
(1957) 07 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 62 of 1957

Bhanuram Pegu

APPELLANT

Vs

The Commissioner of Hills Division and Another

RESPONDENT

Date of Decision : 31-07-1957

Acts Referred:

Constitution of India, 1950 — Article 227, 237, 46
Eastern Bengal and Assam Excise Act, 1910 — Section 36

Citation : (1957) 07 GAU CK 0006

Hon'ble Judges : Sarjoo Prosad, C.J.;Deka, J

Bench : Division Bench

Advocate : S.K. Ghose and R.C. Choudhuri, for the Appellant; S.M. Lahiri, General, F.A. Ahmad and R.K. Goswami, Jr. Government Advs., for the Respondent

Judgement

Sarjoo Prosad, C.J.—This is an application under Articles 226 and 227 of the Constitution. The Petitioner prays for issue of a suitable writ of certiorari or mandamus quashing the order of the Excise Appellate Authority dated 30th May, 1957, or in the alternative for setting aside the order under the power of superintendence enjoyed by this Court under Article 227 of the Constitution.

2. Tenders were invited for the settlement of the Murmuria country spirit shop for the year 1956-57. The Petitioner, who belongs to the Miri community, a plains tribal of Assam, with some University education to his credit, in pursuance of a notification issued by the Authorities, submitted his tender for settlement of the shop. The Deputy Commissioner on the unanimous advice of the members of the Advisory Committee held that the liquor shop in question should be settled with the Petitioner. This officer considered that the Petitioner was financially sound to undertake the venture. The order of settlement was upheld by the Commissioner of Excise on appeal and also affirmed by the then Commissioner, Hills Division and Appeals. The Petitioner then took possession of the liquor shop on paying for the extra stock of liquor to the Respondent No. 2, who was the previous lessee. The price of the liquor was actually paid for on the 2nd April, 1950 and not on

1-4-1956.

The Petitioner, explains that the delay of one day in payment was due to the misrepresentation of the said Respondent, who told the Petitioner on 1-4-1956 that the stock of liquor was only 80 gallons, whereas in fact the stock was 370 gallons; and bore fore, the amount had to be arranged and Psion the following date. The Petitioner also claims" that during period the average sale of liquor rose considerably as compared to the sales in previous years.

3. During the current year 1957-53, the Petitioner in due course again submitted his tender for settlement of the liquor shop in question and the Deputy Commissioner on the unanimous recommendation of the Advisory Committee held in favour of settlement with the Petitioner. The Respondent No. 2 who had also submitted his tender for settlement and Anr. prospective vendor appealed to the Commissioner of Excise against the order of the Deputy Commissioner.

At that stage, an affidavit was filed by the Respondent alleging that the Petitioner was not financially sound and that he had taken a loan of Rs. 8,000/- on a hand note from Anr. person. The Petitioner denied these allegations, which were for the first time raised at the appellate stage and. he also produced some proof of his financial capacity. The Commissioner of Excise called for a report from the Deputy Commissioner on the point and eventually upheld the order of settlement made by the Deputy Commissioner and dismissed the appeals.

The Respondent then carried an appeal against the order to the Commissioner, Hills Division and Appeals, who is the Excise Appellate Authority constituted under the law to hear such cases. When the matter of the Petitioner's financial condition was again raised before this officer, the Petitioner swore an affidavit reiterating his denial of having taken any loan as alleged by the Respondent.

The" Excise Appellate Authority by its "order dated 30th May, 1957, set aside the orders of the officers below directing settlement with the Petitioner and in its turn ordered settlement of the liquor shop with the Respondent No. 2. It is this order of the Appellate Authority, which is sought to. be quashed by the Petitioner.

4. Mr. Ghose appearing in support of the petition has substantially urged two points before UP: (1) He argues that the Excise Appellate Authority has acted in violation of the principles of natural justice in that it did not give any adequate opportunity to the Petitioner to controvert the allegations made in the affidavit of the Respondent or to meet the report of the Excise Inspector for-hat; all of which documents it utilised to the detriment of the Petitioner.

He also urged that the officer refused to entertain the counter-affidavit of the Petitioner disputing the allegations made on the erroneous and exypothesi assumption that it was belated and that It contained false allegations the even went to the length of threatening the Petitioner with legal action for filing the counter-affidavit.(2) The next branch of Mr. Ghose's submission Is that there is an error apparent on the face of- the record in that the whole order of the

Appellate Authority is based upon the allegations contained in the affidavit filed by the Respondent before the Commissioner and the report of the Excise Inspector, without even a reference to the report of the Deputy Commissioner as to the financial condition of the Petitioner, and without due consideration of the fact that the settlement in favour of the Petitioner had been made on the unanimous recommendation of the Advisory Committee, which consisted of members fully conversant with local conditions.

The learned Counsel argues that under the Rules, the primary responsibility for making these settlements lay with the Deputy Commissioner, aided by the Advisory Committee and the Excise Superintendent; and the Appellate Authority in disposing of the appeals had misconceived its powers and duties as an Appellate Tribunal and acted in violation of the relevant Rules. Mr. Ghose has further taken exception to the re-emergence of the Appellate Tribunal when it observed:

It is not understood why the learned Excise Commissioner in his appellate order gave the Respondent an additional credit for his being a member of a tribal community.

The learned Counsel submits that under Article 46 of the Constitution, a tribal was entitled to some preferential consideration. On the above grounds, it is contended that the order of the Excise Appellate Authority should be quashed.

5. It is no doubt recognised that this Court is not a Court of Appeal and howsoever wide and extensive its jurisdiction may be under Articles 226 and 227 of the Constitution, it cannot convert itself into an Appellate Tribunal with a view to examining on merits the correctness of the order impugned and deciding about the appropriate view to take on the facts and circumstances of the case. In other words, this Court cannot substitute its own

The jurisdiction exercised by this Court under the above provisions is a supervisory jurisdiction with the result that it cannot review findings of fact arrived at by an inferior Court, Body or Tribunal even if such findings were erroneous. This is on the accepted principle that where a person has jurisdiction to decide, he may decide rightly or even wrongly.

But, where a subordinate Tribunal or body or officer acts without jurisdiction or in excess thereof or acts with illegality in the exercise of its jurisdiction or in disregard of the principles of natural justice; or where there is error apparent on the face of the record, this Court is not only entitled, but bound to act in the exercise of its Constitutional powers to avoid mischief and injustice: See *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, ; *Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property*, and *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*,

Here, the complaint of the learned Counsel for the Petitioner is that in disposing of the appeal, the Appellate Authority has acted in excess of its powers as an

Appellate Tribunal constituted under the Rules to decide such matters; it has also violated the principles of natural justice and Its order is further untenable because of errors apparent on the face of the record.

6. The point of principle, therefore, which arises in all such cases, is to ascertain the ambit Of the powers of the Appellate Authority-as prescribed by the statute and the relevant Rules; and to see whether in the discharge of its duties, it has functioned Within that ambit or usurped certain powers, which it could not be deemed to possess under the Rules.

The Rules have been framed by the State Government on the authority of Section 36 of the Eastern Bengal and Assam Excise Act, 1919 (Act, 1 of 1910), and have, therefore, the force of statutory Rules. They provide that one of the modes of settlement of liquor shops is by inviting tenders. The District Collector or the Sub-Divisional Officer, as the case may be, with the previous sanction of the Excise Commissioner, calls for tenders for settlement of a shop.

The tender is submitted in a prescribed form bearing a Court fee stamp and is to be presented on such date or dates as may be fixed in the sale notice, which is a few days before the announcement of the result of settlement. The dates of settlement either by auction or by tender, unless otherwise directed by the State Government, are to be not later than the 20th February in each year and 15 days" previous notice of such dates should be ordinarily given. The notices in the prescribed form, fixing these dates, are widely circulated and the shops intended to be settled are open to general inspection at the Collectorate.

The executive instructions bearing on the point further provide that the prescribed form of the tender should contain certain requisite particulars The tenders are to be presented on the date fixed personally by the tendered and received by the Collector or Superintendent of Excise or the Sub-Divisional Officer, as the case may be. The officer receiving the tender is thus in a position to" collect necessary information about the tendered by putting direct" questions to him, answers whereof are noted down in the tender. This procedure facilitates further enquiries about the tendered and the information in some cases may even obviate the necessity of a further enquiry: (See Rules 205 and 207 and also executive instruction No. 104).

It is also important to notice that the Collectors, which means the District Officers or the Sub-Divisional Officers, are required to make settlement in consultation with an Advisory Committee of non-official gentlemen of standing to be nominated by them. The Committee may consist of five members or less. The District Collector or the Sub-Divisional Officer, as the case may be, as a rule required to preside at the sales held, and the Rules further provide that the Superintendent of Excise should invariably attend all such settlements and should act as an expert adviser to the District Collector or the Sub-Divisional Officer making the settlement.

The Collector may refuse to consider tenders submitted by undesirable persons.

under the executive instructions, the Deputy Commissioner refrain selecting the members of the Advisory Committee: is directed not to issue any invitation to the members of the Committee earlier than a day before the date fixed for settlement and all possible steps are to be taken by him to ensure that their names are not divulged; and it is also essential to avoid selecting any gentleman, who is known directly or indirectly "to have or likely to have any interest in any excise or liquor shop.

The whole object of keeping the names secret is that the gentlemen serving on the Committee may not be harassed or canvassed by prospective vendors: (See Rules 208, 209 and 211.

Also executive instructions Nos. 105 and 106). It also appears that a list of persons called "debarred list" is maintained by the Collector containing the names of undesirable persons, and the tenders offered by these persons cannot be even taken into consideration.

7. Two factors appear to emerge clear from an examination of these elaborate Rules. Firstly—that the responsibility for making settlement of these excise shops rests primarily and almost entirely upon the Deputy Commissioner or the Sub-Divisional Officer presiding at these settlements. He is assisted in making his choice by both internal and external experts.

The internal expert is the Superintendent of Excise, while the external experts are the members of the Advisory Committee, who are men of standing representing a cross-section of the community and conversant with local conditions. All these gentlemen are naturally expected to possess better knowledge about the desirability or otherwise of the person to be selected than any other authority, and which knowledge is further augmented by the facts stated in the prescribed tender form or obtained on a personal examination of the tenders. A choice so made has, therefore, to be respected and the Rules obviously do not warrant interference with such a choice, except for very compelling circumstances, e. g., where the choice is vitiated on account of any violation of Rules or instructions. Another factor, which also emerges, is that since these tenders for settlement of excise shops have to be delivered personally by the prospective vendors to the officer concerned on the date fixed in the notice, which is a few days prior to the date of settlement, the persons offering tenders must inevitably come to know who the rival claimants are and if any of them, has, any genuine and serious objection to the suitability of the other, he can easily bring that objection to the notice of the officer conducting the settlement by an affidavit or otherwise.

The objection can then be investigated with much better facility than if it is allowed to be raised at a later stage, because the officers dealing with the matter at the initial stage possess better local knowledge of men and affairs and have further the advantage of the advice of the members of the Advisory Committee.

8. The Rules provide that an appeal shall lie to the Excise Commissioner

from any original order made by the "District Collector; and an appeal to the Revenue Tribunal or the Excise Appellate Authority (as now constituted) from the order of the Excise Commissioner. The memorandum of appeal has to be presented with stamped Court fee within a period of one month from, the date of the order appealed against, excluding the time. for obtaining a copy of the order, and it is to be accompanied by a certified copy of the order appealed against, (vide Rules 340-343).

There is of course no procedure laid down as to how the appeal is to be disposed of but from the nature of the Rules, which I have discussed earlier, it is quite obvious that the powers and" duties of the Appellate bodies are limited and circumscribed. Evidently, the Rules make a clear A distinction between the powers and duties of- the officers conducting these settlements at the initial stage and those, who are concerned merely to hear appeals against their orders.

In dealing with appeals in such cases, these Appellate bodies have to be conscious of this distinction and respect both the letter and the spirit of the Rules, In other words, they have to respect the choice, in the first instance made by the officers conducting the settlement. It is not open to the Appellate bodies to usurp the functions of: the primary authorities on whom the Rules have placed the responsibilities for the settlement with adequate checks and balances.

What obviously the Appellate bodies have to consider disposing of such appeals is to see from the records "whether the choice in making settlement "of the liquor shop has been correctly made and accordance with the Rules. In other words, it" is not for the Appellate Authority to make the choice, since the choice has already been made by the officers below; and it is only where the choice is perverse" or illegal and not in accordance with the Rules that the Appellate Authority can interfere, with the order and make its own selection out of the persons offering tenders.

If the Appellate bodies chose to act differently and consider themselves free to make their own choice of the person to be offered settlement irrespective of the recommendations of the Deputy Commissioner or the officer conducting the settlement, the Appellate bodies will be obviously exceeding the jurisdiction, which they possess under the law or going beyond the scope of their authority as contemplated by the Rules.

The assumption of any such power by the Appellate bodies would mean almost a .negation of these wholesome Rules. Their decision in that case will be subject to the supervisory jurisdiction of " this Court.

9. I am unable to accept the contention of the learned Advocate-General for the Respondent No. .2 that these Appellate bodies are merely administrative bodies and are free to act as they like. It may be that the officers making the settlement perform a purely administrative duty and the law allows them a free choice in the matter, so long as they function within the four corners of the statutory Rules supplemented by the executive Instructions, which are their guiding principles;

but the same cannot be said of the Appellate bodies.

As we have seen, the memoranda of appeal are presented before them with all the formalities of a memorandum presented to an Appellate Tribunal duly stamped and within the period of limitation prescribed. Though there is no regular procedure laid down, but parties are heard in the matter according to the normal principles of natural justice and these bodies have to decide upon the rights of the parties with fairness and impartiality. The Excise Appellate Authority is also invested with the powers of review as under the CPC. It must be, therefore, held that these bodies perform quasi-judicial functions and their orders have to be examined from that point of view. The Tribunal in question may not be administering justice in a Court of Law; yet, while deciding about the rival claims of the applicants, it has to deal with them in a just and equitable manner. In the course of his speech in *Local Government Board v. Arlidge*, (1915) AC 120 (D), Viscount Haldane, L. C. made the following observation:

My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same,

The Supreme Court in *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, expressed the same view, when it held that the question "whether the rules of natural justice have been observed in a particular case must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the legislature and in that sense the rules themselves must vary." The Appellate bodies have, therefore, to function in a quasi-judicial capacity in accordance with the rules made under the statute governing them. Even where these Appellate bodies function as administrative bodies, their orders would still be amenable to the supervision of this Court as vouchsafed by the Constitution, if they acted beyond the scope of their authority as provided by the Rules.

10. In the light of the above discussions, let us now examine whether in disposing of the appeal, the Excise Appellate Authority has acted within the scope of its powers, has observed and respected the letter and spirit of the Rules and has acted in accordance with the principles of natural justice; or its order is vitiated by those errors or errors apparent on the face of the record. As observed earlier, the Deputy Commr. on the unanimous recommendation of the Advisory Committee and, I have no doubt, in consultation with the Excise Superintendent, accepted the tender of the Petitioner and selected him as the most suitable person for settlement of the Excise shop in question.

It may be also mentioned that he was the sitting lessee of the shop, and though

it may not be an additional qualification, it was not a disqualification either Appeals were preferred to the Commissioner of Excise by the Respondent and Anr. prospective vendor, who had been disappointed. The appeal by the Respondent was filed on 9-2-1957 and in the memorandum of appeal, a general ground was taken that the Petitioner's financial condition was unsound and he could not safely undertake the responsibility of running the shop and paying the Govern merit dues.

This was followed by an affidavit filed before the Commissioner of Excise on 5-3-1957 in which allegations were made that he was indebted to some person from whom he had taken loan and which he held not repaid. The entertainment of such an affidavit from interested quarters at the appellate stage was open to grave exceptions on principle. There is no explanation on the record as to why the Respondent could not have filed this t affidavit before the Deputy Commissioner when. as I pointed out earlier, he had enough opportunity of doing so. He knew about the rival claimants and the Petitioner being the sitting lessee, it was". in his interest to eliminate him, if the grounds alleged were correct and had any relevancy, to the" financial capacity of the Petitioner.

Entertainment of such affidavits at the appellate stage, at the instance of unsuccessful claimants, would inevitably lead to many complications, specially when there was no explanation for the delay. The defeated claimants would be tempted and encouraged to make reckless and frivolous" allegations against the successful party, if only to defeat his interest. It may even lead to corruption and favoritism. If the affidavit had been filed earlier, the Deputy Commissioner and the Advisory Committee on whom the responsibility for the " settlement rested and who were competent to know about the local conditions could have teen to consider and express their own views about ".the suitability of the candidates after taking into I account the correctness or otherwise of the allegations made.

By omitting to do so at the earliest stage, the authorities have been deprived of this advantage. Then again, affidavits of the kind are likely to cause undue delay in disposal of such cases, when expedition is the essence of the matter. Unless some reasonable limit is put to the presentation" of such affidavits from stage to stage, it may cause delay in the settlement to the detriment of all concerned, including the public revenue. The Commissioner of Excise might, therefore, have been well , advised in even rejecting this affidavit in lamina but, he played for safety and thought it proper to obtain the opinion and report of the Deputy" . Commissioner on the allegations made.

He knew that, as the Appellate body, under the Rules it was incumbent on him to obtain the views of the Deputy Commissioner on the new material that he had allowed to come on the record. He received the Deuputy Commissioner's report in due course on 14-3-1957 and after hearing arguments on the following 17th, disposed of the appeals on the 25th, dismissing the same".

11. I should here refer to a few of the relevant findings of the Commissioner of

Excise. The settlement before that Officer was questioned on the ground that the Petitioner was not financially sound inasmuch as he could not buy up the whole stock of liquor on 1-4-1956. The Deputy Commissioner reported that he could not take delivery of the liquor after paying for it on the 1st of April, " yes he was not aware of the actual stock in existence and therefore, he did not go prepared with the whole amount on that day, but took delivery of the stock on 2-4-1956 on payment of the actual price. The Commissioner of Excise, therefore, held that the report of the Deputy Commissioner is clear on this point and this could not be construed as lack of financial soundness on the part of the Respondent.

Another argument raised before the Commissioner of Excise related to the loan, which the Petitioner is alleged to have taken from Anr. person. The Petitioner denied this and gave some proof of his financial position in producing a deed of purchase and some bus permit. Whatever the importance of the disputed transaction may be, the Commissioner of Excise relied upon the report of the Deputy Commissioner about his financial soundness unquestionable and observed that the state of the Deputy Commissioner could not be rushed aside. The Deputy Commissioner had also repelled the suggestion that the shop was being by the Petitioner beamy. The Commissioner of, Excise, therefore, finally closed his judgment these pertinent observations:

The settlement of the shop for the year 1957-58 was made by the Deputy Commissioner on the unanimous recommendation of the Advisory Committee. There is nothing wrong or perverse with the selection The Deputy Commissioner also reports that the Respondent is found to be the most suitable of all the tenders, the relative merits of each one of whom have been duly taken into consideration. Over and above that, the Respondent is a member of the Plains Tribal community.

In the circumstances discussed above, I regret that I do not see any ground for interference with the settlement made by the Deputy Commissioner on the unanimous advice of members of the Advisory Committee.

We have no desire to prejudice the merits of the case, but on the face of the order as it stands, we cannot fail to notice that this was the correct approach to the disposal of the matters in appeal as contemplated by the Rules. It is, however, strange to find that when the disappointed parties carried the matter in appeal to the Excise Appellate Authority, it did not consider it even worth-while to refer to the report of the Deputy Commissioner, a report to which very rightly the Commissioner of Excise had attached so much importance.

The Appellate Authority decided the whole case on a presumption that the allegations made in the affidavit of the Respondent were correct and were supported by some report submitted by the Excise Sub-Inspector of Jorhat. It even refused to entertain the counter-affidavit filed by the Petitioner and threatened to take action against him on the assumption that the statements in the counter-affidavit must be false. Apart from the impropriety of entertaining

the affidavit over which I have already commented I am unable to see how an alleged transaction with a third party affected the suitability of the Petitioner, when the Deputy Commissioner had selected him and had emphatically reported in favour of his financial soundness.

The disputed transaction as alleged might well be the subject of a civil dispute between the interested parties; and even an administrative body would have hesitated to presume things against the Petitioner on those allegations and prejudge the case against him, much less a body sitting in appeal and exercising quasi-judicial functions. The Petitioner complains that he had no opportunity to meet the allegations contained in the report of the Excise Inspector of Jorhat.

It appears that the report was submitted before the Commissioner and though it is true that the Petitioner had not applied for any adjournment on that account, yet that was no reason why even the counter-affidavit of the Petitioner should not have been entertained, by the officer and it should have been taken for granted by him that it contained untrue facts. It is said that the counter-affidavit should have been filed before the Commissioner of Excise; but the Commissioner of Excise, after obtaining the report of the Deputy Commissioner, had held in favour of the Petitioner and therefore, there was no occasion for him to file the counter-affidavit then.

12. I am afraid cannot in the circumstances held thinking that the procedure adopted by the Appellate Authority is highly prejudicial to the Petitioner and revolting to principles of natural justice. But the most glaring error on the face of the order of the Appellate Authority is that it does not even refer to the report of the Deputy Commissioner on which the Excise Commissioner had so strongly relied. In my opinion, it was under the Rules obligatory on the Appellate Authority to consider that report before disposing of the appeal, and in failing to do so, the officer acted arbitrarily and in excess of his powers as an Appellate Authority.

I do not mean to suggest that in no such cases an Appellate Authority can take into account new materials, which come through an untainted source and which could not be available at any earlier stage in spite of due diligence, provided the material had a substantial bearing on the suitability of the person selected for settlement of the liquor shop and had been duly checked and tested by the Deputy Commissioner and the Excise Superintendent, who had the primary responsibility, as enjoined by the Rules, in the matter Respondent. The Appellate Authority was also idler in holding contrary to Article 4.6 of the Constitution that the Petitioner could have no superior claim - as a tribal: There was nothing objectionable "in the remark of the Commissioner of Excise-"that the Petitioner was, over and above his Other claims, a tribal.

13. The question then remains what orders we should pass in the case. Although in the circumstances already discussed above, we would have been Justified in issuing a writ of certiorari quashing the offending order, we would be content to

utilize in this case our powers of judicial superintendence under Article 227 of the Constitution in view of the misconception under which the Appellate Authority labored as to the actual scope of its powers under the Rules. The power of Judicial superintendence conferred by Article 227 of the Constitution can be exercised, by this Court in appropriate cases in order to keep the subordinate."{Courts or Tribunals within the bounds of their authority: See Waryam Singh and Another Vs. Amarnath and Another, and (S) AIR 1955 SO "233 (C). We accordingly direct that the order of the Appellate Authority should be set aside and the appeal should be decided by that Authority according to law in the light of the principle indicated in this judgment. The Rule is accordingly made absolute but we will make no order as to costs in the case.

Deka, J.

14. I fully agree with my Lord the Chief Justice and have not much to add. It has caused us enough anxieties in ascertaining where we should stop in or whether we should in at all. In other words where is the limit to which an Appellate Authority can go in exercising its powers under Rule 341 of the Excise Act. It is a statutory body and its powers are to be gathered from the Act itself. Though Mr. Lahiri has argued for the Respondents and with great emphasis that the Appellate Authority is purely an administrative body because of its function itself and the jurisdiction prescribed it cannot be said to be an administrative body simpliciter. "It has a judicial function to perform and it must be construed to be a quasi-judicial" tribunal in the discharge of its powers as an appellate tribunal. The power was once enjoyed by the Revenue Tribunal and now by the Appellate Authority as constituted.

15. The question at hand is whether we can prescribe any limit to its powers decidedly not " unless the Act itself so prescribes. The rule is worded in very general terms but it must fit in with" the general texture of the Act and the Rules prescribed there under. The Appellate Authority has to examine the machinery in the matter of settlement that is the rules and procedure of settlement as prescribed, To be more precise, the Appellate Authority should not all at once decide for itself as an absolute authority as to whom the settlement should go for any particular year, and then find its reasons for so doing, but on the other hand should examine as an appellate court whether there has been any violation of standing rules and orders in the matter of settlement with any particular individual and how far the order of the lower appellate body namely that of the Excise Commissioner has been in keeping with the rules and how far the reasons given by him stand to reason and fair play. The general principles guiding an appellate court should normally guide its hands.

Obviously it is difficult to lay down the exact limit to its powers, but once it is found to act in derogation of the principle and orders under the Act, or is found to act in breach of rules of natural justice this Court can step in exercising its powers under Art, 226 or 237 as the circumstances might indicate. The authority should keep in view these principles and should not arrogate to itself

all the powers of settling oblivious of the initial steps for settlement prescribed under the Excise Rules. The machinery of settlement is one and the whole and no extra importance should be given only to one part thereof. Applying these tests to the instant case I think that there has been excess of jurisdiction in the matter of deciding the appeal by the Appellate Authority to the prejudice of the Appellant and the order therefore should be set aside.

16. I agree with the direction as contained in the judgment of my Lord the Chief Justice" and the rule may be disposed of accordingly. (Leave to appeal to the Supreme Court refused).