

(1984) 09 CAL CK 0015
In the Calcutta High Court
In Re: S.S. Kothari

Date of Decision : 19-09-1984

Acts Referred:

Customs Act, 1962 — Section 111, 112, 115(1), 115(2), 125
Customs Tariff Act, 1975 — Section 3
Imports and Exports (Control) Act, 1947 — Section 3, 3(2)

Citation : (1985) 6 ECC 81 : (1987) 30 ELT 156

Hon'ble Judges : Ajit Kumar Sen Gupta, J

Bench : Single Bench

Advocate : H.K. Dev Burman, P.K. Mullick Ranjan Deb and Surendra Dube, for the Appellant; Taher Ali, for the Respondent

Judgement

Ajit Kumar Sen Gupta, J.—The petitioner carries on restaurant business under the name and style of Bar-B-Q. He is the son of one Shivji Valji Kothari who is a non-resident Indian residing in Tokyo, Japan, for the last .14 years. It has been alleged that in or about January, 1984 the father of the petitioner purchased a Toyota Corona car of 1452 c.c. 1983. Model (hereinafter referred to as the said car) for himself for his personal use in Japan. The said car was subsequently found unsuitable to the father of, your petitioner and was arranged to be sent to the petitioner in India as a gift from father to son. The said car which fitted with an air-conditioner, stereo/radio/cassette and a car lighter was shipped by the father of the petitioner ex S.S. Vishva Karuna which sailed from the Port of Tokohama on or about July 6, 1984 and the same arrived at the Port of Calcutta on or about August 10, 1984. The cargo including the said car was discharged immediately thereafter.

2. The petitioner appointed a clearing agent and submitted the bill of lading, a letter of gift from the petitioner's father and a certificate from the Consul General, Embassy of India in Japan, Tokyo. The petitioner in order to avoid demurrage and pilferage of and from the said car which is still lying at the K.P. Docks 6 (K.P.D.), submitted an application for warehousing the said car under the provisions of Section 49 of the Customs Act, 1962. The respondent No. 3 the Assistant Collector of Customs, for Appraisement Group VII intimated that until

and unless the licence and/or customs clearance permit for the said car was obtained by the petitioner from the requisite authorities, the prayer for warehousing could not be entertained. The said car is leviable to customs duty by virtue of various provisions of Customs Act, 1962, the Customs Tariff Act, 1975 and Item No. 87.02 of the First Schedule to the Customs Tariff Act, 1975. The scheduled rate of duties specified for the said car in the Customs Tariff Act, 1975 as amended by the Finance Act, 1984 is 15% basic and auxiliary duty at the rate of 40% and additional duty at the rate of 5% plus Rs. 10,500 plus 5% of Rs. 10,500. Additional duty of customs is leviable u/s 3 of the Customs Tariff Act, 1975. This additional duty is also commonly referred to as the countervailing duty.

3. On June 18, 1977 the Central Government published a notification bearing No. 83-Cus., the text whereof is set out herein below :-

"Exemption to motor vehicles of an engine capacity not exceeding 1600 c.c. - In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts motor vehicles falling under sub-heading (2) of Heading No. 87.02 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and of an engine capacity not exceeding 1600 c.c., when imported into India, from so much of that portion of the duty of customs leviable thereon, which is specified in the said First Schedule, as is in excess of 100 per cent ad valorem."

4. By reason of the said notification the effective rate of duty of customs on the said car which is below 1600 c.c. is 100%. The C.I.F. value of the car was ascertained by the customs authorities at Rs. 59,595.99, C.I.F. value of the air conditioner was ascertained at Rs. 3,709.33 the stereo/radio/cassette at Rs. 800.00 and the car lighter at Rs. 100.00 respectively. On or about 17th August, 1984 the petitioner said clearing agent received a show cause notice issued by the respondent No. 3 calling upon the petitioner to show cause as to why the car with its attachments should not be confiscated u/s 111(d) of the Customs Act, 1962 and why the penalty should not be imposed on the petitioner u/s 112 of the said Act. In the said show cause notice it has been alleged that the said car has been imported in contravention of Clause 3(2) of Imports (Control) Order, 1955 as amended read with Section 3 of the Imports & Exports (Control) Act, 1947 as amended.

5. The contention of the petitioner is that even assuming, without admitting, that the importation of the said car contravenes the Imports (Control) Order, 1955 or the Imports and Exports (Control) Act, 1947, then and in that event the petitioner is entitled to and can pay a fine under the provisions of Section 125 of the Customs Act, 1962 in lieu of confiscation. It has been stated that in similar circumstances where importers have imported cars without a licence and customs clearance permits, the customs authorities allowed the concerned importers to clear the cars in question upon payment of customs duty and a fine

in lieu of confiscation. Instances of such importation have been given in the writ petition. The grievance of the petitioner was that the Appraising Officer for the Customs Department has received a telex message from the Central Board of Excise and Customs and/or other instructions directing the latter to confiscate all cars imported into India without a licence and/or customs clearance permit without giving the importer an option to pay a fine in lieu of confiscation u/s 125 of the said Act. Section 125 of the Customs Act provides as follows :-

"125. Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods, is authorised by this Act, the officer adjudging it may, in the case of any goods the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit.

Provided that, without prejudice to the provisions of the proviso to Sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) For the removal of doubts it is hereby declared that any fine in lieu of confiscation of goods imposed under Sub-section (1) shall be in addition to any duty and charges payable in respect of such goods."

The petitioner therefore moved this Court apprehending that in his case following the said instructions the respondents may not exercise the discretion to give an option to pay fine in lieu of confiscation in the event the car is confiscated. It has also been alleged that the clearance of the said car cannot be allowed in terms of Notification No. 83/Cus., dated 18th June, 1977. Upon the said application an order was passed by me directing the respondents to arrive at an independent decision in the adjudication proceedings in respect of import of the said car without considering the circular or instructions or any telex message of the Central Board of Excise and Customs. The concerned respondents were directed to complete adjudication proceedings on or before 30th August, 1984.

6. On 30th August, 1984 this matter was mentioned and an adjudication order was passed confiscating the said car absolutely with its fittings and accessories under Section 111(d) of the Customs Act, 1962 read with Section 3(2) of the Imports and Exports Control Order, 1947 as amended. The said order was passed by Sri S. Mukhopadhyay, Collector of Customs. The matter was mentioned on 31st August, 1984 when the operation of the said order dated 30th August, 1984 was stayed and the petitioners were given liberty to file supplementary affidavit incorporating the impugned order. On 8th September, 1984 another writ application has been moved before me challenging the said order of adjudication for clearance of the said car upon payment of the duty as mentioned in Notification No. 83/Cus., dated 18th June, 1977 and from giving any effect to or further effect and/or from acting on the basis of the said order and from removing or causing the car in question to be removed to any place save as may

be directed by this Court.

7. Having regard to the urgency of the matter I allowed the application to be moved at my residence and passed an interim order directing the respondents not to give any effect to the order dated 30th August, 1984 and removing the car without the leave of the Court. I also directed to produce the records relating to importation and release of the cars as mentioned in Annexure D to the second writ petition. The respondents were also directed to produce the relevant records relating to release of the foreign cars upon payment of redemption fine during the last one year. The matter was fixed on 12th September, 1984. On 13th September, 1984 the records were produced by Mr. Taher Ali. He submitted that in this case the petitioner should move the Tribunal and appropriate order should be obtained from the Tribunal. Further he submitted that he does not admit the allegations contained in the petition but the Court may pass appropriate orders on the basis of the records produced by him before this Court.

8. Certain other facts have been mentioned in this writ application. Pursuant to the order passed by me on 24th August, 1984 the petitioner received a letter from the Deputy Collector of Customs for appraisal although the letter was signed by the Assistant Collector of Customs, By the said letter, the petitioner was forwarded a copy of the show cause notice which the petitioner did not receive earlier and the petitioner was directed to appear before the Deputy Collector of Customs on 24th August, 1984 for personal hearing. Your petitioner replied to the said show cause notice by a letter dated August 27, 1984. The petitioner together with his Advocate duly called before the Deputy Collector of Customs for appraisal at the Customs House for the personal hearing fixed before him in terms of the said letter dated 24th August, 1984. Upon arrival at the office of the Deputy Collector Customs, the said officer told that he has no jurisdiction to hear the matter and the same would be heard by the Collector of Customs. Thereafter the personal hearing took place before the Collector of Customs. A note of argument was also submitted. On 30th August, the impugned order was passed. It has been stated in this petition that the Deputy Collector of Customs, one Sri G.P. Pal, was to hear the matter in terms of the letter dated 24th August, 1984. The said Sri Pal had allowed the importer to clear the car imported into India without a valid licence and/or customs clearance permit upon payment of a fine in lieu of confiscation. It is alleged that to avoid the aforesaid situation the Collector of Customs exercised concurrent jurisdiction with that of the Deputy Collector of Customs under the Customs Act, 1962, personally heard the matter to try and absolve the said Sri G.P. Pal from allowing the petitioner to pay a fine in lieu of confiscation of the said car.

9. The contention is that the revenue authorities are bound by their previous act and in releasing the imported car upon payment of the duty and upon payment of fine in lieu of confiscation. They cannot act differently in different cases depending on the whims of a particular officer. 10. It has been contended by the respondents that the revenue authorities are not bound to follow their own

decision and on the facts and circumstances of this case they rightly passed the order of confiscating. 11. I have considered the rival contentions. The car has been imported as a gift from father to son. Section 125 of the Customs Act, 1962 provides that whenever confiscation of any goods is authorised under the said Act, the officer adjudicating it may, in the case of any goods the importation or exportation whereof is prohibited under the said Act or under the law for the time being in force, give to the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. Even if the importation of the goods is prohibited under the Act, the adjudicating officer has the discretion to give an option to the importer to pay in lieu of confiscation such fine as the officer thinks fit. The Act has not provided the circumstances under which the prohibited goods should be released upon payment of fine in lieu of confiscation. The adjudicating officer may, in his discretion, give the importer an option to pay in lieu of confiscation a fine. The exercise of this discretion by the adjudicating officer is a quasi-judicial function and cannot be controlled by the dictates of the Central Board of Excise and Customs or any other authority. The power to give option to the importer to release the prohibited goods upon payment of fine is a power coupled with the duty and in any event it should be exercised fairly and reasonably and not arbitrarily and capriciously. The question in this case is whether the Collector of Customs has acted fairly and reasonably in this matter is not allowing the importer the option to pay redemption fine in lieu of confiscation. The Collector of Customs has given the following reasons in support of his order of confiscation :

"I have carefully considered the entire issue independently without being governed by any instruction from any other authority and have come to the conclusion that release of the car on payment of a fine will be against public interest: and against the interest of indigenous industry. The air-conditioned car imported in this case is a luxury item. If Government goes on allowing importation of such cars by each person on payment of redemption fine it will be against the economic interest of the country. Mrs. Deb Burmari, the importer's lawyer, has argued that there is no foreign exchange involved. This argument is based on a wrong idea about economics. What really has taken place is that the car purchased by a gentleman in Japan has been sent to his relative in India. The foreign exchange has in fact been spent in Japan. Had he not bought this car, an equivalent amount of foreign exchange would have been possible to be netted by the Reserve Bank of India when that money would have been repatriated to India. To say that foreign exchange is not involved in this case is only to say that foreign exchange has not travelled from India to Japan. But this is not the only and important sense. Even if a car or any item is imported from abroad to India without foreign exchange being sent from India to abroad, foreign exchange in effect has been spent abroad to bring the things into India. In the alternative India would have got the foreign exchange had these goods not been imported."

12. I have not been able to appreciate how foreign exchange and economics are involved in this case. The father of the petitioner who made the gift of the car is

a non-resident Indian and has been residing for the last 14 years in Japan. There may be saving if there is no spending for the car by the petitioner's father but there was no obligation on his part to send the amount involved in the purchase of the car to India or to his son. The entire order of the Collector of Customs is based on assumption of facts which a quasi-judicial authority is not permitted to do. It is not a case where the importer getting release of the foreign exchange buys a prohibited goods. Where the adjudicating officer arrives at a conclusion partly on relevant consideration and partly on irrelevant consideration, the order is liable to be struck down as it cannot be decided how far the mind of the authority was influenced by such irrelevant consideration. The Collector of Customs although has said that he came to an independent conclusion without being governed by the instruction of the Central Board of Excise and Customs, it is admitted, by Mr. Taher Ali that there is an instruction from the Central Board of Excise and Customs that the authorities concerned shall not give any option for release of the imported car upon payment of redemption fine in lieu of confiscation u/s 125 of the Customs Act, 1962. Although the Collector of Customs has said in his order that he was not influenced by the said instruction, but from the tenor of the order passed I have no doubt in my mind that the authority followed the said instruction of the Central Board of Excise and Customs blindly. The Board has no authority or jurisdiction to direct an officer to exercise his discretion in a particular way. The discretion is vested in the adjudicating officer. While the adjudicating officer performs the statutory or particularly the quasi-judicial duty, the authorities cannot direct that the discretion should be exercised in one way or the other. There cannot be any general instruction on a question whether in any case the importer should be allowed the option to release the imported car on payment of redemption fine or not.

13. It is also the contention of the Revenue that the Collector of Customs is not bound by the orders or the departmental practice. He has said that he is not to be guided by the action of his predecessor or by any other Officer. He is also not governed by any so-called practice in the matter. The Collector of Customs has further observed in his order as follows :-

"Here the discretion lies with the adjudicating authority and admittedly he cannot be governed by the instructions of any other authority in the matter. At the same time, he is not to be guided by the action of his predecessor or by any other officer. He is also not governed by any so-called practice in the matter. In fact, when the discretion lies entirely with the adjudicating authority there cannot be a fixed practice. The case of *Mercantile Express Co. Ltd. v. Asstt. Collector of Customs - 1978 ELT (552)* cited by the importer relates to precedence in administering a taxing statute. But the issue involved here does not relate to any taxing matter but to prohibition relating to imports."

14. But I have not been able to appreciate the reasoning of the Collector of Customs. In the case of *Mercantile Express Co. Ltd. v. The Asstt. Collector of*

Customs and Ors. reported in 1978 ELT (552) P.B. Mukherjee, 3. (as his Lordship then was), was construing Item 63(9) of the Customs Tariff Act. There the Court held :-

"8. Having expressed my view of the law and the construction of Item 63(9) and (28) of the Indian Customs Tariff, I cannot help averting to the fact that in 1953 these very similar articles were imported by the Superintending Engineer, Bhakra Dam Area No. 1 Nangal Township, Punjab and they were assessed under Item 63(9) of the Tariff by the Customs authorities themselves. The Customs now say that they are not bound by their previous decisions. Whether the doctrine of precedents applies in its full rigour to administrative agencies and officers, and whether a reasonable latitude should be given to them or administrative tribunals to correct or modify their previous decisions may still remain a debatable controversy in the world of law; nevertheless I am clearly of the opinion that neither the Appraiser nor the Collector of Customs can change his mind from time to time in respect of the same articles by assessing them in the case of one importer under one Section and then assessing them for another importer under different Section. To allow the customs to do so will lead to utter confusion in the very basis and principles of taxation and grave uncertainty in business and foreign trade of India. Its more serious result will be the most unfair discrimination of taxes in respect of the same goods with regard to different importers. That cannot be permitted by the Constitution which insists on the equality of law as one of its fundamental guarantees. I am, therefore, inclined to hold that the customs are bound by their own precedents in administering taxing statutes involving the very basis of taxation in respect of a particular article and not leave it to them to modify their own previous decisions but to leave it to them to apply to Courts or Parliament or Legislatures as the case may be to put the law beyond doubt. In a recent Tariff ruling of the Department C.B.R. No. 36(221)-Cus. LLL/55, dated 29-12-1955 T.R. 201/55 it has been said that armco nestable steel culverts are assessable under Item 63(28). These rulings are in the nature of administrative directions or guides. This departmental ruling, however, came after the assessment in this case had been made in July, 1955 and cannot either bind or affect this assessment. These departmental instructions, guides or rulings can always be examined by Courts of law and if found wrong in law, can be overruled and set aside by the Courts. Law cannot be finally made by these departmental instructions or what are called departmental rulings. They are always subject to judicial decisions of Courts of law. If the law requires change in the light of such judicial decisions, it can be done only by the proper legislative authority, which in this case is Parliament. If the administration itself feels the need of changing its mind that is prima facie proof that law is dubious on the point and should be set right by legislation."

15. No doubt the Court was concerned with the interpretation of the tariff item, but the principles laid down therein are equally applicable in the case like this. The issue involved here relates to the taxing statute or the fiscal enactment and the customs authorities are bound by their previous decisions. If the authorities

have on previous occasions allowed the importer to release the imported car upon payment of the fine in lieu of confiscation, they cannot, unless there are compelling reasons, depart from the previous decision. In this case, no reason at all has been given and the reasoning of the Collector of Customs as appearing from the impugned order are entirely wrong. The object of the Section 125 of the Customs Act, 1962 is to prohibit mainly the importation of the goods which would endanger public order or public morality. The import of car does not result in competition with the indigenous manufacturers of car. The Collector of Customs has not given the statistics. It is not known how many foreign cars have been imported in this country. The records of certain cases have been produced. One Miss. Vandana Wadhwa had imported a car Daimler Benz. The said case was adjudicated by the Deputy Collector of Customs (P.G. Pal) and the car was allowed to be released on payment of fine to the tune of Rs. 75,000/-. The said car fitted with one air-conditioner was sent by the father of Miss. Vandana Wadhwa as a wedding gift. The Deputy Collector of Customs (P.G. Pal) in his order dated 4th February, 1984 has stated as follows :

"I have gone through the records of the case. Although the car has been imported as a wedding gift its clearance cannot be allowed without a valid import licence/C.C.P. Since the importer has failed to produce a valid import licence/C.C.P. for clearance of the consignment, the importation is treated as unauthorised. Accordingly, I confiscate the goods Under Section. 111(d) of C.A. 62 read with Section 3(2) of Imports & Exports Control Act, 1947. However, the importer is given an option to redeem the goods on payment of fine of Rs. 75,000/- in lieu of confiscation."

16. It may be mentioned that when the said order was passed by the Deputy Collector of Customs the present Collector who has passed the order in this case was the Collector. In another case there was unauthorised importation of one used BMW 1983 model motor car of capacity 1990 c.c. fitted with air-conditioner, radio/cassette with spares and food stuff and toilet requisites by one Iswar Bhagwandas valued at Rs. 73,399.45.

17. Before the order of adjudication was passed a note was put up by the Appraiser on 9th May, 1984 to the following effect :-

"Import of motor cars without the valid licence/C.C.P. is not allowed and such vehicles are liable to confiscation. However, in a number of cases adjudicated by the Collector and D.C.(P) depending upon the value of the goods, the cars were allowed clearance on payment of redemption fine at the rate of 100% of the total value of unauthorised importation. In some of these cases motor cars were sent as gifts."

18. The order passed on 10th May, 1984 by the Deputy Collector of Customs (A.S.R. Nair) as follows :-

"I have gone through the case and submissions of the party carefully. In the absence of lic./G.G.A. the importation is treated unauthorised and liable to

confiscation. Accordingly, I confiscate the goods Under Section. 111(d) of C.A. 62 read with Section 3(2) of Imports & Exports Control Act, 1947. However, the party is given an option to redeem the goods on payment of fine of Rs. 75,000/- (Rupees Seventyfive Thousand) only in lieu of confiscation."

19. In another case the importation of foreign motor car (Mercedes Benz) was allowed. The import was made by one Mahabir Prosad Goylan. In this case it was represented to the Collector of Customs that this was unsolicited gift from father who is a resident in Hongkong for a long time and his father is engaged in business for over decades. The said car was given to her as an absolute gift and even the customs duty would be paid by her father. The Collector of Customs (T.W. Swaminathan) passed the order on 3rd March, 1983 in the following terms :-

"I have gone through the records of the case. Importation of car is banned for some years more. Being a banned item, the car is not permitted for import without a valid licence. In the absence of such licence, the importation of the car along with fittings is held unauthorised. However, being an unsolicited gift from the father to the son, I refrain from absolute confiscation.

ORDER

The importation of the motor car along with fittings worth Rs. 1,20,973.73 without a valid licence is prohibited u/s 111 of the Customs Act read with Section 3 of the Imports & Exports (Control) Act of 1947 as amended and Government of India, Ministry of Commerce & Industry's Order No. 17/55, dated 17-12-1955. I, accordingly, confiscate the goods u/s 111(d) of the Customs Act, 1962. In lieu of confiscation the importers are however, given the option u/s 125 *ibid.*, to clear the goods on payment of a fine of Rs. 1,20,000/- (Rupees one lakh twenty thousand only) within 15 days from the date of issue of this order."

20. There are two other cars which have been imported by two different persons, one by Shankarlal Sharaf, the other by Gobindlal Agarwalla. The cars were Toyota Cressider and Honda. Both the cars were gifted by one Atu Balani of Hongkong. It appears that no enquiry was made of the circumstances under which Atu Balani allegedly gifted two cars, one Honda and the other Toyota, to the aforesaid two persons. They are not related. But after the adjudication was made in those two cases by the then Collector of Customs, the cars were released upon payment of fine of Rs. 1,00,000/- in each of the aforesaid two cases. The Collector accepted the story in those two cases that those were unsolicited gifts from one Atu Balani.

21. In another case, one Jagmohan Jindal imported a car. It appears that the case was adjudicated by the Deputy Collector (P) on 26th December, 1983. The order was issued on 15th February, 1984,. The car was allowed to be released upon payment of fine of Rs. 70,000/-. This file was however not produced before me but the aforesaid facts and figures were submitted by Mr. Taher Ali, learned Advocate appearing for the respondents.

22. It appears from the note reproduced above that the Collector and the Deputy Collector (P) released the car on redemption fine and as such the Deputy Collector (N) also released the car, although in one case where the Deputy Collector (N) passed the order on 10th May, 1984, no reason at all was given

23. In those cases no reason has been given why the discretion has been exercised in releasing the car upon payment of redemption fine. Although the present Collector of Customs was also the Collector of Customs when the aforesaid two or three orders have been passed, he did not take any steps for revocation of the said order if according to him that "such orders would open the floodgates of more and more imports of such items". This, in my view, is no ground for withholding the release of the goods on payment of redemption fine. It is a gift from the father to the son. The father is a non-resident and has been residing in Japan. In two cases where there were gifts from the father to the daughter or the son as- the case may be the cars have been released without raising any objection. In two other cases of gift no enquiry was made although there was no relationship at all between the alleged donor and the donees. I, therefore, fail to understand how the Collector in this instant case could stop the release of the goods holding that he is not "legally bound to give an option to the importer to clear the car with its fittings on payment of fine." If gifts is a ground of release of the foreign cars in four cases, why it is not so in this case, is not known. Whether such decision is based on the "instruction of the Board or on the view of the Collector not being legally bound by the precedent and practice, previous orders and decisions, such decision cannot be sustained. The respondents cannot act differently in identical set of circumstances.

24. It appears from the records that the valuation of the car and its attachments was determined at Rs. 64,205.82 and accepted by the authorities. The Assistant Collector, Appraising Group-7, was directed to issue a show cause notice. Under the Notification No. 250-Cus., dated the 27th August, 1983 the Deputy Collector was empowered to exercise jurisdiction u/s 125 of the said Act as the adjudicating authority in respect of the said car. That is why he directed the Assistant Collector to issue the show cause notice. The show cause notice was issued on 18th August, 1984 by the Assistant Collector directing the petitioner to show cause in writing to the Deputy Collector of Customs, for appraising. The petitioner thereafter came to this Court and order was passed by me on 24th August, 1984. It appears from the records that the petitioner wrote a letter asking for personal hearing. The personal hearing was fixed on 28th August, 1984. The Assistant Collector thereafter discussed the matter with the Deputy Collector (P) and obtained his verbal orders. The following note is found on record :-

"As regards the M.O.P. its percentage has to be decided on the basis of the present market price on such car in India in terms of Section 125 of C.A. 62."

The Officer gave a note that the valuation of a similar type of car in the present market would amount to Rs. 2,90,000/- to Rs. 3,00,000/- and the total amount

of customs duties will come to Rs. 1,26,000/- and on the basis the M.O.P. would work out to approximately 165% to 175%. Then the Deputy Collector gave the following note.

"If the car is allowed to be cleared on a redemption fine the likely fine amount may exceed Rupees .one lac. Therefore, the case may be heard and adjudicated by Collr. Sd-28.8."

25. The Deputy Collector of Customs who heard the matter himself on earlier occasion released the imported car on payment of redemption fine. When the petitioner went to the Customs House on 28th August, 1984, he was informed that the jurisdiction was taken away from the Deputy Collector and the Collector heard the matter himself. It appears to me that a ground was made out so that the Deputy Collector did not hear the matter. That is why valuation without any material of basis was sought to be given on the car and its attachment. Since the valuation at Rs. 64,205/- was accepted by the authorities, the show cause notice was issued by the Assistant Collector at the direction of the Deputy Collector so that the matter could be heard by him. He would have been bound by his own earlier order. It is only to take the matter out of his hand, the manoeuvring was made and the matter was taken to the Collector of Customs. The reasons are obvious. The Collector did not want that the Deputy Collector should hear the matter; he would be bound by the previous decision. This clearly manifests bias. The Collector of Customs after the adjudication Wrote a letter to the Central Board of Customs, New Delhi on 6th September, 1984 stating therein, inter alia, as follows :-

"The Board has recently issued an instruction for not releasing cars imported without a C.C.P., on redemption fine. I have, however, decided the case independently and have come to the conclusion that release of such foreign cars imported without a customs clearance permit will be against the economic interest of the country and have confiscated the car absolutely. The adjudication order has been issued on 30-8-1984. A copy of my adjudication order is enclosed."

26. It is, therefore, evident that the Collector of Customs did not exercise his discretion fairly and reasonably and independently. He has acted on the basis of the instruction of the Board which however has not been disclosed before this Court. Having regard to the facts and circumstances of the case, the allegations of mala fide cannot be ruled out. In none of the other cases after the order of adjudication was passed either by the Deputy Collector or the Collector the Board was informed of such release. It does not also appear from the records that the Board asked for any report on the release of the foreign cars on payment of redemption fine. I have no doubt in my mind that it was decided before adjudication that under no circumstances the car would be released to the petitioner on redemption fine.

27. For the aforesaid reasons I set aside the order of Collector of Customs dated

30th August, 1984 and direct him to pass a fresh order allowing the option to the petitioner to release the car on payment of redemption fine. The Collector shall impose such fine as he thinks fit and proper having regard to all other similar cases where redemption fine was imposed. The Collector of Customs shall determine the quantum of fine within three days from the date of the communication of this order. The car shall be released upon payment by the petitioner of such duty as has been determined in the case of other imports referred to above and in particular in terms of the Notification No. 831-Cus., dated 18th June, 1977. The car shall be released within 3 days from the date of payment of the assessed duty and the redemption fine as may be imposed by the Collector of Customs.

28. Let a plain copy of the order, countersigned by an officer of this Court, be handed over to the learned Advocate appearing for the party.

29. Having regard to the facts and circumstances of the case the prayer for stay is refused.