CIVIL WRIT

Before Khosla and Soni, JJ.

MESSRS AFGHAN COMMERCIAL CO. (INDIA), LTD.,—*Petitioners*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 18-D of 1952

Constitution of India—Article 226—Writs of Mandamus and Prohibition—Scope of—When to issue—The Sea Customs Act (VIII of 1878)—Sections 30(a) and 30(b)—Assessment made under section 30(a)—Mandamus or Prohibition—Writ of—Whether can issue to compel the Customs authorities to make assessment under section 30(b)—Revenue Recovery Act (I of 1890)—Section 4—Remedy under—Whether adequate.

1953

March, 10th

The petitioner was assessed for payment of customs duty under section 30(a) of the Sea Customs Act, 1878. He contended that he should be assessed under section 30(b). The contention was rejected and the petitioner filed the appeal and revision to prescribed authorities under the Act, which were also rejected. The petitioner then made petition for issuance of a writ of mandamus or prohibition to direct the Customs authorities to make assessment under section 30(b). The question arose whether such a writ could be issued.

Held, that the writ of mandamus is reserved for extraordinary emergencies, being a supplementary means of obtaining substantial justice where there is a clear legal right and no other adequate legal remedy. The mandamus cannot be used to perform the functions of an appeal and cannot be used to review errors of law committed by a tribunal acting within its jurisdiction. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdiction. The remedy by a writ is not available unless there is no other appropriate redress possible. The writ does not supersede legal remedies but supplies the want of such a remedy.

Held further, that where an act is specially enjoined by law, the manner of performance of which involves judicial action mandamus will lie to compel performance of the act but not to compel performance in any particular manner. The office of mandamus is to compel the exercise of judicial action, not to determine in advance what the action shall be. A writ ordinarily lies to compel an inferior court to act one way or another if it has jurisdiction, but the writ

cannot direct what particular judgment shall be rendered, or to control judicial judgment or power of discretion in any particular manner. The writ cannot be used as a substitute for an appeal to revise or correct alleged errors committed by a tribunal in the proper exercise of its lawful jurisdiction. Mandamus is not the means by which ruling of an inferior tribunal on questions of evidence, or jurisdictional matters involving the merits can be reviewed. This court has no power by mandamus to compel a subordinate tribunal to reverse a conclusion already reached, to correct an erroneous decision, or to direct it in what particular way it shall proceed or shall decide a specified question. When the subordinate tribunal takes up any question for consideration, and in its best judgment decides, it exercises its jurisdiction and performs its duty, and there is nothing left but a supposed judicial error for review. That error cannot be corrected by mandamus.

Held, that the principles under which a writ of prohibition lies are practically the same as those under which a writ of mandamus lies. Prohibition is primarily and principally a preventive rather than a remedial or corrective remedy, its office being rather to arrest proceedings than to undo them. A writ of prohibition cannot be used to usurp or perform the functions of an appeal, writ of error or certiorari, or to correct any mistakes, errors or irregularities in deciding any question of law or fact within the jurisdiction of the tribunal. The office of the writ is to prevent an unlawful assumption of jurisdiction not to correct mere errors and irregularities in matters over which the tribunal has cognizance. Where the general scope and purpose of the action is within the jurisdiction of the tribunal, any error or overstepping of its authority in a portion of its judgment, or any other error in its proceedings, is only ground for a review or appeal, and not prohibition. That is to say, where there is authority to do the act, but the manner of doing it is improper, the writ will not lie. In other words, whatever power is conferred may be exercised and if it be exercised injudiciously, erroneously or irregularly, it amounts to error merely and not to a usurpation or excess of jurisdiction. In such a case, however gross the error, irregularity or mistake, the writ does not lie, not because there exist other adequate remedies, or such remedies are inhibited, but for the reason that there has been no usurpation or abuse of power.

Held also, that there is a distinction between the right to relief and the right to a remedy by mandamus or prohibition to grant such relief. Under section 4 of the Revenue Recovery Act, 1890, it is open to a person who feels that the tax has been improperly levied on him to deposit the tax and then to bring a suit against Government for recovery of tax. In that suit all questions of fact relating

to evidence which have not been properly considered by the assessing tribunal or questions of law as to the applicability of one or other of the sections of the Sea Customs Act, can be adequately gone into. The remedy is an adequate remedy.

Held, that in the circumstances of this case the remedy by means of a writ whether of mandamus or prohibition was misconceived.

Ford Motor Co. of India, Ltd. v. *Secretary of State* (1), relied on.

Petition under Article 226 of the Constitution of India, praying that this Hon'ble Court, may be pleased to issue a writ of mandamus or writ of Prohibition against the respondents restraining them from proceeding with demand notices, dated the 17th January, 1949 and 29th December 1951, or taking any further action for the recovery of the amount of Rs. 37,242-12-0, claimed from the petitioners as differential duty or issue such directions or orders or writs as this Hon'ble Court may consider proper in the circumstances of the case.

ANANT RAM WHIG and JINDRA LAL, for Petitioners.

BISHAMBAR DAYAL, for Respondents.

ORDER.

SONI, J. This is an application under Article 226 of the Constitution for the issue of a writ of mandamus or prohibition against the Government so as to restrain them from proceeding with demanding a sum of Rs. 37,242-12-0 from the petitioner as extra duty. Soni, J.

The petitioner is the Afghan Commercial Company, a Company registered under Indian Companies Act. This Company deals mainly in export and import of dry fruit. The Company placed orders in Afghanistan for six wagons of dry fruit and the same was despatched and received in India. The Customs Officer assessed the duty leviable under section 30(b) of the Sea Customs Act, and the petitioners paid a duty amounting to Rs. 81,852-13-0 on various dates at the end of 1948. The Government realising that assessment had been wrongly made under the provisions of sec-

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tion 30(b) while it should have been made under the provisions of section 30(a) of the Sea Customs Act, issued a demand notice in January 1949, under section 39 of the Sea Customs Act calling upon the petitioner to pay an extra duty of Rs. 47,242-12-0. Later on it was realised that there was an arithmetical error in calculation and the duty demanded was reduced to Rs. 37,242-12-0. The Company protested and filed an appeal under section 188 of the Sea Customs Act. This appeal was rejected. The Company then preferred a revision to Government as provided by the Sea Customs Act. This revision was also rejected. The original application was rejected by the Collector, Central Excise, New Delhi, on the 26th March 1949, the Central Board of Revenue rejected the appeal on the 14th of August 1950, and the Government of India rejected the revision on the 12th of October 1951. Thereupon the Company filed the present application for a writ under Article 226 of the Constitution in this Court in March 1952.

The Government in their reply stated that originally the duty was wrongly levied under the provisions of section 30(b) of the Sea Customs Act, while it should have been levied under the provisions of section 30(a) of the Act and that, therefore, this mistake was one which was covered by the provisions of section 39 of the Sea Customs Act, and, therefore, an order to pay extra duty was properly made under the provisions of the latter section. The Government also stated that the remedies given to the petitioner under the Act were availed of by them. The appeal was properly made by the Company. Every opportunity was given to the Company to lay their case before the appellate authority and their representations were properly taken into consideration. The petitioner Company themselves wrote a letter, Exhibit H, in which they expressed thankfulness of the courtesy shown and the patient hearing given by the Assistant Collector of Customs to the Company's representatives. The Government submit that as the provisions made for the assessment and for the extra demand were provisions which had been invoked by Government and the

Company had been given all opportunities to place their case both in appeal as well as in revision there was no justification for this Court in issuing either a writ of mandamus or a writ of prohibition restraining the Government from collecting extra duty. In my opinion the contention of Government is well-founded.

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The principles under which a writ of mandamus is issued are well known. The writ of mandamus is reserved for extraordinary emergencies, being a supplementary means of obtaining substantial justice where there is a clear legal right and no other adequate legal remedy. The mandamus cannot be used to perform the functions of an appeal and cannot be used to review errors of law committed by a tribunal acting within its jurisdiction. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. The remedy by a writ is not available unless there is no other appropriate redress possible. The writ does not supersede legal remedies but supplies the want of such a remedy. The contention of the petitioner is that the Customs authorities should have applied the provisions of section 30 (b) instead of 30 (a). The petitioner does not allege that there was no jurisdiction in the assessing authority but that in the exercise of its jurisdiction it came to a wrong decision in point of law, not appreciating the facts properly. But a writ of mandamus is not intended for that purpose. Where an act is specially enjoined by law, the manner of performance of which involves judicial action, mandamus will lie to compel performance of the act but not to compel performance in any particular manner. The office of mandamus is to compel the exercise of judicial action, not to determine in advance what the action shall be. A writ ordinarily lies to compel an inferior court to act one way or another if it has jurisdiction, but the writ cannot direct what particular judgment shall be rendered, or to control judicial judgment or power or discretion in any particular manner. The writ cannot be used

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as a substitute for an appeal to revise or correct alleged errors committed by a tribunal in the proper exercise of its lawful jurisdiction. Mandamus is not the means by which ruling of an inferior tribunal on questions of evidence, or jurisdictional matters involving the merits can be reviewed. This Court has no power by mandamus to compel a subordinate tribunal to reverse a conclusion already reached, to correct an erroneous decision, or to direct it in what particular way it shall proceed or shall decide a specified question. When the subordinate tribunal takes up any question for consideration, and in its best judgment decides, it exercises its jurisdiction and performs its duty, and there is nothing left but a supposed judicial error for review. That error cannot be corrected by mandamus. A writ of prohibition also does not lie. The principles under which a writ of prohibition lies are practically the same as those under which a writ of mandamus lies. Prohibition is primarily and principally a preventive rather than a remedial or corrective remedy, its office being rather to arrest proceedings than to undo them. A writ of prohibition cannot be used to usurp or perform the functions of an appeal, writ of error or certiorari, or to correct any mistakes, errors or irregularities in deciding any question of law or fact within the jurisdiction of the tribunal. The office of the writ is to prevent an unlawful assumption of jurisdiction, not to correct mere errors and irregularities in matters over which the tribunal has cognizance. Where the general scope and purpose of the action is within the jurisdiction of the tribunal, any error or overstepping of its authority in a portion of its judgment, or any other error in its proceedings, is only ground for a review or appeal, and not prohibition. That is to say, where there is authority to do the act, but the manner of doing it is improper, the writ will not lie. In other words, whatever power is conferred may be exercised and if it be exercised injudiciously, erroneously or irregularly, it amounts to error merely and not to a usurpation or excess of jurisdiction. In such a case, however gross the error, irregularity or mistake, the writ does not lie, not because there exist other adequate reme-

dies, or such remedies are inhibited, but for the reason that there has been no usurpation or abuse of power.

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These observations regarding writs of prohibition and mandamus are well known and most of what I have said above have been taken by me from 'Ferris' Book on Extraordinary Legal Remedies. There is a distinction which should always be borne in mind between the right to relief and the right to a remedy by mandamus or prohibition to grant such relief. The Legislature has indicated how a relief can in such cases be obtained. Under section 4 of the Revenue Recovery Act, 1890, it is open to a person who feels that the tax has been improperly levied on him to deposit the tax and then to bring a suit against Government for the recovery of tax. In that suit all questions of fact relating to evidence which has not been properly considered by the assessing tribunal or questions of law as to the applicability of one or other of the sections of the Sea Customs Act can be adequately gone into. The remedy is an adequate remedy. In a case which went up to the Privy Council reported as *Ford Motor Co. of India Ltd.* v. *Secretary of State* (1), the person aggrieved by the assessment had deposited the amount and had then brought the suit. Writs of mandamus or prohibition were well known in Bombay, Calcutta and Madras. They may not have been available in other parts of the country before the Constitution came into force. Therefore this ruling from the Bombay High Court shows the method to be followed in which questions relating to a tax which the tax-payer feels he should not be called upon to pay.

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In my view the remedy by means of a writ whether of mandamus or prohibition was misconceived. The application is dismissed with costs.

KHOSLA, J.—I agree.

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