

(1969) 09 SC CK 0016
In the Supreme Court Of India
Case No : Civil Appeal No. 1361 of 1966

Union of India

APPELLANT

Vs

A.V. Narasimhalu

RESPONDENT

Date of Decision : 01-09-1969

Acts Referred:

Sea Customs Act, 1878 — Section 188, 191

Citation : (1983) 13 ELT 1534 : (1969) 2 SCC 658 : (1970) 2 SCR 145

Hon'ble Judges : V. Ramaswami, J;J. C. Shah, J;A. N. Grover, J

Bench : Full Bench

Advocate : Niren De, Attorney General, V.A. Seyid Muhammed, R.N. Sachthey and S.P. Nayar, for the Appellant; Lily Thomas, for the Respondent

Final Decision : Allowed

Judgement

1. A. V. Narasimhalu-hereinafter called "the plaintiff" imported 43 reels of newsprint 131/4" width under a bill of Entry dated July 15, 1954. The width of the newsprint being less than 15" no import duty was payable under the Open General Licence. The Assistant Collector of Customs held that the commodity imported fell within item 44 of the Customs Tariff and levied a duty of 333/8% ad valorem. The plaintiff paid the duty under protest, and applied for refund or the duty relying upon a decision of the High Court of Madras in writ petition No. 402 of 1954 in which it was decided that newsprint of width less than 15" was exempt from duty. This application was rejected. An appeal to the Collector of Customs and a revision application to the Central Board of Revenue were unsuccessful. The customs authorities rejected the claim on the ground that the claim not having been made within three months of the date of demand was barred u/s 40 of the Sea Customs Act. 1878.

2. The plaintiff then instituted an action in the City Civil Court for a decree for Rs. 2,669-62 against the Union of India. The Trial Court decreed the claim holding that the claim was not barred. In appeal the Principal Judge, City Civil Court held that the City Civil Court had no jurisdiction to entertain the suit. In so holding he

relied upon the judgment of the judicial Committee in *Secretary of State for India v. Mask & Co.* L.R. 67 IndAp 222 In Second Appeal, the High Court of Madras reversed the judgment of the Principal Judge, City Civil Court, and restored the decree passed by the trial court. The Union of India has appealed to this Court with special leave.

3. It is unnecessary to consider whether the claim is barred u/s 40 of the Sea Customs Act, for, in our judgment, the Civil Court had no jurisdiction to entertain the suit. Section 188 of the Sea Customs Act, 1878, insofar as it is relevant, provides :

Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs Authority, or in such cases as the Central Government directs, to any officer of Customs not inferior in rank to a Customs Collector and empowered in that behalf by name or in virtue of his office by the Central Government.

Every order passed in appeal under this section shall, subject to the power of revision conferred by Section 191, be final:

4. Section 191 provides :

The Central Government may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs Authority, and from which no appeal lies, reverse or modify such decision or order".

The Act is a complete code dealing with liability to pay customs duty and for obtaining relief against excessive or erroneous levy and other related matters. The jurisdiction of the Civil Court to entertain a suit on the ground that the duty was improperly or illegally levied is excluded. It is true that the decision or order passed u/s 188 of the Sea Customs Act in appeal to the appellate authority is expressly declared final. But on that account it cannot be held that by refusing to appeal against the decision or by refusing to claim relief in the manner provided by Section 188 and Section 191 of the Sea Customs Act, a party aggrieved by the order of a Customs Officer may invest the Civil Court with jurisdiction to entertain a suit.

5. In *Mask & Company's case*, L.R. 67 IndAp 222 a firm of merchants imported a quantity of betelnuts into British India. The Assistant Collector of Customs assessed them for the purposes of duty on a tariff as "boiled", rejecting the contention of the importers, that they were "raw sliced betel-nuts" subject to duty ad valorem. The importers, appealed from the decision of the Assistant Collector to the Collector of Customs. The appeal was dismissed, and in revision to the Government of India the Collector's decision was affirmed. A suit was then filed by the importers to recover the excess amount collected from them, by levying duty upon a tariff and not ad valorem,. Before the Judicial Committee it

was contended that the decision or order passed by the officer of Customs could only be challenged by an appeal u/s 188 of the Sea Customs Act and jurisdiction of the Civil Court was excluded. Alternatively it was contended that the right of appeal conferred by Section 188 constituted a procedure which was alternative to procedure in the civil courts, and since the importers in their option had chosen to proceed u/s 188, they were bound by that election, and were thus excluded from resort to the civil courts. The Judicial Committee observed that adjudication as to confiscations, increased rates of duty or penalties made under the power conferred by Section 182 were decisions or orders within the meaning of Section 188, and that the decision of the Collector u/s 188 was final and excluded the jurisdiction of the Civil Court.

6. The Judicial Committee did not express any opinion on the question whether prior to taking an appeal u/s 188 the importers would have been entitled to resort to the civil courts. But in our judgment it would not be open in all situations where a party who had right to appeal to refuse to resort to the procedure prescribed by the statute and to file a suit. The express declaration in Section 188 of the Sea Customs Act that the order of the Collector in appeal shall be final does not imply that a suit will lie against the decision or order of the original authority.

7. In a recent judgment of this Court *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, this Court set out certain principles relating to the exclusion of the jurisdiction of the Civil Court. The propositions (1), (2), (5), (6) & (7) are relevant.

8. It may be observed that it was not the case that the Assistant Collector of Customs had not acted in conformity with the fundamental principles of judicial procedure, nor was it the case that the provisions of the Act were ultra vires or unconstitutional. The Act in terms, creates a special liability and provides for determination of the right of the State to recover duty and the liability of the importer to pay duty and by the clearest implication it is provided that it shall be determined by the Tribunal so constituted.

9. The High Court in the judgment under appeal observed :

...the question in these appeals is different, namely, whether the Collector could be said to be acting within his jurisdiction, if he, in direct disregard of the provisions of the Act and the Rules made thereunder, levied a duty upon the goods which were not liable to duty and compelled by duress as it were the importer to pay the same before taking delivery of the goods. The result of his action was that the respective appellants had to part with certain sums of money which were collected from them under the colour of statutory power. In such a case, a suit will undoubtedly be maintainable in a civil court by showing that the Customs authorities had excessively charged duty; it will really be a common law right to property being interfered with. It may be that the remedy provided u/s 188 of the Sea Customs Act would be available to the aggrieved importer to

challenge the levy on the ground that it was either improperly made or that the duty was collected under a mistake or under duress. But in all such cases, there will also exist a remedy under the common law in a civil Court, for the simple reason that these categories of cases will amount to a levy beyond the jurisdiction of the authority, or one made under duress, or paid by mistake.

But an erroneous decision of the Customs Authority cannot be said to be reached without jurisdiction merely because it may be shown in some collateral proceeding to be wrong. Normally an action of an administrative authority interfering with the right to property may be challenged by resort to a civil court. Yet in the case of a right which depends upon a statute, the jurisdiction of the civil court to grant relief may by express provision or by clear implication of the statute be excluded. Where a statute re-enacts a right or a liability existing at common law, and the statute provides a special form of remedy, exclusion of the jurisdiction of the civil court to grant relief in the absence of an express provision, will not be readily inferred. Where, however a statute creates a new right or liability and it provides a complete machinery for obtaining redress against erroneous exercise of authority, jurisdiction of the civil court to grant relief is barred. Liability to pay a duty of custom is not a common law liability: it arises by virtue of the Sea Customs Act: in respect of any grievance arising in consequence of enforcement of that liability machinery has been provided by the Act. Having regard to the complicated nature of the questions which arise in the determination of liability to pay duty of customs the Legislature has invested the power of determining liability and the manner of enforcement thereof upon a specially authorised hierarchy of tribunals. An appeal lies against the order of the Assistant Collector of Customs against an order imposing duty as well as an order refusing to refund duty, and the grievance may be carried to the Central Board of Revenue. In our judgment, the jurisdiction of the civil court is by clear implication of the statute excluded.

10. We, however, deem it necessary to observe that the civil courts have jurisdiction to examine cases in which the Customs Authority has not complied with the provisions of the statute or the officer of customs has not acted in conformity with the fundamental principles of judicial procedure or the Authority has acted in violation of the fundamental principles of judicial procedure or he has made an order which is not within his competence or the statute which imposes liability is unconstitutional, or where the order is alleged to be mala fide. A civil suit will lie for obtaining appropriate relief in these cases.

11. But the exclusion of the jurisdiction of the civil court to entertain a suit does not exclude the jurisdiction of the High Court to issue high prerogative writs against illegal exercise of authority by administrative or quasi-judicial tribunals. The finality which may be declared by the statute qua certain liability either by express exclusion of the jurisdiction of the civil court or by clear implication does not affect the jurisdiction of the High Court to issue high prerogative writs.

12. The jurisdiction of the civil court to entertain a suit challenging the validity of

the imposition of the duty of customs being excluded, the plaintiff's suit must fail. But it must be observed that the present is a fair illustration of the administration not making a serious attempt to avoid futile litigation for small claims. There was a judgment of the High Court of Madras on the identical question which fell to be determined. If the plaintiff had moved the High Court in exercise of its jurisdiction under Article 226 the Union had practically no defence. The Union could without loss of face accede to the request of the plaintiff to refund the amount collected. The learned Attorney-General stated that the Union desired to obtain a decision of this Court on the extent of the jurisdiction of the Civil Court to entertain a suit challenging the decision of the Customs Authorities, because in the view of the Law Advisers the High Court had fallen into error in enunciating the principles. But the High Court recorded the judgment under appeal after the claim was resisted by the Union. We are glad to record the assurance given by the Attorney General that whatever may be the decision in the appeal, the Union of India will refund the amount of tax unauthorisedly recovered by the Assistant Collector of Customs. This was essentially a case in which when notice was served the Central Government should instead of relying upon technicalities have refunded the amount collected. We trust that the Administrative authorities will act in a manner consistent not with technicalities, but with a broader concept of justice if a feeling is to be nurtured in the minds of the citizens that the Government is by and for the people.

13. The appeal is allowed. The suit is ordered to be dismissed. The order of costs passed by the High Court is however maintained. There will be no order as to costs in this appeal.