

(1995) 11 CAL CK 0001

Calcutta High Court

Case No: C.O. No. 8580 (W) of 1994

India Sales International

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

Date of Decision: Nov. 23, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 165, 165(1), 165(5)
- Customs Act, 1962 - Section 10(2), 100(2), 105, 105(2), 110
- General Clauses Act, 1897 - Section 27
- Partnership Act, 1932 - Section 18, 19

Citation: 100 CWN 429

Hon'ble Judges: Satyabrata Sinha, J

Bench: Single Bench

Advocate: A.K. Sen and S.K. Ghosh, for the Appellant; N.C. Roy Chowdhury, for the Respondent

Final Decision: Dismissed

Judgement

Satya Brata Sinha, J.

Both these writ applications involving common questions of law and fact were taken up for hearing together with the consent of parties, and are being disposed of by this common judgement. Seizure of some goods belonging to the petitioners by four different seizure memos on 3 different dates by the authorities of the Customs Department is the subject matter of these writ applications.

2. Shorn of all unnecessary details, the fact of the matter is as follows

3. M/s. Tirupati Trading Corporation (hereinafter referred to as Tirupati) and India Sales International (hereinafter referred to as India Sales) despatched 200 bags refuse for joss sticks and 340 bags machine finished knife handle as well as 200 bags machine finished paper weight made of sandal wood from Kanpur Railway Station

for exporting the said goods on 14.2.94 wherefor shipping bills and/or bills of entry were prepared being No. EF-787 for 200 bags of refuse for joss sticks for Tirupati and Bill of Entry No. EF-784 for 140 bags machine finished knife handle of sandal wood, bill of entry No. EF-785 dated 14.2.94 for 200 bags machine finished knife handle of sandal wood and bill of entry No. EF-786 dated 1.4.2.94 for 200 bags machine finished paper weight of sandal wood were prepared so far as India Sales is concerned. Both the aforementioned consignments reached Howrah Station on 16.2.94. The said consignment allegedly were delivered in a mixed condition. The handling agent of India Sales and partner of Tirupati took delivery of the said 740 bags through the local clearing agent. Commercial Tax Officer at Howrah allegedly gave clearance for the paid consignment and necessary endorsements on the railway receipts were made.

4. The said consignments were loaded in 5 trucks. However. 50 bags refuse for joss sticks of Tirupati were allegedly mixed up with the consignment of India Sales. One truck containing 150 bags on account of India Sales was seized arid it is now stated that out of the said 150 bags, 50 bags containing refuse for joss sticks belonged to Tirupati.

5. Admittedly, the aforementioned consignments were stored in the warehouse of M/s Macneil Barry Kilburn Ex-Employers Transport Company Co-operative Societies Limited in the name of the clearing agent of the petitioners being M/s. Sk. & Pandit, including 50 bags in excess on account of Tirupati, treating it to be the consignment on account of India Sales. On 22.2.94 the clearing agent took delivery of 150 bags of refuse for joss sticks, 200 bags machine made knife handles made of sandal wood from India Sales and excess 50 bags received on account of India Sales treating the same to be refuse for joss sticks was also taken, and against the bill of entry No. EF-787 dated 14.2.94, 200 bags of refuse for joss sticks was offered for export along with the bill of entry and 200 bags of knife handles on account of India Sales against the bill of entry No. 785 dated 14.2.94 were offered for export along with the bill of entry purported to be in terms of Sections 50 and 51 of the Customs Act. The said consignments were brought in dock and presented for clearance for export and loading order. On 23.2.94, the said consignments were cleared for export and the same were loaded in the containers. On 26.2.94 the said consignments loaded in the containers were detailed by the customs authorities. On 1.3.94, samples were drawn from the respective containers by the customs authorities in presence of the petitioners" representatives. On 3.3.94, the consignments of the petitioners were seized by the customs authorities on the allegation of illegal attempt to export by mis-declaration on the ground that the same were liable to be confiscated under the" provisions of the Customs Act, 1962. On 10.3.94, a truck along with the goods which was seized by the sales tax authorities on 16.2.94 were again seized by the customs authorities. The said goods were unloaded from the truck and allegedly it was found that 50 bags refuse for joss sticks of Tirupati were lying in the bottom portion of the seized truck and the regaining 100 bags of machine finished knife

handles and semi-machine finished paper weight made of sandal wood belonging to India Sales were lying on the upper portion of the truck. The petitioners alleged that the fact that 50 bags of refuse for joss sticks in the truck seized by the sales tax authorities was not known to them before the said seizure. On 11.3.94, the customs authorities by a letter detained the remaining 190 bags in the private warehouse on the allegation that the said goods are contraband foreign articles. On 7.4.94, 190 bags which were detained in the private warehouse were seized by the customs authority on the allegation of mis-declaration and the goods are liable to be confiscated under the Customs Act. Two supplementary affidavits have been filed in these writ applications wherewith notices dated 18.8.94 had been annexed. The said notices were issued to India Sales, M/s. Sk. & Pandit, Chandra Prakash Bharrech, Md. Ikhlaque Waris. it may be recorded that in the meanwhile Chandra Prakash Bharech, partner of Tirupati and Md. Ikhlaque Waris, partner of India Sales were detained under COFEPOSA and the said notices were served upon them in the Presidency Jail. On 18.8.94 attempt was made to serve the said show cause notice at the office of Tirupati, but the same could not be served as the office was found closed. Again, on 20.8.94, attempt was made to serve the said notice upon Tirupati, but again the said service could not be effected owing to closure of the office. The said notice was, therefore, hung up in the notice board of the Customs on 20.8.94. On 10.9.94, show cause notices were allegedly served by registered post on India Sales.

6. Mr. A.K. Sen, learned senior counsel appearing on behalf of the petitioner India Sales and Mr. S.K. Ghosh, learned counsel appearing on behalf of M/s. Tirupati, have raised several contentions in support of these applications.

7. In the instant writ applications the validity of the show cause notices and/or the initiation of the confiscation proceedings having not been questioned, learned counsel appearing on behalf of the petitioners had confined, their submissions with regard to the legality and/or validity of the purported seizure, *inter alia*, on the following grounds :

(1) The show cause notice with regard to the seizure dated 3.3.94 and 10.3.94 having not been served upon the owners of the goods within a period of 6 months, the same was illegal and thus, the petitioners are entitled to return of the seized goods in terms of Section 110(2) of the Customs Act. (2) There had been no reason to believe that such seizure was made as contemplated u/s 110(1) of the Act, either by the customs authorities or by the sales tax authorities and thus the seizures made on 16.2.94, 4.4.94, 10.3.94 and 7.4.94 are bad, illegal and without jurisdiction. (3) In Tirupati, it has also been urged that the seizure made by the commercial tax authorities is also bad as no reasons to believe has been recorded for such seizure.

8. Mr. Roychowdhury, learned counsel appearing on behalf of the respondents, on the other hand, submitted that in terms of 1992-97 Import Export Policy of the Central Government, restriction for export had been withdrawn except in respect of lists which are contained in the negative list and in relation to the goods export

whereof was completely prohibited. Item No. 2 of Chapter XVI of the said Policy prohibits export of sandal wood in any form except, (i) fully finished handicrafts and (ii) machine finished sandal wood product. It was, therefore, urged that the petitioners' products must be machine finished and not either unfinished or semi-finished. It is stated that the purported sandal wood knife handles did not answer the description of machine finished sandal wood products and the same were merely semi-machine" finished and there had been no handle nor any grove has been made for affixing the knife. With regard to service of notice, it is submitted that the petitioner has failed to discharge the onus of proof upon it in this regard. It is submitted that the notices have been served upon the partners and agents of the firms, and as such, the same would also be a valid service within the meaning of Section 124 read with section 153 of the Act. Learned counsel contends that in terms of sub-section (3) of Section 147 of the Act, a legal fiction has been created in terms whereof the agents were deemed to be the owners of the goods. Learned counsel contends that for the purpose off effecting a service, only sending the registered cover by post would meet the statutory requirement. It was next contended that show cause notice having been issued, the seizures cannot be challenged indirectly as the petitioners are entitled to raise all contentions before the competent authority. Learned counsel, however, conceded that joss sticks being not a sandal wood product, the same is not a prohibited item for the purpose of export.

9. Learned Counsel has also urged that in view of definition of "smuggling" as contained in Section 239, the petitioners may be found to be guilty of making an attempt to illegally export the said goods, and thus, the same were liable to confiscation under Sections 112 and 113 of the Customs Act. With regard to the contention that the said goods which were cleared could not have been seized from the containers, learned counsel submitted that in case of fraud or mistake, the customs authorities cannot be said to have no power at all in this regard. It was also contended that the reasons to believe need not be a belief on the part of the court but such belief must be considered as occurring in the minds of the seizing authority. Seizure and belief, according to leaned counsel, should go together.

10. Before proceeding to consider the respective submissions of the learned Counsel for the parties, the relevant provisions of the Customs Act may be noticed.

11. Section 2(11) defines "customs area as meaning the area of a custom station including any area in which imported goods or export goods are ordinarily kept before clearance by the Customs Authorities.

12. Section 2(18) defines export with its grammatical variation and cognate expression as meandihg taking out of India to a place outside India.

13. Section 2(22) of the Act defines "goods" as inter alia including vessels, stores, baggage.

14. Section 2(34) defined proper officer in the following terms :

"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.

15. Section 2(39) defines "smuggling" in the following terms :

"Smuggling" in relation to any goods, means any act or omission which will render such goods liable to confiscation u/s 111 or Section 113".

16. Section 47 of the Act provides for clearance of goods for home consumption which reads thus :

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.

17. Section 50 provides for entry of goods for exportation and Section 51 provides for clearance of such goods. Sections 50 and Section 51 of the said Act read as follows :

Section 50. Entry of Goods for exportation.

(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 or subscribe to a declaration as to the truth of its contents.

18. Section 51. Clearance of goods for exportation.

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.

19. "Section 110 empowers the authorities to seize goods in the event the Proper Officer has reason to believe that any goods are liable to confiscation under the said Act. Proviso appended to sub-section (1) deals with a situation 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."

20. "Section 100(2) stipulates that where any goods have been 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 or the goods, the goods shall be returned to the person from whose possession they were seized. Proviso appended to the said

provision, however, empowers the Collector of Customs to extend the said period not exceeding six months."

21. "Section 123. puts a burden on the person inter alia from whose possession, the goods were seized and/of seen of where such seizure was made in the reasonable belief that they are smuggled goods."

22. "Section 124 of the Act envisages issue of show-cause notice before confiscation of goods. Clause (a) of Section 124 provides that such notice should be given in writing informing the concerned person the ground on which the said goods are proposed to be confiscated of a penalty is proposed to be imposed. Clause (b) provides for an opportunity of making, representation. Clauses (b) and (c) of the said provision envisages that an opportunity of making representation and reasonable opportunity of" being heard in the manner should be provided to the proceeding. The proviso appended to the said Section provides that notice referred in clause(a) and representation in clause(b) may in the request of the concerned authority may be oral."

Section 111(c) provides that :-

23. "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." shall be liable to confiscation Section 113(d) provided that :

24. "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." shall be liable to confiscation.

25. Section 147 provides for liabilities of the principal and of agent respectively in the following terms :

Section 147. liability of principal and agent

(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.

(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 of the goods shall also be liable as if the thing had been done by himself.

(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 purpose of this Act, such person shall, without prejudice to the liability of owner, importer or exporter, be deemed to be the owner, importer or exporter of such goods for such purposes :

26. Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any willful 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."

27. Section 143 deals with mode and manner service of order; decision; the manner of service of decision, summons or notice etc. which may be effected i.e. :-

(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) order, decision, summons or notice which cannot be served in the manner provided in clause (a), by affixing it on the Notice Board of the Customs House.

28. On the backdrop of the aforementioned provisions the respective contentions of the parties may be considered.

29. It is not disputed that the both the petitioners are partnership firms.

30. It is also not in dispute that in terms of the provisions of Indian Partnership Act, the partners cannot claim any independent ownership with regard to the properties belonging to the partnership firms. They have merely a right to share the profits earned by the said partnership business.

31. Customs Act, however, is a special statute. Provisions of the said Act shall prevail over the provisions of the Partnership Act, Section 147 of the Act deals with liability of the principal and agent. It empowers the agent to do all acts which were required to be done thereunder by the owner, importer or exporter of any goods. Sub-Section (2) of Section 147 of the Act creates a legal fiction that such things done by any agent unless the contrary is proved would be deemed to have been done with the knowledge and Consent of owner, importer or exporter as a result whereof the owner, importer or exporter of the goods shall also be liable as if things have been done by himself.

32. Sub-Section (3) of Section 147 raises another legal fiction that any agent acts by reason of any authority of the owner, importer or exporter of any goods for all or any or the parties of the act such persons would be deemed to be owner, importer or exporter or such goods for such purpose.

33. It is now well known that a legal fiction must be given its full effect. In *East End Dwelling Company Ltd. v. Finsbury Borough Council* reported in 1951(2) AER 509 Asquith, J. stated the law thus :

If one is bidden to treat an imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939

level of rents. The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit one's imagination to boogie when it comes to the inevitable corollaries of that state of affairs.

34. It may be true the partners of the petitioners' firm were not described as such in the show cause notice. But it is neither denied nor disputed that they are partners. As partners they are the agents of their firms in terms of Section 18 of the Indian Partnership Act. In fact, a partner of one firm is the clearing agent of the other firm.

35. Moreover, it is not disputed that the copies have been served upon the clearing agent and/or their representatives who had been representing such clearing agents. In law, it is not necessary to serve notice upon the agent stating as to in what capacity he is acting if the facts are not disputed. In the instant case, the basic fact namely, the partners of petitioners firm were detained under COFEPOSA in connection with seizure and they had been served with the notices is not in dispute which raises a presumption that they have been so detained as having been committed an offence on behalf of the partnership firm either as their partners and/or as agents. Such act of the partners and agents of the partnership firm are binding on the partners.

36. Every partner in law is the general and accredited agent of the partnership, may, consequently, bind all the other partner by his acts in all matters which are within the scope and object of the partnership. The general authority of a partner as agent of the firm has been designated as implied, ordinary and ostensible. Sub-section (2) of Section 19 of the Indian Partnership Act limits the power of a partner to bind the firm. Therefore, there cannot any doubt whatsoever that the partners of the firm are entitled to accept notice on behalf of the firm. It is admitted that M/s. Sk. and Pandey had been acting as an agent of both the firms as regards the exports of the consignment in question. Moreover the rights and liabilities of the partners would depend on the stipulation in the partnership deed. The partnership deeds have not been produced before this court.

37. Section 50 deals with the entry of goods for exportation and provides that the exporter of any goods should make entry thereof by presenting, to the proper officer in the case of goods to be exported in a vessel or air craft, a shipping bill.

38. Sub-section (2) casts the mandatory duty on the exporter to make and subscribe to a declaration as to the truth of its contents while presenting a shipping bill. Section 51 provides for clearance of goods and stipulate that if 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, he may make an order permitting clearance and loading of goods for exportation. An order passes u/s 51 does not exonerate the exporter from doing his duty under the Law. If any export is or attempted to be made contrary to the provision of the licence, the export would be illegal. Clearance

u/s 51, therefore, should not prevent the authority from taking other steps open to them under the Statute nor any order u/s 51 can stand as an impediment to adjudication under the provision of Chapter 14 of the Act.

39. The goods were not seized from the ship. They were seized from dock area. It may be true that Section 129D empowers the Board or Collector to call for and examine the records of any proceedings in which an authority subordinate to it, has passed any decision or order under the Act.

40. In *Jain Sudh Vanaspati Limited v. Union of India* reported in 1982 Excise Law Times, page 43 upon which reliance was placed by Mr. Sen, a division bench of the Delhi High Court while considering the provision of Section 47 of the Act stated the law thus :

Considering Section 47 of the Customs Act in the light of the legislative history, we are clear that the section attaches finality to the satisfaction of the officer that the goods are not prohibited. The finality cannot be disturbed unless the Department successfully shows that there was fraud or deliberate suppression. The respondents have alleged that the containers were painted and thus the original identity of the drums was suppressed by the petitioners. This allegation is on the assumption that stainless steel drums was a prohibited item. We do not agree. The law as it then stood, did not require of an importer to disclose the nature of the material or the price of the containers. A new requirement in this regard was introduced for the first time by public notice dated September, 6, 1979 i.e. after the importation of oil by the petitioner. We, therefore, hold that the proper officer's satisfaction, that the goods were not prohibited goods, had reached finality by the time the goods were cleared.

41. The said decision has, thus, been rendered in a different fact situation.

42. The aforementioned decision has been followed by a division bench of Bombay High Court in *Union of India & Ors. v. Popular Dyechem* reported in 2B Excise Law page 63. The Bombay High Court held that Section 47 of the Act attached finality upon the satisfaction of the officers that the imports in question are not prohibited.

43. In those cases no seizure was effected. But a show-cause notice was issued and issue was decided by the concerned authority as an original adjudicating authority instead of exercising the power of revision or review in terms of Section 129 of the said Act.

44. However, in *Madan Lal Steel Industries Ltd. v. Union of India* reported in 1991(56) ELT 55, a Division Bench noticed the decision by Kanak Raj, J. wherein it was observed :

The argument that such mistakes can be corrected only by resorting to Section 1290 of the Customs Act does not appeal to us because we are only concerned with seizure of goods.

45. The Division Bench considered the decision of the Delhi High Court in Jain Sudh-Vanaspati Ltd. (supra) and Popular Dyechem (supra) and noticed that in the Bombay High Court judgement the Assistant Collector who had cleared the goods u/s 47 of the Act had done so after physical verification of the goods and yet a certain proceedings to confiscate the goods had been started. In the case before the Delhi High Court notices under Sections 28 and 124 of the Act had been issued and they were under challenge which shows that proceeding for confiscation had already been initiated and along with the proceedings for confiscation, notice for payment of duty short-levied had also been issued. The division bench of Madras High Court also noticed a full bench decision of this Court in Uresian Equipment and Chemical v. Collector of Customs reported in AIR 1980 Cal 888 and followed the same. The division bench held :-

Both the Bombay Court judgement in the case of Union of India and others Vs. Popular Dyechem, and the Delhi Court judgment in the case of Jain Shudh Vanaspati Ltd., etc. Vs. Union of India and Others, on their peculiar facts, are good for taking notice of the order u/s 47 of the Act and saying accordingly that unless that order was set aside, no proceeding for confiscation should have been taken. It is difficult, however; to accept this as a law as once there is a clearance u/s 47 and/or Section 51 of the Act is ordered, unless that order is set aside, the proper officer cannot act on his reasonable belief under Sections 110, 111 or 113 of the Act. The Calcutta Full Bench judgement in the case of Euresian Equipments and Chemicals Ltd. and Others Vs. The Collector of Customs and Others, has, in substance, pronounced that such proper officer's satisfaction for confiscation proceedings shall remain unaffected by the order of the proper officer permitting the clearance of goods u/s 51 of the Act. That view is in consonance with the basis of the belief that goods have been improperly imported or exported and such belief being in relation to the goods and in rem, it will not be correct to read in the orders u/s 47 or Section 51 of the Act any inhibition upon the jurisdiction of the proper officer to act under Sections 110, 111 and 113 of the Act. The petitioner appellant came to this Court challenging the seizure without waiting for the notice u/s 124 of the Act. Such materials upon which it will be possible to predicate whether there are reasons for misrepresentation or fraud in importing or exporting of any prohibited goods or dutiable goods in violation of the conditions under which such import or export is permissible, will be available only in the notice, which, as we have already noticed, has to contain the grounds on which the proposal to confiscate is based, to afford an opportunity to the importer or the exporter or any other person from whose custody such goods are seized, to make a representation in writing and thereafter heard. We thus find that it is not a fit case in which this Court can declare the seizure invalid.

46. The division bench thereafter considered the merit of the seizure and held that the same was not illegal.

47. It is worthwhile noting that a division bench of this Court in Collector of Customs and Central Excise, West Bengal and Others Vs. Hindustan Motors Ltd. and Another,

In the present case the Customs Authorities have stated that the appellants were permitted to clear the goods by mistake. It was the duty of the appellants to obey the law. If the allegations of the Customs Authorities be correct they had no right to import goods without a valid licence, they should not be heard to say that because of the order u/s 47 steps cannot be taken against them under the other provisions of the Customs Act. This contention of counsel for the appellants is, therefore, overruled.

48. In Euresian Equipments and Chemicals Ltd. and Others Vs. The Collector of Customs and Others, it was held :

An order by the proper officer permitting clearance and loading of the goods u/s 51 of the Customs Act does not affect the position. u/s 113 of the Customs Act export goods incur the liability to confiscation at the stage when they are attempted to be exported. The attempt to export necessarily precedes actual export. At the time of attempting to export the goods contrary to prohibition, the liability of the goods to confiscation arises, the goods are "goods which are to be taken out of India to a place outside India" and are, undefined in Section 2 (19) of the Act. Actual export of the goods, as a result of the attempt succeeding subsequent to the stage of the attempt, is not indeed of any material consequence.

49. However, I must notice that a division bench of the Madras High Court in M/s. Lucas T.V.S. Padi vs. The Assitt Collector of Customs, reported to 1987(12) E.C.R. 1213 took a contrary view holding that when the goods for export are loaded abord a vessel, no further notice can be issued on the ground that territorial waters (concept) does not fit in with the scheme of the Customs Act. The division bench observed :

Section 51, in our view, is an important provision. Under that provision, if 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 the Act, in respect of the same, he may make an order permitting clearance and loading of the goods for exportation. Once the exporter has complied with the provisions of these sections, so far as he concerned, whatever is required to be done for the purpose of exportation of the goods has been done by him. As a matter of fact, section 51 deals with the last stage upto which the exporter has control over the goods, and once the goods have been cleared and directed to be loaded for the purpose of exportation and the goods are subsequently loaded, the goods passed out of the control of the exporter.

50. In the instant case, however, I noticed hereinbefore, that goods were not loaded in the ship?" but they had been seized from the dock yard itself

51. Mr. Ghosh, however, submitted that the division bench decision of the Delhi High Court judgment in Jain Sudh Vanaspati was affirmed by the Supreme Court. He in this connection, has drawn my attention to a decision of the Supreme Court in [N.K. Bapna Vs. Union of India \(UOI\) and Others](#), In Jain Shudh Vanaspati, S. Ranghanathan, J. (as his Lordship then was) was a party and the said learned Judge was also a party in N.K. Bapna. The Apex Court held :

The third point made by Shri Sen is that once goods are cleared by the customs authorities, they are not liable to confiscation unless the order granting clearance is reversed in appropriate proceedings. He places reliance for this proposition on Union of India vs. Jain Shudh Vanaspati (1992, 1 Scalee 34) affirming the decision of the Delhi High Court in [Jain Shudh Vanaspati Ltd., etc. Vs. Union of India and Others](#), (to which one of us was a party). There was some discussion before us as to whether this Court has confirmed the decision of the High Court on the above point or left it open in para 4 of the judgment. We do not think it is necessary for us to enter into this controversy. That was a case where the goods had been completely cleared accepting the plea of the importer that their import was not prohibited. The High Court held that so long as this acceptance stood the goods were not liable to confiscation. We are here concerned with the question whether the goods are liable to confiscation u/s 111(j) and this question has to be answered in the affirmative in view of the language of the section. The conclusion here that the goods are liable to confiscation does not go behind or ignore the effect of the order of clearance, as in that case. It accepts the fact of clearance and proceeds on the footing that the goods, rightly, cleared u/s 59. have been clandestinely removed from the warehouse within the meaning of Section 59. The decision cited by learned counsel is, therefore, of no assistance to him.

52. From the aforementioned paragraph it cannot be said that the Decision of the Delhi High Court in Jain Shudh Vanaspati on the said point has been affirmed by the Supreme Court.

53. This court is bound by the decision of the Division Bench and Full bench of this Court.

54. In any event the respondents in their affidavit-in-oppositions have made out a sufficient case for having reasons to believe that the seizure was justified. Section 51 of the said Act does not countenance either fraud or an honest mistake.

55. An Officer may bona fide believe that the contents of the shipping bill are correct. He might have made a superficial verification and might not have held a detailed enquiry. Subsequent information reaching him may, however, be enough either to rectify his mistake or come to a conclusion that a fraud has been committed. It is now well known that fraud vitiates all solemn acts. When a fraud is committed even compliance of the principles of natural justice are not required to be complied with. Even in Jain Shudh Vanaspati, the Delhi High Court has laid down

the said law. In the instant case sandal wood was a prohibited item. 50 bags of sandal wood powder were sought to be exported by covering the same with 150 bags of refuse of joss sticks.

56. According to the customs authorities the sandal wood knife handles or paper weights were not machine finished products and they were merely chiselled manually. In such a situation, in my opinion, the respondents were entitled to effect seizure of said articles despite their clearance u/s 51 of the Act. The seizure of this consignment, therefore, was not illegal.

57. The admitted fact of the case is that the said addressee had been acting as agent of the partnership firm and these show cause notices served on them would thus be deemed to be notices served on the petitioner firms. The contention of the learned counsel to the effect that in terms of Section 124 of the Act only the owners had to be served with notice thus cannot be accepted. The said provision postulates service of notice on the owners of the goods or such persons which means that notice may be served also on the person upon whom penalties can be made. In any event, in terms of sub-section(3) of Section 147 of the Act. such agent shall also be deemed to be owner, importer or exporter of such goods for the purpose of the provisions of the said Act. It is also not correct to contend that the goods were seized from the petitioners. Admittedly the goods were seized at the following places

- a) from the customs area where such goods were dealt with by the partners and/or agent of the petitioners firm
- (b) from the godown of the clearing agent who were also agent of the petitioners, and
- (c) from the Sales Tax Authorities who in turn seized the goods from the partners and/or agents of the petitioners.

58. It is evident from the statements made in Affidavit-in-Opposition to the main writ applications and also the Affidavit-in-Opposition to the supplementary Affidavit filled by the petitioner that such notices were served upon M/s. Sk. and Pandit who are clearing agents of the petitioners through Shri S.K. Jha who was their dealing Sarkar. It will not be correct that such services of notices were made in individual capacity. The fact that Shri S.K. Jha was Billing Sarkar of M/s. Sk. & Pandit the clearing agent of the petitioner is neither denied nor disputed. In that view of the matter, such services upon the clearing agent of the petitioner apart from their partners would be deemed to be a service upon the petitioners in view of Section 147 of the said Act. It is admitted that the show-cause notices have been issued to the partners of the firm, the clearing agent as also Shri S.K. Jha personally. But apart from their personal liabilities, their actions were also binding upon the principal.

59. In view of the aforementioned provisions, however, the contention of Mr. Ghosh to the effect that as the office of M/s. Tirupati was found locked and no service could

be effected on them, a purported service were made by hanging the said notice on the Notice Board of the Customs Authorities in view of clause (b) of Section 153 of the said Act appears to be correct. However, notices were also sent by registered post to M/s. India Sales.

60. Section 27 of the General Clauses Act reads thus :

Where any Central Act or Regulation made after the commencement of this Act authorizes 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 containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

61. The notice sent under registered cover is, therefore, presumed to be served on the addressee within a reasonable time. Service of such was expected to be effected in a few days in view of the presumption of such service of notice upon the petitioners in terms of Section 27 of the General Clauses Act. The burden of proof lies upon the petitioners to bring all such materials so as to enable them to rebut the presumption. The petitioners have not filed the registered cover which are in their possession as to why such a delay had taken place in service of notice. This proposition has been well discussed in the case of [State of Punjab Vs. Khemi Ram](#), where the meaning of the word "communication" has been dealt with.

62. Furthermore Section 110 of the Customs Act has to be construed in the context of Section 153 of the Customs Act. It is true as has been submitted by Mr. Sen and Mr. Ghosh that in Section 110(2) of the Act the word used is "given". In the case reported in [K. Narasimhiah Vs. H.C. Singri Gowda](#), upon which strong reliance has been placed by the learned Counsel for the petitioners, the Apex Court was considering the matter under the provision of Section 27(3) of the Mysore Act which required three clear days" notice to be given before holding a meeting. It is well known that a word may be construed differently in different context. The word "communication" has been interpreted differently in the context of order of termination of service and suspension. In the first case, it has been held that actual service is required. (See [State of Punjab Vs. Amar Singh Harika](#), . But in a case of suspension it has been held that when an order goes out of the hands of the competent authority, the same would amount the communication. (See [State of Punjab Vs. Khemi Ram](#), Service of notice of a meeting has a different connotation.

63. The Supreme Court in the case reported in 1982 ELT 270 construed the provision of Section 79 of the Gold Control Act which is in pari materia with sub-section (2) of Section 110 of the Customs Act. Object of such provision, inter alia, is to enable the appropriate authority to make up its mind within 6 months as to whether to proceed with the confiscation. Proceedings. It may be noticed that admittedly for the

purpose of initiation of the confiscation proceeding no period of limitation has been prescribed. In the case reported in AIR 1966 SC 330 the Apex Court has interpreted the word "given" in a different context.

64. However, it appears that in the case of Oyatape Fibres Pvt. Ltd. vs. Collector of Customs, Calcutta reported in [Oyatape Fibres Pvt. Ltd. Vs. Collector of Customs](#), Tarun Chatterjee, J. relying upon decision in the case of [K. Narasimhiah Vs. H.C. Singri Gowda](#), and other decisions held as follows :

For the reasons aforesaid, it must be held that "the notice is given contemplated by section 110(2) of the Act is not the same thing as sending the notice and "the notice is given" as occurring in Section 110(2) of the Act would mean that either the show cause notice was received by the importer or at least it had reached him. Admittedly, in this case, the show cause notice was received by the writ petitioner after the period of six months from the date of seizure a prescribed in Section 110(2) of the Act. It is not the case of Customs Authorities that the notice was even tendered to the writ petitioners on any date before the expiry of the period of limitation, as prescribed in Section 110(2) of the Act. It is also not the case of customs authorities that any other mode of service as contemplated in Section 153 of the Act was effected on the writ petitioners on any date prior to the expiry of the period of limitation.

65. The decision by Tarun Chatterjee, J. was rendered on 16-9-94. However, it appears that the attention of the learned Judge has not been drawn to an unreported decision of Ruma Pal, J. dated 11-5-93 in C.O. No. 5838(W) of 1993, wherein the said learned Judge upon taking into consideration the various decisions held that issuance of notice would tantamount to giving of notice for the purpose of Section 110(2) read with Section 153 of the Customs Act. Chatterjee J., also differed with the views of T.K. Basu, J. in Jayantilal Morakhia vs. Union of India and Ors., reported in 82 CWN 270 whereas Pal, J. agreed therewith.

66. In terms of sub-section (2) of Section 110 of the said Act a notice u/s 124(a) is to be given within six months of the seizure of the goods. What is, therefore, required is to give a notice within six months.

67. In terms of the aforementioned provisions it is the duty of the Customs authorities to know that notice under Clause (a) of Sub-section (1) of Section 124 was issued to the owners and failure issue to such notice within six months of seizure of the goods would entitle the owner the return of the goods from whose possession they were, seized.

68. Six months times u/s 110 starts from the date of despatch of notice by post. Reference in this connection may be made to Ambali Karthikeyan vs. The Collector of Customs & Central Excise & Ors., reported in 1971 TLR 699 at page 700. Section 110(2) in my opinion, has to be read with Section 153 of the Act. in terms whereof a mandate has been given as to how a notice under the Act should be served. In other

words Section 153 of the Art provides for the manner as regards service of notice issued under the Act.

69. Section 153 provides not only for service of notice but also of orders or decisions. Clause (a) of Section 153 in no uncertain terms prescribes that any order or decision passed or any summons or notice issued under the Act shall be served, *inter alia*, by tendering the same or sending it by registered post to the person for whom it is intended or to his agent. The Parliament in its wisdom while prescribing the manner of service of notice has used a terminology of sending and not served. In this situation there cannot be any doubt that a notice can be served either by tendering the same to the owner or sending it by registered post or to his agent.

70. The views I have taken find support from a Division Bench Judgment of this Court in F.M.A.T. No. 923 of 1994; *Union of India & Ors. vs. Sri Kanti Tarafder & Ors.*, disposed of on 7-9-1995 wherein Barin Ghosh, J speaking for the Division Bench taking into consideration the decisions relied upon by the counsels for the parties held :

We, therefore, conclude that Section 153 of the Act controls Section 10(2) of the Act and a notice which is required to be given u/s 110(2) should be given in the manner provided in Section 153 and by no other means.

The word "serve" in legal connotation means to make legal delivery (a process or writ) on or upon (a person) or to present (a person) with a writ. (See the Shorter Oxford English Dictionary reprint of 1988 at page 1949). Therefore, in legal parlance serving is giving.

Under Section 153 of the Act, service is either by personal delivery (tender) or by putting it into transmission by registered post in case both are possible.

Thus, the logical conclusion would be that service of a notice will be complete either by tendering or by sending the same by registered post, since the legislature has equated both the situations by using the word "or".

In the event of the notice is tendered, the date on which the same was tendered should be taken as the date of giving of notice, but if the other option is exercised and the notice is sent by registered post the date of sending the notice should be the date of giving of notice as contemplated by Section 110(2) of the Act. Any other construction will render the legislative intent of equating tender with sending by registered post office.

71. In terms of the said decision the judgment of this court in Oyatape Fibres Pvt. Ltd. Vs. Collector of Customs, must be held to have been overruled and the decision of T.K. Basu, J. in 82 Calcutta Weekly Notes, page 270 and Ruma Pal, J. in *Anil Kumar Das* (*supra*) were affirmed.

72. In this view of the matter it must be held that the notice was validly served upon the respondents when the same were sent under registered post to the petitioners.

73. However, it is sufficient to notice that in Oyatape Fibres Pvt. Ltd. Tarun Chatterjee, noticed that in that case the Customs Authorities had not made any attempt to effect service of notice.

74. In this case non-service of such notice within six months in terms of Section 110(2) of the Act had been taken as a ground for return of the goods. The validity of the show cause notice is not in question in this application.

75. In this view of the matter, the large number of decisions cited by the learned Counsel for the parties need not be examined.

76. There cannot be any doubt whatsoever that a valid seizure can be effected when a proper officer has reason to believe that the goods are liable to be confiscated. There cannot be any doubt whatsoever that such reason to believe cannot be arbitrary on ipsedexit on the part of the concerned authority. In the seizure Memo reasons have been assigned to the effect that the petitioners have been made attempts to export the goods illegally. It is not necessary to state such reasons in the seizure memo themselves. However, when such a question is raised sufficient materials must be placed on record so as to enable the Court to arrive at a finding as to whether such seizure has been effected on reasonable ground. Reference in this connection may be made to the decisions reported in [R.S. Seth Gopikrishan Agarwal Vs. R.N. Sen, Assistant Collector of Customs and Others](#), AIR 1976 Cal 1/8 New Central Jute Mills Co. Ltd. v. T.N. Kaul and Others and 77 OWN 14 Assistant Collector of Customs for Preventive & Ors. v The New Central Jute Mills Co. Ltd. upon which reliance has been placed by Mr. Sen.

77. Mr. Sen, learned Counsel, in this connection also relied upon a case reported in [Oyatape Fibres Pvt. Ltd. Vs. Collector of Customs](#), and [Indru Ramchand Bharvani and Others Vs. Union of India \(UOI\) and Others](#),

78. However, it is pertinent to note that recently the Supreme Court in the case of [Union of India Vs. Shyamsunder and others](#), has quoted with approval its earlier decision in the case of [State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another](#), equivalent to [State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another](#), which laid down the law to the following effect :

Whether or not the official concerned has seized the article in the "reasonable belief that the goods were smuggled goods is not a question on which the court can sit in appeal. The law to this effect has been declared in no ambiguous terms in [Pukhraj Vs. D.R. Kohli](#), This Court has administered caution to the courts not to sit in appeal in regard to this question and has observed that if *prima facie* there are grounds to justify the belief the courts have to accept the officers belief regardless of the fact where the court of its might or might not have entertained the same belief. The law

declared by this Court is binding on the High Court and it was not open to the High Court to do exactly what it was cautioned against by this Court. Section 123 of the Act does not admit of any other construction. Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with as; over-indulgent eye which sees no evil anywhere within the range of its eye sight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances.

79. The Supreme Court noted that decision in D.R. Kohli (*supra*) has been followed in the case of Indru Ramchand Bharvani and Others Vs. Union of India (UOI) and Others, and 1991 (2) ShimLC 7 (SC)

80. The question as to whether the authority had any reason to believe or not must, therefore, be judged in the context as to whether *prima facie* there are grounds to justify the belief. This Court cannot sit in appeal with regard there to where the opinion has *bona fide* been formed by the Customs Authority.

81. it is not in dispute that the sandal wood pieces have been seized. It has been accepted at the Bar that sandal wood paper weights cannot be exported. The question as to whether the sandal paper weights and the sandal wood knife handle were the machine finished products or not is essentially a question of fact. Whether such products were at all finished products or not cannot be determined by this Court. In fact, it is admitted by the petitioner that owing to curfew imposed at Kanpur, at the relevant time, the said goods were brought to Calcutta in a semi finished condition. Such determination has to be made in the confiscation proceedings by the appropriate authority. However, it is admitted that upon chemical examination some goods had been found to be sandal wood just which admittedly cannot be exported.

82. Mr. Sen, submits that the question as to whether the goods which was sought to be exported were sandal wood dust or refuse for joss sticks should have been found out upon smelling the same.

83. According to the respondents 50 sandal wood pieces bags were load in the container covered by 150 bags of dust material. Again 100 bags of sandal wood pieces along with 50 bags of sandal wood dust materials were loaded covered by Shipping Bill No. EF-784 dt. 14.2.94. It is relevant to note the following chart as has been supplied by the learned Counsel. Mr. Roy Chowdhury where is it is stated as follows :-

Shipping No.	Bill and Exporter's name	Date of seizure	Place container No.	Sandal wood P.	Dust Materials
1. EF-785	dt. 14.2.94	3.3.94	6. K.P.D. NSAU-201290-1(20-)	200 bags	X
2. EF-787	dt. 14.2.94	3.3.94	6, K.P.D EISU 309625-9(20)	50 bags	150 bags
3. EF-784	dt. 14.2.94	10.3.94	Office of the Commissioner of Commercial Taxes	100 bags	50 bags
4. EF-786	dt. 14.2.94	7.4.94	Macneil berry Kilburn Godown Total	190 bags	X 200 bags.

Note : The shipping bill was processed for 200 bags but actually 190 bags covered under the" shipping bill.

84. Comercial Tax Department detained those 150 bags on 16.2.94. Customs Department came to know about this detention on 25.2.94 and took sample.

85. It is true that the refuse of joss sticks is not a prohibited item. M/s. India Sales International had admitted that they had received order from M/s. Tirupati Trading for supply of machine finished 900 bags of sandal wood paper weights.

86. By an order dated 26.2.94 M/s. Shipping Agencies Private Limited were directed to detain 200 bags of Refuse for joss sticks and 400 bags of refuse for joss sticks loaded in two different containers and 200 of machine finished knife handle of Sandal wood under shipping bill No. EF-785 as there were reasons to believe that the said article meant for export contained contraband goods. The said articles were detained for further enquiry in the matter.

87. So far as the seizure dated 1.3.94 is" concerned, it appears that the same had been made as the goods were declared as machine finished knife handle but the same was a mis-declaration as there were cut pieces of sandal wood. So for as the other item are concerned it was believed that refuse for joss sticks which is as per declaration, mixture of sandal wood and other ingredients. It is quite evident that

sandal wood dust is not in large percentage. From the records it further appears that though the export of sandal wood in its different form have become more and more stringent under the I.T.C. policy 1992-97 exporters had been adopting all sorts of devices to export sandal woods either misdeclaring them to be permitted product or simply concealing the same inside other items thereby frustrating the very efforts of the government to preserve this natural wealth from being extinct in this land of one flora and fauna. It is further stated that small pieces of woods with coarse surface and uneven shape and size declared as machine finished knife handle of sandal wood was nothing but an effort to hoodwink the customs authority. It has been noticed that such types of activities were being made for quite sometime. To locate the consignment in the docks for giving an information from Eagle Moon to Nicholison was itself a direct job. It further appears that the aforementioned operation was originated from the feed back from town section.

88. As regards the seizure list of India Sales dated 10.3.94 it appears that the goods were taken over from the West Bengal Comercial Tax Authorities at Beliaghata as those are reasonably believed to be prohibited goods under Negative List of Exports of Import and Export-Policy, 1992-97 under Item No. 9 of para 158 of the said goods have been attempted to be smuggled out of India under misdeclaration the export documents (viz. Shipping Bill No. EF-784 dated 14.2.94 and Invoice No. 1 SI/EXP/115/94 dated 9.2.94 of M/s. India Sales International, 93/59, Firdaus Mansion, Rajbi Road, Kanpur) rendering them liable to confiscation u/s 113 of the Customs Act, 1962. Representative of the exporter/owner of the goods Shri Chandra Prakash Bhavech was also present at the time of making the seizure.

89. Prusuant to the seizure of Raw Sandal wood pieces meant for export to. Dubai A/c. M/s. India Sales International, Kanpur, under S/Bill No. EF-789 dated 14.2.94 and that of Raw Sandal wood pieces along with refuse for Joss Sticks meant for export to Hongkong A/c. M/s. Tirupati Corporn. Calcutta under S/Bill No. EF-787 dated 14.2.94 at Container Yard of 6 KPD made by Customs Calcutta, the abovementioned goods under seizure, found stored in the godown of M/s. Macncill Barry Kilbum at 26/1 Satya Doctor Road, Calcutta-23 by the clearing Agents M/s. Shri & Pandit of 3/1 Bankshall Street, Calcutta-1 on behalf of M/s. India Sales International, Kanpur and assessed under S/Bill No. EF-786 dated 14.2.94 meant for export to Hongkong A/c. M/s. India Sales International, Kanpur are prohibited goods for export.

90. All those goods were acquired, transported, stored and assessed and thereby attempted to be exported out of India through the Port of Calcutta under misdeclaration as "Machine Finished Paper Weight of Sandal wood" in S/Bill in contravention of the provisions of the Customs Act, 1962, read with item No. 9 of para-158 of Import and Export Policy, 1992-93 and thereby rendering them liable for confiscation under the provisions of Customs Act, 1962. The goods which were detained under Customs House letter dated 11.3.94 were, therefore, seized u/s 110 of the Customs Act, 1962. The seizure list of Tirupati, the reasons to believe, has

been stated thus :

Attempt of illegal import and misdeclaration in contravention of the provisions of Calcutta Act, 1962. Thus, rendering the goods liable for confiscation under Customs Act, 1962.

92. It is, therefore, not correct to contend that no reason has at all been assigned. It is not disputed that in relation to all the aforementioned materials, seizures have been effected to either from the dock yard after clearance therefor were obtained or in respect of such goods for which shipping bills were obtained from Customs Authorities.

93. It is admitted that the bill of entry were presented to the proper officer. Export does not commence unless the steps are taken therefor in terms of Section 51 of the Act. It has not been disputed by the petitioners that the said goods were meant for export and shipping bills have been obtained only for the said purpose.

94. Section 29(6) defines entries in relation to goods as meaning 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 regulation made u/s 84.

95. The Shipping Bill and the Bill of Export (Form) Regulations, 1976 prescribed different forms in which different shipping bills have to be prepared. No goods can be exported unless such shipping bill and bill of export are to be prepared in terms of Regulation 2. The Regulations 2 and 3 require that the bill of export on shipping bill is to be presented by exporter of the goods. A shipping bill and bill of export have been presented by the exporter of the goods on behalf of the petitioners through the Clearing Agent.

96. At the time of seizure of such goods, it is not necessary to give the details thereof inasmuch as Section 110(1) provides for reasons which on ultimate analysis may be found to be correct or incorrect. During further investigation after seizure, it may be found by the seizing authorities that apart from the reasons on the basis whereof the goods had been seized, other reasons also exist. It is one thing to say that some goods had been seized without there being any reason to believe in existence at all and it is another thing to say that sufficient reasons to believe existed but during investigation other reasons had also been found.

97. In Assistant Collector of Customs in Prevention v. The New Central Jute Mills Company Limited reported in 77 Calcutta Weekly Notes, page 14 upon which Mr. Ghosh placed strong reliance, this court relying on the decisions of [R.S. Seth Gopikrishan Agarwal Vs. R.N. Sen, Assistant Collector of Customs and Others,](#) inter alia, held that the procedures prescribed u/s 165(1) of the Criminal Procedure Code for search is not applicable in Section 105(2) of the Customs Act inasmuch as two sections are intended to meet total different situations. In Gopikrishan's (supra) case

the Supreme Court held that Section 105 of the Act neither compel the officer to give reasons nor the particulars of the goods and all the documents were to be given in the authorisation. This court observed that the statutory requirement of reasonable belief rooted in the information in possession of Customs Officer and to safeguard the citizens from vexatious proceedings. Belief is a mental operation of accepting a fact as true, so without any fact, no behalf can be formed. It is true that it is not necessary for the Assistant Collector of Customs to state reasons for his belief but if it is challenged that he had no reason to believe for such seizure he must disclose the materials upon which his belief was formed. As has been held in Seunath Singh's case which was referred to by Mr. Sen and reported in Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, the court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials although the sufficiency of the reasons for the belief cannot be investigated by the Court.

98. In Gopikishan Agarwals case reported in 1967 SC.1298 upon which strong reliance has been placed by Mr. Sen, the Apex Court repelled the contention that Section 105 of the Act confers unbridled and arbitrary power on the Assistant Collector of Customs to make a search, only condition being that he has reasons to believe in the existence of the facts mentioned therein. The Supreme Court noticed that the object of the Section is to make a search for the goods liable to be confiscated of the documents created in any place which are relevant to any provisions under the Act. It further noticed that the legislative policy recorded in the Section is that search must be with regard to 2 categories mentioned therein.

99. The Supreme Court further observed : "that apart from u/s 165(5) of the Code of Criminal Procedure read with Section 105(2) of the Act, he has to send forthwith to the Collector of Customs copy of any record made by him." The Collector would certainly give necessary directions if the Assistant Collector went wrong or an act is guided by malafide. It further observed that an effective control had also been laid down u/s 136(2) of the Act.

100. In the instant case the records produced before me show that all requirements of the Act were complied with. In fact on the basis of the reports, the Collector had commended the job of the Assistant Collector.

In Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, the Supreme Court held on the facts of that case that the second ground to the effect that the income of the respondents chargeable to tax had escaped assessment could not have led to be formation on the belief. It was held "whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of the grounds which induce the income tax Officer to act is, therefore, not a justifiable issue. It is, of course, open to the assessee to contend that the income tax Officer did not hold the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. The expression "reason to believe" does not mean a

purely subjective satisfaction on the part of the income tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the sanction. To this limited extent, the action of the income tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law.

The aforementioned decisions, in the facts and circumstances of this case, therefore, do not render any assistance to the learned Counsel for the petitioner.

In Hindustan Motors Limited vs. T.N. Kaul and Ors., reported in 1971 CLJ 181 which has been strongly relied upon by Mr. Sen, the Division Bench of this Court, (of which Sabya Sachi Mukherjee, J. as his Lordship then was a member) was considering the provisions of Foreign Exchange Regulation Act. It was held that though the formation of opinion is subjective and is vested in the appropriate officer, yet such formation of opinion is also subject to scrutiny by the Court. It was held that in terms of Section 19(D) of the Foreign Exchange Regulation Act, 1947 the identity of the informer need not be disclosed.

101. In Sakti. Steel Traders vs. Ashoke Chakraborty, reported in 1993 Criminal Law Journal, page 969 the search warrant was found to be invalid and in that context it was held that the goods should be returned to the persons from whose custody they were seized.

102. In Board of Revenue, Madras vs. R.S. Jhaver reported in 1968 SC 59 the Supreme Court while considering the provisions of Section 41(2) held that Section 165 of the Code of Criminal Procedure apply to such searches and seizures also. No exception can be taken to the aforementioned proposition.

103. The starting point of a search is Section 105 of the Customs Act and it is completed u/s 110. In the instant case the respondents in their affidavit-in-opposition have disclosed the reasons. The entire records have also been produced before me and on perusal whereof it appears that such seizure had been effected upon obtaining an information that large scale smuggling of sandalwood is being rode from India which was a prohibited item. In fact Shri S.K. Jha the authorised representative of the clearing accent of M/s. Sk. & Pandit Hearty stated that such goods have been exported out of India in large quantity. The respondents, thus, have a right, nay a duty to unearth such racket, if any and if in this process they have seized the goods in question and had found out the illegal motive on the part of the petitioners to export sandalwood in the name of machine finished sandal wood product, in my opinion, no illegality can be said to have committed. Such a misdeclaration, according to the respondents, attract the provision of confiscation under the Customs Act.

104. In this case the court is not concerned with the tact as to whether in fact any confiscation shall be effected to or not. The petitioner may be able to show that they had not violated any of the provision of the Act and the goods were thus not liable for confiscation.

105. The only question which arises for consideration at this juncture is as to whether there has been reason to believe that such goods, if seized, would be liable for confiscation or not.

106. However, in the facts and circumstances of the case, it is desirable that the respondents take adequate steps for early disposal of the confiscation proceedings. For the foregoing reasons, it must be held that the seizure of the said goods was not illegal.

In the result both these applications are dismissed but without any order as to costs.