
(1963) 07 CAL CK 0031

In the Calcutta High Court

Case No : Appeal from Original Order No. 128 of 1961

Deputy Collector of Customs

APPELLANT

Vs

Ramchand Jagadishchand

RESPONDENT

Date of Decision : 11-07-1963

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Sea Customs Act, 1878 — Section 167(37), 167(8), 182, 29, 30

Citation : 68 CWN 974 : (1970) 2 ILR (Cal) 588

Hon'ble Judges : Bose, C.J.;Mitter, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bose, C.J.—This is an appeal from an order of Ray J. dated May 4, 1961, by which a Rule nisi issued under Article 226 of the Constitution was made absolute and an order of the Deputy Collector of Customs of confiscation of goods u/s 167(37) of the Sea Customs Act and imposition of personal penalty was quashed and a sum of Rs. 20,818.25 P. was directed to be refunded.

2. The Respondent carries on business at Nos. 47 and 82 Khangra-putty Street, Calcutta, as dealer inter alia in woolen piece-goods. In course of such business the Respondent on or about May 22, 1959, placed an order for supply of 8 cases of woolen fabrics with M/s. K. Jos Otten of Germany through a firm, M/s. T. S. Narang, carrying on business at 34 Western India House, Sir Phiroze Shah Mehta Road, Bombay. The said order was placed under an import licence which the Respondent had obtained from the appropriate authorities of the Government of India, and the price at which the goods are alleged to have been purchased was 20 s. per yard. The goods arrived at the Port of Calcutta on or about August 20, 1959, and were landed at the Port under rotation No. 1159/59, Line No. 142. On September 5, 1959, the Respondent through its clearing agents M/s. S. C. Sanyal & Sons of New Custom House, Calcutta/submitted to the Assistant Collector of Customs for appraisalment a bill of entry along with certain other

documents declaring the total value of the goods as Rs. 22,893.73 P. calculated at the rate of 20 s. per yard. On February 12/13, 1960, the Respondent received from the Assistant Collector of Customs for appraisal, a memorandum stating that on examination of the goods it was found that the correct C.I.F. value of the goods should be 24 s. per yard and the Respondent was called upon to show cause why the goods should not be confiscated and penalty imposed upon the Respondent under the relevant provisions of the Sea Customs Act for re-declaration of value. On February 18, 1960, the Respondent wrote a letter to the Assistant Collector of Customs enquiring the basis of the conclusion of the Assistant Collector of Customs that the price of goods was 24 s. per yard and stating that on receipt of the information asked for the Respondent would reply to the memorandum dated February 12, 1960, issued by the Assistant Collector. On February 20, 1960, the Respondent wrote another letter to the Assistant Collector giving notice that the Respondent desired to be heard in person. On March 14, 1960, the Assistant Collector addressed another memorandum to the Respondent in which it was alleged that on further enquiries it had been found that the correct assessable value of the goods was Rs. 33,728 calculated at the rate of 29 s. 6 d. per yard and it was further stated in the memorandum that the basis of the said valuation was contained in four documents three of which were annex. A, B and C to the memorandum. By this memorandum the Respondent was called upon to show cause why confiscation and penalty should not be ordered under the relevant provisions of the Sea Customs Act mentioned in the memorandum. The Respondent was also asked to submit its replies with all necessary supporting documents within a fortnight from the date. On March 22, 1960, the Respondent submitted its reply to the notice to show cause, and in this reply the Respondent dealt with the annex: A, B and C to the memorandum dated March 14, 1960, and pointed out that no reliance could be placed on such annexures. On March 31, 1960, personal hearing was granted to the Respondent by the Assistant Collector of Customs for appraisal. At the hearing one of the partners of the Respondent firm was present along with an authorised representative and submissions were made on behalf of the Respondent firm. On April 20, 1960, the Deputy Collector of Customs by an order made on that date held that correct C.I.F. value of the goods imported was 29 s. 6 d. per yard and the real value of the goods as per Section 30(b) of the Sea Customs Act was Rs. 33,728. It was further held that the goods were deliberately mis-declared in the bill of entry as regards value with a view to defraud the Government of revenue and the Deputy Collector directed that the goods be confiscated u/s 167(37) of the Sea Customs Act but he gave the Respondent option to redeem the goods on payment of a fine of Rs. 9,890 within four months from date or such other extension of time as may be given on good cause being shown, and he also imposed a personal penalty of Rs. 1,000 on the Respondent as person concerned in the offence u/s 167(37) of the Sea Customs Act. The penalty was directed to be paid forthwith. No separate action was taken u/s 167(8) of the Sea Customs Act. On May 10, 1960, the Respondent paid the duty and penalty amounting in all to Rs. 41,708.29 P. without prejudice to its right and contentions and took

delivery of the goods. On May 13, 1960, the Respondent moved this Court under Article 226 of the Constitution, and a Rule nisi was issued by Sinha J. This Rule came up for hearing before Ray J., and by his judgment dated May 4, 1961, the learned Judge made the Rule absolute and quashed the order of the Deputy Collector of Customs dated April 20, 1960, and directed refund of the sum of Rs. 20,815.25 P. within six weeks from the date. It is against this order that the present appeal has been preferred.

3. At the hearing before the learned trial Judge the counsel on behalf of the Respondent firm raised two contentions, first, that the Customs authorities had no jurisdiction to apply Section 30(b) of the Sea Customs Act without exhausting the provisions contained in Section 30(a) of the Act and, therefore, the order of the Customs authorities was illegal. The second contention was that the hearing was given by the Assistant Collector of Customs, but it was the Deputy Collector of Customs who actually passed the order of confiscation and penalty and, as such, the order was bad. It appears that on behalf of the Customs authorities it was contended before the learned trial Judge that the order dated April 20, 1960, was one in assessment and was, therefore, not justifiable under Article 226 of the Constitution. The learned Judge has found that the provisions of Section 30(b) cannot be invoked without exhausting the provisions of Section 30(a) of the Act, and he has also found that the order of the Deputy Collector of Customs is bad on the ground that the hearing had been given by the Assistant Collector of Customs and the order was made by the Deputy Collector. With regard to the contention of the counsel for the Customs authorities that the order was administrative in nature, the learned Judge has found that the order of confiscation and penalty having been made in exercise of the power contained in Section 182 of the Sea Customs Act the order was quasi-judicial in character and so amenable to a writ of certiorari. The learned Judge has further found that even assuming that the assessing authority was discharging administrative function still such authority was not above the law and it was bound to assess customs duty in accordance with law and the very basis of assessment being illegal a writ of mandamus could issue commanding the authority to forbear from enforcing the illegal order. It appears that before the learned Judge there was also some controversy with regard to the question whether the Court in a proceeding under Article 226 of the Constitution can direct refund of the duty or penalty paid and it was held by the learned Judge that the Court had power to make such an order of refund.

4. At the hearing of this appeal all the points raised before the learned trial Judge have also been canvassed before this Court; but the principal points on which stress has been laid by the learned Counsel for the Appellant is that the finding of the learned trial Judge as to the true construction to be placed on the provisions of Section 30 of the Sea Customs Act and the finding that the real value is to be assessed at the rate of 20 s. per yard is not correct. Mr. G. P. Kar, the learned Counsel appearing for the Appellants, has contended that the procedure adopted by the Customs authorities for ascertainment or

determination of the real value of the goods is perfectly in accordance with the provisions of the Sea Customs Act and for that purpose he has referred to the relevant provisions in the Act; The first section which may be considered is Section 29 which provides, inter alia, that upon importation of any goods the owner of such goods is under an obligation to state in his bill of entry the real value, quantity and description of such goods to the best of his knowledge and belief, and he has to subscribe a declaration of the truth of such statement at the foot of such bill of entry. If the Customs Collector feels any doubt he may require the owner or any other person in possession of any invoice, broker's note or policy of insurance or other document whereby the real value, quantity or description of the goods can be ascertained, to produce the same and to furnish any information relating to such value, quantity or description which it is in his power to furnish and thereupon such person is obliged to produce such document and furnish such information. Section 30 of the Act defines "real value" and is as follows:

30. For the purposes of this Act the real value shall be deemed to be—(a) the wholesale cash price less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof; or (b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid.

5. Section 31 provides that if it appears that the real value of goods is not correctly stated in the bill of entry or shipping bill the goods shall be assessed in accordance therewith. Section 32 provides that if it appears that the goods are properly chargeable with a higher rate or amount of duty than that to which they should be subject according to the value as stated in the bill of entry or shipping bill, then the officer of Customs may detain such goods for the purpose of enabling the Collector of Customs to decide whether the goods should be delivered to the importer on payment of duty in accordance with the declaration made by him, or the goods should be retained for the use of the Central Government; and if it is decided to adopt the latter course, then the procedure for such retention and the steps to be taken thereafter are indicated in that section. It may, however, be pointed out in this connection that Sections 30 and 32 relate to a particular class of goods, that is ad valorem goods (non-tariff value goods). Now, it has been held that the expression "wholesale cash price" u/s 30(a) means the price current for staple articles, the amount of which, if not a subject of a daily publication in the press, is easily ascertainable in the appropriate trade circles, but a special low price allowed by the manufacturers in consideration of the importer purchasing a big lot or for any other reason is an exceptional one outside the ordinary channels of business and cannot represent the true cost at which goods of the like kind and quality could be delivered in India within the meaning of Section 30(b). In the case of *Willaitiram Jaishiram v.*

Secretary of State AIR 1936 Sin 127 (129) the learned Judicial Commissioner, in dealing with the question whether the special price offered by a seller could be regarded as real price within the meaning of Section 30 of the Sea Customs Act, observed:

The Plaintiff's case was not that the wholesale price of similar goods was less than sh. 2 per yard, but that the manufacturers had made a special reduction in price. The correspondence which might have thrown light upon the causes which had induced the shippers to invoice the goods at such a low price was not produced. But assuming, for the sake of argument, that as Plaintiff No. 1 had offered to purchase a very big lot at a special price, I am not prepared to hold that the Collector was not justified in holding that "that special price did not represent the wholesale price of staple articles and in fixing the price at sh. 1-9 per yard. If, on the other hand, the goods in question were not staple articles, falling within the purview of Clause (a) of Section 30, it was equally competent for the Collector to assess them at sh. 1-9 per yard.

The jurisdiction to determine the real value of the goods is vested by the Legislature in the Customs officers and it is well settled that where he has conformed to the statutory provisions of the law in arriving at his decision, the Court cannot sit in appeal against it or re-try the question at issue.

6. In the case of AIR 1932 168 (Privy Council) , in interpreting Section 30 of the Sea Customs Act, Lord Blanesburgh observed:

Sections 29 and 30 are sections of a taxing Act not to be pressed against the taxpayer beyond their plain intendment, and taken as a whole, as their Lordships read them, they seem to disclose on the part of the Legislature when describing the price which is to represent the "real value" of the goods to be taxed a definite purpose to define a price?conservative in its every aspect and free in particular from any loading for any post-importation charges incurred in relation to the goods. The price is to be a price for goods, as they are both at the "time" and "place" of importation. It is to be a "cash price", that is to say, a price free from any augmentation for credit or other advantage allowed to a buyer; it is to be a net price, that is to say, it is a price "less trade discount". And this last expression, supplemented by these other indications, confirms in their Lordships' view the conclusion that the words "wholesale...price" are used in the section in contradistinction to a "retail price.

...Their Lordships accordingly reach the conclusion that in no sense can the price charged to consumers for the machinery oils imported by the Appellants be regarded as such "a wholesale cash price" as is described in the Act,-nor is it in their judgment possible by further inquiry to extract any such price from any other available material. Indeed the Act as their Lordships read it does not invite any such further inquiry. The wholesale cash price primarily in view is, they cannot doubt, that price current for staple articles, the amount of which, if not a subject of daily publication in the press, is easily ascertainable in appropriate

trade circles. Their Lordships do not find in the section any sufficient indication that the alternative basis of assessment indicated in Section 30(b) is only to be a "dernier resort". For the great bulk of dutiable goods in their infinite variety it must; they feel satisfied, be the only available basis. And in their Lordships' judgment it is the basis on which these oils of the Appellants must be charged to duty.

7. The facts in this case were that the Vacuum Oil Company imported at Bombay very large quantities of lubricating oil (Mobil oil) of a particular manufacture and mark and they sold it direct to numerous customers, but never to dealers. The price they charged was the same whether a large or small quantity was bought, except that if a consumer contracted to buy from them all his requirements for a year, he was entitled to a discount of from 2 J to 15 per cent according to the quantity bought in the year. No other lubricating oil of a like kind and quality was sold in Bombay. In the circumstances it was held that the word "wholesale" in Section 30(a) of the Act was used in contradistinction to "retail" and that, accordingly, Clause (a) of Section 30 was not applicable to the case but Clause (b) of Section 30 applied and the duty was payable upon the basis of the cost price at Bombay to the oil company including freight, insurance and landing charges.

8. Reference may in this connection, however, be made to another decision of the Judicial Committee in *Ford Motor Company of India Ltd. v. Secretary of State for India in Council* (1937) 65 I.A. 32 "(40. 42) to which our attention was drawn by the learned Counsel for the Respondent. Sir George Rankin, who delivered the judgment of the Judicial Committee, observed:

It is reasonably plain in limine that, if such a wholesale price as satisfies the description contained in Clause (a) of Section 30, is ascertainable, the goods cannot be dealt with under Clause (b), and the statute is not consistent with the view that; the importer's profit should in that case be excluded from the assessable value.

Then the following further observations appear:

But in their Lordships' view this is a misinterpretation of Clause (a). The application of the clause does not depend upon any hypothesis to the effect that at the time and place of importation an indefinite amount of further goods added to the available supply has had effect upon the wholesale price. Ordinarily at the time of making out the bill of entry there will not be an actual price relating to the goods themselves and complying with the requirements of Clause (a). As a rule, therefore, the price appropriate to the goods under assessment will under the clause be deduced, if at all, from actual prices relating to other goods of like kind and quality. But if there is an actual price for the goods themselves at the time and place of importation, and if it is a "wholesale cash price, less trade discount" the clause is not inapplicable for want of sales of other goods.

9. The learned Counsel for the Respondent has laid particular stress on the

observation at p. 40 and has argued that if it is not possible to ascertain the wholesale price as contemplated in Clause (a) and the Customs authorities have made attempt to find out the wholesale cash price as contemplated in Clause (a), but they failed in such attempt that they can have resort to the terms of Clause (b) of Section 30.

10. Reliance has also been placed on a Division Bench decision of this Court, Legal Remembrancer, Bengal v. H. C. Patel (1942) 46 C.W.N. 414 : ILR (1942) Cal. 62, where in dealing with the question whether the acquittal of the Respondent, who imported some Japanese goods to this country and was charged with mis-declaration of value of the goods in contravention of Section 30 of the Sea Customs Act, was justified or not, it was pointed out that was not sufficient to prove that the Customs officer in fact applied Section 30(b) of the Act or that the importer sought to have the real value determined u/s 30(b); it was incumbent on the prosecution to prove that those conditions were fulfilled which entitled the Customs officers to apply Section 30(b) and not; Section 30(a). In other words, it was incumbent on the prosecution to prove that the "wholesale cash price" less trade discount for which goods of the like kind and quality are sold, or are capable of being sold at the time and place of importation was not ascertainable. From these propositions it is sought to be argued that the procedure adopted by the Customs authorities in determining the real value under the provisions of Clause (b) of Section 30 was illegal. The learned Counsel for the Appellant, on the other hand, has contended that the observations on which reliance is placed by the learned Counsel for the Respondent were made in connection with a criminal prosecution where the innocence of the accused is presumed and a heavy onus is cast upon the prosecution to bring the case strictly within the terms of the section the contravention of which is complained of as an offence ; but in determining the real value, as laid down u/s 30 of the Act, the Customs authorities have not to follow the strict rules of evidence, and strict proof of every material fact) is not necessary as is required in proving the charge laid in a criminal prosecution. But it appears to us that if a particular case has interpreted the provisions of a particular section of a statute whether it is in course of a civil proceeding or in course of a criminal prosecution the interpretation so put will have a binding force and a due weight may be given to the effect of such interpretation by learned Judges who are confronted with similar questions in subsequent cases coming up before them for determination. The Division Bench has attempted to make it clear that the mere fact that the Customs officer in fact applied Section 30(b) to a particular case or that the importers sought to have the real value determined u/s 30(b) does not conclude the matter. It is further necessary for a prosecution to establish that the price mentioned in Section 30(a) could not be ascertained and so it was necessary to have recourse to Section 30(b). It may, however, be pointed that the decision of the Judicial Committee in the Vacuum Oil Company's case (Supra) was not brought to the notice of the Division Bench while dealing with the case of Legal Remembrance v. H. C. Patel (Supra). It is further to be observed that there is no

question of any heavy onus being cast on the Customs authorities in the matter of assessment of duty under the relevant provisions of the Sea Customs Act of establishing the fact of inapplicability of the provisions of Clause (a) of Section 30 of the Act before resort can be had to Clause (b) thereof. Section 30(b) provides,, as pointed out by the Privy Council, for an alternative basis of assessment. This appears to me to be the correct interpretation of Section 30 of the Act.

11. In the present case, for the purpose of establishing that the Respondent had made a mis-declaration in the bill of entry as to the real value of the goods, the Customs authorities have placed reliance mainly on two letters which they received from T. S. Narang, the indenting agent of the Respondent. One such letter is dated December 24, 1959, and it was written to the Assistant Collector of Customs, Preventive Department, Bombay, pursuant to some enquiry made by the Assistant Collector of Customs, Bombay. The relevant portion of the letter is as follows:

Dear Sir, As per your enquiry we hereby state that the correct C.I.F. value of woolen fabrics of our under mentioned qualities during the year 1959 have been as follows:

per yard Quality No. N.A. 2/800?Sh. 29/6 2/1400? Sh. 29/9 2/236?Sh. 29/6

Yours faithfully,

For T.S. Narang Partner

12. The other letter is dated February 6, 1960, which was also written by T.S. Narang to the Assistant Collector of Customs, Custom House, Bombay, and the relevant portion is as follows:

Dear Sir,

With reference to our letter dated 24th December, 1959 the correct C.I.F. value mentioned therein are the lowest correct C.I.F. values of the qualities mentioned therein during 1959.

Yours faithfully,

For T.S. Narang

Sd./-....

Partner

13. It appears that the Customs authorities also managed to obtain possession of an advice dated May 22, 1959, which was sent by T.S. Narang to M/s. K. Jos Otten, West Germany, which was enclosure "A" to the memorandum dated March 14, 1960, and also a cable dated February 4, 1959; but as the Respondent firm succeeded in casting some doubt upon the authenticity of the document marked annex. A dated May 22, 1959, the Deputy Collector of Customs ignored this

document and relied on the other two documents, annex. B and C, for the purpose of arriving at his conclusion. Now, it is clear from Section 29 of the Customs Act to which reference has already been made that it is open to the officers of Customs to procure information or necessary evidence in the manner in which they have done in the case and, therefore, no exception can be taken to the Customs department obtaining the necessary information from T.S. Narang, the indenting agent of the Respondent firm. The invoice which was submitted along with the bill of entry has been produced before us and this shows that the quality and description of the goods which was imported by the Respondent firm in the present case are exactly the same as set out in the letter of T.S. Narang dated December 24, 1959, and for" which the price of 29 s. 6 d. per yard is the price that has been quoted in that letter. The two letters of T.S. Narang make it absolutely clear that 29 s. 6 d. per yard was the lowest price of the goods in question prevailing during the whole of the year 1959. It appears from a letter dated May 1, 1959, written by "M/s. K. Jos Otten to M/s. T.S. Narang that certain goods including the goods of the quality which are referred to in the invoice of the Respondent were offered for sale to Indian customers, and the German firm was prepared to sell the same at the special price of 20 s. per yard. The relevant portion of the letter may be set out hereunder:

Dear Sir, We are in a position to send you our offer for stocks shortly available.

We are convinced this kind of goods will be specially suitable for the Indian market and therefore we have pleasure to submit you this offer though we have a number of enquiries for this cloth from other markets.

By way of exception we are ready to grant the special price of 20 d. per yard.

We hope our offer will be of interest for you and ask you to let us have your decision by return of mail otherwise we must sell these goods to another side.

Yours faithfully, K. Jos Otten pp. Sd./- and there is a letter enclosed to this letter which sets out qualities of the goods including qualities mentioned in the invoice of the Respondent firm which was submitted along with the bill of entry on September 5, 1959. It is to be pointed out that the price which is quoted in this letter of May 1, 1959, was an exceptional and special price which was offered and so it cannot be regarded as the real value of the goods within the meaning of Section 30 of the Sea Customs Act. The learned trial Judge has made certain comments with regard to annex. B and C on which reliance has been placed by the Deputy Collector of Customs in making his order dated April 20, 1960. The learned Judge has observed:

Exts. B & C on which the Customs Authorities relied to arrive at the ascertainment of the real value in the present case suffer in my opinion from various infirmities. First, the letters marked B and C do not show a& to whether there was any import pursuant to the quotation mentioned there. Secondly, no time of importation is mentioned. Thirdly, the place of importation is not mentioned. Fourthly, the wholesale cash price at which they were sold at the

time and place of importation does not appear and finally the letter does not show to which part of the year 1959 the price mentioned relates or whether they were the price ruling at Bombay or at Calcutta.

14. The learned Counsel appearing for the Respondent has tried to justify these comments made by the learned Judge with regard to the annex. B and C to the petition ; but it is %o be pointed out that under Clause (b) of Section 30 it is not necessary to have evidence of actual importation in respect of other goods of like kind and quality for the purpose of determining the real value in terms of Clause (b). All that is necessary under that clause is that goods of the like kind and quality "could be delivered" at such place and not actually delivered. The next thing to be pointed out is that, although in the letters which have been marked as annex?s. B and C there is no mention as to any particular point of time when the price was prevailing, it-is quite clear from the wordings of the letter dated December 24, 1959, that during the whole of the year 1959 the prices quoted in the said letter as against the particular qualities were prevailing. It was suggested by the learned Counsel for the Respondent that this statement could not be accepted as this cannot be a probable state of affairs, but we do not think that it is open to us to go by probabilities as suggested by the learned Counsel for the Respondent, but we should go by the actual terms and wordings of the letter which states very clearly that during the whole of the year 1959 the prices quoted in the letter dated December 24, 1959, were prevailing. All that we have to consider in this case is whether there is any evidence to support the finding of the Customs authorities and not that the evidence on which reliance has been placed in arriving at the finding is true or not, or is sufficient or not. Then again it is to be pointed out that there is no justification for the learned Judge's comment that the wholesale cash price should appear anywhere in the documents, annex?s. B and C, or there should be any evidence of that available to the Customs authorities before they can proceed under Clause (b) of Section 30. If the wholesale cash price as contemplated in Clause (a) of Section 30 is not available or is not ascertainable then Clause (b) applies; and there is no suggestion on behalf of the importer here (Respondent) that any wholesale cash price was available or ascertainable in respect of the goods in question. It has been argued that these documents, annex?s. B and C, do not give any indication that they have reference to goods of description and quality identical to that imported by the Respondents in this case; but it appears that the qualities are specifically set out in the letter of December 24, 1959, and the particular qualities with which we are concerned in this case are 2/800/2/1400 and 2/263 which find place in this letter of December 24, 1959, and the price quoted against these qualities is 29 s. 6 d. per yard. A reference to the invoice which has been produced at the time of the hearing also indicates that these three qualities of goods had been imported by the Respondent. The letter dated May 1, 1959, to which reference is made in the reply submitted by the Respondent dated March 22, 1960, in answer to the show cause memo, dated March 14, 1960, and which is set out at p. 26 of the Paper Book also sets out the three qualities, 2/800,

2/1400 and 2/263 and the width, length and other particulars are set out in this letter, but the price is quoted as 20 s. per yard, This letter is an annexure to the letter of the same date, May 1, 1959, which is set out at p. 25 of the Paper Book and which shows that this price was offered as a special price or as by way of exception. The order of the Deputy Collector of Customs which is impugned in the present proceeding also refers to these three qualities as being the qualities ? of goods with which we are concerned in this case (p. 31 of the Paper Book), and it is also pointed out that these qualities having various shades and designs are the goods which are the subject-matter of the enquiry. The reply of the Respondent in answer to the show cause memo, dated March 22, 1960, also makes reference to a letter No. S4(V)/59 APT in which enquiries have been made by the Customs authorities, Bombay, regarding the price of materials imported (p. 24 of the Paper Book) and it is quite clear from the letter of December 24, 1959, that it was in answer to these enquiries of the Customs authorities that the particulars of the goods which are mentioned in the letter of December 24, 1959, had been supplied by T. S. Narang to the Assistant Collector of Customs, Preventive Department, Bombay. The Deputy Collector of Customs had occasion to consider this letter of May 1, 1959, and the finding that he arrived at with reference to this letter is recorded in the following manner:

No case has either been made out to prove that there was any justification for the alleged special price and that it would be admissible to one and all in similar circumstances. It was the responsibility of the importers to declare the real value of the goods correctly in terms of the Sea Customs Act, which they have failed to do. It is more so if they were aware that the prices to them were special and did not reflect the normal cost of delivery.

15. Therefore, there can be no doubt that the Deputy Collector of Customs had before him evidence to show that goods of like kind and quality could not be delivered at a price lower than 29 s. 6 d. per yard. The further argument of the learned Counsel for the Respondent has been that there was no evidence before the Deputy Collector of Customs as to whether goods of like kind and quality as imported by the Respondent could be delivered at Calcutta at the price of 29 s. 6 d. per yard because there is no indication either in the letter of December 24, 1959, or in the letter of February 6, 1960, that 29 s. 6 d. per yard was the C.I.F. value of the goods deliverable at Calcutta. But no such point appears to have been made in the reply dated March 22, 1960, and nor in the letters on which reliance is placed on behalf of the Respondent, namely the letter dated May 1, 1959, and its annexure also dated May 1, 1959, there is any indication that 20 s. per yard was the C.I.F. value of goods to be delivered at Calcutta. Those letters also passed between T.S. Narang and the German supplier. But it is that price 20 s. per yard that was stated to be the GIF. price in the letter dated May 1, 1959, and that is also the price quoted in the invoice which has been submitted. Therefore, it is reasonable to presume that there is no appreciable difference between the C.I.F. value of goods deliverable at Calcutta and that is why no importance was attached to this aspect; or the position may be that as the

importer realised that the C.I.F. value of the goods imported at Calcutta will be more than the C.I.F. value of the goods imported at Bombay, no such point as to value at the place of importation was raised. As no such point also appears to have been taken at the hearing before the Customs authorities and there is no indication of such point being argued in the order of the Deputy Collector of Customs, we do not think that the learned trial Judge was justified in finding out for himself certain additional infirmities with regard to annexes B and C although no such suggestion was made in the reply dated March 22, 1960, or at the hearing before the Customs authorities on behalf of the Respondent. We are, therefore, unable to agree with the learned trial Judge that there was no evidence before the Customs authorities to justify the finding at which the Deputy Collector of Customs arrived and which are recorded in his order dated April 20, 1960. Reliance was placed on cases of RADHA DEBI JALAN AND OTHERS Vs. COMMISSIONER OF Income Tax, CALCUTTA., ; COMMISSIONER OF Income Tax Vs. ASIT KUMAR GHOSH., ; Sree Meenakshi Mills Ltd. v. Commissioner of income tax, Madras (1956) 31 LT.R. 28 and State of Orissa v. Murlidhar Jena A.I.R, 1963 S.C. 404 but it is not necessary to deal with them at length. It also appears to us that it was open to the Customs authorities to have recourse to the provisions of Clause (b) of Section 30 of the Sea Customs Act when there was no declaration in the bill of entry that was submitted about the wholesale cash price less trade discount with regard to goods in question. The declaration was merely of the invoice value of the goods. But as I have pointed out already, it has never been suggested on behalf of the Respondent that wholesale cash price as contemplated in Clause (a) of Section 30 of the Act is ascertainable or available in respect of these goods. That being the position it appears to us that the procedure adopted by the Customs authorities in determining the real value of the goods under the provisions of Clause (b) of Section 30 of the Act was justified and no exception can be taken to it.

16. The next question which is to be considered is whether principles of natural justice have been violated in this case inasmuch as it was the Assistant Collector of Customs who gave a personal hearing to the Respondent, but it was the Deputy Collector of Customs who passed the order of confiscation and imposition of penalty without giving any further hearing to the Respondent. On this point the position in law appears to be fairly well-settled. The Supreme Court in the case of Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, in construing certain rules and statutes, has pointed out that if one person hears evidence and arguments and another person decides, then such a procedure is destructive of the concept of a judicial hearing and defeats the object of a personal hearing. Personal hearing enables the authority concerned to watch the demeanor of the witnesses and clear up his doubts during the course of the arguments and the party appearing to persuade the authority by reasoned argument to accept his point of view. But, if one person hears and another decides then personal hearing becomes an empty formality and such a procedure offends the basic principle of judicial procedure.

Chakravartti CJ. in the matter of P. K. Mukherji (1955) 59 C.W.N. 969 in dealing with a reference under the Chartered Accountants' Act has observed:

That it is fundamentally and radically wrong that some one should hear and see witnesses and some one else should give the decision.

17. The learned Counsel for the Appellant placed reliance on a decision of the Bombay High Court in *Mohadev Ganesh v. Secretary of State for India* AIR 1922 Bom. 30 but in that case it was found on facts that the Appellant had ample opportunities to correct or contradict any statement prejudicial to his view which had been recorded and there was no injustice done to the parties. So that case is distinguishable from the facts of the present case. The learned Counsel for the Appellant also referred to *M.R.M.N. Chockalingam Chettiar Vs. The Government of Madras*, but this case does not actually decide the point at issue nor can it be regarded as good law after *Nageswara Rao's* case (9) even if it is construed to have laid down any principle. In the present case the Assistant Collector of Customs heard the entire argument and all the evidence were produced before him. What the Deputy Collector has done is simply to go through the entire records and to arrive at his finding upon persuade of such records. It is true that the explanation which was submitted by the Respondent to the show cause memo, by their letter of March 22, 1960, was before the Deputy Collector of Customs and there was some record of the personal hearing which was also placed before the Deputy Collector of Customs. But this record of the personal hearing was produced before us at the time of the hearing of the appeal, but it does not bear out the statement of the Deputy Collector in his order that during the personal hearing the very arguments adduced in the reply were reiterated.

The record made at the time of the personal hearing does not show that it contains all the arguments which are to be found in the reply of the Respondent dated March 22, 1960. In any event, there is no doubt that the Deputy Collector of Customs had no opportunity of hearing the arguments addressed. It has been pointed out in the case of *A.N. Sattanathan v. Lakhani Ltd.* Unreported decision of a Division Bench of the Calcutta High Court dated June 16, 1961, in Appeal from Original Order No. 15 of 1959 that it is a well-settled principle that administrative adjudication ordinary requires a fair hearing to be given to persons interested. Such hearing is designed to afford safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous consideration. In other words, the hearing is the hearing of evidence and arguments of both parties. As pointed out already, the Supreme Court has made it abundantly clear in *Nageswara Rao's* case (*Supra*) that if one person hears evidence and argument and the other person decides, then personal hearing becomes an empty formality. The learned Counsel for the Appellant relied also on two decisions of the Supreme Court: *S. Kapur Singh Vs. Union of India (UOI)*, and *Major U.R. Bhatt Vs. Union of India (UOI)*, but it is well-settled that under Article 311 of the Constitution it is not necessary to give a second hearing at the

stage of imposition of the punishment. So these cases are distinguishable and are of no assistance to the Appellant.

18. In view of all these it cannot be said that there has been proper compliance with the principles of natural justice in this case. It may be that the Respondent has not as a matter of fact suffered any prejudice by reason of this violation of the principles of natural justice, but as has been pointed out by the Judicial Committee in the case of *Annamunthodo v. Oilfields Workers Trade Union* (1961) A.C. 945 (956) even if there has been no actual prejudice caused to the person by reason of the principles of natural justice being violated, still if it is established that there has been in fact any non-compliance of the principles of natural justice, the Court will have no hesitation in setting aside the Act or order which is made in violation of natural justice. The Judicial Committee observed:

If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the Courts. It is a prejudice to any man to be denied justice. He will not of course be entitled to damages if he has suffered none. But he can always ask for the decision against him to be set aside.

For these reasons it must be held that the order of the Deputy Collector of Customs dated April 20, 1960, cannot stand and it must be quashed.

19. The last point that was argued on behalf of the Appellant is that the learned trial Judge should not have directed refund of the amount which is claimed to have been paid in excess and which sum is claimed in prayer (c) of the petition, but the learned Judge should have directed the Customs authorities to proceed according to law and to determine the question of assessment afresh. On behalf of the Respondent the learned Counsel has contended that in view of the decision of the Supreme Court in *Universal Imports Agency v. Chief Controller of Imports and Exports* AIR 1961 S.G. 41 and the case of *Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another*, and the case of *Wazir Chand v. State of Himachal Pradesh* AIR 1954 S.C.A. 1257 the learned trial Judge was justified in directing refund of the excess amount of duty which have been assessed by the order of the Deputy Collector of Customs. It is to be pointed out that in the first mentioned case the Court quashed an order impugned because it came to the conclusion that the order had been illegally made and so directed refund of the amount illegally collected. In the second case, the Supreme Court held that the Court of Wards could not continue in possession of the property of the Petitioner and so it ordered restoration of the property and in the third case certain goods had been seized from the possession of the Appellants by the Police in India at the instance of the Police of Jammu and Kashmir, and the Supreme Court directed issue of an appropriate writ to restore to the Petitioner the goods seized by the Police. These cases show that the Court has power to direct refund or restoration if it comes to the conclusion that the orders the validity of which has been challenged cannot be sustained in law. We are, therefore, unable to hold that the learned trial Judge in any way exceeded his jurisdiction in making the

order of refund as has been done in this case. If it is the intention of the Customs authorities to proceed afresh against the Respondent in accordance with law and if it is open to them to do so, they can proceed accordingly. But, I do not think that any fault can be found with the judgment and order of the learned trial Judge, because he has not given any direction or liberty to the Customs authorities to proceed against the Appellant afresh and to re-try or re-adjudicate upon the question of assessment of duty.

20. In the result, the appeal must fail, and it is accordingly dismissed. There will be no order as to costs.

21. Certified for two counsel.

Mitter, J.

22. I agree.