

(1980) 04 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 3724 of 1977

K.R. Ahmed Shah

APPELLANT

Vs

Additional Collector of Customs, Madras and Others

RESPONDENT

Date of Decision : 14-04-1980

Acts Referred:

Customs Act, 1962 — Section 111, 112, 122, 128, 135

Citation : (1981) 8 ELT 153

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Advocate : A. Abdul Ghani, for the Appellant; U.N.R. Rao, for the Respondent

Judgement

1. The writ petition has been filed on 25-3-1977 to quash the order passed by the Special Secretary to the Government of India, the third

respondent herein, in the revision application filed by the petitioner on 24-8-1973. The third respondent has levied in lieu of confiscation and re-

export, a fine of Rs. 5000 and the penalty of Rs. 15000 on the petitioner. The facts leading to the filing of the writ petition may be stated as follows

- The petitioner is an Indian citizen, but had been carrying on business in Saigon (South Vietnam) in the year 1970. On 7-2-1970 he arrived at

Meenambakkam airport by the Air India flight from Saigon to India. In the Customs examination hall, the petitioner made declaration of his

personal effects which included the following items :-

1. One pair ear rings with white metal

base set with one big stone each ... 3.7 gms about 3

carats Rs. 36250

2. One diamond ring with white metal base

set with one big stone and surrounded
by smaller stones. ... 5 gms. Rs. 4000

3. One diamond ring with white metal
base set with one big stone and
surrounded by smaller stones. ... 7 gms. Rs. 5500

4. One packet containing 51 Nos.
diamonds ... 2.5 gms. 13
carats Rs. 35100

Total Rs. 80,850

The total value of these four items, according to the petitioner, was Rs. 80850. On the basis of the declaration the customs authorities issued a detention receipt. It is the petitioner's case that at the time of giving the declaration, he made an oral request for re-export of the declared jewellery and diamonds as required under Secs 77 and 80 of the Customs Act, 1962 (hereinafter referred to as the Act). He followed up his oral request for re-export of the declared items by a letter addressed to the Assistant Collector of Customs, Madras airport. Thereafter, he was arrested and produced for remand before the then Chief Presidency Magistrate, Egmore, Madras. Subsequently, the first respondent, the Additional Collector of Customs, Madras issued a show cause notice to the petitioner as to why the detained diamonds and jewellery should not be confiscated to the Central Government u/s 111(d) of the Act and that personal penalty should not be imposed on the petitioner u/s 112 of the Act. The petitioner submitted his explanation. That was followed by an enquiry as provided u/s 122 of the Act. The first respondent passed an order on 29-9-1970 confiscating the jewellery and diamonds to the Central Government and also imposed a personal penalty of Rs. 40,000 on the petitioner. The petitioner after paying the personal penalty preferred an appeal to the Central Board of Excise and Customs, New Delhi, the second respondent herein, u/s 128 of the Act. The second respondent confirmed the order of the first respondent in respect of the personal penalty but modified the

order in respect of the confiscation of the goods by giving an option to the petitioner to re-export the said items on payment of another fine of Rs.

40,000. It is not disputed now that the petitioner paid the fine and re-exported the said items. Against the order of the second respondent, the

petitioner preferred a revision application before the third respondent. By his order No. 41-A of 1977 dated 25-3-1977, the third respondent held

that the liability of the goods for confiscation u/s 111(d) of the Act and the petitioner's liability for penal action u/s 112 of the Act was justified in

law. However, having regard to the fact that the petitioner had made a declaration u/s 77 of the Act and the further fact that the goods had not

gone into home consumption but were allowed to be re-exported, the third respondent reduced the fine in lieu of confiscation for re-export to Rs.

5,000 and the personal penalty to Rs. 15,000. It is in these circumstances, the present writ petition has been filed by the petitioner.

2. The Assistant Collector of Customs, Madras has filed counter affidavit. According to him, on 7-2-1970 a discreet watch was being kept by the

Customs officers of Meenambakkam airport to the movements of passengers who arrived from Singapore by Air India flight A-1 - 115B. The

officers noticed that a passenger, whose name was later ascertained to be K. R. Ahmed Shah, was moving around suspiciously with a group of

five persons in the health and immigration counter. Thereafter, the petitioner came to the customs examination hall and produced a bunch of

passports along with the pooled baggage of himself and his group before the customs officers. He then picked out his baggage and produced the

same for customs examination. Before examination of his baggage, the petitioner was asked by the Customs officer to make a written declaration

of the goods in his possession, especially gold, diamonds and watches. The petitioner accordingly filled in the baggage declaration form. In the said

form he declared that he was in possession of one ear ring, two rings and about ten carats diamond. Besides, the petitioner had also imported on

Omega wrist watch valued at Rs. 400, one lady's wrist watch valued Rs. 100 and miscellaneous goods valued Rs. 50. He was allowed to take

these items under the baggage rules. However, the petitioner did not possess any import licence of Reserve Bank of India permit to cover the

import of the aforesaid diamonds and jewellery. They were, therefore, detained under detention receipt No. 124693 dated 7-2-1970 for

necessary action under the customs law. It is further stated in the counter affidavit that the petitioner gave a statement that the diamonds and jewellery under detention were given to him by his wife in Saigon for being presented to his wife and children in India, that he was not aware of the value of the said diamonds and jewellery and that the loose diamonds were meant for making jewellery for his daughter. Adjudication proceedings were instituted as a result of which the first respondent passed an order as mentioned already. The counter affidavit further refers to the fact that the petitioner filed a further appeal before the second respondent and the second respondent upheld the order of the first respondent, but allowed the diamonds and jewellery to be re-exported on payment of a fine of Rs. 40,000. It is further stated that the petitioner was prosecuted before the Sub-Divisional Magistrate, Poonamallee, and he was convicted and sentenced to pay a fine of Rs. 1000, in default to undergo three months rigorous imprisonment. On further appeal by the petitioner, the conviction was set aside and the petitioner was acquitted by this court. The first respondent has stated in the counter affidavit that notwithstanding the declaration made by the petitioner u/s 77 of the Act, he contravened the provisions of Section 111 of the Act inasmuch as he has imported diamonds and jewellery far in excess of the permissible limit without any permit from the Reserve Bank of India. Further, there is an absolute ban on the import of diamonds. There is a further allegation that the petitioner had visited India in 1968-69, before his arrival in 1970 and, therefore, he should be deemed to be aware of the customs rules. Counter affidavit denies the allegations against the petitioner that he had orally requested the customs officer for permission to re-export the goods. It is further stated that inasmuch as the petitioner had brought these items for being presented to his wife and children in India, he could not have had and intention to re-export the goods. The power conferred u/s 80 of the Act to permit the goods to be re-exported in respect of which a true declaration had been made, is said to be within the discretion of the authority concerned.

3. Mr. Abdul Ghani, learned counsel for the petitioner, conceded that the items of gold jewellery brought by the petitioner being far in excess of the permissible limits could not be imported into the country without a licence or a permit from the Reserve Bank of India and that there is an absolute

ban against the import of diamonds into the country. The learned counsel, however, contended that on the facts and circumstances of the case the

petitioner had committed an offence under S. 111(d) of the Act. As soon as the petitioner reached the customs area of the Meenambakkam

airport he was given a form to declare his personal effects. Accordingly, he signed a declaration form and declared that he had brought with him

the items of jewellery and the diamonds. The learned counsel would further state that the petitioner made a request to the customs officials that he

might be permitted to re-export the items. The situation according to Mr. Ghani attracted Ss. 77 and 80 of the Act and not S. 111(d) of the Act.

The learned counsel further emphasised the fact that the petitioner was prosecuted and convicted under S. 135 of the Act by the Sub-Divisional

Magistrate, Poonamallee. However, on appeal, the petitioner was acquitted.

4. Mr. U. N. R. Rao, learned Senior Central Government Standing Counsel, contended that this was a clear case where the petitioner has

contravened the provisions of S. 111(d) of the Act. The petitioner has given a statement to the customs officials on the very day of his arrival that

these items of jewellery and diamonds were handed over to him by his wife in Saigon to be presented to his wife and children in India and that the

diamonds were meant for making ornaments for his unmarried daughter. Further, the import of these items were complete as soon as the plane

landed at the Meenambakkam airport. Mr. Rao would further argue that the petitioner did not make any request that the goods might be detained

for re-export and that the subsequent letter written by him to the customs official was an after-thought. Mr. Rao would equally challenge the bona

fides of the petitioner in mailing a declaration. The petitioner was accompanied by his brother and brother's wife. It was only when the petitioner

realised that his brother and brother's wife were caught by the customs officials for attempting to smuggle contraband goods into the country, that

the petitioner decided to make a declaration.

5. The question for consideration is whether the petitioner has contravened the provisions of S. 111(d) of the Act. S. 111(d) of the Act reads as

follows -

The following goods brought from a place outside India shall be liable to confiscation - (d) any goods which are imported or attempted to be

imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this

Act or any other law for the time being in force.

S. 112 of the Act provides for penalty for improper importation of goods. The section reads thus -

112. Any person - (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to

confiscation u/s 111, or abets the doing or omissions 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 knows 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 a penalty not exceeding five times the duty sought to be evaded on such goods or

one thousand rupees, whichever is the greater :

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made u/s

77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding five times the

difference between the declared value and the value thereof or one thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii) to a penalty not exceeding five times the value of the goods or five times the

difference between the declared value and the value thereof or one thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii) to a penalty not exceeding five times the duty sought to be evaded on such goods of

five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the highest.

6. To attract Section 111(d) of the Act, there must be an import of the goods or an attempt to import goods contrary to any prohibition imposed

by or under the Act or any other law for the time being in force, or the goods must be brought within the customs waters for the purpose of being imported contrary to any provisions of law.

Section 77 of the Act is as follows -

77. The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer"".

Baggage has been defined to include unaccompanied luggage but not motor vehicles. Section 80 of the Act is as follows -

80. Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made u/s 77 the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India.

7. A combined reading of Secs. 77 and 80 would show that if a passenger declares an article u/s 77, he may import it if he is prepared to pay duty

and if its import is not prohibited. If the passenger is not prepared to pay the duty and/or cannot produce the requisite import licence, he will not be

allowed to clear it for import. In such a case, he may make a request to the proper officer to detain such article for the purpose of being returned

to him on his leaving India. By making the declaration u/s 77, and the request u/s 80 the passenger expresses his intention not to import such an

article. The question that was debated at the Bar is whether the petitioner can be deemed to have imported the goods when they had not passed

the Customs barrier. The word "import" has been defined in Section 2(23) of the Act, thus :- ""Import with its grammatical variations and cognate

expressions means bringing into India from a place outside India"". The contention of Mr. Rao therefore is the moment the aircraft landed at

Meenambakkam airport, there was an import of the diamonds in India. The learned counsel would contend that if goods arrived by a vessel can be

deemed to be imported into the country the moment they enter the territorial waters of India, there is every reason to conclude that the moment the

plane landed at one of the airports of the country, the goods have been imported. However, it is now settled by high authority that unless goods

that are brought into the country for the purpose of use, enjoyment, consumption, sale or distribution are incorporated in and got mixed up with the

totality of the property in the country, they cannot be said to have been imported. It will be useful in this connection to refer to the decisions of the

Supreme Court in *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal*

Committee, Wardha, . In that case, S. 66(1)(c) of the C.P. and Berar Municipalities Act, 1922 authorised the imposition of a terminal tax on

goods imported or exported from the limits of the municipality. The question was whether the goods passing in transit through the municipal limits

without loading or unloading or stopping within the municipal limits was liable to the terminal tax. The Supreme Court observed thus - ""By giving to

the words "imported into or exported from", their derivative meaning without any reference to the ordinary connotation of these words as used in

the commercial sense, the decided cases in India have ascribed too general a meaning to these words which from the setting context and history of

the clause was not intended. To construe the words "import" and "export" as meaning bring in or take out of or away from and cover the goods in

transit by the words imported into or exported from would make rail borne goods passing through a railway station within the limits of a

municipality liable to the imposition of the tax on their arrival at the railway station of departure therefrom or both which would not only lead to

inconvenience but confusion, and would also result in inordinate delay and unbearable burden on trade both inter-State and intra-State. It is hardly

likely that that was the intention of the Legislature. Such an interpretation would lead to absurdity which has according to the rules of interpretation,

to be avoided. Import is not merely the bringing into but comprises some thing more, i.e., "incorporating and mixing or mixing up of the goods

imported with the mass of the property" in the local area. Similarly the word export has reference to taking out of goods which had become part

and parcel of the mass of the property of the local area and will not apply to goods in transit i.e., brought into the area for the purpose of being

transported out of it. If the intention was to tax such goods then the word used should have been re-exported which means to export (imported

goods) again"". This decision of the Supreme Court is authority for the proposition that goods could not be deemed to be imported the moment an

aircraft lands in one of the airports in India as contended by Mr. Rao. The acceptance or Mr. Rao's contention would amount to making air borne

goods passing through the airport in India liable to confiscation or other penalties provided for under the Act as soon as the plane lands or takes off

from an airport and as pointed out by the Supreme Court would not only lead to inconvenience and confusion but also result in inordinate delays

and unbearable burden on trade. If the argument of Mr. Rao is given its full effect then the moment an aircraft lands at an airport in India all the

goods contained in the aircraft must be deemed to have been imported and the moment the aircraft takes off again the goods must be deemed to

have been exported from the country. Consequently, the interpretation suggested by Mr. Rao, would, if I may respectfully borrow the language of

the Supreme Court, lead to absurdity which according to the rules of interpretation should be avoided.

8. That this should be the meaning to attached to the word "import" has been ruled by a Bench of the Delhi High Court in *Union of India v.*

Kacherim, 1970 Crl. L.J. 417. On 14th August, 1967 a passenger arrived from overseas by an Air France Flight at Palam airport, New Delhi.

Upon arrival at the airport, he requested the customs officer on duty to keep in customs custody a packet which was declared by him to contain

four smaller packets containing diamonds of the value of approximately \$ 34000. Thereupon, the Customs Officer on duty issued a detention

receipt stating that one packet containing four smaller packets said to contain diamonds of the value of \$ 34000 sealed with the passenger's own

seal and the customs seal over his signatures had been received. It was further stated on the face of this receipt by the Customs Officer "declared

re-export allowed" and "declared pending re-export out of India". Again, before his departure from India he requested for the return of the

diamonds but they were not delivered back or released. Thereafter, the proceedings were initiated against him for confiscation of the diamonds

under the Act. In this context, the question arose whether the passenger had imported the diamonds in India and had thereby contravened Section

111(d) of the Act. After referring to the decision of the Supreme Court in *The Central India Spinning and Weaving and Manufacturing Company,*

Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, , the learned Judges observed as follows - ""Unless, therefore, the

goods are brought into the country for the purpose of use, enjoyment, consumption, sale or distribution so that they are incorporated in and mixed

up with the mass of the property in the country they cannot be said to have been imported or brought into the country. That this is the meaning to

be attached to the word "import" as used in the Customs Act is also clear from the explanation to clause (3) of the Tourist Baggage Rules which

excludes only such merchandise from the term "personal effects" as is imported for commercial purposes. The object of Section 80 is to exclude

any article from the purview of Secs. 110 and 111 if a declaration is made u/s 77 and the article is entrusted to the proper officer. If the article is so

entrusted, there are no commercial purposes which can be achieved. In my view, therefore, there is no import within the meaning of the Customs

Act in a case where the goods are entrusted u/s 80 and are not carried by the passenger beyond the customs barrier"".

9. The meaning to be attached to word "import" came up for consideration before Veeraswami C.J. and Natarjan J. in W.A. No. 84 of 1968

wherein it has been observed thus -

The word "import" for purposes of the Act is defined as bringing into India from a place outside India. Smuggling is defined as any act or omission

which will render such goods liable to confiscation u/s 111. In different contexts, the expressions "import" and "export" have been construed by

courts with reference to the Customs frontiers of the Customs barriers. But of a question of import through aircraft, the question arises whether the

moment the aircraft arrives in an international airport in the country, the goods are imported. On this question, we are inclined to share the view of

the Delhi High Court in Union of India and others v. Khalil Kacherim, 1970 Crl. L.J.417. To take a different view would introduce confusion in the

matter of levy of duty under the provisions of the Act. More so, as we think, in the case of goods in the hands of transit passenger. So long as they

were not taken out of the clearance line in the customs office in the airport, they cannot be said to be imported within the meaning of the Act.

10. In this context, it is necessary to refer to the decision of Krishnaswamy Reddy J. in K. R. Ahmed Shah v. Asst. Collector of Customs, 1975

L.W. Crl.127. During the narration of the details of the case, I have already referred to the fact that the petitioner was prosecuted and convicted

u/s 135 of the Act by the Sub-Divisional Magistrate, Poonamallee. Against the conviction the petitioner filed C.A. No. 712 of 1973. (K. R.

Ahmed Shah, appellant v. Collector of Customs - respondent) on the file of this court while the first respondent filed Crl. R.C. 58 of 1972 for

enhancing the sentence. Krishnaswamy Reddy J. allowed the petitioner's criminal appeal and acquitted him and dismissed the criminal revision

petition filed by the first respondent for enhancement of the sentence. It was argued before Krishnaswamy Reddy J. on behalf of the first

respondent that the petitioner must be deemed to have imported the diamonds as soon as the aircraft landed at the Meenambakkam airport.

Dealing with this contention Krishnaswamy Reddy J. observed as follows -

The learned counsel appearing for the Assistant Collector Sri G. Ramaswami has made an attempt to argue that when the appellant brought the

diamonds and alighted at the airport, he has committed the offence of smuggling at the airport and he has committed the offence of smuggling then

itself. He further contended that the appellant should have known that the diamonds could not be passed even on payment of duty and therefore his

intention in having brought them was only to smuggle them. I am unable to agree with him. If I accept the argument of the learned counsel, it would

create an utter confusion in respect of the bona fide passengers bringing goods from foreign countries into this country. The object of having a

customs counter is to make the passengers coming from foreign countries to give declaration of what they had brought, so that the officials

concerned may pass certain goods on payment of duty or detain the other goods which could not be passed even on payment of duty and if the

passengers agreed, to return such goods to the place of origin. I am therefore of the view that once a passenger coming from a foreign country had

entered into the customs counter and had given a declaration of what all he had brought, irrespective of the fact whether the goods could be

passed on payment of duty or not, unless there were circumstances to indicate that such passenger was bringing the goods with the intention to

smuggle, no offence is committed by him.

10A. The judgment of Krishnaswamy Reddy J. is relevant for purposes of this case for two reasons. Firstly, for the ratio that the learned Judge has

laid down viz, that once a passenger coming from a foreign country enters the customs area and gives a declaration of what all he has brought,

irrespective of the fact whether the goods could be passed on payment of duty or

not, in the absence of circumstances to show that he had intention to smuggle the goods into the country, no offence is committed by him. Secondly, on the facts of this case by reason of the fact that the petitioner had made a declaration unhesitatingly of all what he had brought as soon as he entered the customs area, he had not committed any offence under the Act.

11. The principles that could be deduced from the above decisions can be summarised as follows - (1) Goods can be said to be imported to the country only when they are incorporated in and mixed up with the mass of goods in the country. (2) It cannot be said that the moment an aircraft lands at an international airport in this country, the goods are imported and to hold otherwise would create inconvenience and confusion and would render the goods which are in the aircraft meant to be carried to other countries subject to the Customs laws of this country. (3) Once a passenger enters the Customs area and makes a declaration of what all he had brought and does not make any attempt to take the goods across the Customs barrier in violation of the customs laws of this country, it cannot be said that he had imported or attempted to import any goods contrary to any prohibition imposed by and under the Act or any other law for the time being in force.

12. It is in the light of the above principles it has to be considered whether the petitioner has contravened the provisions of S. 111(d) of the Act. It is not disputed that as soon as the petitioner entered the customs examination hall he made a full declaration of what all he had brought. Excepting the four items of jewellery and diamonds the other items were allowed free. It is not suggested that the petitioner had concealed these items in his bag and that only after the customs officials discovered the same that he made a declaration of the same. In fact, from the file I am able to see that the officer himself has noted that there was neither concealment nor non-declaration in the case. All the diamonds and jewellery were duly declared by the passenger in the declaration form and that nothing else was recovered either from his person or from his baggage. The only suggestion made in the counter affidavit is that the petitioner was moving around suspiciously with a group of five others in the Health and Immigration counter. What led the authorities to so suspect the petitioner is not made clear. The counter

affidavit itself admits that the moment the petitioner was asked to separate his baggage from the pool of bags of himself and his group, he took out his bag and produced the same for customs examination. Without any hesitation he filled up the declaration form and declared that he had these items with him. It is therefore clear as is rightly pointed out by Mr. Ghani that the petitioner unhesitatingly made a declaration as required u/s 77 of the Act.

13. Mr. Rao referred to the statement given by the petitioner before the customs official on the very day that these jewellery and diamonds had been handed over to him by his wife at Saigon to be presented to his wife and children in India and that the diamonds were meant for making ornaments for his unmarried daughter and that he was not aware of the value of these goods. The fact that the petitioner gave a statement that he had brought these diamonds and jewellery at the instance of his wife at Saigon to be presented to his Indian wife and children cannot lead to the conclusion that he had contravened or attempted to contravene the provisions of the Customs laws of the country. The very purpose of his declaration must be taken to be an indication that he was prepared to abide by the decision of the customs authorities as to whether he could bring the goods out of the customs barrier or not. As rightly observed by Krishnaswamy Reddy J., if I may say so with great respect, that the petitioner would have been under the bona fide impression that the diamonds were allowed to be taken into the country on payment of duty. It is not as if when he was told that he could not take the diamonds into the country he persisted in his design to smuggle them into the country. Mr. Rao then contended that there was no bona fides at all in declaration made by the petitioner because he made a declaration only on finding that the customs officials had seized diamonds and jewellery from his brother and sister-in-law. First of all, the adjudicating officer himself did not take this into consideration while finding that the petitioner was guilty of violation of S. 111(d) of the Act. Secondly, in paragraph 15 of the counter affidavit itself it is asserted that the adjudicating authority had made only a passing reference to the seizure of diamonds and jewellery from the petitioner's brother and sister-in-law and that the adjudicating officer had made a specific mention that he was not taking this correlating evidence into

consideration for coming to his conclusion. Having stated so in the counter affidavit, it is not open to Mr. Rao to contend now that the fact of seizure of jewellery and diamonds from his brother and sister-in-law promoted the petitioner to make a declaration. Even otherwise, I do not think the petitioner would have acted wrongly after he found that his brother and sister-in-law had been caught in their attempt to smuggle into the country contraband goods in violation of the provisions of the Act and that therefore he should made a clean declaration to what all he had brought and should not commit an offence. I have therefore no hesitation to conclude that the declaration made by the petitioner under S. 77 of the Act was without hesitation and bona fide.

14. Mr. Rao then laid emphasis on the fact that the detention receipt would show that the goods were detained for adjudication and that it would belie the case of the petitioner that he had made a request for re-export. The learned counsel would further argue that the request in writing made by the petitioner five days later was an after-thought. I am unable to agree with the contentions of Mr. Rao. No doubt, the detention receipt says that the goods were retained for adjudication. It is not in any way inconsistent with the case of the petitioner that he had requested for permission to re-export the goods. As it became clear later the idea formed by the customs officials at that time was that the goods had been imported into the country as soon as the aircraft landed in the Meenambakkam airport. Therefore, naturally the question whether the petitioner had to be allowed to re-export the goods or to be convicted for violation of any of the provisions of the Act remained to be adjudicated upon. The letter written by the petitioner clearly refers to the fact that he had made the request for re-export. Whatever that might be, the question to be considered is whether the petitioner had been guilty of violation of Section 111(d) of the Act. Once it is found that the petitioner has not violated the provisions of Section 111(d) of the Act, then the goods will not be liable to confiscation and he will not be liable to penalty u/s 112 of the Act. I have already found the petitioner has not imported or attempted to import the goods into the country since they had not crossed the customs barrier. In the circumstances, the goods shall not be liable to confiscation. No personal penalty also can be imposed on petitioner. I therefore quash the order and

allow the writ petition, but without costs.