

B. C. MITRA ON THE CUSTOMS ACT 1962. Eastern Law House,  
Calcutta, 1970. pp 79+335. Rs. 25.

B. C. Mitra On The Customs Act 1962 is an interesting book to go through. No one can deny the importance of customs law and procedure in the present world of science and technology passing through the process of international trade and transactions. The General Agreement on Tariffs and Trade bears an ample testimony to this fact.<sup>1</sup> While on the one side there are principles of *laissez-faire*, free and equal trade and open-door policy, on the other hand there are needs for tariff barriers, foreign exchange controls, and import and export trade controls. Certain economic interests of the 'developed' and 'developing' countries clash on many vital issues. Under these circumstances the importance of the customs law and procedure gathers further momentum. The serious problem of smuggling faced by some developing countries make such laws and procedure further complicated.<sup>2</sup>

Taking these facts into account, Mitra has made a very bold attempt to write something on a subject on which very few have written, and none very significantly, and on which there is need to write much in the interests of the importers, exporters, international passengers, shipping agents, members of the crew, as well as customs officials and the government. Although the customs law in India is as old as the age of Mauryas,<sup>3</sup> there was no unified code on the subject till 1878, which again was revised in 1962 and its importance is growing day by day. In spite of this, it is to be regretted that the customs law and procedure, like the central excise law and procedure, is not receiving any notable attention by the Law Schools in the country.

The book contains total 414 pages. The first 63 pages are a reproduction of the Act LII of 1962 followed by its 1969 Amendments. Thereafter the author draws a comparative table of provisions under the Customs Act 1962 and the Sea Customs Act of 1878, and gives an introduction to the subject of interpretation of statutes.

The following pages from 1 to 83 give a commentary on each section of the Customs Act 1962 and form the main contribution of the author. Then the book gives certain Appendixes. Appendix A gives extracts from the Statement of Objects and Reasons of Bill No. 56 of 1962. Notes on the Clauses of the Bill, Report of the Select Committee and Minutes of Dissent.

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1. G.A.T.T. 61 stat. A 3 (pts. 586) (1947) T.I.A.S. No. 1700 as amended. Came into force on January 1, 1948. B.T.N. is an off-shoot of the same.

2. The Statement of Objects and Reasons of Bill No. 56 of 1962, henceforth referred to as Statement, remarks—"Smuggling consequent to controlled economy, has presented new problems." Gazette of India Extraordinary, June 15, 1962, Pt. II, Sec. 2, 334-370; see also D.I.R. 1962. Part XII A, sec. 131B; see also a recent note of the author on smuggling in, *J.I.L.I.* Vol. 12, No. 2 at 322-332.

3. See, Kautilya's *Arthashastra* ed. & translated by Samshastri (1909).

Appendix B gives the text of the Sea Customs Act and Appendix C gives texts of or relevant extracts from the relevant Acts. Appendix D gives some relevant rules, Appendix E deals with some relevant regulations, and Appendix F with relevant orders. Then the book is followed by an addenda, a table of cases, an index and an errata.

The first glimpse of a contribution from the side of the author is found in the portion of 'introduction' wherein the author gives some of the principal rules of interpretation in a philosophic way and displays his great knowledge of the subject especially with respect to the large number of cases cited in the foot-notes.<sup>4</sup> Though it is a big task, but such things are not of great importance for a book written on the Customs Act. It could have been of much more use in a book written on interpretation of statutes or jurisprudence.

Further contribution of the author lies from pages 1 to 83 wherein he gives a 'running' commentary on each of the provisions of the Customs Act. Almost without any exception, the author compares the provisions of the Customs Act with those of the Sea Customs Act 1878, repealed since 1962, giving an idea that the title of the book would have served better as the 'Customs Act 1962 as compared with the Sea Customs Act 1878' instead of just the Customs Act 1962. Such comparision of the corresponding provisions is a repetition of pages 72-73 and also does not serve any other but academic interest. Moreover, such dual reference to the statutes might confuse a reader who is not well acquainted with the customs law and procedure.

Due to the paucity of time and space, it will not be possible to review the author's comments on each and every provision of the Act, but one will be shocked to find that more than ninety per cent of the author's comments are a ditto reproduction of Appendix A giving extracts from the Statement of Objects and Reasons of the Bill No. 56 of 1962. This was not expected from an author of great repute. Of course, the author tries to supplement such reproductions by referring to some cases here and there, but except for the comments from sections 105 to 147, others are a blind reproduction of Appendix A. Though under section 90, a detailed reference is made to the case of *Sheikh Mohd Omer v. Collector of Customs*,<sup>5</sup> which discusses what is 'baggage', section 90 relates to concessions in respect of imported stores for navy and has nothing to do with 'baggage'. This case could have been better utilised under section 77 or 79. Again the story form in which the case is referred to, provides a stale reading about the breeding and pregnancy of a mare. Such references could have been very well ignored and only relevant portions cited. Further, the comments on section 2, which involves a lot of interpretations and should have been in details, is unduly neglected.

It is now imperative to review in some greater details the comments of the author on some of the important provisions of the Act on which he has taken more pains. To start with, it is good to take section 100

4. The author has cited 44 cases in 5 pages.

5. A.I.R. 1966 Cal., 237.

which relates to the power to search suspected persons entering or leaving India. Though the comments are a ditto reproduction of the Statement of Objects, it draws attention because of a reference made to a case by the author. Relying on the decision of *S. Fernandes v. The State*,<sup>6</sup> the author remarks :

It should be noted that a Preventive Officer of the Customs Department is a police officer in its extended sense within the meaning of Section 25 Evidence Act, and as such no confession made to him shall be proved as against a person accused of any offence.<sup>7</sup>

Such a reference to an old decision of the Calcutta High Court is grossly misleading to the reader since it has been decided by the Supreme Court on various occasions that the customs officers are not police officers within the meaning of section 25 of the Evidence Act 1872.<sup>8</sup>

Comments have been made in detail on section 105 which relates to the powers of the customs officers to search premises. The first three paras are a reproduction of the Statement so much so that like the Statement which was made in 1962, the author, writing in 1970, also refers to the 'Central Board of Revenue' forgetting that there is no such body as the Central Board of Revenue since January 1, 1964, and the same has been split into two *viz.* the Central Board of Direct Taxes and the Central Board of Excise and Customs. Then the author discusses at length the scope of search warrants under section 172 of the Sea Customs Act 1878. Repeated reference is made to the case of *Srivastava v. Gajanan*,<sup>9</sup> wherein it was held that the custody of the documents seized during the search was to remain with the Magistrate and not with the customs officials since the warrants were issued by the Magistrate. Such references are of no use since under section 105 of the Customs Act 1962 the power to issue search warrants are specifically given to the Assistant Collectors of Customs. The references to the case of *Mohd. Serajuddin v. Mishra*,<sup>10</sup> and the powers of the Magistrates to issue search warrants under section 172 of the Sea Customs Act 1878 are equally irrelevant in view of section 105 of the Act of 1962. Here the author could have usefully discussed the implications of such provisions as well as those of sections 94 and 96 of the Criminal Procedure Code 1898 in the light of article 20(3) of the Constitution and the leading cases decided by the Supreme Court on the subject such as those of *M. P. Sharma v. Satish Chandra*,<sup>11</sup> and *State of Bombay v. Kathi Kalu Oghad*.<sup>12</sup>

6. A.I.R. 1953 Cal. 219.

7. B.C. Mitra On The Customs Act 1962 (hereinafter cited as *Mitra*) (1970) at 34.

8. See, for example *State of Punjab v. Barkat Ram*, A.I.R. 1962 S.C. 276; *P. Shankar & Others v. Asstt. Collector of Customs, Madras*, Cr. App. Nos. 52 & 104 of 1965, and *R.C. Mehta v. State of West Bengal*, Cr. App. No. 27 of 1967.

9. A.I.R. 1956 Cal. 609.

10. A.I.R. 1962 S.C. 759.

11. A.I.R. 1954 S.C. 300.

12. A.I.R. 1961 S.C. 1808.

Section 108 is one of the best commented upon provisions in the book wherein the author discusses the implications of articles 20(2) and 20(3) of the Constitution, read with section 171-A of the 1878 Act and in the light of some Supreme Court decisions. Section 111 is also a well commented upon section though its various sub-clauses deserved comments in greater detail. Sections 112, 113, 115 and 118 are also well commented upon. Section 122 is a nicely dealt with provision though the commentary would have been made more useful by discussing the Supreme Court decisions in *Union of India v. A. V. Narasimhalu*,<sup>13</sup> wherein the Court discussed the jurisdiction of the customs adjudicating authorities vis-a-vis the civil courts, and in the *Orient Paper Mills* case<sup>14</sup> wherein the Court held that the Central Board of Excise and Customs, [being also an appellate authority, cannot issue any 'rulings' in its executive capacity.

Sections 123, 124 and 125 are again thoroughly treated and so are sections 128 and 135. However, the comments are not free from incongruous references. There is a discussion on baggage under section 90. Section 142, which relates to the recovery of sums due to the Government, discusses the nature of the acts done by the customs officials. Similarly under section 156 which gives the Central government powers to make rules there is a discussion on whether the customs officers have acted in an arbitrary manner or not. Again, under section 46 which relates to entry of goods on importation and talks about the procedure to follow the Bill of Entry, the author quotes Bachawat, J., from *Collector of Customs v. Dass & Co.*<sup>15</sup> which could have been more usefully discussed under section 15 as it relates to the date for determination of the rate of duty on imported goods.

Some reflections about the Appendices which form a major portion of the book will not be out of way. I must appreciate the author for giving so many relevant Acts, Orders, Rules and Regulations which will be of tremendous use, specially to the lawyers who may have to argue cases with reference to these allied Acts, and also to the adjudicating authorities who will have to decide the case in the light of the arguments put forth by the lawyers. In this regard the book is really a success.

But the book is not free from various lacunas of its own. A book is to be judged by its overall utility. The customs law and procedures concern not only the lawyers and the adjudicating authorities, but also and primarily so the importers, exporters, the international passengers, the shipping agents, the airlines, the members of the crew, the masters of the vessels and aircraft as well as a vast number of non-adjudicating custom authorities. Since the book is completely silent on the procedural aspects, it does not give much help to the above-mentioned classes of people. The author could have usefully discussed the great number of day to day problems arising in the custom transactions such as those relating to classifications, assessments, provisional assessments, bonds, import trade

13. Civil Appeal No. 1361 of 1966.

14. A.I.R. 1969 S.C. 48.

15. A.I.R. 1966 S.C. 1577

controls, export trade controls, problems relating to licences, problems arising out of preventive measures and transhipments. The author could have also described the particulars of a Bill of Entry and Shipping Bills which are the main and primary documents in the procedures for imports and exports. Surprisingly enough, the book is also silent about important documents like the Customs Study Team Report 1965, Drawback Report 1967, Import Trade Control Handbook, and the red books on the Import Trade Policy.

A few words about the style of the book will not be inappropriate. The author has first given the text of the Customs Act 1962 and then starts commenting on each provision in isolation from the Act. The result is that if a reader wants the exact words in the section he has to look back in the text. It would have been better if the author had first given the text of the provision and then the comments just below it so as to give the reader a full and clear picture of the discussion. It would have also avoided the duplication of the page numbering<sup>16</sup> and would have made the book run in one serial order.

The style of the foot-notes is also peculiar. They are neither on the same page, nor at the end, but the reader has to look back and forth in order to locate the foot-note referred to. This results in an undue loss of time to the reader and also breaks his chain of thought. It would have been better if the foot-notes were on the same page of the relevant text even though under abbreviation such as *op. cit.*, *supra* etc.

The style of citing the cases is varied. Sometimes the full case is cited in the foot-note,<sup>17</sup> sometimes the main body is given in text and only the citation is in the foot-note,<sup>18</sup> at other places<sup>19</sup> full case is given in text together with its citation, still at other places<sup>20</sup> a case is given in bold letters as a heading to a para without its citation, and yet at other places the citation of both A.I.R. and I.L.R. is given together, that too in the main text.<sup>21</sup> It would have been better if the author had adopted some uniform method of referring to the cases.

The book is not free from printing mistakes. Besides the errata given at pages 334 and 335, the following misprints can be noticed. At page 7, in fourth para of section 17 line 4 says that the 'writ in the nature of *certiorari* cannot issue to set it aside.' It should obviously be that such a writ cannot 'be' issued. Then at page 79, para 3, line 6 says, 'has not been made'. It should obviously be 'has not been made.' Barring such few stray instances the printing of the book has been perfect for which the publishers deserve appreciation. They also deserve praise for giving a

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16. For example, from 1 to 79 and then again from 1 to 79,

17. *Mitra* at 50.

18. *Mitra* at 58.

19. *Mitra* at 52.

20. *Mitra* at 74.

21. *Mitra* at 7,

nice get-up to the book, for printing nice eulogies about the author on the cover and for putting the price at Rs. 25. I hope the future editions of the book will be much more perfect if the author wants to serve a better cause and also justify the price charged.

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