

(1960) 09 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 263 of 1960

Ramnath Agarwal

APPELLANT

Vs

G.S. Iyer, Collector of Customs, Kandla and Another

RESPONDENT

Date of Decision : 08-09-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Sea Customs Act, 1878 — Section 37, 39, 39(2)

Citation : AIR 1961 Guj 51 : (1960) GLR 267

Hon'ble Judges : Desai, C.J.; Bhagwati, J

Bench : Division Bench

Advocate : Porus A. Mehta, J.R. Gagrath and S.B. Vakil, instructed by Gagrath and Co, for the Appellant; A.G. and Asst. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Desai, C.J.—This petition raises a question of some importance relating to the interpretation and ambit of a limitative provision in Section 39 of the Sea Customs Act to be referred to by us hereinafter as "the Act". In view of the contentions urged at the bar on this question of limitation and other aspects of the matter, the facts require to be stated with some fullness.

2. In December 1957, the petitioner imported 380 cases of components of free wheels at port Kandla per S. S. Egidia. The petitioner in the usual course filed the Bill of Entry through his clearing agents along with the relevant documents. On 11th January 1958, the petitioner in answer to some inquiry made by the Customs Authorities supplied further information required of him. On 14th January 1958, the Customs Officer made certain endorsements on the Bill of Entry. Those endorsements are of considerable importance in appreciating the arguments advanced before us. In the column under the heading "Value on which Duty is Assessed", the Customs Officer wrote as under—

"Rs. 97,435.50".

In the heading under "Rate of Duty", he wrote 65 per cent u/i (meaning "under item") 75(8) I. C. T. (meaning Indian Customs Tariff). In the heading under "Amount of Duty", he wrote out the sum of Rs. 63,333,08. All the three endorsements relating to Value on which Duty was Assessed, Rate of Duty and Amount of Duty, were initialled by the Customs Officer and the date appended to the same was 14th January 1958. As we shall presently point out, greatest stress is laid on behalf of the petitioner on this factual aspect of the matter. On 15th January 1958, the Collector of Customs, Kaadla, addressed a letter to the petitioner inter alia stating therein --

* * * * * "In view of the evidence produced by you, the goods are being released on payment of duty You are therefore requested to make early arrangements for the clearance of the consignment."

On 16th January 1958, the amount of duty was paid by the petitioner and it is common ground that the goods were cleared on that date. Nothing happened in the matter of this consignment to be described by us hereafter as "first consignment" till the 16th April 1958, when the Collector of Customs, Kandla, addressed a letter of Demand to the petitioner of which we shall presently make mention. In the meantime the petitioner had imported another consignment of 113 cases of components of free wheels at Kandla per S. S. Jaltarang and this had arrived at Kandla in about March 1958. The petitioner filed the Bill of Entry relating to the same through his clearing agents along with the relevant documents. The goods of the second consignment were detained by the Customs Authorities on the ground that the real value declared by the petitioner was not correct. Adjudication proceedings ensued in which ultimately the Collector of Customs, Bombay, passed an order on 14th January 1980 directing that the goods of the second consignment be confiscated u/s 167(37) of the Act. He, however, gave an option to the petitioner to pay in lieu of confiscation a fine of Rs. 12,000/-. By that order, the petitioner was informed that he could appeal against that order to the Central Board of Revenue at Delhi. An appeal filed by the petitioner against that order is pending, but we are not concerned on this petition with the subject matter of that appeal or the contentions therein raised. The petitioner through his clearing agents applied for clearance of the detained goods on payment of the fine of Rs. 12,000/- in compliance with the Order.

3. By this time the Collector of Customs had addressed the Letter of Demand to the petitioner dated 16th April 1958 u/s 39 of the Act. One head of the argument of Mr. Porus Mehta, learned counsel for the petitioner, has rested wholly on the contents of that Letter of Demand and it will be convenient to set out that letter in extenso.

"Whereas it appears that Customs duty amounting to Rs. 99,162.92 (Rs. Ninety nine thousand one hundred sixty two and ninety two naya paise only) which was short levied in respect of the above consignment is due from you as indicated below:-

Duty was collected at the rate of 65 per cent on the declared value viz., Rs. 97,435.50 nP. From enquiries made it appears that the real value of the consignments u/s 30(b) of the Sea Customs Act, is Rs. 2,50,000.00 nP. Duty on this at the rate of 65 per cent comes to Rs. 162,500.00 nP. Duty thus short levied is Rs. 99,166.92 nP. only.

I demand u/s 39 of the Sea Customs Act, 1878 (VIII of 1878) that the said amount be paid within fifteen days from the date of this demand.

Any representation oral or in writing against the demand with necessary documentary evidence about the correctness of your stand should be made within the said period. If no representation is received within the period aforesaid, it will be presumed that you have admitted the correctness of the demand."

On 26th April 1958, the petitioner addressed a letter to the Collector of Customs expressing his surprise at the claim for the alleged short levied Customs duty. He stated in that letter inter alia that the Customs duty had already been collected from him and that was the correct duty chargeable on the real and correctly declared value of the goods; that the alleged value of Rs. 2,50,000.00 nP. was arbitrary, exorbitant, fanciful and untenable; that the Notice of Demand dated 16th April 1938 u/s 39 was time-barred. Nothing appears to have taken place after that letter, but the adjudication proceedings relating to the second consignment took place thereafter. When the petitioner applied for clearance of the detained goods on payment of the fine of Rs. 12,000/- in respect of the second consignment under the Order dated 14th January 1960 the first respondent refused clearance of the detained goods on the ground that that could not be permitted unless first until the demand relating to short levy of Rs. 99,166.92 nP. was met and the amount paid. Correspondence ensued between the legal advisers of the petitioner and the Customs Authorities to which it is not necessary to refer in this resume of the facts. The petitioner has approached this Court challenging the order u/s 39 of the Act and dated 16th April 1958. The relief sought by him is that a Writ of Certiorari or any other proper writ may issue or a direction or order may be made by this Court under Articles 226 and 227 of the Constitution. Certiorari is sought on the footing that the challenged order was made in the exercise of quasi judicial powers by the collector of Customs.

4. In opposition to the rule, the Collector of Customs. Kandla, has filed an affidavit. The relevant and material part of that affidavit requires to be set out as the learned Advocate-General, who appears on behalf of the opponents, has rested a factual aspect of the case on some of the averments in that affidavit. He has deposed in that affidavit as under:-

".....The petitioner alleges the date of assessment as 14-1-1958 but that is not so. The assessment on that day was not complete. The petitioner had been asked earlier to furnish some further information on receipt of which a letter was written to the petitioner on 15th January, 1958, in pursuance of which he paid

the duty leviable on the Egidia consignment and cleared the goods on 16th January, 1958. The process of assessment was not completed on 14-1-1958 as alleged by the petitioner but the Egidia consignment was finally released only after the information asked for was received from the petitioner on or about the 15th January, 1958 and after the final computation of the amount of the duty payable was completed and amount thereof was determined by the officers of the Customs which was immediately prior to the payment of duty by the petitioner of the Egidia consignment on the 16th January, 1958. Hence the date of the first assessment of the Egidia consignment is not 14-1-1958 as alleged but 16-1-1958....."

"It is true that the demand must be made within three months of the first assessment but the date of assessment in law is not 14-1-1958 as alleged in the petition. It is not true that the notice was issued more than 3 months after the assessment. It is submitted that the notice is legal and as no duty was paid as mentioned therein, the detention of the Jalatarang consignment is also legal....."

5. An objection has been raised in limine by the learned Advocate-General and the objection is that the petition has been filed after inordinate delay. It is said that the petitioner who challenges the demand u/s 39 made by the Customs Authorities by the letter dated 16th April 1958 should have appealed against that order and if an appeal was not maintainable, so the objection has run, he should have gone in revision against the Notice of Demand. In our opinion there is little substance in this preliminary objection. It is not necessary to rehearse the facts and it will suffice to observe that it was in pursuance of what was mentioned in the last paragraph of the letter dated 16th April 1958 that a representation in writing was made by the petitioner to the Collector of Customs by a letter dated 26th April 1958. There was no reply to that letter and the adjudication proceedings relating to the second consignment continued till about March 1960. It is extremely difficult to see how in this set of circumstances it can be said that the petitioner was guilty of such laches and inaction on his part as should deprive him of his right to approach this Court on a petition under Articles 226 and 227 of the Constitution.

6. Three contentions have been urged before us by Mr. Porus Mehta, learned counsel for the petitioner. Firstly, it is urged that the notice of demand u/s 39 of the Act is not a final demand and must be read as containing merely a provisional demand. Then it is said that the Customs Authorities had no jurisdiction or power to make any such provisional demand. We have set out the whole of the letter of the Collector dated 16th April 1958. It is true that in the last part of that letter the Collector has stated that the petitioner could make a representation orally or in writing against the demand with necessary documentary evidence about the correctness of his stand within fifteen days of the date of demand and that if no representation was received from him, it would be presumed that he admitted the correctness of the demand. This might perhaps suggest that a final demand would be made after the representation was

made. As against that there is the clearest indication in the earlier part of the letter that what the Collector of Customs purported to do was to pass an order u/s 39 of the Act and make a demand in respect of short levy of duty. In express terms he stated --

"I demand u/s 39 of the Sea Customs Act, 1878 (VIII of 1878) that the said amount be paid within fifteen days from the date of this demand."

In support of his argument, Mr. Forus Mehta has referred to decision of the Bombay High Court in *Glaxo Laboratories (India) Private Ltd. Vs. A.V. Venkateswaran and Another*, It is true that in that case it was held that there was no final demand but a provisional demand. But that was on the express and explicit phraseology of the relevant communication which was under consideration by the Court. We are unable to read this letter of 16th April 1958 in the manner suggested by Mr. Mehta. It is to be noticed that the order u/s 39 is a unilateral act and the mere fact that the Collector of Customs added at the end of the letter that any representation made by the petitioner would be considered cannot be permitted to alter the very essence and effect of the letter. What we are asked to do is to hold that what is expressly stated to be a Notice of Demand u/s 39 should not be read by us as such. That demand is categorical and we must give due meaning to the same. The contention that this Notice of Demand must be read merely as a show cause notice must, therefore, be repelled.

7. It is next contended on behalf of the petitioner that even if the demand made by the letter of 16th April 1958 was a final demand, it was issued to the petitioner beyond the period of three months prescribed u/s 39 of the Act. It is the major premise of the argument of Mr. Mehta that the date of the first assessment in respect of the first consignment was 14th January 1958.

8. The factual aspect of the matter need present no difficulty. The photostat copy of the Bill of Entry annexed to the petition, we were told by the learned Advocate-General, did not contain all the relevant endorsements and he drew our attention to the original Bill of Entry described as the "Customs Copy" wherein the Collector has put his initials and appended the date "15-1-1958". We have allowed this original Bill of Entry to be taken on the record of this petition. The entry in the column relating to "Value on which Duty is Assessed" could obviously be made only after the duty was assessed and the amount there mentioned is Rs. 97,435.50. The entry under the heading of "Rate" in the column relating to "Duty" mentions 65 per cent under item 75(8) of the Indian Customs Tariff. Under the heading of "Amount" in the column relating to "Duty" is mentioned the sum of Rs. 63,333. Obviously this is the amount of duty particularised and determined on completion of the assessment. The signature of the Customs Officer embraces this endorsement and bears the date "14-1-1958". Primarily and principally we should have regard to these endorsements in determining the date of the first assessment. Of course it may be necessary in a given case to have regard to some other relevant circumstances. In the case before us there is

not much of any such relevant circumstances except what may be gathered from the letters of 11th January 1958 and 15th January 1958 of which we have already made mention. Before we turn to examine the same and particularly the letter of 15th January 1958 addressed by the Collector of Customs to the petitioner, we must advert to what the Collector of Customs has to say on this point. We have already quoted that part of his affidavit which has been relied on by the Advocate-General. The contention there that the date of assessment in law was not 14th January 1958 but was 16th January 1958 is to say the least very feeble. In the absence of any other data we would prefer to rest our conclusion on the endorsements made on the Bill of Entry itself and on the contents of the letter dated 15th January 1958 addressed by the Collector to the petitioner and the endorsements on the Bill of Entry leave little scope for any doubt or dispute. Assuming, however, that something did require to be done after those endorsements were made on 14th January 1958 and that was done after the receipt of the petitioner's letter of 11th January 1958, there was nothing which remained to be done after the Collector addressed his letter of 15th January 1958 to the petitioner. In very clear terms it is there stated that the petitioner could clear the goods of the consignment. It is also there stated that the goods were being released in view of the evidence produced by the petitioner. We fail to see what remained to be done by the Collector or could have been done by him after he addressed this letter of 15th January 1958 to the petitioner. The conclusion seems to us to be inescapable that the date of the first assessment was 14th January 1958 and in any event a date not later than 15th January 1958. If further support is necessary for this conclusion that is to be derived from the express and explicit language of Section 87 of the Act which rules --

"87. On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the same subject to the provisions hereinafter contained".

The petitioner could clear the goods only after the completion of the assessment. This factual aspect of the matter has also bearing on a legal argument stressed before us by the Advocate-General to which argument we shall presently turn. But before we do so, it will be convenient to set out the provisions of Section 39 of the Act.

"39. (1) When customs-duties or charges have not been levied or have been short-levied through inadvertence, error, collusion or misconstruction on the part of the officers of Customs, or through mis-statement as to real value, quantity or description on the part of the owner,

or when any such duty or charge, after having been levied, has been, owing to any such causes erroneously refunded,

the person chargeable with the duty or charge which has not been levied or which has been so short-levied, or to whom such refund has erroneously been

made, shall pay the duty or charge or the deficiency or repay the amount paid to him in excess, on a notice of demand being issued to him within three months from the relevant date as defined in Sub-section (2);

(2) For the purposes of Sub-section (1), the expression "relevant date" means:-

(a) in a case where the duty or charge has not been levied, the date on which the Customs-officer makes an order for clearance of the goods;

(b) in a case where the duty is reassessed u/s 29A, the date of re-assessment;

(c) in a case where the duty is provisionally assessed u/s 29B, the date of final adjustment of duty;

(d) in a case where the duty or charge has been erroneously refunded, the date of refund; and

(e) in any other case, the date of the first assessment."

The contention of the petitioner as we have already indicated is that the first assessment was made on the 14th January 1958 and in support of that he relies on the endorsements made on the Bill of Entry which we have already examined. The argument of the learned Advocate-General on the other hand is that the true meaning of the expression "date of the first assessment" requires to be fully examined. Assessment it is said is not a single act but a process and examination of goods is part of the process of assessment. It does not consist merely in writing entries or making any endorsements. The factual aspect of the matter has already been considered by us and it is not necessary to burden this part of the judgment with any repetition of the relevant and crucial facts. We put to counsel the question as to when according to him the process would end and the answer was that the process of assessment ended when the final amount of the duty to be levied was computed and communicated to the person liable to pay the duty. He has also drawn our attention to a number of sections relating to levy of customs-duties.

9. Before we turn to consider this argument urged on behalf of the respondents, it will be convenient to examine the scheme of the relevant provisions relating to levy of customs-duties and make some prefatory general observations. Section 20 is the levying or charging section and it enacts in Subsection (1) --

"Except as hereinafter provided, customs-duties shall be levied at such rates as may be prescribed by or under any law for the time being in force, on goods imported or exported by sea into or from any customs-port from or to any foreign port;"

* * * * * Section 21 relates to goods partially composed of dutiable articles. Section 22 enacts an important provision which authorises the Central Government, from time to time, by notification, to fix tariff-values. Section 29 imposes upon the owner of goods who imports or exports goods from, any customs-port, whether liable to duty or not, to state, in his bill of entry or shipping

bill, the real value, quantity and description of such goods to the best of his knowledge and belief and subscribe a declaration to that effect at the foot of such bill. Section 29A provides for assessment of duty prior to examination of goods. The part of that section relevant for our purpose states that goods chargeable to duty may, prior to the examination thereof, be permitted by the Customs-Collector to be assessed for the purposes of the Act on the basis of the statement contained in the bill of entry or shipping bill, as the case may be. In case it is subsequently found on an examination of the goods or otherwise, that any such statement is not true in respect of any matter relevant to the assessment, the goods may be re-assessed to duty. Section 29B empowers provisional assessment of duty in certain cases. Section 30 enacts a deeming provision as to the meaning of "Real Value". Section 31 relates to examination of ad valorem goods. It lays down -

".....If it appears that the real value of such goods is correctly stated in the bill of entry or shipping bill, the goods shall be assessed in accordance therewith".

Section 32 lays down the procedure to be adopted where goods are under-valued by the owner. It empowers the Customs-officer to detain the goods. Section 39 which is the vital clause and on the language of which the crucial argument before us was advanced contains provisions relating to payment of duties not levied, short-levied or erroneously refunded. It will be noticed from the provisions of Section 39 which we have already set out that Sub-section (2) which gives the meaning of "relevant date" for the purpose of applying the period of limitation of three months speaks of the date on which an order for clearance of the goods is made; the date on which re-assessment is made in a case where duty is re-assessed u/s 29A; the date of final adjustment of duty in a case where the duty is provisionally assessed u/s 29B; the date of refund in a case where the duty has been erroneously refunded; and in any other case, the date of the first assessment.

10. In an extended and expansive sense the expression "assessment" may include a number of steps and the whole procedure for imposing, fixing and collecting of the duty. It is obvious that the expression "first assessment" with which we are here concerned, does not relate to the whole gamut of it. In the context of the prescriptive provision in Section 39 which we are called upon to interpret, it can only relate to assessment strictissimi juris. It must relate to the fixation of the prescribed category which covers the particular goods and the computation and determination of the amount of the duty to be paid on the same. This should not present any difficulty if it is clearly borne in mind that there are three stages in the imposition of levy of Sea Customs-duty. There is the declaration of liability in respect of dutiable goods. That is by the initial part of Chapter V intitled "Levy of, and Exemption from, Customs-duties". The levying or the charging provisions in that Chapter raise the levy and determine the goods in respect of which that is to be done. The relevant provisions lay down that customs-duties shall be levied at such rate as may be prescribed under any law

and empower the Central Government to fix the tariff-values. The liability is fixed ex hypothesi. That is the first stage. The second stage is the assessment. Assessment particularises and fixes the precise amount of duties in respect of the dutiable goods, the subject matter of each case. The third and the last stage is the mode or method of collection and recovery of the amount to which the goods are assessed. It seems, therefore, beyond disputation that the limitative provision in Section 39 with which we are here concerned relates to and means actual assessment by the Customs-authority of the particular goods. An "actual assessment" in the present context can only mean the computation and fixation of the precise amount of duty to be paid on the particular goods having regard to the prescribed category under which they fall and the mode or manner by which their value or real value has to be ascertained. There is no provision for a notice of demand in respect of the first assessment envisaged by Section 39, In view of the argument urged before us by the learned Advocate-General that the process of assessment continues till the final amount of duty is computed and communicated to the person who is liable to pay the duty, we would have lingered longer on the aspect of notice incorporated in the argument and considered whether we would be justified in giving such wider and enlarged meaning to the expression "first assessment". Learned counsel has, however, with his usual fairness, stated before us that there is no practice of giving notice of the first assessment followed by the Customs-authorities. We refrain from entering into an elaborate discussion of this aspect of notice as, very rightly, it is no part of the argument of counsel that the process of assessment under Consideration does not terminate till any prescribed notice is given. It is common ground that there is no provision of law relating to giving of notice in respect of the first assessment and no system or practice relating to giving of any such notice followed by the Customs-authorities. That being the position, learned counsel had necessarily to seek support from certain decisions where in considering the terminus a quo of a prescribed period of limitation, the Courts expressed the view that the starting point of limitation, in provisions for instance, relating to the filing of appeals, should be the date when the decision should, in the normal course, have become known to the party. We might have referred to those decisions but do not deem it necessary to do so since they all relate to periods prescribed in different contexts. As was pointed out by Fawcett, J. in one of the decisions cited by the learned Advocate-General, that principle should be followed only when the context so justified. We put to ourselves the question whether there is anything in the context in which Clause (e) of Sub-section (2) of Section 39 appears, which requires that the expression "date of the first assessment" should be understood to connote not the date of the actual making of the first assessment but the date on which intimation of the making of the assessment was given to or received by the owner of the goods? In these cases argument derived from analogy is at times an unsound consideration, though we agree with counsel that such argument may sometimes be of some assistance. A closer analogy, if indeed analogy is to be resorted to, is furnished by certain provisions in the Income Tax Act, for instance Section 33A, which

speaks of an order which has been made more than one year previously, That section relates to the power of revision by Commissioner. Another instance of the like nature is furnished by Section 33B of that Act and which relates to power of Commissioner to revise Income Tax Officer's orders and the period of limitation there prescribed is two years "from the date of the order sought to be revised". The question of commencement of the limitation period in cases falling under Sections 33A and 33B of the Income Tax Act has given rise to some conflicting decisions. But the majority of the High Courts have taken the view that limitation in cases under those sections commences from the actual date of the order. We have referred to those sections only in answer to the argument based on analogy on which counsel for the respondents sought to place reliance. The analogy is not helpful. It is also to be noticed that in a case of the nature before us there cannot be any question of the period of limitation commencing without intimation or knowledge of the order and thereby any prejudice being caused to the party against whom the bar of limitation has been pleaded.

11. The language of Clause (e) of Sub-section (2) of Section 39 read with the relevant part of Subsection (1) of that section, does not leave the meaning in dubio. On the contrary, the language employed is clear and explicit. In express terms the clause requires that the notice of demand must be issued within three months from the date of the first assessment. It is the Customs authority who makes the first assessment and it is the Customs authority who has to give the notice of demand within the prescribed period of limitation. There is neither principle nor authority which requires any extended meaning being given to Section 39(2) (e). After giving our best consideration, to the argument urged on behalf of the respondents, we have reached the conclusion that the notice of demand was issued after the expiry of the period of three months prescribed for the same by Section 39. On that ground alone the petitioner is entitled to succeed. This period of three months goes to the very root of the matter and the condition that the order must be issued within the prescribed period is a condition precedent to the exercise of any power or authority by the Customs-officer u/s 39. It was unfortunate that in the present case the notice of demand should have been issued after the expiry of the period of limitation though it was within a very short time of it.

12. There remains to be considered the third contention urged by Mr. Porus Mehta and that contention is that in issuing the notice of demand, the Customs-authority violated a fundamental principle of natural justice namely that he issued the notice without giving any hearing to the petitioner. It is said that the particulars on which the conclusions resulting in the notice were based were not given to the petitioner and the petitioner had no chance of submitting his version of the case before the order was made. Succinctly stated, the argument is founded on the dictum *audi alteram partem*. It is upon this maxim that the well-known principle of law applicable to such cases is founded. The maxim has been loosely translated to mean that no person shall be condemned unheard. We had occasion to consider this principle and this maxim in a case recently decided by

my brother Miabhoy and myself in *Ramjibhai Ukabhai Parmar Vs. Manilal Purushottam Solanki and Another*, . In his judgment my brother Miabhoy there referred to Broom's Legal Maxims and pointed out that the rule required that no one shall be condemned, punished or deprived of his property in any judicial proceeding unless he has had an opportunity of being heard. The decision of the House of Lords in *Local Government Board v. Alridge* (1915) AC 120 , is a landmark on this aspect of law. There are decisions of the Supreme Court and also of various High Courts in India where the view has been taken that the application of the principle founded on the maxim *audi alteram partem* does not reach executive or administrative orders and that its application covers orders which are judicial or quasi judicial. To refer to only one of them in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, , where question arose as to the character of the functions performed by Wage Boards under the Industrial Disputes Act. In the judgment of the Court in that case, Mr. Justice Bhagwati pointed out this vital distinction. At page 609 of the report, his Lordship observed --

".....The question assumes importance on two grounds: viz., (i) whether the decisions of the wage boards are open to judicial review and (ii) whether the principle of *audi alteram partem* applies to the proceedings before the wage boards. If the functions performed by them were administrative or legislative in character they would not be subject to judicial review and not only would they not be amenable to the writs of certiorari or prohibition, under Articles 32 and 226 of the Constitution, they would also not be amenable to the exercise of special leave jurisdiction under Article 136. Their decisions moreover would) not be vulnerable on the ground that the principle of *audi al-teram partem* i.e., no man shall be condemned unheard, was not followed in the course of the proceedings before them and the procedure adopted by them was contrary to the principles of natural justice."

13. A rather feeble attempt was made by Mr. Mehta when he said that in the case before us there was a *lis* and, therefore, the order passed by the Customs authority should be regarded as made in a matter which was quasi-judicial. The differentiation and distinction relating to a *lis* no doubt relevant in certain cases has no bearing, however, on the facts and circumstances of the case before us and we need not pursue the point. On our part we are of the definite view that the action taken by the Customs authorities u/s 39 is an administrative or executive action and, therefore, in doing so, they cannot be regarded as acting in any quasi-judicial manner. We are also of the view that before making the impugned order the Customs-authorities were not bound to hear the petitioner. In every case contemplated by the section, the action of the authorities would be an unilateral act although of course there is nothing to prevent them from seeking all information that may be relevant for enabling them to make adequate and satisfactory assessment. For reasons which we have already discussed, the present contention must be negatived.

14. In the view we have taken of the contention relating to bar of limitation, the petition must succeed. A writ of Mandamus and an order will issue in terms of prayer (b) of the petition. There will also be an order directing the respondents to forbear from detaining the goods in question in implementation or pursuance of the short levy notice dated 16th April 1958 and the notice dated 22nd March 1960. The respondents will pay the petitioner's costs of the petition. Mr. S. B. Vakil presses for the maximum amount of costs which can be awarded by this Court in a writ matter which is Rs. 500/-. The petitioner has canvassed three points before us and on two of them our decision has gone against him. That is a circumstance which cannot wholly be ignored in awarding costs. The fair order for costs, in our opinion, will be that the respondents should pay to the petitioner Rs. 250/- as costs.