(1967) 01 CAL CK 0010

In the Calcutta High Court

Case No : Appeal from Original Civil No. 147 of 1961

Hoare Miller and Co. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 05-01-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Sea Customs Act, 1878 — Section 11, 167, 182, 188, 190
Tariff Act, 1934 — Section 2

Citation : (1967) 2 ILR (Cal) 661

Hon'ble Judges : Sankar Prasad Mitta, J;Ghose, J

Bench : Division Bench

Advocate : B. Das and A.K. Basu, for the Appellant;G.P. Kar and R.M. Dutt, for the Respondent

Final Decision : Dismissed

Judgement

Ghose, J.—This appeal arises out of a judgment and decree dated January 4, 1961, passed by Datta, J. dismissing the Plaintiff-Appellant''s suit bearing No. 4334 of 1952 filed in the Original Side of this Court, inter alia, for declarations that certain orders and decisions made by the Defendants-Respondents assessing certain goods exported by the Plaintiff-Appellant to be ''hessian'' and not ''sacking within the meaning of the Indian Tariff Act read with the Sea Customs Act and the demand of export duty in respect of the said goods on the aforesaid basis of assessment are null and void; for a declaration that the Plaintiff-Appellant was not liable to pay to the Defendants a sum of Rs. 45,67,530-1-0 or any part thereof wrongly assessed as export duty; and a decree for the refund of the said sum of Rs. 45,67,503-1-0.

2. The Plaintiff was at the relevant time a shipper of, inter alia, jute carpet yarn. The said goods, according to the Plaintiff, had all along been, till the impugned orders were passed, assessed as ''sacking'' under the Indian Tariff Act, 1935 and the Sea Customs Act, 1878. Between June, 1950 and January, 1951, the Plaintiff

shipped from Calcutta several consignments of the said carpet yarn (particulars whereof have been set out in Schedule ''A'' annexed to the plaint filed by the Plaintiff). The said goods were, according to the Plaintiff, illegally and wrongfully assessed as ''hessians''. The Defendants-Respondents illegally and wrongfully demanded the duties so assessed as mentioned hereinbefore on the said goods and threatened to take proceedings against the Plaintiff-Appellant under the Sea Customs Act. The Plaintiff preferred an appeal against the said orders of assessment in respect of the said goods mentioned in Schedule ''A'' to the plaint but the Defendant No. 2 upheld the said order of assessment. The Plaintiff''s further case is that pending the said appeal the Plaintiff exported several other consignments of jute carpet yarn from Calcutta (particulars of the said goods have been set out in Schedule ''C'' to the plaint). The Plaintiff states that by reason of the act and/or conduct and/or directions of the Customs authorities to declare the goods in the said consignments as ''hessians'', the Plaintiff was compelled to pay and did pay or allowed the Defendants to debit the Plaintiff with duty at the rate ruling for hessians for an additional sum of Rs. 32,50,7824-0. This the Plaintiff did under the coercion and without prejudice to its right and contention that the said goods were ''sacking'' and not ''hessians''. In the suit the Plaintiff seeks to set aside the aforesaid orders of assessment and recover the said aggregate sum of Rs. 45,67,503-1-0.

3. The Defendants filed their written statements. In the written statement die Defendants denied that the said assessments and orders of assessment were illegal or ultra vires or that any of the said orders or decisions were null and void. In any event, the orders of assessment, according to the Defendants, were executive or administrative acts and could not be challenged in the present suit. The Defendants state that the goods exported by the Plaintiff were ''hessians'' within the meaning of the Indian Tariff Act and Sea Customs Act. The Defendants denied that there was any violation of natural justice. The Defendants finally contended that this Court had no jurisdiction and that the suit was not maintainable inasmuch as the Sea Customs Act was a self contained code and the method of redress of any alleged injury for action taken under the said Act is indicated by the said Act.

4. On the aforesaid pleadings the parties went to trial before Datta, J.

Verval and documentary evidence were adduced on behalf of both the parties. The learned trial Judge has dismissed the suit on one ground only, i.e., the suit was not maintainable in view of the provisions of the Sea Customs Act. In view of his aforesaid conclusion, Datta, J. did not answer the other issues raised and settled in the suit.

5. Mr. Amiya Kumar Basu, appearing on behalf of the Appellant, submitted as follows:

The Plaintiff admittedly exported yarn, which is thread but (the assessment) was taxed on the basis that it was hessian, i.e., cloth. This was a decision which was perverse; no reasonable man could take such a decision and so the civil Court has jurisdiction to entertain and try this suit.

6. The Customs authorities had decided the question of fact that the goods exported were yarn, but they applied a wrong item in the schedule to the Indian Tariff Act in assessing the said goods'' and thereby did not comply with the provisions of the statute and '' as such, the Court has jurisdiction to try the suit.

7. The choice and application of an item in the schedule to the Tariff Act is a matter of jurisdiction. If a wrong item is applied, then the officer concerned exceeds his jurisdiction. Reliance was placed, in this connection, on Secretary of State for India v. Mask and Company L.R. 67 IndAp 226. In any event, in cases where no appeal was preferred, the Court had jurisdiction. Mr. Basu stated that Sections 197 and 198 of Sea Customs Act were not noted nor considered by the Judicial Committee in the aforesaid case of the Secretary of State for India v. Mask and Company L.R. 67 IndAp 226. Mr. Basu contended that the Sea Customs Act contemplated suits and relied on Sections 197 and 198. Mr. Basu also relied on the cases of Gulabdas and Co. and Another Vs. Assistant Collector of Customs and Others, ; A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, ; New Central Jute Mills Co. Ltd. and Others Vs. The State of West Bengal and Others, ; Firm Seth Radha Kishan (deceased) represented by Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, . Mr. Basu submitted that an act in contravention of the statute makes the act without jurisdiction and the application of the item of tariff applicable to ''hessians'' to ''yarn'' was by itself exceeding jurisdiction. Mr. Basu contended that in the case of Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, , there was a provision enabling the Assessee to come to Court, but there was no such provision in the Sea Customs Act. Mr. Basu placed para. 12 at p. 325-26 and submits that this case does not approve of the observations of the Privy Council made in Secretary of State for India v. Mask and Company L.R. 67 IndAp 226. Section 9(b) of the said Act (Madras Sales Tax Act) expressly places the person not appealing in no better position. But there is no such provision in the Sea Customs Act. Mr. Basu also relies on State of Kerala Vs. Ramaswami Iyer and Sons, ; Kamala Mills Ltd. Vs. State of Bombay, ; and K.S. Venkataraman and Co. Vs. State of Madras, . Mr. Basu seeks to distinguish the instant case by saying that in the Sales Tax Act and income tax Act there are provisions enabling an Assessee to seek the opinion of the High Court on a question of law; but in the Sea Customs Act there is no such provision. So Mr. Basu contends that no implied bar to a suit should be inferred to be contained in the Sea Customs Act. Mr. Basu also places reliance on Toronto Railway Co. v. Corporation of the City of Toronto (1904) App. Cas. 809 and Bennett and White (Category) Ltd. v. Municipal District of Sugar City (1951) App. Cas. 786. Mr. Basu submits that the jurisdiction of the appropriate authority is complete so far as the finding of jurisdictional facts is concerned. If he finds that fact, the statute gives him jurisdiction to levy and collect taxes only in accordance with the schedule and no

more. By wrongly construing items in the schedule to the Indian Tariff Act he cannot have jurisdiction which the Act had not conferred on him, i.e., tax a thing at a rate higher than the rate prescribed by the statute. The Court has always the power to correct wrong construction of the schedule by the officer. According to Mr. Basu, the moment the Customs authority makes an error and applies a wrong item in the schedule to the Tariff Act to particular goods he travels beyond the statute.

8. Mr. G.P. Kar, appearing on behalf of the Respondents, contends that the Sea Customs Act is a special statute; it has conferred new rights and special remedies. Section 188 bars the institution of all suits and the scheme of the Sea Customs Act is to bar all kinds of suits for challenging the assessment. Redress of all grievances should be sought for in the manner laid down in the Act itself. The Act is a code in itself. This suit is barred impliedly by the provisions of the said Act.

9. Mr. R.M. Dutta, who made his submission on behalf of the Respondents in the absence of Mr. Kar on the following day, submitted that the Customs officers had initial jurisdiction in the matter to decide as to which group the said goods fell and thereafter to apply the particular item of tariff for assessment. In the instant case Customs officers, in assessing the goods as ''hessians'', at the most, committed an error but did not exceed jurisdiction. Mr. Dutta strongly relied on the case of Kamala Mills v. Bombay State Supra.

10. In the case of Secretary of Slate represented by the Collector of South Arcot v. Mask and Company Supra the facts were as follows: The Respondents Mask and Company imported a quantity of betel-nuts into British India. The Assistant Collector of Customs assessed the said betel-nuts for the purpose of levying duty as ''boiled''. The Respondents contended that the betel-nuts were raw sliced betel-nuts and were only subject to duty ad valorem. The Respondents appealed from the order of assessment made by the Assistant Collector of Customs to the Collector of Customs who dismissed the appeal. The said matter was taken in revision to the Government of India by the Respondents, but the revision application was also dismissed and the Collector''s decision was affirmed. Thereafter, the Respondents instituted a suit to recover the excess amount collected from them by r levying duty upon a tariff and not on ad valorem basis. At p. 236 their Lordships of the Judicial Committee observed:

Section 188 provides that "every order passed in appeal under this section shall subject to the power of revision conferred by Section 191 be final". By Sections 188 and 191 a precise and self-contained code of appeal is provided in regard to obligations which are created by the statute itself and it enables the appeal to be carried to the supreme head of the executive government. It is difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the civil Courts.

11. Their Lordships further observed:

it is to be noted that the same finality clause applies equally to appeals against adjudication u/s 182 and to appeals against decisions or orders as to the rate of duty leviable under the tariff; their Lordships are unable to construe this clause differently according as it applies to these classes of appeals....

12. In so far as the Plaintiff-Appellant claims refund of the alleged excess payment for Rs. 13,16,720.00, set out in annex. ''A'' to the plaint the claim is barred by the express provision of Sections 188 and 191 of the Sea Customs Act inasmuch as the Plaintiff-Appellant, according to its own case, preferred an appeal against the orders of assessment made by the Customs officer to the Collector of Customs. Therefore, the decision of the Collector of Customs in these cases would be final subject to the decision in the revision conferred by Section 191 of the Sea Customs Act.

13. A perusal of the Sea Customs Act shows that the Act is a self-contained Act and is a code in itself. Chapter I of the Act gives definitions and interpretations of words and phrases. Chapter II deals with the appointment of officers and sets out the powers of such officers. Chapter III of the Act deals with appointment of ports, wharves, customs houses, ware-houses, boarding and landing stations. Chapter IV sets out the provisions and restrictions in respect of importation and exportation of goods and articles into or out of the country. Chapter V sets out the dutiable goods and deals with dutiable goods and levying and exemption from excise duties. Chapter VI deals with drawback, including allowable drawback of export, drawback on goods exported on customs port and then to foreign port etc. Chapter VIA deals with provision of entry for vessels constructed for concealing goods. Chapter VII deals with arrival and departure of vessel including the formalities to be observed for landing of goods from vessel and also loading of goods on vessel. Chapter VIII deals with general provision affecting vessel in port, fees to be charged and paid by such vessels using port. Chapter IX deals with discharge of cargo and entry of goods. Chapter X relates to clearance of goods for home consumption.

14. Section 2 of the Indian Tariff Act, 1934, provides as follows:

Section 2(i). Tariff shall be levied and collected in every port to which this Act applies the duties specified in the first and second schedules.

The first schedule to the Indian Tariff Act deals with the export tariff with which we are concerned in this appeal. In the said schedule there are several columns; the first column sets out the number of the items, the second column gives the name of the article, the third column the nature of duty, the fourth column standard rate of duty if the article is the produce or manufacture of the U.K. and British colony and the last column deals with duration of protracted rates of duty. Section 2 of the Indian Tariff Act read with Section 20 of the Sea Customs Act provides the levy and collection of customs duty. The Sea Customs Act confers power to appoint ports, wharves and customs houses (see Section 11). It also confers power to prohibit and restrict importation and exportation of goods. The said Act provides for detention and confiscation of goods whose importation is prohibited. Section 20 of the Act confers the power to levy tax on goods imported or exported by sea into or from any customs port from or to any foreign port. Section 21 lays down as to what duty would be leviable on goods of which an article liable to duty under the said Act forms a part or ingredient. Section 22 of the Sea Customs Act confers power upon the Central Government to fix for the purpose of levying duties tariff values of goods exported or imported on which customs duties are by law imposed. Section 23 confers power upon the Central Government to exempt any goods imported into or exported from India or any specified part thereunder from the whole or a part of the duties leviable on such goods. Section 24 confers power upon the Collector to pass free of duty any baggage of a passenger in actual use and to determine whether any goods would be treated as baggage in actual use or as goods on which duty is leviable.

15. Section 29 of the Sea Customs Act lays down that the owner of goods imported or exported must declare the real value etc. of the goods in bill of entry or shipping. Section 29A provides for assessment of duty prior to examination of goods. Section 29B provides for provisional assessment of duty. The real value for the purpose of levying duty on goods has been defined by Section 30 of the said Act. In this way the Act has laid down the entire procedure for determining the nature of the goods for the purpose of levying duty thereof, recovery of duties not levied, short levied or refunded by mistake; refund of charges levied or paid by mistake or erroneously. The Act provides for fixation of places wherefrom goods have to be boarded on ship for the purpose of export and places whereto goods shall be landed from the ships after importation, forwarding of goods at warehouses, assessment of duties at ware-house, goods lost or destroyed.... The said Act, however, describes offences in respect of exportation or importation of goods and provides for penalties to be inflicted therefore by Section 167 and paragraphs thereunder. By Section 182 the said Act has provided for adjudication of confiscation and penalties by the Customs authorites. It has provided for payment of fine in lieu of confiscation and that on confiscation of goods the property therein shall vest in Government. Then in Section 188 it has provided for appeal from subordinate officer to chief Customs authority. By Section 190 power has been conferred upon the chief Customs authority to remit penalty or confiscation and to revise the decisions of the subordinate Customs officer. By Section 191 it has been provided that any person aggrieved by any decision or order passed under the said Act or by any Customs officer or chief Customs authority from which no appeal lies may apply in revision to the Central Government and the Central Government may reverse or modify such decision or order. Section 193 prescribes for recovery of penalty by sale of the goods concerned.

16. In this manner the chapters and the sections of the Sea Customs Act deal with import and/or export of goods, control of the same, levy of duty in respect of the same and collection and recovery thereof. The said Act also lays down a

complete procedure for adjudication of duty payable, appeal therefrom and revision of the appealed order as well.

17. In our opinion, the Sea Customs Act creates rights and liabilities which were not there prior to its promulgation and provides remedies and/or procedure for enforcing of such rights and /or liabilities. Reference in this connection may be made to the judgment of Willes, J. in Wolverhamton New Water Works Co. v. Hawkes Forde (1859) C.B. (N.S.) 336 and Neville v. London ''Express'' Newspaper Ltd. (1919) A.C. 368.

18. We respectfully agree with the finding of the learned Judge upon consideration of the aforesaid provisions of the said Act, that once there is an order of assessment, the same will necessarily attract Sections 188 and 191 of the Sea Customs Act and the jurisdiction of the ordinary civil Courts will be barred impliedly by the said provisions of the Sea Customs Act. We are of the opinion that a person aggrieved by an order of levy of duty under the Sea Customs Act, except in cases noted later, has the remedies provided by the said Act only for the redress of his grievances. He cannot take recourse to the civil Courts for the redress of his grievances.

19. Mr. Basu, appearing on behalf of the Appellant, was all through aware of this position and therefore, based his argument only on two grounds, namely, (i) that in applying item No. 2(ii) in the schedule to the Indian Tariff Act the Customs officer misconstrued the law and exceeded his jurisdiction, (ii) in any event, this decision of applying the item No. 2(ii) of the said schedule in the instant case was a perverse decision which could not be taken by any reasonable man and as such, the jurisdiction of the civil Courts is not barred.

20. Mr. Basu''s contention, in short, was that the Customs officers had decided that it was yarn and so he could not assess the said goods on the basis that the same was ''hessian'' and in so assessing and applying the said item No. 2(ii) the Customs officer misconstrued the item No. 2(ii) in the schedule to the Indian Tariff Act; this was a question of law and as such, the jurisdiction of the Court is not barred and the Court has power to go into the question of construction of the relevant item in the schedule to the Indian Tariff Act. We are unable to accept Mr. Basu''s aforesaid contention. We are of the opinion that under the Sea Customs Act, read with the Indian Tariff Act, the Customs officer had the jurisdiction to decide whether the goods were ''sacking or ''hessians''. The ascertainment of the said facts was the specific issue for the decision of the Customs officer. The Customs officer, after consideration of various factors, came to the decision that they were ''hessians''. The categorising of the said goods for the purpose of applying different items in the schedule to the Indian Tariff Act for assessment of duty under the said Act, read with the Sea Customs Act, was the special and exclusive province of the Customs officer and in deciding the said goods to be ''hessians the Customs officer acted within his jurisdiction. Even if we assume that in deciding the said matter the Customs officer misconstrued the word ''hessans'', the construction of the word ''hessians'' was, in our opinion, a specific

issue for the decision of the Customs officer and as such, even if the said construction was wrong, it must be held that the Customs officer in arriving at that construction acted within his jurisdiction. Reference may, in this connection, be made to the decision of the Court of Appeal of England in the case R v. Minister of Health ex parte Committee of Visitors of Glamorgan County Mental Hospital (1938) 4 A.E.R. 32. Relevant observation appears in the judgment of Greer, L.J.:

Be that as it may, we have not to decide that, because the Act of Parliament says that that is a, matter, amongst other things, which has to be decided by the Minister and if the Minister has wrongly construed that section, still he has not acted without jurisdiction, because a mere misconstruction of this section would not entitle the Committee to say that the order was made without jurisdiction.

21. Mr. Santosh Chatterjee, who assessed the goods as ''hessians'', has given evidence in the suit and said that on examination of samples, he was satisfied that the goods in question were yarn of hessian quality and came within the meaning of the" word ''hessians'' being the item No. 2(ii) in the schedule to the Indian Tariff Act (see questions and answers 45 and 46). In some of the mill''s specification, the description of exactly similar goods were given as ''hessian ? twine'' (Q. 76). Other exporters, namely. Rallies (India) Ltd., were exporting exactly similar goods under the description ''hessian goods'', ''hessian warp yarn'' and paying duty as per item No. 2(ii) of the schedule to the Indian Tariff Act (Q. 91 and 92). Mr. Sutherland, a member of the Indian Jute Mills Association and Mr. Walker, another member of the I.J.M.A. and the committee for classifications of jute for the purpose of applying Indian Tariff Act formed by the I.J.M.A., held the opinion that similar goods were ''hessians'' (see parts of Ex. G printed at p. 263 of the paper-book as well as part of Ex. G the letter dated April 4, 1951 printed at pp. 271 and 272 of the paper-book). Exhibit 4A, copy whereof is printed at p. 582 of the paper-book, shows that similar goods were specified as ''hessians'' by the manufacturer mill, the Meghna Mills Co., Ltd.; Ex. 6 shows that exactly similar goods were described as hessian yarn by the Hooghly Mills Company who manufactured the same; Ex. 7, copies whereof appear at pp. 601 to 620 being copies of shipping bills, show that similar goods were exported by Jardine Henderson Ltd. of 4 Clive Row, Calcutta, under the description ''hessian twist two ply'' in the shipping bills; Ex. 8, a copy whereof is printed at p. 621 of the paper-book, describes similar goods as jute yarn superior light colour hessian quality.

22. In the facts and circumstances mentioned above, we do not think that the decision of the Customs officer in the instant case was perverse. A reasonable man could come to the finding as was arrived at by the Customs officer in the instant case.

23. It has been stated by the Supreme Court in Collector of Customs, Madras v. L. Ganga Setty A.I.R.1963 S.C. 1321:

...It is primarily for the Import Control authorities to determine the head or entry under which any particular commodity fell; but that if in deciding so these authorities adopted a construction which no reasonable man can adopt, i.e., if the construction was perverse then it was a case in which the Court was competent to interfere.

Although the aforesaid observations were made in an application for issue of the writ of mandamus u/s 45 of the Specific Relief Act, they may apply in the case of a suit as well see Associated Provincial Picture House Ltd. v. Wednesbury Corporation (1948) 1 K.B. 223; Halsbury''s Laws of England, 3rd ed., vol. 11, p. 62, where the decision is perverse.

24. In the case of Firm Seth Radha Kishan (deceased) re presented by Hari Kishen v. Administrator, Municipal Committee, Ludhiana Supra it has been held that u/s 9 of the CPC the Court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred.

25. In that case the Municipal Committee, Ludhiana Supra imposed terminal tax on the salt imported by the Appellant into the area of the said municipality. The Appellant paid a sum of Rs. 5.893-7 0 towards the said tax between October 24, 1927 and December 8, 1947. Under a notification, bearing No. 26463 dated July 21, 1932, issued by Punjab Government, terminal tax was payable under item 68 of the schedule attached to the said notification at the rate of 3 pies per maund in respect of salt common and under item 69 at the rate of 10 annas per maund in respect of salt of all kinds other than common salt. The Municipal Committee, Ludhiana, collected terminal tax on the Sambher salt at the higher rate under item 69 of the schedule. The Appellant filed a suit against the Administrator, Municipal Committee, Ludhiana, for the refund of the said amount with interest. The Respondent in the said suit contended that Sambher salt was not common salt and that the civil Court had no jurisdiction to entertain the suit because under the Punjab Municipal Act, 1911, whereby the liability to pay terminal tax was created, a remedy was given to a party aggrieved in the enforcement of that liability and the party aggrieved had to take recourse to that remedy only and could not resort to ordinary proceedings in a civil Court. Mr. Justice Subba Rao, as he then was, delivering the judgment of the Supreme Court, observed, inter alia, as follows:

It will be seen from the aforesaid provisions that the power to impose a terminal tax and the liability to pay the same is conferred or imposed on the municipal committee and the Assessee respectively by the provisions of the Act. The Act also gives a remedy to an aggrieved party to challenge the correctness of the levy or to seek, refund of the same.

His Lordship then considered the authorities on the point and came to the conclusion

that the party aggrieved can only persue remedy provided by the Act and he cannot file a suit in a civil Court in that regard in respect of tax levied or the assessment made under the Act.

In the said case, as was observed by his Lordship (Subba Rao, J.),

the municipal committee is empowered to levy terminal tax on salt, whether it was common salt or not.... The only dispute was as regards the rate of tax payable in respect of the salt brought by the Appellant into the-limits of the municipal committee. The rate depended upon the character of the salt. The ascertainment of the said fact is a necessary step for fixing the rate and it is not possible to say that in ascertaining the said facts the parties concerned travelled outside the provisions of the Act.

We are of the opinion that the aforesaid observations also apply to the facts and circumstances of the instant case; in the instant case only the Customs officer had the power to decide whether the said goods came within the meaning of ''hesian'' under item 2(ii) of the schedule to the Indian Tariff Act. In the instant case the Customs officer had held that the said goods came within the meaning of ''hessians'' and the item 2(ii) in the schedule to the Indian Tariff Act was applicable to the said goods for the purpose of levying export duty. This liability to pay duty was created by the said Indian Tariff Act read with the Sea Customs Act and the remedies to a party aggrieved by such levying of duty has also been provided for in the said Sea Customs Act.

26. In our opinion, although under the Sea Customs Act read with the Indian Tariff Act there is no provision for inviting the opinion of the High Court on any question of law like the provisions of the Punjab Municipal Act, 1911, even then the aforesaid observations of Subba Rao, J. (as his Lordship then was) apply to the instant case and the present suit is barred. In the case of Illuri Subbayya Chetty and Sons v. State of Andhra Pradesh Supra an Assessee''s suit for the refund of sales tax alleged to have been illegally recovered from him was held to be not maintainable in view of the bar enacted by Section 18A of the Madras General Sales Tax (9 of 1939). It was held that Section 18A expressly barred the said suit. In the said case Gajendragadkar, J. (as he then was) delivering the judgment of the Supreme Court observed:

The question about the exclusion of the jurisdiction of the civil Courts to entertain civil actions by virtue of specific provisions contained in special statutes has been judicially considered on several occasions. We may, in this connection, refer to two decisions of the Privy Council. In AIR 1940 105 (Privy Council) , the Privy Council was dealing with the effect of the provisions contained in Section 188 of the Sea Customs Act (VIII of 1878). The relevant portion of the said section provides that every order passed in appeal under the section shall, subject to the power of revision conferred by Section 191, be final. Dealing with the question about the effect of this provision, the Privy Council observed that "it is settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied." Lord Thankerton who delivered the opinion of the Board, however, proceeded to add that "it is also well-settled that that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure."

It is necessary to add that these observations, though made in somewhat wide terms, do not justify the assumption that if a decision has been made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on the merits and as such, it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute to which reference is made by the Privy Council, must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings, before the appropriate authority illegal and without jurisdiction. It is apparent that in the instant case it cannot be said that the Customs officer has not complied with the provisions of the said Act in the sense mentioned above by the Supreme Court. The case of the Provincial Government of Madras (now Andhra Pradesh) represented by the The Provincial Government of Madras Vs. J.S. Basappa, , in our view, follows the cases of I.S. Chetty and Sons v. State of Andhra Pradesh Supra and Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana Supra. In the case of Kamala Mills Ltd. v. State of Bombay Supra the Supreme Court had to consider whether an act of assessment made under the Bombay Sales Tax Act or the rules made thereunder was erroneous or without the jurisdiction of the officer concerned.

27. Section 20 of Bombay Sales Tax Act provides as follows:

save as is provided in Section 23 no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any person appointed u/s 3 to assist him shall be called into question in any civil Court and save as is provided in Sections 21 and 22, no appeal or application for refund shall lie against any such assessment or order.

In the said case, according to the Appellant, the Appellant was assessed at Rs. 65,187-4-0 in respect of sales made by the Assessee outside the city of Bombay and thus not assessable under the Bombay Sales Tax Act. The Assessee instituted the suit to recover the said amount. The said suit was dismissed by the Bombay High Court. The Plaintiff thereupon preferred the said appeal to the Supreme Court. In considering whether Section 20 was a bar to the institution of the said suit, the Supreme Court observed as follows:

In deciding the validity of this contention, it is necessary to examine the scope of the jurisdiction conferred on the appropriate authorities by the relevant provisions of the Act. Jurisdiction is either territorial, or pecuniary, or in respect of the subject-matter. There is no difficulty about the assessing authorities'' territorial and pecuniary jurisdiction in the present case. What is the nature of the jurisdiction conferred on the appropriate authority, in respect of the subject-matter of sales tax? Has the appropriate authority been given power to examine the nature of the transaction and decide whether it is liable to tax or not? Or, can the appropriate authority proceed to examine its power of imposing a tax only in cases where the transaction in question is assessable to such tax? In other words, is the decision about the character'' of the transaction, the decision of a collateral facts, the finding on which alone confers jurisdiction on the Tribunal to levy the tax, or is it the decision on a question of fact which is left to be determined by the appropriate authority itself? If the jurisdiction conferred on the appropriate authority falls under the first category, then its finding that a particular transaction is taxable under the relevant provisions of the Act would be a finding on a collateral question of fact and it may be permissible to a party aggrieved by the said finding to contend that the tax levied on the basis of an erroneous decision about the nature of the transaction is without jurisdiction. If, however, the appropriate authority has been given jurisdiction to determine the nature, of the transaction and proceed to levy a tax in accordance with its decision on the first issue, then the decision on the first issue cannot be said to be a decision on a collateral issue and even if the said issue is erroneously determined by the appropriate authority, the tax levied by it in accordance with its decision cannot be said to be without jurisdiction.

Similarly, in the instant case, the decision to apply item 2(ii) of the schedule to the Indian Tariff Act cannot be said to be without jurisdiction.

28. In view of the aforesaid conclusion arrived at by us, we think it unnecessary to discuss the other authorities cited at the bar, namely, the case of K.S. Venkatraman and Co. (P) Ltd. v. State of Madras Supra and the case of State of Kerala v. Ramaswami Iyer and Sons Supra, Toronto Railway Co. v. Corporation of the City of Toronto Supra and Bennett and White (Calegary) Ltd. v. Municipal District of Sugar City Supra. In 1951 Appeal Case 786 (11) Lord Reid delivering the judgment of the Judicial Committee held that the Assessment Act and Municipal District Act of Alberta did not clearly take away the right of the Appellants to maintain the action.

29. For the reasons stated above we hold that the Plaintiff''s suit for the refund of the alleged enhanced duties paid by him is impliedly barred in view of the provisions of the Sea Customs Act read with the Indian Tariff Act. The suit, mentioned in Section 198, is the suit, in our view, contemplated by Section 197 of the Sea Customs Act and is not a suit for the refund of excess duty charged or paid. We do not think it necessary for us to decide as to whether the order of assessment made by the Customs officer in the instant case was an administrative order as urged by Mr. Kar.

30. In the result, this appeal must fail and is dismissed with costs. Certified for two counsel.

Sankar Prasad Mitra, J.

31. I agree.

