
(1973) 11 GUJ CK 0008
In the Gujarat High Court

J.K. Bardolia Mills

APPELLANT

Vs

M.L. Khunger, Dy. Collector of Central Excise and Customs
and Others

RESPONDENT

Date of Decision : 02-11-1973

Acts Referred:

Constitution of India, 1950 — Article 141
Customs Act, 1962 — Section 129, 129

Citation : (1975) 16 GLR 119

Hon'ble Judges : S.N. Patel, J;A.D. Desai, J

Bench : Division Bench

Judgement

A.D. Desai, J.—The petitioner is a partnership firm registered under the Partnership Act. The factory premises of the petitioner's firm which has an open compound were raided by the Custom Officers on May 26, 1969 in the presence of Panchas and the search led to the find of 28 packages of synthetic yarn and synthetic fabrics of foreign origin in a hedge of the compound. The said goods were seized under a panchnama because the custom officers entertained a reasonable belief that the goods in question were liable to confiscation under the provisions of the Customs Act, 1962 (hereinafter referred to as the Act). The seizure was under the provisions of Section 110 of the Act. On November 27, 1969 Mr. L.N. Kaul, the Collector of Customs and Central Excise, Baroda passed order No. VIII/ 10-272/Cus/69, stating that in respect of the seizure of Nylon yarn and fabrics made on May 26, 1969, he was satisfied that there were sufficient grounds for extending the period by 2 months for the issue of the show cause notice prescribed u/s 124 of the Act and he extended the period by two months from November 26, 1969. On December 19, 1969 Mr. L.N. Kaul issued notice No. VIII/10-272/Cus/69 stating that the goods shown in Annexure "A" to the show cause notice have been imported into India contrary to the provisions of para 3 of the Import (Control) Act, 1967 read with Section 11 of the Customs Act of 1968 and that the said goods were notified goods vide notification issued u/s 11(B) of the provisions of Chapter IV-A of the Customs Act, 1962 and that

the said goods were acquired and possessed in contravention of the provisions of Chapter IV-A of the Customs Act inasmuch as the petitioner could not on demand produce any bill or such other document in support of genuine purchase or import of the said goods. The notice further stated that it appeared that the petitioner was the person who acquired possession of or was concerned in carrying, removing, depositing, harbouring, keeping, concealing or purchasing or in any other manner dealing with the said goods which the petitioner knew or had reason to believe to be liable to confiscation u/s 11 of the Act. The petitioner was required by the Collector, to show cause why a penalty should not be imposed on him u/s 112(h) of the Act and why the goods mentioned in Annexure "A" to the notice should not be confiscated u/s 111 of the Act. The said show cause notice was received by the petitioner on December 26, 1969. The petitioner filed a reply contending that the goods in question were not recovered from his possession, that the petitioner did not import goods or purchase the same, that he had no concern with them and that the show cause notice was illegal and invalid as it did not confirm to the provisions of the Act. The hearing in respect of the said proceeding proceeded and 3 adjournments were granted to the petitioner prior to February 22, 1971 either at the request of the petitioner or his advocate. Finally the case was fixed for final hearing on February 22, 1971 and the notice in respect of this date of hearing was served on the petitioner on February 2, 1971. The petitioner did not remain present on that date and, therefore, the Assistant Collector of Customs, Appeal Unit, Bombay, passed order No. VIII/10-272/ Cus/69 dated February 24, 1971 ordering confiscation of the goods in dispute and imposing a penalty of Rs. 50,000/- on the petitioner under the provisions of Section 112(b) of the Act. Being aggrieved - by the said order of confiscation and levy of personal penalty the petitioner preferred an appeal to the Appellate Collector of Customs and Central Excise, Appeal Unit, Bombay. The appellate officer required the petitioner to deposit Rs. 15,000/- as condition precedent to the entertaining of the appeal and this order was passed u/s 129 of the Act. The petitioner did not deposit the said amount and, therefore, the appellate authority rejected the appeal for non-compliance of the provisions of Section 129 of the Act. The petitioner challenges the order dated February 24, 1971 passed by the Assistant Collector of Customs, Appeal Unit, Bombay which is at Ex. "B" and the order passed by the Appellate Collector of Customs dated December 23, 1972 rejecting the appeal of the petitioner for non-compliance of the provisions of Section 129 of the Act and which is at Ex. "H". The aforesaid orders are challenged on the grounds : (1) that after expiry of the statutory period of 6 months as contemplated u/s 110(2) of the Act a right vested in the petitioner entitling him to return of the goods so seized and once the property under seizure vested in the petitioner by virtue of efflux of time the custom authorities were debarred from holding any inquiry and passing the impugned orders; (2) that the extension of time granted by the Collector of Customs and Central Excise by his order dated November 27, 1969 which is at Ex. "B" was illegal and invalid and the same was passed without notice to the petitioner; (3) that the impugned order Ex. "D" passed by the Deputy Collector dated February

24, 1971 was invalid as reasonable opportunity of being heard was not given to the petitioner inasmuch as his application for adjournment of the case was wrongly rejected; and (4) that the dismissal of the appeal without considering its merits was opposed to the principles of natural justice.

2. The learned advocate for the petitioner contended that the goods in dispute were seized by the Custom Authorities on May 29, 1969 and the notice as contemplated by Section 124(1)(a) read with Section 110 of the Act was given on December 19, 1969, that is, after a period of 6 months as provided in Section 110 and, therefore, the said notice was invalid and illegal. The consequence of this was two fold, (1) that a right vested in the petitioner to be entitled to the return of goods seized under the provisions of Section 110(2) of the Act; and (2) the respondents were debarred from holding any inquiry in respect of such goods. He also contended that the order passed by the Collector of Customs and Central Excise dated November 27, 1969 extending the statutory period of six months was illegal as the same was passed ex parte without notice to the petitioner. In order to appreciate those contentions it is necessary to refer to the relevant provisions of Sections 110, 112 and 124 of the Act which are as follows:

110(1). If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(2) Where any goods are seized under Sub-section (1) and no notice in respect thereof is given under Clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized: Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months. 112. Any person,-

(a) who, in relation to any goods, does or omits to do any act or omission would render such goods liable to confiscation u/s 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods, which he known or has reason to believe are liable to confiscation u/s 111. shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding five times the value of the goods or one thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to penalty not exceeding five times the duty sought to be evaded on such goods or one

thousand rupees, whichever is the greater.

124. No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in Clause (a) and the representation referred in Clause (b)) may, at the request of the person concerned be oral.

The aforesaid provisions have been interpreted by the Supreme Court in the case of the Assistant Collector of Customs Vs. Charan Das Malhotra, , and the view taken by the Supreme Court is that the person from whom goods are seized is entitled to restoration of goods if no show cause notice as contemplated u/s 124 read with Section 110 is issued within the prescribed time limit of six month. It was further held by the Court that the time limit can be extended by further period not exceeding six month in exercise of the powers under the proviso to Sub-section (2) of Section 110 only if the person from whom the goods are seized is offered an opportunity to show cause against such an extension. If such an opportunity has been offered and the Collector of Customs comes to the conclusion on the basis of the material placed before him that it is a fit case for extension of time and sufficient cause has been shown for granting the time, the Collector may extend the time. But in a case where the Collector extends time ex parte without offering any opportunity to show cause against such an extension to the person from whom the goods are seized, the order of extension is illegal, ultra vires and a nullity. In the present case the goods in dispute were seized on May 26, 1969 and show cause notice u/s 110 read with Section 124 was issued on December 19, 1969. In between those two dates, the Collector of Customs and Central Excise passed order No. VIII/ 10-272/Cus/69 on November 27, 1969, extending the period for the issue of the show cause notice prescribed u/s 110 of the Act without notice to the petitioner. The consequence is that the order passed by the Collector of Customs and Central Excise dated November 27, 1969 extending the period of six month provided in Section 110 by two month from November 26, 1969 is bad and illegal in view of the provisions of Section 110(2) of the Act. But the question then arises is whether the petitioner is entitled to return of the goods seized, once the order of confiscation is passed u/s 110 of the Act. So far as Section 110 is concerned it deals with the seizure of the goods and the return thereof. In other words if the said provisions are not satisfied the goods seized have to be returned. Section 110 of the Act deals with the seizure of the goods. Section 124 of the Act deals with the confiscation and imposition of the penalty. The provisions relating to the seizure of the goods and those relating

to the confiscation of the goods or imposition of penalty stand on different footing. Section 124 of the Act does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110(2) affects only the seizure of the goods and not the validity of notice. In the present case after proceeding of seizure the proceedings for confiscation and imposition of penalty were proceeded with and the proceedings ended in the order of confiscation and imposition of penalty vide order Ex. "D". As the goods have already been ordered to be confiscated the question of return of goods after the period of six month as mentioned in Section 110 of the Act cannot survive. In Special Civil Application No. 555 of 1971 decided by a Bench consisting of our brother Mr. M.P. Thakker and myself decided on April 10, 1973 *Vasa Bhaja v. B. Tawde* the question arose about the return of 2 silver bars which were seized by the custom authority on June 10, 1968 from one Vasa Bhoja. The claim for return of 2 silver bars was rejected by the Court on two grounds, namely, (1) that the question that Vasa Bhoja was entitled to return of goods depended upon the disputed question whether 2 silver bars belonged to or owned by Vasa Bhoja, and (2) that an order of confiscation thereof had already been passed. This decision, therefore, supports our conclusion that once the order of confiscation of the goods is passed under the provisions of Section 111 of the Act the question of return of goods after expiry of the period mentioned in Section 110 of the Act cannot survive.

3. It was then contended by the learned advocate for the petitioner that no order of confiscation or levy of penalty under Sections 111 or 112 could have been passed in respect of the goods in dispute because the petitioner was entitled to restoration of the goods under the provisions of Section 110 of the Act. It was contended that Section 110 is contained in Chapter XIII of the Act which chapter contains provisions for searches, seizure and arrest. The provisions contained in Chapter XIV which follow the provisions of Chapter XIII provide for confiscation of goods, conveyances and imposition of penalty. It was therefore, contended that an order under Sections 111, 112 and 124 for confiscation or imposition of penalty can be passed only in respect of the goods which are seized u/s 110 of the Act. It was further argued that if a right of restoration of goods vested by efflux of time in the person from whom the goods are confiscated, such person should again be served with an order of seizure u/s 110 of the Act, and unless the goods are so seized, no order of confiscation or imposition of penalty can be passed under Sections 111 & 112 of the Act. The aforesaid arguments advanced on behalf of the petitioner cannot be accepted. The first reason is that the provisions of Chapter XIII deal with the procedural matters. The provisions enacted therein are for securing goods suspected to be illegally imported. The provisions contained therein invest powers on certain officers to prevent disposal of goods in respect of which the proper person entertains a reasonable belief that the goods are smuggled goods. In Chapter XIV substantive provisions are enacted. In order that the substantive provisions may not be rendered ineffective the provisions are enacted in Chapter XIII so that suspected smuggled goods

may not be disposed of taking at the same time abundant caution that individuals may not be put to more inconvenience than what is necessary. It is necessary to consider the provisions contained in Chapter XIV of the Act. Section 111 of the Act describes the goods which can be confiscated. Section 112 provides for penalty for improper importation of goods. Section 113 provides for confiscation of goods attempted to be improperly exported. Section 114 provides for penalty for attempt to export goods improperly. Section 115 provides for confiscation of conveyances and Section 116 provides penalty for not accounting the goods. Section 117 is a general provision providing for penalty for contravention which is not expressly provided. Section 118 provides for confiscation of packages and their contents. Section 121 provides that where any smuggled goods sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale proceeds thereof shall be liable to confiscation. Section 125 provides for option to pay fine in lieu of confiscation. Section 122 contains procedural provisions and Section 129 provides for rules relating to burden of proof. Section 124 requires that no order confiscating any goods or imposing any penalty on any person shall be made under Chapter XIV unless owner of the goods is given notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty and is given an opportunity of making a representation in writing against the grounds of confiscation or imposition of penalty, and is given a reasonable opportunity of being heard in the matter. If the intention of the legislature was to restrict confiscation of goods or imposition of penalty only in respect of the goods which are seized u/s 110 of the Act, the legislature would have used the language qualifying the word. "Goods" used in Sections 111, 112 and 124 of the Act. The words used in Sections 112 and 124 are "any goods" and "any person". These words are of widest import and they cannot be given a restricted meaning as is sought to be given by the learned advocate for the petitioner. There is nothing in these provisions to indicate that the goods in respect of which an order of confiscation or penalty can be passed under Sections 111 and 112 of the Act must be goods seized under the provisions of Section 110 of the Act. The power to seize the goods u/s 110 is distinct and separate from the power of confiscation and imposition of penalty as provided in Sections 111 and 112 of the Act. The later provisions are not absolutely dependent on the provisions of Section 110 of the Act.

4. It was next contended that the notice issued u/s 124 read with Section 110 of the Act, which is at Ex. "B" to the petition is bad, illegal and invalid, because (1) there is nothing in the Panchnama made at the time of the seizure to indicate that the custom officers who seized the goods had reason to believe that the goods in dispute were liable to confiscation under the Act, and (2) that the notice u/s 124 was issued after the expiry of the period of six months as contemplated by Section 124 read with Section 110 of the Act. Section 110 of the Act provides that if the proper Officer has reason to believe that any goods are liable to confiscation, he may seize the goods. After the goods are seized, a notice in

writing informing the person from whom the goods are seized of the grounds on which it is proposed to confiscate the goods or to impose a penalty has to be issued and served on the person from whom the goods are seized within the period of six months the failure of which gives a right to the person from whom the goods are seized to restoration of the goods. In the present case the goods were seized in the presence of the panchas. The Panchnama is a mere record of the statement of the panchas in respect of the goods which are seized. The panchnama is the statement of the panchas and not the Custom Officer. That being so the first ground regarding the invalidity of the notice advanced on behalf of the petitioner cannot be accepted. It was then contended that the notice u/s 124 of the Act was invalid because it was not issued within the statutory period provided by Section 110 of the Act. In short the contention was that the statutory period laid down in Section 110 applied to the notice required to be issued under the provisions of Section 124 of the Act. In support of this strong reliance was placed on the decision of the Division Bench of this Court consisting of Diwan J. (as he then was) and P.D. Desai J. in *Ambalal Morarji Soni Vs. Union of India and Others*, and particularly on the following passage occurring in the judgment:

We may also point out that with the consent of the person concerned both under the Customs Act as well as under Gold (Control) Act, the notice can be oral and unless the grounds are communicated to him in person it cannot be said that the notice has been given to him orally. This is the further ground in support of our conclusion that the word "given" in the Context in which it is used means "actual communication of the notice to the person concerned either in writing or orally". But it must reach him before the expiry of the period of six months from the date of the seizure if the civil right to get back the seized goods is not to accrue to him. In the instant case, it is clear on the facts narrated above that the notices in question at Annexures B and C to the petition, were not given within the period of six months from the date of seizure of the goods and further a right to get back the seized goods has vested in the petitioners [It was not open to the respondents Nos. 2 and 3 to proceed with the confiscation or imposition of penalty under the relevant provisions of the Customs Act or the Gold (Control) Act under these two show cause notices.] Hence the petitioner has become entitled to the return of the seized goods and we issue a Writ of Mandamus directing the respondents to hand over possession and custody of the seized goods to the petitioner, the goods being those referred to in the Panchnama dated May 7, 1969, Ann. A to the petition, B [Though the notices were not given within the time contemplated by Section 110, it does not mean that the notices were bad and, therefore, it is not open to us to strike down the notices and hence the prayers in paragraphs 15(A) and 15(B) of the petition are not granted to the petitioner.": (Brackets and the markings A and B are ours).

In this case the Court was concerned as to the meaning of the word "given" used in Section 110 of the Act and Section 79 of the Gold (Control) Act, 1968. Gold weighing 455 grams was seized under the provisions of Section 110 of the Act

and under the provision of the Gold (Control) Act, 1968. It was observed by the Court that the provisions of Section 110 read with Section 124 of the Act and the provisions of Section 79 of the Gold (Control) Act were identical. It is not necessary for us to consider whether these two provisions are identical as we are not concerned with the provisions of the Gold (Control) Act. We are only concerned with the provisions of the Customs Act. The question that arose before the Court was whether the person from whom the gold was seized was entitled to restoration of the goods on the expiry of six months. Show cause notices u/s 124 of the Act and the provisions of the Gold (Control) Act viz. annex. A and B were issued and the petitioner challenged these notices on the ground that the notices were not issued within the period of six months. The Court came to the conclusion that the word "given" used in Section 110 of the Act and Section 79 of the Gold (Control) Act did not mean merely issuance of notice but it required that notice must have been served on the person intended to be served by the provisions of the Act within the period of six months. While giving this construction to the word the Court made the observation which have been cited herein before. The notice under the Custom Act with which the Court was dealing required the person from whom the gold was seized to show cause why a penalty u/s 112(b) of the Custom Act should not be imposed and the goods in dispute should not be confiscated under the provisions of the Custom Act. This notice was obviously u/s 124 of the Act. Bearing this in mind we have to consider the observations made by the Court and cited hereinbefore. We have divided the material observations in 2 parts, namely, A and B. These two observations do not fit in with each other. In the observation at mark B it has been held that the notices were not bad and, therefore, they could not be struck down. Now if the notices were not bad, there is nothing to prevent the authority from proceeding further in pursuance of the said notice. The observation made at mark A conflicts with the observation made at mark B. The observation at mark A has been made on the basis that the period of six months mentioned in Section 110 of the Act also applied to the notice which is required to be issued u/s 124 of the Act and this observation is in direct conflict with the decision of the Supreme Court in Assistant Collector of Customs (supra). The Supreme Court while interpreting the provisions of Sections 110 and 124 of the Act observed as under:

Section 124 provides that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the ground on which it is proposed to confiscate the goods or to impose a penalty. The Section does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110(2) effects only the seizure of the goods and not the validity of the notice.

We have considered the question of referring the point to a larger Bench but in view of the clear decision of the Supreme Court cited hereinabove it is not necessary to do so as the decision of the Supreme Court is binding on this Court under Article 141 of the Constitution of India. The aforesaid decision of the

Supreme Court clearly lays down that the period of 6 months mentioned in Section 110 affects only the seizure of the goods and not validity of the notice u/s 124 of the Act. Section 124 does not lay down any period within which the notice required by it has to be given. That being so the argument advanced on behalf of the petitioner that notice u/s 124 must have been issued within the period of 6 months cannot be accepted. On this point reliance was sought to be placed on decision in the case of Mohammad Hanif Vs. Collector of Customs and Central Excise and Others, . The facts in that case were that certain goods were seized from the petitioner under the provisions of Section 110 of the Act. It was alleged that no show cause notice in respect of the seized goods was served upon the petitioner within the statutory period of 6 months as required u/s 110 read with Section 124 of the Act. The petitioner, therefore, made a request to the Collector demanding the return of the goods. The Custom authorities thereafter gave an intimation of the extension of the period for the issue of show cause notice by 6 months. This intimation notice was at Annexure 4. Subsequently the Custom authorities also issued a notice to the petitioner to show cause why the goods should not be confiscated under the provisions of Section 111 of the Customs Act and this notice was at Annexure 6. The petitioner challenged Annexures 4 and 6. It appears that subsequently a show cause notice, Annexure 9, extending the period to show cause as mentioned in Annexure 4 was issued and it was Annexure 9. The petitioner also challenged the notice at Annexure 9. The Court following the decision of the Supreme Court in Assistant Collector (supra) observed as under:

I, therefore, accept the petitioner's contention that the extension of the six months' period of giving show cause notice by the Collector of Customs and Central Excise under the proviso to Section 110(2) of the Customs Act was invalid in law with the result that the subsequent show cause notice given to the petitioner was also rendered illegal. Consequently the goods recovered and seized from the possession of the petitioner and contained in Annexure I are liable to be returned to petitioner Mohammed Haneef.

The learned Judge quashed the show cause notices Annexures 4, 6 and 9. Now the Court in this case did not consider the question whether the period mentioned in Section 110 applied to the notice u/s 124 which provides for confiscation of goods. This decision, therefore, cannot be of any assistance to the petitioner.

5. Reliance was also sought to be placed on the decision of the Calcutta High Court reported in Bibhuti Bhusan Das and Anr. v. I.J. Rao and Ors. 73 CWN 340. The question which arose before the Court was whether the extension of the period of six months provided in Section 110 without notice to the person from whom the goods were valid in law and the Court came to the conclusion that ex parte extension of time was invalid. In this connection the Court observed in paragraph 8 as under:

It appears that right to get back the goods if no notice u/s 124 of the Customs

Act is served and goods are confiscated accrues in favour of the owners of the goods on the expiry of six months from the date of the seizure.

It is on this passage that reliance was placed by the learned advocate for the petitioner. The observations made by the Court only mean that the right to get back the goods accrues on the expiry of 6 months from the date of seizure if no notice u/s 124 served and no goods are confiscated. It is difficult to understand how this passage can help the petitioner in contending that period of 6 months also applies to the notice required to be issued u/s 124 of the Act.

6. It was lastly contended that the petitioner had not been given a reasonable opportunity to defend the proceedings in respect of confiscation of goods or imposition of penalty. It is argued that the case was fixed for hearing by the Custom authorities on February 22, 1971. On 20th February 1971, the petitioner had made an application for adjournment on the ground that the petitioner wanted to change his advocate and engage another advocate. This application was rejected by the concerned Custom Officer and the argument advanced at the bar is that this order rejecting the adjournment was bad inasmuch as a personal hearing which is matter of right to the petitioner was denied to him. Now there is no dispute that prior to February 22, 1971, 3 adjournments were granted to the petitioner either at his request or on the request of the petitioner's advocate. With respect to fixing the date of hearing as February 22, 1971, a notice was served on the petitioner on February 2, 1971. It is clear, therefore, the petitioner was given 20 days' time to prepare himself for the personal hearing in the matter. On February 22, 1971, the learned advocate who was appearing on behalf of the petitioner remained present before the Officer and made a statement that he was unable to proceed with the matter since his client had taken away the papers stating that he wanted to study the case. At that very moment an application was received by post praying for time. The petitioner requested for time on the ground that the petitioner wanted to change the advocate. Now in the notice which was issued to the petitioner intimating him the date of hearing as February 22, 1971, a specific warning was given to him that the case would not be adjourned because summonses had been issued to the witnesses who were responsible officers of the department. After considering all the facts of the case the officer concerned came to the conclusion that this was not a fit case for adjournment. It was in the discretion of the officer to grant an adjournment and in view of the facts as stated above, it cannot be said that he had exercised his discretion illegally. If the petitioner wanted to remain present in person at the time of the hearing he could have done so. It must be noticed that no explanation is given in this petition why the petitioner could not appear before the Custom Officer on February 22, 1971 with another lawyer. It was further argued that as the adjournment was refused, the petitioner was unable to cross examine the witnesses of the department. In this connection it was further contended that the witnesses were never present at earlier occasion when the case was adjourned and for this argument reliance was placed on the affidavit in rejoinder filed by the partner of the firm. Now it must be noted that such a case

was not made out in the petition itself. There is nothing on the record to show on what basis this statement was made in the affidavit in re-joinder i.e. whether this statement was made on the basis of knowledge, information or belief. Prior to this an adjournment was granted on the ground that the petitioner was sick and certainly the petitioner could not have any knowledge whether the witnesses were not present on that date. The statement made by the partner of the firm in the affidavit-in-rejoinder is therefore, unreliable. It cannot, therefore, be said that the petitioner had been denied any reasonable opportunity to put forward his case before the Custom Officer.

7. The order in appeal was challenged on the ground that the condition to deposit Rs. 15,000/- was harsh one with result that the petitioner could not put forward his case in appeal. It was contended that the financial condition of the petitioner was not such that he could have deposited the amount of Rs. 15,000/- as ordered by the authority. Now it appears from the record of this petition that before the order of deposit was made the petitioner was heard on the point as to what amount he should be ordered as to deposit before the appeal could be entertained and after considering all the facts, the appellate authority passed the order requiring the petitioner to deposit Rs. 15,000/- before the appeal could be entertained." Therefore, the order requiring the petitioner to deposit Rs. 15,000/- was made after hearing him and on merits. It cannot, therefore, be said that he was deprived of the right of being heard in appeal. For the aforesaid reasons the arguments on this score cannot be accepted.

The result is that the rule issued on this petition is discharged with costs.

8. Mr. Shethna seeks leave to appeal under Article 133 of the Constitution but he is unable to point out that this case involves a substantial question of law of general importance and that in the opinion of this Court such a question requires to be decided by the Supreme Court. As a matter of fact while deciding the case, we have followed the decision of the Supreme Court in Assistant Collector of Customs (supra). This case in our opinion does not involve any substantial question of law of general importance which requires determination by the Supreme Court. Hence the oral application for certificate for leave to appeal is rejected.