

(1957) 02 CAL CK 0005
In the Calcutta High Court
Case No : Matter No. 99 of 1955

East India Commercial Co. Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 25-02-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Imports and Exports (Control) Act, 1947 — Section 3, 3(1), 3(2), 3(3), 4
Sea Customs Act, 1878 — Section 19

Citation : AIR 1957 Cal 606 : (1957) CriLJ 1116

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : N.C. Chakravartti, for the Appellant; D.K. Sen, for the Respondent

Judgement

Sinha, J.—This is an application in respect of the importation by the petitioner company, the East India Commercial Coy. Ltd., of a quantity of Fluorescent Tubes and Fixtures from the United States of America. Before I deal with the facts of the case it would be necessary to investigate about the law applicable to such importation. In exercise of the powers conferred by Sub-rule (3) of Rule 84 of the Defence of India Rules, the Government of India issued a notification No. 23-ITC/43 dated 1-7-1943. prohibiting the bringing into British India by sea, land or air from anyplace outside India, of any goods of the description specified in the schedule annexed to the said notification. It is unnecessary to deal with the notification in detail, it being sufficient to refer to item 78 of the schedule whereby Electrical Instruments, Apparatus and Appliances can only be imported under a License issued by any Officer specially authorised in this behalf by the Central Government. It is admitted that Fluorescent Tubes and Fixtures come within this category, and that the Officer empowered in 1948 to issue special license in respect thereof was the Chief Controller of Imports, New Delhi. The Defence of India Rules were continued by the Emergency Provisions (Continuance) Ordinance, No. XX of 1946. The Imports and Exports (Control) Act 1947 (XVIII/47) came into operation on the 24-3-1947. Sections 3, 4 and 5 of

this Act are of great importance and must be set out:

"Powers to prohibit or restrict imports and exports--

(1) The Central Government may, by order published in the Official Gazette, make provision for prohibiting, restricting or otherwise controlling, in all cases or in specified classed of cases, and subject to such exceptions, if any, as may be made by or under the Order--

(a) The import, export, carriage coastwise or In shipment of ship stores of goods of any specified description:

(b) The bringing into any port or place in (India) of goods of any specified description intended to be taken out of (India) without being removed from the ship or conveyance in which they are being carried.

2. All goods to which any order under (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted u/s 19 of the Sea Customs Act, 1878. and all provisions of that Act shall have effect accordingly, except that Section 183 thereof shall have effect as if for the word "shall" therein the word "may" were substituted.

3. Notwithstanding anything contained in the aforesaid Act, the Central Government may, by order published in the Official Gazette, prohibit, restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad, of any goods or class of goods imported into (India).

4. Continuance Of existing orders-- All orders made under Rule 84 of the Defence of India Rules or that rule as continued in force by the Emergency Provisions (Continuance) Ordinance 1946 and in force immediately before the commencement of this Act shall so far as they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under this Act.

5. Penalty--If any person contravenes any order made or deemed to have been made under this Act, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act 1878, as applied by Sub-section (2) of Section 3, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both."

(2) It will be observed that Section 3(2) introduces the provision of the Sea Customs Act 1878 and Section 4 introduces the Defence of India Rules as continued by the Ordinance. By notification No. 2-ITC/48 dated 6th March, 1948, the Central Government passed an order in exercise of the powers conferred by Sub-sections (1) and (3) of Section 3 of the Import and Export (Control) Act, 1947, and inter alia provided that any Officer issuing a "Licence" under Clauses (VIII) to (XIV) of the said notification No. 23-ITC/48, may issue the same subject to one or more of the conditions stated in the said notification. The relevant condition is condition V which runs as follows:

"That such other conditions may be imposed which the licensing authority considers to be expedient from the administrative point of view and which are not inconsistent with the provisions of the said Act."

(3) It appears that such conditions are often imposed by the licensing authority, the condition being set out on the "License" by means of a rubber stamp. On or about 26-7-1948 an order was made by the Government of India, being notification No. 1(13)-ITC/47(i). There is a dispute as to whether this order was made u/s 3(1) of the Imports and Exports (Control) Act, but for reasons which I shall state hereinafter, I am satisfied that it is such an order. It is stated in the notification that the exchange position in respect of sterling and soft currency countries had become easier and restrictions on imports of certain goods from these countries had been removed. It was further stated that the foreign exchange position in respect of dollar and hard currency areas continued to require a close watch. It then proceeded to prescribe a new form of application. The relevant provisions of the notification are set out below:

"7. Form of application -- A new form of application has been drawn up in appendix III. Application for import license in July/December, 1948 should be made in this form and all the information: required should be accurately furnished. Any application which is not made in the proper form or which does not furnish all the relevant information, required by this form is liable to be summarily rejected. In their own interest applicants are requested to send each application separately with relevant documents by registered post acknowledgment due.

(8) In the case of articles which are subject to overall monetary limits, where goods are raw materials and accessories used in industrial concerns, applications from actual consumers of goods will receive consideration. Actual consumers should clearly specify their past and estimated consumption of the article concerned, as required in paragraph 6 of the form of application."

(4) Item 78 in the appendix of the said notification reproduces item 78 of the Schedule attached to ITC 23/43 and declares that "Licenses" with) regard to such items from a dollar area would be subject to monetary ceiling but no "License" would be granted for unessential articles.

(5) I shall now come to the facts of the present case. On or about 27th September 1948, the petitioner company through the second respondent, one of its directors, made an application to the Chief Controller of Imports, New Delhi, for the issue of an Import "Licence" in respect of a quantity of Fluorescent Tubes and Fixtures. The application was made in the prescribed form, together with a covering letter. Copies of these documents were not annexed to the pleadings but I have directed that copies should be filed and they have been filed and marked as Exhibit I. In the covering letter it was stated that the application was for an import "License" enabling the company to import Fluorescent Tubes and Fixtures from the U.S.A. It was then stated as follows:

"These goods are required primarily for our Sree Krishna Jute Mills at Ellore in Madras Presidency where we are planning to arrange for an upto date lighting system. We have already placed our orders with Messrs. Perennial Export Emporium. New York, whose confirmation has been received by their cable dated 22nd instant" In the actual application made in the prescribed form, there is no reference to the fact that the goods were required /primarily" for the company"s mills. The application definitely declares that the entire import was required for the purpose of the company"s own use, and for no other purpose, and definitely not for purposes of sale. The following answers show this clearly:--

"(2) Whether actual user/established importer/new-comer in the line -- (answer) Consumer.

(a) For forward sale or sale on commission Purposes of which goods required:-- (no).

(b) For stock and sale to retailers, manufacturers or consumers -- (no).

(c) For retail sales, for agency or ... -- (no).

(d) For own use as industrial raw material or accessories for manufacture of -- (for own use).

(e) For any other purpose (specify details) --(no).

6. The application itself shows that the authorities considered this as a consumer"s application, and this fact appears from an endorsement made on the top of the form dated 5th October 1948. The application was for 20,000 Flourescent Tubes and 2,000 Fixtures of the value of one hundred thousand dollars. On the 8th October 1948, the Chief Controller of Imports, New Delhi, issued a special Licence to the petitioner company, a copy whereof is annexed to the petition and marked "A". The "Licence" shows that it is in respect of Flourescent Tubes and Fixtures of the approximate value of CIF Rs. 3,33,333 (equivalent of 100.000 dollars). It is stated that the "Licence" was granted under Government of India Ministry of Commerce notification number 23-ITC/43 dated 1st July 1943, and was without prejudice to the obligation under any other prohibition or regulation affecting the importation of the goods which may be in force at the time of their arrival. The "Licence" has a rubber stamp which runs as follows:--

"This Licence" is issued subject to the condition that the goods will be utilised only for the consumption as raw material or accessories in the Licence-holder"s factory and that no portion thereof will be sold to any party."

7. The "Licence" is in respect of 20,000 Flourescent Tubes and 2.000 Fixtures. The actual number of Flourescent Tubes received were four or five times the specified number although the monetary ceiling was observed. It appears that after the goods arrived they were taken delivery of, and reports began to reach the Chief Controller of Imports that the petitioner company was selling the goods

imported to various parties and the matter was placed before the Special Police Establishment, Government of New Delhi. On or about 31st August 1949, the Special Police Establishment of the Government of India at Calcutta, obtained a search warrant from the Chief Presidency Magistrate, Calcutta, searched the office and godown of the petitioner company and seized a large stock of Flourescent Tubes and Fixtures. It is said that the value thereof would be about Rs. 4.66,000. After seizure, the goods were left with the petitioner on execution of a bond by the petitioner number 2. On the 9th December 1950, the petitioner filed an application before the Chief Presidency Magistrate, Calcutta, praying for return of the seized goods and documents and the learned Magistrate called for a report. On the 12th January 1951, the Police submitted a challan against the petitioner No. 2 and others, for alleged offences u/s 420-120B, I. P. C., which was registered as case No. C-121/51. On the same day, namely, 12th January 1951, the Assistant Collector of Customs (C.T.A. Pillai) filed a petition of complaint before the Chief Presidency Magistrate, Calcutta, against the petitioner No. 2 and others, for alleged offences u/s 5 of the Imports and Exports (Control) Act. He inter alia prayed that the company may be directed to produce the Flourescent Tubes in Court and the same may be made over to the Assistant Collector of Customs, to be held in custody, or in the alternative, a search-warrant be issued for their seizure. The learned Chief Presidency Magistrate, by order dated 12th January 1951, issued process on the said complaint against the petitioner No. 2 and another person of the name of Manick Chand Lohia. The case was numbered C-120/51. The said two cases (C-120/51 and C-121/51) were tried by Sri G. Kumar, Presidency Magistrate, Calcutta, who by his judgment dated 28th June discharged the accused u/s 253 of the Code of Criminal Procedure. In the opinion of the learned Magistrate there was no sufficient evidence to make out a prima facie case for convicting the accused of the offences with which they were charged and he therefore discharged them u/s 253 of the Code of Criminal Procedure. Against the said order of discharge, the State as well as the Assistant Collector of Customs, made applications in revision before the High Court in its Criminal Revisional Jurisdiction, being Criminal Revision Cases Nos. 935 and 936 of 1951. It appears that by an order dated 28th March 1952, the orders of discharge were set aside and there was a remand. On the 9th June 1952, the petitioner filed an application before the trying Magistrate for an order for release of the goods, stating that the goods seized were lying stock-piled in the godown and were deteriorating in condition. The learned Presidency Magistrate rejected the application. Again there was an application in revision before the High Court, being Criminal Revision No. 595 of 1951. On the 16th January 1953, a Division Bench presided over by K.C. Das Gupta, J., ordered that the Magistrate should sell the goods and hold the sale proceeds in his custody pending such orders as may be passed on an application by the parties, or of his own accord. It was contended by the Customs Authorities that the goods were liable to confiscation but it was held that it was not necessary at that state to consider whether any order for confiscation can or should be made. The learned Presidency Magistrate then proceeded to decide the

cases C-120-51 and C-121-51. He made strong remarks upon the lightening speed with which the "Licence" was issued, it appears that the prosecution case was that an unlicensed firm of the name of Bengal Electric Co. Ltd., sold Flourescent Tubes of the description imported by the accused firm to several parties who gave evidence. It was stated that this firm was a bogus company and that it was the petitioner No. 1 which was carrying on the sale of the goods under this name. In the opinion of the trying Magistrate, however, no prima facie case had been made out against any of the accused persons either u/s 420/120B, I.P. C. or u/s 406, I.P.C., nor was it established that there was contravention of any order u/s 5 of the Import and Export (Control) Act. On the 27th July 1953, the cases were accordingly discharged. On the 3rd August 1953, petitioner No. 2 on behalf of petitioner No. 1 filed an application before the learned Presidency Magistrate praying that the sale proceeds, namely, Rs. 4,15,000 should be returned to them. On the 28th August 1953, the Assistant Collector of Customs moved the High Court against the order of discharge passed in case No. C-120/51. On the 28th August 1953, a Rule was issued (Cr. Rev. Case No. 1124/53) and an order was made that the sum of Rs. 4,15,003 should be kept in deposit until further orders of the High Court. It will thus appear that so far as the case of cheating is concerned, no further step was taken by way of revision but an application was made for revision in respect of an alleged offence u/s 5 of the Import and Export (Control) Act. Criminal Revision Case No. 1124/53 was heard and decided by a Division Bench of this Court and by a judgment delivered by Sen., J., dated 3rd March 1955, the Rule was discharged. Great reliance has been placed on this judgment and it would be necessary to see how far it is of assistance in this case. I shall deal with it presently. On the 24th March 1955, the petitioner No. 2 on behalf of petitioner No. 1 filed an application before the learned Presidency Magistrate, Calcutta, inter alia for making over the sale proceeds to them. This application stood adjourned from time to time and on the 7th May 1955, an application was made by the Assistant Collector of Customs asking for further adjournment, stating that it had been decided to initiate adjudication proceedings under the Sea Customs Act against the petitioner and the sum of money in question. Upon this application, the matter was further adjourned and on the 9th May 1955, the petitioner No. 2 moved an application u/s 439 read with Sections 517, 520 and 561 of the Code of Criminal Procedure, before the High Court in its Criminal Revisional Jurisdiction. There was an interim stay of all proceedings pending the disposal of the Rule.

8. On the 28th May 1955, notice was served upon the petitioners to show cause why the Flourescent Tubes and accessories and/or the sale proceeds thereof should not be confiscated u/s 167(8) of the Sea Customs Act and why penal action should not be taken for the illegal importation of the said Goods. A copy of this show cause notice is annexed to the petition and marked with the letter "L". The notice stated that the special "Licence" was issued on the express condition that the goods would be utilised, for consumption as raw material or accessories in the license-holder's factory and no part thereof would be sold or permitted, to

be utilised by any other party. It was stated that investigation revealed that portion of the goods were sold to other parties in breach of the representation by which the "Licence" had been caused to be issued, namely, that it was required "for the purpose of the Importer's own use. It was stated that since the "Licence" had been caused, to be issued by fraudulent misrepresentation and the restrictions imposed by the notification issued u/s 3 (1) of the Import and Export (Control) Act were infringed, the Fluorescent Tubes and accessories were liable to confiscation as also the equivalent sale proceeds. The petitioners were called upon to explain why the money should not be confiscated and why penal action should not be taken.

9. This Rule was issued on the 3rd June 1955, for an order upon the respondents to show cause why there should not be a Writ in the nature of mandamus directing the respondent to recall the notice dated the 28th May 1956 and/or not to proceed by way of adjudication or otherwise in pursuance thereof and for other reliefs. An interim order was issued restraining the adjudication proceedings but I did not issue any restraint order with regard to the proceedings before the Presidency Magistrate. It appears that the learned Presidency Magistrate, by an order dated 22nd June 1955, directed the return of the money to the Assistant Collector of Customs for being dealt with according to the provisions of the Sea Customs Act. Again to this an application was made in revision being Criminal Revision Case No. 812 of 1955. It is not quite clear what happened in this case except that the money is still lying with the Presidency Magistrate.

10. Mr. Sen on behalf of the petitioners advanced the following argument. He pointed out that the respondents proposed to confiscate the goods under the provisions of the Sea Customs Act. But as stated above, the Sea Customs Act comes into operation because of Section 3 of the Imports and Exports (Control) Act, which in its turn attracts the orders made under the Defence of India Rules. We have, therefore, to start from the prohibition contained in Notification No. 23-I. T. C./43 dated July 1, 1943, and read this with Section 3 (1) of the Imports and Exports (Control) Act. Under the last mentioned provision, the condition precedent for imposing a prohibition is for the Central Government to make an order published in the official gazette. There is no doubt that Notification No. 23-I.T.C./43 must be deemed to be such an order. This notification or order lays down that the electrical goods we are concerned with in this case, cannot be imported except under a special licence. Therefore, if it is imported without a special licence that would be a contravention of the order. The goods have been imported under a special Licence, In fact, the petitioners have taken delivery and the goods have completely passed the customs barrier, and were resting in the godown of the petitioners. Coming now to Notification No. 2-I.T.C./48 dated March 6, 1948, that merely gives power to an officer issuing a "Licence" to impose certain conditions which he considers expedient from the administrative point of view. In the present case, such conditions were stamped upon the "Licence" by a rubber stamp. It is argued that these conditions are no part of

any order passed by the Central Government, and a violation of such conditions is not a violation of an order of the Central Government as contemplated in Section 3 (1) of the Imports and Exports (Control) Act. Mr. Sen points out that assuming that there was a violation of the conditions, that is something which happened after the goods had passed the customs barrier, and the penalty for such violation is laid down in the above-mentioned notification itself, namely that where a licensee was found to have contravened the order and the terms and conditions, embodied in or accompanying the "Licence" then without prejudice to any penalty to which he may be liable under the Imports and Exports (Control) Act or any other enactment for the time being in force, he shall either permanently or for a specified period be refused any further Licence" for import of goods. Mr. Sen argues that there is therefore, no room for imposing a penalty of confiscation. Mr. Sen relies on the decision of Sen, J., in Criminal Revn. Case No. 1124 of 1953 (C.T.A. Pillai Vs. H.P. Lohia and Another,). As will appear, from the facts set out above, this was a preceding taken by the Assistant Collector of Customs, Calcutta, against the respondent No. 2 and another, for an alleged offence u/s 5 of the Imports and Exports (Control) Act. That section has been set out above. It expressly lays down that the penalty can be imposed only if a person contravenes any order made or deemed to have been made under this Act. In such a case, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act, a penalty may be imposed of imprisonment or fines or both. Considering all the facts, Sen, J., came to the conclusion that there had not been any contravention of any order made under the Imports and Exports (Control) Act. The learned Judge pointed out that Notification No. 2-I.T.C./48 does not directly impose any duty but it gives power to the licensing officer to impose certain conditions. But contravention of such condition imposed by the licensing officer cannot, prima facie be regarded as contravention of the notified order itself. The learned Judge further pointed out that there might have been some substance in this argument if Clause (xiii) of Notification No. 23-I.T.C./43 had contained a term like "under the terms or conditions of the "Licence"". He pointed out that the difficulty had apparently been realized in Pakistan and, therefore, the Act was first amended by an Ordinance and then by the Imports and Exports (Control) Act, 1950, of Pakistan. I am told that there has been a similar amendment now in India as well. The learned Judge concluded as follows:--

"It is not possible to hold that the licensee by merely committing breach of the condition imposed by a "Licence" has committed the offence which consists in contravention of an order made or deemed to be made under this Act. In this view, therefore, ... it is clear that the prosecution of the opposite party u/s 5 of the Imports and Exports (Control) Act, 1947, must fail."

11. Mr. Sen next refers to the notice served upon his client by the Collector of Customs dated May 28, 1955, a copy whereof is Annexure L to the petition. This notice mentions that under Notification No. 23-I.T.C./43 dated July 1, 1943, as amended, the importation of Fluorescent tubes and their accessories from the

United States of America was prohibited except under a special "Licence" and under the conditions indicated in the special "Licence" and imposed under the authority vested in the licensing officer by virtue of the Notification No. 2-I.T.C./48 dated March 6, 1948. It then goes on to say that the petitioner company had induced an import trade control "Licence" to be issued on certain representations made. The "Licence" was issued on the express condition "that the goods will be utilised for consumption as raw material or accessories in the licence-holder's factory and no portion thereof would be sold or permitted to be utilised by any other party" and the "Licence" was subjected to the said condition. It then propounds that the importation of such goods would be deemed to be illegal unless at the time of importation the goods were covered by a valid special "Licence" which was not caused to be issued by fraudulent misrepresentation, and also that after importation the goods or any part of them were not sold or permitted to be utilised by any other party except the importer for consumption as raw material or accessories in the license holder's factory. Finally, it was stated that investigation revealed that portions of the goods were sold to other parties by the license holder in breach of the representations by which the "License" had been caused to be issued and in contravention of the conditions Imposed in the "License." It was said that since the "License" had been caused to be issued by fraudulent misrepresentation and the restrictions imposed under notifications issued u/s 3(1) of the Imports and Exports (Control) Act 1947 were infringed "the fluorescent tubes and accessories are due to be liable to confiscation u/s 167(8) Sea Customs Act as read with Sections 3(2) and "4 of the Imports and Exports (Control) Act, 1947 as amended". It was further stated that in view of the fact that the goods had been sold by order of court the confiscation would attach to the equivalent monetary value. Although the above reasons for confiscation were stated, there is a paragraph of a general nature which is as follows:--

"6. They are also called upon to explain within the abovementioned Period why the money should not be confiscated u/s 167(8) of the Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act, 1947, as amended, and also why penal action should not be taken against them under, the aforementioned section."

12. Mr. Sen argues that the position is exactly similar to that which came for decision in Criminal Revision Case No. 1124 of 1953, and that for the reasons stated by Sen J. this notice also should be quashed.

13. Mr. Sen next says that the Sea Customs Act is attracted by Section 3 (2) of the Imports and Exports (Control) Act but Section 3(2) says that all goods to which any "order under Sub-section (1) applies" shall be deemed to be goods of which the import or export has been prohibited by the Sea Customs Act. The order in question viz., Notification No. 23-I.T.C./43 was not an order u/s 3(1) of the Imports and Exports (Control) Act. It was an order under the Defence of India Rules which u/s 4 would be "decreed to have been made" under the said

Act. Mr. Sen argues that an "order made under the Act"" and "deemed to be made under the Act" are not the same thing. He says that if they were the same, such different expressions would not be used in Sections 3, 4 and 5. In my opinion, this point is of no substance. I do not find any justification for treating an order made under the Act or deemed to be made under the Act upon a different footing. If Mr. Sen's contention is right then an order which is deemed to be made under the Act cannot be challenged at all. How then does Section 5 impose a penalty upon any person contravening an order made, or deemed to have been made under the Act, and why does it provide that it will be without prejudice to any confiscation or penalty which he may be liable under the provisions of the Sea Customs Act as applied by Sub-section (2) of Section 3?

14. I now come to his main point as mentioned above. The first thing of importance to note is that throughout the proceedings abovementioned the Government Notification No. 1(13)-I.T.C./ 47(i) dated 26-7-1948 was never mentioned. It is, therefore, necessary first of all to decide as to whether this is an order of the Central Government u/s 3(1) of the Imports and Exports (Control) Act. This Notification has been published in the Gazette of India on 29-7-1948 and is headed as follows:

"Government of India, Ministry of Commerce, Public Notices, New Delhi, the 26-7-1948. Subject: Proposed Government issue of Import "License" for the period July-December 1948." It will be observed that like the other notifications which we have considered viz., Notifications Nos. 23-I.T.C./43 and 2-I.T.C./4S, this notification is also an import trade control notification. It is stated in the order itself that it contained decisions made by the Government of India governing the issue of Import "License"" for the licensing period July-December 1948. It makes a modification of the policy to be followed in the granting of "Licenses", and what is very important, prescribes a new form of application. It is in this new form that the application in the present case was made. It, also lays down the period within which "Licenses" would remain valid. This form puts an emphasis on a complete disclosure as to whether the applicant was an actual user or not. In fact, the applicant, in filling up the form, has to categorically state as to whether he was making any importation for his own purpose or for any other purpose. In paragraph 8 of the order which has already been quoted above, it has been clearly stated that in the case of articles sublet to overall monetary limits, applications from actual consumers of goods will receive consideration. Since there was a controversy as to Whether this notification was meant to be an order u/s 3(1) of the Imports and Exports (Control) Act, I directed that an affidavit should be filed stating as to whether it was so or not. An affidavit has now been filed by one Syed Naqi Belgrami dated 26-7-1956. Mr. Belgrami is a joint Secretary of the Government of India under the Ministry of Commerce. He says that he is well acquainted with the various notifications that were and are issued from time to time under the Imports and Exports (Control) Act, 1947 as extended and amended from time to time. He states on oath, confirming it to be true to his knowledge, that Notification No. 1/13-I.T.C./47(i)

published in the Gazette of India at New Delhi on Thursday 29-7-1948 was a notified order of the Central Government and that the said order prohibits, restricts and otherwise controls the importation, of the goods mentioned in Appendix I of the said notified order. He further states that the said order is a notified order issued u/s 3(1) of the Imports and Exports (Control) Act, 1947 as extended and amended upto date. He further says that by virtue of the said notified order the Importation of goods covered by item 78 was restricted to the extent that they were to be used as accessories in the factory of the ""License" holder and, no fluorescent tubes except for such use could be imported into the country. In reply to this affidavit, the respondent No. 2 in his affidavit dated 14-8-1955 states that Shri G.R. Kamath who was the Chief Controller of Imports and Exports in July-December 1948 in his capacity of Joint Secretary, Ministry of Commerce, Government of India and signed the order in question had deposed before the Presidency Magistrate Mr. G. Kumar, and said as follows:

"I ordered the actual user license under authority given by notification published in March 1948 that being a statutory notification continued in force during the licensing period. It was not repealed. In this regard the policy to be followed in each licensing period were derisions of the Ministry of Commerce find published in the official gazette under my signature as I was also the Joint Secretary of the Ministry of Commerce.""

It is further said that one Mr. P. G. Salvey who was the Deputy Chief Controller of imports at the relevant time told the learned Magistrate, that notifications regarding principles to be followed in a particular licensing period were to be issued during that period. If the proposed notifications were intended to be followed in a subsequent licensing period, a notification to that effect was to be published in the subsequent licensing period. Based on these observations, it is argued that the order in question is merely a decision of the Ministry of Commerce, and not an order made by the Government. I am unable to draw this inference. This is a notification issued by the Government of India and numbered as an import trade control notification. It says on the face of it that it contained, decisions made by the Government of India. It is clear that it has a reference to order No. 23-I.T.C./43 because the original prohibition is contained therein, in fact, the Appendix to this new order shows that it follows the same serials as the Appendix to the original order, and declares the new policies to be followed in respect of the same. It prescribes a new form of application. It lays down a new policy. The. position therefore, appears to me to be clear that the original prohibition is contained in order No. 23-I.T.C/43. This is amended from time to time and order No. 1(13)-I.T.C/47(i) is an amendment of that order. It is quite obvious why the original order had to be amended from time to time. The export and import of goods depend on various factors, one of which is the exchange position in respect of sterling in soft currency countries. This varies from time to time, requiring changes in policy. At one time the exports and imports may be liberalised whereas at others there may be stringent restrictions. It depends on economic, political and various other factors. There is nothing in the statement of

Mr. Kamath and Mr. Salvey to show that this is not an order made by the Central Government u/s 3(1) and it has now been stated authoritatively that this is so. I accept it.

15. It is unfortunate that this order was not placed before the Court in the previous proceedings. It is necessary to consider how it affects the question in issue. The order No. 23-I.T.C/43 prohibits the importation of the goods in question without a special "License." The goods are specified in the Schedule. So far as the Schedule to that order is concerned, it speaks about electrical instruments, apparatus and appliances. Coming now to the conditions imposed under, order No. 2-I.T.C/48 we find that the particular condition imposed in this case is that the goods will be utilised only for consumption as raw material or accessories in the license holder's factory and that no portion thereof will be sold to any party. I respectfully agree with Sen J. that a breach of this condition alone will not be a violation of the order passed by the Central Government as contained in Notification No. 23-I.T.C/43. This is one aspect of the matter. In my opinion, however there is another important aspect, which is either not considered or did not fall to be considered in the proceedings u/s 5 of the Act. Coming now to the question of the Sea Customs Act, we find that all goods to which any order under Sub-section (1) of Section 3 applies shall be deemed to be goods of which the import or export has been prohibited or restricted u/s 19 of the Sea Customs Act and all the provisions of that Act shall have effect accordingly. Let me analyse the position. Under order No. 23-I.T.C/43 the importation of fluorescent tubes and accessories is prohibited except under a special "License." That much is conceded by every party. If order No. 1 (13)-I.T.C/47(i) is an order u/s 3(1) of the Act then the position is. that intending applicants for import "License" were clearly told that in the case of import of articles which are subject to overall monetary limits only applicants for actual consumer goods will receive consideration. The new form that has been prescribed clearly stated that the applicant will have to declare as to whether the goods that he intended to import were for his own consumption or for other use viz., sale etc. The petitioner company made an application categorically stating that it required the goods for its own use, that is to say, use in its factory. Some stress was laid on the covering letter which said that it was "primarily" so intended. I have to reject this contention. The covering letter seems to have been cleverly used in order to leave some elbow room, but the authorities when granting the application did so upon the application made in the prescribed form and not upon the covering letter. As I have already pointed out, there is an endorsement on the top of the form that it was an application for consumer's own use. It is clear that the "License" was granted on that footing. The question, therefore, is as to what was the "License" that was granted. In other words, was it a "License" in respect of goods answering the description, intended for any kind of use, or was it a "License" confined to fluorescent tubes and fixtures which the petitioner company required for its own use in its factory viz., Sri Krishna Jute Mills at Ellore. Mr. Ben argues that for this purpose it is permissible only to

look at the "License" and nothing else. He argues that the "License" shows that it was a ""License" in respect of fluorescent tubes and fluorescent fixtures consigned from the United States of America of the approximate value of Rs. 3,33,333/-, that is to say, one hundred thousand dollars. It is, of course subject to the condition that the goods Will be utilised for consumption as raw materials or accessories in the license holder's factory and that no portion thereof will be sold to any party. I am unable to agree. I think that there are two parts of the question. First of all as to what was permitted to be imported and secondly the condition imposed upon the disposition of the goods after import. These two questions will have to be dealt with separately. The judgment of Sen J. mentioned above deals only with the last question. In my opinion the first question is still open. In order to determine as to what goods were permitted to be imported under the "License", we are bound to see the application of the petitioner together with the "License" granted thereon. In short, the position is this. The Government was prepared to grant consideration to applicants for importation of goods which they required for their own use. In other words, such applications were likely to be granted, whereas goods required for other purposes would not receive consideration, meaning that they were likely to be refused or passed over. The petitioner company upon this invitation made an application declaring that it was for goods required for its own purpose. Therefore the "License" that was applied for and granted was not for fluorescent tubes and fixtures generally but for fluorescent tubes and fixtures which the petitioner company wanted for use in its own factory at Ellore. Then two questions may arise. Firstly, the application may have been perfectly bona-fide, that is to say, the petitioner company might have needed the goods genuinely for its own factory but having succeeded in importing it, might find that it would be more lucrative to sell it in the open market, and make a gain in violation of the conditions imposed. But again, it may be that the whole transaction was fraudulent because it never required the goods for its own use, that is to say for its factory at Ellore, but that it always intended to import and did actually import the goods for the purpose of selling it in the open market. Under such circumstances, the goods that have been imported were never goods required by the petitioner company for its own use. If this can be established, then the result would be that the petitioner company had imported goods for which the special "License" was not issued, which is another way of saying that the goods were imported without being covered by a special "License." Let us take an extreme case. The company stated that it required the goods for its factory at Ellora and a "License" was issued upon that footing and it would not have been granted under any other footing. Supposing at the time of the application, or the issue of the "License," it did not possess any factory at all. Could it be said that the goods imported had conformed to the "License" ? In my opinion, it would not.

16. Let us now come to the investigation that is proposed to be held, by the notice given by the Collector of Customs dated 28-5-1955. I cannot say that the notice has been framed happily. First of all, it does not refer in terms to order No

1(3) I.T.C./47 (i) but to notification No. 23 I.T.C/43 dated 1-7-1943. "as amended". However, as I have mentioned above, this last mentioned order is in reality an amendment of the original order. Therefore, I do not see why technically speaking it is not covered. It is apparent that the notice complained, of a violation of the conditions as imposed in the "Licence", but it also complains that the "License" was caused to be issued by fraudulent misrepresentation. Mr. Sen has stressed the fact that the criminal case for cheating against his clients has been now terminated. In my opinion that is not conclusive so far as these proceedings are concerned. As I have said before, if it is found that as a fact the company had imported these goods as goods required for its own use whereas it was not required or could not possibly be required for its own use, then it would be the importation of goods not covered by a "License", because the "License" is in respect of goods required by the petitioner company for its own use. If this is not so held, it will, in my opinion, be giving a premium to gross dishonesty and fraudulent dealings. The next thing to consider is the stage at which this application has been made. At present only a notice has been given to show cause. as is known, this is not a statutory notice required by the Sea Customs Act. It is a notice given because rules of natural justice require that the person whose goods are to be confiscated or upon whom a penalty is to be imposed, should be afforded an opportunity to defend his case. We are not, therefore, to construe such notices like a statutory notice. What is to be considered is whether it has conveyed to the delinquent the exact case which it has to meet. It may be that the authorities cannot confiscate the goods or impose a penalty for a violation of the rubber stamped conditions. It, will be for the company to show cause, and satisfy the authorities that no such confiscation or penalty could be imposed. There is, however, the other point viz., as to whether the goods are covered by an appropriate "License". The question is whether I should at the present moment stop investigation into the facts? Very serious allegations appear from the documents placed before me. It is not for me at this stage to express any opinion thereon, but I do not see any reason why I should stop a searching investigation into the questions raised. I will state below only some of the facts that have been brought forward and require investigation:

- (i) The disparity in the application for the "License" and the covering letter.
- (ii) The learned Presidency Magistrate has himself remarked at the "lightening speed" with which the license was issued.
- (iii) The allegation that goods of the description imported were being sold by a company called the Bengal Electrical Co. Ltd. which is stated to be a bogus company carrying on the sale of the goods in this name, on behalf of the petitioners.
- (iv) That the petitioner company applied only for 20,000 tubes but imported nearly five times that number, whereas it is stated that the Mill belonging to the petitioner company did not even have scope for the use of 20,000 tubes, not to speak of about a lac.

(v) The learned Presidency Magistrate himself said that on the facts, the importation of tubes and fixtures of the value of 100,000 dollars was an absurd figure for the company as an actual user. It may be necessary to investigate as to the actual capacity of the petitioners' factory at Ellore, at the time of the export.

17. In my opinion, on the facts of this case the petitioners have not successfully made out any ground why I should interfere at this stage. It will be for them to establish to the satisfaction of the respondents that the importation of the goods was in fact made according to law. If they are successful in showing this, to the authorities concerned, they may not proceed any further and may not either confiscate the goods or impose any penalty. There is no question of the respondents not having jurisdiction to deal with the matter. They have done nothing more than to issue a notice proposing to do certain acts and asking the petitioners to show cause why it should not be done. There is no reason why this Court should interfere at this stage. If the respondents after investigating the matter make an order not in accordance with law or follow a procedure not known to law then the petitioners might ask for relief at the proper stage.

18. Lastly, I might mention about a point Mr. Sen made viz., that now that the goods have been sold nothing can be done with regard to the sale proceeds. This contention has neither merit nor substance. If the goods could be confiscated, then the equivalent in money can also be confiscated. It is at the company's own application that the court, in order to save possible damage, ordered that the perishable goods should be sold and converted into money. It cannot be the law that by reason of such an act on the part of the court, the petitioners can escape the consequences of a breach of the law assuming that there is such a breach, which of course has not yet been established. Again, that is a point which will come up for consideration after the respondents have completed the enquiry and have made their decision. In my opinion the application is entirely premature and should be dismissed.

19. The rule is discharged and all interim orders are vacated. There will be no order as to costs.

20. I had by the rule nisi restrained further proceedings before the respondents. Mr. Chakravorty asks me to continue the same until his client can make an application to the Appeal Court for further stay. I will not continue the stay so far as the filing by the petitioner of his explanation is concerned, but except that let further proceedings be stayed for a month, after which any further stay must be obtained from the Court of Appeal, if an appeal is preferred. As the original period for filing the explanation has already expired Mr. Sen suggests that it should be filed within two weeks from date. Let that be done.

21. The order is to be expeditiously drawn up.