

Soorajmull Nagarmull Vs. the Asst. Controller of Customs and ors.

Soorajmull Nagarmull Vs. the Asst. Controller of Customs and ors.

SooperKanoon Citation : sooperkanoon.com/868426

Court : Kolkata

Decided On : Feb-16-1951

Reported in : AIR1952Cal103,55CWN528

Judge : Bose, J.

Acts : Sea Customs Act, 1878 - Sections 182 and 198; ; [Constitution of India](#) - Article 226; ; [Code of Civil Procedure \(CPC\) , 1908](#) - Section 9

Appeal No. : Civil Matter No. 113 of 1950

Appellant : Soorajmull Nagarmull

Respondent : The Asst. Controller of Customs and ors.

Advocate for Def. : H.N. Sanyal and ; E.R. Meyer, Advs.

Advocate for Pet/Ap. : S.M. Bose, Adv. General and ; B. Das, Adv.

Judgement :

ORDER

Bose, J.

1. This is an application under Article 226 of the Constitution and under Clauses 4 and 21 of the Charter for Writs in the nature of Mandamus, Prohibition and Certiorari and also under section 45 of the Specific Relief Act for a direction on the

Respondents prohibiting them from exercising jurisdiction to call upon the production of an import licence other than the licence already produced and from taking steps in enforcing the bond dated the 28th of March 1950 or from recovering a sum of Rs. 4,65,473/12/- and also for a. direction for withdrawal of the illegal demand and for refund of a sum of Rs. 75,925,/14/- illegally realised by way of extra duty and for certain other directions.

2. On the 30th December 1949 the petitioner bought from Tiona Petroleum Co. of Philadelphia, U. Section A., 7215 drums of pale spindle oil which is a lubricating oil and is used for lubrication alone. The said drums were imported into India by the petitioner under two invoices both dated the 30th September 1949, one for 6500 drums and the other for 715 drums. Both the said invoices described the goods thereby covered as 'Spindle Oil' for lubrication not being a white spindle oil or a technically white or a white mineral with flash point open 250 degree P. minimum.

3. The said oil was imported under Import licence No. 088842/ 48 /CCI dated the 23rd June 1949 permitting import of lubricating oil excluding white spindle, Technically White and White Mineral Oil from the United States of America. The goods arrived at the Port of Calcutta on the 6th of March 1950. The petitioner states that the said oil is 'Lubricating Oil' within the meaning of item 27(8) of the First Schedule to the Tariff Act 1934, i.e., oil such as not ordinarily used for other purposes than lubrication. According to item 27(8) the rate of import duty is Rs. 0/2/6 per Imperial Gallon. It is stated in the petition that the invoices, cables and correspondence and other papers relating to the purchase of the said goods bear out the fact that the oil that was purchased was 65/75 pale Spindle Oil whose open flash point was about 270 degree F., and it was neither White Spindle nor Technically White oil nor White Mineral Oil. It is further stated that it would appear from the letter of the Central Board of Revenue, New Delhi, to the Indian Chamber of Commerce, Calcutta, according to the Board 'Spindle Oil, is assessable to duty under item 27(8) of the Indian Customs Tariff as 'Lubricating Oil' and if duty is imposed under any other Tariff item than item 27(8) since November 1948 such duty would be refundable to the persons entitled to such refund.

4. After the arrival of the goods on or about 6th March 1950 a Bill of Entry was submitted and a sum of Rs. 49,752/1/- was calculated at the rate of Rs. 0/2/6 per Imperial Gallon under item 27 (8) as the duty payable for such goods and the said sum was paid to the Customs Authorities. The Customs Authorities however insisted on and did take a guarantee or bond in writing from the petitioner on the representation that on such bond being executed the said goods would be released to the petitioner immediately samples had been taken. But although such samples were taken on the 8th of March 1950, the goods were not released till 30th March 1950. On the 16th March 1950, the Respondent No. 1, the Assistant Collector of Customs informed the petitioner that on chemical test of samples drawn from the consignments the goods have been found to be classifiable as 'Mineral Oil' under item No. 27 (3) of the Indian Customs Tariff which provides that 'All sorts of Mineral Oils not otherwise specified shall be assessed to duty at 27 per cent 'Ad Valorem.' The petitioner was called upon by the said Memorandum to show cause as to why the goods should not be confiscated and penalty imposed on the petitioner under Section 167 Clauses (8') and (37) of the Sea Customs Act and the petitioner was further directed to submit full correspondence and evidence in support of its explanation. On the 23rd of March 1950 the Bill of Entry was corrected by the Customs authorities and the figure of Rs. 49,752/- was struck out and was substituted by the figure of Rs. 1 25,677/15/-. The petitioner charges that the alteration was made capriciously, mala fide and without any or proper evidence and in the absence of the petitioner and without giving the petitioner any opportunity to be heard. It is submitted in the petition that the Customs Authorities are under a duty to act judicially or 'quasi-judicially' in matters of assessment and it is incumbent on them to act in conformity with the fundamental principles of judicial procedure and of natural justice in making decisions and passing the orders. But the orders passed or actions taken against the petitioner are contrary to the principles of natural justice. On the 30th of March 1950, the petitioner paid the excess duty of Rs. 75,925/- and the petitioner also had to execute a bond along with the General Assurance Society Ltd., dated the 28th of March 1950. The petitioner repeatedly asked for refund of the extra duty of Rs. 75,925/14/- but no refund was made. The petitioner also asked for a certified copy of the test report but on the 22nd of May 1950 the petitioner was informed that testing of samples

had not yet been finalised and the matter of granting a certified copy of the test report would be considered after a final decision was arrived at. In fact, however, no certified copy of test report was at any time sent to the petitioner. On the 20th November 1950 the petitioner received a Notice dated the 17th November 1950 purporting to be an order of the Collector of Customs the Respondent No. 2 demanding payment of Rs. 4,65,473/12/- in the first instance within fourteen days. It is stated in the petition that this order was passed without justification and without giving the petitioner any opportunity to be heard and there was no adjudication within the meaning of the Sea Customs Act. It is pointed out that this demand was also contrary to the principles of natural justice and in violation of the fundamental principles of judicial procedure. It is further stated in the petition that by reason of the stray orders and demands of the Customs Authorities the petitioner's fundamental rights to hold property and to carry on its trade or business has been illegally hampered and its personal rights and its property and its business have been injured. In the circumstances the petitioner has moved this Court for the reliefs stated above.

5. The Survey Report dated 3rd January 1950 of Charles Martin & Company of Philadelphia, U.S.A., describes and analyses the goods as 65/75 Spindle Oil for lubricating purposes not being white Spindle or technical white or white mineral oil of average Flash open cup 250 degrees F. Minimum.

6. The analysis of R. V. Briggs & Co., Ltd., of the samples drawn by Norman Stewart & Co., describes the goods as Spindle Oil of Flash point Cleveland open cup 262 degrees P, 250 degrees P and 255 degrees P respectively but it contains the remarks that although the sample complies with U. Section Specification it fails to comply with I.S.D., Specification G/O-101/1 for Extra Light Spindle Oil as the Flash point is too low, and it is not suitable for burning in wick lamps.

7. The telegrams and correspondence between the petitioner and the Tiona Petroleum Company also describe the goods as 65/75 Spindle oil.

8. Mr. Ernest Joseph Breuleux who signed the certificates of Examination carried out by R. V. Briggs & Co. Ltd., has sworn an affidavit dated 6th December 1950, stating that the examination was carried out under his supervision and he testifies

to its being correctly done. He also states that one of the apparatus at the Customs House, Calcutta, was found by him to be defective, and it yielded results which had to be discarded.

9. The affidavit of James Paterson, partner of Norman Stewart & Co. relates how the samples were collected from the consignment.

10. The affidavit of Asok Ratan Mazumdar a qualified chemist describes the commodity as lubricating oil.

11. The Government Test House Certificate at Alipore describes the open Plash Points of the different samples as ranging between 270 degrees F and 290 degrees F and remarks that all the samples conform to the specification for 65/75 Spindle Oil for lubricating purposes, and burning tests carried out on one of the samples show that it is not quite suitable as an illuminant.

12. The certificate points out that D.G. I & 9 Specification No. G/O-10-/1 for oil spindle extra light, stipulates however a minimum closed flash point of 150 degrees C. (302 degree F) which is considerably higher than the Plash points of the samples as indicated by their open flash points of 270-290 degrees F.

13. It is submitted by the learned Advocate-General who appears for the petitioner that the Government Specification G/O-101/1 is for the guidance and regulation of Government transactions in spindle oil. The same cannot be adopted as the standard for classifying goods, according to the Customs Tariff classification standard for purposes of assessment of duty on goods imported by private traders. The goods imported by private traders has to be classified and assessed to duty according to the description of the goods in various items of the Indian Tariff Act.

14. According to Item 27 (8) all kinds of lubricating oil excluding any mineral oil which has its flashing point below two hundred degrees of the Farenheits' thermometer by Abels' close test are assessable at the rate specified against that item. According to the Advocate-General this item should apply to the goods in question. I think there is considerable force in this contention. The Customs Authorities are to act in accordance with the classification in the Tariff Act. The

Government standard laid down for guidance of its own transactions cannot override the provisions or classifications laid down in the Statute. It is clear that the decisions of the Customs Authorities have been actuated by extraneous and irrelevant considerations and they have clearly exceeded their jurisdiction. See 'Rex v. Board of Education (1910) 2 K. B. 165 at p. 179, Parwell, L. J., observed as follows (p. 179):

'If the tribunal has exercised the discretion entrusted to it 'bona fide', not influenced by extraneous or irrelevant considerations and not arbitrarily or illegally, the Courts cannot interfere; they are not a Court of appeal from the tribunal but they have power to prevent the intentional usurpation or mistaken assumption of a jurisdiction beyond that given to the tribunal by law and also the refusal of their true jurisdiction by the adoption of extraneous considerations in arriving at their conclusion or deciding a point other than that brought before them, in which cases the Courts have regarded them as declining jurisdiction. Such tribunal is not an autocrat free to act as it pleases but is an inferior tribunal subject to the jurisdiction which the Court of King's Bench for centuries and the High Courts since the Judicature Acts have exercised over such tribunals.'

15. On behalf of the Respondents Mr. Vasani the Assistant Collector of Customs has affirmed an affidavit.

16. He states that the oil in question is not a lubricating oil. According to the test carried out by the Chief Chemist, Central Revenues, New Delhi the oil has the Flash point of 210 degrees and is unsuitable for use as an illuminant in wick lamps, and it does not conform to official specification (I.S.D. No. G/O-101/1-3 and R.I.A.S., Order Nos 176 & 177) of Spindle oil which prescribes minimum flash point of 105 degrees C (302 degrees P) by the Pensky-Martens Closed Tester and as such cannot be classified as Spindle oil but it would appear to be classifiable as a Diesel oil.

17. Further on examination at the Chemical Examiner's Department, Calcutta, the oil was found to have a strong Kerosene smell and as the distillation range was found to be up to 300 degrees C (15 per cent) and up to 350 degrees C (42 per cent), the oil could not be considered as a lubricating oil.

18. It may be noted that the case of the oil having strong Kerosene smell is not to be found in any of the correspondence of the Customs authorities but is made for the first time in the affidavit in opposition.

19. Mr. B. D. Mukherjee, the Appraiser of the Customs House and certain other importers in the Calcutta market are alleged to have expressed certain opinions but no affidavits are forthcoming from such, persons, or from Mr. H. L. Suri the Chemical Examiner who also expresses the opinion that the oil is not spindle oil.

20. Mr. Vasani further states in his affidavit that by letters dated the 8th March 1950, 23rd March 1950 and by the Guarantee dated the 28th March 1950 the petitioner undertook to pay extra duty or penalty if imposed and undertook to produce documents showing the use of oil as lubricating oil within three months. The petitioner however failed to produce any such documents.

21. It is also pointed out in Mr. Vasani's affidavit that by the Memorandum issued by the Customs authorities on the 16th March 1950 the petitioner was called upon to show cause and to produce evidence but no satisfactory cause was shown in answer, and thereupon he (Mr. Vasani) assessed and imposed the extra duty of its. 75,926/14/- rightly and honestly. He says that it is for him both to make a proper classification of the goods under the Sea Customs Act and also to satisfy himself that the goods are such as have been prohibited to be imported. He is duly authorised in this behalf by the Chief Customs Authority.

22. It appears however that immediately after the Memorandum dated the 16th March 1950 was issued by the Customs Authorities a letter was written on the same date in reply to the memorandum, and the petitioner submitted the relative correspondence, indent, acceptance notes etc., as asked for by the memorandum. There was no date or time for hearing fixed nor was the petitioner called upon to establish his case before the Customs Authorities. The petitioner sent a statement of its case by its letter of the 16th March 1950 and there the matter rested. It was not followed up by any hearing nor did the petitioner receive any notice fixing time or place for putting forward its case.

23. It is the duty of the Customs Authorities to 'adjudge' (i.e., decree judicially) the penalty {Sections 182 to 184.) In other words the duty is to act judicially or quasi-judicially: 'Province of Bombay v. Khusaldas Advani', : [1950]1SCR621 . The fundamental rules of judicial procedure or the principles of natural justice require that a proper hearing and opportunity should be given to a person before the rights of such person are affected by any decision or adjudication. The petitioner repeatedly asked for a copy of the Test report, this was never supplied to the petitioner. Without giving proper opportunity to the petitioner to put its case before the Customs Authorities extra duty is imposed and later on an order or demand for payment of Rs. 4,65,473/12/- is made upon the petitioner.

24. It was contended by the learned counsel for the respondents that the memorandum dated the 16th March 1950, gave sufficient opportunity to the petitioner to put forward its case as it called upon the petitioner not merely to produce certain documents but also all corroborative evidence. But this corroborative evidence may not consist of documentary evidence only in petitioner's possession but may be evidence produced by other dealers of such commodities or the statements or reports of experts who may support the case of the petitioner with Authoritative treatises-or with their personal explanations. So a time and place has to be specified. The extent and scope of the enquiry must depend on the acts and circumstances and the magnitude of each case. It may be that the Customs authorities cannot take oral evidence but they can hear the arguments of experts. No grounds of the decision by which the goods were found classifiable under item 27 (3) were set out in the letter of 16th March 1950 nor otherwise communicated to the petitioner so as to enable it to make an effective or proper representation to the Customs Authorities. It is clear from the letter of the 16th March 1950 (Memorandum No. S-27-58/50-A) that a chemical test had been carried out but no copy of it was furnished to the petitioner in spite at repeated requests. It was put off on the ground that the test was not finalised, and even when, it was actually finalised no copy was supplied of the final: test report or results and the excuse put forward is that because the petitioner did not make a fresh; request after the finalised test was made so no copy was supplied. This sort of excuse from responsible public, officials is not only ridiculous but. brings discredit upon themselves.

25. It was submitted that since the petitioner agreed by letter dated the 8th March to accept the result of the chemical tests carried out by the Customs Authorities it was not open to the petitioner to make a grievance of its not being supplied with a copy thereof.

26. I am not at all impressed by this suggestion. The undertaking to accept the result of the test cannot be stretched to mean that if the chemical analysis is arbitrary or mala fide or] erroneous on the face of it or is found to be actuated by extraneous considerations even then it will be binding on the petitioner and will preclude the petitioner from, challenging the accuracy or validity of the same. Nothing can be more absurd than this.

27. In 'Hopkins v. Smethwick Local Board of Health', (1890) 24 Q.B.D. 712 at 714-715: Wills, J. observed:

'In condemning a man to have his house pulled down, a judicial act is as much implied, as in fining him 5 pounds; and as the local board is the only tribunal that can make such an order its act must be judicial act and the party to be affected should have a notice given him; and there is no notice unless notice is given of time when and place at which the party may appear and show cause.'

28. The Judicial Committee of the Privy Council in 'Lapointe's Case' (1906) A C 535 at p. 54ft. quotes with approval the following passage from the observation of Lord Chief Baron as to his view of the mode of administering justice by persons other than judges who have judicial functions to perform:

'They are bound in the exercise of their functions by the rule expressed in the maxim 'Aradi alteram partem', that no man should be condemned to consequences resulting from alleged misconduct unheard, and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals.'

The Customs Authorities are no doubt masters Of. their own procedure but they should observe the fundamental principles of natural justice. I do not for a moment suggest that they should follow the strict rules of judicial procedure but they are undoubtedly under a duty to act according to [general principles. Reliance is placed by the learned counsel for the respondents on the case of 'Local Government Board v. Arlidge', (1915) A C 120 which was cited by the Advocate-General and it is submitted that the petitioner had no right to be heard orally or to get a copy of the chemical test report and consequently there is no question of any violation of the principles of natural justice.

29. In that case the Local Government Board which was vested with the right to hear appeal from closing Order made under the Housing Town Planning Act 1909 had by Section 39 of the Act power to determine the procedure to be followed in appeal by rules framed for the purpose. But it was provided that the Board could not dismiss an appeal without first holding a public local enquiry. The rules framed contained a provision for local enquiry.

30. A local enquiry was held. The applicant sent only copies of expert's reports to the Board ' and intimated that he should decline to attend the enquiry and he did not appear or tender evidence. The rules provided for oral hearing at the enquiry but not before the Board in appeal. The appellant refused to avail himself of the opportunity at the time of the local enquiry. It was held that he had no right to ask for an oral hearing before the officer deciding the appeal. He had also no right to insist on the Inspector's report of the local enquiry being disclosed because it was in the discretion of the Board to disclose it or not. This case is therefore distinguishable from the facts of the case before me.

31. In my view there can be no doubt that there has been a denial of natural justice and violation of the fundamental principles of judicial procedure and hence a Writ of Certiorari does lie, even though there may be an alternative remedy open to the petitioner by way of Appeal under the provisions of the Sea Customs Act and there is also the alternative remedy by way of a right of action under the general law. See 'Rex v. Wads-worth', (1942) 1 KB 281.

32. It was contended that this Court has no jurisdiction to prevent enforcement of the Bond or Contract executed by the petitioner by Writs of Mandamus or Certiorari. I do not accept this contention. There can be no doubt that the decision whether a liability has arisen to produce a licence, or a bond has become enforceable, involves an adjudication, in other words such decisions are judicial or quasi-judicial acts and as the entire proceedings are vitiated by reason of failure to observe the principles of natural justice, such decisions also can be quashed by Writ of Certiorari. It appears that the Bond has been taken pursuant to rules under the Sea Customs Act and in the prescribed form. It is true that this Court in the exercise of its extraordinary powers under Article 226 will not make an order discharging the Bond on the alleged grounds of coercion or duress and I do not propose to make any such order on this application but it is quite clear that it is open to this Court to quash the decision to the effect that the Bond has become enforceable, and consequently the liability to pay the penalty has arisen.

33. The conduct of the Customs Authorities shows that they have acted in an arbitrary manner. The goods arrived on the 6th March 1950. The petitioner was eager to get an early release of the goods for purposes of its trade. The Customs authorities refused to release the goods unless a letter in terms of the letter of the 8th March 1950 was signed and handed up to them. The learned counsel for the Customs authorities has admitted that in ordinary practice such a letter is not taken before the release of the goods. The petitioner is made to agree to accept the test results of the samples and to agree to pay extra duty and penalty as a condition for immediate release of the goods. But although the letter is written and taken in consideration for immediate release of the goods and samples are collected on the 8th March 1950 goods are not released but instead a memorandum dated the 16th March 1950 is served on the petitioner intimating that a chemical test had been already carried out and the petitioner is called upon to explain why it would not pay extra duty and penalty for the goods and for the false declaration made in the Bill of Entry. Apparently the petitioner required the goods urgently and so on that very day (16th March), the petitioner wrote a reply to the memorandum setting out a short statement of its case and forwarding the documents which were at the time in its possession. The Customs authorities did not stop there but insisted on another letter being written and signed by the

petitioner on the 22nd March 1950, in which they extort an undertaking to produce documents showing user of the oil as lubricating oil within three months as a condition for immediate release of the goods. But curiously they still hold on to the goods and compel the petitioner to execute a Bond on the 28th March 1950 and to pay an extra duty of Rs. 75,925/- on that day and it is not till the 30th March 1950 that they allow the petitioner to take away the goods. Subsequently when the petitioner goes on repeatedly asking for a copy of the test report to be supplied to it and writes five or six letters and offers to pay the necessary fees, that petitioner is ultimately met with a reply on the 22nd May 1950 that the test had not till then been finalised and the question whether a copy of the test report would at all be granted to the petitioner or not would be considered when the final decision was reached. It now appears that the Test was finalised sometime in July 1950 but no copy was furnished to the petitioner and the excuse now put forward for not supplying it is that the petitioner did not make fresh requests after the finalisation for being supplied with a copy. It is not suggested however how the petitioner would come to know whether the Test was finalised or when it was finalised if it was not informed about these things. Without furnishing the petitioner with a copy of the Test Report or giving the petitioner any proper and reasonable opportunity to represent its case or defence the petitioner is faced with an order calling upon the petitioner to produce a proper licence and on the 17th November 1950 the petitioner is called upon to pay the penalty of Rs. 4,65,473/-12/-. The language and tone of the correspondence and the attitude displayed by the Customs authorities throughout their dealing with the petitioner leave no doubt that they have acted in a high-handed and in an arbitrary manner and have arrived at their decision on extraneous and irrelevant considerations and not according to the provisions of the Statutes governing the matter.

34. It was contended that Section 198 of the Sea Customs Act is a bar to these proceedings. I do not think that there is any force in such contention. The Customs authorities have acted in an arbitrary manner and have taken into consideration extraneous and irrelevant matters in arriving at their decisions and passing the orders. In the circumstances it cannot be said that they were purporting to act in pursuance of the Act. A person by merely taking shelter under the plea that he honestly thought that he was acting in pursuance of the Act or Statute cannot bring

himself within the terms of or the protection of the section, for if it were so, then in every case however dishonestly a person might be acting, however autocratic or arbitrary his acts might be he can shield himself under the protection of the Act by a mere declaration that he bona fide intended to act or thought that he was acting in pursuance of the Statute. The question whether the act is purported to have been done in pursuance of the Statute or not must depend on the special circumstances of each case. No hard and fast rule or test can be laid down for determining the question. If a person acts arbitrarily or in violation of the principles of natural justice or on the basis of extraneous or irrelevant considerations he cannot be said to be 'purporting to act in pursuance of the Act.' A person cannot disregard or ignore the provisions of the Statute and at the same time maintain that he is purporting to act in pursuance of that statute.

35. In the circumstances non-compliance with the requirements of Section 198 cannot operate as a bar to the present proceedings.

36. It was contended that application for the issue of Prerogative Writs is not a 'proceeding' within the meaning of Section 198 of the Sea Customs Act and reliance was placed on certain English decisions (1), 'Rex v. London County Council', (1930) 141 L. T. 590 per Lord Hewart, C.J., and (2) 'The King v. Port of London Authority', (1919) 1 K B 176 at 186, 188. It appears however that the Judicial Committee while construing 'Civil and Criminal Proceedings' in Section 270 of the Government of India Act 1935 has interpreted the same to mean proceedings capable of being instituted under the ordinary law of the land. 'Albert West Meads v. The King', (1948) 10 F C R 67. I am unable to hold that application for Prerogative Writs is not a 'proceeding' within the meaning of Section 198 of the Sea Customs Act. It may be noted that in England also there are decisions to the contrary e.g., 'Rex v. Westminster Assessment Committee', (1917) 2 K.B. 215.

37. It was contended by the learned counsel for the petitioner that Article 226 of the Constitution has vested the High Court with supreme and unqualified power to issue the Prerogative Writs in proper cases. This power is not subject to any other provisions of the Constitution nor subject to the provisions of any law. Article 372 provides that all laws in force are subject to the provisions of the Constitution.

Therefore in so far as Section 198 purports to impose any fetter or restriction on the exercise of the absolute and unqualified power of the High Court as contained in Article 226 it must be held to be void to the extent of the inconsistency or repugnancy. In my view Section 198 only imposes a bar or disability on the person who seeks to commence proceedings in a Court of law but it does not fetter or restrict the power of the High Court or affect the jurisdiction of the High Court in any way. If however it would tend to affect the power of the Court it would be void to that extent.

38. art from this it is well established that in order that power of a Court to issue writ of certiorari can be taken away by any Statute there must be express negative words to take away the power. (Halsbury Vol. 9 paragraph 1455 page 861 Hailsham Ed.)

39. But even in cases where Certiorari is expressly taken away a Writ may be issued if the inferior Court or tribunal has acted without or in excess of jurisdiction. ('See Ex parte Bradlaugh' (1878) 3 Q.B.D. 509) and 'Venkata Narasimha Rao v. Municipal Council Narasaraopet', : AIR1931 Mad122 and also Halsbury Vol. 9, paragraph 1458.)

40. If in spite of an absolute bar imposed by a statute to initiate proceedings for the issue of a Writ of Certiorari a person can apply for such writ and the Court can issue such writ where there is want or excess of jurisdiction I fail to see why this Court cannot issue the Writ in the present case when the Customs Authorities have exceeded their jurisdiction, merely because a partial bar in the shape of Section 198 is imposed by the Sea Customs Act. I hold that this Court has jurisdiction and power to issue the Writ of Certiorari asked for.

41. A point was raised by the learned Advocate-General that the Assistant Collector of Customs is not the competent authority and had no jurisdiction to make the decisions or pass the orders complained of. I do not think that there is any substance in this contention. The Sea Customs Manual has been produced before me and it appears from paragraph 189 at page 192 of the Manual that there has been a delegation of authority to the Assistant Collector of Customs to exercise the powers under Section 182 (a) of the Sea Customs Act and he is fully

authorised to exercise such powers.

42. In my view this petition must succeed in part. The Rule is made absolute to this extent that the Orders and Demands contained in the letters dated the 22nd September 1950 and the 17th November 1950 and made by the Respondents Nos. 1 and 2 are quashed and cancelled.

43. The petitioner will be at liberty to file suit or take any other proceedings as it may be advised for discharge or cancellation of the Bond or refund of extra duty paid or for such other reliefs to which the petitioner is entitled. The petitioner is entitled to costs of the present proceedings. The Rule as against the Union of India is discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com