

(1979) 02 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No. 246 of 1975

Assistant Collector of Customs

APPELLANT

Vs

Johney Brothers

RESPONDENT

Date of Decision : 22-02-1979

Acts Referred:

Customs Act, 1962 — Section 11, 11(1), 113, 114, 114(1)
Foreign Exchange Regulation Act, 1947 — Section 12, 12(1), 12(2), 12(5), 12(6)
Foreign Exchange Regulation Rules, 1952 — Rule 3, 4, 5

Citation : (1979) 02 KL CK 0006

Hon'ble Judges : Narendran, J; Balakrishna Eradi, J

Bench : Division Bench

Advocate : T.R.G. Warriar, for Central Government, for the Appellant; V. Bhaskaran Nambiar, C.R. Natarajan and M.K. Ananthakrishnan, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Eradi, J.—The Appellants in this writ appeal are (i) the Assistant Collector Customs (Exports), Custom House, Cochin and (ii) the Collector of Customs and Central Excise, Cochin. The appeal has been filed by them against the judgment of a learned single Judge of this Court allowing O.P. No. 5018 of 1972 filed by the Respondent herein and declaring that the proceedings initiated by the Appellants against the Respondent under the notice Ext. P-20 for confiscation of certain goods on the ground of violation of Section 12(1) of the Foreign Exchange Regulation Act, 1947 read with Section 23A of the said Act and Section 113(d) of the Customs Act, 1962 are illegal and without jurisdiction.

2. The parties will hereinafter be referred to in this judgment on the basis of their ranking and array in the original petition, that is, the Respondent herein will be referred to as the writ Petitioner and Appellants Nos. 1 and 2 herein as Respondents Nos. 1 and 2.

3. The writ Petitioner is a firm engaged in the business of export and import of

various commodities including rosewood. In October 1972 the writ Petitioner-firm purchased at a public auction conducted by the Forest Department of the Tamil Nadu Government the right to collect and remove 9769 kg. of Pueraria Javanica Seeds. Thereafter it invited offers from foreign buyers for the purchase of the said commodity and after a good deal of correspondence a contract is said to have been entered into on 9th October 1972 for the sale of the aforesaid goods to a firm in Kuala Lumpur at a price of Malaysian Dollars 2250 per long ton c.i.f., Singapore. Ext. P-16 has been produced by the Petitioner as a true copy of the aforesaid contractual agreement. Thereafter the Petitioner obtained the requisite licence from the Deputy Chief Controller of Imports and Exports, Ernakulam and made arrangements for shipping the goods to the foreign buyer. But, when the shipping bills were submitted to the customs authorities through the Petitioner's shipping agents they were returned with the endorsement -- "the price is very low, substantiate". The Petitioner thereupon made representations to the Assistant Collector of Customs and produced before him the sale note issued by the Conservator of Forests together with the contract entered into with the foreign buyer and copies of the correspondence that preceded it. Since no favourable orders were issued by the 1st Respondent permitting the export of the goods the Petitioner made a representation to the 2nd Respondent (Collector of Customs) also as per the petition Ext. P-18. In the meantime, the goods were transported to the Port Warehouse in Willingdon Island and kept ready for export by a ship which was due to sail on 12th September 1972. On 10th November 1972 the 1st Respondent issued to the Petitioner the impugned notice Ext. P-20 which reads as follows:

M/s. Transmarine Corporation, Cochin-3, on behalf of the exporters filed a Shipping bill for the export of 80 bags cover crop seeds viz., Pueraria Javanica, to Singapore. The export was in pursuance of an order dated 9th October 1972 from the overseas buyers M/s. A.M. Chaney and Co., Kuala Lumpur. The price declared was M.S. 2250 per L. Ton C.I.F. Singapore. This price was considered low as there were other shipments at much higher prices. On being called upon to substantiate the price, the exporters stated that the shipment being on a trial order, they were selling the goods on a nominal profit, that the goods were purchased from the Tamil Nadu Government at a price of Rs. 3.30 per kg. and that they were selling the goods for the best price offered to them. They also produced the correspondence leading to the transaction. They further stated that the higher price relied on by the Department for comparison related to a contract entered into many months back.

The investigations done by the Department showed that though the import price of Pueraria Javanica seeds has come down in Singapore, there were fresh contracts obtained by other exporters at prices of S.\$ 3000 to 3250 per L/Ton. C.I.F. The exporters' explanation that declared price of \$. 2250 per L/Ton is fair, is therefore, not correct. Giving due weight age to the fluctuations in price, a price of \$. 3000 per L/Ton C.I.F. is considered as fair for the goods in question. The difference in price is \$. 750 per L/Ton involving an undervaluation of \$. 3750

on the whole consignment, equivalent to Rs. 9,51,700 approximately.

Under Section 12(1) of the Foreign Exchange Regulations Act, 1947 (as amended), the exporters, are required to declare the full value of the goods in the shipping bill and G.R. Form. This has not been done by the exporters in this case and the declared value, therefore, does not represent the full export value as required u/s 12(1) of the Foreign Exchange Regulations Act. Attempt of export of the goods is, therefore, in contravention of the Government of India, Ministry of Finance, G.S.R. Notification No. 2641, dated 14th November 1969 issued u/s 12(1) of the Foreign Exchange Regulation Act and the goods are liable to confiscation u/s 113(d) of the Customs Act, 1962 read with Section 23A of the F.E.R.A. The exporters are also liable to penal action u/s 114(i) of the Customs Act, 1962.

The exporters M/s. Johnney Brothers, Cochin-11, are, therefore, called upon to submit their written explanation in the matter within seven days from the date of receipt of this notice and to show cause as to why the goods should not be confiscated and penal action taken against them as stated above.

The written representation should be accompanied by the originals or certified copies of all the documentary evidence on which they may rely in support thereof and forwarded to the Collector of Customs and Central Excise, Customs House, Cochin-3.

The exporters are further requested to state whether they would like to avail of the opportunity to be heard in person before the case is adjudicated. If no mention is made about this in the written reply to the show cause notice, it will be presumed that a personal hearing is not required.

If they fail to submit their written representation in time or appear before the Adjudicating Officer when the case is fixed for hearing, the case may be decided on the basis of the evidence on record without further notice to them.

4. On receipt of the above notice the Petitioner came upto this Court and filed the Original Petition (O.P. No. 5018 of 1972) praying that the impugned notice Ext. P-20 should be quashed and that a writ of mandamus should be issued to the Respondents directing them to forbear from taking any action against the Petitioner in pursuance of the said notice and compelling them to allow the Petitioner to export by the nearest available ship the goods in question which were stocked in the port warehouse. By an interim order passed by this Court on 17th November 1972 the writ Petitioner was directed to deposit Rs. 10,000 in this Court as security against the liability, if any, which may ultimately attach to the Petitioner in respect of the proceedings initiated against it and a direction was issued to the Respondents that on the Petitioner producing before them evidence in proof of its having made such deposit they should permit the Petitioner to export the goods subject to the acceptance of a bond that the Petitioner had already furnished. On the basis of the said direction the goods were allowed to be exported to the foreign buyer after the Petitioner had

complied with the condition relating to the deposit of Rs. 10,000.

5. The challenge raised by the Petitioner against the notice Ext. P-20 was mainly on the ground that the Customs authorities had no jurisdiction or power to detain the Petitioner's goods or to initiate action against the firm on the ground of contravention of Section 12(1) of the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the Act) read with Section 23A thereof and Section 113(d) of the Customs Act, 1962 inasmuch as the firm had duly furnished a declaration in the prescribed form supported by necessary evidence and had thereby complied fully with the requirements of Section 12(2). In support of this contention reliance was placed by the Petitioner on the observations contained in the judgments of the Supreme Court in *Union of India (UOI) and Others Vs. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others*, and *Becker Gray and Co. (1930) Ltd. and Others Vs. Union of India (UOI) and Another*, . In answer to the said contention it was submitted before the learned single Judge on the side of the Respondents that the legal position has undergone a material change after the amendments effected in Section 12(1) of the Act by the Foreign Exchange Regulation (Amendment) Act, 1969 (Act 40 of 1969). This submission of the Respondents did not, however, find acceptance in the hands of the learned single Judge. Rejecting the said submission the learned Judge observed:

Counsel for the Respondents contended that after the amendment the decision of the Supreme Court will have no application. I am unable to see how this conclusion follows. As far as I can see the amendment has only introduced the additional requirements that the declaration must be true in all material particulars which, among others, shall include the full export value of the goods. The principle laid down by the decision that the inaccuracy of the declaration u/s 12(1) of the Foreign Exchange Regulations Act is not a restriction deemed to have been imposed u/s 11(1) of the Customs Act as provided in Sections 23A of the Foreign Exchange Regulations Act, 1947, remains unaffected. That principle being there, I am unable to see how the amendment effected to Section 12(1) can make any difference in the position.

6. In the light of his conclusion that the amendment had not brought out any change in the legal position as declared in the two rulings of the Supreme Court aforecited the learned single Judge held that the aspect relating to foreign exchange involved in a transaction of export is a matter exclusively for the Reserve Bank to take care of u/s 12(5) of the Act and that the mere fact that the full export value shown in the declaration was incorrect or low would not constitute a contravention of Section 12(1) of the Act. Accordingly the learned Judge declared that the proceedings initiated by the Respondents against the writ Petitioner-firm as per the impugned proceedings Ext. P-20 on the ground of contravention of Section 12(1) of the Act read with Section 23A thereof and also u/s 113(d) of the Customs Act were illegal and without jurisdiction. But, in view of the fact that the goods had already been exported on the basis of the interim direction issued by this Court the learned Judge declined to grant the relief of

quashing Ext. P-20 in so far as it threatened to confiscate the goods and to impose a penalty because, in the view of the learned Judge, there could be no question of confiscation of goods u/s 113(d) of the Customs Act nor any levy of penalty u/s 114 of the said Act after the goods had already been exported. However, in view of its having been held that there was no warrant for any action u/s 12(1) of the Act even in its amended form, the learned Judge directed that the amount of Rs. 10,000 deposited by the Petitioner pursuant to the condition imposed by the interim order should be refunded to the firm. The Respondents have come up with this appeal challenging the legality and correctness of the aforesaid decision recorded by the learned single Judge.

7. The learned Central Government Pleader appearing on behalf of the Appellants submitted that the view taken by the learned single Judge that the principle laid down by Supreme Court in Union of India (UOI) and Others Vs. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others, that the failure on the part of the exporter to state accurately in the declaration filed u/s 12(1) of the Act the true export value of the goods exported will not constitute a contravention of a restriction imposed u/s 12(1) so as to fall within the scope of Section 23A stands unaffected even after the amendment of Section 12(1) by Act 40 of 1969, is erroneous and that it is based on a misunderstanding of the scope of the section as it stands after the amendment. Elaborating this submission, counsel pointed out that the very object and purpose underlying the amendment of Section 12(1) was to rectify the lacuna that was found to exist in the original section in the light of the rulings of the Supreme Court in Union of India (UOI) and Others Vs. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others, and Becker Gray and Co. (1930) Ltd. and Others Vs. Union of India (UOI) and Another, and to suitably modify the terms of the section so as to render the failure on the part of an exporter to state truly the full export value of the goods in the declaration filed u/s 12(1) a contravention of a restriction imposed by the said action. In substantiation of his aforesaid contention concerning the object and purpose of the legislature in effecting the amendments in Section 12(1) the Central Government Pleader invited our attention to the statement of objects and reasons relating to the amending Act published in the Gazette of India Extraordinary, Part II, dated December 8, 1969. Counsel submitted that the words used by Parliament in the amended section are fully adequate to carry out the aforesaid legislative purpose and intent and that on the terms of the amended sub-section the only reasonable interpretation to be placed thereon is to understand the said sub-section as imposing a restriction that no goods falling within the scope of the notification issued under the said sub-section shall be exported unless the exporter furnished to the prescribed authority a declaration stating truly the full export value of the goods. Hence, counsel submits, the failure on the part of an exporter to state in the declaration the true export value of the goods will constitute under the amended sub-section the contravention of a restriction imposed by it so as to attract the operation of Section 23A of the Act.

8. After having given our anxious consideration to the arguments addressed on

both sides we have unhesitatingly come to the conclusion that the contention advanced by the learned Central Government Pleader has to be upheld.

9. Section 12(1) of the Act as it originally stood prior to the amendment introduced by Act 40 of 1969 was in the following terms:

The Central Government may, by Notification in the Official Gazette, prohibit the taking or sending out by land, sea, or air (hereafter in this section referred to as export) of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified unless a declaration supported by such evidence as may be prescribed or so specified, is furnished by the exporter to the prescribed authority that the amount representing the full export value of the goods has been, or will within the prescribed period be, paid in the prescribed manner.

There was no specific requirement in the sub-section that the declaration referred to therein must contain a true statement of the full export value of the goods. It was only by Rules 3 to 5 of the Foreign Exchange Regulation Rules, 1952 that the form of the declaration to be filed u/s 12(1) and the nature of the evidence to be furnished in support thereof were prescribed.

10. Section 23A of the Act reads:

Without prejudice to the provisions of Section 23 or to any other provision contained in this Act, the restrictions imposed by Sub-sections (1) and (2) of Section 8, Sub-section (1) of Section 12 and Clause (a) of Sub-section (1) of Section 13 shall be deemed to have been imposed u/s 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

In *Union of India (UOI) and Others Vs. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others*, the Supreme Court had occasion to consider the question whether the failure on the part of an exporter of manganese ore to state in the declaration filed u/s 12(1) of the Act the true export value of the goods shipped by him would constitute a contravention of a restriction imposed by Sub-section (1) of Section 12 so as to attract the operation of Section 23A of the Act. It was contended on behalf of the Company which had effected the export that it had complied with the statutory requirements of Section 12(1) in as much as the declaration in its statutory form had been furnished by them to the prescribed authority, namely, the Collector of Customs, and that the Collector having passed the consignment for shipment had no further right or jurisdiction to take proceedings relating to the consignments in question. It was further urged that if such a declaration was found to be false it did not mean that there was a contravention of any restriction imposed by Section 12(1). This contention was upheld by the Supreme Court and it was held that the only restriction imposed by Sub-section (1) of Section 12 was that no one should export any goods from this country, without furnishing the declaration mentioned in Section 12(1) and in as much as declarations in the prescribed form had been furnished by the exporters in that case and the evidence specified had also been given by them it

could not be said that they had contravened any restriction imposed u/s 12(1) of the Act. It was further pointed out by their Lordships that the requirement relating to the particulars to be furnished in the declaration was laid down only by the rules and since neither Section 12(1) nor any other provision in the Act empowered the rule-making authority to add to the restriction imposed by Section 12(1), the contravention of the requirements laid down by the rules could not be regarded as a violation of any restriction imposed by Section 12(1). Explaining this position the Supreme Court observed:

Before a case can be held to fall within the scope of Section 23A it must be shown that there has been a contravention of the restrictions imposed by Section 12(1). Therefore we have to find out what those restrictions are? The only restriction placed by Section 12(1) read with the Central Government Notification dated August 4, 1947, is that no one should export any goods from this country without furnishing the declaration mentioned in Section 12(1). Admittedly the stipulated declarations in the prescribed forms have been furnished. The evidence specified have also been given. Therefore prima facie there was no contravention of Section 12(1). What is said against the Respondents that the invoice price mentioned by them in the declarations did not represent the full export value; hence the declarations given by them are invalid declarations which means that the concerned goods were exported without furnishing the declaration required by Section 12(1). It is not possible to accept this argument. The declarations given to satisfy the requirements of Section 12(1) though they do not correctly furnish all the informations asked for in the form. Such declarations cannot be considered as non est. The informations called for in the prescribed form cannot be considered as restrictions imposed by Section 12(1). They are merely informations called for the proper exercise of the powers under the Act. Many of them do not relate to the restrictions imposed by Section 12(1). Neither Section 12(1) nor any other provision in the Act empower the rule-making authority to add to the restrictions imposed by Section 12(1). For finding out the restrictions imposed by Section 12(1) we have only to look to that section. The requirement of that section is satisfied if the stipulated declaration supported by the evidence prescribed or specified is furnished. The contravention complained of in this case is really the contravention of Section 12(2) and Rule 5. The former is punishable u/s 23 and the latter u/s 23 read with Section 22.

The declaration required by Section 12(1) is only to the effect that the amount representing the full export value of the goods has been, or will within the prescribed period be, paid in the prescribed manner. This is as it should be because this section governs both the goods sold to the foreign buyers as well as those sent on consignment basis. So far as the goods sold to the foreign buyer are concerned it is generally possible for the exporter to know the exact value but that would not be the position when the goods are sent on consignment basis. In the case of goods sent on consignment basis, the exporter can give only an estimated value. The main purpose of Section 12(1) is to get a declaration from the exporter that he has either brought or will bring back the amount

representing the full export value of the goods exported. There are other provisions in the Act to deal with other situations. We shall presently refer to them.

* * * *

There are two facts in every export, one relating to the goods exported and the other relating to the foreign exchange earned as a result of the export. Broadly speaking, the former aspect is dealt with by the Customs authorities and the latter either by the Reserve Bank or by the Director of Enforcement. The price of goods exported has to be mentioned in the invoice. But the Reserve Bank has power to examine whether the price mentioned in the invoice is correct. Section 12(5) provides that where in relation to any goods exported the value as stated in the invoice is less than the amount which in the opinion of the Reserve Bank represents the full export value of those goods, the Reserve Bank may issue an order requiring the person holding the shipping documents to retain possession thereof until such time as the exporter of the goods has made arrangements for the Reserve Bank or a person authorised by the Reserve Bank to receive on behalf of the exporter payment in the prescribed manner of an amount which represents in the opinion of the Reserve Bank the full export value of the goods. Sub-section (6) of Section 12 says that for the purpose of ensuring compliance with the provisions of that section and any orders or directions made thereunder, the Reserve Bank may require any person making any export of goods to which a notification under Sub-section (1) applies to exhibit contracts with his foreign buyer or other evidence to show that the full amount payable by the said buyer in respect of the goods have been or will within the prescribed period be paid in the prescribed manner. These provisions go to indicate that so far as the value of the goods exported is concerned the matter is left primarily in the hands of the Reserve Bank, and the Customs authorities are not burdened with that work. This aspect becomes relevant in ascertaining the true scope of Section 12(1). If we bear in mind the scheme of the Act, it is clear that so far as the Customs Authorities are concerned all that they have to see is that no goods are exported without furnishing the declaration prescribed u/s 12(1). Once that stage is passed the rest of the matter is left in the hands of the Reserve Bank and the Director of Enforcement.

The same principle was reiterated in *Becker Gray and Co. (1930) Ltd. and Others Vs. Union of India (UOI) and Another*, .

11. In the place of the original Sub-section (1) of Section 12 a new provision was substituted by the Foreign Exchange Regulation (Amendment) Ordinance, 1969 which was later replaced by the Foreign Exchange Regulation (Amendment) Act, 1969 -- Act 40 of 1969 -- whose provisions are identical with those contained in the Ordinance. Section 12(1) as it now stands after the aforesaid amendment reads:

The Central Government may, by notification in the Official Gazette, prohibit the

taking or sending out by land, sea or air (hereinafter in this section referred to as export) of all goods or of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified unless the exporter furnishes to the prescribed authority a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars which, among others, shall include the amount representing

(i) the full export value of the goods; or

(ii) if the full export value of the goods is not ascertainable at the time of export the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the course of international trade, and affirms in the said declaration that the full export value of the goods (whether ascertainable at the time of export or not) has been, or will within the prescribed period be, paid in the prescribed manner.

It is now laid down in the sub-section itself that the declaration which the exporter is required to furnish before the prescribed authority should be true in all material particulars, which among others shall include the amount representing the full export value of the goods. The sub-section thus imposes a restriction that in respect of goods covered by a notification issued thereunder by the Central Government there shall not be any transaction of export from the country by land, sea or air unless the exporter furnishes to the prescribed authority a declaration in the prescribed form containing a true statement regarding the full export value of the goods. Such being the position, it is no longer possible to say that the obligation to furnish a declaration containing a true statement of the full export value of the goods is not part of the restriction imposed by Section 12(1) or that a failure to furnish such a true statement of the export value will not constitute the contravention of such a restriction. In our opinion, from the very terms of the amended section [section 12(1)] it is very clear that the intention of the parliament was to rectify the lacuna or defect that existed in the original section which was brought to light by the aforesaid rulings of the Supreme Court and to suitably modify the language of the provision so as to bring within the scope of the restrictions imposed by it on exporters the obligation to furnish a true statement of the full export value of the goods. The matter is also placed beyond doubt by the statement of objects and reasons relating to the amending Act which was published in the gazette of India Extraordinary, dated 8th December, 1969 which we may usefully extract in full:

Sub-section (1) of Section 12 of the Foreign Exchange Regulation Act, 1947 empowers the Central Government to issue a notification prohibiting the export from India of any goods or class of goods specified in the notification to any place unless a declaration supported by such evidence as may be prescribed, is furnished by the exporter to the prescribed authorities that the amount representing the full export value of the goods has been or will, within the prescribed period, be paid in the prescribed manner. Accordingly, some notifications have been issued imposing a general prohibition with certain

exceptions. The requisite rules relating to the declarations have also been framed. Section 23A of the Act provides that any restriction imposed by Sub-section (1) of Section 12 of the Act, shall be deemed to have been imposed u/s 11 of the Customs Act, 1962 and all the provisions of the said Customs Act shall have effect accordingly. On this basis, officers of customs were detaining goods intended for export wherein the full export value had not been correctly stated in the declaration.

2. All along the view held by officers of customs supported by certain decisions of the High Courts has been that the Act and the notification imposed upon the exporter an obligation to specify in the declaration the true full export value of the goods and that in the event of his failure to make a true declaration, the prohibition of export imposed by the notification would operate. It was thus assumed that if the exporter fails to make a correct declaration of the full export value, it was open to the customs authorities to seize the goods in respect of which such an erroneous declaration has been made and to take steps for the confiscation of the goods and the imposition of a penalty.

3. However, in the case of *Union of India v. Rai Bahadur Shree Ram Durga Prasad (Private) Limited*, the Supreme Court held that the declaration required by Section 12(1) of the Act is only to the effect that the amount representing the full export value of the goods had been or will within the prescribed period, be paid in the prescribed manner. In the case of misdeclaration of the full export value, it was held by the Court that it was not open to the Customs Authorities to take any action against the goods, though the exporter would be liable to be proceeded against u/s 23 of the Act for making a false declaration. An attempt was made to persuade the Supreme Court to reconsider this decision but in a recent judgment in the case of *McLeod and Co. v. Union of India* the court declined to reconsider its earlier decision in this regard.

4. With a view to preventing under-invoicing, it was necessary to amend the Act so as to restore to the Customs Authorities powers which they were believed to possess prior to the aforesaid judgment of the Supreme Court. As Parliament was not in session, and the checking of under-invoicing called for immediate action, the Foreign Exchange Regulation (Amendment) Ordinance, 1969 (9 of 1969) was promulgated by the President on the 13th November, 1969, amending Sections 12 and 23A of the Foreign Exchange Regulation Act, 1947 suitably.

5. The present Bill seeks to replace the aforesaid Ordinance by an Act of Parliament.

The language used by Parliament in the amended provision of Sub-section (1) being fully adequate to give effect to the aforesaid object and purpose we have to construe the section in such a way as would help to effectuate the said legislative intent. As observed by us already, on the plain language of Sub-section (1), as it now stands, the obligation to furnish in the declaration a true statement of the full export value of the goods forms part of the restriction

imposed on the exporter by the said sub-section. A failure to furnish the true export value in the declaration would therefore constitute the contravention of a restriction imposed by Sub-section (1) of Section 12. Section 23A would, thereupon get automatically attracted to such a case with the result that the exporter would be liable to be proceeded against for contravention of a restriction deemed to have been imposed u/s 11(1) of the Customs Act. In our considered opinion, the observations contained in paragraph 38 of the judgment of the Supreme Court in *Union of India (UOI) and Others Vs. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others*, , to the effect that under the scheme of the Act as it stood at the time of the said decision it was clear that so far as the Customs authorities were concerned all that they had to see was that no goods were exported without furnishing the declaration prescribed u/s 12 and once that stage was passed the rest of the matter relating to the value of the goods exported was left in the hands of the Reserve Bank and the Director of Enforcement, cannot now hold good after the amendment of Section 12(1) effected by Act 40 of 1969. By the said amendment there has been a substantial alteration of the scheme of the Act and the customs authorities have now been invested with the function and power of enforcement of the restriction or condition imposed by Section 12(1) of the Act that the declaration filed by the exporter should contain a true statement of the full export value of the goods. It is obvious that such a change was considered necessary by Parliament for the purpose of dealing effectively with cases of under-invoicing which, if left unchecked, would deleteriously affect the economy of the country. We are, therefore, unable to subscribe to the view expressed by the learned Single Judge that even after the amendments effected in Section 12(1) of the Act, when an exporter fails to furnish in respect of goods attempted to be exported by him a declaration stating truly the full export value of the goods the Customs authorities will have no jurisdiction to proceed against him on the ground of contravention of Section 113(d) of the Customs Act. As already observed, under the amended provisions of Section 12(1) read with Section 23A of the Act the failure of the exporter to furnish true information regarding the full export value of the goods will constitute an attempt to export the goods contrary to the prohibition imposed by or under the Customs Act and the goods will be liable to confiscation u/s 113(d) of the Customs Act.

12. With respect, we are also unable to agree with the view expressed by the learned Single Judge that because of the fact that the goods have actually been allowed to be exported pursuant to the direction contained in the interim order issued by this Court the proceedings initiated against the Petitioner under the notice Ext. P-20 have become infructuous. u/s 114 of the Customs Act any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation u/s 113, shall be liable to be subjected to the levy of penalty in the manner specified in Clauses (i) to (iii) thereof. The only question to be considered under the said section is whether the person concerned has done or omitted to do any act in relation to the goods

attempted to be exported which act or omission would render such goods liable to confiscation. A determination of this question is in no way affected by the fact that the goods have been subsequently allowed by the Customs authorities to be exported in obedience to a direction issued by this Court. Moreover, it will not also be right, in our opinion, to permit the writ Petitioner even to put forward the plea that by reason of the fact that the Respondents have complied with the interim direction issued by this Court and allowed the goods to be exported, the goods have ceased to be liable for confiscation and that the writ Petitioner has thereby acquired immunity from being subjected to penalty.

13. u/s 113(d) of the Customs Act 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 the said Act or any other law for the time being in force shall be liable to confiscation. Once the liability of the goods for confiscation under the said section has arisen or accrued, the provision for imposition of penalty contained in Section 114 gets automatically attracted and the liability of the exporter for being subjected to penalty will not be in any way affected by the fact that the goods have been subsequently allowed to be exported pursuant to an interim direction issued by this Court. Hence we have no hesitation to set aside the finding entered by the learned Single Judge that by reason of the fact that the goods have been exported by the Petitioner the notice Ext. P-20 in so far as it threatens confiscation and penal action is incapable in law of being implemented.

14. The conclusion that emerges from the foregoing discussion is that the learned Single Judge was in error in holding that the proceedings initiated by the Respondents against the writ Petitioner-firm under the impugned notice Ext. P-20 are devoid of jurisdiction and unwarranted by law.

15. Before parting with the case we should record that the learned Central Government Pleader very fairly submitted before us that in the light of the discussion that took place in the course of the hearing of the case the Respondents have, on a re-consideration of the matter decided that on the facts and circumstances of the present case no further steps need be taken against the writ Petitioner-firm in pursuance of the impugned notice Ext. P-20 and that accordingly no further action will be taken against the Petitioner. In the light of this submission made by the learned Central Government Pleader the direction contained in the judgment of the learned Single Judge that the amount of Rs. 10,000 deposited by the writ Petitioner in this Court pursuant to the interim order referred to above should be refunded to the Petitioner will stand confirmed.

16. We accordingly allow this appeal, set aside the judgment of the learned Single Judge except to the limited extent indicated above and dismiss the writ petition O.P. No. 5018 of 1972. The parties will bear their respective costs in this appeal.