

(1985) 11 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No's. 11408 and 11520

Ukchand Ranka

APPELLANT

Vs

Assistant Collector of Central Excise, Madras and Others

RESPONDENT

Date of Decision : 05-11-1985

Acts Referred:

Customs Act, 1962 — Section 11(J), 11(K), 11(L), 110(2), 113(1)

Citation : (1987) 13 ECC 152 : (1987) 30 ELT 144

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : M. Ranka, for the Appellant; T. Somasundaram, for the Respondent

Judgement

Ratnam, J.—These writ petitions are dealt with together as the petitioner is the same in both and the writ petitions arise out of the same set

of facts. In W.P. 11408 of 1981, the petitioner has prayed for the issue of a writ of certiorarified mandamus to quash the order No. 365/81 F.No.

373/1325/76 Cus. II dated 4-3-1981 passed by the third respondent therein and for a direction to it to refund the amount of penalty and fine in a

sum of Rs. 3,000 while, in W.P. No. 11520 of 1981 the petitioner has prayed for the issue of a writ of declaration to the effect that the notification

No. 101-Customs dated 1-7-1964 and Notification G.S.R. 37 7/F.No. 2/5/78 Cus. VI dated 3-1-1969 are unconstitutional, null and void. The

facts giving arise to the writ petitions are as follows :-

On 30-10-1974, the Customs Preventive Officers, Customs House, Madras, searched the Jain Temple at Pozhal near Red Hills, Madras and

recovered 8 silver bars weighing 19.197 Kgs., valued at Rs. 19,858.92 from a gunny covered tin kept in the locker of the temple. On the gunny

cover, the name of Ukchand Ranka (the petitioner in these writ petitions) was found written. In the statement given by Shri Kesarimal, Manager of the Jain Temple, on the day of recovery, he stated that the devotees of the temple used to be allowed to keep their things in the lockers and that owing to pressure of work, he was unable to recollect who had left the recovered silver bars in the locker. Since the recovered silver was not covered by any transport voucher or other document, the preventive staff seized the silver bars under a mahazar. Thereafter, the case was transferred to the Superintendent, Gold Control Unit, Madras I Division for taking appropriate further action. By letter dated 2-12-1974, Shri Himmatmal Mardia, Advocate appearing for the petitioner, addressed the Customs House, Madras, Claiming that the seized silver bars belonged to his client Sri Ukchand Ranka and required the Customs authorities to let him know the provision of law under which the seizure was effected. It was also claimed in that letter that Shri Ukchand Ranka was the bona fide owner of the silver and he had not committed any offence. Later, the counsel who had written the letter dated 2-12-1974 on behalf of the petitioner sent a vakalat on his behalf on 25-1-1975, though the vakalat was executed on 21-1-1975. The Superintendent, Gold Control Unit, Madras, on 11-2-1975 wrote a letter to the counsel requesting the petitioner to appear before him in connection with the seizure of silver bars. In reply to this, on 15-2-1975, the counsel for the petitioner states that the petitioner had gone to his native place and requested the fixing of a date after eight weeks. This letter was received on 26-2-1975. Inasmuch as the petitioner was not produced and the address of the petitioner was also not furnished to facilitate further investigation, a notice was issued by the Collector of Central Excise, Madras-34, for the extension of time for a further period of six months u/s 110(2) of the Customs Act, 1962 (Act for short). In response to this, by letter dated 14-4-1975, the counsel for the petitioner requested two weeks time for sending a reply and also to grant a personal hearing. This letter was received on 16-4-1975. As desired by the counsel for the petitioner, the personal hearing was fixed on 24-4-1975, with a direction to file reply to the notice u/s 110(2) of the Act by that time and this communication was served on the advocate for the petitioner as well as Shri Kesarimull from whose custody the silver was recovered. The counsel for the petitioner did not turn up on 24-4-1975;

nor was a reply filed by that time as directed earlier. In view of this, the Collector of Central Excise, Madras passed orders extending the time for

the issue of a show cause notice by six months beyond 29-4-1975. Thereafter, the Assistant Collector, Madras I Division issued summons to the

petitioner to his address at Calcutta and also at Pozhal by registered post acknowledgement due in his proceedings C.No. VIII/10/2/75 Cus.

dated 2-6-1975 requesting him to appear before the Superintendent on 16-6-1975. Though the petitioner received this, he did not appear.

However, on 1-7-1975, the advocate for the petitioner wrote to the Superintendent, Gold Control Unit, that the petitioner had gone to his native

place owing to his father's old age and illness and that it will take two months for him to return to Madras and requested that a date may be fixed

in September 1975. It was also mentioned that an appeal against the order extending the time for the issue of a show cause notice u/s 110(2) of

the Customs Act had also been preferred and requested that further proceedings may not be taken till the appeal was disposed of. Thereupon, the

second respondent herein, by his letter dated 18-9-1975 addressed to the counsel, directed the petitioner to appear before the Superintendent,

Gold Control Unit, Madras, on 25-9-1975. The counsel was also informed that no further postponement would be granted. To this, the counsel

for the petitioner replied on 24-9-1975 to the effect that he did not know the correct place as well as the address of the petitioner who had

claimed ownership of the seized silver bars and therefore, it would not be possible for him to contact the petitioner before 25-9-1975. The

Superintendent was also requested to intimate the petitioner the next date four weeks in advance with a copy to him. A show cause notice was

issued on 14-10-1975 charging the petitioner u/s 11J, K and L of the Customs Act, 1962. In reply, the counsel for the petitioner in his letter dated

27-10-1975 stated that the petitioner purchased the seized silver on 8-1-1971 at Bangalore for Rs. 11,112.36 and was keeping the same at his

residence at No. 19, Chandi Road, Pozhal, and later as he wanted to sell the silver, he melted it and converted it into Bill as in April/May 1974

and that the petitioner vacated the house on 31-10-1974 necessitating the keeping of Bill as in the Jain Temple. The counsel for the petitioner also

stated that a copy of the bill was enclosed, though factually it was not so done and a personal hearing was also asked for. By a letter dated 28-1-

1976, the first respondent directed the counsel for the petitioner to appear on 23-2-1976 and a copy of the notification No. 7/F.No. 2/5/68. Cus.

VI dated 3-1-1969 was also sent. Thereupon, the counsel for the petitioner sent a copy of the alleged purchase bill on 16-2-1976 and required

the first respondent to verify the same before he appeared at the personal hearing. On 23-2-1976, counsel appeared, though not at the appointed

time and prayed for a postponement of the personal hearing by 15 days and accordingly, the counsel was directed to appear on 6-3-1976 at 3

P.M. On that date, the counsel for the petitioner appeared, but the petitioner did not. Meanwhile, the bill produced by the petitioner was sent for

verification and the verification report received on 11-3-1976 stated that the bill agreed with the duplicate copy available with the firm. On 16-3-

1976, the counsel for the petitioner wrote that the petitioner had come down and that he could be produced at the appointed date and time.

Accordingly, the counsel was asked to produce the petitioner on 24-3-1976 at 3 P.M. and the petitioner who appeared said that he had nothing

to add to what has already been stated by his counsel. On a consideration of the contentions urged by the learned counsel for the petitioner. The

first respondent found that the petitioner had contravened Section 11J, K and L of the Customs Act, 1962 and that the plea of ignorance

advanced by the petitioner is unacceptable. Accordingly, the first respondent passed an order on 9-4-1976 confiscating 19.19 Kgs. of silver u/s

113(1) of the Customs Act. But the petitioner, in view of the confiscation, was given the option to pay a fine of Rs. 1,000/- in terms of Section 125

of the Customs Act. A penalty of Rs. 1,000/- was also imposed on the petitioner u/s 114 of the Customs Act. Aggrieved by this, the petitioner

preferred an appeal before the Appellate Collector of Customs, Madras. Meanwhile, the Collector of Central Excise, Madras-34, in the exercise

of powers conferred u/s 130 of the Act read with notification 101-Customs dated 1-7-1964 called for the records relating to the order passed by

the first respondent on 9-4-1976 for examination and revision. On an examination of the proceedings of the first respondent, the Collector of

Central Excise, Madras-34, felt that a case for revision was made out and accordingly issued a show cause notice dated 31-5-1976 to the

petitioner and Shri Kesarimull endorsing also a copy to the counsel for the petitioner. The petitioner in his reply stated that whatever had been

stated by him earlier in the replies through counsel dated 27-10-1975, 16-2-1976 and 14-10-1975 may be treated as part and parcel of his reply

and that the entire correspondence may also be taken into account. Before the Collector of Central Excise, Madras-34, the petitioner challenged

the powers vested in him to revise cases as well as the notification. A personal hearing was given to the petitioner as desired on 3-7-1976 and the

Collector of Central Excise, on a consideration of the facts and circumstances, concluded that the petitioner had deliberately contravened the

provisions of Section 11J, K and L of the Customs Act and is liable to pay penalty as well. While maintaining the order for the confiscation of the

seized silver, the Collector of Central Excise, Madras-34, gave an opportunity to the petitioner to redeem the same on payment of fine of Rs.

5,000/- within 90 days from the date of receipt of the order. A penalty of Rs. 2,000/- was imposed on the petitioner. The further proceedings

against Shri Kesarimull were dropped. In view of this order, the appeal preferred by the petitioner against the order of the first respondent dated

9-4-1976 was dismissed on the ground that it had become infructuous. Against this, the petitioner preferred a revision petition to the third

respondent in the writ petitions. By the following order dated 4-3-1981, the revision petition preferred by the petitioner was dismissed.

The Government of India have carefully looked into the facts and records of the case in the light of the submission made in the revision application

and at the personal hearing.

2. The Government observe that the order of the Collector is correct in law. In any case, the contravention of Section 11K of the Customs Act,

1962 has also been admitted by the petitioner. However, having regard to all the facts of the case and considerations urged in the revision

application and at the hearing the Government order that (i) the fine in lieu of confiscation be reduced to Rs. 2,000/- (Rupees two thousand only),

(ii) the penalty be reduced to Rs. 1,000/- (Rupees one thousand only) and consequential refund granted. The order of the Collector is modified

only to that extent and the revision application is rejected otherwise.

It is the correctness of this order that is challenged by the petitioner in W.P. No. 11408 of 1981. Incidentally, the petitioner has questioned the

validity of the exercise of powers of revision u/s 130 of the Customs Act, 1962 by

the Collector of Central Excise, Madras-34 by impugning the validity of the notification 101-Customs dated 1-7-1964 and the notification G.S.R. 37 dated 7. F.No. 2/5/68/Cus. VI dated 3-1-1969 in W.P. No. 11520 of 1981.

2. It will be convenient to deal with W.P. No. 11520 of 1981 first. In the affidavit filed in support of the challenge to the notifications referred to earlier, it is stated that the vesting on powers of revision in the Collector of Central Excise is absolute and excessive without any safeguard against misuse. The notification No. 101-Customs dated 1-7-1964 was also challenged on the ground that unbridled suo motu powers of revision had been conferred. In paragraph 12 of the common counter affidavit filed by the respondents, it was stated that the power of revision was exercised by virtue of express provision in Section 130 of the Customs Act, 1962 and that was also subject to checks and therefore, the review power cannot be characterised to be arbitrary or unbridled power. It was also further pointed out that consequent upon the creation of an Appellate Tribunal for Customs, Central Excise and Gold Control, Section 130 of the Customs Act had undergone an amendment and the impugned notification had also become redundant and had been rescinded as well and therefore, there is no need to strike down a notification not in force.

3. There is no dispute that u/s 152 of the Customs Act, 1962, the Central Government is empowered to direct that powers exercisable by the Board under the Act be exercised also by a Collector of Customs empowered by the Central Government. In other words there is no dispute that the Central Government could by a notification, direct that powers exercisable by the Board, can be exercised by a Collector of Customs. The power of revision u/s 130 of the Customs Act is one exercisable by the Board. That power has been permitted to be exercised by virtue of notification 101 dated 1-7-1964 by the Collector of Customs. By a notification MF (DR) No. 36-Cus. dated 1-12-1963, the Collector of Central Excise, Madras has been appointed as the Collector of Customs within his jurisdiction. It is not as if the exercise of the delegated powers by the Collector of Customs is likely to be unreasonable or arbitrary or even unbridled. The first proviso to Section 130(1) of the Customs Act, 1962 contemplates the giving of a reasonable opportunity to the person affected by

the proposed order. u/s 131(b) of the Act, a right of revision has been conferred with reference to an order passed u/s 130 of the Act suo motu and the Central Government was empowered in such revision to annul or modify such order. Besides, u/s 131(3) of the Act, the Central Government of its own motion was empowered to annul or modify any order passed u/s 130 of the Act. From the foregoing inbuilt safeguards, the exercise of the power of revision by the Collector of Customs as delegate of the Board cannot be considered to be either arbitrary or unbridled, as claimed by the petitioner. Suitable safeguards have been provided against any misuse of the power of revision. Above all, it is now admitted by both sides that Notification 101, Customs, dated 1-7-1964 is no longer in force consequent upon the amendments to the Act introduced by the Finance Act 2 of 1980. It is therefore unnecessary to pursue the challenge to notification 101 Customs, dated 1-7-1964 any further.

4. The learned counsel for the petitioner, however, challenged the notification No. 7, Customs, dated 3-1-1969 on the ground that it imposes unreasonable restrictions and also affects right to property. On the other hand, the learned Additional Central Government Standing Counsel submitted that the restrictions imposed u/s 11J, K and L of the Act are reasonable restrictions imposed in public interest and that there is no total ban on either owning, possessing or transporting silver bullion and coins, but that it had to be done after complying with certain statutory requirements and formalities. The learned counsel therefore maintained that the Notification No. 7, Customs, dated 3-1-1969 did not suffer from any infirmity.

5. It has to be mentioned that the power of the Central Government u/s 11-I of the Act to specify the goods was not disputed by the learned counsel for the petitioner. Therefore, the only question that arises is whether there is any justification for the complaint of the petitioner that the restrictions are unreasonable and affect rights to own and possess property or there is no reasonable nexus between the imposition of restrictions and the avowed object viz., illegal export of silver bullion and coins. The impugned notification indicates the circumstances under which the notification came to be issued. The magnitude of illegal export of silver bullion and coins is stated to be the reason for taking special measures to

check such illegal export and to facilitate detection of such goods likely to be illegally exported. Avowedly, the object of the notification is to prevent illegal export. The restrictions imposed u/s 11-J, K L and M of the Act relating to place of storage, transport of goods, maintenance of accounts and the steps to be taken by persons selling or transferring specified goods are conceived only with a view to keep places of storage, transport of goods, maintenance of accounts as well as sale under check and control. If there is no such control whatever over places of storage of silver, transport of silver, acquisition or parting with silver being reflected by the accounts and the sale or transfer of silver, then, it follows that there cannot be any kind of check over acquisition, storage, transport and sale of silver bullion and coins with the results that the magnitude of illegal export cannot be checked at all, but would have been, perhaps, encouraged. Precisely, with a view to check illegal export of silver bullion and coins, these restrictions in Section 11-J to M had been thought of and imposed on silver bullion and coins by declaring them to be specified goods u/s 11-I of the Act. A consideration of the restrictions imposed u/s 11-J to M also clearly establishes that they cannot be stated to be unreasonable restrictions or totally unrelated to the object viz., prevention of illegal export of silver bullion and coins. Even under the restrictions, which are undoubtedly reasonable restrictions having regard to the object sought to be achieved viz. Prevention of illegal export of silver bullion and coins, any citizen can still hold and dispose of silver bullion and coins in accordance with the requirements u/s 11-J to M of the Act. It is thus seen that the restrictions imposed are with a view to prevent injury to the economy of the country by the illegal export of silver and is therefore in public interest and consequently, cannot be challenged either as being unreasonable or having no reasonable nexus between the imposition of restrictions and the avowed object. Under those circumstances, the validity of the Notification No. 7 , Customs, dated 3-1-1969 including the silver bullion and coins as ""specified goods"" in the schedule has to be upheld.

6. The learned counsel for the petitioner in W.P. No. 11408 of 1981 first contended that the seized silver was purchased by the petitioner on 8-1-1971 for Rs. 11,112.36 as shown by the production of bill for the purchase and therefore, the petitioner cannot be held to have contravened

Sections 11-J, K and L of the Act. On the other hand, the learned Additional Central Government Standing counsel submitted that the seizure of

the silver was effected on 30-10-1974 and it was then valued at Rs. 19,948.82 and there being no other material placed by the petitioner to show

the value of the silver seized on 30-10-1974, the petitioner is not entitled to claim that even in 1974, its value should be taken as on 8-1-1971.

7. There is no dispute that the value of the silver seized was arrived at Rs. 19,948.82 on the basis of the value prevalent on the date of the seizure.

Indeed, it is seen from the files that the seizure report mentions this value. If, according to the petitioner, the value of the seized silver was

something different from that given by the Customs Department, then, it is for the petitioner to have placed adequate materials in support thereof.

Admittedly, between the date when the silver was purchased by the petitioner on 8-1-1971 and the date of seizure viz., 30-10-1974, more than

three years had elapsed. It is common knowledge that gold and silver have a fluctuating market and the value may change even during the course

of the day. Under those circumstances, the petitioner cannot, by merely relying upon a purchase bill three years prior to the date of the seizure,

contend that the value of the silver seized was less than Rs. 15,000/- and therefore, the provisions u/s 11-J, K and L of the Act cannot be applied

to him. There is therefore no substance in this contention of the learned counsel for the petitioner.

7A. The learned counsel for the petitioner next submitted that the Customs Preventive Officers is not a proper Officer for the purpose of

conducting a search and seizure and therefore the seizure and the proceedings arising out of the seizure, are not valid. On the other hand, the

learned Additional Central Government Standing Counsel invited attention to Section 2(34) and Section 110 of the Act and the Entry against Serial

No. 78 with reference to Section 110 in the Madras Supplement to the Customs Manual, First Edition, Page 54, and contended that the officers of

the Preventive Department would also be proper officers for the purpose of effecting seizure of goods u/s 110 of the Act.

8. Section 110 of the Act empowers a proper officer to seize goods, if he has reason to believe that the goods are liable to confiscation under the

Act. "Proper officer" is defined u/s 2(34) of the Act in relation to any functions to be performed under this Act as the Officer of Customs who is

assigned those functions by the Board of the Collector of Customs. It is seen from page 54 of the Madras supplement to the Customs Manual,

First Edition, that by standing order 79/70 dated 29-6-1970, the Collector of Customs has designated all officers, except clerks of the Preventive

Department all principal appraisers, appraisers, examiners, as proper officers in the exercise of powers u/s 2(34) of the Act. This is with reference

to the exercise of powers u/s 110 of the Act. Serial No. 78 in the Madras Supplement to the Customs Manual clearly bears this out. Since the

officers of the Preventive Department have been assigned the performance of the functions u/s 110 of the Act by the Collector of Customs, there is

no substance in the objection raised by the learned counsel for the petitioner that the proceedings relating to the search and seizure as well as

subsequent proceedings are invalid and fundamentally bad.

9. The learned counsel for the petitioner next contended that the Preventive Officers could not have entertained a reasonable belief that the silver

was liable to confiscation at the time of seizure and therefore, the seizure was vitiated. Reliance in this connection was placed by the learned

counsel for the petitioner upon certain decisions as well. On the other hand, the learned Additional Central Government Standing Counsel pointed

out that the place of storage had not been notified and there was no material to establish any permitted transport and no documents were also

available to support the ownership of the silver bars at the time of search and that therefore, the officers bona fide entertained a reasonable belief

that the goods were liable to be confiscated - Reliance was also placed by the learned counsel upon the statement of Shri Kesarimull to the effect

that though the name of Ukchand Ranka was written, there was nobody in the temple of that name and that there were no documents to support

the ownership of the silver or possession of the same.

10. The question whether the Preventive Officers entertained a reasonable belief that the goods were liable to confiscation has to be decided in the

context of the circumstances which led to the search. Apparently, on information, the Preventive Offices had searched the temple and during the

course of such search, they had recovered the silver bars. At the time of the recovery, there was absolutely nothing to indicate that the temple was

the owner of the recorded silver, for, Shri Kesarimull disclaimed interest in the

silver recorded. There was no other material to show that the recovered silver belonged to the person whose name was found written on the gunny bag. There was no bill or transport voucher to show either the purchase or transport of the silver. The storage of silver in the temple had also not been notified. A cumulative consideration of the aforesaid circumstances coupled with the disclaimer of interest in the recovered silver by the temple clearly showed that the silver recovered was of unknown origin. There is, therefore, nothing improbable under those circumstances in the Preventive Officers having bona fide and honestly entertained a reasonable belief that the silver was liable to be confiscated. The reasonable belief has to be found on the subjective satisfaction of the officers concerned and if, on a consideration of the circumstances and other materials available, the Preventive Officers had honestly entertained an opinion that the goods were liable to be confiscated, then, it cannot be stated that they could not have entertained such a reasonable belief. On the materials available in this case, it is clearly made out that the Preventive Officers had reason to believe that the silver was liable to be confiscated. In any event, the authorities below have found that the petitioner had violated Section 11-J, K and L of the Act occurring in Chapter IV-B of the Act and that would render the goods liable to be confiscated u/s 113(1) of the Act. There is, therefore, no substance in the contention of the learned counsel for the petitioner.

11. The learned counsel for the petitioner next contended that the order of the first respondent was void, without jurisdiction and based on conjectures and surmises. I am unable to accept this argument, for, a reading of the order of the first respondent clearly establishes that with reference to the conclusions arrived at, there has been a reference to the available materials and the order cannot, therefore, be characterised as one not based on materials. Equally, I do not see how the first respondent's order can be said to be one without jurisdiction. There is nothing to indicate that the order passed by the first respondent is without jurisdiction or is otherwise unsupportable. This contention of the learned counsel for the petitioner is therefore rejected.

12. The learned counsel for the petitioner next contended that the levy of penalty u/s 114 of the Act is not sustainable as an overt act is

contemplated and the petitioner has not been found to have committed any such act. On the other hand, the learned Additional Central

Government Standing Counsel pointed out that even according to the petitioner, there has been a violation of Section 11-K and L of the Act with

reference to specified goods under Chapter IV-B of the Act and therefore, the goods were liable to be confiscated u/s 113(1) of the Act and the

omission on the part of the petitioner to obtain a transfer voucher u/s 11K and maintain an account u/s 11-L would suffice to attract levy of

penalty. Earlier, it has been pointed out that the value of the seized silver was in excess of Rs. 15,000/-. Silver bullion and coins had been notified

u/s 11-I of the Act as specified goods. u/s 11-K, transport of specified goods, can be done within any specified area or in any conveyance only if

it is accompanied by a transport voucher. Similarly, Section 11-L obliges a person owning, possessing within a specified area any specified goods

of a market value exceeding Rs. 15,000/- to maintain a true and complete account of the goods and this would take in even application of those

goods for the manufacture of other goods. In the instant case, even according to the letter dated 27-10-1975 (page 77 of the file) sent by the

counsel for the petitioner, the quantum of silver purchased by the petitioner was 19.612 Kgs., and it had been kept at No. 19, Chandi Road,

Pozhal, where the petitioner was residing till October 1974. The latter further states that in April or May 1974, the petitioner thought of disposing

of the silver and the silver was melted and it weighed 19.197 Kgs. It is also further stated that the petitioner vacated the house on 31-10-1974 and

at that time, he kept the silver bill as in the locker in the temple. It is thus seen from the letter that the petitioner had not intimated the storage of the

specified goods in excess of the market value of Rs. 15,000/- to the authorities. Even if it be that the petitioner became the owner of the silver

subsequent to 3-1-1969, the specified date u/s 11-J(2) of the Act, he was obliged to deliver intimation at least in October 1974, where such

goods were proposed to be kept or stored. This omission would plainly be a case of violation of Section 11-J(2), if not Section 11-J(I) of the Act.

Similarly, u/s 11-K of the Act, the transport of specified goods has to be accompanied by a voucher. Admittedly, in this case at the time of the

transport of the silver from door No. 19, Gandhi Road, Pozhal, to the temple it was not covered by any transport voucher. The transport voucher

is dispensed only where the transport is within the village, town or city and of specified goods, the market price of which on the date of transport

does not exceed Rs. 1,000/-. Even according to the petitioner, what had been purchased was 19.6 Kgs., and what was found in the shape of bill

as was 19.197 Kgs. Admittedly, no accounts had been maintained by the petitioner with reference to the silver owned or possessed after 3-1-

1969. There has therefore been a violation of Section 11-J(2) and Section 11-K and L of the Act. Such violation would attract Section 113(1) to

the Act rendering the person who had omitted to do the things enjoined upon him u/s 11-J to L liable to the levy of penalty u/s 114 of the Act. It is

therefore, not necessary that there should be any overt act attributable to the petitioner before penalty can be levied. It is, therefore, not possible to

accept this contention of the learned counsel for the petitioner.

13. The learned counsel for the petitioner next contended that the burden is on the Customs department to establish violations of the provisions of

the Act and that not having been done, the petitioner cannot be subjected to any penalty. Even in the letter written by the counsel for the petitioner

referred to earlier, there is an admitted violation of sub-section 11K and L of the Act. Where it is so admitted, it is unnecessary to prove anything

further. There is therefore no substance in this contention of the learned counsel for the petitioner.

14. The learned counsel for the petitioner next contended that there is nothing to indicate that the place where the silver was recovered is within the

specified area u/s 11-H(c) of the Act and that in the absence of any notification issued by the Government, the petitioner cannot be held to be

guilty of any violation of the provisions of the Act. On the other hand, the learned Additional Central Government Standing Counsel submitted that

a notification u/s 11-H(c) of the Act had been issued including Pozhal within the specified area and that there is therefore no substance in the

objection of the petitioner raised in this score. It is seen from the notification produced before court that on 7-1-1969, in the exercise of powers

conferred by clause (c) of Section 11-H of the Act, the Central Government has declared an inland area of 50 kilometres in width from the coast

of India falling within the territory of State of Madras and Union territory of Pondicherry as specified area taking into account the vulnerability to

smuggling of that area. There is no dispute that Pozhal is within 50 kilometres from the coast of the territory of the State of Madras and

undoubtedly that area would fall within the notification as specified area for purpose of the Act. Consequently, this contention of the learned

counsel for the petitioner also cannot be accepted. No other point was urged. Thus, on a careful consideration of the facts and circumstances of

the case as well as the several contentions urged, no case is made out for issuing the writs as prayed for by the petitioner in these writ petitions.

Consequently, the rule nisi is discharged and the writ petitions are dismissed with costs of the third respondent-one set. Counsel's fee Rs. 500/-.