



CASES AND COMMENTS

Customs, Cigarettes and Cosmetics.

The decision of the Supreme Court in *Babu Lal Amtha Lal Mehta v. Collector of Customs, Calcutta*¹ has raised an important issue—whether the new Section 178-A of the Sea Customs Act (1878), violates some of the fundamental rights guaranteed by the Indian Constitution.

Section 178-A was inserted by Section 14 of the Amending Act XXI of 1955.² The purpose of this amendment, as explained by the Minister of Revenue,³ was to vest certain additional powers in Customs authorities in order to control smuggling and to safeguard the revenue of the State. The section requires that where gold, gold manufactures, diamonds and other precious stones, cigarettes and cosmetics and *any other goods which are specified by the Central Government* are seized by any officer of customs in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods are seized. In brief, it puts the burden of proof in cases of certain goods upon the possessor. The validity of this section was challenged in the above case mainly on the ground that it offended Art. 14 of the Constitution of India.

The facts of the case are briefly as follows: The petitioner who carried on business as a broker in diamonds and precious stones was found in possession of 475 pieces of diamonds and one piece of synthetic stone. These goods were believed to be smuggled goods by the Customs authorities. The Customs Officer served him a notice stating that there were reasonable grounds to believe that those goods were illegally imported into India and, therefore, if they were not

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1. A.I.R. 1957 S.C. 877.
 2. See Central Acts, 1955, (Supplement to Madras Law Journal) p.77. This amendment was introduced in order to give effect to the suggestion made by "Taxation Inquiry Commission Report" Vol. II, pp. 320-21. This runs as follows:

178A: '(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods, shall be on the person from whose possession the goods were seized.

(2) This section shall apply to gold, gold manufactures, diamonds and other precious stones, cigarettes and cosmetics and any other goods which the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every notification issued under sub-section (2) shall be laid before both Houses of Parliament as soon as may be after it is issued.
 3. See Shri A.C. Guha, Lok Sabha Debates, Vol. I, Part 2 (1955), pp. 1924-25.



to be confiscated, he should submit any documents which might be in his possession showing that the goods were legally imported into India on payment of proper customs duty and on production of a valid import trade control license. It was also stated that if he was not the importer, he should produce evidence to show that he was purchaser. After looking into the evidence produced by the petitioner, the Customs Collector passed an order that since the petitioner had failed to discharge the onus under Section 178-A, the goods should be confiscated under Sections 167(8)⁴ and 167(39)⁵ of the Sea Customs Act. The petitioner later filed an application to the Supreme Court for a writ under Art. 32 of the Constitution.

It was argued for the petitioner that this section violated Arts. 14, 19(i)(f) and (g) and 31. The main argument was that the section gave to the Customs authorities unrestricted, arbitrary and naked power by laying the burden of proof upon the possessor and thus was opposed to the fundamental principles of justice in so far as it reversed the rule of burden of proof that the party who alleges a fact must prove it. It therefore involved discrimination between one possessor of gold and another and offended Art. 14 of the Constitution.

Justice Govinda Menon, for a unanimous Court, rejected these arguments and held that Section 178-A was valid. The learned Judge referred to several cases on Art. 14, but relied mainly upon the principles laid down in *Budhan Choudhry v. State of Bihar*⁶ to the effect that a legislative classification was valid under Article 14 if it was based on an intelligible differentia and had a rational relation to the object sought to be achieved.

In the case in question, the learned Judge said that the object of the section was to prevent smuggling. The differentia on the basis of which the goods had been classified and the presumption raised by the section obviously had a rational relation to the object sought to be achieved by the Act and, therefore, the legislation successfully fulfilled the conditions for its validity.⁷

4. 167 (8) : "If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Ch. IV of this Act, be imported or exported from India contrary to such prohibition or restriction; or if any attempt be made so to import or export any such goods, such goods shall be liable to confiscation ; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees."
5. 167 (39) : "If without entry duly made, any goods are taken or passed out of any custom house or wharf, the person so taking or passing such goods shall in every such case be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation."
6. A.I.R. 1955 S.C. 191 at 193.
7. A.I.R. 1957 S.C. 877 at 881.



It is clear that Section 178-A vests in the Customs authorities a very drastic power without prescribing any standard or norm to be followed by them for its exercise. The section simply states that where any goods (as mentioned in section 178-A(2)) are seized in the *reasonable belief* that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods are seized. The words 'reasonable belief' were interpreted by the courts to mean subjective belief. "The only prerequisite", said the Supreme Court, "for the application of the section is the subjectivity of the customs officer in having a reasonable belief that the goods are smuggled."⁸ It may be observed that when the Amendment Bill was under discussion in the Parliament, several members felt the harshness of such provision,⁹ and the Supreme Court too, was not unaware of the arbitrary nature of the section. The learned judge in the instant case observed :

"No doubt the content and import of the section are very wide. It applies not only to the actual smuggler from whose possession the goods are seized but also to those who came into possession of the goods after having purchased the same after the same has passed through many hands or agencies. For example, if the customs authorities have reasonable belief that certain goods in the possession of an innocent party are smuggled goods and the same are seized under the provisions of this Act, then the person from whose possession the goods are seized, however innocent he may be, has to prove that the goods are not smuggled articles. This is no doubt a very heavy and onerous duty cast on an innocent possessor who, for aught one knows, may have bona fide paid adequate consideration for the purchase of the articles without knowing that the same has been smuggled
....."¹⁰

8. *Ibid* at p. 881.

9. Shri Dabhi observed that it was against the accepted principle of criminal jurisprudence, namely, that in a criminal case, the burden lies upon the prosecution, Lok Sabha Debates, Vol. III, Part 2(1955), p. 4692. Shri Tulsi Das accepted the grant of powers but he said that if safeguards were there the Customs Officers in the department would not create unnecessary difficulties to the public, *ibid.* p. 4712. Shri Lanka Sundaram said : 'My objection fundamentally is that unless the prosecution has an element of share or, in other words, unless a definite burden is placed upon it to prove guilt, it should not be empowered with powers to make the accused prove his innocence,' *ibid.* p. 4752. All of them suggested that the actual solution for preventing smuggling lay in toning up the administration and not in giving such arbitrary powers to the customs authorities.

10. A.I.R. 1957 S.C. 877 at pp. 880-881.



If this was what the Supreme Court felt, the learned Judges need not perhaps have laboured to justify the classification made in the section on the ground that it was a well defined classification based on an 'intelligible differentia.' The court said: 'the section applied only to certain goods described in sub-section (2).....' But it should not be forgotten that the Central Government is empowered under sub-section (2) of section 178-A to specify other goods also. Then it is difficult to say that the section would apply only to few specified goods. It is felt that the argument of valid classification looks clouded. One is at a loss to know as to what sort of classification the court was having in mind—of the goods or of the persons.

Even assuming that the section is not violative of Article 14, it is submitted that it is an unreasonable restriction upon citizens' right to hold property and to carry on business and trade guaranteed by Art. (19)(i)(f) and (g). A recent decision of the Bombay High Court (which is not yet reported) has declared the provisions of Section 178-A of the Sea Customs Act, requiring the possessor of gold to prove that the same is not smuggled, *ultra vires* of Art. 19(i) (f) and (g) of the Constitution.¹¹

It is hoped that the Supreme Court will get another chance to strike down this draconic piece of legislation if the case decided by the Bombay High Court comes up on appeal.¹²

S.P.S.

11. *Amichand & Co. v. Additional Collector of Customs:*

See '*Statesman*', May 21, 1958, p. 4. column 2.

It may be that in future the Customs Officers, instead of taking resort under S. 178-A of the Sea Customs Act, would try to reach the same end by exercising power under S. 5(3) of the Land Customs Act (1924) which empowers the Land Customs Officers to require from the person in charge of any goods to produce a permit whenever such officer has reason to believe such goods to be imported or to be about to be exported from, or to, any foreign territory, and the whole of India appears to be land customs area.

12. Apart from the constitutionality of the section, it may also be observed that the procedure laid down in the Act for the seizure of goods was not fully followed. It is provided that when anything is seized under Sea Customs Act, the officer or any person who makes seizure shall on demand give a statement in writing of the reasons for such seizure (S. 180). In this case the demand for reasons was made twice (on 7-5-1955 & 16-5-1955) and the only reply (on 23-5-1955) was that the goods in question were seized on reasonable suspicion that the same had been imported into India illegally. Looking closely at the facts we would find that 'illegal importation' was the very charge against the petitioner. And it could not serve as specific reasons for the seizure which the petitioner was requesting for. Hence, it can be said that there was procedural flaw by not following the procedure laid down in the Sea Customs Act relating to seizure of goods.