

WORKING PAPER

PROJECT : Administrative Procedure.

TOPIC : Land and Sea Customs Law in India.

PRELIMINARY EXPLANATION

UNDER this topic, the aims and objectives of the project are to make an objective study of the adjudicatory powers exercised by administrative authorities of various ranks in customs administration and the procedure followed by each in exercising such powers.

PLAN OF WORK

It was originally decided to start with a preliminary study of the Land and Sea Customs Act, along with the rules and notifications passed from time to time, and of the various decisions of the Supreme Court and High Courts upon the procedural provisions of the Acts and then to embark on field work. A good part of the book study has been completed and attempts were begun to get responses from official and non-official sources which had personal experience of the procedure involved in customs administration.

But it was soon felt that from the point of view of best official co-operation it is better to suspend the study of these projects until a few other subjects have been studied. This working paper is, therefore, based on an interim draft paper which is far from complete. However, since some serious problems are thrown up by the study conducted so far, it is felt proper to present them.

OUTLINE OF SCOPE AND NATURE OF WORK DONE

A. Collection of material

The following material has been collected and collated :—

- (i) The rules, regulations and notifications on customs—since 1772—from India Gazettes in the National Archives of India.
- (ii) Sixty decisions of the Supreme Court and various High Courts.
- (iii) Relevant portions from Parliamentary Debates upon various amendment bills on Land and Sea Customs Acts.
- (iv) Some of the portions from the Taxation Inquiry Commission's Report which are related to Customs Administration.

B. Preparation of Paper etc.

- (i) A Case Note concerning the validity of S. 178-A of the Sea Customs Act—published in the first issue of the Journal of the Indian Law Institute (P. 171).
- (ii) Charts showing the powers of customs officials of various ranks have been prepared.
- (iii) A paper upon the organisation and functions of the Customs Department, Appellate and Revisional Procedure etc., has been prepared.
- (iv) Another paper upon the principal sanctions in the Sea Customs Act has also been prepared.

PRELIMINARY CONCLUSIONS

1. The composition and functions of the appellate authorities in the Customs Administration show that they are not free from the control of the Ministry of Finance. For example, the Collector of Customs in his capacity as the first appellate authority is not free from the flow of instructions from the Central Board of Revenue. And the Central Board of Revenue in turn is nothing but a part of the Ministry of Finance. Even the revision by the Central Government under S. 191 of the Sea Customs Act is conducted by the officials of the Ministry of Finance. In such context justice is liable to be jeopardised in face of greater governmental interest. Thus, there is a great need for independent review whether by a special appellate tribunal or by the ordinary Courts or by both, in cases of customs. Such review would provide a greater sense of security and fair play to the public in general.

2. In any case the part to be played by the Courts in controlling customs procedures should be clarified and perhaps extended. To illustrate this, see Point No. 8 under the heading "Questions arising under this topic for further study."

3. Burden of proof under S. 178-A of the Sea Customs Act.

This section provides that when certain goods as specified in the section are seized in the reasonable belief that they are smuggled goods the burden of proving that they are not smuggled goods shall lie upon the possessor. This section puts a heavy and onerous duty upon the possessors which seems to be in violation of the rights guaranteed under articles 14 and 19. Recently, the Bombay High Court declared the section invalid under the latter article.¹ In fact this decision is a warning to the whole Customs Department to realise the harshness of the section. But there is some evidence to show that the Customs Administration has discovered a way to evade the effect of this decision. This is by exercising power under S. 5(3)² of the Land Customs Act (Act XIX of 1924).

1. For discussion see I.L.I.J. Vol. I, page 171.

2. This section empowers the Land Customs Officer to require from the person in charge of any goods which such officers have reason to believe to have been imported, or to be about to be exported, by land from or to, any foreign territory to produce a permit, and the whole of India is treated as Land Customs area. If such goods which are dutiable are not accompanied by a permit or do not correspond with the specification contained in the permit produced are liable to detention and confiscation.

If this is true it would mean two things : *firstly*, S. 178-A would continue to remain in the Statute Book, and, *secondly*, a fiction would be introduced to by-pass the effect of the declaration that the provision is invalid.

QUESTIONS ARISING UNDER THIS TOPIC FOR FURTHER STUDY

At the forefront of Customs Administration two matters of fundamental nature have to be considered. The first is S. 23 of the Sea Customs Act and the other is sections 3-A and 4-A of the Indian Tariff Act.

1. General power to exempt goods from customs duties : S. 23 of the Sea Customs Act.

The first provision empowers the Central Government and the Central Board of Revenue, with the previous sanction of the Central Government, to exempt any dutiable goods from payment of such duty, by notification or special order (in case of Central Board of Revenue) published in the official Gazette. The necessity for the conferring of this power is not at all considered for the present purposes but only its existence without any procedural safeguards.

The exercise of this power is not subject to any prescribed procedure which will provide some guarantee that this important power of the executive will not be misused. It is obviously salutary that in the exercise of this power the Government is obliged to refer the matter to an independent advisory body as in England.³ If this principle is found acceptable the details for the advisory body could be worked out.

2. Power to levy or increase import and export duties: Ss. 3-A and 4-A of the Indian Tariff Act (XXXII of 1934).

Section 4-A of the Indian Tariff Act empowers the Central Government to increase or levy export duties by a notification in the official Gazette when it is satisfied that circumstances exist which render it necessary to take immediate action. Every such notification requires the approval of the Parliament and the Central Government is further authorised to rescind this approved notification by another notification in the official Gazette. Section 3-A of the Indian Tariff Act gives power to the Central Government upon the recommendation of the Tariff Commission to levy protective duties by a notification in the official Gazette when it is satisfied that circumstances exist which render it necessary to take immediate action. Such notification also requires the approval of the Parliament.

3. It may be noted that in England there is an Advisory Committee only on imports. There under the Import Duties Act, 1932, the Treasury is authorised to impose duties on imported goods and to amend the list of goods which at that time were not subject to customs duties on the advice of the 'Import Duties Advisory Committee'. The purpose of appointing this Committee was to give advice and assistance to the Treasury in connection with its functions under the Act. This Committee is required to take into consideration any representations which may be made to them with respect to matters on which, under the provisions of the Act, action may be taken on a recommendation by the Committee to make recommendations to the treasury with respect to the matters referred to in the Act. See sections 1 and 2 and Schedule 1 of the Act—Halsbury's Laws of England, 2nd Edn., Vol. 21, pp. 980, 981, 982 and 993.

It may be suggested that the Central Government should be empowered to levy or increase export and import duties not only in emergencies but in ordinary times also subject to reference to an independent advisory body as indicated above. This method will bring greater flexibility in the procedure of levying duty under the Customs Administration and shall give to the Government adequate powers to increase or levy duty in the national interest.

3. General rules for grant of reward to customs officers and other persons under S. 9(c) of the Sea Customs Act for bringing to notice breaches and evasions of the Law—Indian Sea Customs Manual, pp. 22-24.

These rules in general provide for rewards to customs officers and other persons when goods are confiscated or a penalty or fine imposed in cases of smuggling or attempted importation of articles contrary to the provisions of the Sea Customs Act and for other breaches or attempted breaches of the provisions of the Sea Customs Act or Land Customs Act etc.

Rule 2(a) provides that the reward shall not exceed half of the realised value of the confiscated goods plus half of the penalty or fine realised, and shall be so restricted that the balance shall suffice to cover all outstanding Government dues and other incidental charges. But rule 2(b) goes further to provide for reward to the officers of customs and other persons even in cases where the value of the confiscated goods or the penalty or fine imposed is not realised, or is only realised in part which is not sufficient for the purpose of rewarding such person. This reward to the officer who is a paid employee of the Government and as such obliged to discharge the very function as part of his ordinary duties at first appears as a curious one. Could not the example of U.S.A. be followed for giving rewards to persons other than the officers ?⁴

For further details and to understand the effects of the section concerned this point requires more investigation. (Though these two rules deal with substantive law, their effect on the entire tone and procedure of Customs Administration is such that we ventured to refer to them in this paper.)

4. Foreign privileged persons Rules, 1957 (under section 9(c) of the Sea Customs Act)—S. R. O. 105, dated January 8, 1957.

Rule 5 deals with the recovery of duty on goods sold by the privileged person to non-privileged person. Rule 7 gives to the Collector of Customs

4. In U.S.A. section 619 of the Tariff Act, 1930, provides that any person not an officer of the United States who detects and seizes any vessel, vehicle, merchandise or baggage subject to seizure and forfeiture under the Customs Laws or the Navigation Laws may be awarded and paid by the Secretary of the Treasury a compensation of 20 per centum of the net amount recovered but not to exceed \$50,000 in any case. U.S.C.A. Vol. 19, S. 1619, p. 1189 & p. 272 of U.S.C.A., Cumulative Annual Pocket Part, 1957.

In England the Commissioners of Customs are authorised to order such reward as they see fit out of any pecuniary penalty or composition to any officer or other person by whose means the same is recovered (S. 212 of Customs Consolidation Act, 1876). Similar power of ordering reward not exceeding the value of the goods is given in cases of making seizures also, (ibid. S. 213). There is also provision for rewards for detaining smugglers (ibid. S. 211). Under Inland Revenue Act, 1890, of England, S. 32 gives discretion to the Commissioner to reward any person who informs them of any offence against any Act relating to Inland Revenue or assists in the recovery of any fine or penalty, provided that a reward exceeding fifty pounds shall not be paid in any case without the consent of the Treasury.

authority to adopt such procedure in giving effect to these rules as he thinks necessary. The procedure in recovering duty and hearing of objections adopted as a matter of practice in these cases are not known. It would be better that the rules themselves provide a suitable procedure. Further investigation is required to discover the details of practice actually followed.

5. Licensing of Private Warehouses and Cargo Boats ; Sections 16 and 79 of the Sea Customs Act.

Section 16 gives power to the Chief Customs Officer to license private warehouses, while section 79 empowers the Chief Customs Authority to prohibit plying of unlicensed cargo boats. Paragraph 2 of S. 16 provides that a license for private warehouses may be cancelled on conviction of the licensees of any offence under the Act relating to warehouses or on the expiration of one month's notice in writing given to the licensee. The provision for notice must naturally be meant to give time to the licensee to make suitable representation why his licence should not be cancelled. But the various rules made under S. 79⁵ show that when the license of cargo boats is cancelled either temporarily or permanently, there is no provision requiring either notice or hearing to be allowed to the licence-holder. Will it not be much better if the rules of natural justice be followed in this case also and a provision for giving notice and hearing introduced in the rules themselves?⁶ Whether or not notice is given in actual practice requires further investigation.

6. Illegal importation and exportation of goods—Confiscation and penalty—S. 167(8) of the Sea Customs Act.

This section authorises the imposition of the punishments of confiscation and penalty not exceeding three times the value of goods or not exceeding one thousand rupees in cases where the goods are imported or exported contrary to prohibition or restriction provided by law. The choice between three times the value of goods and an amount not exceeding one thousand rupees is now within the absolute discretion of the customs authorities. Thus, it poses a problem that sometimes the use of this power may result in discrimination between one person and another whose cases are similar. It would be better if some rules could be made further to prescribe the limits of this discretion so as to check possible discrimination.

7. Powers of Customs Officer to summon persons to give evidence and produce documents—Section 171-A of the Sea Customs Act.

This section empowers the officers of customs to summon persons whose attendance they consider necessary either to give evidence or to

5. Indian Sea Customs Manual, pp. 159-161.

6. There are two relevant cases—In *Ganapatsinghi v. State of Ajmere*, A.I.R. 1955 S.C. 188, the power to revoke permit without previous notice was declared *ultra vires* by the Supreme Court (This case was not on Sea Customs Act). In *Re-Haji Hussain*, 4 Bom. L.R. 773, it was held that licence for boats could not be revoked without legal jurisdiction.

produce documents or any other thing in any inquiry in connection with the smuggling of any goods. All such persons summoned are bound to state the truth upon any subject respecting which they are examined or to make statements and produce such documents and other things as may be required. The Calcutta High Court⁷ held that this section did not violate Art. 20(3) of the Constitution of India which requires that no person accused of any offence should be compelled to be a witness against himself. This decision was based on the ground that parties were not bound to give answers or produce documents which will incriminate them. The Court observed that the parties could not claim any constitutional immunity from being examined by the Customs Authorities or from being asked to produce any documents but they could refuse giving evidence or producing documents if it amounted to self-incrimination. In future if the Customs Authorities follow this interpretation there is no danger, but the section as it stands does not ensure that the Customs Authorities will not seek to ask for self-incriminating evidence or document. It would be much better if the section could make it more clear that the compulsion feared under S. 171-A (3) will not be exercised by the Customs Authorities. Further investigation is required to know the effect of this section in actual practice.

8. Whether the existence of alternative remedy under the Sea Customs Act is adequate—Sections 188, 189 & 191 of the Act.

The reading of sections 188 and 191 along with section 189 shows that before a person can avail himself of the remedy by appeal under the Act, he has to deposit the entire amount of duty with the Customs Officer. Sometimes it may happen that the amount of duty and penalty to be paid may be so heavy that the person is unable to pay. In such circumstances the remedy by appeal will not be adequate, rather it would be taking away the right of appeal. Another difficulty is that some Courts have held that unless the remedies under sections 188 and 191 are exhausted the Court will not grant any writ to give relief to the aggrieved party.⁸ This will increase the difficulties of the persons when, as observed above, the remedies in the Sea Customs Act are not adequate due to the heavy duty laid by section 189. Therefore, in the interest of justice either the amount of duty to be paid under section 189 should be reduced or the Courts should be more liberal to exercise review even though the party has not exhausted alternative remedies under the statute. Even a provision similar to section 45 of the Indian Income-tax Act where the Income-tax Officer may in his discretion treat the assessee as not being in default as long as the appeal is undisposed of shall ease the situation; if the discretion is used liberally as is apparently done under the Income-tax Act. Further investigation is required in order to know how much hardship is caused by the operation of section 189.

9. Revision under the Sea Customs Act—Sections 190-A and 191 of the Sea Customs Act.

This new section giving powers of revision to the Central Board of Revenue and the Chief Customs Officer was added in 1955⁹ as a measure to give effect to the recommendations of the Taxation Enquiry Commis-

7. *Collector of Customs v. Calcutta Motor & Cycle Co.*, A.I.R. 1958 Cal. 682.

8. For cases see Main Paper, Part I.

9. Act 21 of 1955.

sion concerning the provisions of revision under the Sea Customs Act.¹⁰ The Commission suggested, *firstly*, that the revision petitions against the Central Board of Revenue and Collectors of Customs should be disposed of by an independent Tribunal, and, *secondly*, that the Collectors of Customs should have authority to revise orders where necessary.

Now, it appears that the second recommendation has been implemented but nothing has been done so far to implement the first recommendation for the establishment of an independent tribunal. On the other hand, the new section 190-A gives power of revision not only to the Chief Customs Officer, but also to the Central Board of Revenue. As a consequence, some duplication of functions seems to have arisen in the system of revision. The Central Board of Revenue has power of revision under section 190-A and also under section 191 because of the reason that the revision petitions to be disposed of by the Central Government under section 191 are in practice dealt with by an official of the Ministry of Finance who also happens to be a member of the Central Board of Revenue though he may not be the same person who heard the appeal under section 188. In order to avoid this and other complications and to do justice to the parties that part of the recommendation of the Taxation Enquiry Commission which provides for the establishment of an independent tribunal should also be implemented. Further investigation is to be made in order to know how much complexities have arisen as a result of introduction of section 190-A and by not implementing the important recommendation of the Taxation Enquiry Commission relating to the establishment of an independent tribunal.

10. Option to pay fine in lieu of confiscation-Section 183 of the Act.

Section 183 of the Sea Customs Act provides that whenever confiscation is authorised by this Act, the officer adjudging it *shall* give the owner of goods an option to pay in lieu of confiscation such fine as the officer thinks fit. This section is intended to give to the owner of goods a facility to get the goods released from the Customs Department by paying a fine in lieu of confiscation made by the Customs Officers. The party which wants to challenge the confiscation may very much like to get such release of goods. The word 'shall' in the section denotes that the officers in all cases will grant this option. But certain other statutes, e.g., section 3 of the Imports and Exports (Control) Act, 1947, if made applicable along with section 183, would turn 'shall' into 'may'.¹¹ This would give a great discretion to the Customs Officer which in the absence of proper safeguards might prove to be prejudicial to the person against whose goods the order of confiscation is passed and which is proved to be bad. Could this gap be filled by prescribing limits for the exercise of the above discretion?

Further Study

With Government co-operation and full response from private interests, a detailed and comprehensive report will be prepared.

10. Taxation Enquiry Commission Report, 1953-54, Vol. 2, page 319.

11. Section 3 of the Imports and Exports (Control) Act, 1947, empowers the Central Government to restrict, control and prohibit the import, export and shipment of any specified description. Clause 2 of the said section requires that all such goods shall be deemed to be goods of which the import or export has been prohibited or restricted under section 19 of the Sea Customs Act and the provisions of that Act shall have effect accordingly except that section 183 thereof shall have effect if for the word 'shall' therein the word 'may' were substituted.

