(1966) 07 BOM CK 0013

Bombay High Court

Case No: O.C.J. Appeal No. 17 of 1964 and Suit No. 37 of 1961

Tarachand Gupta and Bros.	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision: July 8, 1966

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Contract Act, 1872 - Section 72

Citation: (1971) 73 BOMLR 558

Hon'ble Judges: Mody, J; Kotval, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Kotval, J.
This is a plaintiffs" appeal against the dismissal of their suit to recover a sum of Its. 45,100 from the Union of India represented by the Collector of Customs, Bombay. The suit came to be filed under the following circumstances.

2. The plaintiffs are a partnership firm carrying on business in Bombay. On July 10, 1956 they obtained from the Controller of Imports a licence permitting them to import into India "Motor Vehicle parts as per Appendix XXVI of J. D. 56 Red Book" the approximate value c.i.f. was stated as Rs. 46,449. The licence which is at exh. A specifically refers to three entries in the I.T.C. Schedule namely 293, 295 and 297-IV. The licence was valid upto July 31, 1957.

3. Pursuant to this licence the plaintiffs imported goods into India in two consignments which arrived by two different ships s.s. "Meerkerk" and the s.s. "Jaladharti". Both the consignments arrived in September 1957 and both the consignments each consisting of 17 cases were received. The two bills of entry in regard to the consignments of the s.s. "Jaladharti" as well as of the s.s. "Meerkerk" are respectively dated September 7/19, 1957 and August 30 to September 19, 1957.

The plaintiffs'' case was that they had imported the goods under these two consignments as motor-cycle parts but on examination by the customs authority they came to the conclusion that these goods were really component parts of 51 sets of "Rixe" Mopeds complete in a "knocked-down" condition. It has been explained that a Moped is a complete cycle with a motor-cycle engine attached to it. "Rixe" is the trade name under which Mopeds are sold. Thus according to the plaintiffs what was imported was strictly in terms of their licence motor-cycle parts whereas according to the Customs Authorities those parts were component parts from which could be constructed 51 "Rixe" Mopeds. They contended that what was, therefore, imported into India were the 51 "Rixe" Mopeds though in a completely "knocked down" condition.

4. Pursuant to this view the Customs Authorities issued a notice to show cause against the plaintiffs on October 22, 1957 calling upon them to explain, within seven days of its receipt, why penal action should not be taken against them and the goods confiscated u/s 167(5) of the Sea Customs Act. Obviously the offence suggested was the importing of unlicensed articles into India. The plaintiffs were informed that "the goods have been mis described as motor cycle parts whereas goods covered by the two be (bills of entry) Nos. shown on the obverse are P51 pcs (Pieces?) "Rixe Mopeds" in CKD condition" and these goods appeared to have been imported in contravention of the Import Trade Control Order issued u/s 8 of the Imports and Exports (Control) Act, 1947. It was alleged that their import licence was not valid for the import of 51 "Rixe" Mopeds. Their goods were classifiable under entry No. 294 of Part IV of the Schedule to the Import Trade Control Order. The plaintiffs justified the import under their license and under entry No. 295 of Section II of the Schedule which runs as follows:-

Section-II

Part and S.No. of I. T. C. Schedule.	Description Importers	Licensing Authority.	Policy for Esta- Wished Licence.	Validity of	Rema
1	2	3	4	5	6
Part IV					
295.	Articles (other than rubber tyres and tubes) adapted for use as parts and accessories of motor cycles and motor scooters, except such articles as are also	I. T. C. Twelve months. The detailed licensing po- licy is given in Appendix XXVI.	N. C. vide Appendix I.		

adapted for use as parts and accessories of motor cars.

Entry No. 294 is as follows :-

294. Motor cycles and motor scooters :-				
(i) Motor cycles and Scooters.	I.T.C.	50%	Six Months	(i) Quota licences issued Motor cycles will be valid the import of Scooters. (ii) Licences granted under this item will not be vali for the import of motor cycles/scooters in a completely knocked down condition. (iii) Applications from approved manufacturers for import of motor cycles/scooters in c.k.d. condition will be consider ad hoc by C. C. I. in consultation with Developm Wing.
(ii) Auto-attachment.	I.T.C.	30% on the basis of imports of motor cycles and scooters	Twelve Months.	(i) Additional licences, f auto-attachments will be granted to Established Importers of cycles on an ad hoc basis. (ii) Applications from appr manufacturers for import auto-attachments in c.k.d condition will be conside ad hoc by C. C. I. in consultation with Develop Wing.

The plaintiffs showed cause and urged that they had strictly complied with the terms of their licence and that the goods fell within the ambit of Entry No. 295 but the Authorities did not accept this contention and by the two orders both passed on November 80, 1957 the Collector of Customs, Bombay held that the plaintiffs had failed to produce a valid import licence and had imported the goods in contravention of the Import Control Order, u/s 3 of the Imports and Exports

(Control) Act, 1947. He held the plaintiffs guilty of having committed offences u/s 167(8) of the Sea Customs Act and imposed several penalties as follows :

(1) Confiscation of goods of both the consignments,

(2) Option u/s 183 of the Sea Customs Act to pay in lieu of confiscation a fine of Rs. 28,000 in respect of the "Jaladharti" consignment within four months.

(3) A personal penalty of Rs. 9,600 in respect of the said consignment;

(4) In respect of the "Meerkerk" consignment option u/s 183 of the Sea Customs Act to pay in lieu of confiscation a fine of Rs. 8,800;

(5) A personal penalty of Rs. 3,700, in regard to the said consignment.

Thus the plaintiffs were penalised to the extent of Rs. 13,300 and had to pay in all Rs. 45,100 in order to get possession of their goods the amount which they now claim from the defendants in the suit.

5. Since a point of limitation arises in the suit we may here state the dates on which the amounts of fines and penalties imposed were paid up. They were as follows:

Description of Payment :-	Amount	Date of Payment
Personal penalty in respect of Jaladharti consignment.	9,600	4th Feb.
Personal penalty in respect of Meerkerk consignment.	3,700	-do-
Fine in lieu of confiscation in respect of Meerkerk consignment	8,800	10th Feb.
Fine in lieu confiscation in respect of Jaladharti consignment	23,000	24th Feb.

Appeals were preferred to the Central Board of Revenue, but they were dismissed by that authority by a brief order on January 7,1960.

6. Now upon these facts it was the case of the plaintiffs that they had paid the said amounts under coercion to prevent the Customs Authorities illegally confiscating or detaining the plaintiffs'' goods. They stated in para. 12 of the plaint that the amounts were paid by them under duress and under protest. They claim that the amounts could not have been recovered from them and that the recovery was illegal and therefore the plaintiffs were entitled to recover the entire amount.

7. The learned single Judge by his judgment dated January 15, 1964 has dismissed the plaintiffs'' suit. He has held in view of a decision of a Division Bench of this Court in D.P. Anand v. T. M. Thakore & Co. (1960) O.C.J. Appeal No. 4 of 1959, decided by Mudholkar and Shah JJ., on August 17, 1960 (Unrep.) that the Customs Authorities might have come to the contrary conclusion and held the plaintiffs not guilty of importing the goods contrary to the provisions of the Imports and Exports (Control) Act, if that decision had been before them. Unfortunately, the decision was given

after both the orders of the Collector of Customs and of the Central Board of Revenue. After thus holding, the learned single Judge nevertheless dismissed the plaintiffs'' suit because of the view which he took on the question of the jurisdiction of a civil Court in a suit to interfere with the findings of the Customs Authorities in a matter like this. The learned single Judge referred to the leading case of The Secretary of State Vs. Mask and Co., . and held that although it could be said that the Authorities had come to a wrong decision in law still it was a decision which they had jurisdiction to take and that, therefore, the civil Court in a suit could not interfere with that decision even though wrong in law. Reference is also made to the decision of this Court in D.P. Anand v. T.M. Thakore & Co., and to Section 188 of the Sea Customs Act which imparts finality to the orders of the Authority. The learned Judge held that the suit as framed is governed by Article 14 of the Limitation Schedule and not as urged by the plaintiffs by Article 62 and, therefore, he held that the suit was barred by limitation having regard to the period of limitation laid down in Article 14. On behalf of the defendants the notice u/s 80 of the CPC served prior to the filing of the suit on November 12,1960 was also challenged as defective and invalid to found the cause of action in the plaint, but the learned Judge held that the notice was a valid notice. That was the only finding which the learned Judge gave in favour of the plaintiffs in the suit. All these findings except the one as to notice have been challenged on behalf of the plaintiffs-appellants by Mr. Sorabjee.

8. So far as the merits of this case are concerned, we do not think that much need be said beyond referring to the decision of the Division Bench of this Court in D.P. Anand v. T. M. Thakore & Co., a decision which was referred to by the learned single Judge also. So far as we can see the present case is both on the facts and in law almost identical with the case before the Division Bench in that appeal. The plaintiffs in the suit in that appeal were challenging three orders of the Collector of Customs confiscating certain motor accessories imported into India and the levying of a personal penalty and fine on them for having contravened the provisions of Section 107(8) of the Sea Customs Act. They had obtained an Established Importer''s Licence for importing "Auto spare parts" falling under Entry No. 295 as here and pursuant to that licence they had indented goods with a British Manufacturer M/s. Quickly Motor Cycle, It was not disputed in that case by the plaintiffs that with the spare parts ordered almost 30 complete motor cycles could have been assembled with the exception of tyres, tubes and saddles, which of course could not be imported. In that ease also the Authorities confiscated the goods and levied personal penalties and fines because according to them the plaintiffs in that suit had contravened the terms of their licence which prohibited them from importing into India motor-cycles in a completely knocked down condition. The plaintiffs'' case there was also as it is here, that they had only imported "auto-spare parts" in accordance with their licence. After referring to the respective entries in the schedule in Section II of the Policy statement, the Division Bench held :

It will be clear from these entries that a person who has obtained a licence which refers to any one of these entries is entitled to import articles adapted for use as parts and accessories of auto vehicles. Entry 205 in particular would cover the goods of the respondents as thereunder articles, other than rubber tyres and tubes, adapted for use as parts and accessories of motor cycles and motor scooters are permitted to be imported. There is no restriction for import of parts and accessories of motor cycles which when taken together can be assembled into a complete motor cycle.

Thus the point which the Division Bench laid down in that case Was that there was no bar to the import of parts and accessories of motor cycles even though taken together they could be assembled into a complete motor cycle,

9. Then the Division Bench pointed out what was the duty of the Collector of Customs in such cases, and they observed:

What the Collector had to satisfy himself was whether by reference to entry 295 or to either of the two remaining entries mentioned in that licence, the articles imported by the respondents could be said to have be on not covered by any of them. It he had proceeded from that point of view he could have seen that the imports were completely covered by the licence. Since the imports covered by the licence were permitted to be imported, he could not carry his enquiries any further. However, as it happened, he considered all the four indents together, came to the conclusion that excepting for tyres, tubes and saddles the parts and accessories imported by the respondents could be utilised for assembling 80 auto cycles and that the respondents had thus in effect imported 30 auto cycles in a completely knocked down condition, though they did not possess a licence under entry 294 for importing into India auto cycles in a completely knocked down condition..... But that was not what the Collector had to ascertain. His duty was to satisfy himself whether the licence which the respondents possessed permitted them to import the articles indented for by them and which actually arrived in India in four different consignments by four different steamers. In our opinion, therefore, the Collector''s approach to the matter was wholly wrong and, therefore, the learned single Judge was justified in quashing his orders.

Here then the Division Bench pointed out the limits of the duties of the Collector, in other words, the extent of his jurisdiction in determining whether the articles imported Were legally imported into India or not. What the Division Bench pointed out was that the Collector was entitled to look to the licence, examine the goods and decide whether they were in accordance with the license. He cannot by referring to extraneous facts or other entries come to the conclusion that they were not covered by the licence. Then it is made clear in the latter passages as follows:

Now here, the Collector no doubt held the respondents having imported into India some articles which were not permitted to be imported into India, but this

conclusion was drawn by him not by reference to the licence held by the respondents, but by reference to entry 294 in column 6 by which certain restrictions have been laid down for the import into India of motor cycles in a completely knocked down condition. For one thing, what the respondents had imported was, ''parts and accessories'' though under one licence under four different consignments. Again the articles imported by them were inadequate for assembling 30 complete auto cycles, for the simple reason that no tyres, tubes and saddles could have been provided for the auto cycles. It is admitted before us that the tyres and tubes used on these motor cycles are not of the standard type and are not manufactured in India. There is nothing to show whether the saddles used on these motor cycles were of the standard type. In the circumstances, therefore, it could not be said that by following devious method the respondents could be said to have imported 80 motor cycles into India in a completely knocked down condition. The Collector''s conclusion that, this is what the respondents intended to do, was the result of an erroneous approach to the matter, and, therefore, interference in the writ jurisdiction was permissible.

What has happened in the present case is, in our opinion, very much the same. The goods imported under the two consignments were motor vehicle parts falling directly within entry No. 295. No doubt, by assembling those parts, the importer could have obtained for himself 51 "Rixe" Mopeds. That position was never disputed by the plaintiffs themselves. The bills of entry at exh. A show in what condition the goods arrived. These were undoubtedly at the time of import, "motor vehicle parts" and that is precisely what the plaintiffs were permitted by their licence to import. There was thus no restriction on the import of these parts and accessories of motor cycles though taken together they could be assembled into a complete motor cycle. Since the imports are covered by the licence within the meaning of the decision, the Customs Authorities could not have proceeded with the enquiry any further. They could not, for instance, have lumped together the two consignments which though imported under one licence arrived separately and were received on different dates and could not have come to the conclusion that the plaintiffs had imported 51 "Rixe" Mopeds in a completely knocked down condition. That, upon the principle laid down in the Division Bench decision in D. P. Anand v. M/s. T. M. Thakore & Co., was not for the Collector to ascertain.

His duty was to satisfy himself whether the licence which the Respondents possessed permitted them to import the articles indented for by them and which actually arrived in India n four different consignments by four different steamers.

10. Even the learned single Judge felt that the decision was clearly applicable to the present case and he has said in his judgment:

Now, having regard to the above decision of the Court, I have no doubt that if the same was supplied to the authorities, they should have held that the plaintiffs were not guilty of importing any goods contrary to the provisions of the Imports and

Exports (Control) Act, Both the Tribunals should have followed the reasoning of the Division Bench and held that the plaintiffs were entitled to import the goods in question under the licence held by them.

We are in agreement with this finding. We hold that so far as the merits in this case is concerned, it is clearly covered by the decision of the Division Bench and that the plaintiffs were entitled to import the goods which they did in the two consignments which arrived per s.s. "Meerkerk" and s.s. "Jaladharti". If so, they could not have been penalised for importing those goods u/s 167(5) of the Sea Customs Act or Section 3 of the Imports and Exports (Control) Act.

11. The decision of the Division Bench in D. P. Anand v. M/s. T. M. Thakore & Co. was attacked on behalf of the respondent Union by Mr. Cooper. He urged that its authority is considerably shaken, if it is not actually overruled, by a decision of the Supreme Court of India, in Girdharilal Bansidhar Vs. Union of India (UOI), . That was a case where the licence was to import "Jackson type oval plate single bolt belt fasteners", but what according to the Authority was imported were "Stove Bolts and Nuts" for which no licence had been obtained. That was thus the reverse of the case which we have before us. There the licence was to import one complete article, but what the importers were alleged to have imported were parts of that article, for which admittedly there was no licence and which in fact could not be imported into India. At page 1521 the Supreme Court found firstly that "it did not stand to reason that a component part which has no use other than as a component of an article whose importation is prohibited is not included in a ban or restriction as regards the importation of that article", and they added "we cannot accede to the position that it is the intention of the rule that importers are permitted to do indirectly...". It must be noticed here that the entry of components into India such as were imported in that case was prohibited whereas in the case before us the both "Rixe" Mopeds under entry No. 294 as also parts and accessories under entry No. 295 could have been imported. That is the first point of distinction between the Supreme Court decision and the present case.

12. But the further point made upon that decision was that the decision of this Court in D.P. Anand v. T. M. Thakore & Co. is no longer good law in view of that decision of the Supreme Court. In this respect the following is the only passage in that judgment (p. 1521):

...Learned Counsel, however, relied upon an unreported judgment of the Bombay High Court delivered by Mr. Justice Mudholkar when a Judge of that Court in Appeal No. 4 of 1959 (Bom.) D. P. Anand v. M/s. T. M. Thakore & Co. in support of his submission that a ban on a completed article, having regard to the phraseology employed in the Hand-book cannot be read as a restriction or prohibition of the separate importation of the component parts which when assembled result in the article whose import is prohibited. We do not read the judgment in the manner suggested by learned counsel. The learned Judge in the judgment recorded an

admission that the articles imported which were components of a motor-bicycle, would not when assembled form a complete cycle which was the article whose importation was restricted because of the lack of certain essential parts which were admittedly not available in India and could not be imported.

Reading this passage we cannot accede to the argument on behalf of the respondents that these remarks have in any way shaken the authority of the decision in D. P. Anand v. M/s. T. M. Thakore & Co. much less that they have overruled it. It seems that on the contrary the Supreme Court referred to that authority and merely distinguished it. Of course, it is not in terms held that it laid down good law but we cannot also hold that it is no longer binding on us. In our opinion, the decision in D. P. Anand''s case, of a Division Bench of this Court, is still good law and not affected by the judgment of the Supreme Court in Girdharilal''s case. Since it is binding on us, we must respectfully follow it.

13. Then we turn to the point of jurisdiction. It was urged by Mr. Cooper on behalf of the respondents that even assuming that the Collector took a wrong view, it amounted to a mere error of law but the authorities had the jurisdiction nonetheless to decide the issue rightly or wrongly, and it is only an error of jurisdiction which can be corrected by a civil Court. Therefore, in a suit the civil Court was not competent to interfere with the finding. In this respect Mr. Cooper relied upon the provisions of Section 188 of the Sea Customs Act particularly the last clause thereof which says "Every order passed in appeal under this section shall, subject to the power of revision conferred by Section 191, be final". The finality thus imparted to the orders of the Customs Authorities can only be ignored or set aside if the order passed is wholly beyond their jurisdiction. But here Mr. Cooper urges that the order passed, assuming that it was on a wrong view of law was nonetheless an order which fell within their jurisdiction.

14. The leading case on the subject is the decision of the Privy Council in Secretary of State v. Mask & Co. In that case the Privy Council laid down two propositions which one finds referred to in most of the subsequent cases. They are (1) the exclusion of the jurisdiction of the civil Courts is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied and (2) that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. We shall presently show that these principles are settled law, but whatever apparent difference or difficulty that has arisen subsequently is the difficulty in their application. If it is once held that the principle of the decision in D. P. Anand v. M/s. T. M. Thakore & Co. is applicable to the present case then there remains little difficulty in holding that the action of the Customs Authorities was beyond the ambit of their powers or their jurisdiction, for the judgment in D. P. Anand''s case itself shows that the Division Bench regarded the action as beyond the powers of the

Authorities. When Mr. Justice Mudholker held

...that was not what the Collector had to ascertain. His duty was to satisfy himself whether the licence which the respondents possessed permitted them to import the articles indented for by them and which actually arrived in India in four different consignments by four different steamers

he was actually referring to the jurisdiction of the Collector, and nothing else. In a later passage, he said :

Now here, the respondents had a licence in their favour and, therefore, what the Customs Authorities had to satisfy themselves was whether the goods imported by the respondents were permitted to be imported under that licence. If they were so permitted, then the matter ended there and the Collector had to do nothing.

Here again, the reference, in our opinion, clearly is to the power or jurisdiction of the Collector. In any case, pointing out that what the Collector has to do is to satisfy himself that the goods imported are in accord with the licence and that he cannot import extraneous considerations or look to other entries to determine that the goods were not according to the licence, was a decision as to jurisdiction. If so, it would certainly fall within the second principle laid down in Mask & Co.''s case that the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with.

15. In Laxman Purshottam Pimputkar Vs. State of Bombay and Others, the principle was thus stated :

...It is settled law that the civil courts have the power and jurisdiction to consider and decide whether a tribunal of limited jurisdiction has acted within the ambit of the powers conferred upon it by the statute to which it owes its existence or whether it has transgressed the limits placed on those powers by the legislature

and in support of that proposition the Supreme Court quoted the same passage to which we have referred from the case of Mask & Co. In the case of Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, the Supreme Court again referred to the decision in Mask & Co. and quoted with approval the statement of principle by Lord Macnaghten in East Fermented Corporation v. Annois [1902] A.C. 213, as follows :

The law has been settled for last hundred years, If persons in the position of the appellants, acting in the execution of a public trust and for the public benefit, do an act which they are authorised by law to do, and do it in a proper manner, though the act so done works a special injury to a particular individual, the individual injured cannot maintain an action.

In a word, the only question is, has the power been exceeded? Abuse is only one form of excess.

Mr. Sorabjee also invited our attention to a recent decision of the Court of Appeal in England in R. v. Paddington Valuation Officer [1965] 2 All E.R. 836 where Lord Denning, then Master of the Rolls, in discussing the question "On what grounds will certiorari lie?" observed :

....The Divisional Court thought that it would only lie for excess of jurisdiction or error of law on the face of the list. But the word "jurisdiction" in this context has innumerable shades of meaning. Some advocates ore prone to say that, whenever a tribunal or other body decides wrongly, it exceeds its jurisdiction. It has only jurisdiction, they say, to decide rightly, not to decide wrongly. This is too broad a view altogether, I would say that, if a tribunal or body is guilty of an error which goes to the very root of the determination, in that it has approached the case on an entirely wrong footing, then it does exceed its jurisdiction.

We may point out that it is just precisely this that the judgment of the Division Bench holds happened in the case before them and we have held has happened in the present case. After pointing out the error which the Authorities had made in that case Mr, Justice Mudholker expressly stated "In our opinion, therefore, the Collector's approach to the matter was wholly wrong and, therefore, the learned single Judge was justified in quashing his orders". He reiterated that remark in a later passage also. That decision, we have already shown, squarely applies to the facts of the present case and, therefore, it must be held that the approach of the Authorities to the present case was on an entirely wrong footing. In his reply to the arguments on behalf of the appellants, Mr. Cooper referred us to a number of decisions which so far as we can see refer to the same principles but apply them to different facts and circumstances. In Kamala Mills Ltd. Vs. State of Bombay, , the question before the Sales Tax Authorities was as to what was the character of the sale transaction on which the dealer was to be taxed. In other words, what the Authorities decided was under which of two or more categories the transaction fell. That is the same thing as saying under which of two competing entries in the schedule under the Imports and Exports Control Act the imported goods would fall. Where, extraneous considerations have prevailed with the Authorities and an entry which had no bearing upon the question was looked at in order to decide that the goods imported were not in accordance with the licence obtained, the case would clearly fall outside the ambit of the powers of the Authorities.

16. Reference was also made by Mr. Cooper to a recent decision of the Calcutta High Court, Nani Gopal Mukherjee Vs. State of West Bengal, . That case was a case of exercise of disciplinary jurisdiction, and can hardly be material in determining the question before us. The case merely lays down to what extent interference is possible with the conclusions of an Enquiry Officer by a civil Court. Two recent decisions of the Supreme Court may also be usefully referred to here. They are (1) Venkataraman & Co. v. State of Madras [1866] 1 S.C.J. 515 Firm and Illuri Subbayya Chetty & Sons v. The State of Andhra Pradesh [1984] 1 S.C.R. 752. In the former case

the Supreme Court laid down the principle thus:

The inference of the exclusion of the jurisdiction of the civil Courts should not be generally made. A suit in a civil Court will always lie to question the order of a tribunal created by a statute even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions.

Here again, therefore, the question which can be agitated in a suit in a civil Court is stated to be whether the tribunal acted in accordance with the Act or in violation of its provisions and that is precisely what in our opinion has happened in the case. The same principle was reiterated in State of Kerala v. N. Ramaswami Iyer & Sons (1960) 18 S.T.C. 1. Again relying upon the decision of the Privy Council in the case of Mask & Co. the principle laid down was :

It is true that even if the jurisdiction of the civil court is excluded, where the provisions of the statute have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the civil courts have jurisdiction to examine those cases.

Therefore, the crucial test is whether the Customs Authorities have complied with the provisions of a statute namely the entries in Part II of the Schedule. If they had not, as we have shown they did not, then interference by the civil Court even in a suit is justified. For these reasons, we are unable to agree with the learned single Judge that

Having regard to the observations in the case of D. P. Anand and another vs. M/s. T. M. Thakore and Co. in Appeal No. 4 of 1958, it appears to me that in that matter the Court interfered with the decision of the Customs Authorities in its supervisory jurisdiction on the ground that the approach of the authorities to the matter was not correct. It is difficult for me to accept Mr. Sorabjee''s contention that in a civil suit, decisions of the Customs Authorities are liable to be challenged on such grounds.

We hold that in the circumstances the Customs Authorities clearly approached the case on an entirely wrong footing and exceeded their jurisdiction when they held that the goods imported by the appellants were "Rixe" Mopeds in a completely knocked down condition.

17. We may also point out that the classification "completely knocked down condition" does not form part of any relevant entry in the Schedule and to that extent also the Authorities went beyond their jurisdiction to hold so. It is a new classification conjured up by the Authorities to rope in imports as being illegal which reading the terms of the licence and Entry No. 295 would be clearly legal. We are here concerned with a provision of law which visits penal consequences on the importer and we cannot, therefore, permit to be read into any entry a condition or

qualification which on its terms is not there. What the authorities say here is simply this "You have imported into India 51 Rixe Mopeds -but in a completely knocked down condition and that import would not fall therefore under entry 295". It so happens that in the present case the parts imported came from one and the same country in two consignments in quick succession though by different boats, and therefore the Customs Authorities were enabled to allege that they formed 51 Rixe Mopeds in CKD (Completely Knocked Down) condition. But suppose a licence had been granted to import cycle parts and the importer had imported at intervals of 3 months each (a) 1000 cycle frames from Germany, (b) 2000 cycle wheels from England; (c) 1000 handle bars from France and (d) 1000 chains from the U.S.A. and those parts could fit each other to make a complete cycle, could the authorities still say that the importer had imported 1000 cycles in CKD condition. And what would happen if consignment No. 1 had passed through Customs when it first arrived? Could the authorities still relate back consignments 2, 3 and 4 to consignment No. 1 and say that the importer had imported 1000 cycles? A number of interesting but dangerous possibilities would be opened up. We do not think that the law intended the import trade to be at the mercy of the ingenuity of a particular officer in correlating one item of import with another item, from wherever it came, at whatever time it came, and whatever the condition in which it came. It is these dangerous possibilities against which the Division Bench set itself in D. P. Anand v. T.M. Thakore & Co. It was urged on behalf of the Collector that the Department''s supervision over imports and the controls would be rendered largely illusory upon the view we take of this matter. We do not think so. The difficulty pointed out could be obviated by a judicious use of other powers which the licensing authorities undoubtedly possess. Rule 5 of the Imports (Control) Order, 1955 as amended upto March 18, 1964 prescribes that :

(1) The licensing authority issuing a license under this Order may issue the same subject to one or more of the conditions stated below:-

(i) that the goods covered by the license shall not be disposed of, except in the manner prescribed by the licensing authority, or otherwise dealt with, without the written permission of the licensing authority or any person duly authorised by it....

(iii) that the applicant for a license shall execute a bond for complying with the terms subject to which a license may be granted.

(2) A license granted under this Order may contain such other conditions, not inconsistent with the Act or this Order, as the licensing authority may deem fit.

These are wide powers by the mere use of which the licensing authority could have positively countermanded if it so desired the importation of spare parts which would go to make up a complete Rixe Moped or being imported, they could have countermanded the use of them for assembling a new complete Rixe Moped, but no such condition was imposed. But for the reason that no such condition was imposed

we cannot enlarge the powers of the enforcement authority or impute to them the power to read that condition into the license and then seize the goods. In essence that is what the Authorities are doing in the present case. In the circumstances, the goods could not have been confiscated nor could the Authorities have proceeded to impose the fines and penalties which they inflicted upon the appellants and which admittedly the appellants have paid.

18. Then we turn to the other questions involved in this appeal. Once it is held that the action of the Authorities was in excess of their jurisdiction the question of limitation practically resolves itself. The learned single Judge held the issue in favour of the respondents. He held the appellants'' suit barred by time because in his opinion it was governed by Article 14 of Limitation Schedule which runs as follows:

14. To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year	The da the ac order.

The learned Judge held that this was the Article applicable and, therefore, the plaintiffs'' suit was barred by time. It seems to us that even assuming that Article 14 applies, the suit in the instant case would not be barred. The final order was passed when the Board of Revenue rejected the plaintiffs'' appeal. That was on January 7, 1900. The suit was filed on February 8, 1961. Now undoubtedly if matters had rested there, the suit would appear to be beyond one year and so barred under Article 14, but there is the fact that the plaintiffs had given the statutory notice u/s 80 of the CPC on November 12, 1960. They would, therefore, be entitled to the two months period in addition to the one year prescribed. If this period of the notice is taken into account then the suit filed on February 3, 1961 would be within limitation.

19. But we do not propose to rest our decision on this footing because, in our opinion, the suit does not fall under Article 14 but would properly fall under Article 62 of the Limitation Schedule which runs as follows:-

62. For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff''s use.	Three years	When the is receiv

That this Article is applicable in a case like this is established upon a recent decision of the Supreme Court in A. V. Subba Rao v. State [1963] 2 S.C.R. 377. The Supreme Court there discussed the history and origin of Article 62 and the question whether the intention of the defendant in receiving moneys for the plaintiff''s use was material and if so, to what extent. The Supreme Court pointed out that there has been some difference of opinion on the construction of Article 62. They showed that the controversy had arisen on the point whether there ought to be a literal compliance with the last part of the first column of the Article before it could be applied viz. "money received by the defendant for the plaintiff''s use." After pointing

out the different views the Supreme Court accepted the view taken by Mr. Justice Mookerjee in Mahomed Wahib v. Mahomed Ameer I.L.R (1905) Cal. 527, where the learned Judge said

...the Article, when it speaks of a suit for money received by the defendant for the plaintiff''s use, points to the well known English action in that form; consequently the Article ought to apply wherever the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which in law render the receipt of it, a receipt by the defendant to the use of the plaintiff.

Applying this interpretation of the Article in the present case, the amounts which the plaintiffs claim in the suit were paid by the plaintiffs to the Collector of Customs, Bombay after the orders were passed imposing the penalties upon the plaintiffs. We have now found the orders of the Authorities illegal and in excess of their jurisdiction. The defendants, therefore, have received the money which in justice and equity belongs to the plaintiffs under circumstances which in law render the receipt of it by the defendants, a receipt by the defendants to the use of the plaintiffs. The plaintiffs'' claim was thus well within time.

20. Lastly, there remains the question as to the notice u/s 80 of the CPC in the case. It was pointed out by Mr. Cooper that the plaintiffs have based their cause of action in para. 12 of the plaint on allegations of coercion and duress and they have averred that they paid the moneys under protest. Mr. Cooper pointed out that while this is no doubt the case put forward in the plaint, no such case was adumbrated in the notice u/s 80 of the Civil Procedure Code. In that notice, all that was stated was that the orders of the Collector of Customs were illegal upon the grounds stated in para. 9, that the decision of the Central Board of Revenue upholding the orders of the Collector of Customs was wrong and that the plaintiffs were entitled "to recover back the amounts of fine and personal penalties paid aggregating to Rs. 45,100/-". Thus it is a simple case of money illegally recovered by the defendants from the plaintiffs and if the orders be illegal then the money is being held by the defendants for the plaintiffs'' use.

21. Now no doubt u/s 72 of the Indian Contract Act money paid by mistake or coercion can be claimed back upon an allegation to that effect being established as if upon an implied contract to repay the money, but that is an additional cause of action to the one which is indicated in Article 62 of the Limitation Schedule. We need not, therefore, go into this alternative and possible cause of action which the plaintiffs could have alleged and proved. Undoubtedly, if that were the only cause of action perhaps Mr. Cooper may be entitled to succeed. In our view the case clearly falls under Article 62 and the cause of action for a suit there indicated is "money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff''s use". In that view, the lacuna pointed out in the notice is not necessarily fatal to the plaintiffs'' suit. The plaintiffs have in the plaint, in stating the cause of action, referred to Article 62 of the Limitation Schedule.

22. For these reasons, we allow the appeal, set aside the judgment and decree of the learned single Judge and instead pass a decree for Rs. 45,100 in favour of the plaintiffs and against the defendants. Prayer (d) for interest is also granted. The respondents shall pay the costs of the appellants throughout.