**(1977) 03 MAD CK 0021**

**In the Madras High Court**

**Case No :** Writ Petition No. 2699 of 1972

Premraj and Ganpatraj and Co. (P) Ltd. (now known as Madras Electrical Conductors (P) Ltd. — APPELLANT

Vs

The Assistant Collector of Customs, Madras and Others — RESPONDENT

**Date of Decision :** 14-03-1977

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** AIR 1978 Mad 40 : (1977) 1 ELT 166 : (1977) 90 LW 629

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

**Bench :** Single Bench

**Advocate :** Habibullah Badsha, for the Appellant; T. Chengalvarayan, for the Respondent

## Judgement

Koshal, J.—The petitioner before me is M/s. Premraj and Ganapatraj and Co. (P.) Ltd. (now known as M/s. Madras Electrical Conductors

(P) Ltd., and hereinafter referred to as the Company), which has been carrying on business at Madras and in the course thereof imported 99707

tons of electrolytic aluminium wire bars under bill of entry No. D. 1796 dated 17-6-1967. The duties payable by the Company on the goods under

the Customs Act, 1962 (hereinafter referred as the Act) were worked out by the assessing officer on the basis that customs duty was due at 15 %

of the value of the goods and another type of duty known as countervailing duty was due at the rate of Rs. 740/- per metric ton u/s 2(a) of the

Tariff Act. Really, however, countervailing duty had been reduced in the case of the goods in question from Rs. 740/- per metric ton to Rs. 620/-

per metric ton by notification No. 170/1967 dated 26-5-1967, issued by the Government of India, which stated thus --

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, read with Sub-clause (4) of Clause 41 of the

Finance (No. 2) Bill, 1967, which clause has by virtue of a declaration made under the Provisional Collection of Taxes Act, 1931 (16 of 1931),

the force of law, the Central Government hereby exempts, with effect from 26-5-1967. aluminium in any crude form falling under sub-item (a) of

item No. 27 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and aluminium manufactures falling under sub-item (b) of

the said item No. 27, from so much of the special duty of excise as is equivalent to the special duty of excise leviable at Rs. 120/- per metric ton.

It appears that neither the Company nor the assessing officer were aware of the contents of this notification when the duty was worked out as

stated above and paid accordingly.

2. On 28-11-1968, the Company applied to the Assistant Collector of Customs, Madras (respondent No. 1), for refund of the duty paid by it in

excess, i.e. at the rate of Rs. 120/- per metric ton the total amount claimed being Rs. 11,952.84. That application was dismissed by respondent

No. 1. on the ground that it was time-barred in view of the provisions of Section 27 of the Act as it had been presented more than six months from

the date of payment of the sum claimed as refund. The Company preferred an appeal to the Appellate Collector of Customs, Madras, but without

success. A revision petition instituted before the Government of India u/s 131 of the Act was also rejected. That is why the Company has invoked

the jurisdiction of this Court under Article 226 of the Constitution of India, with a prayer that the orders of the Assistant Collector of Customs,

Madras, the Appellate Collector of Customs, Madras, and the Government of India, who are the three respondents before me, be quashed by a

writ of certiorari and that the Government of India be directed to refund to the Company the said sum of Rupees 11,952.84.

3. In so far as the orders of the respondents are concerned, no fault can be found therewith, inasmuch as the application for refund made by the

Company was actually time-barred, having been presented, as already stated, beyond six months of the payment of duty so that the customs

authorities were bound to reject it in pursuance of the provisions of"" Section 27 of the Act. That, however, does not end the matter because the

recovery of excess duty was clearly and admittedly in contravention of the notification above extracted and, therefore, without jurisdiction so that

the same is liable to be refunded by directions in the nature of Mandamus to be issued by this Court. This conclusion finds support from the

judgment in Special Civil Appln. Nos. 909, 910 and 911 of 1971, decided by a Division Bench of the Gujarat High Court consisting of Mehta and

Sheth, JJ. on the 17th/18th of March 1972, which was followed by Ramaprasada Rao, J. in Premraj Ganapatrai and Co. (P) Ltd. v. Asstt.

Collector of Customs, Madras, W. P. Nos. 3236 to 3251 of 1970, decided on 14-9-1972 (Mad).

4. In the result, the petition succeeds in part. While the orders of the three respondents holding the application made by the petitioner to the

Assistant Collector of Customs. Madras, for a refund of the excess duty to be time-barred are not interfered with, the respondents are directed by

a writ of Mandamus to refund to the Company the sum of Rs. 11,952,84. The parties are, however, left to bear their own costs.

 