

**LOK SABHA**  
**THE CUSTOMS BILL, 1962**

**(Report of the Select Committee)**

*(Presented on the 14<sup>th</sup> November, 1962)*



**LOK SABHA SECRETARIAT**  
**NEW DELHI**

*November, 1962*

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Joint/Select Committee Report presented  
to the Lok Sabha during 1962

Sl. No.	Name of the Report	Date of presentation
1	2	3
1.	The Specific Relief Bill, 1962	10-11-62
2.	The Customs Bill, 1962	15-11-62

LOK SABHA

CORRIGENDA

TO

THE REPORT OF THE SELECT COMMITTEE ON THE  
CUSTOMS BILL, 1962

Report of the Select Committee

Page x, line 8 from bottom, for 'vlaue' read  
'value'

Minutes of Dissent

Page xv, line 9, for 'salutory' read 'salutary'  
line 21, for 'tanable' read 'tenable'

Bill as reported by the Select Committee

Page 4, for line 44 read 'customs who is  
subordinate to him'

Page 6, line 40, after 'national' insert  
'prestige';

Page 34, lines 25-31 be side-lined.

Page 38, line 30, for 'COVEYANCES' read  
'CONVEYANCES'

Page 51, lines 37-42 be side-lined

Page 67, against Sl.No.12, for '11-1-1962'  
read '11-8-1962'

NEW DELHI;

The 16th November, 1962.

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# THE CUSTOMS BILL, 1962

## Composition of the Select Committee

Shri S. V. Krishnamoorthy Rao—*Chairman*.

### MEMBERS

2. Shri Ramchandra Vithal Bade
- \*3. Shri G. Basu
4. Shri Tridib Kumar Chaudhuri
5. Shri R. Ramanathan Chettiar
6. Shri N. T. Das
7. Shri Morarji Desai
8. Shri B. D. Deshmukh
9. Shri Vishwanath Singh Gahmari
10. Shri J. N. Hazarika
11. Shri Prabhu Dayal Himatsingka
12. Shri Hari Vishnu Kamath
13. Shri Narendrasingh Mahida
14. Sardar Surjit Singh Majithia
15. Shri Krishnan Manoharan
16. Shri Bakar Ali Mirza
17. Shri Mahesh Dutta Misra
18. Shri R. R. Morarka
19. Shri Shankarrao Shantaram More
20. Shrimati Savitri Nigam
21. Shri Ghanshyamlal Oza
22. Shri Prabhat Kar
23. Shri A. V. Raghavan
24. Shri Shivram Rango Rane
25. Shri R. V. Reddiar
26. Shri K. V. Ramakrishna Reddy
27. Shri M. Shankaraiya
28. Dr. L. M. Singhvi

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\*Shri G. Basu did not attend any sitting of the Committee after the Election Tribunal declared his election to Lok Sabha void w.e.f. the 11th August, 1962.

(iv)

29. Shri Sumat Prasad

30. Shri Bali Ram Bhagat.

**DRAFTSMEN**

Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*

Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

**SECRETARIAT**

Shri A. L. Rai—*Deputy Secretary.*

## REPORT OF THE SELECT COMMITTEE

I, the Chairman of the Select Committee to which the Bill\* to consolidate and amend the law relating to customs was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 15th June, 1962. The motion for reference of the Bill to a Select Committee was moved by Shri B. R. Bhagat, Deputy Minister in the Ministry of Finance, on the 19th June, 1962 and was adopted on the same day (*Appendix I*).

3. The Committee held thirteen sittings in all.

4. The first sitting of the Committee was held on the 21st June, 1962 to draw up a programme of work. The Committee at this sitting decided to hear evidence from associations etc. desirous of presenting their suggestions or views before the Committee and to issue a press communique, inviting memoranda for the purpose. The Chairman was authorised to decide, after examining the memoranda submitted by the associations as to which of them should be called upon to give oral evidence before the Committee.

5. 45 memoranda/representations on the Bill were received by the Committee from different associations, public bodies and individuals as mentioned in *Appendix II*.

6. At their Second to Seventh sittings held on the 30th and 31st July, 1st, 2nd and 11th August, and 1st September, 1962, respectively, the Committee heard the evidence given by the representatives of nineteen associations etc. and one individual specified in *Appendix III*.

7. The Committee have decided that the evidence given before them should be laid on the Table of the House *in extenso*.

8. At their Sixth sitting, it was suggested that the Committee might undertake an on-the-spot study tour of some of the Customs Offices to acquaint themselves with their working. At their Seventh sitting, the Committee was informed that the proposal had been discussed with

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\*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 15th June, 1962.

the Speaker who was agreeable to such a tour being undertaken by a small sub-Committee. Accordingly, a sub-Committee consisting of ten members visited Calcutta from the 10th to the 13th October, 1962 (*Appendix IV*).

9. During their stay at Calcutta, the sub-Committee visited the various departments of the Customs Organisation located in the Customs House, Dum Dum Airport, docks and jetties at the Calcutta port and land customs check posts at the Petropol Road and the Petropol Railway Station. The sub-Committee looked into the working of these establishments and also questioned in detail the authorities and others concerned whom they met for eliciting first hand information on the provisions of the Bill.

10. The Committee considered the Bill clause by clause at their Eighth to Twelfth sittings held from the 15th to 19th October, 1962.

11. The Report of the Committee was to be presented by the last day of the first week of the Second Session. As this could not be done, the Committee requested for extension of time on the 8th August, 1962 which was granted upto the last day of the first week of the Third Session.

12. The Committee considered and adopted the report on the 9th November, 1962.

13. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

14. *Clause 11.*—The Committee are of the view that the purposes mentioned in sub-clause (2) of the clause for which importation or exportation of goods may be prohibited should specifically include the implementation of any treaty, agreement or convention with any country.

The other amendment made in the clause is of a drafting nature.

The clause has been amended accordingly.

15. *Clause 13.*—The Committee have given thought to the clause and are of the opinion that when the imported goods are not under the importer's control, he should not be required to pay the duty on any goods that may be pilfered before the Customs Officer makes an order for clearance of the goods.

The clause has been amended accordingly.

16. *Clause 14.*—The Committee consider that the nomenclature 'normal price' may cause some difficulty in determining the value of goods for the purposes of assessment. They, therefore, feel that the word 'normal' should be dropped and other drafting changes may be made.

The clause has been amended accordingly.

17. *Clause 23.*—The Committee feel that provision regarding sale in sub-clause (2) may be transferred to clause 48 which deals with similar matters.

The other amendments to this clause are of a consequential or drafting nature.

The clause has been amended accordingly.

18. *Clause 28.*—The Committee are of opinion that some time limit should be laid down within which a notice may be served upon an importer or an exporter, as the case may be, for payment of duty not levied, short-levied or erroneously refunded by reason of collusion or wilful mis-statement or suppression of the facts on his part, and they feel that a period of five years would be adequate for this purpose.

The clause has been amended accordingly.

The other amendment is of a drafting nature.

19. *Clause 29.*—The Committee feel that specific provisions should be made in the Act itself regarding action to be taken by the person in charge of a vessel or an aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a Customs port or Customs airport.

The clause has been amended accordingly.

20. *Clause 30.*—The Committee consider that as in the Sea Customs Act, 1878, a period of 24 hours after the arrival of the conveyance may be allowed for the delivery of the import manifest or import report.

The clause has been amended accordingly.

21. *Clause 36.*—The amendment made in the clause is clarificatory in nature.

22. *Clause 41.*—The Committee are of opinion that the export manifest or export report may be allowed to be delivered after the departure of the conveyance on the lines of the provision in the Sea Customs Act, 1878, but the period within which such manifest, etc. may be delivered may be increased to seven days from the existing five days.

The clause has been amended accordingly.

23. *Clause 47.*—The clause has been re-drafted to make the intention clear.

24. *Clause 48.*—The amendment to the clause is consequential to the amendment made to clause 23 (2).

The Committee feel that the words 'arms' and 'ammunition' should be defined as in the Arms Act, 1959.

The clause has been amended accordingly.

The other amendment is of a drafting nature.

25. *Clause 51.*—The clause has been re-drafted to make the intention clear.

26. *Clause 74.*—The Committee consider that the drawback allowable on re-export of duty paid goods should be ninety-eight per cent instead of ninety-five per cent.

The clause has been amended accordingly.

27. *Clause 88.*—The Committee are of the view that the Act itself should provide on the lines of the international agreements that the whole of the duty should be allowed as drawback on fuel and lubricating oil taken on board any foreign going aircraft as stores.

The clause has been amended accordingly.

28. *Clause 101.*—The Committee feel that this clause should not specifically apply to precious stones other than diamonds.

29. *Clause 102.*—The Committee are of the opinion that search of persons under clause 100 and clause 101 should be conducted in the presence of two or more witnesses.

They also feel that when a person is to be taken to a gazetted officer of Customs or magistrate, that should be done without unnecessary delay.

The other amendment is of a drafting nature.

The clause has been amended accordingly.

30. *Clause 104.*—The Committee are of the view that an officer of Customs arresting a person under the clause should have the power to release the arrested person on bail or otherwise similar to the power conferred on the officer-in-charge of a police station under the Code of Criminal Procedure, 1898, so as to obviate the necessity of detaining an arrested person till he can be taken to a magistrate.

The Committee feel that sub-clause (3) being merely a repetition of the provisions of the Criminal Procedure Code should be omitted.

The Committee are also of the opinion that the offences under this Act should be non-cognizable as at present although the maximum punishment in respect of certain offences is being enhanced to five years imprisonment.

The clause has been amended accordingly.

31. *Clause 105.*—The Committee feel that the record containing the grounds of belief, etc., to be maintained under the provisions of section 165 of the Code of Criminal Procedure 1898 should be forwarded to the Collector of Customs and not to the magistrate in order to enable the former to keep proper control over the Customs officers authorising search of premises.

The clause has been amended accordingly.

32. *Clause 107.*—The Committee feel that sub-clause (c) should be omitted.

The clause has been amended accordingly.

33. *Clause 108.*—The Committee consider that the power to summon persons to give evidence or produce documents should be conferred only on a Gazetted Officer of Customs.

The clause has been amended accordingly.

34. *Clause 110.*—The Committee are of the view that when any goods are seized, proceedings in the nature of a show cause notice should be started within six months of the seizure but this period may on sufficient cause being shown be extended by the Collector of Customs for a further period of six months. If the show cause notice is not issued within the specified period, the goods should be returned to the person from whom they were seized.

The Committee also feel that in order to obviate any hardship or inconvenience to a person from whom any documents are seized, he should be entitled to make copies thereof or take extracts therefrom.

The clause has been amended accordingly.

35. *Clause 112.*—The Committee feel that sub-clause (a) as drafted may not be comprehensive enough to bring within its scope all persons who abet the doing or omission of any act which would render any goods liable to confiscation under clause 111. This sub-clause has, therefore, been omitted, and an addition made to sub-clause (b) to cover such abettors.

x

The amendment to sub-clause (c) is of a clarificatory nature.

They further feel that the penalty under the clause should be enhanced from three times the value of the goods or one thousand rupees whichever is the greater, to five times the value of the goods or one thousand rupees, whichever is the greater.

The clause has been amended accordingly.

36. *Clause 113.*—Item (k) of the clause has been re-drafted to provide that goods cleared for exportation under a claim for drawback would be liable to confiscation if they are not loaded for exportation on account of any wilful act, negligence or default of the exporter or after having been loaded are unloaded without the necessary permission.

37. *Clause 114.*—The clause has been amended on the lines of the amendments made to clause 112.

38. *Clause 118.*—It was represented to the Committee that the clause, though identical with an existing provision in the Sea Customs Act, 1878, would cause hardship in certain cases where the smuggled goods may after importation happen to be kept in a package along with non-smuggled goods. The Committee noted that essentially the intention was to apply the clause only to such other goods as are imported in a package along with the goods liable to confiscation.

The clause has been re-drafted to cover such goods only.

As regards exports, the amendment is of drafting nature only, recasting the provision on the same lines as for imports.

39. *Clause 120.*—The Committee feel that since the provision regarding transfer of onus of proof was contained in clause 123, this clause should not also transfer to the owner the onus of proving that a part of the goods has not been smuggled. The Committee were, therefore, of opinion that where a case falls under the proviso to sub-clause (2), only such part of the goods the value of which is equal to the value of the smuggled goods should be liable to confiscation.

The clause has been amended accordingly.

40. *Clause 123.*—The Committee are of the opinion that precious stones other than diamonds should not be specifically included in this clause.

The clause has been amended accordingly.

41. *Clause 125.*—The amendment made to the clause is of a clarificatory nature.



42. *Clause 128.*—The Committee are of the view that appeals against the orders of officers of Customs below the rank of Collector should be heard by Appellate Collectors of Customs who should not be entrusted with any other functions under this Act.

The Committee are also of the view that the power to enhance penalty or fine in lieu of confiscation or to confiscate goods of greater value should not vest in the Appellate Collector of Customs.

The other amendments are consequential to the amendment to clause 28.

The clause has been amended accordingly.

43. *Clause 130.*—The Committee feel that the Collectors of Customs should not be vested with the powers of revision.

The other amendment is consequential to the amendment to clause 28.

The clause has been amended accordingly.

44. *Clause 131.*—The Committee are of the opinion that the Central Government should have the power to revise of its own motion any order in appeal or an order in revision. The Committee also consider that the Central Government should have the power to enhance duty or penalty or fine in lieu of confiscation, etc.

The clause has been amended accordingly.

45. *Clause 135.*—The Committee consider that in order to check large-scale smuggling, deterrent punishments are called for. They are, therefore, of the view that where the offence concerns any goods to which clause 123 applies and the market-price of which exceeds one lakh of rupees, the imprisonment may extend to five years and that except for special and adequate reasons to the contrary, the minimum punishment in such cases should be six months' imprisonment.

The clause has also been revised to make it clear that persons who in any manner deal with smuggled goods after these have been imported shall be liable to prosecution if such persons had knowledge or reason to believe that the goods were smuggled goods.

46. *Clause 136.*—The Committee feel that among the offences by Customs Officers, the offence of illegal search and illegally authorising another officer to search premises, should be included.

They further feel that punishment for such offences should be more severe. Accordingly, a term of imprisonment which may extend to six months has been provided for.

The clause has been amended accordingly.

47. *Clause 138.*—The amendment to the clause is consequential upon re-draft of clause 135.

48. *Clause 140.*—The Committee consider that, as in other Acts, the word 'and' occurring in the proviso to sub-clause (1) should be substituted by the word 'or'.

49. *Clause 142.*—The Committee are of the view that the manner of recovery provided in this clause should also be applicable where the terms of any bond, etc., executed under this Act, provide a contractual obligation that the amount of the bond may be so recovered.

The clause has been amended accordingly.

50. *Clause 144.*—The Committee are of the view that a sample should be restored to the owner, if practicable, without a request being made to that effect by the owner. They further consider that in case the duty on the sample consumed or destroyed during the course of any test or examination is not less than five rupees, such duty should not be charged.

The clause has been amended accordingly.

51. *Clause 145.*—The amendment made in the clause is clarificatory in nature.

52. *Clause 147.*—The Committee feel that it should be clarified that if the owner, importer or exporter proves to the contrary, the presumption under sub-clause (2) should not be raised against him.

They also feel that it should further be provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any wilful act, negligence or default of the agent, such duty should not be recovered from the agent unless in the opinion of Assistant Collector of Customs the same cannot be recovered from the owner, importer or exporter.

The clause has been amended accordingly.

53. *Clauses 150 and 153.*—The amendments made in the clauses are of a clarificatory nature.

54. *Clause 159.*—The Committee are of opinion that notifications issued under clause 43 should also be laid on the Table of both Houses of Parliament.

The clause has been amended accordingly.

55. The recommendations of the President have been obtained under Article 117(1) of the Constitution in respect of the amendments made in the Bill.

56. The Select Committee recommend that the Bill as amended be passed.

NEW DELHI;  
The 9th November, 1962.

S. V. KRISHNAMOORTHY RAO,  
Chairman,  
Select Committee.

## MINUTES OF DISSENT

### I

We regret we cannot agree with the majority report of the Select Committee on the following clauses:

This is a new legislation on land, air and sea customs and in order to check smuggling the law is to be made more drastic but in our anxiety to do this we should take care that the innocent traders may not be unnecessarily harassed. By keeping this point of view in our mind we are giving this minute of dissent.

(1) Clause 11(v) should be deleted. This is giving too much powers to the Customs authorities. Similarly sub-clauses (e), (j) and (n) should be deleted as it overlaps the provisions of other enactments.

(2) Clause 14 requires some change. The importer loses his goods as well as he is charged with duty for the same.

(3) In clause 105 the Customs Officer should not be authorised to make search without obtaining the search warrant from a Magistrate. Therefore, the provision should be that an application should be made by the proper officer to the Magistrate who may issue a warrant for search of goods, things or documents specifying therein the place of such search and nature of the offence.

(4) In clause 118 a proviso should be added that other goods shall be confiscated only if the owner thereof knowing that any goods are smuggled goods places other goods with them but not otherwise. The term 'package' should also be defined as connotation of package is too vague and very wide.

(5) Clause 123 is about burden of proof. It will be very unjust to place burden of proof on the accused or on the purchaser of goods, so explanation to this clause should be added that if the person concerned proves to the satisfaction of the Court the source from which he had received or purchased the goods, the onus of proof shall be deemed to have been discharged.

(6) Clause 131 is against the recommendation of the Badhwar Committee report. In Chapter XXI, page 81, of the said report, it is said:—

“We find that the Taxation Enquiry Commission examined this matter and came to the conclusion that, in the interest of the appellants themselves, it would be unwise to disturb the appellate machinery provided at present. But, at the stage of revision by the Government of India of appellate orders, they recommended the setting up of a Tribunal consisting of at least one Judicial member who should be either a serving or a retired High Court Judge and one member who has had experience of Customs Administration. We agree with the Commission’s views except to the extent that we consider that the association of a suitable representative of the Import-Export Trade as an additional, or third member of the Tribunal would be an improvement and would help to secure more informed, and therefore, more objective decisions.”

In line with the above recommendation, we suggest the following amendment:—

“The Central Government shall constitute a Tribunal which should consist of at least one Judicial Member who should be a serving or retired High Court Judge and one member who has had experience of customs administration and one representative of the association of the Import and Export Trade.

The Central Government shall ordinarily appoint a Judicial Member of the appellate Tribunal to be the President thereof.”

(7) In clause 147 the clearing agent should be responsible for some fixed period only and for the mistake of the owner the clearing agent should not be liable to punishment.

NEW DELHI;  
The 9th November, 1962.

NARENDRASINGH MAHIDA  
RAMCHANDRA VITHAL BADE

The Sea Customs Act was enacted in the eighth decade of the nineteenth century, the Land Customs Act in the third decade of the twentieth, and while there is no Air Customs Act the administration of air customs is governed by rules made under the Indian Aircraft Act which is half a century old. The Customs Bill, 1962, seeks to consolidate the provisions relating to sea, land and air customs into a single comprehensive measure. Such an attempt at codification is welcome and has been long over due. The Bill now on the anvil of Parliament contains many features which are salutary, desirable and even an improvement on the existing law; but there are certain provisions therein which, I am sorry to say, do not commend themselves to me. I am accordingly constrained to append a note of dissent, mainly in respect of the here-in-after mentioned clauses. Lack of time has prevented me from listing all the clauses with which I do not agree.

(1) *Clause 102(1).*—It should be so amended as to provide that the person about to be searched should be clearly told that he has a legal right to be taken before a magistrate or a Gazetted Officer of Customs, and only if he opts otherwise, he may be searched by the officer himself. The facile assumption or dictum that every one is supposed to know the law with all its details is not wholly tenable in our country where the vast majority of the people are illiterate, at best semi-literate.

(2) *Clause 105.*—Human nature being what it is, and power being often an inebriating thing, there should be a safeguard against possible abuse of authority. That can only be done in this case by providing for a wholesome restraint to the effect that no such search shall be made without a magisterial warrant. In this connection I should like to make it perfectly clear that while smuggling and other anti-social, anti-national malpractices should be severely, even drastically dealt with, the law should not become an engine of persecution or harassment of honest traders or other citizens. The task of the conscientious legislator, particularly so in a modern democratic State, is to ensure that the exercise of more and more power by the executive does not make serious inroads upon the legitimate rights and liberties of the individual.

(3) *Clauses 106 and 118.*—The word 'package' should be so defined as to admit of no ambiguity.

(4) *Clause 123.*—This clause should contain, if possible, a provision or an explanation stating when or how the onus of proof on the person concerned should be deemed to have been discharged, and consequently shifted to the person by whom the goods were seized or to the prosecution.

(5) *Clauses 128—131.*—I agree with the recommendations of the Customs Reorganization Committee (Badhwar Committee) with regard to the appellate and revisional machinery, and am therefore of the view that these clauses should be amended in the light of those recommendations.

(6) *Clause 144.*—The words 'if practicable' be deleted.

(7) *Clause 161.*—Every order made under this section should be laid before Parliament for approval or such modification as Parliament may deem necessary.

NEW DELHI;  
The 12th November, 1962.

HARI VISHNU KAMATH.

**THE CUSTOMS BILL, 1962**  
**(AS REPORTED BY THE SELECT COMMITTEE)**

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**ARRANGEMENT OF CLAUSES**

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**CHAPTER I**  
**PRELIMINARY**

**CLAUSES**

1. Short title, extent and commencement.
2. Definitions.

**CHAPTER II**  
**OFFICERS OF CUSTOMS**

3. Classes of officers of customs.
4. Appointment of officers of customs.
5. Powers of officers of customs.
6. Entrustment of functions of Board and customs officers on certain other officers.

**CHAPTER III**

**APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, WAREHOUSING STATIONS, ETC.**

7. Appointment of customs ports, airports, etc.
8. Power to approve landing places and specify limits of customs area.
9. Power to declare places to be warehousing stations.
10. Appointment of boarding stations.

**CHAPTER IV**  
**PROHIBITIONS ON IMPORTATION AND EXPORTATION**  
**OF GOODS**

11. Power to prohibit importation or exportation of goods.

**CHAPTER V**  
**LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES**

12. Dutiable goods.
13. Duty on pilfered goods.
14. Valuation of goods for purposes of assessment.

(i)

**CLAUSES**

15. Date for determination of rate of duty and tariff valuation of imported goods.
16. Date for determination of rate of duty and tariff valuation of export goods.
17. Assessment of duty.
18. Provisional assessment of duty.
19. Determination of duty where goods consist of articles liable to different rates of duty.
20. Re-importation of goods produced or manufactured in India.
21. Goods derelict, wreck, etc.
22. Abatement of duty on damaged or deteriorated goods.
23. Remission of duty on lost, destroyed or abandoned goods.
24. Power to make rules for denaturing or mutilation of goods.
25. Power to grant exemption from duty.
26. Refund of export duty in certain cases.
27. Claim for refund of duty.
28. Notice for payment of duties not levied, short-levied or erroneously refunded.

**CHAPTER VI**

**PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED OR EXPORT GOODS**

29. Arrival of vessels and aircrafts in India.
30. Delivery of import manifest or import report.
31. Imported goods not to be unloaded from vessel until entry inwards granted.
32. Imported goods not to be unloaded unless mentioned in import manifest or import report.
33. Unloading and loading of goods at approved places only.
34. Goods not to be unloaded or loaded except under supervision of customs officer.
35. Restrictions on goods being water-borne.
36. Restrictions on unloading and loading of goods on holidays, etc.
37. Power to board conveyances.
38. Power to require production of documents and ask questions.
39. Export goods not to be loaded on vessel until entry-outwards granted.



**CLAUSES**

- 40. Export goods not to be loaded unless duly passed by proper officer.
- 41. Delivery of export manifest or export report.
- 42. No conveyance to leave without written order.
- 43. Exemption of certain classes of conveyances from certain provisions of this Chapter.

**CHAPTER VII**

**CLEARANCE OF IMPORTED GOODS AND EXPORT GOODS**

- 44. Chapter not to apply to baggage and postal articles.

*Clearance of imported goods*

- 45. Restrictions on custody and removal of imported goods.
- 46. Entry of goods on importation.
- 47. Clearance of goods for home consumption.
- 48. Procedure in case of goods not cleared, warehoused, or transhipped within two months after unloading.
- 49. Storage of imported goods in warehouse pending clearance.

*Clearance of export goods*

- 50. Entry of goods for exportation.
- 51. Clearance of goods for exportation.

**CHAPTER VIII**

**GOODS IN TRANSIT**

- 52. Chapter not to apply to baggage, postal articles and stores.
- 53. Transit of goods in same vessel or aircraft.
- 54. Transshipment of goods without payment of duty.
- 55. Entry, etc., of transitted or transhipped goods on arrival at customs port or customs airport.
- 56. Transport of certain classes of goods subject to prescribed conditions.

**CHAPTER IX**

**WAREHOUSING**

- 57. Appointing of public warehouses.
- 58. Licensing of private warehouses.
- 59. Warehousing bond.
- 60. Permission for deposit of goods in a warehouse.

## CLAUSES

61. Period for which goods may remain warehoused.
62. Control over warehoused goods.
63. Payment of rent and warehouse charges.
64. Owner's right to deal with warehoused goods.
65. Manufacture and other operations in relation to goods in a warehouse.
66. Power to exempt imported materials used in the manufacture of goods in warehouse.
67. Removal of goods from one warehouse to another.
68. Clearance of warehoused goods for home consumption.
69. Clearance of warehoused goods for exportation.
70. Allowance in case of volatile goods.
71. Goods not to be taken out of warehouse except as provided by this Act.
72. Goods improperly removed from warehouse, etc.
73. Cancellation and return of warehousing bond.

## CHAPTER X

### DRAWBACK

74. Drawback allowable on re-export of duty-paid goods.
75. Drawback on imported materials used in the manufacture of goods which are exported.
76. Prohibition and regulation of drawback in certain cases.

## CHAPTER XI

### SPECIAL PROVISIONS REGARDING BAGGAGE, GOODS IMPORTED OR EXPORTED BY POST, AND STORES

#### *Baggage*

77. Declaration by owner of baggage.
78. Determination of rate of duty and tariff valuation in respect of baggage.
79. *Bona fide* baggage exempted from duty.
80. Temporary detention of baggage.
81. Regulations in respect of baggage.

#### *Goods imported or exported by post*

82. Label or declaration accompanying goods to be treated as entry.
83. Rate of duty and tariff valuation in respect of goods imported or exported by post.

**CLAUSES**

84. Regulations regarding goods imported or to be exported by post.

*Stores*

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86. Transit and transhipment of stores.
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92. Entry of coastal goods.
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94. Clearance of coastal goods at destination.
95. Master of a coasting vessel to carry an advice book.
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**CLAUSES**

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**CLAUSES**

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- 160. Repeal and savings.
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**THE SCHEDULE.**

25 (8) "Collector of Customs" includes an Additional Collector  
of Customs:

- (9) "conveyance" includes a vessel, an aircraft and a vehicle;
- (10) "customs airport" means any airport appointed under clause (a) of section 7 to be a customs airport;
- (11) "customs area" means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities; 5
- (12) "customs port" means any port appointed under clause (a) of section 7 to be a customs port;
- (13) "customs station" means any customs port, customs airport or land customs station; 10
- (14) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;
- (15) "duty" means a duty of customs leviable under this Act;
- (16) "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84; 15
- (17) "examination", in relation to any goods, includes measurement and weighing thereof; 20
- (18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (19) "export goods" means any goods which are to be taken out of India to a place outside India;
- (20) "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter; 25
- (21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes— 30
- (i) any naval vessel of a foreign Government taking part in any naval exercises;
  - (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India; 35
  - (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;
- (22) "goods" includes— 40
- (a) vessels, aircrafts and vehicles;
  - (b) stores;
  - (c) baggage;
  - (d) currency and negotiable instruments; and
  - (e) any other kind of moveable property; 45



(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(24) "import manifest" or "import report" means the manifest or report required to be delivered under section 30;

5 (25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for  
10 home consumption, includes any owner or any person holding himself out to be the importer;

(27) "India" includes the territorial waters of India;

(28) "Indian customs waters" means the waters extending into the sea to a distance of twelve nautical miles measured from  
15 the appropriate base line on the coast of India and includes any bay, gulf, harbour, creek or tidal river;

(29) "land customs station" means any place appointed under clause (b) of section 7 to be a land customs station;

(30) "market price", in relation to any goods, means the  
20 wholesale price of the goods in the ordinary course of trade in India;

(31) "person-in-charge" means,—

(a) in relation to a vessel, the master of the vessel;

(b) in relation to an aircraft, the commander or pilot-in-  
25 charge of the aircraft;

(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

(d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;

30 (32) "prescribed" means prescribed by regulations made under this Act;

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include  
35 any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Collector of Customs;  
40

(35) "regulations" means the regulations made by the Board under any provision of this Act;

(36) "rules" means the rules made by the Central Government under any provision of this Act;

(37) "shipping bill" means a shipping bill referred to in section 50;

(38) "stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting; 5

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

(40) "tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 10 14;

(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) of section 14;

(42) "vehicle" means conveyance of any kind used on land 15 and includes a railway vehicle;

(43) "warehouse" means a public warehouse appointed under section 57 or a private warehouse licensed under section 58;

(44) "warehoused goods" means goods deposited in a 20 warehouse;

(45) "warehousing station" means a place declared as a warehousing station under section 9.

## CHAPTER II

### OFFICERS OF CUSTOMS

Classes of  
officers  
of customs.

3. There shall be the following classes of officers of customs, 25 namely :—

(a) Collectors of Customs;

(b) Appellate Collectors of Customs;

(c) Deputy Collectors of Customs;

(d) Assistant Collectors of Customs; and 30

(e) such other class of officers of customs as may be appointed for the purposes of this Act.

Appoint-  
ment of  
officers of  
customs.

4. (1) The Central Government may appoint such persons as it thinks fit to be officers of customs.

(2) Without prejudice to the provisions of sub-section (1), the 35 Central Government may authorise the Board, a Collector of Customs or a Deputy or Assistant Collector of Customs to appoint officers of customs below the rank of Assistant Collector of Customs.

Powers of  
officers of  
customs.

5. (1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge 40 the duties conferred or imposed on him under this Act.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate

(3) Notwithstanding anything contained in this section, an Appellate Collector of Customs shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

- 5 6. The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.

Entrustment of functions of Board and customs officers on certain other officers.

### CHAPTER III

#### 10 APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, WAREHOUSING STATIONS, ETC.

7. The Central Government may, by notification in the Official Gazette, appoint—

Appointment of customs ports, airports, etc.

- 15 (a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;

(b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;

- 20 (c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;

- 25 (d) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

8. The Collector of Customs may—

Power to approve landing places and specify limits of customs area.

- 30 (a) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;

- (b) specify the limits of any customs area.

9. The Board may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

Power to declare places to be warehousing stations.

- 35 10. The Collector of Customs may, by notification in the Official Gazette, appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of customs.

Appointment of boarding stations.

### CHAPTER IV

#### PROHIBITIONS ON IMPORTATION AND EXPORTATION OF GOODS

- 40 11. (1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance)

Power to prohibit importation or exportation of goods.

as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following:—

- (a) the maintenance of the security of India; 5
- (b) the maintenance of public order and standards of decency or morality;
- (c) the prevention of smuggling;
- (d) the prevention of shortage of goods of any description;
- (e) the conservation of foreign exchange and the safeguard- 10  
ing of balance of payments;
- (f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
- (g) the prevention of surplus of any agricultural product or the product of fisheries: 15
- (h) the maintenance of standards for the classification, grading or marketing of goods in international trade;
- (i) the establishment of any industry;
- (j) the prevention of serious injury to domestic production of goods of any description; 20
- (k) the protection of human, animal or plant life or health.
- (l) the protection of national treasures of artistic, historic or archæological value;
- (m) the conservation of exhaustible natural resources;
- (n) the protection of patents, trade marks and copyrights; 25
- (o) the prevention of deceptive practices;
- (p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;
- (q) the fulfilment of obligations under the Charter of the 30  
United Nations for the maintenance of international peace and security;
- (r) the implementation of any treaty, agreement or convention with any country;
- (s) the compliance of imported goods with any laws which 35  
are applicable to similar goods produced or manufactured in India;
- (t) the prevention of dissemination of documents contain-  
ing any matter which is likely to prejudicially affect friendly  
relations with any foreign State or is derogatory to national 40

(u) the prevention of the contravention of any law for the time being in force; and

(v) any other purpose conducive to the interests of the general public.

5

## CHAPTER V

### LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

32 of 1934.

12. (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Indian Tariff Act, 1934, or any other law for the time being in force, on goods imported into, or exported from, India. Dutiable goods.

(2) The provisions of sub-section (1) shall apply in respect of—

(a) all goods belonging to the Central Government; and

15 (b) all goods belonging to the Government of a State and used for the purposes of a trade or business of any kind carried on by, or on behalf of, that Government, or of any operations connected with such trade or business;

as they apply in respect of goods not belonging to any Government.

20 13. If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage. Duty on pilfered goods.

32 of 1934.

25 14. (1) For the purposes of the Indian Tariff Act, 1934, or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be—

30 (a) the\*\*\*\* price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the\*\*\* course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale; Valuation of goods for purposes of assessment.

35 (b) where such price is not ascertainable, the nearest ascertainable equivalent thereof determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Date for  
determination  
of rate of  
duty and  
tariff valua-  
tion of im-  
ported goods.

15. (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,—

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section; 5

(b) in the case of goods cleared from a warehouse under section 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty : 10

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this section shall not apply to baggage and goods imported by post. 15

Date for  
determina-  
tion of rate  
of duty and  
tariff valua-  
tion of ex-  
port goods.

16. (1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,—

(a) in the case of goods entered for export under section 50, on the date on which a shipping bill or a bill of export in respect of such goods is presented under that section; 20

(b) in the case of any other goods, on the date of payment of duty :

Provided that if the shipping bill has been presented before the date of entry outwards of the vessel by which the goods are to be exported, the shipping bill shall be deemed to have been presented on the date of such entry outwards. 25

(2) The provisions of this section shall not apply to baggage and goods exported by post.

Assessment  
of duty.

17. (1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer. 30

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed. 35

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue 40

or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter  
5 or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis  
10 of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or  
15 any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

18. (1) Notwithstanding anything contained in this Act but with-  
out prejudice to the provisions contained in section 46—

Provisional  
assessment  
of duty.

20 (a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

25 (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or

30 (c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty;

the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be,  
35 furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

(2) When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then—

40 (a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of, the finally assessed, the importer or the exporter

of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty. 5

Determina-  
tion of duty  
where goods  
consist of  
articles liable  
to different  
rates of duty.

19. Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows:—

(a) articles liable to duty with reference to quantity shall be chargeable to that duty; 10

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates; 15

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):

Provided that,—

(a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article; 20

(b) if the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it. 25

Re-importa-  
tion of goods  
produced or  
manufactured  
in India.

20. (1) If goods produced or manufactured in India be imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value not so produced or manufactured are liable or subject, on the importation thereof; 30

Provided that if such importation takes place within three years after the exportation of such goods and it is shown to the satisfaction of the Assistant Collector of Customs that the goods are the same which were exported, the goods may be admitted— 35

(a) in any case where at the time of exportation of the goods, drawback of any customs or excise duty levied by the Union or both was allowed, on payment of customs duty equal to the amount of such drawback;



(b) in any case where at the time of exportation of the goods, drawback of any excise duty levied by a State was allowed, on payment of customs duty equal to such excise duty leviable at the time and place of importation of the goods;

15 (c) in any case where the goods were exported in bond, without payment of—

(i) the customs duty leviable on the imported materials, if any, used in the manufacture of the goods, or

10 (ii) the excise duty leviable on the indigenous materials, if any, used in the manufacture of the goods, or

(iii) the excise duty, if any, leviable on the goods, on payment of customs duty equal to the aggregate amount of all such duties calculated at the rates prevailing at the time and place of importation of the goods;

15 (d) in any other case, without payment of duty.

(2) For the purposes of this section goods shall be deemed to have been produced or manufactured in India, if at least twenty-five per cent. of the total cost of production or manufacture of the goods has been incurred in India.

20 21. All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act. Goods derelict, wreck, etc.

25 22. (1) Where it is shown to the satisfaction of the Assistant Collector of Customs— Abatement of duty on damaged or deteriorated goods.

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or

30 (b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or

35 (c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

40 (2) The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the

goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.

(3) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following 5 methods at the option of the owner:—

(a) the value of such goods may be ascertained by the proper officer, or

(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any 10 other manner, and the gross sale proceeds shall be deemed to be the value of such goods.

Remission  
of duty on  
lost, destroy-  
ed or aban-  
doned goods.

23. (1) Where it is shown to the satisfaction of the Assistant Collector of Customs that any imported goods have been lost\*\*\*\* or\*\*destroyed, at any time before clearance for home consumption, 15 the Assistant Collector of Customs shall remit the duty on such goods.

(2) The owner of any imported goods may at any time before an order for clearance of the goods for home consumption has been made, relinquish his title to the goods\*\*\*\*\*and thereupon he shall not be 20 liable to pay the duty thereon.

Power to  
make rule  
for denatur-  
ing or  
mutilation of  
goods.

24. The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable 25 to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

Power to  
grant  
exemption  
from duty.

25. (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such 30 conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, 35 exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

26. Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if— Refund of export duty in certain cases.

(a) the goods are returned to such person otherwise than by way of re-sale;

(b) the goods are re-imported within one year from the date of exportation; and

(c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

27. (1) Any person claiming refund of any duty paid by him in pursuance of an order of assessment made by an officer of customs lower in rank than an Assistant Collector of Customs may make an application for refund of such duty to the Assistant Collector of Customs before the expiry of six months from the date of payment of duty: Claim for refund of duty.

Provided that the limitation of six months shall not apply where any duty has been paid under protest.

*Explanation.*—Where any duty is paid provisionally under section 18, the period of six months shall be computed from the date of adjustment of duty after the final assessment thereof.

(2) If on receipt of any such application the Assistant Collector of Customs is satisfied that the whole or any part of the duty paid by the applicant should be refunded to him, he may make an order accordingly.

(3) Where, as a result of any order passed in appeal or revision under this Act, refund of any duty becomes due to any person, the proper officer may refund the amount to such person without his having to make any claim in that behalf.

(4) Save as provided in section 26, no claim for refund of any duty shall be entertained except in accordance with the provisions of this section.

28. (1) When any duty has not been levied or has been short-levied or erroneously refunded, the proper officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or which has been so shortlevied or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice: Notice for payment of duties not levied, short-levied or erroneously refunded.

Provided that where any duty has not been levied or has been short-levied or has been erroneously refunded by reason of collusion

or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "six months" the words "five years" were substituted.

(2) The Assistant Collector of Customs, after considering the representation, if any, made by the person on whom notice is served under sub-section (1) shall determine the amount of duty due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined. 5

(3) For the purposes of sub-section (1), the expression "relevant date" means— 10

(a) in a case where duty is not levied, the date on which the proper officer makes an order for the clearance of the goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof; 15

(c) in a case where duty has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty.

## CHAPTER VI

20

### PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED OR EXPORTED GOODS

Arrival of  
vessels and  
aircrafts in  
India.

29. (1) The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land—

(a) for the first time after arrival in India; or 25

(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft;

at any place other than a customs port or a customs airport, as the case may be \* \* \* \*. 30

(2) The provisions of sub-section (1) shall not apply in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft—

(a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall on demand produce to him the log book belonging to the vessel or the aircraft; 35

(b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and

(c) shall comply with any directions given by any such officer with respect to any such goods,

and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft:

Provided that nothing in this section shall prohibit the departure of any crew or passengers from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.

30. (1) The person-in-charge of a conveyance carrying imported goods shall, within twenty-four hours after arrival thereof at a customs station, deliver to the proper officer, in the case of a vessel or aircraft, an import manifest, and in the case of a vehicle, an import report, in the prescribed form:

Delivery of  
import  
manifest  
or import  
report.

Provided that,—

(a) in the case of a vessel any such manifest may be delivered to the proper officer before the arrival of the vessel;

(b) if the proper officer is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof within twenty-four hours after the arrival of the conveyance, he may accept it at any time thereafter.

(2) The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented.

31. (1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

Imported  
goods not  
to be un-  
loaded from  
vessel until  
entry in-  
wards  
granted.

(2) No order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

(3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

Imported goods not to be unloaded unless mentioned in import manifest or import report.

32. No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.

5

Unloading and loading of goods at approved places only.

33. Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

Goods not to be unloaded or loaded except under supervision of customs officer.

34. Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer:

Provided that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

Restrictions on goods being water-borne.

35. No imported goods shall be water-borne for being landed from any vessel, and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form:

20

Provided that the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

Restrictions on unloading and loading of goods on holidays, etc.

36. No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the working hours, except after giving the prescribed notice and on payment of the prescribed fees, if any:

Provided that no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

Power to board conveyances.

37. The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period as he considers necessary.

35

Power to require production of documents and ask questions.

38. For the purposes of carrying out the provisions of this Act, the proper officer may require the person-in-charge of any conveyance or animal carrying imported goods or export goods to produce any document and to answer any questions and thereupon such person shall produce such documents and answer such questions.

40

Export goods not to be loaded on vessel until entry-outwards granted.

39. The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

40. The person-in-charge of a conveyance shall not permit the loading at a customs station—

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;

(b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

41. (1) The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form:

Provided that if the agent of the person in charge of the conveyance furnishes such security as the proper officer deems sufficient for duly delivering within seven days from the date of departure of the conveyance the export manifest or the export report, as the case may be, the proper officer may (subject to such rules as the Central Government may make in this behalf) accept such manifest or report within the aforesaid period.

(2) The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

42. (1) The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

(2) No such order shall be given until—

(a) the person-in-charge of the conveyance has answered the questions put to him under section 38;

(b) the provisions of section 41 have been complied with;

(c) the shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;

(d) all duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;

(e) the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116

or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(f) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods,—

(i) such goods have been unloaded, or

(ii) where the Assistant Collector of Customs is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

Exemption of certain classes of conveyances from certain provisions of this Chapter.

43. (1) The provisions of sections 30, 41 and 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants.

(2) The Central Government may, by notification in the Official Gazette, exempt the following classes of conveyances from all or any of the provisions of this Chapter—

(a) conveyances belonging to the Government or any foreign Government;

(b) vessels and aircrafts which temporarily enter India by reason of any emergency.

## CHAPTER VII

### CLEARANCE OF IMPORTED GOODS AND EXPORT GOODS

25

Chapter not to apply to baggage and postal articles.

44. The provisions of this Chapter shall not apply to (a) baggage, and (b) goods imported or to be exported by post.

#### *Clearance of imported goods*

Restrictions on custody and removal of imported goods.

45. (1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force,—

(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer.

Entry of goods on importation

46. (1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting to the



proper officer a bill of entry for home consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of  
 5 full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed  
 10 under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) A bill of entry under sub-section (1) may be presented at any  
 15 time after the delivery of the import manifest or import report as the case may be:

Provided that the Collector of Customs may in any special circumstances permit a bill of entry to be presented before the delivery of such manifest or report.

20 (4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

25 (5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or *vice-versa*.

30 47. Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption. Clearance of goods for home consumption.

35 48. If any \* \* goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within two months from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods  
 40 may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof: Procedure in case of goods not cleared, warehoused, or transhipped within two months after unloading.

Provided that—

(a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time:

45 (b) arms and ammunition \* \* \* may be sold at such time and place and in such manner as the Central Government may direct.

*Explanation.*—In this section, “arms” and “ammunition” have the meanings respectively assigned to them in the Arms Act, 1959.

54 of 1959.

Storage of  
imported  
goods in  
warehouse  
pending  
clearance.

49. Where in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Collector of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a public warehouse, or in a private warehouse if facilities for deposit in a public warehouse are not available; but such goods shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

#### *Clearance of export goods*

Entry of  
goods for  
exportation.

50. (1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

Clearance of  
goods for  
exportation.

51. Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.

### CHAPTER VIII

25

#### GOODS IN TRANSIT

Chapter not  
to apply to  
baggage,  
postal arti-  
cles and  
stores.

52. The provisions of this Chapter shall not apply to (a) baggage, (b) goods imported by post, and (c) stores.

Transit of  
goods in  
same vessel  
or aircraft.

53. Subject to the provisions of section 11, any goods imported in a vessel or aircraft and mentioned in the import manifest as for transit in the same vessel or aircraft to any port or airport outside India or any customs port or customs airport may be allowed to be so transitted without payment of duty.

Transship-  
ment of  
goods with-  
out payment  
of duty.

54. (1) Where any goods imported into a customs port or customs airport are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form.

(2) Subject to the provisions of section 11—

(a) where any goods imported into a customs port are mentioned in the import manifest as for transshipment to any port outside India, or

(b) where any goods imported into a customs airport are mentioned in the import manifest as for transhipment to any airport outside India, such goods may be allowed to be so transhipped without payment of duty.

(3) Where any goods imported into a customs port or a customs airport are mentioned in the import manifest as for transhipment—

15 of 1908. (a) to any major port as defined in the Indian Ports Act, 1908, or the customs airport at Bombay, Calcutta, Delhi or Madras, or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or

10 (b) to any other customs port or customs airport, and the proper officer is satisfied that the goods are *bona fide* intended for transhipment to such customs port or airport,

15 the proper officer may allow the goods to be transhipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs port or customs airport to which transhipment is allowed.

20 55. Where any goods are allowed to be transitted under section 53 or transhipped under sub-section (3) of section 54 to any customs port or customs airport, they shall, on their arrival at such port or airport, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods. Entry, etc., of transitted or transhipped goods on arrival at customs port or customs airport.

56. Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from one part of India to another part through any foreign territory, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination. Transport of certain classes of goods subject to prescribed conditions.

## CHAPTER IX

### WAREHOUSING

57. At any warehousing station, the Assistant Collector of Customs may appoint public warehouses wherein dutiable goods may be deposited without payment of duty. Appointing of public warehouses.

58. (1) At any warehousing station, the Assistant Collector of Customs may license private warehouses wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited without payment of duty. Licensing of private warehouses.

(2) The Assistant Collector of Customs may cancel a licence granted under sub-section (1)—

(a) by giving one month's notice in writing to the licensee; or

(b) if the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the licence:

Provided that before any licence is cancelled under clause (b), the licensee shall be given a reasonable opportunity of being heard. 5

(3) Pending an enquiry whether a licence granted under sub-section (1) should be cancelled under clause (b) of sub-section (2), the Assistant Collector of Customs may suspend the licence.

**Warehousing  
bond.**

59. (1) The importer of any dutiable goods which have been entered for warehousing and assessed to duty under section 17 or 10 section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods,—

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

(b) to pay on or before a date specified in a notice of demand 15 all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at the rate of six per cent. per annum or such other rate as is for the time being fixed by the Board; and

(c) to discharge all penalties incurred for violation of the 20 provisions of this Act and the rules and regulations in respect of such goods.

(2) For the purposes of sub-section (1), the Assistant Collector of Customs may permit an importer to enter into a general bond in such amount as the Assistant Collector of Customs may approve in 25 respect of the warehousing of goods to be imported by him within a specified period.

(3) A bond executed under this section by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to 30 another warehouse:

Provided that where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond 35 executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee.

**Permission  
for deposit  
of goods in  
a warehouse.**

60. When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permit- 40 ting the deposit of the goods in a warehouse without payment of duty.

61. Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed, till the expiry of three years after the date on which the proper officer made an order under section 60 permitting the deposit of the goods in a warehouse: Period for which goods may remain warehoused.

Provided that—

(i) in the case of any goods which are likely to deteriorate, the aforesaid period of three years may be reduced by the Collector of Customs to such shorter period as he may deem fit;

10 (ii) in the case of any goods which are not likely to deteriorate, the aforesaid period of three years may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding one year and by the Board for such further period as it may deem fit:

15 Provided further that when the licence for any private warehouse is cancelled, the owner of any goods warehoused therein shall, within seven days from the date on which notice of such cancellation is given or within such extended period as the proper officer may allow, remove the goods from such warehouse to another warehouse or clear them for home consumption or exportation.

20 62. (1) All warehoused goods shall be subject to the control of the proper officer.

Control over warehoused goods.

(2) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.

25 (3) The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

(4) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

30 63. (1) The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Collector of Customs. Payment of rent and warehouse charges.

(2) If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse-keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.

40 64. With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same—

Owner's right to deal with warehoused goods.

(a) inspect the goods;

(b) separate damaged or deteriorated goods from the rest;

(c) sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;

(d) deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods; 5

(e) show the goods for sale; or

(f) take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples. 10

Manufacture and other operations in relation to goods in a warehouse.

65. (1) With the sanction of the Assistant Collector of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods. 15

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply:—

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported: 20

Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form; 25

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption. 30

Power to exempt imported materials used in the manufacture of goods in warehouse.

66. If any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty. 35 40

67. The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, without payment of duty, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

Removal of goods from one warehouse to another.

68. The importer of any warehoused goods may clear them for home consumption if—

Clearance of warehoused goods for home consumption.

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

10 (b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer.

15 69. (1) Any warehoused goods may be exported to a place outside India without payment of import duty if—

Clearance of warehoused goods for exportation.

(a) a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form;

20 (b) the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for exportation has been made by the proper officer.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

30 70. (1) When any warehoused goods to which this section applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant Collector of Customs may remit the duty on such deficiency.

Allowance in case of volatile goods.

35 (2) This section applies to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may, by notification in the Official Gazette, specify.

40 71. No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or re-exportation, or for removal to another warehouse, or as otherwise provided by this Act.

Goods not to be taken out of warehouse except as provided by this Act.

Goods im-  
properly  
removed  
from ware-  
house, etc.

72. (1) In any of the following cases, that is to say,—

(a) where any warehoused goods are removed from a warehouse in contravention of section 71;

(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;

(c) where any warehoused goods have been taken under section 64 as samples without payment of duty;

(d) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer;

the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

(2) If any owner fails to pay any amount demanded under subsection (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may select.

Cancellation  
and return  
of warehousing  
bond.

73. When the whole of the goods covered by any bond executed under section 59 have been cleared for home consumption or exported or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

## CHAPTER X

### DRAWBACK

30

Drawback  
allowable on  
re-export of  
duty-paid  
goods.

74. (1) When any goods capable of being easily identified which have been imported into India and upon which any duty has been paid on importation, are exported to any place outside India, ninety-eight per cent. of such duty shall, except as otherwise hereinafter provided, be re-paid as drawback, if—

(a) the goods are identified to the satisfaction of the Assistant Collector of Customs as the goods which were imported; and

(b) the goods are entered for export within two years from the date of payment of duty on the importation thereof.

35



Provided that in any particular case the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.

5 (2) Notwithstanding anything contained in sub-section (1), the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government, having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette, fix.

10 (3) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may—

(a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;

15 (b) specify the goods which shall be deemed to be not capable of being easily identified.

(4) For the purposes of this section—

(a) goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16;

(b) in the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be the date of payment of duty.

25 25. (1) Where it appears to the Central Government that in respect of goods of any class or description manufactured in India and exported to any place outside India, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture of such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2).

Drawback on imported materials used in the manufacture of goods which are exported.

(2) The Central Government may make rules for the purpose of carrying out the provisions of sub-section (1) and, in particular, such rules may provide—

35 (a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture of the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture of goods of that class or description either by manufacturers generally or by any particular manufacturer;

40 (b) for the production of such certificates, documents and other evidence in support of each claim or drawback as may be necessary;

(c) for requiring the manufacturer to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Collector of Customs to enable such authorised officer to inspect the processes of manufacture and to verify by actual check or otherwise the statements made in support of the claim for drawback. 5

Prohibition  
and regula-  
tion of  
drawback in  
certain cases.

76. (1) Notwithstanding anything hereinbefore contained, no drawback shall be allowed—

(a) in respect of any goods which are required under the regulations to be included in the export manifest or export report and are not so included; 10

(b) in respect of any goods the market-price of which is less than the amount of drawback due thereon;

(c) where the drawback due in respect of any goods is less than five rupees. 15

(2) Without prejudice to the provisions of sub-section (1), if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification. 20

## CHAPTER XI

### SPECIAL PROVISIONS REGARDING BAGGAGE, GOODS IMPORTED OR EXPORTED BY POST, AND STORES 25

#### *Baggage*

Declaration  
by owner of  
baggage.

77. The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

Determina-  
tion of rate  
of duty and  
tariff valua-  
tion in res-  
pect of  
baggage.

78. The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under section 77. 30

*Bona fide*  
baggage  
exempted  
from duty.

79. (1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty—

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules; 35

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a *bona fide* gift or souvenir; provided that the value of each such article and the total value of all such 40

articles does not exceed such limits as may be specified in the rules.

(2) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may specify—

(a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);

(b) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of sub-section (1);

(c) the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed free of duty.

(3) Different rules may be made under sub-section (2) for different classes of persons.

80 Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India.

81. The Board may make regulations,—

(a) providing for the manner of declaring the contents of any baggage;

Regulations  
in respect  
of baggage.

(b) providing for the custody, examination, assessment to duty and clearance of baggage;

(c) providing for the transit or transshipment of baggage from one customs station to another or to a place outside India.

#### *Goods imported or exported by post*

82. In the case of goods imported or exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, shall be deemed to be an entry for import or export, as the case may be, for the purposes of this Act.

Label or  
declaration  
accompany-  
ing goods  
to be treat-  
ed as entry.

83. (1) The rate of duty and tariff-value, if any, applicable to any goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon:

Rate of duty  
and tariff  
valuation in  
respect  
of goods  
imported or  
exported by  
post.

Provided that if such goods are imported by a vessel and the list of the goods containing the particulars was presented before the date of the arrival of the vessel, it shall be deemed to have been presented on the date of such arrival.

(2) The rate of duty and tariff value, if any, applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation.

Regulations regarding goods imported or to be exported by post.

84. The Board may make regulations providing for—

5

(a) the form and manner in which an entry may be made in respect of any specified class of goods imported or to be exported by post, other than goods which are accompanied by a label or declaration containing the description, quantity and value thereof;

(b) the examination, assessment to duty, and clearance of 10 goods imported or to be exported by post;

(c) the transit or transshipment of goods imported by post from one customs station to another or to a place outside India.

### Stores

Stores may be allowed to be warehoused without assessment to duty.

85. Where any imported goods are entered for warehousing and 15 the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty under this Chapter, the proper officer may permit the goods to be warehoused without the goods being assessed to duty.

Transit and transshipment of stores.

86. (1) Any stores imported in a vessel or aircraft may, without 20 payment of duty, remain on board such vessel or aircraft while it is in India.

(2) Any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided in section 87 or section 25 90.

Imported stores may be consumed on board a foreign-going vessel or aircraft.

87. Any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft. 30

Application of section 69 and Chapter X to stores.

88. The provisions of section 69 and Chapter X shall apply to stores (other than those to which section 90 applies) as they apply to other goods, subject to the modifications that—

(a) for the words "exported to any place outside India" or the word "exported", wherever they occur, the words "taken on 35 board any foreign-going vessel or aircraft as stores" shall be substituted;

(b) in the case of drawback on fuel and lubricating oil taken on board any foreign-going aircraft as stores, sub-section

(1) of section 74, shall have effect as if for the words "ninety- 40 eight per cent.", the words "the whole" were substituted.

89. Goods produced or manufactured in India and required as Stores to be stores on any foreign-going vessel or aircraft may be exported free of free of export duty. duty in such quantities as the proper officer may determine, having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart.

90. (1) Imported stores specified in sub-section (3) may without Concessions in respect of payment of duty be consumed on board a ship of the Indian Navy. imported stores for the Navy.

(2) The provisions of section 69 and Chapter X shall apply to the Navy. stores specified in sub-section (3) as they apply to other goods, subject to the modifications that—

(a) for the words "exported to any place outside India" or the word "exported" wherever they occur, the words "taken on board a ship of the Indian Navy" shall be substituted;

15 (b) for the words "ninety-eight per cent." in sub-section (1) of section 74, the words "the whole" shall be substituted.

(3) The stores referred to in sub-sections (1) and (2) are the following:—

(a) stores for the use of a ship of the Indian Navy;

20 (b) stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service.

## CHAPTER XII

### PROVISIONS RELATING TO COASTAL GOODS AND VESSELS CARRYING COASTAL GOODS

25 91. The provisions of this Chapter shall not apply to baggage and stores. Chapter not to apply to baggage and stores.

92. (1) The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a bill of coastal goods in Entry of coastal goods. 30 the prescribed form.

(2) Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

35 93. The master of a vessel shall not permit the loading of any coastal goods on the vessel until a bill relating to such goods presented under section 92 has been passed by the proper officer and has been delivered to the master by the consignor. Coastal goods not to be loaded until bill relating thereto is passed, etc.

Clearance of coastal goods at destination.

94. (1) The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that port. 5

(2) Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him under sub-section (1). 10

Master of a coasting vessel to carry an advice book.

95. (1) The master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book to be called the "advice book".

(2) The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port. 15

(3) The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection.

Loading and unloading of coastal goods at customs port or coastal port only.

96. No coastal goods shall be loaded on, or unloaded from, any vessel at any port other than a customs port or a coastal port appointed under section 7 for the loading or unloading of such goods. 20

No coasting vessel to leave without written order.

97. (1) The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer. 25

(2) No such order shall be given until—

(a) the master of the vessel has answered the questions put to him under section 38;

(b) all charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct; 30

(c) the master of the vessel has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct; 35

(d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with. 40

98. (1) Sections 33, 34 and 36 shall, so far as may be, apply to coastal goods as they apply to imported goods or export goods.

Application of certain provisions of this Act to coastal goods, etc.

(2) Sections 37 and 38 shall, so far as may be, apply to vessels carrying coastal goods as they apply to vessels carrying imported goods or export goods.

(3) The Central Government may, by notification in the Official Gazette, direct that all or any of the other provisions of Chapter VI and the provisions of section 45 shall apply to coastal goods or vessels carrying coastal goods subject to such exceptions and modifications as may be specified in the notification.

99. The Central Government may make rules for—

Power to make rules in respect of coastal goods and coasting vessels.

(a) preventing the taking out of India of any coastal goods the export of which is dutiable or prohibited under this Act or any other law for the time being in force;

15 (b) preventing, in the case of a vessel carrying coastal goods as well as imported or export goods, the substitution of imported or export goods by coastal goods.

## CHAPTER XIII

### SEARCHES, SEIZURE AND ARREST

20 100. (1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person.

Power to search suspected persons entering or leaving India, etc.

(2) This section applies to the following persons, namely:—

25 (a) any person who has landed from or is about to board or is on board any vessel within the Indian customs waters;

(b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;

30 (c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;

(d) any person not included in clause (a), (b) or (c) who has entered or is about to leave India;

(e) any person in a customs area.

Power to  
search sus-  
pected  
persons  
in certain  
other cases.

101. (1) Without prejudice to the provisions of section 100, if an officer of customs empowered in this behalf by general or special order of the Collector of Customs, has reason to believe that any person has secreted about his person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person. 5

(2) The goods referred to in sub-section (1) are the following:—

(a) gold;

(b) diamonds;

(c) manufactures of gold or diamonds;

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(d) watches;

(e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

Persons to be  
searched may  
require to  
be taken  
before  
gazetted  
officer of  
customs or  
magistrate.

102. (1) When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest gazetted officer of customs or magistrate. 15

(2) If such requisition is made, the officer of customs may detain the person making it until he can bring him before the gazetted officer of customs or the magistrate. 20

(3) The Gazetted Officer of Customs or the magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) Before making a search under the provisions of section 100 or section 101, the officer of customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses. 25 30

(5) No female shall \* \* be searched by any one excepting a female.

Power to  
screen or  
X-ray bodies  
of suspected  
persons for  
detecting  
secreted  
goods.

103. (1) Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate. 35

(2) A magistrate before whom any person is brought under sub-section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person. 40



(3) Where any such magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or  
5 X-rayed, he may make an order to that effect.

(4) Where a magistrate has made any order under sub-section (3), in relation to any person, the proper officer shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of  
10 this section, and such person shall allow the radiologist to screen or X-ray his body.

(5) A radiologist before whom any person is brought under sub-section (4) shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him,  
15 to the magistrate without unnecessary delay.

(6) Where on receipt of a report from a radiologist under sub-section (5) or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on  
20 the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction:

Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.

(7) Where any person is brought before a magistrate under this  
25 section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such period as he may direct.

(8) Nothing in this section shall apply to any person referred to  
30 in sub-section (1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods.

*Explanation.*—For the purposes of this section, the expression “registered medical practitioner” means any person who holds a  
35 qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916, or notified under section 3 of that Act, or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1956.

7 of 1916.

102 of 1956.

104. (1) If an officer of customs empowered in this behalf by  
40 general or special order of the Collector of Customs has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under section 135, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. Power to arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the Code of Criminal Procedure, 1898.

5  
5 of 1898.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Act shall not be cognizable.

Power to  
search  
premises.

105. (1) If the Assistant Collector of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.

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(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Collector of Customs" were substituted.

5 of 1898.

Power to  
stop and  
search con-  
veyances.

106. (1) Where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and—

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(a) rummage and search any part of the aircraft, vehicle or vessel;

(b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;

(c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

35

(2) Where for the purposes of sub-section (1)—

(a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to

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or special order of the Collector of Customs may, during the course of

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(b) examine \* \* \* any person acquainted with the facts and circumstances of the case.

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3 of 1908.

5 of 1800.

Power to  
require  
production  
of order  
permitting  
clearance  
of goods  
imported by  
land.

109. Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under section 47 permitting clearance of the goods: 5

Provided that nothing in this section shall apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of section 7.

Seizure of  
goods, do-  
cuments and  
things.

110. (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods: 10

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. 15

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months. 20

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act. 25

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

## CHAPTER XIV

### CONFISCATION OF GOODS AND COVEYANCES AND IMPOSITION OF PENALTIES

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Confiscation  
of improperly  
imported  
goods etc.

111. The following goods brought from a place outside India shall be liable to confiscation:—

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods; 35

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

5 (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

10 (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

15 (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

20 (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

25 (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

30 (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

35 (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

40 (m) any dutiable or prohibited goods which do not correspond in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof;

(n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

Penalty for  
improper  
importation  
of goods,  
etc.

## 112. Any person,—

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\* \* \* \* \*

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

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(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

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shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding five times the value of the goods or one thousand rupees, whichever is the greater;

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(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding five times the duty sought to be evaded on such goods or one thousand rupees, whichever is the greater.

Confiscation  
of goods  
attempted  
to be im-  
properly  
exported  
etc.

## 113. The following export goods shall be liable to confiscation:—

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(a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;

(b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the export of such goods;

(c) any dutiable or prohibited goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land-customs station or a customs port appointed for the loading of such goods;

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

(f) any dutiable or prohibited goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;

(g) any dutiable or prohibited goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;

(h) any dutiable prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(i) any dutiable or prohibited goods which do not correspond in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof;

(j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74;

(k) any goods cleared for exportation under a claim for drawback which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer.

114. Any person\*\*\*\*\* who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,—

Penalty for attempt to export goods improperly, etc.

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being

in force, to a penalty not exceeding five times the value of the goods or one thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding five times the duty sought to be evaded on such goods or one thousand rupees, whichever is the greater; 5

(iii) in the case of goods under claim for drawback, to a penalty not exceeding five times the amount of drawback claimed or one thousand rupees, whichever is the greater.

Confiscation  
of conveyances.

115. (1) The following conveyances shall be liable to confiscation:— 10

(a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods; 15

(b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;

(c) any conveyance which having been required to stop or land under section 106 fails to do so, except for good and sufficient cause; 20

(d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer; 25

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods. 30

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all such precautions against such use as are for the time being specified in the rules: 35

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the 40



conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

*Explanation.*—In this section, “market price” means market price at the date when the goods are seized.

5 116. If any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure  
10 to unload or the deficiency is not accounted for to the satisfaction of the Assistant Collector of Customs, the person-in-charge of the conveyance shall be liable,—

(a) in the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of this Act, to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported;

(b) in the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported.

117. Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one thousand rupees.

118. (a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.

(b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.

119. Any goods used for concealing smuggled goods shall also be liable to confiscation.

*Explanation.*—In this section, “goods” does not include a conveyance used as a means of transport.

120. (1) Smuggled goods may be confiscated notwithstanding any change in their form.

(2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation:

Penalty for not accounting for goods.

Penalties for contravention, etc., not expressly mentioned.

Confiscation of packages and their contents.

Confiscation of goods used for concealing smuggled goods.

Confiscation of smuggled goods notwithstanding any change in form, etc.

Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation.

Confiscation  
of sale-  
proceeds of  
smuggled  
goods.

121. Where any smuggled goods are sold by a person having 5  
knowledge or reason to believe that the goods are smuggled goods,  
the sale-proceeds thereof shall be liable to confiscation.

Adjudication  
of confisca-  
tions and  
penalties.

122. In every case under this Chapter in which anything is liable  
to confiscation or any person is liable to a penalty, such confiscation  
or penalty may be adjudged,— 10

(a) without limit, by a Collector of Customs or a Deputy  
Collector of Customs;

(b) where the value of the goods liable to confiscation does  
not exceed ten thousand rupees and where the penalty proposed  
to be imposed does not exceed two thousand rupees, by an 15  
Assistant Collector of Customs;

(c) where the value of the goods liable to confiscation does  
not exceed one thousand rupees and where the penalty proposed  
to be imposed does not exceed two hundred rupees, by a gazetted  
officer of customs lower in rank than an Assistant Collector of 20  
Customs.

Burden of  
proof in  
certain cases.

123. (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. 25

(2) This section shall apply to gold, diamonds, manufactures of  
gold or diamonds, watches, and any other class of goods which the  
Central Government may by notification in the Official Gazette  
specify.

Issue of  
show-cause  
notice  
before con-  
fiscation of  
goods, etc.

124. No order confiscating any goods or imposing any penalty on 30  
any person shall be made under this Chapter unless the owner of  
the goods or such person—

(a) is given a notice in writing informing him of the grounds  
on which it is proposed to confiscate the goods or to impose a  
penalty; 35

(b) is given an opportunity of making a representation in  
writing within such reasonable time as may be specified in the  
notice against the grounds of confiscation or imposition of penalty  
mentioned therein; and

(c) is given a reasonable opportunity of being heard in the 40  
matter:

Provided that the notice referred to in clause (a) and the repre-  
sentation referred to in clause (b) may, at the request of the person  
concerned be oral.

125. (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Option to  
pay fine in  
lieu of  
confiscation.

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) For the removal of doubts it is hereby declared that any fine in lieu of confiscation of goods imposed under sub-section (1) shall be in addition to any duty and charges payable in respect of such goods.

126. (1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

On confisca-  
tion, prop-  
erty to vest  
in Central  
Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods.

127. The award of any confiscation or penalty under this Act by an officer of customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chapter XVI of this Act or under any other law.

Award of  
confiscation  
or penalty  
by customs  
officers not  
to interfere  
with other  
punishments.

## CHAPTER XV

### APPEALS AND REVISION

128. (1) Any person aggrieved by any decision or order passed under this Act may, within three months from the date of the communication to him of such decision or order—

Appeals.

(a) where the decision or order has been passed by a Collector of Customs, appeal to the Board;

(b) where the decision or order has been passed by an officer of customs lower in rank than a Collector of Customs, appeal to the Appellate Collector of Customs:

\* \* \* \* \*

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(2) The Appellate Authority may, after giving an opportunity to the appellant to be heard, if he so desires, and making such further inquiry as may be necessary, pass such order as it thinks fit, confirming, modifying or annulling the decision or order appealed against:

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall not be passed—

(a) by an Appellate Collector of Customs;

(b) by the Board unless the appellant has been given a reasonable opportunity of showing cause against the proposed order :

Provided further that where the Appellate Authority is of opinion that any duty of customs has been short-levied, no order enhancing the duty shall \* \* \* \* \* be passed unless the appellant is given notice within the time-limit specified in \* \* \* section 28 to show cause against the proposed order. 10

Deposit,  
pending  
appeal, of  
duty de-  
manded or  
penalty  
levied.

129. (1) Where the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of customs authorities or any penalty levied under this Act, any person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty demanded or the penalty levied: 15

Provided that where in any particular case the appellate authority is of opinion that the deposit of duty demanded or penalty levied will cause undue hardship to the appellant, it may in its discretion dispense with such deposit, either unconditionally or subject to such conditions as it may deem fit. 20

(2) If upon any such appeal it is decided that the whole or any portion of such duty or penalty was not leviable, the proper officer shall return to the appellant such amount of duty or penalty as was not leviable. 25

Powers of  
revision of  
Board.

130. (1) The Board may of its own motion or on the application of any aggrieved person call for and examine the record of any proceeding in which an officer of customs has passed any decision or order under this Act (not being an order passed in appeal under section 128) for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may pass such order thereon as it thinks fit: 30

Provided that no order \* \* \* \* \* enhancing any \* \* \* penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section unless the person affected by the proposed order has been given a reasonable opportunity of showing cause against it: 35

Provided further that where the Board is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall \* \* \* \* \* be made unless the person affected by the proposed order is given notice to  
5 show cause against it within the time-limit specified in \* \* section 28.

\* \* \* \* \*

(2) No decision or order passed by an officer of customs shall be revised under this section by the Board \* \* \* of its \* \* own motion and no application for the revision of any such decision or  
10 order shall be entertained, after the expiry of two years from the date of such decision or order.

131. (1) The Central Government may, on the application of any person aggrieved by— Revision by  
Central  
Government.

(a) any order passed under section 128, or

15 (b) any order passed under section 130 otherwise than on the application of any aggrieved person, or

(c) any order passed on the application of any aggrieved person under section 130 where the order is of the nature referred to in either of the provisos to sub-section (1) of that section.

20 annul or modify such order.

\* \* \* \* \*

(2) An application under sub-section (1) shall be made within six months from the date of the communication to the applicant of the order against which the application is being made:

25 Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of six months, allow it to be presented within a further period of six months.

30 (3) The Central Government may of its own motion annul or modify any order passed under section 128 or section 130.

(4) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section—

35 (a) in any case in which an order passed under section 128 or section 130 has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and

40 (b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it, within one year from the date of the order sought to be annulled or modified.

(5) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section, unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28.

5

## CHAPTER XVI

### OFFENCES AND PROSECUTIONS

False  
declaration,  
false docu-  
ments, etc.

132. Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

10

Obstruction  
of officer  
of customs.

133. If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

15

Refusal to  
be X-rayed.

134. If any person—

(a) resists or refuses to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a magistrate under section 103, or

20

(b) resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, as provided in section 103;

25

he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Evasion of  
duty or  
prohibitions.

135. Without prejudice to any action that may be taken under this Act, if any person—

(a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or

30

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

35

he shall be punishable,—

40

(i) in the case of an offence relating to any of the goods to which section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to five years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months;

(ii) in any other case, with imprisonment for a term which may extend to two years, or with fine, or with both.

10 **136. (1) If any officer of customs enters into or acquiesces in any** Offences by  
 agreement to do, abstains from doing, permits, conceals or connives officers of  
 at any act or thing whereby any duty of customs leviable on any customs.  
 goods, or any prohibition for the time being in force under this Act  
 15 or any other law for the time being in force with respect to any  
 goods is or may be evaded, he shall be punishable with imprisonment  
 for a term which may extend to two years, or with fine, or with both.

(2) If any officer of customs,—

(a) requires any person to be searched for goods liable to  
 confiscation or any document relating thereto, without having  
 20 reason to believe that he has such goods or document secreted  
about his person; or

(b) arrests any person without having reason to believe that  
 he has been guilty of an offence punishable under section 135; or

(c) searches or authorises any other officer of customs to  
 25 search any place without having reason to believe that any  
goods, documents or things of the nature referred to in section  
105 are secreted in that place,

he shall be punishable with imprisonment for a term which may  
extend to six months, or with fine which may extend to one thousand  
 30 rupees, or with both.

(3) If any officer of customs, except in the discharge in good faith  
 of his duty as such officer or in compliance with any requisition made  
 under any law for the time being in force, discloses any particulars  
 learnt by him in his official capacity in respect of any goods, he  
 35 shall be punishable with imprisonment for a term which may extend  
to six months, or with fine which may extend to one thousand  
rupees, or with both.

137. (1) No court shall take cognizance of any offence under Cognizance  
 section 132, section 133, section 134 or section 135, except with the of offences.  
 40 previous sanction of the Collector of Customs.

(2) No court shall take cognizance of any offence under section  
 136,—

(a) where the offence is alleged to have been committed by

an officer of customs not lower in rank than Assistant Collector of Customs, except with the previous sanction of the Central Government;

(b) where the offence is alleged to have been committed by an officer of customs lower in rank than Assistant Collector of Customs, except with the previous sanction of the Collector of Customs. 5

Offences to  
be tried  
summarily.

138. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Chapter other than an offence punishable under clause (i) of section 135 may be tried summarily by a magistrate. 10 5 of 1898.

Presumption  
as to docu-  
ments in  
certain cases.

139. Where any document is produced by any person under this Act or has been seized under this Act from the custody or control of any person, and such document is tendered by the prosecution in evidence against him, the court shall,— 15

(a) unless the contrary is proved by any such person, presume—

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested that it was executed or attested by the person by whom it purports to have been so executed or attested; 25

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

Offences by  
companies.

140. (1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: 30 35

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. 40

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and



it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) “company” means a body corporate and includes a firm or other association of individuals; and

10 (b) “director”, in relation to a firm, means a partner in the firm.

## CHAPTER XVII

### MISCELLANEOUS

15 141. All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of customs.

Conveyances and goods in a customs area subject to control of officers of customs.

142. (1) Where any duty demanded from any person or any penalty payable by any person under this Act is not paid,—

Recovery of sums due to Government.

20 (a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs; or

25 (b) the Assistant Collector of Customs may recover or may require any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Collector of Customs or such other officer of customs; or

30 (c) if the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b), the Assistant Collector of Customs may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from the said person the amount specified thereunder as if it were an arrear of land revenue.

40 (2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

Power to  
allow import  
or export on  
execution of  
bonds in  
certain  
cases.

143. (1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Collector of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export 5 or clearance without detriment to that person, the Assistant Collector of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Collector 10 of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the Assistant Collector of Customs shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the 15 person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, 20 the Assistant Collector of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

Power to  
take sam-  
ples.

144. (1) The proper officer may, on the entry or clearance of any 25 goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.

(2) After the purpose for which a sample was taken is carried 30 out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within three months of the date on which the sample was taken, it may be disposed of in such manner as the Collector of Customs may direct.

(3) No duty shall be chargeable on any sample of goods taken 35 under this section which is consumed or destroyed during the course of any test or examination thereof, if such duty amounts to five rupees or more.

145. All operations necessary for making any goods available for examination by the proper officer or for facilitating such examination shall be performed by, or at the expense of, the owner, importer or exporter of the goods, as the case may be.

Owner, etc.,  
to perform  
operations  
incidental  
to compli-  
ance with  
customs  
law.

146. (1) No person shall carry on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs-station unless such person holds a licence granted in this behalf in accordance with the regulations.

Custom  
house agents  
to be  
licensed.

(2) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may provide for—

(a) the authority by which a licence may be granted under this section and the period of validity of any such licence;

(b) the form of the licence and the fees payable therefor;

15 (c) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in his work as an agent;

20 (d) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted;

(e) the circumstances in which a licence may be suspended or revoked; and

25 (f) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeals shall be filed.

147. (1) Where this Act requires anything to be done by the owner, importer or exporter of any goods, it may be done on his behalf by his agent.

Liability of  
principal  
and agent.

30 (2) Any such thing done by an agent of the owner, importer or exporter of any goods shall, unless the contrary is proved, be deemed to have been done with the knowledge and consent of such owner, importer or exporter, so that in any proceedings under this Act, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself.

35 (3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or exporter, be deemed to be the owner, importer or exporter of such  
40 goods for such purposes:

Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any wilful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of Assistant Collector of Customs the same cannot be recovered from the owner, 5 importer or exporter.

Liability of agent appointed by the person in charge of a conveyance.

148. (1) Where this Act requires anything to be done by the person in charge of a conveyance, it may be done on his behalf by his agent.

(2) An agent appointed by the person in charge of a conveyance 10 and any person who represents himself to any officer of customs as an agent of any such person in charge, and is accepted as such by that officer, shall be liable for the fulfilment in respect of the matter in question of all obligations imposed on such person in charge by or under this Act or any law for the time being in force, and to penalties 15 and confiscations which may be incurred in respect of that matter.

Amendment of documents.

149. Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the customs house to be amended:

Provided that no amendment of a bill of entry or a shipping bill 20 or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may 25 be.

Procedure for sale of goods and application of sale-proceeds.

150. (1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner. 30

(2) The proceeds of any such sale shall be applied—

(a) firstly to the payment of the expenses of the sale,

(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of 35 the goods,

(c) next to the payment of the duty, if any, on the goods sold,

(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods, 40

(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods.

**151.** The following officers are hereby empowered and required to assist officers of customs in the execution of this Act, namely:—

Certain officers required to assist officers of customs.

(a) officers of the Central Excise Department;

(b) officers of the Navy;

5 (c) officers of Police;

(d) officers of the Central or State Governments employed at any port or airport;

(e) such other officers of the Central or State Government or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

**152.** The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification—

Delegation of powers.

(a) any power exercisable by the Board under this Act shall be exercisable also by a Collector of Customs empowered in this behalf by the Central Government;

(b) any power exercisable by a Collector of Customs under this Act may be exercisable also by a Deputy Collector of Customs or an Assistant Collector of Customs empowered in this behalf by the Central Government;

(c) any power exercisable by a Deputy Collector of Customs under this Act may be exercisable also by an Assistant Collector of Customs empowered in this behalf by the Central Government;

(d) any power exercisable by an Assistant Collector of Customs under this Act may be exercisable also by a gazetted officer of customs empowered in this behalf by the Board.

**153.** Any order or decision passed or any summons or notice issued under this Act, shall be served—

Service of order, decision, etc.

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

**154.** Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.

Correction of clerical errors, etc.

Protection  
of action  
taken under  
the Act.

**155. (1)** No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.

General  
power to  
make rules.

**156. (1)** Without prejudice to any power to make rules contained elsewhere in this Act, the Central Government may make rules consistent with this Act generally to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of determining the nearest ascertainable equivalent of the normal price of any goods;

(b) the conditions subject to which accessories of, and spare parts and maintenance and repairing implements for, any article shall be chargeable at the same rate of duty as that article;

(c) the precautions that shall be taken by the owner, his agent and the person-in-charge of any conveyance or animal for the purposes of sub-section (2) of section 115;

(d) the detention and confiscation of goods the importation of which is prohibited and the conditions, if any, to be fulfilled before such detention and confiscation and the information, notices and security to be given and the evidence requisite for the purposes of such detention or confiscation and the mode of verification of such evidence;

(e) the reimbursement by an informant to any public officer of all expenses and damages incurred in respect of any detention of any goods made on his information and of any proceedings consequent on such detention;

(f) the information required in respect of any goods mentioned in a shipping bill or bill of export which are not exported or which are exported and are afterwards re-landed.

General  
power to  
make re-  
gulations.

**157. (1)** Without prejudice to any power to make regulations contained elsewhere in this Act, the Board may make regulations consistent with this Act and the rules, generally to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

5 (a) the form of a bill of entry, shipping bill, bill of export, import manifest, import report, export manifest, export report, bill of transshipment, boat note and bill of coastal goods;

10 (b) the conditions subject to which the transshipment of all or any goods under sub-section (3) of section 54, the transportation of all or any goods under section 56 and the removal of warehoused goods from one warehouse to another under section 67 may be allowed without payment of duty;

(c) the conditions subject to which any manufacturing process or other operations may be carried on in a warehouse under section 65.

15 158. (1) All rules and regulations made under this Act shall be published in the Official Gazette. Provisions with respect to rules and regulations.

(2) Any rule or regulation which the Central Government or the Board is empowered to make under this Act may provide—

20 (i) for the levy of fees in respect of applications, amendment of documents, furnishing of duplicates of documents, issue of certificates, and supply of statistics, and for rendering of any services by officers of customs under this Act;

25 (ii) that any person who contravenes any provision of a rule or regulation or abets such contravention or any person who fails to comply with any provision of a rule or regulation with which it was his duty to comply, shall be liable,—

(a) in the case of contravention or failure to comply with a rule, to a penalty which may extend to five hundred rupees;

30 (b) in the case of contravention or failure to comply with a regulation, to a penalty which may extend to two hundred rupees.

159. Every rule made under this Act and every notification issued under sections 11, 14, 25, 43, 66, 69, 70, 74, 75, 76, 98, 101 and 123 shall be laid as soon as may be after it is made or issued before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such

Rules and certain notifications to be laid before Parliament.

modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Repeal and  
savings.

160. (1) The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof. 5

(2) In the Indian Tariff Act, 1934—

32 of 1934.

(a) for section 2, the following section shall be substituted, namely:—

Duties  
specified in  
the Schedules to be  
levied.

“2. The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules.”; 10

(b) sections 5 and 6 shall stand repealed.

(3) Notwithstanding the repeal of any enactment by this section,—

(a) any notification, rule, regulation, order or notice issued or any appointment or declaration made or any licence, permission or exemption granted or any assessment made, confiscation adjudged or any duty levied or any penalty or fine imposed or any forfeiture, cancellation or discharge of any bond ordered or any other thing done or any other action taken under any repealed enactment shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act; 15 20

(b) any document referring to any enactment hereby repealed shall be construed as referring to this Act or to the corresponding provision of this Act. 25

(4) This Act shall apply to all goods which are subject to the control of customs at the commencement of this Act notwithstanding that the goods were imported before such commencement.

(5) Where the period prescribed for any application, appeal, revision or other proceeding under any repealed enactment had expired on or before the commencement of this Act, nothing in this Act shall be construed as enabling any such application, appeal or revision to be made or a proceeding to be instituted under this Act by reason only of the fact that a longer period therefor is prescribed or provision is made for extension of time in suitable cases by the appropriate authority. 30 35

(6) The provisions of section 65 shall apply to goods warehoused before the commencement of this Act if the operations permissible under that section were carried on after such commencement.



(7) Any duty or penalty payable under any repealed enactment may be recovered in a manner provided under this Act but without prejudice to any action already taken for the recovery of such duty or penalty under the repealed enactment.

5 (8) The mention of particular matters in sub-sections (4), (5), (6) and (7) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect 10 of 1897. of repeals.

(9) Nothing in this Act shall affect any law for the time being in 10 force relating to the constitution and powers of any Port authority in a major port as defined in the Indian Ports Act, 1908. 15 of 1908.

161. If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments 15 repealed by this Act to the provisions of this Act, the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to be necessary or expedient for the purpose of removing the difficulty. Removal of difficulties

# THE SCHEDULE

(See section 160)

## REPEALS

Year	No.	Short title	Extent of repeal	
1	2	3	4	5
1878	8	The Sea Customs Act .	The whole	
1896	8	The Inland Bonded Ware- houses Act . . . . .	The whole	
1924	19	The Land Customs Act .	The whole	
1934	22	The Aircraft Act , . .	Section 16.	10

## **APPENDIX I**

(Vide para 2 of the Report)

### **Motion in Lok Sabha for reference of the Bill to Select Committee**

"That the Bill to consolidate and amend the law relating to customs be referred to a Select Committee consisting of 30 Members, namely:—

1. Shri Ramchandra Vithal Bade
2. Shri G. Basu
3. Shri Tridib Kumar Chaudhuri
4. Shri R. Ramanathan Chettiar
5. Shri N. T. Das
6. Shri Morarji Desai
7. Shri B. D. Deshmukh
8. Shri Vishwanath Singh Gahmari
9. Shri J. N. Hazarika
10. Shri Prabhu Dayal Himatsingka
11. Shri Hari Vishnu Kamath
12. Shri Narendrasingh Ranjitsingh Mahida
13. Sardar Surjit Singh Majithia
14. Shri Krishnan Manoharan
15. Shri Bakar Ali Mirza
16. Shri Mahesh Dutta Misra
17. Shri R. R. Morarka
18. Shri Shankarrao Shantaram More
19. Shrimati Savitri Nigam
20. Shri Ghanshyamlal Oza
21. Shri Prabhat Kar
22. Shri A. V. Raghavan

23. Shri Shivram Rango Rane
24. Shri S. V. Krishnamoorthy Rao
25. Shri R. V. Reddiar
26. Shri K. V. Ramakrishna Reddy
27. Shri M. Shankaraiya
28. Dr. L. M. Singhvi
29. Shri Sumat Prasad, and
30. Shri Bali Ram Bhagat

with instructions to report by the last day of the first week of the next session."

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## APPENDIX II

(Vide para 5 of the Report)

### Statement of memoranda/representations received by the Select Committee

Sl. No.	Nature of document	From whom received	Action taken
1	Memorandum	Bharat Chamber of Commerce, Calcutta.	Circulated to Members and evidence of the Chamber taken on the 30th July, 1962.
2	Do.	The Precious Stone Importers' and Exporters' Association, Bombay.	Circulated to Members and evidence of the Association taken on the 30th July, 1962.
3	Do.	The Indian Merchants Chamber, Bombay.	Circulated to Members and evidence of the Chamber taken on the 31st July, 1962.
4	Do.	All India Jewellers Association, New Delhi.	Circulated to Members and evidence of the Association taken on the 31st July, 1962.
5	Do.	Indian Chamber of Commerce, Calcutta.	Circulated to Members and evidence of the Chamber taken on the 31st July, 1962.
6	Do.	Federation of Indian Chamber of Commerce and Industry, New Delhi.	Circulated to Members and evidence of the Federation taken on the 1st August, 1962.
7	Do.	The Associated Chambers of Commerce of India, Calcutta.	Circulated to Members and evidence of the Chambers taken on the 1st August, 1962.
8	Do.	The Bombay Custom House Clearing Agents' Association, Bombay.	Circulated to Members and evidence of the Association taken on the 1st August, 1962.
9	Do.	The All India Manufacturers' Organisation, Bombay.	Circulated to Members and evidence of the Association taken on the 2nd August, 1962.

Sl. No.	Nature of document	From whom received	Action taken
10	Memorandum	The Bombay Bullion Association Limited, Bombay.	Circulated to Members and evidence of the Association, taken on the 2nd August, 1962.
11	Do.	The Madras Jewellers' and Diamond Merchants' Association, Madras.	Circulated to Members and evidence of the Association taken on the 2nd August, 1962.
12	Do.	The Bombay Diamond Merchants' Association, Bombay.	Circulated to Members and evidence of the Association taken on the 11th August, 1962.
13	Do.	Andhra Pradesh Gold, Silver, Jewellery and Diamonds Merchants' Association, Rajahmundry.	Circulated to Members and evidence of the Association taken on the 11th August, 1962.
14	Do.	Trichy Shroff and Jewellers Association, Tiruchirapalli.	Circulated to Members and evidence of the Association taken on the 11th August, 1962.
15	Do.	The Indian National Steamship Owners' Association, Bombay.	Circulated to Members and evidence of the Association taken on the 11th August, 1962.
16	Do.	Bengal National Chamber of Commerce and Industry, Calcutta.	Circulated to Members and evidence of the Chamber taken on the 1st September, 1962.
17	Do.	Shri D. N. Mukerjee, Retired Collector of Central Excise and Customs and Advocate, Calcutta High Court, Calcutta.	Circulated to Members and evidence of the individual taken on the 1st September, 1962.
18	Do.	The Bombay Genuine Pearl Dealers Association, Bombay.	Circulated to Members and evidence of the Association taken on the 1st September, 1962.
19	Do.	The Pearls Importers and Exporters Association, Bombay.	Circulated to Members and evidence of the Association taken on the 1st September, 1962.
20	Do.	The Leading Bullion Merchants, Dealers and Commission Agents of Bombay.	Circulated to Members and evidence of the Association taken on the 1st September, 1962.
21	Do.	The All India Association of Industries, Bombay.	Circulated to Members.
22	Do.	All India Importers' Association, Bombay.	Do.

Sl. No.	Nature of document	From whom received	Action taken
23	Memorandum	Kerala Cashew Manufacturers' Association Quilon.	Circulated to Members.
24	Do. . .	Calcutta Clearing Agents' Association, Calcutta.	Do.
25	Do. . .	Bullion Merchants, Dealers & Commission Agents of Delhi.	Do.
26	Do. . .	Jewellers Association, Bangalore.	Do.
27	Do. . .	The Sonaputty Bullion Merchants' Association, Calcutta.	Do.
28	Do. . .	The Calcutta Johuri Mandal, Calcutta.	Do.
29	Do. . .	The Bombay Shroffs Association, Bombay.	Do.
30	Do. . .	The Jewellers Association, Jaipur.	Do.
31	Do. . .	The Guntur Bullion and Jewellery Merchants' Association, Guntur.	Do.
32	Do. . .	The Bezwada Jewellers and Bullion Merchants Association, Bezwada.	Do.
33	Do. . .	Muccadam Association, Bombay.	Do.
34	Do. . .	All India Exporters' Chamber, Bombay.	Do.
35	Do. . .	The Tamilnad Jewellers' Federation, Coimbatore.	Do.
36	Do. . .	The Vijayawada Bullion Merchants' Association, Vijayawada.	Do.
37	Do. . .	Punjab and Delhi Chamber of Commerce, New Delhi.	Do.
38	Do. . .	The Eluru Bullion and Jewellery Merchants' Association, Eluru.	Do.
39	Do. . .	Bihar State Bullion Merchants' Association, Patna.	Do.
40	Do. . .	Federation of All India Automobile Spare Parts Dealers' Associations, Delhi.	Do.

Sl. No.	Nature of document	From whom received	Action taken
41	Representation	The Bombay Oilseeds and Oils Exchange, Ltd., Bombay.	Placed in the Parliament Library and Members informed.
42	Do. . .	The Indian Chamber of Commerce, Guntur.	Do.
43	Do. . .	Chamber of Commerce, Vizianagram City.	Do.
44	Do. . .	Rajasthan Chamber of Commerce and Industry, Jaipur.	Do.
45	Do. . .	The Millowner's Association, Bombay.	Do.



## APPENDIX III

(Vide para 6 of the Report)

### List of Associations/individual who gave evidence before the Select Committee

Sl. No.	Names of Associations/individual	Dates on which evidence was taken
1	Bharat Chamber of Commerce, Calcutta . . . . .	30-7-1962
2	The Precious Stone Importers' and Exporters' Association, Bombay . . . . .	30-7-1962
3	The Indian Merchants Chamber, Bombay . . . . .	31-7-1962
4	All India Jewellers' Association, New Delhi . . . . .	31-7-1962
5	Indian Chamber of Commerce, Calcutta . . . . .	31-7-1962
6	Federation of Indian Chamber of Commerce and Industry, New Delhi. . . . .	1-8-1962
7	The Associated Chambers of Commerce of India, Calcutta . . . . .	1-8-1962
8	The Bombay Custom House Clearing Agents' Association, Bombay. . . . .	1-8-1962
9	The All India Manufacturers' Organisation, Bombay . . . . .	2-8-1962
10	The Bombay Bullion Association Limited, Bombay . . . . .	2-8-1962
11	The Madras Jewellers' and Diamond Merchants' Association Madras . . . . .	2-8-1962
12	The Bombay Diamond Merchants' Association, Bombay. . . . .	11-1-1962
13	Andhra Pradesh Gold, Silver, Jewellery and Diamonds Merchants' Association, Rajahmundry . . . . .	11-8-1962
14	Trichy Shroff and Jewellers Association, Tiruchirapalli . . . . .	11-8-1962
15	The Indian National Steamship Owners' Association, Bombay . . . . .	11-8-1962
16	Bengal National Chamber of Commerce and Industry, Calcutta . . . . .	1-9-1962
17	Shri D.N. Mukerjee, Retired Collector of Central Excise and Customs and Advocate, Calcutta High Court, Calcutta . . . . .	1-9-1962
18	The Bombay Genuine Pearl Dealers Association, Bombay . . . . .	1-9-1962
19	The Pearls Importers and Exporters Association, Bombay . . . . .	1-9-1962
20	The Leading Bullion Merchants, Dealers and Commission Agents of Bombay . . . . .	1-9-1962

## **APPENDIX IV**

(Vide para 8 of the Report)

### **Sub-Committee of the Select Committee on the Customs Bill, 1962**

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#### **COMPOSITION**

1. Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### **MEMBERS**

2. Shri Ramchandra Vithal Bade
3. Shri R. Ramanathan Chettiar
4. Shri Prabhu Dayal Himatsingka
5. Shri Hari Vishnu Kamath
6. Shri Nirendrasingh Mahida
7. Shri Bakar Ali Mirza
8. Shri R. R. Morarka
9. Shri Prabhat Kar
10. Shri Shivram Rango Rane.

#### **SECRETARIAT**

Shri A. L. Rai—*Deputy Secretary.*

**APPENDIX V**  
**MINUTES OF THE SITTINGS OF THE SELECT COMMITTEE ON**  
**THE CUSTOMS BILL, 1962**

**I**

**First Sitting**

The Committee met on Thursday, the 21st June, 1962, from 14.03 to 14.30 hours.

**PRESENT**

Shri S. V. Krishnamoorthy Rao—*Chairman.*

**MEMBERS**

2. Shri Ramchandra Vithal Bade
3. Shri G. Basu
4. Shri R. Ramanathan Chettiar
5. Shri B. D. Deshmukh
6. Shri Vishwanath Singh Gahmari
7. Shri J. N. Hazarika
8. Shri Narendrasingh Mahida
9. Shri Bakar Ali Mirza
10. Shri R. R. Morarka
11. Shri Shankarrao Shantaram More
12. Shri Ghanshyamlal Oza
13. Shri Prabhat Kar
14. Shri A. V. Raghavan
15. Shri Shivram Rango Rane
16. Shri R. V. Reddiar
17. Shri Sumat Prasad
18. Shri Bali Ram Bhagat.

**DRAFTSMAN**

Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*

**REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS**

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*

2. Shri D. P. Anand, Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.
3. Shri M. G. Abrol, Officer on Special Duty, Ministry of Finance.

#### SECRETARIAT

Shri A. L. Rai, Deputy Secretary.

2. The Committee considered whether any evidence should be taken by them and whether it was necessary to issue a press communique advising associations and individuals desirous of presenting their suggestions or views before the Committee in respect of the Bill to submit written memoranda thereon.

3. It was decided that a press communique might be issued advising associations, public bodies and individuals who are desirous of presenting their suggestions or views or giving evidence before the Committee in respect of the Bill to send written memoranda thereon to the Lok Sabha Secretariat by the 16th July, 1962.

4. The Committee authorised the Chairman to decide after examining the memoranda as to which of the associations etc. might be called upon to give oral evidence before the Committee.

5. The Committee desired that relevant literature on the Bill such as, Acts of the Indian Legislature, U.K. Customs and Excise Act, 1952 and Badhwar Committee Report might be circulated to the members of the Committee.

6. The Committee decided to sit from the 30th\* July, 1962 onwards for hearing evidence.

7. The Committee then adjourned to meet again on Monday, the 30th July, 1962 at 14.00 hours.

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## II

### Second Sitting

The Committee met on Monday, the 30th July, 1962, from 14.00 to 16.30 hours.

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri G. Basu
4. Shri Tridib Kumar Chaudhuri
5. Shri R. Ramanathan Chettiar
6. Shri N. T. Das
7. Shri Morarji Desai
8. Shri B. D. Deshmukh
9. Shri J. N. Hazarika
10. Shri Prabhu Dayal Himatsingka
11. Shri Hari Vishnu Kamath
12. Shri Narendrasingh Mahida
13. Shri Bakar Ali Mirza
14. Shri Mahesh Dutta Misra
15. Shri R. R. Morarka
16. Shri Shankarrao Shantaram More
17. Shrimati Savitri Nigam
18. Shri Ghanshyamlal Oza
19. Shri Prabhat Kar
20. Shri A. V. Raghavan
21. Shri Shivram Rango Rane
22. Shri R. V. Reddiar
23. Shri M. Shankaraiya
24. Dr. L. M. Singhvi
25. Shri Sumat Prasad.

## DRAFTSMEN

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

## REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Rai, *Deputy Secretary.*

## WITNESSES

I. *Bharat Chamber of Commerce, Calcutta.*

1. Shri L. R. Das Gupta
2. Shri D. P. Kajaria
3. Shri R. L. Maheshwari.

II. *The Precious Stone Importers' and Exporters' Association, Bombay.*

1. Shri Jaiysukhlal D. Zaveri
2. Shri Kirtilal K. Doshi
3. Shri Pravin M. Nanavati
4. Shri J. R. Gagrati.

2. The Committee heard the evidence given by the representatives of the Associations named above.

3. A verbatim record of the evidence given was taken.

4. The Committee decided to meet at 09.00 hours on Tuesday, the 31st July, 1962 and at 14.00 hours on Wednesday, the 1st August, 1962.

The Committee then adjourned.

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### III

#### Third Sitting

The Committee met on Tuesday, the 31st July, 1962 from 09.01 to 11.54 hours.

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri G. Basu
4. Shri Tridib Kumar Chaudhuri
5. Shri R. Ramanathan Chettiar
6. Shri N. T. Das
7. Shri Morarji Desai
8. Shri B. D. Deshmukh
9. Shri J. N. Hazarika
10. Shri Prabhu Dayal Himatsingka
11. Shri Hari Vishnu Kamath
12. Shri Narendrasingh Mahida
13. Shri Bakar Ali Mirza
14. Shri Mahesh Dutta Misra
15. Shri R. R. Morarka
16. Shri Shankarrao Shantaram More
17. Shrimati Savitri Nigam
18. Shri Prabhat Kar
19. Shri A. V. Raghavan
20. Shri Shivram Rango Rane
21. Shri R. V. Reddiar
22. Shri M. Shankaraiya
23. Dr. L. M. Singhvi
24. Shri Sumat Prasad
25. Shri Bali Ram Bhagat.

## DRAFTSMEN

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

## REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Rai, *Deputy Secretary.*

## WITNESSES

- I. *The Indian Merchants' Chamber, Bombay.*
  1. Shri Pravinchandra V. Gandhi
  2. Shri Ambalal Kilachand
  3. Shri C. L. Gheevala
  4. Shri D. S. Pendurkar.
- II. *All India Jewellers' Association, New Delhi.*
  1. Shri Bhola Nath
  2. Shri Sultan Singh Backliwal
  3. Shri Jawaharlal
  4. Shri V. J. Merchant.
- III. *Indian Chamber of Commerce, Calcutta.*
  1. Shri B. P. Khaitan
  2. Shri H. R. Sugla
  3. Shri B. Kalyanasundaram.

2. The Committee heard the evidence given by the representatives of the Associations named above.

3. A verbatim record of the evidence given was taken down.

4. The Committee decided to take up clause by clause consideration of the Bill from Thursday, the 2nd August, 1962 after the conclusion of evidence.



5. The Committee decided to sit at 09.30 hours on Thursday, 2nd August, 1962.

6. The Committee then adjourned to meet again on Wednesday, the 1st August, 1962 at 14.00 hours.

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## IV

### Fourth Sitting

The Committee met on Wednesday, the 1st August, 1962 from 14.00 to 17.33 hours.

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri G. Basu
4. Shri Tridib Kumar Chaudhuri
5. Shri R. Ramanathan Chettiar
6. Shri N. T. Das
7. Shri Morarji Desai
8. Shri B. D. Deshmukh
9. Shri J. N. Hazarika
10. Shri Prabhu Dayal Himatsingka
11. Shri Narendrasingh Mahida
12. Shri Bakar Ali Mirza
13. Shri R. R. Morarka
14. Shri Shankarrao Shantaram More
15. Shri Prabhat Kar
16. Shri A. V. Raghavan
17. Shri Shivram Rango Rane
18. Shri R. V. Reddiar
19. Shri M. Shankaraiya
20. Dr. L. M. Singhvi
21. Shri Sumat Prasad
22. Shri Bali Ram Bhagat.

#### DRAFTSMEN

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

# REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

## WITNESSES

### I. *Federation of Indian Chamber of Commerce and Industry, New Delhi.*

1. Shri Bharat Ram.
2. Shri Ambalal Kilachand.
3. Shri J. N. Guzder.
4. Shri P. Chentsal Rao.
5. Shri G. B. Sundriyal.

### II. *The Associated Chambers of Commerce of India, Calcutta.*

1. Shri J. L. Puri.
2. Mr. J. H. Forman.
3. Mr. R. von Leyden.

### III. *The Bombay Custom House Clearing Agents' Association, Bombay.*

1. Shri K. D. Pathak.
2. Shri M. T. Bandivdekar.

2. The Committee heard the evidence given by the representatives of the Associations named above.

3. A verbatim record of the evidence given was taken down.

4. The Committee then adjourned to meet again on Thursday, the 2nd August, 1962 at 09.30 hours.

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## V

### Fifth Sitting

The Committee met on Thursday, the 2nd August, 1962 from 09.30 to 12.53 hours.

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

2. Shri Ramchandra Vithal Bada.
3. Shri R. Ramanathan Chettiar.
4. Shri N. T. Das.
5. Shri Morarji Desai.
6. Shri B. D. Deshmukh.
7. Shri J. N. Hazarika.
8. Shri Prabhu Dayal Himatsingka.
9. Shri Hari Vishnu Kamath.
10. Shri Narendrasingh Mahida.
11. Shri Bakar Ali Mirza.
12. Shri R. R. Morarka.
13. Shri Shankarrao Shantaram More.
14. Shrimati Savitri Nigam.
15. Shri Prabhat Kar.
16. Shri A. V. Raghavan.
17. Shri Shivram Rango Rane.
18. Shri R. V. Reddiar.
19. Shri M. Shankaraiya.
20. Dr. L. M. Singhvi.
21. Shri Sumat Prasad.
22. Shri Bali Ram Bhagat.

#### DRAFTSMEN

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

# REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

## WITNESSES

### I. *The All India Manufacturers' Organization, Bombay.*

1. Shri Prabhu V. Mehta.
2. Shri Hans Raj Gupta.
3. Shri D. M. Desai.

### II. *The Bombay Bullion Association Limited, Bombay.*

1. Shri Chandulal Kasturchand.
2. Shri Mangulal Trikamlal.
3. Shri Amratlal Sonawala.
4. Shri Chimanlal C. Shah.
5. Shri P. Gopalakrishniah.
6. Shri Jayendra Mehta.

### III. *The Madras Jewellers' and Diamond Merchants' Association, Madras.*

1. Shri V. Pandurangiah.
2. Shri Harendra Mehta.
3. Shri P. Gopalakrishniah.
4. Shri Kanayalal Mehta.

2. The Committee heard the evidence given by the representatives of the associations named above.

3. A verbatim record of the evidence given was taken down.

4. The Committee decided to hear further evidence on the Bill on the 11th August, 1962.

5. The Committee decided to ask for an extension of time for the presentation of their report upto the last day of the first week of the Third session of Lok Sabha and authorised the Chairman and, in his absence, Shri P. D. Himatsingka to move the necessary motion in the House.

6. The Committee then adjourned to meet again on Saturday, the 11th August, 1962, at 09.30 hours.

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## VI

### Sixth Sitting

The Committee met on Saturday, the 11th August, 1962 from 09.40 to 12.27 hours.

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

2. Shri J. N. Hazarika.
3. Shri Narendrasingh Mahida.
4. Shri Bakar Ali Mirza.
5. Shri Shankarrao Shantaram More.
6. Shrimati Savitri Nigam.
7. Shri R. V. Reddiar.
8. Shri M. Shankaraiya.
9. Shri Sumat Prasad.
10. Shri Bali Ram Bhagat.

#### DRAFTSMEN

1. Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

#### REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

#### SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

## WITNESSES

**I. *The Bombay Diamond Merchants' Association, Bombay.***

1. Shri Chandrakant B. Jhaveri.
2. Shri Ramniklal B. Jhaveri.
3. Shri Mahendra G. Mehta.

**II. *Andhra Pradesh Gold, Silver, Jewellery and Diamonds Merchants' Association, Rajahmundry.***

1. Shri Sampat Kumar Bang.
2. Shri Kovilmundi Venkataswarao.
3. Shri V. L. N. Venkataramayya.
4. Shri Nimmala Sambasiva Rao.

**III. *Trichy Shroff and Jewellers Association, Tiruchirappalli.***

1. Shri Rajamannar.
2. Shri R. Mahdava Rao.
3. Shri P. Ramaswami.
4. Shri M. Veerasami Naidu.
5. Shri K. P. Lakshmana Padayachi.

**IV. *The Indian National Steamship Owners' Association, Bombay.***

Shri K. K. Kothawala.

2. The Committee heard the evidence given by the representatives of the associations named above.

3. A verbatim record of the evidence given was taken down.

4. The Committee desired that copies of the Customs Manual might be circulated to the members of the Committee. The Deputy Minister of Finance informed the Committee that he would try to procure as many up-to-date copies of the Manual as possible, for the use of the members.

5. Some members suggested that the Committee might undertake an on-the-spot study tour of some of the Customs Offices at the airports and ports to acquaint themselves with their working and see how far the difficulties brought out in the evidence were justified and what remedies could be devised to resolve them. The Chairman observed that he would discuss the matter with the Speaker.

6. The Chairman then announced that the following associations/individual would be called upon to send their representatives to give



oral evidence before the Select Committee on the 1st September, 1962:—

- (1) Bengal National Chamber of Commerce and Industry, Calcutta.
- (2) Shri D. N. Mukerjee, Retired Collector of Central Excise and Customs and Advocate, Calcutta High Court, Calcutta.
- (3) The Bombay Genuine Pearl Dealers' Association, Bombay.
- (4) The Pearls Importers and Exporters Association, Bombay.
- (5) The Leading Bullion Merchants, Dealers and Commission Agents of Bombay.

7. The Committee then adjourned to meet again on Saturday, the 1st September, 1962 at 09.30 hours.

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## VII

### Seventh Sitting

The Committee met on Saturday, the 1st September, 1962 from 09.35 to 13.25 hours.

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

2. Shri Tridib Kumar Chaudhuri.
3. Shri R. Ramanathan Chettiar.
4. Shri N. T. Das.
5. Shri J. N. Hazarika.
6. Shri Hari Vishnu Kamath.
7. Shri Narendrasingh Mahida.
8. Shri Bakar Ali Mirza.
9. Shri R. R. Morarka.
10. Shri Shankarrao Shantaram More.
11. Shri Prabhat Kar.
12. Shri A. V. Raghavan.
13. Shri Shivram Rango Rane.
14. Shri R. V. Reddiar.
15. Shri M. Shankaraiya.
16. Shri Sumat Prasad.
17. Shri Bali Ram Bhagat.

#### DRAFTSMAN

Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*

#### REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

## WITNESSES

I. *Bengal National Chamber of Commerce and Industry, Calcutta.*

1. Shri D. N. Mukerjee.
2. Shri A. N. Daing.
3. Shri B. C. Sen.
4. Shri A. R. Dutta Gupta.

II. *Shri D. N. Mukerjee, Retired Collector of Central Excise and Customs and Advocate, Calcutta High Court, Calcutta.*III. *The Bombay Genuine Pearl Dealers Association, Bombay.*

Shri Jawahar M. Jhaveri.

IV. *The Pearls Importers and Exporters Association, Bombay.*

Shri Pravin M. Nanavati.

V. *The Leading Bullion Merchants, Dealers and Commission Agents of Bombay.*

1. Shri Valimahammed Gulamhusain.
2. Shri Amichand Valamji.
3. Shri Kantilal Chunilal.
4. Shri Dolatram Bherumal.
5. Shri P. Gopalekrishnah.
6. Shri Kapurchand Chimanlal.
7. Shri J. R. Gagrat.

2. The Committee heard the evidence given by the representatives of the associations and individual named above.

3. A verbatim record of the evidence given was taken down.

4. The Chairman announced that he had discussed with the Speaker the proposal made by some members at the last sitting that the Committee might undertake an on-the-spot study tour and that the Speaker was agreeable to such a tour being undertaken by a

small sub-Committee and not by the whole Committee. After some discussion it was decided that the Chairman might again approach the Speaker to permit the whole Committee to undertake such a tour. If such a permission was not granted then a sub-Committee consisting of about ten members nominated by the Chairman might visit Calcutta, where the sub-Committee would have an opportunity to familiarise themselves with the working of Customs Offices at the port, the airport as well as on the land border, for four days from the 10th to 13th October, 1962.

5. The Committee then adjourned to meet again on Monday, the 15th October, 1962 at 10.30 hours.

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## VIII

### **Eighth Sitting**

The Committee met on Monday, the 15th October, 1962 from 10.30 to 12.55 hours.

#### **PRESENT**

Shri S. V. Krishnamoorthy Rao—*Chairman*.

#### **MEMBERS**

2. Shri Ramchandra Vithal Bade.
3. Shri Tridib Kumar Chaudhuri.
4. Shri R. Ramanathan Chettiar.
5. Shri N. T. Das.
6. Shri Morarji Desai.
7. Shri B. D. Deshmukh.
8. Shri Vishwanath Singh Gahmari.
9. Shri J. N. Hazarika.
10. Shri Prabhu Dayal Himatsingka.
11. Shri Hari Vishnu Kamath.
12. Shri Narendrasingh Mahida.
13. Shri Bakar Ali Mirza.
14. Shri Mahesh Dutta Misra.
15. Shri R. R. Morarka.
16. Shrimati Savitri Nigam.
17. Shri Ghanshyamlal Oza.
18. Shri Prabhat Kar.
19. Shri A. V. Raghavan.
20. Shri Shivram Rango Rane.
21. Shri R. V. Reddiar.
22. Shri K. V. Ramakrishna Reddy.
23. Shri M. Shankaraiya.
24. Dr. L. M. Singhvi.
25. Shri Sumat Prasad.
26. Shri Bali Ram Bhagat.

## DRAFTSMEN

1. Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

## REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Raj—*Deputy Secretary.*

2. At the outset, the Chairman informed the Committee that a sub-Committee consisting of the under mentioned members, nominated by him, had undertaken an on-the-spot study tour at Calcutta from the 10th to the 13th October, 1962:

1. Shri S. V. Krishnamoorthy Rao—*Chairman.*
2. Shri Ramchandra Vithal Bade.
3. Shri R. Ramanathan Chettiar.
4. Shri Prabhu Dayal Himatsingka.
5. Shri Hari Vishnu Kamath.
6. Shri Narendrasingh Mahida.
7. Shri Bakar Ali Mirza.
8. Shri R. R. Morarka.
9. Shri Prabhat Kar.
10. Shri Shivram Rango Rane.

Shri Bali Ram Bhagat, Deputy Minister of Finance, had also joined the sub-Committee at Calcutta where the members visited the various departments located in the Customs House. They also went to the Dum Dum Airport, docks and jetties at the Calcutta port and land customs check post at the Petropol Road and Petropol Railway Station.

3. The Committee then took up clause by clause consideration of the Bill.

4. *Clause 2.*—Discussion on the following amendment was held over:

Page 4, line 8,

after "section 113" *add*—"and includes goods brought into and taken out of India without clearance through the customs authorities".

Subject to above, the clause was adopted without amendment.

5. *Clauses 3 to 10.*—These clauses were adopted without amendment.

6. *Clause 11.*—The following amendment was accepted:

Page 6, line 37,

for "which prejudicially affects" *substitute* "which is likely to prejudicially affect".

The Draftsman was directed to examine whether the provisions of sub-clause (2) (q) of the clause should be amplified to cover treaties entered into by the Government of India with foreign countries and to examine whether a provision prohibiting export or import of articles against public policy is necessary.

Subject to above, the clause, as amended, was adopted.

7. *Clause 12.*—The clause was adopted without amendment.

8. *Clause 13.*—The following amendment was considered:

Page 7, line 21, at the end, *add*—

"except (a) where the whole of the goods are pilfered or (b) where some of the goods are pilfered and the importer relinquishes his little to the remaining goods."

The Draftsman was directed to re-draft the clause, in the light of discussion in the Committee.

9. *Clause 14.*—The following amendments were accepted:

Page 7,

(i) line 26,

Omit "normal".

(ii) line 26,

for "are sold" *substitute* "are ordinarily sold".

(iii) line 28,

Omit "ordinary".

(iv) line 32,

for "the normal price" substitute "such price".

The clause, as amended, was adopted.

10. *Clauses 15 to 22.*—These clauses were adopted without amendment.

11. *Clause 23.*—Discussion on the clause was held over.

12. *Clauses 24 to 27.*—These clauses were adopted without amendment.

13. *Clause 28.*—The following amendments were accepted:

(i) Page 13, line 35,

for "issue notice to" substitute "serve notice on".

(ii) Page 14, lines 3-4,

for "as if the words 'within six months from the relevant date' were omitted" substitute "as if for the words 'six months' the words 'five years' were substituted".

The clause, as amended, was adopted.

14. *Clause 29.*—The following amendment was considered:

Page 14,

after line 31, add—

"(2) In case the person in charge of an aircraft is compelled by accident, stress of weather or other unavoidable causes, to land at a place other than a customs airport, he shall immediately report the landing to a proper officer or constable and shall on demand produce to him the Journey Log Book belonging to the aircraft and shall not without the consent of an officer permit any goods carried in the aircraft to be unloaded or any of the crew or passenger to depart from the vicinity of the aircraft and shall comply with the directions given by the proper officer:

Provided that nothing in this sub-section shall prohibit the departure of crew or passenger from the vicinity of or the removal of goods from an aircraft where that departure or removal is necessary for reasons of health, safety or the preservation of life and property."



Discussion on the clause was held over.

15. *Clause 30.*—The following amendment was accepted:

Page 14, line 33,

for "immediately" substitute "within twenty-four hours".

The clause, as amended, was adopted.

16. *Clauses 31 to 35.*—These clauses were adopted without amendment.

17. *Clause 36.*—The following amendment was accepted:

Page 16, line 9, at the end add "if any".

Discussion on the clause was held over.

18. The Committee then adjourned to meet again on Tuesday, the 16th October, 1962 at 10.30 hours.

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## IX

### Ninth Sitting

The Committee met on Tuesday, the 16th October, 1962 from 10.33 to 13.07 hours.

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri Tridib Kumar Chaudhuri
4. Shri R. Ramanathan Chettiar
5. Shri Morarji Desai
6. Shri B. D. Deshmukh
7. Shri Vishwanath Singh Gahmari
8. Shri J. N. Hazarika
9. Shri Prabhu Dayal Himatsingka
10. Shri Hari Vishnu Kamath
11. Shri Narendrasingh Mahida
12. Shri Bakar Ali Mirza
13. Shri Mahesh Dutta Misra
14. Shri R. R. Morarka
15. Shrimati Savitri Nigam
16. Shri Ghanshyamlal Oza
17. Shri Prabhat Kar
18. Shri A. V. Raghavan
19. Shri Shivram Rango Rane
20. Shri R. V. Reddiar
21. Shri K. V. Ramakrishna Reddy
22. Shri M. Shankaraiya
23. Dr. L. M. Singhvi
24. Shri Sumat Prasad
25. Shri Bali Ram Bhagat.

## DRAFTSMEN

1. Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

## REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. *Clauses 37 to 40.*—These clauses were adopted without amendment.

4. *Clause 41.*—The following amendment was accepted:

Page 16, for lines 38 to 41 substitute—

“Provided that if the agent of the person in charge of the conveyance furnishes such security as the proper officer deems sufficient for duly delivering within seven days from the date of departure of the conveyance the export manifest or the export report, as the case may be, the proper officer may (subject to such rules as the Central Government may make in this behalf) accept such manifest or report within the aforesaid period.”

The clause, as amended, was adopted.

5. *Clauses 42 and 43.*—These clauses were adopted without amendment.

The Committee desired that notifications issued under clause 43 should be laid on the Table of both Houses of Parliament.

6. *Clause 44.*—The clause was adopted without amendment.

7. *Clause 45.*—The clause was adopted without amendment.

The Minister of Finance gave an assurance that instructions would be issued for maintaining the records, under this clause, up-to-date.

8. *Clause 46.*—The clause was adopted without amendment.

9. *Clause 47.*—The following clause was adopted in place of the existing clause 47:—

Page 19, for lines 19 to 23 substitute—

“47. Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.”.

10. *Clause 48.*—The following amendment was considered:

Page 19, line 27,

after “may allow” insert—

“or if the title to any imported goods is relinquished”.

Discussion on the clause was held over.

11. *Clauses 49 and 50.*—These clauses were adopted without amendment.

12. *Clause 51.*—The following clause was adopted in place of the existing clause 51:

Page 20,

for lines 9 to 13 substitute—

“51. Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.”

13. *Clauses 52 to 68.*— These clauses were adopted without amendment.

14. *Clause 69.*—The following amendment was considered:

Page 25,

after line 29, insert—

“(3) Without prejudice to the provisions of Sub-Section (1) hereof, any warehoused stores may be shipped on any

foreign-going vessel or aircraft without payment of import duty to be consumed thereon during the stay in India of such vessel or aircraft and during the period such vessel or aircraft is a foreign-going vessel or aircraft in such quantities as the proper officer may determine having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the vessel's stay in India."

The draftsman was directed to examine the amendment.

Discussion on the clause was held over.

15. *Clauses 70 to 73.*—These clauses were adopted without amendment.

16. *Clause 74.*—The following amendment was accepted:

Page 26, lines 34-35,

for "ninety-five" substitute "ninety-eight".

The clause, as amended, was adopted.

17. *Clauses 75 to 79.*—These clauses were adopted without amendment.

18. *Clause 80.*—The Draftsman was asked to examine whether a provision should not be made in this clause against carriage of prohibited goods by a passenger in his baggage.

Subject to above, the clause was adopted without amendment.

19. *Clauses 81 to 85.*—These clauses were adopted without amendment.

20. The Committee then adjourned to meet again on Wednesday, the 17th October, 1962 at 09.30 hours.

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## **X**

### **Tenth Sitting**

The Committee met on Wednesday, the 17th October, 1962 from 09.33 to 13.07 hours.

#### **PRESENT**

**Shri S. V. Krishnamoorthy Rao—Chairman.**

#### **MEMBERS**

2. Shri Ramchandra Vithal Bade
3. Shri Tridib Kumar Chaudhuri
4. Shri R. Ramanathan Chettiar
5. Shri N. T. Das
6. Shri Morarji Desai
7. Shri B. D. Deshmukh
8. Shri Vishwanath Singh Gahmari
9. Shri J. N. Hazarika
10. Shri Prabhu Dayal Himatsingka
11. Shri Hari Vishnu Kamath
12. Shri Narendrasingh Mahida
13. Shri Bakar Ali Mirza
14. Shri Mahesh Dutta Misra
15. Shri R. R. Morarka
16. Shrimati Savitri Nigam
17. Shri Ghanshyamlal Oza
18. Shri Prabhat Kar
19. Shri A. V. Raghavan
20. Shri Shivram Rango Rane
21. Shri R. V. Reddiar
22. Shri K. V. Ramakrishna Reddy
23. Shri M. Shankaraiya
24. Dr. L. M. Singhvi
25. Shri Sumat Prasad
26. Shri Bali Ram Bhagat.

## DRAFTSMEN

1. Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

## REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. *Clauses 86 and 87.*—These clauses were adopted without amendment.

4. *Clause 88.*—The following amendments were accepted:

Page 30,

(i) line 37,

for "modification that" substitute "modifications that (a)".

(ii) line 40, at the end add—

"(b) in the case of drawback on fuel and lubricating oil taken on board any foreign-going aircraft as stores, sub-section (1) of section 74 shall have effect as if for the words 'ninety-eight per cent' the words 'the whole' were substituted."

The clause, as amended, was adopted.

5. *Clauses 89 to 100.*—These clauses were adopted without amendment.

6. *Clause 101.*—The following amendment was accepted:

Page 34,

for lines 3 and 4 substitute—

"(b) diamonds;

(c) manufactures of gold or diamonds;"

The clause, as amended, was adopted.

7. *Clause 102.*—The following amendments were accepted:

Page 34,

(i) line 10,

after "take him" insert—

"without unnecessary delay".

(ii) for line 19 substitute—

"(4) No female shall be searched by any one except by a female".

The Draftsman was directed to examine whether a search under this clause should not be made before witnesses.

Subject to above, the clause, as amended, was adopted.

8. *Clause 103.*—The clause was adopted without amendment.

9. *Clause 104.*—The following amendment was accepted.

Pages 35 and 36,

for lines 40 to 43 and 1 to 3 respectively substitute—

"(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Act shall not be cognizable."

The clause, as amended, was adopted.

10. *Clause 105.*—The following amendment was accepted:

Page 36, line 14,

" .

at the end add—

"subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word 'Magistrate' wherever it occurs the words 'Collector of Customs' were substituted."

The clause, as amended, was adopted.

11. *Clause 106.*—The clause was adopted without amendment.

12. *Clause 107.*—The following amendments were accepted:

Page 37,

(i) line 6, omit "orally".

(ii) Omit lines 8-10.

The clause, as amended, was adopted.



13. *Clause 108.*—The following amendment was accepted:

Page 37, lines 11-12,

for "Any officer of customs empowered in this behalf by general or special order of the Collector of Customs" substitute—  
"Any gazetted officer of customs".

The clause, as amended, was adopted.

The Draftsman was directed to examine whether a provision could be made to ensure attendance of persons summoned under the clause.

14. *Clause 109.*—The clause was adopted without amendment.

15. *Clause 110.*—The following amendments were accepted:

Page 38,

(i) line 1,

for "any officer of customs" substitute—  
"the proper officer".

(ii) line 8,

for "Any officer of customs" substitute—  
"The proper officer".

(iii) after line 10, add—

"(3) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs."

The Draftsman was directed to examine whether a provision directing the Customs Officer to return the seized documents or things within a specified time should not be made under this clause.

Subject to above, the clause, as amended, was adopted.

16. *Clause 111.*—The clause was adopted without amendment.

17. The Committee then adjourned to meet again on Thursday, the 18th October, 1962 at 14.30 hours.

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## **XI**

### **Eleventh Sitting**

The Committee met on Thursday, the 18th October, 1962 from 14.31 to 17.20 hours.

#### **PRESENT**

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### **MEMBERS**

2. Shri Ramchandra Vithal Bade
3. Shri Tridib Kumar Chaudhuri
4. Shri R. Ramanathan Chettiar
5. Shri N. T. Das
6. Shri Morarji Desai
7. Shri B. D. Deshmukh
8. Shri Vishwanath Singh Gahmari
9. Shri J. N. Hazarika
10. Shri Prabhu Dayal Himatsingka
11. Shri Hari Vishnu Kamath
12. Shri Narendrasingh Mahida
13. Shri Bakar Ali Mirza
14. Shri R. R. Morarka
15. Shrimati Savitri Nigam
16. Shri Ghanshyamlal Oza
17. Shri Prabhat Kar
18. Shri A. V. Raghavan
19. Shri Shivram Rango Rane
20. Shri R. V. Reddiar
21. Shri K. V. Ramakrishna Reddy
22. Shri M. Shankaraiya
23. Shri Sumat Prasad
24. Shri Bali Ram Bhagat.

## DRAFTSMEN

1. Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

## REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. *Clause 112.*—The following amendments were accepted:

1. Pages 39 and 40,  
omit line 30 and 31, and 1 and 2 respectively.
2. Page 40,
  - (i) line 3,  
for “(b)” substitute “(a)”
  - (ii) line 5, at the end add—  
“abets the doing or omission of such an act, or”
  - (iii) line 6,  
for “(c)” substitute “(b)”
  - (iv) line 8,  
for “or selling” substitute “selling or purchasing”
  - (v) line 14,  
for “three times” substitute “five times”
  - (vi) line 17,  
for “three times” substitute “five times”

The clause, as amended, was adopted.

4. *Clause 113.*—The following amendment was accepted:

Page 41, lines 18-19,

for "which are not exported except on account of lack of space in the conveyance by which they were to be exported" substitute "which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer."

The clause, as amended, was adopted.

5. *Clause 114.*—The following amendments were accepted:

1. Page 41,

(i) omit lines 21 to 24;

(ii) line 25, omit "(b)";

(iii) line 27, at the end add—

"or abets the doing or omission of such an act,";

(iv) line 31,

for "three times" substitute "five times";

(v) line 34,

for "three times" substitute "five times".

2. Page 42, line 2,

for "three times" substitute "five times".

The clause, as amended, was adopted.

6. *Clauses 115 to 117.*—These clauses were adopted without amendment.

7. *Clause 118.*—The following clause was adopted in place of the existing Clause 118:

Page 43,

for lines 22 to 24 substitute—

"118.(a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.

(b) Where any goods are brought in a package within the limits of a Customs area for the purpose of exportation and are liable to confiscation, the package and any other

goods contained therein shall also be liable to confiscation."

8. *Clause 119.*—The clause was adopted without amendment.

9. *Clause 120.*—The following amendment was accepted:

Page 43, lines 36-37,

for "such part of the goods as is proved by him to have not been smuggled, shall not be liable to confiscation" substitute "only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation".

The clause, as amended was adopted.

10. *Clauses 121 and 122.*—These clauses were adopted without amendment.

11. *Clause 123.*—The following amendment was accepted:

Page 44, lines 19-20,

for "manufactures of gold and precious stones, precious stones" substitute "diamonds, manufactures of gold or diamonds".

The clause, as amended, was adopted.

12. *Clause 124.*—The clause was adopted without amendment.

13. *Clause 125.*—The following amendment was accepted:

Page 45,

for line 13 substitute "be in addition to any duty and charges payable in respect of such goods."

The clause, as amended, was adopted.

14. *Clauses 126 and 127.*—These clauses were adopted without amendment.

15. *Clauses 128 to 131.*—These clauses were discussed and further consideration thereof was held over.

16. *Clauses 132 and 133.*—These clauses were adopted without amendment.

17. *Clause 134.*—The Draftsman was directed to examine whether a reference should also be made to Section 103 in sub-clause (b) of the clause.

Subject to above, the clause was adopted without amendment.

18. *Clause 135.*—The following clause was adopted in place of the existing Clause 135:

Page 48,

for lines 17 to 31 *substitute*—

“135. Without prejudice to any action that may be taken under this Act, if any person—

- (a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or
- (b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

he shall be punishable,

- (i) in the case of an offence relating to any of the goods to which section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to five years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months;

- (ii) in any other case, with imprisonment for a term which may extend to two years or with fine or with both”.

19. *Clause 136.*—The following amendments were accepted:

Page 49,

- (i) line 4, at the end *add* “or”

- (ii) *after* line 4 *insert*—

“(c) searches or authorises any other officer of customs to search any place without having reason to believe that any goods, documents or things of the nature referred to in section 105 are secreted in that place”.

The clause, as amended, was adopted.

20. *Clause 137.*—The clause was adopted without amendment.

21. *Clause 138.*—The following amendment was considered:

Page 49, line 27,

*after “this Chapter” insert “other than an offence punishable under clause (i) of section 135”.*

Discussion on the clause was not concluded.

22. The Committee then adjourned to meet again on Friday, the 19th October, 1962 at 09.00 hours.

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## **XII**

### **Twelfth Sitting**

The Committee met on Friday, the 19th October, 1962 from 09.05 to 11.55 hours.

#### **PRESENT**

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### **MEMBERS**

2. Shri Ramchandra Vithal Bade
3. Shri Tridib Kumar Chaudhuri
4. Shri N. T. Das
5. Shri Morarji Desai
6. Shri B. D. Deshmukh
7. Shri Vishwanath Singh Gahmari
8. Shri J. N. Hazarika
9. Shri Hari Vishnu Kamath
10. Shri Narendrasingh Mahida
11. Shri Bakar Ali Mirza
12. Shrimati Savitri Nigam
13. Shri Prabhat Kar
14. Shri A. V. Raghavan
15. Shri Shivram Rango Rane
16. Shri R. V. Reddiar
17. Shri K. V. Ramakrishna Reddy
18. Shri M. Shankaraiya
19. Shri Sumat Prasad
20. Shri Bali Ram Bhagat.

#### **DRAFTSMEN**

1. Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*



# REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

## SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. *Clause 138. (Continued)*—The following amendment was accepted:

Page 49, line 27,

after "this Chapter" insert—

"other than an offence punishable under clause (i) of section 135".

The clause, as amended, was adopted.

4. *Clause 139.*—The following amendment was accepted:

Page 49, line 29,

for "furnished" substitute "produced".

The clause, as amended, was adopted.

5. *Clause 140.*—The following amendment was accepted:

Page 50, line 15,

for "and" substitute "or".

The clause, as amended, was adopted.

6. *Clause 136.*—Discussion on the clause was reopened.

The Draftsman was directed to re-draft sub-clauses (2) and (3) of the clause so as to provide for the punishment of imprisonment which may extend to six months or with fine or with both.

The clause, as further amended, was adopted.

7. *Clause 128. (Vide para 15 of the Minutes of the Eleventh Sitting)*—The Draftsman was directed to re-draft the clause to provide that the power to enhance duty etc. (excluding short levy)

would vest in the Board and the Central Government only and that there should be a separate Collector to hear appeals.

8. *Clauses 129 and 130.* (*Vide* para 15 of the Minutes of the Eleventh Sitting)—These clauses were adopted without amendment.

9. *Clause 131.* (*Vide* para 15 of the Minutes of the Eleventh Sitting)—The Draftsman was directed to re-draft the clause in the light of decision of the Committee on Clause 128.

10. *Clauses 141 to 143.*—These clauses were adopted without amendment.

11. *Clause 144.*—The following amendment was accepted:

Page 52,

*after line 5 insert—*

“(3) No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof:

Provided that this sub-section shall not apply if the duty chargeable in respect of such sample is less than five rupees.”

The Draftsman was directed to re-draft sub-clause (2) of the clause so as to make the return of the sample possible without a request from the owner after the purpose for which it had been taken had been carried out.

Subject to above, the clause, as amended, was adopted.

12. *Clause 145.*—The following amendment was accepted:

Page 52, lines 8-9,

*for “owner of the goods” substitute “owner, exporter or importer of the goods, as the case may be.”*

The clause, as amended, was adopted.

13. *Clause 146.*—The clause was adopted without amendment.

14. *Clause 147.*—The following amendments were accepted:

1. Page 52, line 35,

*after “shall” insert—*

*“unless the contrary is proved”.*

## 2. Page 53,

after line 6, add—

“Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any wilful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of Assistant Collector of Customs the same cannot be recovered from the owner, importer or exporter.”

The clause, as amended, was adopted.

15. *Clauses 148 and 149.*—These clauses were adopted without amendment.

16. *Clause 150.*—The following amendment was accepted:

Page 53, line 27,

after “any goods” insert—

“not being confiscated goods.”

The clause, as amended, was adopted.

17. *Clauses 151 and 152.*—These clauses were adopted without amendment.

18. *Clause 153.*—The following amendment was accepted:

Page 54, line 30,

for “by post” substitute “by registered post”.

The clause, as amended, was adopted.

19. *Clauses 154 to 158.*—These clauses were adopted without amendment.

20. *Clause 159.*—The following amendment was accepted:

Page 56, line 34,

after “25”, insert “43”.

The clause, as amended, was adopted.

21. *Clauses 160 and 161.*—These clauses were adopted without amendment.

22. *The Schedule.*—The Schedule was adopted without amendment.

23. The Committee heard the Draftsman on the various points in respect of which directions had been given to him at the earlier sittings of the Committee and considered re-drafts of amendments submitted by him.)

24. *Clause 11.* (Vide para 6 of the Minutes of the Eighth Sitting).—The following further amendment was accepted:

*Page 6, after line 32, insert*

“(qq) the implementation of any treaty, agreement or convention with any country.”

The clause, as amended, was adopted.

25. *Clause 13.* (Vide para 8 of the Minutes of the Eighth Sitting).—The following amendments were accepted:

*Page 7,*

(i) line 20, after “before” insert “the proper officer has made an order for”;

(ii) line 21, after “shall” insert “not”;

(iii) after line 21, insert—

“except where such goods are restored to the importer after pilferage.”

The clause, as amended, was adopted.

26. *Clause 23.* (Vide para 11 of the Minutes of the Eighth Sitting).—The following amendments were accepted:

(i) Page 12, lines 14 and 15, for “otherwise than by pilferage or have been”, substitute “or”.

(ii) Page 12, for lines 18 to 23, substitute—

“(2) The owner of any imported goods may at any time before clearance of the goods for home consumption, relinquish his title to such goods and thereupon he shall not be liable to pay the duty thereon.”

The clause, as amended, was adopted.

27. *Clause 29.* (Vide para 14 of the Minutes of the Eighth Sitting).—The following amendments were accepted:

*Page 14,*

(i) lines 30-31, omit

“unless he is compelled to do so by stress of weather or other unavoidable cause”,

(ii) after line 31, insert—

“(2) The provisions of sub-section (1) shall not apply in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a Customs port or Customs airport but the person in charge of any such vessel or aircraft—

(a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest Customs officer or the officer in charge of a police station and shall on demand produce to him the log book belonging to the vessel or the aircraft;

(b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and

(c) shall comply with any directions given by any such officer with respect to any such goods,

and no passenger or member of the crew shall without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft:

Provided that nothing in this section shall prohibit the departure of any crew or passengers from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.”

The clause, as amended, was adopted.

28. *Clause 30.*—Discussion on the clause was re-opened and the following further amendments were accepted:

Page 15,

(i) line 3, for “immediately” substitute “within twenty-four hours”;

(ii) line 4, for “after such arrival” substitute “at any time thereafter”.

The clause, as further amended, was adopted.

29. *Clause 36.*—(Vide para 17 of the Minutes of the Eighth Sitting).—The clause as amended on the 15th October, 1962 was adopted.

30. *Clause 48.* (Vide para 10 of the Minutes of the Ninth Sitting).—The following amendments were accepted:

Page 19,

(i) line 24, for "imported goods" substitute "goods brought into India from a place outside India";

(ii) line 27,

after "may allow" insert—

"or if the title to any imported goods is relinquished".

(iii) line 33,

for "ammunition and military stores" substitute "and ammunition";

(iv) after line 35, insert

"*Explanation.*—In this section, 'arms' and 'ammunition' have the meanings respectively assigned to them in the Arms Act, 1959."

The clause, as amended, was adopted.

31. *Clause 69.* (Vide para 14 of the Minutes of the Ninth Sitting).—The clause was adopted without amendment.

32. *Clause 102.* (Vide para 7 of the Minutes of the Tenth Sitting).—The following further amendments were accepted:—

Page 34,

(i) after line 18, insert—

"(4) Before making a search under the provisions of section 100 or section 101, the officer of customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses."

(ii) for line 19, substitute—

"(5) No female shall be searched by any one excepting by a female."

The clause, as further amended, was adopted.

33. *Clause 104.*—Discussion on the clause was re-opened and the following further amendment was accepted:

Page 35, after line 39, insert—

“(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the Code of Criminal Procedure, 1898.”

The clause, as further amended, was adopted.

[34. *Clause 110.* (Vide para 15 of the Minutes of the Tenth Sitting).—The following further amendment was accepted:

Page 38, after line 10, add—

“(3) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months.”)

The clause, as further amended, was adopted.

35. *Clause 1.*—The clause was adopted without amendment.

36. *Title and the Enacting Formula.*—The Title and the Enacting Formula were adopted without amendment.

37. The Draftsman was directed to correct patent errors and to carry out amendments of consequential nature.

38. The Committee decided that the evidence given before them might be laid on the Table of the House and the memoranda submitted by the associations who gave evidence might be placed in the Parliament Library for reference by Members.

39. The Committee decided to consider the draft Report and the Bill as amended at their next sitting.

40. The Committee then adjourned to meet again on Friday, the 16th November, 1962 at 14.30 hours.

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## XIII

### Thirteenth Sitting

The Committee met on Friday, the 9th November, 1962 from 17.45 to 18.00 hours.

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

#### MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri N. T. Das
4. Shri Morarji Desai
5. Shri Vishwanath Singh Gahmari
6. Shri J. N. Hazarika
7. Shri Hari Vishnu Kamath
8. Shri Narendrasingh Mahida
9. Shri Bakar Ali Mirza
10. Shri R. R. Morarka
11. Shrimati Savitri Nigam
12. Shri Prabhat Kar
13. Shri Shivram Rango Rane
14. Shri R. V. Reddiar
15. Shri K. V. Ramakrishna Reddy
16. Shri M. Shankaraiya
17. Shri Sumat Prasad
18. Shri Bali Ram Bhagat.

#### DRAFTSMEN

1. Shri G. R. Bal, *Additional Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law*

#### REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*



2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

#### SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee took up consideration of the Bill as amended and adopted the same with the following amendment:

*Clause 142.*—The clause was re-numbered as sub-clause (1) thereof and after the sub-clause as so re-numbered, the following sub-clause was added, namely:—

“(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.”

3. The Committee then considered the draft report and adopted the same, subject to necessary changes being made consequent upon the acceptance of amendment to clause 142.

4. The Chairman announced that the recommendations of the President under Article 117(1) of the Constitution in respect of amendments made in the Bill have been received.

5. The Committee authorised the Chairman and, in his absence, Shri Shivram Rango Rane to present the Report on their behalf.

6. The Chairman announced that Minutes of Dissent, if any, should be sent to the Lok Sabha Secretariat so as to reach them by 11.00 hours on Monday, the 12th November, 1962.

7. The Chairman announced that the Report would be presented to Lok Sabha on the 14th November, 1962.

*The Committee then adjourned.*

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**LOK SABHA**

# SELECT COMMITTEE ON THE CUSTOMS BILL, 1962

## EVIDENCE



सत्यमेव जयते

**LOK SABHA SECRETARIAT**  
**NEW DELHI**

**November, 1962/Kartika, 1884 (Saka)**

**Price : Rs. 2.10 nP.**

# WITNESSES EXAMINED

Sl. No.	Names of Associations and their spokesmen	Dates of hearing	Page
I	Bharat Chamber of Commerce, Calcutta . . . . .	30-7-1962	2
	<i>Spokesmen :</i>		
	1. Shri L. R. Das Gupta		
	2. Shri D.P. Kajarla		
	3. Shri R.L. Maheshwari		
II	The Precious Stone Importers' and Exporters' Association, Bombay . . . . .	30-7-1962	19
	<i>Spokesmen :</i>		
	1. Shri Jajysukhlal D. Zaveri		
	2. Shri Kirtilal K. Doshi		
	3. Shri Pravin M. Nanavati		
	4. Shri J.R. Gagrati		
III	The Indian Merchants' Chamber, Bombay . . . . .	31-7-1962	26
	<i>Spokesmen :</i>		
	1. Shri Pravinchandra V. Gandhi		
	2. Shri Ambalal Kilachand		
	3. Shri C. L. Gheevala		
	4. Shri D. S. Pendurkar		
IV	All India Jewellers' Association, New Delhi . . . . .	31-7-1962	34
	<i>Spokesmen :</i>		
	1. Shri Bhola Nath		
	2. Shri Sultan Singh Backliwal		
	3. Shri Jawaharlal		
	4. Shri V. J. Merchant		
V	Indian Chamber of Commerce, Calcutta . . . . .	31-7-1962	43
	<i>Spokesmen :</i>		
	1. Shri B. P. Khaitan		
	2. Shri H. R. Sugla		
	3. Shri B. Kalyanasundaram		

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	<i>Spokesmen :</i>		
	1. Shri Bharat Ram		
	2. Shri Anbalal Kilachand		
	3. Shri J. N. Guzder		
	4. Shri P. Chentsal Rao		
	5. Shri G.B. Sundriyal		
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	<i>Spokesmen :</i>		
	1. Shri J. L. Puri		
	2. Mr. J. H. Forman		
	3. Mr. R. von Leyden		
<b>VIII</b>	<b>The Bombay Custom House Clearing Agents' Association, Bombay. . . . .</b>	<b>1-8-1962</b>	<b>80</b>
	<i>Spokesmen :</i>		
	1. Shri K. D. Pathak		
	2. Shri M. T. Bandivickar		
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	<i>Spokesmen :</i>		
	1. Shri Prabhu V. Mehta		
	2. Shri Hans Raj Gupta		
	3. Shri D. M. Desai		
<b>X</b>	<b>The Bombay Bullion Association Limited, Bombay . . . . .</b>	<b>2-8-1962</b>	<b>98</b>
	<i>Spokesmen :</i>		
	1. Shri Chandulal Kasturchand		
	2. Shri Mangulal Trikamlal		
	3. Shri Amratlal Sonawala		
	4. Shri Chimanlal C. Shah		
	5. Shri P. Gopalakrishniah		
	6. Shri Jayendra Mehta		
<b>XI</b>	<b>The Madras Jewellers' and Diamond Merchants' Association, Madras . . . . .</b>	<b>2-8-1962</b>	<b>108</b>
	<i>Spokesmen :</i>		
	1. Shri V. Pandurangiah		
	2. Shri Harendra Mehta		
	3. Shri P. Gopalakrishniah		
	4. Shri Kanayalal Mehta		

Sl. No.	Names of Associations and their spokesmen	Dates of hearing	Page
XII	The Bombay Diamond Merchants' Association, Bombay. <i>Spokesmen :</i> 1. Shri Chandrakant B. Jhaveri 2. Shri Ramniklal B. Jhaveri 3. Shri Mchendra G. Mehta	11-8-1962	123
XIII	Andhra Pradesh Gold, Silver, Jewellery and Diamonds Merchants' Association, Rajahmundry <i>Spokesmen :</i> 1. Shri Sampat Kumar Bang 2. Shri Kovilmandi Venkataswarao 3. Shri V. L.N. Venkataramayya 4. Shri Nimmala Sambasiva Rao	11-8-1962	123
XIV	Trichy Shroff and Jewellers Association, Tiruchirapalli <i>Spokesmen :</i> 1. Shri Rajamannar 2. Shri R. Madhava Rao 3. Shri P. Ramaswami 4. Shri M. Veerasami Naidu 5. Shri K. P. Lakshmana Padayachi	11-8-1962	137
XV	The Indian National Steamship Owners' Association, Bombay <i>Spokesman :</i> Shri K. K. Kothawala	11-8-1962	140
XVI	Bengal National Chamber of Commerce and Industry, Calcutta <i>Spokesmen :</i> 1. Shri D. N. Mukerjee 2. Shri A. N. Daing 3. Shri B. C. Sen 4. Shri A. R. Datta Gupta	1-9-1962	151
XVII	Shri D. N. Mukerjee, Retired Collector of Central Excise and Customs and Advocate, Calcutta High Court, Calcutta	1-9-1962	160
XVIII	The Bombay Genuine Pearl Dealers Association, Bombay <i>Spokesman :</i> Shri Jawahar M. Jhaveri	1-9-1962	164

Sl. No.	Names of Associations and their spokesmen	Dates of hearing	Page
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<b>XX</b>	<b>The Leading Bullion Merchants, Dealers and Commission Agents of Bombay</b> <i>Spokesmen :</i> 1. Shri Vallimahammed Gulamhusain 2. Shri Amichand Valamji 3. Shri Kantilal Chunilal 4. Shri Dolatram Bherumal 5. Shri P. Gopalakrishniah 6. Shri Kapurchand Chimanlal 7. Shri J.R. Gagrati	<b>1-9-1962</b>	<b>170</b>

**SELECT COMMITTEE ON THE CUSTOMS BILL, 1962**  
**MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL,**  
**1962**

*Monday, the 30th July, 1962, at 14.00 hours.*

**PRESENT**

**Shri S. V. Krishnamoorthy Rao—Chairman.**

**MEMBERS**

- |                                    |                                     |
|------------------------------------|-------------------------------------|
| 2. Shri Ramchandra Vithal Bade.    | 15. Shri R. R. Morarka.             |
| 3. Shri G. Basu.                   | 16. Shri Shankarrao Shantaram More. |
| 4. Shri Tridib Kumar Chaudhuri.    | 17. Shrimati Savitri Nigam.         |
| 5. Shri R. Ramanathan Chettiar.    | 18. Shri Ghanshyamlal Oza.          |
| 6. Shri N. T. Das.                 | 19. Shri Prabhat Kar.               |
| 7. Shri Morarji Desai.             | 20. Shri A. V. Raghavan.            |
| 8. Shri B. D. Deshmukh.            | 21. Shri Shivram Range Rane.        |
| 9. Shri J. N. Hazarika.            | 22. Shri R. V. Reddiar.             |
| 10. Shri Prabhu Dayal Himatsingka. | 23. Shri M. Shankaraiya.            |
| 11. Shri Harj Vishnu Kamath.       | 24. Dr. L. M. Singhvi.              |
| 12. Shri Narendrasingh Mahida.     | 25. Shri Sumat Prasad.              |
| 13. Shri Bakar Ali Mirza.          |                                     |
| 14. Shri Mahesh Dutta Misra.       |                                     |

**DRAFTSMEN**

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

**REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS**

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

**SECRETARIAT**

**Shri A. L. Rai—Deputy Secretary.**

**WITNESSES EXAMINED**

**I. BHARAT CHAMBER OF COMMERCE, CALCUTTA**

- |                          |                           |
|--------------------------|---------------------------|
| 1. Shri L. R. Das Gupta. | 3. Shri R. L. Maheshwari. |
| 2. Shri D. P. Kajaria.   |                           |

**II. THE PRECIOUS STONE IMPORTERS' AND EXPORTERS' ASSOCIATION, BOMBAY**

- |                                |                             |
|--------------------------------|-----------------------------|
| 1. Shri Jaiysukhlal D. Zaveri. | 3. Shri Pravin M. Nanavati. |
| 2. Shri Kirtilal K. Doshi.     | 4. Shri J. R. Gagrati.      |
- 1812 (B) LS—1.

**I. BHARAT CHAMBER OF COMMERCE,  
CALCUTTA**

*Spokesmen*

1. Shri L. R. Das Gupta.
2. Shri D. P. Kajaria.
3. Shri R. L. Maheshwari.

*(Witnesses were called in and they took their seats).*

**Chairman:** Your evidence is to be published. Your memorandum has been distributed to the members and they have all read it. If you have anything more to add, you may do so now.

**Shri Das Gupta:** We can just try to invite your kind attention to some of the more important points in the note that we have already submitted. Shall we go clause by clause and take up the more important clauses from the memorandum that we have submitted where we have expressed our views?

**Shri Morarji Desai:** But please do not repeat many things that you have stated there.

**Shri Das Gupta:** Now, take page 5 of our memorandum. Among the definitions, we have something to say about "market price" and "smuggling". Regarding "market price", we want that the word "cash" should be added. We want that it should be "cash wholesale price" and not only "wholesale price".

**Shri Morarji Desai:** What is the meaning of "cash wholesale price"?

**Shri Das Gupta:** Many people sell with varying credit periods. Instead of showing it separately, they include it within the wholesale price.

**Shri Morarji Desai:** That cannot be helped. It is a well-known term and I do not think it requires any change.

**Shri Das Gupta:** If you see the previous Act you will find that the word "cash" is used there. For computing the wholesale price index the

Ministry of Economic Affairs collect data on the basis of cash wholesale prices. Otherwise, Sir, there is always difference in the same market in the wholesale prices according to the credit period that is given.

**Shri Morarji Desai:** Even in cash prices there will be difference.

**Shri Das Gupta:** There is a ruling cash price on any one day, but not in the wholesale price which includes always the credit period that is allowed. That is one submission for your consideration.

Secondly, the "market price" may be the "market price" in India. We want that it should be the "market price at the place of clearance" because the market price will be varying at any one time in Bombay and in Calcutta.

**Shri Ramanathan Chettiar:** The market price varies from port to port. I do not know what our friend wants.

**Shri Morarji Desai:** He wants that it should be the "market price at the place of clearance". Supposing the clearance is at Madras, he wants that it should be the Madras market price and not the Calcutta market price.

It is possible that for some articles there is no market price at that port. In such cases the market price elsewhere has to be taken. You should leave it to commonsense. If there is injustice, appeal is always there. Everything cannot be fixed by provisions in the law so that there is no scope for any doubt whatsoever. From your side you can always find loopholes. I do not want to give you more loopholes.

**Shri Das Gupta:** I have nothing to add then.

About "smuggling" we feel that the definition itself has been made co-extensive with "confiscation" mentioned in clause 111. Clause 111 provides



many reasons for confiscation including breach of any condition on any import licence. There are many clauses given in clause 111 under which goods may be confiscated. In the definition of the word "smuggling" it has been said that any commodity which is liable to be confiscated under clause 111 is a smuggled commodity. If that be the case, on any import licence if there is any excess in valuation it will be treated as smuggled commodity and the provisions suggested in respect of a smuggled commodity may be attracted.

**Shri Morarji Desai:** Any additional goods that come in are smuggled goods. It does not require any argument.

**Shri Das Gupta:** If you examine clause 111, you will find that there are many grounds on which goods can be confiscated. In sub-clause (o) for example it is said that if certain licences have been issued under any other law under certain conditions and if the party has committed any breach of those conditions, then the provisions contained here will be attracted.

**Shri Morarji Desai:** It means the same thing. When the condition is not observed, it means that the goods have been smuggled.

**Shri Das Gupta:** The condition may be that the raw material imported should be used in a particular manner.

**Shri Morarji Desai:** If it is used in any other manner, it will become smuggled goods for that purpose. Otherwise, how else are you to treat it?

**Shri Das Gupta:** We want to make a distinction between unauthorised imports and smuggled goods. Our idea of 'smuggled goods' is that 'smuggled goods' are those that do not pass through customs.

**Shri Morarji Desai:** No, no. Anything which comes before the customs but which is not authorised is also smuggled goods. People smuggle in various ways. Goods which are brought before the customs under different descriptions also become smuggled

goods when they are found out. Otherwise, it will be very easy for people to smuggle.

**Shri Das Gupta:** Now, under the provisions of this Bill, such goods also become confiscated.

**Shri Morarji Desai:** I think they should be. The law must be so stringent that it becomes unprofitable for people to indulge in smuggling.

**Shri Das Gupta:** It should be very stringent. But we feel that it will make it impossible for the third party to clear manufactured goods.

**Shri Morarji Desai:** That is a very far-fetched argument.

**Shri Das Gupta:** Then those goods which are confiscated are auctioned by customs authorities.

**Shri Morarji Desai:** When we are auctioning such goods, there will be a label put on them. So, under that pretext, nobody would be able to sell them.

**Shri Dehejia:** Then they cease to be smuggled goods and their character will change. Suppose one brought them without licence and subsequently obtained a licence. Then they will cease to be smuggled goods.

**Shri Das Gupta:** We agree that there is a process by which originally unauthorised or smuggled goods can become authorised goods under certain process of law. If the definition of "smuggled goods" remains, the goods which are confiscated under section 111 . . .

**Shri Morarji Desai:** They are not confiscated. Once they are sold after confiscation, they are not smuggled.

**Shri Das Gupta:** Will it follow from the definition?

**Shri Morarji Desai:** Yes, it will follow. A certificate will be given to them.

**Shri Morarka:** Is it not a fact that the definition that they are suggesting is much wider than the definition

contained in the Bill? According to them, any goods which do not pass through the customs should be treated as smuggled goods. In that case, over and above those qualifications which are mentioned in clauses 111 and 113, those goods which do not pass through the customs barrier should also be treated as smuggled goods.

**Shri Morarji Desai:** How does that save that contingency? After confiscation and sale they will become the same thing. So, their alternative does not save the other category. When they do not pass through the customs, they are confiscated. Is it not? After that, they will be sold by auction. Then what happens? So, theirs also is not a better suggestion.

**Shri Das Gupta:** There may be a genuine case of difficulty in enforcement.

**Shri Morarji Desai:** In the name of a genuine case, I cannot allow contraband to get in.

#### Clause 13

**Shri Das Gupta:** Coming to clause 13, page 9 of our memorandum, we feel that there should not be a duty liability on pilfered goods.

**Shri Morarji Desai:** You have been paying it so far?

**Shri Das Gupta:** This has been our complaint before the Badhwar Committee also that that portion of the goods which have been pilfered should not be taxed; that is to say, the tax liability for that portion of the goods should not remain on us. The duty should be realisable from the party in whose custody the goods were at the time of pilferage. If the pilferage has taken place at the Port Commissioners, the Port Commissioners should be held responsible for the duty. If the pilferage has taken place from a bonded warehouse, the bonded warehouse should be held responsible for the duty. Now the importer who has not got the goods is held liable to pay duty on goods not obtained whereas the authorities who were in custody

of the goods at the time of pilferage are not being touched. That is why we say that it can be realisable from the party in the first instance but it should be refundable on its realisation from that party in whose custody the goods were at the time of pilferage.

**Shri Morarji Desai:** The Port Trust have made it very clear that they are not responsible for it. Even if it is necessary, it is the Port Trust Act that has to be amended. I cannot amend this law for that sake.

**Shri Das Gupta:** The main difficulty arises because under the Port Trust Act the liability of the Port Commissioners ceases three days after the landing of any part of the consignment. Now our customs procedures and rules are such that in the majority of cases clearance and assessment take more than three days. Therefore, if any pilferage takes place in the meanwhile, the Port Commissioners always take the plea that their liability ceased three days after the date of landing. At the same time, we cannot get the documents and clear the goods within three days. It is impossible. Therefore, our contention is that the liability should be of the custodian at the time of the pilferage and not of the party who has already lost the goods.

**Shri Ramanathan Chettiar:** Now we are concerned only with the Sea Customs Act, whereas the implementation of the suggestion of our friends mean the amendment of the Port Trusts Act. So, I do not think we can deal with it just at present.

**Shri Morarji Desai:** You can get them insured. When they are pilfered, you have to pay the price to the party from whom you have purchased them. You also pay the freight. So, why not pay the duty also? Also, you can insure them against pilferage.

**Shri Das Gupta:** For insurance claims all sorts of hurdles are there. The insurance companies also take advantage of the position as existing

between the customs law and the port law. So, we feel that our suggestion is the only solution.

**Shri Hari Vishnu Kamath:** Clause 13 of the Bill is a new provision, according to the list supplied to us. And I think the suggestion made by the witness is a reasonable one.

**Shri Morarji Desai:** That will be considered when we consider the amendments.

**Shri Hari Vishnu Kamath:** You said that some other law will have to be amended.

**Shri Morarji Desai:** Let us consider it when we consider the various clauses for amendment.

**Chairman:** Yes, we will take it up later when we take the Bill clause by clause. What is the next point?

#### Clause 14

**Shri Das Gupta:** This relates to valuation. The most important point that we wanted to stress in our memorandum is the basis of valuation of goods in the Bill. About the basis of valuation we do not propose to take much of your time because this has been an issue with us for years not only here but at international levels also. Our experience has convinced us that any other formula except the invoice value evidenced by foreign exchange payment is bound to lead to difficulties. Our submission is that by changing the words to 'normal price' the main cause for our difficulty has remained, in that whenever any transaction is there and if there is any scope to refer to any extraneous factor for deduction of the value, the germ for difference of opinion and controversy remains. Therefore we have suggested 'value evidenced by foreign exchange payment'. Nowadays there are the foreign exchange control and other laws to regulate the foreign exchange part. So, the value should be the actual invoice value that is there in the particular transaction evidenced by the foreign exchange payment at the port of importation.

Another addition that we have made is regarding forward contracts. Delivery price at the time of importation has been brought into the definition. If there are forward contracts entered, say, three or more months ago at a particular price between two independent merchants and the goods arrive now, the trouble arises if the current price is made the basis. So, we have suggested this definition here. In fact, we have suggested the inclusion of the definition in the definitions clause itself by referring specifically to the basis of quotation. The quotation basis may be either c.i.f. or c. & f. for imports and f.o.b. for exports. Therefore, we have suggested that in the definition c.i.f., c. & f. and f.o.b. should be brought in; otherwise, 'normal price' will remain a matter of judgment or information of the assessing officer. So, to our understanding, the present difficulty on the landed cost basis will continue even with the changed definition.

**Shri Morarji Desai:** All that you say does not take account of the fact that there is a lot of under-invoicing done by many people. How am I to get over it?

**Shri Das Gupta:** We would say that under-invoicing will be a matter of opinion.

**Shri Morarji Desai:** It is not a matter of opinion. I am positive about it. It is only my misfortune that I am not able to find out where it is done. I am therefore thinking of providing some monstrous punishment for this; otherwise, this will not be checked.

**Shri Das Gupta:** We would only suggest that if with all your resources you have not been able to find out the data . . .

**Shri Morarji Desai:** Government can find more resources. We become wiser every day, but you become cleverer.

**Shri Ramanathan Chettiar:** We would like to know what the remedy is to overcome this.

**Shri Das Gupta:** We have thought over this under-invoicing, over-invoicing and forward contracts. Our suggestion is that forward contracts can be registered at the time of entering into them and the contracted price should be accepted when the goods are imported or exported.

**Shri Morarji Desai:** Yes; that is what you should do. When you enter into forward contracts, register them with the customs and the customs should have the right to tell you at that time that it is a false contract and will not be valid.

**Shri Das Gupta:** We are agreeable to that.

**Shri Morarji Desai:** That is what we want you to do. That will save all these things. Then we will agree.

**Shri Das Gupta:** Forward contracts may be registered. But in the case of ready contracts, the valuation problem will remain.

**Shri Morarji Desai:** To ready contracts we will apply our own common-sense.

**Shri Das Gupta:** If you or the CBR Members apply, it is one thing; but there are a few hundred officers who are applying it and we are subject to hundred and one such officers. There is hardly any price collection. There is no guidance. There is no basis of published prices on which the citizen and the assessing officer can rely that that is the correct price. It is a matter of judgment of the particular officer and there are hundreds of officers. Some officer may be assessing the same goods in the same port on different values within three months; even on the same day on different values by different officers.

**Shri Morarji Desai:** Because values also differ on the same day.

**Shri Dehejia:** Can you quote any instance of different value on the same day?

**Shri Das Gupta:** You will remember that when the Italian art silk yarn was coming, their agents were allowing

different discounts to different parties and the Bombay Port started allowing a certain amount of discount and the Calcutta Port a different amount.

**Shri Morarji Desai:** At different ports it may be different. But you said that the same officer was doing it on the same day. I should like to have two instances of that.

**Shri Das Gupta:** If you permit us, from old records we can show that. These differences are bound to be there. Our submission is that none is less risky. Even now the collusion question can go on even between the officers and the staff. *Bona fide* sections of the trade at least do not know that they are all practising over-invoicing and under-invoicing. So, our submission is: Please do not cast reflection on the entire trade.

**Shri Morarji Desai:** I am not doing it.

**Shri Das Gupta:** Then, how will valuation be done?

**Shri Morarji Desai:** Those who are honest will not find any difficulty.

**Shri Das Gupta:** How will 'normal price' be fixed? What will be the basis for it?

**Shri Morarji Desai:** The basis will be the prices which are prevalent.

**Shri Das Gupta:** Where? In the market.

**Shri Morarji Desai:** Yes. Where else?

**Shri Das Gupta:** But the definition does not say 'market price'; it says 'normal price'.

**Shri Dehejia:** It will be normal price at that place. It is not the price in London or in New York that is relevant but the price at Bombay or Calcutta that is relevant.

**Shri Das Gupta:** Normal price will be the price prevailing at the despatching port.

**Shri Morarji Desai:** That will make under-invoicing absolutely legal and beyond any possibility of checking it. I can never accept that.

**Chairman:** The wording of the clause is:

"the normal price at which such or like goods are sold, or offered for sale, for delivery at the time and place of importation or exportation . . ."

**Shri Das Gupta:** Majority of our import licences are going to be actual users' licences for which there is no market price. There is no market for the actual users' licence goods and 95 per cent of many items of imports are against such licences. If there is any particular black market transaction and if that is taken as the market price . . .

**Shri Morarji Desai:** Black market price cannot be called 'normal price'.

**Shri Das Gupta:** But through the definition of normal price decision will be retained in the hands of the assessing officer.

**Shri Dehejia:** We are considering the law. The law here uses the word 'normal' which does not say black market price. When interpreting 'normal price' if somebody says black market price, it should be an argument "Do not take black market price".

**Shri Das Gupta:** What will be the basis?

**Shri Anand:** The basic concept is this. Goods of right kind and quality will have a certain price at which they can be delivered at the time and place of importation. This pre-supposes the independent relationship between the buyer into India and the seller abroad. One party is completely independent of the other. There are no strings attached to it. This is not the price at which the particular person may manage to get the goods, but the price at which goods of the right kind and quality can be obtained in the normal course of business. If there are sole agencies for

anything or if a certain firm has any subsidiary, then, it should come under clause 14 (1) (b) and not under 14 (1) (a). This will be regulated by clause 14 (1) (b).

**Shri Das Gupta:** That is the exact point which we stressed. Here, the price of any particular assessment will not be based upon the contract between the buyer and the seller. The valuation is not a case of contract of purchase or sale, but this is all done at the discretion and judgment of the assessing officer. It is his information or lack of information which will decide what value is to be placed on the imports. The Badhwar Committee went into this aspect to which we have made a reference. We do not for a moment say that our suggestion for the invoice price is all fool-proof. Our suggestion will result in reducing the daily controversies and number of appeals. Valuation should not be left to the arbitrariness of the assessing officers. All the undesirable practices have come because of the discretion and judgment of the officers. There are black-sheeps in the trade and there are blacksheeps on the other side, the official side also. Therefore, we want to place these things without any ambiguity.

We thank you for having given us the opportunity of saying these few words to your Committee, so that the controversy between the general trade and the Government would be set at right by parliamentary legislation.

This is the same stand that we took before the Badhwar Committee. They agreed that the price will be the f.o.b. price for export, and, for import, they also agreed that the invoice price should be the price. They agreed that the actual value should be the basis of valuation. The onus of the burden of proof of a collusion between the buyer and the seller should be on the administration but the importer is called upon to prove that there had been no collusion. There will be a 5 per cent or 10 per cent fluctuation in price in the case

of sole agents. This is not to be then normal price. There is no provision of exempting these sole agents or the sole sellers of the particular commodities. That is one point which we wish to place before your Committee. Forward contracts are being incorporated at the moment. We do not get any advantage by entering into competition in the foreign market and buying at a cheaper price. We are assessed at a higher rate. That is our submission. So, it is our request that the meaning of the words "normal price" should be made more clear.

The language should be made more clear and positive. We pay for certain goods the one duty at Calcutta but some others may get at one-third of it in some other place. It took us three years to standardise these matters in regard to ball-bearings. We want clarity and definiteness in all these matters and we do not want that such matters should be left to the judgment of officers. We want this matter to be stated with all clarity and definiteness and should not be left to be decided on the basis of the information of the different officers.

**Shri Dehejia:** I suppose you have finished your appeal on that point. Would there be a guarantee that all the goods coming into different ports would have the same invoice value? You have said that the price has varied between Bombay and Calcutta etc. Can you assure that all the goods coming at Bombay, Calcutta, Madras and other ports will have the same invoice value?

**Shri Das Gupta:** No. We submit that different invoice values are to be recognised.

**Shri Dehejia:** So, the invoice price will not be uniform throughout the country. We will go to the next point made by you. I have taken your last point first.

I would like to make a reference to the Brussels Convention and the

broad agreements reached by them. This is what they say:

"For the purpose of levying duties of customs, the value of any goods imported for home consumption shall be taken to be the normal price, that is to say, the price which they would fetch at the time when the duty becomes payable on a sale in the open market between buyer and seller independent of each other".

This is the statement of the Brussels Convention, based on GATT.

**Shri Das Gupta:** It should be made with clarity and definiteness.

**Shri Dehejia:** Please also refer to page 27—paragraph 8 of the Badhwar Committee report. This is what they say:

".....The invoice value should be made the sole basis of *ad valorem* assessments to Customs duty, provided only that this value is, in fact, the cost of delivery from an independent seller abroad to an independent buyer in India at the time of importation. Such cost would normally be represented by the foreign exchange to be remitted in payment for goods imported.

"This aspect is controlled under regulations issued by the Reserve Bank of India in terms of invoice values....."

So, the foreign exchange element is already there. Our point is that the Customs people should take cognizance of the trade quotations, trade practices and all that, whether it is c.i.f., c. & f. or f.o.b. as the case may be. 'Normal price' is just an abstract concept. It is for you, Sir, to consider how definiteness and clarity can be brought in. Our only request is, please do something. After all, after so many years you are going in for such a piece of legislation. Kindly do something, at least, to minimise the hardship that has been going on.

**Shrimati Savitri Nigam:** Have you got any other suggestions to offer?

**Shri Das Gupta:** We have suggested that the normal price shall be the c.i.f., or c. & f. or f.o.b., as the case may be. That will provide the basis to fall back upon.

**Shrimati Savitri Nigam:** Besides the suggestions mentioned on page 10 of your Memorandum, I want to know whether you have any other suggestion to make.

**Shri Das Gupta:** No other suggestion.

Now, I come to Clause 17 in regard to assessments.

**Chairman:** You want the words "not exceeding a week" to be added.

**Shri Das Gupta:** We are only saying that we have tried to put in certain time-limits in various clauses at various stages of assessments, of appeals, of giving notices, of issuing show-cause notices, etc. At present, undue delay is taking place. We suggest that some time-limit should be placed here.

**Shri Morarji Desai:** We are trying to remove the difficulties. But we cannot provide a time-limit here.

**Shri Das Gupta:** There are provisional assessments, but these are burdensome.

**Shri Dehejia:** Clause 18 provides that.

**Shri Das Gupta:** That is provisional assessment.

**Shri Morarji Desai:** We may make a provisional assessment.

**Shri Das Gupta:** It is a costly affair.

**Shri Morarji Desai:** We will make a refund.

**Shri Das Gupta:** The investment is there.

**Shri Morarji Desai:** It is only for a short time.

**Shri Das Gupta:** The moment provisional assessment is done, there will be still more delay and the money will be locked up.

**Shri Morarji Desai:** Then, do not have it.

**Shri Das Gupta:** Even in Income Tax you have provided time-limit this year.

**Shri Morarji Desai:** We have provided a time limit of four years for assessment. You can provide three months here. Then, it will always run in three months, not in two days.

**Shri Das Gupta:** It should be done in seven days.

**Shri Morarji Desai:** I say, it should be done on the same day. How am I to provide for it? I am prepared to say, ordinarily it should be done within seven days.

**Shri Das Gupta:** That will do.

**Shri Morarji Desai:** The word 'ordinarily' will kill the whole thing.

**Shri Das Gupta:** There will be at least some guidance to the officers.

**Shri Morarji Desai:** Whenever there is undue delay, you bring it to my notice and I am prepared to punish the officers concerned. You are also not prepared to cooperate with us. You do not want to complain against the officers. You want to complain against them when it does not suit you. The result is, the Government suffers and the public suffers. If you cooperate with us, I am prepared to see that it is done within two days. But you must also be prepared to suffer hardship. You should not be partners with the officers in the matter of collecting duties.

**Shri Das Gupta:** We can assure our cooperation.

**Shri Morarji Desai:** Please do not think that I am charging you. I am only saying about those who do it.

**Shri Das Gupta:** The administration will admit that we have been trying to cooperate with them.

**Shri Morarji Desai:** I am afraid it is a very difficult thing. I have gone into in one case, about a consignment of goods which was exported. That was done by the Customs. Now the Association represents that this is wrongly done. What am I to do?

**Shri Das Gupta:** I do not know the merits of the case.

**Shri Morarji Desai:** Therefore, it becomes a difficult matter to provide a time-limit like that. Suppose, it does not happen within seven days. Then, what will happen?

**Shri Das Gupta:** We are not saying about the completion of the assessment. The assessment may not be completed. The notice for calling in any document must be issued at least within seven days.

**Shri Morarji Desai:** The notice is issued to you.

**Shri Das Gupta:** But it takes a lot of time.

**Shri Morarji Desai:** Why should that happen? The notice must be given within less than seven days. Why should it take seven days?

**Shri Das Gupta:** We want to put a statutory obligation.

**Shri Morarji Desai:** We must provide it in such a manner that there is less scope for temptation on either side.

**Shri Das Gupta:** Yes, Sir. We certainly agree with you.

**Shri Morarji Desai:** We will consider it.

**Shri Das Gupta:** Then I come to clause 17(3)—calling of various documents in driblets. Sir, the basic documents to be submitted can be listed, that these are the basic documents which every importer must submit, that is, bank draft, bill of

lading, etc. Then, in addition to that, if the officers want to have some other documents, some technical papers, these should be listed all in one notice. What happens now is that the officers call for the papers and say, "Seen this; produce such and such a paper". It goes on like that. There is no end to it.

**Shri Morarji Desai:** I should like to have two or three examples of this nature so that I can punish the officers concerned. This can be prevented only by that way. It cannot be prevented in any other way.

**Shri Dehejia:** You say, this is what is happening in the administration and that it should not happen. That is your point, I suppose.

**Shri Das Gupta:** Our point is that it should be statutorily provided, as is the case in Income Tax, that all relevant papers should be called for at one time, not in driblets.

**Shri Morarji Desai:** That will always be there. Intelligence has no limit and you will not be satisfied like that. Instead, it is better I act by means of issuing circulars and if they are contravened, the officers concerned get punished. That is a better way of doing it.

**Shri Das Gupta:** If you would permit me, I would say, the recommendations of the Badhwar Committee . . .

**Shri Morarji Desai:** The Badhwar Committee is not the final word. Need you go on quoting only Badhwar Committee's recommendations as conclusions? We have accepted many of them.

**Shri Das Gupta:** Some of these recommendations have been accepted.

**Shri Morarji Desai:** They are accepted.

**Shri Das Gupta:** But the things do not improve. That is why we suggest that some statutory obligations should also be imposed.



**Shri Morarji Desai:** The things do not improve because where you should complain, you do not complain and you do not cooperate with the Government in punishing the wrongdoers.

**Shri Himatsingka:** The suggestion is being made that if you bring such things to the notice of the Government, action will be taken against the officers concerned.

**Shri Morarji Desai:** I am prepared to take action against the officers concerned. If I can deal a dozen cases like that, then there will be no trouble.

**Shri Das Gupta:** Complaints have been made in the past to the highest authority. But there is one big snag. If I have to get the information, I have to get it from the traders. We find that very often a particular official is continued in the same post and the life of informants who cooperated with the Chamber was made hell. This happened during the days of Shri Rajaram Rao. For nearly one year a party which cooperated with us was harassed.

**Shri Morarji Desai:** Sometimes these things do happen; yet we receive a lot of information. There are a lot of informers also and their life is not made hell, because nobody knows about it.

**Shri Dehejia:** I think Mr. Rajaram Rao retired in 1955. I suppose these things happened before that?

**Shri Morarji Desai:** Do you mean to say that things have remained like that and there has been no improvement?

**Shri Das Gupta:** There has been a lot of improvement.

**Shri Morarji Desai:** With the law as it is, why is there improvement? Because Government is trying to persuade. I can persuade only so long as you cooperate. If you cooperate with me, I am prepared to persuade.

I am prepared to see that the officers responsible are dismissed, or punished heavily. That is the only way of doing things.

**Shri Das Gupta:** But we have to make one submission that the officer complained against should be removed from the particular post—we do not say removed from service.

**Shri Morarji Desai:** If it becomes necessary, we shall transfer him from there. I am prepared to suspend him if we are satisfied that a *prima facie* case has been made out.

**Shri Das Gupta:** That is a good idea.

#### Clause 23

**Shri Das Gupta:** This clause relates to short-landed goods. I shall, along with this, take also clause 13 which deals with pilfered goods.

**Shri Morarji Desai:** You confine yourself to clause 23. What have you to say about it? There is some point in what you say regarding the goods short-landed, which might not have arrived on the shores. Then there should accordingly be no question of duty at all, according to you.

**Shri Das Gupta:** Our Chamber took up this question with the Customs. The Customs agreed in principle that on short-landed goods which are detected on board the ship, there is no question of duty. But they consider that the duty liability is on the steamer companies. The importers are advised that they should first go to the steamer companies to establish their claim. Our submission is that when it is not the liability of the importer, Government should remit the duty straightway and realise it from the steamer companies.

**Shri Morarji Desai:** But I am told that you are not charged duty on short-landed goods at all.

**Shri Das Gupta:** It is being practically charged, though not technically charged. It is admitted that it is not the liability of the importer, but all

the same he is asked to pay it and claim it from the steamer companies.

**Shri Morarji Desai:** It should not be paid.

**Shri Das Gupta:** It should not be realised.

**Shri Morarji Desai:** If you show it is actually short-landed, then the duty should not be levied from the importer.

**Shri Das Gupta:** At the time of assessment it should be remitted.

**Shri Morarji Desai:** Where is the question of remittance, when I say it should not be levied?

**Shri Morarka:** Please refer to sub-clause (1) of clause 23 which says that duty will not be levied if it is shown to the satisfaction of the officers that the goods have not been imported. What is the definition of imported? If it is short-landed, it is not imported.

**Shri Das Gupta:** We wish to explain our experience. We submit the Bill of Entry and assessment is made on the basis of it. When we go to the port to take delivery we find that there is a short-landing. The duty has already been paid on the basis of the Bill of Entry.

**Shri Morarji Desai:** If it has been levied, it will be remitted. It has been provided for here.

How many more points have you to make? I hope you will please confine yourself to important things, because those who follow you may also be making the same points.

#### *Clause 28*

**Shri Das Gupta:** With regard to clause 28, our first point is that the liability for short-levies cannot be made indefinite. By the proviso to sub-clause (1) it can be made indefinite on three grounds: firstly, when there is collusion between the officer and the importer; secondly, when there is wilful mis-statement; and, thirdly, when there is suppression of facts. In customs matters this may

refer to assessment or to the catalogue or list of documents; it can be very widely interpreted.

**Shri Morarji Desai:** How can it be? It is suppression of facts, not suppression of catalogue.

**Shri Das Gupta:** It may be something in the bill of entry.

**Shri Morarji Desai:** Bill of entry is a very vital thing. If anything is suppressed in it, then what is to be done?

**Shri Das Gupta:** It can be produced; it has been produced.

**Shri Morarji Desai:** Here "wilful" applies to both—wilful mis-statement or wilful suppression.

**Shri Bade:** What, according to you, is the difference between wilful mis-statement and suppression of facts?

**Shri Das Gupta:** Our apprehension is that the term "suppression of facts" may be very widely interpreted.

**Shri Morarji Desai:** There also it is wilful. It applies to both.

**Shri Das Gupta:** To suppression also?

**Shri Morarji Desai:** Yes.

**Shri Bade:** It won't.

**Shri Morarji Desai:** It is intended that it should apply to both. If it does not, we can make it clear.

**Shri Oza:** The word "wilful" may be repeated.

**Chairman:** The word "wilful" qualifies both.

**Shri Morarji Desai:** After "collusion" we can put a comma, and afterwards no comma is necessary. Or we can use the word "wilful" twice—wilful mis-statement or wilful suppression. We can do that, but that is a matter for consideration by us.

**Shri Das Gupta:** That is our apprehension. If you clarify it, that would be all right.

**Chairman:** Yes, we will consider that point.

**Shri Das Gupta:** Then, this should not be for an unlimited period.

**Shri Morarji Desai:** You said it is all right....

**Shri Das Gupta:** It may be for three or four years, but it should not be for an unlimited period.

**Shri Morarji Desai:** "Unlimited" has not much of a meaning. After ten years, or even after five years nobody is going to take it up.

**Shri Das Gupta:** But if anybody takes it up?

**Shri Morarji Desai:** It is better that it is kept hanging.

**Shri Das Gupta:** Then I want to say something about the service of the notice for re-opening. This should naturally arise by the post-checking assessment of duty and inspection. That should be expedited. These are imported goods. So, the re-opening should be started promptly. And that is why we have suggested that you do it within three months, instead of keeping it for six months for the service of the notice. This is being reopened. It should be reopened within three months, if so desired.

And, secondly, the notice for re-opening should indicate the basis and the reason for reopening it. It should not simply be a notice saying that it is being reopened, but it should also provide the reasons and the basis for the reopening.

**Shri Morarji Desai:** It is six months on both sides. You can ask for a refund also within six months. If you will reduce that period to three months, then I am prepared to consider this. It is six months on both sides.

**Shri Das Gupta:** While reopening the case the basis and the reasons should be given in the notice.

And, the notice should not be only issued but served. Recently there has been a case where the Department said that they had issued it. But the High Court held that it had not been served. Only a record in your book that it was issued will not do. The wording in the clause is "issued". It should be "served", whatever the time.

**Shri Morarji Desai:** Suppose it is issued on the last day of the six-months' period. Then it may not be served for a month. You may avoid the service. What is to be done then?

**Shri Das Gupta:** A registered letter will do.

**Shri Morarji Desai:** Registered letters also get lost. They also are not received.

**Chairman:** The man may pay something to the postman and dodge receiving it.

**Shri Morarji Desai:** If you have not received that notice, Government is bound to find out why you have not received it, and nobody is going to charge you without getting your explanation.

**Shri Das Gupta:** It went to the High Court and they said that the notice had not been served. The Department said it had issued the notice. In clause 153, under 'Service of order etc.' if you add the word "registered" before the word "post", that will serve the purpose. There the term is "by post".

**Shri Anand:** "Post" means registered post—that is what the Law Ministry say.

**Shri Morarji Desai:** How can anybody say that "post" means registered post? You better mention "by registered post". There is nothing wrong in it. That we can consider.

All right, you go ahead.

**Shri Das Gupta:** The notice should indicate the basis and the reasons.

**Shri Morarji Desai:** That we will consider doing by means of a circular, not in this. We will issue instructions that in the notice we should let them know. But if that is statutorily provided, even if one thing is not mentioned you will say, "This is not mentioned". So I cannot do it here. But I will certainly do it by means of instructions that the reasons should be given.

**Shri Das Gupta:** Under the rules.

**Shri Maheshwari:** Another thing is that the demand is served on us. Afterwards we do not get any reply from the Customs for years together. Once a demand is made, after that the Authorities remain silent. The matter is never withdrawn.

**Shri Morarji Desai:** Let us know some cases like that. Let us know one or two cases like that, and we will set things right. I can believe many things happening in customs, but unfortunately I am not being helped by you people.

**Shri Maheshwari:** We will give such cases.

**Shri Das Gupta:** Under clauses 44 to 49, that is, the Clearance clauses, our submissions are two. These are not in the note. This is a new point. At present, in practice detention certificates are issued in three circumstances, loss of documents, delay in chemical tests and delay in the scrutiny of import licences. In these three cases, detention certificates are given by the Customs. These are necessary in connection with wharfage and demurrage charges. Our only submission is, add somewhere, in appropriate cases if for one reason or another there is delay in assessment, then also it should be possible to issue detention certificates.

**Shri Morarji Desai:** If the delay in assessment is due to not supplying the facts?

**Shri Das Gupta:** In such cases, the department will not issue the certificate.

**Shri Morarji Desai:** You cannot provide it here that if there is delay, detention certificates should be given.

**Shri Das Gupta:** The officers say that there is no provision for the issue of detention certificates. There is no provision here.

**Shri Dehejia:** What you are stating does not relate to the procedure here but something with reference to the Port Trust.

**Shri Das Gupta:** Clauses 44 to 49 deal with clearance of goods, at different stages of clearance. Nowhere is there any provision for the issue of detention certificates. Our submission is that some provision be made in this group of clauses for the issue of detention certificates.

**Shri Morarji Desai:** That means that the Port Trusts Act will have to be amended. Suppose we issue detention certificates and the Port Trust says, we are not going to honour? They are bound by the Port Trusts Act.

**Shri Das Gupta:** In practice, they honour.

**Shri Morarji Desai:** The two Acts must have proper connection.

**Shri Das Gupta:** You may secure the connection. The question is, there is no provision. We are suggesting, make some provision for the issue of detention certificates.

**Chairman:** Who issues the certificate?

**Shri Morarji Desai:** The Collector of Customs. We will consider what can be done.

**Chairman:** This will be considered.

**Shri Dehejia:** I suppose what you want is a legal provision for the present working arrangement between the Port Trust and the Customs.

**Shri Das Gupta:** No. Some provision here for the issue of detention certificates in appropriate cases.

**Shri Morarji Desai:** We will consider whether it can be done. We do not undertake to do it.

**Shri Das Gupta:** Regarding clause 110, Seizure of goods, documents and things, our only submission is this. In appropriate cases, certainly, seizure of goods and also documents may be necessary. In case the documents are seized, except those which may be directly required in any particular case that may be going on, all other documents should be returned after keeping photostat copies if necessary. At the moment, there is no obligation to return.

**Shri Morarji Desai:** Here it is mentioned:

"Any officer of customs may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act."

That is provided. If useless things are taken, you let me know. There is no remedy in this clause. That is another thing.

**Shri Das Gupta:** The provision for return is not there.

**Shri Morarji Desai:** They must return. Why should they keep them?

**Shri Dehejia:** For seizing anything, authority is required. If there is seizure beyond authority, it is not correct.

**Shri Morarji Desai:** If an officer seizes a document which is not relevant, he is liable for wrong action.

**Shri Das Gupta:** Allow me to submit, documents are taken. If you will only look into the Customs cases before the courts, you will find that people have to go to the court and the court has to order that these documents should be returned.

**Shri Morarji Desai:** Send some cases. I think it is very wrong if we have not taken action in those cases. Let me have some cases.

**Shri Das Gupta:** There are cases in the courts.

**Shri Morarji Desai:** Show me where the courts have said like that. I will take the court's decision.

**Shri Das Gupta:** They are returned after the court's decision.

**Shri Morarji Desai:** We will punish those officers. Give me the cases. It is a wrong action on the part of the officer. The law is correct.

**Shri Das Gupta:** In clauses 112 to 114 taken together, there is reference to financial transaction and personal liability for abetment. If you will kindly see the wording, it has perhaps made the position a little more fluid than intended. It is said that a person knowing or having reason to believe that that man may use it for smuggling, has given financial or other assistance. The financier has lent money to another man who is also an importer doing import business. This includes a bank or financial institution. If for one reason or another, some part of the goods have been considered to be smuggled and confiscated, the financier will be in difficulty on a charge of abetment.

**Shri Dehejia:** The clause says, financial or other assistance for smuggling such goods. It does not merely say, financial or other assistance.

**Shri Das Gupta:** How will it be proved?

**Shri Morarji Desai:** I want to revert to the Registered post provision. From the General Clauses Act, I find that what I said was wrong and what they said was right. Clause 27 says:

"Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing,

pre-paying and posting by registered post, a letter . . ."

It is there. I am sorry I did not know that. That does not require any provision.

**Shri Das Gupta:** A man has lent money to an established importer. The established importer, the merchant is there. He is doing good business. The man has lent money. He takes the money. A part of his goods or a part of his traded goods has become confiscated. The financier cannot be blamed: that out of the money that portion was used for smuggling.

**Shri Morarji Desai:** I want the financiers to be careful not to finance such things.

**Shri Das Gupta:** Will that be possible?

**Shri Morarji Desai:** It will be possible. All of you know who is doing this.

**Shri Das Gupta:** I am referring to the financier.

**Shri Morarka:** Kindly read the clause: 'Any person who, knowing or having reason to believe. . .' This is the qualification.

**Shri Das Gupta:** 'Knowing'—we agree. But 'having reason to believe' is a different thing.

**Shri Morarji Desai:** Suppose the man has been fined once for smuggling. Then he has reason to believe. Otherwise, the prosecution will have to prove that he has reason to believe. We will go further.

#### Clause 120 (2)

**Shri Das Gupta:** The smuggled portion should constitute the major portion of the goods, not a small part.

**Shri Morarji Desai:** Even if it can be separated, I would like to confiscate all the goods. Unless the punishments are monstrous, I am afraid this business of smuggling is not going to end. I do not think the punishment now is sufficiently monstrous. I would like to confiscate all

his property, but Parliament will not allow that.

**Shri Shankaraiya:** The value of the smuggled article will be more than that of the container.

**Shri Morarji Desai:** Sometimes it happens. They profit so much by smuggling that they take the risk of punishment when they are found.

**Shri Oza:** This relates to possession in third party's hands. Suppose the goods are transferred to third parties.

**Shri Morarji Desai:** I would take that step even with regard to the third party, if I can help it, for some time, to put God's fear into these people.

#### Clause 122

**Shri Das Gupta:** The confiscation order should not be by an officer below the rank of Deputy Collector.

**Shri Morarji Desai:** I do not see any necessity.

**Shri Das Gupta:** For smaller amounts, there are still lower officers who can do it.

**Shri Morarji Desai:** It is by a gazetted officer. Gazetted officers must all be allowed to do that. Otherwise, the work will be tremendous. There is nothing objectionable in it. You can always appeal.

**Shri Kajaria:** That is the reverse order.

**Shri Morarji Desai:** Reverse order is better for these things.

#### Clause 128

**Shri Das Gupta:** At least there should be a tribunal.

**Shri Morarji Desai:** I am sorry. One tribunal is enough. I am not able to find judges required for all the tribunals.

**Shri Das Gupta:** Another more important thing is this. The appeal orders that are now issued are not appeal orders. Generally, the CBR

orders are mostly of the type of 'no cause for intervention'. When appeals are rejected, the reasons for rejection should be stated.

**Shri Morarji Desai:** 'Appeal rejected' is enough. Reasons should be given only if the appeal is allowed, not otherwise.

**Shri Das Gupta:** At the Collectorate level, can there be a separate Deputy Collector for hearing appeals?

**Shri Dehejia:** There is a ruling that the officer who adjudicates should hear the parties.

**Shri Das Gupta:** In case an appeal is filed, at the moment it goes to the Assistant Collector.

**Shri Morarji Desai:** From the lower officer.

**Shri Das Gupta:** Yes, and from the Assistant Collector to the Collector. We were thinking that if Assistant Collectors are also assessing authorities and if there was some appellate officer under the Collector who only hears appeals, it would expedite matters.

**Shri Morarji Desai:** You want two appeals again at that stage. In the case of an officer below the Assistant Collector, you have two appeals—to the Assistant Collector and Collector. Now you want two appeals from the Assistant Collector, that is, to the Deputy Collector and then to the Collector.

**Shri Morarka:** What they want is that the appellate machinery should be separate from the executive machinery, as we have in the Income-tax Act.

**Shri Morarji Desai:** I do not want to turn executive matters into judicial matters. Taxation is not a judicial matter at all. These are financial things. It is only economic justice.

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## Clause 129

**Shri Das Gupta:** Our submission is that the disputed amount should not be required to be deposited when the appeal is going on.

**Shri Morarji Desai:** Why should it be held in abeyance? It must be deposited.

**Shri Das Gupta:** If the assessment is higher, it becomes very hard for the man to do it, even if he wins the appeal subsequently.

**Shri Morarji Desai:** He should deposit it.

**Shri Das Gupta:** When the assessment has been done, let the portion not disputed be deposited.

**Shri Morarji Desai:** No.

**Shri Das Gupta:** Let it remain up to the first day of the hearing.

**Shri Morarji Desai:** The whole assessment should be deposited.

**Shri Morarka:** A new proviso is there now.

**Shri Morarji Desai:** That is quite enough. That also may get taken away in your asking for more.

**Shri Das Gupta:** Coming to Clause 156(2) dealing with rule-making powers, we want that in respect of the Manual of the Tariff Guide, the rulings of the CBR should be periodically consolidated, because in the last 27 years the Tariff Guide has been revised only five times.

**Shri Morarji Desai:** It will be done. We will publish the Manual, and issue every year additions, and when the additions become too many, we will reprint the whole thing.

**Shri Das Gupta:** Before expressing our grateful thanks to you for hearing us, we would invite your attention to one thing. At the moment permission, of a judicial authority is necessary before search and entry into a house by the customs authorities. Under the Bill, Clause 105, that permission is dispensed with. If this is allowed here, the police will say that it is a police matter and

enter premises and search without the permission of the court, on the lines of the customs people.

**Shri Morarji Desai:** The police also have powers to do it. Without taking a warrant, they can enter and search in several cases.

**Shri Das Gupta:** Only in specified cases.

**Shri Morarji Desai:** This is also only in specified cases. It will affect only the smugglers.

**Shri Das Gupta:** It is not mentioned that it is only in the case of smugglers. If customs people enter into houses for customs reasons, police will enter for police reasons, and Central excise people will enter for excise reasons, without taking permission from any judicial authority, and in spite of our having democracy, there will be an administrative Raj.

**Shri Morarji Desai:** The police have the powers to do it; excise officers also have the powers; income-tax and sales tax people also have those powers.

**Shri Das Gupta:** Income-tax and sales tax people require permission and the search is of the assessee.

**Shri Morarji Desai:** Have you ever suffered from it? Has anybody entered your House? When a person has to go to a magistrate and get a warrant, it gets known and everything is finished. It becomes very difficult to find anything there. This is the experience.

**Shri A. V. Raghavan:** The police should record the reason and then forward it to the magistrate.

**Shri Morarji Desai:** It amounts to the same thing. Why should he forward it to the magistrate? He should forward it to his superiors. If we find that his action is wrong, we will take action against the man. Punishment given to the man for wrong action will be a better deterrent than going to the magistrate.

**Shri Morarka:** We have a similar provision in the income-tax law, but there it is confined to the place of business of the assessee only.

**Shri Morarji Desai:** If you do not do it, you will not be able to get at the root of it, because it is so widespread.

**Shri A. V. Raghavan:** The officer searching may take two witnesses.

**Shri Morarji Desai:** When the search is made, there are bound to be two people. No search can be made by the officer without *panches*. *Panches* are bound to be there. The provision in the Criminal Procedure Code will apply to searches here. They cannot make a search without leaving a trace of it, that cannot happen. It is mentioned in the clause.

**Shri Das Gupta:** Here the question is not the man involved; it may be only the relevant man. The necessity of taking permission of the judicial authority has been taken away.

**Shri Morarji Desai:** Deliberately, not through mistake.

**Chairman:** But there is provision for punishment of officers for wrongful search.

**Shri Morarji Desai:** You have sympathy from several hon. Members. Therefore, you need not go further. I will have to meet them, not you. That is why I said I could not get the powers from Parliament; otherwise, in six months I could stop all this. Unless we have these punishments, I do not think we will be able to do it. Even if some people are harassed, I am prepared to take the risk, but the way the racket is going on is a shame for the whole country. We do not know what we should do.

**Shri Das Gupta:** The unfortunate part of it is that perhaps the more you make law stringent, the greater will be the harassment to the honest man, and the more intelligent will still go scot-free, because their buoyancy and flexibility are so much that they can always over-reach.



**Shri Morarji Desai:** The atmosphere now is such that an honest man is considered a stupid man, and therefore nobody wants to remain honest. That atmosphere must be removed.

**Shri Das Gupta:** That is our submission also.

**Shri Morarji Desai:** We are trying to do that. That is why I say where a man is harassed, and wrongly harassed, we will punish the officer harassing him very severely. That is a better deterrent.

**Shri Das Gupta:** We assure you of our co-operation on condition that the administration helps us. Those who run their business honestly and strictly should be encouraged and shown to others as an example.

**Shri Morarji Desai:** I am prepared to trust people like that, but let them deposit with me the proper amount of money. When they are found to go wrong, I will confiscate it. Then I am prepared to trust them.

**Shri Das Gupta:** You are only trying to mobilise money in an indirect way.

**Shri Morarji Desai:** What is wrong with it? I will give you back the interest, so that there is no saving to Government. Is that enough?

**Shri Das Gupta:** Certain proposals were made in the Central Advisory Committee about steps to be taken to secure co-operation between the Federation and Chambers of Commerce on the one side and the local administrations on the other. The Federation has written to us in confidence what those steps are and in what manner it can be done.

**Shri Morarji Desai:** We are trying to do it, but that it not a matter to be discussed here.

**Chairman:** Thank you very much for the evidence you have given.

*(The witnesses then withdrew.)*

## II. THE PRECIOUS STONE IMPORTERS' AND EXPORTERS' ASSOCIATION, BOMBAY

### *Spokesmen:*

1. Shri Jaiysukhal D. Zaveri
2. Shri Kirtilal K. Doshi
3. Shri Pravin M. Nanavati
4. Shri J. R. Gagrati

*(Witnesses were called in and they took their seats).*

**Chairman:** We have your memorandum. Have you anything more to say in addition to your memorandum?

**Shri Gagrati:** As mentioned in the memorandum, there are certain provisions of the Bill which have caused serious apprehension in our minds as far as our trade is concerned. We are not here to dispute the purpose of amending the Act; but we want to draw your particular attention to certain sections which have caused great apprehension in our minds.

**Shri Morarji Desai:** How many sections?

**Shri Gagrati:** There are only 4 sections to which we will refer. There is clause 118 which provides:

"Where any smuggled goods are contained in a package, the package and any other goods contained therein shall also be liable to confiscation."

Precious stones are dealt with in the course of our trade. The practice in our trade is that we put the stones in certain paper folders. What we do is this. We collect the previous stones from various sellers. They are sorted out according to the size, type etc. Then, they are put in one package. There would be a package of rubies, emeralds and so on. They are carried on our person.

Supposing, for instance, there is one piece of a precious stone in one package which is alleged to be or found out to be smuggled, then, the whole package is liable to confiscation even though the package may

contain 25 other precious stones which may belong to other sellers who may have been *bona fide* purchasers or whose family property the stones may be. The whole package is liable to confiscation merely because they happen to be put into the packet with one stone which is smuggled or alleged to be smuggled.

**Shri Morarji Desai:** Why was it put in?

**Shri Gagrat:** Then there is clause 123, under which I have to show that a precise stone, which is seized by a customs officer as smuggled, is not smuggled.

**Shri Morarji Desai:** Because it is not covered by any licence. You will grant that there is a lot of smuggling in precious stones. It may also include diamonds.

**Shri Gagrat:** I will make one thing very clear. The precious stones with which our Association, which is now before you, is concerned, are coloured stones; they are emeralds, rubies and sapphires. As far as these three items are concerned, even after 1955 when the provision of Section 178 A was inserted, there has been no single case of confiscation, because of two reasons. Emeralds, rubies and sapphires are produced and mined in India freely since centuries. Their import policy was very liberal and up to 1947 there was no licensing at all of these. Up to 1957, liberal licences were granted and from 1957 *ad hoc* licences are being granted.

As far as these three stones are concerned, there is not much of home consumption but large exports are being effected by us. We get them, polish them and export them. Government had actually put a duty of 5 per cent; and there would not be much incentive for smuggling these things. As far as these three stones are concerned, I would like to point out that there has been not a single instance of smuggling. You can verify that from the customs records.

There have been 4 instances in which the customs have seized these things under section 178A.

**Shri Morarji Desai:** I do not know how to distinguish between these three stones and the other stones.

**Shri Gagrat:** We speak only for these stones, rubies, emeralds and sapphires.

**Shri Morarji Desai:** Do you want to have some exception provided for these?

**Shri Gagrat:** Yes, Sir.

**Shri Morarji Desai:** We will consider what can be done.

**Shri Gagrat:** After 1955 only 4 instances of seizure have taken place. This would cause harassment to the traders.

**Shri Morarji Desai:** We will find out some method whereby we can avoid harassment.

**Shri Gagrat:** In our view, you should exclude these specific stones from sections 118, 120 and 123.

**Shri Morarji Desai:** We will see.

**Shri Gagrat:** That is our first objection. You will appreciate the difficulty. If one stone in a package is found to be smuggled or alleged to be smuggled the whole package is liable to be confiscated.

**Shri Morarji Desai:** In the first place, I am not satisfied why any other piece should be found in that package. It does not come by itself; it is put in.

**Shri Gagrat:** Supposing 7 or 8 people sell to me precious stones in the course of a deal. As far as these are concerned, it is not possible to investigate and find out or even suspect that some of them are smuggled. Supposing customs come to know that A has smuggled certain stones and that those stones have later on come to me, they seize it. But I do not know of it because I put them in one package with the stones of other dealers.

**Shri Morarji Desai:** That means your whole stock will be liable to confiscation.

**Shri Gagrat:** Supposing I have a certain type of rubies in my shop. I go on purchasing different sizes of stone and I sort them and put into one package stones of a certain type. In that package there might be one stone smuggled by A but which I might have purchased *bona fide*. Simply because I have put that in the packet along with others, all the others, will be confiscated.

**Shri Dehejia:** Clause 178A was enacted in 1955. Between 1955 and 1962 have there been any cases of hardship?

**Shri Gagrat:** There have been four cases. I may submit that there is no incentive to smuggle in these stones. Licensing is liberal. In none of these four cases the guilt was proved and the poor traders felt harassed.

**Shri Morarji Desai:** If in none of these cases it could be proved, then that means they were harassed. Did it happen with the same officer or in one place?

**Shri Gagrat:** No, Sir: at different places.

**Shri Morarji Desai:** .Anyway, there may have been some information. We will try to consider this. For *bona fide* transactions, we will see what we can do. We shall see if we could find some provision whereby *bona fide* transactions could be covered.

**Shri Gagrat:** May I then invite your attention to clauses 118, 120 and 123? It is a corollary to our earlier submission. I will not repeat the facts. They apply to all these clauses.

**Shri Morarji Desai:** We shall consider them.

**Shri Gagrat:** If you exclude these three precious stones from section 123(2) it will be good. It reads:

"This section shall apply to gold, manufactures of gold and precious stones, precious stones. . ."

You may define precious stones like diamonds of other categories of stones.

in which there is material on record to show that smuggling has been going on.

**Shri Morarji Desai:** We will consider all that.

**Shri Gagrat:** I will now come to clauses 191 and 192. When a person believes....

**Shri Morarji Desai:** What else can be done. It says: when he has reason to believe.

**Shri Gagrat:** The grounds are not given. The reasons are not given. It should be made a condition.

**Shri Morarji Desai:** That will be done. Before he searches a person the reasons must be recorded and given to him. We will do that.

**Shri Gagrat:** He may be searched in the presence of two independent witnesses.

**Shri Morarji Desai:** For that the Criminal Procedure Code will apply; that is provided for in clause 105.)

**Shri Gagrat:** As the Bill is drafted, it leaves a doubt.

**Shri Morarji Desai:** It will be taken out and put in such a manner as to leave no doubt.

**Shri Gagrat:** He may be arrested in the presence of panchas.

**Shri Morarji Desai:** No arrests are made before panchas. How can we arrest before the panchas. Searches can be made like that but arrests cannot be made necessarily like that.

**Shri Gagrat:** The men arrested should be produced before the Magistrate forthwith.

**Shri Morarji Desai:** Within 24 hours: it cannot be forthwith. There is a provision in the Criminal Procedure Code also like that.

**Shri Hari Vishnu Kamath:** Article 22 of the Constitution gives 24 hours.

**Shri Dehejia:** You are probably thinking in terms of Bombay city. Where are places in the country where it takes much time to reach a magistrate.

**Shri Morarji Desai:** The time for taking a man to the magistrate in some places may be outside 24 hours: in some cases it takes even two days to take a man to the magistrate.

**Shri Gagrat:** There are certain other provisions to which there is no objection as such but healthy suggestions are made from the practical point of view.

Section 13 says that if any imported goods are pilfered after the unloading thereof and before clearance for home consumption or deposit in a warehouse, the importer shall be liable to pay the duty leviable on such goods. Suppose the goods are lost not due to his fault.

**Shri Morarji Desai:** Are there any cases of pilferage of such stones? Why do you want to get covered by it?

**Shri Gagrat:** Clause 14 deals with the real value of the goods.

As far as the precious stones are concerned, there is, I am told, nothing like a fixed market price by which you can evaluate. Every stone depends on the size, shape, weight, etc. We are only suggesting that you might, under this sub-clause, constitute a panel comprising your departmental officers and some of our members of the Association so that as and when importation takes place, that panel may be the arbiters to decide the dispute. Otherwise, the clearance is affected, the export is affected. These are goods that come in different sizes, shapes and forms.

**Shri Morarji Desai:** But there can be under-invoicing and over-invoicing.

**Shri Gagrat:** Not in this trade.

**Shri Morarji Desai:** Why not? I do not think that is not done. It can be done and it is done.

**Shri Dehejia:** Even now, when there is no statutory committee, market enquiries are made from the experts.

**Shri Gagrat:** In this clause, the offer of sales is taken as the basis for determining the price etc.

**Shri Morarji Desai:** It is so because of under-invoicing and over-invoicing.

**Shri Gagrat:** Quotation is never the basis and the sale itself is subject to bargaining by the parties.

**Shri Morarji Desai:** Therefore, it has to be kept as it is.

**Shri Gagrat:** By reason of my bargaining power, for example, I import goods at value X, and when I get the quotation of Y, and still Y is said to be normal price. . .

**Shri Morarji Desai:** There is no harassment in it.

**Shri Gagrat:** The goods are liable to confiscation only on the ground that it is a mis-statement.

**Shri Morarji Desai:** I do not think there will be such a thing if there is only a little difference.

**Shri Gagrat:** Supposing, as a result of my bargaining, I am able to get at price X, and you get a quotation.

**Shri Morarji Desai:** You do anything by bargaining and not by under-invoicing.

**Shri Gagrat:** I can show the correspondence.

**Shri Morarji Desai:** There is always collusion.

**Shri Dehejia:** The question is, this provision applies to every trade and every commodity. I do not suppose it is your contention that is no country is the basis for evaluation different for different commodities.

**Shri Gagrat:** The quotation is never the basis for fixing the normal price.

**Shri Morarji Desai:** You will have to try to regulate it by law.

**Shri Gagrat:** When quotation is taken as the basis for the price....

**Shri Morarji Desai:** We will issue instructions about it.

**Shri Bade:** How can a normal price be fixed, when there is no statutory committee, etc.?

**Shri Zaveri:** It is through experience in the trade. There may be different valuations. For importers, the valuation can be anything from five to ten per cent.

**Shri Morarji Desai:** That is why it is such an expert business.

**Shri Bade:** It is very difficult to fix the price.

**Shri Morarji Desai:** They could find this out from the man who deals with precious stones. It is a very expert business.

**Shri Bade:** Who will fix the normal price?

**Shri Morarji Desai:** We ask somebody who is not in the trade but who knows. He gives the price all right. Generally, the price does not vary much, when you consult independently the people who can say about it. Of course, when there is collusion among the people concerned, they may say something. But you can avoid all this by jumping on them by surprise!

**Shri Gagrat:** The new section 128 provides that in an appeal the Board has powers to enhance the sentence. As you know, the customs officers have been held to be quasi-judicial tribunals; and it is not a normal provision—that the appellate authorities' function is to adjudicate *de novo*.

**Shri Morarji Desai:** When there is a collusion and the officer lets him off with a very small punishment, what is one to do?

**Shri Gagrat:** In such a case, the importer would not file an appeal.

**Shri Morarji Desai:** I think it was in order to prove that they are very honest. It is normally happening. It is not an abnormal thing.

**Shri Gagrat:** If the appellate authority is to adjudicate *de novo*, what happens? This is a hard provision.

**Shri Morarji Desai:** Even when the thing is meticulously provided for, there may be some loopholes through which the man gets acquitted.

**Shri Gagrat:** The alleged shortcoming of the officer....

**Shri Morarji Desai:** It is not shortcoming. It is the position of the other man. He is more responsible than the officer. It is because of the temptations that the administration gets spoiled.

**Shri Gagrat:** A provision may be made to the effect that in the case of any collusion, the appellate authority can act.

**Shri Morarji Desai:** It is not judicial matter. This is absolutely an executive matter.

**Shri Gagrat:** The Supreme Court has held that Custom Authorities are quasi-judicial and not executive authorities.

**Shri Morarji Desai:** One can always go to the Supreme Court. One cannot debar that.

**Shri Ramanathan Chettiar:** We would like to see what rubies, sapphires, etc., are, and how they deal with them.

**Shri Zaveri:** We build our reputation after 40 to 50 years of our activity.

**Shri Morarji Desai:** You can rest assured that nothing is done to injure your reputation. We will see that you maintain your reputation. We do not want to hurt honest people.

**Shri Zaveri:** That reputation will go within a minute if....

**Shri Morarji Desai:** We will see that does not happen. Let us not think of any danger like that. We will issue proper instruction. It can never be provided for by law.

**Shri Gagrat:** We are saying that you are equating us with dealers in other commodities like gold and watch, items which are under-invoiced.

**Shri Morarji Desai:** You cannot claim that there is no under-invoicing here.

**Shri Gagrat:** We will substantially satisfy you. If you put us on a par with other commodities....

**Shri Morarji Desai:** It is difficult to find out whether under-invoicing is going on on a larger scale.

**Shri Gagrat:** You have equated us with gold and watches—items in which there is large scale smuggling. There is no smuggling here. I can assure you.

**Shri Morarji Desai:** I am talking of under-invoicing; not about smuggling. That is why we provide for these things. I will try to see that you are protected against other things.

**Shri Gagrat:** I would request you to see to this: that you put us out of clause 123 which does not apply to us.

**Shri Morarji Desai:** We will see.

**Shri Zaveri:** As regards the appeal not disposed for 4½ years by the board case is dated, 1-1-1958.

**Shri Morarji Desai:** We will look into the case.

**Shri Tridib Kumar Chaudhuri:** I want one clarification. Are the merchants dealing with diamonds and rubies the same, or, are they differ-

ent sets of people for these different items?

**Shri Morarji Desai:** Sometimes they are the same; they are not necessarily different. Therefore they cannot be separated. It is difficult to separate them. Anyway, we will see what can be done.

**Shri Gagrat:** These commodities are separate and distinct from each other. There can be no similarity between diamonds and sapphires.

**Shri Morarji Desai:** Diamond by mistake will not be kept as a sapphire; sapphire by mistake may be kept as a diamond!

**Shri Zaveri:** There are merchants who deal with both diamonds and sapphires.

**Shri Morarji Desai:** We shall see what can be done.

**Shri Doshi:** In the case of gold, there is some marking on it to distinguish it from smuggled gold. But in our case, there is no marking and it can never be distinguished.

**Shri Morarji Desai:** How can smuggled diamond be distinguished from genuine diamond? Smuggled and genuine things cannot be distinguished. These things do not happen by mistake. The person concerned knows it necessarily. But I may assure you that we do not want to cause harassment to anybody. We will see that honest people do not suffer.

**Shri Gagrat:** We are obliged to you for giving us this opportunity.

**Chairman:** Thank you.

*(The witnesses then withdrew)*

*The Committee then adjourned.*

## SELECT COMMITTEE ON THE CUSTOMS BILL, 1962

### MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL, 1962.

*Tuesday, the 31st July, 1962 at 09.01 hours.*

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

- |                                    |                                     |
|------------------------------------|-------------------------------------|
| 2. Shri Ramchandra Vithal Bade.    | 14. Shri Mahesh Dutta Misra.        |
| 3. Shri G. Basu.                   | 15. Shri R. R. Morarka.             |
| 4. Shri Tridib Kumar Chaudhuri.    | 16. Shri Shankarrao Shantaram More. |
| 5. Shri R. Ramanathan Chettiar.    | 17. Shrimati Savitri Nigam.         |
| 6. Shri N. T. Das.                 | 18. Shri Prabhat Kar.               |
| 7. Shri Morarji Desai.             | 19. Shri A. V. Raghavan.            |
| 8. Shri B. D. Deshmukh.            | 20. Shri Shivram Rango Rane.        |
| 9. Shri J. N. Hazarika.            | 21. Shri R. V. Reddiar.             |
| 10. Shri Prabhu Dayal Himatsingka. | 22. Shri M. Shankaraiya.            |
| 11. Shri Hari Vishnu Kamath.       | 23. Dr. L. M. Singhvi.              |
| 12. Shri Narendrasingh Mahida.     | 24. Shri Sumat Prasad.              |
| 13. Shri Bakar Ali Mirza.          | 25. Shri Bali Ram Bhagat.           |

#### DRAFTSMEN

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

#### REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

#### SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

#### WITNESSES EXAMINED

##### I. THE INDIAN MERCHANTS' CHAMBER, BOMBAY

- |                                  |                          |
|----------------------------------|--------------------------|
| 1. Shri Pravinchandra V. Gandhi. | 3. Shri C. L. Gheevala.  |
| 2. Shri Ambalal Kilachand.       | 4. Shri D. S. Pendurkar. |

## II. ALL INDIA JEWELLERS' ASSOCIATION, NEW DELHI

- |                                 |                         |
|---------------------------------|-------------------------|
| 1. Shri Bhola Nath,             | 3. Shri Jawaharlal.     |
| 2. Shri Sultan Singh Backliwal. | 4. Shri V. J. Merchant. |

## III. INDIAN CHAMBER OF COMMERCE, CALCUTTA

- |                        |                             |
|------------------------|-----------------------------|
| 1. Shri B. P. Khaitan. | 3. Shri B. Kalyanasundaram. |
| 2. Shri H. R. Sugla.   |                             |

I. THE INDIAN MERCHANTS' CHAMBER,  
BOMBAY*Spokesmen:*

1. Shri Pravinchandra V. Gandhi.
2. Shri Ambalal Kilachand.
3. Shri C. L. Gheevala.
4. Shri D. S. Pendurkar.

*(Witnesses were called in and they took their seats).*

**Chairman:** Your memorandum has been distributed to members. If you want to add anything to it you may do so now.

**Shri Gandhi:** We are grateful to you for giving us this opportunity of appearing before you in person and discussing with you the points which we have raised in our memorandum. The present law governing customs was enacted about 80 years ago and, as we have stated in our memorandum, codification of the customs law has become very necessary for several reasons. We are glad that it is being done now. It is gratifying that a number of new facilities and concession asked for by the trade and recommended by the Customs Reorganisation Committee are provided in the new Customs Bill. At the same time, we would like to point out that there are some provisions which have far-reaching implications and which, according to us, require slight modifications. We have suggested these modifications in the course of our memorandum.

While we concede that it is necessary to take all possible measures to safeguard the interests of revenue

and to effectively deal with the problem posed by anti-social activities in the sphere of foreign trade such as smuggling, we would, at the same time, stress the need to take care to see that the powers sought to be given to the departmental officers are not very wide and arbitrary as will interfere with the day-to-day functioning of trade and business. For example, the power to search persons and premises without a search warrant issued by a magistrate is an extra-ordinary power. Similarly, there is the power that is sought to be vested in the Customs Officers to require persons to make statements in writing and to sign such statements. There are also the powers which are proposed to be given to the Customs officers to confiscate the entire goods suspected to be inextricably mixed with smuggled goods. These are powers which, we think, are of a very extra-ordinary nature. We have tried to point that out in our memorandum. We have also given our comments on some of the other provisions of the Bill.

If you permit, Sir, we would like to begin by drawing your attention to clause 11 of the Bill. In the initial stages, we have also tried to point out that very little time was given to us as the copies of the Bill were not available to the Chamber of Commerce till 10th July and the time left was very little for us to circulate the Bill to our members.

Regarding clause 11, we very much welcome the change which is there. Formerly there were no guiding principle. Now the guiding principles have been laid down. But we want-



ed that certain clarifications should be there. We thought that they could come probably under some other statutes. Item (e) relates to conservation of foreign exchange and safeguarding of balance of payments. We thought that this was a purpose which could come under the Foreign Exchange Regulations. We wanted to find out whether it was necessary in the customs Act. Then, item (p) is: "the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;"

**Shri Morarji Desai:** What is the meaning of your saying that conservation of foreign exchange should not be one of the reasons for prohibiting exports or imports?

**Shri Gandhi:** The question is whether it cannot come under the Foreign Exchange Regulations.

**Shri Morarji Desai:** That is only for the breach of foreign exchange regulations. That does not regulate whether foreign exchange should be given. Foreign exchange is regulated by Government under certain rules which they issue. Any breach of those rules is dealt with under the Foreign Exchange Regulations Act. Here imports and exports are regulated on account of requirements of foreign exchange. Therefore, how can it not be put down here? It is a very strange plea. Can imports and exports be allowed irrespective of the foreign exchange position? It is a strange argument that you are raising.

**Shri Gandhi:** We felt that the conservation of foreign exchange will not come within the scope of this Bill.

**Shri Morarji Desai:** That is the main purpose.

**Shri Gandhi:** We entirely agree that conservation of foreign exchange is necessary. Our only point is whether it should come within the scope of the Customs Bill.

**Shri Morarji Desai:** It is one of the purposes of the Customs Bill. I do not know how you are objecting to this kind of thing here.

**Shri Bade:** All that he says is that it is overlapping.

**Shri Morarji Desai:** There is no harm in their overlapping. That will remind these people every now and then that such a provision is there. They now seem to think that foreign exchange is something with which they can play according to their free will.

**Shri Gandhi:** Anyhow, this is our submission. The other point refers to carrying on of foreign trade by the State.

**Shri More:** They have elaborately stated their objections in their memorandum and we are supposed to have studied them. If they have something to say in addition which, by some chance, did not appear in the memorandum, then it will be worthwhile for them to mention them now.

**Shri Gandhi:** It is not our intention to unnecessarily take your time. We just wanted to stress our point.

**Shri Morarji Desai:** You may stress those points which you think are important; not every point, so that we might focuss our attention on those important points.

**Shri Gandhi:** Coming to the duty on pilfered goods, under the present law, if a consignment is to be abandoned by the party because it was pilfered, then no customs duty is leviable on the abandoned goods. But, under the present Bill, even if goods are abandoned complete custom duty will be payable. Here is a case where the party cannot be held responsible at all for the goods which are not cleared by him, because pilferage is not within his control. We would like to stress that the position regarding customs duty in respect of this should be as at present.

**Shri Morarji Desai:** How does the question of payment of duty arise in the case of abandoned goods?

**Shri Gandhi:** If there is a consignment, a part of which is pilfered, if I choose to take delivery of the balance then only I pay customs duty on the whole consignment, under the present Customs Act. But, under the Bill, even if I do not take delivery at all of the consignment, I have to pay customs duty on the whole consignment.

**Shri Morarji Desai:** If you do not take anything, you do not have to pay anything.

**Shri Dehejia:** Under the new Bill they have to pay. I will explain the position....

**Shri Morarji Desai:** No it should not be there. It does not stand to reason. If that is the position under the new Bill, we must change it. We cannot levy any duty on goods which are not taken delivery of.

**Shri Tridib Kumar Chandhuri:** So far as consignments of imported goods are concerned, the general practice is to have them insured. Suppose they pay duty on pilfered goods, they can recover it from the insurance companies. So, what is the harm in paying customs duty?

**Shri Morarji Desai:** His point is slightly different. Suppose there is a consignment of 100 tons out of which 5 or 10 tons are pilfered. If the remaining portion is taken delivery of, then they pay customs duty on all 100 tons. But if they do not take delivery of the consignment at all, under the present Act, they have not to pay anything. Now, according to them, under the present Bill, if 50 tons out of 100 tons are pilfered, and the party chooses to abandon the balance, even then customs duty will be recovered from the party. How can we levy the duty when they have not taken delivery of the goods? I do not understand it. We will have to consider it later.

**Shri Gandhi:** There are two provisions—one about abandoned goods and the other is about pilfered goods.

**Shri Morarji Desai:** For pilfered goods you have to pay. You can insure them and recover the money from the insurance company.

**Shri Gandhi:** It is not possible to cover the full cost by insurance.

**Shri Morarji Desai:** At any rate, you pay the price and the freight. Why not you pay the duty also?

**Shri Gandhi:** If I may explain, the position is this.

**Shri Morarji Desai:** Anyhow, that is the existing law and we do not propose to change it.

**Shri Gandhi:** You are penalising in the case of pilfered goods.

**Shri Morarji Desai:** Because I have conceded one point, now you are stressing the other. If you persist, I will not consider the other point either.

**Shri Gandhi:** That we leave to your good sense. Then, coming to the valuation of goods, the departmental rules should be made and applied on a realistic basis so that there are no unnecessary complications.

**Shri Prabhat Kar:** May I draw your attention to clause 23(2) which says:

"The owner of any imported goods may at any time before clearance of the goods for home consumption, relinquish his title to the goods if they have not been pilfered and thereupon the Assistant Collector of Customs shall remit the duty thereon and sell the goods."

So, the question of payment is already there.

**Shri Morarji Desai:** That we will consider when we take up the clauses.

**Shri Gandhi:** Coming to clause 18(b), the wording here is:

"binding himself in a sum equal to twice the amount of the excess duty."

Our submission is that instead of being rigid and fixing a certain amount or percentage, would it not be desirable to leave it to the discretion of the officer, to fix it according to the standing of the party, according to the goods, so that he may fix whatever he considers adequate? So, we suggest the substitution of the words "up to twice the amount" instead of "a sum equal to twice the amount", leaving the discretion to the officer to decide what he feels necessary.

**Shri Morarji Desai:** What is wrong with this? Suppose you agree even to thrice the amount. Even then you are not required to pay one farthing more than what you have otherwise to pay. So, I do not see how this will affect you. Why should discretion be unnecessarily given to officers which will give them different kinds of temptations to take money from you? I do not think any inconvenience is caused to you by this provision. Even if it is thrice, how does it hit you? It is only when it is assessed that you will have to pay, and that too only the assessed amount. I do not feel this requires any change.

**Shri Gandhi:** We would now refer to the second part of clause 23 regarding the destruction of the goods. There are certain cases of genuine hardship and sometimes it is not possible for the importer to destroy the goods.

**Shri Morarji Desai:** In what type of cases?

**Shri Kilachand:** The goods may be of a highly explosive character, say, petrochemicals.

**Shri Morarji Desai:** Why should Government be put to the expenditure of destroying them? You import the goods and for reasons known to yourself you do not take them. Why should then Government be put to the expenditure of destroying

them? You can take them and put them in the sea or somewhere.

**Shri Kilachand:** It is in the interest of the Government that we are suggesting this. Once the goods are abandoned or are to be destroyed, why do you want the party to have anything to do with the goods? Suppose, the goods may not be destroyed. Then the party may bring them through the back door.

**Shri Morarji Desai:** We will not allow them to bring them through the back door. However, if you are prepared to pay the cost of destroying them, Government will undertake it.

**Shri Kilachand:** You can recover the cost from the party.

**Shri Morarji Desai:** I do not mind it, but this will be worse for you. You will find that the cost will be more. Afterwards please do not come to us.

**Shri Kilachand:** My personal experience is that those goods cannot be destroyed by the party without getting the consent of the State Government and authorities concerned with the regulation of explosives. It is very difficult for private parties to destroy them. What has the private party to do?

**Shri Morarji Desai:** As I have told you, I do not mind it if you are prepared to pay the cost. I am prepared to recover the cost and destroy them.

**Shri Gandhi:** The Assistant Collector requires the power only in case the goods are non-saleable.

**Shri Morarji Desai:** It is stated there 'provided the goods are not saleable'. If the goods are not saleable then and then only he 'may' require. It is not that he 'shall' require.

**Shri Ramanthan Chettiar:** But the responsibility will be theirs.

**Shri Morarji Desai:** It is on their behalf that the Government shall destroy them.

**Shri Kilachand:** The option should be given to the owner of the goods.

**Shri Morarji Desai:** Then it would be very difficult. Either it is done this way or it is done that way. It cannot be both ways. You think over it and let us know.

**Shri Kilachand:** I think an option should be given. If you say, "Either you accept this or you accept that", there is no choice and it is very difficult for the trade to accept. I would say that you give the option to the party.

**Shri Morarji Desai:** Then let it remain as it is.

**Shri Gandhi:** Then regarding clause 28 our submission is that there should be some definite and reasonable period, say, one year, within which notice should be issued for recovery of the levies even in cases of collusion.

**Shri Morarji Desai:** When it is collusion, it must be indefinite. We want to make it impossible for them to collude. I know trade and commerce is capable of doing it both in good and bad ways. When it is a bad way you should have no sympathy; otherwise, you lose your reputation.

**Shri Gandhi:** We also do not have any sympathy for them.

**Shri Morarji Desai:** I do not know why you want to side with them when there is suppression of facts or wilful misrepresentation. It must remain indefinite with the sword hanging on their heads all the while. It is deliberately done. It is not done without a purpose. I want this to be as monstrous as I can make it. The evil has become so rampant that I do not know what is to be done except that I become very cruel about it.

**Shri Gandhi:** We have no sympathy with them at all. We are looking to the inconvenience which might be caused by keeping it open indefinitely.

**Shri Morarji Desai:** If there is inconvenience caused to a wrong-doer, let it be so.

**Shri Gandhi:** Even on suspicion?

**Shri Morarji Desai:** It will not be merely on suspicion; it will be when collusion is proved and when a wilful mistake is proved. It cannot be done without that. Unless that is proved it cannot be re-opened.

**Shri Gandhi:** I will now draw your attention to clause 59. Earlier you have not accepted this, so we will not go into this again.

Now we go to clause 101. I would again like to assure you that this Chamber or any Chamber of Commerce would have no sympathy with any smuggling or anti-social activity.

**Shri Morarji Desai:** I readily grant the intention, but I do not grant the implementation.

**Shri Gandhi:** We would like to see that genuine cases do not suffer. That is why we would like to point out the clause which we are now pointing out.

**Shri Morarji Desai:** I can only give you one assurance and that is that if any genuine case is put to hardship, we will deal with the officer also similarly. That is the only remedy for it. There is no other remedy. If loopholes are kept, the remedies will go astray.

**Shri Gandhi:** Here the customs officers are to be empowered without a magistrate's order.

**Shri Morarji Desai:** Why is a magistrate so sacrosanct in this matter? It is so sacrosanct because you always have the possibility of getting away even when you have done the deed.

**Shri Kilachand:** The judiciary and the executive should be separate.

**Shri Morarji Desai:** It is an executive function entirely. It has no relation to any judicial decision. I do not think we should enter into the judicial field at all.

**Shri Kilachand:** There is a provision that it should be done under a magistrate's orders.

**Shri Morarji Desai:** Our experience is that then the information is immediately obtained by the parties concerned. Therefore this has been changed deliberately.

**Shri Gandhi:** We would say 'Assistant Collectors' or higher officers.

**Shri Morarji Desai:** It can be a gazetted officer. It cannot be anybody else.

**Shri Kilachand:** This has to be done by Assistant Collectors, or, in the alternative, by gazetted officers.

**Shri Morarji Desai:** Who is a proper officer who is not a gazetted officer?

**Shri Dehejia:** Here it is the officer authorised in this behalf by the Collector of Customs. In Clause 102, it is a gazetted officer.

**Shri Morarji Desai:** It should be a gazetted officer here also.

**Shri Dehejia:** Clause 102 is confined to particular goods. It is not any person who can do it. Clause 101 is in respect of certain goods. Suppose a man has smuggled certain goods from Pakistan border. Information was received that he is passing through some part of Punjab. At that place Gazetted officer may not be there. These items relate to gold, watches etc. in respect of which he can be searched anywhere.

**Shri Morarji Desai:** There is no frontier without a gazetted officer. You have gazetted officer everywhere.

**Shri Dehejia:** Clause 102 says that the officer of customs shall take him to the nearest gazetted officer of customs or magistrate.

**Shri Morarji Desai:** The provision is as follows:

"102(1) When any officer of customs is about to search any person under the provisions of

section 100 or section 101, the officer of customs shall, if such person so requires, take him to the nearest gazetted officer of Customs or magistrate."

The person shall ask that he may be produced. We will see whether this should be done whether he requires or not.

**Shri Gandhi:** Clause 103 mentions 'without unnecessary delay'. It is very vague. He has to be produced forthwith before the magistrate.

**Shri Morarji Desai:** It is to be done within 24 hours.

**Shri Dehejia:** That means, without unnecessary delay with 24 hours. Even within those 24 hours, there should be no delay whatsoever. That was the point.

**Shri Morarji Desai:** 24 hours is the time within which he has to be taken. There is the Criminal Procedure Code. Clause 103 is all right.

**Shri Gandhi:** In Clause 120, confiscations of goods are inextricably mixed with smuggled goods. This is a new provision. He can take all the goods which cannot be identified in this category. "How can a person prove who genuinely purchases something?"

**Shri Morarji Desai:** We all know. There is no genuine law-breaker.

**Shri Kilachand:** We should know what are genuine goods and what are smuggled goods. For people who do *bona fide* transaction, there should be no harassment.

**Shri Morarji Desai:** The proviso says:

"Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods as such part of the goods as is proved by him to have not been smuggled, shall not be liable to confiscation."

That is provided here. I do not know what you have got to stress?

**Shri Kilachand:** In Clause 120, the onus of proof is on whom?

**Shri Morarji Desai:** On the defaulter. Otherwise no smuggling will be proved at any time. How is smuggling to be proved at any time?

**Shri Ramanathan Chettiar:** What are the suggestions and methods which our friends would suggest to end this smuggling?

**Shri Morarji Desai:** Can anybody do it? Smuggling is an age-old profession.

**Shri Ramanathan Chettiar:** They can say some ways and methods.

**Shri Morarji Desai:** The only way in which they can help us is not to allow such persons to become Members. They can remove such people. If there are prominent people doing that, how can they remove them? I don't think you can ever do it.

**Shri Kilachand:** If Government is not able to say who is a smuggler and who is not, how can the Chamber of Commerce do it?

**Shri Morarji Desai:** Even if you have a clause, you can't implement it. Don't make impossible provisions.

**Shri Kilachand:** The fact remains that there are certain natural difficulties which a genuine man may have to suffer on account of an officer who may not be in the know of things.

**Shri Morarji Desai:** Dismiss that officer the moment you prove like that. You say, he has done this, he has harassed me, etc. That is what we will do.

**Shri Kilachand:** My point is that damage has been done.

**Shri Morarji Desai:** No body is so genuine. There comes the difficulty. In certain cases he makes up with the officer and he does not want to complain. He does not want to complain against him. What can I do in that

case? The really genuine man will complain about it and I will take action against the officers concerned. Otherwise, I cannot do anything. It is just your own inability to deal with your members.

**Shri Bade:** Do you want that this should be deleted?

**Shri Morarji Desai:** He does not want that.

**Shri Gandhi:** We certainly do not want it to be deleted.

Now, I come to clause 140—Offences by companies. Here it is provided that every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence. This would mean that it would include all the Directors, Managing Directors and other Officers of the company. It will create a lot of hardship.

**Shri Kilachand:** The point is that the Directors who attend meetings of the company once a month or once in two months are also unnecessarily involved here. The person who is really in charge of the company and responsible to the company should be deemed to be guilty of the offence. Otherwise, it would result in a vicarious liability.

**Shri Dehejia:** This provision exists in so many other Acts also.

**Shri Gandhi:** At the time of the Companies Act also, we had pointed out that it would impose a vicarious liability.

**Shri Morarji Desai:** It says:

"...every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence....".

The Director is not held responsible. It is no use saying that the Directors are also brought in. It is only the Chairman or the Managing Director who will come in.

**Shri Bade:** The proviso is there.

**Shri Morarji Desai:** The proviso says:

"Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence."

**Shri Kilachand:** How can the Director prevent the commission of such an offence. The Director is not aware of it.

**Shri Morarji Desai:** That is what you can say immediately. Nobody is going to prosecute the Director.

**Shri Kilachand:** That could be clarified.

**Shri Morarji Desai:** It cannot be clarified. If it is clarified, then the other fellow will go scot-free.

**Shri Kilachand:** It is a very wide provision. It may be construed to mean that anyone of the Officers of the company, even the Director, can be held guilty of the offence.

**Shri Morarji Desai:** The proviso is very wide. The proviso covers every genuine case.

**Shri Kilachand:** It says:

"...if he proves that the offence was committed without his knowledge...."

**Shri Morarji Desai:** He can say that the offence was committed without his knowledge. But if it is proved that the offence was committed with his knowledge, then he shall be deemed to be guilty of the offence.

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**Shri Dehejia:** There are various types of instances. There may be a resolution of the Board itself, saying how things should be done and all the Directors may have participated. Then, there may be another instance where the Chairman has given an order to the Secretary and the Secretary has done it. Only the Chairman and the Secretary know about it. In some cases Directors are a party to it and in some cases Directors are not a party to it. It happens like that.

**Shri Morarji Desai:** It will have to be proved. It is stated:

"...it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence...."

It is very clear here. There is no ground for apprehension.

**Shri Gandhi:** Then there is the last point about Appellate Provisions.

**Shri Morarji Desai:** You want a Tribunal. No Tribunal will be given.

**Shri Kilachand:** There are Tribunals provided in similar enactments, under various other laws. Why not also here?

**Shri Morarji Desai:** In Customs, things are so difficult to prove. Once you go into those things, I think, no case will be proved.

**Shri Kilachand:** There should be an independent appellate authority.

**Shri Morarji Desai:** When it is a prosecution, it goes to the magistrate and it goes even to the Supreme Court. When it is an executive fine, it is not a judicial decision and, therefore, it should not go to the judicial authority.

**Shri Kilachand:** The aggrieved party should have some independent body.

**Shri Morarji Desai:** In foreign countries, the fines are levied on the spot by the policemen. There is no question of even an appeal.

**Shri Kilachand:** It is not on the spot. It is only in the case of traffic cases.

**Shri Morarji Desai:** Traffic cases and sanitation and things. This is sanitation of public life.

**Shri Bade:** Does he want that the appellate authority should be just like the one as in Income Tax?

**Shri Kilachand:** That is what we are saying.

**Shri Gandhi:** Sir, we are very grateful to you for giving us this opportunity for expressing our views.

**Shri Morarji Desai:** Thank you for being very brief.

**Mr. Chairman:** Thank you.

*(The witnesses then withdrew.)*

## II. ALL INDIA JEWELLERS' ASSOCIATION NEW DELHI

*Spokesmen:*

1. Shri Bhola Nath
2. Shri Sultan Singh Backliwal
3. Shri Jawaharlal
4. Shri V. J. Merchant

*(Witnesses were called in and they took their seats)*

**Chairman:** Your memorandum has been circulated to the Members of the Committee. Have you anything more to add?

**Shri Merchant:** I shall first deal with the history of the import of precious stones. It has been allowed to be imported without any duty for quite a long time now. Recently a small duty of 5 per cent has been imposed. The result is that quite a considerable quantity of precious stones has already come into the country.

**Shri Morarji Desai:** Are you dealing only with precious stones—excluding diamonds—that is, rubies, sapphires and emeralds

**Shri Merchant:** Prior to the partition of Burma quite a large quantity of precious stones has come to India and a good part of these precious stones are in circulation. It is also very easy to import these stones from outside India. They are available in plenty within the country. Therefore, there is no point in smuggling these stones. Our submission is that these three items should be excluded from the purview of the Sea Customs Act.

Then I come to clause 118, which says that "Where any smuggled goods are contained in a package, the package and any other goods contained therein shall also be liable to confiscation." Suppose I have bought some precious stones. I do not know whether they are smuggled or not. Along with my other items of jewellery I go to a safe-deposit vault to keep it in safe custody. At that time the Customs Officer comes and examines the packet. The result would be I would lose the entire lot.

**Shri Morarji Desai:** You have to read the proviso to clause 120 which says:

"Provided that where the owner of such goods proves that he had no knowledge or reasons to believe that they included any smuggled goods, such part of the goods as is proved by him to have not been smuggled, shall not be liable to confiscation."

**Shri Merchant:** That proviso would apply only to clause 120.

**Shri Morarji Desai:** Supposing we make a similar proviso here as well?

**Shri Merchant:** Then we would not mind.

**Shri Morarji Desai:** We had told the other deputation that we shall consider what best could be done



about precious stones. It is not possible to exclude them entirely.

**Shri Merchant:** There is no particular mark or anything on the precious stones to find out whether they are imported or are indigenous ones.

**Shri Morarji Desai:** That applies to so many items.

**Shri Backliwal:** But the main factor to be considered is that these stones are available in plenty. The import duty of 5 per cent is almost insignificant. Local consumption of these stones is not much; we export a lot.

**Shri Morarji Desai:** How much do you export from local sources?

**Shri Backliwal:** In India there are crores worth of precious stones which have come from Burma, Ceylon and other countries. The princes and other rich classes have been having these as a form of investment. A good part of these are now being recut and rephased.

**Shri Morarji Desai:** There is perhaps a case for precious stones to be considered. But there are many persons who deal in both. Therefore we have to see how best this can be safeguarded.

**Shri Merchant:** If the precious stones are meant to include these items which we have mentioned, the difficulty will be solved.

**Shri Hari Vishnu Kamath:** Will this difficulty of differentiation between deshi and videshi precious stones applies only to emeralds, rubies and sapphires or also to other precious stones?

**Shri Merchant:** There are also other precious stones. They are mostly semi-precious stones. Some of them are sometimes treated as precious stones. But these are the three most important previous stones.

**Shri Hari Vishnu Kamath:** You say it is difficult to distinguish between deshi and videshi, indigenous

and foreign. Does this difficulty of differentiation apply only to these three kinds or other categories also?

**Shri Merchant:** It also applies to other categories.

**Shri Hari Vishnu Kamath:** For instance?

**Shri Backliwal:** There are about 64 types of precious and semi-precious stones known to the jewellers. To define all of them will be quite difficult.

**Shri Hari Vishnu Kamath:** You are not bothered about those?

**Shri Backliwal:** We are bothered.

**Shri Hari Vishnu Kamath:** You are sticking only to these three.

**Shri Morarji Desai:** They are bothered only about these three, because these three are common and there is no incentive for their smuggling.

**Shri Hari Vishnu Kamath:** Even the uncommon ones are precious stones.

**Shri Morarji Desai:** The uncommon ones are smuggled, but these are not smuggled because they are freely allowed to be imported.

**Shri Backliwal:** The others are not so much in fashion and not so much worn by Indians. Some of it is imported and some are found indigenously, and most of them are exported: for instance the cinnamon-ruby, aquamarine, peridot and many other precious stones.

**Shri Hari Vishnu Kamath:** What about onyx and amethyst?

**Shri Backliwal:** They are also precious stones in which we deal.

**Shri Narendrasingh Mahida:** Is there any difference between the locally produced ruby and the foreign-produced ruby, in the polishing and so on?

**Shri Backliwal:** There is not much difference between them. You cannot distinguish between the two. Once they are cut, and even in the raw form, many of them cannot be distinguished.

**Shri Ramanathan Chettiar:** What about Rangoon diamonds?

**Shri Morarji Desai:** They are artificial stones.

**Shri Backliwal:** We are not dealing with synthetic stones but real ones found naturally. Synthetic and chemical things are different.

**Shri Morarji Desai:** We have said we will consider that.

**Dr. L. M. Singhvi:** If a proviso similar to the proviso to clause 120 is incorporated in clause 118, will their interests be safeguarded?

**Shri Morarji Desai:** They say that. But we will have to see whether only for these three it has to be done.

**Dr. L. M. Singhvi:** That is a matter for us.

**Shri Morarji Desai:** We have to see how best to give them protection. There is a genuine case for giving them protection.

**Shri Merchant:** If a proviso is added, we suggest that it should be on these lines:

"Provided that other goods can only be confiscated provided the owner thereof knowing that any goods are smuggled places other goods with them but not otherwise."

The entire burden is being put on the owner. If he knows that there are smuggled goods in the packet, then it can be confiscated. But if he himself is not aware about it, it should not be confiscated even if it is diamond. Clause 120 goes beyond this. The proviso I am submitting is to the effect that if he knowingly puts a smuggled item in the packet, then it can be confiscated.

**Shri Morarji Desai:** Are you considering this only for precious stones, or are you speaking generally?

**Shri Merchant:** Only for precious stones.

**Shri Morarji Desai:** I have said that we will consider that. You can give that suggestion.

**Shri Bade:** You say that it is impossible to prove the negative in the court.

**Shri Merchant:** Yes.

**Shri Morarji Desai:** You have brought this packet to show all the precious stones? Does anybody want to see these?

**Shri Backliwal:** You will see, Sir, that it is difficult to distinguish them.

**Shri Merchant:** Even if it is smuggled it is very difficult to find out.

**Chairman:** Is there any smuggled stone in it?

**Shri Backliwal:** Not at all, Sir, what I want to submit is this. Pieces like these come to us from princes or other customers, from so many people. What are we to do? We are satisfied after getting the purchase voucher. Suppose they give us that and we buy a thing in good faith. How are we to know at the time of purchase whether one stone out of the whole necklace or the whole set may be such which a Customs Officer may say is a smuggled stone?

**Shri Morarji Desai:** Nobody will be taken to task for that. If you purchase one necklace in a genuine manner, and one stone in it—whether small or big—is found to be smuggled, nobody is going to find fault with you, unless you have put it yourself afterwards.

**Shri Backliwal:** There may be one stone in it on which a Customs Officer may have a doubt.

**Shri Morarji Desai:** Have you been harassed like that?

**Shri Backliwal:** There have been cases, not with us but with some other traders.

**Shri Morarji Desai:** How many? Yesterday we were told that there were only four or five cases since 1955.

**Shri Merchant:** But after the coming into force of the new Customs Act ....

**Shri Morarji Desai:** As I said, we are going to consider this.

**Shri Hari Vishnu Kamath:** May I know whether these three kinds of precious stones are in fashion or in common use because they are used as part of jewellery only, or because they are prescribed by astrologers for their clients; and, if so, whether there are not nine precious stones for nava grahas?

**Shri Morarji Desai:** Nava rathnas.

**Shri Backliwal:** They are used for two purposes in India. Most of the people put their money in jewellery more as an investment rather than merely for the sake of ornament. When one wants to invest a large amount of money—the word 'large' being a relative word—one buys jewellery, emerald, sapphire and ruby; the others will be less costly. Also, many people wear them for beneficial effects of the nava grahas in the zodiac.

**Shri Hari Vishnu Kamath:** So there are nine precious gems. But you are concerned only with three.

**Shri Backliwal:** Some of them are semi-precious, e.g. turquoise or yellow sapphire.

**Shri Prabhat Kar:** Suppose there is a packet of precious stones. While distributing it, you may distribute it one here, one there, etc. So far as this is concerned, this will be one out of a thousand items. They will get distributed at several places.

**Shri Morarji Desai:** What they say is that in respect of these precious

stones there is no incentive for smuggling. That is how they are pleading, and there is something in what they say. There have been very few people found smuggling these. As a matter of fact no case has been proved so far.

**Shri Prabhat Kar:** But this question is raised that if one out of a hundred stones is found to be a smuggled one, then all the other ninety-nine will also be confiscated.

**Shri Morarji Desai:** That should not be done.

**Shri Prabhat Kar:** If it is done in the manner I have described?

**Shri Morarji Desai:** That risk we have to take.

**Shri Prabhat Kar:** I wanted to know whether we will consider that aspect.

**Shri Backliwal:** Reference are sometimes made to under-valuation and over-valuation. But our submission is....

**Shri Morarji Desai:** Under-invoicing and over-invoicing. That we have got to take care of. You are also not free from that, I think.

**Shri Merchant:** It is covered by the Foreign Exchange Control regulations.

**Shri Merchant:** Section 120: we have the same objection.

**Shri Morarji Desai:** The same argument for every clause.

**Shri Merchant:** In clause 121 there is a practical difficulty.

**Dr. L. M. Singhi:** The same objection that they have to clause 118, they have also for clause 120. To my earlier question, the witness said that if the proviso to clause 120 is incorporated in clause 118, their interests would be safeguarded, and they would have no objection. If there is the same objection to clause 120, it may not remove the difficulty.

**Shri Morarji Desai:** The Committee will consider when we take it clause by clause.

**Dr. L. M. Singhvi:** I would like to know their clarification. What is their position? They said that if this proviso is added there, they would have no objection. They say that clause 120 is objectionable.

**Shri Merchant:** Clause 120 reads like this:

"Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods the whole of the the goods shall be liable to confiscation."

Restricting myself to the three precious stones, in the case of these three stones, it is very difficult to find out whether it is smuggled.

**Shri Morarji Desai:** Once a thing is found to be smuggled, then, it can be separated from all others. What do you mean by saying that they cannot be separated? It is quite a different thing altogether. This may not apply to precious stones. You are imagining something. When does this apply? You have got 100 precious stones. When will confiscation come? When it is proved that a part of it or the whole of it is smuggled. Even if a part is smuggled, we will have to prove that these stones are smuggled. This means that they can be separated. There is no question of confiscating the whole thing. You are not understanding the clause at all.

**Shri Backliwal:** The question was one of proof.

**Shri Morarji Desai:** If it is not proved, nothing will be done. The prosecution will have to prove that it is smuggled. Once it is proved that it is smuggled, you have to prove that it is *bona fide* you had no knowledge. All that comes later.

**Shri Merchant:** Suppose the smuggled one is not identified, the whole is not to be confiscated.

**Shri Morarji Desai:** If I can prove that the whole packet is smuggled, you have no objection left. If, in the packet, I say that something is smuggled, I will have to prove what is smuggled. Otherwise you are not going to be charged.

**Shri Merchant:** It may be said as well by the Customs Officer that they were smuggled.

**Shri Morarji Desai:** He is not a Czar. He will have to work under the law. He will have to prove that the whole is smuggled.

**Shri Backliwal:** It should be provided beyond all suspicion.

**Shri Morarji Desai:** It is impossible if you go on suspecting.

**Shri Merchant:** If out of 100 stones, they say 1 or 2 are smuggled?

**Shri Morarji Desai:** If people who do not know law want to become lawyers, it is impossible.

**Shri Hari Vishnu Kamath:** How would you like to amend it?

**Shri Morarji Desai:** They have suggested that precious stones should be kept out.

**Shri Hari Vishnu Kamath:** That will be considered later.

**Shri Morarji Desai:** That is what I have said.

**Shri Merchant:** Clause 121 says:

"Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods the sale proceeds are liable to confiscation."

**Shri Morarji Desai:** "A person having knowledge or reason to believe": what are you objecting to?

**Shri Merchant:** I am pointing out that it is said that the sale proceeds shall be liable to confiscation. Supposing the sale proceeds are in the form of currency notes, after orders of confiscation are made, they should be confiscated, not before that.

**Shri Morarji Desai:** How can they do before that? How can anything be confiscated before an order is passed? Notes cannot be confiscated before an order is passed. I do not see to what you are objecting.

**Shri Merchant:** Worded as it is, there is power to confiscate.

**Shri Morarji Desai:** How can anything be confiscated before an order is passed? Once the first part is proved, the second part will follow. There is no question of seizing it. Go on further.

**Shri Morarka:** In this clause it is said that the sale proceeds shall be liable to confiscation. They say that this section is very harsh for bona fied purchasers. It is not harsh for the purchasers. The purchaser will not be in possession of the currency notes, i.e. the sale proceeds.

**Shri Morarji Desai:** If you are going to take up unnecessary things, you may lose your main thing.

**Shri Merchant:** It is not a question of bringing in unnecessary things. We have viewed it from our own angle. We are expressing our own views in the matter.

#### *Clause 123*

**Shri Morarji Desai:** What is your objection? Again, precious stones should be removed.

**Shri Merchant:** That is one part. The ratio of the decision of the Supreme Court in A.I.R. 1962 Supreme Court 316 should be incorporated in this clause, about burden of proof.

**Shri Morarji Desai:** Here the burden of proof is deliberately put on the smuggler. You want to reverse that. That will never be done.

**Shri Merchant:** I am only drawing attention to the judgment of the Supreme Court.

**Shri Dehejia:** That judgment is in our favour.

**Shri Bade:** You say that the purchaser who takes the smuggled goods by giving the price and from whom the goods are seized should prove that these goods are not smuggled.

**Shri Merchant:** What I say is that the ratio of the Supreme Court judgment should be incorporated in this. If you wish I will read it out.

**Shri Morarji Desai:** I do not think you need read out everything.

#### *Clauses 101 and others*

**Shri Merchant:** These clauses regarding searches, seizure and arrest are so strongly worded that they give tremendous powers to the customs officers without any pressure from the court of law.

**Shri Morarji Desai:** There will be no court of law brought into this.

**Shri Merchant:** These should be amended in such a way that before action is taken, at least some opportunity should be given to the persons.

**Shri Morarji Desai:** Opportunity cannot be given before seizing it.

**Shri Merchant:** An honest man is liable to be penalised.

**Shri Morarji Desai:** If an honest man is penalised, then the officer will be penalised.

**Shri Merchant:** That is a different question. The clauses as worded give tremendous powers.

**Shri Morarji Desai:** Nobody denies that.

**Shri Backliwal:** The point is that in the jewellery trade unlike other trades where goods are sold and bought, it is the confidence of the customers on the trader that is most important.

**Shri Morarji Desai:** In the case of precious stones, you yourself admitted that there have been only four cases from 1955 till now. Four cases are not many cases.

**Shri Backliwal:** They are major cases. There have been many other cases of harassment.

**Shri Morarji Desai:** You give a list of those cases. We will go into each one of them.

**Shri Backliwal:** I will.

**Shri Hari Vishnu Kamath:** What is the nature and kind of harassments to which you are subjected?

**Shri Backliwal:** Suppose on the slightest suspicion....

**Shri Morarji Desai:** Why suppose? Give concrete cases.

**Shri Backliwal:** There is a firm in Delhi—Ivory Palace. They had a packet of diamonds....

**Shri Morarji Desai:** I thought you were not concerned with diamonds. There are many smugglers of diamonds in this country. We have to act even on suspicion about these people.

**Shri Backliwal:** He had also rubies.

There was one firm in Chandni Chowk. The Customs people had suspected that the ruby package that he had was smuggled. Actually, that person was taken to task.

His business was lost. Many of the jewellers have ceased to have any trading or association with him.

**Shri Dehejia:** Could you kindly give a list of people who have gone out of business as a result of harassments?

**Shri Backliwal:** I did not bring it. We will submit it.

**Shri Morarji Desai:** Names of people who have been harassed and how they have been harassed.

**Shri Hari Vishnu Kamath:** Those who have been forced out of business.

**Shri Backliwal:** We will

The point I wanted to make is that this is the only trade in the world where all sales are done on the confidence of the trader. The average customer does not know the worth and value of the ornament he is buying. Jewellers run their business for generations on this confidence. Suppose a jeweller is harassed; he loses his reputation.

**Shri Morarji Desai:** If anybody is harassed, we will take action against the officer.

**Shri Backliwal:** But the reputation of the jeweller is gone.

**Shri Morarji Desai:** We will punish the officer and publish the fact that he has been wrongly harassed.

**Shri Hari Vishnu Kamath:** You never publish it. It has never been published.

**Shri Merchant:** We feel that these provisions are very harsh.

**Shri Morarji Desai:** They have to be harsh, because the profession of smuggling requires to be rooted out. That cannot be done unless there is heavy punishment.

**Shri Merchant:** The honest citizen is liable to suffer in the process.

**Shri Morarji Desai:** If an honest citizen suffers, we will dismiss the officer.

**Shri Merchant:** The officer will always say that he had reason to believe and so on.

**Shri Morarji Desai:** Can you guarantee that no precious stones will be smuggled by anybody?

**Shri Merchant:** How can anyone give that guarantee?

**Shri Hari Vishnu Kamath:** Can you formulate a code of conduct for your own fraternity and take action according to the code, even boycotting any members of your fraternity

who are proved to have smuggled goods?

**Shri Morarji Desai:** They can never do that.

**Shri Hari Vishnu Kamath:** Let the answer come from them.

**Shri Morarji Desai:** I know human affairs as they are taking place.

**Shri Backliwal:** There is no written code of conduct. But there is a hereditary code of conduct which is inherent in every jeweller all over India and all over the world.

**Shri Morarji Desai:** Have not jewellers gone wrong? Have they not smuggled goods? Have they not been punished? There is no section for which you can give a guarantee that there will be no wrong done by it.

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**Shrimati Savitri Nigam:** The witness was referring to the case of a firm in Chandni Chowk. Could he give us a synopsis of the case?

**Shri Morarji Desai:** It cannot be given vaguely. He will give it in writing.

**Shrimati Savitri Nigam:** If he could give it in a minute or two, we can know what happened.

**Shri Backliwal:** I will give you some concrete examples of cases which occurred.

The particular jeweller, whom I referred to, was taken to the police station on the pretext of mere suspicion that he was associated with smugglers. He had in the past gone to Burma two or three times and had stayed there. That was about 20 years ago. On that slightest idea, all his goods were confiscated, though finally they were returned to him. He was marched through the streets. Every jeweller was seeing this because this was in the centre of Chandni Chowk.

**Shri Morarji Desai:** When did this happen?

**Shri Backliwal:** 2½ years ago. I gave just one example. But such a stray example will never come to notice.

**Chairman:** Did you bring this to the notice of the Finance Ministry?

**Shri Backliwal:** No.

**Shri Morarji Desai:** Why not?

**Shri Backliwal:** This question has arisen just now. That jeweller must have taken steps to redress his own grievance. I do not know in what way he did.

**Shri Morarji Desai:** I have not heard about it.

**Shri Backliwal:** Every jeweller was very much pained at this. The whole trade was very much pained at this.

**Chairman:** Parliament is sitting here. You could easily have brought it to our notice.

**Shri Morarji Desai:** You give us the details now. I will make inquiries.

**Shri Backliwal:** We will do that. But his reputation once lost cannot be regained.

**Shri Morarji Desai:** The reputation of every citizen is precious, not only of jewellers.

**Shri Backliwal:** Yes.

#### Clause 13

**Shri Merchant:** Here before clearance, he will have to pay the duty.

**Shri Morarji Desai:** He has to pay. The goods are insured. They have been paying so far.

**Shri Merchant:** But now it is after he has taken it for home consumption.

**Shri Dehejia:** Has there been any case of pilferage of precious stones?

**Shri Merchant:** This is general.

**Shri Morarji Desai:** Precious stones are seldom received through ports.

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\*Expunged as ordered by the Chairman.

**Shri Merchant:** In Clause 14, we suggest that the words "offered for sale" may be removed, as the price may be brought down by negotiation by the time the goods are sold.

**Shri Hari Vishnu Kamath:** Can you tell us what the position is in countries like the U.K., and U.S.A., in regard to pilferage?

**Shri Merchant:** I cannot enlighten you.

What is the exact meaning of the expression "normal price". We suggest there should be assessors or a panel of valuers to determine the normal price.

**Shri Morarji Desai:** That is a matter for executive instruction. In the section there cannot be mention of a panel. There are assessors and valuers.

**Shri Merchant:** But a representative of the Association may be there.

**Shri Morarji Desai:** Not necessarily always. Where they do not know, they will take advice.

**Shri Merchant:** But that is not done in all the cases. So, it should be in the statute itself.

**Shri Bade:** Can you give a definition of "normal price"?

**Shri Merchant:** Such price which may be ascertained looking at the circumstances of the case.

**Shri Morarji Desai:** That is what it says here.

**Shri Backliwal:** Prices are governed by many factors.

**Shri Morarji Desai:** Therefore, it cannot be defined in a precise manner.

**Shri Backliwal:** So, we want an expert from the Association to be associated.

**Shri Morarji Desai:** That can be done only by rules.

**Shri Merchant:** Then I come to Clause 111(l) and (m) and Clause 113 (h) and (i).

It should be clarified that if there is a mistake in the bill of entry by oversight, this provision will not be attracted. The words "wilfully or knowingly" may be added to make this clear, as otherwise people may be unnecessarily harassed.

**Shri Morarji Desai:** How can it be an oversight or accidental? These are all methods of smuggling, and we cannot leave loopholes in this. The actual experience is that an import is shown as 100 tons, and actually 110 tons are brought in.

**Shri Backliwal:** Here it is only carats and cents. For instance, 0.20 cents is like a few human hairs.

**Shri Morarji Desai:** Nobody is going to bother about it. Does it ever happen? This is not a new provision at all.

**Shri Backliwal:** But viewed in the light of the other provisions, this is harsh.

**Shri Morarji Desai:** It should be harsh. I am not bothered.

**Shri Dehejia:** Is it your contention that exporters are always honest?

**Shri Merchant:** No one can say that, but there may be an oversight.

**Shri Morarji Desai:** There cannot be any oversight in this matter.

**Shri Merchant:** Coming to Clause 128, I submit that the appellate authority should have only power to lessen the penalty, not to increase it, as this leads to taking of fresh evidence.

**Shri Morarji Desai:** When it suits you, you want to go into more evidence so that you may be acquitted, but you do not want to go into more evidence if it brings you in. If there is collusion between you and the other people, why should not the appellate authority set it right?

**Shri Bade:** Probably what he wants to say is that the appellate authority is not the original court, and therefore, it has no authority to enhance the punishment, it can only lessen it.



**Shri Morarji Desai:** Is it not provided in any other law? High Courts have powers of enhancement, the Supreme Court has got. How is it against the law of jurisprudence?

**Shri Merchant:** They take the evidence from the facts which are on record, but this leads to taking of fresh evidence.

**Shri Morarji Desai:** That will be better so that it is more sure.

**Shri Merchant:** Then it will take four, five years to dispose of.

**Shri Backliwal:** In Bombay, in a case goods were confiscated and it has been going on for the last three years. The goods are worth about Rs. 20,000.

**Shri Morarji Desai:** Please let me know so that we can go into it. I will deal with the persons concerned. That should not happen at any time.

**Shri Backliwal:** We shall let you know the details.

**Shri Merchant:** About clause 129, I would say that demanding the deposit would act as a hardship because there may be many people who may not go on appeal because the amount has to be deposited.

**Shri Morarji Desai:** Otherwise how is it to be recovered?

**Shri Merchant:** The goods are there in custody.

**Shri Morarji Desai:** But the goods might deteriorate in value.

**Chairman:** There is the proviso which provides for the discretion to dispense with the deposit. It says:

"Provided that where in any particular case the appellate authority is of opinion that the deposit of duty or penalty levied will cause undue hardship to the appellant, it may in its discretion dispense with such deposit, either unconditionally or subject to such conditions as it may deem fit."

**Shri Merchant:** Clause 131 is the last one. Opportunity should be given for the person to be heard.

**Shri Morarji Desai:** I do hear many people; but I cannot hear everybody. It becomes impossible; it is not necessary to hear every time. You may place the facts in writing.

*(The witnesses then withdrew)*

### III. INDIAN CHAMBER OF COMMERCE, CALCUTTA

*Spokesmen:*

1. Shri B. P. Khaitan
2. Shri H. R. Sugla
3. Shri B. Kalyanasundaram.

*(Witnesses were called in and they took their seats)*

**Chairman:** Your memorandum has been circulated to all our members. Do you want to add anything to it or clarify anything?

**Shri Khaitan:** There are two points about which I would like to emphasise and to supplement the memorandum because they are not covered by the memorandum.

The first is clause 120 of the Bill.

**Shri Morarji Desai:** If you concentrate on the most important points it would be better, instead of touching every point.

**Shri Khaitan:** That is exactly what I am going to do. There seems to be a drafting mistake in the proviso to 120(2). The latter part is a negation of the former part. The idea is that if a person proves that he is a *bona fide* purchaser, he satisfies the condition. But the latter part seems to imply that he will have to prove that those are not smuggled goods. I do not think it was the intention.

**Shri Dehejia:** The first part says that all goods are liable to confiscation. Then, there is the proviso. It provides for the exception. That is the purpose of a proviso.

**Shri Khaitan:** If the owner proves that he is a *bona fide* purchaser, then, the goods will not be confiscated. But then you have put an additional burden.

**Shri Morarji Desai:** What is the negation?

**Shri Khaitan:** If I prove that I am an innocent purchaser I need not prove that the goods are not smuggled.

**Shri Morarji Desai:** You have to prove that you did not know that the goods were smuggled. It is proved that part of what you have got is smuggled goods. So, you must prove after that that you did not know that it was smuggled. I do not see any negation. I am prepared to take away the proviso if it is redundant.

**Shri Khaitan:** The proviso is important; I want a similar proviso in clause 123.

**Shri Dehejia:** Would you suggest an alternative draft?

**Shri Khaitan:** I will give the suggestion for an alternate draft.

The next clause I would like to deal with is 123. Under the clause if I purchase the goods in the open market, or how long I have been in possession of these goods it does not matter, even if any customs officer chooses to take action and seizes the goods, then I have to prove that they are not smuggled. The goods might have passed several hands even.

**Shri Morarji Desai:** Does this not apply to stolen goods? Is there any time-limit provided for stolen goods?

**Shri Khaitan:** If you put it on the same level as stolen goods I will accept that. That protects *bona fide* purchasers; it does not hit them hard. We know the habits of our people. Every family has got some amount of jewellery. The clause as it is capable of causing serious difficulties.

**Shri Morarji Desai:** Has anybody been taken in like that?

**Shri Khaitan:** I can show one or two instances where it took one year or more to get the ornaments released.

Possibly customs people went there to search some other goods and some papers. They found none of them but found some ladies' ornaments and they took them away. It took me one year to get them back.

**Shri Morarji Desai:** When did this happen? Can you send me full details of this case?

**Shri Khaitan:** I can send you full details about this case. In this connection, with reference to this clause, it should be modified so that if anybody shows that he has purchased the goods *bona fide* or that he has been in possession of them for a considerable period, then he should not be adversely affected.

**Shri Morarji Desai:** That is the burden of proof. If they prove they are not smuggled goods, the matter ends there.

**Shri Khaitan:** The burden of proof should be that I am a *bona fide* purchaser.

**Shri Dehejia:** There are two things one in respect of goods and the other in respect of persons. Smuggled goods even if they have changed hands remain smuggled. So, the goods have to be confiscated.

**Shri Khaitan:** How can there be proof that this watch is not smuggled? It may have passed ten hands before it was purchased.

**Shri Dehejia:** A smuggler sells the goods to some person. Now, what is to be done?

**Shri Khaitan:** You can guard against dealers but you must protect *bona fide* people, knowing as you do the general habits, especially in the case of ornaments and jewellery which are in their possession for over 10 or 15 years.

**Shri Morarji Desai:** If he says that he possessed it for ten years who will prove it is smuggled? There must be reasonable belief. You can say that the reasons must be given in writing.

**Shri Hari Vishnu Kamath:** There is a provision for reasons to be recorded in writing. Are you satisfied with that?

**Shri Khaitan:** If it says 'for reasons to be recorded in writing', that will do.

**Shri Morarji Desai:** We will find out the best method; we will see how best it can be put in.

**Shri Khaitan:** Then clause 127 goes against the principles of our Constitution. A man has been punished by the customs officers; his goods have been confiscated; and a penalty has been imposed for matters forming part of the same offence of smuggling. But he can again be prosecuted. You can have a deterrent punishment if you like but a man should not be prosecuted if he has been penalised.

**Shri Morarji Desai:** Confiscation is not prosecution.

**Shri Khaitan:** It is a punishment; there should not be double penalties.

**Shri Morarji Desai:** There can be two punishments; there is nothing wrong such persons should be punished several times. There are circumstances in which there are bound to be two punishments. Supposing an officer is prosecuted for corruption, he is dismissed and he is also sent to jail. There are two punishments.

**Shri Prabhat Kar:** The Supreme Court has said that it is not a contravention of the provisions of the Constitution.

**Shri Khaitan:** May I submit that many times laws are enacted to set right what the Supreme Court has done because we think that the law should be different.

**Shri Morarji Desai:** But nothing prevents them from saying that it is against natural laws.

**Shri Khaitan:** The Supreme Court has not expressed any opinion about the ethics of the thing.

**Shri Prabhat Kar:** They examined whether this particular clause contravenes the articles of the Constitution, it was held that it was not *ultra vires* the Constitution.

**Shri Morarji Desai:** It has always been found that when the Supreme Court is helpless against a provision of law which is constitutional, which is legal, but which they think is not in accordance with the natural law of justice, they also register an *obiter dicta* saying that even though the thing is justified in law, it ought to be remedied. That is what they say.

**Shri Hari Vishnu Kamath:** Equity and justice.

**Shri Morarji Desai:** In this case they have said nothing of the sort.

**Shri Khaitan:** I have never said that the original Act is against the Constitution. But my submission is that this is a hardship which should be removed.

**Shri Morarji Desai:** The hardship is deliberately kept.

**Shri Khaitan:** In regard to clause 128 which deals with appeals, my humble submission is this. I suggest that there should be a tribunal as under the Income-tax Act or an appellate board as in the Foreign Exchange Regulations Act.

**Shri Morarji Desai:** The Board of Revenue is an appellate Board.

**Shri Khaitan:** There is a difference. The customs officers, many times when there is a case of importance, take interest in the case from top to bottom.

**Shri Morarji Desai:** From top to bottom?

**Shri Khaitan:** I mean the senior and other officers come to know of the case and they even go up to Calcutta or Bombay and give guidance and so they take an interest. What is the use of appealing to them afterwards, when there is decision under their directions?

**Shri Morarji Desai:** They never go like that. If their advice is asked for, something is given.

**Shri Dehejia:** Sometimes at the instance of the party itself.

**Shri Khaitan:** In a recent case, what happened was that while the case was pending, other innocent affected party came to Delhi and made representations and naturally the whole thing was judged in the light of what happened higher up.

**Shri Morarji Desai:** These are all executive matters. They do not require any judicial handling.

**Shri Khaitan:** The remedy at the appellate stage should be a real one; it should give a real sense of feeling that justice is being done.

**Shri Morarji Desai:** There is no sense of feeling of justice unless a person is acquitted!

**Shri Dehejia:** If the Board members have taken interest, and there is a failure of justice, a writ lies in the matter.

**Shri Khaitan:** If the Board has already made up its mind that this punishment should be given, what happens of the appeal?

**Shri Dehejia:** In the case you referred to, such a thing has not happened.

**Shri Khaitan:** Things happen in secret files.

**Shri Hari Vishnu Kamath:** Before the present tribunal, what is the proportion of appeals that have succeeded and what is the proportion that has not succeeded?

**Shri Khaitan:** If the departmental figures are made available to me, this

information is possible. Unless the departmental files are made available to me, it is not possible for me to give these figures.

**Shri Morarji Desai:** I myself have reversed the orders in several cases.

**Shri Dehejia:** We can give the figures to the hon. Member, if necessary.

**Shri Morarji Desai:** I have also interfered and reversed the orders.

**Shri Hari Vishnu Kamath:** Yes; please give those figures including the cases in which the hon. Minister has reversed the orders.

**Shri Morarji Desai:** It will be roughly about ten per cent.

**Shri Khaitan:** Then I refer to clause 129. Though this is some improvement over the existing provision, in my humble opinion the deposit of the fine should not be a condition precedent to the filing of appeal.

**Shri Morarji Desai:** There is a discretion given.

**Shri Khaitan:** The discretion should be like this. The person should be allowed to file an appeal as a matter of right, as a matter of course. That may not operate as a stay till the realisation of fine, unless the appellate court orders. Otherwise, it becomes a wrong trial.

**Shri Morarji Desai:** I am sorry. I cannot revise it.

**Shri Khaitan:** That is the view which we express and which we bring to your notice; that is what other people and we also think. It is for you to consider what should be done.

Then, I come to clause 138. This clause provides that the magistrate may try the cases or the offences under this chapter summarily. What I suggest is, you should lay down the terms and conditions which should govern the magistrate; you must mention the cases in which the magistrate may try summarily and cases in which the magistrate may not try

summarily. Otherwise, the word "may" will create difficulty and it may be against the Constitution.

**Chairman:** It exists in the old Act also.

**Shri Morarji Desai:** We have left the discretion to the magistrate.

**Shri Khaitan:** Some hon. Members just now referred to the Supreme Court. I may point out that the Supreme Court has held that this unfettered discretion is against the Constitution.

**Shri Morarji Desai:** If the discretion is fettered against the Constitution, then it is wrong. That is what they have said, I think.

**Dr. L. M. Singhvi:** If it is unfettered discretion it is against the Constitution, because there is no reasonable criterion prescribed.

**Shri Hari Vishnu Kamath:** Are you against the summary procedure or against the clause itself as a whole?

**Shri Khaitan:** If you give absolute discretion to the magistrate, you should lay down the conditions under which summary procedure may be followed.

**Shri Dehejia:** Under the Criminal Procedure Code, a summary procedure case can also be tried as a full procedure case, so that there also the discretion comes in.

**Shri Khaitan:** I mean discretion in the sense that the magistrate should go by the facts and circumstances of the case.

**Shri Morarji Desai:** Perhaps you could add "if he so thinks fit" or something like that. But this is the same as in the existing provision. It is not a new provision. It has stood the test of time and the law.

**Shri Khaitan:** I am only trying to bring to your notice the lacuna.

**Shri Morarji Desai:** You could add "if he deems fit" or something like that.

**Shri Ramanathan Chettiar:** The provision says that the magistrate "may" try the case summarily. The discretion is left to him.

**Shri Morarji Desai:** That is why he says that it is completely unfettered. If it is "shall", there is no discretion. Unfettered discretion is not within the Constitution. That is what the Supreme Court has said. He says that some criteria should be laid down for trying the cases summarily. He says that the magistrate "may" do it if he thinks proper. But in that case also, there is discretion.

**Shri Ramanathan Chettiar:** The representatives of the Chambers of Commerce have already been objecting to any other person trying the cases except the magistrates. But here is a case where the magistrate is trying the case.

**Shri Morarji Desai:** He is referring to the summary trial.

**Shri Khaitan:** Then, in the proviso to clause 140, in the last but one sentence, the word "and" should be "or". It is on line 15.

**Shri Dehejia:** We shall look into it.

**Shri Morarji Desai:** It should be "or".

**Shri Khaitan:** The vicarious liability clauses are standardised now.

**Shri Morarji Desai:** I think it is a mistake in printing. It should be 'or'.

**Shri Morarka:** Both are contradictory. If it is without his knowledge, how can he exercise due diligence?

**Shri Hari Vishnu Kamath:** With all due diligence, we will discuss it later on.

**Shri Khaitan:** These are the clauses to which I wanted to draw your attention. I would submit that while you can make as rigorous provisions as you like, provisions of double punishment, denying right of appeal, etc. are very onerous and I request that they should be amended.

**Shri Morarji Desai:** You must also be knowing that smuggling is a disease which is prevalent very much and if we want to root it out, we will have to take very rigorous measures. Rigorous measures consist of very harsh punishment. Unless it is made very deterrent, I do not think things will improve. You are right in saying that you are making an appeal, but I make a statement that I should like to make it as monstrous as I can, provided the Parliament agrees.

**Shri Hari Vishnu Kamath:** May I know whether there is any impediment in the way of your formulating a rigid code of conduct for your own fraternity and strictly enforcing it?

**Shri Morarji Desai:** His fraternity is law.

**Shri Hari Vishnu Kamath:** I mean the fraternity of commerce and trade.

**Shri Khaitan:** I would say that there is no fraternity which is immune from this, whether they are diplomats, officials, etc. I have seen under my very nose customs officials allowing smuggled goods to pass. All that is happening.

**Shri Hari Vishnu Kamath:** Those who are engaged in any trade are a fraternity. Try to follow what I say and do not try to be smart with me here. Answer the Question put to you. You are a witness here. Mr. Chairman, I seek your protection. I have put a question. He may or may not answer it, but this is not the way to deal with the Members of the Committee.

**Shri Khaitan:** I am very sorry if I have hurt you in any way. All that I wanted to say was that there is no fraternity which is immune from this.

**Shri Hari Vishnu Kamath:** If you do not know the meaning of the word 'fraternity', take up the English Dictionary and find out the meaning. We talk of the legal fraternity and so on. We say that in Parliament. If you do not want to answer the question, you may say so.

**Shri Khaitan:** I have come here to give evidence on the Bill. I submit that the question is not relevant to the Bill.

**Shri Hari Vishnu Kamath:** You have not understood the question even now. I am sorry for your attention. The question is, has the trade and commerce fraternity at all thought of evolving a code of conduct for their profession and if they have not done so, what is the impediment in the way?

**Shri Khaitan:** Not to my knowledge.

**Shri Ramanathan Chettiar:** If there are any erring members in your chamber, what remedial measures are there? That is why my colleague, Shri Kamath, wanted to know. You seem to have taken objection to the word 'fraternity'.

**Shri Morarji Desai:** We know the reply to the question. It is not possible for anybody to suggest remedies.

**Shri Khaitan:** No instance has been brought to the notice of the committee of the Chamber.

**Shri Morarji Desai:** I am afraid that is very far-fetched. You must be knowing some members of the Chamber who err.

**Shri Khaitan:** We have come to give evidence on the Bill.

**Shri Prabhat Kar:** All these attempts are for amending the clauses for the fulfilment of the object of the Bill. We want to take the assistance and suggestions of the Chamber in order to fulfil the objects of the Bill.

**Shri Morarji Desai:** The question is put for the purpose that if we can do without rigorous law, it is much better. If we can provide for us a self-regulating conduct, such legislation may not be necessary. You were objecting to harsh treatment and that is why he tried to ask you whether this has been done. It is not a kind of reflection on anybody.

**Shri Bade:** In your note, you have not said anything about clauses 13 and 14. Have you got no objection to

those clauses? May we take it that you agree to those clauses?

**Shri Morarji Desai:** Why do you ask him to object? This is a very novel procedure.

**Chairman:** They have referred to it in their note. On page 2, they have said:

"The committee are glad to find that in many directions the Customs Bill, 1962 has made a great

improvement on the old Sea Customs Act, particularly in regard to... valuation of goods for purposes of export duty (Section 14)..." etc.

This is there in their note.

Thank you very much.

**Shri Khaitan:** Thank you.

*(The witnesses then withdrew).*

*The Committee then adjourned.*

**SELECT COMMITTEE ON THE CUSTOMS BILL, 1962**

**MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE OF THE CUSTOMS  
BILL, 1962**

**Wednesday, the 1st August, 1962 at 14.00 hours.**

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**PRESENT**

**Shri S. V. Krishnamoorthy Rao—Chairman.**

**MEMBERS**

- |                                    |  |
|------------------------------------|--|
| 2. Shri Ramchandra Vithal Bade.    | 13. Shri R. R. Morarka.                |
| 3. Shri G. Basu.                   | 14. Shri Shankarrao Shantaram<br>More. |
| 4. Shri Tridib Kumar Chaudhuri.    | 15. Shri Prabhat Kar.                  |
| 5. Shri R. Ramanathan Chettiar.    | 16. Shri A. V. Raghavan.               |
| 6. Shri N. T. Das.                 | 17. Shri Shivram Rango Rane.           |
| 7. Shri Morarji Desai.             | 18. Shri R. V. Reddiar.                |
| 8. Shri B. D. Deshmukh.            | 19. Shri M. Shankaraiya.               |
| 9. Shri J. N. Hazarika.            | 20. Dr. L. M. Singhvi.                 |
| 10. Shri Prabhu Dayal Himatsingka. | 21. Shri Sumat Prasad.                 |
| 11. Shri Narendrasingh Mahida.     | 22. Shri Bali Ram Bhagat.              |
| 12. Shri Bakar Ali Mirza.          |  |

**DRAFTSMEN**

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

**REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS**

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

**SECRETARIAT**

**Shri A. L. Rai—Deputy Secretary.**

**WITNESSES EXAMINED**

- I. FEDERATION OF INDIAN CHAMBER OF COMMERCE AND INDUSTRY, NEW DELHI**
- |                            |                          |
|----------------------------|--------------------------|
| 1. Shri Bharat Ram.        | 4. Shri P. Chentsal Rao. |
| 2. Shri Ambalal Kilachand. | 5. Shri G. B. Sundriyal. |
| 3. Shri J. N. Guzder.      |                          |



## II. THE ASSOCIATED CHAMBERS OF COMMERCE OF INDIA, CALCUTTA

1. Shri J. L. Puri.
2. Mr. J. H. Forman.
3. Mr. R. Von Leyden.

## III. THE BOMBAY CUSTOM HOUSE CLEARING AGENTS' ASSOCIATION, BOMBAY

1. Shri K. D. Pathak.
2. Shri M. T. Bandivdekar.

## I. FEDERATION OF INDIAN CHAMBER OF COMMERCE AND INDUSTRY, NEW DELHI

### Spokesmen:

1. Shri Bharat Ram.
2. Shri Ambalal Kilachand.
3. Shri J. N. Guzder.
4. Shri P. Chentsal Rao.
5. Shri G. B. Sundriyal.

*(Witnesses were called in and they took their seats).*

**Chairman:** We have got your memorandum. If you have got anything to add or supplement, you may kindly do so.

**Shri Bharat Ram:** Thank you, Mr. Chairman, and members of the Committee for giving the Federation the opportunity to appear before you for giving evidence on this important matter.

We have already submitted our memorandum, and I would like to say that we have been guided by three main principles, the principles being that as far as possible there should be uniformity in procedure, where malpractices are supposed to be checked it should not cause unnecessary harassment to the innocent and the non-guilty.

I would like to make one or two general observations before we go to the general clauses where we may have to say something. Firstly, we have a little complaint that while this Bill was placed before the Parliament on 15th June and the Extraordinary Gazette which reproduced the Bill had the same date line, it was not available to us, I think, till the 9th July. We wish that on an

important matter like this more time is given for study.

**Shri Morarji Desai:** You have such a large establishment that even three days are enough for you to study this. This has become a normal practice of saying that enough time has not been given. Is not the period from 9th July till now enough time for you to study the Bill?

**Shri Bharat Ram:** We would not say that the time is not enough.

**Shri Morarji Desai:** It is not quite a new provision that is sprung on you. The whole Bill is based on the old Act and it contains the old provisions. There are some new provisions, and I am sure you could study them easily in the time available to you.

**Shri Bharat Ram:** Now, Sir, I would ask my friends here to take up the clauses.

**Shri Kilachand:** About clause 13 of the Bill, Sir, I would like to expand the idea which I put forth yesterday, and that is in connection with the pilfered goods where the duty is liable to be paid by the importer. Having submitted our memorandum, there are a couple of points on which we would like to draw your attention and the attention of the members here. First of all, the figures that I have collected from the Bombay Port Trust show that the revenue loss to the Government is very small and, at the same time, to my mind it seems that if this proviso is put into the Act it might result in a sort of laxity on the part of the authorities who have got the custody of the goods, and they are the Bombay Port Trust. If I may quote the figures of the Bombay Port Trust, in 1960-61 the

reported cases of pilferage amounted to 458 and the amount involved was Rs. 4,73,000. The recovery which was done was Rs. 3,60,000. So there was only about a lakh of rupees worth of pilfered goods or goods not found. In 1961-62 the number of reported cases was 443 and the amount involved was Rs. 4,30,000. The recoveries were of the order of Rs. 3,41,000. That means it was even less than Rs 90,000.

**Shri Morarji Desai:** What is the duty on Rs. 90,000.

**Shri Kilachand:** Even if it is 50 per cent—let us take the maximum—it will be Rs. 45,000. Considering the quantum of loss of revenue, which is very small, and the unfortunate position in which we are putting the importers for having to suffer this, to my mind, even administratively, if I may say so, this is going to create a certain amount of difficulty. How are they to establish that the goods were taken at a certain point of time, that they were taken before the goods were taken to the warehouse or after they were taken to the warehouse etc.? I would like the Committee to consider this. Our recommendation is that just as in the case of damaged goods where the question of duty does not arise, in the case of pilfered goods also duty is not leviable. If this recommendation is accepted, a consequential change will have to be effected in clause 23.

**Shri Dehejia:** I think the Federation must have compared the provisions of the existing law and the provisions in this Bill. Even at present when a consignment has arrived and it is cleared though a part of the consignment is pilfered, duty is payable on the entire consignment. So, even under the existing law when the goods are part pilfered duty has to be paid on the entire consignment.

**Shri Morarji Desai:** That is no argument. They are saying that they have been objecting to it for a long time.

**Shri Dehejia:** I am coming to it stage by stage.

The real difficulty arises when the goods are part pilfered and the rest of the goods are abandoned. When the goods are abandoned no duty is payable. That is under the existing law. Under the present Bill when the goods are pilfered and the rest of the consignment is abandoned, on the part that is abandoned no duty is payable; but by not excluding the pilfered goods in clause 23 duty is payable on goods which are pilfered. So, the effect is that when goods are abandoned, on what in fact remains physically behind no duty is payable even under the new provision, but on goods which are actually pilfered duty is now sought to be levied.

**Shri Morarji Desai:** How can it be levied? Is it justifiable? To my mind it is not understandable as to how we can levy any duty on goods which have been pilfered not on account of their fault but on account of the fault of the Port Trust. When no duty is leviable on goods which are abandoned, that is, when they do not take their goods, why have they to pay duty on goods which they cannot take? It seems something fantastic.

**Shri Dehejia:** I am putting it to them because they are the people who have cleared goods for several years so that the Committee which is not associated with the day-to-day procedure of the customs may be acquainted with what is happening.

**Shri Morarji Desai:** They will submit to many laws of Government. What else can they do? That does not mean that because something has gone on for 500 years there is justification for a levy. The whole question is whether the levy is justifiable.

**Shri Dehejia:** We either take that the Committee is familiar with what happens when goods are imported or we get the facts from witnesses who are used to it from day to day. I think the experience of Shri Guzder goes back to three generations.

**Shri Morarji Desai:** This is justifiable only on one ground, namely,

that there is collusion between those who pilfer and those who import. That ground does not apply to everybody.

**Shri Kilachand:** I accept that. But when the collusion is between the Customs Officer and the pilferer, why should the importer pay the duty?

**Shri Morarji Desai:** Not the Customs Officer but the Port Trust Officer, the importer and the pilferer.

**Shri Kilachand:** The importer is not in the picture.

**Shri Morarji Desai:** Without the importer it does not happen. He knows what is to be pilfered.

**Shri Kilachand:** Pilfered goods are always the goods which have got a high value in the local selling market.

**Shri Morarji Desai:** Therefore it is known to the importer.

**Shri Kilachand:** It is known to the Port officers and the pilferers.

**Shri Morarji Desai:** Not always.

**Shri Guzder:** The steamer manifest in which the description of the entire cargo of the steamer is in the hands of the Port Trust officials and usually there is a certain amount of collusion between the people in whose custody the goods are and the pilferers. From the statistics you will find that the kind of goods that are pilfered are usually ball bearings, bicycle parts and those parts of machinery which are in great demand in this country and which fetch a very high price in the outside market. Normally, these parts which are imported are imported by firms and manufacturers of considerable standing including the Government of India and the State Governments. Therefore it is not exactly right to say that in most cases there is collusion between the pilferer and the importer.

**Shri Morarji Desai:** How much of the Government goods have been pilfered. It will be interesting to find

that out. If no amount of Government goods are pilfered then I am to draw an inference that there is collusion between the importer and these people who pilfer the goods.

**Shri Guzder:** I have had the privilege of being the clearing agent at the Port of Bombay for the Government of India and I find that consignments which are imported for Hindustan Aircraft.

**Shri Morarji Desai:** Importers including clearing agents also.

**Shri Guzder:** Then I have nothing to say.

**Shri Morarji Desai:** In some cases clearing agents are also responsible. It is not a matter where one can say that anybody is not responsible. All are not responsible but there are a few only who are responsible.

**Shri Guzder:** But you made a very important point, namely, that if goods which are not in the custody of the importer and over which he has no control are pilfered while in the custody of another authority, how can you, with any justice, make the importer liable to pay the duty?

**Shri Morarji Desai:** That is a matter for the Committee to consider.

**Shri Morarka:** You have given some figures about the goods which had been pilfered and were recovered. Would you kindly give also the figures of goods abandoned during those two years?

**Shri Kilachand:** I am sorry that I do not have those figures with me at the moment but I can ask the officer of the Federation to send round to the Members of the Committee those figures if you want.

**Shri Morarji Desai:** Yes, if you can get them soon.

**Shri Kilachand:** We will do so.

**Shri Dehejia:** As an ex-Port Trustee Shri Kilachand will be knowing that a large quantity of goods abandoned have to be auctioned and at almost every meeting there is a list of goods

to be auctioned by the Port Trust which runs into three or four pages.

**Shri Morarji Desai:** As the ex-Chairman of the Port Trust who is there. Why do you ask the ex-trustee?

**Shri Kilachand:** He is aware of it more than I am.

Our next point is about clause 14. That is in connection with 'normal price.' We would like to mention that as far as exports are concerned, 'normal price' should be on the f.o.b. basis and as far as the imports are concerned, it should be on the c.i.f. and c & f value, that is, the invoice value. I do not know but I think it is for the rules which may be issued later on; but it is our submission that when the rules are issued this may be taken into consideration. Then again, it also happens that a certain amount of imports are taking place on the basis of forward contracts. The question arises as to what will be the value which is termed normal price at the time when the export or import takes place. Our submission is this. These export or import contracts are done on the basis of long-term arrangements and extends to a period of three months or four months and naturally these contracts are on a firm basis. A person has to export on those lines or import on those lines. He has to calculate his pro-forma on those lines. Here, there is no interest between the buyer and the seller. In my opinion, it would be fair that the actual invoice value ought to be the value which is termed normal price.

Coming to section 14(b), what is stated here is as follows:

"Where the normal price is not ascertainable, the nearest ascertainable equivalent of such price determined in accordance with the rules made in this behalf".

We say that when rules are issued, this should be put on a more realistic basis. There should be no hardship on the trade dealing in any par-

ticular commodity. That is our submission.

**Shri Bade:** I want to ask a question. If we want to define 'normal price' in the definition of clause 14(b), what should be the definition of 'normal price'?

**Shri Kilachand:** In forward contracts, the normal price ought to be the invoice value. It may be the contract price of the invoice value, whatever you may call.

**Dr. L. M. Singhvi:** I wish to put one question in this connection and I hope you will give the answer for it. It has been pointed out before us that there is a lot of over-invoicing and under-invoicing. Naturally, we wish to avoid any such large-scale over-invoicing or under-invoicing. What have you to suggest in this regard, to remedy this State of affairs? What are your suggestions to get over this difficulty and to satisfy the interests of the trade?

**Shri Kilachand:** So far as this aspect is concerned, the Customs are very vigilant on this score. If a commodity is exported, they see whether it comes under the license issued to them. They do check this aspect at the time of exporting. Of course, there may be a slight variation, maybe, 5 per cent. or 10 per cent. difference. But, by and large, I think the customs people are quite vigilant on that score.

**Shri Morarji Desai:** Have you said everything that you wanted to say on this particular point?

**Shri Kilachand:** No. I have not yet finished. The point I was making was this. There is, I think, sufficient machinery within the Government to check and to control this under-invoicing or over-invoicing of prices.

**Shri Morarji Desai:** What is the machinery you are thinking of?

**Shri Kilachand:** You have got the Foreign Exchange Regulations. You

have got the Reserve Bank of India which looks into this. You check up from their import licence.

**Shri Morarji Desai:** But, does the import licence prescribe the price and the value? That is done in respect of total value only. What is the machinery for checking it?

**Shri Kilachand:** There is enough machinery.

**Shri Morarji Desai:** Show me what the machinery is.

**Shri Kilachand:** The Reserve Bank gets all the invoices.

**Shri Morarji Desai:** The machinery can be Customs.

**Shri Kilachand:** There is check today.

**Shri Morarji Desai:** Give a proper definition. If the invoice price is to be taken then, invoice price will always be there. But, if it is under-invoice, then, that price will be less than what it should be. Now, if it is not to be checked and if that price only is to be taken, what is the check over it?

**Shri Kilachand:** The check that can be done is in terms of the Exchange Regulations by the Reserve Bank and by the Customs.

**Shri Morarji Desai:** Show me how. I will do it.

**Shri Bharat Ram:** May I suggest something?

**Shri Morarji Desai:** Yes. We are trying to find out the remedy. You may place your point of view before the Committee.

**Shri Bharat Ram:** As has already been stated, the determination of price is left to the judgment of the customs authorities, but we should see that they should try to be as fair as possible.

There were several cases, as my friend mentioned, where there were forward contracts of either exporters or importers. Now, one check can

be exercised in this manner. Suppose a contract was made three months ago. The proper authorities can check what was the price of that article in the market three months ago, when the contract was made. Although the price given for the export today may appear to be lower than the existing price, if he has made the contract three months ago, then, that price is to be taken into account.

**Shri Morarji Desai:** Provided the forward contracts were registered at the time they were made. Any forward contract can be presented in a bogus way. There can be collusion there also. If that is registered, then, it will be relevant to say that that price should be taken and not the price today.

**Shri Kilachand:** If you provide that they should be registered, they can be registered.

**Shri Morarji Desai:** How can I provide it?

**Shri Himatsingka:** If you go by the c.i.f. value or invoice value, how do you lose? The price sometimes goes down. The price may be lower today than the price on the day of exportation or importation. The price should be the price at the time of importation or exportation. You may have entered into contract at a very high price or lower price. It is not that you will lose in each case. You may be a gainer also.

**Shri Kilachand:** Normally the importer and the exporter does this on a *bona fide* basis. Any exporter or importer buys or sells with minimum profits or commission. By doing *bona fide* transaction, he earns a commission. Why should he take the stand that when goods arrive at lower price or higher price he will lose or benefit by the duty?

**Shri Dehejia:** Section 30 of the Sea Customs Act provides for duty on the basis of wholesale price. The customs people make enquiries. The reference here is to price, to be ascer-

tained in the manner provided in the present Sea Customs Act. Now, I would like to state in this connection that this very question was agitated before the Taxation Enquiry Commission and I do not know whether you have got its Report with you. They went in detail into the question of whole-sale price and invoice price. Even in a completely bonafide transaction the invoice price of the goods imported may be lower or very much lower than that of all other imports. That is quite possible under a variety of circumstances. So, the price here, is to be taken as the price in India. One may purchase from country X. Another may purchase from country Y. When the duty is *ad valorem*, it is on the value of the goods. I think you will accept that. That is what the Taxation Commission has said.

**Shri Kilachand:** In the case of export or import, one has to be a little more careful in arriving at the value of the goods at the time of arrival or at the time of export. Between the time you have contracted goods for sale and the time when you are making shipment, there may be changes for no rhyme or reason. I want Government to consider these things when they frame rules.

**Shri Morarji Desai:** Government should not and does not want to take anything more than the duty which can be charged on the actual amount paid or would have been paid for the goods concerned and not for any notional value, that is, for any value which may be in the air, either more or less. We are not interested in taking more duty than we are entitled to on the actual cost. The difficulty arises only in the case of under-invoicing and over-invoicing. How is that to be dealt with? You cannot deny that this is done and done not on a small scale but on a fairly large scale. It may not be done in a majority of cases—when I say it is done on a large scale, it does not mean that it is done on a majority scale—but the number of instances are fairly large, not a few. How is this to be overcome? That is the main ques-

tion. That is why we are struggling with the definition under which we can put a fear in the minds of the people. After all, that is our intention. If you try to play any trick, you will have to pay much more. You cannot run away with it. But it also causes harassment to the *bona fide* persons because there may be cases in which, as it was pointed out, two importers of the same goods will buy goods at different prices even in the same country. It depends on the bargaining capacity of the person concerned. What has to be done? That is the main thing which is worrying us also. The problem has become so acute now on account of under-invoicing and over-invoicing because it affects our foreign exchange balances a great deal. We have got to find out a remedy. It is in order to do that that has been put. I do want and all the Members of this Committee would also want to see that we do not harass anybody. We do not want to harass anybody. How is this to be met? If you have any suggestion to make, certainly we should like to pay great attention to it.

There is just one thing—I do not know whether it is practicable—which has struck my mind. I have not talked about it with my officers yet. I have just thought of it. Suppose we provide in the rule that the duty will be charged on the invoice value and then we also have a provision that if it is found in any case that it is under-invoiced or over-invoiced, then a penalty equal to the value of the goods will be charged and the person concerned will be liable to pay that and it will be recovered from him by all means at the disposal of the Government. Would you be amenable to that?

**Shri Kilachand:** I think your suggestion is a good one. I may only point out a snag there also. How would you establish that it was under-invoiced or over-invoiced?

**Shri Morarji Desai:** It will have to be established. Otherwise, nobody

can be charged. I do not know whether it is practicable. Therefore, I want to ask my officers whether it is practicable or not.

**Shri Dehejia:** May I point out the type of cases in which it may not be practicable? For example, there may be a company in Switzerland which has a manufacturing contract in India and the agreement is that the Swiss company will supply goods at any price it likes but when the goods are manufactured into something else, they will be sold to a subsidiary of the Swiss company at the import price plus so much percentage. In a case like that, the invoice may be a fictitious one.

**Shri Kilachand:** That is correct.

**Shri Dehejia:** I may give you another instance. There may be a foreign company which has a subsidiary in India. The profits of the subsidiary company can be sent to the parent company at any time. If the invoices of the parent company are at a lower figure, the subsidiary company in India makes a higher profit. As a result of that, it is also able to send out more money in foreign exchange and our country stands to lose.

**Shri Kilachand:** Quite true.

**Shri Dehejia:** There are so many collaboration agreements these days. These things can arise in a number of ways. These are the sort of cases which have to be taken care of. We are not thinking in terms of 'X' person or 'Y' person.

**Shri Morarji Desai:** But even there under-invoicing or over-invoicing may take place.

**Shri Dehejia:** Even then, though there may be *bona fide* cases on all sides where there is no under hand dealing, there can be a special relationship between an exporter and an importer. These cases have to be taken care of.

The other point is that import and export is an international affair because goods go from one country to another. In such international trans-

sactions, it is desirable to have a fairly common basic concept acceptable to most of the countries. For that purpose, there is such a thing known as the International Trade Agreement. There is the GATT which has tried to work out how the valuation—forget about the price—should be done. This is for *ad valorem* duty. Sometimes the goods are assessed by weight also. The very idea of having *ad valorem* duty is that as the prices vary the duty also may vary so that it is necessary to find the exact valuation of the goods at a given time. I suppose that is accepted.

**Shri Kilachand:** Yes.

**Shri Morarji Desai:** I have seen it myself at free ports, where people buy goods, the seller asks the purchaser, "Shall I put down less value in the bill?". I have seen that. What am I to do with this? That is the main question. If these things pass untouched, then it is an encouragement to all these practices and they will do it more freely.

**Shri Kilachand:** I entirely agree with you, Sir. At the moment, I have not got anything to suggest.

**Shri Morarji Desai:** Therefore, it will be equitable if some people have to pay a little more even if it is unjustified.

**Shri Kilachand:** If that is your intention, Sir. . . .

**Shri Morarji Desai:** But it will be a check.

**Shri Ramanathan Chettiar:** Mr. Chairman, Sir, this over-invoicing and under-invoicing has now become the order of the day. Here are the representatives of the Federation of the Indian Chamber of Commerce and Industry. Have they formulated a code of conduct at least among their member bodies to see that this evil is put an end to? I would like to know the reaction of the representatives of the Federation of the Indian Chamber of Commerce and Industry to this.

**Shri Morarji Desai:** It is beyond their capacity.

**Shri Ramanathan Chettiar:** Let them answer this. I would like to know whether they have any concrete suggestions to offer in this respect. Have they at least given a thought to bringing in a code of conduct at least among their member bodies?

**Shri Gusder:** Sir, I am not saying anything on this particular clause as such. But I would like to make a remark arising out of the question of the hon. Member that we should make suggestions as to what can be done in this regard. I have been thinking on the subject and I want to say a few words which must be subject to the approval of my colleagues here. As far as the import is concerned, there is a certain amount of check inasmuch as the new Act provides that they can check the wholesale price, etc. What happens in the case of exports is that there is no such check because there is no export duty. In fact, 99 per cent of the commodities which are exported today have no export duty and because there is no export duty, the Customs officers rightly in the discharge of their duties do not pay any specific attention to the value of the shipping bills. What happens is this. At the time of export, you present shipping bills and you also present GRF 4 which has got to be sent to the Reserve Bank, that you have exported 'X' quantity of 'Y' value and that the amount will be remitted or has been remitted. There again there is no check on the veracity of the value of the consignment exported. Therefore, I would like to suggest, if it is at all feasible, that these shipping bills should be made subject to scrutiny after shipment, let not the export be held up. For example, in one ship there are a lot of shipments. So, they can be counter-checked, whether there is a certain amount of similarity, whether there is a certain amount of consistency between the prices of different exporters.

**Shri Gusder:** I hope some way could be evolved to do this.

**Shri Morarji Desai:** How can you subject them to check after the goods are gone?

**Shri Gusder:** Because it is not possible to check them at the time of export.

**Shri Morarka:** May I ask one question? We have been hearing so much about over-invoicing and under-invoicing. Over-invoicing is done only in the case of imports and under-invoicing in the case of exports. If on imports we have over-invoicing that means the value of the goods is shown more in the invoice than it really is. If the customs duty is paid on the invoice value that means, they will be actually paying more duty than they really ought to.

**Shri Morarji Desai:** This question relates mainly to the foreign exchange problem. There may be no direct loss or gain in customs, but there is great loss in foreign exchange.

**Shri Morarka:** For the purpose of clause 14 the practice of over-invoicing may not be relevant. But if they pay the duty on the basis of invoice they tend to lose; the customs would not lose.

**Shri Morarji Desai:** Customs does not merely deal with customs. Customs is also one of the agencies of Government to check malpractices in foreign exchange also.

**Shri Morarka:** How will you then determine the normal value?

**Shri Morarji Desai:** That is where we are fumbling.

**Shri Morarka:** The normal value will be higher than the invoice; it cannot be lower than the invoice.

**Shri Dehejia:** It may also be lower than the invoice. We are concerned at getting the correct value. I do not think the Customs Department can accept a lower or higher invoice.



**Shri Morarji Desai:** This is the only point where it can be caught. There is no other point. That is why one is more particular to see that this section is made sufficiently capable of removing the mischief. I do not say that what has been done is just sufficient or will be capable of doing it—I do not know. We have to consider this.

**Shri Bakar Ali Mirza:** We may consider provision of some penalty clause.

**Shri Kilachand:** Arising out this we would like to suggest that the normal price should be based on this, as also the price which is not ascertainable. Whatever further provisos you want to make to see that foreign exchange is not misappropriated it is for you to consider from time to time. You can think of it or we can think of it.

**Shri Dehejia:** These are not very simple matters. These are complicated affairs. I wonder whether it has come to your notice that a person may import goods and show a lower value. He might make good the difference in value in export. In a case like that under valuation of import and under valuation of export can work quite easily.

**Shri Bharat Ram:** The STC deals in barter. They must abide by the same clause.

**Shri Dehejia:** Normally where there is no reason to suspect or doubt anything the invoice is accepted as the value. When there is reason to suspect or doubt and it becomes necessary to determine the actual price, I take it your suggestion is that the rules should be framed in such a way that no harassment is caused.

**Dr. L. M. Singhvi:** In section 13 of the existing Act and clause 14 of the Bill as it is framed now, there is a concept of normal value. I would like to know the reaction of the witnesses as to which of the two concepts they, from their own point of view, prefer? Secondly, I would like to

have their reaction to the suggestion that was just now mentioned by the hon. the Finance Minister regarding the invoice value being considered as the normal value and providing for a penalty equal to the value of the goods, in case the invoice value is found to be based on a mis-declaration. On both these points, I would like to have their reaction.

**Shri Kilachand:** As far as your first point is concerned, we can say that in the new Bill, clause 14, takes care on a much better basis than what is provided in the old Sea Customs Act. Regarding point two, the hon. the Finance Minister made a suggestion to meet this difficulty of under-invoicing and over-invoicing. As I said, I do feel there will be a little difficulty in the sense that it would be still a question of investigation of what has been under-invoiced or over-invoiced. What Mr. Dehejia has indicated is a just and fair basis, in my view. Where the normal trend of business continues, the Customs takes the normal value for consideration as the c.i.f. value or invoice value. Where they feel there is a suspicion of a certain commodity imported or exported is not being done in a *bona fide* basis they have all the powers under the Act and rules to investigate into it and penalise the exporter or importer to the extent they can. I would personally like to leave this matter in that way. That would be much more flexible than have it done in a hard and fast manner.

**Shri Morarji Desai:** The present clause as it is would be suitable.

**Shri Kilachand:** When you make the rules, take these into consideration. We accept the clause as it is and executive instructions may take care of the various other things.

**Shri Morarji Desai:** That is a very realistic approach. We may not have spent all this time for nothing!

**Shri Kilachand:** We have only a small point to make. In connection with the goods exported which have borne a duty, if after a certain period

of time they are re-imported back by the same party, the export duty levied on it, or paid on it should be refundable. We would also like to add that the export duty or cess whichever has been realised on these goods must be refunded.

**Shri Dehejia:** That will have to be under the other Acts. What is levied under the Customs Act come under this. What is levied under the Tea Cess Act or Central Excise Act cannot be refunded under this Act.

**Shri Kilachand:** If there is a Central Excise Duty it should be refundable.

**Shri Dehejia:** That should be under the relevant Act.

**Shri Kilachand:** There is also a time-limit provided. In clause 20 you have got a time of three years. A similar time-limit should be provided in clause 26 as well.

**Shri Dehejia:** Suppose the goods come back after use? Would they always come back in the same condition?

**Shri Anand:** As might have been noticed there is a difference in time-limit between clause 20 and clause 26. Under clause 20 where certain duties have been paid on exports it is presumed it is going there for a brief period, and if it is not approved, it would come back normally. That is why we have said that the time-limit here should be much more stringent than in clause 20 where the question of duty does not arise. In clause 26 if we were to say that the duties will have to be refunded whenever the goods come back there will be a great deal of difficulty. It is certainly not the intention that once the purpose for which the goods have been sent out has been fulfilled the Government should refund the duty.

**Shri Kilachand:** There are cases where goods go for sale, and remain there for a number of years without sale. When the seller finds that he would stand to lose by selling them in that market he chooses to bring

them back. This has happened in the case of mica.

**Shri Dehejia:** How are they to be identified?

**Shri Kilachand:** On the quality from the invoice.

**Shri Morarji Desai:** It is impossible to identify mica. But what is your suggestion?

**Shri Kilachand:** My suggestion is to increase the time-limit to three years. I only gave mica as an instance.

**Shri Morarji Desai:** Where?

**Shri Kilachand:** In clause 26.

**Shri Morarji Desai:** Why should it be three years. Why should not the goods return after a year? Why should you keep it for such a long period.

**Shri Kilachand:** Because we feel there may be goods which may have to be kept for a longer period. It is a matter for the Committee to consider.

**Shri Bharat Ram:** With regard to clause 28, the proviso to sub-clause (1) says that in cases where duty has not been levied or has been short-levied or has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, there will be no time-limit for their being reopened for assessment. We merely want to say this. Where there is collusion, there should be stringent measures. But we hope that it is intended that it is only where there is collusion that this proviso will apply.

**Shri Morarji Desai:** Yes, that is so.

**Shri Bharat Ram:** But that is not clear.

**Shri Morarji Desai:** It is clear here. It is meant to cover cases where there is collusion or wilful mis-statement or suppression of facts.

**Shri Bharat Ram:** Where it says "wilful mis-statement or suppression" it is not clear.

**Shri Morarji Desai:** It applies to both—wilful mis-statement and wilful suppression. That will be made clear if it is not clear.

**Shri Bharat Ram:** That is all that we want.

**Shri S. S. More:** 'Suppression is always wilful. So the adjective is not necessary.

**Shri Morarji Desai:** It is to satisfy them. Anyhow, it is for us to decide what word to use.

**Shri Bharat Ram:** The other point is about issuing the notice and serving the notice. We would like that the word "issue" be changed into "serve".

**Shri Morarji Desai** (to Ministry officials): Here the question is between serving and issuing. If you say "issued", suppose you issue it today but it is not received by them. Even then you can act. When it is "serving", serving is by registered post. Then their receipt must come or it is returned as not taken. Then from that date you can take that it is "served". Therefore, whether we should have service or issue is the question. I think service is better. "Issued" means you have sent it. Who knows you have sent it? After all, the person concerned who is going to be punished must receive it. If he is not receiving it deliberately, let us provide for it that after it is sent a certain number of times it will be taken as served. I think the law provides for it. That is a better way.

**Shri Abrol:** We send it either through a peon or by registered post.

**Shri Morarji Desai:** What happens is, if the time-limit is six months and it is issued on the last date. Service will have to be done within six months. Do you want to extend the time-limit by this indirect method?

**Shri Kilachand:** Sir, we want that it should be served, not issued.

**Shri Guzder:** Clause 41 of the Bill which is equivalent to section 66 of the existing Act refers. . . .

**Shri Morarji Desai:** Please refer only to the clauses of the new Bill.

**Shri Guzder:** Clause 41 of the Bill is about delivering of the export manifest by the master of the vessel. In the existing Act five days are provided while in the proposed Act, it removes the time and gives discretion to the customs officer to fix the time. This is certainly an improvement, and we feel it is a liberalising provision in the new Bill. But what we would like to see added in the rules is that the wording might remain as it is, but there might be a proviso "not earlier than five days". That might be added.

**Shri Morarji Desai:** And not later than how many days?

**Shri Guzder:** That depends upon the officer's discretion.

**Shri Morarji Desai:** Then why should a minimum of five days be provided if a maximum is not provided? I am prepared to provide a minimum, provided you have a maximum limit also.

**Shri Guzder:** You can certainly say "not less than five days and not more than ten days". The idea is that it should not be less than what it is in the existing Act.

**Shri Morarji Desai:** Let it be three days and five days. Five days was the maximum. Why should it be a minimum of five days? You have not asked for more than seven days. So let it be three days minimum and seven days maximum.

**Shri Guzder:** Seven days was recommended by the Customs Reorganisation Committee.

**Shri Morarji Desai:** They are not the proper people. We can do that. Anyhow, that is a matter for the Rules, not here.

**Shri Guzder:** Then with regard to clause 46 we have one suggestion to make. Of course this is not incorporated in the Act but it is important from the point of view of the importer and therefore it arises here.

At present the Customs are in the habit of issuing detention certificates to the Port Trust for goods being detained through no fault of the importers.

**Shri Morarji Desai:** Why do you say "in the habit of issuing"? That is the practice. You may say that the practice is like this.

**Shri Guzder:** Yes, Sir. The practice followed is that the Customs issued detention certificates to the Port Trust for goods being detained when it is beyond the control of the importer. The main reasons are when the goods are sent on test. . . .

**Shri Morarji Desai:** If your point is that they should also be issued when the delay is on account of the Customs, we have said that we are going to consider it.

**Shri Dehejia:** On test it is given now.

**Shri Guzder:** Not on all cases.

**Shri Dehejia:** You know the Bombay practice. There is an agreement between the Bombay Port Trust and the Collector of Customs. Where it is on account of testing or verification of goods a certificate is given.

**Shri Guzder:** You were yourself the Chairman of the Bombay Port Trust and you will remember that it was mentioned that the certificates from the Customs to the Port Trust were more in the form of recommendation. . . .

**Shri Dehejia:** Even today, even if the provision is made in the Customs Act it will not be binding on the Port Trust.

**Shri Guzder:** But if the Customs issue it as a procedure, then it might be binding.

**Shri Morarji Desai:** It will have to be "Notwithstanding anything contained in the Port Trust Act". Then it will be binding on them.

**Shri Dehejia:** May I explain this? A number of circumstances arise

where it may be due to something done, or not done, by the importer also. His licence may not be adequate or properly worded.

**Shri Guzder:** Then it does not arise. This is only for the delay arising on account of the Customs.

**Shri Dehejia:** When the licence is not adequate, is it the fault of the Customs?

**Shri Kilachand:** It is the importers' fault. We are not asking for that.

**Shri Morarji Desai:** If the goods imported are not in accordance with the licence, it is the fault of the importer. Where there is delay because information has not been supplied, that is not the fault of the Customs. They have supplied the information, but the Customs pass an order after three days; it is their fault. I believe in such circumstances, the Port Trust accepts the certificate.

**Shri Dehejia:** In Bombay and Calcutta, they accept.

**Shri Guzder:** It may be put in here.

**Shri Morarji Desai:** How can it be put in here? You do not supply the information. Then you will say it is the fault of the Customs. That can be taken care of by circulars. It cannot be taken care of by a provision here. Then, I will have to consult the Port Trust authorities. That Ministry will have to be consulted. I cannot put a clause here which will be binding on them. That will not be right.

**Shri Kilachand:** It is not the intention to bind them at all.

**Shri Morarji Desai:** Let us go on this basis. We have said that we will provide for that.

**Shri Guzder:** In clause 46. . . .

**Shri Morarji Desai:** That is finished.

**Shri Guzder:** No. I only said that that question arose with reference to clause 46. Clause 46 lays down that the bill of entry shall mention all the goods that are imported under one

bill of lading. This particular clause also provides for discretion to the Customs officers to permit some changes. I would like to bring to your notice one important thing that has taken place in international transport, that is, consolidated freights. It so happens that freight rates for international air cargo are being fixed by the I.A.T.A. They have fixed certain rates for transport of goods. They have also fixed certain concessions for consignments weighing more than a certain weight. In order to get the advantage of this concession, small shippers send under one consolidated airway bill. This is the current practice in Europe and America. Unfortunately, in India, the shippers are not able to take advantage of this concession in freight. It would mean saving of foreign exchange. We are not permitted to make more than one bill of entry for one bill of lading/airway bill. We should permit more than one bill of entry for one bill of lading/airway bill, as consolidated freight-shipment.

**Shri Anand:** The section itself is certainly not against one bill of entry being put in for more than one bill of lading. As representation has been made, what is required is more bills of entry for one bill of lading by different parties.

**Shri Guzder:** Sub-delivery orders. If this can be provided by the rules, it is all right.

**Shri Morarji Desai:** If you want to provide it in the rules, do not say that here.

**Shri Guzder:** It will mean saving of foreign exchange.

**Shri Morarji Desai:** That you can say afterwards. What cannot be provided in the clause should not be discussed here. That can be discussed later in the rules.

**Dr. L. M. Singhvi:** I think that is also the suggestion made in the memo that has been submitted by the Federation that this may be provided for in the rules. I am wondering if it can be provided in the rules if it is

not completely consistent with the Act itself. If it is consistent it can be provided. But, then, it would be superfluous.

**Shri Morarji Desai:** It is not a question of superfluous rules. The clause itself, sometimes, is differently interpreted by different officers. Therefore, we give them instructions. It must be in conformity with the Act. If a rule says something which is not in conformity with the Act, it will not be legal. No court will uphold it.

**Dr. L. M. Singhvi:** My suggestion was only whether they would prefer a change by making these expressions 'importer' and 'bill' in the plural in the Act as it stands: whether that would meet their suggestion or they would only want such a thing to be incorporated in the rules. My own opinion is that if it can be incorporated in the rules, it can be conveniently incorporated in the Act, by saying importer or importers and bill or bills.

**Shri Morarji Desai:** Even if you say that, it will not serve their purpose unless it is clarified in the rules. That is why they are insisting on the rules. So, why change here unnecessarily? The rule will be there.

**Shri Bharat Ram:** As long as it is provided in the rules, it is all right.

**Shri Dehejia:** Do you refer to goods sent by the same parties or different parties?

**Shri Guzder:** Different parties.

**Shri Dehejia:** If something goes wrong, who will be responsible?

**Shri Guzder:** It is only sub-delivery. My point is, you will get a reduction in the freights.

**Shri Morarji Desai:** We will do it. But, it cannot be done here.

**Shri Guzder:** You may put it in the rules.

**Shri Bharat Ram:** Clauses 100 to 104 refer to powers of arrest and so on. The only thing that we would like here

is that the grounds of arrest should be communicated forthwith.

**Shri Morarji Desai:** We have said that it will be recorded in writing.

**Shri Bharat Ram:** They should be communicated forthwith. That is what we want. Later on he is told. When a person is being arrested, he should be able to know.

**Shri Morarji Desai:** No warrant mentions the grounds of arrest. The section under which the arrest is made is mentioned. We have said, he must record in writing his reasons for doing so so that you can ask for a copy of it. That is what can be done.

**Shri Bharat Ram:** It is stated here:

"...he may arrest such person and shall, as soon as may be, inform him of the grounds of such arrest."

When he is going to be arrested, give him the grounds. Why should not the grounds be given forthwith when you arrest?

**Shri Morarji Desai:** Why not simultaneously with the arrest? That would guarantee that the reasons have been written beforehand and not afterwards?

**Shri Dehejia:** What might happen is, when the arrest is made, there may be enough evidence on record to justify the arrest. Even after the arrest, further investigation goes on and further facts will come to light. If grounds are communicated at the time of arrest, they may not be complete. There may be further grounds.

**Shri Bharat Ram:** At least the grounds on which he is initially being arrested may be mentioned. It may be said, these and others.

**Shri Dehejia:** The others may not be ready.

**Shri Bharat Ram:** At least some of the grounds on which he is being arrested should be there.

**Shri Morarji Desai:** The Constitution lays down:

"No person who is arrested shall be detained in custody without being informed, as soon as may be of the grounds for such arrest....".

If some grounds are given and afterwards some more grounds are given, they may not be relevant and you will say that they were the only grounds.

**Shri Bharat Ram:** It may be said, these and others.

**Shri Morarji Desai:** I think these words are right. I cannot go beyond the Constitution.

**Shri Bade:** Even under the Criminal Procedure Code, grounds are not given at that very moment. They are given when they are produced in the court.

**Shri Morarji Desai:** They cannot be given at the time of arrest. We were arrested several times. We were never given any grounds of arrest. Not even after a fortnight.

**Shri Bharat Ram:** The section under which he is arrested should be given at the time of arrest.

**Shri Morarji Desai:** That will be given. There must be a warrant.

#### Clause 110

**Shri Bharat Ram:** What we want to emphasise is that the documents which are seized should be returned within a reasonable period. The customs authorities may have photostat copies thereof if they want them for a longer period.

**Shri Dehejia:** Except those which are required for further proceedings, the documents can be returned.

**Shri Bharat Ram:** They may have photostat copies.

**Shri Morarji Desai:** Photostat copies are not accepted in court and so the originals must be with the customs. The originals must remain with the court. You can take them from the

court. We will provide that those persons who want, can be given photostat copies at their expense. That can be done.

**Shri Bharat Ram:** That is all right. )

*Clause 128*

**Shri Kilachand:** I am referring to (1)(b). The grounds on which the decision has been arrived should be recorded.

**Shri Morarji Desai:** That is never done generally in appeals.

**Shri Kilachand:** A decision has been arrived at. Even in income-tax appeals, the grounds are stated.

**Shri Morarji Desai:** When the decision is changed in appeal, grounds have to be given. Otherwise, it confirms the original order.

**Shri Kilachand:** The right of personal hearing should be given.

**Shri Morarji Desai:** Where a thing is summarily rejected, why should there be personal hearing?

**Shri Kilachand:** It is the feeling of the trade that justice is not being done to them. It is summarily rejected without even giving an opportunity to the person to appear in person and explain his case.

**Shri Morarji Desai:** Provision is made that where necessary, they will give him a proper hearing.

**Shri Kilachand:** If you read 128(2), it says: "The appellate authority may, after giving an opportunity to the appellant, if he so desires....". What does 'if he so desires' mean?

**Shri Morarji Desai:** The appellant. If he wants, he will get it. Why do you want a change?

**Shri Kilachand:** I thought 'if the appellate authority so desires'. I am sorry. So that is all right.

**Shri Morarji Desai:** There is a proviso saying that if it is to be enhanced, he has to be given a hearing.

1812 (B) LS-5 .

*Clause 129*

**Shri Kilachand:** This is about deposit of penalty before appeal is filed.

**Shri Morarji Desai:** There is a proviso there also.

**Shri Kilachand:** It is discretionary. Suppose the person is not able to pay the fine?

**Shri Morarji Desai:** They will certainly allow him an opportunity.

**Shri Kilachand:** At one stage, you are not in favour of giving discretionary powers to the officers; at other stages, it is the other way.

**Shri Morarji Desai:** I have never said that—in some cases, not all.

**Shri Kilachand:** In this case, why cannot there be a proviso?

**Shri Morarji Desai:** If I make it rigid, you will find it difficult.

**Shri Kilachand:** In this particular case, I think there should be a proviso that the fine or levy will not be collected before the appeal is filed.

**Shri Morarji Desai:** If they avoid paying, what happens? Therefore, if they want to go in appeal, they have to deposit it.

**Shri Kilachand:** It may be harsh on a person who may not be able to pay.

**Shri Morarji Desai:** There he will be allowed.

**Shri Bharat Ram:** Does this also provide for complete allowing or part allowing?

**Shri Morarji Desai:** Both. The words 'dispense with such deposit' are there. It is not for the levying authority, it is for the appellate authority.

*Clause 147*

**Shri Guzder:** Here I am making more a suggestion or appeal. An importer may have committed collusion, suppressed facts and wilfully deprived Government of review. But the agent

may not be aware of it at all. Yet the Bill provides that if the Government cannot lay hands on the importer, the agent will be caught.

**Shri Morarji Desai:** The clearing agent must know his customer. I am not going to let the agent alone. He is the only person I can catch hold of properly.

**Shri Guzder:** But he may have no control over the importer.

**Shri Morarji Desai:** He will not deal with such shady customers.

**Shri Dehejia:** There are known cases.

**Shri Guzder:** You should first proceed against the importer. Why take a short-cut?

**Shri Morarji Desai:** Short-cut is sometimes good.

**Shri Guzder:** He may not have anything to do with it.

**Shri Morarji Desai:** How is one to prove collusion in such cases. It is implied in all such cases. But if he proves that he has absolutely no knowledge of it, we will take that into consideration.

**Shri Guzder:** At least provide it in the rules; otherwise, customs officers will never act accordingly.

**Shri Bade:** Your request is that it should be provided in the clause itself.

**Shri Guzder:** Yes or at least in the rules.

**Shri Morarji Desai:** We can say that if he satisfies Government that he had no reason to believe or no knowledge of it, we will consider it.

**Shri Dehejia:** The agent is the only person whom we know.

**Shri Morarji Desai:** Supposing the clearing agent gets a new customer, of whom he has had no experience. He may be dealing with him for the first time, and his customer may let him down.

**Shri Dehejia:** But the importer is not known to the customs authorities, he may not be traced.

**Shri Morarji Desai:** Then the agent will not be allowed to pass off.

**Shri Dehejia:** The clearing agent signs the bill of entry, takes the goods, pays the duty, and actually he is the only person who knows who the importer is.

**Shri Guzder:** In the event of the importer being known, and the clearing agents proves to the satisfaction of the authorities that he had no knowledge of the wrong doing of the importer, he may not be penalised.

**Shri Morarji Desai:** If the importer is held liable, then the agent will not be liable. We will not hold both liable.

**Shri Guzder:** You may proceed against the importer first.

**Shri Morarka:** What is the position in law? Is it the rule that once an agent, always an agent? Suppose an agent clears for a particular transaction and that is over. He has cleared the goods, got the commission, paid the duties etc. If after two or three years the customs authorities discover that there had been an undercharge of duties, will they first catch hold of the clearing agent instead of taking recourse against the importer?

**Shri Morarji Desai:** We should not do that first, but he was responsible for that particular thing at that time, therefore he is liable for that.

**Shri Morarka:** His agency terms are over, he had discharged his duty.

**Shri Morarji Desai:** But he had also pocketed the fees.

**Shri Morarka:** For that purpose he has done the work.

**Shri Morarji Desai:** For that purpose, as long as that liability lasts, his liability lasts. And they do not want that exemption.



**Shri Morarka:** I was only making an enquiry.

**Shri Bade:** You are taking objection to the responsibility of the agent under clause 147. I draw your attention to clause 28(1) proviso, where in respect of any duty being not levied or short-levied or erroneously refunded etc., the importer or the agent or the employee is liable. If the agent is liable under clause 28, why should he not be liable under clause 147?

**Shri Gazdar:** For that we have stipulated a time-limit. Here there is no time-limit. It may happen after ten years.

**Shri Bade:** If there is a time-limit, you have no objection?

**Shri Gazdar:** Yes.

**Shri Bade:** You agree that it should be the vicarious liability of the agent and the employee also?

**Shri Gazdar:** The Government is taking that view.

**Shri Bade:** What is your opinion? You are appearing as a witness here. The Budhwar Committee have opined that the agent should not be made responsible.

**Shri Kilachand:** Both of them should not be made liable. The agent only acts as such for doing certain services to his clearing, for clearing 'his goods. Once he has cleared the goods, handed them over to the party, paid the dues etc., his function ceases. We are not in favour of the agent being made liable. First you must take steps against the importer and his employee.

**Shri Bade:** So, you have got objection to clause 28 also.

**Shri Gazdar:** We have stated that in our memorandum.

**Shri Bade:** But you have not raised it before the Committee.

**Shri Morarji Desai:** Clause 147 is a general liability, while clause 28 is a specific liability clause.

**Shri Ramanathan Chettiar:** Shri Morarka was saying that once the clearance was made, the responsibility of the agent ceased. That is wrong in law, because the agent is responsible for an act done. So, there is responsibility of both the agent and the importer.

**Shri Bharat Ram:** I may refer to section 204 of the existing Act, which does not find a place in the present Bill, in regard to the publication of rules, notifications etc., to be collected and arranged and published at intervals not exceeding two years. This was very useful.

**Shri Morarji Desai:** I have said we will publish a manual every year; we will go on amending it every year, and give the additions every year; if the corrections became too many, we will publish it again. It need not be here.

**Shri Bharat Ram:** It was in the old Act.

**Shri Morarji Desai:** It need not be here because even if a few days elapse in publishing it, you will hold us liable. We will issue a standing order.

**Shri Bharat Ram:** I would now like to thank you and all the Members on behalf of the Federation for listening to us so patiently, even though some of the points which we raised may not have had very much sense in them. But certainly you have heard our point of view, and we are hoping and we have the feeling that at least on some points we have been able to convince you that there was some sense in what we said, and we hope that the Act as it emerges will take care of some of the difficulties which we have placed before you.

**Shri Morarji Desai:** I thank you for agreeing that clause 14 could remain as it is.

**Chairman:** Thank you for the evidence.

*(The witnesses then withdrew)*

## II. THE ASSOCIATED CHAMBERS OF COMMERCE OF INDIA, CALCUTTA.

### Spokesmen:

1. Shri J. L. Puri,
2. Mr. J. H. Forman,
3. Mr. R. Von Leyden.

*(Witnesses were called in and they took their seats).*

**Chairman:** We have got your memorandum; if you want to add to it or supplement it, you may do so.

**Mr. Forman:** On behalf of the Associated Chambers of Commerce, I regret that our notes have been somewhat scrappy on account of shortness of time.

The Bill as it stands now, is without the rules and regulations. It is difficult to interpret it. Of course, we have to know what the rules and regulations will be. We sincerely trust that when they are published, sufficient opportunity will be given to the Chamber and the public, as a whole, to study and comment on them.

**Chairman:** That is always done. That is done after the Bill is passed. They will be placed before the Parliament. They cannot be published along with the Bill.

**Mr. Forman:** As we have stated in the preamble to our note, the Associated Chamber of Commerce feel that little notice has been given to the report of the Customs Reorganisation Committee, which, we thought, contained really sound advice, in a sense.

As a result of this new Bill, the customs will appear to be given considerably more judicial powers than they had in the past. The Associated Chambers of Commerce would like to suggest that provision should be made for the setting up of a Tribunal comprising of High Court Judges or members from the Board and the Finance Ministry and customs authorities to which we could easily have an appeal against the decisions which the customs authorities may take as a result of this Bill coming into law.

The Chamber appreciates that considerable effort has been put into the drafting of this Bill and that an endeavour has been made to have a more realistic approach to the problems of the importer and those who deal with customs.

We have been dealing with various special associations who have direct dealings with the customs authorities and we know what they feel. We also appreciate a reference to the GATT and the fact that every genuine effort has been made to try and find out what is happening in other parts of the world before this Bill was introduced.

What we are pointing out is not in any way a sort of endeavour to find out loopholes in the law. We are always mindful of our civic duties.

You have received a copy of the note of the Chamber on the various points. Obviously, there must have been notes from various other associations. Rather than go through each and every one of the points made in our note, I would like to lay emphasis on some of the more important ones and answer the number of points that might be raised.

First of all, I would like to refer to the Chamber's note on clause 14(1)(a). We think that the wording is a bit loose and can be tightened up. We sincerely trust that the authorities would agree with this.

My first point here is that the expression 'like goods' is a much too general term whereas goods of the like kind or quality would be far more clear. The example given in the Chamber's note will bear out this point.

The second point I would refer to is about clause 14(1)(b). The C. B. R. has had a number of cases in the past. In view of what has been said in our note, I have not very much to say now. We only feel that it is leading too far. We feel that the administration of the individual will have a bearing on it. There have been some cases of abuse in the past.

**Shri Bade:** I want to ask one question. You have said in your note that the provisions contained in 14(1)(b) are very vague and that it has not given an accurate basis of determining the normal price. I want to know what would be the correct definition of normal price. If I want to give a definition of 'normal price' in clause 2, the definition section, what should I put there?

**Mr. Forman:** I hope the Associated Chambers of Commerce would be averse to suggest it. What we are dealing with here is not so much a definition but a criticism of the nearest equivalent of such price, and the methods of ascertaining that price.

**Shri Bade:** Instead of 'the nearest ascertainable equivalent of such price' what should be the wording?

**Mr. Forman:** I think we may enlarge on that. For instance, officials at one part state that a particular item is worth Rs. 50 while officials at another part state that it is worth Rs. 100. These are the sort of situations we have in mind.

**Mr. Von Leyden:** The Chamber does not want to assume legislators' authorities for defining what they consider the right thing. It would be quite happy if any kind of definition is given in order to remove the uncertainty. Great difficulty is caused to the trade today as on the landing of goods the importer does not know how much duty he has got to pay. Now under the new Bill the definition is left to rules. The Chamber feels that the legislators should at least indicate in the Bill the methods on which the real value has to be assessed.

**Shri Dehejia:** You started by saying that you are very happy that in drafting the Bill note has been taken of the international ideas and you also referred to GATT. I wonder whether you are aware that they have also used the word 'like merchandise'. That definition has been arrived at by discussion among different countries. In a matter like this there should be uni-

formity of ideas between different countries because these are international transactions.

**Mr. Forman:** I entirely agree.

**Shri Dehejia:** Again, the United Kingdom is a party to the Brussels Convention which used exactly the same words. The GATT provision says that when the actual value is not ascertainable in accordance with subparagraph (b) the value for customs purposes should be based on the nearest ascertainable equivalent of such goods.

**Mr. Forman:** What you say about GATT is all very commendable but the note of the Chambers, I think, amply brings out our point in particular. May I quote the instance given there. All art silk goods, for instance, could be said to be like goods. But within the generic description there might be art silk articles of a different sort, quality, etc. each having its own normal price.

**Shri Dehejia:** I think the wording here is the correct interpretation of the words 'like merchandise' because 'like' means like in a number of respects.

**Mr. Forman:** The Chambers have suggested that the words 'goods of the like kind and quality' should be retained.

**Shri Dehejia:** 'Like' by itself conveys more. If you mention 'kind and quality' you are tied down to consider only two things. When you say 'like merchandise', there may be other qualities and other traits of the goods which may have to be considered in a given case. 'Like merchandise' is a much more expressive and much wider phrase than saying like 'kind and quality' if I may say so. That is why the GATT has used it.

**Shri Morarji Desai:** We will amplify it in the rules. If you can provide a better definition, we are prepared to consider it.

**Mr. Forman:** Thank you. The next point is about the real value clause 14(b).

**Shri Dehejia:** I have read out to you the GATT provision.

**Mr. Forman:** The next clause is 15 which refers to cargo overcarried and subsequently returned to the original port in which duty was assessed. We would be happy if accommodation can be made in the Bill to apply the original rate when the cargo is returned.

**Shri Morarji Desai:** What have you to suggest in clause 15?

**Shri Puri:** Our views given in our memorandum are based on our experience. We want a proviso to be added to clause 15. It very often happens that the new Finance Bill is placed before Parliament and the duty is increased. For example.

**Shri Morarji Desai:** That is, it has gone out and come back? But that is provided in another clause.

**Shri Puri:** No, Sir. For example, if there is a consignment consisting of 150 cases....

**Shri Morarji Desai:** It cannot be done. I do not think there is any possibility of changing it.

**Shri Puri:** I request you to give me an opportunity to explain the point in a moment. Now, once the goods have been discharged, the duty has been charged at the prevailing rate, and when the goods come back—they do come back....

**Shri Morarji Desai:** Why should it come back?

**Shri Puri:** Supposing out of 150 cases, 75 cases are discharged at Madras and the other 75 cases at Calcutta, in the meantime, the rate of duty has been increased or decreased.

**Shri Dehejia:** Are there different rates as between Calcutta and Madras?

**Shri Puri:** What I mean to say is, the time-lag is there.

**Shri Morarji Desai:** In the meantime, if the duty is decreased, we will charge you at the decreased rate.

**Shri Puri:** That provision has not been there in the Sea Customs Act.

**Shri Dehejia:** It is there.

**Shri Puri:** In practice, that has not been done.

**Shri Morarji Desai:** In practice you may say that the duty has not been decreased.

**Shri Dehejia:** Could you give one case where the duty in force on the date is not charged and where the higher duty is charged?

**Shri Puri:** There have been very few cases where the duty has been decreased, and where the duty has been on the increased rate, even the Government have asked the shipowners to pay saying, "you have over-carried the goods and in the meantime the duty has increased."

**Shri Morarji Desai:** You will have to pay for it then.

**Shri Puri:** Over-carriage is not something that can be controlled. It is beyond control.

**Shri Morarji Desai:** If it is not controlled, then it is your negligence.

**Shri Puri:** It amounts to a thousand rupees, sometimes.

**Shri Morarji Desai:** It may be a lakh of rupees. You have to pay. I do not think that for your negligence the Government is going to pay.

**Mr. Forman:** Then, I may refer to clause 23. Here, the new Bill has made a genuine effort to improve the position. But we would suggest that the remittance of duty should be extended to goods lost otherwise than by pilferage or destroyed either before unloading or in the course of unloading. The Chamber has given two cases or examples in this connection. One is, bagged cargo often spills in the holds during discharge through insufficiency of packing, etc. So, the quantity discharged is less as some of it goes on the other side.

**Shri Morarji Desai:** The duty has been limited. I do not know what you want. This clause is meant for that purpose. Please read clause 23 (1) and (2), both.

**Shri Bade:** He wants to remove the words "otherwise than by pilferage."

**Shri Morarji Desai:** That is what they are asking for, and that is what is done. That is provided here. I do not know what is not provided. Pilferage is in the other clause.

**Mr. Forman:** Well, if it is already covered in the Bill, we delete it and pass on to the next.

**Shri Morarji Desai:** It does cover it. The proviso says that the goods are to be destroyed by the owner. We say that the Government will destroy them at the expense of the owner, so that we will only charge the cost of it.

**Mr. Forman:** Now, I come to clause 28. We notice that in the Bill, with respect to this clause, the time-limit for claim has been removed. This, we feel, is unfair.

**Shri Morarji Desai:** Only for collusion why should the time-limit be kept? We want to make collusion to be punished eternally.

**Mr. Forman:** I commend it, but in the case of a collusion which happened 20 years ago, the question of keeping the records comes in.

**Shri Morarji Desai:** If it is proved, it should be liable. If it is not proved, no collusion will occur further. Collusion has first to be proved, and then it has to be disproved.

**Mr. Forman:** If there is a demand 20 years after, the company will have to keep the records.

**Shri Morarji Desai:** Unless it is proved, where is the necessity for disproving it?

**Mr. Forman:** It may first be the original company. Then, after 20 years, if the company is asked to pay for what has been raised, say, in 1933,....

**Shri Morarji Desai:** He will have to prove that.

**Mr. Forman:** The written statement is there.

**Shri Morarji Desai:** If it is acceptable, it will be accepted. You must pay for it. It will be chargeable. But it all depends upon whether the person who passed them will accept them. Then you can refute it. Supposing, a person comes under the influence of MRA, why should I not believe him?

**Mr. Forman:** In that case, the company will have a difficult time disproving it. Sometime that happens and, as you will see, we suggest that a time-limit of five years may be prescribed. You may fix a reasonable period to be applied.

**Dr. L. M. Singhvi:** I would like to know what would be considered a reasonable time to be prescribed under clause 28.

**Shri Morarji Desai:** Five years, as he says. They preserve the record for five years.

**Dr. L. M. Singhvi:** What is the basis for the suggestion?

**Shri Morarji Desai:** They say that they preserve the records for five years.

**Dr. L. M. Singhvi:** Is that the usual practice? In most trading firms, apart from income-tax purposes for which the period is much further than five years, what is the usual practice?

**Shri Morarji Desai:** In regard to income-tax, it can go for 16 years. Formerly, the period was indefinite. I have made it 16 years now. Otherwise, it was indefinite.

**Dr. L. M. Singhvi:** I suppose the records have to be preserved for the purpose of income-tax for at least 16 years. From that point of view, five years would not be a reasonable limit of time for keeping the records in this case.

**Mr. Forman:** Financial records and company records are two entirely different things.

**Shri Morarji Desai:** You will have to preserve the records for income-tax purposes. Otherwise, you are liable to be charged.

**Mr. Forman:** I had better be careful!

**Shri Morarji Desai:** You had better be careful!

**Dr. L. M. Singhvi:** For how long do you preserve your company records?

**Mr. Forman:** 16 years with effect from now!

**Mr. von Leyden:** There is a difference between company records—custom house records and other records—and the financial accounts which have to be kept now for income-tax purposes. If we have to keep on the documents connected with one single transaction which parties may require, then, large warehouses will have to be found in order to keep the documents. So, I beg for more than five years.

**Shri Morarji Desai:** No honest company has to fear anything. There is no danger of any honest company being charged after 20 years.

Will you be satisfied if we keep it at 10 years?

**Mr. Forman:** It will be something.

**Shri Morarji Desai:** Let us consider that.

**Shri Puri:** Next item is clause 30 which deals with delivery of import manifest or import report. Sub-clause (1) says that:

"The person-in-charge of a conveyance carrying imported goods shall, immediately after arrival thereof at a customs station, deliver to the proper officer, in the case of a vessel or aircraft an import manifest....."

I submit that it is not a practical proposition, particularly when ships are loaded in Indian ports, East Pakistan,

Rangoon, etc. As it is now, the manifest is delivered within 24 hours. That may be retained.

**Shri Dehejia:** What is the difficulty about 'immediately'?

**Shri Puri:** If the steamer arrives at 4 o'clock, how can the manifest be delivered immediately?

**Shri Dehejia:** 'Immediately' does not mean in the same breath.

**Shri Puri:** As it is, the customs officers will have the liberty to decide as they like. We want a uniform procedure and we submit that present section 53 in the Sea Customs Act may be retained.

**Shri Dehejia:** There also, it is a discretionary power.

**Shri Morarji Desai:** Sub-clause (b) says:

"If the proper officer is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof immediately after the arrival of the conveyance, he may accept it after such arrival."

**Shri Puri:** One officer may say it should be done with 1 day, another may say within two days and so on. We want a uniform procedure.

**Shri Morarji Desai:** If you want 24 hours to be provided, I shall certainly do so.

**Shri Dehejia:** It may suit the present witness to say 24 hours, but there are people in other places who have represented otherwise. I do not suppose the present witness speaks for all of them.

**Shri Morarji Desai:** I do not see what you lose if more time is given to some people.

**Shri Puri:** At least an assurance may be given that in the rules it will be provided. The difficulty is where the ships are loaded, say, from Vishakapatnam or Rangoon, the manifest may not arrive before the ships arrive. We

want, therefore, that there should be a uniform procedure. It may be provided that the manifest may be delivered within 24 working hours from the arrival of the ship, because the next day may be a holiday.

**Shri Morarji Desai:** We will see what is necessary to be done. This makes it a little bit less rigid.

**Shri Dehejia:** In the previous Act also, the power is discretionary.

**Shri Puri:** If it can be provided in the rules, I will be too glad.

**Shri Morarji Desai:** I do not see that there is any hardship; it only removes hardship.

**Shri Dehejia:** Some get so used to one thing that even a thing which is better may look bad.

**Shri Puri:** Certainly not; I beg to differ from you. It is not fair.

**Shri Morarji Desai:** There is nothing unfair in that; generally that is the practice.

**Shri Puri:** We only suggest that there may be a uniform procedure rather than leave it to the discretion of the officers.

**Shri Dehejia:** Uniformity in administration can best be brought about by supervision.

**Dr. L. M. Singhvi:** Does not the witness think that it is not necessarily to be provided in the Statute? If there is any difficulty, the department can easily take care of it. As it is, the circumstances are easier for them rather than onerous.

**Shri Morarji Desai:** He does not mind if it is provided in the rules. He has said so.

**Shri Puri:** My next submission is that in clauses 30(2) and 41(2), the words "to the best of his information, knowledge and belief" should be added.

**Dr. L. M. Singhvi:** He is always free to make a further declaration that it is to the best of his information, knowledge and belief.

**Shri Morarji Desai:** How can it be put down here. You can always say that the declaration is to the best of your information, knowledge and belief.

**Shri Puri:** All the Manifests are made from the Manifests which are received from the port of shipment.

**Shri Morarji Desai:** You have to take care to see that they are not wrong.

**Shri Puri:** That is done.

**Shri Morarji Desai:** That is enough. Then I do not think there is any danger.

**Shri Dehejia:** Sub-clause (3) says:

"If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented."

**Shri Puri:** That is something else. That is where marks and numbers may be wrong.

**Shri Morarji Desai:** If the officer is satisfied that there was no fraudulent intention, he may permit it to be amended.

**Mr. Forman:** It is not correct to add anything in writing on a printed declaration form.

**Shri Morarji Desai:** What you are going to say is truth. Sub-clause (3) provides that if the intention was not fraudulent then it can be amended. We cannot qualify truth like this. What about 41(2)?

**Shri Puri:** We would like to have a uniform procedure laid down.

**Shri Morarji Desai:** We are saying "minimum of three days and a maximum of seven days".

**Shri Puri:** That would be all right.

Then we come to clause 42(2)(c). We would humbly submit that as the shipping companies cannot submit all

shipping bills at the time of port clearance this clause should not be there. All this information is being given in the requirements under clause 41. How can we submit shipping bills? They are retained by the customs authorities. This is according to the represent practice. An Allow Order is given on the dock challan. It should not be a condition that the shipping companies must produce shipping bills or bills of export at the time of port clearance. The shipping bills are presented to the customs authorities by the exporters themselves. We do not come in the picture at all.

**Shri Morarji Desai:** Why should this be a condition on the shipping companies?

**Shri Abrol:** The normal procedure is that the shipping companies get the authority from the person concerned that such and such goods could be taken on board. Only after seeing that endorsement the carrier is allowed to take the goods on board. When the goods are put on the board the carrier takes the shipping bill. We only want him to give it back so that we may check it. It is only in the case of shipments ex-lighters that the shipping bills are not given and part order are given.

**Shri Puri:** The practice is that the shipping bills are presented to the customs officers in the docks by the shippers. Thereafter the Port Commissioners take the dock challan to the customs authorities who give the permit. The shipping companies do not take the shipping bills in their possession and, therefore, they are not in a position to present them.

**Shri Abrol:** I am afraid you are talking only about the ex-lighter shipments in Calcutta. We are providing for the normal shipments that are taking place in Bombay and Madras where goods are loaded from the shore.

**Shri Puri:** Even where goods are loaded from the shore shipping bills are not given to the shipping companies at Calcutta.

**Shri Abrol:** I am afraid you are talking only of Calcutta port.

**Shri Morarji Desai:** What happens at that port? This will apply to the Calcutta port also.

**Shri Abrol:** In that case the shipping bills will be with us.

**Shri Morarji Desai:** Why is it necessary to provide this here?

**Shri Abrol:** This is the authority for the carrier to take goods on board, otherwise they will not be allowed to take the goods on board. How is the carrier to know that some goods have been passed? Unless the authority is with him how can we check and make the levy?

**Shri Morarji Desai:** If the bills are not with him the proper officer will not ask him.

**Shri Puri:** The shipping bills are not submitted to the shipping companies at all. They are given to the customs. Allow Orders are given on the dock challan.

**Shri Morarji Desai:** Without the bill of export how can a ship be allowed to go?

**Shri Puri:** The shipping bills are kept with the customs officers. We do not take possession of the shipping bills at all. We just get an allow order on the basis of the dock challan.

**Shri Dehejia:** Kindly see clause 40 of the Bill which says:

"The person-in-charge of a conveyance shall not permit the loading at a customs station unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;"

**Shri Puri:** I quite agree that no cargo can be loaded unless and until a shipping bill has been passed by the Customs House. But according to the procedure the shipping bills are not presented to the shipping companies but they go to the Customs Officer and



to him the Port Commissioners approach for an allow order.

**Shri Dehejia:** Will the witness kindly read clause 40 which says:

"The person-in-charge of a conveyance shall not permit the loading at a customs station—

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export.... has been handed over to him...."

**Shri Morarji Desai:** Therefore he must take it from the exporter and hand it over. It is a new provision and you will have to adjust yourself to it. It is not an existing provision. You will have to take the shipping bill from the exporter; otherwise, you do not load it.

**Shri Puri:** If this is going to be a new procedure, we will undertake to produce the shipping bill along with the EGM. In Bombay shipping bills etc. are normally submitted with the EGM.

**Shri Morarji Desai:** This is a new procedure. Therefore there is no question of the normal procedure. When a new provision is made, it will have to be carried out.

**Shri Abrol:** The procedure at present is slightly different then what we have put in clause 40 which says that you will not take anything on board unless the shipping bill has been given to you.

**Shri Puri:** How do you expect me to produce 500 shipping bills on the day I get port clearance? I take port clearance from the Customs Collector 48 hours before the sailing and I am still loading cargo. At the time the ship is to sail the EGM can be given.

**Shri Morarji Desai:** There is no trouble, whether you give one bill or 500 bills. I do not see what difficulty is there in giving all the bills together.

**Shri Puri:** How can it be possible when no cargo can be loaded without proper shipping bills?

**Shri Morarji Desai:** That is what clause 40 provides, namely, that the bill must be given before a clearance can be given.

**Shri Puri:** We cannot give the bills at the time of port clearance because it is 48 hours before sailing and cargo is still being loaded.

**Shri Morarji Desai:** Why should it be given 48 hours earlier? It should be given before you go.

**Shri Abrol:** It is only prepared earlier. It is handed over to the ship after they have stopped taking any further cargo.

**Shri Puri:** Port clearance is always given earlier. If the ship is to sail, say, at 4 O'clock in the morning, how can you expect the customs station to be open at that time?

**Shri Dehejia:** It will not be handed over in the customs house itself and as the witness knows there are officers present at the time of the ship's sailing. I do not suppose the witness is as new as that.

**Shri Puri:** Is it the intention of the framers of this particular clause that customs clearance will be given by the Customs Officers on board the steamer before the ship sails?

**Shri Morarji Desai:** It will not be given on board the steamer but in the office. It should not be the duty of the Customs Officer to go on board the steamer and give it; it is your duty to take it from his office.

**Shri Abrol:** Just before you are wanting to sail you will go to the officers who is in charge of the wharf and he will give it to you.

**Shri Puri:** If that is the intention, certainly I will still like to record that there might yet be difficulties.

**Shri Morarji Desai:** If there are any difficulties, if this causes any delay in.

the ship leaving the port, we will certainly remove those difficulties. You can tell those difficulties to us.

*Clause 74(1)*

**Shri Puri:** The drawback on aviation fuel should be hundred per cent. and not 95 per cent. as is permitted by this particular clause. It is an international obligation of India to exempt duty on fuel uplifted on international aircraft.

**Shri Morarji Desai:** If that is the rule, you must provide for hundred per cent.

**Shri Anand:** We will make that.

**Shri Morarji Desai:** That particular provision will be made there.

*Clauses 86 and 87*

**Shri Puri:** It is humbly submitted that ships which are permitted to have stores ex bond at the various ports should also be permitted to consume those stores while they are within the port limits. The present procedure is that whatever has been taken ex bond on a steamer is not permitted to be consumed unless that steamer has sailed and has cleared off the Port limits. If this is done, it would be a further facility for the ship's officers and crew.

**Shri Abrol:** The facility will now be available to all foreign going vessels. The definition includes the period that the foreign-going vessel may spend in India provided that it only participates in foreign trade.

**Shri Puri:** From whatever bond the goods are taken at a particular port in Indian waters stores should be allowed to be consumed within the port itself. At present bond supplies are given to the ships but they are not allowed to consume any such goods until and unless they have cleared the Port limits.

**Shri Morarji Desai:** Clause 87 says:

"Any imported stores on board a vessel or aircraft (other than

stores to which section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft."

**Shri Puri:** This facility is being granted. I agree with you. But my reference is only to those stores which are taken ex-bond by steamers. They are not allowed to be consumed within the port itself.

**Shri Morarji Desai:** If they are not to pay duty on that, they cannot be allowed to consume that.

**Shri Puri:** Even if a ship is a foreign-going ship?

**Shri Morarji Desai:** Even then. If you take any new stores here, why should you consume them here?

**Shri Puri:** But they are being supplied ex-bond.

**Shri Morarji Desai:** You may consume other stores if you like. But on these stores duty will have to be paid if you want to consume them. If you want to take the stores, you can take them; but you should not consume those stores in this port because those stores are taken from this port. If a foreign-going ship purchases stores in this port, it must pay the duty.

**Shri Puri:** A foreign-going ship has been allowed to buy stores from bond, especially stores which have been kept without payment of duty and are supplied on board the steamer under the customs.

**Shri M. G. Abrol:** Evidently, the witness has not examined Section 88 which says as follows:

"The provisions of section 69 and Chapter X shall apply to stores (other than those to which section 90 applies) as they apply to other goods, subject to the modification that for the words "exported to any place outside" or the word "exported" wherever they occur, the words "taken on board any foreign-going vessel or aircraft as stores" shall be substituted."

The provisions of Section 69 will apply to stores also.

**Shri Dehejia:** The question is whether it is covered by the present Act or not.

**Shri Morarji Desai:** Clause 9 applies to Indian Navy only.

**Shri Dehejia:** This is with reference to Clauses 88 and 69.

**Shri Morarji Desai:** Why should not we bring it in one place?

**Shri Dehejia:** We can do it.

**Shri Morarji Desai:** The intention is to allow them. We will see that this is clarified.

**Shri Puri:** The ships which are actually coming from abroad but for only one particular voyage are allowed to trade on the Indian coast. They are the foreign ships and not the ships belonging to the Indian companies. We request that permission should also be given and suitable modifications may be made wherever this can be made in the chapter under stores for stores without payment of duty. For one reason or other they have permitted the ship only to trade on the Indian coast for just one single voyage only.

**Shri Morarji Desai:** Why should they have free consumption? They should pay the duty.

**Shri Puri:** The consumption should be without payment of duty.

**Shri Morarji Desai:** I don't think that is right. Foreign ships have a lot of advantage over our ships. I don't want to give anything more. (*Interruptions*). He is asking for one more privilege. Why should anybody not ask for more?

**Shri Puri:** I will explain it again. No foreign ship is allowed to ply without the prior permission of the Director-General of Shipping or the Ministry of Transport or Aviation, whichever Ministry controls it, of that country.

**Shri Morarji Desai:** They may allow.

**Shri Abrol:** The countries of Australia, Canada and U.S.A. are charging duty whenever there is coastal trade.

**Shri Puri:** I don't know. The ship has gone on only one single voyage under a specified licence from the Director of Shipping.

**Shri Morarji Desai:** One more concession. That is all.

**Shri Mahida:** Has the witness in mind any international convention which regulates such things? Is this done in England?

**Shri Puri:** In England this is done. They are going free of duty, if a ship of any other country is allowed under special circumstances to carry on coastal trade for one or two voyages. That is what I say.

**Shri Morarji Desai:** I don't think any ship of India will be allowed to do that. This concession should not be given.

**Mr. Forman:** I wish to say something referring to clause 105 read in conjunction with clause 110. It is our view that the officers should accept the responsibility also if they are going to accept these powers. They must be prepared to accept the responsibility too. Therefore, we have made a recommendation in our Memorandum as follows:

"All goods seized and all documents and things seized shall be in the charge of the Assistant Collector of Customs who shall be responsible for their safe custody".

**Shri Morarji Desai:** They should be responsible for safe custody.

**Mr. Forman:** Then we have suggested:

"The person from whose custody the goods, documents, or things are seized, or on whom an order is served under this section shall forthwith be informed in writing of the nature of the offence by

virtue of which the goods are believed to be liable to confiscation or to which the proceedings under this Act relate and he may forthwith apply to the Assistant Collector of Customs to decide whether there is a case to investigate."

"This is what we have suggested. Then we say:

"If the Collector of Customs shall thereupon decide that there is no case to investigate he shall cause the goods, documents or things to be immediately returned to the persons from whose custody they were seized, and shall cancel any order served on such person under this Act and if he shall decide that there is a case to investigate he shall direct proceedings to be commenced and a show-cause notice to be issued within such period not exceeding one month as he may deem fit and if proceedings are not commenced or a show-cause notice issued within such period he shall order the immediate return of the goods, documents or things and cancel any order served on such person".

"This is what we have stated in connection with clause 110 read in conjunction with clause 105.

**Shri Morarji Desai:** Wherefrom are you reading?

**Mr. Forman:** This is from our Memorandum. We wish to ensure that there is no hardship. That is our point.

**Shri Morarji Desai:** If there is abuse of power, we will punish the man.

**Mr. Forman:** There are some hardships.

**Shri Morarji Desai:** We will remove the hardship. Every officer has to do his duty. They are responsible to Government for that. Every officer has to do his duty. Otherwise, it will mean that no officer will do his duty. In all their transactions which they do, if the action is bonafide, they are all protected.

**Mr. Forman:** The Chamber has suggested that there should be a very thorough examination before this is done.

**Shri Morarji Desai:** When certain things are happening, when we find that foreign people are coming with gold etc., we cannot take any risk. How can anybody take any risk? Therefore, that must not happen. But if any officer behaves wrongly, then we will certainly deal with him. He will be removed from service. That will be a sufficient check. I do not think you need to be afraid. We will certainly deal with them rigorously.

**Mr. Forman:** That is right. If you are satisfied, it is all right.

*Clause 115—Confiscation of conveyances.*

Here again the Chamber feels that perhaps innocent persons may suffer. Smuggling may have been done without their knowledge. They may not have sufficient proof with them. Then, Sir, this clause is based on the situation which obtained in U.K. a couple of hundred years ago. There used to be smuggling. Actually one ship was seized.

**Shri Morarji Desai:** That is a different thing altogether. They were called pirates, not smugglers. That was a different thing. We are not going on that basis. We are going here on the basis of ships which have come here with gold and other things.

**Mr. Forman:** In many cases owners of the ships have been co-operating with the Government.

**Shri Morarji Desai:** Then we also help them, if they are co-operative.

**Shri Dehejia:** May I mention one thing. The owners of the ships may not know it, but what about the other officers of the ships and their employees?

**Mr. Forman:** I am not trying to condone smuggling.

**Shri Morarji Desai:** If we find that that has been done only by some person without the knowledge of the

officers of the ship, we will not do it. If they cannot prove that it was done without their knowledge, then we will have to forfeit the ship. Otherwise, they would not take very great care.

**Mr. Forman:** There was a recent case where a foreign ship had been confiscated and it cost them a lot.

**Shri Dehejia:** Do you think that in that ship a saloon panelling could have been removed and new panelling done without the knowledge of the officers of the ship?

**Shri Morarji Desai:** How could that have been done without the knowledge of the superior people? We have got to give most exemplary punishment. We have got to check them and make it impossible for these things to go on.

**Mr. Forman:** I am merely suggesting that innocent people should not be punished.

**Shri Morarji Desai:** That will be a matter of consideration afterwards, not in a law.

**Mr. Forman:** Anyhow, if I may say so, the Chamber has made this point.

**Shri Morarji Desai:** The Chamber must do it. I have no quarrel with the Chamber.

**Shri Puri:** These ships have got so many cavities and if in a small place somebody hid a diamond or something else, the owner of the ship who is ten thousand miles away is punished.

**Shri Desai:** It is not the question of one diamond. We can understand that. It is large scale smuggling, that one has to think of. Do not think that Government is going to deal with people so harshly without any reason. That would not be done. Gold worth crores of rupees is smuggled. It cannot go on like that.

Any other point? We have already given you more than an hour.

**Mr. Forman:** Only one or two points more.

**Shri Morarji Desai:** At the beginning you said you had only two or three points. Now it is lengthening to more points.

**Shri Puri:** Clause 116. In the original Act, it was provided that if any package is shortlanded, the penalty would be twice the amount of duty and where the duty cannot be assessed, the penalty will be Rs. 500 per package. That safeguard has unfortunately been removed.

**Shri Morarji Desai:** We do not want to provide safeguards for these things.

**Shri Puri:** Are we to understand that the penalty will be charged on the basis of actual duty or it will be charged on an *ad hoc* basis? I am asking this because unfortunately at present the Customs officers are charging penalty upto the tune of Rs. 10,000 per package.

**Shri Morarji Desai:** I would tell them to charge even Rs. 20,000 even if it is the value of Rs. 500. That is not on the actual value of a particular package. It is only that particular package which is found. Many other packages may have gone without anybody's notice. The punishment should be very very prohibitive.

**Shri Puri:** I agree with you. But where the duty cannot be assessed, there must be a safeguard that it should be so much per package. Would you suggest that it should be left to the discretion of the Customs authorities?

**Shri Morarji Desai:** As it is here. The amount is mentioned.

**Shri Puri:** I want to know what will happen where the duty cannot be assessed.

**Shri Morarji Desai:** It can be assessed.

**Shri Puri:** What about the cases where the duty cannot be assessed?

**Shri Morarji Desai:** Why can it not be assessed?

**Shri Puri:** Then it is all right. It should not be done on an ad hoc basis. That is my submission.

**Shri Morarji Desai:** If the duty cannot be assessed, then no fine can be levied.

**Mr. Forman:** Clause 140—Offences by companies.

Here I would respectfully submit that our responsibility here should be the same as it obtains under the Companies Act. Sub-clause (1) says:

“...responsible to the Company for the conduct of business of the company....”;

and sub-clause (2) says:

“...attributable to any negligence on the part of any director, manager, secretary or other officer of the company....”.

**Shri Morarji Desai:** Same thing is there in sub-clause (2). This is the same thing. There is no difference.

**Mr. Forman:** Clause 147—this relates to the responsibility of the importer vis-a-vis the agent. I may say that importers are not in collusion with dishonest agents.

**Shri Morarji Desai:** Agents say that they are not in collusion with dishonest importers. That is what the agent said who came just before you. What am I to do? We will deal with persons who are dishonest. That is all we are going to do. Unfortunately, any side being dishonest makes my officers dishonest. That is my difficulty.

I think, that is all.

**Mr. Forman:** We thank you very much.

**Shri Puri:** We are grateful to you for giving us a very patient hearing. Thank you.

**Chairman:** Thank you.

*(The witnesses then withdrew)*

### III. THE BOMBAY CUSTOM HOUSE CLEARING AGENTS' ASSOCIATION, BOMBAY.

**Spokesmen:**

1. Shri K. D. Pathak.

2. Shri M. T. Bandivdekar.

*(Witnesses were called in and they took their seats).*

**Chairman:** We have got your memorandum which has been circulated to the Members of the Committee. If you have got anything further to add, you may do so.

**Shri Pathak:** We shall first take up clause 13. We have said that the importer should not be made liable to pay duty on pilfered goods, because after unloading and before clearance the goods are lying either in the custody of the Customs or the Port Commissioners, in major ports, or it may be in the custody of the steamer agents or the State Government officers at minor ports. We have said that since the importer has no control over the goods after they are unloaded and before clearance, he should not be made liable to pay the duty on them. When a vessel which brings the cargo comes, it cannot discharge it, or even berth at any other places except the one nominated by the Customs. The vessel has to come at the place nominated by the Customs. It has to file a manifest immediately on arrival with the Customs; it has to discharge cargo under the supervision of the Customs and the cargo would be delivered to the person nominated by the customs and not the importer. So right from the time the cargo is received, it is in the custody of persons other than the importer and the importer has absolutely no control over the goods. When the cargo is lying in the custody of a person other than the importer over which he has no control, to say that he has to pay the duty even on pilfered goods, is not fair.

**Chairman:** This point has been urged by every witness. It has to be considered.

**Shri Pathak:** We do not know what the others have said. If the Committee thinks that it should not be prolonged, I shall go to the next point.

**Mr. Chairman:** The Committee will consider it.

**Shri B. R. Bhagat:** We have to consider where the goods are consumed. Moreover the bulk of the cargo is insured.

**Shri Pathak:** The goods are definitely consumed, but it goes into somebody else's hands, except the importer. To hold the importer liable to pay the duty is not correct, according to us.

**Shri B. R. Bhagat:** The point of collusion is there. It has to be taken note of.

**Shri Pathak:** That has to be established.

**Shri Dehejia:** There are some goods which can be used by certain parties only. There may be part of a machine which can be used only by an assembler of machines. There are so many factors to be considered.

**Shri Pathak:** Can it be said definitely that it has gone into the hands of the importer.

**Chairman:** This is a point which has been made by everybody and all aspects of it will be considered. You may rest assured that we shall give the fullest consideration to this matter.

**Shri Shankaraiya:** The Clearing Agents will be knowing the whole thing with regard to the removal of the goods. Can they give any information or throw some light as to how this pilferage takes place and how it can be prevented?

**Shri Bandivdekar:** The position in the Bombay Port particularly is that the goods are landed and a manifest is submitted to the Customs and the Port Trust. From the Customs it is not possible for the people to know

anything. But the copy that is submitted to the Port Trust goes into various hands and those who want to take unfair advantage of it will know what goods are received by a particular steamer and landed from that ship. From there they can find the marks and numbers of cases—whether it is ball-bearing goods or cycle chains and so on. Some control or some sort of machinery has to be evolved there, so that the information that goes into the hands of the Port authorities can remain confidential and may not be misused.

**Shri B. R. Bhagat:** Only those goods which are not cleared quickly and are lying there for a period are generally pilfered. It is the responsibility of the clearing agents also to clear them speedily. They lie in the dock for a number of days. So they have also some responsibility in this matter.

**Shri Bandivdekar:** The clearing agents have no information about these. They have no access to the manifest. The manifest goes into the hands of some authorities, and they know the entire thing. From there it is possible for others to know.

**Shri Pathak:** You have mentioned about speedy clearance.

**Shri B. R. Bhagat:** Pilferage takes place only because there is no quick clearance and the goods are lying there.

**Shri Dehejia:** Therefore, speedy clearance will prevent pilferage.

**Shri Pathak:** I have to say something on that, because it is not in the interests either of the importer or the clearing agent to retain the goods in the Port Trust area if they can clear them speedily. But there are certain hurdles regarding detention due to the Customs procedure or the ITC formalities. And this procedure sometimes takes a very long time and the goods lie there pending the finalisation of the Customs documents. It is not that they are purposely using the Port Trust sheds as warehouses or godowns.

**Shri Dehejia:** Would it be true in all cases?

**Shri Pathak:** I should think so.

**Shri Dehejia:** There are a number of causes known to you or to the people associated with the Customs operations: there are a variety of reasons for which the goods remain uncleared.

**Shri Pathak:** The variety of reasons is only so far as the Customs and ITC procedure are concerned. There is no other reason why they should lie in the docks.

**Shri Dehejia:** People who want to smuggle can have different consignments with the same marks. When one is unloaded it may have the same marks as another, and while clearance may be obtained for the first one they wait and actually clear the second.

**Shri Pathak:** It may be that in certain cases there may be a collusion between the importer and the pilferers, and the port authorities. But that is not true in all cases.

**Shri Dehejia:** That is just the point I put to you, that there can be exceptional cases where the importer also is responsible. The ownership remains with the importer all the time even though the custody is with the Port Trust or the port authorities. When goods are lost from the importer's ownership, though they may be in the custody of somebody else—maybe his agent or friend—he suffers the loss.

**Shri Morarka:** The loss is all right. Here he pays duty over and above that.

**Shri Pathak:** An exception does not prove the rule. In exceptional cases I do admit that it may be so, but not in all cases.

**Shri Dehejia:** There can be a provision that duty will be paid immediately on presentation of the bill of entry. And then the goods are lost. What will happen? We do not have it because that will cause hardship. If the duty is required to be paid along

with the bill of entry, what would happen? Nothing.

**Shri Pathak:** Then the Customs should refund the duty.

**Chairman:** This is only to provide for such exceptional cases. But we will consider all this.

**Shri Dehejia:** We have undertaken to consider all the different combinations of circumstances that may arise.

**Chairman:** You may take up only the important points. I think you are mostly concerned with clause 147.

**Shri Pathak:** Yes, Sir, clauses 147 and 28.

**Chairman:** Instead of going into all the general provisions I suggest you refer to such clauses as apply to you in your capacity as clearing agents.

**Shri Pathak:** Very well, Sir. I will take up clause 147 read with clause 28.

Under clause 147(3) the Custom House Agents are deemed owners of the goods because they clear on behalf of the importers. Before I proceed with this point I think I would not be wrong if I give a background of the clearing agents' trade. We have been given a licence by the Customs after examination of all the proofs and we have been authorised to process the documents with the Customs. By virtue of our licence we have been authorised to clear the consignments on behalf of the importers. The importer comes to the clearing agent and says, "I have got these goods, please clear these goods." We take the documents, present the bill of entry and process it through the Customs, get the goods cleared and hand them over to the importer.

The moment the goods are handed over to the importer the connection or the relation between the clearing agent and the importer ceases. According to the code of conduct immediately the goods are cleared we have settled his accounts and squared up everything, and the moment this is



done the relationship between the clearing agent and the importer is over. Because, the importer is not bound to give his subsequent consignment to the same clearing agent. He can give it to anybody. He may give it to the same man or to anybody else. He is absolutely free.

So this is a case of casual employment. It is not a permanent agency as between the importer and the clearing agent, because he is concerned only with the particular consignment, and the clearing agent has not been given a general lien on their goods. Suppose any money is due to the clearing agent after that from the importer, he cannot detain his subsequent consignment or anything. The moment his accounts are squared up, the relation between the clearing agent and the importer ceases.

**Chairman:** What is it you want to be done?

**Shri Pathak:** In clause 147(3) a liability is being created that the moment we clear the goods on behalf of the importer we become deemed owners of the goods, and whatever liabilities there are the same attach to the clearing agents.

**Chairman:** For that particular consignment of goods your liability is there for whatever acts of omissions and commissions there are.

**Shri Pathak:** The penalty on the importer, even the imprisonment, attaches to the clearing agent? Whatever the liability of the importer, that liability has been attached to the clearing agent only because he has cleared that particular consignment. As I told you, once the consignment is cleared and the goods are delivered to the importer, there is nothing in the hands of the clearing agents if subsequently, a liability has been created by the Customs.

**Chairman:** Subsequent liability only as regards that particular consignment.

**Shri Dehejia:** Suppose there is a mis-statement?

**Chairman:** Simply because you have handed over, you cannot escape.

**Shri Pathak:** Suppose the mis-statement is on the part of the importer. After the goods have been delivered, after the relationship between the clearing agent and the importer ceases, the importer will say, I am not going to pay anything, let the clearing agent pay.

**Shri Dehejia:** May I put it this way? Liability arises out of a thing done while your contract lasted. These things are done while you are acting as the agent. A declaration is given suppressing certain things. May be by the importer, may be by the clearing agent. We are not fixing the responsibility. That may come to light subsequently. The fact that he has ceased to be your customer does not mean that the action has ceased to be yours or of your customer at the relevant time. . .

**Shri Pathak:** That is not the point.

**Shri Dehejia:** I realise what you say that you have no hold on the customer subsequently. That is quite true. But, these things have occurred when you had the relationship of customer and agent.

**Shri Pathak:** Actually, the point is, we do not act as the agent of the importer. We clear the consignments by virtue of our profession, holding a licence of the Customs House.

**Shri Dehejia:** Licence as clearing agent. Whose agent?

**Shri Pathak:** Customs House.

**Shri Dehejia:** They have no agents. They have nothing to do. Kindly consider the basic point. You are appointed agent by the importer. The Customs recognise you. You do not become an agent of the Customs. You are an agent of the importer. Can there be any doubt on that?

**Shri Bandivdekar:** This provision is there already in the previous Act. The Customs authorities authorise the Customs house agents. Certain rules have been prescribed. We sign the bill of entry, we process it, we pay the duty, we deliver the goods. After that, we have to hand over all the documents to the importer. There is nothing with us. If some questions are raised at that time, we can say what is the correct position. Actually, after a year or two, it will be impossible for us without the documents to point out whether it was a mis-statement or a collusion. Because, by that time, the invoice, the bill of lading, duty bill, all the documents are returned to the importer. Under that section, there are rules which enjoin on us that we have to give a factual account to the importer. If we want to keep a deposit from the importer for whom we clear, that also we cannot do. The result is, merely because we have signed a bill of entry for the sake of Rs. 5 or Rs. 10 per case—these are the charges in Bombay—we take responsibility for a very huge amount. Clause 28 is coupled with clause 147. That clause says that if there is collusion or mis-statement, notice can be given for an unlimited time for a number of years. Actually, the position is, all those documents we cannot keep with ourselves. How can we meet the demand? That is the difficulty.

**Shri Dehejia:** It is not as if only the agents are being held liable. The liability is fixed on both the importer as well as the clearing agent. In quite a number of cases, to the Customs authorities, the importer may be nothing more than a name. He would be known to you. Somebody may have signed; he must have taken instructions, so that he is known to you. He is not known to the Customs at all. The Customs know ABC Co. They may not know whether ABC Co. exists; the clearing agent knows.

**Shri Bandivdekar:** Actually the position is, the documents are received through banks for large number of consignments which are consigned to

up-country importers. In such cases the clearing agent does not know who is the importer. Only through correspondence through banks these things come. Ultimately, if this responsibility is to be fastened on the clearing agents, we will have to ask the importer or the bank to sign the bill of entry. That will be impossible. For example, a bank in Delhi cannot sign a bill of entry. We have to send the bill of entry forms to Delhi to get them signed. Expeditious clearance will not be possible.

**Shri Dehejia:** Bill of entry forms are available.

**Shri Bandivdekar:** Forms are available. These forms have to be signed. At the present moment, except signing bills of entries, while processing, we have to make a number of declarations.

**Shri Morarka:** May I ask, clause 147(3) is not a new provision; it is an already existing provision.

**Shri B. R. Bhagat:** Formerly it was section 4. I think it was challenged and it went up to the Supreme Court. The Supreme Court decided that this provision is not improper. It is quite a proper provision. The principle of the equity of it has been decided by the Supreme Court. So far as practicability is concerned, we do not know the importer. You act as agent. You take all the responsibility for any mis-statement. It is not as if it is absolute responsibility in the sense that you will be charged for anything. It is a single transaction. If you take care to see that there is no mistake, if you scrutinise carefully, if you take care to see that there is no mis-statement or under-valuation and that all the statements are truthful, nothing will happen. No liability will come to you. I do not think even from the equity or practicability points of view, there is any objection.

**Shri Pathak:** If I have read the judgment of the Supreme Court rightly, I do not think they have considered the propriety of section 4. They have said that since section 4 is there,

according to section 4, the clearing agents are responsible. They have not commented anything on the propriety or impropriety of section 4.

**Shri Morarka:** Apart from the question that the hon. Deputy Minister put to you, may I know, in your experience, in actual practice, have clearing agents ever been made responsible for defaults committed like the one contemplated here? Has the clearing agent suffered any loss and if so, in how many cases? Or, are you discussing theoretically?

**Shri Bandivdekar:** In one case, I know, a cess charge was recovered to the tune of Rs. 32,000 from the clearing agent. The clearing agent was a big man.

**Shri Morarka:** One case in 80 years.

**Shri Bandivdekar:** There were so many cases. That was a big case.

**Chairman:** Just as you are trying to shift responsibility, they may also try.

**Shri B. R. Bhagat:** Neither you nor the importer should be responsible: what do you suggest?

**Shri Bandivdekar:** The procedure has become so complicated. There is smuggling as it is said. Actually, in the case of semi-finished goods also mostly machinery, there are complications. While dealing with all these complications, if the clearing agents are held responsible for anything that is wrong, really, it becomes difficult.

**Chairman:** The section says, the the clearing agent, the importer, owner, all of them will be responsible. You prove who is responsible. You can certainly safeguard your interests.

**Shri Bade:** Clause 147 only says that if an agent does something, liability will go to the importer or owner.

**Shri Bandivdekar:** There is sub-clause (3).

**Shri Bade:** The importer will be responsible for that.

**Shri Pathak:** What about 147(3).

**Chairman:** You can prove that such and such person is the owner or importer.

**Shri Bandivdekar:** Our difficulty is that if the liability comes later on, we have no papers.

**Shri Ramanathan Chettiar:** Keep copies.

**Shri Bandivdekar:** It is difficult to keep copies of invoices etc.

**Shri Raman Chettiar:** You can talk to the importer about it.

**Chairman:** You can show that you are not responsible.

**Shri Himatsingka:** This provision is already there.

**Shri Pathak:** We have protested against this even before.

**Shri Bandivdekar:** We have come before the framers to plead that some relief should be given.

**Shri B. R. Bhagat:** Apart from apprehended fear, is there any actual case of hardship?

**Shri Bandivdekar:** Yes.

**Chairman:** Only one.

**Shri Prabhat Kar:** Even in that case, what was the time-lag?

**Shri Bandivdekar:** We are in existence as an association for some years. We have not been keeping any record. At that time, these were also negligible. But during the last few years, the rates of duty have increased considerably on some items. It is even 600 per cent.

**Shri B. R. Bhagat:** You will appreciate that we cannot always realise duty from the importer. So we can realise it only from the clearing agent.

**Shri Bandivdekar:** Formerly, there was no provision while taking a bond from the clearing agent. Now that provision has been made to the effect that if the amount has to be realis-

ed, it can be appropriated from the deposit amount of the clearing agent.

**Chairman:** If there are cases of harassment, you can go up in appeal. Have you taken up any such cases in appeal?

**Shri Bandivdekar:** This has recently been introduced. Formerly while giving the bond, this was not there. This new provision was introduced only a couple of years ago.

**Shri Pathak:** Our prayer is only this, that we should be treated in the same category as chartered accountants or lawyers, and this liability should not be imposed on us.

**Shri B. R. Bhagat:** Do you not think that the combined effect of (2) and (3) as they are worded is to make you less liable than before?

**Shri Pathak:** (3) is only a repetition of the original section 4. (2) is an addition.

**Shri B. R. Bhagat:** It is less onerous.

**Shri Pathak:** We do not want to have any liability on this account.

**Shri Bandivdekar:** The clearing agents are not even paid the amount of duty by the importer. That is the position.

**Shri Narendra Singh Mahida:** You should change your designation from 'clearing agents' to something else.

**Shri Pathak:** We agree that the clearing agent should be liable for any misrepresentation or negligence on his part under section 132. But so far as the other liabilities are concerned which arise on account of the importers or the customs, he should not be made responsible for them.

**Shri B. R. Bhagat:** What are the faults of the importer, which you would not know?

**Shri Pathak:** We go by the documents. We have no access to their books. The importer may be in Ludhiana or Amritsar. We only go on the basis of documents given to us at the port. Nobody will allow us access to their books.

**Shri Bandivdekar:** If the customs authorities rigorously scrutinise the documents, we have absolutely no objection, because that is in our favour. But what happens so often is that the importer comes in a hurry and the customs people also pass them because the firm may be of good standing. Ultimately when the liability comes, the firm may not be in existence.

Then if the goods are detained by the customs, there is no provision either in the existing Act or in the Bill for issue of detention certificates. We suggest the inclusion of a clause after clause 144 to this effect.

**Shri B. R. Bhagat:** Who gives such certificates?

**Shri Bandivdekar:** The customs.

**Shri Dehejia:** I wonder whether such a provision can be inserted in this Bill. It is within the discretion of the Port Trust to accept it or not. In matters of procedure like this, this Act cannot bind them. It is beyond the purpose of this legislation.

*(The witnesses then withdrew)*

*The Committee then adjourned.*

**[SELECT COMMITTEE ON THE CUSTOMS BILL, 1962**

**MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL,  
1962**

*Thursday, the 2nd August, 1962 at 09.30 hours.*

**PRESENT**

**Shri S. V. Krishnamoorthy Rao—Chairman.**

**MEMBERS**

- |                                   |                                     |
|-----------------------------------|-------------------------------------|
| 2. Shri Ramchandra Vithal Bade.   | 13. Shri Shankarrao Shantaram More. |
| 3. Shri R. Ramanathan Chettiar.   | 14. Shrimati Savitri Nigam.         |
| 4. Shri N. T. Das.                | 15. Shri Prabhat Kar.               |
| 5. Shri Morarji Desai.            | 16. Shri A. V. Raghavan.            |
| 6. Shri B. D. Deshmukh.           | 17. Shri Shivram Rango Rane.        |
| 7. Shri J. N. Hazarika.           | 18. Shri R. V. Reddiar.             |
| 8. Shri Prabhu Dayal Himatsingka. | 19. Shri M. Shankaraiya.            |
| 9. Shri Hari Vishnu Kamath.       | 20. Dr. L. M. Singhvi.              |
| 10. Shri Narendrasingh Mahida.    | 21. Shri Sumat Prasad.              |
| 11. Shri Bakar Ali Mirza.         | 22. Shri Bali Ram Bhagat. }         |
| 12. Shri R. R. Morarka.           |                                     |

**DRAFTSMEN**

1. Shri G. S. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

**REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS**

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

**SECRETARIAT**

**Shri A. L. Rai—Deputy Secretary.**

**WITNESSES EXAMINED**

**I. THE ALL-INDIA MANUFACTURERS' ORGANISATION, BOMBAY**

1. Shri Prabhu V. Mehta.
2. Shri Hans Raj Gupta.
3. Shri D. M. Desai.

## II. THE BOMBAY BULLION ASSOCIATION LIMITED, BOMBAY

- |                               |                            |
|-------------------------------|----------------------------|
| 1. Shri Chandulal Kasturchand | 4. Shri Chimanlal C. Shah  |
| 2. Shri Mangulal Trikamlal    | 5. Shri P. Gopalakrishniah |
| 3. Shri Amratlal Sonawala     | 6. Shri Jayendra Mehta     |

## III. THE MADRAS JEWELLERS' AND DIAMOND MERCHANTS' ASSOCIATION, MADRAS

- |                         |                            |
|-------------------------|----------------------------|
| 1. Shri V. Pandurangiah | 3. Shri P. Gopalakrishniah |
| 2. Shri Harendra Mehta  | 4. Shri Kanayalal Mehta    |

### I. ALL-INDIA MANUFACTURERS' ORGANIZATION, BOMBAY

#### Spokesmen:

1. Shri Prabhu V. Mehta
2. Shri Hans Raj Gupta
3. Shri D. M. Desai.

*(Witnesses were called in and they took their seats.)*

**Chairman:** We have got your memorandum, which has been circulated to the Members. If you want to supplement it, you may do so.

**Shri Mehta:** With your kind permission, we may be allowed to refer to several clauses which we have not touched in our memorandum. Particularly, in clause 11(2), among the purposes mentioned is:

“(p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;”

We feel that this purpose is likely to take away the basic or fundamental rights of the people to carry on lawful trade, because the Government might, by a notification, say that in certain commodities no private citizen of India might trade, because elsewhere sufficient power is given to Government to issue a notification for purposes of security, maintenance of public order and standards of decency, morality etc. Normally such purposes are likely to be achieved even if this sub-clause (p.) is excluded. That is our first submission.

**Shri Morarji Desai:** You can go to a court of law if it is a case of fundamental right.

**Shri Mehta:** We do not wish to do that.

**Shri Morarji Desai:** I think you are totally wrong when you say that it is against fundamental rights, because it is being done even now. It is not a new thing which is being done. According to this nobody is going to be prohibited. In some cases, imports and exports have to be prohibited. How can you allow the two things together? If no citizen of India is allowed to import a particular commodity except the State Trading Corporation, that has got to be said. That is all that is done. So also, only licensed importers are allowed, unlicensed importers are not allowed. What is the meaning of saying fundamental right? Should only a few people be given monopoly?

**Shri Mehta:** I did not refer to fundamental right in a legal sense. I must apologise.

**Shri Morarji Desai:** You are entitled to say whatever you want. You need not apologise at all. We are only trying to discuss.

**Shri Mehta:** Our second submission is in regard to clause 13 which says that if goods are lost due to pilferage, the importer has to pay the duty on such goods. This has to be read with clause 23 where the Collector has been given powers of remission of duty in case goods are lost otherwise

than by pilferage etc. Pilferage is so much rampant and so much on the increase at the ports, port trust premises, warehouses etc., that the importer loses—I am speaking on behalf of the manufacturers, we are more concerned with them—raw materials and components out of the very meagre quotas available to him. On account of it, production suffers, and on top of it he has also to pay duty on such pilfered goods. The goods are not in our possession. They are in the possession of the customs or port trust, and if there is a loss due to pilferage, why should we be penalised twice? So, we suggest that clause 23 might also include remission of duty in case of pilferage and clause 13 may be deleted.

Coming to Clause 14, we fear that the term "normal price" is likely to be misunderstood, particularly when it is translated in relation to the term, "the seller and the buyer have no interest in the business of each other". Speaking as manufacturers, there are many technical collaborations with foreign firms, who supply components etc., according to their own designs. Would it be construed by clause 14(1) (a) that the technical collaboration is a business relation when the import takes place? If so, almost all the cases will fall under (b) instead of (a). The term "where the seller and the buyer have no interest in the business of each other" has to be more specifically explained. Relations such as sole selling agents, distributors, representatives or branches might probably be construed as business relation, but technical collaboration may not be so construed.

**Shri Morarji Desai:** What is your alternative suggestion?

**Shri Mehta:** My suggestion is that in the case of a dispute about the normal price, the customs might accept a certificate from a recognised or well-known and established Chamber of Commerce in the exporting country that these are the normal fair prices of these articles exported to your

country. That certificate should be considered valid, and customs may accept it for purpose of customs duty.

**Shri Mehta:** Then, with regard to clause 18, provisional assessment of duty, we have a modest submission to make. That is, instead of exactly twice the amount of the excess duty, it might be said, 'not exceeding twice the amount' so that a certain discretion might be given to the officer-in-charge, if he considers that he has to get a deposit of a lesser amount in a particular case.

About clause 20(1)(a), speaking as manufacturers, we have difficulties in that particular clause. It has not been mentioned in our memorandum. One is the satisfaction of the Assistant Collector of Customs, if the goods exported have been re-imported. That satisfaction is extremely difficult. Suppose, we send a consignment of 400 or 500 pieces and 4 or 5 pieces come back, it will be very difficult to prove that these 4 or 5 pieces are not of that particular consignment.

I may cite an example. One of our members had sent a lock to a bank in Ceylon along with other security furniture. They found it defective and sent it back to India for repairs. It took exactly 4 months for us to get that particular lock through the customs because of the difficulty in identification of the particular lock having been exported. A long procedure had to be gone through. Because of this, the bank in Ceylon got fed up with it; and to avoid this difficulty which might happen again, they placed an order in England. We lost our business.

The same thing happens in the case of goods sent for exhibitions. When they come back, the customs take the view, 'How can you prove that these are the same goods that were sent to the exhibition and which have come back? So, our submission is that whenever the Collector of Customs finds it difficult to satisfy himself that the articles in question are

the same articles which were exported and are re-imported, they might be subject to a bond procedure so that no time lag is there between the replacement or repair of the thing and the satisfaction of the Collector of Customs. Because we are exporting large quantities of manufactured items, we have to consider this from that point of view.

**Shri Morarji Desai:** You are referring to goods which are re-exported after they have come back. But what happens to goods which cannot be re-exported afterwards?

**Shri Mehta:** If they are rejected goods, then the Collector's satisfaction will have to be there. We have no objection to that.

**Shri Dehejia:** You may be aware that the bond procedure is available not only for goods which are re-imported and exported but also for goods which are just imported. So, what exists in the Bill is much wider than what you suggest.

**Shri Mehta:** I thought that when this Bill comes into force the bond procedure might be discontinued.

**Shri Morarji Desai:** But where is this bonding arrangement?

**Shri Mehta:** That is in a separate clause.

**Shri Morarji Desai:** If it applies to this then you are satisfied?

**Shri Mehta:** If we are assured that it applies, we are satisfied.

**Shri Bade:** They have not given notes regarding clause 20(1).

**Shri Mehta:** I said so.

**Shri Bade:** What is the amendment you want in this clause? I cannot understand that.

**Shri Mehta:** What we want to say is that the bond procedure should apply to goods which have been once exported and which have come back for repairs or replacements etc. In these cases, identification is the real

problem and the Collector of Customs has to be satisfied that these are the goods that were exported and have come back.

**Shri Bade:** In clause 20(1) it is already given.

**Shri Mehta:** It is said, 'to the satisfaction of the Assistant Collector of Customs'. That satisfaction is really very difficult.

**Shri Bade:** Then, what is the procedure you suggest?

**Shri Mehta:** That is why I am suggesting the bond procedure.

**Chairman:** It is there in clauses 60 and 61; please read 60.

**Shri Mehta:** Our understanding is that that does not include this. The operation procedure should be available for every factory because we cannot repair the things in the bonded warehouse. Let me explain myself.

Suppose we have exported a machine-tool; and a complicated part came back for repairs. It might have to go through a process of several stages in the factory and the whole factory will have to become a bonded warehouse. It is not possible.

**Shri Morarji Desai:** It is impossible to do so. All your work will stop. You have to send a new part. You cannot send that part back. That is all that could happen in that case. It is not possible to undertake that kind of arrangement.

**Shri Desai:** An example of a lock had been given by Shri Mehta. The lock should have been repaired in the factory and a bond or a guarantee from the manufacturer could have been taken.

**Shri Morarji Desai:** What do you lose by sending a new part? You can repair the other one and keep it for your own purpose.

**Shri Mehta:** There may be a special specification.



**Shri Morarji Desai:** You can send a new part. I do not understand the difficulty. Why should you need the system of a bonded warehouse and all that?

**Shri Desai:** It is not always that the goods are made in accordance with the specifications and requirements of our own country. If we have to manufacture a part to meet the specifications of either Egypt or Iran or Iraq, then, that part will be useful only in that country. If I am called upon to manufacture a new part rather than repair the defective one, which can sell only in Iran or Iraq, then it will mean additional cost and loss to me.

**Shri Morarji Desai:** You can export the same thing again.

**Shri Desai:** Provided another equipment is sold.

**Shri Morarji Desai:** When it comes back, the duty, if any, will have been refunded. When you send it again, you pay the duty, if it is to be paid. I do not see where the objection lies.

**Shri Desai:** The problem is about the delay in giving satisfaction.

**Shri Morarji Desai:** That is a different thing altogether. That has got no relation to this. That is a matter for proper arrangement. This does not solve your difficulty. If there is delay in giving satisfaction, that is an arrangement that has got to be made. I do not know why it takes so much time. Unnecessary time is taken for nothing. Wrong enquiries are made when no enquiries are to be made; and no enquiries are made when they have to be made. That is a bad thing; that should not be done.

**Shri Meh'a:** Thank you very much.

**Shri Bade:** How can there be the satisfaction of the proper officer by giving the bond?

**Shri Morarji Desai:** Where is the necessity for satisfaction? Nobody is going to get two parts unless it be from the same consignment. Who is

going to import two parts and get a refund? That can very easily be satisfied. I do not think it will take long time.

**Shri Desai:** It does take a long time.

**Shri Morarji Desai:** I do not think it will be difficult to arrange this. Satisfaction should not take a long time.

**Shrimati Savitri Nigam:** May I know what is the suggestion of the witness in order to get over the delay part of it?

**Shri Mehta:** We have been assured by the hon. Finance Minister that it would not occur. Therefore, we have no suggestion to make.

**Shri Morarka:** May I ask one clarification? It is said in this proviso to 20(1) that if such importation takes place within three years—it means Indian goods exported but imported back—no duty would be payable on that. Which are the goods for which you give three years' period for the purchaser to satisfy himself whether the goods are according to the requirements or not? Why should there be three years?

**Shri Dehejia:** The point is that they may bring a part here, repair it and then send out again. We are trying to facilitate the trade. For instance, Godrej locks had gone to Ceylon but after sometime some were sent back because they required some repairs. It was not as if a guarantee was given but then we want to encourage our trade also. But the period cannot also be more because after a time satisfaction will become more and more difficult because of the need to see the documents with the customs authorities. The marks on the goods exported may also get erased.

**Shri Prabhat Kar:** If the period is reduced, the question of difficulty about satisfaction may not arise.

**Shri Dehejia:** The difficulty will not arise in any case provided the goods are identifiable. A thing may be

manufactured in India and sent abroad but one may get foreign parts of a similar kind into India which may be of more value in India. So that the question of identity has to be gone through.

**Shri Morarka:** How does this three years' period help you?

**Shri Mehta:** We are exporting a variety of things now; there was one case where one entire factory was involved. We are exporting distilleries and things like that where performance satisfaction may take time. The delay might occur in the other country.

For instance, we are exporting textiles to Germany, Sweden and Norway; there are warehousing facilities. The customs takes delivery of these and the customer can take delivery of it even after 6, 7 or 8 months.

**Shri Prabhat Kar:** Are there specific cases where the exported goods have come back in the third year?

**Shri Mehta:** Cases have been reported where goods have come back after 1½ or even two years.

**Shri Ramanathan Chettiar:** Apart from sending machinery for exports I would like to know whether for any customer you have given any guarantee for more than one year.

**Shri Mehta:** For electric fans we give a guarantee for two years.

**Shri Morarji Desai:** All the world over it is only one year.

**Shri Mehta:** But we have to go and capture new markets. Refrigerators are given a guarantee for seven years. We are trying to create confidence in our products.

**Shri Desai:** Therefore, our submission is that the period should be increased from three years to five years.

**Shri Dehejia:** Three years is a good compromise. These goods will come in and then go out and they are covered by the other clauses also.

**Shri Mehta:** In clause 20 (2) it refers to 25 per cent of the total cost of production or manufacture. It might be a matter of dispute: it will be difficult for the Collector of Customs to examine and find out the cost of production. It could be changed to 20 per cent of the export value. The cost of production would be difficult to determine.

**Shri Morarji Desai:** We will consider that: we can take the cost of exports. They do not want to let out the cost of production.

**Shri Mehta:** No, no, Sir. We have agreed to let the Productivity Council to study it in six industries and we will welcome the Government to study it; it may help us perhaps in understanding our problems better.

**Shri Morarji Desai:** If we take the export value given in the shipping Bill it will be simpler.

**Shri Morarka:** That will not meet the whole situation because it is for the goods manufactured in India. That is the condition precedent.

**Shri Dehejia:** Has this led to any difficulty so far?

**Shri Mehta:** It is not being followed, and that is why I feel it will cause difficulties. It is not there at all.

**Shri Morarji Desai:** There is no harm, I think, in following their suggestion. What we have to be satisfied with is that it must be 25 per cent, that is, 25 per cent of the manufacture must have been done in India. In order to be satisfied about that, whether you take the cost of production or the selling value, it is all the same. The selling value can be easily identified because it is put in the shipping bill.

**Shri Morarka:** If they are not going to refer to the shipping bill, how are you going to be satisfied about that?

**Shri Morarji Desai:** 25 per cent of the value has got to be manufactured here. They will have to satisfy us about it.

**Shri Desai:** It is not very difficult to satisfy because when we obtain the export incentives, in that, these break-ups are given regarding the contents—whether they are indigenous or foreign.

**Shri Morarji Desai:** We can certainly do that.

**Shri Dehejia:** When you say only the export price shall be taken, then, it may be that something is imported from Japan and is being exported—and there may be no part of it which is manufactured in India.

**Shri Morarji Desai:** Only 25 per cent.

**Shri Dehejia:** It is for goods manufactured or produced in India. Take, for instance, transistor, which is 100 per cent made in Japan. It comes to India and goes to Iran. For that, they will give the export value.

**Shri Mehta:** You have a provision to cover the goods imported for subsequent re-export.

**Shri Dehejia:** The goods being covered are of Indian production. The proviso says:

“For the purpose of this section goods shall be deemed to have been produced or manufactured in India, if at least twenty-five per cent. of the total cost of production or manufacture of the goods has been incurred in India.”

**Shri Morarji Desai:** Export value of the goods or the price of the goods that are sold. You can specify them. You put it down only to cover that value. What they mean is, the selling price. We shall mention the selling price.

**Shri Desai:** I would say that it should be scaled down to 20 per cent.

**Shri Morarji Desai:** I do not see why we should support the people who are manufacturing less and less here. Why should they get the facilities? I do not know. I am not interested in the actually no part in it. ....

**Shri Mehta:** Then we come to clause 23(1). We started with our submission on clause 13 wherein the goods lost by pilferage also are to be included. We would re-submit our point about that clause and request that that should be considered.

Then we come to clause 28. Here, there is some kind of time-limit which is required in respect of these duties, and we thought that perhaps a period of six months should be sufficient for the purpose.

**Shri Morarji Desai:** Here, it is six months only.

**Shri Mehta:** No time-limit for serving notice is fixed.

**Shri Morarji Desai:** Where it is collusion, there should be no time-limit specified. When there is collusion, why should there be any time-limit?

**Shri Mehta:** It might be difficult for large houses where the imports are large. If I want to sell the firm to some other firm, the party will say, “what are these responsibilities? The responsibilities might arise even after 50 years, and so I will not accept the responsibility of the firm.” There has to be some definiteness about the responsibility. We have to look into the future and see how this will react on all kinds of eventuality.

**Shri Morarji Desai:** It lies on the importer, the Indian firm, and not on the foreign firm.

**Shri Mehta:** The Indian firm is sold to somebody else.

**Shri Morarji Desai:** It will be on the Indian firm even then.

**Shri Mehta:** But the liability will lie on the buyer who has paid.

**Shri Morarji Desai:** The buyer in another country will have no liability.

**Shri Mehta:** I think I have not made my point clear. If A has imported certain consignments and if A firm has been sold to B, who has actually no part in it. . . .

**Shri Morarji Desai:** He should take the risk; otherwise he should not buy.

**Shri Mehta:** That is where the difficulty comes in.

**Shri Morarji Desai:** That difficulty does not matter.

**Shri Mehta:** Why not have six months or a year or two years? Would it not be possible to fix two years in order that it may be found out?

**Shri Morarji Desai:** Sometimes we get information after ten years.

**Shri Bade:** Yesterday there was a suggestion that there should be some time for serving notice. So, for this wording, has he got any objection?

**Shri Morarji Desai:** He is talking about the proviso to clause 28. There, it is collusion. He says that it is indefinite. Yesterday, we said we might increase the period to ten years. They were satisfied. So, these witnesses have also got to be satisfied.

**Shri Mehta:** We have made our submission, and it is for you to consider it in the interests of the country.

**Shri Morarji Desai:** That will be for the Commissioner to fix.

**Shri Bade:** What is the suggestion of the witness? Does he want six months, or, does he want a greater period, or does he want to change the entire provision?

**Shri Morarji Desai:** We have already decided it. By implication we have decided that the period will be for serving the notice.

**Shri Mehta:** We do not want any change, and we do not want anybody who indulges in undesirable activities to go free. Let them be proceeded with according to the law.

Then we come to clause 47. It appears that the taking of the decision on the assessment and on the nature of the goods need not be simultaneous. That is, it appears that a simultaneous decision need not

be taken about the assessment and as to whether the goods are prohibited ones or not. We submit that both the decisions should be simultaneous. The provision should be such as to prescribe that a decision whether the goods are prohibited goods or not and a decision on assessment should be made simultaneously. From the wording of the clause it appears that they need not be simultaneous. It is not very clearly stated.

**Shri Morarji Desai:** Unless the officer says that they are permissible goods, the goods will not be permitted inside. How can it be afterwards?

**Shri Mehta:** The person is always called upon to pay the duty, when the assessment is made.

**Shri Morarji Desai:** All that will be done. Without assessment of duty and without deciding anything, they are not prohibiting the goods. It is some imaginary things that you are pointing out.

**Shri Mehta:** Both the things must be done simultaneously.

**Shri Morarji Desai:** It cannot be otherwise.

**Shri S. S. More:** I think the provision should be redrafted.

**Shri Mehta:** Otherwise, it will cause misunderstanding.

**Shri S. S. More:** First, a decision whether the goods are to be prohibited or not should be taken, and then the question of duty leviable arises.

**Shri Morarji Desai:** The clause reads thus:

"When the importer of any goods entered for home consumption has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer, if he is satisfied that the goods are not prohibited goods, may make an order permitting clearance of the goods for home consumption."

**Shri Mehta:** So, the clearance order comes after the importer has paid the duty.

**Shri S. S. More:** First, the duty is paid. Then the officer comes to the decision whether they are prohibited goods or not. Then the point about the satisfaction comes in.

**Shri Morarji Desai:** If he has paid the duty, then he may be allowed to clear the goods.

**Shri S. S. More:** The goods should not be prohibited after the duty is paid. First the decision on prohibition should be taken and then the duty should be paid. I think this clause has to be redrafted properly.

**Shri Morarji Desai:** We shall consider that . . .

**Shri Mehta:** In regard to clause 59, I submit that the bond should not be for twice the amount of duty assessed.

**Shri Morarji Desai:** You are not depositing any money; it is only a bond.

**Shri Mehta:** Sometimes, you may be called upon to pay. Our difficulty is the customs do not accept the bond on any scheduled bank unless and until it is guaranteed by the Reserve Bank or State Bank. If bonds on scheduled banks are also accepted, this difficulty will not arise.

**Shri Morarji Desai:** It is an executive matter. We will consider it later on.

**Shri Mehta:** Clause 69—Clearance of warehoused goods for exportation. Sub-clause (2) says:

"If the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India....." etc.

If there is definite proof, it is all right. But on the basis of certain opinion, action can be taken under this clause.

**Shri Anand:** This will be a Government notification; not an order of an individual officer.

**Shri Mehta:** If it is a Government notification, then it is a different matter.

Then, clause 101 gives power to search suspected persons in certain other cases. At the outside, I would make it clear that I hold no brief for anybody who commits any offence; but it has been our unfortunate experience that sometimes wide powers given to officers might also lead to harassment. Therefore, we submit that it may be provided that nobody lower than the rank of a gazetted officer will be given this power.

**Shri Dehejia:** Suppose there is a woman passenger who has come down and who has to be searched.

**Shri Mehta:** A female will be searched by a female.

**Shri Morarji Desai:** The search may be by anybody, but the order must not be by anybody except a gazetted officer.

**Shri Himatsingka:** In some places, there is no gazetted officer; there will be only a sepoy.

**Shri Dehejia:** The status of a person who may search under clause 101 is the same as in the old Act.

**Shri Morarji Desai:** Even in excise, the SI is not a gazetted officer. Then, you will have to bring an Inspector.

**Shri Mehta:** We know that it is the same as in the old Act, but since we have got this opportunity, we are mentioning it.

**Shri Dehejia:** How many instances of overacting have come to your notice? I do not say there are not, but it is very rare.

**Shri Morarji Desai:** I do not think there will be any difficulty on this account.

**Shri Mehta:** Then, in regard to clause 102, we submit that the person should be brought before the gazetted officer of customs or the magistrate as the case may be as quickly as possi-

ble, because in the next clause 103, the words "without unnecessary delay" are used.

**Shri Morarji Desai:** You may say "with the least possible delay".

**Shri Mehta:** We have suggested the substitution of the word "forthwith". But I believe the spirit of our suggestion is accepted.

**Shri Morarji Desai:** Yes; we will see what can be done.

**Shri Mehta:** Clause 104 gives the power to arrest. Here also our submission is that gazetted officers may have that power.

**Shri Morarji Desai:** We will provide that he must put down the reasons for arresting a particular person in writing.

**Shri Mehta:** We have also suggested that "as soon as may be" should be substituted by "forthwith". If the spirit of our suggestion is accepted, we are satisfied.

[ Then, clause 105 deals with power to search premises. We feel that a magistrate should issue this order instead of a departmental officer.

**Shri Dehejia:** Under a number of other Acts dealing with income-tax, excise, etc., this power to search premises is there.

**Shri Morarji Desai:** If you try to get the order from a magistrate, the magistrate's clerk is there and everything goes on in the routine manner, by which time the information reaches the man concerned and when actually the search is made, nothing is found.

**Shri Mehta:** There is a lot of force in that.

**Shri Bade:** In the case of excise, the officer does not go to the magistrate, but he only writes in his diary that he has received information that at such and such place, illicit distillation is going on and he searches the premises. In a democratic coun-

try, it should not be done, but when it is done in the case of excise, why not in the case of customs also?

**Shri Mehta:** I agree; we are conscious of what is happening.

**Shri A. V. Raghavan:** This affects the fundamental rights. Even under the Cr. P. C., apart from taking a warrant, when the police search a house, immediately they have to inform the magistrate that they made a search of that house. So, here also, the customs officer may inform the magistrate about the search that he has made, so that there may be judicial notice of the search. You said that by the time the magistrate makes the order, the man concerned gets the information. So, after the search is made, the magistrate may be informed.

**Shri Morarji Desai:** Why should the magistrate be informed? The magistrate has no jurisdiction over the customs officer. He will report to his superior officer.

**Shri A. V. Raghavan:** If he does not report to the superior officer?

**Shri Morarji Desai:** He will be dismissed. Why should the magistrate be informed?

**Shri Bakar Ali Mirza:** We can discuss that in the Committee.

**Shri Morarji Desai:** Yes.

**Shri Desai:** We do not wish to press the point.

**Shri Mehta:** Regarding clause 123, we consider it to be an important change. In certain cases at least there should be a provision that the Customs Officer should be able to establish a *prima facie* case.

**Shri Morarji Desai:** He has to give his reasons in writing before he seizes the goods.

**Shri Bade:** What the witness says is that there is a burden placed on the accused to prove the negative, which is an impossible thing.

**Shri S. S. More:** This clause is similar to section 178A. Many times the Supreme Court has laid down very specifically that the onus may be heavy but it is reasonable and in the interest of the country. It has been held valid. This is only a reproduction of section 178A. The judiciary has given everything in favour of this clause. The contention that the onus has been wrongly placed has now no legs to stand on.

**Shri Mehta:** Against the judgment of the Supreme Court we have nothing to submit.

Regarding clause 129 we feel that there should be a time limit within which the wrongful duty or penalty should be refunded by the customs. We have known cases where it has taken three to four years. There should be some time limit fixed.

**Shri Morarji Desai:** It should be returned within a month. Why should it take more time. We will provide that within one month of the issue of the order the amount must be refunded.

**Shri Morarka:** Under sub-section (2) it is said:

"If upon any such appeal it is decided that the whole or any portion of such duty or penalty was not leviable, the proper officer shall return to the appellant such amount of duty or penalty as was not leviable".

Suppose the duty was not leviable and in fact he did not pay anything, what is there to be refunded?

**Shri Morarji Desai:** We will say "such amount as was deposited". It will be added when we provide the time limit.

**Shri Mehta:** With your permission, Sir, I would like to go back to clause 128. This is regarding the appellate provisions. We know that there are certain advantages in that particular clause. But we do feel that there is no provision at all, apart from the 1812 (B) LS-7

departmental enquiry, for an independent tribunal. We in the trade and industry have been feeling for quite some time now that at a certain stage somebody from the department concerned must come into the picture to judge the equity of the case. We have felt that appeals sometimes are only a repetition of a departmental enquiry.

**Shri Dehejia:** Revision lies to the Government.

**Shri Morarji Desai:** If there is a tribunal, it would not come to the Government.

**Shri Mehta:** We would welcome an independent tribunal.

**Shri Morarji Desai:** Because you can always get liberties there. These are executive things. I do not think any judiciary is necessary.

**Shri Dehejia:** Clause 131 provides for revision by Central Government. The first appeal lies to a departmental officer.

**Shri Mehta:** Sometimes our experience is that when against a decision of a particular appraiser we go to the Assistant Collector of Customs, the Assistant Collector of Customs calls the same appraiser and asks him to listen to the appeal.

**Shri Morarji Desai:** That is wrong. If that happens you must let us know and we will stop it quickly.

**Shri Gupta:** That is why we have made this suggestion.

**Shri Morarji Desai:** But that does not solve the problem.

**Shri Dehejia:** The first appeal goes to a departmental officer and the revision goes to the Central Government.

**Shri Mehta:** There are three stages—the appraiser, the Assistant Collector and then the Collector.

**Shri Dehejia:** There cannot be a second appeal. The second one is the revision.

**Shri Mehta:** We do hope that you will reconsider our suggestion about the independent tribunal.

**Shri Morarji Desai:** I am sorry.

**Shri Mehta:** Then, our reading of clause 140 is that perhaps all the directors of the company or partners of a firm can be held responsible.

**Shri Morarji Desai:** If he proves that it was without his knowledge then nothing can happen.

**Shri Mehta:** Will they not undergo the rigours of arrest etc.?

**Shri Morarji Desai:** Nobody will be arrested so lightly.

**Shri Mehta:** The director of a firm in Bombay may be at Calcutta. He might not even know of a particular thing happening in Bombay.

**Shri Morarji Desai:** Then he has no business to be the director of that firm. If he proves that it was without his knowledge then he will not be punished. The proviso is complete.

**Shri Mehta:** We have nothing more to suggest as far as this Bill is concerned. We are grateful to you for giving us this opportunity.

*(The witnesses then withdrew.)*

## II. THE BOMBAY BULLION ASSOCIATION LIMITED, BOMBAY

### Spokesmen:

1. Shri Chandulal Kasturchand
2. Shri Mangulal Trikamlal
3. Shri Amratlal Sonawala
4. Shri Chimanlal C. Shah.
5. Shri P. Gopalakrishniah
6. Shri Jayendra Mehta.

*(Witnesses were called in and they took their seats.)*

**Chairman:** Your Memorandum has been distributed to the members of the Committee. If you want to submit or add anything, you may now do so.

**Shri Trikamlal:** We are very grateful to you for giving us this opportunity to appear before you. Ours is an association trading in bullion, ready and forward. We are concerned with this Bill only to the extent it affects

our trade. Our only object is to see that merchants doing bona fide business are not put to unnecessary and avoidable hardships. We have no sympathy for those who indulge in smuggling and we are willing to extend our fullest co-operation to the Government in preventing smuggling. I will put before you our idea of trade in gold in Bombay.

The Bombay Bullion Association is one of the biggest markets in bullion at present in Asia and, formerly, it was one of the biggest markets in the world. Quotations of our bullion market are recognised in London and New York. Our daily turnover in bullion in ready gold alone is to the tune of about Rs. 12 lakhs to 15 lakhs every day, weighing about 100 kilograms.

Our Association is the only recognized association for forward transactions in gold and silver in India, functioning under the Forward Contracts Regulation Act and under the supervision of the Forward Markets Commission. Trading in bullion is done in forward as well as in ready and whenever deliveries are to be taken, they are given and taken through the clearing house of the Bombay Bullion Association, which is conducted by the Bank of Baroda Limited. Purchasers desirous of taking delivery pay the money in advance to the clearing house and the seller who has to give delivery gives the number of the bars and the weight and fineness in advance to the clearing house. The clearing house then issues delivery orders with its own cheque and the purchaser takes delivery from such seller whom the clearing house has directed to give him delivery. He has to take delivery from him and not from the original seller. It is the clearing house which decides which purchaser will take delivery from which seller. Gold comes into the market for ready sale every day in the shape of ornaments, Ravas, lagdis, bars or old coins, the fineness ranging from 75 to 99.75.

The import of gold was first restricted in 1939. Until 1946 gold was imported duty-free. The Reserve



Bank statistics show that during the period 1851—1956 gold worth Rs. 353 crores has been imported into India. Besides this, there is a huge hoard of indigenous gold and century old stock. Gold in various shapes is purchased by merchants, melted, refined and then turned into gold bars. A number of well-known merchants issue their own lagdis of different weights.

**Shri Morarji Desai:** What has all this to do with this Bill? I think you better come to the clauses and then explain to us how your business is affected by the various clauses.

**Shri Trikamlal:** There are Government as well as private refineries where gold is melted and turned into lagdis with specific markings.

**Shri Morarji Desai:** I am very much exercised over the refining of gold.

**Shri Trikamlal:** From the above facts it will be clear that it is impossible to distinguish smuggled gold from other gold and there the difficulties of our trade arise because of this difficulty of identification.

**Shri Morarji Desai:** It is because the refineries melt gold.

**Shri Gopalkrishniah:** We are not concerned with what the refineries do in their normal course of business. All that we want is to safeguard our interests in these provisions of law.

**Shri Morarji Desai:** I am interested in safeguarding the country's interest; not your interest at the cost of the country. Let me make it quite clear.

**Shri Trikamlal:** Our only object is that a person who can prove his *bona fides* should not be harassed or penalised.

**Shri Morarji Desai:** You take up the clauses. Why do you want to say all this?

**Shri Shah:** He wants to give you an idea of the nature of the trade. Probably you already have an idea of this thing.

**Shri Morarji Desai:** I have a full idea of it.

**Shri Trikamlal:** Then I would like to deal with some of the clauses. First of all, I take up clauses 100 to 110. On all these clauses there are one or two principal points which I will make. Firstly, where search of persons or premises is to be done, or where goods are to be seized, or if any person is to be arrested, it should be done only under an order of a court in order to prevent any abuse of this power.

**Shri Morarji Desai:** I am not agreeable to that.

**Shri Trikamlal:** At present search of premises can be done only under the orders of a court. Arrests and seizures are serious matters for merchants. Their reputation also is at stake. That is why we submit that it should be done under the orders of a court. When a person is arrested he should immediately be produced before a magistrate so that he has an opportunity to furnish bail.

**Shri Morarji Desai:** That will always be done. Under the Criminal Procedure Code it has to be done within 24 hours.

**Shri Trikamlal:** At times it is not done. I will cite a recent example.

**Shri Dehejia:** Let us hear their Legal Adviser on this point.

**Shri Shah:** The clause says that an arrested person should be produced before a magistrate without unnecessary delay. Now, if a man is arrested, say, at 5 O'clock in the evening on a Saturday, he will be produced before the magistrate only on Monday at 11 O'clock. What they want is that he should be taken to the magistrate immediately so that he will be in a position to furnish bail without delay.

**Shri Morarji Desai:** He may grant bail himself.

**Shri Shah:** The Customs Officer does not grant bail. It is the magistrate who can give the orders. Customs Officers should be empowered to take

bail immediately and if a man is in a position to give bail he should be released immediately.

**Shri Morarji Desai:** We are trying to see what words can be put in place of 'unnecessary'.

**Shri Shah:** In the existing Act the word is 'forthwith'.

**Shri Morarji Desai:** We may say 'without undue delay' or 'without any delay'. We are trying to see what words can be put in there.

**Shri Shah:** The point is that Customs Officers have no power to grant or take bail. It is only a magistrate who can do so.

**Shri Badi:** Are not offences under the Customs Act bailable offences?

**Shri Shah:** They are.

**Shri Badi:** So, when they are bailable they must take bail.

**Chairman:** What he is saying is that Customs Officers have no power to order bail and by the time the man is produced before a magistrate it is more than 24 hours. So, they are making the point that Customs Officers should be empowered to take bail.

**Shri Morarji Desai:** It has to be done within 24 hours but if there is a Sunday intervening or if it is a long distance then it is lengthened by that time.

**Shrimati Savitri Nigam:** Why should the Customs Officers not be empowered?

**Shri Morarji Desai:** It is a matter for us to consider.

**Shri Shah:** That is the only point so far as that is concerned. The other point is that when an officer takes action on the ground of "reasonable belief" or "having reason to believe" he should immediately give the grounds of his belief to the person concerned.

**Shri Morarji Desai:** He will not give the grounds immediately but he will write them down. When the person asks for a copy of that, it will be given.

**Shri Shah:** At present what is done is that only an order is served.

**Shri Morarji Desai:** That is always the case. When the search warrant is issued do they mention the reasons in that? It is not possible to give the grounds immediately.

**Shri Shah:** Within a particular time it should be done.

**Shri Morarji Desai:** That we will see. All those safeguards must be exercised.

**Shri Shah:** Under the Preventive Detention Act a person is given the reasons for his detention.

**Shri Dehejia:** There are arrests made under the Criminal Procedure Code also. I do not suppose we are going in for preventive detention in the Customs.

**Shri Morarji Desai:** When we take powers like these which could be abused we must provide certain reasonable safeguards to see that those powers are not misused by a stray officer and if he does that then we can put him down. We must provide these safeguards. Therefore we must put down the reasons or grounds in writing immediately and whenever they want a copy it should be given.

**Shri Dehejia:** But safeguards I suppose should correspond to what exists in other similar Acts.

**Shri Morarji Desai:** There there are other safeguards also.

**Shri Dehejia:** We can have those. The point is what safeguards are necessary.

**Shri Shah:** Take, for example, clause 123. A Customs Officer can seize goods in the reasonable belief that they are smuggled goods and the other person has to prove that they are not smuggled goods. In order that he may be able to prove that he must know the grounds on which the Customs Officer holds that belief. That is the point that I am making. The Customs Officer is unable to prove that they are smuggled goods, but he attaches them in the reasonable belief that they are

smuggled goods, The other person is then called upon to prove that they are not smuggled goods. Before he can demolish that belief of the Customs Officer he should know the grounds on which he holds that belief. Unless he knows the grounds of that reasonable belief under which the Customs Officer acts, how can he demolish that belief?

**Shri Dehejia:** This very point was taken up in the Supreme Court and the Court has held that the provision is *intra vires*.

**Shri Shah:** The Supreme Court has held that the provision is constitutionally valid.

**Shri Dehejia:** This very point was raised by the defence in that case.

**Shri Shah:** I can assure you that I have carefully studied it and this point was not before the Supreme Court at all. The point before the Supreme Court was whether this is a reasonable restriction on trade under Article 19(a) (f) and 19(1)(g) of the Constitution. They held that it is a reasonable restriction. So, the point that I was making was that whenever any action is taken on the ground of reasonable belief or having reason to believe a particular thing, the grounds of such belief should be told to that person within a particular time so that he can reply to that. He should know what the case is that he has to meet.

**Shri Morarji Desai:** This is a reasonable request. We should give them the grounds when they ask for them. We must provide sufficient safeguards. If we take extraordinary powers, we must do that.

**Shri Dehejia:** May I put a question?

**Shri C. C. Shah:** If he is to be able to reply to it to your satisfaction, grounds should be given.

**Shri Dehejia:** For the purpose of this section, the onus of proof is put on the person. It does not mean that one has to prove or give the reasons. This has been maintained in a number of judicial proceedings.

**Shri C. C. Shah:** The purpose of this section, as I understand it, is this. The department is unable to prove that these are smuggled goods. The information in their possession leads them to a reasonable belief. They are not doing this on suspicion, but they are doing it on the reasonable belief that these are smuggled goods. And, then, the burden is shifted upon the other person to prove that these are not smuggled goods. Unless he is given the information which you have received on which your reasonable belief is based, how can he reply to it?

**Shri Dehejia:** But then, the ground is mentioned in the show-cause notice itself.

**Shri Shah:** It gives certain facts on the basis of which they say that these are smuggled goods.

**Shri Morarji Desai:** If it is given in show-cause notice, that is enough. If you give it once in the show-cause notice, that is quite enough. It is not at all necessary to give it afterwards once again separately.

**Shri Abrol:** Clause 124 provides for this.

**Shri Shah:** Clause 124 says as follows:

"No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in writing informing him of the ground on which it is proposed to confiscate the goods or to impose a penalty . . ."

That is quite different from giving the grounds of reasonable belief.

Under Section 123, 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. Confiscation comes under clause 124(1), if, after reasonable belief, he thinks that these are smuggled goods.

**Shri Dehejia:** There might be an informer who has come and said that such and such goods are coming at such and such a place and that they are smuggled goods. It will be possible to say that such and such information has been received. Will it be possible to say that such and such a man has sent the information?

**Shri Shah:** Not the name.

**Shri Morarji Desai:** Certain information comes that certain goods are coming at such and such a place which are smuggled. You should immediately attach the goods. That is enough ground for doing it. He says that there are reasons in believing that these are smuggled goods. Grounds ought to be given, but not the name of the informer. ✓

**Shri Prabhat Kar:** Section 124 provides as follows:

"No order confiscating any goods or imposing any penalty on any person shall be made under this chapter unless the owner of the goods or such person is given a notice in writing informing him of the ground on which it is proposed to confiscate the goods or to impose a penalty".

The witness says that this can only be the opinion of the Customs officer.

**Shri Shah:** Reasonable belief of that officer.

**Shri Morarji Desai:** The ground will be that such goods are smuggled. Therefore, they are confiscated. That is a sufficiently valid ground for confiscation.

**Shri Prabhat Kar:** Will he give the grounds? Will he say "These are the reasons and this is the information on the basis of which we believe the goods to be smuggled"?

**Shri Morarji Desai:** That is what should be made clear. If it is known that certain goods are smuggled, they are confiscated. The reasons are given.

**Shri Shah:** The Customs officer investigating the case has to be satisfied that there are grounds for a reasonable belief that these are smuggled goods. Reasonable belief of the Customs officer is a ground for confiscation.

**Shri Dehejia:** The section for confiscation says that the goods are in fact smuggled.

**Shri Ramchandra Vithal Bade:** If, instead of saying 'reasonable belief' we say 'reasonable ground', will that suffice?

**Shri C. C. Shah:** That will not make a difference. Ground has to be given.

**Shri Morarji Desai:** Ground can be given, but it cannot be proved to anybody's satisfaction.

**Shri Shah:** Belief is a term much stronger than suspicion. We have no complaint with the word 'reasonable belief'. All that we want is that the ground of belief should be given. How is it that he comes to the reasonable belief?

**Shri Prabhat Kar:** Goods can be confiscated only on the ground that they are smuggled.

**Shri Shah:** But in this case it is presumed that they are smuggled. Therefore, they are confiscated. The other man has to prove that they are not smuggled.

**Shri Morarji Desai:** You have purchased the goods at such and such a place.

**Shri Shah:** That does not mean that they are smuggled.

**Shri Morarji Desai:** You might receive them in a bonafide manner, but once they are smuggled goods, they are liable to confiscation. All smuggled goods are liable to confiscation.

**Shri Shah:** How to prove that they are not smuggled? I am a bonafide purchaser. You may be a bonafide purchaser and yet the goods may be smuggled. Smuggled goods have not been defined here. It means goods on which duty has not been paid and which come without the permission of the Reserve Bank. It is impossible for the department to prove that they are smuggled. The difficulties arise only because of that.

I have purchased certain gold in the ordinary course of my business. It is a *bona fide* transaction. It is sold by a well-known merchant. I pay the price. I have not the least suspicion that these are smuggled goods. Then, I should be protected.

**Shri Dehejia:** He personally, or the goods?

**Shri Shah:** Both. If the person has reason to believe that he has purchased goods which are smuggled goods, the goods should be confiscated. But if he proves his bonafide, that is different. I will give the illustration of a case in connection with clause 120, sub-clause (2). There it is provided that where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation. I will tell you one case which may be of interest to you.

One sweeper was arrested at an airport and he was in possession of 100 tolas of gold coming from Pakistan. Those 100 tolas were confiscated. Then he was interrogated. He said that 8 days ago he got another 100 tolas. Then he was asked as to what he did with that. He said that he gave that to one John Lobo. He was traced and it was found that he gave it to one goldsmith. The goldsmith was traced. He was interrogated. The goldsmith said that he added some copper to it and what was 100 tolas has become 103 tolas. That goldsmith was a well-known trader in the bazaar. He sold it to a choksi in the gold market who he was having a standing of 100 years

old, namely, Chimanlal Mohanlal. He sold it to one Vali Mohammad. He has a refinery of his own. He purchased that bar from Chimanlal Mohanlal and paid the full price of it. At the same time he purchased from Chimanlal Mohanlal two other bars of 100 tolas and 42 tolas and paid the price for it. On the same day, Vali Mohammad had purchased 250 tolas of gold from another merchant. Then two of his constituents also brought gold to him for being refined in the refinery. So, all the gold which contained 100 tolas of gold which was originally smuggled was put in a crucible and it became a bar of 750 tolas.

**Shri Morarji Desai:** So, it cannot be identified.

**Shri Shah:** Out of that, these two constituents were given pieces corresponding to their own gold. One was given a piece of about 100 tolas and another was given a piece of about 142 tolas. The remaining 450 tolas of gold remained with Vali Mohammad. When the Customs officials began to enquire into it, 100 tolas of smuggled gold had gone into the crucible. The seized 450 tolas of gold from Vali Mohammad and the rest from the other two constituents. The collector investigating the case could not say which 100 tolas had gone into the bar.

**Shri Morarji Desai:** Nobody could say that.

**Shri Shah:** What he said was, "I will keep all this gold—650 tolas." He told Vali Mohammad, "I will not release your 45 tolas of gold unless you pay a penalty of Rs. 8,000." He told the other man, "I will not release your 100 tolas of gold unless you pay a penalty of Rs. 2,300. Similarly, he told the third person "unless you pay a penalty of Rs. 1,800 I will not release your gold."

So, all the three persons who had not even the least suspicion that any smuggled gold had come to them, who purchased this gold from a well-known choksi in the bazaar and had paid the full price—only 100 tolas of smuggled

gold had gone into a bar of 750 tolas—had to pay the penalty. Otherwise all the gold—750 tolas—would have been confiscated.

**Shri Morarka:** What should have been done?

**Shri Dehejia:** What should have been confiscated? Here is the case. Let us discuss it in full step by step.

Now, John Lobo is not a merchant in gold. He is an ordinary person. The goldsmith had taken this gold from John Lobo. At least, at that stage he should have the reason to believe that it was not ordinary gold.

**Shri Shah:** But Chimanlal Mohanlal did not know about it. The goldsmith was a well-known merchant in the bazaar.

**Shri Morarji Desai:** They are all well-known. I will have to do something drastic. And what that drastic thing is, I do not know yet. I have got to do something drastic about this gold business. Otherwise, it is becoming terrible.

**Shri Shah:** Chimanlal Mohanlal purchased from the goldsmith. Vali Mohammad purchased from Chimanlal Mohanlal choksi which is of hundred years standing and they sell hundreds of tolas of gold everyday. Had Vali Mohammad any reason to suspect that it was smuggled gold?

**Shri Morarji Desai:** All this is all-right. I agree with you. But tell me what is to be done?

**Shri Shah:** What the Association says is this. If I am in possession of gold which is believed to be smuggled, I must be given an opportunity to prove to you that I have genuinely purchased from the market.

**Shri Morarji Desai:** I am not bothered about as to what is in your possession. I am bothered about this that a lot of gold is smuggled and it cannot go into the country, unless all these people get into it one way or the other. How am I going to prevent it? At what stage should I take the

step? And what step should I take to prevent this smuggling? You can send your suggestions later on to me. You need not do it here.

**Shri R. Ramanathan Chettiar:** May I know what is your concrete suggestions? An association like yours with a long standing can suggest the ways by which these mal-practices could be put an end to. Human nature being what it is there are likely to be mal-practices. We would like to know what your concrete suggestions are in order to put an end to this evil. Gold worth crores of rupees is smuggled into this country and the Government would like to put an end to it. Have you got any remedies to suggest?

**Shri Bade:** Mr. Chairman, I want to put one thing to the witness. There was such a case in my province where hundred rupees and one piece of gold were stolen and it was given to a merchant who put it in his safe and this was mixed up with his other gold. Then the police went there and asked him to give hundred rupees and one piece of gold which was mixed up with other gold. So, here the Customs officer did not confiscate the whole thing. The case which you cited may be an exception. It is not as a rule that the whole thing is confiscated. I do not think that the Customs officer under the law is empowered to confiscate the whole lot.

**Shri Shah:** Under clause 120, the Customs officer can seize the whole lot. There appears to be some misunderstanding about it. This is what it means. In this case, Vali Mohammad will have to prove that it is not smuggled gold. He has to prove that the duty was paid and that it was imported on Reserve Bank permit which he cannot prove. All that he can prove is that he genuinely purchased it from the market in the ordinary course of business. He does not know which gold is duty paid and which gold is not duty paid.

**Shri Morarji Desai:** What can the Government do?

**Shri Shah:** I appreciate that. There are difficulties. On behalf of the Association I would like to say that we are prepared to extend our fullest cooperation in putting down this evil of smuggling.

**Shri Morarji Desai:** Give me the remedy. Otherwise, I can provide the remedy which you would not like.

**Shri Shah:** If a person is in possession of gold for which there is a reasonable belief that it is smuggled gold, then he must be called upon to give a satisfactory explanation as to how he has come into possession of this gold. If he proves that he has purchased it from 'X' person, then action should be taken against 'X' person and not against the merchant.

**Shri Morarka:** Even if the 'X' person is a sweeper as is in this particular case? The 'X' person may have spent away the money and he may have neither money nor gold.

**Shri Shah:** Vali Mohammad says, he has purchased from a well-known merchant. You go to that well-known merchant. Then you go to the goldsmith who has purchased gold from a man who was not a gold dealer. He either purchased it knowingly that it was smuggled gold or at least he could have reason to believe that this was smuggled gold.

**Shri Dehejia:** May I ask one thing. In this particular case the penalty imposed was Rs. 8000 plus Rs. 2300 plus Rs. 1800—all told Rs. 12100. If you take the price of gold obtaining at that time that was the price of 100 tolas of gold. The total penalty put was equivalent to the value of 100 tolas of gold and not equivalent to the value of 750 tolas of gold.

**Shri Shah:** Yes. The point is only in this as to who should be penalised. In this case it is a purchase from Chamanlal Mohanlal Choksi and he is a well-known merchant whom you could have caught. Why should Vali

Mohammad be called upon to pay a penalty of Rs. 8000 who had nothing to do with the smuggling of gold? Why should two other constituents of Vali Mohammad be penalised? Their gold was not smuggled gold. Because it was put into the same crucible, they were penalised. Why should they be penalised?

**Shri Shah:** Mr. Wali Mohammad should not have been penalised. Chamanlal Choksy should not be penalised if he points out the man who should be penalised. If he fails to point out the man, or if he points out somebody from whom he purchased knowing it to be smuggled, or having reason to believe that it is smuggled, he is an accomplice.

**Shri Dehejia:** I do not know whether you are aware that crores and crores worth of gold is being smuggled into Bombay every year.

**Shri Shah:** A very large quantity; there is no doubt about it. We entirely agree that a considerable quantity of gold is being smuggled. Our only submission is that bona fide people who have honestly purchased gold after paying the full price—all of them very well-known merchants in the bazaar—should not be penalised.

It is a question of balancing the various factors which arise in the trade. One possibility is that Government may take over the entire trade in gold and then, of course, the question of smuggling would not arise. If, however, trade in gold is permitted, if, for example, this bar which Vali Mohammad melted in the crucible had been given delivery through the clearing house in a forward purchase and the purchaser took delivery of it by paying the full price, what would be the consequence? Or if the bar of 750 tolas had been pledged by Vali Mohammad with the State Bank and the Bank had advanced Vali Mohammad Rs. 1 lakh, what would be the consequence?

**Shri Dehejia:** Even then the 750 tolas of gold would be liable to confiscation.

**Shri Morarji Desai:** All that is understood. But it does not take us anywhere. This is not a problem for this Committee; it is a problem for you.

**Shri Shah:** The problem for this Committee is that when you are making a law which makes it very difficult to carry on this trade—I must say makes it almost impossible. . . .

**Shri Morarji Desai:** It will be good if it is made impossible. I shall be very happy. That alone will stop the smuggling. That is the basic conclusion I have come to.

**Shri Dehejia:** Can a large quantity of smuggled gold be disposed of without the complicity of well known bullion merchants?

**Shri Morarji Desai:** Some well known merchants, not all.

**Shri Dehejia:** But many people finance this.

**Shri Morarji Desai:** If they can make a good bargain, they make it anywhere.

**Shri Mahida:** Can your Association take any responsibility in this matter?

**Shri Morarji Desai:** I want to make it impossible. That is why this clause is put. If they do not do any business, I shall be very glad.

**Shri Morarka:** May I ask one question of Mr. Shah. In the illustration which Mr. Shah gave what is to happen to the gold. Should the Customs be entitled to confiscate the 100 tolas, or all the gold in whosever's hands it may be.

**Shri Morarji Desai:** What he said was that when it is traced to different persons the person who can be

charged with not having exercised caution should be penalised.

**Shri Morarka:** This is like stolen property. You cannot transfer title to stolen property.

**Shri Morarji Desai:** His suggestion is that the gold is not to be taken; only a fine is to be levied. That is his suggestion.

**Shri Shah:** If the gold can be identified, it can be confiscated.

**Shri Morarji Desai:** I readily agree that if it becomes impossible, let it become impossible. I have come to a blind alley where I have to take action.

**Shri Shah:** It is a matter for the Select Committee and Parliament to decide.

**Shri Prabhat Kar:** It is admitted that in the bar of 750 tolas 100 tolas is smuggled. So the question is not of any doubt; it is one of certainty and the gold will have to be confiscated.

**Shri Shah:** Clause 120 goes much beyond what you are stating the whole can be confiscated.

**Shri Morarji Desai:** I would say this. As a citizen if I am in possession of goods which I have acquired from *bona fide* people, but are found to be stolen goods, I would have no objection to get it forfeited. I would agree to it as a citizen. I have come to this desperate solution.

**Shri Shah:** You have used the correct word.

**Shri Morarji Desai:** The interest of the country is far more important than the interest on any particular trade.

**Shri Ramanathan Chettiar:** Unless we take very stringent measures we cannot put down this gold smuggling.

**Shri Morarji Desai:** It is a very dangerous thing that is happening all the while. It is increasing every year. This trade is being maintained on



that only. No gold is being produced in the country.

**Shri Shah:** There is enough stock.

**Shri Morarji Desai:** There is stock; but the stock does not come out for sale.

**Shri Bade:** I think what he means to say is that innocent people should not be made to suffer.

**Shri Ramanathan Chettiar:** Today the world price of gold is much less than the price in our country.

**Shri Morarji Desai:** There is acute scarcity of gold in the country and there is the hunger of the people to buy.

**Shri Ramanathan Chettiar:** That leads to smuggling. Unless we take stringent measures to put it down, we cannot succeed.

**Shri Morarji Desai:** It is for us to decide; it is not possible to get anything from them.

**Shri Morarji Desai:** I will have to find a solution, whatever may be the risks. Even if it appears monstrous I will have to do it.

**Shri Ramanathan Chettiar:** May I enquire from them whether the Bullion Association have thought of evolving a code of conduct at least among their own members?

**Shri Morarji Desai:** You are expecting the impossible from them. Can I suggest any code of conduct to them? I cannot. Therefore, how can they suggest any code of conduct? They cannot. It is impossible.

**Shri Bade:** Mr. Shah, with regard to clause 120(2), do you want to delete this proviso or do you want to amend it?

**Shri Shah:** In the proviso we want only an amendment that a *bona fide* purchaser who has received it without knowing or without having reason to believe that it is smuggled goods should not be penalised.

**Shri Morarji Desai:** He will not be liable for prosecution, but for confiscation he should be liable.

**Shri Shah:** Only of the gold that is smuggled, not the whole lot.

**Shri Morarji Desai:** The whole lot—lock, stock and barrel. I would say that even his property should be confiscated. Then and then only will this stop. I want to put dread into the minds of the people and to stop this.

**Shri Bade:** Mr. Shah, would you say that it should be confiscated and not forfeited?

**Shri Shah:** There is no difference between confiscation and forfeiture.

**Chairman:** Anything else?

**Shri Shah:** There is one thing more. As regards the provisions for appeals, revisions and reviews, their request is that just as in Income-tax and Sales Tax there should be a tribunal to hear appeals. That is their request.

**Shri Morarji Desai:** The request is before the Committee. The Committee will consider it.

**Shri Shah:** Another thing is that in clause 121 the provision is that the sale proceeds may also be taken away. Their only request is this. Where any goods are purchased by any person having knowledge that they are smuggled, the provision is all right. But when you say "or reason to believe" this is very wide and therefore these words should be omitted. If he has knowledge that they are smuggled goods, the sale proceeds may be confiscated. But the words "or reason to believe" should be omitted.

**Shri Morarji Desai:** They are the same thing.

**Shri Shah:** They are not the same. Parliamentary legislation does not use redundant words. That is what I know of.

**Shri Morarji Desai:** They are not redundant.

**Shri Shah:** So they are different.

**Shri Debejia:** In this case you mentioned would the boldsmith have knowledge or reason to believe?

**Shri Shah:** He would have reason to believe.

**Shri Morarji Desai:** Therefore both things are required.

**Shri Shah:** Where you forfeit the smuggled goods it is all right but when it comes to the sale proceeds...

**Shri Morarji Desai:** Even the sale proceeds. Unless there are monstrous provisions there is not going to be a solution to this. And these are monstrous provisions. I am not denying that. These are not ordinary provisions. But they are very necessary.

**Shri Kasturchand:** (Spoke in Gujarati).

**Shri Morarji Desai:** Shri Kasturchand says that this will be a very great hardship to the people who do bona fide transactions. I say this is a hardship and we cannot afford to take away the hardship.

**Shri Hari Vishnu Kamath:** The hardship may be minimised. That is all that we can do. Life is hard for every one.

**Shri Morarji Desai:** We can try to do that. That is for the Committee to consider.

**Shri Trikamlal:** This will stop the trade completely everywhere in India.

**Shri Morarji Desai:** That also may be necessary.

**Shri Trikamlal:** Suppose a man has ten or fifteen tolas of gold and he goes to somebody asking him to finance against it. Nobody would finance against that gold.

**Shri Morarji Desai:** He will preserve the gold and not incur any debt. He will save himself.

**Shri Kasturchand:** (Spoke in Gujarati).

**Shri Morarji Desai:** He says that this won't be accepted by the coun-

try or that this will not become current. I say we have got to change the customs, the habits, the traditions. We have not kept our modes of dress, food and actions. The joint family has broken up.

**श्री कस्तूरचंद :** मैं यह कहना चाहता हूँ कि भूविस्मर्गलिंग का काम यहाँ से ही आदमी बहो है, इसलिए सारे देश के आदमियों का पीनलाइज करना ठीक नहीं है।

**श्री मोरारजी देसाई :** मैं इन्टरनेशनल प्राइस पर सब का सोना खरीदने के लिये तैयार हूँ।

**Chairman:** Thank you.

*(The witnesses then withdrew.)*

### III. THE MADRAS JEWELLERS' AND DIAMOND MERCHANTS' ASSOCIATION, MADRAS

#### Spokesmen:

1. Shri V. Pandurangiah
2. Shri Harendra Mehta
3. Shri P. Gopalakrishniah
4. Shri Kanayalal Mehta.

*(Witnesses were called in and they took their seats.)*

**Chairman:** Your Memorandum has been distributed to all the Members of the Committee and they have gone through it. If you want to supplement it you may now do so.

**Shri Harendra Mehta:** Here are diamonds in various forms in which they are cut for demonstration. (Shown to Members).

**Shri Morarji Desai:** How many diamond merchants are there in Madras?

**Shri Pandurangiah:** Two-hundred and twenty recognised traders who deal in diamonds and jewellery.

**Shri Morarji Desai:** In Madras city All over Madras?

**Shri Pandurangiah:** Diamond merchants, dealers in gold ornaments, about 5000 people.

**Shri Morarji Desai:** In Madras they use diamonds more than in other places.

**Shri Pandurangiah:** Yes. Diamonds of a particular quality are used in Madras, mostly the better quality ones.

**Shri Morarji Desai:** Because it is said that in marriage, every girl must have one just as every girl must have some gold in our State.

**Shri Pandurangiah:** At least one pair of ear drops of good quality, without flaw. There is some sentiment attached to it. They will even borrow to buy this.

**Shri Morarji Desai:** On how many clauses do you want to speak?

**Shri Pandurangiah:** What we have to say will be in a general way. We are worried about certain aspects of this Bill.

**Shri Morarji Desai:** The idea is to put fright into the minds of the people concerned.

**Shri Pandurangiah:** In the process of doing that, you are frightening the very existence of the trade. We feel that certain peculiar aspects of this trade have to be explained as they may not be known to you. We are confident that if what we have in mind is made known to Government, there will not be any trouble. I would like to make my submissions with only one or two general remarks. This is an industry which has been going on for thousands of years. It fills a definite need in the social economy of the country. People need certain commodities and jewellers have to exist. I do not want to cite the Parkinson law, I will only say that we the *bona fide* jewellers in India have got a right to be protected by the Government against seizure, arrest, being taken before a magistrate, being paraded in the streets and then

being left without a defence and without a definite means of protecting ourselves. We only request that the honest trader should be protected from being harassed. If in the process of trying to check smuggling, *bona fide* traders are put to trouble, I submit that it is the duty of the Government to protect them. We have got as much right to exist as anybody else because there is need in this country for our services. This Bill has put a fright into the mind of every jeweller, and they have been asking: are we to be wiped out? If that is so we would like to have a statement to that effect that we should change our business.

**Shri Prabhat Kar:** May I know whether all this picture of handcuffing and parading in the street etc., did take place?

**Shri Pandurangiah:** I can prove any statement that I am making to be a fact. Any point I am submitting I am prepared to prove with facts and figures.

**Shri Prabhat Kar:** I only wanted to know whether any one of your members was handcuffed and paraded in the streets?

**Shri Pandurangiah:** Yes, it happened, and the Association took up the matter. The matter went to the highest persons. We made representations to the I.G. of Police in Madras on this specific instance, and we have been given a letter saying that the members of our Association will be treated with the utmost consideration in future. I have got the letter in the files of the Association. I can produce it.

**Shri Bakar Ali Mirza:** What was the case in brief?

**Shri Pandurangiah:** The case was that the man bought a property which was supposed to be smuggled or stolen. The man was handcuffed, paraded in the streets, beaten, and the matter became so serious that it

had to be taken up with the State Ministry and the I.G. of Police, and written representations were made. A letter was received from them that consideration would be shown to the members and that safeguards would be made, and that in similar cases, the Association officials would be allowed to give evidence and their evidence would be taken.

**Shri Hari Vishnu Kamath:** Was it proved that it had not been smuggled?

**Shri Pandurangiah:** Yes. It was released.

**Shri Prabhat Kar:** Was it by the customs authority?

**Shri Pandurangiah:** Yes, customs and police. In a case of goods smuggled, stolen or unaccounted, whether the action is taken by income-tax, police or excise ...

**Shri Dehejia:** Under the Police Act of a State, when some goods are found which cannot be accounted for, the police have certain powers. It may have exceeded its powers in a particular case.

**Shri Pandurangiah:** We do not object to that, we only object to the manner in which that Act was enforced.

**Dr. L. M. Singhvi:** Were those proceedings initiated under the Police Act or was it done by the police at the instance of the customs authorities? Who filed the F.I.R.?

**Shri Pandurangiah:** Customs.

**Shri R. Ramanathan Chettiar:** Where was it confiscated and where was the person arrested?

**Shri Pandurangiah:** This happened in Madura. It was brought by the customs, and then we took it up.

**Shri R. Ramanathan Chettiar:** Land customs?

**Shri Pandurangiah:** Land customs or sea customs, I suppose it is the same.

**Shri Morarji Desai:** When was this?

**Shri Pandurangiah:** About two years back.

**Shri Dehejia:** Could the I.G.P. give that undertaking in respect of a customs officer?

**Shri Pandurangiah:** The police ill-treated the person, and we submit that whatever may be the case, we the organised Association will come to the help of the police, but we do not want vindictive action to be taken against any one.

**Shri R. Ramanathan Chettiar:** This is a matter for the police. I do not think the customs come into the picture at all.

**Shri Hari Vishnu Kamath:** You mean to say that powers conferred on any officer are likely to be abused?

**Shri Pandurangiah:** Yes, it is only from that point of view. That is why I submit that this Bill and its whole spirit has put a fright into the minds of *bona fide* traders. We are asking this simple question: will we be permitted to live and do our business? If some one person smuggles somewhere, why should the normal *bona fide* trade suffer? We have no objection to the smuggler being caught red-handed, he may not have any defence, and we will not go to his rescue.

**Shri Hari Vishnu Kamath:** In the case mentioned by you, did your Association proceed against the police officer who committed excess?

**Shri Pandurangiah:** Yes, we did. We made a representation. We did not make a complaint in a court of law. We made a representation to the I.G. and the Commissioner, because they were sympathetic at that level.

**Shri A. V. Raghavan:** It was open to you to take common law proceedings.

**Shri Pandurangiah:** After the man was handcuffed, paraded in the streets, beaten in the police station, what benefit or what satisfaction do we get out of proceeding against him when the damage has been done?

**Shri A. V. Raghavan:** It will be an example to others not to do it.

**Shri Pandurangiah:** Short of going to a court of law, we did everything possible. The position is this. If a man is caught in the street with a packet of Lucky strike in his pocket and is taken to a police station and asked to explain, he cannot reasonably account for that packet unless he says that he came by a plane and bought the packet on the plane. The packet has got the mark and the tobacco is fresh. A watch has got a registered number engraved at the back. Whenever we send it for repairs, they say the particular number watch is being repaired. Identification is possible. In a fountain pen, the parts and other things are named, stamped, engraved, and even if a spurious engraving is done, by magnification it can be found out whether it is the original part of the pen or an imitation. In the case of the diamond, which is a transparent article, which is cut either in this country or elsewhere, the excellence and skill of the cutting in India being equal to any other part of the world, the only identification that a man can give is as to where he purchased it. If it is 10 per carat or 20 per carat, one of small size and mixed up with other items, it is impossible for Government to lay down any particular procedure; nor is it possible for the owner of diamonds or the possessor of diamonds to defend. At the level where it is smuggled, either in the aircraft or within the customs precincts, it can be caught and the man cannot have any defence. Supposing you catch one person with 100 carats of diamonds, he cannot say he bought it in his grandfather's time or that they are his wife's jewellery; he has to account for them. But, once he gets into the street, in the country, he is just like a convict escaping from jail and shedding off the dress of the

prison and putting on civilian dress and joining any party in a maidan of 10,000 people. There can be no justification for burning up all the 10,000 people so that this one man cannot escape.

In the same way, we the jewellers buy in a *bona fide* manner from individuals. The source of supply is from the rough diamonds which are imported into the country and cut. Large quantities of diamonds had been imported by princes all these years because of the diplomatic privilege. They are being sold. Till 1947, we ourselves were importing as many diamonds as we could possibly get. There was no restriction on the diamonds until 30th June, 1947. We could get anything; and the diamond imported into the country on the 15th of June 1947 cannot be distinguished or differentiated from diamonds smuggled today and brought into the country. Indian mines are there. Diamonds are still being mined in a small way and rough diamonds are being imported under the Export Promotion Scheme or under the import controls. A diamond in your hand may be a million years old; it is ageless. The diamond does not change for years. It is not like emerald which will be watered down. Diamond is a thing which will defy such an operation. It will be permanent even after hundreds of years.

**Shri Hari Vishnu Kamath:** What is supposed to be the average life-time of a diamond?

**Shri Pandurangiah:** The geologists say that they must have been created by nature millions of years back. If any diamond can be proved to have been with any particular person before the year 1900, you can safely say that it is of Indian origin and, therefore, cannot come under the purview of smuggling. Because the discovery of mines and mining of diamonds in Africa was done between 1895 and 1898 and it was not until 1905 to 1908 that diamonds in quantities entered this country. From 1905-1908 to 30th June, 1947, diamonds were freely

being imported. Even South Africa was selling diamonds to us until 1945.

**Shri Hari Vishnu Kamath:** Is there any test by which you can discover how many years back a particular diamond was cut and polished?

**Shri Pandurangiah:** Regarding cutting and polishing we can broadly classify them into what are known as having been popular in the twenties or before. But, if it is a question of a diamond cut after 1935, it will be absolutely impossible to identify because there has been no broad change in the style and manner of cutting. The angle at the top and the angle at the bottom, the number of facets, the proportion of the girdle, that is the base, to the diameter, that is the top table, there has been no broad change from 1930 and 35 till now.

**Shri Hari Vishnu Kamath:** Is the technique the same in Europe and in India?

**Shri Pandurangiah:** Yes, Sir. It is identical because it is a question of pure geometry. 30 to 32 degrees is the limit for the top and 27 degrees for the bottom; 24 facets at the bottom and 32 facets at the top; one at the top and one at the bottom; total 58. It is pure and simple geometry. If a diamond is not cut that way, it will be considered to be badly cut and badly shining, and, therefore, not worthy of being called a good diamond.

I submit once again that it is transparent. In a transparent stone, that is diamond, which is with me from 1920, if I do not like the cutting, I can send it to one of the diamond cutters anywhere where cutting is done and have it re-shaped. It will look as if it is newly cut. Cutting is a thing which is done by human hands, capable of changing the shape of a diamond to bring out its best brilliance and, therefore, it is a question of craftsmanship. Our cutters, particularly in the Surat area, are so experienced that some of the biggest and most valuable diamonds

are cut and polished in India. Surat and Navasari are the places where diamonds are cut.

**Shri Mahida:** Cambay also.

**Shri Pandurangiah:** It is for rubies and sapphires.

**Shri Hari Vishnu Kamath:** It is the Minister's constituency.

**Shri Morarji Desai:** I am allowing him to hear fully if he wants to. I have taken a lesson from him.

**Shri Hari Vishnu Kamath:** My constituency produces *tarboojas* and *kharboojas*.

Another question is, so far as uncut diamonds are concerned, can you distinguish *deshi* from *videshi*?

**Shri Pandurangiah:** It is not possible. In the olden days, luckily nature did not differentiate politics or geography. The discovery was made under identical circumstances; when the pressure exceeded so much, when the temperature exceeded so much, carbon became diamond.

**Shri Hari Vishnu Kamath:** There is difference between man and man in one part of the world and the other.

**Shri Pandurangiah:** God's presentation of humanity being two eyes and two ears, in the same manner....

**Shri Hari Vishnu Kamath:** The ethnic qualities of mankind vary from part to part of the world. They are quite different.

**Shri Pandurangiah:** May I submit that these qualities are man-made and not God-made?

**Shri Hari Vishnu Kamath:** I do not speak about the physical qualities, but about the ethnical ones.

**Shri Morarji Desai:** Every child in any part of the world cries in the same manner, smiles in the same manner; its gutters function in the same manner. It is only after they come in contact with people like us that they differ.

**Shri Hari Vishnu Kamath:** I do not talk of the inner qualities; but I am speaking of the external variations.

**Shri Pandurangiah:** My submission is general and not with regard to particular clauses because I am not worried about the clauses. If you understand the thing, then, you will so frame the clauses to suit us.

**Shri Morarji Desai:** We are not worried about you or how you carry on your business. We are worried about smuggling.

**Shri Pandurangiah:** With regard to smuggling I would submit this. People are smuggling because a climate has been created for that. I do not wish to say who created this climate.

**Shri Morarji Desai:** Nobody creates the climate; it is the smugglers who create the climate for themselves.

**Shri Pandurangiah:** You may take as much strong action against smuggling as you like. We do not plead for them. We are not here as representatives of the Smugglers' Association. I do not know whether the hon. Minister is aware that in other countries there are smugglers' associations in existence.

**Shri Morarji Desai:** I do not know; this is the first time I hear of it.

**Shri A. V. Raghavan:** Are they legal associations?

**Shri Pandurangiah:** They are known as Smugglers' Associations.

**Shri Morarji Desai:** They may be like a gang of dacoits; they cannot be associations.

**Shri Pandurangiah:** They may not be legal but illegal. They call themselves associations.

It is not legal; it is illegal. We want to state that the prejudice which seems to be in the minds of the Government that we are connected in some way with illegal transactions is not justified.

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**Shri Morarji Desai:** No illegal transactions can take place unless those who do the legal transactions get mixed up. Not all of them. Some do get mixed up. Otherwise no illegal transaction can remain there.

**Shri Pandurangiah:** Clauses 101 to 105 relate to the power to search, arrest, etc. We wish to submit that in the case of arrests, etc. the present provision which asks them to go to the Magistrates should be continued. It has a salutary effect. The *bona-fides* of merchants who are known for their honesty and integrity are known to the Magistrates who do not generally give permission to arrest unless they have got strong reasons to believe that there is some truth in what the police or customs officers say. Once a place is searched, the customs people come in and then the whole business is paralysed. I have known instances where even for ten hours officers sat there and refused to allow a person to go even to the WC or receive telephone calls in the normal course or the customers to come in.

**Shri Morarji Desai:** I can understand about the telephone calls not being allowed but I cannot understand about a person not being allowed to go to the WC. If any officer had done like that I am prepared to be very stern on it.

**Shri Pandurangiah:** What can the poor person do? I wanted to come to his help. He was very frightened. He was not allowed to talk to his lawyer or friends and when I wanted to see him I was not allowed. I am the President of the association.

**Shri Morarji Desai:** Nobody is allowed except panchas when the search is going on: no lawyer can be allowed. After the search is over, a lawyer or others may be allowed to go in or see him.

**Shri Gopalakrishnaiah:** Sometimes coercion takes place.

**Shri Morarji Desai:** We have also got provisions to put fright in the officers if they do improper things. But you must write to us.

**Shri Anand:** Another impression created by you is that under the present Act one requires the permission of the magistrate to arrest a person. It is not so. You can see section 173 of the existing Act; it is not necessary to get permission from the magistrate.

**Shri Pandurangiah:** I was thinking of search warrants.

**Shri Mehta:** Our request is that search warrants may be issued by the magistrates. It happens sometimes that people are kept in custody the whole night and they are even beaten.

**Shri Morarji Desai:** That is illegal. Suppose you are beaten, unless you complain how can action be taken. Unless you are courageous enough to complain, how can any provision help you.

**Shri Mehta:** If the presence of a lawyer is allowed at that time it will be of help.

**Shri Morarji Desai:** But if he beats before the lawyer comes? He cannot be accompanied by a lawyer everywhere. A lawyer can see him after the search is over; nobody prevents that.

**Shri Hari Vishnu Kamath:** At what stage of the proceedings would you need the services of a lawyer?

**Shri Mehta:** After the search is over, immediately a lawyer should be allowed.

**Shri Morarji Desai:** Nobody prevents that. If you want that it should be incorporated in law, how can we do that?

**Shri Mehta:** In practice they do not allow the lawyer to come. An ordinary person does not know the law. The officer says that the presence of any lawyer is not allowed.

The officer will say, "you cannot get a lawyer." The ordinary man will not know the law. After the officer makes the search and finishes it, the man will say that he wants to be brought in.

**Shri Morarji Desai:** What for?

**Shri Mehta:** To put questions.

**Shri Morarji Desai:** The officer leaves after the search.

**Shri Mehta:** The *mahazar* is there. The statement is taken there.

**Shri Morarji Desai:** If the statement is taken the lawyer will not be allowed.

**Shri Mehta:** He comes to the customs house or to the customs officer and he is detained there for a number of hours; sometimes from one to eight hours.

**Shri Morarji Desai:** He cannot be detained.

**Shri Mehta:** That is the prevailing practice.

**Shri Hari Vishnu Kamath:** You are afraid that the customs officer may force the man to make a statement.

**Shri Mehta:** Yes; and so, he can be in for greater trouble on the next occasion.

**Shri Morarji Desai:** That is what happens when confessions are taken by the police. They are taken into account.

**Shri Mehta:** In the present Act, it is being said that confession before the police officer or the customs officer is going to be a *pucca* document.

**Shri Hari Vishnu Kamath:** The Committee will consider that. It is a reasonable suggestion.

**Shri Mehta:** We request the Committee to consider this aspect very sympathetically.

**Shri Himatsingka:** We cannot make it provisional.

**Shri Morarji Desai:** He wants that he should be allowed.

**Shri Mehta:** He should not be disallowed. If he wants, he should be allowed.

**Shri Morarji Desai:** That depends on the discretion.



**Dr. L. M. Singhvi:** I would request the witness to tell us if it is within his knowledge—if there is any specific instance within his knowledge—where there was an extortion of a statement by a customs official though there is nothing in law to force a man to make his statement. It is open to the persons charged to make a statement only after he has consulted his lawyer—he cannot be forced to make a statement until he has consulted the lawyer—but are they making their statement on the basis of any specific case within their knowledge, or, is it just an anticipatory sort of relief that they are seeking?

**Shri Pandurangiah:** I can give an instance of a man who was kept for the whole night in detention and then a statement was put before him and he was asked to sign it. I had personally to intervene in the matter. He signed the statement.

**Shri Morarji Desai:** When did this happen?

**Shri Pandurangiah:** A year before.

**Shri Morarji Desai:** Did you complain about it?

**Shri Pandurangiah:** I shall briefly tell you what happened. At 1 O'clock in the morning I telephoned to the Collector of Central Excise. I woke him up and asked, "what has happened to so and so, who was arrested at 9 O'clock in the night?" He said he must have returned home. I replied that he had not and that his wife and children were in my house and "they say that the man has not come back. The man has not come back and he is still in your office. Will you kindly check up?" The Collector was known to me personally and therefore he was very courteous and said, "I have ordered that he should be sent back." He then rang up his office and was told that I was correct and that the man was still under detention. He told me, "He is here still. We have given him a bed. We have provided cots for him for sleeping." I asked "Why should he be there? Please let me know." He said, "We have had a

trunk call to Bombay for a certain information, and until that information is checked, I am detaining him for the whole night."

**Shri Morarji Desai:** That becomes necessary. Otherwise, he will get into contact with others and whitewash the whole evidence.

**Shri Pandurangiah:** I said that the Collector was not quite correct in doing so, because the moment the man was arrested, trunk call had already been made by his relations and it would not help anyone by detaining him there.

**Shri Morarji Desai:** The man does not have the telephone for contacting anybody.

**Shri Pandurangiah:** But his relations do it.

**Shri Hari Vishnu Kamath:** Was he detained for more than 24 hours?

**Shri Pandurangiah:** From 9 O'clock in the night to 7 O'clock in the morning.

**Dr. L. M. Singhvi:** Was the man made to sign a statement?

**Shri Pandurangiah:** He was made to sign and he signed it.

**Dr. L. M. Singhvi:** What happened after that?

**Shri Pandurangiah:** Actually, I do not know whether the statement was believed in or not. But ultimately those goods were confiscated.

**Shri Morarji Desai:** You must have gone to court. What happened then?

**Shri Pandurangiah:** I think one or two packets which were identifiable were returned to him and the rest was confiscated.

**Shri Morarji Desai:** Then there was a case for confiscation. All these things have to be done. Otherwise nothing can be identified. We have got to be very harsh on this.

**Shri Pandurangiah:** But they were not able to prove from the accounts.

**Shri Morarji Desai:** You have just said that and you have gone to court.

**Shri Pandurangiah:** Two packets which could be identified were returned by the court.

**Shri Morarji Desai:** So, it was on a proper basis. There must have been a mistake in respect of one or two packets. But this means he was a man who was dealing with all these things. Why are you trying to save him?

**Shri Pandurangiah:** I am not trying to do that. I only say that he was detained for the night.

**Shri Morarji Desai:** I do not think there was anything wrong in his having been detained.

**Shri Pandurangiah:** We said that his wife and children were in my house.

Now, we come to section 118. Under this, when packages get mixed up with other things, when there is a suspicion, the whole stock can be confiscated. If this is literally followed, even if five out of 100 diamonds are suspected to be smuggled, all the 100 diamonds are to be confiscated.

**Shri Morarji Desai:** Can you not separate the diamonds?

**Shri Pandurangiah:** It is such that you cannot separate it.

**Shri Morarji Desai:** Then what has to be done?

**Shri Pandurangiah:** If, out of four carats, one and a half carats are suspected, then they can be taken out.

**Shri Morarji Desai:** That could be done, if it is possible. But, if all of them are of the same size, what could be done? The whole thing is to be confiscated.

**Shri Pandurangiah:** But is it fair? It may not be possible either for the prosecution or for the defence to distinguish them.

**Shri Mehta:** When there is information that something has been smuggled into the country, there may be

also some information as to the quantity of goods that have been smuggled. Suppose the quantity of smuggled goods is about 100 carats, if there is reasonable evidence that the total quantity is 500 carats, then, 100 carats alone will be confiscated.

**Shri Morarji Desai:** All the stock will be forfeited and confiscated so that the God-fear will be in their minds and they may not repeat it again. The whole stock will be forfeited.

**Shri Pandurangiah:** How do you protect the ordinary *bona fide* trader?

**Shri Morarji Desai:** A *bona fide* person is one who does not mix up things. Once it is proved that all these are mixed up and smuggled goods, I do not know what you want us to do.

**Shri Hari Vishnu Kamath:** Your case is that only he should be liable to punishment who, knowingly or wilfully, mixes smuggled goods with the genuine goods. Then, there could be no objection.

**Shri Morarji Desai:** Clause 120 says:

“(2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation;”.

**Shri Gopalakrishniah:** The goods are seized even on suspicion. The whole thing is taken away first.

**Shri Morarji Desai:** If it is proved the whole thing is taken away.

**Shri Gopalakrishniah:** If the prosecution has got a proper, reasonable belief, if they have reasonable evidence, it can be done.

**Shri Morarji Desai:** Before a proper investigation is made they cannot do it. But on suspicion also, it must be done.

**Shri Gopalakrishniah:** Then where is the safety?

**Shri Morarji Desai:** There should be no safety for it.

**Shri Prabhat Kar:** If it is already a proved matter, all these things will not arise.

**Shri Mehta:** Whether the business we are carrying on is legalised....

**Shri Morarji Desai:** All illegal business is mixed up with legal business.

**Shri Mehta:** I perfectly agree with you. Let me give a concrete example. A has 1,000 carats of smuggled diamonds and he sells 500 carats to B. B sells out of these 500 carats to C. C is a *bona fide* purchaser. He has got a voucher from B and he has paid B through a cheque. After sometime it is found by the department that A has smuggled the diamonds and sold it to B, who has in turn sold it to C. C is in possession of a *bona fide* bill and he has paid through a cheque. How is C responsible? How does he know that the diamonds he purchased are smuggled ones?

**Shri Morarji Desai:** C will not be prosecuted, but the goods will be confiscated.

**Shri Mehta:** What mistake has he committed that he should lose the goods he has paid for?

**Shri Morarji Desai:** Smuggled goods should not be allowed to remain with anybody.

**Shri Hari Vishnu Kamath:** He says, C has purchased them without the knowledge that they are stolen. Under the IPC, he is not punishable.

**Shri Morarji Desai:** That is why he is not proceeded against.

**Shri Bade:** There was a case which happened in Indore. An advocate purchased motor car from Calcutta and it was stolen. It was confiscated in Indore. When he proved that he was a *bona fide* purchaser, the court ordered that the car should be restored to the original owner.

**Shri Gopalakrishniah:** In this case, identification is not possible.

**Shri Mehta:** Suppose I have purchased 100 carats of diamond by voucher and I have a stock of 500 carats. All my stock of 500 carats will be confiscated by the department.

**Shri Morarji Desai:** Under the proviso, the 400 carats out of that will be saved and restored to you when you prove that they are not smuggled.

**Shri Mehta:** To get relief for my 400 carats, it will take 2 years. My entire assets will be in your hands and I am out of business.

**Shri Morarji Desai:** There can be never 500 carats in one packet. It is pure imagination. How many carats were there in the packet you showed to me?

**Shri Mehta:** 10 carats. But under the present law, my entire stock will be confiscated.

**Shri Bade:** Your point is that the whole thing should not be confiscated. That is the difficulty for the committee also. The previous witnesses also have mentioned it. We will discuss it and come to a decision.

**Shri Morarji Desai:** It is for the committee to decide.

**Shri Dehejia:** Under which clause do you fear that the entire stocks will be confiscated?

**Shri Mehta:** Clause 118.

**Shri Morarji Desai:** He is wrong when he says that the whole stock will be confiscated. By overstating your case, you lose your case. Has it ever happened?

**Shri Mehta:** Yes. In Madras last year Rs. 1½ lakhs worth of goods were confiscated. There were nearly 22 packets ranging from 2 carats to 25 carats in each packet. Still no decision has come from the excise officer.

**Shri Morarji Desai:** You give me the details before you go and I will

look into that. Not only this case, but in other cases also, if there has been harassment or wrong use of power, if you bring it to our notice, we will go into each case. If any officer harasses you and if you come in appeal, I will certainly punish him.

**Shri Mehta:** Thank you.

**Shri Bade:** So far as this case is concerned, the Minister has given the assurance. That is all right. But we are here to consider the whole problem which you have raised.

**Shri Mehta:** Our point is that the diamond is indistinguishable.

**Shri Bade:** Can you throw some light on clause 115 about confiscation of conveyances?

**Shri Pandurangiah:** They confiscated a motor car just because smuggled watches were kept under the seat.

**Shri Morarji Desai:** There is nothing wrong in that.

**Shri Pandurangiah:** It was the watches which were smuggled and not the car.

**Shri Morarji Desai:** Under the former Act, we have confiscated several motor cars. They have gone to the courts and lost. It is not a new provision. Cars are used for smuggling, kidnapping, dacoity, etc. In such cases, they are bound to be confiscated.

**Shri Mehta:** The first man who knowingly smuggled should be punished.

**Shri Morarji Desai:** Suppose from you shop some diamonds were stolen and after changing several hands, they are found in somebody's possession and that person was a *bona fide* purchaser. The diamonds must be restored to you, but so far as the *bona fide* purchaser is concerned, his remedy is against the person from whom he purchased.

**Shri Mehta:** Where one packet of 500 carats is sold in the same condition, that is absolutely justified. Supposing it is not sold in the same condition. We have shown that it is not possible to distinguish the diamond. How can we prove that it is duty paid or not?

**Shri Morarji Desai:** Even if you trace it, how can the goods not be returned to the original owner?

[**Shri Pandurangiah:** Then we come to clause 123 which deals with the burden of proof. This is a point on which we are feeling very unhappy.

**Shri Morarji Desai:** You are bound to feel unhappy. I also do not feel happy when I have to be heard.

**Shri Pandurangiah:** I hope this applies to individuals and also dealers. The individual concerned can only say that he bought it. How can he be expected to prove anything beyond that? How can he prove that it is not a smuggled thing.

**Shri Morarji Desai:** If it is proved that it is *bona fide* purchase he will not be prosecuted.

**Shri Bade:** According to section 123 you are to prove two things. You have to prove that you are a *bona fide* purchaser and, secondly, that the goods are not smuggled goods. You want to remove the second part.

**Shri Pandurangiah:** The thing might have passed through hundred hands. It would not have even been bought, it might have been polished locally or an old-cut diamond might be re-cut. How can I prove that it is not a smuggled diamond?

**Shri Morarji Desai:** We have said, therefore, that the grounds for seizure will be conveyed to you. You can prove that those grounds are not valid.

**Shri Pandurangiah:** He can at best prove that it was bought in a *bona fide* manner.]

**Shri Morarji Desai:** Supposing somebody gets something from Connaught Place which has been smuggled, what am I to do?

**Shri Pandurangiah:** They are all branded goods. I am talking of goods which are not branded. It is as difficult for the prosecution to prove that it is not smuggled or smuggled as it is for the possessor.

**Shri Morarji Desai:** The misfortune is that regular dealers also deal in this matter.

**Shri Pandurangiah:** At least to save one honest man hundred people can be allowed to go.

**Shri Morarji Desai:** In some matters like the matter of smuggling, I am not prepared to subscribe to it. If I have reasonable grounds, I cannot help it. I know that is a very well known axiom of law, but I am very much worried about smuggling.

**Shri Pandurangiah:** But you cannot hurt an honest man. Then you will be committing a great sin, that is all that I can say.

**Shri Morarji Desai:** I will pay for it in the interest of society.

**Shri Hari Vishnu Kamath:** It is the view of the Executive, not necessarily of the Parliament.

**Shri Morarji Desai:** Why of the Parliament; it is yet the view of the Committee even.

**Shri Hari Vishnu Kamath:** This is a Committee of Parliament, and that is why I said "Parliament".

**Shri Pandurangiah:** He is dealing in a commodity which is not identifiable. It is the duty of the State to protect him.

**Chairman:** Provided he proves his *bona fide* he will be protected. The clause is quite clear.

**Shri Pandurangiah:** This is a thing which you cannot prove. It is not like a packet of cigarettes.

**Shri Hari Vishnu Kamath:** Can you suggest any concrete measures to prevent smuggling and to catch smugglers?

**Shri Pandurangiah:** Please give me a seat on the other side, then I will show how to prevent smuggling.

**Shri Morarji Desai:** Without sitting here why don't you show me? You are not a good citizen if you know it and you do not tell me.

**Shri Pandurangiah:** I have no powers to exercise. You tighten your defence on the shores. It is only through a sense of frustration and despair that the Government is bringing hardship on honest people so avowedly and so openly.

**Shri Dehejia:** What is the length of our shores?

**Shri Pandurangiah:** It is not the length of the shores that matters. Smuggling is done through a few channels; the Government knows it and the public also know it.

**Shri Morarji Desai:** It is done in any part of the shores; it is not only at a few places. You cannot keep a sentinel at every few yards.

**Shri Mehta:** As far as gold is concerned, Sir, I would like to make one suggestion. Gold from the Kolar gold field is not now sold to the public. I understand that the quantity of gold now taken out from there is about 20,000 to 25,000 tolas every month. If that goes to the market most of the gold smuggling is likely to be eliminated.

**Shri Morarji Desai:** Rs. 50 crores worth of gold has to be sold every year, and only then it will go. From where am I to bring it? Who will give it?

**Shri Pandurangiah:** Allow us to find the foreign exchange, and we will bring it.

**Shri Morarji Desai:** Where will you get the foreign exchange?

**Shri Pandurangiah:** In the international market, there is a free market and a controlled market. I can go and buy any amount of gold and silver from an uncontrolled market in London or Belgium.

**Shri Morarji Desai:** How will you pay for it?

**Shri Pandurangiah:** By selling it.

**Shri Morarji Desai:** By selling it in India?

**Shri Pandurangiah:** Anywhere. We will send our goods there.

**Shri Morarji Desai:** What goods? You give me a practical proposition and I am prepared to consider it. Do not think that you are more brilliant than all the people sitting here.

**Shri Pandurangiah:** It is not that. We actually speak from a feeling of hurt.

**Shri Morarji Desai:** I do not think I am unmindful of that hurt. I would not have been fit to sit here if I did not take into account the feeling of the people.

**Shri Pandurangiah:** You said that you are willing to hurt honest people.

**Shri Morarji Desai:** I have to do that sometimes.

**Shri Hari Vishnu Kamath:** Reluctantly.

**Shri Gopalakrishniah:** You admit that there is large scale smuggling in gold and jewellery.

**Shri Morarji Desai:** It is a known fact.

**Shri Gopalakrishniah:** Thereby our country is losing foreign exchange to a large extent. Therefore, why not Government take up this matter and sacrifice some foreign exchange.

**Shri Morarji Desai:** From where to sacrifice? I will have to do it continuously for ten years and hold up other industrial developments.

**Shri Gopalakrishniah:** By importation of gold naturally the market will come down.

**Shri Morarji Desai:** The moment I do that, nobody will give me a loan. You do not understand the implications of it. I wish you were in my position and I were in your position. You think it is so easy.

**Shri Mehta:** The gold from the Kolar gold field may not be sufficient for the country. In the international market the price is Rs. 60 to Rs. 62 a tola. If the Kolar gold field gold is sold to the public....

**Shri Morarji Desai:** It is only infinitesimal. That won't do.

**Shri Mehta:** But the price factor will be such that there will be no smugglers. The smugglers will not then think it fit to bring gold to the country.

**Shri Morarji Desai:** That is a smaller amount. If you are to sell it, that will not solve the problem. Only that much will be sold at that low price, because the demand is greater.

**Shri Pandurangiah:** Coming to clauses 111 and 113, in respect of goods in excess of the invoice some limit should be put. If it is shown as 100 kilo and if it exactly weighs 102 kilo, the person concerned should not be penalised. If, on the other hand, if it is shown as 100 kilo and the actual weight is 500 kilo, certainly the person concerned can be penalised. I suggest that some limit may be indicated there so that there may not be any ambiguity about it.

**Shri Morarji Desai:** If it exceeds the weight shown in the invoice, the difference alone will be confiscated. So, why should you bother about it?

**Shri Pandurangiah:** Suppose a person declares 100 kilo and the consignment actually weighs 102 kilo?

**Shri Morarji Desai:** Only the excess of 2 kilo will be confiscated.

**Shri Pandurangiah:** In such cases, a *bona fide* mistake can occur.

**Shri Morarji Desai:** All that will be taken care of by executive action. We will try to take care of all *bona fide* people.

**Shri Pandurangiah:** That is all what I wanted to submit. If I have exceeded my limits, please forgive me.

**Shri Morarji Desai:** No, you have not. You were invited to give evidence and you have given evidence.

**Shri Hari Vishnu Kamath:** You have been well within your limits. You may go in peace.

*(The witnesses then withdrew).*

*(The Committee then adjourned.)*

**SELECT COMMITTEE ON THE CUSTOMS BILL, 1962**  
**MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL,**  
**1962**

*Saturday, the 11th August, 1962 at 09.40 hours*

**PRESENT**

**Shri S. V. Krishnamoorthy Rao—Chairman.**

**MEMBERS**

- |                                      |                           |
|--------------------------------------|---------------------------|
| 2. Shri J. N. Hazarika               | 6. Shrimati Savitri Nigam |
| 3. Shri Narendrasingh Mahida         | 7. Shri R. V. Reddiar     |
| 4. Shri Bakar Ali Mirza              | 8. Shri M. Shankaraiya    |
| 5. Shri Shankarrao Shantaram<br>More | 9. Shri Sumat Prasad      |
|                                      | 10. Shri Bali Ram Bhagat. |

**DRAFTSMEN**

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

**REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS**

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

**SECRETARIAT**

**Shri A. L. Rai—Deputy Secretary.**

**WITNESSES EXAMINED**

**I. THE BOMBAY DIAMOND MERCHANTS' ASSOCIATION, BOMBAY**

- |                                |                            |
|--------------------------------|----------------------------|
| 1. Shri Chandrakant B. Jhaveri | 3. Shri Mahendra G. Mehta. |
| 2. Shri Ramniklal B. Jhaveri   |                            |

**II. ANDHRA PRADESH GOLD, SILVER, JEWELLERY AND DIAMONDS MERCHANTS' ASSOCIATION, RAJAHMUNDY**

- |                                  |                                 |
|----------------------------------|---------------------------------|
| 1. Shri Sampat Kumar Bang        | 3. Shri V. L. N. Venkataramayya |
| 2. Shri Kovilmundi Venkataswarao | 4. Shri Nimmala Sambasiva Rao.  |

**III. TRICHY SHROFF AND JEWELLERS' ASSOCIATION, TIRUCHIRAPALLI**

- |                        |                                    |
|------------------------|------------------------------------|
| 1. Shri Rajamannar     | 4. Shri M. Veerasami Naidu         |
| 2. Shri R. Madhava Rao | 5. Shri K. P. Lakshmana Padayachi. |
| 3. Shri P. Ramaswami   |                                    |

**IV. THE INDIAN NATIONAL STEAMSHIP OWNERS' ASSOCIATION, BOMBAY**  
**Shri K. K. Kothawala.**



**I. THE BOMBAY DIAMOND MERCHANTS' ASSOCIATION, BOMBAY**

**Spokesmen:**

1. Shri Chandrakant B. Jhaveri
2. Shri Ramniklal B. Jhaveri
3. Shri Mahendra G. Mehta.

**II. ANDHRA PRADESH GOLD, SILVER, JEWELLERY AND DIAMONDS MERCHANTS' ASSOCIATION, RAJAHMUNDRY**

**Spokesmen:**

1. Shri Sampat Kumar Bang
2. Shri Kovilmundi Venkataswarao
3. Shri V. L. N. Venkataramayya
4. Shri Nimmala Sambasiva Rao.

*(Witnesses of the above two associations were called in together and they took their seats).*

**Chairman:** Since the points which you want to place before us and the difficulties which you are facing are likely to be common, I have called the representatives of both the Bombay Diamond Merchants' Association, Bombay and the Andhra Pradesh Gold, Silver, Jewellery and Diamond Merchants' Association, Rajahmundry together. I hope neither of you has any objection to this procedure.

**Shri C. B. Jhaveri:** Not at all.

**Shri Bang:** No, Sir.

**Chairman:** We have circulated both the memoranda to all the Members of the Committee. Instead of repeating what you have stated in the memorandum, if you want to add anything to substantiate your arguments or stress some points, you may now do so.

**Shri C. B. Jhaveri:** In order to substantiate the points which we have raised in our memorandum, we want to show how practically certain clauses of the Bill will affect our trade. I will particularly refer to the mixing of diamonds in packed lots when the goods are in packets under clause 118 and sub-clause (2) of clause 120. Here we may be permitted to demonstrate how difficult it is, if not impossible, for the trade in general, individual merchants, tradesmen and even to the customers to differentiate between imported goods and goods manufactured here in our country,

because the cutting and polishing of diamonds has reached to such a perfection that we have got the best cutters and polishers, and it has been accepted not only within the country but even by foreign associations and institutions. To substantiate our argument we would like to place before you the May issue of a magazine published from Belgium so that you may read only two lines of one paragraph to know in what esteem they hold us.

We do know that a certain amount of smuggling is going on in the diamond trade and we do not mind the preventive steps which the Government want to take, and the authorities or powers to be given to the customs officers for the purpose of checking smuggling. But here we want to point out that because of these measures the innocent traders, the *bona fide* traders, should not be harassed or put to unnecessary inconvenience and it should not result in a reduction of trade. Even the customers are scared of these provisions.

Here we want to point out that we buy diamonds not only from the market but we import them also. Of course, at present only uncut diamonds are permitted to be imported against a licence. The uncut diamonds are cut and polished here in India and are sold by the merchants and manufacturers. The traders in their turn sell them to the customers, and these deals are made in good faith and bills are passed even when we buy from the customers. In India we have goods worth crores of rupees since centuries past and these lots also come into the market for sale. We buy from the customers also, in good faith, in loose form or in the form of jewellery. We pay them by cheques, official bills are passed and receipts are given. In spite of that, if subsequently it is proved or it is stated by the customs officer or the Customs Department that the particular lot was smuggled, under the provisions of sub-clause (2) of clause 120, if the smuggled goods are mixed up with other lots, the entire lot is liable to be confiscated.

**Chairman:** You say that they may be smuggled diamonds and that you cannot separate them out, but at the same time you want smuggling to be prevented. What is the remedy you suggest for it then?

**Shri C. B. Jhaveri:** The remedy is the preventive steps taken by the Department. We have no objection to their being taken.

**Shri B. R. Bhagat:** This provision is preventive step.

**Shri C. B. Jhaveri:** If the authorities are able to prove that the goods are smuggled. . . .

**Chairman:** The dealer must know the source of the diamond.

**Shri C. B. Jhaveri:** When I purchase a lot from a merchant or a customer, I get the bill and I am able to point out from whom I have purchased.

**Shri B. R. Bhagat:** Clause 120(2) will take care of that because you will be able to prove that whatever smuggled goods were there were not within your knowledge.

**Shri C. B. Jhaveri:** It is impossible to separate them. The clause says that if they are mixed up and it is not possible to separate them from the lot, the whole lot is liable to confiscation. Suppose, we have a packet of 100 carats of diamonds. We buy it in the market from a merchant and he gives us a bill. We make the payment by cheque. Now if in that lot of 100 carats I mix up 10 carats from my purchases and subsequently the Customs authorities suspect that those 10 carats were smuggled goods, then only on suspicion and reasonable belief our whole packet of 110 carats would be liable to confiscation.

**Shri S. S. More:** You say that you purchase certain diamond from a merchant and you mix it with your original stock. The Customs officer comes and reasonably feels that a particular diamond in that stock is smuggled and you say that you will refer to the merchant from whom you have purchased it. But at this stage can

you distinguish this particular diamond or separate it?

**Shri C. B. Jhaveri:** No; it is absolutely impossible.

**Shri S. S. More:** Then there is the possibility of the merchant whose bills you produce saying that he did not sell that diamond to you. When you purchase diamond pieces and mix them up with your original stock, the identity of a particular diamond is lost. So, what is the remedy?

**Shri C. B. Jhaveri:** That is why we have stated that *bona fide* traders . . .

**Shri S. S. More:** What is your definition of *bona fide* traders?

**Shri C. B. Jhaveri:** I would put it this way. We not only buy from merchants but we also buy from the customers.

**Shri S. S. More:** Every smuggler, unless he is detected, will pretend to be a *bona fide* trader.

**Shri C. B. Jhaveri:** That is correct. When we are approached either by a customer or by a merchant, we are shown the goods. Then, when we buy them, bills are passed and payments are made by cheque.

**Shri S. S. More:** What is there to show that a particular diamond is a subject of a particular bill?

**Chairman:** He may deny it. He may say, "I did not sell this diamond."

**Shri C. B. Jhaveri:** If he denies, the case against purchaser would not stand.

**Chairman:** There is also this possibility. Suppose a man convicted of theft comes to you and sells a diamond. You mix it up with your stock. Afterwards he says, "I did not sell this diamond." Now, so far as the Customs authorities are concerned, the fact that you purchased a diamond from such a man is *prima facie* proof that it is a smuggled diamond.

**Shri C. B. Jhaveri:** If the man denies that he has sold his goods to us, where is the proof that we have

bought smuggled goods?

**Shri B. R. Bhagat:** You must have voucher, receipt and all that.

**Shri C. B. Jhaveri:** That is correct. But if somebody denies that it has been sold to us, the case against me would not stand.

**Chairman:** We expect you to help the Government.

**Shri C. B. Jhaveri:** That is why we say that there must be a way out.

**Chairman:** What is the remedy that you suggest?

**Shri C. B. Jhaveri:** At present what happens is that if smuggled goods are found in the possession of someone, they are seized and a show-cause notice is issued. So far, it is well and good. But when the whole lot is to be seized and is made liable to confiscation, the whole trade would come to a standstill.

**Shri B. R. Bhagat:** If some such provision is not there and if smuggled goods are found in a packet which cannot be separated from the other goods, we may not be able to confiscate smuggled goods.

**Shri C. B. Jhaveri:** That is correct.

**Shri B. R. Bhagat:** There was a reference in the Bombay High Court.

**Chairman:** There is a provision in Clause 120 which says:

"Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, such part of the goods as is proved by him to have not been smuggled, shall not be liable to confiscation."

**Shri C. B. Jhaveri:** I would like to ask a question. If I buy goods in good faith, take a bill from the seller and pay him by cheque, can it not be said that those goods which I bought were bought in good faith and that they were not supposed to be smuggled?

**Shri S. S. More:** How are you going to prove the identity of those goods when you mix them up with the other honestly procured ones?

**Shri C. B. Jhaveri:** My point is this. Suppose, someone has sold me some smuggled goods in a *bona fide* deal and I have mixed it up with my regular stock. Now, the stocks are maintained on a quantitative basis. We keep them in different packets according to quality and size. When I purchase one packet, that packet may not have been mixed up only with one lot because I would sort them out and mix them up with different qualities and different sizes so that it would mean that one packet of smuggled goods would be distributed among other lots. That would mean that the whole stock would be liable to confiscation.

**Shri Shankaraiya:** Once the smuggled goods are mixed up with the stock, they will not be able to distinguish them. They also say that if they prove that they are *bona fide* purchasers and have purchased them proper persons in consideration, the goods should not be seized. I want to know from them how they can prove that that particular packet was purchased from a *bona fide* person. It may have been smuggled goods and may have been kept somewhere else. How can they say that the seized article itself was an article purchased *bona fide*?

**Shri C. B. Jhaveri:** Suppose, we are asked to point out where a particular lot purchased from a particular person was. Then, we can say that we have mixed it up with our stock. That much we can say, that is, we have purchased it and have mixed it up with the other packets. In that case if the whole lot is made liable to confiscation, the whole business would come to a standstill. It not only affects the trader but even the customers are scared. Suppose, a merchant sells some goods to a customer and later on it is proved that they were smuggled goods, what would be the position?

**Shri Bakar Ali Mirza:** There is one difficulty which I would like to point out. My hon. friend has mentioned about this already. He asked: how can you identify a particular gem? It cannot be identified in the case of the buyer. If a gem is not identifiable there, probably the gem is still with the seller. How do you say that this particular diamond that this man has sold is a smuggled one? He sells hundreds of diamonds to anyone. Right through, why should the buyer alone be made to prove this, while this thing cannot be proved anywhere else?

**An Hon. Member:** There is the section 116 of the existing Act.

**Shri C. B. Jhaveri:** May I speak on this? An Hon. Member has said about this and I wish to say something on this point.

**Shrimati Savitri Nigam:** I would like to know about certain points . . .

**Shri B. R. Bhagat:** Not only that, but even the U.K. Act makes a similar provision.

**Shri C. B. Jhaveri:** Now, may I seek your permission to make certain clarifications?

**Shrimati Savitri Nigam:** I would like to say something. Suppose you buy a packet of diamonds. It may be having 10 carat weight. Later on you realise that the *bona fide* merchant from whom you had got that, got that from somewhere else and that was a smuggled one. Now the question which arises is this. Would you have any objection if, from any of your packets, 10 carat weight of diamonds which is proved to be a smuggled one, is taken out?

**Shri C. B. Jhaveri:** That is one concrete suggestion. If there are hundred packets and if 10 carat weight of diamonds is supposed to be a smuggled one, if an equivalent quantity is taken away from that packet, that is a good suggestion, no doubt. But it is certainly unfair if the whole packet is liable to be confiscated. I am

referring to sub-section (2) of clause 120.

**Shrimati Savitri Nigam:** When you purchase diamonds, do you also mention in your bills about the weight of each diamond? Are you aware of the weight of each diamond or not?

**Shri C. B. Jhaveri:** The weight of the whole lot is mentioned in our bills and the price. The amount is mentioned.

The hon. member has just suggested that if an equivalent quantity of the goods supposed to be smuggled is taken away from the packet, that would be a good thing. Old section 168 relates to section 118 of the new bill. I am objecting to sub-section (2) of section 120. Section 120 is absolutely a new provision.

In many cases we have found that people have failed to satisfy the customs authorities according to their complete satisfaction. In fact, in spite of producing all material proofs, bills and particulars of the party from whom this was purchased etc., the arguments are not accepted, that is, they have failed to prove this to the satisfaction of the Customs authorities.

**Shri Mahida:** I would like to put one question to the witness. May I know whether smuggling has increased after 1947 or decreased after 1947?

**Shri C. B. Jhaveri:** Before 1947, there was no smuggling. There was absolutely no high duty. The duty was only 6 per cent then. There was no licence. In the month of July, 1947, the import of diamonds was prohibited and it was put under established licence system. In 1953, even the cut and polished diamonds were not allowed to be imported. Since 1953, only uncut diamonds are allowed to be imported into India. The duty has since been raised from 6 per cent at one time to 20 per cent. The higher amount of duty and the short supply of goods has also led to smuggling like this.

**Shrimati Savitri Nigam:** You just now said that you are not satisfied with certain proviso in this regard. You said that people are not in a position to prove to the satisfaction of the customs authorities. Now, I would like to know from you concrete instances. Have you got concrete cases like that? Can you cite those instances?

**Shri C. B. Jhaveri:** Yes. I will give certain cases. There are many cases like that. I know of one case particularly. A raid was made in 1957, and after 4½ years, the case was dismissed by the Customs Collector in the Central Board of Revenue. After 4½ years, the packet of diamonds was returned to the owner. If necessary, my Association would try to submit such cases with the details.

**Chairman:** You have got only one case now.

**Shri C. B. Jhaveri:** There were a number of cases where the goods have been seized and the buyer had been given show-cause notice. One of the sections mentioned is 178(a) of the Sea Customs Act. Somebody questioned the validity of section 178(a). He went up to the court and the matter went right up to the Supreme Court. Now, we were advised that no such case will be finalised till the Supreme Court had given its decision on that case. That is why all these cases had to be kept pending for the time being. Only for the last six months we have taken them up.

**Chairman:** Customs are not responsible.

**Shri Shankaraiya:** Your association is interested in preventing smuggling and in seeing that the interests of *bona fide* merchants are safeguarded. You yourself say that in case of smuggled goods, the merchants should be punished. You say that *bona fide* merchants should not be harassed. Under the canons of your business, can you point out any means by which this smuggling could be prevented? Can you point out any means by which

merchants conniving with the smugglers can be exposed?

**Shri C. B. Jhaveri:** It is very difficult for an Association to find out or give details. I was referring to the sub-section. Because of a certain quantity of smuggled article, the whole thing is to be confiscated. The suggestion is that the merchant may be asked to deposit an equivalent amount of the goods. Suppose the Customs authorities say that smuggled goods worth Rs. 10,000 are mixed up in a lot containing Rs. 50,000 worth of diamonds. They may either take an equivalent quantity of the same quality of diamonds or an equivalent amount of the smuggled goods. They may be asked to deposit that till the pending of the final decision of the case. That would be a good suggestion. That would keep the trade smooth; otherwise, the trade would come to a standstill. It is not only the trade and the industry which suffer but the customers also suffer. It is very difficult to find out whether a particular packet of diamonds is smuggled or not. How am I to know whether it is smuggled or not? Any customer would just come to my shop and offer me diamonds for sale.

**Shri B. R. Bhagat:** They are very few. That is rare.

**Shri Venkataramayya:** In the case of gold, they are many.

**Shri Narendrasingh Mahida:** You just inform the police and find out whether it is smuggled or not.

**Chairman:** Mr. Venkataramayya, have you anything to say on this?

**Shri Venkataramayya:** Mr. Chairman, Sir, you have asked us to suggest the measures for preventing this smuggling. At the outset, I would like to say that the Act does not give a proper definition of the smuggled goods. First of all, the lacuna is with regard to the definition of smuggling itself.

**Shri Dehejia:** That is defined in the Bill.

**Shri Anand:** The definition is given in clause 2 (39) of the Bill.

**Shri Venkataramayya:** That is not the proper definition.

**Shri B. R. Bhagat:** How?

**Shri Venkataramayya:** It is very difficult to distinguish between smuggled goods and other goods. How to distinguish them? That is the point. With regard to gold, any customer can come and offer gold for sale. In the case of diamonds, of course, the number is very low. In the case of gold, the purchasers and sellers are in good number. Especially in our country everybody possesses gold and it is sold in time of need. This Bill creates a lot of difficulties for an ordinary merchant, an ordinary broker, an ordinary customer and an ordinary agent. An ordinary agent earns a commission of only 10 nP. out of a sale of a few rupees.

Mr. Chairman, will you please tell us how it is possible in Customs, on any rational basis, to distinguish between the smuggled gold and the other gold? How to safeguard the interests of the commoner, leave apart an ordinary merchant? Even respectable persons can be questioned. I am wearing this ring and tomorrow anybody can say that it is a smuggled one. It can be confiscated. I am even liable to prosecution. Under the present Act, I could be arrested also.

**Shri B. R. Bhagat:** If the Customs officer says that it is a smuggled good, then he will have to state the reasons.

**Shri C. B. Jhaveri:** It is only on suspicion.

**Shri B. R. Bhagat:** It is on reasonable belief.

**Shri C. B. Jhaveri:** But that reasonable belief is never revealed to the party.

**Shri Venkataramayya:** This clause 120 is a new introduction. This has

been introduced only to circumvent the recent judgement of the Nagpur High Court.

**Shri S. S. More:** Can you give the reference?

**Shri Venkataramayya:** This is Bombay 62, All India Reporter 1961; Pledge 48 under AIR 1961.

Now, Sir, your question is how to prevent smuggling. This Association of Andhra Pradesh has submitted suggestions as to how to safeguard the interest of the merchants. Suppose, without the knowledge of the merchant, one tola or two tolas of smuggled gold have been mixed with a rod of 250 tolas or 300 talas of gold. Now, under the law, the whole thing can be confiscated. The business will come to a standstill.

**Shri S. S. More:** You are taking extreme cases in order to emphasize a general proposition. Do you really believe that the Customs people are so unreasonable that they will not accept your reasonable explanations?

**Shri Venkataramayya:** I may give you a case where gold plates duly marked by the India Government mint and the Bombay Bullion Association had been sized and removed.

**Shri S. S. More:** Have you gone in for appeal in such cases?

**Shri B. R. Bhagat:** Where is the case?

**Shri Venkataramayya:** I can submit it.

**Shri B. R. Bhagat:** Is there only one case or more?

**Shri Venkataramayya:** Only one case.

**Shri B. R. Bhagat:** Was it together with other gold or was it separate? These things will have to be taken into account.

**Shri Venkataramayya:** We purchase gold from different people, people who are in need of money. We purchase gold, which is all mixed up. We cannot say which part of

the gold is smuggled and which part of the gold is not smuggled. There may be an isolated case of a merchant who may have smuggled gold, but the other ninety-nine merchants may be *bona fide* sellers.

**Shri B. R. Bhagat:** Those who deliberately purchase smuggled gold and mix it with other gold are the only persons who are to be dealt with.

**Shri Venkataramayya:** I seek a clarification. How to distinguish between the smuggled gold and the other gold?

**Shri B. R. Bhagat:** This presumption is already there in the case of stolen property. Where the property is proved to be stolen, the whole property is confiscated.

**Shri Venkataramayya:** The case of stolen property is different. When we purchase gold from a new party, unless we know the party, we take their address and all that.

**Shri B. R. Bhagat:** No action is taken against you, if you do not know it. The fact is that the gold is smuggled and the goods are seized. That is the point.

**Shri C. B. Jhaveri:** In the case of stolen goods, the party whose goods are stolen comes and points out the particular goods, these are my goods stolen and those goods are seized. If some one says that I have purchased stolen goods, my whole stock would not be confiscated or seized. Only the particular lot which is proved to be stolen or which is pointed out by the person as stolen will be taken away by the police and not the whole stock.

**Chairman:** Stolen article is sold to you. You melt it and make it into a bar. It cannot be said which portion of that bar is stolen and which is not stolen.

**Shri Venkataramayya:** The quantum is specified. Supposing there is stolen gold and it is proved or the charge is made. To what extent it is

stolen and to what extent wrongful purchase is made will be known. That extent will be taken away by the department. The provision here is so arbitrary. Even if one tola is stolen and it is in 100 tolas, it must be taken away by the department and confiscated. These cases will be taken to the High Court and the Supreme Court.

**Chairman:** What is it that you want to be done?

**Shri Venkataramayya:** I agree with my hon. friend.

**Chairman:** Only so much of the property as is found to be smuggled should be confiscated . . .

**Shri Venkataramayya:** Is alleged to be smuggled.

**Chairman:** . . . and you go scot-free for smuggling.

**Shri C. B. Jhaveri:** The goods will be taken away by the customs. You may ask for security.

**Chairman:** Penalty?

**Shri C. B. Jhaveri:** The penalty may be there after the case is decided. That is a different matter. If it is proved that the particular goods is smuggled, if it is proved that the purchase was intentionally made after knowing that the goods were smuggled, the penalty would be there.

**Chairman:** The Committee will consider the point.

**Shri Venkataramayya:** One more submission. All the business, diamond or gold, whatever the category or level of the merchant or the business, we have necessarily to depend on the bank for overdraft facilities or loans or something like that. Supposing the entire bar, the entire stock has been confiscated by the department, the whole business will be at a standstill. We cannot have any credit facilities in the bank.

**Shri C. B. Jhaveri:** To substantiate my hon. friend's suggestion, would any bank finance on any bullion or silver or gold stock with the bank? Would

it be possible for any merchant or dealer to prove to the bank that it does not contain any smuggled gold or silver or diamond?

**Shri Venkataramayya:** We will invest 25 per cent; 75 per cent will be invested by the banks. The whole business would come to a standstill. We cannot move an inch if clause 120 is passed. With regard to the proviso that the hon. Member has pointed out, actually it is an eye-wash. The burden of proof has been thrown on him. It is only to circumvent the judgment of the Supreme Court in the recent case. The burden of proof is on the merchant. Supposing there are 200 tolas and 100 purchases. If it is proved, all the gold of the 100 people has to be confiscated. They have to go to the officer or the court and prove their bona fides that their gold is not smuggled or that they had no reason to believe or no knowledge, that they were innocent.

**Shri B. R. Bhagat:** That is true. It has been very deliberately done. Smuggling has assumed dangerous proportions. It will not affect bonafide transactions.

**Shri Venkataramayya:** It should be reasonable. All these persons are men with respect and honour. There should be reasonable opportunity. What is the safeguard given to the merchants?

**Shri Bakar Ali Mirza:** The purpose of the clause is not to recover smuggled gold like stolen goods. The purpose of the clause is to make the punishment deterrent. If you want, it may be modified. You have to suggest something deterrent which will satisfy you and also achieve the purpose of this clause.

**Shri Venkataramayya:** The punishment may be deterrent to the smuggling merchant. They may take even criminal action to which we are agreed. We have no objection to that.

**Chairman:** This is against the smuggler and against the trader who helps

the smuggler. You should not grudge this.

**Shri Venkataramayya:** We are pleading for the bona fide merchant.

**Shri C. B. Jhaveri:** We have stated in the memorandum also that we have no sympathy for the smuggler. Preventive action may be taken. At the same time, safeguards should be there for bona fide persons.

**Shri Shankaraiya:** Smuggling is going on. Smugglers do not directly come into contact with the buyer or the consumer. All the smuggled goods whether gold, diamond or anything must pass through the channel of business. After arguing all these points, have they any concrete suggestion to make to prevent smuggling? Leaving the second question whether the smuggled goods should be confiscated or not, which is a separate matter, to prevent smuggling, because smuggled goods can only go into the market, to the consumer, through the channel of trade, what is the remedy that they are going to suggest?

**Shri C. B. Jhaveri:** On behalf of my committee, in the preamble, in the beginning I have said that the reason for smuggling is the high percentage of duty, that is 20 per cent.

**Shri B. R. Bhagat:** Can the levy of an import duty be a reason for smuggling?

**Shri C. B. Jhaveri:** I have been asked to suggest ways and means to stop smuggling. There are two things. Shortage of supply and higher import duty. These are the two reasons which lead to smuggling.

**Shri B. R. Bhagat:** Will that be a reason? The reason is, some of the people want to have an illegal profit and undesirable profit out of the situation.

**Shri C. B. Jhaveri:** These are the incentives.

**Shri B. R. Bhagat:** Can they be incentives? I am surprised. If you put



an import duty, can it be an incentive for bona fide citizens to smuggle?

**Shri C. B. Jhaveri:** You may object to the word incentive. They are tempted because there is a big margin.

**Shri B. R. Bhagat:** It is undesirable anti-social persons—they are utilising the national situation for their personal profit. That cannot be an incentive. That cannot be the reason.

**Shri Narendra Singh Mahida:** What is the actual import duty realised from these diamond merchants?

**Shri B. R. Bhagat:** What is the price differential?

**Shri C. B. Jhaveri:** At present, the import of diamonds is only against the export promotion scheme. There is a total ban on established imports. Whatever imports are permitted are against only the exports we make and the foreign exchange earned. We are entitled to import for 80 per cent of the foreign exchange earned. First, we are expected to export diamonds, whatever stock we have. Against that, we are issued a licence for 80 per cent. Annual import under the export promotion scheme comes to a little over Rs. 150 lakhs.

**Shri B. R. Bhagat:** What is the value of the uncut and cut diamond? What is the price differential?

**Shri C. B. Jhaveri:** The difference between the un-cut and cut would be, 20 per cent import duty, 30 to 40 per cent manufacturing expenses, that is labour charges, polishing charges in the country. We are allowed to import only cut diamonds.

**Shri B. R. Bhagat:** Twenty plus 30 or 40: that is 60. Then, the profit of the merchant.

**Shri C. B. Jhaveri:** Profit of the merchant.

**Shri B. R. Bhagat:** How much?

**Shri C. B. Jhaveri:** You can put it at 10 per cent., to be reasonable.

**Shri Dehejia:** Does any diamond merchant do business at a 10 per cent profit?

**Shri C. B. Jhaveri:** It may differ with the income-tax authorities.

On behalf of my committee, I would request the complete deletion of sub-clause (2) of clause 120. As the hon. Member suggested, I have put in another suggestion. An equivalent quantity may be taken away from the packet of diamonds or an equivalent amount may be deposited. The customs can take security deposit till the disposal of the case.

**Shri Bakar Ali Mirza:** There is no suggestion by the Members. It is a question of getting your reaction. Do not regard it as a suggestion from any Member.

**Shri B. R. Bhagat:** We may take it as his suggestion.

**Shri Venkataramayya:** Clause 121: This also runs parallel to clause 120. Supposing in 200 tolas of gold, the Department says that five or ten tolas are smuggled, then the whole of the goods will be confiscated. It is not earmarked in any particular quantity as to how much of it consists of smuggled goods.

**Shri S. S. More:** On the contrary, I would suggest that we are erring on the side of moderation. When there is knowledge or reason to believe that they included any smuggled goods, then it is very reasonable to take such proceedings.

**Shri B. R. Bhagat:** Knowledge that they included smuggled goods should be there.

**Shri Venkataramayya:** My point is that it is not specific.

**Chairman:** There is no ambiguity about it. It is only where any smuggled goods are sold by a person having knowledge or reason to believe that they are smuggled goods, that the sale proceeds are liable to be confiscated.

**Shri Venkataramayya:** The wording here is that the sale proceeds thereof shall be liable to confiscation.

**Shri B. R. Bhagat:** 'Thereof' means 'of the smuggled goods'. That is the intention.

**Shrimati Savitri Nigam:** I think that this provision is very clear and it gives protection to the bona fide merchants who will not be having any knowledge that it included any smuggled goods; it is only when they have the knowledge that it included smuggled goods that this provision will be binding.

**Shri S. S. More:** As a matter of fact, the possession of smuggled goods is made more rigorous than the selling of smuggled goods.

**Shri C. B. Jhaveri:** My Association has not gone into details in our memorandum. But, if the sale proceeds of the smuggled goods are to be confiscated, will it not be possible for the Customs Authorities if they are able to catch the smuggler, to point out that the goods are smuggled goods, and recover that amount from the smuggler? Suppose I become the purchaser of those goods from the smuggler; then the sale proceeds remain with the smuggler. So, is it not possible to recover the amount from the smuggler?

**Shri S. S. More:** You can pursue the smuggler; when the goods are proved to be smuggled, the sale proceeds have to be confiscated.

**Shri C. B. Jhaveri:** If the sale proceeds have to be recovered from the smuggler, then sub-clause (2) of clause 120 would go out automatically. If you are able to catch the smuggler and prove that he has sold smuggled goods, then why not recover the sale proceeds from him?

**Chairman:** Clause 120 is quite different from clause 121.

**Shri C. B. Jhaveri:** My point is this. Suppose I am the merchant and I am the purchaser, and the seller is the smuggler; if the seller is found out,

why not collect the sale proceeds from the seller?

**Shri S. S. More:** When a person has the knowledge or the reason to believe that the goods were smuggled should he be allowed to escape scot-free? It is only those persons who have the knowledge or the reason to believe that the goods are smuggled goods, who are to be punished, by the confiscation of the sale proceeds. When a person sells it with the knowledge that it is smuggled goods, he should also become equally guilty.

**Shri C. B. Jhaveri:** I want to seek a clarification on this. Since the smuggler would be the seller, if the sale proceeds are to be collected, the same may be collected from the smuggler.

**Chairman:** Clause 120 refers to smuggled goods, while clause 121 refers to sale proceeds of the smuggled goods. The two are quite different.

**Shri Venkataramayya:** The amendment that I would suggest to clause 121 is this. From this clause, the words 'reason to believe' should be deleted, and it should be made clear that the knowledge referred to will not be presumed but will be proved by the Customs Authorities. Further, by this clause, power is given to seize Indian currency and cash on hand in business, which can jeopardise or completely paralyse the business, if an action is taken pursuant thereto, and as such, the provision should be enacted that until the adjudication order is passed, the sale proceeds cannot be seized or detained, as sale proceeds being money have no ear-mark, and as such, there is no need or requirement of effecting the seizure on the one hand, while great prejudice will be caused by doing so, on the other.

**Shrimati Savitri Nigam:** Do you have any objection if the sale proceeds are confiscated from the smuggler as well as the merchant who has purchased the goods knowing that they were smuggled goods?

**Shri C. B. Jhaveri:** We have no sympathy with anyone who has purchased the goods knowing that they are smuggled goods; deterrent punishment may be given in such cases.

**Shri S. S. More:** You should have no sympathy with persons who sell goods knowing that they are smuggled goods.

**Shri Venkataramayya:** We entirely agree with the term 'knowledge', but the words 'reason to believe' are the most ambiguous ones. Knowledge is different from reason.

**Shri B. B. Bhagat:** That is a very well-known legal terminology.

**Chairman:** That term is found in most other penal sections.

**Shri S. S. More:** Take the instance of the penal provisions in regard to stolen goods. There also, the term 'reason to believe' has been used.

**Shrimati Savitri Nigam:** The witnesses are keen that smuggling should be stopped. I would like to make a suggestion to them. Why should they not start a form in which any seller will have to state wherefrom he has got the goods, in which year he got those goods and so on? If they could do like that, then they will be in a better position to assess whether the seller is a bona fide person or he is a smuggler.

**Shri C. B. Jhaveri:** At the time of purchase, we take the address of the person, and it is only when we are satisfied that the person is a bona fide seller and we have no doubt whatsoever, that we purchase the goods. After all, when we purchase gold or silver, we have to take every precaution, and unless we are satisfied about the bona fides of the seller, we do not make the purchase; and we have to take adequate precaution also against stolen goods being sold.

**Shri S. S. More:** It is not our function to suggest how you should carry on your trade.

**Chairman:** A genuine merchant will never risk his reputation. These

precautions are always taken by those who are genuine merchants.

**Shri S. S. More:** You will agree that there are smugglers and some people who belong to your trade are partners in that game.

**Shri C. B. Jhaveri:** Not only persons belonging to our trade but even outsiders, and those who are not interested regularly in this trade are there in that game.

**Shri S. S. More:** They too will come under punishment under some other provision.

**Shri C. B. Jhaveri:** Regarding clause 123, I should like to say a few words. This corresponds to section 178A of the present Act, and this relates to the onus of proof.

Here, the onus of proof has been shifted to the person from whom the goods are seized. This provision was enacted, I think, in 1957. Prior to 1957, the onus of proof was on the authorities. In 1957, it was shifted to the person from whom the goods were seized. Since then, we have experienced that it is absolutely impossible for the merchants to discharge the proof to the satisfaction of the customs authorities. In spite of producing all the vouchers, the necessary bills, the regular payments made, and knowledge or reasonable belief and so on, the goods are confiscated or the onus of proof is not discharged.

**Shri C. B. Jhaveri:** I submit that once a merchant is asked to prove from where the goods came into his possession and he does so by pointing out the party from whom he purchased the goods, the onus of proof should be deemed to have been discharged. But here we are asked to prove the negative, that we have not done something. This is against the provision in the Indian Penal Code.

**Chairman:** Suppose the goods change half a dozen hands in half an hour. That is what usually happens. So it has to be traced back.

**Shri C. B. Jhaveri:** Diamonds are things which have no trade mark. There are no markings on them. The goods are absolutely not identifiable.

**Chairman:** We are concerned mainly with smuggled diamonds and gold.

**Shri C. B. Jhaveri:** If I am able to produce my immediate vendor or point out the party, the onus of proof should be deemed to have been discharged.

**Shri S. S. More:** Section 123 corresponds to the old section 178-A. This matter had also gone to the Supreme Court and the Court had made certain observations. The point is that we cannot lay down what measure of evidence is required. We must assume that the customs officers are doing their duty in a reasonable manner. What particular interest have they? This is a matter of evidence. No legal provision can lay down the quantum of evidence that is required for carrying satisfaction to the customs officers. If a particular officer has acted whimsically, you can go to the higher court.

**Shrimati Savitri Nigam:** The customs officer may be a very good man or a very bad man. So we should not depend on that. What we should do is to make the provision clear here, whatever may be the nature of the customs officer. The smuggler has to be caught. The last portion of the clause 'from whose possession the goods were seized' makes the smuggler free from the responsibility of proving. The burden lies on the person who possesses it. The person who has smuggled, who has been found guilty of smuggling, should also be roped. He should be roped in first. Where the person from whom it is seized is unable to prove from where and from whom he got it, he should be caught. The burden of proof should also lie on the person from whom he has bought it, that is, in addition to the man from whom the goods were seized proving that he got it from A, B or C.

**Shri S. S. More:** Such a provision will lead to fabrication of evidence . .

**Chairman:** We will discuss that later among ourselves.

**Shri S. S. More:** I am pointing out to the witnesses the various dangers that the provision will be susceptible to.

**Shri C. B. Jhaveri:** This would only affect the bona fide traders; the smugglers will go free. They sell to the traders. The traders go into the market and sell the goods. When the goods are found in possession of the trader, he is asked that the goods are not smuggled. That is why my Committee has suggested that if we are in a position to point out the immediate vendor, we should be deemed to have discharged the onus of proof.

**Shri Dehejia:** Do you accept that large quantities of diamonds and gold are smuggled into the country?

**Chairman:** They have accepted it.

**Shri Dehejia:** Also that these quantities cannot be disposed of without going through the trade channels?

**Shri C. B. Jhaveri:** Not necessarily.

**Shri Dehejia:** Rs. 30-40 crores worth of such goods cannot be disposed of privately.

**Shri C. B. Jhaveri:** I would not be the proper person to reply to that. The total consumption in our country is only Rs. 3 crores worth of diamonds a year.

**Shri Dehejia:** That is legally imported.

**Shri C. B. Jhaveri:** It is calculated on past record.

**Shri Dehejia:** You mentioned a little while ago that diamonds are also exported?

**Shri C. B. Jhaveri:** Yes.

**Shri Dehejia:** When smuggled diamonds are re-exported, the person gets entitlement for import of diamonds.

**Shri C. B. Jhaveri:** There is some misunderstanding. Export is not of the imported goods. We are exporting only such goods which our country possesses since centuries. We are able to export only big-size diamonds which fetch very high prices in U.K. and other continental countries and America. Imported goods are permitted for home consumption. It is only against our export of the bigger-size diamonds and good quality demands that we are allowed to import.

**Shri Dehejia:** Are there restrictions on the size of diamonds which can be exported?

**Shri C. B. Jhaveri:** Your department will be able to find out the sizes of the diamonds exported.

**Shri Dehejia:** Diamonds are the easiest to smuggle.

**Shri C. B. Jhaveri:** It is so.

**Shri Dehejia:** So it requires special care in handling.

**Shri C. B. Jhaveri:** That is what we have mentioned in our memorandum, that we have no sympathy for the smugglers. At the same time, we want that the bona fide trader is protected and no innocent person is victimised.

**Shri Venkataramayya:** Clause 123 was originally section 178-A which came before the Supreme Court (AIR 1962 page 316). While upholding the constitutional validity of this section, the Supreme Court has made it clear that the said section can apply only to seizures which are effected by the seizing officer on the reasonable belief that the goods which he was seizing were smuggled goods and which belief he must have either before or at the time of seizure. Further, the said belief is not a subjective belief but an objective fact which may be investigated into, and has to be investigated, by the adjudication officer. Further, all materials on which such belief is based....

**Shri S. S. More:** You need not read the whole of the decision.

**Shri Venkataramayya:** I only say that I may be permitted to state that the proof may be subjective proof and objective proof and this may be incorporated in the section.

**Chairman:** The clause says, 'under reasonable belief'. What is reasonable belief is a question of fact which has to be decided on merits. It cannot be incorporated in the section. It is only the general principle that can be incorporated. What is quoted in the Supreme Court judgment are the words used here in the clause, 'are seized under the Act in the reasonable belief'.

**Shri S. S. More:** Reasonable belief cannot be subjective; it cannot be capricious. The court is not entitled to go into the sources of reasonable belief.

**Shri Venkataramayya:** It is only that particular portion which is useful to the officers that has been incorporated in the clause.

**Chairman:** What is reasonable belief is a question of fact and it cannot be incorporated in the section.

**Shri C. B. Jhaveri:** Regarding 123, if my memory does not fail me, in 1957 when this onus of proof was shifted on to the person, the question was raised in the Lok Sabha. If someone is asked to prove that his watch is smuggled or not, what would be the proof given by him? Can anyone prove it? At best he can produce a bill or a voucher from the shop wherefrom he purchased it. In the same way if we are able to point out the person from whom we got it and his address, then the onus should be considered to be discharged.

**Chairman:** Yes.

**Shri Venkataramayya:** With regard to gold, I have to say a word. Gold may be specifically defined. Gold includes all types of gold, that is, even

gold which are indisputably not imported gold nor can they be even suspected to be imported gold. As the section stands, any article of gold can fall within the purview of the section which is not the intention of the section, which is a protective provision. As such, it is respectfully suggested that the definition of gold should be indicated to mean that it is gold of a fineness exceeding 99.80 and gold having foreign markings thereon.

**Shri S. S. More:** If the section is made applicable only to the finest quality, it means you are giving a charter to the smuggler to import gold of inferior quality.

**Shri Venkataramayya:** The question is, how to distinguish between gold that is smuggled and gold that is not smuggled.

**Shri Shankaraiya:** By defining percentage it cannot be avoided or prevented.

**Shri Dehejia:** Is it a very difficult job to reduce the purity of gold?

**Shri Venkataramayya:** It is not very difficult.

**Shri Dehejia:** Would not your definition then mean that all gold that is smuggled will escape?

**Shri C. B. Jhaveri:** I would not take much time of the hon. Members. I would just make a few suggestions only with regard to two clauses. 101 is new; power to search suspected persons; and 105 is corresponding to section 172 of the present Act, authorising search of premises. Up till now these powers were to be taken on a warrant from a magistrate. If these powers are to be vested in the customs officers, then they should be of a considerably high rank so that these powers may not be misused.

**Shri Dehejia:** Under what section of the present Act do you say that it has to be done on a warrant from the magistrate?

**Shri C. B. Jhaveri:** I mean generally a search is made under a warrant

from a magistrate. Under clause 105, where certain documents have to be searched, the authorisation to be given should be to one who must be not below the rank of Assistant Collector.

**Chairman:** Under 105, it is the Assistant Collector or an officer specially empowered by him. I think there is no difficulty in this.

**Shri C. B. Jhaveri:** Thank you, Sir. I once again request the members of this committee to consider the views expressed by my Association.

*(The witnesses of the Bombay Diamond Merchants' Association, Bombay, then withdrew).*

**Shri Venkataramayya:** Section 125 provides for an imposition of fine in lieu of confiscation. It is suggested that in cases where an order of confiscation is made and it is not proved that there was any *mens rea* on the part of the owner, then the Customs Officer is bound to give an option of redemption of the goods and cannot, in such cases, make an order for outright confiscation.

**Shri S. S. More:** The previous Section speaks about confiscation of goods and the ground on which it is proposed to confiscate the goods. Goods are confiscated only after reasonable time and opportunity are given to the person. Now my friend wants to amend the section so as to make all sections *malafide*. That is a special concession given to you.

**Chairman:** Why do you want to change this?

**Shri Venkataramayya:** Section 139 provides for the raising of certain presumptions in connection with the documents and statements seized and recorded under the Act. It is submitted that the same is directly contrary to the provisions of the Indian Evidence Act and Article 20 of the Constitution and as such illegal and bad in law and should be deleted. I may submit that in the Evidence Act there are special procedures in regard to recording of the statements and the same may be adopted here too.

**Shri Shankaraiya:** May I bring to the notice of the Members that the provisions in the Evidence Act will be applicable only to extraordinary circumstances. In the Customs, as you are aware, we are dealing with the extraordinary circumstances and hence the things which cannot be done in the ordinary course are done in extraordinary circumstances. Hence the provisions of the Evidence Act be applied here.

**Shri S. S. More:** With regard to the prosecution, we have to assume that it has gone to the Court of Law. In the Court of Law it is expected that the Customs Officer should prove that the documents which have been seized from a person are according to the Evidence Act.

**Chairman:** You can say that the document has been surreptitiously introduced.

**Shri S. S. More:** How can there be a room for any surreptitiousness here?

**Shri Venkataramayya:** Sections 107 and 108 give power to examine and summon persons. Since under Section 107, examinations can be conducted without issuing summons, Section 108 will be circumvented in that case. Further, recording of statements and production of the goods should be provided to be made in the presence of independent Panchayats and in the presence of legal advisers of the parties, if they so desire, to protect against these statements which are being extorted and obtained. Further, mandatory provisions should be made that the copies of statements recorded should be furnished and handed over forthwith. It should be expressly provided that no statements or documents obtained are produced in any criminal proceedings which should be instituted against the said parties subsequently. We have to ensure and give effect to the protection provided for by Article 20 of the Constitution.

**Shri S. S. More:** Then what is the use of recording of statements?

**Shri Venkataramayya:** Before an Income-tax Officer, they are all confidential matters. Some safeguard is given to the merchants. In the end, I must say that we are all respectable citizens. The people who have been arrested for smuggling gold etc. should be treated with respect. I submit to the Chairman and Members that by taking this stand by Government that these smugglers must be arrested and punishments should be given, this not only affects the merchants but every person who is in possession of any quantum of gold. Any person possessing the goods which are smuggled can be taken into custody and by seizing or confiscating the jewelleries etc. not only the traders but all the citizens might be harassed.

With these I thank the Chairman and Members for your patient hearing.

*(The witnesses of the Andhra Pradesh Gold, Silver, Jewellery and Diamonds Merchants' Association, Rajahmundry, then withdrew).*

### III. TRICHY SHROFF AND JEWELLERS' ASSOCIATION, TIRUCHIRAPALI.

*Spokesmen:*

1. Shri Rajamannar
2. Shri R. Madhava Rao
3. Shri P. Ramaswami
4. Shri M. Veerasami Naidu
5. Shri K. P. Lakshmana Padayachi.

*(Witnesses were called in and they took their seats).*

**Chairman:** You represent the Trichy Shroff and Jewellers' Association, Tiruchirapalli.

**Shri Madhava Rao:** Yes, Sir. The names of my friends here are: Shri Rajamannar, Shri Ramaswami, Shri Veerasami Naidu and Shri Lakshmana Padayachi.

**Chairman:** We have received your memorandum; it has been circulated to Members here. You need not go through that memorandum again. If

you want to add anything more, you may do so.

**Shri Madhava Rao:** We want to stress our view regarding chapters 13 and 14—clauses 101 to 105—searching and arrest of persons.

**Chairman:** You have referred to them in your memorandum. You want to add anything?

**Shri Madhava Rao:** We wish that recording of evidence must be directed to be made before the legal advisers of parties if they so desire. Copies of statements should also be furnished forthwith.

**Chairman:** It is not possible. He is a customs officer; it is not a court to give you copies.

**Shri Madhava Rao:** The party should know what is in the statement. The evidence should not be used against the party.

**Chairman:** But it is not a court case; it is a fiscal matter.

**Shri Madhava Rao:** Clause 118 refers to smuggled goods. The whole package could be confiscated. We desire that only the gold of the particular description should be confiscated. Otherwise, as it stands now the whole package could be confiscated. There is also no definition of 'package'; it should be defined.

Section 121 refers to confiscation of sale proceeds. We feel that till adjudication the amount should be with the party. If it is proved or established that the sale proceeds relates to smuggled goods it is right. But till such time as the adjudication proceedings are over the amount should be allowed to be with the party.

**Chairman:** But if he is a bona fide person doing business, he does not come there at all. He must have knowledge of the case: there must be reasonable belief that they are smuggled goods and he sells the goods. Why should you object to it?

**Shri Madhava Rao:** Supposing there is Rs. 10,000 in the cash box. The money in that box can be confiscated.

**Chairman:** They will take only the sale proceeds.

**Shri S. S. More:** Besides, will you not make a voucher? You will take particular care to prepare a voucher and when the voucher is there, the sale proceeds will be according to the voucher.

**Shri Madhava Rao:** I come to clause 123. The burden of proof must be on the officers. Merchants are bona fide persons. Proof can only be by the officers.

Besides, several lakhs of merchants are doing business bona fide and to the satisfaction of the purchasing public and they are also law-abiding. Therefore, if the Bill is passed as it is, the entire business people will suffer and they do not have any safeguard from the Government. It is also earnestly prayed that any action by the customs authorities should be through or by the order of the court.

**Shri S. S. More:** What is the clause you are discussing?

**Chairman:** That is his general conclusion. I may say that genuine merchants need not have any fears at all; it is only a smuggler who will come into trouble. You should not protect such people; you should help the Government to find out the smugglers. There is a lot of smuggling in gold and diamonds. You know it. How are you going to help the Government in preventing this smuggling?

**Shri Madhava Rao:** Our submission is that bona fide merchants should not be put to harassment.

**Chairman:** How many bona fide merchants have been harassed in your place? Can you give one instance? None. They why should you fear?



**श्री रामास्वामी :** मि० चेअरमैन, मैं आपकी इजाजत से हिन्दी में बोलना चाहूंगा। मैं बतलाना चाहता हूँ कि त्रिचनापल्ली के एक बोनाफाइड बुलियन और ज्वैलरी के व्यापारी जिनका कि नाम श्री के० सम्बाशिवम् है उन को सन् १९५२ में पकड़ा गया था। अभी तक उनका केस पंजाब हाई कोर्ट में चल रहा है और आज तक उन के केस का फैसला नहीं हुआ है। मेरा निवेदन है कि इस तरह से जो बोनाफाइड ट्रेडर्स हैं उन को जो इस तरह से हैरेस किया जाता है वह न किया जाना चाहिये। हम तो बोनाफाइड मर्चेंट्स हैं हम को स्वतंत्रतापूर्वक बिना हैरेस किये अपना व्यापार करने दिया जाये। अब इस तरह के हमारे सरीखे बोनाफाइड व्यापारियों को आप लोगों को प्रोटेक्ट करना चाहिये। अब इस के लिए अगर आप के पास आकर नहीं बोलेंगे तो किस के पास बोलेंगे ?

**चेअरमैन :** आप उस केस के डिटेल्स पार्टी का नाम और केस का नम्बर दे दीजिये।

**श्री ब० रा० भगत :** उस केस के डिटेल्स दे दीजिये और पार्टी का नाम आदि दे दीजिये।

**श्री रामास्वामी :** जी हां, मैं दिये देता हूँ।

**Chairman:** All right. Anything else?

**श्रीमती सावित्री निगम :** यदि आप ने इस ऐक्ट को पूरे तरीके से पढ़ा है तो कृपया यह बतलाइये कि इस के वे कौन कौन से क्लोजेज हैं जिन में कि आप संशोधन चाहते हैं ?

**श्री रामास्वामी :** अब इस समय तो नम्बर हमें याद नहीं है लेकिन जनरली इतना मैं अवश्य निवेदन करूंगा कि आज कस्टम्स वाले बोनाफाइड व्यापारियों को भी काफी परेशान करते हैं और उस के कारण हम लोगों को बहुत तकलीफ है। बोनाफाइड मर्चेंट्स को आप को अवश्य प्रोटेक्शन देना चाहिए।

**चेअरमैन :** अब क्रिमिनल प्रोसीज्योर कोड में भी इसी तरह का संक्शन है और बिना वारंट के गिरफ्तार कर सकते हैं इसलिए यहां पर यह कोई स्ट्रेंज संक्शन नहीं है।

**श्री रामास्वामी :** लेकिन बोनाफाइड मर्चेंट को तो बचाना चाहिए और उसको परेशान नहीं करना चाहिए।

**श्रीमती सावित्री निगम :** क्या मैं पूछ सकती हूँ कि अगर जो कस्टम अफसर गिरफ्तार करता है वही आप की बेल ऐक्सेप्ट करे तब तो कोई आप को ऐतराज न होगा ? उस हालत में तो कोई परेशानी और अपमान की बात न होगी ? मान लीजिये कस्टम अफसर ने देखा कि कोई आदमी स्मगलर गुड्स रखता है और उस ने कहा कि मैं आपको गिरफ्तार करता हूँ और उसी वक्त वह आदमी अपनी सिक्युरिटी दे कर बेल करवा ले तब तो कोई अपमान नहीं होगा ? अगर कस्टम अफसर को खाली गिरफ्तार करने के लिए ही नहीं बल्कि उसको बेल करने के लिए भी एथोराइज कर दिया जाय और बजाय इसके कि बेल के लिए उसे मजिस्ट्रेट के सामने जाना पड़े वही कस्टम अफसर उसकी बेल भी ऐक्सेप्ट कर सके तब तो उसका कोई अपमान नहीं है और उस हालत में तो आपकी शिकायत दूर हो जायेगी ?

**श्री रामास्वामी :** हम यहां पर स्मगलर्स के लिए प्लीड नहीं करना चाहते लेकिन यह अवश्य कहना चाहेंगे कि जो रीजनेबुल पार्टीज हैं बोनाफाइड मर्चेंट्स हैं उनको अवश्य प्रोटेक्शन देना चाहिए और आज के दिन उनको कस्टम अफसरों द्वारा जो परेशान किया जाता है वह बन्द होना चाहिए। बस हमें आप लोगों के सामने यही निवेदन करना है।

**Chairman:** You have given only one instance for all these eighty years during which the old Act has been in force. The present Bill is more liberal.

So genuine merchants need not have any fear.

*(The witnesses then withdrew).*

IV. THE INDIAN NATIONAL STEAMSHIP OWNERS' ASSOCIATION, BOMBAY.

*Spokesman:*

Shri K. K. Kothawala.

*(Witness was called in and he took his seat).*

**Chairman:** Your Memorandum has been distributed to the Members of the Select Committee. If you want to add anything to it or make some other submission, you may do so.

**Shri Kothawala:** Sir, with your permission I would like to take up the more important points that are agitating us.

**Chairman:** You are concerned only with one clause, is it not?

**Shri Kothawala:** I shall take up clause 41(1), clause 42 and also clause 30(1).

**Chairman:** Very well, you may go in the chronological order.

**Shri Kothawala:** Clause 30(1) deals with the import general manifest to be submitted by shipowners or shipping agents. The wording of the present Bill is:

"The person-in-charge of a conveyance carrying imported goods shall, immediately after arrival thereof at a customs station, deliver to the proper officer, in the case of a vessel or aircraft, an import manifest, and in the case of a vehicle, an import report, in the prescribed form."

The existing Act gives the shipowner twenty-four hours from the time of arrival of the vessel within which to submit his import general manifest to the Customs. That, to our mind, is most essential. In fact, even this twenty-four hours' time-limit given to us makes us literally race for submitting the final import general manifest. In the case of the Import Gen-

eral manifest, I may add that there is a system of prior entry which enables us to submit the final IGM in 24 hours of the arrival of the vessel. But the words "immediately after the arrival of the vessel" are not clear or distinct as the words "24 hours of the arrival of the vessel." If it is Sunday or a holiday intervening, we can get the advantage of the following working day. So, I would submit respectfully that the present wording in the present Act, may be retained and the words "immediately after the arrival of the vessel" may be deleted.

**Shrimati Savitri Nigam:** What is your suggestion?

**Shri Kothawala:** I said that in the present context of the Act, "24 hours of the arrival of the vessel" may be retained in the new Bill also.

**Chairman:** So, you object to the words "immediately after arrival".

**Shri Dehejia:** What is the difficulty about it?

**Shri Kothawala:** The difficulty is, sometimes, the manifest of the port of shipment is not received by us before the arrival of the vessel.

**Shri Dehejia:** The goods are on the vessel and it is the person in charge of the vessel who is to attend to them.

**Shri Kothawala:** I would like to clear the misconception. The words "master of the vessel" should be less freely used these days in the context of the modern development and the words "shipowner or the agent" should be employed more and more.

**Shri Dehejia:** The words here are "person-in-charge of the vessel." The point is, he is the person who has received the goods on his ship. There has been a fair interval. It is not within a couple of hours that the vessel is touching another port. Some time has passed between the last port and the arrival at another port. He has time to prepare the document.

**Shri Kothawala:** The items must be entered in the prescribed form. It is

not the port manifest that is submitted to the customs.

**Shri Dehejia:** The forms are kept on the ship.

**Shri Kothawala:** At the moment, the agents are functioning at the smallest ports. The clerical work of submitting the manifests is undertaken not by the personnel of the ship but by the office of the company or the agent of the company.

**Shri Dehejia:** Why should it not be the person on the ship? Is there any difficulty?

**Shri Kothawala:** It has been found that the personnel there are not doing justice to clerical work as much as the office personnel who are supposed to be working for the company, the customs section of the office.

**Shrimati Savitri Nigam:** Don't you think it will be in your interests to give it as soon as possible?

**Shri Kothawala:** I submit that 24 hours is not much of a delay.

**Chairman:** You will be satisfied if the original clause is retained.

**Shri Kothawala:** Yes.

**Shri Anand:** Is it not a fact that most of the manifests are presented even before the ship arrives?

**Shri Kothawala:** I prefaced my remarks by saying that under the prior entry system a large number of items are to be submitted to the customs in our import general manifest, but the final manifest is to be submitted within 24 hours of the arrival of the vessel.

**Shri Anand:** If you refer to clause 30(3) you will find that it does not lay down any time-limit.

**Shri Kothawala:** Discretion has been given.

**Shri Anand:** It is much more than 24 hours.

**Shri Kothawala:** It may or may not be, but after all the discretion is there.

**Shri Anand:** Considering the merits of the case, the customs officer will be prepared to extend the time as necessary.

**Shri Kothawala:** I agree, but he may say that "we find you at fault in not submitting the manifest immediately on the arrival of the vessel." There may be penalisation and unnecessary complication.

**Shri B. E. Bhagat:** You prefer to have the 24 hours limit.

**Shri Kothawala:** I would prefer the words "24 hours" to the words "immediately on arrival of the vessel" which can have a different interpretation.

**Shrimati Savitri Nigam:** You just now said that instead of the "master" it should be the shipowner or the agent. Could you give us some more reasons for this suggestion?

**Shri Kothawala:** I would submit that today, except for the most outlandish ports, the position is that the shipping companies have their own branch offices or agencies. The old concept of the master of the vessel submitting the various documents to the customs and other authorities is an obsolete one. The master or the other personnel of the ship do very little clerical work *vis a vis* the public authorities, major or minor. They do clerical work only *vis a vis* their company or the shipowners. Most of the work connected with the reports to be filed is essentially done by the shipping companies' offices, say, at the ports of Bombay or Calcutta or the shipping companies' agents at ports like Madras and Cochin, as for example, the Scindia Steam and the India Steam Navigation Company, and indeed almost all the Indian shipping lines.

**Shri Dehejia:** If you see clause 148 (1), you will find that the agent is enabled to do all the work. The power is given to the agent. Everything can be done by the agent.

**Shri Kothawala:** That is quite true. But it is much more clear in the present Act. Master includes the shipowner or the agent. In fact, in my

opinion, the emphasis should be more on the shipowner or the shipping agent doing this or that rather than the master.

**Shri S. S. More:** The master of the vessel appears in clause 31 and nowhere else. It is only the "person-in-charge" everywhere.

**Shri Kothawala:** I would read it as the person in charge as intended to be the master of the vessel, taking in and out the vessels. It cannot be the manager or the agent of the shipowner. If it is the intention that by the "person-in-charge", it is intended to cover the manager and the assistants working in the offices or the agencies I am happy.

**Shri B. R. Bhagat:** That is not the intention.

**Shri Kothawala:** Section 5 of the Act definitely says that the master includes owners and agents of the vessel.

**Shri Shankaraiya:** The witness says that the manifest should be filed within 24 hours of the arrival of the ship. According to him, there will be branch officers and they will have enough staff there. Whenever the goods are taken aboard on the ship, the owner or the master, whoever he may be, will be in the know of things. The staff who are putting the things on board the ship will have sufficient knowledge of the things. Why should not that office, which sends the cargo, send the manifest? Why should the office where the ship arrives be asked to file the manifest?

**Chairman:** We will discuss that afterwards.

**Shri Kothawala:** The IGM or the import general manifest, which we are required to submit to customs, is in a certain form which is laid down in the customs manual. Even the size and quality of the paper are prescribed. The order in which the manifest should be submitted is also laid down in the manual. First the local cargo should be shown separately at the top. Then the cargo intended for transshipment to other ports is required to be

shown. Then the retention cargo, intended to be carried in the same vessel to Cochin, Calcutta, Karachi or any other port is to be shown. Government cargo is to be shown separately. Hazardous cargo is to be shown separately. It is the office in Bombay who will put up the IGM in that form to the Collector of Customs. The various manifests of the ports of shipments, from which we prepare our IGM, will not serve the customs purposes. If the customs are willing to accept those manifests, a lot of our time and labour will be saved. But I doubt very much whether the customs authorities will agree. During the period of the strike, we requested that the manifests of the ports of shipment may be treated as IGM. After great hesitation, they agreed to it purely as a temporary measure for the duration of the strike only. If you can find a way out and institute something in the rules or the manual by which the manifests of the ports of shipment would be accepted, we would be happy. Otherwise, we require 24 hours from the time of arrival of the vessel.

**Chairman:** That will be considered.

**Shri Dehejia:** So, you want that in section 30, instead of the word 'immediately' it may be within 24 hours and sub-clause (3) should be deleted.

**Shri Kothawala:** That would be in conformity with sections 62 to 66.

**Shri Dehejia:** Would you be satisfied if it is provided that within 24 hours, he can amend it without the special sanction of the customs officer?

**Shri Kothawala:** I am very grateful to you.

**Shri Anand:** A supplementary manifest can be put in within 24 hours, after filing the main manifest immediately on arrival. That is the suggestion.

**Shrimati Savitri Nigam:** If 24 hours time is provided, is there any necessity to have sub-clause (3) in clause 30?

**Shri Kothawala:** That can be retained to our advantage.

**Shri Dehejia:** Let there be one scheme and let it be consistent.

**Shri Kothawala:** It should be 24 hours read with sub-clause (3). After 24 hours, we can ask for extension of time with the permission of the Collector of Customs.

**Chairman:** The committee will think over it.

**Shri Kothawala:** Then, clause 41 deals with export general manifest. The present sections 62 to 66 clearly gives the ship-owner 5 days' time from the sailing of the vessel or more correctly from the obtaining of the port clearance. Now clause 41 says that the Collector of Customs may extend the time-limit in his discretion, but normally, the EGM should be filed by the master—I hope, by the agent also—before the departure of the vessel and before obtaining the port clearance. This, I respectfully submit, is most difficult, if not impossible. Even now when 5 days' time-limit is given, there are occasions when we request the Collector of Customs to extend it by two days because there are hundreds of shipping bills and it takes a lot of time to prepare the EGM as laid down in the manual. Our experience is we have to work a lot of over-time in order to compile the EGM within 5 days of the port clearance, which in turn is 24 hours before the departure of the vessel. So, the Collector of Customs might turn round in future and tell us that he has no authority to give us five days or seven or ten days. In his own discretion he may give time, which is not as good as laying it down in the Act itself. Five days are provided under the present Act.

**Shri Dehejia:** Information in respect of export goods is available with you at the time the ship is about to leave. Therefore there is no question of collecting any further information from any source.

**Shri Kothawala:** The shipping bills are not in our hands.

**Shri Dehejia:** After all, there is a provision that nothing can be loaded unless the necessary bill has been passed. So, that information is available with you. It is merely a question of compiling.

**Shri Kothawala:** It is also a question of obtaining the information from our dock staff and also from the Bombay Port Trust occasionally.

**Shri Dehejia:** Actually, the goods cannot be loaded without a bill of lading being given.

**Shri Kothawala:** The bill of lading is given much later.

**Shri Dehejia:** Clause 40 says:

"The person-in-charge of a conveyance shall not permit the loading at a customs station—

(a) of export goods, . . . , unless shipping bill or bill of export or a bill of transshipment, . . . , has been handed over to him by the exporter;"

The shipping bill is with you and all that you have to do is to prepare a consolidated statement.

**Shri Kothawala:** May I submit that the shipping bill travels through several hands, that is, the mukaddams and even the stevedores and the shipping staff? Finally a mate receipt is issued and handed over to the Port Trust. The Port Trust do not part with the mate receipt and give it to a shipper of goods till their dock dues are settled. In turn, the shipper is not able to present the mate receipt for exchange with a bill of lading till after two or five and sometimes seven or ten days of the sailing of the vessel. But I will not unnecessarily emphasise on the issue of the bill of lading because though we would like the prepare the EGM after the bills of lading are prepared and issued to shippers we generally prepare it from the shipping bills. It is our unfortunate experience that when the mate receipt is produced, there is sometimes

a discrepancy between the mate receipt and the shipping bill so that there is a discrepancy between our bill of lading and the EGM which has already been submitted to the Customs. In order to avoid such discrepancies we would like the bill of lading to be issued to shippers and our export general manifest to be prepared from the bills of lading which will be a more authentic document because the shipping bill might show or miss to show short-shipment whereas our mate receipt will only be in respect of the quantity shipped on board. So, we have five days in which to sort out any such discrepancy. I do not submit that these discrepancies are in each and every case, but occasionally we do come across them. In order to sort out these discrepancies and to prepare the EGM in the prescribed form, five days' time limit has been found to be just sufficient. If I may say so, if that minimum comfort is removed, it will act as a hardship to the ship-owner.

**Shri Anand:** Is it not a fact that even under the present Act you are supposed to present the manifest at the time of applying for port clearance and it is only where the Customs authorities think that it is not necessary and you apply for it that they give you the permission to put in the manifest within five days after the departure of a vessel? Even under the existing Act the provisions are more or less the same as now proposed except that we have removed this time limit of five days and it will depend upon the Customs authorities to see whether to see whether to give five days or seven days.

**Shri Kothawala:** The Act also lays down that the EGM should be submitted prior to the departure of the vessel and prior to the obtaining of the port clearance. But it is to be read with section 66 which gives us the benefit of five days.

**Shri Anand:** That is discretionary.

**Shri Kothawala:** I might add that under an agreement with the Customs

by shipowners which also is provided under section 66 we are not only given five days for the submission of the EGM and 24 hours for the submission of the IGM but we are even permitted to obtain port clearance without the submission of the required papers provided we give an indemnity or a bond to produce those papers within 24 or 48 hours after the sailing of the vessel.

**Shri Dehejia:** There is a very material change between the old Act and the new Bill. The old Act was only in respect of sea-going vessels. The new Bill is in respect of all kinds of conveyances. So, if five days are given in the case of an aircraft, the export goods would reach their destination and would be discharged.

**Shri Kothawala:** I quite agree.

**Shri Dehejia:** So, what you mean to say is that for a shipping company the provision may be different and for aircraft and motor vessels it may be something else?

**Shri Kothawala:** I am representing the shipping interests.

**Shrimati Savitri Nigam:** I would like to have a clarification. On page 16, at the end there is a proviso to clause 41 which says:

"Provided that if the proper officer is satisfied that there was sufficient cause for not delivering the export manifest cause for not delivering the export manifest or export report or any part thereof before the departure of the conveyance, he may accept it after such departure."

Now, you just now suggested that it should be not less than five days. Do you want it to be after the departure of the vessel or before that?

**Shri Kothawala:** I would like it to be after five days of departure. But that is only confined to the discretionary power.

**Shri S. S. More:** In that case five days will be the compulsory period and discretion will come only after the lapse of five days.

**Shri Kothawala:** The present Act provides for five days. That is the minimum.

**Shrimati Savitri Nigam:** This was enacted in 1878. Now everything has been modernised and therefore it should be shortened.

**Shri Kothawala:** Loading of cargo on a ship in 1962 is definitely more than the average cargo loading during the 1870.

**Shrimati Savitri Nigam:** I was suggesting that if it could be done in two or three days instead of five days it would be better.

**Shri Kothawala:** From actual experience we have found that because the ship is loaded with hundreds of items five days are just sufficient.

**Chairman:** The old Act is about sea customs only but the present Bill is for air and motor vessels also. However, we will consider this point and see how best we can accommodate you. In the case of air travel within 24 hours the goods will be thousands of miles away.

**Shri S. S. More:** He is comparing this particular proviso with section 66 of the present Act. This proviso is more liberal than section 66. It gives discretion to the Customs officer. According to the proviso, if the officer is satisfied, he may grant him time even for 15 days.

**Shri Kothawala:** But my difficulty arises if the officer is unfortunately not so liberal.

**Chairman:** He cannot be so unreasonable.

**Shri Kothawala:** I agree. But if five days protection is given to me in law, it would be better.

**Shri Kothawala:** The minimum of five days' limit also would be very helpful and in conformity with the present Act. I am sorry to emphasise the present Act again, but the volume of trade has increased also.

About section 32, as we have mentioned in our memorandum, it is more a trade angle than a shipping company's angle. I have mentioned it for two reasons. It is attempted to be laid down that cargo manifested for a particular customs port must be discharged at that port. The idea is, consignees after shipping their cargo from, say, Liverpool, suddenly discover that the cargo has been wrongly manifested for Bombay but it should go to Calcutta. Then they come to the shipping company saying that the exigencies of trade and business require the landing of that cargo in Calcutta. We ask them to get the permission of the customs for amending the manifest.

**Chairman:** It is provided here "except with the permission of the proper office".

**Shri Kothawala:** I hope such permission will be liberally coming forward because in the present Act there is no such amenity. If this permission is not granted the trade will be inconvenienced. Between one Indian customs port and another Indian customs port we hope the objection should not be very serious. I am thinking of my company's stores—shipping stores. I will, Sir, with your permission give you an instance. We had shipping stores in transit ordered by vessel. A for receiving vessel B from Liverpool. By the time A arrived, the receiving ship happened to be in Calcutta. It would have been of no use our discharging the shipping stores at Bombay and transshipping it to Calcutta. We requested for permission of the customs for amendment of the manifest from 'local' to 'same bottom'. In anticipation of the sanction we retained the cargo on board and discharged it at Calcutta. We received a strong letter from the customs asking us to explain why prior to receipt of the sanction this was done. It is shipping stores in transit. It does not go out into the town. It does not even attract customs duty. In such cases some leniency should be shown.

**Shri Dehejia:** The stores would have gone on bond to the port of landing.

**Shri Kothawala:** It goes out on bond to Calcutta where also it does not attract duty because it is transferred to another vessel.

**Shri Anand:** I hope you are also aware of cases where when the goods are still on board or on the high seas attempts have been made for changing the IGM fraudulently to avoid complications with the customs. Where the goods were unauthorised excuses were given that the goods were not meant for an Indian port and were to be carried to ports outside India.

**Shri Dehejia:** When they find that the customs officers at Bombay are a bit vigilant they might say that the goods are going to Hong Kong.

**Shri Kothawala:** It is not so much our interest as the interest of the trade. Important companies like the Hindustan Lever or Tatas come to us saying that instead of Bombay the goods may be discharged at Calcutta. We say that if the storage permits we have no objection, because it is rather difficult from the storage point of view. We always say that we will make an endeavour, whatever expenses are incurred will be debited to them, and they must obtain the permission of the customs. The trade has also told us that it is extremely difficult to obtain the permission of the customs even in bona fide cases. This new Bill will make it still more difficult.

**Shri Dehejia:** Import licences may be accepted in a particular way at a particular port, and importers may have come to know that by taking the goods to a smaller port like Bhavnagar or Portbandar they may have less vigilance.

**Shri Kothawala:** Import cargo have to be accounted for sufficiently at every port.

**Shri Dehejia:** I am only saying that when we are talking technically let us be clear as to what could happen technically.

**Shri Kothawala:** There is one more point which is not covered by our memorandum. It is about retention cargo. The present Act as well as the proposed Bill says that the details of the retention cargo are also to be given in the same fashion as for local cargo or transshipment cargo. But by public notices the Customs have given us this concession in Bombay, Calcutta, Madras, and other places that in the case of retention cargo or 'same bottom' cargo we only say the port of shipment, the port of discharge and the total number of packages, we do not show them item-wise as in the case of local cargo or transshipment cargo. In the case of local cargo and transshipment cargo they have to be shown item-wise because they have to be delivered to separate consignee or the cargo has to be off-loaded at one port and, then shipped to another port. But for 'same bottom' cargo the details are hardly necessary at Bombay for Calcutta 'same bottom' cargo, because in the Calcutta IGM those details will be furnished as local cargo. Recently the Calcutta Customs have advised the shipping companies that for retention cargo or 'same bottom' cargo full details of marks and other things should be given. Fortunately, Bombay Customs have not raised this question. In case they also do it, it is going to make it very difficult for us. In the 'same bottom' cargo there may be hundreds of items. It would load the IGM considerably. After all, those details will be reflected in the Calcutta or Madras IGM where the cargo becomes local and therefore we are bound to discharge the cargo according to the IGM. I would, therefore, suggest that in the new Bill that is under consideration one treatment may be given to transshipment cargo and local cargo and a separate treatment may be given for 'same bottom' cargo for showing it in the IGM.

**Shrimati Savitri Nigam:** I think that transshipment could be made without landing that cargo at the port?

**Shri Kothawala:** Actually it is carried in the same bottom of the ship.



From Liverpool to Calcutta the ship touches Bombay, then Madras and then goes to Calcutta. The Calcutta cargo which is in a separate storage is retained at Bombay and Madras while the ship discharges Bombay and Madras cargo. When the ship arrives at Calcutta the same 'same bottom' cargo becomes local cargo in Calcutta port and is shown in the IGM and is accordingly discharged in Calcutta. For the first time it becomes local cargo and we have to account for every single package. So, it does not come out of the ship at all. Even if it comes, we are bound, even under the terms of the bill of lading, to carry it at our expense to Calcutta and deliver it in Calcutta and satisfy the Customs at Calcutta that that cargo has not short-landed.

**Shri Anand:** As you may have noticed from clause 30, it does not lay down the form in which the I.G.M. is to be submitted. It has to be submitted in the prescribed form. It does not say anything even about the local cargo, or transshipment cargo etc. So, what you are saying can be dealt with under the regulations and rules and whoever contravenes those rules would be dealt with accordingly. But that cannot be put in the Act itself.

**Shri Kothawala:** Since the Bill is on the anvil, our difficulties *vis-a-vis* customs at various ports could be considered and if we could lay down a rule of law in this regard that would be better. That is what we wish to submit.

**Shrimati Savitri Nigam:** Have you got any model amendment to suggest about this point?

**Shri B. R. Bhagat:** That need not be put in the Act.

**Shri Kothawala:** It may be put in the rules.

**Chairman:** The rules are all laid down on the Table of the House. You may please be watchful and you will come to know that. All such rules are laid on the Table of Parliament.

**Shri Kothawala:** About confiscation of vessels, I wish to say something. We have referred to that in our Memorandum. This relates to Clause 115 of the new Bill.

We were worried about search of documents without obtaining the necessary permission of magistrate. But we thought it better not to bring it up as an agitational approach. But, when it comes to confiscation of vessels, we wish to say something. Clause 115 allows confiscation of vessels even when alterations or adaptations in vessels for the purpose of concealing goods are made without the knowledge or privity of the owner or the master of the vessel. Sometimes, during the voyage, some people conceal contraband without the knowledge of the owner of the vessel. That concealment is unknown to the ship-owner, but if such a concealment is found, he is punished.

**Shri B. R. Bhagat:** Is it a practical proposition or a theoretical proposition? I don't think it is ever done without his knowledge.

**Shri Kothawala:** It could be done without his knowledge. The ingenuity of the smuggler knows no bounds.

**Shri Anand:** It is not a new section. It is an old section.

**Shri Kothawala:** Confiscation of ships is not warranted.

**Shri Dehejia:** It comes under clause 52(a) read with clause 167.

**Shri Kothawala:** While the entire Bill is on the anvil, may we not take this up? That is why I suggest modifications.

**Shri Dehejia:** You are most welcome to make suggestions. It repeats something which already existed in the old Act.

**Shri Kothawala:** We would like its rigorous to be less. If this could be done in the new bill, it is worthwhile.

**Shri B. R. Bhagat:** The problems are more. Do you want this to be less rigorous?

**Chairman:** The space in the ship is altered to send certain smuggled goods, contraband gold bars, etc. That cannot be done surreptitiously without the knowledge of the ship-owner.

**Shri B. R. Bhagat:** Without confiscating the vessel, this cannot be enforced.

**Shri Kothawala:** One officer on duty cannot go to the various places in the ship. One officer works during night duty. Another comes for day shift. Now, one officer cannot go to all the places. If any mischief is done unknown to the officer of the ship, the vessel is confiscated once the place of concealment is detected. This can be done if the ship-owner's guilt, his indifference or his negligence is established.

**Shri Dehejia:** The ship owners may have better check over their crew. After all they are their employees.

**Shri Kothawala:** At various ports, labourers come in to take the cargo. There are passengers at various places.

**Chairman:** Section 115 gives instances where conveyances shall be liable to confiscation. It says:

"The following conveyances shall be liable to confiscation:—

(a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered, or fitted in any manner for the purpose of concealing goods;

(b) any conveyance from which the whole or any part of the goods is thrown overboard, stayed or destroyed so as to prevent seizure by an officer of customs;

(c) any conveyance which having been required to stop or land under section 106 fails to do so."

Now, it is only in such instances that confiscation takes place. That cannot be condoned. There are certain things

which cannot be done without the connivance of the ship-owner.

**Shri Anand:** The ship owner has to have knowledge in certain types of cases. Clause 115, sub-clause (2) says as follows:

"Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all such precautions against such use as are for the time being specified in the rules"

**Shri Kothawala:** How can the owner prove his innocence?

**Chairman:** This is to be done when a *prima facie* case is established.

**Shri Kothawala:** I agree, if a *prima facie* case is proved against the owner.

**Chairman:** All such cases are specified in sub-clause (a) to (3) under clause 115. Suppose some quantities of cotton bales are missing and some quantities of silver bars are put in their place. You cannot say that you have no knowledge. It is only in such cases that confiscation is contemplated.

**Shri Kothawala:** It can be extended to any cargo and the ship can be confiscated. Because we are unable to account for the cargo, we are answerable. The Association suggests that confiscation should be resorted to only if it is proved that such adaptations or alterations are made with the knowledge or privity of the owners of the vessel.

**Shri S. S. More:** Are there instances where the vessels were confiscated? Can you cite some instances?

**Shri Kothawala:** In Calcutta, there was recently an incident relating to a foreign vessel. You will remember that.

**Shri Dehejia:** That matter went to the court. It is still pending in the court.

**Shri Anand:** In that case, Rs. 25 lakhs worth of gold was discovered there.

**Shri Dehejia:** That is still pending in the court.

**Chairman:** Thank you for the evidence.

**Shri Kothawala:** Thank you.

*(The witness then withdrew).*

*(The Committee then adjourned).*

**SELECT COMMITTEE ON THE CUSTOMS BILL, 1962**  
**MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL,**  
**1962.**

*Saturday, the 1st September, 1962 at 09.35 hours.*

..  
**PRESENT**

Shri S. V. Krishnamoorthy Rao—*Chairman.*

**MEMBERS**

- |                                 |                                     |
|---------------------------------|-------------------------------------|
| 2. Shri Tridib Kumar Chaudhuri. | 10. Shri Shankarrao Shantaram More. |
| 3. Shri R. Ramanathan Chettiar. | 11. Shri Prabhat Kar.               |
| 4. Shri N. T. Das.              | 12. Shri A. V. Raghavan.            |
| 5. Shri J. N. Hazarika.         | 13. Shri Shivrām Rango Rane.        |
| 6. Shri Hari Vishnu Kamath.     | 14. Shri R. V. Reddiar.             |
| 7. Shri Narendrasingh Mahida.   | 15. Shri M. Shankaraiya.            |
| 8. Shri Bakar Ali Mirza.        | 16. Shri Sumat Prasad.              |
| 9. Shri R. R. Morarka.          | 17. Shri Bali Ram Bhagat.           |

**DRAFTSMAN**

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

**REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS**

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

**SECRETARIAT**

Shri A. L. Rai—*Deputy Secretary.*

**WITNESSES EXAMINED**

**I. BENGAL NATIONAL CHAMBER OF COMMERCE AND INDUSTRY, CALCUTTA**

- |                         |                            |
|-------------------------|----------------------------|
| 1. Shri D. N. Mukerjee. | 3. Shri B. C. Sen.         |
| 2. Shri A. N. Daing.    | 4. Shri A. R. Dutta Gupta. |
11. SHRI D. N. MUKERJEE, RETIRED COLLECTOR OF CENTRAL EXCISE AND CUSTOMS AND ADVOCATE, CALCUTTA HIGH COURT, CALCUTTA

**III. THE BOMBAY GENUINE PEARL DEALERS ASSOCIATION, BOMBAY**

Shri Jawahar M. Jhaveri.

**IV. THE PEARLS IMPORTERS AND EXPORTERS ASSOCIATION, BOMBAY**

Shri Pravin M. Nanavati.

## V. THE LEADING BULLION MERCHANTS, DEALERS AND COMMISSION AGENTS OF BOMBAY

- |                                   |                               |
|-----------------------------------|-------------------------------|
| 1. Shri Valimahammed Gulamhusain. | 4. Shri Dolatram Bherumal.    |
| 2. Shri Amichand Valamji.         | 5. Shri P. Gopalekrishnah.    |
| 3. Shri Kantilal Chunilal.        | 6. Shri Kapurchand Chimanlal. |
|                                   | 7. Shri J. R. Gagrath.        |

## I. BENGAL NATIONAL CHAMBER OF COMMERCE AND INDUSTRY, CALCUTTA.

### Spokesmen:

1. Shri D. N. Mukerjee.
2. Shri A. N. Daing.
3. Shri B. C. Sen.
4. Shri A. R. Dutta Gupta.

*(Witnesses were called in and they took their seats).*

**Chairman:** Gentleman, we have got your memorandum. It has been circulated to the members. If you have got anything to add, we are ready to hear you.

**Shri Mukerjee:** In the first place, Sir, the Chamber expresses their sincere thanks to this Committee for having given them an opportunity to appear before this Committee to present their views. Secondly, the Chamber is very grateful to the hon. Finance Minister for having overhauled the Customs Law which was originally introduced in this country in 1878, and that old Customs Law has now been consolidated with the Land Customs Act of 1924 and the Indian Aircraft Act. This has been a great uphill task for the hon. Finance Minister and the Chamber sincerely appreciates that this has now been done and made possible.

The Chamber has felt that in the new Bill the necessities of the trade which the trade had been asking for the last few years have been considerably met and they have got some concessions which they greatly appreciate. The trade necessities have been considerably fulfilled and the planned economy which is desired to be protected in this country has also been sufficiently attempted to be met in the Bill. The Chamber is also grateful

that the facilities and concessions which have been granted to the trade will be very helpful in having a close co-operation between the trade and the Government.

I may mention some of the most outstanding changes which have been made.

**Chairman:** I would request you, Mr. Mukerjee, to come to the provisions of the Bill. If you have got any objection to any particular clause you may mention that. Similarly, if you have any suggestions to improve them, you can straightway give them.

**Shri Mukerjee:** We have, Sir, in our memorandum, represented our views specifically according to the clauses. We now want to lay emphasis on a few of the clauses and want further clarification.

The first clause which I shall refer to is clause 14. This refers to the determination of assessable values. There has been a long dispute in the past about this fixation of assessable values, and we appreciate that this clause has been drafted on a more realistic basis. But then, we would like to have a clarification as to whether this "normal price" will also include the landing cost, because "normal price" has been defined as the price of the seller to the buyer. By that we understand that the price which the seller will charge to the buyer in the ordinary course of international trade will be the price. That is to say, generally, we understand that the CIF or the FOB price will be the "normal price" in the international trade. But, after the goods are landed there are some small landing costs. The question whether that landing cost would also be included. In fact, we have

suggested that an explanation may be added to this clause just to clarify whether it will include the landing cost and whether it will include the discounts. Discounts are now allowed in the international trade and the discounts vary from seller to seller and from buyer to buyer. More or less, there is no fixity about these discounts. It depends upon the quantity purchased at a time and the bargaining of price. The question is whether these things should be clarified by an explanation. We have suggested that it should be done because otherwise it might leave chances for future disputes.

Then again, we have pointed out that the same goods or similar goods when manufactured in different countries, are supplied at different prices. Of course, we understand that "normal price" means the price of the different international markets. But sometimes it happens that from the same international market goods of the same type are sold to buyers in the buying country at different prices. The question is whether the "normal price" should be accepted for each individual sale to the different buyers who are allowed different discounts. How should these things be dealt with?

Then again, there is the question of forward sale price. Goods are sometimes found sold at a cheaper price or at a higher price according to the forward contracts and the same goods when supplied at later date may be sold at a lower or higher price. In this case, what would the "normal price" mean? Would it mean the price at which that forward contract has been made or the price which is current at the time when the goods reach the buying country?

**Chairman:** What do you want it to be?

**Shri Mukerjee:** We want that in the case of forward contracts the price which is contracted should be accepted as the normal price and in case different prices are obtaining in the same international market, if it is

proved that there is no special relationship between the buyer and the seller and the prices have been arrived at by independent bargaining, the prices should be accepted, although they are different and although they are from the same international market. These things should be clarified.

**Shri Ramanathan Chettiar:** Could you clarify the point about forward prices? Do you want it to be like, for example, phadka market price in regard to jute in Calcutta?

**Shri Mukerjee:** Sometimes goods are ordered ahead of the manufacture and the prices are settled even before the goods are manufactured in the manufacturing country. So, we should take into account not only jute contract but also the prices of other goods in general.

**Shri Ramanathan Chettiar:** Probably you are referring to exportable commodities and not in regard to imports.

**Shri Mukerjee:** Both imports and exports because in the case of imports also there are some forward contracts.

**Shri Ramanathan Chettiar:** What are the articles of import which will come under this category?

**Chairman:** He has referred to some machinery.

**Shri Ramanathan Chettiar:** How could there be a forward contract on that?

**Shri Mukerjee:** Machinery is manufactured in the manufacturing country. Orders are placed well ahead. The prices are fixed by contract and the components of the same machinery may be supplied at a later date at a higher or lower price.

**Shri Ramanathan Chettiar:** I would like to point out that it happens only in very few cases in regard to certain items. When we import from the United States they say that the price is subject to the ruling market price on the day of manufacture or delivery. But I do not think this will apply to any article or components that we may have to import from the United Kingdom or any of the Con-

tinental countries. I think this would apply more in regard to jute and shellac that are exported from our country rather than in regard to imports from foreign countries.

**Shri Mukerjee:** Then I will refer to clause 18, although it is a small point. It refers to the provisional assessment of duties. It happens that when goods are imported and an assessment cannot be done immediately, after some enquiries the goods are provisionally assessed to duty and a bond is taken from the importer to pay the difference in duty in case when the final assessment is made there is additional duty involved. The provision that has been made is for a security bond, which means the importer has to pay cash security in Government papers for the goods imported. We suggest that surety bond may also be allowed to be accepted and in case cash security is insisted, the cash should not exceed twice the value of the difference in duty between the provisional assessment and the estimated final assessment, because if it is left to the discretion of the officer and if the discretion is not exercised properly, it might happen that he might demand any lump sum as cash security which the importer is unable to pay. Therefore, it is suggested that the surety bond as well as the security bond should be limited to the difference between the two duties.

**Chairman:** You need not repeat what is contained in the memorandum, because we have gone through it. If you want to lay stress on any particular point or bring in additional points, you may do so.

**Shri Mukerjee:** In clause 28 provision has been made that a show cause notice may be issued. We suggest that the show cause notice may be provided as a compulsory item. So, instead of the word "may" the word "shall" may be used.

**Shri S. S. More:** In this particular clause, if you interpret it in that particular context, the word "may" has the force of "shall".

**Shri Mukerjee:** Then we will not press that. Then, in the same clause the time given is six months. We have suggested that the show-cause notice may be issued within three months and the proceedings may be finalised within six months. That is to say, whether the importer has to pay any additional duty must be decided within six months but the show-cause notice may be issued earlier, that is, within three months.

**Shri S. S. More:** Would you not allow some time for the customs authorities for reaching their own conclusions before they issue the notice?

**Shri Mukerjee:** In the clause the provision that has been made is that the show-cause notice will be issued within six months and there is no limitation as to the time for arriving at a decision. This means that the importer is held in suspense for an unlimited time which is not proper.

Then I refer to clause 105, sub-clause 1. The power of issuing search warrants is proposed to be delegated to officers upto the rank of Assistant Collectors. We have not supported it. We emphasise that this may lead to great abuses of power, more particularly on account of the fact that search warrants under this clause may be issued for the seizure of documents of the importer for any proceeding and 'any proceeding' may include a proceeding for the payment of additional duty and adjudication proceedings. If in an adjudication proceeding relating to an investigation whether the importer is liable to any additional duty a search warrant is issued by an Assistant Collector and the documents of the businessman are seized and brought to the customs house, nobody knows when they will be released. He will be subjected to great inconvenience. The power is at present confined to the magistrate and in case the business accounts are not released the businessman can approach the magistrate and a quick decision is made. But when the decision is left to the departmental officer who himself has

issued the search warrant, there may be harassment of the business people.

**Shri S. S. More:** Apprehensions are expressed here that by the time the officer concerned goes to the magistrate, somehow delays take place and the prospect of securing certain documents is marred. In order to prevent the possibility of such delays, it will be better if we retain the provision as it appears in the Bill and to the aggrieved party who feels that documents are not being returned promptly we may provide some remedy by providing for some representation to the District Magistrate or somebody else.

**Shri Mukerjee:** Where a magistrate is readily available and the customs officer approaches him for the issue of a search warrant, the magistrate makes enquiries into the truth of the allegation and unless there is a prima facie case, he refuses to issue a search warrant; whereas, if it is left to the departmental officer and if the officer is not scrupulous enough or cannot exercise his discretion correctly, there will be harassment. Of course, we have suggested that in the case of border areas where smuggling goes on and it is not possible to find a magistrate there would be no harm in giving the power of issuing search warrants to senior officers of the Department.

**Chairman:** We have got a long land customs barrier and we cannot have magistrates at every place. So, necessarily power has to be given to the customs officers.

**Shri B. R. Bhagat:** Even in income-tax and sales tax cases such power is vested in the administrative officers.

**Shri Mukerjee:** In the case of income-tax officers the power is exercised in a different way. But here there is the power of seizure of the property of the person. In the case of income-tax the warrant authorises the seizure of documents of assesses and not the personal property of the individual. An analogous case is that of the State excise authorities who have got to deal

with excisable goods and there the power of search warrants is restricted to the magistrate or to the Collector of the District and not to any subordinate official. They also have got to work on the border.

**Chairman:** Even here it is a gazetted officer, that is, the Assistant Collector of Customs, who is authorised to issue a search warrant just as the magistrates.

**Shri Mukerjee:** The Assistant Collector of Customs may be biased, but in the case of the magistrate there cannot be any allegation of bias.

**Shri Dehejia:** The witness quoted some excise law. We have got the Bengal Excise Act and he may be familiar with that. Could he quote from there some case where it requires a magistrate's order?

**Chairman:** There section 70 gives the power to the Excise Officer. Such powers are there in many Acts.

**Shri Mukerjee:** Kindly see section 69 of the Bengal Excise Act.

**Chairman:** There also it is 'any officer or magistrate'.

**Shri Mukerjee:** There it is 'any collector or magistrate' and not any subordinate officer.

**Chairman:** But section 70 immediately follows section 69.

**Shri Mukerjee:** But we have suggested that in the case of the border areas where there may be any necessity for issuing a search warrant senior officers may be empowered to do so. The power of issuing search warrants may be given in the case of land customs to the Superintendent who is readily available there.

**Chairman:** All right, we will consider it.

**Shri Hazarika:** When an officer is specifically empowered for that purpose, he is as good as a magistrate.

**Shri Mukerjee:** I will only repeat that he is a departmental officer.



The next clauses I would refer to are clauses 107 and 108. 107 is a new clause giving the power of investigation to the customs officers to examine persons and require them to produce documents or to make and sign statements, just like police officers. In view of this new clause 107 we do not feel the necessity of clause 108. The distinction between clause 107 and clause 108 is that in the case of clause 108 any person can be summoned, by the officer empowered, to appear before him and to give evidence and to produce documents. And this is in the existing Act also, the corresponding section in the existing Act being 171A. Now, it has been found by experience that this power of summoning persons has been delegated to subordinate officers even of the rank of preventive officers on the customs side. So a preventive officer can summon a person. And it is a judicial proceeding, for certain purposes—for instance, he cannot give false evidence, he cannot insult the officer who has summoned him. So, the purpose with which section 171A was promulgated in 1955 was to empower the officers to make investigations. But that power is now being taken under clause 107. So the old power, which is embodied in clause 108, need not remain.

The next clause I would refer to is clause 118. It is suggested that the word 'package' be defined. Because, it may so happen sometimes that licit goods may be associated with illicit or smuggled goods in a box. That should not make the licit goods liable to confiscation because the smuggled goods were contained in that box. The dictionary meaning of the word 'package' is bundle. But the keeping of articles in a box in which probably smuggled goods are found should not make the licit goods liable to confiscation. That is why the definition of the word 'package' should be clarified.

The next clause that I would like to refer to is clause 120. Clause 120 says that smuggled goods may be confiscated notwithstanding any change

in their form. If the smuggled goods are gold, and if any ornaments have been manufactured out of that gold and sold from a jeweller's shop, and an innocent person goes and buys that ornament, then those ornaments would be liable to confiscation, and the onus of proving that those ornaments have not been manufactured from smuggled goods is on the citizen who innocently buys those ornaments. So, this clause 120 will bring harassment to innocent citizens. If it is at all retained, it is suggested that the onus of proving that the ornaments were manufactured from smuggled gold should be on the Customs Department. If they are satisfied that it has been made from smuggled gold, then of course it may be confiscated. And there should be provision for compensation to the citizen who has innocently bought those ornaments.

**Chairman:** The provision is already there regarding stolen property, in the Penal Code.

**Shri Mukerjee:** I would next refer to the appeals and revision clauses, that is clauses 128, 130 and 131. We have not referred to this in our Memorandum. We suggest that there should be an independent body for deciding appeals and revisions, as has been recommended by the Badhwar Committee. At the lower levels appeals are generally decided by the Collectors, against the orders of their subordinate authorities. At the lower level, just as in the Income-tax department, there may be an Appellate Collector or Assistant Collector. But, at the higher level, corresponding to the Board of Revenue, there may be a Tribunal as in the case of the Income-tax department. This, we think, will do justice to the citizens.

**Shri Hazarika:** What about clause 123?

**Shri Mukerjee:** The real difficulty, we have explained, has been brought out against clause 120. If there is any suspicion of smuggling and gold is seized from a suspected smuggler, it is

quite right that it is for the person from whom gold is seized to prove that it is not smuggled gold. But, that should not apply in the case of a citizen who has purchased some gold ornaments from an ordinary dealer's shop in the town. He is asked to prove that the gold ornaments have not been manufactured from smuggled gold. Really, he is not manufacturing. He is only a buyer. Here, in clause 123, it is the person who is carrying gold and who is suspected to have smuggled, who is liable. The suspicious person with other case is the dealer who has sold the gold to the citizen. You have seized the gold from the citizen. It is not right to ask the citizen to get proof that the dealer from whom he has bought has not manufactured it from smuggled gold.

We refer back to clause 12. This is a new provision that an importer has to pay the duty on the pilfered goods whether he takes delivery of the goods or not. In the existing Act, there was a provision that he might abandon the goods in which case he has not got to pay duty on the pilfered goods. In this clause 13, now, it has been made compulsory that whether he takes the goods or not, he has got to pay duty on the pilfered goods although the pilfering might not have been done at his instance or there is no proof at least that he has anything to do with pilfering. As a matter of fact, the pilfering is done from the jetty when the goods are in the custody of the Port Commissioner. The law is that if any goods are pilfered and the party makes a claim within five days, then and then only he can claim compensation from the Port Commissioner. Five days is too short a period now. As a matter of fact, on account of the imposition of import control, ordinarily or in most cases, it is not possible to get a clearance of the goods on payment of duty within five days. It will be a great hardship if the importer is asked to pay the duty on the pilfered goods even when he intends to abandon the goods. It is suggested that the existing provision may remain as it is. That is all.

**Shri Hazarika:** It is duty on imports. The good have been imported. Then, it has been pilfered. Duty should be paid by somebody.

**Shri Mukerjee:** Legally, it should be. But, equity demands that a person should not be made to suffer for no fault of his. His only fault is that he imported goods. Pilfering has been done in circumstances beyond his control.

**Chairman:** This matter will be considered by the Committee.

**Shri Hari Vishnu Kamath:** Mr. Mukerjee,....

**Chairman:** He is representing the Bengal Chamber of Commerce.

**Shri Mukerjee:** I am not coming in my personal capacity, because I will repeat the same things.

**Chairman:** Suppose the Committee wants to ask some questions in your personal capacity?

**Shri Mukerjee:** If the Committee desires, I am at your service.

**Chairman:** Then, the other witnesses can retire.

**Shri Dutta Gupta:** I want to say something regarding clause 14. It refers to the value on the basis of which the duty is to be assessed. It has to be done on the basis of normal price. Reference has been made in the note appended to the Bill that this has been framed on the basis of the provision in the G.A.T.T. In the provision what has been mentioned is the actual price and not the normal price. We do not know why this difference has been made. If it is normal price, the price will differ from place to place and in respect of different shipments of similar consignments. Duty has to be assessed on the C.I.F. value of the imports. If it is normal price, some other elements will come into consideration. The basis should be actual price. If the goods are delivered on credit basis, the price will be much higher.

**Chairman:** The point will be considered.

**Shri Dutta Gupta:** Provision has been made in the Bill, for seizure of documents, etc. There should be some time limit for the return of the documents. Otherwise, trade may face great difficulty.

A number of provisions have been made for checking smuggling. While we are at one with the Government that smuggling should be stopped, we do not think that by mere legislation we can stop smuggling.

**Chairman:** What is your suggestion?

**Shri Dutta Gupta:** The point is this. We feel that these provisions have been made to catch hold of the smuggler after the event has taken place. Rather we should think of finding out ways and means to stop smuggling before it takes place. The point is that even for smuggling of goods, the price for that has to be paid to somebody with funds abroad. We should enquire how the funds have been created. Moreover, people are perhaps finding smuggling more profitable, because the internal prices are higher, and perhaps the value of the rupee is also depreciating. So, we must create certain conditions here so that smuggling may not be found to be profitable.

Then, there is a feeling that perhaps there is under-invoicing of the export value, and foreign exchange is thus being accumulated. There might be some provision for checking up the export invoices and the inspection of the goods to see that there is no under-invoicing. At present, Government only act on stray information. I suggest that Government must have a body consisting of trade, the customs officials and the import control authorities etc. to check the prices of the goods and they must have also a machinery for getting market intelligence about prices etc. in a regular manner.

**Mr. A. N. Diang** will be able to throw more light on this.

**Shri Ramanathan Chettiar:** About smuggling, have you got any concrete suggestions to put down this evil?

**Chairman:** He has said that conditions should be created to check smuggling; he says that those conditions which encourage smuggling should be removed.

**Shri Dutta Gupta:** The point is that however stringent the laws may be, the dishonest man will always find ways and means of avoiding them. On that ground it should not be presumed that every trader is dishonest.

I would submit that smuggling itself cannot take place if the administration is sufficient.

**Shri S. S. More:** After all, a smuggler is a smuggler; we cannot call him a trader.

**Shri Narendra Singh Mahida:** Has any member of your association taken part in smuggling, and has he ever been caught?

**Shri Dutta Gupta:** No, never. But because the provisions are there we thought we must make our submissions.

**Chairman:** Then you should not have any objection to these provisions.

**Shri Dutta Gupta:** For instance, there is a provision that when gold is changed into a certain form, then certain presumptions will be made, and so on...

**Chairman:** These provisions do not apply to honest traders.

**Shri Dutta Gupta:** But in their application, honest people also may be harassed.

**Chairman:** If the person is honest, then he can prove it. You have proved now that there has not been a single case of smuggling by any member of your association.

These provisions are meant to apply only to those persons who are engaged in smuggling.

**Shri Datta Gupta:** The point is that in applying these provisions, honest people also may suffer.

**Chairman:** But, so far, from your experience, these provisions have not been applied to you, and they have not been misused.

**Shri Datta Gupta:** But, so far, the laws were not also so stringent.

**Shri Daing:** I would also like to say a word on this.

The chairman had asked us whether there had been any trader or member of our association who had been caught for smuggling, and we had said 'No' in reply to that question.

But the fact remains that often when a genuine trader or importer has imported certain items at world market prices, sometimes the customs officials compare those prices and find them to be lower than those at which certain other firms have imported those particular items, and they argue why the other importer should not be charged the difference in prices as excess duty. It so happens that many times there is an honest trader who as a result of great efforts succeeds in importing goods at prices lower than those at which others import; and he saves foreign exchange for the country. Instead of being appreciated for that, he is being harassed on the ground that he has smuggled the goods at lower prices. This has happened on many occasions.

We, therefore, suggest that there should be some kind of guiding principles by which there will be no harassment to genuine traders. I cannot suggest definitely what those guiding principles should be but some guiding principles should be there.

I may mention some instances in this connection. I may go back to the days when the Ford Motor Co. or the General Motors were here. And the goods which were imported under those brands were fifty per cent higher in price as compared to that of the goods which were imported from the source

from where the General Motors or the Ford Motors had bought them. If the importer bought from those very manufacturers from whom the Ford Motors or the General Motors bought those things, then the goods would be 50 per cent cheaper. But the importers who got those things at those cheaper rates were suspected by the customs officials as being involved in smuggling on the ground that they had not paid the proper price.

So, some guiding principles should be there so that there may not be harassment. As Mr. Datta Gupta has been saying there has been no case of smuggling in our association, but harassment cases have been numerous, and that is the point at which he was arriving. Where foreign exchange is saved by an importer, he is harassed by the customs officials. So, if there is any ambiguity in regard to this matter, some guiding principle should be laid down.

Of course, it may be a difficult thing. But some proforma may be submitted even for export and that may be checked up. For instance, in an export item, if the items are undervalued, foreign exchange may be secreted out. To stop that, we have to ensure that there is no foreign exchange accumulated outside by anybody; if that is done, then there will not be any under-invoicing also.

To stop this evil of under-invoicing etc. I would humbly suggest that the proforma of the invoices be scrutinised by the import authorities or the customs authorities before an export or import is made. And when the export or import has been effected, there should be no harassment whatsoever. That is my humble suggestion in regard to this matter.

As far as my information goes, Japan is one country, for instance, where when an export is made, the export invoices are submitted to the Export Bureau, and the Bureau puts its stamp on them and gives them permission to export, and then the goods are exported. Here also, a machinery can be

formed by the customs authorities. The proforma of the invoices may be submitted to them before we export or import, and they may approve of it or stamp it and say 'Yes, you may import these items' or 'you may export these items' as the case may be; if that is done, then there will be no harassment to the trade afterwards by the customs. This is a humble suggestion which may kindly be taken note of.

A lot of foreign exchange which is now being accumulated outside the country on account of this under-valuation of exports will be stopped, once there is this machinery to see that they are not under-valued. Similarly also, a check may be kept that there is no over-valuation of the imports.

When such a machinery is formed, rules and regulations should necessarily be published for the guidance of the trade.

**Shri Hari Vishnu Kamath:** We agree that there should not be any harassment of honest traders. But I am sure you will agree with us that smuggling should be put down with a heavy hand. At the same time, we have to see that honest trade is not harassed or persecuted.

Could you tell us, first, whether smuggling has been for sometime, and is today steadily on the increase in India, from the reports that you get in your big city? You are living in a big city, and you must certainly be getting reports from various sources. Secondly, what alternative provisions or measures would you suggest to put down smuggling or to end smuggling, in place of the provisions which we have proposed in this draft Bill to end smuggling?

**Shri Daing:** This is a very pertinent question, how to check smuggling. As reports go, smuggling is definitely on the increase. As regards this, I have made a humble suggestion, that before export of goods is made, there should be a check on the prices. How do smuggled goods come into India? Obviously foreign exchange

has been paid for the goods abroad. Nobody is going to give goods in charity.

**Shri Morarka:** Over-invoicing of imports and under-invoicing of exports.

**Shri Daing:** Yes. Before goods are exported from the country, there should be a machinery to check whether the prices are fair or not. We have few commodities in India which are generally exported in volume and the fair price can always be verified by a small machinery. If that is done, foreign exchange will not be exported and smuggling will decrease.

**Shri Ramanathan Chettiar:** But is it within our power to control export? The Indian price of gold is higher than the international price. What are the other measures that we can adopt to put down smuggling of gold?

**Chairman:** We have no control over other countries.

**Shri Daing:** This is a tempting commodity for smuggling, because the international price is about 40 per cent less than the Indian price. But for buying gold abroad money has to be exported. A check on that must be kept.

**Shri B. E. Bhagat:** Out of the funds accumulated at the other end, he is paid.

**Shri Dehejia:** Are you aware that there are various other forms of accumulating foreign exchange independently of import-export manipulations? There are probably a dozen ways.

**Shri Daing:** I have not thought of any other method. We would like to know what it is.

**Shri Ramanathan Chettiar:** Should we go into all that?

**Shri Daing:** The other method I can think of is that a certain amount of salaries of foreigners is retained here. But the main thing is the under-invoicing of exports.

**Shri Bakar Ali Mirza:** What about over-invoicing of imports? How to check it?

**Shri Daing:** Yes. The importer should send a proforma of imports to the Bureau of investigation. They should check and compare the prices with the other importers and determine whether the price is fair or not. Before the act is done, this should be done.

**Shri Bakar Ali Mirza:** The goods are imported from the other end.

**Shri Daing:** Yes. The proforma comes and the importer wants to import. Before he establishes a letter of credit, he should send the proforma or invoice to the Bureau to check whether the price is fair or not and whether he can import at that price.

**Chairman:** Thank you. Shri D. N. Mukerjee may stay on.

*(The witnesses, except Shri D. N. Mukerjee, then withdrew.)*

**II. SHRI D. N. MUKERJEE, RETIRED COLLECTOR OF CENTRAL EXCISE AND CUSTOMS, AND ADVOCATE, CALCUTTA HIGH COURT, CALCUTTA**

**Shri Hari Vishnu Kamath:** Has the witness anything to add to his 8-page note?

**Shri Mukerjee:** Nothing substantial.

There is one thing I might suggest as a preventive measure. I do not know how far it would work; I had only thought about it recently. I was wondering whether it would not be worthwhile to licence manufacturers of gold articles.

**Shri Ramanathan Chettiar:** What about dealers?

**Shri Mukerjee:** If the dealers of gold are licensed, they have to maintain some accounts. For the present, we have got no control over these dealers. Everybody must have noticed that in big cities these dealers' shops are springing up like mushrooms. Nobody knows why the number of gold shops in big cities is increasing so

rapidly. So the suspicion is that a lot of gold and other smuggled goods coming into the country are distributed to these dealers and they are kept there in the form of manufactured gold ornaments.

**Shri B. R. Bhagat:** Should they be licensed all over the country, including villages?

**Shri Mukerjee:** If the Central Excise department can license tobacco dealers all over the country, there is no reason why they cannot license these gold dealers everywhere. Then you can keep some sort of check over them as to from where they are obtaining the gold, and how they are disposing of it. That is the only way of expanding preventive control.

**Shri Ramanathan Chettiar:** Gold and bullion come under the State Government.

**Shri Mukerjee:** Gold is to be declared as an excisable commodity in the Central Excises Act.

**Shri Narendra Singh Mahida:** Apart from those dealing in gold, will you not include the gold smelters?

**Shri Mukerjee:** Naturally, that is also manufacture, because under the definition of manufacture under the Central Excise Act, any process ancillary to manufacture is also manufacture. So, starting from the gold factories in Mysore or the banks, these small dealers should be licensed, and their accounts books and stocks will have to be checked from time to time. That is the way of having effective preventive control over them. At present we have no control, and that is why these things are increasing, and with the increase in the number of shops disposing of the gold, the smugglers get an incentive to smuggle gold into the country.

**Shri J. N. Hazarika:** Do you suggest the Central Government should give a gold quota?

**Shri Mukerjee:** At present, licit gold is purchased from the Mysore gold factory through the banks. Then

there are the old gold ornaments sold by the citizens to the dealers which are melted and refined and then there is smuggled gold. These are the three sources of gold.

**Shri Ramanathan Chettiar:** The major portion is illicit gold?

**Shri Mukerjee:** That is very difficult to say. It may or may not be. We have at present no statistics. It is only an estimate of smuggling.

**Shri Ramanathan Chettiar:** When you license, don't you indirectly legalise and encourage smuggling?

**Shri Mukerjee:** No, not at all. Rather, we control the dealing in smuggled gold.

**Shri Ramanathan Chettiar:** Today gold import is banned.

**Shri Mukerjee:** But there is enough of gold in the country.

**Shri Ramanathan Chettiar:** As far as the gold from the Kolar Gold Fields is concerned, it is very limited in quantity, and as for the old ornaments that are sold, you know that very few people part with them even in the villages, because of traditional habits.

**Shri Mukerjee:** It is not a fact that very few part with them. It depends on the rise in price. If the prices rise high, they dispose of the gold. If the prices go low, they will not.

**Shri Ramanathan Chettiar:** You can have a rough estimate. You cannot actually arrive at an accurate figure.

**Shri Mukerjee:** You can only have a fairly accurate estimate of the dealings when we license these gold dealers.

**Shri J. N. Hazarika:** Your suggestion is for internal control. Without any control on the borders, do you think it will be sufficient?

**Shri Mukerjee:** The customs people have got their preventive checks at the border, and the internal checks in the hinterland will be done by the licensing of these shops. What else

can you do? That is the only way you can extend your preventive checks.

**Shri Narendra Singh Mahida:** Do you suggest that just like tobacco checking, we can have a department of Central Excise for gold?

**Shri Mukerjee:** Yes. Even now, in spite of the licensing of tobacco shops, there is smuggling of tobacco from the growing areas, and there are preventive officers to check them, but they are evading quite a lot.

**Shri Narendra Singh Mahida:** But tobacco earns money. Do you think this system will earn money for the Government?

**Shri Mukerjee:** We have got the Central Excise staff all over the country, and it will not cost the Central Government more than at present to license the gold shops.

**Shri Narendra Singh Mahida:** I think it is a good idea.

**Shri Ramanathan Chettiar:** You must have experience of land customs also. Apart from licensing of gold dealers and gold manufacturers, what other remedial measures would you suggest to check this gold smuggling both by land and sea?

**Shri Mukerjee:** We have sufficient preventive staff, but the only way is to exercise effective control over them. If you can make our officers wholly honest, smuggling will be stopped.

**Shri S. S. More:** What is your suggestion for making them honest?

**Shri Mukerjee:** Cent per cent honesty cannot be secured in any establishment, but if the officers are contented, and if the higher officers are honest, and they work properly, there may be an improvement.

**Shri Hari Vishnu Kamath:** About 90 per cent?

**Shri Mukerjee:** It is very difficult to say, but I do not know whether it would be proper for me to disclose

one thing. I speak subject to correction, and I do not vouchsafe for its correctness and I do not want that it should go outside this Committee. The information which I have received from my clients now and then is that only 10 per cent of the gold that is smuggled into the country is detected.

**Shri Dehejia:** May be the estimate is right.

**Shri J. N. Hazarika:** You were saying that if the higher officers were honest, the rest also will be honest. Do you know of any case—I do not want any name—of a person who acted with vigilance, or persons who are not supposed to be contended with their pay etc.?

**Shri Mukerjee:** Generally, the standard of honesty amongst the supervisory officers is very good.

**Shri Hari Vishnu Kamath:** Just now you referred to your clients, the information that you got from your clients. Can you tell the Committee whether by your clients you mean honest people who are wrongly or falsely prosecuted as smugglers?

**Shri D. N. Mukerjee:** No, it is not that. In the course of friendly conversation, I have got that information. It is not out of any prejudice that they have complained to me, but this has been talked about not from one source, but from many sources, as to how much of it is detected. That is the point.

**Shri Hari Vishnu Kamath:** You said clients. The word is clients.

**Shri Mukerjee:** I mean clients, not one client. It may or may not be true, but the department, I think, has got full information that much of it escapes; what percentage escapes it is very difficult to say.

**Shri S. S. More:** You say that from your clients' information only 10 per cent is detected. You were also an important officer. What does your experience tell you, what percentage of it is detected?

**Shri Mukerjee:** When I was in office, it was not possible for me to get this information. But, when I was out of office and in touch with the other side of the world, then, this information was collected.

**Shri S. S. More:** Do you mean to suggest that the experience of the officers is always one-sided?

**Shri Mukerjee:** Yes, it is my belief that the informers who assist the department in the detection of smuggling know all these things. And, I would not be surprised if officers in the department also know, as Shri Dehejia was just now saying, that my information was about the same as his.

**Shri Dehejia:** Not that I have any particular information.

**Shri Hari Vishnu Kamath:** As a former Collector of Customs, and now as an advocate, you have had access to many sources of information to which other might not have. You have heard of the death of A. K. Mitra at Vienna when he was engaged in checking and finding out he smugglers in Europe. Have you got any information about this matter?

**Shri Mukerjee:** I have no information.

**Shri Ramanathan Chettiar:** As Collector of Customs have you come across any smuggling in the diplomatic bags?

**Shri Mukerjee:** I was not Collector of Sea Customs; but I was Collector of Land Customs, and so I had not the experience of smuggling through Embassies.

**Shri Ramanathan Chettiar:** Our trade is increasing because of our planned economy. Do you think the present staff in the Sea Customs, at the Airport and also and customs will be able to cope with the amount of work?

**Shri Mukerjee:** It all depends on the supervisory officers.



**Shri Ramanathan Chettiar:** Do you think we should increase the strength of the establishment; or will they be adequate to cope with the work?

**Shri Mukerjee:** I cannot say about it.

**Shri Ramanathan Chettiar:** From your experience, do you think the staff is inadequate or insufficient to cope up with the work even in land customs?

**Shri Mukerjee:** Of course, we started the land customs in 1948. At that time we were given sufficient staff. But the smuggling that followed showed that our staff was inadequate, and more staff would be necessary. As a matter of fact, since then the staff has been increased by at least 4 times or more than that.

**Shri Ramanathan Chettiar:** From your experience you think that the supervisory staff is fairly above board?

**Shri Mukerjee:** That is my belief and my information too. The standard of the subordinate staff can be increased by efficient work of the supervisory staff; and we should not mind increasing the supervisory staff and control the subordinate staff for it will have a very good effect on smuggling.

**Chairman:** I think we should conclude now because there are other witnesses.

**Shri Hari Vishnu Kamath:** Just one question, Sir. Mr. Mukerjee, you have submitted a useful and interesting memorandum to the committee wherein, at several places, you have commented on the new provisions that the Bill seeks to embody. You have said that the new powers are likely to be abused. That is the word you have used. You have had a fairly vast experience as an administrator of the old law for quite a few years, I believe.

**Shri Mukerjee:** As Collector of Central Excise and Customs I was for three years.

**Shri Hari Vishnu Kamath:** During that period of your administrative ex-

perience, and even earlier, did you come across any cases where the power conferred under the old law—that is the present law—had been abused by the officers subordinate to you? Did you take any action on them?

**Shri Mukerjee:** No; my experience is that powers which were given to the Customs department in 1955 are the powers which are being abused to some extent.

**Shri Hari Vishnu Kamath:** You know of instances, not stray instances, but several instances?

**Shri Mukerjee:** Yes.

**Shri Hari Vishnu Kamath:** Now, Sir, the very last question. It is a rather hypothetical question and may be a semi-personal one. If this Bill is passed into law, would you be happy to function as Collector of Customs under this Act? From your experience, do you think that this will be more efficient to prevent smuggling than the present law?

**Shri Mukerjee:** Yes, I think so. The proposed law will be more efficient than the present law and very beneficial in preventing smuggling.

**Shri Hari Vishnu Kamath:** As Collector, do you think you will be able to prevent abuse of powers?

**Shri Mukerjee:** If the Collector is alert, he can do a lot in stopping the abuses by subordinate officers.

**Shri Hazarika:** How did you ascertain that the powers were abused? Did you find them assisting the importers and smugglers?

**Shri Mukerjee:** That experience has been gained in the course of investigating the cases of my clients for the last 11 years. When I was Collector I administered the law. But, on the other side, when I collected the evidence against the department, I found that the officers were abusing their powers in some cases. That is the experience gained from the papers of my clients.

**Shri Hazarika:** Not as official?

**Shri Mukerjee:** As official, I only administered the law. But, as an advocate....

**Shri Hazarika:** You must have got some cases acquitted and so on.

**Shri Bakar Ali Mirza:** Witness gave information that about only 10 per cent of smuggled gold is detected and also said that he wanted this information only for the committee and not to go out. In that case, you will have to expunge some of the remarks; otherwise, they are likely to be published.

**Shri Mukerjee:** In the memorandum which has been signed by me, it has been stated that if the witness desires, he may say that it may not be published. That was why I mentioned it.

**Shri Bakar Ali Mirza:** Do you insist on that? After all, the information given is not so confidential.

**Shri Morarka:** I do not think even if he insists we can do it now, because he knew that it is liable to be published and now he cannot take out anything from whatever he has said.

**Shri Bakar Ali Mirza:** Let us be clear from the point of view of the witness.

**Shri Hari Vishnu Kamath:** You say that in a city like Calcutta, for instance, there are innumerable hawkers and small shops selling gold, gold manufactures, watches etc. which are sometimes smuggled; you have said so in your memorandum. Are they still prospering and still flourishing?

**Shri Mukerjee:** They are prospering and still flourishing.

**Shri Narendra Singh Mahida:** Can you say that smuggling of gold is done more by ships or by air?

**Shri Mukerjee:** We find that in the newspapers.

**Shri Narendra Singh Mahida:** In your experience, have you come across any instance where a big

smuggler was caught and some political or official pressure was brought to release him?

**Shri Mukerjee:** Not in my experience; as collector of customs I had not any opportunity of detecting cases of gold smuggling at that time; I was in 1943-48 the collector. Since then it has increased.

**Shri Dehejia:** You mentioned a little while ago that the land customs staff has multiplied about four times in the course of the last few years. Do I take it that you were referring to the entire Central excise staff and not only the land customs staff?

**Shri Mukerjee:** That is my case. The land customs and the central excise are a combined establishment.

**Shri Dehejia:** That is to say, you say that the Central excise staff has increased more than four times.

**Shri Mukerjee:** Yes.

**Shri Dehejia:** You mentioned that we had adequate preventive staff. Is it possible for you to give the number of men for manning the land border and the coast? You are used to the idea of land customs patrolling.

**Shri Mukerjee:** I am talking of the East Pakistan border.

**Shri Hari Vishnu Kamath:** When did you retire?

**Shri Mukerjee:** 1951.

**Chairman:** Thank you, Mr. Mukerjee.

*(The witness then withdrew.)*

### III. THE BOMBAY GENUINE PEARL DEALERS ASSOCIATION, BOMBAY

**Spokesman:** |

**Shri Jawahar M. Jhaveri.**

### IV. THE PEARLS IMPORTERS AND EXPORTERS ASSOCIATION, BOMBAY

**Spokesman:** |

**Shri Pravin M. Nanavti.**

*(Witnesses of the above two associations were called in together and they took their seats.)*

**Shri Hari Vishnu Kamath:** There are two associations. Which one is coming now?

**Chairman:** Both the associations the Pearls Importers and Exporter Association and the Bombay Genuine Pearl Dealers Association are giving evidence together.

**Shri Nanavati:** Sir, we have already submitted a memorandum.

**Chairman:** Whatever has been given in the memorandum need not be repeated. If you want to supplement anything, you may do so.

**Shri Nanavati:** Members of my association are importing and exporting pearls after processing them approximately Rs. 1.25 crores worth of processed pearls are exported abroad annually. This comes under the export promotion scheme and we are importing regularly these pearls from abroad for processing. There are two kinds of pearls—real pearls and cultured pearls and there is a 20 per cent duty on cultured pearls. We have Real pearl fisheries in Tuticorin and the pearls produced here are absolutely similar in all respects to those imported from abroad, other than the cultured pearls. There is no duty and almost all pearls that are coming here are to be exported and they are exported regularly. There is no reason therefore why these clauses should be made applicable to us, I mean, clauses 108, 120, etc. That will harm the trade. It is an handicraft industry and thousands of workers are employed in that industry. It is a foreign exchange earner also. Our special request is that as far as possible pearls should not come within the purview of these clauses. We are mainly concerned with exports and exports will increase if substantial aid are granted, as is being done today.

Our major difficulties are with clause 14 which provides for 'Normal price'; under-invoicing and over-invoicing are alleged. I can show you some of the pearls imported from

abroad. It is a special industry; they have not been standardised nor are they regulated by any laws of demand and supply. There is no normalcy of price; there is abnormalcy with regard to them. For instance, this packet which I have placed here contains millions of pearls; each pearl is of different value. When we go to buy, we see these things.

If I go 20, 30 or 40 miles deep into the interior and meet the fishermen, etc., I can get the things 30 per cent cheaper. Sometimes some people import from Kobe and some people get the pearls through Bombay; the shipment is from Kobe through Bombay. Thus, there is some importation of cultured pearls from Japan. There will be natural disparities in prices and this is normal in the trade. It does not mean that it is purposely made or that it is man-made. The agent concerned may not know the price at all. Or, if it is known, he has no control, while we who trade in it know the price; we have control because we procure it or fetch it. There will be a natural disparity up to 30 to 40 per cent. So, the customs will allege that something has happened. Even today, there are two different prices. When you try to apply this price control normal price or abnormal price and so on, in considering that there is some malpractice in the trade, you will apply the penal clauses, and we will have a virtual stoppage of the business, all the time we will be in trouble. We have made a special request to you in this connection, namely, that as far as pearls and finished products of the pearls are concerned, there is no comparison with the other commodities that are manufactured.

**Shri Ramanathan Chettiar:** In your memorandum, you say that Rs. 1.25 crores worth of pearls are exported. It does not indicate how much pearl is imported.

**Shri Nanavati:** If we export Rs. 1.25 crores worth of pearls, against that export, we get licence to import 80

per cent. If my export is Rs. 1 crore, I get Rs. 80 lakhs by way of licence to import. Naturally, we also import

**Shri Ramanathan Chettiar:** Are not the pearls obtained in Tuticorin taken into account for this purpose?

**Shri Nanavati:** They are separate. Sometimes they fish about Rs. 5 lakhs and sometimes Rs. 10 lakhs worth. Last year they suspended the operations. Maybe this year they will start again. It is not a surety.

**Shri Ramanathan Chettiar:** That is not taken into account for the purpose of import?

**Shri Nanavati:** There is no difference between them as regards appearance. I have purchased pearls from Persian Gulf, Venezuela and from Japan. There is no difference among these pearls in appearance. The mere appearance will not give you any idea about them. The more so when they are processed, and as they are processed, you will forget about their racial entity. You cannot identify as to which variety or race they belong to; you can never be sure of it.

Now, here are some real pearls. The price of this is not marked. They are real pearls. They are not mother-of-pearl. These are at the moment Rs. 5,000 worth. If there is a demand from Paris, and if some lady is asking my business-house to send it, mentioning the particular size, shape etc., so as to wear it as a necklace,—they do not know the price—I may charge it Rs. 5,000 for it. If, on the other hand, I have to sell it myself, without having this demand delivery. I cannot liquidate it even for Rs. 2,000! If I knew that there was demand and that I could get Rs. 5,000, I will export it, whereas another person who does not know anything about it, will have to export it for Rs. 2,000 or Rs. 1,000. When we go to export them, the customs house authorities come in, and more or less similar prices are quoted, with the result that we are stranded. The person is

charged with the offence that he has under-invoiced or over-invoiced. In fact, there is no criterion for any such thing in the trade.

**Shri Ramanathan Chettiar:** Are you justifying your position?

**Shri Nanavati:** I only say that there is genuine cause for grievance. If a lot of pearls go into circulation, nobody knows what the price is. The usual disparity is between Rs. 100 and Rs. 300. I may put the price of a pearl as five shillings. If one is the sender of a pearl, the very pearl may be asked for about seven shillings or eight shillings. This is what happens, and this happening every day.

**Shri Ramanathan Chettiar:** What is mother-of-pearl?

**Shri Nanavati:** It is different. They are shells.

**Shri J. N. Hazarika:** Are they not also imported?

**Shri Nanavati:** Sometimes they are. When they are processed, the difference between it and other real pearls is very little. It is very difficult to distinguish between a Venezuela pearl, Tuticorin pearl and a Persian Gulf pearl.

**Shri J. N. Hazarika:** Then how do you distinguish?

**Shri Nanavati:** By reason of our long experience, we know more or less the difference. All these are considered as curious. People pay a fancy price for them. The difference between a real pearl and other pearls is that of Picasso and other art paintings. For a Picasso painting, those who know will pay one million dollars. Those who do not know, may ask it for ten dollars! That arises because one does not always know what Picasso painting is and what a modern painting is. It is all the creation of man, an illusion.

Further, there is the drilling process. The drilling up to a thickness of one millimetre is done; nowhere else is this done, than in India.

People from elsewhere come to India for this. Our artisans are known to be experts in this since the past 400 or 500 years; perhaps since the dawn of history. But the position is, there is no question of normal or abnormal price in this trade. It is all according to one's whims and fancies. It is very difficult to judge. You are having a number of sections—118, 120, etc., as being applicable to our trade. We are absolutely baffled as to how we can proceed. Even today there are difficulties. What further difficulties will be there in the future, we shudder to think.

I explained the position yesterday in connection with some other appointment here and I show the goods. It is rather difficult to judge these things. There is fancy, there is illusion, in the demands. I pray that these aspects should be considered, because, otherwise, we will lose.

**Shri Hari Vishnu Kamath:** Have you got pearls from different countries? If you have, can we have a look at them?

Now, I would like to refer to clause 101, under Chapter XIII, which deals with searches, seizures and arrest. This clause refers to confiscation in respect of certain goods which have been specified in sub-clause (2). Sub-clause (2) mentions "... (a) gold; (b) manufactures of gold or precious stones; (c) precious stones; (d) watches;" May I know whether the pearls come under the category of precious stones or some other category? If they do not come under this category, then what is it?

**Shri B. R. Bhagat:** They do not come in this list.

**Shri Hari Vishnu Kamath:** Then, why examine them?

**Shri Nanavati:** We have requested that pearls must be excluded from this. But the position is, we are more concerned here with difficulties about prices—under-invoicing and over-invoicing. This cannot be ap-

plied to such commodities which are the creation of artisans and which are demanded for their fancy.

**Shri Dehejia:** You say that pearls must be excluded. Do you mean it should not be defined as goods at all?

**Shri Nanavati:** No; it should be defined as goods. But for the purpose of clause 14, pearls should be excluded.

**Shri Morarka:** If it is excluded, how can the prices be fixed?

**Shri Nanavati:** It has been working all these years without any difficulty.

**Shri Dehejia:** Are you excluded from the present section 30?

**Shri Nanavati:** No, but we have an apprehension that you are trying to become more stringent.

**Shri Amand:** The present provision is more or less the same as the previous section.

**Shri Jhaveri:** The penal provision is now being inserted in the new Bill, which will cause tremendous hardship, because of the particular nature of our business. We are suggesting that the genuine contract price of our commodity is the only criteria of each sale and if it is proved by the department that it is not the genuine price, then only the penal provision should be applied.

**Shri Anand:** Even now under sections 167 (37) any mis-declaration of value or mis-statement is liable to punishment. This new provision is more or less based on that.

**Shri Jhaveri:** We are suggesting that rules may be framed under section 14 by which a Board of valuers may be there, in which members of the trade may be given the due representation and they can value the pearls.

**Shri Ramanathan Chettiar:** As Mr. Anand stated, they come within the purview of Sections 167 and 37 of the present Act. Have you experienced any serious hardship under these sections?

**Shri Nanavati:** Not in many cases, but sometimes we have experienced hardship.

**Shri Narendrasingh Mahida:** Do you get import licences for pearls?

**Shri Nanavati:** We get import licences for pearls on our exports.

**Shri Narendrasingh Mahida:** What is the ratio of imports to exports? Which is more?

**Shri Nanavati:** We export more.

**Shri Dehejia:** When you say you export more, you mean in value and not in quantity, because the value of the pearl goes up by nearly 100 per cent as a result of polishing, etc.

**Shri Nanavati:** Yes.

**Shri Narendrasingh Mahida:** Do you receive any incentives from the Government for export?

**Shri Nanavati:** Yes; there is an Incentive Licence Scheme.

**Shri Narendrasingh Mahida:** Can you disclose the percentage of profit normally?

**Shri Nanavati:** We get roughly 20 per cent, but the profit is getting much lower now.

**Shri Anand:** The profit also depends on the illusion of the buyer.

**Shri Nanavati:** Yes; when the illusion of the buyer is there we sell it at a higher price, and we liquidate the rest of the goods here quickly, even at a lower price.

**Shri Hari Vishnu Kamath:** For pearls, it is always a sellers' market and not a buyers' market?

**Shri Nanavati:** It is always a buyers' market.

**Shri Narendrasingh Mahida:** What is the ratio of smuggling of pearls compared to diamonds?

**Shri Nanavati:** Pearls are not smuggled.

**Shri Morarka:** Apart from clause 14 to which the witnesses have referred, their other objections are in regard to clause 111 and clause 113. About clause 111, they want that sub-clauses (1) and (m) should not apply to the pearl trade. I do not understand why. Clause 111 begins by saying:

"The following goods brought from a place outside India shall be liable to confiscation....".

Sub-clause (1) says:

"(1) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77."

Sub-clause (m) says:

"(m) any dutiable or prohibited goods which do not correspond in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof."

What are their apprehensions? Why do they want that these two provisions should not apply to pearl trade? These are anti-smuggling measures. How are these provisions likely to create hardship or harassment only to pearl trade?

**Shri Nanavati:** The position is this. There are cultured pearls and real pearls. Real pearls are non-dutiable and on cultured pearls there is a duty of 20 per cent. Cultured pearls are produced in Japan. Along with it there are what are known as natural pearls. They are absolutely real pearls. But they are produced along with cultured pearls. Sometimes a few pieces of cultured pearls get into a thousand tiny pieces of real pearls. The licences given to us were given separately for real and cultured pearls. Nowadays we are given only one licence and we are asked to write on the Bill of Entry what sort of pearls they are. Supposing on the

Bill of Entry we mention that they are real pearls and if after they are imported some four or five pieces of cultured pearls are found, they will say that the whole lot is cultured pearls and 20 per cent duty will be charged. Under the new section we will be asked to explain why there was a misrepresentation or misstatement.

**Shri Anand:** Even now is it not a misrepresentation or misstatement under section 167(37) of the existing Act? Have you been penalised under the present Act?

**Shri Nanavati:** The position is, when we get goods released now we are in a way at the mercy of the appraised. When he charges us with misrepresentation we explain to him the difficulty and he leaves us. Now the law is being specially framed and there are certain words put in which are not exactly similar to the old provision. We thought it is better that we bring it to your notice, because tomorrow again you may want to change it and in that case you will be able to consider it in the light of our difficulties that we have placed before you.

Sir, this is a handicraft. These pearls come only for specialised treatment which is done only in India in the world. If we are troubled like this, then the business will come to an end and it will be taken up by Japan as it was being done in the days of the British. Japan have increased their business from Rs. 1 crores to Rs. 25 crores.

Then, there is a sort of pearls known as Biwaco pearls. There also there is the same difficulty. Even if one cultured pearl is found in a lot it will be taken as cultured pearls and duty will be charged at the rate of 20 per cent.

**Chairman:** You have said that the existing provision has not proved to be a hardship. Why should there be any fear about the new provision when it is similar to the existing one?

**Shri Nanavati:** It is our duty, Sir, to bring it to your notice. About sections 118 and 120 you have already been told by other witnesses.

**Shri Hari Vishnu Kamath:** Before you leave, will you tell us the country that makes the best pearls?

**Shri Nanavati:** We make the best pearls. We are the only people who make certain things.

**Shri Jhaveri:** We make the best pearls out of the raw pearls that come.

Sir, I represent the Bombay Genuine Pearl Dealers Association, Bombay. We have already submitted our memorandum. I would only like to stress with regard to sections 118 and 120 of the Act. My friend has already submitted with regard to the practical difficulty about section 14.

Section 118 provides that where any smuggled goods are contained in a packet, the packet and any other goods contained therein shall also be liable to confiscation. In our trade, as we have shown in the memorandum, the goods of our trader are carried sometimes in one packet by a broker. If by chance that broker has got certain packets which contain smuggled goods, the genuine trader may not be in the know of it. But because they will be found in the packet, the whole lot will be confiscated and the man penalised. This is absolutely an unjust provision by which genuine traders of our association will suffer great hardship and trouble. It will violate our right to property and, also, it will kill our business.

With regard to section 120, it is on the same lines as section 118. It says that where smuggled goods are mixed with other goods which cannot be separated, the whole goods can be confiscated. Our trade is such that the goods have got to be mixed up with other goods.

**Chairman:** I learn that there is no smuggling in pearls. I do not know why you should stress this point.

**Shri Jhaveri:** If we are given exemption from sections 118 and 120, I have no point to make.

**Shri Dehejia:** Should we give exemption in all cases where there is no smuggling? In the case of timber there is no smuggling. Should we give exemption to timber also?

**Shri Jhaveri:** The main difficulty will also arise in the case of Section 14, as has been explained earlier. With regard to section 128 which gives power to the Board in an appeal to enhance duty, we feel there is much grievance as far as our Association is concerned. A man goes to the appellate authority because he has suffered unjust penalty from an officer. But here right is given to the appellate authority to enhance the penalty. I think that is prejudicial to the interests of the trade.

**Shri Hari Vishnu Kamath:** Where do you get raw pearls from?

**Shri Jhaveri:** From Japan, Persian Gulf and Venezuele. Only a very small amount is coming from Venezuela.

*(The witnesses then withdrew)*

#### V. THE LEADING BULLION MERCHANTS, DEALERS AND COMMISSION AGENTS OF BOMBAY

**Spokesmen:**

1. Shri Valimahammed Gulamhusain
2. Shri Amichand Valamji
3. Shri Kantilal Chunlilal
4. Shri Dolatram Bherumal
5. Shri P. Gopalekrishnah
6. Shri Kapurchand Chimanlal
7. Shri J. R. Gagrath.

*(Witnesses were called in and they took their seats.)*

**Chairman:** We have circulated your memorandum and Members have gone

through it. If you want to emphasize or stress any particular point, or submit something in addition, you may now do so. It is unnecessary to repeat what is contained in the memorandum. Further, since some of you were before the Committee earlier in some capacity or other, you can be brief and to the point.

**Shri Gagrath:** There are three categories of people who are concerned with gold—gold dealers, refiners and commission agents. As far as the Act is concerned, according to the Statement of Objects and Reasons, it is meant to prevent the smuggling of foreign gold into India. With that object of the Act we have no disagreement. But what the proposed Act purports to do is not to check the smuggling of foreign gold but to make trade in gold very difficult by putting all sorts of obstacles in the way of the dealers. What I want to know is, when an Act has been enacted with a particular objective, viz, preventing the smuggling of foreign gold, could it contain provisions which go far beyond the particular object of the Act? We are not going to object to such of the provisions as would apply for checking the smuggling of foreign gold, but we will certainly object to blanket provisions which will cover dealings in indigenous gold and lawfully imported gold. According to us, no rational approach has been made to the question of differentiating between these two categories of gold. Before we go to the relevant provisions of the Bill, our submission is that the clauses travel beyond the limited object of the enactment.

Coming to the provisions, there are some facts which are admitted by Government and which have got to be borne in mind. The first admitted fact is that till 1939 there was no restriction on the import of gold and that till 1946 import of gold was permitted.



**Chairman:** All these points have been mentioned here earlier. Let us come to the provisions of the Bill.

**Shri Gagrat:** I will not go into details, but may I broadly indicate the seven facts which are important? The first fact is that a large quantity of gold has been lawfully imported into India. In fact, between the years 1851 and 1956 gold worth Rs. 353 crores has come into India.

**Shri S. S. More:** What is the basis of your figures?

**Shri Gagrat:** Government of India publications. In the New India Assurance Diary they have set out statistics from governmental records. This fact has been noted also in the judgment of the Supreme Court where Government, faced with this fact, had to admit that this much quantity has come in lawfully.

**Shri S. S. More:** What is the reference of the Supreme Court judgment

**Shri Gagrat:** It is reported in AIR 1962 Supreme Court 136.

**Shri Shankaraiya:** What is the point that you are trying to make by saying that so much gold has been imported and by bringing it to the notice of the Committee?

**Shri Gagrat:** The point that we are making is that it is wrong to assume that any foreign gold either in the possession of a citizen or of a dealer in gold is smuggled gold. Such a large quantity of gold has lawfully come into India and gold is not a commodity which is consumable or perishable. Once it comes in it goes on circulating in different shapes, form and sizes. If those are the facts and figures, how can a provision that any foreign gold which may be found in possession of any citizen or of a dealer in gold is smuggled or presumed to be smuggled, be justified? There must be some rational basis for such presumption.

**Shri Shankaraiya:** May I know whether it has come to your notice

that there has been heavy smuggling of gold and whether any distinction can be made between imported gold that is already available in India and gold that is smuggled?

**Shri Gagrat:** In our representation before you today we are going to suggest that a definition of the word 'gold' should be provided in the Act. To enable you to appreciate that, I want to point out to you seven admitted facts which must be borne in mind and taken into consideration before this legislation is enacted. On the basis of those facts you should consider whether a blanket provision that any gold, even if it is indigenous gold of the lowest fineness, can be presumed to be smuggled gold and is liable to be confiscated, is justified.

I was referring to the Supreme Court judgment which is reported in AIR 1962, page 316. The relevant passage is at page 326. I may read out the passage:

"It is common knowledge that India produces very little gold and that most of the gold available in India is imported gold. A statement has been put in by consent showing the official figures of India's imports and exports of gold from 1851 to 1956, which shows a net import into the country, after deducting exports, of Rs. 353 crores and three lakhs worth of gold."

Then, the other facts are mentioned.

**Shri S. S. More:** But did not the Supreme hold that section 178A is not invalid or *ultra vires*?

**Shri Gagrat:** The Supreme Court had decided on the basis of the section as it was enacted. The Supreme Court was not a legislature to mellow down the tone of the section. But they have said—it is recorded in the judgment—that extreme hardship is being caused to the innocent section of the public as the section stands. Today I am before you to impress upon you as Members of Parliament that although the Supreme Court may be helpless in striking down a

section enacted to achieve the object of checking smuggling as a whole, you can enact the section in such a way as to prevent hardship on the innocent section of the public.

**Shri S. S. More:** Will you please give us a draft so that the evil can be checked? You will appreciate that there is a lot of smuggling going on....

**Shri Gagrat:** I admit that.

**Shri S. S. More:** ...and it has to be checked. If it is to be checked, how are the customs officers going to prove that a particular piece of gold is smuggled or not?

**Shri Gagrat:** If you will bear with me, I will only indicate the seven basic facts which are important to give the background.

**Chairman:** Those facts need not be repeated. There is no use going over the same points. Let us come to the features of the Bill and suggest what remedies you have in view.

**Shri S. S. More:** The problem that we are faced with is to fight effectively the evil of smuggling which is growing and not diminishing. How can the Government machinery fight this evil which is increasing? That is the only question. Could you suggest any practical remedy for this? If you could, we shall be thankful to you. What is the use of enumerating the seven or thirteen facts?

**Shri Gagrat:** Because they are essential to understand the amendments which we propose to suggest. But if you so desire, I will not go into them.

**Shri Ramanathan Chettiar:** Is that Supreme Court decision in Sonavala's case?

**Shri Gagrat:** It is in the case of Nathella Sampathu Chetty from Madras.

**Chairman:** You may take up the particular clauses because all these points that you are mentioning have been stressed before. You yourself had come here earlier

**Shri Gagrat:** I did not come in connection with gold matters.

**Chairman:** It may not be so; but you also admit that there is a lot of smuggling and these provisions are supposed to prevent smuggling.

**Shri Gagrat:** Our object in indicating the facts was that it would indicate to you the harshness of the proposed provisions and the Members will be in a position to appreciate why we are making the comments and suggestions. But if you feel that that need not be done, I shall not do that.

**Shri B. B. Bhagat:** Hardship to whom—the trade or the smugglers?

**Shri Gagrat:** Hardship to the trade and to the citizen who purchases gold.

**Shri Ramanathan Chettiar:** Could you give us your own views about the percentage of smuggling that is detected so that we could have some idea of what the undetected portion is?

**Shri Gagrat:** Unfortunately, we are not possessed of information about the smuggling activities which are going on, but we are not contesting the fact that there is smuggling going on. It affects the trade also and provisions for checking it are necessary. We are not suggesting that the provisions should be done away with. We are only suggesting that the provisions should be enacted to safeguard the trade at the same time.

**Shri Ramanathan Chettiar:** How would the trade react if Government introduced a scheme of licensing gold dealers and gold manufacturers?

**Shri Gagrat:** We have no tangible scheme of that nature. But if there is any possible scheme by which we are not put to any harassment and the interests of the trade are protected and at the same time the objective of the Government is achieved, we will certainly like to consider any such scheme.

**Chairman:** You have no objection?

**Shri Gagrati:** No, we have no objection.

Then, Sir, clause 123 must have been repeatedly placed before you....

**Shri Shankaraiya:** Will you give some definition or some such thing for consideration, the seven points you were mentioning?

**Shri Gagrati:** I was trying to give the seven points, but the Chairman directed me to go to the sections.

**Shri Chettiar:** Sir, let him go briefly to those seven points.

**Chairman:** Yes, just mention the heads.

**Shri Gagrati:** Sir, I will mention only the heads and not elaborate upon them.

The first admitted fact is that in India there is a large amount of validly imported gold.

The second head is that in India, as the government records show, there is also indigenous gold which is available. And, connected with that is the point that our refineries in India refine gold up to a fineness of 99.80. So, there is also indigenous gold and refined gold.

**Shri Abrol:** Is this done in the government mint or in the ordinary refineries?

**Shri Gagrati:** By Wali Mohammed Ghulam Hussain Sonawala & Co. and by the National Refineries.

**Shri Abrol:** They can both refine up to a fineness of 99.80?

**Shri Gagrati:** Yes, it has been done regularly. I can get the audited records and send the same to the Committee.

The third admitted fact is that when a man in the trade or a citizen purchases gold he can only verify two things, and nothing more. In the first place he can verify the fineness

of the gold and, secondly, by physical observation he can see whether the gold has any foreign marks. If the gold is of a fineness of 99.80 and upwards you can say that he should have noticed that such a gold is foreign gold; if the gold has foreign marks you can say that he should have noticed it. Apart from these two things it is not possible to verify anything while purchasing gold.

We have brought samples to show how these five types of gold are sold in the bazar. And if any Member can indicate any method by which there can be reason to believe that anything is wrong or is smuggled, we will welcome that suggestion. In our trade we have failed so far to find any method of doing so while purchasing these five types of gold.

Broadly, five types of gold are sold in India. If there is any indication by which any honest dealer can verify whether it is smuggled gold or not, if there is any such indication then certainly you can put the burden on us. I will show you how it is sold. (*Witness exhibited several bars of gold before the Committee*). The first usual method is the selling of ornaments.

**Chairman:** All these points have been urged. There is nothing new that you are saying.

**Shri Gagrati:** The difficulty is how there can be any suspicion that it is smuggled, by merely looking at the gold.

**Chairman:** Once it goes into the crucible and is melted, it is mixed up.

**Shri Gagrati:** We are at the stage of purchasing. Can I have any idea that what I am purchasing is smuggled gold? If there is any suggestion given to us by which the trade can find this out while purchasing, we would welcome that suggestion.

The fourth admitted fact is that in our gold business, which has been going on for decades, we have been melting and refining the gold. It is an accepted fact and it is not a feature

of the restrictions imposed. Melting, assaying and refining of gold, these three things have been accepted facts before any restrictions were imposed.

The fifth admitted fact is that this gold which we purchase is deposited with the banks as security to raise money.

The sixth one is that we have to transport this gold to the refinery in packages. Either the storing or the transport has to be done in packages; we cannot make a package of each gold.

The last point is that in our trade there are commission agents whose business is to buy and sell gold on commission. They receive the gold against a price and are reimbursed afterwards; *vice-versa* they also sell gold. That is how the gold business is done.

I will now point out what are the difficulties with which we are confronted. Clause 123 merely uses the word "gold". It does not indicate what gold is to be covered by the section. Clause 123(2) says that this section shall apply to gold and manufactures of gold. This section would therefore apply to indigenous gold, to gold which is lawfully imported; it also applies to gold that is innocently purchased, innocent gold. As the Supreme Court judgment has observed, this section creates a hardship to the public. The Legislature has full power to remedy the evil.

Our suggestions in this respect are three-fold. The first suggestion is that under sub-clause (2) the Legislature should define the word "gold". And the definition should be to include in its scope only gold exceeding a fineness of 99.80 and gold bearing foreign marks.

**Shri S. S. More:** What about gold of the other variety? You are referring to gold of a certain fineness. What about the non-fine gold which is being smuggled?

**Shri Gagrat:** Nobody will smuggle gold below a fineness of 99.80, because it is indigenously available. Smuggling is always of the purest gold, gold of a fineness from 99.99 down to 99.82. There is no incentive so far as gold below that fineness is concerned. If you make this kind of definition, that would immediately put a distinction between foreign gold and the other gold.

**Shri B. R. Bhagat:** You have said that there are only two ways of verifying it, namely the marking and the degree of fineness. Is it not a fact that very easily both these can be tampered with? If we are liberal on these two points, I think there is no way of checking smuggling at all.

**Shri Gagrat:** With all respect to you, Sir, I do not think there can be any tampering.

**Shri B. R. Bhagat:** The markings can be erased very easily, as well as the fineness can be altered.

**Shri Gagrat:** Tampering would imply that certain foreign gold is illegally imported, or smuggled.

**Shri B. R. Bhagat:** That can be done.

**Shri Shankaraiya:** Sir, the witness has been asking us to define gold, so as to prevent smuggling, by defining it to be of a fineness of over 99.80 per cent and, further, foreign gold by putting the words "foreign gold" on it. There is already, as has been admitted by him, Rs. 350 crores worth of foreign gold, either smuggled or otherwise, in this country. There is smuggled gold also to a large extent. How are you going to distinguish that gold from the gold that is already imported and has a fineness of 99.80?

**Shri Gagrat:** You are perfectly right in what you are pointing out. But the difficulty that arises is this. The logical extent to which we should make our representation is that even foreign gold should be excluded from clause 123. But we do not want to go that length because a large amount of smuggling is going on. Therefore, to

that extent we are conceding our rights. Since this legislation is going to be there for years together, let there be a definition of gold defined by the fineness, whatever may have happened in the past. You are perfectly right that logically our contention should be that in view of the large volume of imported gold, foreign gold should be excluded from clause 123. But we do not want to go to that extent. As long as the trade is protected, and we know once and for all what the demarcating line is, we would be satisfied.

**Shri Shankaraiya:** How are you going to distinguish it?

**Shri Gagrat:** The distinction is made by a very simple process, with the touchstone you can find out the fineness. The fineness is ascertained easily by the gold dealer.

**Chairman:** Is it not easy to vary the fineness of the gold? That can be done.

**Shri Gagrat:** A bullion dealer cannot do it. It has got to be done at the refinery. There must be a regular refinery for that purpose.

**Chairman:** There can be a lot of refineries.

**Shri Gagrat:** Before gold of a higher fineness is converted to gold of a lower fineness, it has to go through a certain process, and that process cannot be done by a bullion dealer at his shop.

**Chairman:** It need not be at the shop; but there can be refineries always at the command of the smugglers.

**Shri Gagrat:** If the suggestion is that every citizen of India who deals in gold has got a private refinery, then we have nothing to say on that. But we submit that there must be some presumption in favour of citizens also.

**Chairman:** Any goldsmith can do it.

**Shri Gagrat:** A goldsmith cannot do it. It has got to be done in a fur-

nace. It must be done in a crucible by the process of refining.

**Shri B. R. Bhagat:** Is it difficult to have it?

**Shri Gagrat:** Why is there presumption that every honest citizen can keep an illicit refinery at the back of his shop?

**Shri B. R. Bhagat:** The smuggling of gold has reached such a very dangerous proportion that the harshest possible measures should be taken to deal with smuggling.

**Shri Gagrat:** That is why we are at pains to point out that you may demacrate the gold; you may demarcate between gold which is normally coming in the shape of foreign gold and gold locally available.

**Chairman:** An honest dealer need not have any fears at all. Clause 123 applies only to those cases where there is a reasonable belief that they are smuggled goods, and then the burden of proving that they are not smuggled goods is on the person from whom the goods were seized. It is only in those cases where the goods are seized in circumstances where there is a reasonable belief that they are smuggled, that this presumption arises and the onus is on the other party; it is only in those cases that this clause comes into operation. So, why should you have any fears? Suppose the gold is concealed in a bag or concealed in a country-barge where it is not expected to be. It is only in such cases that this clause will apply.

**Shri Gagrat:** The difficulty with the traders is this. What happens is that we buy gold. That gold must have been bought by six or seven persons prior to us also. If the Customs Department has information or has the reasonable belief that even the sixth or seventh predecessor of mine had smuggled that gold into India, then this clause provides that I must lose the gold. That is what we are objecting to. If I had purchased it with the knowledge that they were smuggled goods, then I had done something illegal and I should be punished . . .

**Chairman:** If there is a link of six or seven persons, and there is at least one man who is dishonest among them, naturally, the others will have to pay for it.

**Shri Shankaraiya:** When stolen property is in the hands of even the tenth man, that is liable to be confiscated. Why not have a similar provision in regard to foreign smuggled gold?

**Shri Gagrat:** But, in the case of stolen property, protection is given to bona fide purchasers for value without notice. Give me the same protection, and I shall not ask for anything more.

**Shri Abrol:** What is the protection which you want?

**Shri Gagrat:** If a person is a bona fide purchaser for value without notice of the alleged theft, then he is protected.

**Shri Abrol:** But what about the property? The stolen property is resorted.

**Shri Gopalekrishniah:** The property is identified by the accused and the complainant there. If the identification is changed, there is no chance of seizing it, and there is no authority to seize it.

**Shri Abrol:** Is not the property taken away? In the case of stolen do not take deterrent measures, and hands, if it is proved that the property is stolen property, then it is restored to the rightful owner.

**Shri Gopalekrishniah:** Only after identification of it. But here you do not have any identification. In the case of the stolen property, the prosecution has to prove that it was stolen and it was found from a particular place.

**Shri Abrol:** Here also, the goods will be seized only when there is reasonable belief that they are smuggled goods, and not otherwise.

**Shri Gopalekrishniah:** But, here, you put the onus on the other party on a reasonable belief, which is un-

fair. Simply because of your suspicion, you put the onus on the other party.

**Shri Narendra Singh Mahida:** Has any member of your association been caught for smuggling?

**Shri Gopalekrishniah:** No, not at all; such a thing has not happened.

**Shri Gagrat:** No, in not a single case.

**Shri Ramanathan Chettiar:** Smuggling has reached such dangerous proportions that Government cannot be blind to it. Smuggling of gold is going on every day. We would like to know whether you have any concrete suggestions to check this smuggling. You are saying that reasonable belief that they are smuggled goods etc. is not sufficient; but how are we to put down this evil? If we do not take deterrent measures, and if we do not give deterrent punishments, how can we put down this evil? Have you any concrete suggestions?

**Shri Gagrat:** I shall make the suggestions.

**Chairman:** I think that we have discussed them in detail already.

**Shri Gagrat:** It is not correct that we have no suggestions. I have got some suggestions.

**Chairman:** Then, please mention them for the benefit of the committee.

**Shri Gagrat:** My first suggestion is that the word 'gold' should be defined. My suggestion is that defining can be on the basis of the fineness of the gold which we treat as smuggled gold. I have suggested a fineness of 99.80 and above. It is for Government to fix whatever fineness they feel is necessary to differentiate genuine local gold from foreign smuggled gold.

**Shri Anand:** Is it your intention that there should be no prohibition on the import of gold whose fineness is less than what you have prescribed,

namely 99-80? If we define that as gold, then anything which has less fineness will not be 'gold' according to you, and there will be no prohibition.

**Shri Gagrati:** All that would happen is that in such cases clause 123 would not apply, and the presumption will not be shifted.

**Shri Anand:** It is not very difficult to change the fineness abroad and then start sending it here with a little less fineness.

**Shri Gagrati:** If the purpose of the Bill is to prevent smuggling at the port or at the customs barriers, then these clauses are not going to help in that matter. These would only affect the trade. I agree with you that smuggling should be checked at the customs barrier and at the ports. But does this clause provide any way of checking the activities of smugglers? It only affects the trade.

**Shri B. E. Bhagat:** What is your object in defining the term 'gold'? We know normally what gold is. If we define it, then anything with less fineness can be freely imported. I am surprised at the way you are making a suggestion like that with all your intelligence and cleverness.

**Shri Shankaraiya:** Is there any concrete suggestion to prevent smuggling?

**Shri Narendra Singh Mahida:** Will your association agree to have a system of licensing for all the refineries?

**Shri Gagrati:** Yes, certainly.

My second suggestion is that as far as this clause is concerned, bona fide purchasers for value without notice should be excluded from the purview of this clause, because this clause affects only the traders and not the smugglers.

My next point is about clause 118.

First of all, section 118 as drafted, renders the confiscation of innocent

goods. Secondly, it does not take into consideration the knowledge of a person who is the owner of innocent goods. Thirdly, there is no definition of what a 'package' will mean. These are, according to us, the shortcomings of the clause as drafted.

If the clause remains as it is in this form, it affects us adversely in so far as we have to store goods in a package. We cannot have a separate package for each piece. When we store goods for transportation, on the mere chance that one article therein is alleged to be smuggled, the whole package is rendered liable to confiscation. Therefore, it affects us so far as storage and transportation of gold is concerned.

If this is so, we make three suggestions. First, the term 'package' should be defined. Secondly, because admittedly innocent goods are confiscated merely on the ground that they have been found with other goods, the *bona fide* or *mala fide* of the owner of such innocent goods should be proved before it is confiscated. Without the bona fides being gone into, confiscation should not be there. Thirdly, if the department can prove that smuggled goods were taken knowingly along with innocent goods, then you may have confiscation.

#### Clause 120

This clause says that if gold has changed its form or if gold is mixed up, then the changed gold or mixed gold is liable to confiscation. We say that this section creates hardship for the trade. As far as we are concerned, we have to deposit gold with bankers and financiers to raise loans. It will be difficult to raise loans from any bank or financier in future—this section is a new one—if the section remains as it is. No bank will run the risk of advancing money because there is a risk that the gold that it is receiving in deposit may have a portion which is

smuggled, even if it is very small. Therefore, this directly affects our borrowing transactions with bankers and financiers.

Secondly, there are three processes: melting, reining and assaying, before gold is changed into jewellery. At all these stages, there is a constant risk that if by chance a portion—even one tola in 100 tolas—is found to be smuggled gold, the entire is liable to be confiscated. There is a proviso to this section which says that if the owner can prove that he had no knowledge that it included any smuggled goods, that portion of the gold may be returned.

The difficulty that arises, as the clause is drafted, is this. As has been made clear in a case in the Bombay High Court, the accepted fact is that gold cannot be identified. The proviso will not apply to transactions of gold, unless it is made clear that the pro-rata principle will be applied.

**Shri Dehejia:** Your point is that if 1/7th is smuggled gold, it can be taken the rest 6/7 being let off. I am not expressing any opinion, but I am saying that this is your point.

**Shri Gagrat:** Yes.

#### Clause 121

**Shri Gagrat:** This is a new clause. It gives power to confiscate the sale proceeds. The sale proceeds will be in Indian currency which has no ear-mark. Therefore, the apprehension is that this section gives powers to the customs officer to come and remove whatever cash is lying on the ground that he suspects that it represents sale proceeds of smuggled goods.

Therefore, our suggestion is 10-fold. As far as application of 121 is concerned, knowledge must be the test, and not reason to believe because you are appropriating Indian currency from a citizen and confiscating it. It is not an importable commodity. The term 'reason to

believe' will create doubt and dispute.

Secondly, the term 'sale proceeds thereof' should be clarified to indicate that the authority of the officer is limited only to taking away such currency which he must at the time of seizure indicate as representing the sale proceeds of a certain quantum of smuggled goods.

As the section is worded, it is apprehended that it gives very wide powers to cause harassment and paralysation of trade, which I think is not the object of the section. We want it to be made clear that there should be a condition precedent to the exercise of the power of seizure. The officer must indicate in writing what, according to him, represents the sale proceeds of smuggled goods and what according to him from my sale proceeds represents the price of such gold. Without these conditions, seizure should not be allowed.

**Shri Narendra Singh Mahida:** What is the percentage of gold produced in the country?

**Shri Gopalekrishniah:** From the Kolar gold fields nearly 50,000 tolas per month on an average were produced. This gold was being sold till recently. Before the Central Government took it over, this gold used to be sold by tenders—till one or two years before. The foreign companies were there. The gold was being tendered through the National Bank of India in Bombay.

**Shri Gagrat:** Before we go to the next point, I would like to make it clear that the objections we are raising are not on the ground of being clever or intelligent, but they are based on substance and our experience in the past. I am going to cite to you 8 instances which we have taken out which show the harassment caused to the trade by keeping such wide provisions. There have been cases where indigenous gold, admittedly not of foreign fineness, has been seized and detained and



only after going to court have the parties got back the gold. What is the effect of the section? It is not a question of being clever or intelligent; it is a question of trying to seek relief from the Lok Sabha on the basis of the experience we have got since 1955. If you want, I shall furnish a tabular statement. We have selected 8 instances to show how this term 'gold' by itself without any definition can cause a lot of harassment. The first case is that of a leading firm in Bombay, Chandrakumar Amichand and Co. 1546 tolas were seized in 1959 and after protracted litigation going to High Court, remand to Collector and adjudication, in 1962—after four years—the gold was released. If the definition had said that only gold upto a fineness of 99.80 and above is liable to confiscation, this gold would not have been touched. Ultimately, the department was satisfied that the gold was indigenous.

**Shri Dehejia:** Is there any law in other countries saying that gold with fineness of less than 99.80 will not be produced?

**Shri Gagrati:** I am not in a position to say.

**Chairman:** You may give that list to us.

**Shri Gagrati:** I would like to read to you three or four cases. In the case of Shantilal K. Gosalia, relating to Rajkot Collectorate, the customs officers seized Indian currency of Rs. 1,53,900 as also the ornaments of the person's wife and daughter, weighing 343 tolas, in December, 1958. After protracted correspondence, and threatening of proceedings, in September, 1961 it has been released, after three years. No memorandum was issued, there was no adjudication.

In the case of Valimahomed G. Sonawala & Co., 452 tolas of gold were seized in September, 1957, and after protracted correspondence and litigation it was released after three years in 1960.

Next is the case of Gokuldas Mohanlal & Co., in which 92 tolas of gold were seized in September, 1957 and released after three years in 1960.

Then, in the case of Mohanlal Bhagwandas Choksi, 133 tolas of gold were seized in September, 1957 and were released after three years in 1960.

There are two cases pending adjudication in Madras—the cases of Sulaiman Sahib and Devichand Jeshtamal—in which gold bars with the markings of the Government of India Mint as also the Bombay Bullion Association were seized and have been lying there for two years.

So, what is the limit up to which the trade can bear this? There is also the case of Bherumal Shamandas relating to Bombay Collectorate, in which 225 tolas of gold of .92 fineness were seized in September, 1956, and were released in 1962, after six years.

We have not come to challenge the bona fides of the officers or to impute male fides, but to show that if you keep the term gold without a definition, without a criterion, executive officers can seize any gold, even from the residence of a citizen, and release it after three years. If that is the way of checking smuggling, we have nothing more to say, but we would strongly impress upon you to indicate to us what gold we should not deal in, so that we may not be put to all this harassment of seizures etc., and release after three years. We have come to represent our genuine hardships, and express our genuine apprehensions. Government is all-powerful. They can take effective preventive measures at the custom barriers.

Having disposed of the provisions specifically applicable to gold, I will now come to some general clauses and list our objections one by one.

Clauses 101 and 102 give power to search a person. If clause 101 is de-

fixed consistent with clause 123, we have no objection, because clause 101 is made applicable to smuggling etc., and it should not apply to the trade. If, however, these two clauses are to be kept in their blanket form to cover any gold of whatever fineness, we would suggest that it should be amended to make it mandatory for an officer to produce the person to be searched before a Customs Collector or a magistrate. The production must be at the earliest possible time. The reasons for the search should be recorded in writing, and the search must be during normal office hours, not any time in the night.

Clause 104 deals with powers to arrest a person. Here also we have the same objection, it must be after production before panchas.

Clause 105, search of premises. This power to search premises now incorporated in the new section provides for search being conducted at any time of any documents etc. It is not confined in scope to prohibited or dutiable goods. Therefore, the application should be narrowed, and the old section 172 should be retained in its original form.

Clauses 107 and 108 give power to record statements and compel a person to produce documents etc. We have no objection. This may be necessary to give effect to the Act, but our objection is to clause 139 by which a presumption is sought to be raised with regard to the truth of the documents, with regard to signature, with regard to authenticity etc. This is a complete violation of the provisions of the Evidence Act and the Criminal Procedure Code. Further, article 20 of the Constitution gives protection to every person in a prosecution not to be treated as a witness against himself. Clause 139 totally ignores this article. This should be deleted, and the machinery of the Evidence Act, the Criminal Procedure Code and the Constitution should prevail.

Then I take up clauses 111, 112 and 125. Clause 111 deals with power

to confiscate, clause 112 imposes a personal penalty and clause 125 deals with imposition of a fine. We have no quarrel with these clauses as such, but these penalties and provisions are quasi-criminal in nature. The Supreme Court has said they are quasi-criminal in nature and that the principles of Criminal jurisprudence must apply. That is what they have said in regard to the Customs Act. If the Customs Department proves mens rea, then certainly they can penalise the person. So, that must be put in.

Clause 147 also raises undue presumption. With regard to the owner of the goods, it says that if the agent of an owner does a certain act, the presumption is that the agent knew it and connived in the act. If it is limited to normal acts within his functions as an agent, it is perfectly valid. It should be made clear that it is limited to acts within the scope of the agent's authority. It cannot extend to any act done by the agent, and make the owner criminally liable.

Clauses 128 and 129 deal with appeals to the Central Board of Revenue. Our objection is that the Central Board hears appeals as an appellate body, and an appellate body normally is not given the power to enhance the penalty, to go into the matter de novo. It should not be like a fresh adjudication. Also, the condition precedent that one must deposit the penalty imposed before going in appeal is a thing to which we object. After all, this is going to be a self-contained Act. Supposing a Collector imposes a penalty of Rs. 2 lakh upon me. I cannot exercise my right of appeal unless I deposit it.

There is the proviso which says that if the appellate authority is satisfied, it may dispense with such deposit. In exceptional cases, the Central Board may waive the deposit of the penalty. But we know that in several cases they do not waive. We submit that at least in the gamut of the procedure, it must

be said that the right of going to the court of appeal, should not be conditioned with the deposit of the penalty. As a matter of fact, the right to go in appeal should be as a matter of course. The right should not be fettered by a condition or should not be subject to any exemption being granted.

**Chairman:** The appellate authority is given the power to waive.

**Shri Gagrat:** The Central Board is the appellate authority which decides the matter. I cannot move the Central Board unless I pay the penalty imposed on me. The appellate authority decides whether I am right, or whether the Collector is right. But, before I have got the right to go to the Central Board, in appeal against that order of the Collector, which is passed wrongly according to me, or where it is most excessive or arbitrary, I have to deposit the penalty that has been imposed. I have to pay the full amount. There are a large number of cases in which the penalties have been remitted in full. Supposing a penalty of a lakh of rupees has been imposed on me by the Collector, I have to pay it first before I go on appeal. I will become an insolvent. It is true that the Board can waive it in full or part; but it is in its discretion. This first right of appeal is confronted with the condition precedent, that I must pay the amount of the penalty. There have been several cases in which, on appeal, we have seen that the appellate authority has cancelled the fine. In such cases, while the person ultimately gets back the amount, why should he be asked to deposit the penalty?

**Chairman:** The proviso is there. In cases of great hardship, the appellate authority can waive the deposit.

**Shri Gagrat:** I agree; but is it at all necessary that before the right of appeal is exercised, there should be this condition?

That is the only submission that remains.

**Shri Narendrasingh Mahida:** I understand there is a dharam kanta in the Bullion market whereby you satisfy yourself that the gold is 90 per cent or 92 cent and so on. Would you, in some such way, suggest any machinery either of the Association or of Government, whereby, when you purchase gold, you can say whether that is smuggled gold or genuine gold?

**Shri Gopalekrishniah:** Unless Government defines what is smuggled and what is genuine gold how can anybody know that?

**Chairman:** I think that has been sufficiently made clear in the Bill. Thank you, all.

**श्री बली मोहम्मद :** मेरी सोने की रिफाइनरी है, जिस का नाम बली मोहम्मद, गुलाम हुसेन सोनावाला है। मेरे पास बाजार का कच्चा सोना आता है और मैं उस को रिफाइन करता हूँ और रिफाइन कर के और बुलियन का ट्रेड मार्क लगा कर जांगड़ लोगों को देता हूँ। अगर उस में किसी का गोल्ड स्मगलड निकले और कस्टम्स का आफिसर आ कर मुझे पकड़ ले जाये तो मैं क्या करूँ ? मेरा उस में कुसूर भी क्या है क्योंकि वह सोना तो कोई और मेरे पास लाया है साफ करने के लिये। इस सिलसिले में मैं श्री मोरारजी देसाई से भी मिला। उन्होंने मुझ से कहा कि तुम दिल्ली आओ। मैं ने कहा कि मैं दिल्ली तो नहीं आ सकता। तब उन्होंने कहा कि अच्छा बली मुहम्मद मैं खुद तुम से मिलने बम्बई आता हूँ। मैं ने उन से कहा कि यहां पर जो लोग टनों सोना अपने पास रखते हैं, उन को कुछ नहीं होता और मेरे ऐसे जो मजदूर लोग हूँ उनको पकड़ कर कस्टम्स वाले ले जाते हैं। मैं कहना चाहता हूँ कि मैं तो एक छोटा व्यापारी हूँ, जो लाखों रुपये का टैक्स देता है और इस तरह का काम करे उस को आप पकड़िये। जो लोग स्मगलिंग का काम करते हैं उनको आप बेशक पकड़ कर फांसी लगा दीजिये, लेकिन मेरे ऐसे ईमानदार आदमी को क्यों तंग किया जाता है ? मैं विनती

करता हूँ कि आगद हिन्दुस्तान में जो इन्फोर्सेट आदमी है उन को नहीं मारा जाना चाहिये । और उनकी बात को सरकार को सुनना चाहिये

**श्री नरेन्द्र सिंह महीडा :** मैं कमेटी के मੈम्बरों की तरफ से यह आश्वासन दूंगा कि इन्फोर्सेट आदमियों को नहीं मारा जायेगा । अगर कोई इन्फोर्सेट आदमी तंग किया जाता है तो आप हमें बतलाइये । हम यहां आप की बात जरूर सुनेंगे और इन्फोर्सेट आदमी को खतरे में नहीं पड़ने देंगे ।

**श्री बीलल राम :** हम लोग यह सोना आप के सामने इस लिये लाये हैं आप देख कर हमें बतलाइये कि हम इस में से कौन सा सोना लें और कौन सा सोना न लें । अगर यह सोना बाजार में बिकने आता है तो हम लोग उस को ले लेते हैं उस में से कुछ सोना गलाते हैं और कुछ सोना रिफाइन करते हैं । उस में से किसी सोने को पाटला बनाते हैं और किसी को इस तरह की लकड़ियों में बदल देते हैं हो सकता है कि उस में कोई सोना स्मगल्ड हो । आप के कस्टम्स का आफिसर आता है और कहता है कि तुम ने फ्लां पार्टी से जो सोना खरीदा है वह स्मगल्ड है, बतलाओ वह कहां गया हम लोग कहते हैं कि हम ने उस को असली सोने के साथ गला दिया । अगर वे उस सोने को ले जाते हैं और अपने पास चार या छः वर्ष रख कर वापस करते हैं तो क्या यह हमारे लिये हार्ब-शिप नहीं है, तकलीफ देह नहीं है ? अगर इस तरह से काम होगा तो हमारा बिजिनेस कैसे चलेगा ? आप हम को बतलाइये कि आखिर कौन सा सोना हम लें और कौन सा न लें । यह जो सोने के टुकड़े रखे हैं इन में से बतलाइये कि कौन सा सोना स्मगल्ड है और कौन सा नहीं ।

**Shri Ramanathan Chettiar:** The gentleman spoke in Hindi which I could not understand. But what I

wanted to convey is this. Would they help the Government to detect who is the smuggler? Will they at least give this assurance that they will remove the smugglers from the bullion market? Will they help us to this extent?

**Shri Gopalekrishniah:** While purchasing gold in the ordinary course of business we come across so many forms of gold. How is it possible for an innocent person or an ordinary trader to identify some foreign gold? Unless he identifies, he cannot be in a position to find out which is genuine and which is smuggled.

**Shri A. V. Raghavan:** In a single transaction how much of gold do you purchase? What is the maximum amount?

**Shri Gopalekrishniah:** It may extend from one tola or 12 grammes to 1,000 tolas or 12,000 grammes.

**Shri A. V. Raghavan:** You purchase from persons known to you?

**Shri Gopalekrishniah:** Traders from mofussil come to Bombay for selling. Mostly we buy from known persons. In small scale purchases, from the minimum 10 grammes to 100 grammes, people from all walks of life come to us for selling. It is not possible for a trader to challenge the genuineness of their possessions. It is not proper for us to ask them where from they got their gold.

**Shri A. V. Raghavan:** Smugglers usually sell in large quantities.

**Shri Gopalekrishniah:** Practically, the smugglers are a set of foreigners who form themselves into a gang. They bring gold into the country through interested persons who are helping; but not the regular traders. There may be some traders who may also be assisting them in this. We are not denying that. But, the provision which you are incorporating in this Bill does not help us in actually checking smuggling which is done by foreigners who take away big slices of the profits from the country.

**Chairman:** But, when the interested persons bring the gold into the market for sale, they must come to some of you. It is up to you to hand them over to the police.

**Shri Gopalekrishniah:** Indirectly it comes into the market.

**Chairman:** You will know who is the smuggler and who is not.

**Shri Gopalekrishniah:** Those who are involved in that may know, but not all people. In the country, in every city, you have got some 200 to 300 merchants and dealers. How can all of them know?

**Chairman:** We just now heard that their number is increasing; the number of shops is increasing.

**Shri Gopalekrishniah:** For livelihood everybody is trying to have some business; you cannot restrict it. Every person has to take to some kind of business for his livelihood. We are in this line for decades and for generations. This jewellery business has been going on for decades. When we are in that line, it is not possible to leave that trade suddenly when you have put restrictions. There are not only the traders; but there are other workers who are in allied traders, maintaining themselves through other lines like manufacturing jewels etc.

**Chairman:** Yes; we will consider all your evidence.

**Shri Hari Vishnu Kamath:** These are days when codes of conduct and discipline are very much in the air, and on terra firma as well. Have you ever given serious thought to the formulation of a very strict code of conduct for the trade and enforcing it also very strictly? Has your association ever considered this matter?

**Shri Gopalekrishniah:** So long as genuine traders are there, we assist them in every respect for honest trans-

saction. We are not there to sympathise with or help dishonest people. We are not concerned with the people who are dishonest. We shall help the Government if it takes stringent measures against dishonest people.

**Shri Ramanathan Chettiar:** What Shri Kamath asked was different. Have you considered the question of evolving a code of conduct for your association? What steps do you intend taking to enforce them among your Members?

**Shri Gopalekrishniah:** Generally, we do not have connections with them. If one of our traders is involved in smuggling, if he is caught doing such things, we generally do not co-operate with him.

**Shri R. V. Reddiar:** What will be the percentage of goods seized or detected to the total of smuggled gold?

**Shri Gopalekrishniah:** 5—10 per cent may be detected.

**Shri R. V. Reddiar:** A lot of smuggled gold, you grant, could not be detected under the provisions of the existing Act, even. But you want that these provisions should be liberalised?

**Shri Gopalekrishniah:** The authorities know there is large scale smuggling. But it is not that all traders are smuggling. There are honest traders in the country.

**Shri R. V. Reddiar:** Do you not agree that the provisions should be tightened to prevent smuggling?

**Shri Gopalekrishniah:** Yes. But my point is this. There are several instances of harassment of innocent traders.

**Chairman:** These provisions are never meant for honest traders and they need not fear. Thank you.

*(The witnesses then withdrew).*

*(The Committee then adjourned).*