

**(1995) 11 KL CK 0037**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 402 of 1989**

Union of India (UOI)

APPELLANT

Vs

Aluminium Industries Ltd.

RESPONDENT

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**Date of Decision :** 29-11-1995

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 152  
Customs Act, 1962 — Section 15, 154, 28, 31, 46

**Citation :** (1996) 83 ELT 41 : (1996) 1 ILR (Ker) 766

**Hon'ble Judges :** K.T. Thomas, Acting C.J.; P. Shanmugham, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

1. This appeal is by the Union of India in challenge of the decision rendered by a learned single Judge of this Court declaring that M/s. Aluminium Industries Ltd., Kundara is not liable to pay any further amount towards duty for import of the goods covered by a consignment which arrived at the Cochin Port on 12-8-1982 [reported in 1989 (1) KLT 355].

2. Facts in brief are these : M/s. Aluminium Industries Ltd., Kundara (ALIND for short) imported [some] aluminium rods for which shipment was made from Switzerland. A vessel carrying 75 metric tonnes of such aluminium rods arrived at Cochin Port on 12-8-1982. The Customs authorities assessed the import duty of Rs. 5,37,670/- on the said goods, but as the customs authorities refused to give clearance for release of the rods, ALIND filed the original petition for a direction to the appellants to permit ALIND to clear and transport the goods. In the counter affidavit filed on behalf of the appellant it was contended that the import duty of Rs. 5,37,670/- was assessed on the goods on the erroneous impression that rate of duty on 2-8-1982 was the same as the rate prevalent on 31-7-1982. But as a matter of fact new rates have been publicised by the Central Government which came into force on 1-8-1982, as per which the duty which should have been assessed is Rs. 11,99,211/-. The Assessment was corrected

accordingly as per the powers conferred on the customs officials by virtue of Section 154 of the Customs Act (for short the Act) and since ALIND has not paid the said amount, the customs officials did not permit the goods to be cleared from the Port.

3. Learned single Judge considered the above objections of the appellant and found that Section 154 of the Act cannot be pressed into service as the re-assessment is not by way of correcting an error as envisaged in Section 154. Learned single Judge pointed out that it was open to appellants to resort to the procedure prescribed in Section 28 of the Act, if they proposed to make a re-assessment.

4. Regarding the contention put forward by the ALIND that assessment should have been made on the basis of the rate prevalent on 31-7-1982. Since bill of entry was presented on that date was repelled by the learned single Judge by holding that the relevant date is the date of entry of the vessel in the port and not the date of presentation of the bill of entry.

5. We may make a reference to the latter aspect though ALIND has not challenged that part of the judgment before us. Section 15 of the Act deal with the date for determination of the rate of duty and tariff valuation of imported goods. It may that the rate of duty applicable to the imported goods shall be the rate in force on the date on which a bill of entry in respect of such goods is presented u/s 46. But the proviso to sub-section ( ? ) read thus :

"Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards".

The expression "entry inwards of the vessel" is not defined in the Act, but its connotation can easily be gauged by a reference to Section 31 of the Act. As per the said provision, the master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer "granting entry inwards to such vessel". It is therefore clear that the date of arrival of the vessel to the port of Cochin cleared by the order given by the proper officer granting entry is the date of entry inwards of the vessel. There is no dispute that the said date was 2-8-1982. The corollary is that the rate of duty applicable is the rate which was in force on 2-8-1982. It has not been disputed before us that if the said rate had to be followed, the amount assessed by the appellant as the total duty payable (Rs. 11,99,211/-) is the correct amount.

6. The question now to be considered is whether power could have been exercised u/s 154 of the Act. Section 154 is extracted below :

"154, Correction of clerical errors etc. Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board

or such officer of customs or the successor in office of such officer, as the case may be."

Four types of errors are mentioned in the section for invoking power under it: (1) clerical mistakes (2) arithmetical mistakes (3) errors arising from accidental slips and (4) errors arising from accidental omissions. If any one of the above types of errors has crept in, then the corrective power mentioned in the section can justifiably be used. In this case, the error happened due to the omission to know of the new rates of import duty which has resulted in the assessment made at the first instance. When the error was brought to the notice of the authorities they corrected it and imposed a duty of Rs. 11,99,211/- in accordance with the rate applicable to the goods. The principle underlying in Section 154 of the Act is that records relating to customs duty are maintained properly and correctly and that such records should represent the correct state of affairs. Almost a similar power can be found conferred on the Civil Court by Section 152 of the Code of Civil Procedure. All the four categories of errors enumerated by us above are mentioned in Section 152 CPC also.

7. In *Bishnu Charan Das v. Dhani Biswal*, AIR 1977 Orissa 68 it has been observed while interpreting Section 152 of the Code that it is based on the principle that the act of the courts shall not prejudice a party and that there must be a duty for the Court to see that its records are true and represent the correct state of affairs. A liberal construction was placed on Section 152 of CPC by the decisions in *Rajeshwari Singh v. Lakhrajo Kumar*, AIR 1984 Patna 354 and *Abdul Khadel v. Chinaswami Padayachi*, AIR 1984 Madras 116 This Court has also followed the aforesaid principles in *Syndicate Chit Funds Ltd. v. Narayanan Nair* - 1988 (1) KLT 825 ker.

8. Learned single Judge has referred to the decision of the Supreme Court in *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, in which Rule 83 of the Orissa Sales Tax Rules was considered. As per the said rule the Commissioner of Sales tax is conferred with the power to correct "any arithmetical or clerical mistakes or any error apparent on the face of the record arising or occurring from accidental slip or omission in an order passed by him." The Commissioner of Sales Tax in that case has passed an order which he reviewed subsequently through a re-appraisal of the whole facts. In fact, the officer has practically re-heard the whole matter and came to a different conclusion. The Supreme Court pointed out that the power under Rule 83 of the said Sales Tax Rules cannot be invoked for reaching a different conclusion on re-appraisal of the facts, particularly because there was no error apparent on the face of the records. We do not think that the principle involved in the said decision can have any application to the facts of this case.

9. Learned single Judge also pointed out that Section 28 of the Act could have been invoked by the authorities when the duty has been short levied. This is not a case where the duty has been short levied. An assessment made under a wrong impression of the rate prevalent without actually being informed of the

publication of the new rates declared by the Central Government is different from a duty short levied on an assessment of the facts. What is provided is Section 28 is therefore for an entirely different contingency and it has nothing to do with correction of an error arising from accidental slip or omission etc.

10. We are, therefore, of the view that customs authorities were within their powers to correct the error and to demand ALIND to pay the duty in accordance with the new rates which came into force even on the previous day of the date of entry of the vessel.

11. In the light of the aforesaid view we allow this appeal and reverse the decision of the learned single Judge [1989 (1) KLT 355] and dismiss the original petition.