declared. The Act does not contemplate an enquiry whether the dividend is properly paid credited or distributed before liability to pay Tax attaches thereto. The answer to the second contention for reasons already set out by us must be in the negative.

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Kishinchand Chellaram v. Commissioner of Income-tax Central Bombay

Shah J.

The appeals therefore fail and are dismissed. In the circumstances of the case there will be no order as to costs.

Appeals dismissed.

THE COLLECTOR OF CUSTOMS, MADRAS

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April 19.

v.

K. GANGA SETTY

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

High Court—Decision of Customs Authorities—Construction of entries in tariff Schedule—Jurisdiction to interfere—"Feed oats" used horse feed—Whether falls within "folder" or "grain"—Import Trade Control Schedule, Part IV. Item Nos. 32 and 42—Specific Relief Act, 1877 (1 of 1877). s. 45

Item 42 of Part IV of the Import Trade Control Schedule permitted "fodder....." to be imported without a special import licence from a soft Currency area... Item 32 of the same Schedule related to "grain...."and included oats; and a licence was necessary for importing goods covered by this item. The respondent imported from Australia, without a licence, goods described as "feed-oats" for feeding race horses. He claimed that the goods were covered by Item 42 and could be imported without a licence. The customs authorities held that the goods were "grains" within the meaning of Item 32 which could not be imported without a licence, confiscated the goods and imposed a penalty in lieu of confiscation. The respondent moved the High Court for the issue of a writ of mandamus under s. 45 specific Relief Act. The High Court held that the

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goods were covered by item 42 and issued a writ prohibiting the authorities from recovering the penalty imposed.

Held, that the High Court had no jurisdiction to interfere with the decision of the customs authorities that the goods fell within item 32. It is primarily for the Import Control authorities to determine the head of entry under which any particular commodity falls, and only when the construction adopted is perverse are the courts entitled to interfere. In the present case the decision of the customs authorities was not one which could not be supported on any reasonable basis and could be called perverse.

Venkatesvaran v. *Wadhwani*, A. I. R. 1961 S. C. 1506, referred to.

Held, further that the goods imported fell within item 82 and not within item 42. Oats are undoubtedly grain. Any particular species of grain cannot be excluded from the item "grain" merely because it is capable of being used as cattle or horse feed. The matter is made clear by the reference to "oats" in item 32 where grain is classified into two categories, oats and "other gains".

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 568 of 1960.

Appeal from the judgment and order dated April 6, 1956, of the Madras High Court in O.. S. A. No. 147 of 1953.

H. N. Sanyal, Additional Solicitor-General of India, V. D. Mahajan and *P. D. Menon*, for the appellant.

R. Ganapathy Iyer, M. S. K. *Sastri* and *M. S. Narasimhan*, for the respondent.

1962. April 19. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR, J.—The point involved in this appeal which comes before us on a certificate of fitness under Art. 133 (1)(c) granted by the High Court of Madras is a very short one and relates to the nature and extent of the jurisdiction possessed by the High Court in considering the validity

of an order of the Customs Authorities interpreting the provisions of the entries in the Tariff Schedule as regards the imposition of duties.

The respondent imported from Australia a quantity of oats which was described in the indent, contract and shipping documents as "standard feed-oats". The commodity imported consisted of oats in whole grain. The question raised related to the proper classification of the goods imported under the Import Trade Control Schedules current during the period July to December 1952 when the consignment reached India. The controversy centered round the point whether the "feed-oats" fell within item 42 or within item 32 of the Circular. Item 42 ran:

"Fodder, bran and pollards—O.G.L.—Soft" i.e., this item was covered by an open general licence and so no special import licence was necessary for the import of these goods from a soft currency area, while as regards item 32 the entry ran:

> "Grain, not otherwise specified, including broken grain but excluding flour—
>
> (a) oats
>
> (b) others —Ports —Nil—A.V."

which meant that a licence was necessary for the importation of the goods specified in it which would be granted by the Joint Chief Controller of Imports or Exports at Calcutta and Bombay, if they were the ports of entry, and by the Deputy Chief Controller of Imports & Exports Madras if they were to be imported through Madras; "nil" that no quotas were specified limiting the quantity to be imported, & that actual users (A.U.) could apply for the licence.

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The respondent who carried on business in fodder under the name and style of Balakrishna Flour Mills placed an order with an Australian firm for the supply of whole grain "feed-oats" without obtaining any licence for the import. The goods arrived in Madras on August 1, 1952 and when the respondent attempted to clear the goods, the Customs Authorities insisted on the production of a licence before he would be permitted to do so. The Assistant Collector held that the goods imported fell within item 32 and as admittedly the respondent held no licence from the Deputy Chief Controller of Imports & Exports, Madras covering the import, there had been a contravention of s. 19 of the Sea Customs Act read with s. 3(2) of the Import & Export Control Act, 1947 and so proceeded to deal with the violation under s. 167(8) of the Sea Customs Act. He directed the confiscation of the goods and imposed a fine of Rs.5,000/- in lieu of confiscation, if the respondent desired to clear the goods. An appeal filed to the Collector of Customs was rejected and thereafter the respondent moved the High Court for the issue of a writ of *mandamus* under s. 45 of the Specific Relief Act.

In his affidavit in support of the application the respondent besides contending that oats in full-grain fell within the head 'fodder' under item 42, set out earlier, because (1) he had imported them for being made available solely for feeding race-horses at Bangalore, (2) that in South India oats was not used as human foods but only as feed for horses, and (3) that in any event, he had been misled by an answer that he received from the Deputy Chief Controller of Imports, Madras of whom he had made an enquiry as to whether feed-oats could be imported under an open general licence under serial No. 42 and had received an affirmative answer The learned

Single Judge who heard the application dismissed it on the ground that the order of the Customs Authorities classifying uncrushed feeds-oats as grain and not as fodder could not be said to be either perverse or malafide and that consequently the Court could not interfere with the decision of the authorities. An appeal was perferred therefrom to a Division Bench and the learned Judged allowed the appeal and issued a direction prohibiting the Collector and his subordinates from collecting or taking steps to recover the fines and penalties imposed on the respondent. It is the correctness of this order of the Division Bench that is challenged in this appeal.

Shortly stated, the ground on which the learned Judges allowed the respondent's appeal were: (1) that the decision of the Customs authorities as regards the entry of the Tariff classification within which an imported commodity fell was not final but was open to judicial review and had ultimately to be decided by the Courts, (2) In the case before the Court, entry 32 reading "grain" had, in the absence of any specific entry regarding oats to be read as excluding all grains which would be "fodder" i.e., which were usually used as cattle or animal feed, and that as the respondent had imported the oats for use as horse-feed the proper item within which the goods imported fell was item 42—Fodder etc.

In arriving at this conclusion the learned Judges referred to the answer of the Deputy Chief Controller to the query by the respondent to which we have adverted earlier, as a circumstance indicative of the doubts entertained by the departmental authorities themselves on this matter.

With very great respect to the learned Judges we are unable to agree with them both as regards the function and jurisdiction of the Court in matters

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of this type, as well as in their actual construction of the relevant entries in the Import Trade Circular. As regards the limits of the jurisdiction of the Court it is sufficient to refer to the decision in *Venkatesvaram* v. *Wadhwani*. (1) That was a case where a party moved the High Court under Art.226 of the Constitution, and not as here under s. 45 of the Specific Relief Act under which the power of the Court to interfere is certainly narrower and not wider. This Court proceeded on the basis that it is primarily for the Import Control authorities to determine the head or entry under which any particular commodity fell; but that if in doing so, these authorities adopted a construction which no reasonable person could adopt i.e., if the construction was perverse then it was a case in which the Court was competent to interfere. In other words, if there were two constructions which an entry could reasonably bear, and one of them which was in favour of Revenue was adopted, the Court has no jurisdiction to interfere merely because the other interpretation favourable to the subject appeals to the Court as the better one to adopt.

In the present case it could not be contended that uncrushed oats did not answer the description of "grain" and therefore the decision of the Customs authorities holding that the oats imported fell within item 32 could not be said to be a view which on no reasonable interpretation could be entertained. In other words, the conclusion or decision of the Customs authorities was rationally supportable. We consider that even if there was no specific reference to "oats" in entry 32, any particular species of grain cannot be excluded merely because it is capable of being used as cattle or horse feed. The word "fodder" is defined in the Oxford dictionary as "dried food, hay, straw etc. for stall feeding cattle". Without resorting to

(1) A.I.R. [1961] S.C. 1506,

Johnson's famous definition of "oats" in his Dictionary, it is sufficient to point out that oats, though they may serve as food for horses, is also used as human food; in other words it is not by its nature or characteristic capable of serving solely as food for animals and incapable of use in the human dietary. For instance, all coarse grains—like *Ragi* and *Khambu*—serve as food for man as well as for cattle. The mere fact therefore that a grain is capable of being used as horse or other cattle feed does not make it "fodder" excluding it from the category of grain to which it admittedly belongs. The decision of the Assistant Collector and of the Collector on appeal holding the oats imported by the respondent to be grain cannot therefore be characterised as perverse or malafide and in the circumstances we consider that the learned Judges of the High Court erred in interfering with the order of the appellant.

In this particular case however, the matter is placed beyond the pale of controversy by the specific reference to "oats" in entry 32 where "grain" is classified into two categories "oats" and "other grains". It is apparent that unfortunately the attention of the learned Judges was not drawn to the entry in full, because, in the course of the judgment they point out that the construction of entry 42 would be different if there had been a specific reference to oats in entry 32.

Learned Counsel for the respondent laid some stress on the respondent having been misled by the answer of the Deputy Chief Controller of Exports to a query as regards the scope of entry 42. The answer which was stated to have misled was in these terms :

> "Feed oats classifiable under serial 42 of Part IV can be imported under Open General License No. XXIII"

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an answer by no means a model of clarity. This letter is dated September 14, 1951, and it is the case of the respondent that he placed an order for the import of "feed-oats" because he was led to believe that for its import no licence was necessary. The contract for the purchase of the goods for import was entered into in the beginning of June, 1952, but before that date the Deputy Chief Controller wrote a further letter to the respondent on January 1, 1952, clarifying the answer he gave in his earlier letter, and pointing out that whereas if the oats were in wholegrain it would fall within item 32, but if the same was crushed, it would be "fodder" within item 42. The respondent however, denied having received this letter and there is no specific finding on this point by the learned Judges of the High Court. We do not propose to record any finding either. We are drawing attention to this matter merely for pointing out that it is a matter which the authorities could properly take into account in modifying, if they consider that the respondent has really been misled, the quantum of penalty imposed on the respondent.

The appeal is accordingly allowed and the order of the Division Bench of the High Court set aside. The application filed by the respondent under s. 45 of the Specific Relief Act will stand dismissed. In the circumstances of the case we direct that the parties bear their own costs in this Court.

Appeal allowed.