
(1980) 02 MAD CK 0027

In the Madras High Court

Case No : Wirt Petition No. 1844 of 1977

Dunlop India Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-02-1980

Acts Referred:

Citation : (1980) CENCUS 560

Hon'ble Judges : M.M. Ismail, C.J.;Ratnam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Ismail, C.J.—The petitioner is a public limited company engaged in the manufacture and sale of automobile types and other rubber

products: The petitioner-company imported raw materials, one such being what is known as V.P. Latex. This raw material imported by the

petitioner was subjected to customs duty under Item 87 of the First Schedule to the Tariff Act, 1934. The petitioner claimed that the raw material

in question would fall under Item 39. But the customs authorities did not accept the contention. Item 39 read:

Rubber, raw

Item 87 read;

All other articles not otherwise specified, including articles imported by post.

Thus, the action of the customs authorities was not to treat the article in question as ""rubber raw"" but to treat it as one falling under the residuary

item, namely, item 87. This has been going on, as far as the Madras Port is concerned, for several years from 1964 to 1972. In 1969, the branch

office of the petitioner at Calcutta received a consignment of V.P. Latex, which

was also subjected to levy under Item 87 by the Assistant Collector of Customs. Against such a levy the petitioner preferred an appeal to the Appellate Collector of Customs, Calcutta, and the said appellate authority accepted the contention of the petitioner and directed the levy of duty under Item 39. This order of the Appellate Collector of Customs was revised by the Government of India in exercise of their revisional powers u/s 131(3) of the Customs Act, 1962, and by an order dated 14-1-1972, the Central Government held that the article in question was liable to duty only under Item 87 and not under Item 39, as claimed by the petitioner and as held by the Appellate Collector of Customs. Against this order of the Central Government, the petitioner obtained special leave to appeal to the Supreme Court, and the Supreme Court, in its judgment reported in *Dunlop India Ltd., Madras Rubber Factory Ltd. v. Union of India and Ors.* A.I.R.1977S.C. 597, upheld the claim of the petitioner herein and set aside the order of the Central Government and restored the order of the Appellate Collector of Customs, Calcutta; This judgment was rendered on 6-10-1975, After this judgment, the petitioner herein wrote to the Central Board of Excise and Customs, the second respondent herein, on 2nd July 1976 claiming refund of the duty paid by it, on the basis of the decision of the Supreme Court. On 6th August 1976, the petitioner received a reply from the second respondent advising the petitioner to write to the concerned Collectors and follow the procedure for the refund of duty under the law and inviting the attention of the petitioner to the provisions of Sections 27,12,14 and 15 of the Customs Act, 1962. Thereafter, the petitioner herein filed the present writ petition on 29th April 1977 praying for the issue of a writ of Mandamus directing the respondents to refund to the petitioner the amount of Rs. 10, 66, 789.54 collected from the petitioner in excess on account of the customs duty and countervailing duties in respect of the imports of V.P. Latex set out in the Annexure filed with the petition. Subsequently, the petitioner filed an application for amendment of the prayer in the writ petition, namely, W.M.P. No. 1379 of 1978. By this petition, the petitioner wanted to amend the figure of Rs. 10,66,789.54 originally mentioned in the writ petition into Rs. 21,18,464.70. As we have seen, there was an annexure to the original writ petition, and when the prayer in the amendment petition, which

was ordered by this Court, was carried out, that annexure was marked as Annexure "A" and the additional annexure which was filed was marked

as Annexure "B", giving the particulars with regard to the additional amount sought to be included in the prayer in the writ petition.

2. The learned Advocate General, who appeared for the petitioner, very vehemently contended that having regard to the position of the law and

having regard to the decision of the Supreme Court, which, according to Article 141 of the Constitution of India, is the law of the land, the

respondents herein were under an obligation to repay the excess duty which they had collected by subjecting the article in question to levy under

Item 87 instead of under Item 39, and even with regard to the countervailing duty, the respondents are under a legal obligation to repay the same,

since the article in question is admittedly not manufactured in this country, and therefore, it is not liable to any excise duty. In support of this

contention, the learned Advocate General placed very strong reliance on certain observations of the Supreme Court in *D. Cawasji and Co. and*

Others Vs. State of Mysore and Another, ; and two Division Bench decisions of this Court, namely. *The Assistant Collector of Customs, Customs*

House, Madras and Ors. v. Premraj and Ganapatraj and Co. (P) Ltd. (Now known as *Madras Electrical Conductors (P) Ltd.*) 90 L.W. 719 and

Durga Shankar Industries, Vijayawada v. The Govt. of India and Anr. Writ Appeal No. 248 of 1975 Judgment dated 6th January 1979.

3. As against this contention of the learned Advocate General, who appeared for the petitioner, Mr. U.N.R. Rao, the learned Counsel appearing

for the respondents, while not disputing the jurisdiction of the High Court under Article 226 of the Constitution of India to issue a writ of

Mandamus directing the respondents to refund the duty illegally and unauthorisedly collected in appropriate cases, contended that on the facts and

circumstances of this particular case, the Court should not exercise its discretion in favour of the petitioner herein. We shall now consider the

relative merits and demerits of these contentions with reference to the law laid down by the Supreme Court as well as the facts and circumstances

of this case.

4. The judgment relied on by the learned Advocate General merely lays down the general principles applicable to such cases. The judgment has

stated that the High Court has power under Article 226 of the Constitution of India to direct refund of the tax collected without the authority of the law, and the period of limitation for filing such writ petitions can be taken to be the period of limitation prescribed for suits for the same reliefs and the period of limitation in such cases will commence only when the person concerned acquires knowledge of the fact that the levy had been collected unauthorisedly and that knowledge can be only on the basis of a decision of a court holding that the levy is illegal. The Court further pointed out that even in a case where a writ petition is filed within the period of limitation referred to above, the Court has got the discretion not to grant the relief in appropriate cases. The Court also pointed out that the result of a Court issuing such a writ of mandamus will be to enable a person to recover the amount paid as tax even after several years of the date of payment, if some other party would successfully challenge the validity of the law under which the payment was made and if only a suit or writ petition is, filed for refund by the person with-in three years from the date of declaration of the in validity of the law and that might both be inexpedient and unjust so far as the State is concerned. The Court again pointed out that a tax is intended for immediate expenditure for the common good and it would be unjust to require its repayment after it has been in whole or in part expended, which would often be the case, if the suit or application could be brought at any time within three years of a Court declaring the law under which it was paid to be invalid, be it a hundred years after the date of payment; nor is there any provision under which the Court could deny refund of tax even if the person who paid it has collected it from his customers and has no subsisting liability or intention to refund it to them, or, for any reason, it is impracticable to do so. Having referred to the general principles applicable to such cases in those terms, the Supreme Court in that decision actually upheld the orders of the High Court dismissing the writ petitions on the ground that they were filed after a considerable time. Consequently the said decision relied on by the learned Advocate General is itself an authority for the proposition that the High Court has jurisdiction to dismiss a writ petition in the exercise of its discretion on the ground of delay, even though the amount with reference to which the writ of mandamus was prayed for was one collected without the authority of law. It is pertinent to point out against the background of

this decision of the Supreme Court, that the decision of the Supreme Court in the petitioner's case was only in relation to a particular consignment

which was imported at Calcutta with reference to which the Government of India interfered with the order of the Appellate Collector of Customs

and directed the levy of duty under Item 87 as against Item 39.

5. The two Division Bench decisions of this Court relied on by the learned Advocate General do not advance the case further. In Assistant

Collector of Customs, Customs House, Madras and Ors. v. Premraj and Ganapatraj and Co. (P) Ltd. (now known as Madras Electrical

Conductors (P) Ltd.) 90 L.W. 719 referred to earlier, which also was concerned with the prayer for the issue of a writ of certiorari to quash the

orders of the customs authorities declining to order refund u/s 27 of the Customs Act, 1962, and for a direction to them to refund the tax, this

Court held that having regard to the provisions contained in Article 265 of the Constitution, the State had no right to collect any tax without the

authority of law and if so collected, it had no right to retain the said tax and that, therefore, the High Court has jurisdiction to issue a writ of

mandamus directing the respondent to pay the excess duty collected from the petitioner.

The next decision, as we have pointed out already, is again a decision of a Bench of this Court in Durga Shankar Industries v. The Government of

India and Anr. Writ Appeal No. 248 of 1975 Judgment dated 6th February 1979, which was also a case of the appellant therein demanding

refund of the tax from the customs authorities u/s 27 of the Customs Act and the customs authorities declining to order refund and the Court,

relying upon the decision of the Supreme Court in Patel India v. Union of India A.I.R. 1973 S.C. 1300 issuing a writ of mandamus directing the

refund of the tax. While doing so, the Bench followed the other Bench decision of this Court in The Assistant Collector of Customs, Customs

House, Madras and Ors. v. Premraj and Ganapatraj and Co. (P) Ltd. (Now known as Madras Electrical Conductors (P) Ltd.) 90 L.W. 791

referred to above. These two decisions also do not lay down any new principle of law and consequently they do not advance the case of the

petitioner any further than what was laid down by the Supreme Court in the decision just referred to above.

6, On the other hand, we shall now examine the decisions relied on by the learned Counsel for the respondents. The first decision is that of a

Constitution Bench of the Supreme Court in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, . That decision related to the levy of sales tax

under the Madhya Bharat Sales Tax Act, 1950. The petitioners therein had filed the writ petitions under Article 226 of the Constitution of India

contending that the taxing provision, under which the tax was assessed and collected from the, was unconstitutional as it infringed Article 301 of the

Constitution and did not come within the saving provisions of Article 304(a), and they prayed for appropriate writs or orders for refund of the tax

that had been collected from them. It is in that context, the Supreme Court had to deal with the question of jurisdiction of the High Court under

Article 226 of the Constitution of India to issue a writ of mandate for refund of the tax alleged to have been illegally collected. In view of the

importance of the point involved, we shall extract the two paragraphs from this judgment which lay down the law on this point, namely, paragraphs

16 and 17:

16. For the reasons given above, we are clearly of opinion that the High Courts have power for the purpose of enforcement Of fundamental rights

and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law.

17. At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the

modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. It has been made clear more than once

that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of

mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by

the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may

have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the Court for relief under

Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back,

the Court, if it finds, that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution.

7. It is pertinent to point out that the Supreme Court in the decision relied on by the learned Advocate General, namely *D. Cawasji and Co. etc. v.*

State of Mysore and Anr. AIR 1975 S.C. 813 referred to already, has referred to this decision of the Supreme Court and the principles laid down therein.

8. The next decision is again that of a Constitution Bench of the Supreme Court in *Suganmal Vs. State of Madhya Pradesh and Others*, . That was

also a case where the appellant before the Supreme Court filed a writ petition praying for the issue of a writ of mandamus against the State of

Madhya Pradesh and the other respondents directing them to perform their statutory duty and/or to refund or cause to be refunded to the appellant

the amount of Rs. 62,809-52 which it was alleged he was entitled in law to receive. The Supreme Court, in paragraph 5 of its judgment referred to

the questions which arose for consideration. That paragraph reads as follows:

Two questions arise for determination in this appeal. The first is whether a petition under Article 226 of the Constitution praying solely for the

refund of money alleged to have been illegally collected by the State as tax, is maintainable under Article 226. The other is whether a writ of

mandamus, if a case for its issue is made out, can be issued under Article 226 for the refund of taxes collected prior to the Coming into force of the

Constitution, though the final assessment was made subsequent to January 26, 1950 and was later set aside by the appellate authority.

Regarding the first point, the Supreme Court observed:

...we are of opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article

226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily

maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the

money as a tax. We have been referred to cases in which orders had been issued directing the State to refund taxes illegally collected, but all such

cases had been those in which the petitions challenged the validity of the assessment and for consequential relief for the return of the tax illegally

collected. We have not been referred to any case in which the Courts were moved by a petition under Article 225 simply for the purpose of

obtaining refund of money due from the State on account of its having made illegal exactions. We do not consider it proper to extend the principle

justifying the consequential order directing the refund of amounts illegally realised, when the order under which the amounts had been collected has

been set aside, to cases in which only orders for the refund of money are sought. The parties had the right to question the illegal assessment orders

on the ground of their illegality or unconstitutionality and, therefore, could take action under Article 225 for the protection of their fundamental right,

and the Courts, on setting aside the assessment orders, exercised their jurisdiction in proper circumstances to. order the consequential relief for the

refund of the tax illegally realised. We do not find any good reason to extend this principle and, therefore, hold that no petition for the issue of a

writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right.

9. The Court referred to some of its earlier decisions including the decision in State of Madhya Pradesh Vs. Bhailal Bhai and Others, , which we

have already referred to, and extracted the passage which we ourselves have

extracted already. As a result of the discussion, the Supreme Court held:

The appellant has not been able to bring his claim for refund within any statute or statutory rule. Rule 8(a) of the rules provides for a refund of the excess tax realised before the completion of assessment if it is found that the tax payable was less in amount and if the assessee applied for the refund within a month from the date of completion of the final assessment. This rule does not provide that in case the appellate authority sets aside the final assessment, the tax realised be refunded to the assessee on his application within any specified period of time. The High Court is, therefore, right in saying that the appellant has no right under any statutory law, to the refund of the tax paid and that no duty is cast on the State to refund the amount it had realised which has been subsequently found to be not in accordance with law. The mere order of the appellate authority that the tax collected was not authorised by any law is not a decision to the effect that the State is to return the amounts to the assessee nor can it be taken to amount to a law making it incumbent on the State to refund the amount to the assessee.

10. Even before us, no reliance was placed on any statutory provision contained in the Customs Act for the refund of the amount claimed in this case and the claim was based solely on Section 72 of the Indian Contract Act on the allegation that the duty was paid by the petitioner and was collected by the respondents under a mistake of law. Even with regard to such a contention, the observation of the Supreme Court in this case as contained in paragraph 15 of its judgment is apposite. That paragraph reads as follows:

Reference is made to Section 72 of the Contract Act for the contention that the State is duty bound to return the amount to the appellant.

Whether the case of the appellant falls under the provisions of that section would be a point for decision in a regular suit and not in the proceedings under Article 226. In the circumstances of the case already narrated, there may be such defences, as urged by the State in its reply, open to it to urge against the appellant, one of the main defences being that the claim could be time-barred. It would be a moot point to consider whether the payment of tax made by the appellant can be said to be under a "mistake"

within the meaning of that expression u/s 72 of the Contract Act.

11. We may point out that no decision of the Supreme Court was brought to our notice taking a view different from the one expressed in the

above judgment, namely, *Suganmal Vs. State of Madhya Pradesh and Others*, . Having regard to this clear enunciation of the legal position, we

proceed to refer to the facts of the case for the purpose of coming to the conclusion whether we should exercise our discretion in favour of the

petitioner in this case or not.

12. As far as the facts are concerned, we have already referred to the admitted position that the refund prayed for in this case relates to the

imports made by the petitioner spread over a period from 1964 to 1972. We may also refer to the fact that when we put a question to the learned

Counsel for the petitioner whether, during these years with reference to the amounts involved in this writ petition, the petitioner took up the matter

by way of appeal or revision challenging the levy of duty on the imports under Item 87, the learned Counsel expressly admitted that no such

remedy by way of appeal or revision was resorted to by the petitioner herein; only with regard to a consignment which arrived at Calcutta in 1969

when the Assistant Collector of Customs imposed the duty under Item 87, the matter was taken up to the Appellate Collector of Customs by the

petitioner con-tending that the proper item is Item 39, which was upheld by the Appellate Collector of Customs, Calcutta, which order was

revised by the Central Government in exercise of its suo moto revisional power and that taken up in appeal to the Supreme Court which held in

favour of the petitioner herein. Under these circumstances, we have to proceed on the basis that as far as the amount sought to be recovered in this

writ petition is concerned the petitioner was content with the orders of the Assistant Collector of Customs, Madras, and did not take further-

proceedings.

13. That is not the only consideration which we have to take into account. In the counter affidavit filed by the respondents here-in, in paragraph 5

thereof they stated, with reference to the particulars furnished by the petitioner in the annexures, that the particulars of importation furnished in the

statements appended to the petition were not possible of easy verification for want of re-cords and the records being too old have already been

destroyed due to the efflux of time and as they had outlived their utility. The petitioner filed a reply affidavit, and in paragraph 5 thereof contended

that the documents, related to the accounts, payment of duty, etc., are with the Government, and as in the case of other revenue records, they are

Available with Government and the petitioner is a company of repute and long standing with a clear record for its payment of tax under various

taxation statutes and its accounts are regularly audited by reputed Chartered Accountants and, therefore, the amounts standing in the two

statements annexed to the affidavit cannot be disputed by the respondents ; further, the Chief Accounts Officer, Customs Department, has

furnished the petitioner with a certified copy of the running account current maintained by him in respect of the petitioner's importation from time to

time. When the learned Counsel for the respondents urged this point before us by contending that this Court should not exercise its discretion in

favour of the petitioner, since there is a controversy with regard to the actual facts themselves, the learned Advocate General very strongly

contended that the respondents cannot put forward the claim that the records are not available in order to defeat the just claim of the petitioner and

in any event this Court can issue a writ of mandamus directing the respondents herein to refund the excess duty collected by the respondents and

that thereafter it will be very easy for the petitioner and the respondents to sit together and, from the records available with both, to arrive at the

actual amount of excess duty collected by the respondents herein. In other words, the request of the learned Advocate General was that this Court

should issue a writ of mandamus which will be in the nature of a preliminary decree for taking of accounts and subsequently accounts will be taken

by both the parties and they may be called upon to file a memo of calculations before this court, on the basis of which the final order regarding the

payment of a particular amount can be issued. We are not satisfied that Article 226 of the Constitution of India can be put to such a use or the

power thereunder can be exercised in that manner. When the learned. Advocate General made the allegation that it is not open to the respondents

to keep the records away from the Court and put forward the contention that they are not available, only for the purpose of defeating the claim of

the petitioner herein and particularly so when the Chief Accounts Officer, Customs Department, had furnished the petitioner with a certified copy

of the running accounts maintained by him, Mr. U.N.R. Rao, the learned Counsel for the respondents produce before the court the rules applicable

to the destruction of records in the office of the Collector of Customs and a copy of the relevant rules was furnished to the Court as well as to the

learned Counsel for the petitioner. This is Rule 7.8 under the heading ""Preservation period of I.G.Ms., E.G.Ms, old Bills of Entry and Shipping

Bills"" which is at page 97 of the Central Manual of the Correspondence and Record Department in the Customs House. The said rule reads:

It has been decided that usual life period for all Import and Export documents should be five years except in the case of Licence Registers, bare

I.G.Ms., and bare E.G.Ms., whose life period should be sixteen years. Bare I.G.Ms., and E.G.Ms., means manifests wherein bills of entry,

shipping bills, transshipment permits and stores lists have not been included which may be destroyed after, five years.

Care should, however, be taken to keep such documents as are required for files under action till expiry of a reasonable period after completion

of each action"".

14. We have already referred to the fact that the amount covered in the writ petition relates to the period from 1964 to 1972, and the writ petition

itself was filed before this Court only on 29th April 1977. In view of this, we cannot hold that the respondents herein had deliberately withheld the

records and made a casual claim before the Court that they are not available, solely for the purpose of defeating the just claim of the petitioner

herein.

15. Now we shall deal with the contention of the learned Advocate General with regard to the furnishing of a certified copy of the running account

current by the Chief Accounts Officer, Customs Department to the petitioner herein. It is not in controversy that the petitioner had maintained a

running account with the Customs Department, In paragraph 3 of the affidavit filed in support of the writ petition, the petitioner itself stated that the

petitioner had been maintaining a running account with the customs authorities . and had been making periodical deposits adjustable against the

customs duties payable on the imports made from time to time. It was the certified copy of the entries in the running account which had been

supplied to the petitioner herein. It is admitted that this certified copy was

applied for and obtained after the respondents herein filed their counter affidavit in the writ petition putting forward the contention that the records were not available. We have perused this certified copy of the running account. It is not possible from this account to arrive at the figure as to what was the excise duty paid by the petitioner to the respondents in respect of the import of V. P. Latex. The certified copy of the running account merely refers to Bill of Entry number, the date when the goods were received and the duty that was collected. It is not in dispute that the petitioner was not importing only V.P. Latex; and in addition to V.P. Latex the petitioner was importing other raw materials also for the manufacture of types and rubber products. This certified extract does not say that the figure of duty referred to therein was with reference to the import of V.P. Latex only, and there are no particulars to show, as to which part of the amount represented duty imposed on V.P. Latex and which part of the amount represented duty imposed on other products. When we expressly put this difficulty to the learned Counsel for the petitioner, the learned Counsel simply stated that all these things can be verified from the records kept both by the petitioner as well as the respondents. All that we are pointing out is that on the face of the records produced before the Court, it is not possible to find out what exactly was the duty levied on the import of V.P. Latex. That is one consideration which we are certainly entitled to take into account for the purpose of deciding whether we should grant any relief to the petitioner in this case or not.

16. We shall also now examine the two annexures to the petition, to which we have already made reference. The two annexures contain certain particulars regarding the name of the steamer by which the goods arrived, the number of the Bill of Entry, the date of the bill of entry, the item under which duty was levied, the duty said to have been paid by the petitioner and the duty according to the petitioner, which was really payable by the petitioner under the law. Even with regard to these entries, there is absolutely nothing to show that these figures are referable only to V.P. Latex and not to any other goods, because as we have pointed out already, the annexures mention only the name of the steamer, the number of the Bill of Entry, the date of the Bill of Entry and the total duty paid by the petitioner herein. Even with regard to the total duty laid to have been

paid by the petitioner herein the relevant columns are blank in respect of four imports, namely, the imports by the vessel by name ""Indian Tradition

on 18.9.1964, the vessel by name ""Falkanger"" on 20.10.1964, the vessel by name ""Clan Fraser"" on 4.12.1964 and the vessel by name ""Executor

on 12.10.1972 (Annexure A). This again only confirms the contention put forward by the learned Counsel for the respondents herein that this is

not a case in which we should exercise our discretion and issue a writ of mandamus directing the respondents to refund the duty to the petitioner

herein.

17. Mr. U.N.R. Rao, the learned for the respondents put forward another contention that even assuming that Annexures A and B to the writ

petition correctly represent the duty, still they do not constitute the actual duty finally collected from the petitioner herein. The learned Counsel

pointed out that the practice prevailing in the customs department is to the effect that the moment the goods arrived, they are subject to duty on the

basis of the particulars contained in the Bill of Entry, and subsequently relief is given with reference to the actual quantity imported, and if there had

been any shortage by way of pilferage, dryage, damage or theft, refund will be ordered and the ultimate duty will be determined only thereafter and

the running account of the concerned person like the petitioner would be credited with the amount of duty which was refundable. As a matter of

fact the learned Counsel produced to the court true copies of a particular Bill of Entry which contain these particulars, namely the original

assessment made on the date of import, namely, 1976, and the revision ordered in 1978 and the final figure arrived at in January 1980. The above

mentioned facts only for the purpose of showing that the figures supplied by the petitioner herein in the two annexures, from the very nature of the

case, cannot correctly represent the duty finally demanded from the petitioner and paid by the petitioner herein and there is scope for adjustment of

figures, and all these things cannot be investigated into in proceedings under Article 226 of the Constitution of India.

18. There is also one other aspect which the court is entitled to take note of. The Supreme Court decision was rendered on 6.10.1975. That was a

decision rendered in the case of the petitioner itself. Yet, the petitioner sent a communication to the Central Board of Excise and Customs claiming

refund only on 2nd July 1976. The Central Board sent its reply on 6th August 1976 and yet, the petitioner filed the writ petition only on 29th April

1977. There has been absolutely no explanation for this delay, particularly when the petitioner was seeking the extraordinary relife of a writ of

mandamus under Article 226 of the Constitution of India.

19. We can also take note of another fact for this Court not going into these controversial facts. As we have pointed out already, the writ petition

as originally filed, claimed a refund of only a sum of Rs. 10,66,789.54 and only one annexure was attached to the writ petition. Subsequently, on

31.1.1978, that is more than nine months thereafter, the petitioner came forward with W.M.P. No, 1379 of 1978 for amendment of the prayer in

the writ petition by adding another Rs. 10 lakhs and old, In the affidavit filed in support of this petition for amendment it was stated:

Subsequent to the filing of the writ petition, the petitioner has discovered that for the very same reasons set out in the affidavit filed in support of the

Writ Petition No. 1844 of 1977, the petitioner is entitled to a further refund of Rs. 10,51,675.16 being customs duty and countervailing duty paid

on V.P. Latex on certain other consignments which omitted to be mentioned in the Annexure filed along with the writ petition. The petitioner

submits that the omission to mention such consignments and include the claim of the duty paid thereon is neither wilful nor wanton but was on

account of the fact that the relevant particulars were not brought to the notice of the petitioner at that time. This was so because the factory of the

petitioner at Madras had been at lockout for various periods and since the consignments related to the period 1969-72 in respect of which appeals

or representations had been preferred to the Appellate Collector and to the Government and the petitioner not having received any orders in

respect of the same, the petitioner was under the impression that they were pending and had not, therefore, included them in the writ petition.

However, the petitioner now understands that the said appeals or representations have been disposed of and orders have been sent but have been

lost during the lock-out period, namely, between November 1972 and January 1973.

20. We are referring to this fact only for the purpose of showing that even when the petitioner filed the writ petition on 29th April, 1977, when the

Supreme Court had rendered its decision on 6.10.1975, it was not able to give all the particulars and figures and it took another nine more months

for the purpose of discovering that a further sum of Rs. 10,51,675.16 had to be included in the prayer in the writ petition. In this context, it is too

much for the petitioner to contend that the respondents should have had all the figures available and they had deliberately, with a view to defeat the

claim of the petitioner, come forward with the story that the records were not available.

21. There is only one more aspect to which we can refer. The affidavit as well as the petition refers to only one amount of claim to be refunded

covering the customs duty as well as the countervailing duty. There are absolutely no particulars either in the Annexures A or B or the certified

extract from the running account maintained by the petitioner with the customs department, said to have been given by the Chief Accounts Officer

of the Customs Department, to show which part of the amount represented customs duty and which part of the amount represented countervailing

duty. In addition, the learned Counsel for the petitioner himself had to admit that the Supreme Court in its judgment in the case of the petitioner

itself already referred to had not expressed any opinion whatever with regard to the countervailing duty. As a matter of fact, paragraph 43 of the

judgment, which is the last paragraph, says:

We should observe that we express no opinion with regard to the question relating to countervailing duty u/s 16-AA of the First Schedule to the

Central Excises and Salt Act, 1944, in these appeals.

22. Consequently, the date of the judgment of the Supreme Court cannot be the starting point of limitation for seeking to claim refund of the

countervailing duty alleged to have been collected illegally from the petitioner by the respondents herein.

23. Having regard to all these features we are clearly of the opinion that the petitioner herein is not entitled to the relief of a writ of mandamus

directing the respondents herein to refund the amount mentioned in the petition. Under these circumstances, the writ petition fails and is dismissed.

There will be no order as to costs.