

(1962) 03 CAL CK 0024
In the Calcutta High Court
Case No : A.F.O.O. No. 79 of 1960

Jagannath Agarwala

APPELLANT

Vs

B.N. Dutta and Others

RESPONDENT

Date of Decision : 29-03-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Imports and Exports (Control) Act, 1947 — Section 3(2), 3(4)
Sea Customs Act, 1878 — Section 167(8), 19

Citation : AIR 1963 Cal 26

Hon'ble Judges : H.K. Bose, C.J.; Debabrata Mookerjee, J

Bench : Division Bench

Advocate : R. Chowdhury and Salil Roy Chowdhury, for the Appellant; A.C. Mitra and A.K. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Debabrata Mookerjee, J.—This appeal is brought from a decision of Sinha, J." discharging a Rule for Certiorari and Mandamus in respect of certain proceedings before the Assistant Collector of Customs Appraisement, resulting in an order dated the 15th December, 1959 whereby a consignment of Camphor B. P. belonging to the appellant was confiscated u/s 167 (8) of the Sea Customs Act.

2. The appellant is an importer of drugs and medicines carrying on business at 5 Pollock Street. He obtained a licence dated the 23rd February, 1959 authorising importation of articles described in the Import Trade Control Schedule, Part IV, bearing serial Nos. 87 and 109. The two serial numbers referred respectively to "drugs and medicines containing spirit" and "drugs and medicines of all sorts not otherwise specified in the schedule." The schedule has to be read along with Appendix XIX, List I of which mentions a number of drugs and medicines. The appellant's licence permitted him to import the "Terpene and its derivatives excluding preparations thereof", which find mention in the List.

3. The licence related to the licensing period October 1958 to March 1959 and

permitted importation of drugs from soft currency area, in this instance, West Germany. The licence was valid for purposes of importation up to the 31st August, 1959.

4. The goods actually imported by the appellant were a consignment of Camphor B. P. The two serial numbers of Part IV of the Schedule we have referred to, contained no reference to Camphor which was dealt with separately under another item bearing serial No. 131 for which the licensing policy for established importers during the period in question was "nil", that is to say, importation of Camphor was completely forbidden.

5. The appellant did not directly import but placed orders with the indenting house of Messrs. Arun and Co. a partnership firm carrying on business also at 5, Pollock Street.

6. As indicated the consignment was shipped from a West German port, on the 24th August, 1959. The vessel arrived at the Calcutta port on the 19th October, 1959 carrying the consignment. Meanwhile, on the 9th July, 1959 the appellant had opened a firm letter of credit in connection with the consignment; but before he could take delivery, he was served with a notice on the 21st October, 1959 requiring him to show cause why the consignment should not be confiscated and penal action taken against him.

7. Some time before the actual indent there was some correspondence between the indenting house M/s. Arun and Company and the Joint Chief Controller of Imports as well as the Assistant Drugs Controller. Even before that on the 9th January, 1959 a public notice was given by the Controller of Imports drawing attention of importers to List I of Appendix XIX of the publication commonly referred to as the Red Book in which "Terpene and its derivatives excluding preparations thereof were set out as one of the items, the import of which had been permitted against quota licence for drugs and medicines. The notification stated for purposes of clarification that "any derivative of Terpene sought to be imported against the entry "Terpene and its derivatives excluding preparations thereof would have to comply with the provisions of the Drugs Act, and a derivative which was not approved under Rule 30-A of the Drugs Rule, 1945 or which was not included in any of the current editions of pharmacopeias recognised under the Drugs Act, 1940 would not be allowed to be cleared against quota licence for Drugs and Medicines". The appellant's indenting agent sought further clarification. The letter by which they did it has not been disclosed; but the reply of the Assistant Controller of Imports is on the record. It says that since Camphor B. P. was stated to be a derivative of Terpene the company's attention was invited to the public notice dated the 9th January, 1959, regarding import of Terpene and its derivatives against Drugs and Medicines licence for the period October 1958 -- March 1959 which was said to be self-explanatory. On the 12th June 1959 in reply to another inquiry from Messrs. Arun and Company, the Assistant Drugs Controller wrote to say that Camphor B. P. could be imported against entry "terpene and its derivatives excluding preparations thereof" against

a licence for Drugs and Medicines. It added that only Camphor of B. P., U. S. P. or I. P. quality would be allowed tender licence for Drugs and Medicines. On the 3rd July, 1959 this last letter was countermanded by the Assistant Drugs Controller who hastened to point out that his previous letter related to the licensing period October 1958 -- March 1959 but in the current licensing policy the entry had been changed to "Terpene, Hydrate excluding preparations thereof. He added that the proper authorities from whom an interpretation of the policy should be obtained was the Joint Chief Controller of Imports and Exports and the Assistant Collector of Customs, Calcutta. He closed the letter with these words, "No responsibility devolves on me for the statement made in my letter No. ADC-5/59/605 dated 12th June, 1959 to you which was issued by oversight and is hereby cancelled. The letter should please be returned to me immediately." On the 8th July, 1959 the Assistant Drugs Controller again wrote to the appellant's indenting agent to say that Camphor B. P. was a pharmacopoeia drug and since it was not a new drug, no question of its approval under the Drugs Rule 30-A arose. On the 13th July, 1959 the Controller of Imports wrote to Messrs. Arun and Co. drawing attention to the Department's earlier letter dated the 5th June, 1959 and stated that that letter might be treated as having been cancelled or withdrawn. This was followed by another letter dated the 15th July, 1959 to Messrs. Arun and Company from the Controller of Imports in which it was stated that Camphor of any, quality or grade was totally banned for import and there existed no licensing provision for the item during the licensing period in question, that is to say, October 52 -- March 1959. It further said that Camphor was classified under serial No. 131, Part IV and there was no licensing provision for the item during the period in question. The letter drew attention to the fact that for the subsequent licensing period commencing from April, 1959 the item had been changed into "Terpene Hydrate excluding preparations thereof. The Controller of Imports concluded the letter saying,

"This amendment has been carried out In the current licensing period in order to prevent any import of Camphor under this serial number. This amendment will indicate that Camphor is not permissible to be imported under a licence for Drugs and medicines. Please also note that Camphor cannot also be imported as a derivative of Terpene against such licence of Drugs and Medicines issued in earlier periods."

On the 22nd July, 1959 there was a public notification for the information of the Trade by the Joint Chief Controller of Imports to the effect that Camphor of all varieties, grades and qualities fell under serial No. 131, Part IV of the Import Trade Control Schedule and import of Camphor of any grade, variety or quality was totally banned.

8. Presumably the letters received by the appellant's indenting agent had been passed on to him and it is his case that he hastened to cancel his indent, but was informed by Messrs. Arun and Company that the goods having been firmly booked the indent could not be cancelled.

9. We have referred to the correspondence and the notifications since the appellant's case has largely been that not only he but the Trade itself had been misled into treating Camphor B. P. as being completely covered by "Terpene and its derivatives excluding preparations thereof" for which he held licence.

10. In showing cause against the proposed order of confiscation of the consignment, the appellant stated that Camphor B. P. being a derivative of Terpene, its import was allowed under a licence for Drugs and Medicines covered by serial Nos. 87 and 109 of Part IV of the Import Trade Control Policy Book. He challenged the correctness of the allegation that he had no valid licence which authorised importation of Camphor and referred to the Public Notice issued by the Controller of Imports on the 9th January, 1959 and other correspondence which according to him showed that Camphor B. P. being a derivative of Terpene was completely covered by the Drugs and Medicines licence he held. His case further was that although there was a number of items which had been classified separately under a particular serial number of the Import Trade Control Schedule, they are allowed importation under a different serial number of that very Schedule. He instanced the cases of Yellow Pottash, Borax and carbonate Ammonia and he desired to be heard in person by the Assistant Collector of Customs, Appraisement.

11. The appellant was given a personal hearing and the Assistant Collector of Customs, Appraisement, after referring to the material before him came to the conclusion that the consignment of Camphor B. P. was not covered by the licence which the appellant held. The main reason for the conclusion was that Camphor had been separately dealt with under serial No. 131 and the licensing policy for the period definitely was that no licence could be issued for importation of Camphor to established importers. In aid of the conclusion reached, the Assistant Collector of Customs emphasized the fact that since Camphor had been dealt with on the footing of a specific and separate item, it could not be covered under the general item "Terpene and its derivatives". Accordingly the consignment was confiscated under sec. 167 (8) of the Sea Customs Act, on the ground that it had been imported without a proper licence and the appellant had thereby contravened section 19 of the Sea Customs Act read with sections 3(2) and (4) of the Imports and Exports (Control) Act 1947 and the Imports (Control) Order, 1955.

12. The appellant challenged this decision in a writ petition under Article 226 of the Constitution and a composite rule for Certiorari and Mandamus was issued by this Court which came to be heard and disposed of by Sinha, J. who on May 16, 1960 discharged the rule.

13. Being aggrieved by this decision the appellant has preferred this appeal and we have been invited to hold that the learned Judge misdirected himself in construing the different items in the Schedule with reference to the licence which had been issued to the appellant in February, 1959 authorising him to import Drugs and Medicines.

14. Before we consider the appellant's contentions it would perhaps be useful to notice the provisions of the law under which the confiscation has taken place.

15. It is well-known that Import Trade Control was first introduced as a war measure under the Defence of India Rules. When those Rules lapsed they were continued under the Emergency Provisions Ordinance which was later replaced by the Imports and Exports (Control) Act, 1947. This is a temporary Act the life of which has been extended from time to time. The Act was buttressed in the past by a number of notifications which have since been consolidated and reduced to the form of an Order under the Act, The Order is known as the Imports (Control) Order, 1955. We have to consider the provisions of this Order at some length; but before we do so we have to take account of the main provision in section 3 of the Act which says that the Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, the import and export of goods of any specified description. Sub-section (2) provides that the 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 or restricted u/s 19 of the Sea Customs Act, 1878 and all the provisions of that Act shall have effect accordingly. Section 4 continues in force all orders made under Rule 84 of the Defence of India Rules or the rules as continued in force by the Emergency Provisions (Continuance) Ordinance, 1946.

16. It is thus clear that the Central Government took powers to make orders regulating, restricting, controlling or prohibiting imports and exports of goods into or out of the country. In pursuance of this power the Imports (Control) Order, 1955 was made and it has a schedule to which we have to refer for the purpose of considering the cases of the respective parties. The schedule in its turn is divided into several appendices. Some of these appendices contain list of goods in respect of some of which there is ban on importation; while in respect of others there is no ban or there is only partial ban. In this case we are concerned with Part IV of the schedule which sets out various articles in respect of which the licensing policy of the Government has been indicated. Against serial no. 87 we have the entry "Drugs and Medicines containing spirit". The licensing authority is indicated to be "Ports" which would, in this instance, mean according to the key to the Schedule the Joint Chief Controller of Imports, Calcutta. The licence if issued will be valid for six months and the detailed licensing policy with respect to the item is given in Appendix XIX attached to the schedule. Serial No. 109 is also the same as serial No. 87 except that to the description of Drugs and Medicines, there is an addition of these words "all sorts, not otherwise specified in this schedule". The licensing policy with respect to the item is also indicated in Appendix XIX. Serial No. 131 deals with Camphor and there are no entries in any of the columns and the word "nil" appears under head "policy for established importers". This would mean that so far as this item is concerned the importation is completely banned. Consequently no question of indicating the licensing authority or the period of validity of license arises. The

position then is plain that for importation of Drugs and Medicines one has to refer to Appendix XIX for ascertaining the licensing policy of the Government. But Camphor covered by serial No. 131 being completely banned, no further details were required to be mentioned. The appellant's case is that having a licence to import items covered by serial Nos. 87 and 109, he was quite entitled to import Camphor B. P. which is admittedly a drug; whereas the respondent's case is that Camphor having been separately provided for and having received independent treatment in the schedule, it cannot be imported in any form, grade or quality under any kind of licence and the importation is completely forbidden.

17. For the purposes of import licence a calendar year is divided into two licensing periods. The import policy of the Government is announced on the eve of each licensing period by means of public notices which are issued in the form of a publication referred to in these proceedings as the Red Book. That book contains Government's policy controlling the import trade. It is to be noticed that the licence which was issued in favour of the appellant was one for established importers. There are several categories of Importers, established importers being one of them; others are actual users and newcomers. We are concerned in this case with the category of established importers since the appellant was given a licence on a quota basis on the footing that he had been in the import trade for some time.

18. At the hearing of the appeal frequent references were made on both sides to certain instructions contained in the Red Book to which we have referred. We have doubts whether those instructions are anything more than mere departmental advice or executive instructions, since they do not appear to form part of the Imports (Control) Order which has statutory effect; but the schedule and the appendices attached to it are different since they are part of the Imports (Control) Order which has statutory effect. We do not think therefore it would be right to rely upon departmental instructions and we do not propose to do so, at any rate in support of the Department's contentions, although perhaps a concession may be made in favour of the appellant when he seeks to rely upon them.

19. It has been said on behalf of the appellant that in Rule 17 contained in the hand book there is instruction to the effect that if an article imported is in accordance with the description given in the licence, its clearance will be allowed, even though there may be difference of opinion, in regard to the classification of the store in question. Even if we disregarded these instructions on the ground that they do not possess statutory effect, it is, we think, only right that we should construe the licence, such as it is, and try and see for ourselves whether on that document the appellant can be said to have lawfully imported into the country Camphor B. P. under serial No. 87 or 109 of Part IV of the schedule.

20. But before we do so it would be necessary to notice that Appendix XIX speaks of three lists. List I contains a number of drugs and begins with the prefatory remark that the consignment should conform to the standard

prescribed in recognised pharmacopoeias and that the provisions of the Drugs Act, 1940 and the Rules framed there-under should be complied with wherever necessary. List II is a list of articles which will not be valid for importation against a licence for Drugs and Medicines. We are not directly concerned with List III which may therefore be left out of account. It has been seriously contended before us that although particular items appear in List II which has been described as the list of "forbidden drugs", nevertheless those very drugs have been permitted to be imported under other serial numbers. This aspect of the matter will require to be noticed in a slightly greater detail.

21. We have just seen that the Appendix which is part of the Imports (Control) Order contains impliedly a reference to the Drugs Act and the Rules and in the present case the licence being one for importation of Drugs and Medicines, it is only right to notice very briefly some of the provisions of the Drugs Act and the Rules although those provisions do not appear to us to be directly relevant to the present considerations.

22. We have seen while noticing the provisions of the Imports and Exports (Control) Act that the Sea Customs Act is brought into play and its provisions attracted by virtue of section 3 (2) of the former Act The Drugs Act by a similar provision contained in section 11, incorporates the provisions of the Sea Customs Act and says that the law for the time being in force relating to Sea Customs shall with certain modifications apply to drugs the import of which is provided under Chapter III of that Act. Section 10 of the Drugs Act provides that with effect from the date to be notified by the Central Government, no person shall import any drug, for the import of which a licence is prescribed, otherwise than under and in accordance with such licence. Section 12 (2) (a) gives power to the Central Government to specify the drugs or classes of drugs for the import of which a licence is required, and prescribes the form and conditions of such licence, the authority empowered to issue the same, and the fees payable therefore. Turning to the Drugs Rules it appears that licensing authority has been defined by Rule 21 as authority appointed by the central Government to perform the duties of the licensing authority under these Rules. Rule 23 says that a licence shall be required for the import of any biological or other special product specified in Schedule "C" or C (1). But turning to the schedules it seems clear that Terpene and its derivatives do not find mention in either of them. That being so, no licence seems necessary for the importation of Terpene; but by Rule 39 provision has been made for importation of drug for which no licence is required. The detailed procedure for the import of drugs and the procedure for testing their quality are to be found in Rules 40 and 41 respectively to which, however, no detailed reference need be made. Rule 39 says that before such drugs are imported, a declaration signed by or on behalf of the manufacturer or by or on behalf of the importer that the drugs comply with the provisions of Chapter III of the Drugs Act, 1940 and the Rules thereunder shall be supplied to the Customs Collector. Chapter III deals with the import of Drugs and that Chapter contains section 11 which extends the operation of the law of Sea Customs to Drugs and

Medicines. We have therefore a complete picture in which these enactments jointly operate and control the field, namely, the Imports and Exports (Control) Act, the Imports (Control) Order, the Sea Customs Act and the Drugs Act. It seems therefore clear that although for importation of Terpene and its derivatives, no drug licence under the Drugs Act is necessary, still for their importation a licence is required under the provisions of the Imports (Control) Order.

23. We have referred to the Drugs Act and the Rules to be able to consider adequately the appellant's contention that since he had a drug licence, he was entitled to import Camphor B. P. which is a recognised drug. There seems to be no dispute that Camphor B. P. is a drug; but the whole question is whether the licence Issued to the appellant which permitted him to import drugs covered by serial Nos, 87 and 109 would also cover importation of Camphor B. p, which is admittedly a drug. According to the respondents, Camphor having been separately dealt with and there being a total ban on Camphor, it cannot be imported at all into this country, even if it is a recognised drug. The appellant's contention is that in order that you might impose a total ban on Camphor B. P. even as a drug, you have to say so. The argument has been that a licensee can very well ask his goods to be cleared if on the basis of the licence he is entitled to ask for such clearance; and if there is any doubt as to whether a particular consignment is covered by the licence that doubt must enure to the benefit of the licensee. The appellant's contention is that if an article is intended to be banned altogether, it requires to be expressly banned everywhere under all the items of the schedule. A general ban on its use is insufficient. There are various uses to which an article may be put; for example it may be put to general use, to medicinal use, to laboratory use, to chemical use; and in order that the Department may be heard to say that all uses have been banned, there must be express provision in the schedule which sets out Government's import policy. It has also been argued that a general ban in the Schedule cannot be regarded as an absolute ban. There must be specific ban imposed on all other heads under which an article can be imported into the country, To illustrate the proposition that a general ban is wholly insufficient to exclude importation of particular items of commodities, our attention was drawn to several serial numbers in the schedule. It would be necessary to take note of them, and examine the contention that a ban like the one imposed on Camphor is wholly insufficient for the purpose of holding that Camphor B. P. which is a recognised drug was intended to be banned.

24. The proposition has been elaborated in different ways. It has been said that there are articles which have been banned in the schedule but permitted in the appendix, just as there are others which have been banned in the appendix but permitted in the schedule. To strengthen this argument it has also been said that there are articles which have been banned both in the schedule and in the appendix. Thus there has been ban in some cases twice over. Several items in the schedule have been drawn upon to illustrate the point. Sodium Acetate which

appears in List II of Appendix XIX described as a list of forbidden articles, appears in Part III under head 1 (b). The import policy with regard to this article is nil. Thus a ban on this occasion has been repeated. Again in the case of Alum which also appears in the list of forbidden articles (List II) seems to be banned again under Part V, serial No. 28A and the detailed licensing policy with respect to it is set out in Appendix 28; and in Appendix 28 the use of Alum as chemical is again forbidden. Alum is forbidden even of the B. P. grade against licences issued for laboratory re-agents or chemicals. The argument therefore is that when the Legislature intended to impose a complete ban, it did so unequivocally. The general use of Alum was banned; even its laboratory or chemical use was banned. Sodium Sulphate which appears in the list of forbidden drugs in List II has been instanced as a case where despite the ban it has been allowed under Item 58 of Appendix 28 and the policy with regard to its importation has been indicated; it says that applications for its importation will be considered on an ad hoc basis. In the same Appendix under List IV Sodium Sulphate is not allowed to be imported for laboratory use as a re-agent chemical. Another instance has been cited to show that a distinction has been made and maintained between the different uses to which an article can be put and the policy of importation varies from use to use. Agar Agar (Pharmaceutical grade) excluding preparations thereof finds mention in List I of Appendix XIX. It is one of the Items, importation of which is permitted. But turning to serial No. 80 of Part IV of the Schedule one finds the entry "all sorts of food, not otherwise specified -- (a) Powdered milk and milk food imported in bulk packing (b) Eggs (c) Others". It is said that Agar Agar is a kind of food and yet its use as food is not permitted although as drug or medicine its use is allowed. With regard to serial No. 50 (c) the policy for established importers is said to be nil; that would mean and imply that no licence can be issued to an established importer to bring into the country other kinds of food which, it is said would include Agar Agar. It does not, however, appear to be clear by any means that item 80 (c) can with any reasonable certainty be said to refer to Agar Agar as an article of food. Similarly, with regard to Paraffin liquid B. P. or U.S. P. or its preparations, the argument has been that since it finds mention in List II which is described as a list of forbidden articles, there is relaxation with regard to the same item in serial No. 17 (b) in Part V; the Joint Chief Controller is indicated in the schedule to be the licensing authority and the policy for established importers is that paraffin liquid 10 per cent "general" and 10 per cent "soft" may be allowed. The licence if issued will be valid for six months. In the remarks column the entries read as "(i) quota licences will be valid for Import of liquid paraffin of B. P. or its equivalent specifications only, (ii) the importers will be required to sell these goods only to such bona fide manufacturers of drugs as are recommended for this purpose by the Drug Standard Control authorities in the States". It has been said that while Paraffin liquid cannot be imported against a licence for drugs and medicines under Appendix XIX, the same substance is allowed to be imported under Part V.

25. It is unnecessary to multiply instances and these are all or nearly all the

items to which our attention has been drawn for the purpose of strengthening the argument that a general ban under the schedule is not enough to imply that the article in question has been totally banned. It has been said that if it was intended to prohibit importation of Camphor B. P. even as drug, there should have been an appropriate mention of it in the schedule and the appendices in appropriate places. We must say at once that while there appear to be a few cases where the ban has been repeated with a view presumably to prohibit its importation, it does not necessarily follow that a clear and express prohibition, unless repeated, will not be an effective ban. The instances which we have considered would merely show that there are certain articles which are capable of being put to different uses; for example, general use or laboratory use; but we should indeed be surprised to be told that Camphor B. P. which admittedly is a drug can be put to any other use at least, the appellant has not said so conceivably it can have only one use, namely, as a drug and we do not see any reason why there should be any reason for repeating the ban since it would be inappropriate to do so in view of the nature of the article. That apart, we are clearly of opinion that since there is a total ban on Camphor, it would be unreasonable in the extreme to hold that Camphor B. P. which is nothing but a variety of Camphor was not intended to be included in the prohibition. Camphor is Camphor by whatever name it may be called, it may be natural Camphor or synthetic Camphor; but it is Camphor all the same and once camphor is prohibited under the schedule it is only reasonable to think that a complete ban was intended to be placed upon Importation of the commodity in any form or variety, be it as drug or as any other. We are not prepared to say that it would always require specific exclusion, more express than the one which has been made in respect Of Camphor. It is true that the schedule and the appendices have to be read together and one cannot be studied in isolation from the rest. Even so we think that when an express ban has been imposed which is unequivocal, there can be no question of any kind of doubt arising as to the legislative intent. The Courts are not permitted to enquire into the reasons why a ban has been imposed upon a particular article; they are only concerned to see whether the article in question is or is not covered by the license read with reference to the relevant items in the schedule and in the appendices taken as a whole.

26. A cognate contention has been that a general ban on Camphor is wholly insufficient to defeat the appellant's right under the licence to import Camphor which is one of the derivatives of Terpene. It has been said that drugs of the B. P. or U. S. P. category have been The subject of separate treatment and if the intention was to impose a ban even on such drugs recognised by the British pharmacopoeia or the United States Pharmacopoeia, a more emphatic ban was necessary to be imposed in order to exclude Camphor B. P. or U. S. P. from the category of allowable imports. It would be unnecessary to pursue this matter further since we think that even on the assumption that drugs of the standard of the British Pharmacopoeia or of the United States Pharmacopoeia have high

prophylactic or therapeutic value, the Courts are not concerned with the question of policy behind the import of drugs, but are concerned with the simple question as to whether a particular item, be it drug or any other, has or has not been unequivocally banned. We have no doubt in this case that Camphor B. P. was banned under serial No. 131 of Part IV of the Import Trade Control Policy.

27. We have been pressed to look at the licence and decide the question raised in this appeal. The argument is that it is the text of the licence that will determine the rights of the licensee and if the licence permits importation of a particular commodity, no further enquiry is permitted and the matter is at an end. Serial Nos. 87 and 109, Part IV of the schedule read with the relevant appendix would mean and imply that Terpene and its derivatives excluding preparations thereof were permitted by the language of the licence. It has been said that since Camphor B. P. is admittedly one such derivative, the consignment ought to have been permitted to be cleared and not confiscated. This argument would have been unassailable but for the fact that Camphor has been specifically and separately provided for in the schedule; such separate treatment surely has the effect of taking such derivative of Terpene as may be called Camphor being taken out of the general expression "Terpene and its derivatives". Where specific mention is made of an Item, the intention cannot be defeated by reference to a general item which might also include the specific item. The rule is well-known that general things do not derogate from the special, *generalia specialibus non derogant*. The following passage from Craies on Statute Law 5th Ed. 171 may be instructive:

"The question whether, when the Legislature has used general words in a statute, not following particular or specific words, those words are to receive any (and, if so, what) limitation, is one which may sometimes be answered by considering whether the intention of the Legislature on this point can be gathered from other parts of the statute. "It is a sound maxim of law", said the Judicial Committee in *Attorney-General for Ontario v. Mercer* (1883) 8 AC 767 "that every word (in a statute) ought *prima facie* to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context." This doctrine is clear from a long list of authorities which appear all to be founded on the case of *Strading v. Morgan*, (1560) 1 Plowd 199 at p. 204, where it is said as follows: "The Judges of the law, in all times past, have so far pursued the Intent of the makers of statute, that they have expounded Acts which are general in words to be but particular where the intent was particular..... The sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the Legislature, which they have collected, sometimes by considering the cause and necessity of

making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances, so that they have even been guided by the intent of the legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion" ".

It would therefore be unreasonable in our view to neutralise the effect of the entry relating to Camphor under serial No. 131 of the schedule by accepting the contention that Camphor B. P. was intended to be excluded from it and included in the general item of Terpene and its derivatives.

28. Referring to the language of the serial no. 109 of the schedule it has been said that if Camphor as a drug was intended to be excluded then the serial number would have been differently worded. It is said that camphor as drug was not excluded, and therefore, it would not be affected by the expression "not otherwise specified in this schedule". Attention has been called to serial No. 31 of Part V which sets out a long list of drugs and medicines which does not contain reference to Camphor and the licensing policy with regard to them is to be found in Appendix 28 in case of serial No. 31 (a) and to Appendix XIX in case of serial No. 31 (b). We are afraid this does not advance the appellant's case at all since we think that further exclusion of Camphor as a drug was unnecessary in view of its express and specific exclusion by serial No. 131 which entry can only mean that Camphor whatever its use, in any form or variety, was completely banned.

29. The learned trial Judge held on the materials before him that Camphor, synthetic or natural, of any grades and varieties, was excluded by serial No. 131. There is some discussion in the judgment under appeal as to what kind of Camphor would be the drug Camphor B. P. whether natural or synthetic. We do not feel called upon to pursue this aspect of the matter. We think the position is plain. Camphor must be given its ordinary meaning and held to include drug Camphor as much as non-drug Cam-phor, natural or synthetic.

30. In aid of the contention that determination of the category of a particular article by the Customs Authorities cannot be final, reliance was placed on the decision in *K. Ganga Setty Vs. The Collector of Customs, Madras*, . The question there was whether feed oats imported as food for horse would fall within entry no. 42 in Part IV of the Import Trade Control Schedule, corresponding to item 12(5) of the Indian Customs Tariff, viz., "fodder, bran and pollards" or whether they would be covered by entry No. 32 of the schedule corresponding to item 10 of the tariff, namely, "grains" and therefore no special licence was required for their import. The learned Judges held that where there was statutory provision granting exemption to a certain class of goods, the question as to what particular goods would fall within that class would be decided by a competent Court. There was in that case a doubt as to the true meaning of the word "fodder" and reference was made to the Oxford Dictionary for the purpose of ascertaining what the word meant. It was held that oats were undoubtedly food for horses, though they might also be used as food for men. On reference to the evidence

they expressed the view that the Consignment in that case had been imported for use as food for horses. Thus there being doubt as to the true import of the word describing a particular commodity, the doubt was resolved in favour of the importer. We do not think that the decision in the Madras case or the reasons given for it really affect the decision in the present case. There can be no doubt that Camphor whether drug or non-drug is included in Camphor mentioned in serial No. 131.

31. It has then been argued that on the materials on record there is at least scope for doubt as to whether Camphor B.P. was banned as having been excluded from Terpene and its derivatives. Reference is made to the correspondence which passed between the appellant's indenting agent and the Assistant Drug Controller as well as the Controller of Imports on the subject as to whether Terpene and its derivatives included Camphor B. P. It has been said that the Department has been in two minds and at no stage until the last was it disputed that Camphor B. P. being a derivative of Terpene, could be imported. We have earlier referred to the correspondence and it is unnecessary to refer to it again in any great detail. Suffice it to say that the Assistant Drug Controller who had earlier expressed the view that Camphor B. P. could be imported against entry "Terpene and its derivatives" against a licence for Drugs and Medicines, hastened to withdraw or cancel that letter by another dated the 3rd July, 1959. In this letter it was pointed out that the licensing policy for the subsequent period April to September 1959 had undergone a change and "Terpene Hydrate excluding preparations thereof" had been substituted for "Terpene and its derivatives excluding preparations thereof". This letter has an important bearing; let the writer speak for himself:--

"I also hereby point out that the proper authorities from whom an interpretation of the policy should be obtained are the Joint Chief Controller of Imports and Exports and the Assistant Controller for Appraisement, Custom House, Calcutta.

No responsibility devolves on me for the statement made in my letter No. ADC-5/2/59-605 dated 12th June, 1959 to you which was issued by oversight and is hereby cancelled. The letter should please be returned to me immediately."

32. This communication was an urgent one which appears to have been delivered by hand. There can be no doubt that the writer became panicky and wrote a frantic letter by which he hastened to remove the impression which might have been created by his letter of the 12th June, 1959. We find nothing improper in this; as soon as it was realised that the position should be made clear no steps were spared to do so. The public notice dated the 9th January issued by the Controller of Imports merely emphasized that any derivative of Terpene to be imported would have to comply with the provisions of the Drugs Act. The notification does not say anything further. The next letter of June 5 from the Assistant Controller of imports addressed to the Appellant's indenting agent is entirely colourless and It proceeds on the basis furnished by the appellant himself or his indenting agent that Camphor is a derivative of Terpene. To the

fetters of the 12th June as well as of the 3rd July from the Assistant Drugs Controller we have just referred. The next important communication is from the Controller of Imports dated the 15/16th July which clearly emphasized the total ban on Camphor in any form or grade. It stated "Camphor of any quality or grade is totally banned for import and in this connection your attention is invited to the entries made under serial No. 131 Part IV (Red Book for October 1958 -- March 1959)". Attention was also drawn to the change of the item in the subsequent licensing period from "Terpene and its derivatives" into "Terpene Hydrate". The amendment was explained in these words:--

"This amendment has been carried out in the current licensing period in order to prevent any import of Camphor under these serial numbers. This amendment will indicate that Camphor is not permissible to be imported under a licence for Drugs and Medicines. Please also note that Camphor cannot also be imported as a derivative of Terpene against such licences of Drugs and Medicines issued in earlier periods,"

33. This was followed by a public notice given by the Joint Chief Controller of Imports and Exports for information of the Trade that Camphor of all varieties, grades and qualities falling under serial No. 131 of Part IV of the Import Trade Control Schedule was totally banned. It was also made clear that Camphor could not be imported as a derivative of Terpene under licence issued for Drugs and Medicines falling under serial Nos. 87 and 109 of Part IV of the Schedule.

34. This correspondence has been relied upon in support of the appellant's plea that the position with regard to the import of Camphor B. P. under a drug licence was at least in a fluid state, and not only importers but even persons in authority had their own doubts as to whether Camphor B.P. could be imported under head Terpene and its derivatives. The argument is that such doubt must enure to the benefit of the importer and the consignment in those circumstances should have been allowed to be cleared and not confiscated. There might have been substance in this contention but for the fact that the correspondence to which we have referred makes it plain that although the Assistant Drugs Controller made it clear on the 3rd July that he took no responsibility for the advice earlier given by the letter dated the 12th June and that it should be treated as having been cancelled, the appellant was not deterred by it but proceeded with his indent and completed it. There is material on the record furnished by the copy of the invoice despatched by the foreign seller from West Germany showing that the indent was actually made on the 4th July, that is to say, after the letter of the Assistant Drugs Controller had been received, by the Appellant's indenting agent. An irrevocable letter of credit was opened on the 9th July in furtherance of the indent. In the face of this fact it is impossible to accept the contention that the appellant had been misled by the Department's letters or that he had no means of knowing on the date of indent that Camphor B.P. was not permitted to be imported under his licence. The learned trial Judge entertained doubts as to whether the appellant had in fact been misled, and whatever material there

exists on the record appears to us to support that conclusion.

35. The letters aforesaid have been put to another use. It has been stated that the Department acted in bad faith and the allegation was made that although the appellant's consignment was confiscated, the consignments of several other firms and individuals were allowed to be cleared quite a long time after his consignment had been withheld. On this part of the case we have to recall the statement contained in the affidavit-in-opposition affirmed by the Assistant Collector of Customs, Appraisement, himself. He denied that he or any other of the respondents had acted in a mala fide manner and explained that the goods which had been imported or indented before the 3rd July, 1959 (the date of the letter of the Assistant Collector of Drugs) were allowed to be cleared in view of the fact that firm commitments might have been made with regard to them before the 3rd of July. Presumably this was a circumstance present to the mind of the learned trial Judge when he came to the conclusion that there were no mala fides on the part of the authorities concerned in confiscating the appellant's consignment. We cannot therefore hold that besides a mere averment of bad faith there is any reliable material upon which the Court could reasonably conclude that the order of confiscation had been vitiated by want of good faith.

36. Even if we assume that there was scope for the appellant being misled, the position in law would not be such as to entitle us to hold that the letters and the invoice to which we have referred would be sufficient to give legal cover to the import. If in fact the appellant was misled, that might be a mitigating circumstance relevant on the question of the quantum of penalty to be imposed. It would merely have that effect and no more. Surely the letters could not legalise an import if it was otherwise illegal, only because the tenor of one or two of them was somewhat indecisive or there was endorsement on the reverse of the bill of entry relative to the consignment that the Assistant Drugs Controller had no objection to its Importation.

37. It was then argued that the findings of the learned Judge indicated that there was hardship involved in the present case. We do not read the findings in that way; and even if we did, we do not think that the question of hardship would be really material in the present context. On behalf of the appellant our attention was drawn to certain observations appearing in Maxwell's Interpretation of Statutes to the effect that if there were possibility of adopting a reasonable construction which would avoid the penalty, the Courts should adopt such construction in favour of the subject. We have in this case to construe the schedule and the appendices which are part of the Imports (Control) Order and we have to construe the text of the licence with reference to them. In our opinion it would not be right, where there is no scope for reasonable doubt, to interpret the schedule in a beneficial manner. The same learned author says elsewhere in his book that the argument of hardship is a great snare and it is sometimes dangerous to listen to it; such argument is apt to introduce bad law and lead to erroneous interpretation of statutes. The Courts ought not to be influenced by

notions of hardship; they ought, on the other hand, to look hardship in the face rather than break the rules of law. (Maxwell, 9th Ed., page 214).

38. The amendment made in Appendix XIX changing "Terpene and its derivatives" into "Terpene Hydrate" for the subsequent licensing period commencing from April 1959 has been stressed with a view to emphasise that the authorities concerned saw the need for a change with the result that a change was made. Penal statutes, it has been said, ought to be strictly construed, particularly when it involves a possibility of infringement of freedom of trade. We do not propose to refer in detail to the observations of authority like Maxwell cited in aid of the contention. It is true that a proceeding u/s 167(8) of the Sea Customs Act is a penal action and it has in fact resulted in an order of confiscation. Section 5 of the Imports and Exports (Control) Act provides that a contravention or even abetment or attempt to contravene an order made under the Act may involve imprisonment for one year in addition to an order of confiscation or penalty to which the person concerned may be adjudged. There can be no question that contravention of an Imports (Control) Order is a serious matter. Courts and Tribunals have to act with care before a person is visited with punishment for breach of such order. In this case, however, we have found nothing which might have remotely justified the apprehension that there was possibility of the appellant having been unjustly dealt with at any stage of the proceedings. No question of beneficial construction arises where the words of the statute are quite unequivocal. The Assistant Collector of Customs, Appraisement, had to decide whether the appellant's licence permitted importation of Camphor B. P. It was held that serial No. 131, Part IV of the schedule completely banned Camphor and there was no scope for thinking that the matter had been involved in any kind of doubt, the argument was sought to be re-enforced by reference to the case of Attorney General v. Brown (1920) 1 KB 773. Sankey, J. recalled the words of Lord Esher M. R. who had expressed a warning in an earlier case of Tuck and Sons v. Priestner (1887) 19 QBD 629:--

"We must be very careful in construing that Section (section 43) because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction, if there are two reasonable constructions we must give the more lenient one."

No one can doubt the value of a warning like this, and we have not been unmindful of it in dealing with the present case. It seems plain that even on a construction most favourable to the appellant he cannot escape liability for having imported into the country goods which were not permitted by the licence he held with reference to the relevant serial numbers of the schedule.

39. The words "excluding preparations thereof" occurring after the words "Terpene and its derivatives" in Appendix XIX have been emphasized with a view to showing that the entry such as it is already provides an exception. The exception is said to be that while Terpene and its derivatives may be brought into the country preparations of Terpene cannot be so brought. It has been said that

if we were to hold that the entry also banned Camphor B.P., we would in fact be reading into it a further exception which it would never be permissible to do. This argument is easily met by the fact that taking the item as it is we have to construe it with reference to another item, namely item 131 occurring in Part IV of the same schedule. If one compares the two items and reads them together it would not certainly be reading something into the items or adding to them or taking anything away from them. On the appellant's own contention this item "Terpene and its derivatives excluding preparations thereof has to-be taken in the context of the schedule and the appendix. We do no more than this; only that we take into account another item, serial No. 131 which is directly relevant and expressly excludes Camphor. By so reading we are surely not adding to or taking away from the item in any way.

40. These are the contentions raised on behalf of the appellant; we have found no substance in any of them.

41. We have then to consider whether in a writ appeal the questions which have been raised can properly be raised; although we have dealt with them out of deference to arguments of counsel.

42. Although the Rule issued in this case was a composite Rule for Certiorari and Mandamus, in substance this was a Rule for Certiorari. It is well known that before a writ for Certiorari can go, it has to be established that the authority concerned had no jurisdiction to act or acted in excess of jurisdiction, or that there was violation of natural justice or that there was error of law apparent on the face of the record. The scope of the writ of Certiorari has been defined by the Supreme Court on a number of occasions. It would not be necessary to refer to all the decisions. Suffice it to say that In the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , the Supreme Court observed:--

(1) Certiorari will be issued for correcting errors of jurisdiction, as and when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The Court issuing a writ of certiorari acts in exercised of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even If they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to consider a right of appeal against that decision it would be defeating its purpose and policy, if a superior Court were to re-hear the case on the evidence, and substitute its own findings in certiorari. These propositions are well settled and are not in dispute.

This decision was re-affirmed in the case of T.C. Basappa Vs. T. Nagappa and Another, where the following observation of Morris L. J. in the case of Rex v. Northumberland Compensation Appeal Tribunal, (1952) 1 KB 338 was referred to with approval:--

"It is plain that Certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown."

Earlier the Supreme Court had held in the case of Veerappa Pillai Vs. Raman and Raman Ltd. and Others, that the High Court will interfere only in grave cases where subordinate Tribunals act without jurisdiction or in excess of it or in violation of the principles of natural justice or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of the record. However extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the impugned decision. In Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , the position was re-affirmed and it was held that the High Court had no power under Article 226 of the Constitution to issue a writ of Certiorari in order to quash an error of fact even though it may be apparent on the face of the record, it can do so only where the issue is one of law and apparent on the face of the proceeding. Any error of law or fact which it can correct as a Court of Appeal or Revision cannot be a ground for the exercise of its power under that Article. So long as the hierarchy of officers and appellate authorities created by a statute function within their ambit, the manner in which they do so can be no ground for interference.

43. It is to be observed that in the present case the appellant did not think it right to take an appeal although the statute gave him the right to appeal from the decision of the Assistant Collector of Customs, Appraisement. Section 188 of the Sea Customs Act says that any person aggrieved by any decision or order passed by an officer of Customs may, within three months, appeal to the Chief Customs Authority and the appellate authority may confirm, alter or annul the decision appealed from. Section 191 of the Act gives power to the Central Government to revise an order of the Chief Customs authority from which no appeal lies and revise or modify such order. The appellant however did not choose to avail of the statutory remedy, it is true that his failure to do so will not disentitle him to relief under Article 226 of the Constitution provided he is otherwise found entitled. As has been observed in the case of State of U. P. v. Mohammad Nooh 1958 SCA 73: (AIR 1958 SC 86) that the rule requiring exhaustion of statutory remedies before the writ can be granted is a rule of policy and discretion rather than a rule of law. This was also the view taken in the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, . It must therefore be held that the appellant's

failure to avail of the ordinary remedies under the statute by way of appeal or revision will not disentitle him to relief when he seeks the Court's assistance for a writ, but that is a circumstance which may well be taken into consideration in deciding whether the discretionary relief provided by Certiorari can be given to the appellant. Indeed, the questions which the appellant in this case sought to raise both here and in the Court below are questions which might properly have been raised before the appellate tribunal or in revision before the Central Government. Several of these questions involve investigation of facts by reference to details of the schedule and the appendices which could not conveniently be made the subject of decision in a writ petition or appeal. Whatever that may be we have to consider whether the rules of natural justice have been violated or whether the authority concerned acted without jurisdiction or exceeded its jurisdiction in making the impugned order; and lastly we have to see whether there is an error of law apparent on the face of the record which would justify the issue of a writ.

44. It has not been argued that the Assistant Collector of Customs, Appraisement, who made the order of confiscation, acted without jurisdiction or exceeded his jurisdiction. Indeed he had the power to act under the law and in exercise of that power he called upon the appellant to show cause why his consignment of Camphor should not be confiscated. The appellant showed cause and asked for a personal hearing. He was given a personal hearing. There can thus be no violation of the rules of natural justice, it remains to see whether there is any error of law apparent on the face of the record. Indeed, the argument based on a laborious research of the schedule and the appendices of the Import Trade Control Policy clearly demonstrates that there is no error apparent on the face of the record. The error, if any, has to be an apparent error. The Supreme Court had occasion in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, , to consider what constituted an error apparent on the face of the record which would justify the issue of a writ of certiorari. Das Gupta J. who spoke for the Court observed as follows:--

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal, viz., that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari."

We think this concludes the matter. In our opinion far from there being an error on the face of the record, the error if any has to be established by patient research. That kind of error cannot be corrected by certiorari.

45. The scope of review by certiorari has its own limitations. In the name of such review the appellant in a writ appeal cannot ask for and obtain reappraisal of the evidence. We are not sitting as a Court of Appeal from the decision of the Assistant Collector of Customs; still we have dealt with the questions raised, analysed the different items in the schedule and the appendices to examine the correctness of the contention that an article may be put to different uses and the ban on importation may be a limited ban which does not extend to all its uses. Assuming that is the true position, it does not advance the appellant's case. The substantial question is whether he was permitted to import Camphor B. P. under the licence he held. It is true that Camphor B.P. is a drug and the appellant's licence permitted importation of drugs covered by serial Nos. 87 and 109 of Part IV of the schedule which read with the relevant appendix means that he was authorised to import Terpene and its derivatives. Camphor B. P. may be one of the derivatives and he would be entitled to import it if there was no specific ban on Camphor as such in the Schedule itself. Camphor may have its use as a drug, but the ban upon it is a total ban without any qualification. If the ban was not unequivocal, the appellant's contention might have substance. Plainly Terpene has many derivatives and it has not been suggested that Camphor is the only derivative. The licence properly construed would therefore mean that it gave the appellant the right to import all derivatives of terpene excluding camphor, drug or non-drug.

46. Even if we assume that the authority charged with the duty of deciding on confiscation committed an error, it could not be said to have acted without, jurisdiction or in excess of it or in violation of natural justice. An error is not amenable to the writ of certiorari. The error if any far from being apparent on the face of the record, requires to be established by research into the intricacies of the schedule and the appendices. It does not satisfy the test laid down by the Supreme Court (Mohammad Nooh's case 1958 SCA 73: (AIR 1958 SC 86) that the error to be corrected by certiorari must be one "so patent and loudly obtrusive that it leaves on the decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or in revision."

47. The appeal therefore fails and is accordingly dismissed. There will however be no order as to costs.

48. The operation of this order will be stayed for a period of ten days from date whereafter all interim orders will stand vacated.

Bose, C.J.

49. I agree.