
(1953) 08 CAL CK 0023
In the Calcutta High Court
Case No : A.F.O.O. No. 52A of 1952

Hindustan Motors Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-08-1953

Acts Referred:

Appraisers Manual of Standing Order — Rule 66
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 2
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115
Sea Customs Act, 1878 — Section 188, 191, 29, 30, 39

Citation : AIR 1954 Cal 151 : 58 CWN 209

Hon'ble Judges : Chakravartti, C.J.; Lahiri, J

Bench : Division Bench

Advocate : K.P. Khaitan, for the Appellant; H.N. Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—This is an appeal from a judgment and order of Mr. Justice Bose, dated January 28, 1952, by which the learned Judge declined to issue any writ of mandamus or certiorari with respect to certain Demand Notices issued to the appellant under the provisions of the Sea Customs Act, or to direct the respondents to forbear from giving effect to the said notices or from taking any action against the appellant under the last clause of section 39 of the Act as threatened. The learned Judge had himself issued a Rule in the first instance on the respondents, the Union of India and the Assistant Collector of Customs, Calcutta, but ultimately he discharged the Rule on six different grounds,

2. In view of the very limited character of the argument addressed to us on behalf of the appellant, it will be sufficient to state the facts only in outline. Between January 20 and September 29, 1949 the appellant placed various orders in the United States of America for importing therefrom motor spare parts, service appliances and tools, parts of completely knocked down cars and trucks, as also some fully assembled trucks. The price of the goods was to be

paid in dollars to a certain Bank in the United States against delivery of the relative documents to that Bank. In order that the price might be so paid, the appellant opened various letters of credit with the United Commercial Bank in Calcutta and, thereafter entered into three several forward exchange contracts with the Bank on three several dates in June, 1949 for the purchase of the required dollars.

Necessarily, the rate of exchange adopted for the contracts was that prevailing on the respective dates of the contracts, which was a rate in accordance with the then current value of the rupee. Between July 4 and October 25, 1949, the Bills of Lading and other shipping documents relative to the goods arrived at the United Commercial Bank and the appellant took delivery of them on payment in terms of the forward exchange contracts. Between October 10 and November 16, 1949, the appellant filed with the Customs authorities the bills of entry in respect of the goods in accordance with section 29 of the Sea Customs Act and the Customs authorities, after the necessary scrutiny levied duty of an amount of Rs. 6,96,951-3-0. In doing so and in computing the "real value" of the goods for the purposes of section 29 and section 30 (b) of the Act, they proceeded on rates of exchange adopted in the forward exchange contracts of prior dates, in accordance with certain departmental instructions in force at the time. Between October and November 1949, the amount of duty levied on the appellant was either paid or debited to its account with the Customs authorities.

3. In the meantime, the rupee had been devalued with effect from September 17, 1949. Under the strict words of sections 29 and 30 of the Sea Customs Act, the real value of any imported goods is the value at the time of the importation and that time is taken to be the time when the bill of entry or the shipping bill is lodged with the Customs authorities. In November, 1949, it came to the knowledge of the Central Board of Revenue that in cases of forward exchange contracts, the Customs authorities in Calcutta were still accepting the exchange rate prevailing before the devaluation of the rupee, where the contracts had been entered into before the devaluation and the Board thought that the Calcutta Officials were presumably following the old departmental instructions. It was considered by the Board that those instructions were perhaps not legal, being in contravention of the statute and they decided that, in any event, those instructions should no longer be followed and that even in the case of forward exchange contracts, the assessment should be made on the basis of the rate of exchange ruling on the day when the bill of entry was presented.

That decision was communicated to the Collector of Customs, Calcutta, by a letter dated November 11, 1949. In the case of the goods with which the present proceedings are concerned, the appellant had filed the bills of entry after the devaluation. Accordingly, by notices issued between November 26 and December 23, 1949, the Customs authorities demanded of the appellant a further payment of Rs. 4,96,103-14-0. It is those notices which the appellant impugns. The reason why several notices were issued is that the original assessments had been

made severally in respect of the several consignments or classes of goods and the extra duty was charged by reference to those several assessments. Some mistakes were, however, made and the additional amount charged comprised certain demands, made twice. It is not disputed that if the duplicate demands are excluded, the computation of the balance is in accordance with the exchange value of devalued rupee as prevailing on the dates on which the bills of entry were lodged.

4. The Demand Notices called upon the appellant to make any representation it desired to make against the demands within a time specified in the notices. For some time, there was no response from the appellant at all. Thereafter, by a letter dated the 10/20 December, 1949, written with reference to one of the notices, the appellant stated that by the original assessments the goods concerned had been correctly assessed to duty at the correct percentage, that the exchange rate applicable to the consignments received after the devaluation would be in accordance with the relative forward exchange contracts entered into before the devaluation and that it was only after satisfying themselves that the consignments were covered by the contracts that the Customs authorities had allowed the appellant to clear the consignments at the contracted rate of exchange in accordance with the standing instructions with respect to forward exchange contracts and assessments u/s 30(b).

In their reply, dated April 11, 1950, the Customs authorities stated that the extra demands were being made, not because there had been a wrong assessment, but because the concession with regard to foreign exchange contracts had been disallowed by the Government of India and therefore the post-devaluation value had to be taken for all the consignments. Sundry correspondence followed to which detailed reference has been made in the judgment of the learned Judge. During the intermediate stage of the correspondence, the appellant asked for a hearing, but the Customs authorities pointed out that as the Central Board of Revenue had already decided the point, a discussion with them would serve no useful purpose and that, in any event, the appellant must pay the duty before it could be heard, as laid down in section 189 of the Act. The appellant does not appear to have pressed for a hearing any further.

In the meantime, the Customs authorities had informed the appellant by a letter, dated February 1, 1951, that It must pay the extra duty within a fortnight and that if it did not, action would be taken under the last clause of section 39 which meant that the Customs authorities would refuse to pass any goods belonging to the appellant until the amounts of the extra demands were paid. Thereafter, by successive letters, the appellant went on asking for time on one ground or another and obtained time by successive instalments up to so far as it appears from the record, April 10, 1951. Still it made no payment and on May 28, 1951, moved this Court under Article 226 of the Constitution for a writ in the nature of mandamus on the Union of India and the Assistant Collector of Customs, Calcutta, directing them, to cancel or withdraw the Demand Notices and a writ in

the nature of certiorari for bringing up the records relating to the orders for payment of additional duty and quashing the same.

5. The case made by the appellant in its petition was of a three-fold character. It was said, that the Customs authorities had violated the fundamental rules of judicial procedure or the principles of natural justice in that they had demanded payment of the additional amount without giving the appellant any proper hearing or opportunity to show cause why no further demand in contravention of the departmental instructions could be made and also in that they had insisted on payment of the additional amount before they would give the appellant a hearing. It was next said that the demands were illegal inoperative and void. It was submitted last that the Customs authorities, having once determined the real value of the goods for the purposes of assessment under the Act and the Rules, were not entitled in law to reopen the question of valuation.

6. As already stated, Mr. Justice Bose issued a Rule in the first instance, but discharged it at the final hearing and dismissed the appellant's petition. The learned Judge held that, in its petition, the appellant had made a disingenuous attempt to make out a case that it had been given no proper opportunity to present its case and, that it had done so by deliberately and carefully suppressing material facts from the Court. The learned Judge thought that for that lack of candour on the part of the appellant, its petition was liable to be thrown out on that ground alone. The learned Judge held, in the second place, that opportunity had, in fact, been given to the appellant and there had been no violation of the principles of natural justice in that regard. Thirdly, he held that the departmental instructions, which were not in accordance with the Act, could not be regarded as valid and effective in the face of the clear provisions of the statute, and that the demands for extra duty, which were in accordance with the provisions of the Act, were perfectly legal.

The learned Judge held, fourthly, that the Jurisdiction to determine the real value of dutiable goods imported into the country had been vested by the Sea Customs Act in the Customs authorities and if they had conformed to the provisions of the law in arriving at their decision, a Court of law could not sit in appeal over them and retry the question at issue. It was held further that the demands were formulated and made before the Constitution had come into force and since the Constitution, including Article 226, was not retrospective in operation, the appellant could not avail itself of Article 226 for the cancellation of the Demand Notices. If it could not, it would gain nothing by attacking the order of February 1, 1951, which was only incidental. Lastly, the learned Judge held that the action of the Customs authorities was not illegal for the reason that the case was outside the purview of section 39 of the Act, as contended. In his opinion, the case was one of "error, misconstruction or misstatement", as contemplated by section 39.

7. In presenting the appeal before us, Mr. Khaitan urged only two points. As I think that his first contention was correct and as Mr. Sanyar on behalf of the

respondents conceded that it was so, I shall deal with that contention first. It was submitted that the learned Judge was not right in holding that Article 226, not being retrospective in operation, was not applicable to the present case. In my opinion, that submission is correct. That the Constitution is not retrospective in operation only means that, in the absence of an express provision, rights created or principles introduced for the first time by the Constitution itself cannot be claimed in respect of or applied to facts, situated in time before the Constitution. When rights and liabilities arising out of such facts fall to be adjudged. That principle cannot apply to a mere procedural provision made by the Constitution, unless such provision itself involves substantive rights. Article 226 merely enables High Courts to exercise their powers of revision and correction in a new form and in a new type of proceeding and so far as this High Court is concerned, the power is not even a wholly new power as regards matters arising within the ordinary, original, civil Jurisdiction, as the present matter did. The Article has created no substantive right, but only provided a new form of remedy through the High Courts which might well have been done by an Act of the appropriate legislature or legislatures.

It follows that where the right asserted or the liability denied is one under the ordinary laws of the country and not one arising out of the Constitution, and an assertion or denial has taken place after the Constitution has come into force, it cannot be said that the application of Article 226 is excluded by the fact that such right or liability originated before the commencement of the Constitution, If there is a present threat, there is no reason why the present remedy under Article 226 should not be available and where the threat is based on a right, claimed to have arisen under one of the ordinary laws of the country at some date prior to the Constitution, I can see no reason why Article 226 cannot reach out to that date to see if the right is in accordance with the law, said to warrant it.

The demand made in the present case is one under the Sea Customs Act and the accrual of the right on which it is based or the ground on which it is challenged depends in no way on the Constitution. The demand was sought to be enforced after the Constitution had come into force and when the appellant company, which was resisting it, invoked Article 226 for protection and relief and asked the basis of the demand to be examined, I do not see that it was asking for application of the Constitution with retrospective effect or even if it was, that the application of anything more than mere procedure was involved. At least, so far as the applicant was asking for a direction on the Customs authorities to forbear from giving effect to the Demand Notices, it was not at all asking for an application of Article 226 with retrospective effect.

I would however prefer to base my decision on the larger ground that provided there has been an assertion of a claim after the Constitution and provided the claim is not one under a right created for the first time by the Constitution itself, but is one under some other pre-existing law, Article 226 empowers the High Court to deal with it by means of appropriate writs or directions although the

claim may have originated before the commencement of the Constitution. I would, accordingly, hold, with respect, that the learned trial Judge was not right in taking the view that Article 226 was not applicable to the case.

8. The second point urged by Mr. Khaitan was an entirely new one, which had not been even hinted at in the petition or in the affidavit-in-reply and which had not been urged before the learned trial Judge at all. That would be sufficient for the disposal of the point, particularly as it was not a pure point of law, but I am able to add that we were unable to appreciate how on the plain facts of the case any such contention could be raised. Before the learned trial Judge, the appellant's case was presented by Mr. G. P. Kar and he contended that the Customs officials were bound to adhere to the departmental instructions so as to accept and apply the rate of exchange evidenced by the foreign exchange contracts and that the action taken by them was not warranted by section 39 of the Act. Before us Mr. Khaitan left those contentions alone. He did not say that the departmental instructions had the force of law, nor that the Central Board of Revenue could not withdraw the concessions regarding foreign exchange contracts, nor that Section 39 was not applicable.

Instead, he urged that the action of the Customs authorities was "ultra vires" the Sea Customs Act, inasmuch as by making the additional demands, they had purported to levy a duty on the dollars with which the price of the goods had been paid, but which had never been imported. Section 29 of the Act requires the importer to state the real value of the imported goods in the bill of entry and section 30 states by clauses (a) and (b) what the real value for the purposes of the Act shall be deemed to be, according as the wholesale cash price for which goods of like kind and quality are sold, or are capable of being sold, at the time and place of importation is or is not ascertainable. Mr. Khaitan contended that neither clause (a) nor clause (b) applied to the case, although the appellant's case in its letters to the Customs authorities had always been that clause (b) applied and although that was the specific contention of Mr. Kar before the learned trial Judge. The Customs officials also had applied clause (b) of section 30.

Be that as it may, Mr. Khaitan's contention was that Section 30 was not exhaustive and that the real value in the present case was to be ascertained otherwise than by the methods laid down in clauses (a) and (b) of that section. He asked us to remember that the price of the goods had been paid in America in dollars. His contention was that the Customs authorities might well have said originally that they would not accept the dollar price paid in America, but would determine the value of the goods in Calcutta and in doing so they might or might not take into consideration the American price and such incidental charges as insurance premium and the like. They did not adopt that course, because they knew that if they did, they would have to value the goods or most of them as mere scrap, since they were only car parts. They had, therefore, preferred to accept the price paid by the appellant. But so far as Calcutta was concerned, the

appellant had paid a rupee price in un-devalued rupees when it had paid the United Commercial Bank, and it was immaterial that the rupees had been applied to the purchase of dollars.

Mr. Khaitan proceeded to urge that if the Customs authorities thought that the original assessment was wrong, they might well have said so and proceeded to determine the value of the goods in Calcutta as on the date of landing and for that purpose, they might or might not have taken the dollar price paid in America and the incidental expenses as guides. In that process of computation, there would be no room for foreign exchange contracts. But the Customs authorities had definitely said in their letter of April 11, 1950, that the assessments were not wrong. According to Mr. Khaitan, what they had been doing was that they had accepted the price of the goods as originally fixed, but had now been saying that while the appellant had imported car parts, by that very process it had also imported dollars, but the dollars had previously been valued on the basis of the forward exchange contracts of earlier dates and therefore the valuation of the dollars had to be corrected and brought into accord with the rupee value on the date of landing. They had thus been trying to levy duty on the dollars.

Mr. Khaitan proceeded to say that the appellant had purchased dollars with rupees and with the dollars it had purchased car parts and it was the car parts and not the dollars which the appellant had imported. Having accepted the price paid for the car parts, the Customs officials, Mr. Khaitan submitted, could not levy any further duty on the value of those goods and they could make a further demand, as they had been making, only by way of levying a duty on the dollars; but since the dollars had not been imported at all, they were trying to levy duty on unimported goods and, therefore, their action was "ultra vires" the Act.

9. I hope I do not do Mr. Khaitan an injustice when I say that I was a little astonished to find him advancing this extremely involved and wholly unreal argument on the simple facts of the case. I cannot at all see where the Customs authorities were treating the dollars as the imported goods and seeking to levy duty on dollars. Their task being to levy duty on the real value of the goods, which was the real value at the time and place of importation, to be ascertained in a certain manner, they were only saying that the value adopted in the original assessment was not the Calcutta value at the time of importation, but the value on the earlier dates of the foreign exchange contracts and therefore they would correct the error and rectify the under-assessment. The simple question arising out of that claim is whether the departmental instructions were binding on the Customs officials or whether, having once made an assessment on the basis of those instructions, the Customs authorities were in any event precluded from reopening the valuation.

To put it in a more concrete form, the question is whether in respect of the goods landed in Calcutta between October 10 and November 16, 1949, or what for practical purposes is the same thing, in respect of which bills of entry were lodged between those dates, the value was to be computed in accordance with

the departmental instructions at the rate of exchange on which the forward exchange contracts had been entered into and which was based on the undervalued rupee, in spite of the fact that the rupee had been devalued on September 17, 1949, and in spite of the fact that the departmental instructions had subsequently been withdrawn. I cannot see that any other question arises or that importation of dollars is in any way involved. I cannot also see that it can be said that the price of the goods was paid in Calcutta when the appellant paid rupees into the United Commercial Bank for the purchase of dollars. When the price was paid to the exporters is not known and by putting the United Commercial Bank in funds for the purchase of dollars, which were to be applied to the payment of the exporters, the appellant was not paying the price of the goods at the time.

Mr. Khaitan reminded us that the Customs officials had said that there had been no Wrong assessment and he wanted to utilise that statement for an argument that they had accepted the rupee price paid to the United Commercial Bank on the dates of the forward exchange contracts. It would, however, appear from an examination of the letter of April 11, 1950, that what the Customs officials were in fact saying was that there had been no incorrect assessment, as suspected to be the Department's case in the appellant's letter of the 10/12 December, 1949, in the sense of section 30(b) having been applied, whereas section 30(a) was applicable or in the sense of the correct percentage of duty not having been charged. That was all that the Customs officials meant by saying that there had been no wrong assessment and the statement has clear reference to what the appellant itself had stated in its letter, namely, that "the consignment has been correctly assessed to 30 per cent, duty leviable on CKD truck components imported By us from U. S. A."

I can find no admission in the letter that the Customs authorities had accepted the rupee price as paid in terms of undervalued rupee. But all this discussion is really irrelevant, because u/s 29 of the Sea Customs Act, read with Section 30, the real value is to be determined in one or the other of the two ways specified in the two clauses of the latter section and the only relevant value is the value at the time and place of importation. If clause (b) of section 30 did not apply, as Mr. Khaitan contended, his client was not entitled to the benefit of the foreign exchange contracts at all, because even the departmental instructions which allowed the benefit and permitted the adoption of the rate of exchange ruling on the dates of such contracts, limited the benefit to assessments u/s 30(b). I am accordingly of opinion that Mr. Khaitan's second contention cannot be entertained, both because it raises a wholly new point and because there is no foundation whatever for it in the facts of the case.

10. Mr. Khaitan did not contend that the departmental instructions had the force of law and in view of their nature, he could not possibly have so contended. Those instructions are to be found in paragraph 16 of Division A of the Instructions u/s 30 at page 71 of the General Manual of Orders relating to

Customs and Tariff Laws, popularly known as the Karachi General Manual, 1940 Edition. They are also to be found in a slightly enlarged form in paragraph 66, appearing at page 87, Chapter IV, of the Appraisers' Manual of Standing Orders. To quote from the latter Manual, the Rule states in part that

"when an importer claims the benefit of a forward "exchange contract, his claim should be allowed for the purpose of assessment u/s 30(b) of the Sea Customs Act, provided the Customs Collector is satisfied that the exchange contract was a "bona fide" transaction in respect of the goods in question."

The note below paragraph 16 in the General Manual is "Board's Instruction 1/36, dated 8th June 1936", and that below paragraph 66 in the Appraisers' Manual gives the File number as "Pile Ap. X/I-9 of "36/37".

These paragraphs clearly embody mere instructions of the Central Board of Revenue, having no force of law and being inconsistent with the provisions of the Act, they are clearly invalid and ineffective, as the learned Judge rightly held. They have now been replaced by fresh instructions which state specifically that the benefit of the forward exchange contracts is to be given only to the extent of ordinary market fluctuations in the exchange rates, "as opposed to abnormal or statutory changes such as devaluation" (See the correction slip "Am. O. Ap. No. 34 of 27-6-52" in the Appraisers' Manual). According to the affidavit-in-opposition, such was also the intended scope of the old instructions.

11. I asked Mr. Khaitan repeatedly whether he was pleading estoppel, at least in the form that the Customs officials, having represented to the appellant that by the original assessment the Act had been complied with, were precluded from saying subsequently that it had not been complied with. He disclaimed any intention to urge any such point. He was certainly logical in doing so, because in his scheme of argument the departmental instructions with respect to foreign exchange contracts had no place. I might, however, observe that although estoppel against a statute may not be wholly inconceivable as between two private parties, claiming under some ordinary Act of a general character, there could be no estoppel against the Sea Customs Act in the present case in bar of the claim of the Customs authorities. Mr. Sanyal drew our attention to the decision of the Privy Council in the case of --" AIR 1937 114 (Privy Council) , which seems to be very apposite. There, a private company functioning as a public utility company under an Act of New Brunswick, supplied electrical power to the consumers in a particular city and was regulated by the provisions of the Act as to the rates it could charge. In order to arrive at the correct amount of the electric energy supplied to any premises, it was necessary to multiply the meter dial reading by ten. In the case of one consumer, a company carrying on dairy business, the multiplication was not done, owing to a mistake, for twenty-eight months with the result that during that time, the company was charged for only one-tenth of the electric energy supplied to it. On the mistake being discovered and on a claim being made by the supplier company to recover the balance of nine-tenths, it was held by the Privy Council that the company was not estopped

from recovering the sum claimed, although the consumer company had adjusted its affairs on the basis of the lower charge which it had been called upon to pay.

So far as the case turned on mistake, it is not relevant here, because the present case is not one of an unconscious or inadvertent mistake. But Lord Maugham, who delivered the opinion of an exceptionally strong Board constituted of Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Alness and himself, also considered the case of an actual remission. "It cannot be doubted", he observed.

"that if the appellants (meaning thereby the supplier company), with every possible formality, had purported to release their right to sue for the sums remaining due according to the schedules, such a release would be null and void. A contract to do a thing which cannot be done without a violation of the law is clearly void."

The reason given by their Lordships was that where an Act was legislation enacted on ground of public policy in a general sense and it imposed a duty of a positive kind, it could not be open to anyone to set up an estoppel to defeat it and that an estoppel could no more release a person, on whom a duty was laid, from the obligation to obey the statute than it could release a person, on whom a liability was imposed, from the obligation to satisfy the liability.

The Sea Customs Act is concerned with one of the principal sources of the public revenues of the country and it directs the Customs officials to determine the value of imported goods in a certain manner and to levy duty on such value. Neither the Government of India, nor any subordinate department of it has any right to modify the provisions of the statute and to recover less on the basis of such modification to the detriment of the public treasury. If it does introduce such modification, even acts on it in a given case, and then cancels the modification and demands the statutory amount of duty, it cannot be met by a plea of estoppel. The Central Board of Revenue, therefore, was within its powers in withdrawing the unauthorised concession made by it previously and the Customs officials were within the limits of law in asking for the additional amount on the basis of the rupee value at the time of importation, although they might have previously made an assessment on the exchange value of the undervalued rupee, as prevailing on the prior dates of the foreign exchange contracts. I have referred to this matter at all, because Mr. Kar seemed to glance at it once or twice in the course of his reply.

12. Mr. Khaitan made certain submissions incidentally as to whether Clause (a) or (b) would apply in the present case and as to whether the real value, contemplated by section 29 of the Act, could be the cost price. In my opinion, such discussions are not material to the present case. There was never any controversy as to whether section 30 would apply at all or as to whether section 30(b) would apply. The case of both parties had always been that it was section 30 (b) which was applicable and in fact no controversy as regards the benefit of the foreign exchange contracts could have been possible except on the common

case of the parties that it was section 30(b) which applied.

13. Mr. Kar, who replied on behalf of the appellant, revived his old point that section 39 did not apply to the case and he submitted that if it did not, the Customs authorities had no jurisdiction to reopen the assessment and make a further demand. Mr. Khaitan had not even mentioned the point in his opening address and therefore, strictly speaking, it was not open to Mr. Kar to raise a new point in the course of his reply. On the merits too, the contention is without substance. The Customs authorities were saying that a wrong exchange value of the rupee had been adopted in the original assessment and they were demanding that the short-levy should be made good. Like the learned Judge, I am unable to understand why the case is not one where the charges had been short-levied through error or misconstruction on the part of the Customs officials or even through misstatement of the real value on the part of the owner.

14. It remains to refer to the view taken by the learned Judge that the appellant's petition was liable to be thrown out at sight, because it had deliberately suppressed material facts which, if disclosed, might have dissuaded him from instituting a Rule "nisi" at all. Mr. Khaitan candidly admitted that there had been a serious omission of material facts which he regretted and his only contention was that the omission had not been so serious as in the case of -- "The King v. General Comrs. for the Purposes of the Income Tax Acts for the Dist. of Kensington" (1917) 1 KB 486 (B), on which the learned Judge had relied. I am unable to agree that the omission in the present case was only venial. Paragraph 13 of the appellant's petition brought its narratives to the additional demand. Paragraph 14 explained its basis, Paragraph 15 called it reckless and then paragraph 16 proceeded to allege all at once that the Customs officials had violated the fundamental rules of judicial procedure or the principles of natural justice in demanding the additional amount without giving the petitioner any proper hearing or opportunity to show cause against the demand.

Not a word was said about full representations made by the appellant by at least two of its letters or about the personal interview referred to in one of them or about the replies with full reasons given by the Customs officials on several occasions. Mr. Khaitan contended that some of the letters had been set out in the annexures to the petition. In the first place, annexures are expected to contain only documents supporting the statements made in the body of the petition and where the petition says that no hearing or opportunity to make a representation had been given, one would not look into the annexures to find evidence of hearing or opportunity. It also appears that the few letters included in the annexures to the petition are all demands by the Customs officials, apparently intended to show how insistent and peremptory they were and they do not include any of the about fifteen letters of the correspondence set out in the annexure to the affidavit-in-opposition. There can be no doubt that the letters had been wilfully suppressed, as the learned Judge thought.

In the case relied on by the learned Judge, an applicant for a writ of prohibition,

in trying to make out a case against an Income Tax demand on the ground that she was not a resident within the United Kingdom, suppressed facts which might lead the Court to think that there was no substance in her case and that she was in fact a resident so that no Rule "nisi" ought to issue. Because of such lack of candour and non-disclosure of material facts, a Divisional Court of three Judges, presided over by Viscount Reading C. J., discharged the Rule without going into the merits and the decision was upheld by the Court of Appeal, constituted of Cozens-Hardy M. R., Warrington L. J., and Scrutton L. J. Almost all the learned Judges pointed out that the prerogative writs were not writs of right and that it was of the utmost importance to preserve the rule of the Court that no writ would issue in favour of a person who would not state all the facts and would be found lacking in *uberrima fides*.

In the present case, if the facts appearing from the affidavit-in-opposition and the correspondence annexed to it, had been disclosed to the learned trial Judge, he might well have come to the conclusion that the allegation of the denial of a hearing or an opportunity to make a proper representation was wholly unfounded and that the ground of natural justice having been violated had been recklessly taken. Mr. Sanyal pointed out that the present case was even worse than the English case, because the appellant had obtained several extensions of time to make the payment and having done so and having not paid a pice, it had utilised the respite for coming up to this Court and moving it under Article 226 of the Constitution. That submission appears to be correct. It is clear that after the first week of February, 1950, by which time the Customs officials had fully explained their point of view in reply to the representations by the appellant, the appellant was no longer asking for a hearing, but only asking for extensions of time and thanking the Customs officials for extensions granted. In those circumstances, and particularly since there is no absence or excess of jurisdiction apparent on the face of the record, I am clearly of opinion that Mr. Justice Bose was entirely right in holding that the appellant's petition was liable to be thrown out at sight. The question however is only one of an academic importance, because the learned Judge did not, in fact, throw out the petition at sight, but went into the merits.

15. It was further contended by Mr. Sanyal that no writ would lie in the present case, inasmuch as the appellant had an alternative remedy in the shape of an appeal to the Chief Customs Authority u/s 188 of the Act and a further right of an application in revision to the Central Government u/s 191. I am not sure that this ground is tenable. As is well known the existence of an alternative remedy is not an absolute bar to the maintenance of an application for a writ. Besides, in the present case, since the Central Board of Revenue had itself taken the action impugned, it can hardly be said that the alternative remedy was or would be an adequate remedy.

16. The duplication of certain demands to which I referred a little while ago is admitted, and it was said before the learned trial Judge that the Customs officials

had certainly no desire to realise duty on account of the same goods twice. I must, however, add my condemnation to that of the learned Judge of the inexcusable carelessness displayed by the Customs officials in making these duplicate demands. Demands of this kind not only put members of the public to unmerited harassment, but also bring the department concerned into discredit which is a public mischief. It seems also to be a matter for comment that some of the letters of the appellant were not replied to till after a long time. These however are only minor matters and do not bear upon the main question of relief by way of a writ in respect of the amount properly charged.

17. For the reasons which I have given, this appeal is dismissed with costs.

18. Certified for two Counsel.

Lahiri, J.

19. I agree.