

(1985) 02 CAL CK 0026**Calcutta High Court****Case No:** Matter No. 1306 of 1985

Himalayan Plywood Industries
Pvt. Ltd. and Another

APPELLANT**Vs**

The Collector of Customs and
Others

RESPONDENT**Date of Decision:** Feb. 25, 1985**Citation:** (1986) 9 ECR 82**Hon'ble Judges:** Sudhir Ranjan Roy, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Sudhir Ranjan Roy, J.

The petitioner No. 1 is a Company within the meaning of the Companies Act, 1956 and carries on business of manufacturing diverse types of plywood products.

2. In or about March 1985 the petitioner-company agreed to purchase, and Sumitomo Corporation of Tokyo (Japan) through its agent in India Messrs. Suniti Private Limited of Calcutta agreed to sell, 100 Metric Tonnes of Phenol 99% at the agreed price of Japanese Yen 185/- per kg. C.I.F. Calcutta and on the terms and conditions as contained in the agreement dated 27th March, 1985 (Annexure "A").

3. Phenol 99% is one of the ingredients for manufacturing diverse types of plywood products, which the petitioner-company uses in its factory at Tinsukia in the State of Assam.

4. Customs duty, both Basic and Auxiliary in respect of the Phenol 99% so imported is payable at the rate of 70% and 40% respectively and countervailing duty at the rate of 15%. On the basis of the contractual price of the commodity, assessable value thereof was Rs. 4,68,765.67 p. But the Customs Authorities illegally and arbitrarily enhanced the said assessable value by adding to the contractual price at the rate of 25 Yen per kg. thereby raising the total assessable value for each of the

two consignments of 50 Metric Tonnes each to Rs. 5,32,112.39 p.

5. To avoid payment of demurrage and to prevent deterioration in the quality of the goods the petitioner-company paid Customs duty on the enhanced assessable value under protest and without prejudice to its rights and contentions and had the goods released.

6. According to the petitioners 185 Yen per kg. is the actual value of Phenol 99% and the manufacturers of the said commodity at Japan have been uniformly charging the said price from different importers at Calcutta and Bombay. And Sumitomo and Company, the foreign supplier also made a declaration on July 22, 1985 regarding the price of Phenol 99% (Annexure "B").

7. It is alleged by the petitioners that they have no liability to pay Customs duty and other duties on the basis of the enhanced value at the rate of 210 Yen per kg instead of 185 Yen per kg. As a matter of fact, while adding 25 Yen to the price of each kg. of the commodity, the Assessing Authority never gave any reasonable opportunity to the petitioners of being heard, violating thereby the principles of natural justice, fair play and equity.

8. Having, however, failed to obtain the desired relief from the Customs Authorities the petitioners have invoked the writ jurisdiction of this Court for a writ in the nature of Mandamus directing the respondents to recall or to set aside the purported order of assessment and to proceed in accordance with law.

9. In their affidavit-in-opposition the respondents besides denying the material allegations contained in the writ petition, have alleged that the addition of 25 Yen per kg. resorted to in the impugned order was on the basis of comparable prices available in respect of similar goods. That the assessment order in question being an administrative order supported by sufficient reasons, there was no question of any violation of the principles of natural justice.

10. Now, the impugned order of assessment dated September 20, 1985 (Annexure "X" to the supplementary affidavit filed by the petitioners) shows that while making the assessment, the Assistant Collector of Customs took as comparable units the prices of similar consignments imported from Japan, United Kingdom etc. and concluded that no uniform f.o.b. value was followed by the Japanese suppliers. However, in the ordering portion of the impugned order it was recorded that on a perusal of the relevant records the Assessing Authority was convinced that the price declared in the relevant invoice of the subject consignment, that is, 185 Yen per kg. C.I.F. was on the lower side and accordingly, the C.I.F. price should be loaded with 25 Yen per Kg.

11. It is clear that while doing so the petitioner-company was not allowed any opportunity of being heard. In this connection Mr. Dutt, the learned Advocate, appearing on behalf of the petitioners, contended that had the petitioners been

given an opportunity of being heard before they were made liable for payment of extra duty, they could have convinced the Assessing Authority that the price of identical consignment imported from Japan at the material time was not more than 185 Yen per kg. and since the petitioners were not afforded any such opportunity, the impugned order of assessment, according to Mr. Dutt, was liable to be set aside.

12. On the other hand, Mr. Mukherjee, the learned Advocate representing the Customs authorities, contended that the order of assessment being an administrative order well-supported by sufficient reasons, no question of violation of the principles of natural justice could arise. In this connection it was further contended by Mr. Mukherjee that it was open to the petitioners to challenge the impugned order of assessment before the relevant authorities under the provisions of the Customs Act, 1962 and not having done so, the petitioners were not entitled to any relief from a writ Court.

13. Coming now to the question whether assessment of duty is an administrative function or a quasi-judicial function, it now seems to be more than well-settled that it is a quasi-judicial function. This Court in Hindusthan Pilkington Glass Works Limited v. Superintendent of Central Excise 1978 E.L.T. 229 has held that determination of assessable value of goods is a quasi-judicial function and consequently an opportunity of being heard should be given to the assessee in the matter. Similar view was taken by the Supreme Court in Orient Paper Mills Limited v. Union of India 1978 E.L.T. 345 (1973 Cen-Cus Aug i-ECR C 245, 267, 344-S.C.). In Assistant Collector of Central Excise v. National Tobacco Co. 1978 E.L.T. 416 (1974 Cen-Cus Nov. 1C-ECR C398-S.C.), the Supreme Court held that assessment in a quasi-judicial process involving due application of mind to the facts as well as to the requirements of law.

14. It need not be mentioned that enhancement of the assessable value is to the prejudice of the assessee and in this connection the Supreme Court in the State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, has observed that if there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity.

15. The law on the subject has since undergone a drastic change and the Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, observed that sometimes an unjust decision in an administrative inquiry may have far more serious consequences than in a quasi-judicial inquiry and hence the rule of natural justice must apply equally in an administrative inquiry which entails civil consequences.

16. Thus, the function of assessment of duty being a quasi-judicial function and since the impugned order of assessment entails civil consequences, the petitioner-company ought to have been given an opportunity of being heard before

the assessable value was enhanced to its prejudice. Significantly, it is not the case of the Customs Authorities that such opportunity was afforded to the petitioner-company.

17. It is now well-settled that denial of natural justice is itself a miscarriage of justice which cannot be cured by preferring an appeal as provided by the Statute and that a writ is maintainable [Hindusthan Pilkington Glass Works Limited (*supra*)].

18. In *Collector of Central Excise and Land Customs v. Sanwarmal Purohit* 1979 E.L.T. 613 the Supreme Court observed that if the inferior authority has conducted the proceeding before it in a manner contrary to the rules of natural justice or offending the sense of justice and fair-play, the High Court would be competent to exercise its power to issue a prerogative writ to correct the order, even if an appeal to a departmental authority was open and the aggrieved party did not avail himself of that remedy.

19. Thus, the impugned order of assessment dated September 20, 1985 enhancing the assessable value of the subject consignment is held to be bad in law as violative of the principles of natural justice and is, accordingly, set aside.

20. This will, however, not debar the Customs Authorities from making fresh assessment in accordance with law, of the assessable value of the subject consignment for calculating the Customs duty and other duties payable by the importers.

21. The writ petition, accordingly, succeeds and Rule issued is made absolute.

22. There will, however, be no order as to costs.

23. The Customs Authorities are directed to make necessary assessment in accordance with law as per direction above within a period of 90 days from the date of the communication of this order.

24. On the prayer of Mr. H. Lall, the learned Advocate appearing on behalf of the Customs Authorities, the operation of this order is stayed for two weeks from date.

25. The parties to act on a signed copy of the minutes of the operative portion of the order on usual undertaking.