

bonded warehouse in Delhi, the duty will be levied in the Delhi State and the revenue will go to the Delhi State. It is not necessary that the manufacturer will have bonded warehouses all over the country; it is not even compulsory to have bonded warehouses anywhere. The only provision is that the duty will go to the particular State in which the bonded warehouse is situated, if the manufacturer decides to have a bonded warehouse. I thought I should clarify this point and remove the misapprehension which the hon. Member might have in his mind.

There are no other points left un-replied.

Mr. Chairman: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

SEA CUSTOMS (AMENDMENT) BILL

The Minister of Revenue and Defence Expenditure (Shri A. C. Guha):
I beg to move*:

"That the Bill further to amend the Sea Customs Act, 1878, be taken into consideration."

The Sea Customs Act is a very old Act. In fact, it was enacted in 1878. Since then, there have been some amendments to this Act. I think last year I had to pilot an amending Bill. I can tell the House that we are just considering a thorough overhauling of the Act; but it may take some time before we can have such a thorough revision of the Act bringing the different provisions therein upto our present requirements. For the time being, we have to make certain amendments to meet some emergent situation and it is for this purpose that this Bill is introduced.

This, also, is naturally, a Bill with a limited scope. I think I can divide the scope of this Bill into four different categories. There have been certain conventions and practices

developed during these years according to the requirements of our foreign trade.

There are no legal backing to those conventions and practices. This Bill seeks to provide a legal backing to those practices and conventions. What we have been doing in practice, we now want to put on the statute to have the formal sanction of the law and of this House.

The second point is to take some additional power for controlling smuggling. It may not be quite unknown to this House that smuggling has increased rather enormously. Previously there was not much economic incentive for smuggling, but due to so many restrictions and controls, and licences and prohibitions due to the development of indigenous industries and also due to our having long land borders after the partition of India, smuggling has become more rampant and has also become a paying proposition. Certain articles are prohibited for import and even for export, and if a smuggler can get them into, or send them out of India, he can reap rich profits. This economic incentive for smuggling was lacking so long; now it has become necessary for the Government to take stringent measures and to take additional powers to stop smuggling.

The third purpose of the Bill is to regulate the customs house clearing agents. There also certain conventions and practices have developed according to the changing phases of our foreign trade. We want now to put these things in a legal form by embodying them in the statute.

The fourth purpose of the Bill is, of course, a minor one, but still from the administrative point of view, it has become important. With the complexities of the developing foreign trade, there have been some cases where it is not possible for the customs authority to make correct assessment in the initial stages. Things might have been cleared on a wrong

*Moved with the recommendation of the President.

[Shri A. C. Guha]

assessment. When the wrong assessment is prejudicial to the assessee, he comes before the Government or the Central Board of Revenue for review or appeal, but when the wrong assessment is to his benefit, it is not in the interest of the assessee to file an appeal for review. In such cases, we have no authority to open up the case again. We are taking power by this Bill that in appropriate case the Central Board of Revenue might open any case on which assessment has been made, payment given and goods cleared.

These four points are, in short, the main purpose of the Bill.

The first point regularising the conventions and practices is mostly for the benefit of the traders and the business community, such as clearance of goods on payment of a provisional duty and this is provided for in clause 3.

Then, with regard to prior entry system, it means that a ship may come here on a particular date, but the manifest and bill of entry may be presented earlier than that date and all the preliminary work might be done in the meantime, so that as soon as the ship arrives, the goods may be cleared without waiting for the formalities to be undergone after the arrival of the ship. The necessary provisions in this respect are in clauses 7 and 8.

Regarding assessment and realisation of duty before actual examination, this is also for the benefit of the traders and the business community.

We have provided a new thing in clause 9 and it will be for the benefit of the exporters. In the case of a short-shipped goods, now the person concerned has to present his claim within five days of despatch. It is not always possible for the exporter to get almost immediately a correct estimate of the goods shipped and he may not be in a position to make his claim for refund of export duty within five days. We are now extending

the period to three months, so that in the case of short-shipped goods, the exporter may make his claim.

As regards the licensing of clearing agents, the provision we have put in the Bill will be helpful to the business community. The present law, if properly interpreted, would mean that the clearing agent would have to take a licence for every consignment of goods that he has to clear. In fact, it has not been possible to work on these lines and we can say that we have been working rather without any legal authority in treating the clearing agent as having a sort of a permanent licence. We are providing here that the licence would be given to the clearing agent and he need not apply for a licence for every consignment of goods to be cleared by him. We are also providing certain rules for the grant of the licence and, if necessary, also for cancellation of the licence. Certain cases have come to our notice in recent times of undesirable activities of the clearing agents, and under the present law it is not possible for us to deal with such delinquent clearing agents properly. We are putting this thing on a proper footing and according to the requirements of the present international and foreign trade of India.

There are certain lacunae in the present Act. As I have said, we have no power to review the cases assessed by the Customs Collector. The Board is now taking the power to review and re-open cases.

Again, certain articles may be exported out of India, enjoying the privilege of drawback of the imported ingredients used in the manufacture of that article. It may happen that the articles might not have been sold in the foreign countries or the consignee in the foreign country might not have taken delivery of those things and if those articles come back to India, we have no provision now to ask for the refund of the drawback which the exporter had while exporting the articles.

So, by providing this, in such cases we may ask for the refund of the drawback which has been enjoyed. Otherwise, this article which might come back after export would be enjoying a sort of privilege and advantage over other articles manufactured in India and which have not got this good fortune of having an oversea trip.

Then, the most important provisions are the anti-smuggling provisions. As I have stated, smuggling has increased I think on all most all days when questions on Finance are asked during the Question Hour, there are a number of questions in both the Houses regarding smuggling in different forms, and so I can take it that this House and the Members are quite alive to the seriousness of this problem. We have put in this Bill certain provisions which give additional powers to the Government and these are embodied in clauses 10 to 15 of the Bill. I can say that some of these provisions which are embodied here are in fact taken recourse to even now, say, in respect of X-rays. In several cases, we have to put the suspected smuggler to be X-rayed, and we have found some precious metals or jewels hidden in their bodies and we have had to extract these things. Strictly speaking, we had perhaps no legal authority to subject the suspected to be X-rayed, but anyhow we are putting those things in this Bill and we have also provided that this will be done only by the order of the court and under proper medical supervision.

Shri Velayudhan (Quilon *cum*-Mavelikara-Reserved Sch. Castes): I think the whole point is covered.

Shri A. C. Guha: As the hon. Member has said, I think I have covered almost all the points in the Bill.

Shri Bansal (Jhajjar-Rewari): What do you say? Have you really covered all the points?

Shri A. C. Guha: Almost covered; I cannot say I have covered all the points.

Mr. Chairman: The hon. Minister may continue undisturbed.

Shri A. C. Guha: I should now leave the Bill to the charge of the hon. Members of this House and I hope they will be pleased to pass the Bill.

STATEMENT RE: INCIDENT DURING PRIME MINISTER'S VISIT TO NAGPUR

Mr. Chairman: I have to bring to the notice of the House that the Government desires to make a statement on a particular incident that happened during the visit of the Prime Minister at Nagpur. Have I the permission of the House to allow Pandit G. B. Pant to make a statement?

Several Hon. Members: Yes.

The Minister of Home Affairs (Pandit G. B. Pant): I thank you and the hon. Members of this House for giving me permission to interrupt the proceedings in order to inform the Members about a deplorable incident which occurred during the Prime Minister's visit to Nagpur this morning, about which the Madhya Pradesh Government have issued an official communique. The communique runs as follows:

"An incident occurred at a road crossing at about 11.45 this morning when the Prime Minister was going from Sonogaon airport to Nagpur. He was travelling in an open car with the Governor and the Chief Minister on either side of him. He was standing in the car. There were big crowds on either side of the road. A rickshaw puller pushed his rickshaw in front of his car which resulted in the car stopping. The rickshaw puller advanced towards the car and jumped on the foot-board. He had a knife in his hand. He was immediately overpowered by the Military Secretary to the Governor and some police-officers. The Prime Minister's car proceeded immediately after, according to the programme and went to the Chief Minister's House where he addressed a meeting of some

[Pandit G. B. Pant]

M.L.As. and others. The rickshaw puller who was arrested gave his name as Babu Rao. The matter is under investigation."

Since vague reports about this incident were whispering about and there had been considerable concern among the Members and also among the public, I have considered it necessary to give the facts that have been authoritatively stated by the Madhya Pradesh Government. The Prime Minister is cheerful, in his best spirits, and is following his heavy programme as usual. He does not seem to attach any significance to this incident and he in fact looks upon even things, much more grave, with utter unconcern. The Members will however join me, I hope, in thanking Providence, congratulating the country and wishing that our beloved Prime Minister may be spared for many, many years to lead the country on to its destined goal.

SEA CUSTOMS (AMENDMENT) BILL

Shri C. C. Shah (Gohilwad-Sorath) : I have a few observations to make about one of the clauses of this Bill. This Bill concerns some technical matters about the levy of customs duty about which I know little. But it also takes certain additional powers to check smuggling with which I am in wholehearted support. Those powers are contained in clauses 10 to 15. There is one clause among this group of clauses, namely, clause 14, to which I wish particularly to draw the attention of the House. That clause reads as under:

"Where any goods are seized under this Act on the ground that they are smuggled goods, the burden of proving that the goods are not smuggled goods, shall be on the persons from whose possession the goods are seized."

In the Notes on Clauses, on this particular clause, it is stated as follows:

"At present when action is taken against persons who are in

possession of smuggled goods, it is not always easy for customs authorities to prove that the goods are smuggled goods. This clause places the burden of proof in such cases on persons, from whose possession suspected smuggled goods are seized. Such a provision is necessary in order to safeguard the revenues of the State."

This raises a very important question and that is why I wish to say a few words about it. Nobody can have any sympathy for smugglers. It is not my intention, in drawing attention to this provision to save any smuggler or do anything of the kind, but it should not mean that we have got only to utter the word 'smuggler' or 'blackmarketeer' to be able to pass any Bill of any kind or nature. There must be something which we must satisfy ourselves about to show that we are doing something which is right and proper, even if it is to check smuggling or blackmarketing. Now, if you read this clause, Sir, you will find that any goods can be seized on the ground that they are smuggled and then the person in whose possession the goods are found has to prove that they are not smuggled goods. Now, what is the definition of smuggled goods? The definition of 'smuggled goods' is "goods on which duty has not been paid." Therefore, if any goods are seized from my possession, on the ground that they are smuggled goods, they can be seized and then I have to prove that customs duty has been paid on those goods. This covers every class of goods and all kinds of goods.

I will give one or two instances to illustrate how unworkable this provision is and what great hardship it will cause to trade and commerce. Supposing for instance, an importer in Bombay receives a consignment of watches or fountain pens on which he pays import duty. Then he sells parts of that consignment to various dealers in Bombay. Those dealers sell the goods to upcountry constituents all

over India and some parts of that consignment, for example, are in Delhi. Then the Customs Officer, alleging—he has only to allege—that these goods are smuggled goods seizes them. Then what happens? The person in whose possession those goods are found has to prove that they are not smuggled goods. He has to prove that customs duty has been paid on those goods. How is he to prove that? How is he to go to the original importer? The goods might have passed through several hands before they came to him. How is he to go to the original importer and get the bill by which he can prove that customs duty has been paid? Take the case of a consignment of watches which has passed through several hands after customs duty has been paid. How is the ultimate dealer in an upcountry place from whom the Customs Officer suspecting that the goods are smuggled goods, seizes them, to prove that customs duty has been paid on those goods? Again, take the case of bullion or gold. I know there is large-scale smuggling in gold. I do not wish to defend it, but if there are smugglers, at least there are some honest dealers also in the country. It is not that all dealers are smugglers. Gold has no label and you cannot put a label on gold to show that import duty is paid on it. It is well known that import of gold has been prohibited in India since the last seven years so that there can be no gold in India now on which import duty can be proved to have been paid, unless you have to go seven years backwards. Now, take the case of a dealer in Bombay from whom a Customs Officer seizes 500 tolas of gold on the ground that it is smuggled gold. That gold may have passed hands through many people before it came to him. How is he to prove that seven years back customs duty has been paid on that gold? I submit it is impossible to prove it. Now, remember this. If it is alleged that these are smuggled goods, even if the man is a *bona fide* purchaser paying full value, he is not protected. If I prove that I have paid full price for the goods, even then unless I prove

that import duty has been paid upon those goods, the ground that I have paid full value is no defence under this clause. Now, a man may have purchased 100 tolas of gold in the open market paying the full price. A police officer follows him and seizes the gold. I have seen many such raids in Bombay. I have dealt several cases of alleged smuggling like this. What is the present position under the existing law? Under the existing law the position is that if a Customs Officer seizes gold on the ground that it is smuggled gold, he has to prove that it is smuggled gold before it can be forfeited. But the decision is left only to the customs authorities, either it may be the Collector of Customs or the Central Board of Revenue or the Joint Secretary of the Finance Department; but no court can intervene. If these authorities find that the goods are smuggled goods on however slender evidence laid before them, that finding is final. I know of a number of cases in which gold has been seized on the ground that it is smuggled gold and if it were to be proved in a court of law that it is smuggled gold, the Customs Officer could never have proved that it is smuggled gold. Yet, the customs authorities have held that it is smuggled gold and have forfeited the gold. They have already very wide powers under the existing law. Their finding whether some particular gold is smuggled or not is final and no court can interfere unless the courts come to the conclusion that the Customs Officer in his investigation has failed to follow the principles of natural justice, or has exceeded his authority. Therefore, in a number of cases I know they have suspected that the gold was smuggled and the same was forfeited. But, the Government have not found these wide powers enough. Now, they are taking a power which I humbly submit to the hon. Minister is extra-ordinary and it shall make trade impossible in certain items, particularly in bullion.

Now, I will give you an instance of a case which I am recently handling.

[Shri C. C. Shah]

A bullion merchant who has been doing bullion trade for the last 40 years openly purchased—it is established—700 tolas of gold at full market rate and paid Rs. 70,000 for it in ready cash. He had borrowed this money from somebody else in order to be able to carry on the trade,—he purchases, sells it back, pays back the money and so on. The Customs Officer seized that gold on the ground that it was smuggled gold. That gold has remained with the customs officials for the last six months and Rs. 70,000 of this man has been locked up which he has borrowed from somebody else.. Yet, it is open to the Customs Collector, even on any slender evidence put before him, to come to the conclusion that it is smuggled gold and forfeit it. Those powers he has already got and not being satisfied with those powers the Government now only has got to say: "We suspect this is smuggled gold. We seize it on the ground it is smuggled gold. Now you prove that import duty has been paid upon it." I submit again, it is impossible to prove it. Therefore, even though in some cases smuggling may go on, after all smuggling may be due to the inefficiency of your administration. Smuggling may be due to corruption in your administration. It may be due to your import policy which makes certain goods scarce and therefore, it is profitable to smuggle goods. So, to a particular extent it may be necessary to modify that policy or it may be necessary to tighten up your administration. But, in order to safeguard State revenues you cannot put a provision in law which makes trade impossible or which makes honest people.....

Dr. Ram Subhag Singh (Shahbad South): Blackmarketeers.

Shri C. C. Shah: Not only that. It makes it impossible for honest people to do any trade or business. There is any quantity of gold in India at present. My father may have purchased 100 tolas of gold ten years

ago. I may have it in my house. The customs officer takes it into his head to do so, and says, I suspect this to be smuggled gold. He comes to my house and makes a search and seizes the gold. He has only to say, I seize this on the ground that it is smuggled. I have to prove that import duty has been paid and that it is not smuggled gold. My father may have purchased it ten years ago; it may have remained in my house. As I said, there is any quantity of gold in India today. I know there is smuggling in gold. How much, I do not know.

Shri Mulchand Dube (Farrukhabad Distt.—North): Will the ground of seizure not be certified?

Shri C. C. Shah: No; he has only to say that this is smuggled gold. Having seized the gold, the other man has to prove that it is not smuggled gold. I submit that this provision, even to protect the State's revenue or to prevent smuggling is too drastic. I know that in several instances we are now modifying the ordinary principle of jurisprudence by shifting the burden of proof here and there. In many cases we have done that out, in this case it goes to this length that a man who has paid the full price for it is not protected. I would earnestly request the hon. Minister to consider as an exception to the rule that if a man proves that he is a *bona fide* purchaser.....

Shri M. D. Joshi (Ratnagiri South): Will he not have receipts or other documents to show that he has purchased?

Shri C. C. Shah: He has receipts for the purchase. He has no document that the import duty has been paid. That is why I began by saying that smuggled means goods on which no import duty has been paid. The mere fact that he has paid the price is not enough. Let us compare, this Bill for example, with the Bill, which we passed this morning, the Railway Stores (Unlawful Possession) Bill. Even there, we wanted to be drastic. If you compare the provisions, you

will find that this provision is some thing more extraordinary than the one we have put in that Bill. The Railway Stores Bill has the provision:

"Whoever is found, or is proved to have been in possession of any article of railway stores shall, if the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration, unless he proves that the article came into his possession lawfully, be punishable..."

There are two conditions: one that the court must have reasonable grounds for believing that such an article is the property of the Railway Administration. A judicial decision has to be made by a judicial officer that it is the property of the Railway Administration. Secondly, the defence can be that I am in lawful possession. Lawful possession means, I am not a thief, I have paid the price for it, I have purchased it in the open market, I have not stolen these goods. That is being in lawful possession. Under this clause, even if you are lawfully in possession, which means, even if you have paid the full price for it, it does not convince Government unless you prove that the Import duty has been paid on it. Therefore, I earnestly submit to the hon. Minister that even though the merchants and the business community may be suspected to do many foul things, let us not do things which make trade and commerce impossible.

Shri H. N. Mukerjee (Calcutta-North-East): I am in general agreement with the objective of the Bill which my hon. friend Shri A. C. Guha has brought forward. But, I feel that even though his objective regarding more expeditious and efficient checking of smuggling is something which we all share, we have to remember that regulations however carefully they are drawn up, cannot make up for lax administration, or what is even worse,

sometimes corrupt administration. That is why I wish to draw the attention of the House to this particular aspect of the matter, namely that the administration of the regulations ought to be as efficient and honest as we wish it to be. I do not wish to imply for a moment that in the Customs Department corruption is general. On the contrary, I should say the generality of our officers are extremely honest. But, there must be black sheep in every fold and if some of the black sheep happen also to be big bugs in the administration, then disaster is likely to follow.

I say this because, though I do not know a great deal about customs administration, I happened to receive last year certain information regarding the working of the Calcutta Customs and the operation of the draw-back regulations. I asked certain questions of the hon. Minister on the 29th March, 1954. If I may be permitted to give a short resume of the points that I wanted to clarify through these questions, I will say that under the rules which are incorporated in the *Customs House Manual*, draw-back was admissible to the extent of the full customs duty levied at the time of importation on aviation spirit which was uplifted by aircrafts proceeding out of India. The quantity of oil taken by the aircrafts was shown in a document called the *Export General Manifest*, which was issued in respect of each shipment at the airport by the agents and countersigned by the customs officials. When claims were received from the claimants, the quantity on which draw-back was claimed was verified by reference to the document *Export General Manifest*, as is the custom, and where the quantity was not found, the claims were rejected. I got certain information on the basis of which I made an enquiry from the Minister which indicated that up to September 1953, certain claims filed by a very important firm, amounting to Rs. 15 lakhs were found to be not in order and the dealing

[Shri H. N. Mukerjee]

officials who were minor clerks, who detected this and filed a complaint with the secret service which is attached to the organisation of the Collector of Customs, in Calcutta. When the enquiry was in progress under the aegis of the secret service, a very high official, it seems, called back the papers from the secret service. The clerk who had given information regarding the initial likelihood of corruption was transferred and then a recommendation came from the Central Board of Revenue for the sanction of certain claims as a special case.

When I asked that question, the Minister found that I had a great deal of information on which I could pursue by means of supplementaries, and therefore he was good enough to suggest that I should write to him about the materials which I had. I wrote to him, I think, on the 1st of April giving him particulars of what I had got. I gave him certain numbers regarding the Customs House office files. As far as I am concerned, I am not in the know of these things. I cannot vouch for the absolute accuracy of this kind of thing. All I wanted was that there should be a thoroughgoing investigation of this position because I had also got certain information regarding some discriminatory treatment to a very important aluminium manufacturing concern in the country regarding the draw-back on aluminium, and certain raw materials which were got for the purpose of manufacture in this country. I had got some material of this sort and I forwarded to the Minister such material as I thought was relevant. In the last session I again reminded the Minister of this matter by means of another communication. It may be that the Minister has taken certain steps regarding this. I got certain answers to my questions when I asked them and I got the impression that there was an attempt on the part of the administration to hush up this matter. There was no attempt, of course, to deny that there have been

certain mistakes, or there had been certain things done which should not have been done. It was said that it involved about Rs. 15,000 while my information was that the amount involved was very much higher. As far as I am concerned, I do not know the rights or wrongs of the matter. What I am concerned with is that these allegations involve, as far as the allegations are concerned, very high-up officials. Even the answers of the Minister suggest that there is a kind of *hocus-pocus*, something wrong somewhat which is being sought to be covered up. I want this kind of thing to be straightened out. That is why I say that it is not sufficient only to have very good regulations. I am very happy that the Minister wants to tighten up the regulations regarding the checking of smuggling. I wish him all success. But, it is very important to remember at the same time that the administrative machinery should also be tightened up. If this kind of allegation comes in, cases of corruption on a high scale, corruption in which high officials are alleged rightly or wrongly to have been associated in wrongful deals with big concerns, foreign as well as Indian, then, surely, there should be a thoroughgoing investigation, and I am happy to say that as far as my humble effort was concerned in forwarding to the Ministry what I got by way of information—those who informed me could not give their full names because they were afraid of being victimised in Calcutta, but I gave whatever information I got and I was rather astonished.....

5 P.M.

Shri A. C. Guha: As far as I recollect.....

Shri H. N. Mukerjee: I do not wish the Minister to intervene before my point is finished.

Mr. Chairman: I think the hon. Minister can reply later.

Shri A. C. Guha: I think I sent a reply to his letter.

Shri H. N. Mukerjee: A real investigation has to be made into this kind of allegation, and I hope that the Minister will really look into the information which I sent in to him. And that is the only point which I wanted to make, viz., that administration is more important perhaps than regulation as far as smuggling is concerned.

Mr. Chairman: I think there are not very many speakers who are desirous to take part at this stage.

Shri Bansal: There are.

Mr. Chairman: Then, I think we have to adjourn, though I think it will be quite a long adjournment. Anyway, we adjourn, since there are so many desirous of taking part.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, the 14th March 1955.