate authority has recorded the finding that the articles are culverts made of fabricated steel sheets. The expression "fabricated" implies that the shape and form have been moulded by human operation for some particular ultimate use. The finding of the appellate authority therefore implies that the imported articles are constructions made of steel sheets artificially shaped and formed by human operation and adapted and fashioned for the construction of culverts. On this finding there can be no doubt that the culverts are steel structures within the purview of item 63(9). The suggestion that in order to be a structure the article must be designed to carry loads is baseless. An article may be a structure though it is not designed to carry loads, A well curb unlike a bridge is not designed to carry loads; yet it is a structure within the meaning of item 63(9). Besides, the appellate authority by his order dated the 11th July, 1955 did not find that the culverts are not designed to carry loads. The suggestion is made for the first time in paragraph 7(c) of the affidavit of Sri Dutt. That paragraph is not properly verified. On the other hand, there is cogent and uncontradicted evidence that the culverts are road structures and are designed to take loads transmitted by road traffic.

24. No reasonable body of men having proper regard to the meaning of the expression of "structure" in the context of item 63(9) could have come to the conclusion that the imported culverts are not structures. Since the appellate authority came to a conclusion which could not be reasonably entertained by him, he fell into an error on a point of law and since the primary facts as to the nature and function of the culverts appear on the record, the error of this kind is sufficient to warrant the intervention of this Court by certiorari. See (1957) 1 QB 574

25. The respondents contended that the imported goods are steel structures used for construction of bridges or similar structures. The contention is set out on the face of the appellate order. According to the respondents, culverts are similar structures. The appellate authority rejected the contention that the articles are steel structures used for construction of bridges on the erroneous view that they are not steel structures. The appellate authority did not decide that the articles are not used for construction of bridges; assuming that he decided this, it is plain that he did not consider at all the question whether they were used for construction of similar structures. Here again the appellate authority erred in law; the error lay in confining item 63(9) to structures required for construction of bridges and in overlooking that the item extends to those required for construction of similar structures.

26. The appellate authority therefore did not consider the real question in the case viz; the question whether the goods are adapted for construction of bridges and similar structures. Acting on the erroneous view that the goods are not structures, the appellate authority omitted to decide the real question. Without deciding that question and without finding that the goods are not adapted for construction of bridges and similar structures the appellate authority had no

power to levy the duty under the residuary item 63(28). In the circumstances, in proceeding to levy the duty under item. 63(28) the authority acted in excess of his jurisdiction. The appellate order on the face of it discloses serious errors of law. The errors are fundamental and go to the root of the matter. The appellate order is therefore liable to be quashed both for excess of jurisdiction and for errors of law apparent on the face of the record.

27. The question whether the goods are for construction of bridges or "similar structures" within the meaning of item 63(9) was for the customs authorities to decide. Since they omitted to consider the question, in an ordinary case the court would simply quash their decision and would leave it to them to determine the question and to proceed further according to law. It is surprising however that though the customs authorities did not determine that question, yet they asserted in the affidavit in opposition filed on their behalf that the goods are not used for construction of bridges or similar structures. Without judicially considering the matter the appellate authority is now committed to the view that the goods are not adapted for the construction of bridges and similar structures. In the circumstances, both parties invited the learned trial Judge to decide the question. The learned trial Judge has decided that question in favour of the respondent. The goods are admittedly used for construction of culverts. The learned Judge held that even if culverts are not bridges they come under the expression "similar structures" in item 63(9). In my opinion the learned Judge came to the right conclusion on the materials before him.

28. To start with, the finding of the appellate authority is that the culverts are used as tunneled drains for the passage of water under bridges and that their main function is to divert water in a particular channel. The appellate authority relied upon the descriptive literature which shows that with the help of these culverts road bridges over streams and running water may be built on solid ground. The motto is "Bury your bridges to make them better." The culvert is placed at the spot under earth fills. Over the earth fill there is solid ground upon which the road bridge is built and underneath is the culvert which provides adequate waterway for the passage of the water. The solid ground, the earth fill and the culvert take the place of a span type bridge structure. Even a span type bridge structure may be so constructed that it is both a bridge and a culvert; the upper part of the structure then constitutes the bridge and the lower part constitutes the culvert. Similarly, the solid ground, the earth fill and the culvert may be regarded as one structure of which the upper part carries the road bridge and the lower part forms the culvert. So regarded the culvert forms part of the bridge structure. Considering the culvert as a structure separate from the bridge, the culvert may well be said to be a structure similar to bridge. The similarity referred to in item 63(9) is a similarity in respect of function, a similarity in respect of uses and adaptation to uses. The function of a road bridge as also of a culvert under it is to assist in road construction. The bridge carries the road-way over an obstruction. The culvert strengthens the bridge and the road-way by providing a water-way. Both bridge and culvert are road structures. The

functional similarity is sufficient. In order to be similar the two structures need not in all respects be the same. By the expression "similar structures" the statute contemplates structures like but not identical with a bridge structure or any other structure specifically mentioned. The common "characteristic which is the test of similarity must be gathered from the context of the statute. The similarity contemplated by item 63(9) is functional similarity.

29. It is to be noticed that item 63(9) specifically refers to buildings, bridges, tanks, well curbs, hestles and towers. The structures specifically referred to are of widely different characters and a question arises whether they can be said to belong to a distinct class or genus. Mr. Roy contended that a genus can be found, that having regard to the structures specifically included and those specifically excluded, all structures coming under the category of civil construction as opposed to mechanical and electrial construction constitute the genus and that consequently all structures coming under the category of civil construction are "similar structures" within the meaning of item 63(9). It is not necessary to decide this point. It is sufficient to say that a culvert for passage of water under a road bridge is a part of the bridge structure or is a structure similar to bridge: It is plain that structure similar to any of the structures specified in item 63(9) answers the description of similar structures.

30. It follows that the imported goods are adapted for construction of bridge or similar structures. They are fabricated steel structures made of steel sheets. They are not otherwise specified in item Nos. 72, 72(3), 74(1), 75(3), 75(4) or 76(1) and they are not builders hardware. They are therefore assessable to duty under item 63(9). The conclusion is supported by the uncontradicted evidence on the record and by a previous ruling of the customs authorities. The culverts imported into India and cleared under the bill of entry dated the 16th December, 1953 were charged with duty under item 63(9). Departmental rulings as to the category of the goods are not binding authorities; but they are relevant evidence of the category to which the goods belong. The duty on the imported goods" is therefore leviabale under item 63(9) and not item 63(28) and it will be the duty of the appellate authority to decide the appeal accordingly.

31. We must now consider the nature of the relief to which the respondents are entitled and the form of the order which ought to be passed in the case. The appellate order of the Collector of Customs dated the 11th July, 1955 must be set aside, a writ in the nature of certiorari must issue to quash the order and the appellants must be directed to forbear from giving effect to it. I think also that a writ in the nature of mandamus must issue -to the Collector of Customs commanding him to hear and decide the appeal in accordance with law. The order of mandamus must issue in order to give the respondents full and effective relief. The respondents are aggrieved by the order of the Assistant Collector of Customs for Appraisement. They have preferred an appeal from that order and pending the appeal have deposited the amount o? duty demanded Oh the basis of the order appealed from. By Section 189 of the Sea Customs Act the

respondents can obtain a refund of the excessive amount demanded, if the Collector of Customs decides on the appeal that the duty levied by the original order was excessive. The respondents are vitally interested in obtaining a decision in the appeal. In these circumstances a writ of mandamus must issue commanding the appellate body to hear and determine the appeal. The decision in *Mahomed Usman Rahimtoola Vs. Labour Appellate Tribunal, Bombay*, is distinguishable. In that case the Industrial Tribunal made an award in favour of a worker. The award was modified on appeal by the Labour Appellate Tribunal to the prejudice of the worker. The worker moved the Bombay High Court for an order that the decision of the Labour Appellate Tribunal be quashed. The trial Judge allowed the application and quashed the order. He also issued a mandamus directing the Labour Appellate Tribunal to hear the appeal. The Order of mandamus was set aside on appeal by a Division Bench. The order of mandamus ought not to have been made in that case because the applicant was opposed to the issue of the mandamus; he had made no grievance of the award of the Industrial Tribunal and was not interested in seeing that the appeal was prosecuted before the Appellate Tribunal. In the instant case the respondents are dissatisfied with the order of assessment and are vitally interested in seeing that the appeal is heard and decided; and the order of mandamus must issue as a matter of course at their instance. In 1941-1 KB 53 a rate payer dissatisfied with a provisional list of valuation preferred an objection to the assessment committee. On his application the court not only quashed the determination of the committee but also issued a mandamus commanding the committee to hear and determine the objection according to law. At page 69 of the Report, *Du Pareq, L. J.* observed

"we are of the opinion that the respondents are entitled to have the determination of the committee quashed. It follows that mandamus "to hear and determine" must also go."

32. The broad observation of *Chagla, C. J.* in *Mahomed Usman Rahimtoola Vs. Labour Appellate Tribunal, Bombay*; that the power of the High Court stops on the issue of certiorari quashing the order of a statutory tribunal and that the High Court has no power to go further and to direct the tribunal to hear the matter again must be read in the context of that case. If, the justice of the case so requires, the High Court may on quashing the illegal decisions also issue a writ in the nature of mandamus commanding the tribunal to hear the matter again. As soon as the order of the Collector of Customs is quashed, it will be his duty to hear and decide the appeal again: The Court can command him to perform that duty. The order of mandamus is consequential on the order of certiorari and may issue in the same proceedings. The order of mandamus is not an order of remand; it is an order commanding the statutory tribunal to perform its statutory duty.

33. I notice that the learned Judge has not only set aside the order of the appellate body but has also set aside the original order of assessment. The

objection that the original order of assessment is an administrative order was not raised in the trial court. In this appeal we do not decide whether the original order of assessment is an administrative or quasi-judicial order and we therefore do not propose to set it aside. On the "appellate order being quashed it will be the duty of the appellate authority to hear the appeal and to decide it according to law. In all these circumstances, I think that the order which I am going to propose should be substituted for the order passed by the learned trial Judge.

34. I propose that the following order be made. The order made by the learned trial Judge be modified and in lieu of the order passed by him the following order be substituted:

"It is ordered that .the order dated the 11th July, 1955 passed by the Collector of Customs, Calcutta, mentioned in the petition on which the Order nisi dated the 8th September, 1953 was issued, be and is set aside. And it is further ordered that the said Order nisi be and the same is made absolute. And it is further ordered that a writ in the nature of certiorari be and is issued quashing the decision and order of the Collector of Customs, Calcutta, dated the 11th July, 1955, And it is further ordered that a writ in the nature of mandamus be and is issued and that the respondents to the said petition be and are directed to forbear from giving effect to the said decision and order. And it is further ordered that the Collector of Customs, Calcutta, do proceed to hear the appeal before him from the order passed by the Assistant Collector of Customs for Appraisement, Calcutta dated the 30th July, 1955 and mentioned in die said petition and do decide the same according to law and as laid down in this judgment and in the light of the observations contained therein. And it is further ordered that if on the decision of such appeal any money becomes refundable to Mercantile Express Co. Ltd., the same be refunded to them."

35. Subject to the modification as aforesaid the appeal be and is hereby dismissed.

36. The appellants do pay to Mercantile Express Co. Ltd., the costs of and incidental to the appeal. " Certified for two Counsel.

Lahiri C.J.

37. I agree.