
(1994) 02 CAL CK 0036

In the Calcutta High Court

Case No : Writ Appeal No. 384/90 in Matter No. 3145/89

Kalindi Woollen Mills (P) Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(6), 301, 302

Customs Act, 1962 — Section 11, 111

Defence of India Rules, 1971 — Rule 126, 126(2), 126(3)

Imports and Exports (Control) Act, 1947 — Section 3, 3(1), 3(3), 7, 8

Citation : (1994) 74 ELT 827

Hon'ble Judges : Nure Alam Chowdhury, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Bhaskar Gupta and S.K. Bajoria, for the Appellant;N.C. Roy Chowdhury and Shibaji Mitra, for the Respondent

Final Decision : Allowed

Judgement

Ajit K. Sengupta, J.—This appeal is directed against the judgment and order passed by a learned Single Judge of this Court on 28th July, 1990 dismissing the writ application filed by the appellants herein challenging the validity and/or legality of a public notice bearing No. 122-ITC(PN)/88-91 dated 26th April, 1989 issued by the Ministry of Commerce, Government of India, New Delhi, and an Import Trade Control Order No. 52/88-91 dated 28th April, 1989 issued by the Ministry of Commerce, Government of India.

2. The facts giving rise to the instant appeal are as under :

The appellant company has a factory at village Dhoom Manikpur, in the District of Ghaziabad in the State of Uttar Pradesh and the principal raw-materials required for running the said factory by the appellants is rags both woollen and synthetic as well as shoddy wool. Since, these raw-materials are in short supply in this country, these are allowed to be imported under the Open General Licence Scheme of the Government of India contained in the Import Policy 1988-91

subject to the conditions imposed regarding, inter alia, importation through canalising agency and/or importation under specific licences granted by the Import Licensing Control Authorities.

3. Under the said Import Policy, the Government of India, in exercise of powers conferred upon it u/s 3 of the Imports and Exports (Control) Act, 1947 (hereinafter referred to as the said Act) issued an order on or about 30th March, 1988 being Open General Licence Order No. 1/88, whereby the said goods were allowed to be imported under the Open General Licence Scheme by an actual user subject, inter alia, to the condition that the contract for importation of such goods had to be registered, prior to the import of the said goods with the Textile Commissioner of the Government of India. It was only after the contracts were registered with the said Textile Commissioner and the appropriate registration number was granted by the said authority, the said goods could be imported.

4. It was stated that the appellants had been running its factory in compliance with the various regulations contained in the Imports (Control) Order, 1955 as well as the provisions contained in the said Import Policy. During the period January 1989 to April 1989, the appellants entered into six several contracts with its foreign sellers for purchase and import of consignments of the said goods required to be used by it in its aforesaid factory as a raw-material. The contracts in question were duly registered by the appellants with the Textile Commissioner of the Government of India. In terms of the said contract, a total quantity of 725 metric tons of the said goods were sought to be imported.

5. In or about May 1989, the appellants allegedly came to learn that by a Control Order being No. 52/88-91 dated 28th April, 1989, the Central Government sought to amend the said Open General Licence in the following manner :-

"In exercise of the powers conferred by Section 3 of the Imports & Exports (Control) Act, 1947, (XVIII of 1947), the Central Government hereby makes the following amendment in the Open General Licence No. 1/88 dated the 30th March, 1988, published under the notification of the Government of India in the Ministry of Commerce No. 329 (E) dated the 30th March, 1988, namely;

In the said Open General Licence No. 1 /88 in condition number 14, after sub-clause (iii) the following shall be inserted namely;

(iv) Imports of woollen rags/synthetic rags/shoddy wool will be allowed through two ports only, viz. Bombay and Delhi, ICD."

6. The appellants also came to learn that simultaneously the said Import Policy was also amended by a public notice bearing No. 122/ITC(PN)/88-91, dated 28th April, 1989 (hereinafter referred to as the said public notice) in the following manner :-

"Import & Export Policy for April 1988/March 1991." Attention is invited to the Import & Export Policy for April 1988 -March 1991 published under the Ministry of Commerce Public Notice No. 1-ITC (PN)/88-91 dated the 30th March, 1988, as

amended.

2. The following amendment shall be made in the Policy at appropriate places indicated below:

-----	Sl.No.
Page No. of Im- Reference Amendment port and Export Policy 1988-91	
Volume I -----	
1. 170 Appendix 6 After the existing con- Conditions dition No. 25(ii) the governing Im- following condition ports under shall be added Open General "(iii) Imports of Wool- Licence len rags, Synthetic rags, Shoddy wool will be allowed through two ports only, viz. Bombay and Delhi ICD."	

The above amendment in the Import & Export Policy has been made in public interest."

7. The appellants-writ petitioners, thereafter, by a letter dated 24th May, 1989 drew the attention of the Joint Chief Controller of Imports and Exports, Respondent No. 3, to the serious prejudice that would be caused to it by the said purported amendment whereby the importation of the said goods was allowed under Open General Licence Scheme only through two ports of the country, viz. Bombay and Delhi. The appellants requested that the said purported amendment should be kept in abeyance in so far as the said contracts were concerned and the appellants should be allowed to import the said goods under the said contracts through the Calcutta Port. In the meantime, while no reply was received by the appellant from the respondent No. 3, the Collector of Customs, respondent No. 4, on or about 16th June, 1989, issued a public notice bearing No. 242/89 allowing importation of the said goods through the Calcutta Port, if the shipments of the goods covered by the import contracts prior to the issuance of the said public notice were effected within 60 days from the 28th April, 1989, i.e. within 27th June, 1989.

8. The said consignments under the aforesaid contracts arrived at the Calcutta Port in or about August 1989. The Customs authorities purported to confiscate the said goods on the ground that the importation of the said goods under the said contracts to the Calcutta Port was violative of the provision of the said Open General Licence and/or the said Import Policy and thus violative of the provisions of Section 111 of the Customs Act, 1962. However, the Customs authorities allowed the redemption thereof upon payment of redemption fine. Since, the appellant's factory was in urgent need of those consignments of raw-materials, it had to obtain clearance of the said goods from the respondent Customs authorities upon payment of the redemption fine of Rs. 35,000/- and Rs. 20,000/-.

9. The appellants-writ petitioners challenged the aforesaid action of the respondents including the said order and/or public notice and/or order of confiscation and/or imposition of redemption fine imposed by the Customs

authorities being the respondent Nos. 4 and 5 as arbitrary, mala fide, illegal without and/or in excess of jurisdiction and bad in law. The case of the appellants in the writ petition was that the said order and/or the public notice, in so far as the same sought to restrict importation of the said raw-materials only through Bombay and Delhi ICD ports, was without jurisdiction, illegal, invalid and void ab initio.

10. The learned Single Judge by his judgment and order dated 28th April, 1989 dismissed the said writ petition. The learned Single Judge, inter alia, held and observed that the only restriction imposed under the said order and/or the said public notice was for the entry of the goods in question to this country through two specific points, viz. Bombay and Delhi ICD. This restriction appeared to the learned Trial Judge to be reasonable having regard to the need to check attempts by unscrupulous traders to import the prohibited goods in a surreptitious way. The learned Trial Judge also held and observed that neither the said order nor the said public notice is contrary to and/or inconsistent with the provisions as contained in Section 3 of the Imports and Exports (Control) Act, 1947 and the Policy of the Government of India to restrict the entry of the goods through two specified ports did not, in the opinion of the learned Trial Court, infringe the rights of the appellants-writ petitioners nor did it violate any constitutional provisions. The learned Trial Judge accordingly dismissed the writ petition filed by the appellants.

11. In the context and setting up of the facts and in the light of the provisions of Section 3 of the Imports & Exports (Control) Act, 1947 (Act XVIII of 1947), the contentions of the learned Counsel appearing for the parties have to be examined. It is, therefore, necessary, at this stage, to set out Section 3 of the Act:-

"3. Powers to prohibit or restrict imports and exports. - (1) 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 and subject to such exceptions, if any, as may be made by or under the order;

(a) the import, export, carriage coastwise or shipment as ships" stores of goods of any specified description;

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

(2) All goods to which any order under Sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited u/s 11 of the Customs Act, 1962 (52 of 1962), and all the provisions of that Act shall have effect accordingly.

(3) Notwithstanding anything contained in the aforesaid Act, the Central

Government may, by order published in the Official Gazette, prohibit, restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad, of any goods or class of goods imported into India."

12. Mr. Bhaskar Gupta, learned Counsel appearing for the appellants, has submitted that the impugned public notice and the Control Order are ultra vires the provisions of the Imports and Exports (Control) Act, 1947 (hereinafter referred to as "the said Act") and the Imports (Control) Order, 1955. There is no provision in the said Act whereby the respondents can restrict importation of goods which are otherwise importable into the country on, inter alia, the terms and conditions contained in the Import Policy and/or the Open General Licence governing such importation, through any one or two ports in the country to be picked and chosen at the whims and fancy of the respondents. If a particular kind of goods is allowed to be imported under Open General Licence, the same has to be allowed to be imported through any port in the country. The said purported order and/or the said purported Public Notice is, so far as the same seeks to restrict importation of the said goods only through Bombay and Delhi ICD ports etc., therefore, illegal, invalid, null and void.

13. The contentions of Mr. Roy Chowdhury, learned Counsel appearing for the respondents, is that the power u/s 3(1) of the said Act enables the respondents to not only prohibit or restrict importation of goods as such but also their point of entry by or through any port in the country.

14. It is also his contentions that Sub-section (3) of Section 3 of the said Act empowers the Central Government to issue the impugned Public Notice or the impugned Control Order.

15. Section 3(1)(a) of the said Act enables the Central Government, in the manner provided in the said Section, to prohibit or restrict import and export of goods of any specified description. The power u/s 3 of the said Act is general in nature and is restricted to the goods only and the scope of the said Act was never intended nor could be construed to empower the authorities under the said Act to pick and choose a port through or at which only the goods could be imported. Hence, any restriction or prohibition imposed under the said Section has to be applicable to, inter alia, all ports of the country, to be in the public interest. The power under the said Section 3 of the said Act although omnibus in nature, cannot by any stretch of imagination be construed to enable the Central Government to pick and choose at its whims and fancy particular ports through which only certain goods can be imported into the country and restricting and/or prohibiting importation of such goods from other ports in the country. Any prohibition or restriction or control of any kind whatsoever under the said Section 3 of the said Act in order to be valid, has to be applicable to the entire country. Hence, if the said goods are allowed to be imported into the country under the Open General Licence Scheme of the Government of India, there can be no valid basis or jurisdiction whatsoever to restrict their importation into the country only through the ports of Bombay and Delhi ICD.

16. This would be further apparent from a comparison of Clauses (a) and (b) of Section 3(1) of the said Act. While Clause (b) empowers the Central Government to make provisions for prohibiting, restricting or otherwise controlling the bringing into any Port or Place in India of goods of any specified description intended to be taken out of India without being removed from ship or conveyance in which they are being carried, in Clause (a) the expression "any port or place in India" is distinctly absent.

17. Reliance has been placed in the decision of this Court in *Hoare Miller and Co. Ltd. Vs. The Assistant Collector of Customs and Others*, . In that case, it has been held by the learned Single Judge as follows :-

* * * * * 18. The aforesaid decision of the learned Single Judge of this Court (as His Lordship Sabyasachi Mukherjee then was) was affirmed by the Division Bench of this Court in *Assistant Collector of Customs for Exports, Calcutta and Others Vs. Hoare Miller and Co. Ltd.*, . There the Division Bench observed as follows :-

"On the other point raised, that is the permissibility of general prohibition of export of all goods to Rhodesia, the contention raised on behalf of the respondent appears to be of substance. The expression "in all cases" and "in specified classes of cases" in Section 3 of the Act appears to us to refer to cases of transaction of export and import and not goods. In the instant case, the specific class of exports prohibited were exports to Rhodesia. This is permissible u/s 3 of the Act of 1947. But, Section 3 further enjoins the authority to specify the description of the goods, the imports and exports of which are prohibited. On a plain reading of the section, goods the export of which is prohibited, must be specifically described. In the instant case, there is no such description. We are unable to accept the contention of the appellants that the ultimate destination of the goods is a sufficient description of the goods. Other orders passed by the Central Government u/s 3 of the Act of 1947, forms prescribed and the rules promulgated in respect of import and export of goods support the contention of the respondent. We note that under the current Defence of India Rules, 1971 the Government has been empowered to prohibit or restrict imports and exports of goods. Rule 126 specifically provides that the Central Government may by notified order prohibit or restrict the import and export of all goods or goods of any specified description from or to any specified person or class of persons. This is sub-rule (2) of the Rule 126. Sub-rule (3) of Rule 126 further empowers the Central Government to prohibit or restrict or control in all cases or in specified classes of cases and subject to exceptions as may be made, the import or export of all goods or goods of any specified description. It is, therefore, clear that in a parallel legislation which is in pan materia with Act of 1947 a distinction has been made between goods of specified description and all goods. We also agree with the view taken by the learned Judge that Section 3 of the Act of 1947 empowers the authorities to impose restriction on trade and, therefore, should be construed with some strictness."

19. Heavy reliance has been placed by Mr. Roy Chowdhury, learned Counsel appearing for the respondents, on the decision of the Supreme Court in the case of Abdul Aziz Aminudin Vs. State of Maharashtra, . There the Supreme Court observed as follows :-

"It is clear, therefore, that the power conferred u/s 3(1) of the Act is not restricted merely to prohibiting or restricting imports at the point of entry but extends also to controlling the subsequent disposal of the goods imported. It is for the appropriate authority and not for the Courts to consider the policy, which must depend on diverse considerations, to be adopted in regard to the control of import of goods. The import of goods can be controlled in several ways. If it is desired that goods of a particular kind should not enter the country at all, the import of those goods can be totally prohibited. In case total prohibition is not desired, the goods could be allowed to come into the country in limited quantities. That would necessitate empowering persons to import under licences certain fixed quantities of the goods. The quantity of goods to be imported will have to be determined on consideration of the necessity for having those goods in the country and that again would depend on the use to be made of those goods. It follows, therefore, that the persons licensed to import goods up to a certain quantity should be amenable to the orders of the licensing authority with respect to the way in which those goods are to be utilised. If the licensing authority has no such power its control over the import cannot be effective. It may have considered it necessary to have goods imported for a particular purpose. If it cannot control their utilisation for that purpose, the imported goods, after import, can be diverted to different uses, defeating thereby the very purpose for which the import was allowed and power had been conferred on the Central Government to control imports. It is, therefore, not possible to restrict the scope of the provision about the control of import to the stage of importing of the goods at the frontiers of the country. Their content is much wider and extends to every stage at which the Government feels it necessary to see that the imported goods are properly utilised for the purpose for which their import was considered necessary in the interests of the country."

20. At a close look at the said decision of the Supreme Court, we are of view that the said decision has no manner of application to the instant case. The observation of the Supreme Court in the said decision was in connection with the contention that once the importation has been completed of particular goods, the Import Licence Control Authorities can have no power or jurisdiction to control their subsequent disposal and no steps can be taken against an importer for any contravention post importation of goods under the said Act. In repelling the said contention, the Supreme Court has observed that Section 3(1) of the said Act does not merely prohibit or restrict the imports at the point of entry but extends also to controlling the subsequent disposal of the goods imported. Nowhere in the said decision including in paragraph 10 thereof the Supreme Court has observed that the respondents were entitled to restrict the importation of any goods through particular ports in the country only. On the contrary, the said

decision speaks about either totally prohibiting importation of certain goods or allowing partial or limited quantities thereof being imported. Thus, the restrictions as aforesaid relate to goods or class of goods only.

21. As indicated earlier, Mr. Roy Chowdhury submitted that Sub-section (3) of Section 3 of the said Act empowers the Central Government to issue the impugned public notice or impugned control order. This contention in our view cannot be accepted. Section 3(3) of the said Act specifically provides for imposition of prohibition, restriction or conditions in respect of goods or classes of goods which have already been "imported into India". The said sub-section is concerned with a post importation situation such as user of the imported materials and after their importation, for example by actual users or by manufacturers with concomitant export obligations and accountal thereof by the said manufacturers or users. Further, the said sub-section also talks about goods or class of goods. Hence the restrictions or conditions or prohibition that would be sought to be imposed in exercise of powers under the said sub-section by the Central Government has to be on "goods" and has to be applicable to the entire country. Such a power cannot be invoked to restrict the importation of goods through any one or two particular ports of the country.

22. For the foregoing reasons it must be held that the impugned public notice and the control order are without jurisdiction being ultra vires the provisions of the Imports and Exports (Control) Act, 1947.

23. The next contention of Mr. Gupta, learned Counsel for appellant, is that the said impugned control order and/or the said impugned public notice is discriminatory and arbitrary and violative of Article 14 of the Constitution of India. By the said impugned control order and/or the said impugned public notice, the respondents are seeking to discriminate between persons similarly situated.

24. This contention has substance. The impugned public notice and/or the impugned control order has resulted in discrimination. The owners of factories which are situated in the Western and North-Western parts of the country would now be able to import the said goods at a much lesser price than owners of factories which are situated in, inter alia, the Eastern and North-Eastern parts of the country as the additional cost of transportation of goods from Bombay or Delhi would now have to be borne by them for no fault of theirs. Although similarly situated, the owners of factories in, inter alia, the Eastern or North-Eastern parts of the country would now be placed, in view of the aforesaid action of the respondents, in a disadvantageous position vis-a-vis their competitors in the North-Western and Western parts of the country. There cannot be any public interest in making such hostile discrimination.

25. Further, there is no intelligible basis which has been disclosed before this Court either in the affidavits filed by the Customs Authorities or in the Import Licensing Control Authorities of the Government of India or during the course of

argument before this Court on the basis whereof Delhi and Bombay ports have been distinguished as a different class from other major ports in the country like Calcutta, Madras, Cochin or Vizagapatnam. Further, there is no rational nexus for imposing the restrictions on importation of the subject goods only through Delhi ICD and Bombay ports with the object to be achieved by the discrimination that has been sought to be made by the impugned control order or the impugned public notice.

26. In the affidavit filed by the Deputy Chief Controller of Imports and Exports on behalf of the Import Licensing Control Authorities, the reasons have been disclosed for issuance of the said impugned Public Notice and/or impugned control order. It has been stated in the said affidavit, inter alia, as follows :-

(a) Prior to the issue of the Open General Licence Order No. 1 dated 30-3-1988, the Importation of Woollen/Synthetic rags were restricted by, being allowed to be imported by the canalising agencies only and/or under specific licence.

(b) In order to help the genuine actual users of such woollen/synthetic rags, it was decided to allow importation of such goods under O.G.L. Scheme and the same was included under the O.G.L. Order No. 1/88 dated 30-3-1988.

(c) It appears that after the said goods had been incorporated as an O.G.L. item various unscrupulous traders were flooding the Indian market with imported woollen/synthetic finished goods by importing it under the cover of woollen/synthetic rags to the great detriment of the local manufacturers.

(d) It is found that the said unscrupulous traders were, in fact, importing serviceable garments or cut garments which could be easily stitched as serviceable garments falsely and wrongfully describing them as woollen/synthetic rags. Large quantities of such wrongful importation were seized in Delhi as also in Calcutta prior to April, 1989.

(e) To prevent such abuse it was thought that the importation of such rags should be restricted and should be introduced into the canalising category. To make such changes, it required time in various Ministries including the Textile and Commerce Ministry who had to be consulted. As an interim measure till such decision was made it was decided to restrict, control and also the clearance of such goods by restricting such importation and clearance to Delhi and Bombay. I say that most of the actual users and/or the owners of woollen/synthetic factories/mills are all situated in Western/North-Western part of the country and at Hyderabad.

(g) I say that the whole object of importing such woollen/synthetic rags was for the recovery of yarns from the same for the purpose of manufacturing other woollen products. Such yarn could only be made and taken out from such rags and manufactured goods therefrom by actual users and/or persons owning woollen mills. I say that the said amendment No. 52/88-91 dated 28-4-1989 was made providing for "Import of woollen rags/synthetic rags, shoddy wool shall be

allowed through two Ports only, viz., Bombay and Delhi ICD. "The said amendment was made in public interest in view of the facts stated hereinabove and to keep overall control over the importation of such goods into India.

27. The document disclosed in support of the said allegations is annexure "A" to the said affidavit, which is a telegram dated 18th December, 1989. It is necessary to set out the said telegram which is to the following effect:-

"Kindly refer to telephone discussion regarding the case of Kalindi Woollen Mills, relevant extracts from minutes of inter-ministerial meeting to discuss problems relating to report of woollen synthetic rags are as reproduced below :-

The problems arising out of large scale importations of rag consignments through various ports including some minor ports and also those which were sought for clearance through Delhi ICD were further elaborated. He also showed samples of different categories of rags being imported to show how the unscrupulous importers were trying to import either serviceable garments or such cut garments which could be easily stitched for use as serviceable garments....Many of the importers were either bogus or only weavers and it was not known how they could be considered as "actual users".

The fact of considerable accumulation of uncleared consignments lying at ICD, Delhi was also mentioned by the Collector of Customs, Delhi and he also pointed out that he had no machinery available to ensure the destruction of some of the consignments which were though at one stage to cure the abuse or to ensure effective mutilation before allowing clearances to the importers.

It was decided that pending further consideration of the proposition of canalisation or restricting imports which may take some time as it would need examination in the Ministry of Textiles and Commerce. As an immediate measure to cure the abuses we can restrict the imports of rag consignments and other customs clearances from two ports only i.e. from Bombay and Delhi, ICD : CC/E's representative indicated that there should not be any difficulty in such a restriction being imposed."

28. Although, it has been alleged in the affidavit that the subject matter was to prevent unscrupulous traders from importing serviceable garments or cut garments by wrongfully describing them as woollen/synthetic rags, as an interim measure pending decision on canalising importation of the woollen/synthetic rags, it is significant that the said annexure speaks of detection and seizure of serviceable garments imported in the garb of woollen/synthetic rags at the Delhi ICD. There is no mention in the said annexure to any seizure at the Calcutta Port. Further, the said document also discloses that there is no facility in the Delhi ICD to ensure destruction or to ensure effective mutilation of woollen/synthetic rags, if necessary, upon their importation, if they did not conform to the specification for importation as woollen/synthetic rags. In spite thereof, it is, inter alia, the Delhi ICD which has been conferred the favoured treatment to the exclusion of, inter alia, the Calcutta Port.

29. It is also significant that though the said document (Annexure "A" does not speak about any seizure of garments at the Calcutta Port, in the affidavit Shri Bidya Nath Singh alleges that the seizure was effected also in Calcutta prior to April 1989. No particulars or details thereof have been made available to this Court. However, the Counsel appearing on behalf of the respondents stated during the course of argument before the learned Trial Judge that there has been no allegation against the appellants of effecting any such unscrupulous method in importing woollen/synthetic rags.

30. Even if there was seizure in Delhi as well as Calcutta of serviceably garments imported by misdeclaring them as woollen/synthetic rags, both Calcutta and Delhi ICD should have been either excluded or included. There is no rational basis for allowing importation through Delhi ICD and prohibiting importation through Calcutta Port.

31. It is the specific case of the appellant that all facilities for clearance of woollen/synthetic rags including facilities for checking remutilation and warehousing therefore etc. are available at the Calcutta Port. All the facilities available at Bombay Port are also available at Calcutta Port. In addition, the Bombay Port is, admittedly, overcongested. But, there is no denial of the said specific case made by the appellants. Thus, there could be no rational nexus of basis whatsoever for allowing importation of the subject goods through the Bombay Port and prohibiting importation thereof through the Calcutta Port.

32. The principle in respect of classification without violating Article 14 of the Constitution has been restated and summarised by the Supreme Court recently in the decision in Federation of AIC & CE Stenographers (Recogsd.) v. Union of India, reported in AIR 1988 SC 1991. There the Supreme Court observed : (Para 9 at page 1299)

* * * * * 33. For the reasons aforesaid, we are of the view that the impugned public notice and/or impugned control order are unreasonable and violative of Article 14 of the Constitution. No basis or document has been disclosed before this Court to prove the reasonableness of the restrictions sought to be imposed by the impugned public notice and/or impugned control order. The burden is upon the respondents to prove the reasonableness of such restrictions which they have failed to prove in the instant case. Reference may be made to the decision of the Supreme Court in the case of Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others, . There the Supreme Court observed as follows :-

" It is well recognised that when an enactment is found to infringe any of the fundamental rights guaranteed under Article 19(1), it must be held to be invalid unless those who support it can bring it under the protective provisions of Clause (5) or Clause (6) of that Article. To do so, the burden is on those who seek that protection and not on the citizen to show that the restrictive enactment is invalid, (cf. Saghir Ahmad Vs. The State of U.P. and Others, and Khyerbari Tea Co. Ltd.

and Another Vs. The State of Assam,

34. We may observe that the impugned public notice and/or impugned control order have been held to be arbitrary and unreasonable by the Rajasthan High Court in the case of Swastika Woollen Industries (P) Ltd. Vs. Union of India (UOI), and the Madras High Court in the unreported case of B.L. Tandon v. Union of India which has been relied upon and referred to in the aforesaid decision of the Rajasthan High Court.

35. It has been contended by Mr. Roychowdhury, learned Advocate for the respondents, that a policy decision of the Government and the Court cannot scrutinise such a policy decision of the Government. Reliance has been (sic)laced on the decision of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . In our view, the said decision does not lay down such a proposition. On the contrary, it supports the contentions of the appellants. In that case, the Supreme Court observed as follows :-

" It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute."

36. It is, therefore, open to the Court to scrutinise as to whether the authorities have or have not the power to impose restrictions as has been done by the impugned public notice and/or impugned control order. As we have already indicated that the concerned authority had no jurisdiction under the said Act to impose restrictions under the impugned public notice and/or impugned control order.

37. Mr. Roychowdhury has also relied on decision of the Supreme Court in Gopal Narain Vs. State of Uttar Pradesh and Another, . For the proposition that the Court cannot sit on appeal on the legislative policy. This decision does not assist the respondents. There the Supreme Court observed that the classification underlying the policy had to have reasonable nexus with the object sought to be achieved. Although equality clause under Article 14 of the Constitution does not forbid geographical classification as such, such geographical classification had to have "a reasonable relation to the objects sought to be achieved." There the Supreme Court observed as follows :-

" The next question is whether the said policy offends Article 14 of the Constitution?

Looking at the policy disclosed by Sections 7 & 8 and Section 128 of the Act and

applying the liberal view a law of taxation receives in the application of the doctrine of classification it is not possible to say that the policy so disclosed infringes the rule of equality. This Court in more than one decision held that equality clause does not forbid geographical classification, provided ; the difference between the geographical unite has a reasonable relation to the object sought to be achieved. So, the impugned section in permitting in the matter of taxation geographical classification which has reasonable relation to the object of the statute, namely, for providing special amenities for a particular unit the peculiar circumstances whereof demand them, does not in any way impinge upon the equality clause."

But, in the instant case, there is no such reasonable relationship disclosed for such discrimination.

38. It has also been contended on the facts of this case, this Court is no called upon to decide the issue as to whether the policy infringes the Article of the Constitution inasmuch as the appellants have their factory in Uttar Pradesh and registered office at Calcutta and as such in any event they have take the goods to their factory at Uttar Pradesh. Reliance has be placed on the decision of the Supreme Court in the case of Union of India and Ors. v. C. Damani & Co. and Ors., reported in AIR 1980 SC 114 Mr. Roychowdhury relied on paragraphs 12 and 20 of the said judgment which are extracted below:-

"Thereafter, silver exports were canalised through the STC, the fifth respondent, which, in turn, entered into contracts in its own name with foreign buyers. To fulfil those contracts, the STC entered into contracts with indigenous suppliers. Technically, there is no contractual relationship between the foreign buyer and the indigenous supplier like Damani. As stated earlier, the amendment to the Exports (Control) Order dated February 20, 1979, barred all silver exports, including by the STC. Of course, Government had a residual power to permit exports although normally and in the absence of such special permission, silver was a banned item. Pursuant to the prohibition, a trade notice of February 27, 1979 was published for the benefit of the commercial community. It is indisputable, on account of the amendment of the law on February 20,1979, that export of silver became impossible for the STC or for that matter for anyone else.

The thorny issue being by-passed for the while, the next question is whether the constitutionality of the Export (Control) Fifteenth Amendment Order, 1979 should be examined closely vis-a-vis pre-ban contracts. Constitutional questions should be considered by courts only when it is absolutely necessary, not otherwise. In the present case, broadly speaking, we are not inclined to stand in the way of the full operation of a policy decision by the Central Government in regard to export of silver. Prima facie, national policy in this area should not be interfered with by courts unless compelled by glaring unconstitutionality. Shri Diwan, taking sensitive note of our approach, readily agreed that his client would be satisfied even if the silver which he had collected at great expense and trouble and on the export of which he legitimately expected a large profit, were not allowed to be

exported, provided the court would give him relief against the inequitable enforcement of the indemnity clause in the contract with the STC."

39. We fail to appreciate how the observations made in the aforesaid judgment can have any application to the facts of this case. The appellants have specifically stated the adverse effect and/or prejudice that was being caused and/or would be caused because of the impugned public notice and/or impugned control order. The respondents have no answer to the contention of the appellants made in the writ petition, nor have the respondents denied or disputed the correctness thereof. In our view, the appellants are aggrieved by the impugned public notice and/or impugned control order and, therefore, the issue involved herein is to be determined.

40. The next contention of Mr. Gupta is that there can be no restriction whatsoever even under the said impugned control order and/or the said impugned public notice for legal and valid importation of the said goods under Additional Import Licence.

41. This contention has to be examined in the light of the provisions of Import Policy. Para 215 of the Import Policy (1988-91) provides for grant of Additional Licence to Export House and Trading Houses on the basis of the admissible exports made by them in the preceding licensing year. The conditions under and subject to which such Licences are issued are all contained in the various clauses of para 215 of the said Import Policy. Para 215(2)(i) of the said Import Policy also provides that the Additional Licences issued thereunder would be valid for the import of "items" appearing in Part I of List 8, Appendix 6 of the said Import Policy. The said goods are "Item" falling under the said list of Import Policy. It is pertinent to note that in none of the clauses of para 215 of the said Import Policy is it provided that "the conditions governing imports under Open General Licence" as contained in Appendix 6 of the said Import Policy would be also applicable to goods importable under the Additional Licences issued under para 215 of the said Import Policy. Clause 2(i) of para 215 of the said Import Policy refers only to the "items" contained in a part of the 10 Lists of Appendix 6 of the said Import Policy. The reference is only to the goods contained in the said Lists and not to the conditions under which the said goods can be imported under the Open General Licence Scheme, which are contained under the head "conditions governing Imports under Open General Licence" in Appendix 6.

42. The conditions governing importation of goods under Additional Licence are provided in the various classes, as aforesaid of the said para 215 itself. In the premises, there being no amendment to Part I, List 8 of Appendix 6 of the said Import Policy including in the "Notes" contained therein, the said goods can be continued to be imported through any port in the country including the Calcutta Port under the said Additional Licence. The amendments made to the Open General Licence No. 1/88 or in the "conditions governing imports under Open General Licence", in Appendix 6 of the said Import Policy, cannot have any manner of application whatsoever to importation of the said goods under the said

Additional Licence.

43. This would also appear from the fact that although in case of importation under the Open General Licence contracts have to be registered with the Textile Commissioner in terms of Clause 24 of the "conditions governing imports under Open General Licence" as contained in Appendix 6 of the Import Policy, (1988-91), there is no such condition for importation of such woollen/synthetic rags under an Additional Licence.

44. The Additional Licences granted by the Licensing Control Authorities of the Government of India would also confirm the aforesaid interpretation. It would be evident that the said Licence was issued for importation of goods "Valid for all India Ports" within the period prescribed in the said types of Import Licence. The said Import Licence clearly contains the description of the goods that can be imported thereunder, the value thereof as specified, the period within which such importation is to be effected, and the conditions under which such importation can be effected. Admittedly, the said Licence has been granted in accordance with the Imports (Control) Order, 1955.

45. Licences issued by the Licensing Authorities in exercise of powers conferred by the said Act and/or the said control order are of various types, e.g., Additional Licence, Replenishment Licence, Import Licence, Advance Licence and Open General Licence. A perusal of the Import Policy, 1988-91 would show that there are specific and separate provisions for grant of each of such Licences and the conditions which have to be satisfied for a particular class or category or persons to be entitled to receive any of the said Licences. Whereas the Open General Licence being general in nature no specific licences are issued to each and every person, the OGL Orders being treated as a Licence therefor, in all other cases the Licences are issued to specific classes or categories of importers and upon such importers satisfying or undertaking to satisfy certain specified conditions. It is also manifest from the Policy that each of the said Licences is issued subject to certain conditions and unless and until the conditions under one particular category of Licence are not specifically incorporated in the case of another category of Licence, such conditions in the former category cannot automatically apply to the latter category.

46. In the instant case, the conditions governing imports under the Open General Licence have been purported to be changed by the impugned control order and/or public notice. However, there has been no corresponding amendment or change in the conditions, governing the grant or importation of Additional Licences which are contained in Chapter 18, Para 215 of the Import Policy. Thus, the amendments made in the conditions governing imports under Open General Licence cannot apply to the importation under an Additional Licence. The abovementioned clause relied on by the respondents in support of their aforesaid contention relates to any prohibition or regulation which might have been introduced after issuance of the subject Additional Licence by the Licensing Control Authorities till the date of importation of the subject goods thereunder in

the conditions governing the import of goods under Additional Licence, that is, in para 215 of the said Import Policy.

47. It has also been contended by the learned Advocate for the respondents that para 215 has no statutory force and cannot override the provision, restriction and/or condition imposed under the amended OGL order dated 28-4-1989, such Additional Licence in so far it authorises importation of item appearing in Part-I, List 8 of Appendix 6 of OGL Policy has to be subjected to the statutory restriction and/or condition imposed by the amended OGL order dated 28-4-1989. The Additional Licence itself contains condition that it is subject to the application of any other prohibition or regulations affecting the importation of the goods which may be in force at the time of their arrival. Reliance, in this connection, is placed by the respondents on the decision of full Bench of Jain Exports (P) Ltd. Vs. Union of India and Others, , which decision has been upheld by the Supreme Court in Jain Exports (P) Ltd. and Another Vs. Union of India (UOI) and Others, .

48. We are unable to accept this contention. The conditions envisaged in Para 215 of the Import Policy have been specifically mentioned in the Additional Licences issued. The said Additional Import Licence is a statutory document having been issued under the said control order which in turn has been framed in exercise of powers conferred under the said Act. Hence, the statutory conditions contained in the statutory Additional Import Licence would govern importation of goods being imported under an Additional Licence. Para 215 of the Import Policy being endorsed therein the conditions as provided in Para 215 would, therefore, be deemed to have been incorporated in the said statutory instrument (Additional Licence).

49. This would be further evident from the fact that although Clause 14 in the OGL Order No. 1/88 has been amended by the impugned Control Order, there has been no similar amendment whatsoever to Clause 23 of the said OGL Order. This clearly demonstrates that the conditions applicable to importation under OGL Licence cannot automatically apply to importation of the same goods under an Additional Licence unless and until the conditions of grant of the said Additional Licence are amended. The said Clause 23 also supports the aforesaid contention that what can be imported under an Additional Licence was "items" covered under Part I of List 8 of Appendix 6 of the Import Policy. There is no mention therein also that in importation of such goods under the Additional Licence the conditions as governing importation of the same goods under the OGL Licence would also apply. On the contrary, it is clearly stated therein that the same can be imported against Additional Licences by Export Houses/Trading Houses "as per Policy" which means as per Para 215 of the said Import Policy.

50. In Jain Exports (supra), the issue involved was that whether or not coconut oil which had been transferred from the OGL List to the Canalised List could be imported under an Import Licence issued in the year 1980-81 which was revalidated on June 28, 1982, when the Import Policy of 1982-83 was in force. Therein both the Delhi High Court and the Supreme Court have held that once a

particular item is transferred from the OGL List to the Canalised List during the period when the Licence has been issued and the goods arrived at the port of Importation in the country such goods no longer remain importable under Open General Licence Scheme and thus can be imported only by the Canalising Agency. This is the contention herein also. If the item, woollen/synthetic rags as contained in List 8, Part I, Appendix 6 of the Import Policy would have been taken out of the said List and placed in the list of canalised goods or any other List of different Appendix of the Import Policy, 1988-91 even under an Additional Licence the said goods could not have been imported. In the instant case, there has been no such change in the List 8, Part I of Appendix 6 of the Import Policy. The items covering the said goods continue to exist therein. No restriction has been imposed, nor any condition has been laid down in the said List to restrict their importation through any Port in the country. Whatever restriction has been imposed has been in the conditions governing import under the Open General Licence as contained in Appendix 6 of the Import Policy and the said OGL Order No. 1/88.

51. Our attention has been drawn to Paragraphs 24 and 26 of the Import & Export Policy (1988-1991). The said paragraphs are extracted below :-

"Competent Authorities for clarification -

24(1) The interpretation given by the Chief Controller of Imports & Exports, New Delhi in the matter of interpretation of Import Policy and procedures shall be final and will prevail over any clarification given by any other authority and person in the same matter.

(2) Actual users may seek clarification on any provision in the Import Policy from the Office of the Chief Controller of Imports & Exports, New Delhi.

(3) Clarification on any item-wise entry may be obtained by the Actual Users from the Chief Controller of Imports & Exports, New Delhi or from the regional licensing authorities at Bombay, Calcutta and Madras. Clarification will be given in consultation with the concerned technical authorities wherever considered necessary.

(4) Enquiries from Export Houses, Trading Houses and others on the interpretation of the Import Policy and procedures are to be addressed to the Chief Controller of Imports & Exports, New Delhi.

(5) Clarification on the scope of an item, technical specification size covered by such item or whether a particular item is allowed for import is a raw material, component, consumables, capital goods or a consumer item banned for import may be obtained from the DGTD (Import and Export Policy Division), Udyog Bhawan, New Delhi. For Iron and Steel items, ore concentrates of Iron, Manganese and Chromium, clarification is to be obtained from the Department of Steel. Clarification in respect of electronic item is to be obtained from the Department of Electronics.

(6) In all cases of clarification, complete details in the prescribed Proforma given in Appendix II-K of the Hand Book of Procedures are required to be furnished.

Compliance with other laws

26. It is implied that every applicant for an import licence has complied with and continues to comply with the provisions of all other laws applicable to himself or any other person on whose behalf he submits an application. The grant of an import licence does not also confer any immunity, exemption or relaxation at any time from an obligation or compliance with any requirements to which the licence-holder may be subject to under other laws or regulations. This would apply also to materials allotted directly by the canalising agencies under the policy, as also to the imports made under the Open General Licence, with or without an "actual user" condition attached thereto."

52. It is contended that the interpretation given by the concerned department is binding and the Court cannot ignore such interpretation. We are, however, unable to accept the contention that any interpretation given by the Import Policy authorities without disclosing any justifiable and legally valid basis or reason therefore has to be accepted by all concerned including this Court. In any event, paragraph 24 of the said Import Policy has no manner of application whatsoever to a case like the instant case. The said paragraph deals with a case where there are conflicting opinions in respect of interpretation of a particular provision of the Import Policy between two concerned Authorities or Departments of the Government. It is provided that in such an event, the opinion of the Import Control authorities would prevail over any other contrary opinion of any Authority or Department. The said provisions are wholly irrelevant to the instant case. Similarly, paragraph 26 of the said Import Policy has or can have no manner of application to the instant case.

53. Having regard to the facts and circumstances of this case, the impugned restriction as to the port of Entry of woollen rags/synthetic rags has the only purpose of securing to the Customs Authority the benefit of having a lesser burden of work. Confining the imports only through ICD Delhi and Bombay would dispense with maintenance of any vigilance against import of serviceable garments fraudulently declared as rags and thus the work of such vigilance hitherto exercised at all points of entry into the country is reduced and minimised. The question is whether the benefit of reduced work as a matter of convenience for the Customs Authority could be said to be a reasonable requirement in public interest notwithstanding that such arrangement shall result in hostile discrimination to the manufacturers situated outside the hinterland of the said two ports, namely ICD Delhi and Bombay and shall create in effect a geographical barrier against trade, commerce and intercourse throughout the territory which the Constitution of India requires to be free. There is no doubt that the withdrawal of the previous facility of import through any and every port coupled with the restriction of import only through the two favoured ports offends the principle of freedom of trade throughout the country. It is doubtless

that the manufacturers who operate outside the hinterland of these two ports shall be placed at a great disadvantage relative to manufacturers inside the hinterland of Bombay and Delhi inasmuch as they will have to incur substantial expenditure in transportation of the consignment from either of those two ports to the place of manufacture. This will give rise to a state of imperfect competition to the jeopardy of the manufacturers, distant from those two ports. The adverse impact of the cost, relative to that of the manufacturers adjacent of the said two ports, would drive the disadvantaged or handicapped manufacturers like the petitioner herein out of the market. The artificially created geographical demerit of a manufacturer cannot but be viewed as a geographical barrier that offends against Article 301. Article 301 reads as follows :-

"Subject to the other provisions of this part, trade, commerce, and intercourse throughout the territory of India shall be free."

Here the privilege of importing wool rags which is an item under OGL has been curtailed as far as the importers outside the region close to Delhi or Bombay are concerned. The same import shall now be dearer to importers like the petitioner on account of a geographical barrier created by an executive fiat impugned herein.

54. We have taken note of the unreported decision of Madras High Court on a writ petition challenging the validity of the identical order. Since, a manufacturer in Madras is also hit hard by the arbitrary and discriminatory effect of the order, it was challenged before the Madras High Court. The executive order was quashed by the Madras High Court in its judgment in the said unreported case of B.L. Tandon v. Union of India, W.P. Number 2167 of 1990, where the judgment was delivered on 25th April, 1990. In paragraph 6 of the said judgment, the Madras High Court observed as follows :-

"Since the import of mutilated rags is permissible under Open General Licence and as the fundamental right to carry on trade, business and occupation is available to the petitioner, if his trade is in any manner interfered with by imposition of restrictions, such restrictions must stand the test of Articles 14 and 19(6) of the Constitution of India. It is not the case that the petitioner has committed violations of the import regulations. Merely because some unscrupulous importers were attempting to import serviceable garments under the guise of mutilated rags, it would not enable the respondents to impose a restriction, which is not warranted. The respondents have enough machinery, resources and man-power to devise ways and means for checking the import of any unauthorised item. When the respondents have provided such facilities in Bombay and Delhi, nothing prevented them from providing similar facilities in the recognised ports like Madras and Tuticorin. When it is the case of the petitioner that he would be put to grave and irreparable loss if he is compelled to import the raw material through Bombay or Delhi, the respondents can sustain their orders only if they could give a rational and reasonable explanation as to why the ports at Bombay and Delhi alone should be given special status. It is not as if

Madras has not been a recognised port. It is a fact which this Court can take judicial notice of that the Port in Madras is as much equipped as any other port in the country, in the matter of handling of cargos. When such is the position, merely because the respondents are not willing to provide the facilities at Madras and Tuticorin to ensure destruction of the consignments or to ensure mutilation before allowing clearance to the importers, the citizens cannot be put to unreasonable restrictions. Therefore, there will be a writ as prayed for."

The Madras High Court, as may be seen from the preceding excerpt, found that the purpose for which this particular restriction has been made is unreasonable and on that score struck down the order. The restriction of this nature in the context of Article 301 of the Constitution was not, however, necessary to be examined by the Madras High Court. True, unreasonableness of the restriction imposed on the fundamental right guaranteed by Article 19(1)(g) by itself is sufficient to strike down the order impugned. But, in our view, the order certainly offends as well against Article 301 inasmuch as it has the ultimate result, intended or unintended, of regional favouritism, one region being favoured to the detriment of the another in the matter of a trade by making the goods imported as raw materials dearer for a region. Thus, it interferes with the freedom of trade enshrined in Article 301.

55. Such restrictions are bound to produce regional domination in trade and commerce trenching upon freedom of trade. Any executive action forcing one region into an unequal trade competition is subversive of equal treatment of all traders which is the very fibre of federated Union of India. The demerits of geographical situation where natural cannot be helped but geographical demerits cannot be generated by human design to cause traders of one favoured region to eclipse the rest of the country.

The freedom is, however, not to be absolute freedom. They are subject to restrictions provided for in other Articles of Part XIII but such restriction cannot be valid if it does not come under Articles 302 to 305 and the restrictions can be imposed only by law; the freedom under Article 301 cannot be taken away by mere executive action. This principle has been laid down by the Supreme Court in *The District Collector of Hyderabad and Others Vs. Ibrahim and Co., etc.*, the Supreme Court observed :-

"Again it may be pointed out that under Article 301 the freedom of trade, commerce and intercourse throughout the territory of India is declared free. That freedom is declared in the widest terms and applies to all forms of trade, commerce and intercourse. But, it is subject to certain restrictions of which Articles 304 and 305 are relevant. It is provided by Article 304:

"Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law -

(a)...

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of Clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

...

"The order was challenged on the ground that it trenches upon the freedom of trade and commerce guaranteed by Article 301 of the Constitution. By Article 304 even by legislative restrictions on the freedom of trade, commerce and intercourse with or within the State may only be imposed, if such restrictions are reasonable and are required in the public interest and the Bill or amendment is introduced or moved in the Legislature of a State with the previous sanction of the President. Obviously, the guarantee under Article 301 cannot be taken away by executive action. The guarantee under Article 301 which imposes a restriction upon legislative power of the Parliament or the State Legislature and the declaration of freedom is not merely an abstract declaration. There is no reason to think that while placing a restriction upon legislative power the Constitution guaranteed freedom in the abstract and not of the individuals. Article 301 of the Constitution is borrowed almost verbatim from Section 92 of Commonwealth of Australian Constitution Act 63 and 64 Viet. c. 12 of 1900. In dealing with the contention that no individual right was guaranteed by Section 92 of the Commonwealth of Australian Constitution Act, the Judicial Committee in *Commonwealth of Australia v. Bani of New South Wales*, (1950) AC 235 :-

"The necessary implications of these decisions [*James v. Cowan* (1932) AC 542 and *James v. The Commonwealth of Australia* (1936) AC 578] are important. First may be mentioned an argument strenuously maintained on this appeal that Section 92 of the Constitution does not guarantee the freedom of individuals. Yet James was an individual and James vindicated his freedom in hardwon fights. Clearly there is here a mis-conception. It is true, as has been said more than once in the High Court, that Section 92 does not create any new juristic rights but it does give the citizen of State or Commonwealth, as the case may be, the right to ignore, and, if necessary, to call on the judicial power to help him to resist, legislative or executive action which offends against the section. And, this is just what James successfully did. "Our Constituent Assembly borrowed the concept of freedom of trade, commerce and intercourse from the Australian Constitution. It is true that the limitations upon the amplitude of the guarantee are not expressed in Section 92 of the Australian Constitution, as are to be found in our Constitution. Again, there is no guarantee in the Australian Constitution of a fundamental right to carry on trade. But, this departure from the scheme of the Australian Constitution does not alter the true character of the guarantee and it cannot be inferred that the Constitution imposed restrictions upon legislative power, but denied to the individuals affected by unauthorised assumption of executive power the right to challenge the exercise of that power. A vital

constitutional provision cannot be so construed as to make a mockery of the declared guarantee and the constitutional restrictions on the power of the Legislature. If the power of the State Legislature is restricted in the manner provided by Article 301, but within the limits provided by Articles 303 to 305, it would be impossible to hold that the State by executive order can do something which it is incompetent to do by legislation."

56. Besides violation of Article 301 of the Constitution, the action of the respondent is tainted with the vice of being arbitrary and discriminatory within the meaning of Article 14 and is further in conflict with the fundamental right guaranteed under Article 19(1)(g). The vires of the order cannot in any manner be saved by reference to Article 19(6) inasmuch as the restriction imposed is marked by transparent unreasonableness.

57. The justification has been sought to be derived from the fact that this particular limitation to the entry points for the import of woollen rags was considered necessary as a preventive measure against camouflaged import of serviceable wool garments under false description. This fraud is alleged to have become rampant. The plugging of the entry except through the two specified points became necessary as there was no sufficient machinery at other ports to administer check against this fraud.

58. It would be clear that the respondent is making a ground of its own failure to check the alleged malpractice by the importers. If we are to accept this as a reasonable cause it will amount to making virtue of inefficiency of the machinery of the respondent. Reasonably, we cannot do it. Quite rightly, the Madras High Court has pointed out that the Customs Department has no dearth of men and machinery for exercising the necessary vigilance and check against the malpractice said to have been rampantly indulged in by the importers. In agreement with the Madras High Court, we also say that like Madras, Calcutta is also a recognised port and a major port which handles substantial imports and exports of the country. There is no reason why the other major ports of the country should not be as equipped as Bombay or Delhi. The entire excuse which is advanced as reasonable cause for the restriction is unconscionable specially when it upsets the constitutional guarantees.

59. For the reasons aforesaid, this appeal is allowed. The writ petition succeeds. Rule is made absolute. Let appropriate writs be issued. The impugned notice(s), order(s) and proceedings are set aside and quashed. It is stated that a sum of Rs. 9,49,780/- was paid as and by way of the penal demurrage charges. In view of the finding that the appellants were entitled to import the said goods to the Calcutta Port, we direct the Customs Authorities to issue wharf rent exemption certificate in respect of the consignment being the subject-matter of this proceeding within a fortnight from date and the Port Authorities shall grant rebate as admissible on the basis of such wharf rent exemption certificate.

There will be no order as to costs.

Stay of operation of this judgment and order as asked for by the learned Advocate for the respondent is granted for a fortnight from date.

Nure Alam Chowdhury, J.

I agree.