

**(1980) 12 MAD CK 0031**

**In the Madras High Court**

**Case No : Writ Petition No. 1597 of 1978**

Nuwood Private Limited, Madras

APPELLANT

Vs

Superintendent of Central Excise

RESPONDENT

**Date of Decision : 03-12-1980**

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 4  
Constitution of India, 1950 — Article 226

**Citation : (1981) 8 ELT 184 : (1981) ILR (Mad) 295**

**Hon'ble Judges : Padmanabhan, J**

**Bench : Single Bench**

**Advocate : A.K. Mysami, for the Appellant; U.N.R. Rao, for the Respondent**

## **Judgement**

1. The petitioner, Nuwood Pvt. Ltd., is engaged in the manufacture and sale of duplicating machines under the collaboration agreement with Boger

Diplomat Apparate KG, West Germany. The duplicating machines manufactured by the petitioner are classified as office equipments for the

purposes of Central Excises and Salt Act, 1944 (hereinafter referred to as the Act). In accordance with the provisions of the Act, the petitioner

submitted a price list for the equipment manufactured by it for the purpose of computation of excise duty payable thereon. The Assistant Collector

of Central Excise, Madras by his order dated 25-9-1975 provisionally approved the price list submitted by the petitioner and allowed clearance of

the manufactured goods on payment of excise duty on the basis of the price list provisionally approved. Thereafter, on 18-12-1975 the Assistant

Collector of Central Excise, Madras issued proceedings C-V/33, D/17-3-75. By the said proceedings, the Assistant Collector fixed the value of

the goods manufactured by the petitioner u/s 4 of the Act. The value so fixed

was to take effect from 1-10-1974. By the said proceedings, the provisional approval accorded to the petitioner's price list on 25-9-1975 was withdrawn. The said proceedings further stated that the petitioner sold 90% of the goods to Messrs. Macneil and Magor Ltd., that the petitioner's goods were therefore not ordinarily sold to independent buyers in the wholesale trade at the price declared in its price list, that M/s. Macneil and Magor Ltd. were related persons for the purpose of valuation of the goods and that consequently the value of the goods for the purpose of duty should be deemed to be the normal price at which M/s. Macneil and Magor Ltd. sold the products to dealers.

2. On 12-1-1976, the petitioner enclosed a price list as called for by the proceedings dated 18-12-1975 under protest and without prejudice to the rights to question the said proceedings. The said letter also stated that the Assistant Collector was not correct in holding that Messrs. Macneil and Magor Ltd. were related persons of the petitioner. On 24-2-1976, the Superintendent of Central Excise, Madras, called upon the petitioner to pay the differential duty of Rs. 20,057.82. On 29-3-1976, the petitioner informed the Superintendent of Central Excise that the petitioner was paying the differential duty under protest. The petitioner also called upon the Superintendent of Central Excise to let the petitioner know on what grounds the price list was finalised on 18-12-1975. The petitioner again wrote to the Superintendent of Central Excise on 8-4-1976, requesting him to furnish the petitioner the grounds on which the price list was finalised. The petitioner then preferred an appeal to the Appellate Collector of Customs and Central Excise on 23-6-1976. By his order dated 4-11-1976, the Appellate Collector dismissed the appeal as time barred. A further revision filed before the Government of India by the petitioner was also dismissed on 5-12-1977. Thereafter the petitioner received a communication from the Superintendent of Central Excise on 25-3-1978, calling upon the petitioner to pay the differential duty of Rs. 20,057.82. In these circumstances, the petitioner has filed this writ petition To quash the order dated 25-3-1978.

3. Mr. Mysami, the learned counsel for the petitioner contended that the petitioner has submitted a price list in respect of the goods manufactured by it to the respondents for the purpose of computation of excise duty. By the

order dated 25-9-1975 the Assistant Collector of Central Excise accepted the price list as provisionally approved the petitioner was paying the excise duty. However, by the proceedings dated 18-12-1976, the Assistant Collector took the stand that the petitioner was selling 90% of its products to Messrs Macneil and Magor Ltd. that M/s. Macneil and Magor Ltd. were related persons of the petitioner and that consequently the price of the petitioner's goods should be valued for the purpose of the levy of excise duty at the price at which Messrs Macneil and Magor Ltd. sold the goods to its dealers. Accordingly, the prices were fixed for the goods manufactured by the petitioner. According to Mr. Mysami no notice was given to the petitioner prior to the passing of the Order dated 18-12-1975. Hence, the said proceedings are vitiated by a failure to conform to the principles of natural justice and are in effect null and void. Therefore, the respondents are not entitled to call upon the petitioner to pay differential duty of Rs. 20,057.82 pursuant to the order dated 18-12-1975 which was void ab initio.

4. Mr. U. N. R. Rao, the learned Standing Counsel for the Central Government appearing for the respondents did not dispute the fact that prior notice was not given to the petitioner before the price was finally fixed by the proceedings dated 18-12-1975 and that the said proceedings are vitiated by a failure to conform to the principles of natural justice. Mr. Rao, however, contended that the petitioner had a right of appeal against the order, dated 18-12-1975. The order itself expressly stated that the appeal would lie against the said order to the Appellate Collector of Central Excise, Madras. However, the petitioner did not prefer an appeal within the period of limitation. The belated appeal presented by the petitioner was dismissed as barred by limitation. The further revision filed by the petitioner was also dismissed. In the circumstances, it would not be open to the petitioner to contend that the order dated 18-12-1975 is liable to be set aside for the reasons that no opportunity was given to the petitioner to show cause against the finalisation of the price list.

5. It is not in dispute that the petitioner preferred an appeal against the order 18-12-1975 and the same was dismissed by the Appellate Collector of Central Excise, on the ground that it was barred by limitation. It is not disputed that the petitioner was not give any notice before the price list

was finalised by the order dated 18-12-1975. It is further not challenged that by the order dated 18-12-1975 the Assistant Collector has treated

Messrs. Macneil and Magor Ltd. as related persons of the petitioner within the meaning of Section 4 of the Act and has adopted the price at which

the Messrs Macneil and Magor Ltd. sold the petitioner's goods to other dealers. But no opportunity was given to the petitioner to show cause

why the price at which Macneil and Magor Ltd. sold the goods should not be taken as the value for purposes of excise duty. Consequently, the

failure of the respondents to give such an opportunity to the petitioner before passing the order dated 18-12-1975 amounts to a clear violation of

the principles of natural justice.

6. The next question that arises is what is the legal effect of an order passed in violation of the principles of natural justice. It is now well settled that

any order passed in violation of the principles of natural justice is a nullity. In *Kidge v. Baldwise* 1964 A.C. 40 Lord Reid has observed as follows

:-

Then there was considerable argument whether in the result the Watch Committee's decision is void or merely voidable. Time and again in the

cases I have cited, it has been stated that a decision given without regard to the principles of natural justice is void, and that was expressly decided

in *Wood v. Woad*, L.R. 9 Exc. 190. I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to

make a decision until it has afforded to the person affected a proper opportunity to state his case.

Lord Hodson has observed as follows :-

In all the cases where the courts have held that the principles of natural justice have been flouted, I can find none where the language does not

indicate the opinion held that the decision impugned was void. It is true that the distinction between void and voidable is not drawn explicitly in the

cases, but the language used shows that where there is a want of jurisdiction as opposed to a failure to follow a procedural requirement, the result

is a nullity. This was indeed by the Court of Exchequer in *Wood v. Woad*, L.R. 9 Exc. 190, whereas, here, there was a failure to give a hearing. In

*Spackman, v. Plumstead*, L.R. 10 A.C. 229, referring to another statement, Lord Selborne said ""There would be no decision within the meaning of

the statute if there were anything of that sort done contrary to the essence of justice". I would apply this language whether the Municipal

Corporation Act, 1882 or the Police Regulations are to be considered. In either case the Watch Committee in failing to give a hearing to the appellant acted without jurisdiction.

7. In Collector of Customs, Madras Vs. A.H.A. Rahiman, it is held as follows :-

Where the Collector of Customs passes an order of confiscation or penalty without notice and without enquiry, the order contravenes every principle of natural justice and must be deemed to be a nullity.

8. In W.A. No. 67 of 1976 - Superintending Engineer, Vellore Electricity System v. Chinnakannu - the first respondent was employed as a lorry

driver under the appellant, the Superintending Engineer, Vellore Electricity System, Vellore. On 20-8-1966 an order was passed removing him

from service with effect from 22-6-1965 on which date he was placed on suspension pending enquiry, into certain charges. He preferred an

appeal and the appellate authority modified the order of removal from service to one of reduction in rank. The first respondent then filed an

application for payment of salary from the date of suspension to the date of his joining duty. However, an order was passed on 22-1-1972, stating

that the period of non-employment of the first respondent should be treated as leave to which he was eligible and the remaining period as leave on

loss of pay. Thereafter, the first respondent filed a petition u/s 33-C(2) of the Industrial Disputes Act, before the Labour Court for computation of

the benefit relating to his wages consequent upon the order of removal from service being modified into one of reduction in rank. The Labour

Court passed an order in his favour computing the benefit in a sum of Rs. 8,675.20. Against that the Superintending Engineer, Vellore Electricity

System filed a writ petition. The stand taken by the Superintending Engineer, Vellore Electricity System was that the first respondent could not

claim monetary benefit except according to the order dated 22-1-1972, and that consequently the Labour Court had no jurisdiction to pass an

order u/s 33-C(2). The learned Single Judge took the view that the order dated 22-1-1972, was a nullity since it was not passed after giving notice

to the respondent and that consequently the Labour Court was justified in computing the monetary value of the benefit claimed by the first

respondent. In the writ appeal also the same contention was urged before the Bench on behalf of the Superintending Engineer, Vellore Electricity

System. It was further argued that it was not necessary to give any notice to the first respondent before the order dated 22-1-1972 was passed.

The learned Chief Justice took the view that a notice was necessary and that a failure to give such prior notice amounted to a breach of the rules of

natural justice. After referring to the decision of the Supreme Court in *M. Gopala Krishna Naidu Vs. State of Madhya Pradesh*, , the learned Chief

Justice has observed as follows :

Thus, it is clear that the Supreme Court rested its conclusion on the ground that the principles of natural justice required the issuance of notice to

the Government servant concerned, before passing the impugned order. It is admitted that any order passed in violation of the principles of natural

justice is a nullity. On the application of the principles laid down by the Supreme Court in the case referred to above, it must be held in the present

case that the memorandum dated 22-1-1972, passed without notice to the first respondent, is a nullity and consequently, there was no order which

the first respondent was bound to get rid of before he could approach the Labour Court directly u/s 33-C(2) of the Industrial Disputes Act, 1947.

9. It is equally well settled that the effect of a breach of the principles of the natural justice vitiated the original decision cannot be cured by the

principles of natural justice being complied with at the appellate stage. Denning LJ. put the matter very clearly in *Barnard v. National Dock Labour*

*Board*, 1953 2 QBD 18, thus ""So far as the decision of the appeal tribunal is concerned, it seems to me that, once the port manager's order is

found to be a nullity, it follows that the order of the appeal tribunal is also a nullity. The appeal tribunal has no original jurisdiction of its own; it

cannot itself make a suspension order; it can only affirm or disaffirm a suspension order which has been already made. If none has been made,

because it is a nullity the tribunal can do nothing"".

10. In *Learvy v. NU of Vehicle Builders*, 1970 2All ER713, it has been observed as follows :-

As a general rule, at all events, I hold that a failure of natural justice in the trial body, cannot be cured by a sufficiency of natural justice in an

appellate body.

It, therefore, follows that even if the petitioner had filed an appeal, the appellate authority could not have set right the defect of the failure of the principles of natural justice committed by the Assistant Collector in passing an order on 18-12-1975.

11. It is equally well settled that a void order is destitute of legal effect and the same can be ignored with impunity. Its validity can be attacked in collateral proceedings as well. It is for these reasons courts have taken the view that in cases where an order or a decision is vitiated by a failure to comply with the principles of natural justice, the jurisdiction of High Courts under Art, 226 of the Constitution of India could be invoked, even without exhausting the alternative remedies of appeal. I am, therefore, of the view that the order passed by the Assistant Collector on 18-12-1975, was in disregard with the principles of natural justice and consequently a nullity. In the circumstances the fact that the petitioner had not filed an appeal in time and that the appeal preferred by the petitioner happened to be dismissed as barred by limitation cannot have the effect of converting the order dated 18-12-1975 into a valid order and that cannot prevent the petitioner from invoking the jurisdiction of this court under Art. 226 of the Constitution of India. Once it is found that the order dated 18-12-1975 is a nullity, it must necessarily follow that the respondents are not entitled to make a demand for the differential duty on the basis of the said order. The consequence is that the impugned demand dated 25-5-1978 has to be quashed and is hereby quashed. The writ petition is allowed. There will be no order as to costs.

12. It will be open to the respondent to fix the price of the petitioner's products afresh after giving notice to the petitioner.