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**(1951) 02 CAL CK 0007**

**Calcutta High Court**

**Case No:** Matter No. 85 of 1950

Monoranjan Roy

APPELLANT

Vs

The Collector of Customs

RESPONDENT

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**Date of Decision:** Feb. 19, 1951

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Sea Customs Act, 1878 - Section 198

**Citation:** AIR 1953 Cal 753

**Hon'ble Judges:** Bose, J

**Bench:** Single Bench

**Advocate:** P.C. Mullick, for the Appellant; A.K. Sen. Advocate, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Bose, J.

This is an application under Article 226 of the Constitution and Section 45. Specific Relief Act for an order on the respondent to cancel or withdraw the order dated 7-8-1950 made by the respondent imposing a penalty of Rs. 3300/- in respect of a consignment of goods imported by the petitioner without the requisite licence and also for an order for refund of the said sum of Rs. 3300/- paid by the petitioner pursuant to the said order of the respondent.

2. The petitioner carries on business as dealer in paper of various kinds and is one of the largest importers of single faced corrugated paper in this country. The single faced corrugated paper is known in this country as also in the countries from which they are imported as "paper1" as opposed to "board". Between May 1945 and June 1947 paper could be imported from the United Kingdom by importers of this country under Open General Licence No. VII and no restrictions were imposed by the Government upon the import of single faced corrugated paper from the United Kingdom. Since July 1947 the Government of India imposed vigorous restrictions on

the import of paper from foreign countries including the United Kingdom and no paper could be imported without an import licence granted by the Government. Such restrictions continued till June, 1948. Thereafter and until May 1949 paper could be imported in India from all Sterling and Soft Currency areas under Open General Licence No. XI. Between July and November 1948 the petitioner imported 2200 rolls of single faced corrugated paper from Czechoslovakia, Finland and United Kingdom and the petitioner was charged with duty payable for

"paper including Poster and "Stereo and all coated papers except art paper, all sorts, not otherwise specified"

as referred to under the then Customs Tariff Items No. 44. From May 1949 the Government of India again imposed restrictions on the import of paper including single faced corrugated paper and no merchant could import single faced corrugated paper without a licence from the Government. The Government, however, notified at the time that in case where traders of this country had already entered into firm contracts for the import of paper under Open General Licence No. XI they would be allowed to import such paper under a special licence to be granted by the Government. In or about April 1949, the petitioner placed orders with Thomson & Norris Manufacturing Co. Ltd. of Middlesex in the United Kingdom for import of 1000 rolls of single faced corrugated paper of which 500 rolls arrived at the Calcutta Port in July 1949 and the remaining 500 rolls in October 1949. The petitioner duly applied to the Government for a special licence for the import of these 1000 rolls of paper and was granted a special licence No. 091546/48 C.C.I. dated 30-7-1949. Upon the arrival of the said 1000 rolls of paper at the Calcutta Port the Customs authorities imposed a penalty of Rs. 2900/- for each lot on the basis that they were not paper but came under the heading of "Paste Board, Mill Board, Card Board and Straw Board all sorts" as referred to under Customs Tariff Item No. 44 (4) and as the petitioner had not the necessary licence required for the import of such goods and the Customs Authorities purported to act u/s 167 (8) of the Sea Customs Act. On 20-12-1949 the petitioner appealed to the Central Board of Revenue from the said order of the Collector of Customs but the Appeal is still pending. Thereafter the petitioner obtained from the Government further licences for the import of "paper and other sorts" the last of such licences being No. 220699/48 C. C. I. dated 6th April. 1950. By virtue of this licence No. 220699/48 the petitioner in April 1950 placed an order with Messrs. Donaldson & Filter Ltd, of Glasgow through the latter's local representative in Calcutta one Antoine Bentz of Stephen House, Calcutta, for the import of 340 rolls of single faced brown corrugated paper. The said goods arrived on or about 18th July, 1950. Upon the arrival of the said goods the petitioner paid the ad-valorem duty of 37 1/2- per cent on the said goods, on or about 20-7-1950 and the Customs Officers made the necessary endorsements on the licence of the plaintiff and on the relevant Bill of Entry. Thereafter, on 7-8-1950 the respondent imposed a penalty of Rs. 3300/- on the said consignment in lieu of confiscation on the basis that the goods came within

the description of Customs Tariff Item No. 44 (4). The respondent acted u/s 167 (8) of the Sea Customs Act.

3. On or about 10-8-1950 the petitioner paid the said penalty of Rs. 3300/- for getting the goods released. It is stated in the petition that it will appear from the correspondence that passed between the Import Authorities and the said Antoine Bentz that single faced corrugated paper was always considered in the past by the Customs authorities as "Paper" and not "Board". The petitioner charges the order dated 7-3-1950 as mala fide, arbitrary and illegal and as an abuse of the statutory powers possessed by the respondent Collector of Customs and his officers. It appears that the petitioner has obtained another licence No. 272312/48 C.C.I. dated 4-3-1950 for the import of paper and other sorts. It is alleged by the petitioner that the order of the Collector is an invasion upon his fundamental rights to acquire, hold and to dispose of property and to carry on his trade as importer of single faced corrugated paper under the said licences. The petitioner has been prevented from exercising his right to trade and utilise the said licences for the import of single faced corrugated paper.

4. In the circumstances the petitioner asks for the reliefs stated above.

5. Mr. C. T. Pillai the Assistant Collector of Customs has affirmed an affidavit. He states that each case of appraisement of the goods by the Customs Authorities is dependent on its own facts and any recognition or description in previous cases is irrelevant. The quality and character of the goods imported may be different in respect of different consignments imported.

6. The Customs authorities had in respect of two previous consignments of goods imported in 1949 adjudged a penalty of Rs. 2900/- for each lot on the basis that the goods answered the description of "Paste Board, Mill Board, Card Board and Straw Board all sorts" as referred to in Customs Tariff Item No. 44 (4) and as the petitioner did not take out the requisite Licence for importation of the goods he was liable to pay the said penalty.

7. In spite of this warning the petitioner in April 1950 again placed orders for 340 rolls of corrugated brown paper and imported such goods without obtaining any special licence therefore.

8. Mr. Pillai states that if in the past any such goods were passed by the Customs authorities as "paper not otherwise specified" it must have been done through mistake. In his opinion the correct classification is to place the goods in question in the category of Customs Tariff Item No. 44 (4). The Customs Appraiser who directed 3 per cent of the goods to be opened for appraisement and checking, decided after giving full consideration to the matter that the goods were assessable under Item No. 44 (4). The Collector of Customs has also agreed with the decision of the Appraising authorities. It is further stated that the opinion expressed by the Chief Controller of Imports in course of correspondence with Antoine Bentz is not

conclusive and cannot be said to be binding on the Customs Authorities.

9. In the "Century" and Oxford Dictionaries "Board" is described as "a kind of thick stiff paper; a sheet formed by layers of paper pasted together". It appears to me by looking at and feeling the sample of goods annexed to the affidavit of Antoine Bentz affirmed on 7-9-1950 that the goods in question cannot be considered with any definiteness or certainty as not falling within the description of goods as in Item 44 (4).

10. The Appraising authorities who guide or assist the Collector or Assistant Collector in the matter of appraisement have expressed the opinion that the goods fall within the description of Item No. 44 (4). The Assistant Collector or the Collector sees no reason to differ from them.

11-12. It appears that the Customs authorities have applied themselves to the consideration of the matter arising before them and they have arrived at a determination and adjudged the penalty. I find it difficult to hold that the Customs authorities have acted in an arbitrary manner or have exceeded their jurisdiction.

13. It was contended at the hearing that the petitioner had not been given any opportunity to put forward his case or to make representations before the Customs authorities before the penalty was adjudged, and there has been violation of the principles of natural justice. No such case-however is made in the petition or in any of the affidavits. There are no materials before me on affidavits to show that the decision as to the imposition of the penalty was arrived at without giving any opportunity to the petitioner to defend himself or to present his case.

14. It is clear law that in proceedings for Writs of Mandamus or Certiorari the Court does not constitute itself a Court of appeal and it cannot go into the merits of the conclusion of the Inferior Court or Tribunal. The decision of the Customs authorities on the merits may be erroneous | but this Court cannot interfere on that ground.

15. It was contended by Mr. A. K. Sen that the prayers of the petition are not for a Writ of Certiorari as quashing of the proceedings has not been asked for. It is true that the prayers should be specified but it has been held by this Court as also by the Supreme Court that the Court has power to amend the relief at the hearing. It may be noted that in the present case the petition has in prayer (c) asked for further or other directions which are wide enough to cover a relief in the nature of a Writ of Certiorari. In the case of - [Chiranjit Lal Chowdhuri Vs. The Union of India \(UOI\) and Others](#), (A), Mukherjea J. of the Supreme Court observed as follows:

"Article 32 of the Constitution gives us very wide discretion in the matter of framing our writs to suit the exigencies of particular cases and the application of the petitioner cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for."

16. It was contended by Mr. Sen that the petitioner has alternative remedy by way of appeal under the Sea Customs Act and he has also a right of action under the general law and so he cannot be allowed to have recourse to the extraordinary Writs of Mandamus or Certiorari. Alternative remedies are factors which are taken into consideration in the exercise of the Court's discretion in the matter of issuing prerogative Writs but I do not think that an appeal under the Act would in the circumstances of this case have been an adequate remedy. The petitioner has already filed an appeal under the Act in respect of a previous consignment of similar goods on or about the 20th December 1949 but the same has not yet: been disposed of. I do not see any reason however why the petitioner could not file a suit and proceed expeditiously with it.

17. It was contended by Mr. Sen that the prayer for refund of the sum of Rs. 3300/- cannot in any event succeed in this application. I think the contention is sound. The money paid has gone into the Government exchequer and has become part of the general revenue or fund of the country. The respondent cannot be called upon to pay the alleged claim of the petitioner out of his own pocket. Action or proceedings should be taken against the Government for realisation of the money. The money deposited by way of penalty was not paid to the Customs authorities either in their official capacity or to them individually. It was paid to them merely as servants or agents of the Government. They have no light to hold it or to deal with it as against the orders of the Government. The appropriate Government is not a party to these proceedings. The prayer for refund of the money cannot in any event be acceded to in this application. - "In Re Nathan" (1884) 12 QBD 451.

18. It was also contended that Section 133 of the Sea Customs Act is a bar to these proceedings as the requisite notice was not served on the respondent. I have already expressed my view on the point in - " [Soorajmull Nagarmull Vs. The Asst. Controller of Customs and Others](#), (C). Unless the acts complained of are outside the section and unless there is want or excess of jurisdiction the section operates as a bar.

19. In the result this petition fails and the Rule must be discharged with costs.