

behave better if a law is there to help them, I have every hope that things would not go the way they have gone I have every hope that our teachers and students are not worse off than any of their counterparts in any other country I may say for the information of the House that recently some statistics were taken Students were put questions in India as they were put questions in other countries and the replies that all the students gave were almost the same with regard to ideal of life, as the ones given in any other country So, we are as good or as bad as our counterparts, in other countries whether as citizens, whether as students or whether as professors We are not worse off I am not pessimistic so far as the future of this University is concerned, if we take courage and do the right thing in the right spirit My only concern is that we should take into consideration the future of this great University, allot larger sums and see that things are done in a better way I hope my wishes would be realised I assure Pandit Govind Malaviya that nobody in the House is less painful about the situation, about the shape that things have taken and everybody, every Member of the House is as much solicitous about the future of this great University as he rightly is

Pandit Govind Malaviya: May I request the favour of two minutes, Sir?

Mr. Deputy-Speaker: My difficulty is, now, the hon Members have to blame themselves because they fixed one hour and that is exhausted How can I extend any time now? That is not in my power now

16 hrs

Dr. K L. Shrimall: I do not wish to take any more time of the House I would only like to say just one or two sentences

This University has to play a very important role in our national life We have undertaken big plans and

projects, and success of these plans and projects would depend not only on material resources, but more on human resources and human talent, and it is only from the universities that we can get men of leadership, talent character Our country has been fortunate in having great men in the past, and I think we should do everything that is possible to reconstruct this university and other universities, so that the cultural heritage may not be lost

It is in that spirit that I have come before this House

Mr Deputy-Speaker: The question is

"That the Bill be passed"

The motion was adopted

16 02 hrs.

**SEA CUSTOMS (AMENDMENT)
BILL**

The Minister of Revenue and Civil Expenditure (Dr B. Gopala Reddi): I beg to move

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

This Bill embodies a simple amendment to the Sea Customs Act which seeks to give formal legal authority to a long-established practice in Custom-houses whereunder bonds are accepted from importers and exporters for the fulfilment of certain conditions imposed by law for allowing the import or export of goods For example, section 17 of the Tea Act provides that no tea shall be exported unless covered by a licence issued by or on behalf of the Tea Board Section 18 of the same Act also provides that no consignment of tea or tea-seed shall be shipped until the owner has delivered to the Customs Collector a valid export licence or a valid permit for the export of the tea It, therefore, follows that if an exporter is unable

[Dr B Gopala Reddi]

to produce the requisite licence at the time of export, as frequently happens, for reasons beyond his control, the consignment would have to be shut out. In order however to avoid delay and inconvenience to the trade, customs authorities have been allowing shipment in such case, subject to the exporters executing a bond to comply with the requirements of law and to produce licence or permit within a time specified in the bond. Other examples could be cited too. For instance, where an importer has an import licence, but is unable to produce it immediately for any reason, the customs authorities, in practice agree to release the goods against a bond whereby the importer undertakes, on pain of a penalty in default to furnish the requisite licence within a specified period.

Now, strictly, under the Sea Customs Act itself, there is no provision in cases of the kind mentioned by me for relaxation either generally or specially, of requirements enjoined by law. It is, of course, possible to argue that such procedural adjustments and relaxations designed to prevent inconvenience to the trade, fall within the legitimate discretion of the executive, and the present practice could be defended on that ground. However as doubts have been expressed about the strict legality of the existing practice, its long-established character notwithstanding it is proposed to introduce a section in the Act specifically permitting the taking of bonds by the customs authorities for waiving or relaxing in appropriate cases subject to the fulfilment of obligations later on, any requirement imposed under the law.

It is hardly necessary for me to stress the need for continuing to give the existing facilities to the trade in this regard. It will be recognised on all hands that any unnecessary hold-up by the Customs of goods imported or in the process of being exported causes inconvenience all round. In respect of imported goods, it leads to

avoidable congestion in wharves, which are already subjected to severe pressure in respect of transit and warehouse accommodation, it retards our development programme by holding up raw material and capital goods needed by our industries and creates scarcity conditions in the market by holding up the already attenuated supply of consumer goods coming into the country in present conditions. In respect of goods for export, any obstacle to speedy customs clearance interferes with our export drive and has a direct adverse effect on our foreign exchange earnings.

I hope I have said enough to convince hon Members of the need for this Bill, and that they will have no hesitation in supporting the Bill.

Mr Deputy-Speaker Motion moved

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

Shri V P Nayar (Quilon) I am sorry that the hon Minister when he was ending up his speech, expressed the hope that this Bill should receive the support of all Members. I went through the provisions of the Bill, and I could not escape the feeling that the Bill is perhaps as much dangerous as the hon Minister is innocent of its mischief. The hon Minister says that by this Bill they are only regularising or giving legal recognition to, a practice which was obtaining continuously for a period of time. I do not agree that in such a case, the provisions as they are embodied ought to have been embodied in the manner in which we find them.

Sir, you know there is a distinction between a proviso and a saving clause. I could have understood if it was provided by a proviso, because the consensus of judicial opinion in such matters is that when a proviso embodies new provisions, the original provisions may be thought of as having been impliedly repealed, but, if, on the other hand, if it is a saving clause

and it is repugnant to the provision, what is the position? The hon. Minister, I am sure, has not examined the legal position. If you have a provision in a clause and give blanket powers to the executive, and to an officer of the grade of a customs collector, to regularise something, solely based on his discretion, and notwithstanding anything contained,—for, the provision says:

“... notwithstanding anything contained in this Act or such other law, grant leave for such import...”,

...in the Act or such other law, then what will be the position?

We have got the Sea Customs Act and there are other Acts and rules and regulations which govern both imports and exports. In this amendment, what is sought to be given is a power to be used or exercised at the discretion of a customs officer, notwithstanding anything obtaining at present in this law. I wonder whether the hon. Minister has made out a case to arm the customs officers with such powers to give a go-by to all the legal provisions, and rely solely on their discretion. I shall show him presently how such a provision cannot merely be mischievous but can even jeopardise the interests of the country, by giving some examples from the published papers before me

But, before going into that, I would very much like the hon. Minister to consider whether the type of irregularities, which has been brought to the notice of Government, both in the matter of holding up imported stuff and also articles intended for export has revealed any necessity for incorporating such a provision and investing the customs officials with such dangerous powers. I shall give you one or two examples to show how such an enactment with the provision giving such absolute powers to the customs officers can operate to the detriment of our country's economic interests, the more so in the present context of foreign exchange crisis.

We all know that under the Sea Customs Act, licences are given for import. And due to the short supply of many vital commodities, it is well known in our country—and I think even Government will not dispute it—that in the matter of certain articles, licences are sold at a premium, and sometimes in the case of articles for which import licences have been issued, the very licences are sold at three hundred per cent or four hundred per cent of the value. In such cases, nothing prevents an importer from importing it even without a licence, because he need only execute a bond. There are many Indian importers who have to their credit foreign exchange earned in a surreptitious way and kept in foreign banks. As I read the provision, it is not at all necessary to get the import licence, because the requirements of import licence, income-tax clearance, proof and all that come under the Sea Customs Act, and it is notwithstanding any such provisions that they are arming the Customs-collector with such blanket powers. Therefore, a correct reading of this amendment must suggest to the hon. Minister that 'notwithstanding anything contained in the Sea Customs Act' would mean that even the necessity to take out an import licence can be dispensed with if the Customs-collector chooses to accept a bond. Where is it stated otherwise?

Take even the question of punishment. Again, I am relying only on this expression 'notwithstanding anything contained in this Act'. Forfeiture of the bond may bring in its train a number of other punishments. There may be prosecution. All that can be taken away because when you have a saving clause saying that no rule, statute or regulation will bind in so far as the exercise of the discretion by the Customs-collector is concerned, where is the question of any law?

I put it this way. A, an importer, imports by managing funds from outside and without reference to the foreign exchange regulation, some

[Shri V. P. Nayar]

articles and brings them to the port of Bombay. The goods are of the value of Rs. 50,000. These are goods for which the import licence will be sold at 300 per cent in India. I do not say that it is legal, but the fact remains that there are several such articles. For example, some of the chemicals today are sold at 500 per cent. In such a case, is it not open to the Customs-collector, taking cover under this provision, to take a bond for the value, may be Rs. 50,000 and then allow it inside the country? In such a case, a merchant who executes a bond for Rs. 50,000, which is the value of the articles which he has imported, can sell away outside and earn Rs. 2,00,000 because the sale value will be 500 per cent and the value of the goods will be only Rs. 50,000?

Therefore, as I read it, there is the possibility of such mischief, and the hon Minister ought to have taken particular care to see that while it is desirable that in the interest of our trade and commerce, there should be the least delay in clearing goods from Customs, it is not merely desirable but necessary to go into the whole question

I shall give another example. I was searching the *Weekly Bulletin of Import Trade Control*, which is again a publication which becomes necessary on account of the Sea Customs Act. Here you have got a list of the licences issued. There is a case which is very typical, that is of art silk yarn. I have also the *Import Trade Control Policy* with me. A casual perusal of the names of the licensees would indicate that several of them would have got those licences by submitting false information, because the licences are clear and most of these firms are known to some of us. Here in the *Import Trade Control Policy*, I find that licences for import of art silk fabrics will also be granted against the export of embroidered and hand-stitched goods of indigenous art silk

fabrics. Another condition is that on prospective export, they can be licensed. On the ground of prospective export of a material on which art silk yarn has been used, art silk can be imported for full value—let alone the question of import licences being given to firms which are called established importers.

Therefore, it appears to me on going through the list of names—99 per cent of whom are only from Bombay—that the silk mills which have been specially considered on their assurance and a bond to the effect that they will have a prospective export have been given 100 per cent. In some cases, I find that when the entire population of weavers in South India, who have been traditionally using art silk and who have been having exports for a period of 10 or 12 years, have not been given one rupee worth of art silk yarn by way of direct import I find that 100 silk mills have been given licence, while there is no provision at all in the *Import Trade Control Policy* for its being given to silk mills. It is very clearly specified

I find another name—I do not want to disclose the name here—of a big firm in Madras which has been given import licence for art silk yarn to the value of Rs. 2½ lakhs on a prospective export of only handkerchiefs. You know very well that embroidery on handkerchiefs will not consume more than half an anna worth of art silk yarn so that you can just calculate how many handkerchiefs will have to be exported for Rs. 2½ lakhs. He is doing so because the only requirement is that he should execute a bond. He can calculate the value of 200,000 or 500,000 handkerchiefs and execute a bond for, say Rs. 50,000. What does he lose? Because he is getting import licence for Rs. 2½ lakhs, he can with impunity go and pay Rs. 50,000, even if it came to a question of forfeiting the bond. I can point out many instances, because these are well known firms, which have been known not merely for their tax evasion but also

for manipulation of import matters
But I do not want to take the time of
the House

Therefore, my submission, is that in such cases where there has been some departure from the rules which require observance of certain formalities in the matter of qualifying oneself for import licence, it is impossible under the present law to prevent abuse. As is well known, when articles are selling at 400—500 per cent of the import value inside our country, all rules, regulations etc framed under the Sea Customs Act, that is, the original Act which is now sought to be amended can just be ignored if a Customs-collector were to think or were to exercise his discretion in a particular manner and the goods are allowed

It does not merely confine itself to imports. It applies in the case of exports also. The hon Minister referred to tea. We know that when we have to go outside we have to have inoculation and vaccination certificates. Would it be justifiable to arm the Customs officials to allow Indians to go abroad without such certificates? Is it not something like that?

Mr Deputy Speaker This is not clear to me. The hon Member will kindly try to explain. So far as I could understand it the authority that was being given to the Customs officer was that he might get a bond from the importer or exporter for the duty that was to be charged subsequently if at the time the goods were imported or exported the documents that could adduce proof as to the amount to be charged were not readily available. So far as the actual authority to import or export is concerned, that is a separate matter altogether—so far as I can think of

Shri V. P. Nayar. If that were so and the hon Minister could give me an assurance to that effect, I can agree. But certainly the courts of our land are not bound to agree because the language of the clause is ambiguous. What does it say?

‘Notwithstanding anything contained in this Act or such other law’—

It takes away the operation of every other legal provision—

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 Customs-collector approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond”

My submission is that all such things as are referred to are things coming under the Sea Customs Act or rules framed thereunder. When we have an amendment whereby notwithstanding any such provision there is a power given to the Customs-collector, how does it operate? That is my real doubt. And when I was expressing this doubt I pointed out instances in which the rules and regulations could be ignored if the Customs-collector chose to exercise his discretion in favour of a particular person. As we know very often it does happen if one chooses to do that, then there is nothing under which you can proceed against anybody. I could have understood if along with this the value of the bond had been fixed at ten times the value of the articles imported. Ten times the value would have been justifiable.

Firstly there is no indication or direction as to the amount for which the bond has to be taken. Secondly there is no indication or direction as to what should be done in case the import is brought in by any surreptitious method. Thirdly, there is clear indication that in case there is such import and if goods are allowed to be imported after taking the bond, the other consequences of law will follow. When once we exempt all Acts and Regulations in the matter of this bond, then my submission is that it is very difficult for Government to check malpractices the more so in the pre-

[Shri V. P. Nayar]

sent context. As I have explained, when goods are selling at 500 or 600 per cent of their value, it is absolutely impossible, knowing as we do that several of our importers can manage—whatever may be the strict control exercised by the Reserve Bank in getting foreign exchange—to bring into our country some of these goods which our country needs. Most of them have private accounts elsewhere earned by nefarious means during the past so many years and they can certainly bring in these goods.

Supposing I am an art silk mill owner. Out of the money which I have secreted in some bank, in the name of A, B or C I bring in some art silk yarn. I convince the Customs authorities that but for taking it inside the mill my mill will not work and I will have naturally to retrench the workers. It is a justifiable ground for the Customs Collector to allow the goods to be taken away from the customs on taking a bond. But, how do you prevent mischief? This is a point which I would like the hon. Minister to explain. May be the way in which he is nodding his head in approval seems to be such that he agrees with me.

Mr. Deputy-Speaker: That we will see.

Shri V. P. Nayar: I think he really meant that.

Mr. Deputy-Speaker: No conjectures and guesses, please.

Shri V. P. Nayar: I once again want to put before the House a concrete case (*Interruptions*). Even in our import trade control policy, articles like art silk yarn which have been denied to the hundreds of thousands of our weavers have been given to monopoly manufacturers even against the rules in force, as I have shown. In such cases I am sure that this particular Bill will bring many more hardships; and, also, it will give chances for those who have a tendency to be corrupt to indulge in

the exercise of powers too often and justify them by the provision which we are having in this Bill—by which we are supposed to give a complete go-by to all legal provisions.

Shri Heda (Nizamabad): Mr. Deputy-Speaker, Sir, the hon. Minister while piloting this Bill has stated that the amendment sought to this Act is a simple one. Whether it is really a simple one or a drastic one is a matter, I think, of interpretation. If we take only that aspect, as he has interpreted, that what was being practised is being legalised, then, it would look a very simple provision, though one would fail to understand why the language is used in such a way as to give much wider powers than was even otherwise desired.

There is another aspect to which I would like to refer. Mr. Nayar was very eloquent and he has brought before the House (*Dr. B. Gopala Reddy*: Always) certain matters concerning it. He has mentioned one or two lines where the profits are so huge that it is quite easy for anybody to execute a bond and also to pay the penalty. That penalty and the execution of the bond are just matters of calculation. They can very well be accommodated under the huge profits that one would get through these imports.

I would add one more item to this and that is arecanut. It is also an article which today has got a profit value. My own information is that the profits are 400 to 500 per cent. because of the rigorous import policy which has got to be so necessarily in the interest of national development. There are certain articles which have got a very huge profit aspect and, therefore, the powers given in this Bill to the Customs Collectors are such that it is quite possible that the Collectors and merchants, if they work as a team, can defeat the very purpose of the Bill, and the rigorous import policy. It is more than possible. Not only we will lose the foreign exchange

but it will also create a situation and a climate not congenial for the healthy growth of trade and commerce.

One thing is there and that sometimes baffles us. It is this. Whenever such blanket powers are given to the officers in the Customs Department or the Income-tax Department, it is not the business community that resents it. They rather like it.

An Hon. Member: Yes

Shri Heda: When we were dealing with taxes like the Wealth Tax and Estate Duty, we mentioned that the business community is quite happy if more and more powers are given to the officers of the Income-tax Department or the Customs Department. Why is it so? Why are they not happy on relying upon the courts of law? Why are such powers generally given to Tribunals and not a provision made for appeals direct to High Courts? This is a big snag.

I think it is the duty of the sovereign body and more so of the Ministry to look into the question whether there is any possibility or whether there exists already a sort of unholy alliance between these two sectors, the trade and the customs or income-tax officers

Evasion of taxes and what we call corruption are two different problems that we are facing. Many times, it appears that they contradict each other. I think, quite often they do not contradict each other but rather help each other. If we look at it from this angle the verdict is not so happy.

I do not know why the Ministry is particular to use the words which Mr. Nayar said were vague—but I think he did not mean it—but which are very clear and give wide powers. Even if, for practical purposes, we have to give certain powers to those officers, we may give without such wide scope. I once again urge upon the hon. Minister to see that in the implementation, these two different interests do not

form a sort of a league and indulge in anti-national activity.

Shri Achar (Mangalore): Sir, I would like to say a word or two about the interpretation of the new section 195(B). The Statement of Objects and Reasons seems to contemplate only the clearance of goods. The Sea Customs Act, 1878 and several other enactments lay down certain requirements which have to be complied with before goods can be released by the customs authorities for export or import. I do not know what exactly the object of the Bill is but it looks from the Statement of Objects and Reasons that the question of import or export is not contemplated; it contemplates the acts to be done for the purpose of clearance. If so, the wording of the clause is not happy.

Shri Nayar gave the interpretation that goods could be exported and imported without licence. I do not think that Government is contemplating such a situation. Of course, the Minister will enlighten us on that point. If that is not the object, I think a small change in the section would be sufficient. The words 'import or export any goods or currency' may be omitted. The amended section will read thus:

"Where this Act or any other law requires anything to be done before a person can . . . clear any goods . . ."

The object of this Bill is only to avoid difficulties of clearance. I would request the hon. Minister to omit the words as suggested by me; that will give no scope for any interpretation as that of my hon. friend, Shri Nayar. We are in great difficulties with regard to foreign exchange and we want to expand our export activities. It will be very good to make the rules as easy as possible.

Again, the officer is not bound to release the goods. Absolute discretion is given to him to take adequate security. If the Government intends that

[Shri Achar]

even in extreme cases where there may be no licence at all, there should be no difficulty, then it can also be remedied because the word used is 'may'. By having probably certain Government orders restricting this discretion or laying down rules as to what should be the amount of security, the difficulties caused by this interpretation could be avoided. Shri Nayar himself has suggested ten times the value of the goods or a very large security. Therefore all these difficulties would be avoided. My hon. friend, Shri Nayar and I rarely agree; at least on this point we agree.

Shri V. P. Nayar: When you agree, I am doubtful of my wisdom.

Shri Achar: If the intention of the Government is only to avoid difficulties of clearance, the words in the clause 'import or export any goods or currency or' may be omitted.

16:35 hrs.

Shri Tangamani (Madurai): Sir, Shri Nayar referred to the import of art silk yarn because it affects a section of the handloom weavers in the southern districts of Madras. I thought that I might also add to the mischief . . .

Mr. Deputy-Speaker: Add to the mischief.

Shri Tangamani: Mischief may be added on by the inclusion of such a clause to the Sea Customs Act. In the Import Trade Control Policy of the Government of India for the Licensing Period, April to September, 1958, appendix 42, clause 3 reads that licences will normally be granted on the basis of actual exports effected on or after the 1st January, 1958 and that art silk mills may however be given such licences in anticipation of exports subject to their furnishing a bond acceptable to the licensing authorities. I would like to know from the hon. Minister what is the basis of the export for the current licensing period and whether licences

are being issued to those various importers as given in the statement showing the particulars of import licences issued by the Chief Controller of Imports and Exports during the week ending 12th July, 1958.

Mr. Deputy-Speaker: This would be outside the scope of this Bill.

Shri Tangamani: I will come to the next point. If this is going to be the policy, then I am afraid persons other than those who were getting import licences for the period ending 12th July, 1958, persons from the south are unlikely to get the permits

Another point is this. In the Import Trade Control Handbook on rules and procedures, appendix 7 deals with the form of bond for clearance of restricted goods. Here again I find that this bond is taken only for the purpose of clearance. The condition of the bond is that these importers bind themselves to a certain amount. The form really contemplates clearance of the imported goods. But as pointed out both by Shri Achar and Shri Nayar, the wording of the section is unhappy. Even though there is repetition, I would like to point out that it may lead to mischief. Sir, it was pointed out that the amending Bill will only cover clearance and may not cover export or import. But this is what it says. Notwithstanding—not what is contained in the earlier part but—anything contained in this Act or such other law, grant. . . .

Mr. Deputy-Speaker: It has to be read with the first part. That is to say, this Act or any other law requiring anything to be done by a person to import or export any goods . . . (Interruptions.)

Shri V. P. Nayar: Can 'Notwithstanding' be qualified? 'Notwithstanding' means notwithstanding.

Mr. Deputy-Speaker: "Notwithstanding" means notwithstanding, but notwithstanding what? Notwithstanding certain facts. It is related to the earlier portion.

Shri Tangamani: This "Notwithstanding" is so omnibus. It says

"Notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing the bond"

It also gives powers for the purpose of export and import, and he really pointed out also how export and import licences can be got and the amount that can be imported also in the case of artificial silk. So, unless those two words "import" and "export" are not deleted I am afraid this will be giving blanket power to the customs collector.

With these observations I oppose the Bill.

Dr B. Gopala Reddi: I thought the Bill would be accepted without any discussion at all unless there is a convention in the House that no Bill should be accepted without discussion.

This is purely an administrative matter. The import export policy is not involved in this. The customs collectors do not issue these licences. What has been obtaining for so many years now is being regularised because somebody expressed a doubt whether they had the power to take a bond.

Sometimes people would like to export things and they may say it does not attract any customs duty, but the customs collector might have a doubt whether it would attract, because in the case of export or import of woollen fabrics and things like that, certain categories are not subject to any duties but certain categories are subject to these duties. So, when there is a doubt he takes a bond and allows the export. Later on it is verified, it is sent to the laboratory, to the appraisers and all that for verifying the thing, and if it is cleared, it is all right; otherwise, he has to pay the penalty.

We are not interfering with section 167 of the Sea Customs Act, we are not doing anything with regard to the sections of the Sea Customs Act. All the penalties are there. In certain cases, the vessel is confiscated. Sometimes all the goods are confiscated, and then again a penalty of thrice the value of the goods also is levied. Section 167(8) says

Such goods shall be liable to confiscation and any person concerned in such offence shall be liable to a penalty not exceeding three times the value of the goods or not exceeding Rs 1,000."

All these penalties are there. They are going to be operated against culpable people. The only power now taken is that in doubtful cases, they give a bond and we clear the goods because we do not want any congestion because there is lack of warehouse accommodation etc, and later on it is verified. If they have to pay something they would pay, or of course, if they do not pay in time, they would be levied a penalty and things like that.

So it is only a procedural thing, regularising what is in practice today, because some doubt has been expressed in some quarters, and it has nothing to do with the licensing authority. We are not going to favour anybody. They must produce a licence if a licence is necessary and they have to pay the duty. The correct duty has to be collected. So, there is no question of any discretionary powers and things like that except taking a bond and releasing the goods.

Otherwise what happens? Suppose we do not give the power and the present practice is not followed. The goods will be detained for days and days.

Shri V. P. Nayar: Why?

Dr. B. Gopala Reddi: Suppose he has lost his licence and the customs collector has reason to believe that he has a licence but he is unable to produce it on the spot. Then, of course, he will try to get a duplicate.

[Dr. B. Gopala Reddi]

etc., but in the meantime the goods will be held up for ten, 15 days. What would happen to the goods? Should they be lying in the docks?

Shri V. P. Nayar: They are not perishables.

Dr. B. Gopala Reddi: They may be perishables. After all, certain discretionary power is being given to the customs collector. In such doubtful cases he takes a bond and releases the goods. If he does not produce the licence in ten or 15 days as is incorporated in the bond, he is subject to penalty or any other thing.

Shri Heda: That penalty is the snag. If he does not produce the import licence, he should be asked to surrender the goods

Dr. B. Gopala Reddi: Or thrice the value of the goods. Suppose it is worth Rs. 10,000, then he will have to pay a penalty of Rs. 30,000. The Sea Customs Act has long provisions about these penalties. Section 167 is very long covering sixteen pages, and we are not touching any of the provisions of section 167.

So, it is only a procedural matter. Otherwise, the whole thing would be held up and it is not good for the party. Suppose it comes by air, sometimes some parcels come, and he has to produce the licence immediately. He may say: "I execute a bond now, and tomorrow I shall produce the licence". Unless this discretionary power is there, the customs collector will have to say: "Under the rules you will have to produce the licence; otherwise, we will not clear the goods at all."

There is a categorical provision in the Tea Act, for instance, about the export licence. So, notwithstanding that, when the collector is satisfied, he can take a bond, and the bond will contain all the conditions, and subject to these conditions the goods

will be released. So, it is a concession to the business people. We are liberalising the provisions of the Act. So, it is a concession.

Shri V. P. Nayar: That is precisely our complaint. You are doing it in the most undeserved manner.

Dr. B. Gopala Reddi: What is the alternative? The whole thing would be held up, and we do not have space in some of these docks there. It is only regularising the procedure, and there is no controversy about it. It is really a concession to the business community

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clauses 1 and 2, the Enacting Formula and the Title stand part of the Bill".

The motion was adopted.

Clauses 1 and 2, the Enacting Formula and the Title were added to the Bill

Dr. B. Gopala Reddi: I beg to move:

"That the Bill be passed".

Mr. Deputy-Speaker: Motion moved:

"That the Bill be passed".

Shri V. P. Nayar: I am sorry that the hon. Minister started replying by saying that if there was no convention that a Bill should be opposed, such opposition would not have been there. I thought that he was trying to establish a new convention

in the House that whatever the Opposition says, however reasonable it may be, Government is in duty bound not to accept it. Unless he wants such a convention to be established, there is no rhyme or reason as far as I can see why the hon. Minister should have come forward with the strange logic which I heard in his speech.

He says that there has all along been this latitude shown by the customs collector. We know that every act which involves the movement of property and which conforms to the definition of theft is not a theft unless it is brought to the court and established. That does not mean that we give a complete licence to all persons to indulge in thieving.

What is the necessity now? If for all these years Government have been allowing the customs collector to exercise his discretion what is the big necessity at present to come and regularise it? And the hon. Minister seems to understand little about the words used 'of this enactment' and other enactments. "This enactment" must necessarily mean and can only mean

Mr Deputy-Speaker: Is it necessary that such language should be used?

Shri V. P. Nayar: I am subject to correction.

Mr Deputy-Speaker: When it can be avoided, why should it be used?

Shri V. P. Nayar: It is all in good spirit. I did not mean any offence at all.

Mr Deputy-Speaker: But the words would not convey that spirit.

Shri V. P. Nayar: The common sense meaning of those words may be taken.

It is very specifically stated "Notwithstanding anything in this Act" He was referring to the Tea Act, the Coffee Act and other Acts, but "this Act" must necessarily mean the Sea Customs Act. What is the provision, what is the other enactment under which you can get an import licence? There is no other Act. He was saying section 167 would not be attracted.

The hon. Minister said that section 167 of the Sea Customs Act, to which he made reference, will not be attracted. How? I do not know how he can reconcile his position. Because, he is specifically excluding it from all the laws on the subject, including the Sea Customs Act by the use of the words "Notwithstanding anything contained in this Act." It does not mean this amendment "This Act" must mean the Sea Customs Act to which this Bill is an amending Bill. So that argument has no force at all.

Secondly, about punishment, if there is a bond and a forfeiture of the bond today punishment also follows under the provisions of the Sea Customs Act. So that when once you give a latitude

Dr B. Gopala Reddi: When once you take a bond, it is governed by the conditions laid down in the bond itself. But now we are going to take action under the Act also—the bond and the Act.

Shri V. P. Nayar: But that is excluded. According to our interpretation such Acts are excluded, and I am perfectly justified in submitting this argument, because I find that I am in the company of no less a person than Maxwell. I went through all the provisions on how a statute has to be interpreted, and I would recommend to the hon. Minister also to read the chapter on the Repugnancy of Provisions and Abrogating Earlier Provisions. That will give him a clear understanding, and with that understanding in view I can find no better authority than Maxwell, much less in our Library.

[Shri V. P. Nayar]

When you have this particular Bill it is necessary for us to consider how it will affect the existing legislation in the matter of import, forfeiture, bond, punishment and everything. If you take away all laws, regulations and rules in force and say "notwithstanding anything contained therein", the Customs Collector has the discretion. And how is the discretion exercised? By circumstances which, according to his discretion, should be such as to enable him to pass an order on the bond. I submit that in such cases clear and specific provisions ought to be made before a discretion is vested. Otherwise, in the absence of clear and specific provisions limiting the exercise of discretion by an executive officer, no courts are going to justify the exercise of a discretion. Because, the courts have always held that the exercise of discretion by an executive officer must be on the same basis as the courts exercising discretion. Do we have anything in this? I regret that despite all our efforts, the hon. Minister does not seem to understand the distinction between this particular Bill and the other laws.

I would once again urge upon him that in his wisdom he may reconsider this. There is nothing lost; because, he himself says that we are having it for a period of time. If by five o'clock it is not passed, the Heavens are not going to fall, as he himself agrees, and the import policy is not going to be changed. Nor are we having any crisis here? But with the possibility of mischief, with its great potential for mischief, I submit that such a blanket power cannot be given, and it will be very dangerous to set up a precedent investing the Customs official or, for that matter, any other officer with power to give the go-by to all enactments and statutes and asking him to exercise his discretion merely based on certain circumstances and facts as he understands them.

I would once again appeal to the hon. Minister that in the interests of our country's economy, in the interests of our country's trade he should reconsider the provisions of this Bill and bring forward another amendment, as otherwise it will be said later on about him that he was responsible for this legislation.

Dr. B. Gopala Reddi: The Sea Customs Act, as it stands at present, does not have a provision about taking bonds and clearing the goods. But the Collectors, in their discretionary powers, are following that practice. Otherwise, as I said, difficulties would arise and there will be a standstill in business. And the Attorney-General seems to have expressed a doubt whether they had the power. The Collectors thought they had the power, because it is a matter of procedure how the goods have to be cleared and things like that. But the Attorney-General seems to have expressed a doubt whether the Collectors had those powers of taking a bond. Now, in order to strengthen their action by legal enactment we have come forward with this amending legislation which only is a procedural matter.

Whatever Mr Nayar has said about other things, I did not quite understand. It does not matter. Anyhow, as I said, the Attorney-General expressed a doubt, and we are trying to remove that doubt.

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

The motion was adopted

16.55 hrs.

MANIPUR AND TRIPURA (REPEAL OF LAWS) BILL

The Minister of Cooperation (Dr. P. S. Deshmukh): Sir, I beg to move:

"That the Manipur and Tripura (Repeal of Laws) Bill, 1958, be taken into consideration."