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**(1986) 12 CAL CK 0016**  
**In the Calcutta High Court**  
**Case No : Matter No. 1705 of 1986**

D. Sengupta

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

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**Date of Decision :** 22-12-1986

**Acts Referred:**

Customs Act, 1962 — Section 108, 110, 110(1), 110(2), 124  
Customs House Agents Licensing Regulations, 1984 — Section 2

**Citation :** (1987) 13 ECC 175 : (1987) 13 ECR 165 : (1987) 31 ELT 30

**Hon'ble Judges :** Ajit Kumar Sengupta, J

**Bench :** Single Bench

**Advocate :** Anindya Mitra and Goutam Mitra, for the Appellant; P. Dutt, for the Respondent

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## Judgement

Ajit Kumar Sengupta, J.—The petitioner carries on business of importation as a holder of letter of authority of various licences. One M/s. Zenith Enterprises of Assam held an import licence for Rs. 6,54,900/- to import inter alia, secondary G.P. Coils. The said Zenith Enterprises issued a letter of authority in favour of the petitioner to import G.P. Coils to the extent of Rs. 3,31,000/- against the said licence. The petitioner entered into a contract on 25th September, 1984 with one Macpherson Exports Ltd. of London for purchase of 250 Metric Tonne of secondary G.P. Coils in thickness below 0.6 mm and width exceeding 800 mm at a price of U.S. \$ 185 per Metric Tonne C & F Calcutta.

2. In terms of the said contract the said foreign seller shipped a consignment of 40 coils of secondary G.P. Sheets in Coils from Japan in Vessel S.S. Vishva Yash under the bill of Lading No. 2, dated 8th April, 1985. The said vessel arrived at Calcutta Port on 27th March, 1986 and the petitioner filed the Bill of Entry through the clearing agent M/s. Barua and Choudhuri. The said goods were declared in the Bill of Entry as secondary G.P. Coils of Japanese origin.

3. On 1st April, 1985 the Shed Appraiser passed an order for examination of the subject consignment. It was countersigned by the Assistant Collector of Customs,

Appraising Group III on the original Bill of Entry.

4. On 11th April, 1985, the goods were examined by the Examining Officer, Shed Appraiser, Metal Export and Assistant Collector of Customs, K.P. Docks.

5. On 18th May, 1985. The Deputy Collector of Customs, Special Investigation Branch, held that the value of the goods declared i.e. 185 U.S. Dollar per Metric Tonne was low and accordingly the value was enhanced to 200 U.S. Dollar per Metric Tonne for the purpose of assessment.. He passed an order levying the duty at 200 U.S. Dollar per Metric Tonne. It was, however, provided that such enhanced value would not be debited against the import licence. Thereafter, on the aforesaid basis the bill of entry was classified and upon payment of the assessed customs duty, on 5th June, 1985 the said goods were released.

6. After release of the said goods the petitioner kept the said goods in a Private Warehouse, M/s. Shalimar Steel Processors at Howrah.

7. On 27th September, 1985 a notice u/s 110 of the Customs Act, 1962 was issued by the Collector of Customs, Calcutta in respect of the said goods. In the said notice it has been inter alia, stated that the said goods are liable to confiscation under the Customs Act and the petitioner was directed not to remove, part with or otherwise deal with the said goods except with the prior permission of the Deputy Collector of Customs.

8. On or about 30th September, 1985 a summons was issued u/s 108 of the Customs Act by the Superintendent of Customs (Preventive) Rummaging and Intelligence (Investigation) for investigation in connection with the seizure of the said goods u/s 110 of the said Act.

9. The petitioner made representation to the Customs authority stating that the goods were cleared upon payment of the Customs duty and upon production of all necessary documents which were available with the petitioner.

10. On 8th October, 1985 the said goods were again examined by the Special Investigation Branch. It is alleged that they did not find any discrepancy in the declaration made in the Bill of Entry.

11. In spite of several reminders given by the petitioner the goods were detained and kept under prohibitory order u/s 110 of the Act.

12. On 31st March, 1986 the petitioner was served with the summons to appear in connection with the importation of some G.P. Coils and other items of steel. The said summons however did not refer to the consignment in question nor the goods under detention. He was only asked to give evidence. When he attended the Customs House on 3rd April, 1986, it is alleged that he was forced to sign a letter on 3rd April, 1986 as if such letter was signed on 20th March, 1986 wherein extension of time for a period of 3 months allegedly granted for issuance of the show cause notice u/s 124 of the Act.

13. The petitioner has challenged the proceedings initiated u/s 110(2) and

Section 124 of the said Act and the detention of goods. The affidavits have been completed.

14. At the hearing Mr. Anindya Mitra Learned Counsel appearing for the petitioner has canvassed before me that the extension of three months allegedly granted by the Collector of Customs under the proviso to Section 110(2) was bad as the order was made without hearing the petitioner and without giving him an opportunity of showing cause as to why such an order of extension should not be made. It was contended that in exercising power of extension under proviso to Section 110(2) of the Act, the Collector was acting quasi-judicially and he was therefore bound to hear the objections of the petitioner to such an order of extension, before granting extension.

15. This contention has to be considered in the light of the relevant provisions of the Act.

16. The goods were cleared and removed from the Customs on 5th June, 1985. Admittedly the goods were seized u/s 110(1) of the Act when the goods were in the custody and possession of the petitioner. Section 110(2) provides as follows :-

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

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

17. It is, therefore, evident that when the goods were seized u/s 110(1) on the ground that the authorities have reasons to believe that the said goods are liable to confiscation under the Customs Act, a show cause notice has to be issued u/s 124 of the Act to the owner of the goods or the person who is in possession of such goods. Such notice has to be issued u/s 124 of the Act within 6 months of the seizure of the goods in terms of Section 110(2). On 26th March, 1986, 6 months period for issuance of a show cause notice expired. The period of 6 months can only be extended by the Collector on sufficient cause being shown for another 6 months. Sufficient cause has to be shown before any extension is made. What is sufficient cause must invariably depend on the facts of each case. The extension has to be made before the expiry of the first 6 months. Upon the expiry of the 6 months the right accrues to the person or the owner to have the goods released from detention of seizure. The act of extension is not merely an administrative order. When a challenge is thrown that there is no sufficient cause the authorities have to satisfy the Court that on the materials the authorities were satisfied that an extension was necessary. Therefore the act of extension is a quasi-judicial Act. The authorities must record the reasons for granting extension for issuance of a show cause notice in respect of the goods seized.

18. In dealing with an application for extension under proviso to Section 110(2) the authorities are required to adopt a judicial approach. The order for extension can be made on sufficient cause being, shown, and this requirement of the statute, plainly indicated that the Collector should act judicially or at any rate quasi-judicially and for that reason the petitioner who would be vitally affected by an order of extension, should have been given an opportunity of showing cause against such an order and of being heard with regard to the objection that he may have made to such an order being made. In this case no such opportunity was given to the petitioner and the order of extension was made without considering the petitioner's objection to such an order. The Supreme Court in the case of Assistant Collector of Customs Vs. Charan Das Malhotra, held thus :

"There can be no doubt that the proviso to the second subsection of Section 110 contemplates some sort of inquiry. The Collector, obviously, is expected not to pass extension orders mechanically or -as a matter of routine but only on being satisfied that there exists facts which indicate that the investigation could not be completed for bona fide reasons within the time laid down in Section 110(2), and that therefore, extension of that period has become necessary. He cannot therefore, extend the time unless he is satisfied on facts placed before him that there is a sufficient cause necessitating extension. The burden of proof in such an inquiry is clearly on the Customs Officer applying for extension and not on the person from whom the goods are seized."

19. The Supreme Court then proceeded to hold as follows :

"In our view, equating the power, the exercise of which depends on a mere reasonable belief, with the power, the exercise of which depends on "sufficient cause being shown envisaging at least some sort of inquiry on facts placed before the authority and determination by him on those facts, is not warranted. Therefore, a conclusion based on such a premise creates difficulty in sustaining it. Further, the distinction between an order extending before and after the expiry of the initial or the extended period does not make any difference as was sought to be made by the learned Judge when one inquires into the character of the power of extension. Both would raise precisely the same question, whether the power is purely administrative requiring no opportunity of being heard or judicial quasi-judicial, as in both the cases the right to the goods being restored would be involved. We cannot also agree with the learned Judge that there is no indication in the Act to suggest that the Collector is required to act judicially, firstly, because the proviso requires determination on facts and not on mere suspicion and a sufficient cause being made out by the applicant-officer, and secondly, because a civil right of a citizen to the restoration of the goods on expiry of the period, whether initial or extended, is affected"....

"In our view, the first question must be answered in favour of the respondent, and therefore, the Division Bench was right in holding that the power under the proviso was quasi-judicial, or any rate, one requiring a judicial approach.

Consequently, an opportunity of being heard ought to have been given to the respondent before orders for extension were made. The High Court, consequently, was justified in ordering restoration of the watches in question to the respondent."

20. The Division Bench of this Court in the case of Collector of Customs and Central Excise, West Bengal and Ors. v. Hindusthan Motors Limited reported in AIR 1975 Cal 369 following judgment of the Supreme Court in the aforesaid decision held as follows :-

"We have seen that on May 4, 1970 the Collector of Customs and Central Excise made an ex parte order u/s 110(2) of the Customs Act, 1962 extending the time for issue of the show cause notice by a period of six months from May 6, 1970. This order was set aside by Sabyasachi Mukharji J. The principal ground for setting aside the order is that it was passed ex parte. The learned trial judge has relied principally on the Supreme Court's decision in Assistant Collector of Customs v. Charan Das Malhotra AIR 1972 5.C. 689 In this judgment the Supreme Court considered the scope of Section 110(2) and of Section 124(a) of the Customs Act, 1962. The Supreme Court has said that the power under the proviso to Sub-section (2) of Section 110 is quasi-judicial or at any one requiring a judicial approach. Consequently, says the Supreme Court an opportunity of being heard ought to have been given to the respondent before orders for extension were made."

21. This Court at page 364 also held as follows :

"The next attack was on the show cause notice. It is stated on behalf of the appellants that if the original seizure was bad and the extension order was also bad, the show cause notice would be bad. We have held that the extension order should be set aside but we do not think that the seizure was bad. Mr. Justice Sabyasachi Mukharji has held that in spite of the order of extension being set aside it would be open to the Customs authorities to issue a show cause notice. The learned Judge has relied on a judgment of this Court in "Appeal No. 122 of 1969 as well as on the case reported in The Collector of Customs and Central Excise, Somajiguda, Hyderabad Vs. Amruthalakshmi and Others, . Since the point is covered by a Division Bench Judgment of this Court it has not been taken before us. But the appellant's counsel made it clear that he was not making any concessions. We accept the view of Mr. Justice Sabyasachi Mukharji that if the seizure was good, a notice to show cause could be given."

22. Admittedly in this case till 26th March, 1986 no notice u/s 124 of the Act was issued to the petitioner. Admittedly, before any alleged extension was made no opportunity of being heard was given to the petitioner. The petitioner was also not communicated the order of extension if any passed prior to 26th March, 1986. The order of extension has to be communicated to the party who may be prejudiced by such extensions It is now well-settled that when an order is made by an authority competent to make the same, if by such an order any party is to

be affected or prejudiced, the order must be communicated to that party. If the extension is made before the expiry of period of six months, it can be communicated any time thereafter. But having regard to the fact that no opportunity was given to the petitioner before the extension was made, the order of extension is bad.

23. It is, however, contended by the respondents that the petitioner consented to the extension being granted and accordingly the extension was made and there was therefore no question of giving any further hearing to the "petitioner. This contention has to be considered in the light of the averments made in the affidavit-in-opposition filed on behalf of the respondents. In paragraph 11 of the affidavit-in-opposition it has been stated that in reply to the summons issued u/s 108 of the Act the statement of the petitioner were record on 3rd April, 1986. It is then stated :

"On 4th April, 1986 the petitioner on his own volition gave a letter dated 20th March, 1986 personally giving no objection for extension of time granted by the Collector and noted such extension at the bottom of the said letter accordingly on the same date."

24. It is, therefore, admitted that although the letter is dated 20th March, 1986, the consent if any was given on 4th April, 1986. It is not clear why the letter was dated 20th March, 1986. Even assuming that consent can confer jurisdiction on the authorities to extend the period for issuance of the notice u/s 124 of the Act, there cannot be any retrospective extension after the period has already expired. My attention has not been drawn to any provision in the Act which permits extension of the period by consent of the party to be affected by such extension. The question arises as to whether the extension of the period of issuance of the show cause notice under the proviso to Section 110(2), can be made by consent. I shall deal with this aspect of the matter later.

25. It is not the case of the respondents that the said letter was sent by the petitioner on 20th March, 1986 expressing his consent for extension of time for issue of the show cause notice. It is not necessary to go into the question whether the consent was obtained by coercion or otherwise. But the fact remains that the said letter although dated 20th March, 1986 was written on 4th April, 1986 and accordingly it cannot be construed as consent to the extension of the time by a period of another 3 months, such consent having not been given prior to the expiry of the time prescribed. Their consent be retrospective consent.

26. It is necessary to refer to the order of the Collector which is stated to have been passed under the proviso u/s 110(2) of the Act. In the affidavit-in-opposition a copy of the order sheet has been annexed. The following note was given by the Deputy Collector (SIB) on 20th March, 1986 :-

"This is a case where seizure was effected by the preventive unit. They could not establish any case they were about to release the goods.

However, in December, 1985 we started investigation against the activities of Shri Chandra Kanth Seth. It is found out that Shri Seth used to import goods, highly under invoice, in the name of D. Sengupta. This is one such case. Shri Seth was arrested on 9-12-1985 and the case is under investigation. Since we have to collect evidence from different sources and the time for issue of SCN. expires on 26-3-1986, Collector may like to end the period for another 3 months, within which SIB would be able to complete the investigation."

Collector S.M. Submitted for order. Sd/- Illegible 21/3 20-3-1986.

27. The said note would show that only ground for extension is that evidence have to be collected from different sources. It has not been stated what steps the department took after the seizure was made on 27th September, 1985. Before the seizure was made on 27th September, 1985 and after 5th June, 1985 when the goods were released, the department must have conducted the enquiry otherwise they could not have seized the goods having reason to believe that the said goods were liable to confiscation. It would be evident from the said note that the Collector only put his initial having seen the said note but he did not pass any order extending the time.

28. The Collector of Customs who is empowered, on the sufficient cause being shown, to extend the period of show cause notice by 6 months should record the reasons and extend the time by passing an order. That has not been done in this case. The Collector did not consider at all whether any cause, for less any sufficient cause had been shown by the investigating officer for extending the period of issuance of show cause notice which in effect would extend the period of detention of the seized goods. This extension cannot be made as a matter of routine without any application of mind to the facts of the case, as the owner of the goods is. deprived of a valuable right of ownership in dealing with or disposing of the goods seized. There was no extension as envisaged by the proviso to Section 110(2). If the case of the respondents is correct that the petitioner consented to the extension in that event in the said note, itself the Officers concerned would have mentioned that the importer does not object to the extension being made, although that might or might not have been a relevant factor for extending the period. From the records which have been produced it appears that on 19th March, 1986 a note was put up before the Assistant Collector, SIB suggesting an extension of 4 months. The Assistant Collector in turn put up a note before the DC, SIB recommending the extension without mentioning any specific ground. The DC, SIB submitted a note before the Collector which has already been set out hereinbefore. The records do not show investigations have been made between the date of the seizure and the date when extension was sought for by the Officers.

29. The aforesaid facts would amply demonstrate that there was no consent at all before the expiry of the period prescribed by the Act and accordingly such consent cannot confer any jurisdiction on the authorities to extend the time for issuance of the show cause notice u/s 124. Even otherwise, the want of

extension affects the jurisdiction of Customs Officer to keep the goods under seizure and to proceed with the confiscation proceedings. There is a distinction between the provisions conferring the jurisdiction and the provision which merely regulates the procedure. A provision which is mandatory and which confers jurisdiction is enacted in public interest on the ground of public policy. This cannot be waived. It can neither be waived nor created by consent.

30. The order of extension was made in this case ex parte after the expiry of the period of 6 months as prescribed by the proviso to Section 110(2) of the Act. The petitioner had acquired a vested right to return of the goods seized. Such a vested right could not be taken away so as to deprive the party to the return of the goods by an order made ex parte extending the time. Where a party had acquired a vested right to the return of the goods by reason of the expiry of the time within which notice was to be served, such a vested right could not be taken away by an order of extension made ex parte without hearing the party.

31. When the goods are seized u/s 110(1), a notice to show cause u/s 124 has to be issued within 6 months of the seizure prescribed by the Act. If no notice is issued within 6 months the consequence is that the goods have to be returned to the person from whose possession they are seized. A notice to show cause may be given after the expiry of 6 months from the date of seizure but the person from whose possession the goods are seized acquires the right to the return of the goods immediately after the expiry of the period of 6 months or the expiry of the extended period. But the respondents lose the right of confiscation which is an action in rem. They will not be entitled to make an order of confiscation when the goods are returned if the order of extension passed u/s 110(2) is bad. They can still perhaps make an order imposing penalty in the proceeding initiated u/s 124 of the Act which may be issued even after the expiry of 6 months of the seizure, for imposing any penalty.

32. In the premises, I am of the view that firstly there was no valid extension of the period of issuance of show cause notice u/s 124. Secondly, there was no consent by the petitioner to the extension being made for the issuance of the show cause notice u/s 124 of the Act. Even if there was any consent such consent cannot confer any jurisdiction to extend, as such consent was given after the expiry of the period prescribed for such extension. There was no order of extension at all passed by the Collector extending the period of show cause notice. Even if it is accepted that the Collector by putting his initial on the proposal of the Deputy Collector for extension of the period for further three months, approved the proposal and impliedly passed an order of extension, even then such order of extension is bad as it was made ex-parte.

33. For the reasons aforesaid, the purported order of extension allegedly made on 20th March 1986 is bad and the respondents have an obligation to release the goods from the seizure and detention.

34. It is then contended that on 5th June 1985 the clearing agent had



acknowledged the receipt of the said show cause notice issued u/s 124 of the Act and the service on the clearing agent tantamounts to the service on the owner or the importer. I have held that there was no extension. The question whether the notice has been served upon the clearing agent or the importer has lost its significance. In any event this contention cannot be accepted. u/s 124 of the Act a show cause notice has to be issued before confiscation of the goods is made. In this case, however, confiscation of goods cannot be made as the goods have to be released to the petitioner as there was no order extending the period of issuance of the show cause notice. Even if any notice is issued for adjudication for imposition of penalty such notice is to be served either on the owner of the goods or the person from whose possession the goods have been Seized. The clearing agent is not a person within the meaning of Section 124 of the said Act for the purpose of service of notice after the goods have been assessed and cleared from the customs. u/s 2(c) of the Customs House Agents Licensing Regulations, 1984 "Customs House Agent" means a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station.

35. Custom station has been defined in Section 2(15) of the Customs Act, 1962 which means any customs port, customs airport or land customs station. Accordingly the clearing agent is only an agent of the importer for a limited purpose for clearance of the goods. Once the goods have been cleared from the customs station and the goods after clearance are in the custody either of the importer or the owner or any other person, the clearing agent ceases to be an agent of the importer. The clearing agent can not be treated as an agent of an importer for all time to come solely on the ground that the importer is the owner of the goods and the goods are found lying in his custody. The importer may sell the goods immediately after it has been imported. The person from whose custody the goods may be seized subsequent to the clearance may be a person other than the importer or the owner. The clearing agent ceases to be an agent of the importer after clearance of the goods from the customs station. The clearing agent has no further function to discharge after removal of the goods from the customs station. He cannot be treated as an agent for all time to come even after the goods have been cleared.

36. In this case the goods have been cleared on 5th June, 1985 and the seizure took place on 24th September, 1985 while the goods were lying in the petitioner's godown. On the date of seizure, the Clearing Agent was not and could not have been the agent of the importer in respect of the said consignment already cleared. Thus the service on the Clearing Agent cannot be treated as service on the petitioner after the goods have been released.

37. The other contention is that the goods have been finally assessed and released and such order has not been set aside or reviewed in accordance with the provisions of the Act. So long as it remains unaffected by any order of

revision or appeal the authorities concerned cannot reopen the assessment. Reliance has been placed in the case of Mangla Brothers Vs. Collector of Customs and Others, where I have held that when an assessment had been made by the authorised officer this order cannot be set aside or reviewed except in accordance with the provisions of the Act. In this case the Deputy Collector directed the assessment to be made on a particular basis and to release the goods thereafter. This was done. u/s 129D of the Act the Collector may examine the records of any proceeding in which authority subordinate to him passed any decision or orders and may by order direct such authority to apply to the Collector (Appeals) for determination of such Questions as may be specified by the Collector of Customs. Neither the Assistant Collector nor can any other officer reopen the assessment already made without earlier assessment being set aside by the appropriate authority.

38. It, therefore, appears to me that the goods which had been released after proper assessment cannot be seized nor any proceeding for alleged under-invoicing can be made in this case.

39. The only ground stated in the show cause notice u/s 124 is that there has been under-invoicing and accordingly the goods are liable to confiscation. No basis for such alleged under-invoicing is disclosed in the show cause" notice. It was imperative on the part of the respondents to disclose in the show cause notice, the fact or materials showing that there was any alleged under-invoicing. The mere ipse dixit of the customs officers that there has been under-invoicing could not clothe them with the jurisdiction for confiscation of the goods particularly when the goods have been assessed and released. In this connection it is necessary to refer the records of the case of the petitioner as well as the records of another case Jesmin Commercial Limited Produced before this Court.

40. From the Bill of Entry it would appear that the Rotation Number of the consignment is 143/85, dated 21st March 1985. On 1st April, 1985 the Shed Appraiser passed an order for examination of the subject consignment. It was counter signed by the Assistant Collector of Customs Appraiser Group-III on the original bill of entry in the following terms :-

"Please select/open any 2 coils for appraisalment, check declaration size and thickness. Check and report specifically whether goods are defective/secondary. Goods shall be examined in presence of Metal Export Appraiser Sri Das Gupta".

On 11-4-1985 the goods were examined by the Examining Officer, Shed Appraiser, Metal Export and A.C. of Customs K.P. Docks. The appraisalment report reads as under :

"Opened S/2 coils No. 76 and 58.

Opened S/2 coils as above for appraisalment. The subject goods are found to be without packing and only small inner portion of coils could be visually examined. Coils being heavy (above 5 ton) and there being no decoiling arrangement in the

docks the same could not be decoiled, only some inner folds could be taken out and examined. The goods are G.P. coils. The outermost and innermost surfaces are found to have some white spots and dents. Small portion of edges are damaged. Coil No. 76 could be seen having its outermost folds torn. No visible defects except small scratches were found on the portion of the goods examined. Amount of white spots, dents, damages, holes as mentioned above do not appear to be manufacturing defects. No categorical opinion regarding quality of goods can be offered at this stage. However, party may be asked to make arrangement for decoiling at least 25 per cent of the individual coils and also to submit manufacturers' Mill Test Certificate regarding quality of the goods".

41. The Deputy Collector on 18th May 1985, inter-alia, passed the following order :

"The 3rd B/E relates to Vishva Yash, Rot No. 143/85, dated 21-3-1985. The goods are defective galvanised sheet. Here again the declared value is U.S. \$ 283 C&F Calcutta per M.T. Here the value may be accepted as the goods are defective."

"Shri Chandrakanta Seth brought to my notice the details of 4 Bills of entry pending in Group-III. All relates to the shipment of secondary G.P. Sheets (defective/secondary). In this case they have produced invoice issued by M/s. Macpherson Exports Limited, London. He has produced mill's test certificate indicating that the goods are secondary G.P. Sheets. In this case the goods have been shipped from Antwerp, West Germany. Shri Chandrakanta Seth stated that] G.P. Sheets are costlier in South Korea whereas they are cheaper in West Germany and in view of the exemption notification relating to South " Korean goods the duty payable in respect of those goods will be only 50% of the duty payable in respect of identical goods shipped from West Germany. Hence though the declared value is only U.S. \$ 185 per tonne C&F Calcutta, the landing cost in this case will be more than the landed cost of the goods shipped from South Korea at comparable prices."

"In order to bring partly and since the value of U.S. \$ 185 per tonne appears to be low I propose to load the value to make it U.S. \$ 200 per M.T. for assessment purposes. Shri Chandrakanta Seth stated that he would mind paying duty at the enhanced value provided the enhanced value will not be debited from the import licence as there will be discrepancies regarding the remittance of foreign exchange like Japan against the import licence concerned. I consider this request and order that the duty may be collected by working out the assessable value as U.S. \$ 200 C&F per Mt. but at the same time to debit the import licence only on the basis of the declared value of U.S. \$ 185. All the 4 Bs/E brought to my notice by Shri Chandrakanta Seth relating to the goods shipped from Antwerp/Japan, may be assessed on the above lines provided mill's test certificate and examination report prove that they are secondary G.P. sheets in coils".

42. After the said order was made by Deputy Collector on 18-5-1985, the

following further notes appear :

"Notes foregoing

DC(N) has passed order in respect of 4 consignments imported by M/s. Jesmine Commercial Ltd. per S/s Vishva Yash Rot No. 143/85, L. No. 87 x L. No. 86, S/s Vishva Madhuri Rot No. 149/85, L. No. 9 and S.S. Golden Lake Rot No. 221/85, L.No. 12. Except the consignment by S.S. Golden Lake the remaining 3 consignments have been stored u/s 49 of C&F. Out of the 3 consignments, the consignment relating to S.S. Vishva Yash Rot No. 143/85, L. No. 86 had been stored u/s. 49 on payment of Duty on Du/B/E.

"In respect of all the three (3) consignments per S/B Vishva Yash Rot No. 143/85 and S/S Vishva Madhuri, DC(N) has passed order to accept the invoice value and to accept the declaration regarding the defective nature of the goods.

(Emphasis supplied)

"Therefore all the consignments have been allowed to be released. Accordingly the Bills of Entry have been suitably endorsed regarding release of the goods as per DC(N)"s Order."

"DCN"s order is very specific Section 49 Register is to be properly endorsed."

"Kind attention is invited to DC(N)"s order at N.S. IV 21/5 relating to 4 consignment for which Sri Chandrakanta Seth appeared before him out of the 4 consignments, the three bills of entry are noted below :

The particulars of 3 bills of entry are as follows :

(1)... .. (2)... .. (3) S.S. Vishva Yash

Rot No. 143/85

Imp. M/s. D. Sengupta

C/A. M/s. Baroa & Chowdhury

Goods: 236.010 M/T Secondary. G.P. Sheets in coils

Invoice No. S 912, dated 7-3-1985 issued by M/s. Macpherson Exports Ltd.

Port of Shipment - Japan

Declared C.I.F. Rs. 561372.22

"In the DC(N)"s order it is specified that the value for the purpose of assessment will be made on the basis of U.S. \$ 200 per M/T C&F but the licence will have to be debited at the invoice value. Further he has passed order to assess the goods on the lines noted above provided Bill"s test certificate and examination prove that they are Secondary in nature.

"The importers have produced Mills Test Certificate in respect of all the 3 (three)

bills of entry noted above and it is seen from the test certificates that the goods are Secondary G.P. Coils.

"All the above three consignments have been examined on original bills of entry and have been allowed storage u/s. 49 of C&F without payment of Duty."

"In respect of consignment No. 3 the importers have also produced mills test certificate and it is seen from therein that these are secondary. However in the examination report which is also countersigned by the Metal Export Appraiser it has been pointed out that no categorical opinion regarding quality of goods can be offered without decoiling of the goods in question. However they have stated that the goods are G.P. coils and the outermost and innermost surfaces are found to have some white spots and dents. Again they have stated that small amount of white spots, dents, damages, holes do not appear to be manufacturing defects. It is also mentioned that no visible defects except small scratchers were found on the portion of the goods examined.

Since there is no decoiling/recoiling arrangement it is to be considered as to whether the goods will be allowed to be released on the basis of mills test certificate examination a report in respect of consignment No. 3 in view of DC(N)"s order.

For order. Sd./- Illigible 22-5-1985". Is not the position regd. (3) as stated above comparable with that of Vishva Yash as recorded by DC(N) at "X1 of his order at n/s

II & III? If so, in view of DC(N)"s order is there any specific difficulty in this case?

Sd./- Illegible 23-3-1985.

Appr

Kind attention is invited to DC(N)"s order in F.No. S. 41-III-P-9/ 85A / S.49-P-32/85AI II) wherein he has passed order to the effect that the clearance of defective steel items may be allowed on the basis of Mills Test. Certificate and examination by Metal Expert and decoiling is not required when Mills Test certificates are produced.

(Emphasis supplied)

In view of the above order of DC(N), the goods may be allowed to be released from Section 49 storage as these are covered by Mills Test Certificates indicating Secondary quality.

Submitted for orders Sd./- Illegible. A.G/Gr. III 23-3-1985

Let us wait DC(N)"s order in file

Section 49-P-34/85A(III) of M/s. S.M. Casting, 24/5/

Appr.

It appears from the orders passed by DC(N) in F.No. S.49-P-34/85A (III) that where this goods are good quality and the importer could not produce any documentary evidence to prove that the goods are second grade, the assessable value of goods declared as defective/ Secondary should be Rs. 3000/- per Mt. Coming from non-preferential area and Rs. 3500/- per M/T for goods coming to an preferential area. Accordingly, it appears the except the case of S/S Jolagopal Rot No. 123/85 L.No. 17 which had been produced by Shri Chandrakant, the remaining three (3) cases noted at N.S. VII may be allowed release after loading the assessable value @ U.S. \$ C&F but debiting the invoice value in the licence.

In anticipation of approval, the three (3) bills of entry of notes at N.S. VII have been classified and assessed and may be released to the party.

Submitted for order and countersignature of the A.C.

Office A.C./Gr. III Sd./-Illegible After release the 3/6. 3-6-1985 file to me urgently

dSd./- Illigible

3-6-1985

Notes at bottom prepage. 3 sets of B/E noted at N.S. VII received by Importer on 3-6-1985.

Submitted for information please.

4-6-1985 Sd./- Illigible

43. Mr. Dutt, Learned Counsel for the respondents argued contrary to the records which is surprising. He submitted that the mill's certificates were not produced, nor were the goods defective. These contentions should not have been advanced. It only reflects the attitude of the respondents. It is not known why Deputy Collector (N) allowed release of the goods. of Chandrakant Seth. But the facts remain that the goods were released after examination was made and in a similar case also (Jesmine Commercial Ltd.) the goods had been released. No materials have been produced before this Court to show that there was under-invoicing or the goods are not of the defective quality. Mills Certificates were produced. The goods were examined and then released on the basis of the order passed by the Deputy Collector. Even thereafter the Assistant Collector of Customs has issued a show cause notice without there being any fresh material in his possession as regards the alleged under invoicing. It is not necessary for me to express any opinion whether proceedings initiated u/s 124 of the Act are valid or not, inasmuch as the impugned show cause notice was not served upon the petitioner. The respondents shall not proceed with the said show cause notice served upon the clearing agent. This will not, however, prejudice the rights of the respondents to issue fresh show cause notice.

44. For the reasons aforesaid, this application succeeds. The respondents shall release forthwith the goods from seizure made u/s 110 of the Customs Act 1962.

The order passed u/s 110(1) of the Act dated 27th September, 1985 shall stand revoked. This will not however, prevent the respondents to serve a fresh show cause notice u/s 124 of the Act to the petitioner and to proceed in accordance with law. after giving the petitioner reasonable opportunity of being heard. The petitioner will be at liberty to urge all points before the appropriate authority including the point that the authorities have no jurisdiction to proceed u/s 124 of the said Act. The petitioner will be at liberty to deal with or dispose of the goods after leaving at least one coil for the inspection by the Customs authorities, if and when they may require the same.

45. Let all parties act on a signed copy of the operative part of this judgment upon the undertaking of the Advocate-on-record of the petitioner to apply for and obtain certified copy of the judgment and order made herein.