

The Secretary of State represented by the Collector of
South Arcot - - - - - *Appellant*

v.

Mask & Co. - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 15th MARCH, 1940

Present at the Hearing :

LORD THANKERTON
SIR GEORGE RANKIN
MR. M. R. JAYAKAR

[*Delivered by* LORD THANKERTON]

The sole question for determination in this appeal is as to the jurisdiction of the Civil Courts to entertain the suit. The appeal is taken from a judgment and order of the High Court of Judicature at Madras, dated the 2nd February, 1938, which set aside a decree of the Subordinate Judge at Cuddalore, dated the 30th March, 1937 (which had dismissed the respondents' suit on the ground of want of jurisdiction), and directed the Subordinate Judge to restore the suit to the file and to dispose of it on the merits.

The respondents are a firm of merchants, having their head office at Panruti in the Province of Madras, and, in the course of their business, they import betel-nuts from Java into British India. The facts in the present suit, which was filed by the respondents on the 10th April, 1934, are not materially in dispute. The suit relates to two consignments of betel-nuts, imported by the respondents in December, 1932, from Java to Pondicherry by sea, and thereafter by rail to Panruti. These consignments, which originally consisted of 3,927 bags in all, were repacked at the Port of Pondicherry, owing to damage to the gunnies, into 4,063 bags, before importation into British India. The consignments were imported into the Province of Madras by rail and carts from Pondicherry to Panruti by various instalments, the first of which consisted of 1,000 bags imported through the Customs station at Pondicherry on the 31st December, 1932. The remaining bags were imported in several instalments in the months of February, March and November, 1933, through the Customs Stations at Pondicherry and Madalapat.

It appears that, prior to this occasion, the respondents had been in the habit of importing their betel-nuts at the port of Cuddalore in the Province of Madras, but, in the beginning of the year 1932, the Customs Collector at that

port had assessed a similar consignment of 3,605 bags as boiled betel-nuts subject to duty on a tariff value, contrary to the respondents' contention that they should be assessed as raw betel-nuts, subject to duty *ad valorem*. In the hope that they might achieve an assessment in accordance with their contention, the respondents altered their place of importation in the case of the consignments here in question, but their disappointment in that respect has given rise to the present suit, in which they seek to challenge the adverse decision in a civil suit.

On the arrival of the consignments at Pondicherry, the respondents wrote on the 27th December, 1932, to the Collector of Customs, Madras, asking to be allowed to import the goods as raw sliced betel-nuts and not as boiled. As they anticipated an increase in the *ad valorem* duty to come into effect at the beginning of 1933, they requested a telegraphic reply, which they received on the 29th December, 1932, saying, "If you desire import before January first you must import goods and deposit duty calculated on higher tariff value Inspector will at time of taking deposit and passing goods take sealed samples for test and will also deliver to you other sealed samples to enable you appeal if necessary." The respondents thereupon imported 1,000 bags on the 31st December, 1932, and paid the higher duty under protest to the Assistant Inspector of Customs at Pondicherry Railway Chauki, samples being duly taken. After examination of the samples, the Assistant Collector of Customs, Madras, wrote to the respondents on the 28th February, 1933, as follows:—

"I have to state that on examination of the samples from the consignment in question, it has been found that the betel-nuts imported are 'boiled'. The 1,000 bags cleared on 31st December, 1932, are therefore assessable at 37½ per cent. on a tariff valuation of Rs.23 per cwt. and the remaining bags, if cleared, will be liable to duty at 45 per cent. on a tariff value of Rs.16 per cwt."

An appeal by the respondents against this decision was dismissed by the Collector of Customs on the 20th June, 1932. The matter was taken to the Government of India in revision, but by their order dated the 13th August, 1933, the Government of India confirmed the Collector's decision. The present suit was filed on the 10th April, 1934.

In the suit the respondents seek to recover the excess amount collected from them by levying duty upon a tariff value of Rs.23 per cwt. upon 1,000 bags and of Rs.16 per cwt. upon the remainder, vizt., 3,063 bags instead of levying duty upon the invoice value of Rs.10-9-1 per cwt. In paragraph 14 of the plaint they state that the cause of action arose on the 18th August, 1933, when their petition for revision to the Government of India was thrown out. Various issues were framed by the Subordinate Judge, but it was decided to determine in the first instance Issue No. 3—"Has this Court no jurisdiction to entertain this suit and is the suit barred by the provisions of the Sea Customs Act?" By a judgment delivered on the 30th March, 1937, the Sub-

ordinate Judge held that the Court had no jurisdiction to entertain the suit and dismissed the suit. An appeal was allowed by the High Court on the 2nd February, 1938, and the Subordinate Judge was directed to proceed to dispose of the suit on the merits. This appeal is from that decision.

While the imposition of the duties here in question is regulated by the Land Customs Act (Act XIX of 1924), the matter in issue arises under certain provisions of the Sea Customs Act (Act VIII of 1878) which are incorporated, subject to the necessary verbal modifications, by section 9 of the Land Customs Act, and the schedule to the Act. The sections of the Sea Customs Act which are material are contained in Chapter XVII of the Act, which is headed "Procedure relating to offences, appeals, etc.", and which includes sections 169 to 193. The material sections are as follows:—

182. In every case, except those mentioned in section 167, Nos. 26, 72 and 74 to 76 both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty or any person is liable to a penalty,

such confiscation, increased rate of duty or penalty may be adjudged—

(a) without limit, by the Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector

* * * * *

186. The Award of any confiscation, penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

188. Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs Authority, or, in such cases as the Local Government directs, to any officer of Customs not inferior in rank to a Customs-Collector and empowered in that behalf by name or in virtue of his office by the Local Government.

Such authority or officer may thereupon make such further enquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

189. Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order.

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

190. If, upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief-Authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such Authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods.

191. The Local Government may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs-Authority, and from which no appeal lies, reverse or modify such decision.

193. When a penalty or increased rate of duty is adjudged against any person under this Act, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge, or in the charge of any other officer of Customs. . . .”

Under section 9 of the Land Customs Act, references to a Chief Customs Officer in the Sea Customs Act are to be deemed to refer to a Collector of Land Customs, references to a Customs Collector to a Lands Customs Officer, and references to Officers of Customs to Collectors of Land Customs or Land Customs Officers. Further, by section 4 of the Central Board of Revenue Act (Act IV of 1924), the Governor General in Council was substituted for the Local Government in section 191 of the Sea Customs Act.

At the hearing before the Board, the appellant maintained that the decision of the Assistant Collector of Customs, dated the 28th February, 1933, was a “decision or order passed by an officer of Customs” within the meaning of section 188 of the Sea Customs Act, and that the decision of the Collector of Customs on appeal therefrom, dated the 20th June, 1933, which had been confirmed on revision under section 191, was final, and excluded the jurisdiction of the Civil Courts. He maintained that the only right of challenge of a decision or order by an Officer of Customs was by an appeal under section 188 and that the jurisdiction of the Civil Courts was excluded. Alternatively, he maintained that the right of appeal conferred by section 188 constituted a procedure which was alternative to procedure in the civil courts, and that as the respondents, in their option, had chosen to proceed under section 188, they were bound by that election, and were thus excluded from resort to the civil courts.

There can be little doubt that adjudications as to confiscations, increased rates of duty or penalties made under the power conferred by section 182 are decisions or orders within the meaning of section 188, and the appellant submitted in the first place that the decision of the Assistant Collector in the present case was an adjudication as to increased rate of duty under section 182. In their Lordships’ opinion this contention is untenable, as the decision was as to the normal rate of duty, whereas an increased rate of duty connotes something in the nature of a penalty, an illustration of which is to be found in section 167, No. 35, where goods

in excess of the manifest or not corresponding with the specification are liable to confiscation or to be charged with such increased rates of duty as the Chief Officer of Customs directs.

The appellant next maintained that the decision or order referred to in section 188 was not confined to adjudications under section 182, but included decisions by an officer of Customs as to the rate of duty applicable to particular goods, which necessarily involved the determination of the particular category in the tariff classification into which the goods fell, and that, accordingly, the decision of the Assistant Collector in this case was a decision or order within the meaning of section 188. The respondents, on the other hand, maintained that the decisions or orders referred to in section 188 related only to adjudications under section 182. This argument of the respondents was not mentioned by the Subordinate Judge, and his judgment does not suggest any doubt of the applicability of section 188. But it was raised in the High Court, who decided it in favour of the appellant.

Their Lordships are of opinion that the High Court were right in deciding that section 188 is applicable. The words "decision or order" are wide words, and they appear to be of a more general nature than the adjudications referred to in section 182, which are also referred to as awards in section 186. The difference of language in sections which are in such close juxtaposition primarily suggests an intention to cover a wider area in section 188. It is suggested that the heading of the chapter—"Procedure relating to Offences, Appeals, etc."—rather indicates that the appeals are correlated with the offences. Their Lordships are unable to draw any such inference. The chapter is one relating to procedure and not a chapter relating to offences; indeed, it might be suggested that if the provisions as to appeals were merely part of the procedure relating to offences, there would be no occasion for a separate mention of appeals in the heading. But, in their Lordships' opinion, the heading of the chapter is of no material assistance in the construction of section 188.

In the next place, the proviso in section 188, which is limited to adjudications under section 182, does not, in the opinion of their Lordships, necessarily involve the narrower construction of the opening words of the section. If the latter had expressly referred to any decision or order under section 182 or any other section in the Act, the proviso would have been drawn in exactly the same terms. But section 189 uses terms naturally applicable to any duty leviable under any part of the Act.

Their Lordships agree with the High Court that there is no reason for limiting the words "any decision or order passed . . . under this Act" in section 188 to decisions or orders passed under section 182. Their Lordships are unable to agree with the somewhat tentative opinion expressed by Sir Charles Innes in *Hari Bhanji v. Secretary of State for India*, (1879) I.L.R. 4 Mad. 344, at p. 353, which is referred

to by the High Court. That opinion was not relevant to the case before the learned Judge, which related to an illegal levy of duty under the Act of 1863.

The Sea Customs Act, 1878, was passed to consolidate and amend the law relating to the levy of Sea Customs-duties which was then regulated by the Consolidated Customs Act (Act VI of 1863), which was repealed by the Act of 1878. If there were any doubt as to the proper construction of section 188 of the 1878 Act, it would undoubtedly be legitimate to consider the previous law which it was consolidating and amending, and their Lordships desire to add that their view already expressed as to the construction of section 188 is confirmed by a consideration of the provisions of the Act of 1863. The material provisions of the latter Act are as follows:—

“ VI. If any dispute shall arise between any-Officer of Customs and any Master or Commander of a vessel, or importer, exporter, owner, or consignee of goods, or agent, or other person, in respect to any matter (not specially provided for by any law for the time being in force) relating to the importation, exportation, or warehousing of any goods, or to the levy of any duty or penalty thereon, or to any seizure or forfeiture thereof, the Chief Customs Authority of the Presidency or place in which such dispute shall have arisen shall settle the same, subject to an appeal to the Local Government, acting under the general instructions of the Governor General of India in Council.

CLXXXIV. If any dispute shall arise as to the proper rate of Duty payable in respect of any goods imported into, or exported from, any Port in British India, the importer, exporter, owner, or consignee of such goods, or his agent, shall deposit in the hands of the Officer in charge of the Custom House at the Port of importation or exportation respectively, the amount of Duty demanded by such Officer, pending the decision of the Chief Customs Authority. Upon payment of such deposit and compliance with the provisions of this Act relating to the entry of such goods, the Officer in charge of the Custom House shall cause the goods to be delivered to such importer, exporter, owner, or consignee, or his agent.

CCXVIII. In every case in which, under this Act, any vessel, cart, or other means of conveyance, or any horse or other animal is liable to confiscation; or any goods are liable to confiscation or to increased rates of Duty; or any person in charge of or owning a vessel, or landing or shipping goods, or passing them through the Custom House, is liable to a penalty, an Officer in charge of a Custom House may, unless it be otherwise provided in this or any other Act relating to the Customs, adjudge such confiscation, penalty, or increased rates of Duty.

CCXX. In any case adjudicated by an Officer of Customs, any party aggrieved by the award may appeal to the Chief Customs Authority of the Presidency or place, or to any superior Officer of Customs empowered in that behalf by the Local Government. It shall thereupon be lawful for such authority or superior Officer to make such further enquiry, and to pass such order as he shall think proper, confirming, altering or annulling the original award. Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty, or rates of Duty than shall have been adjudged against him in the original award.

CCXXI. The award of any confiscation, penalty or increased rates of Duty under this Act by an Officer of Customs shall not interfere with any punishment to which the person affected thereby shall be liable under any other law.

CCXXIII. If, upon consideration of the circumstances under which any penalty or confiscation has been adjudged under this Act, by an Officer of Customs or by a Magistrate, the Chief Customs Authority of the Presidency or place shall be of opinion that such penalty or confiscation ought to be remitted in whole or in part, or commuted, such Chief Customs Authority may remit the same or any portion thereof, or may commute any order of confiscation to a penalty not exceeding the value of the goods ordered to be confiscated."

Section 6 appears under the heading of "General Rules"; section 184 under "Miscellaneous Provisions"; and the other four sections under "Offences and Penalties". In their Lordships' opinion, it is clear that the provisions of section 6 and of section 220 are both now incorporated in section 188 of the later Act, the subject matter of the appeal being altered from an "award" to a "decision or order", and the heading of the chapter being altered to "Procedure relating to Offences, Appeals, etc." Section 184 of the 1863 Act is reproduced in section 189, while section 221 is reproduced as section 186 of the 1878 Act, before section 188, and section 223 reappears as section 190 of the later Act.

The decision of the Assistant Collector therefore falls within the terms of section 188 of the Sea Customs Act of 1878, and the respondents in fact acted on that view, and exercised the right of appeal conferred by that section and by section 191. It is now necessary to determine whether the order of the Collector of Customs, dated the 20th June, 1933, which dismissed the appeal under section 188, and which was confirmed by the Governor-General in Council on an application under section 191, excludes the jurisdiction of the civil courts to entertain a challenge of the merits of that decision. It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled 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. Many of the cases referred to in the judgments below are of this nature, and are not relevant to the present case, in which there are no allegations of that nature.

Section 188 provides that "every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final". By sections 188 and 191 a precise and self-contained code of appeal is provided in regard to obligations which are created by the statute itself, and it enables the appeal to be carried to the supreme head of the executive government. It is difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the civil courts.

Further, it is to be noted that the same finality clause applies equally to appeals against adjudications under section 182 and to appeals against decisions or orders as to the rate of duty leviable under the tariff; their Lordships are

unable to construe this clause differently according as it applies to these two classes of appeals, as apparently the High Court were prepared to do. In their judgment the High Court refer with approval to the unreported decision of Coutts Trotter J. in C.S. No. 747 of 1920, in which he held that the suit, which challenged the adjudication of a fine under section 182, was barred by section 188, and the learned Judges add, "We think that the decision in that case is, if we may say so, not open to exception and it does not help the Government in this case, because the Act of the Customs Authorities in that case was an adjudication." Later, the learned Judges rejected the argument that section 188 only applied to decisions or orders passed by Customs Authorities when acting under section 182, and held that the opening words of section 188 were not so limited. Nevertheless, they held, as regards the present case, that the finality clause was not so worded as to exclude the jurisdiction of the civil courts. Their Lordships are unable to agree with this distinction.

Their Lordships are of opinion that in this case the jurisdiction of the civil courts is excluded by the order of the Collector of Customs on the appeal under section 188, and it is unnecessary to consider whether, prior to taking such appeal under section 188 the respondents would have been entitled to resort to the civil courts, or whether they would have been confined to the right of appeal under section 188.

The determination of this question must rest on the terms of the particular statute which is under consideration, and decisions on other statutory provisions are not of material assistance, except in so far as general principles of construction are laid down. The main principles to be observed in the present case are to be found in the well-known judgment of Willes J. in *Wolverhampton New Waterworks Co. v. Hawkesford*, (1859) 6 C.B. (N.S.) 336, at p. 356, which was approved of in the House of Lords in *Neville v. London Express Newspaper Limited*, [1919] A.C. 368. The question is whether the present case falls under the third class stated by Willes J., vizt., "Where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it With respect to that class it has always been held, that the party must adopt the form of remedy given by the statute."

It has been held that the jurisdiction of the civil courts is excluded in three cases in which an appeal under section 188 had been taken—C.S. No. 747 of 1920, already referred to, *Bhiwandirvalla and Company v. The Secretary of State*, (1937) A.I.R., Mad. 536, which is referred to by the High Court, and *Thin Yick v. Secretary of State for India*, [1939] 1 Cal. 257. Each of these cases related to an appeal against an adjudication under section 182. In the case referred to in 71 Mad. L.J., Notes of Recent Cases, p. 40, Varadachariar J. held that jurisdiction was not excluded in circumstances similar to the present case, except that there had been no appeal under section 188, and, for the reasons already explained, their Lordships do not find it necessary to consider

the question. Similarly, in the cases of *Vacuum Oil Company v. Secretary of State for India*, 59 Ind. App. 258, and *Ford Motor Company v. Secretary of State*, 65 Ind. App. 32, no appeal had been taken under section 188; the question of jurisdiction was not in issue, though in the former case an issue had been framed, but it was abandoned by the Advocate General. It was submitted on behalf of the respondents that an exclusion of the subject's right of resort to the civil courts would be *ultra vires* of the Indian Legislature in view of the provisions of section 32 of the Government of India Act, 1915, which re-enacted section 65 of the Government of India Act of 1858, and reference was made to *Moment's* case, (1912) 40 Ind. App. 48, which was a case of tortious trespass on land. But, in their Lordships' opinion, neither section 32 nor the principle involved in the decision in *Moment's* case affect the validity of an Act of the Indian Legislature which creates an obligation and provides an exclusive code for its determination; such an obligation is not covered by sub-section 2 of section 32.

On the whole matter, their Lordships are of opinion that the decision of the Subordinate Judge was correct, and they will humbly advise His Majesty that the appeal should be allowed, that the order of the High Court should be set aside and that the decree of the Subordinate Judge should be restored. The appellant will have the costs of the appeal, and also his costs in the High Court.

In the Privy Council

THE SECRETARY OF STATE REPRESENTED BY THE COLLECTOR OF SOUTH ARCOT

v.

MASK AND CO.

DELIVERED BY LORD THANKERTON

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