

(1969) 08 CAL CK 0033
In the Calcutta High Court
Case No : Matter No. 438 of 1967

Shew Bhagwan Goanka

APPELLANT

Vs

The Collector of Customs and Another

RESPONDENT

Date of Decision : 05-08-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 11, 122, 129(1), 131(1)
Imports and Exports (Control) Act, 1947 — Section 3

Citation : AIR 1971 Cal 112 : 74 CWN 907

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Advocate : Ginwalla, for the Appellant; G.P. Kar, for the Respondent

Judgement

B.C. Mitra, J.—The petitioner seeks appropriate writs and orders regarding two show cause notices dated June 24, 1966, and October 19, 1966, and an order made thereon on April 28, 1967, confiscating certain goods and imposing a fine of Rs. 50,000/- in lieu thereof and further imposing a personal penalty of Rs. 50,000/-.

2. The petitioner is the Karta of a Hindu undivided family and carries on business under the name and style of East Jamuria Coal Company (hereinafter referred to as the firm) in Calcutta. The business of the firm consists in winning coal at its collieries and selling the same. For this business the firm uses various plant and machinery including Haulages headgears, drill machines etc. The petitioner obtained an actual user's Import Trade Control Licence dated January 7, 1964, under the Import and Export (Control) Act, 1947, and the Imports (Control) Order, 1955 for the import of plant, machinery and equipment of a total C.I.F. value of Rs. 66,000/-. This licence was valid up to October 30, 1964, but was re-validated from time to time and finally upto June 30, 1965. The machineries permitted to be imported under the said licence were as follows:--

15 H. P. Tugger Haulages, 30/35 H. P. Endless Haulages, 40/45 H. P. Direct

Haulages.

3. Amendments were made in the list of machinery to be imported by the petitioner, and by an amendment made by the Assistant Controller of Imports and Exports on April 6, 1965, the description of the goods in the licence was treated to be as mentioned above but "as per list attached" the list attached contained the following description of machinery;--

"1. Two Nos. 50 H.P. Heavy Duty Direct Haulages, complete with electrical equipment and one set of spare electrical equipment for 50 H.P. Heavy Duty Direct Haulages.

2. Ball-bearings for Motors, Haulages and Gear-box etc.

3. Complete set of Bonded Asbestos Brake Linings. Total C.I.F. value for the above Rs. 66,000/-."

4. One of the conditions of the licence was that it would be subject to the conditions in force regarding the goods covered by the licence as set out in the relevant Import Trade Licence Policy Book. One of such conditions imposed was that in the case of consolidated licences covering a number of items the licensing authority would indicate the quantitative/value limits of only such items in respect of which it was desired to impose restrictions on the quantity/value for import and in such cases if the licence indicates that the value-quantity limits, the licensee might import more of the given quantity/value but within the overall value of the licence. But in the case of an item for which the licence did not indicate the value/quantity limits, it would be open to the licensee to import that item to the extent of any value/ quantity provided the import thereof was covered within the overall value of the licence.

5. The petitioner's case is that in spite of several extensions of the validity of the licence, the suppliers could not supply the machinery within the period of validity, and the petitioner therefore imported, under the said licence 28 cases of Ball-bearings supplied by an Italian firm. The petitioner's clearing agent thereafter presented a Bill of Entry to the Customs House at Calcutta on August 21, 1965, for clearance of the said consignment of 28 cases of Ball-bearings. The respondent No. 1 did not permit clearance of -the machinery, and on March 31, 1966, the respondent No. 1 caused the office premises of the petitioner to be searched, a large number of documents connected with the import of the said Ball-bearings were seized.

6. A show cause notice dated June 24, 1966, was issued to the firm by the Customs authorities whereby the firm was called upon to produce a valid Import Trade Control Licence, for the goods sought to be imported, within 15 days from the date of the notice and failing such production the firm was directed to show cause why the goods should not be confiscated u/s 111(d) of the Customs Act, 1962, (hereinafter referred to as the Act) and why a personal penalty should not be imposed on the firm u/s 112 of the Act. A second notice dated October 19,

1966, was issued by the Customs authorities in this connection.

7. Three personal hearings were given by the respondent No. 1, and at these hearings it was contended on behalf of the firm, that the ball-bearings in question were intended for use in the existing plant, machinery and equipment at the firm's collieries. The petitioner contends that an offer was made to the respondent No. 1 to visit the collieries to satisfy himself upon inspection, that similar ball-bearings were actually in use in the plant and machinery at the colliery. The petitioner further contends that the, respondent No. 1 refused to inspect the plant and machinery at site, and not only put the burden of proving that the ball-bearings sought to be imported were capable of use in such machinery of the firm, but went further and insisted that the only evidence which would satisfy the respondent No. 1 would be manufacturer's catalogues or published literature of the manufacturer showing that such ball-bearings could be used in coal mining machinery plant and equipment.

8. On April 28. 1967, the respondent No. 1 made an order whereby it was held that the importation of the said goods was unauthorised. By this order the goods were confiscated u/s 111(d) of the Act, with an option to the firm to pay a fine of Rs. 50,000/- in lieu of confiscation, and a personal penalty of Rs. 50,000/- was also imposed upon the firm. Aggrieved by this order the petitioner obtained this Rule Nisi and also an interim order restraining the respondents from giving effect to the impugned order for three weeks in the first instance with liberty to apply for extension of the same.

9. Various grounds have been taken in the petition but appearing for the petitioner Mr. Ginwalla confined himself to five grounds which he formulated as follows:

(1) The respondent No. 1 acted altogether without any jurisdiction as the show cause notices did not disclose any offence.

(2) There was no evidence to support the impugned order as there was nothing to show that the ball-bearings sought to be imported by the firm were not suitable for use in the plant and machinery of the firm,

(3) The respondent No. 1 was in error in imposing upon the firm the burden of proving that the ball-bearings were suitable for use in the plant and machinery of the firm.

(4) Rules of natural justice were violated as the catalogue for automotive bearings published by S. K. F. Ball-Bearing Company was not shown to the petitioner.

(5) The respondent No. 1 misconstrued the licence issued to the petitioner.

10. On behalf of the respondent No. 1 Mr. G. P. Kar contended that the goods were imported illegally, and in breach of the terms and conditions of the import licence. The licence it was argued permitted importation of ball-bearings to be

used in Haulage Motors and Gearbox and similar equipment. Further, it was submitted that the licence did not permit importation of 1950 pieces of ballbearings, C.I.F. value of which was Rs. 13,111/60 which were designed and adapted for use in motor vehicles and 646 multipurpose bearings C.I.F. value of which was Rs. 10,994/11/- and which were machine parts capable of being used in a large variety of machines, not recommended by the manufacturers for any special use. It was contended that the petitioner had alternative remedy by way of revision and appeal under the Act.

11. In the affidavit-in-opposition affirmed on March 28, 1968, it is alleged that the licence was granted to the petitioner on the recommendation of the Coal Controller made on an application by the firm, and that from the statements made by the firm to the Coal Controller, it would appear that the firm made a categorical statement that its requirement of ball-bearings to be imported under the licence would be for Rs. 3000/- only. It is further alleged that the licence was mainly for the importation of Haulages, and the ball-bearings of the value of Rs. 3000/- were to be imported only as spares. It is said that merely because the suppliers of the Haulages could not supply the same within time, it did not mean that the firm was authorised to import ball-bearings of a large quantity which were not needed by the firm, taking into account their suitability for use in Haulages and their auxiliaries. The contention of the respondent No. 1 in substance is that the importation was made in violation of Section 3 of the Imports and Exports (Control), Act, 1947, read with I.T.C. Order No. 17/55 dated December 7, 1955, and the provisions of the Act.

12. The next contention of counsel for the respondent No. 1 was that the suppliers' invoice merely showed type, numbers of the ball-bearings with the corresponding S.K.F. numbers, the quantity of each type, Unit price and total value. The catalogue of automotive bearings published by S.K.F. Ball-Bearing Company showed that 1950 pieces of ballbearings imported by the firm were specially adapted for use in motor vehicles and that this statement in the catalogue was not challenged during the hearing or in the reply to the show cause notices. The remaining 646 bearings, it was argued were multipurpose bearings as stated in the show cause notices,

13. Counsel for the petitioner argued that the licence permitted the petitioner to import three specific items of goods.

(1) Two Nos. 50 H.P. Heavy Duty Direct Haulages, complete with electrical equipment and one set of spare electrical equipment for 50 H.P. Heavy Duty Direct Haulage.

(2) Ball-bearings for Motors, Haulages and Gear-Box etc.

(3) Complete set of bonded asbestos brake linings. Total C.I.F. value for the above Rs. 66,000/-.

14. The value of the three items were not separately specified but the total C.I.F.

value allotted was Rs. 66,000/-. In paragraph 87(1) of the "Amendments to the Import Trade Control Hand Book of Rules and Procedure 1964", it is stated that actual users, while applying for licence, should indicate against each item the value and quantity sought to be imported. In sub-paragraph (2), however, it is stated that in the case of consolidated licences for a number of items of raw materials components and spare parts, the licensing authority will, on the basis of recommendation of the sponsoring authority, indicate the quantitative/value limits of such items covered by the licence, in respect of which it is desired to impose itemised restriction on the quantity/value to be allowed for import. In such cases, it is further stated, if an item for which the licence indicates the value/quantity limits the licensee may import more of the given quantity/value in terms of the concession regarding flexibility provided in paragraph 84 of the amendments. It is, however, further provided that in the case of an item for which the licence indicates the value/ quantity limits it will be open to the licensee to import that item to the extent of any value/quantity provided the Import thereof is covered within the overall value of the licence. Relying upon this provision, counsel for the petitioner submitted that the licence in this case did not indicate the value of each item, but an overall limit of Rs. 66,000/- was imposed for all the three items included in the licence. The Heavy Duty Haulages covered by the licence could not be imported, it was submitted, as the supplier could not deliver them within the extended period of validity of the licence. For that reason the petitioner had imported ball-bearings the value of which were well within the limits prescribed by the licence. It was therefore argued that no offence was committed by the petitioner who imported the ball-bearings in accordance with the said Rules. I shall revert to this question later.

15. I now proceed to deal with the first contention on behalf of the petitioner mentioned above namely since the show cause notices did not disclose any offence committed by the petitioner in importing the ball-bearings, the respondent No. 1 had no jurisdiction to entertain the adjudication proceedings, and to make the impugned order. In order to test the soundness of this contention reference has to be made to certain provisions of the Imports and Exports (Control) Act, 1947. The Customs Act, 1962, and the Imports (Control) Order, 1955.

16. u/s 3(1) of the Imports and Exports (Control) Act, the Central Government may by order make provision for prohibiting, restricting or otherwise controlling in all cases or in specified classes of cases and subject to exceptions to be made, the import and export of goods of any specified description. u/s 3(2) of the said Act all goods to which any order under Sub-section (1) of Section 3 applies, shall be deemed to be goods of which the import and export has been prohibited u/s 11 of the Customs Act, 1962. Under Clause 3 of the Imports (Control) Order 1955, no person can import any goods of the description specified in Schedule 1 to the Order except under and in accordance with a licence or Customs clearance permit granted by the Central Government. Ball-bearings have been specified in Item 19(1) in Part II of the Schedule to the Order. Reading the provisions

together it is clear firstly that the Central Government has the power to prohibit or impose conditions on the import of certain goods. Secondly, it is clear that the Central Government has the power to issue licence for the import of prohibited goods. Thirdly, it is clear that ball-bearings are goods with regard to importation of which a licence is needed. Fourthly, the ball-bearings are goods of which the import and export is prohibited u/s 11 of the Customs Act. The provision in Customs Act is therefore attracted to the importation of goods, the import of which is prohibited, and can be made only upon a licence to be issued by the Central Government. This takes us to Section 111(d) of the Customs Act, 1962 which prescribes that goods which are imported and attempted to be imported contrary to any prohibition are liable to confiscation. Penalty is imposed by virtue of Section 112 of the said Act, after a show cause notice has been issued u/s 124 and adjudication has taken place u/s 122 of this Act.

17. The question whether the respondent No. 1 had jurisdiction to make the impugned order has to be decided with reference to the statutory provisions mentioned above. According to the respondent No. 1 the petitioner attempted to import ball-bearings, which can be imported only on the basis of a licence, in violation of the terms of a licence obtained by it. The licence was obtained by the petitioner for the importation of three different items of goods mentioned earlier; but instead of importing the goods for which the licence was issued, the petitioner attempted to import ball-bearings only, which were one of three items for which the licence was granted. The suppliers' invoice discloses that the subject-matter of import were 1950 pieces of 18 types of ball-bearings of the C.I.F. value Rs. 13,111.60 and 646 pieces of 16 types of ball-bearings of the C.I.F. value of Rs. 10,994.11. According to the respondent No. 1, in the application by the petitioner submitted to the Coal Controller it was stated that the value of Haulages required and sought to be imported would be Rs. 60,000/- and that ball-bearings and brake linings for the main equipment would be of the value of Rs. 6,000/- only. In the show cause notice dated June 24, 1966, it is stated that the importation of 28 cases of ball-bearings of the C.I.F. value of Rs. 24,105.87 is unauthorised having regard to the provisions in Section 3(1) and 3(2) of the Imports and Exports Control Act, 1947, read with Import Trade Control Order No. 17/55 and is therefore liable to confiscation u/s 111(d) of the Customs Act, 1962.

18. In the show cause notices dated June 24, 1966 and October 19, 1966 the Customs authorities have made out a case that the attempted importation of the ball-bearings were unlawful. The question is if, having regard to the terms of the show cause notices and the charge made against the petitioner in the same, the respondent No. 1 had jurisdiction to make the impugned order. Admittedly in this case the ball-bearings mentioned in the show cause notices, full particulars of which have been set out in the suppliers' invoice submitted to the Customs authorities, were sought to be imported by the petitioner on the basis of a licence obtained by it. According to the respondent No. 1 the licence obtained by the petitioner did not authorise the importation of the ball-bearings and therefore

the attempted importation of the ball-bearings was unlawful, being in violation of the various statutory provisions discussed earlier and the provisions of the Customs Act are attracted to the importation of the ball-bearings by the petitioner the show cause notices, and the adjudication proceedings which followed, were in compliance with the provisions of the Customs Act, 1962.

19. The charge against the petitioner being what it is, it cannot but be held that the respondent No. 1 had jurisdiction to adjudicate upon the matter u/s 122 of the Customs Act, 1962. In deciding the question of jurisdiction, the question of truth or validity of the charges and the show cause notices and the question whether the charges can be sustained are not matters relevant for consideration. The only question is whether the statute has conferred upon the respondent No. 1 the jurisdiction to adjudicate upon the matters set out in the show cause notice. I have analysed the different statutory provisions relating to the restrictions on the importation of goods and also the provisions regarding proceedings for violation of the terms of a licence. The charge against the petitioner is that the importation of the ball-bearings was unauthorised and in my view the statute has clearly conferred jurisdiction upon the respondent No. 1 to adjudicate upon this charge. The first contention of Mr. Ginwalla therefore fails and is rejected.

20. The next contention of Mr. Ginwalla was that there was no evidence to support the impugned order as there was nothing to show that the ball-bearings sought to be imported by the petitioner were not suitable for use in the plant and machinery of the firm. Counsel for the petitioner argued that the materials set out in the show cause notices could not be treated as evidence as they were allegations of fact as in a plaint in a civil suit, and needed to be proved by evidence, before they could be relied upon by the respondent No. 1. It was submitted that statements were made on behalf of the firm before the respondent No. 1 in support of the petitioner's contention that the ball-bearings in questions were suitable for use in the petitioner's plant and machinery. This evidence, it was argued, was improperly rejected by the respondent No. 1, who also refused to inspect the plant and machinery at the petitioner's colliery to satisfy himself about the suitability of the ball-bearings for use in such plant and machinery. In order to decide this question it is necessary to refer to the two show cause notices and also the impugned order. In the first show cause notice dated June 24. 1966, it is stated that the petitioner obtained an import trade control licence dated 7-1-64 for the importation of the goods a list of which is annexed to the licence. The next document referred to in this show cause notice is the suppliers' invoice in which the quantity and value of the ball-bearings is set out. The third document mentioned in the show cause notice is the catalogue of bearings published by the S.K.F. Ball-Bearing Company. It is next stated that it appeared from a scrutiny of the suppliers' invoice that 1950 pieces of ball-bearings were adapted for use in motor vehicles and that 646 ball-bearings were multipurpose ball bearings used generally in industrial machines. The next document referred to is the petitioner's application for a licence which was

sponsored by the Coal Controller. In this application it was stated that the value of the Haulages sought to be imported would be Rs. 60,000/- and the value of the ball-bearings and brake linings for the main equipment, would be Rs. 6,000/-. The next document referred to is the licence itself from which it appeared that the petitioner had not imported the haulages for the importation of which the licence was issued. It is stated in this show cause notice that it appeared from the licence that it was utilised solely for the importation of brake linings and ballbearings.

21. In the second show cause notice dated October 19, 1966 a reference has been made to the petitioner's application to the Coal Controller for revalidation of the period of shipment and for inclusion in the licence of a list of spares for "Wild Haulages". In this show cause notice a reference has been made to a letter from the petitioner dated April 24, 1964, addressed to the Coal Controller in which it was stated that orders have been placed with Messrs. Larsen and Toubro Ltd. for importation of the goods and also a copy of a letter from Messrs. Larsen and Toubro Ltd. dated April 21, 1964, setting out a list of goods. A reference has also been made to a letter by the petitioner dated June 4, 1964, addressed to the Coal Controller in which it was stated, that part numbers of the spares were assigned only after detailed drawings were made, and therefore part numbers could not be furnished. The other letters referred to are a letter dated May 30, 1964, from Messrs. Larsen and Toubro Ltd. explaining the position regarding the part numbers of the spares, a letter dated August 6, 1964, from Messrs. Larsen and Toubro Ltd. certifying the C.I.F. value of the spares, a letter dated March 23, 1965, from the petitioner in which it was stated that the goods could not be shipped within the validity period of the licence and a request was made for revalidation up to June 13, 1965, and a letter dated March 5, 1965, from Messrs. Larsen and Toubro confirming the C.I.F. value of the equipment. The next reference is to the order placed by the petitioner on April 23, 1965, for the importation of the ball-bearings manufactured by the Italian Firm and the opening of the letter of credit dated May 4, 1965, through the United Commercial Bank, Calcutta, for importation of the goods.

22. In the impugned order itself reliance has been placed on various correspondence that passed between the parties. The petitioner was called upon to produce two relevant files, which he could not produce, as these were seized by the Special Police Establishment. The respondent No. 1 summoned these files, which were placed before him. Copies of the relevant correspondence in the files which indicated the exact purpose for which the licence was issued, were supplied to the petitioner under cover of a letter from the Customs authorities dated October 19, 1966. These materials on which the respondent No. 1 relied for making the impugned order, except for the catalogue published by S.K.F. Ball-Bearing Company, are admittedly correspondence between the parties, the Coal Controller and Messrs. Larsen and Toubro Ltd. These are materials on record on which the respondent No. 1 relied and of which the petitioner was fully aware. With regard to such of the letters as were not in the possession of the petitioner,

but were in the files seized by the Special Police Establishment, copies were forwarded to the petitioner. With regard to the catalogue of the S.K.F. Ball-Bearing Company, counsel for the petitioner submitted that the rules of natural justice had been violated as this catalogue was not produced by the respondent No. 1 at the hearing. I shall deal with this contention later in this judgment.

23. In my view it can by no means be said that there was no evidence or materials on which the respondent No. 1 could have made the impugned order. The sufficiency or adequacy of materials is not a matter to be considered by this Court in an application for a writ of certiorari against the order of a quasi-judicial tribunal. Appraisal or appreciation of evidence, and the inference of fact to be drawn from such evidence, is again not a matter for this Court in such an application. This question is now well settled and I shall refer to the decisions later in this judgment. The petitioner's grievance is that the onus of proof was thrust upon him to prove that the ballbearings sought to be imported were suitable for use in the plant and machinery at the colliery. It was argued that it was for the Customs Department to prove that they were not suitable. Adjudication proceedings before a statutory tribunal is not the trial of an action in a Court of law. If there was no material for coming to a conclusion or if material evidence was excluded different considerations would apply. This Court is not sitting in appeal over the adjudication order made by the respondent No. 1. If the respondent No. 1 came to a wrong conclusion on facts, it is not for this Court to interfere with such a conclusion merely because he has drawn a wrong inference of fact. The petitioner knew quite well what the charge is, and he had produced experts who gave evidence, and he was given a full hearing with regard to the charges, and had produced experts to refute the charges. The evidence of the experts and of other materials produced on behalf of the petitioner was not accepted by the respondent No. 1. The materials and the evidence on which the respondent No. 1 relied have been fully set out in the two show cause notices to which I have referred earlier. The petitioner had ample opportunity to refute and disprove the charges and establish his own contention with regard to the ball-bearings sought to be imported. I have set out in some details the various materials on which the respondent No. 1 relied, and those materials constituted the evidence for the impugned order. As I said earlier the sufficiency or adequacy of the materials is not a matter for this Court, nor should this Court interfere with the impugned order merely because the respondent No. 1 has drawn a wrong inference of fact. In these facts I cannot hold that there were no materials or no evidence to support the impugned order.

24. To what extent and in what circumstances this Court can interfere with the decision of a quasi-judicial tribunal on question of facts is now well settled. In dealing with an order made by such a tribunal, the Court does not sit in appeal over its findings, and it is not for this Court to substitute its own findings for those of the respondent No. 1. This question has been settled as early as in 1952 by the Supreme Court in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, . In that case it was held that however extensive the jurisdiction of the Court

might be under Article 226 of the Constitution, it was not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what was the proper view to be taken or the order to be made. Since that decision this view has been reaffirmed by the Supreme Court in *T.C. Basappa Vs. T. Nagappa and Another*, ; *Ambalal v. Union of India*. AIR 1961 SC 264. This position was further explained by the Supremo Court in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , in which it was held that the jurisdiction of the High Court to issue a writ of certiorari was a supervisory jurisdiction and the Court exercising it was not entitled to act as an appellate court. It was further held that the finding of facts reached by a tribunal as a result of appreciation of evidence, could not be reopened or questioned in writ proceedings. An error of law which was apparent on the face of the record could be corrected by a writ, but not an error of fact, however, grave it might be. It was also held that it was exclusively for the tribunal to decide if there was sufficient evidence on a particular point and also if an inference could be drawn from the facts as proved. The same views were expressed by the Supreme Court in *Girdharilal Bansidhar Vs. Union of India (UOI)*, ; *State of Orissa v. Murlidhar Jena* AIR 1963 SC 404. This question of law has been reaffirmed by the Supreme Court later in *The State of Madras Vs. G. Sundaram*, . On this question reference may also be made to two Bench decisions of this Court reported in (1965) 69 Cal WN 439 and *Parry's (Calcutta) Employee's Union Vs. Parry and Co. Ltd. and Others*, . On a review of the decisions mentioned above it is clear that in dealing with a petition for a writ of certiorari the Court does not sit in appeal over the decision of the tribunal, but acts only in a supervisory capacity. Secondly, that the sufficiency or adequacy of evidence is not a matter for this Court, thirdly, it is not for this Court to appreciate or appraise the evidence on which the tribunal acted. Fourthly, the Court will not interfere with an error of fact however grave it might be. Fifthly that if there is no evidence or if the tribunal excluded material evidence the Court will interfere with the findings of a tribunal and lastly where there is some evidence which the tribunal has accepted and which evidence may reasonably support its conclusion, it would not be for this Court to review the findings of the tribunal and substitute its own conclusion for that of the tribunal.

25. In this case the respondent No. 1 has, on the materials before him, come to the conclusion that the ball-bearings sought to be imported are not suitable for the plant and machinery of the petitioner at the colliery. This conclusion is based on the materials that the respondent No. 1 had before him. This is not a case where there is no evidence at all. On the other hand as I have noticed earlier the respondent No. 1 had ample materials before him on this question, and on these materials he came to the conclusion that the ball-bearings sought to be imported were not suitable for use in the petitioner's plant and machinery. I cannot therefore accept the contention of counsel for the petitioner that there was no evidence and that the impugned order should be quashed as there were no materials before the respondent No. 1 to support the conclusion to which he

arrived.

26. Before I proceed to consider the next contention on behalf of the petitioner I should refer to one other aspect of the matter. If there was an error of law apparent on the face of the record, the impugned order could have been quashed or set aside. But is there such an error of law apparent on the face of the record? Does the impugned order contain a legal proposition with regard to which it can be said that there is an error of law apparent on the record? To both these questions the answer must be in the negative. There is no legal proposition in the impugned order. If there is no legal proposition in respect of which it can be said that there is an error of law apparent on the record, a writ of certiorari or an order in the nature thereof cannot be made by this Court in a petition under Article 226. On this point a reference may be made to the decision of the Supreme Court in *Bharat Barrel and Drum Mfg. Co. Vs. L.K. Bose and Others*, .

27. I now proceed to deal with the next contention of counsel for the petitioner namely that the impugned order ought to be set aside on the ground of violation of rules of natural justice. The grounds on which this argument was based were firstly that the catalogue for automotive bearings published by S.K.F. Ball-Bearing Company, on which reliance was placed by the respondent No. 1, was not produced for inspection of the petitioner. The second ground was that the respondent No. 1 was asked to visit the coal mines and inspect the plant and machinery for verification of the question if the ball-bearings sought to be imported could be used in the plant and machinery at the colliery.

28. In the show cause notice dated June 24, 1966, it is stated that the specific application of the ball-bearings sought to be imported are indicated in the catalogue published by S.K.F. Ball-Bearing Company. There is, however, no reference in the impugned order to this catalogue. It was argued by counsel for petitioner that this, catalogue to which reference was made in the show cause notice should have been produced at the hearing and inspection of the same should have been given to the petitioner; and as that was not done rules of natural justice were violated, It was submitted that the petitioner was entitled to inspection of documents on which the respondent No. 1 relied in making the impugned order There is no merit in this contention. The catalogue published by the S.K.F. Ball-Bearing Company is not a private communication from one party to another, nor is it a confidential report or document prepared privately for use in the adjudication proceeding. It is a printed catalogue, and it is stated therein that it has been compiled for the information of purchasers of bearings for replacement purpose. Obviously it is commonly used in the trade and there is no reason why the petitioner should not have procured one and looked into it, if he was serious in relying upon the catalogue to refute the contention of the respondent No. 1, and establish his own. It has not been alleged nor argued that this catalogue was not freely available and for that reason the petitioner was unable to look into it. Secondly, and this in my view is decisive, at no stage the petitioner asked the respondent No. 1 to procure the catalogue for his inspection

or at the hearing. The catalogue was mentioned in the show cause notice dated June 24, 1966; the petitioner therefore was aware that there was such a catalogue to which reference had been made in the show cause notice.

Yet the petitioner did not ask for the production and inspection of the same, but wants to make a grievance of it after the impugned order has been made. If the petitioner had asked for production of the catalogue, and if there was refusal on the part of the respondent No. 1 to produce the same and offer inspection to the petitioner, there would have been some force in the contention of the counsel for the petitioner. But his client never cared to look into it and did not ask for its production and it is therefore not open to him now to contend that rules of natural justice had been violated because the catalogue was not produced and inspection of the same was not given.

29. Turning to the second aspect of this contention namely that the respondent No. 1 did not go to the colliery to inspect the petitioner's plant and machinery, it is to be noticed that the offer to visit the coal mine was made in the reply dated August 2, 1966 to the first show cause notice. In paragraph 11 of this reply the petitioner invited the respondent No. 1 or any of his officers to visit the coal mine. This offer was repeated in the reply dated November 25, 1966 to the second show cause notice. The offer was again repeated in the petitioner's letter dated October 10, 1966. Relying upon this offer to visit the coal mines, for verification of the fact if the ballbearings could be used in the petitioner's plant and machinery, it was argued, that as the respondent No. 1 failed to visit the colliery for the purpose of verification of the use of the ball-bearings, rules of natural justice had been violated. It was submitted that such verification of the use of the ball-bearings was a material piece of evidence, and failure on the part of the respondent No. 1 to visit the collieries resulted in exclusion of this material evidence. I cannot accept this contention of counsel for the petitioner. In my view there is no force in the contention that rules of natural justice are violated if the adjudicating officer declines to visit factories, workshops and manufacturing sites for collecting materials which may help a party to establish his contention. It was open to the petitioner to adduce evidence before the respondent No. 1 that the ball-bearings in question were suitable for use in the plant and machinery at the colliery, and indeed the petitioner produced used and worn out pieces of bearings which according to the petitioner were parts of the plant and machinery and which the petitioner wanted to replace with imported bearings. The petitioner was given three personal hearings and it was up to him to produce materials in support of his contention that the ball-bearings sought to be imported were meant for and could be used for replacement purposes. It has not been argued that it was not possible to produce samples of used ball-bearings in support of the petitioner's contention. Indeed even if the respondent No. 1 visited the colliery, the ball-bearings in use at the plant should have had to be taken out for verification and that being so there is no reason for not producing them before the respondent No. 1 at the time of hearing. For these reasons I cannot accept the contention of counsel for the petitioner that in making the

impugned order rules of natural justice had been violated.

30. The next question to be considered is whether the existence of an alternative remedy is a bar to the petitioner's right to relief in a writ petition. Section 128 of the Act provides for appeal from decisions or orders of Customs authorities. In this case the impugned decision is that of a Collector of Customs and therefore an appeal lies from that decision to the Central Board of Revenue. Section 129(1) of the Act requires that pending the appeal the appellant should deposit with the proper officer the duty demanded or the penalty levied. From the order of the Central Board of Revenue an application in revision lies to the Central Government u/s 131(1) of the Act. The statute therefore clearly provides for an alternative remedy to a party who is aggrieved by an order of the Customs authorities; and the question therefore is if the existence of such an alternative remedy bars a petitioner's right to relief in this application. The law on this question is now well settled. The existence of an alternative remedy is no bar to the jurisdiction of this Court to issue appropriate writs and orders, but is a matter which the Court should take into consideration in exercising its jurisdiction in issuing appropriate writs and orders. This position has been affirmed in several decisions by the Supreme Court: *Rashid Ahmed Vs. The Municipal Board, Kairana*, ; *Union of India (UOI) Vs. T.R. Varma*, ; *The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs, Calcutta and Others*, ; *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, ; *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, ; *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, ; *Additional Collector of Customs v. Shohanlal Bahl* 69 CWN 439; *Sovachand Mulchand Vs. The Collector of Central Excise and Land Customs and Others*, .

31. As I have noticed earlier under the Act the aggrieved party is required to deposit the duty demanded and the penalty levied. In this case in the impugned order itself it is stated that in the event of an appeal being preferred against the order the duty demanded and the penalty levied would have to be deposited pending the appeal. But quit? apart from the fact that the petitioner is required to deposit the duty and the penalty levied by the impugned order, a question of jurisdiction of the respondent No. 1 to make the impugned order has been raised by the petitioner. Even though I have rejected the petitioner's contention regarding jurisdiction of the respondent No. 1 to make the impugned order, I cannot say that this contention on behalf of the petitioner is altogether frivolous. Such a question of jurisdiction having been raised by the petitioner in this petition, I cannot hold that the existence of the alternative remedy bars the petitioner's right to relief under Article 226 of the Constitution.

32. I now proceed to deal with the last contention of counsel for the petitioner namely that the licence was misconstrued by the respondent No. 1. The argument was that since in the licence no limit was put upon the value of individual items, the petitioner was entitled to import any of the items for which

the licence was issued to the extent of any value provided the import was within the overall ceiling fixed by the licence. This contention was based on paragraph 87 of the Amendments to Import Trade Control Hand Book of Rules and Procedure, 1964, to which I have referred earlier. The Rule has been set out under paragraph 4 of the petition. The argument was that since the value of the two Heavy Duty Direct Haulages was not limited by the licence which had fixed the overall value of all the three items at Rs. 66,000/-, the petitioner was entitled to import the ball-bearings, provided the value thereof was within the ceiling fixed by the licence namely Rs. 66,000/-. It was contended that the impugned order was made without regard to the terms of paragraph 87 of the Rules and in violation thereof and therefore the licence was misconstrued. This argument though attractive is devoid of any merit. Quite apart from the fact that this argument, even if meritorious would not have entitled the petitioner to a writ of certiorari, it is to be seen if there is any substance in this contention. The ball-bearings which the petitioner was authorised to import under the licence were specifically for motors, haulages and gear-box. One of the conditions of the licence was that the items of goods imported under it shall be used only in the licence holder's factory and no portion will be sold or permitted to be utilised by any other party. It is clear therefore that the licence permitted importation of ball-bearings for use as spare parts of the haulages and for the plant and machinery at the petitioner's colliery. The respondent No. 1 however came to the conclusion on the materials before him that the ball-bearings sought to be imported were for use in motor vehicles and machinery in general and they were not meant for use either in the haulages or in the petitioner's plant and machinery at the colliery. The respondent No. 1 also came to the conclusion that the petitioner had failed to prove that the ball-bearings were used as accessories or spares of direct haulages, their motors and gears. If the petitioner could prove, as he was called upon to prove, that the ball-bearings were for use in the petitioner's plant and machinery at the colliery there would have been some force in the contention of his counsel. But according to the respondent No. 1 the petitioner failed to prove this and according to him again the importation of the ball-bearings was not authorised by the licence. That being so, the claim by the petitioner to import ball-bearings of any value within the ceiling prescribed by the licence cannot be sustained and it cannot be said that the licence has been misconstrued by the respondent No. 1. This disposes of all the contentions raised on behalf of the petitioner.

33. The charge against the petitioner as laid in the two show cause notices was that he attempted to import certain goods without a licence. He obtained the licence for the importation of certain plant and machinery. . The machinery to be imported were, strictly to be used by the petitioner in his colliery. The principal item of machinery was Two Direct Haulages, which the petitioner failed to import as the suppliers failed to ship the same within the extended period of the licence, which was revalidated from time to time. On his failure to import the Haulages the petitioner sought to import certain ball-bearings, which according to the

petitioner could be used in his plant and machinery at the colliery. The respondent No. 1 came to the conclusion on the materials before him that the ball-bearings sought to be imported were not meant for, and not suitable for, use in the plant and machinery of the petitioner's colliery, and that these were meant for use in motor vehicles and machinery generally. Particulars of the materials on which the respondent No. 1 relied were met out in the two show cause notices. The petitioner was made fully aware of the charges. He knew what he was called upon to prove and establish in order to justify the attempted importation of the ball-bearings under the licence. Three personal hearings were given by the respondent No 1 and the petitioner produced expert witnesses in support of his case. The evidence tendered on behalf of the petitioner has been rejected by the respondent No. 1, who in coming to the conclusion to which he did, has relied upon various materials of which full notice was given to the petitioner. It is by no means a case where there was no material at all for coming to the conclusion to which the respondent No. 1 did, namely, that there was no valid licence for the importation of the goods. The principles of law on which the Court exercises its jurisdiction under Article 226 of the Constitution have been discussed by me earlier, in this Judgment. In my view in the facts of this case there is no reason, for interfering with the impugned order.

34. In the result, this application fails and is rejected. The Rule is discharged. There will be no order as to costs.