

(1985) 11 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 1897 of 1984

J.N. Baxi and Co.

APPELLANT

Vs

Assistant Collector of Customs and Others

RESPONDENT

Date of Decision : 21-11-1985

Acts Referred:

Customs Act, 1962 — Section 116, 124

Citation : (1991) 33 ECR 701

Hon'ble Judges : Kurdukar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kurdukar, J.—It is not at all necessary to set out in detail the various challenges made by the petitioner against the impugned order dated June 25, 1984 passed by the Deputy Collector of Customs, New Custom House, Bombay.

2. This petition must succeed only on the short ground that the impugned order does not contain the reasons for arriving at the findings recorded therein. Shri Gomes learned Counsel appearing in support of this petition urged that the purported outturn report on the basis of which the show cause notice was issued and thereafter the order was made, do not indicate any basis. The outturn report was disputed by the petitioner. The petitioner made a written request to the authority while showing cause that witness summons be issued to the Bombay Port Trust Docks Manager or Deputy Docks Manager or the Officer concerned from the Bombay Port Trust who has issued the outturn report. Since this request was turned down it amounts to denial of opportunity and therefore the impugned order is bad and illegal. It was then contended that the petitioner had also submitted the draft survey report but the same was rejected by the Deputy Collector of Customs solely on the ground that it was only an approximation based on the draft measurement of the ship before and after discharge and therefore it will only record an estimated quantity of the goods discharged. By the impugned order the Deputy Collector of Customs has imposed a penalty of

Rs. 3,40,478.05 and when such a heavy penalty is imposed it is expected that he should give a reasonable opportunity of being heard as contemplated u/s 116 read with Section 124 of the Customs Act. In my opinion the submission made on behalf of the petitioner is well founded and must be accepted. Shri Bulchandani in spite of his best efforts was unable to persuade me to hold contrary. The findings recorded by the Deputy Collector in his order are very unsatisfactory and do not disclose the reasons and the basis on which the impugned order is founded. The Deputy Collector is directed to give reasonable opportunity to the petitioner and especially if the petitioner makes afresh application for witness summons to the B.P.T. Officer who made the outturn report he shall issue the witness summons, to the concerned officer. It is needless to say that the Deputy Collector will also consider the evidence that will be adduced by the parties at the hearing and will pass the appropriate orders in accordance with law by giving findings as expected from a quasi-judicial tribunal.

3. In the result, the petition succeeds. The impugned order dated June 25, 1984 is quashed and set aside and the rule is made absolute in terms of prayer (a) of the petition. The matter is remanded back to the Deputy Collector of Customs for disposal in the light of the observations made hereinabove. There shall be no order as to costs.

4. The Deputy Collector will dispose of the proceedings as expeditiously as possible and preferably before the end of March 1986.