
(1939) 07 CAL CK 0006
In the Calcutta High Court

Wan Ten Lang

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 05-07-1939

Acts Referred:

Sea Customs Act, 1878 — Section 32
Specific Relief Act, 1877 — Section 45

Citation : AIR 1940 Cal 174

Hon'ble Judges : Ameer Ali, J

Bench : Division Bench

Judgement

Ameer Ali, J.—This is an application u/s 45, Specific Relief Act for an order upon the Customs Authorities to proceed u/s 32, Sea Customs Act. The questions are three, (1) whether the Court has any jurisdiction at all, a point of demurrer, (2) whether on a proper construction of the Act,, the Customs Authorities are refusing to perform a statutory duty; in other words, what if anything have the Customs Authorities done wrong? (3) Whether assuming jurisdiction, relief u/s 45, should be granted. The particular facts are as follows:

The goods in question arrived on 17th February 1939. On the previous day, OB 16th February 1939 we find a bill of entry which is annexed to the affidavit in support of this application. It shows that the-consignment consisted of a number of miscellaneous goods. The amount or real value appears in the appropriate column inserted by the importer or his agent. At the bottom of the bill of entry is a printed note Clause 3 of which is material. It reads-as follows:

It is hereby declared that the acceptance of the-deposit of duty calculated on the declared value and description of the goods specified in this bill of entry before examination and assessment shall not be deemed to imply acceptance by Government of such declared value or description or to affect the rights of Government under Sections 31 and 32, Sea Customs Act, until the Appraising Department shall have finally accepted such declared value and description.

2. The consignment, I have mentioned, consists of articles as different as felt

caps, silk haberdashery, hardware, saddlery, pipes, and wooden beams. On 21st February 1939, under existing practice, the duty according to the declared value was deposited in advance. On 22nd February 1939 the Customs Authorities had the goods, opened and they found amongst them not declared 116 packets of cotton cord. They also found that what were described in the invoice I believe as silk tassels and in the bill of entry as silk haberdashery were in fact silk scarves. The latter appears to be a most momentous fact as it makes a difference in duty of the sum of Rs. 5. The 116 packets of cotton cord of course requires explanation. The Customs Authorities justifiably regarded it as an attempt to smuggle; On 8th March 1939 the "Customs Authorities gave notice to show cause why the goods should not be forfeited. This is in accordance with the law u/s 167, item 37. On 21st March, the goods being detained in the meantime, the goods under an order which is endorsed on the bill of entry were re-assessed for duty by the addition of 50 per cent, on each item of the value declared and a penalty was imposed of Rs. 5. The letter to the importer states that "the duty short levied must be paid" (the phrase should be noted). On 1st April there is a final order of the Assistant Collector of Customs. It refers to the penalty. It also refers to the "payment of correct duty assessed u/s 87, Sea Customs Act," which is the first reference to assessment under that Section or to any assessment at all. This application was made on 28th April 1939. There is no letter actually calling upon the Customs Authorities to proceed under any particular Section but in the letter of 15th March 1939, para. 4, the applicant asks that "action u/s 167 may not be taken and that he may be allowed to pay the sums found deficit."

3. There is in this case, as in all cases of this nature, an important point of demurrer but as so often happens, that point of demurrer will depend to a great degree on the facts, namely the question, what if anything have the Customs Authorities done wrong? We have first to find whether they have failed to carry out or are refusing to carry out a statutory duty and secondly, we have by reason of the particular Section of the Government of India Act, to decide whether what they are doing or the matter in which the Court is asked to exercise jurisdiction does or does not "concern revenue." I now proceed to deal with the construction of the Act and what the Customs Authorities have done. It seems to me clear that if the only course open to the customs under the statute is to proceed u/s 32 they are wrong and they are refusing to proceed according to their statutory obligations. When the matter was first presented to me, I thought that the Customs were proceeding or purporting to proceed wholly criminally, that is to say u/s 167, and had made some kind of anomalous order purporting to be made under the power to impose a penalty, but that is not so. Although this is clearly a penal assessment the main contention of the customs before me is not that it is irregular or an anomalous order u/s 167 but that they are entitled to assess, levy and detain irrespective of Section 32 and in particular u/s 87.

4. There were three points which were argued before me by the Advocate-General. The first is that there is no question of assessment u/s 32 and that the only provision providing for assessment is u/s 87. Secondly-and this was the

Advocate-General's point with which I was not at the time at all impressed—that Section 32 only applies to a limited class of cases where there is a question of discrepancy of value and no question of class description goods. In other words, Section 32 applied only to a limited class of disputes. Lastly, that u/s 32 the Customs have the option of either detaining or not detaining, of proceeding or not proceeding but they are not compelled to detain the goods under that Section, and not compelled either to deliver them or to sell them or to offer them conditionally as provided in that Section. For that point learned standing counsel relied on a decision of the Sind Court. See AIR 1936 Sin 127.

5. As I first read the Act, during the course of the argument before me it appeared to me that Section 87 was a Section providing general enabling power to assess, and that Sections 30, 31 and 32 provide the actual machinery for appraisement and assessment and levy. As I read the Act during the course of the argument, it seems to me that on this basis levy was not intended to be made or enforced save by the process set out in Section 32. On the other hand, as I myself pointed out, there is Section 39 providing for levy of duty short levied. Section 89, as to which I shall question the lay client when he is here, and Section 192 the last Section specifically providing for the power to detain pending payment of any duty outstanding as the result of increase of rate. The question which then arose, and which I reserved to consider, was whether there are under this Act concurrent powers to levy an assessment of duty by different processes. Has the Customs the option of proceeding under Sections 30 and 31 or independently of these Sections. Now, I first treated the matter of silk scarves and tassels somewhat lightly, but the question so put does raise an important question of principle. There is power to check or penalize or confiscate u/s 167. There is power to check an under-value u/s 32 undoubtedly. Is there a general power to assess, apart from the Section, and to detain, against which a trader has no protection other than appeal? That is the question of principle. The procedure u/s 32 undoubtedly does protect a trader as well as the State.

* * * * 6. Although the Advocate-General's point regarding Section 32 in my view is wrong, the real point which the customs might have made and which apparently they are not anxious to make is that Sections 30 and 32 relate to a particular class of goods and it provides a procedure relating to a particular class of goods, The side note to Section 31 speaks of "ad valorem goods" and the marginal note to Section 32 is procedure where such goods are under, valued by the owner." Turning back to Section 22 we find the power to fix tariff values of goods. Reading through the whole Act (see for instance Section 34) we find stress laid on the difference between the tariff value goods, and ad valorem goods. Section 30 provides for "real value." Now so far as I can see, "real value" only comes into operation or is only of importance in dealing with non-tariff value goods, i.e. ad valorem goods. Leaving this point as to the antithesis between the two classes of goods, I go on to ask the question regarding Section 39 last clause, by which the Customs Collector may refuse to pass any goods until such deficiency or excess is paid. What is the meaning of "refuse to pass?" Does it

mean, detain? Is it the same as clearing order u/s 89? What is the clearing order u/s 89? How were the goods in this case dealt with? When the duty is paid on the declared value are they cleared or are they not cleared? Were they allowed entry or were they not allowed entry?

7. Chapter 9 is headed "Discharge of...." The provisions of the Sections to which I have referred are included in the chapter dealing with "Levy of duty." Chap. 9, Sections 86, 87 and 89 are Sections to be considered. Section 87 upon which the Customs Authorities base their case still appears to me to be the Section which indicates the stage at which goods shall be assessed. The other matter upon which I shall ask questions of the Customs Authorities is this matter of the bill of entry, payment of duty on the value set out by the import trader and the note. As I already indicated I don't know under what Section or rule this is done, or whether on this payment, goods are regarded as cleared, or what happens. But the point for the Collector of Customs to consider is this. Note 3 appears to suggest very strongly that the Customs Authorities regard their only power of assessment and levy of excess duty as under Sections 31 and 32 and no other Section.

8. I return to the main question upon which I wish the assistance of the legal advisers of the Customs Authorities, and that is, the antithesis between tariff value goods and non-tariff value goods and it does appear to me, speaking generally, subject to further argument on this subject, that Sections 30 and 32 relate only to particular class of goods, non-tariff value goods, i.e. ad valorem goods. Whether the goods here are tariff value goods or non tariff value goods has not been explained to me. I assume from what has transpired that the bulk of them at any rate, the silk haberdashery, are tariff value goods and I also infer—and this is what I wish confirmed—that in the case of tariff value goods some value is put on the goods by weight or bulk and the question of "appraisement" does not arise. It is therefore inferred that this Act intends to prescribe different procedures for different classes of goods. There is no question of option. If it is ad valorem goods there is a special class of procedure, Sections 30 and 32. If it is tariff value goods then the assessment is under the general powers and the power to detain under the general power. If that view is right (and indeed upon any view) the action of the Customs in making a penal assessment, merely increasing it by 50 per cent, is not warranted by any provision of the Act. They can confiscate, they can impose a penalty u/s 167. On the view that I have expressed; if they are ad valorem goods they proceed under Sections 30 and 32. If they are tariff value goods they proceed by way of normal assessment on tariff value. I now return to the question of law. I am dealing first with the point of demurrer. I will deal with that point of demurrer on the basis that the Customs were bound to proceed u/s 32. The obstacle is Section 106 Sub-section (2), Government of India Act. High Courts have not and cannot exercise any original jurisdiction in any matter

concerning revenue or concerning any act, ordered, or done for the collection of

revenue according to the usage and practice of the country or law for the time being in force.

9. Now on the operation of that Section there are various decisions, some of this Court and that of the Judicial Committee in *Alcock Ashdown & Co. Ltd. v. The Chief Revenue Authority* A.I.R.(1923) P.C. 138. In that case it was held that the refusal to state a case under the income tax Act for the opinion of the Court on a matter of law did not fall within the prohibition. That was something dehors the collection of revenue or "revenue," that it was something which concerned the judicial powers of the Revenue Authorities. On the facts of this case can it be said that what was done is outside "revenue" or collection of revenue. I think there can be only one answer to this question. I think it is not outside.

10. There arises the further question of law on the demurrer which was actually not discussed before me but upon which I shall not call on counsel again, as I have my own views upon it, and it is this: Can it be said under the second part of Section 106, that this is an act in the collection of revenue which is not according to the law for the time being in force? I have taken the view that it was not according to law for the time being in force. I do not propose to consider in this case whether there is any actual antithesis between the two phrases of the Section or any independent significance to be attached to the second portion of that Section and whether I should go on to consider whether the act done by the Customs was reasonable or bona fide. There appears to be some law upon that point. It is referred to by Panckridge, J. in his judgment in *Thin yen Vs. Secy. of State and Another*, . I think that to interfere in this matter would be to exercise jurisdiction in a matter concerning revenue. The further obstacle in the way of the applicant is that he has not exhausted his remedies. Until his right of appeal under Sections 188 and 191 is exhausted, the Court does not interfere by way of mandamus. The application therefore fails on a point of law.

11. Going back to discuss however the question that had to be discussed, there is one case to which I shall refer, the *Sind* case relied upon by the Advocate-General. That case is in my opinion, if the view I have expressed is correct, somewhat misleading and for this reason. It ignores altogether the question of ad valorem, tariff value goods. The real point was whether Section 167 was excluded by Section 32, i.e. whether the Customs were precluded from proceeding criminally and were not bound to proceed u/s 32. The learned Judge does go on to say that there are three alternatives. Then he goes on to say "there is an option on the part of the Customs Authorities," and his point is not that there is an alternative procedure, or option to proceed u/s 32 or by way of some other Section, but that u/s 32, by reason of the word "may," notwithstanding that he is applying Section 32, he need not follow the course there laid down. That was the learned Advocate-General's argument based on this case. That argument is I think wrong. If Section 32 applies, "may" is "must." If Section 32 applies, there is no other procedure.

12. On the other hand, in my view, there are alternative procedures with regard

to different classes of goods. I think that the learned Judge in that case was in the same difficulty as I have been, and had not explained to him the system upon which the Customs work. The application will be dismissed with costs. The portion of this judgment (pp. 7 to 10) relating to the antithesis between "tariff value goods" and "ad valorem goods" was intended to invite further argument from the Advocate-General and further information from his clients. That invitation having been declined, except in so far as I have been told that all the goods in this case are "ad valorem goods," the judgment will remain.