**(2011) 07 BOM CK 0162**

**In the Bombay High Court**

**Case No :** Writ Petition No. 4734 of 2011

Balaji Impex APPELLANT

Vs

The Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 01-07-2011

**Acts Referred:**

**Citation :** (2011) 4 BomCR 490 : (2011) 186 ECR 167 : (2012) 279 ELT 485

**Hon'ble Judges :** D.Y. Chandrachud, J;Anoop V. Mohta, J

**Bench :** Division Bench

**Advocate :** Prakash Shah and Ayush Agarwal, instructed by PDS Legal, for the Appellant; Pradeep S. Jetly and Jitendra B. Mishra, for the Respondent

## Judgement

D.Y. Chandrachud, J.—Rule, by consent returnable forthwith. With the consent of Counsel and at their request the Petition is taken up for hearing and final disposal.

2. The Petitioners are aggrieved by the communication issued to them by the Assistant Commissioner Customs (Preventive) Alibag Division (Exhibit G) by which they have been informed that the Deputy Commissioner of Customs, who was nominated by the Commissioner of Customs for finalization of the provisional assessments of certain bills of entry, under a special drive had finalized the assessments and passed orders accordingly. The communication contains an annexure setting out the provisional assessments which have now been finalized, and calls upon the Petitioners to pay the duty alleged to have been short paid.

3. The grievance of the Petitioners is that (i) No hearing was afforded to them by the Deputy Commissioner of Customs; (ii) No speaking order has been passed and (iii) Even the elementary principles of natural justice have therefore not been complied with. Counsel appearing on behalf of the Respondents urged that the Petitioners should be relegated to the remedy of filing an appeal against the orders passed by the Deputy Commissioner finalizing the assessments. During the course of the hearing, it has been stated before the Court by Counsel

appearing on behalf of the Respondents that the Petitioners were not afforded an opportunity of being heard by the authority which passed the order. That being an admitted position on which there is no dispute, we are of the view that a fit and proper case for the exercise of the writ jurisdiction has been made out and there is no reason to relegate the Petitioners to the remedy of an appeal. There is manifestly a failure of compliance of the principles of natural justice.

4. In Automotive Tyre Manufacturers Association Vs. The Designated Authority and Others, the Supreme Court held that if one person hears and another decides, a personal hearing would become an empty formality. An order passed by a quasi judicial authority without complying with the principles of natural justice would therefore be invalid. The same principle would govern the present case. Merely because there was a special drive to clear a backlog of matters, that would afford no justification for the department not to comply with fundamental principles of natural justice. Efficiency in the disposal of quasi judicial proceedings is important but, that cannot be at the cost of overriding fundamental principles known to the law of the land.

5. We are, therefore, of the view that the impugned communication at Exhibit G and the consequent assessment orders, have to be set aside and a direction would have to be issued to the Deputy Commissioner of Customs to pass fresh orders finalizing the assessments after furnishing to the Petitioners an opportunity of being heard. There shall accordingly be an order and direction in these terms. The Petitioners shall appear before the concerned Deputy/Assistant Commissioner of Customs entrusted with the hearing of the cases on 11 July 2011 together with an authenticated copy of this order. The adjudicating authority shall take necessary steps in accordance with law to finalize the assessment after furnishing to the Petitioners an opportunity of being heard and complying with the principles of natural justice, on an expeditious basis.

Rule is accordingly made absolute.

There shall be no order as to costs.