Union of India

Vs

Tarachand Gupta and Bros

Civil Appeal No. 344 of 1967

(J. M. Shelat, C. A. Vaidialingam JJ)

28.01.1971

JUDGMENT

SHELAT, J. -

1. This appeal, by certificate, arises from the respondents' suit in respect of fines and penalties recovered from them by the Collector of Customs, Bombay, for the alleged contravention of Section 3 of the Imports and Exports (Control) Act, 1947 and Section 167(8) of the Sea Customs Act, 1878.

2. The respondents held an import licence, dated July 10, 1956, permitting them to import parts and accessories of motor-cycles and scooters as per appendix XXVI of the Import Policy Book for July-December, 1956. Under the said licence, the respondents imported certain goods which arrived in two consignments, each containing 17 cases, by two different ships. According to the respondents, the goods so imported by them were motor-cycle parts which their licence authorised them to import. The Customs authorities, on the contrary, held, on examination of the goods, that they constituted 51 sets of Rixe Mopeds complete in a knocked down condition". The Deputy Collector of Customs thereupon held an enquiry in pursuance of two show-cause notices issued by him.

3. The result of the enquiry was an order under which the Deputy Collector directed confiscation of the said goods with an opinion to the respondents to pay certain sums in lieu of confiscation and also personal penalties. That order was passed on the basis that the goods imported were not parts and accessories of motor-cycles and scooters permissible under Entry 295 of the Schedule to the Import Control Order but were motor-cycles/scooters in completely knocked down condition, prohibited under remark II against Entry 294, a licence in respect of goods covered by it would authorise import of motor-cycles and scooters. The order of the Deputy Collector, dated November 19, 1957, reads as under :

> "On examination of the goods and scrutiny of the documents relating to the Bills of Entry stated above, it was ascertained that M/s. Tarachand Gupta and Brothers had imported 51 sets of "Rixe" Mopeds complete (except tyres, tubes and saddles) in a knocked down condition. The total number of consignments covered by the aforesaid two Bills of Entry were sufficient to give exactly 51 sets complete Rixe 'Mopeds' (except for tyres, tubes and saddles which would in any case have required a separate licence). The packing was also such as to show that those were nothing but "Mopeds" in a disassembled condition, since each of the cases contains components relating to three Mopeds. Moreover, it was found that major components such as the frames, completely fitted with electrical wires and control cables and grips, had been imported in equal numbers..... All these went to show that the goods were not

imported as spare parts but as complete vehicles in a knocked down condition. The goods were, therefore, considered to be correctly classifiable under item 75(2) of the I.C.T. corresponding to S. No. 294/IV of I.T.O. Schedule. The licence under which clearance was sought, could not, thereof, be accepted."

Deputy Collector rejected the respondents' contention that the two consignments which arrived in two different ships at different dates should be viewed separately, that the machines were incomplete as they were without tyres, tubes and saddles, and therefore, they could not be said to constitute motor-cycles in knocked down condition. He held, on the other hand, that though the goods were not in completely knocked down condition it made no difference as the tyres, tubes and saddles were easily obtainable in India and their absence did not prevent the machines being otherwise complete. He also found that there was a trade practice under which traders were supplying motor-cycles without tyres, tubes and saddles unless the purchaser specially asked for those parts. According to him, the goods could not be regarded as spare parts but were 'Mopeds in disassembled conditions'.

4. In the suit filed by the respondents in the High Court against the said order, the Trial Judge held, on the authority of the Secretary of State v. Mask & Co., (1940 (67) IA 222.) that an order of a statutory tribunal, such as the Collector of Customs under the Sea Customs Act, which the statute makes final, subject, of course, to an appeal provided under it, can be set aside in a suit before a Civil Court on two grounds only, namely, where the provisions of the Act have not been complied with, or where the tribunal has failed to act in conformity with the fundamental rules of judicial procedure. He rejected the respondents' contention that the case fell within the first ground and held that however erroneous the Collectors' decision might be, since it was within his jurisdiction to decide whether the goods fell under one entry or the other, a Civil Court had no jurisdiction to grant relief. He also held that the order could not be said to be without or in excess of jurisdiction and was, therefore, not a nullity. The order consequently required to be set aside if the respondents were to have any relief, and therefore, Article 14 of the Limitation Act, 1908 applied. On that basis he held the respondents' suit to be time barred and dismissed it.

5. We may, at this stage, mention that in a similar matter involving import of spare parts and accessories under a licence relating to Entry 295, the Collectors' order, on the basis that the goods fell under Entry 294, as the spare parts in question could, it all the different indents were taken together, constitute auto-cycles in completely knocked down condition, was held to be bad as "the Collectors' approach to the matter was wholly wrong" by a Division Bench of the same High Court in D. P. Anand v. M/s. T. M. Thakore & Co., (Civil Appeal No. 4 of 1959, decided on August 17, 1960.) According to that judgment, the jurisdiction of the Collector was to ascertain whether the goods, such as they were, were properly imported under the licence relating to goods under Entry 295, i.e., whether they were spare parts and accessories, and not to go further and find out whether they would, when put together, constitute auto-cycles in completely knocked down condition as envisaged by Entry 294, and therefore, the order was amenable to interference by the High Court. The Trial Judge held, on the authority of this judgment that on merits the Collector of Customs was in error in holding the respondents guilty of importing goods not covered by the licence held by them and that the Collector would have been bound by that judgment had it been delivered before he passed the impugned order. He, however, was of the view that whereas the High Court in D. P. Anand's case (supra) interfered with the order in its writ jurisdiction, a suit could not lie as the impugned order was within the jurisdiction of the Collector and the mere fact that he applied a wrong entry did not invest the Civil Court with the jurisdiction to entertain a suit and set aside such an order.

6. The Letters Patent Bench of the High Court, following the judgment in Anand's case (supra) agreed with the Trial Judge that on merits the Collector was in error. Following that judgment, the Bench also held that the Collector's jurisdiction was limited to ascertain whether or not the goods imported by the respondents were spare parts and accessories covered by Entry 295 in respect of which they undoubtedly held the licence, and therefore, he could not 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, (i.e., the respondents herein) had imported 51 "Rixe" Mopeds in a completely knocked down condition. The Bench also held that upon the principle laid down in Anand's case (supra) it was not for the Collector to ascertain whether the goods, if assembled together, would constitute 51 "Rixe" Mopeds in C.K.D. condition. The respondents were entitled to import the said goods, and therefore, Section 167(8) of the Sea Customs Act did not apply and the respondents consequently could not have been held guilty of breach either of that section or Section 3 of the Imports and Exports (Control) Act. The Bench also held that the decision of this Court in Girdharilal Bansidhar v. Union of India (1964 (7) SCR 62 : AIR 1964 SC 1519 : (1964) Cur LJ (SC) 194 : (1964) (2) Cr LJ 461.) did not overrule but only distinguished the judgment in Anand's case, (supra) and, therefore, the binding force of that decision remained unshaken. Regarding the jurisdiction of Civil Courts, the Division Bench held that where the question is simply whether one or the other entry applies and the tribunal, to which jurisdiction is entrusted in that behalf, decides it erroneously, even then its order, made final by the state conferring such jurisdiction, cannot be made the subject-matter of a suit. On the other hand, where its jurisdiction is confined to see whether the importation is under a particular entry or not, but while deciding such a question, the tribunal takes into account extraneous considerations, such as an entry which has no bearing upon the question, the case would fall outside the ambit of the powers of the statutory authority. The question, in other words, would then be, whether the tribunal has exceeded its jurisdiction and therefore acted in non-compliance with the provision of the statute under which it has to decide the question. The Division Bench deprecated the attempt on the part of the Collector in considering the two consignments together and making out a case that the two, when put, together, would make it possible to regard the goods as "Rixe" Mopeds in C.K.D. condition. Such an attempt, the Bench observed, was "a new classification conjured up by the authorities to rope in the imports as being illegal which according to the terms of the licence and Entry 295 would be clearly legal". Lastly, the Division Bench disagreed with the Trial Judge who had held that the article in the Limitation Act applicable was Article 14 on the ground that once it was accepted that the order was in excess of jurisdiction it was a nullity, and therefore, there was no question of its having to be set aside. Following A. Venkata Subba Rao v. Andhra Pradesh, (1965 (2) SCR 577 : AIR 1965 SC 1773 : (1966) 1 SCJ 241.) it held that the suit fell under Article 62, and therefore, was within time.

7. Counsel for the Union of India challenged the correctness of the judgment of the Division Bench and urged that the Sea Customs Act had clearly vested in the Collector the authority to decide whether the goods in question fell within Entry 295 or not and for which the respondents had been granted the licence. His decision, subject, of course, to an appeal and revision provided under the Act, being final, could not be challenged in a suit save under the well-recognized exceptions that his decision was not in compliance with the provisions of the Act, or that he had failed to follow the fundamental principles of judicial procedure. The present case, according to him, was one of importing "Rixe" Mopeds in C.K.D. condition, not permissible either under Entry 295 or Entry 294, and therefore, was a case where the importer, misusing his licence, had attempted to do indirectly what he could not do directly. There was, according to him, no question of the Collector acting in excess of his jurisdiction or in non-compliance with the provisions of the Act, and therefore, the

Trial Judge was that in holding that no suit lay against his action.

8. Before we proceed to consider these contentions it is expedient first to look at the provisions of the relevant law. Under Section 3 of the Imports and Exports (Control) Act, 1947, the Central Government by an order can provide for prohibiting, restricting or otherwise controlling inter alia the import of goods of any specified description and all goods to which any such order applies are deemed to be goods of which the import has been prohibited by the Sea Customs Act, 1878 and all the provisions of that Act are to have effect accordingly. The Imports (Control) Order 1955, passed under the power reserved under the Act, by clause (3) thereof, provides that no person shall import any goods of the description specified in Schedule I thereto except under and in accordance with a licence granted by the Central Government or by an officer specified in Schedule II. Sub-clause (2) of clause (3) provides that if it is found that the goods imported under a licence do not conform to the description given in such a licence under which they are claimed to have been imported, then without prejudice to any action that may be taken against the licensee under the Sea Customs Act in respect of such importation, the licence may be treated as having been utilised for importing the said goods.

9. Entries 294 and 295 of Section II of Part V of Schedule I of the Import Trade Control Policy for the period July-December, 1956, are in this connection the relevant entries. Entry 294 deals with import of motor-cycles and scooters. Remark (ii) in its Column No. 6 lays down that "Licences granted under this items will not be valid for the import of motor-cycles/scooters in a completely knocked down condition". Remark (ii), however, provides that applications from approved manufacturers for import of motor-cycles/scooters in C.K.D. condition will be considered ad hoc by the Chief Controller, Imports in consultation with Development Wing. Entrys 295 deals with "Articles (other than rubber tyres and tubes) adapted for use as parts and accessories of motor-cycles and scooters, except such articles as are adapted for use as parts and accessories of motor-cars". Entry 41 in Part V deals with import of rubber tyres and tubes and other manufactures of rubber not otherwise specified.

10. Section 167(8) of the Sea Customs Act provides that goods shall be liable to confiscation if the goods, the importation of which is for the time being prohibited or restricted by or under Chapter IV, are imported contrary to such prohibition or restriction and any person concerned in any such importation shall be liable to penalty prescribed therein. Section 188 of the Act makes an order, passed in appeal against the Collector's order, final subject only to the power of revision under Section 191.

11. The position then is, under Entry 294 above-cited import under the requisite licence of motor-cycles and scooters was permitted. However, a licence permitting import of motor-cycles and scooters could not be used for import of motor-cycles and scooters in C.K.D. condition. Even then, the prohibition was not absolute because approved manufacturers could apply and get licences to import motor-cycles and scooters in C.K.D. condition albeit on an ad hoc basis. It is thus clear that Entry 294 deals with the import of motor-cycles and scooters and the import, though only by approved manufacturers, of motor-cycles and scooters in C.K.D. condition. The entry is complete in itself so far as import of motor-cycles and scooters complete and assembled and also in C.K.D. condition is concerned. The words "completely knocked down condition" in the entry are not used in any technical sense, and therefore, must, be given their ordinary dictionary meaning, i.e., "made or constructed so as to be capable of being knocked down or taken apart, as for transportation; in parts ready to be assembled." (See Webster's New International Dictionary, Volume II, p. 1371 and also Words and Phrases, Permanent Addition, Volume 23, p. 560).

12. Under Entry 295, except for rubber tyres and tubes for whose import a separate licence could be obtained under Entry 41 of Part V, there are no limitations as to the number or kind of parts or accessories which can be imported under a licence obtained in respect of the goods covered thereunder. Prima facie, an importer could import all the parts and accessories of motor-cycles and scooters and it would not be a ground to say that he has committed breach of Entry 295 or the licence in respect of the goods described therein, that the parts and accessories imported, if assembled, would make motor-cycles and scooters in C.K.D. condition. There are no remarks against Entry 295, as there are against Entry 294, that a licence in respect of goods covered by Entry 295 would not be valid for import of spares and accessories which, if assembled, would make motor-cycles and scooters in C.K. D. condition. Apart from that, the goods in question did not admittedly contain tyres, tubes and saddles, so that it was not impossible to say that they constituted motor-cycles and scooters in C.K.D. condition. The first two could not be imported and were in fact not imported because that could not be done under the licence in respect of goods covered by Entry 295 which expressly prohibited their import and a separate licence under Entry 41 of Part V would be necessary. The third, namely, saddles were not amongst the goods imported. No doubt, there was, firstly, a finding by the Collector that a trade practice prevailed under which motor-cycles and scooters without tyres, tubes and saddles could be sold. Secondly, the tyres and tubes could be had in the market here and so also saddles, so that if an importer desired, he could have sold these goods as motor-cycles and scooters in C.K.D. condition. The argument was that since there was a restriction in Entry 294 against imports of motor-cycles and scooters in C. K.D. condition, the importer could not be allowed to do indirectly what he could not do directly.

13. The argument apparently looks attractive. But the question is what have the respondents done indirectly what they could not have done directly. In the absence of any restrictions in Entry 295, namely that a licence in respect of goods covered by Entry 295 would not be valid for import of parts and accessories which, when taken together, would make them motor-cycles and scooters in C.K.D. condition, the respondents could import under their licence all kinds and types of parts and accessories. Therefore, the mere fact, that the goods imported by them were so complete that when put together would make them motor-cycles and scooters in C.K.D. condition, would not amount to a breach of the licence or of Entry 295. Were that to be so, the position would be anomalous as aptly described by the High Court. Suppose that an importer were to import equal number of various parts from different countries under different indents and at different times, and the goods were to reach here in different consignments and on different dates instead of two consignments from the same country as in the present case. If the contention urged before us were to be correct, the Collector can treat them together and say that they would constitute motor-cycles and scooters in C.K.D. condition. Such an approach would mean that there is in Entry 295 a limitation against importation of all parts and accessories of motor-cycles and scooters. Under that contention, even if the importer had sold away the first consignment or part of it, it would still be possible for the Collector to say that had the importer desired it was possible for him to assemble all the parts and make motor-cycles and scooters in C.K.D. condition. Surely, such a meaning has not to be given to Entry 295 unless there is in it or in the licence a condition that a licensee is not to import parts in such a fashion that his consignments, different though they may be, when put together would make motor-cycles and scooters in C.K.D. condition. Such a condition was advisedly not placed in Entry 295 but was put in Entry 294 only. The reason was that import of both motor-cycles and scooters as also parts and accessories thereof was permitted, of the first under Entry 294 and of the other under Entry 295. A trader having a licence in respect of goods covered by Entry 294 could import assembled motor-cycles and scooters, but not those vehicles in C.K.D. condition, unless he was a manufacturer and had obtained a separate licence therefor from the Controller of Imports who, as

aforesaid, was authorised to issue such a licence on an ad hoc basis. Thus the restriction not to import motor-cycles and scooters in C.K.D. condition was against an importer holding as licence in respect of goods covered by Entry 294 under which he could import complete motor-cycles and scooters and not against an importer who had a licence to import parts and accessories under Entry 295.

14. If Dr. Syed Mohamed's contention were to be right we would have to import remark (ii) against Entry 294 into Entry 295, a thing which obviously is not permissible while construing these entries. Further, such a condition, if one were to be implied in Entry 295, would not fit in as it is a restriction against import of motor-cycles and scooters in C.K.D. condition and not their parts and accessories. There is, therefore, no question of a licensee under Entry 295 doing indirectly what he was not allowed to do directly. What he was not allowed to do directly was importing motor-cycles and scooters in C.K.D. condition under a licence under which he could import motor-cycles an scooters only. That restriction, as already observed, applied to a licensee in respect of goods described in Entry 294 and not a licensee in respect of goods covered by Entry 295.

15. The result is that when the Collector examines goods imported under a licence in respect of goods covered by Entry 295 what he has to ascertain is whether the goods are parts and accessories, and not whether the goods, though parts and accessories, are so comprehensive that if put together would constitute motor-cycles and scooters in C.K.D. condition. Were he to adopt such an approach, he would be acting contrary to and beyond Entry 295 under which he had to find out whether the goods imported were of the description in that entry. Such an approach would, in other words, be in non-compliance of Entry 295.

16. The question then is whether such a reading of the two entries is in any way contrary to the decisions of this Court. In Girdharilal Bansidhar, (supra) the principle laid down was that the High Court in its writ jurisdiction does not sit in appeal over the correctness of the decision of the authorities under the Sea Customs Act on appreciation of entries in the Handbook or in the Indian tariff act. In the case, the appellant, who had a licence to import iron and steel bolts, nuts, etc., imported nuts and bolts which were the components of 'Jackson Type Single bolt oval plate belts fasteners', which were described in the bill of entry as "Stove Bolts and Nuts". The Customs found that these were in reality the actual components of Jackson Type Single belt oval plate belts fasteners, import whereof was totally prohibited. The Collector, while arriving at his decision, took into account also the fact that washers, the third component of the prohibited article, were imported by a firm owned by the appellant's relations. On these facts, this Court held (1) that importing components of a prohibited article was importing the prohibited Article, (2) that the evidence that washers imported by the relations of the appellant was considered by the Collector as evidence to confirm his conclusion that the nuts and bolts imported by him were in reality the components of the prohibited Article and (3) that where the decision of the statutory authority is whether an item falls under one or the other entry, the High Court could not interfere with that decision on the ground that it is erroneous. That is because when a statute confers power on an authority to decide a particular question, its decision, even if it is erroneous, is still within its jurisdiction.

17. What needs to be observed in that decision is that the Collector's decision was, under which of the two competing entries the imported items fell, that is, whether the goods were bolts and nuts or were components of the prohibited article. And the Court there laid down the well established principle that the High Court, under Article 226, could not interfere with the decision of the authority upon whom jurisdiction to decide the question, whether the goods fell under one or the other entry, was conferred on the ground that it was erroneous. Further, the nuts and bolts imported

by the appellant could only be used as components of the prohibited article. In other words, the import was of parts of the prohibited article and therefore of the prohibited article. It was, therefore, that the Court held (1) that the Customs' decision was not incorrect and (2) that the importer could not be allowed to do indirectly what he could not do directly.

18. It will be noticed that the Bombay decision in D. P. Anand's case (supra) was not dissented from but only distinguished, and therefore, the High Court in the present case was justified in following it. It is true, however, that counsel for the appellant there relied on that decision in support of his proposition that a ban on a completed article cannot be read as a ban on the importation of its constituents, which, when assembled, would result in the prohibited article, and this Court pointed out in answer that in D. P. Anand's case (supra), the imported components could not have, when assembled, made up the completed article because of the lack of certain essential parts which admittedly were not available in India and could not be imported. The real distinction, however, between the two cases was that the decision of the Collector in D. P. Anand's case (supra) was not, as was the decision in Girdharilal's case (supra) under which of the two competing entries the imported goods fell but that the imported goods in question, if assembled together, would not be the goods covered by the entry, and therefore not the goods in respect of which the licence was granted. Further, the articles in question even when assembled together, were not prohibited articles as in Girdharilal's case (supra). Girdharilal's case (supra) is clearly distinguishable because it is not as if motor-cycles and scooters are prohibited articles as was the case there. The restriction is not against licensees importing motor-cycles and scooters under Entry 294 and parts and accessories under Entry 295 but against the licensees under Entry 294 importing motor-cycles and scooters in C. K.D. condition. The question in the instant case was not under which of the two Entries, 294 or 295, the goods fell, but whether the goods were parts and accessories covered by Entry 295.

19. In Firm Illuri Subbayya Chetty and Sons v. Andhra Pradesh, (1964 (1) SCR 752 : AIR 1964 SC 322 : (1963) 2 SCJ 725.) the suit filed by the appellants was for recovery of a sum paid by way of purchase tax under the Madras General Sales Tax Act, 1939. The cause of action was that the amount had been illegally recovered. Relying on Section 18-A of the Act, this Court held that the expression "any assessment made under this Act" in that section was wide enough to cover all assessments made by the appropriate authorities under the Act and even if an assessment was incorrect, so long as it was within the jurisdiction of the authorities, it was not non-compliance of the statute, and therefore, was not covered by the principle laid down in the case of Mask and Co., (Supra). The Court observed :

> "There is no justification for the assumption that if a decision has been made by a taxing authority under the provisions of a taxing authority under the provisions of a taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on merits and as such it can be claimed that the provisions of the said statute have not been complied with."

This principle was repeated in Dhulabhai v. Madhya Pradesh (1968 (3) SCR 662 : AIR 1969 SC 78 : (1969) 1 SCJ 925.) where it was held that where a statute gives finality to the orders of the special tribunal the civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit, i.e., to correct an assessment which is erroneous. The Court also pointed out that in the Firm Illuri Subbayya Chetty and Sons case (supra), it had been said that mask and Co.'s case (supra) was an authority for the proposition that non-compliance with the provisions of the statute would render the entire proceedings before the authority illegal and without jurisdiction.

20. The case of Panthulu v. Andhra Pradesh (1970 (2) SCR 714 : AIR 1971 SC 71 : (1969) II SCWR 970.) illustrates as to when an authority can be said to have acted in non-compliance with the provisions of the statute under which it derives its authority. Section 3(2) of the madras Estates Land (Reduction of Rent) Act, XXXI of 1947, authorised the State Government to fix the rates of rent in respect of each class of Ryoti land in each village in the State after considering the recommendations of the Special Officer and the remarks of the Board of Revenue. Section 8(1) provided that no order passed under Section 3(2) could be challenged in a Civil Court. The suit filed by the appellants disputed the legality of the notification reducing the rates of land in respect of the dry Delta Royti lands in a village on the ground that the class of land had been determined to be Delta Ryoti lands on the basis only of the settlement register which did not contain any entry with respect to the village in question, that the settlement register could not be treated as conclusive and that proper factual enquiry was necessary. The High Court held that the suit was not maintainable by reason of section 8(1). Dua, J., speaking for the bench held that under Section 2 the special officer had to determine the average rate of cash rent per acre for each class of Ryoti land such as wet, dry or garden. This could only be done on relevant material. The special officer, however, had based his determination on a report of his assistant, who had considered the entry in the settlement register of another village. That meant that the special officer had made his determination on irrelevant evidence, i.e., on the register which did not contain any data with respect to the land in the village in question. On these facts he held that the determination by the special officer was based on no evidence with the result that it was in violation of the fundamental principles of judicial procedure. A fortiori, the order of the Government made under Section 3(2) on the basis of the recommendations of the special officer was not in conformity with provisions of the Act and was therefore outside the purview of Section 3(2) and consequently Section 8(1) was inapplicable. Thus, Section 8(1) was held not to apply because the Government's determination could not be said to be one under Section 3(2).

21. The words "a decision or order passed by an Officer of Customs under this Act" used in Section 188 of the Sea Customs Act must mean a real and not a purported determination. A determination, which takes into consideration factors which the officer has no right to take into account is no determination. This is also the view taken by courts in England. In such cases the provision excluding jurisdiction of Civil Courts cannot operate so as to exclude an inquiry by them. In Anisminic Ltd., v. the Foreign Compensation Commissioner, (1969 (1) ALL ER 208.) Lord Reid at pages 213 and 214 of the Report stated as follows :

> "It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that if failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to

> take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

To the same effect are also the observations of Lord Pearce at page 233. R. v. Fulham, Hammersmith and Kensington Rent Tribunal ((1953) 2 All ER 4.) is yet another decision of a tribunal properly embarking on an enquiry, that is, within its jurisdiction, but at the end of its making an order in excess of its jurisdiction which was held to be a nullity though it was an order of the kind which it was entitled to make in a proper case.

22. The principle thus is that exclusion of the jurisdiction of the Civil Courts is not to be readily inferred. Such exclusion, however, is inferred where the statute gives finality to the order of the tribunal on which it confers jurisdiction and provides for adequate remedy to do what the courts would normally do in such a proceeding before it. Even where a statute gives finality, such a provision does not exclude cases where the provisions of the particular statute have not been complied with or the tribunal has not acted in conformity with the fundamental principles of judicial procedure. The word "jurisdiction" has both a narrow and a wider meaning. In the sense of the former, it means the authority to embark upon an enquiry; in the sense of the letter it is used in several aspects, one of such aspects being that the decision of the tribunal is in non-compliance with the provisions of the Act. Accordingly, a determination by a tribunal of a question other than the one which the statute directs it to decide would be a decision not under the provisions of the Act, and therefore, in excess of its jurisdiction.

23. The respondents' licence admittedly authorised them to import goods covered by Entry 295. They could, therefore, legitimately import, on the strength of that licence, all and several kinds of parts and accessories of motor-cycles and scooters. The only question, therefore, before the Collector was whether the respondents' licence covered the goods imported by them, i.e., whether the goods were parts and accessories. If they were, the imports were legitimate and no question of their being not covered by the licence or the respondents having committed breach of Section 3 of the Imports and Exports (Control) Act or Section 167(8) of the Sea Customs Act could possibly arise. What the Collector, however, did was that he put the two consignments together and held that they made up 51 'Rixe' Mopeds in C.K.D. condition and were, for that reason, not the articles covered by Entry 295 but articles prohibited under remark (ii) of Entry 294. But Entry 294 deals with motor-cycles and scooters complete and assembled. Remark (ii) against that entry prohibits and importer who held a licence to import motor-cycles and scooters from importing motor-cycles and scooters in C.K.D. condition. Remark (ii) containing that prohibition had nothing to do with Entry 295 which did not contain any limitations or restrictions whatsoever against imports of parts and accessories.

24. That being so if an importer has imported parts and accessories, his import would be of the articles covered by Entry 295. The Collector could not say, if they were so covered by Entry 295, that, when lumped together, they would constitute other articles, namely, motor-cycles and scooters in C.K.D. condition. Such a process, if adopted by the Collector, would mean that he was inserting in Entry 295 a restriction which was not there. That obviously he had no power to do. Such a restriction would mean that though under a licence in respect of goods covered by Entry 295 an importer could import parts and accessories of all kinds and types, he shall not import all of them but only some, so that when put together they would not make them motor-cycles and scooters in C.K.D. condition. In the present case even that was not so because he would have to buy tyres, tubes and saddles to convert them into motor-cycles and scooters into C.K.D. condition. That would be

tantamount to the Collector making a new entry in place of Entry 295 which must mean non-compliance of that entry and acting in excess of jurisdiction during the course of his enquiry even though he had embarked upon the enquiry with jurisdiction. In our view that was precisely what the Collector did. This is, therefore, not one of those cases where between two competing entries the statutory authority applied one or the other, though in error, and where a Civil Court cannot interfere.

25. In this view the other was in non-compliance of the provisions of the statute, and therefore, was covered by the exceptions laid down in Mask and Co.'s case (supra). It was not an order in respect of which the Collector was invested with jurisdiction. That being so, the provision excluding the jurisdiction of the Civil Courts was not applicable. Indeed, the order was a nullity and Article 14 of the Limitation Act, of 1908, could not be applied to hold the suit time-barred. Even if Article 14 applied, it would not be time-barred, if, as the High Court pointed out, the date of the appellate order was taken into consideration.

26. The judgment of the Division Bench of the High Court, therefore, must be upheld. Consequently, the appeal fails and is dismissed with costs.

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