

(1992) 09 MAD CK 0030
In the Madras High Court
Case No : Writ Appeal No. 729 of 1992

Union of India

APPELLANT

Vs

K. Siraj

RESPONDENT

Date of Decision : 21-09-1992

Acts Referred:

Customs Act, 1962 — Section 100, 101, 102, 103, 104

Citation : (1993) 44 ECC 262 : (1993) 65 ELT 25

Hon'ble Judges : R.R. Mishra, J;Padmini Jesudurai, J

Bench : Division Bench

Advocate : Shri C.A. Sundaram, Addl. C.G.S.C, for the Appellant; Shri R. Thiagarajan, for the Respondent

Judgement

Mishra, J.—A learned single Judge of this Court has found a summons issued u/s 108 of the Customs Act to the petitioner-respondent

invalid. The Union of India, the Collector of Customs and Officers of the Directorate of Revenue Intelligence who were party-respondents in the

writ petition have appealed against the said order. The impugned summons was issued to the petitioner-respondent by the Assistant Director,

Directorate of Revenue Intelligence, Madras, stating that he was making inquiries in connection with investigation into alleged evasion of custom

duty on the import of Lupofresh Browary HDP Extract/Pollots in the name of M/s. Integrated Exports, M/s. Trio Imports and Exports (P) Ltd.

and Arasan Industries. According to the summons, the goods were cleared through Madras Air Cargo and through Trivandrum Airport, but the

Assistant Director considered the attendance of the petitioner-respondent necessary to give evidence and produce documents relating to import of

the consignment and sales thereof.

2. The petitioner-respondent is the proprietor of M/s. Integrated Exports, M/s. Arasan Industries and a Director in M/s. Trio Imports and Exports

(P) Ltd. During September, 1990, M/s. Integrated Exports imported hop extracts by Air. This however was not cleared by the Customs. He

preferred a writ petition in W.P. No. 15553 of 1990 seeking a mandamus to Customs Authorities to assess the bill of entry. The writ petition

however was allowed in the sense that he was allowed to clear the entire consignment on payment of duty subject to any adjudication proceedings.

In December, 1990, M/s. Trio Imports and Exports Private Limited imported the very same item, i.e. to say, hop extracts by Air and when there

was a delay, M/s. Trio Imports and Exports Private Limited filed this time a writ petition in W.P. No. 26 of 1991. The Court once again ordered

for the release of the goods on payment of the duty as assessed. A further consignment of the very same item was imported in February, 1991 this

time, again leading to a writ petition in W.P. No. 1587 of 1991. The Court this time, however, ordered for release of the goods on payment of

duty and on payment of a sum of Rs. 12 lacs in respect of each bill of entry by way of cash and execution of a personal bond for the balance of

redemption fine and the total of personal penalty. The petitioner-respondent shifted the Port from Madras Air Port to Trivandrum Air Port in June,

1991 and instead of in the name of M/s. Trio Imports and Exports Private Limited imported hop pellets in the name of M/s. Arasan Industries. The

Collector of Central Excise and Customs, Cochin, ordered in the month of July, 1991 clearance of the goods on payment of a redemption find of

Rs. 8 lacs and a personal penalty of Rs. 2 lacs. In September, 1991, another consignment of hop pellets came for M/s. Arasan Industries at

Trivandrum Air Port. The Collector directed the release of goods on payment of redemption find of Rs. 36 lacs, a personal penalty of Rs. 16 lacs

and a further penalty of Rs. 2 lacs on one R. Ramanan. According to the petitioner-respondent, the said order of adjudication dated 1/6-11-1991

was passed after issuing a show cause notice dated 21-10-1991 and after the Officers of the Directorate of Revenue Intelligence investigated into

the value of the goods imported by making inquiries and recording a statement of various persons by summoning them. The same who challenged

before this Court in Writ Petition No. 15742 of 1991. In a miscellaneous petition in the said writ petition, this Court ordered on 18-12-1991 for

the release of the impugned goods on condition that the admitted duty of Rs. 12,18,321/- was paid plus 50% of the differential duty sought to be

demand; for the balance 50% of the differential duty, the petitioner therein was directed to furnish a bank guarantee. Both the petitioner in the

said writ petition as well as the respondent preferred writ appeals against the order in the miscellaneous petition W.A. Nos. 1544 of 1991 and

1547 of 1991, which were disposed of by a Bench of this Court on 30-12-1991 confirming the order in the miscellaneous petition with regard to

payment of duty, but modifying with respect to the fine and penalties by vacating the stay and directing that the Importer should furnish a bank

guarantee for Rs. 12 lacs onwards redemption fine and furnish personal bond for the balance amount of redemption fine. Notwithstanding the

adjudications as above and the various orders that were passed with respect to different consignments in the cases of M/s. Integrated Exports,

M/s. Trio Imports and Exports Private Limited and M/s. Arason Industries, however, on 18-11-1991, the impugned summons was issued.

Petitioner-respondent challenged the same alleging that the goods imported by the above mentioned firm and companies were all cleared by the

orders of this Court and orders of adjudication by the Customs Authorities and if the Authorities were aggrieved by the orders of adjudication or

orders of release, they could have challenged the same in accordance with the provisions of the Customs Act before the appropriate forum and

that once the goods were released on assessment and payment of duty, penalty, etc., the Customs Authorities cease to have any further jurisdiction

to inquire or investigate into the alleged evasion of customs duty on the import.

3. In their written, the respondents maintained however that based on an intelligence report regarding evasion of customs duty on certain imports of

Lupofresh Aromatic Hop Pellets with 15% Alpha in the name of M/s. Arasan Industries, the Officers of the Directorate of Revenue Intelligence

carried out searches at Trivandrum and Madras, covering several premises including the office and residential premises of the petitioner-

respondent herein, three consignments of the said goods weighing in all 6 metric tonnes pending clearance at Trivandrum Airport were also seized

on 28-09-1991, several incriminating documents such as Airway Bills, Manufacturers' invoices which show a higher value than the one which had

been declared in the Bills of Entry filed for clearance of the subject consignment were seized and the documents seized from the office/out-house of the residence of the petitioner-respondent included the confirmation of the order of Lupofresh A & E, Germany in respect of the said consignment, which also showed a higher value and certain account books containing details as to huge cash payments to parties on account of hop extracts/pellets over a period of time were also found. They refer to several other materials which according to them, demonstrate that hop pellets were cleared in the name of Arasan Industries through Trivandrum Airport on mis-declaration of the value and manipulation of the documents and that this apart, it was the petitioner-respondent who had indulged in import of Lupofresh Hop Export with 30% Alpha in the names of Integrated Exports and Trio Imports and Exports Private Limited.

4. The respondents-appellants however accepted that all earlier cases including the last 6 metric consignment seized at Trivandrum Airport were subjected to adjudications by the Collector of Customs and Central Excise and in cases of release ordered by this Court as well as release otherwise, they acted on information available until then. In the last import, when however, the documents were found undervalued and documents manipulated, the Collectors of Customs and Central Excise, Cochin, not only demanded differential duty, but also imposed redemption fine on the goods as well as penalty on the persons including the petitioner-respondent, who were found responsible for the misdeclaration. According to the respondents-appellants, the present summons dated 18-11-1991 u/s 108 of the Customs Act, 1962 by the 4th respondent herein is in connection with the investigation/inquiry of all the above mentioned imports that appeared to lead to actions for smuggling goods.

5. We do not think it necessary to refer to many other details of the facts that are stated either in the writ petition or in the counter-affidavit except stating according to the petitioner-respondent, each consignment having once been subjected to duty and subjected to proceedings under the Customs Act for differential duty, redemption fine and penalty, there remained nothing for the respondents to inquire further or to have a fresh inquiry u/s 103 of the Customs Act, a contention which has been accepted by the learned single Judge. In opposition thereto, the respondents-

appellants however have contended that when so many imports are found to be integrated to a chain of smuggling by those who imported

Lupofresh Aromatic Hop Pellets and only because consignments were noticed and considered individually and actions taken for, then noticed

defaults, it cannot be said that no further action under the Customs Act is permissible.

6. To appreciate the case of the respondents-appellants as learned Single Judge has done, we may also do to take notice of one basic fact that the

goods have been imported from Lupofresh A & F, Germany to Madras as well as Trivandrum Airports. Invoices, however, are issued by the

intermediary at Singapore. According to the respondents-appellants, prices charged by the intermediary were very low in respect of one and the

same consignment. This led to the suspicion that the prices noted in the invoices of the Singapore intermediary did not represent the true sale value

of the goods under import to India directly from Germany. According to them, the goods had never touched Singapore and so, any document

showing import to India from Singapore was intended to mislead. In the case of release of goods under the orders of the Court, nothing in this

behalf was done and cases in which differential duty, redemption fine and penalty were claimed, only indicated that in the goods earlier imported

from Germany, the same method had been adopted to grossly undervalue the goods.

7. Before we dwell into the contentions and record our opinion, we may do a little probing into the provisions of the Customs Act, 1962. With a

view to consolidate and amend the law relating to Customs, the Parliament adopted by a Legislation such laws that made specific prescription as to

prohibition on importation and exportation of goods, prevention or detection of illegal export of goods, levy of exemption from customs duties,

clearance of imported goods and exported goods, etc. and in particular with respect to searches, seizure and arrest of persons and goods in

Chapter XIII thereof. Section 108 which falls in this Chapter, reads as follows :-

108. Power to summon persons to give evidence and produce documents :-

(1) Any gazetted officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or

to produce a document of any other thing in any inquiry which such officer is

making in connection with the smuggling of any goods.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of

all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct and all persons so

summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such

documents and other things as may be required :

Provided that the exemption u/s 132 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to any requisition for attendance under

this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal

Code (45 of 1860).

Section 107 preceding this Section 108 reads as follows :-

107. Power to examine persons. - Any officer of customs empowered in this behalf by general or special order of the Collector of Customs may,

during the course of any inquiry in connection with the smuggling of any goods, -

(a) require any person to produce or deliver any document or thing relevant to the inquiry;

(b) examine any person acquainted with the facts and circumstances of the case.

The word "enquiry" in Section 107 and the word "inquiry" in Section 108 do not appear to cannot proceedings of two different kinds, but for the

fact that when power to summon persons to give evidence and produce documents is envisaged, it is conferred upon any gazetted officer of

customs, but when it is with respect to examining person found during the course of any inquiry in connection with smuggling of any goods, it is

conferred upon any Officer of Customs empowered in this behalf by general or special order of the Collector of Customs. The word "enquiry" or

"inquiry" has not been defined in the Act, but as meaning may be gathered from the scheme of the Act and particularly, Chapter XIII. A proper

officer who has reason to believe that any person who has landed from or is

about to board or is on board any vessel within the Indian customs water, any person who has landed from or is about to board, or is on board a foreign-going aircraft, any person who has got out of, or is about to get into, or is in a vehicle, which has arrived from, or is to proceed to any place outside India and any person not included in the above who has entered or is about to leave India as well as any person in a customs area, had secreted about his person, any goods liable to confiscation or any document relating thereto, he may search that person. Besides the above, any person who has secreted about his person any goods, viz., gold, diamonds, manufacture of gold or diamonds, watches and any other class of goods which is specified in the Official Gazette by the Central Government, can be subjected to search by an Officer of Customs empowered in this behalf by general or special order of Collector of Customs.

A person secreting any goods liable to confiscation may be screened or x-rayed and arrested by an Officer of Customs empowered in this behalf by general or special order of the Collector of Customs. The power to search is not confined to any person's body, but is extended also to the premises, if the Assistant Collector of Customs, or in any area adjoining the land frontier or the coast of India, an Officer of Customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion, will be useful for or relevant to any proceeding under the Act are secreted in any place. In such case, the Assistant Collector of Customs or the Officer of the Customs specially empowered by name in this behalf by the Board, as the case may be, may authorise any officer of customs to search or may himself search for such goods, documents or things. There can be a search of any part of any aircraft, vehicle or vessel in India or within the Indian customs water by the Proper Officer, if he has reason to believe that such aircraft, vehicle or vessel is used in the smuggling of any goods or in the carriage of any goods which have been smuggled. These are provided under Sections 100 to 106A. Sections 109 and 110 which also fall in Chapter XIII, provide about the power to require production of the order made u/s 47 of the Act permitting clearance of the good and seizure of goods, documents and things. Sections 107 and 108 which intervene the power to require production of order permitting

clearance of the goods and seizure of goods, documents and things, speak of the power to examine persons or to summon persons to give

evidence and produce documents as above. Seen in this background, the inquiry in connection with the smuggling of any goods for the purposes

either of Section 107 or of Section 108 must relate to the belief that any person has secreted about his person any goods liable to confiscation or

there is any reason to believe that any goods are smuggled or intended to be smuggled. The word "smuggling" in relation to any goods has been

given a definite meaning in the Act, which means, any act or omission which will render such goods liable to confiscation u/s 111 or Section 113.

Sections 111 and 113 are in Chapter XIV of the Act. The words used in Section 111 are, "the following goods brought from a place outside India

shall be liable to confiscation....". The words used in Section 113 are, "the following export goods shall be liable to confiscation". Export goods

means any goods, which are to be taken out of India to a place outside India. All acts thus which are in the course of the search of any person,

premises or conveyance, seizure of goods, documents and things with respect to the goods brought from a place outside India and falling under

any of the types of goods and any export goods specified in Section 113 of the Act, must be seen as acts during the course of any inquiry. This

enquiry in which power is given to summon persons to give evidence and produce documents, is in the nature of a preliminary enquiry to actions

that are taken for confiscation of good, etc. A regular inquiry is held, however, only after notice is given to the owner of the goods to decide

whether to order confiscation or to impose penal. The grounds on which it is proposed to confiscate the goods or to impose a penalty are served

upon him and opportunity of making a representation in Writing against the grounds of confiscation or imposition of penalty is given to him. This is

contemplated u/s 124 of the Act. Although there is nothing like enquiry or trial, stated in any of the provisions in this behalf, it is obvious it is a

proceeding in the nature of an enquiry by the officer, who is empowered to impose the penalty or order confiscation of the goods. Although words,

in the course of any inquiry, are used as alternative to the expression during the course of any inquiry, Courts always bear in mind that something

don during the course of inquiry may be de hors the enquiry, if done in connection with the smuggling by any officer of customs empowered in this

behalf by general or special order [See (1962) Madras Weekly Notes Criminal 168].

8. The system of clearance of imported goods and export goods is dealt with in Chapter VII of the Act. Section 47 reads as follows :

Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

Section 51 reads as follows :

Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.

There has been cases brought to the Courts by persons who obtained such clearance of goods when there were any attempts to seize such goods and confiscate them. Seizure of goods is contemplated u/s 110 of the Act, which reads as follows :

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

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

This provision uses the expression "goods are liable to confiscation". Sections 107 and 108 use the words "any enquiry in connection with the

smuggling of any goods" and "any enquiry which such officer is making in connection with the smuggling of any goods", since we have a definition

of "smuggling" to mean "in relation to any goods any act or omission, which will render such good liable to confiscation, the words "goods liable to

confiscation" u/s 111 or Section 113 have to be read in both Section 107 and Section 108 in place of the smuggling of any goods; thus to mean,

during the course of any enquiry or in any enquiry in connection with any act or omission, which will render the goods liable to confiscation u/s 111

or Section 113 of the Act. In a case, where goods were cleared for home consumption u/s 47 of the Act and steps were taken thereafter to seize

them, a Bench of the Delhi High Court in Jain Shudh Vanaspati Ltd., etc. Vs. Union of India and Others, , held as follows :

It might sound anomalous that stainless steel as such is prohibited item but stainless steel containers for carrying permitted goods are not. It can

even be said that this is a lacuna in the law as it stood on the date of the importation in the present case. But neither the Department nor the Court

can fill this lacuna by stretching the language of law. We are interpreting a taxing statute and subjecting a citizen to a possibility of very heavy

customs duties, and other harsh penalties under the Customs Act...

On Section 47, the Delhi High Court said :

An order u/s 47 is one of the orders against which a revision can lie u/s 130 of the Act. Section 130 required that before revising any order, party

affected, should be heard. It is thus clear that the Act does not provide for any review of an order passed u/s 47 of the Act. Admittedly, there is no

order passed by the concerned authorities u/s 130 of the Act. Respondents however, contend that notices u/s 28 or Section 124 are not in nature

of review. They further contend that power to issue such notices is an independent power and can be issued even after the goods are cleared u/s

47. Respondents rely upon a judgment of the Calcutta High Court reported in Lakshminarayan Ramniwas Vs. Collector of Customs and Others, .

This ruling is of no assistance to the respondents. The said decision was rendered on interpretation of Section 89 of the Sea Customs Act which is

different from Section 47 of the Customs Act, 1962, in material particulars....

The Delhi High Court also said :

Considering Section 47 of the Customs Act in the light of the legislative history, we are clear that the section attaches finality to the satisfaction of

the officer that the goods are not prohibited. The finality cannot be disturbed unless the department successfully shows that there was fraud or

deliberate suppression. The respondents have alleged that the containers were painted and thus the original identity of the drums was suppressed

by the petitioners. This allegation is on the assumption that stainless steel drums was a prohibited item. We do not agree. The law as it then stood,

did not require of an importer to disclose the nature of the material or the price

of the containers. A new requirement in this regard was introduced for the first time by Public Notice dated September 6, 1979 i.e. after the importation of oil by the petitioner. We, therefore, hold that the proper officer's satisfaction that the goods were not prohibited goods, had reached finality by the time the goods were cleared.

The judgment of the Delhi High Court was followed by a Bench of the Bombay High Court in Union of India and others Vs. Popular Dyechem, , which, in a summary order, said as follows :

The only goods which remain now to be cleared are goods in respect of which it was contended by the appellants that the same were not plastic

scrap but serviceable plastic articles when imported whereas the respondents contended that the said goods were plastic scrap. The order of

clearance u/s 47 was passed by the Assistant Collector concerned after physical verification of the goods. In view of this and in view of the

decision of a Division Bench of the Delhi High Court reported in Jain Shudh Vanaspati Ltd., etc. Vs. Union of India and Others, , it is clear that

such goods cannot be confiscated, except in contemplation of an order or in pursuance of an order passed in revision u/s 129D of the Customs

Act, 1962. No such order has been passed till today. In these circumstances, no inference with the trial Court's order is called for, except that we

direct that in respect of the aforesaid disputed goods the appellants-respondents shall comply with the interim order by 4.00 p.m. on 15th

December, 1986, unless proceedings are taken u/s 129D of the Customs Act before that time and appropriate orders to the contrary are passed therein.

A Full Bench of the Calcutta High Court, however, dealt with a case in which a person was suspected to have done or omitted to do such acts,

which act or omission rendered the goods liable to confiscation u/s 113. A notice to show cause why penal action should not be taken u/s 114 of

the Act had been issued in that case, in which it had been alleged that the company exported certain consignments against shipping bills, which

appeared to have contravened the provisions of Section 12(1) of the Foreign Exchange Regulation Act, 1947, as amended by the Foreign

Exchange Regulation (Amendment) Act, 1949, read with Government of India, Ministry of Defence EAD Notification No. GSR 2641, dated 14-

11-1969. In the case of Euresian Equipments and Chemicals Ltd. and Others Vs. The Collector of Customs and Others, , the Calcutta Full Bench

considered two questions :

(1) Whether, by virtue of Section 23A of the Foreign Exchange Regulation Act, 1947, the provisions of Sections 113 and 114 of the Customs

Act, 1962, are attracted for the contravention of Section 12(1) of the Foreign Exchange Regulation Act, 1947, in relation to goods which had

been exported beyond India ? and

(2) Whether, when goods have been exported beyond India such goods may be said to be "export goods" as defined in Section 2(19) of the

Customs Act, 1962 and liable to confiscation u/s 113 for the purpose of imposition of penalty u/s 114 of the said Act ? and observed as follows :

We have earlier set out the provisions of Section 11 of the Customs Act which confers power on the Central Government to prohibit importation

or exportation of goods for purposes mentioned therein. These purposes indeed cover very very wide fields. Some of the purposes for which the

prohibition may be imposed as stated in Section 11(2) are, prevention of smuggling, prevention of shortage of goods of any description and

prevention of the contravention of any law for the time being in force. Section 113 provides for liability of the goods to confiscation in case of any

violation of the prohibition imposed u/s 11 of the Act and Section 114 provides for personal penalty for those whose acts or omissions render the

goods liable to confiscation u/s 113. To construe the said sections to mean that Section 114 can only be attracted when the goods are attempted

to be exported and will have no application when goods have in fact been exported will defeat the purpose and object for which the said

provisions have been introduced. The submissions that the legislature has so intended by using the words "attempt to export" in Section 113(a), (b)

and (d) and the analogy of the offence of attempt to commit suicide give in this connection are, in our opinion, misleading and devoid of merit. An

attempt to commit suicide is indeed an offence and the act of committing suicide resulting from the successful attempt may not be considered to be

an offence. This is so far the simple reason that once a person attempting to commit suicide succeeds in his attempt he places himself beyond the

reach of law and no punishment is intended to be inflicted on the dead person or

his heirs and legal representatives by imposing any fine or penalty, as they may in no way be liable or responsible for the said act. As we have earlier observed, the liability of the goods to confiscation arises u/s 113(d), as soon as the goods are attempted to be exported and the attempt to export the goods necessarily precedes the actual export of the goods. Goods become liable to confiscation as soon as the attempt is made. There is no provision in the Act to suggest that this accrued liability is wiped out or extinguished with the exportation of the goods. It may be that after the goods had in fact been exported the liability of the goods to be confiscated may not be enforceable by actual confiscation of the goods. Personal penalty of any person who, in relation to the goods, does or omits to do any act which act or omission renders the goods liable to confiscation u/s 113 or abets the doing or omission of such an act has been provided in Section 114. This provision is attracted as soon as the goods incur the liability to confiscation u/s 113 and such liability, as we have earlier held, arises when the goods are attempted to be exported contrary to any prohibition. It is to be noted that at the time when the goods are sought to be exported they are undoubtedly "export goods" within the meaning of Section 2(19) of the Customs Act. The liability of personal penalty provided in Section 114 of the Act, which arises with the accrual of the liability of the goods to confiscation u/s 113 of the Act at the stage of the attempt to export the said goods, clearly remains and the said liability is capable of enforcement. In the case of illegal export of the goods contrary to prohibition the effect may be that the liability of the goods to confiscation which arises and accrues may not be capable of enforcement but the personal liability which arises with the accrual of liability of the goods to confiscation can be enforced and by enforcement of the personal liability the offender can still be brought to book and this kind of offence may be checked. We must, therefore, hold that by virtue of Section 23A of the Foreign Exchange Regulation Act, 1947 the provisions of Sections 113 and 114 of the Customs Act, 1962 are attracted, when there is a contravention of Section 12(1) of the Foreign Exchange Regulation Act, 1947 in relation to goods which had in fact been exported...

In a case where goods had been cleared u/s 47 of the Act, and a notice u/s 110 had been issued in the case of Madanlal Steel Industries Ltd. Vs.

Union of India, , a Bench of this Court, to which one of us (Mishra, J.) was a party, took notice of all these cases as well as many other cases,

including the observations of the Supreme Court in Collector of Customs, Madras and Others Vs. D. Bhoormall, that a proceeding for confiscation

is one in rem rather than one in personam, and the observation in Frankfurter v. W. L. Exner 1947 Ch. D. 629 that "confiscation is an act of

appropriation of private property for State or Sovereign use and usually being the result of the doing by the owner of some prohibited act; the

seizure and appropriation of property as a punishment for breach of the law whether municipal or international was held to be confiscation."

The Bench observed :

Courts which have taken the view that an order u/s 47 of the Act is final and on the face of such an order in favour of the importer action to

confiscate the goods cleared for home consumption cannot be taken, have also taken notice of the exceptions that may arise and even goods

cleared in such circumstances can be subjected to confiscation. The Delhi Court's judgment supra has taken notice of these exceptional

circumstances saying, ""The finality cannot be disturbed unless the Department successfully shows that there was fraud or deliberate suppression"".

Both the Bombay Court and the Delhi Court in the case of Union of India and others Vs. Popular Dyechem, and Jain Shudh Vanaspati Ltd., etc.

Vs. Union of India and Others, , however, have not taken notice that the seizure and confiscation are acts in rem unlike any penal action under the

Act itself being one in relation to the goods rather than in relation to the person and such proceedings, however, depend not on anything else, but

the reasonable belief of the proper officer that the goods are liable to confiscation, whether for the reason of being improperly imported goods or

for the reason of improper export. Such a belief may be found to be reasonable for the reasons of fraud or suppression, as noticed by the Delhi

Court in Jain Shudh Vanaspati Ltd., etc. Vs. Union of India and Others, or such other reasons or such other goods which render the import or the

export illegal and liable to confiscation. It would be only in the notice u/s 124 of the Act that grounds would be disclosed and then only it would be

possible to know whether there has been any fraud, suppression of fact and/or any other invalidity in the import or export, or not.

Both the Bombay Court judgment in the case of Union of India and others Vs. Popular Dyechem, and the Delhi Court judgment in the case of Jain

Shudh Vanaspati Ltd., etc. Vs. Union of India and Others, , on their peculiar facts, are good for taking notice of the order u/s 47 of the Act and

saying accordingly that unless that order was set aside, no proceeding for confiscation should have been taken. It is difficult, however, to accept

this as a law, as once there is a clearance u/s 47 and/or Section 51 of the Act is ordered, unless that order is set aside, the proper officer cannot

act on his reasonable belief under Sections 110, 111 or 113 of the Act. The Calcutta Full Bench judgment in the case of Euresian Equipments and

Chemicals Ltd. and Others Vs. The Collector of Customs and Others, has, in substance, pronounced that such proper officer's satisfaction for

confiscation proceedings shall remain unaffected by the order of the proper officer permitting the clearance of goods u/s 51 of the Act. That view is

in consonance with the basis of the belief that goods have been improperly imported or exported and such belief being in relation to the goods and

in rem, it will not be correct to read in the orders u/s 47 or Section 51 of the Act any inhibition upon the jurisdiction of the proper officer to act

under Sections 110, 111 and 113 of the Act. The petitioner/appellant came to this Court challenging the seizure without waiting for the notice u/s

124 of the Act. Such materials upon which it will be possible to predicate whether there are reasons for misrepresentation or fraud in importing or

exporting of any prohibited goods or dutiable goods in violation of the conditions under which such import or export is permissible, will be

available only in the notice, which, as we have already noticed, has to contain the grounds on which the proposal to confiscate is based, to afford

an opportunity to the importer or the exporter or any other person from whose custody such goods are seized, to make a representation in writing

and thereafter heard. We thus find that it is not a fit case in which this Court can declare the seizure invalid.

Learned single Judge, after taking note of the judgment in the case of Madanlal Steel Industries Ltd. Vs. Union of India, , however, has said :

The case before me is a converse one from that of Calcutta case. In this case, a notice u/s 124 has been issued and adjudication orders have been

passed. In my view, once an adjudication order has been passed and the fine and the penalty levied have been paid by the importer (i.e. when the

Bills of Entry are assessed) and the appeals are pending before the CEGAT, I do not think the respondents have got any jurisdiction to issue

summons u/s 108 of the Act for making a roving enquiry. In my view, the only course open to the Department is to file an appeal against the order

of adjudication if they are not satisfied with them, or to file a cross appeal before the CEGAT, apart from taking action u/s 28 of the Act. I do not

think by raising the allegation of "fraud" the respondents can clutch at the jurisdiction to issue summons u/s 108 of the Act.

Since we have to consider mainly the scope and nature of the enquiry under Sections 107 and 108 of the Act, and to answer the question whether

having once subjected to a proceeding for confiscation, the goods, after enquiry u/s 124 of the Act, any further enquiry u/s 107/108 of the Act is

permissible, and since we have already noticed that enquiry under Sections 107 and 108 is preliminary to any action to confiscate the goods or to

impose any penalty on any person found to have indulged in smuggling of the goods or to pay fine in lieu of confiscation and smuggling means any

act or omission, which renders goods liable to confiscation u/s 111 or Section 113, we attempt to understand as to what the words "liable to

confiscation" convey. Ordinarily, the word "liable" denotes, (1) "Legally subject or amenable to"; (2) "Exposed or subject to or likely to suffer

from (some thing prejudicial)"; (3) "Subject to the possibility of (doing or undergoing something undesirable)" and according to Webster's New

World Dictionary, "something external which may befall us". The Courts have given a narrower or a wider meaning to this word, depending upon

the context and the nature of the statute concerned. In Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs.

Abani Maity, , the Supreme Court has said :

Accordingly, the word "liable" occurring in many statutes, has been held as not conveying the sense of an absolute obligation or penalty but merely

importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words "shall be". Thus, where an

American Revenue Statute declared that for the commission of a certain act, a vessel "shall be liable to forfeiture", it was held that these words do

not effect a present absolute forfeiture but only give a right to have the vessel forfeited under due process of law..... Similarly, it has been held that

in Section 302, Indian Penal Code, the phrase "shall also be liable to fine" does not convey a mandate but leave it to the discretion of the Court

convicting an accused of the offence of murder, to impose or not to impose fine in addition to the sentence of death or imprisonment for life.

But a statute is not to be interpreted merely from the lexicographer's angle. The court must give effect to the will and inbuilt policy of the

Legislature as discernible from the object and scheme of the enactment and the language employed herein.

Exposition ex visceribus actus is a long recognised rule of construction. Words in a statute often take their meaning from the context of the statute

as a whole. They are, therefore, not to be construed in isolation. For instance, the use of the word "may" would normally indicate that the provision

was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a

permissive sense would relegate it to the unenviable position, as it were, "of an ineffectual angel beating its wings in a luminous void in vain". "If the

choice is between two interpretations", said Viscount Simon L. C. Hokes v. Doncaster Amalgamated Collieries Ltd. 1940 AC 1041, "the

narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation

to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about

an effective result".

Applying the above-mentioned rule, the Supreme Court in the above cited case, interpreted the two provisions in the Bengal Excise Act, 1909, as

found in Section 63(2) and 64(1) thereof in these words :

The provisions of Sections 63 and 64 of the Act are to be interpreted in the light of this principle. The language and scheme of the Excise Act,

taken as a whole, show that the purpose of this legislation is not only to raise revenue but also to control and restrict the import, export, transport,

manufacture and sale of intoxicants. Free and unrestricted use of intoxicants and illicit trade in contraband intoxicants not only means a loss of

revenue to the public exchequer but also has a harmful effect on public health and morals. Moreover, illicit trade and smuggling of intoxicants is

often committed, in an organised and clandestine manner, and is difficult to

detect.

We have, therefore, to adopt that construction of the expressions "shall be liable to confiscation" used in Section 63(2), and "may" in sub-section

(1) of Section 64, which will preserve the efficacy of the provisions as an instrument for combating these anti-social activities, and reject the other

which will render them ineffective.

For the above, the Supreme Court quoted once again from an earlier judgment of the Court in the case of Indo-China Steam Navigation Co. Ltd.

Vs. Jasjit Singh, Additional Collector of Customs and Others, . A learned single Judge of the Calcutta High Court in Everett Orient Line

Incorporated Vs. Jasjit Singh and Others, , however, considered a case in which objection was taken to confiscation of a vessel, which was found

violating certain provisions of the Sea Customs Amendment Act, 1947. Facts of the case and the rule that the learned Judge applied, however, are

not very relevant, except that we get the idea of the meaning of the words "shall be liable to confiscation". Learned Calcutta Judge rejected the

argument that for establishing liability to confiscation, the alleged act or omission must be found to have been established that it violated some

prohibitory provision. Learned Judge has said :

What, then, is the meaning of the words "shall be liable to confiscation ?" Mr. Kar argues that it can only mean that if the offence is committed,

then the vessel must be confiscated. I do not think that this is a reasonable interpretation.

In this connection, two English cases might be cited. One is *Grivell v. Malpas* (1906 2 KB 32. In this case, sub-section (3) of Section 47 of the

Public Health (London) Act, 1891 was being considered. It was held that the words "any article liable to be seized" meant any article "prima facie"

liable to be seized. The next case is *Wiekhambrook Psrochial Church Council v. Croxford* (1935) 2 KB 417. In the case, the word "liable" as

appearing in sub-section (3) of the Chancel Repairs Act, 1932, was interpreted. Lord Hanworth M.R., held that the word "liable" meant that a

person was imperilled of having something done to him and to which he was exposed and subjected to, or from which he was likely to suffer.

It appears to me that the position under the Indian law is that if a vessel comes within the mischief of Section 52A that is to say, if it constructed,

adapted, altered or fitted for the purpose of concealing goods and if it enters or is within the limits of any port in India or the Indian Customs water,

then it becomes a vessel which has satisfied the conditions laid down in Section 52A and, therefore becomes a tainted vessel. The offence is

committed as soon as such, a vessel enters the prohibited area, and for that purpose, the knowledge, intention or complicity of the owners is

immaterial. But such question or any other mitigating circumstances are not irrelevant when considering the imposition of the penalty.

Section 167(12A) of the Act declares such vessels to be "liable" to confiscation, that is to say, open to the peril of confiscation. It may, however,

be that the Customs authorities, having considered all the facts of a given case, would not consider the matter deserving of the extreme penalty of

confiscation. I will explain this a little farther. Section 52A speaks about construction, adaptation, alteration, etc., for the purpose of concealing

goods. Such construction, adaptation, etc., must necessarily be of an infinite variety. A ship may be big or small. Even a medium size ship would

nowadays cost a gigantic sum. A large size ship may cost crores. Supposing that a sailor makes a little hole underneath his bunk in order to conceal

a smuggled watch he has picked up in the last port. That would certainly make the vessel an offending vessel, upon a strict interpretation of Section

52A. But does it mean that the whole ship worth crores should by that reason alone be automatically confiscated ? In my opinion, that is neither the

provision of law. As I find it, not could it have been the intention of the Legislature to impose such a law. There is no obligatory word used for

imposing the penalty of confiscation in each and every case. Therefore, while under the English Law of 1876, there was bound to be confiscation

at the first instance with a right to the commissioners to do justice between the parties and mitigate the rigorous of confiscation in India there is no

obligation to confiscate in the first instance and it is open to the customs authorities to consider all mitigating circumstances at the earliest possible

movements and to do justice between the parties. From that point of view, there is no prohibition upon the customs authorities to consider every

kind of mitigating circumstances, which will include a plea on behalf of the owners as to their absence of knowledge on the complicity in the

commission of the offence and the impossibility, or an anarmous difficulty in ensuring a vessel from being tainted altogether and at all times. That

being so, let me come to the facts of the present case and consider as to whether the decision of the Additional Collector of Customs in this case is in accordance with this view of the law.

8A. We have already noticed that foundation of the jurisdiction to act u/s 107 or u/s 108 is in the suspicion that any person, who was summoned, had secreted about any goods liable to confiscation or any documents relating thereto or that there has been such secretion in any vessel, any vehicle, any aircraft or any animal. The Act has contemplated several modes and created a special agency for search, seizure, confiscation, fine and penalty. The Act has besides these, many provisions for clearance of goods for home consumption or for exportation, realisation of duty by provisional assessment, final assessment, remission of duty, denaturing or mutilation goods for the purpose of reaching the appropriate nature of the goods, etc. Such suspicion can arise in the case of export or import and if there are repeated movements of goods by persons giving rise to suspicion as to secretion of goods liable to confiscation or any documents relating thereto. It is not possible to say that as a result of the enquiry under Sections 107 and 108 of the Act, a notice u/s 124 shall always follow. The preliminary enquiry before any notice u/s 124 is issued may satisfy the proper officer that goods are not involved in any act or omission constituting smuggling. In that case, any other appropriate action may be taken, goods may be cleared for home consumption or cleared for exportation. There is, however, no possibility of confiscation, penalty or fine in lieu of confiscation, unless there are grounds to proceed u/s 124 of the Act, except, perhaps, provisions where punishments may be awarded for acts like false declaration, false documents, etc., relating to the customs as provided u/s 132 of the Act. The above, in our view, thus lead to only one conclusion that it is the existence of the suspicion and the satisfaction of the proper officer in the sense that he has reason to believe that there has been anything secretive about goods liable to confiscation or any documents relating thereto that officers empowered in this behalf will act and that will thus give rise to a prima facie satisfaction for the preliminary enquiry either u/s 107 or in appropriate cases u/s 108 of the Act. The problem posed before us is in principle like one already decided by a Bench of this Court in the case of Madanlal Steel Industries Ltd. Vs. Union

of India, , but different for the reason that in Madanlal's case it was a case of the clearance of the goods, in the instant case it is a case of the goods already subjected to confiscation. On principle, thus, there should be little difficulty in accepting that there should be goods involved in smuggling, in the sense that there should exist the liability to confiscation. This should have been the complete answer to the question, but for certain alternatives that appear to emerge in a given case, when both competent or proper officer and the Court may be faced with situations where goods are appropriated either by clearance or by confiscation, but, liability for one or the other action under the Act, for the reason of the goods' liability for confiscation not being over, may be found to exist.

9. In Madanlal Steel Industries Ltd. Vs. Union of India, the Court has held that proper officer's satisfaction for confiscation proceedings shall

remain unaffected by the order of the proper officer permitting the clearance of goods u/s 51 of the Act. Any inhibition upon the jurisdiction of the

proper officer to act under Sections 110, 111 and 113 of the Act in this behalf can be found only in the grounds that are stated in the notice under

Sec. 124 of the Act. In other words, the Court has found that it was not possible to see any inhibition upon the jurisdiction of the proper officer to

proceed u/s 110 or Section 124 of the Act on the ground that goods have been cleared u/s 47 or Section 51 of the Act. It is indeed inherent in the

scheme of the law that a notice u/s 124 of the Act has to be issued when it is contemplated that order has to be passed confiscating the goods or

imposing any penalty or any person found responsible for smuggling. The words in Section 124 are, ""No order confiscating any goods or imposing

any penalty on any person shall be made under this Chapter unless the owner of the goods or such person", which indicate on the one hand

confiscation u/s 111 (confiscation of improperly imported goods, etc.); Section 113 (confiscation of goods attempted to be exported; Section 115

(confiscation of conveyances); Section 118 (confiscation of packages and their contents); Section 119 (confiscation of goods used for concealing

smuggled goods); Section 120 (confiscation of smuggled goods, notwithstanding any change in form, etc.); and Section 121 (confiscation of sale-

proceeds of smuggled goods) and on the other hand, penalties under Sec. 112 for improper importation of goods, etc., under Sec. 114 penalty for

attempt to export goods improperly, etc. u/s 116 penalty for not accounting for goods, and u/s 117 penalties for contravention etc., not expressly

mentioned; which fall in Chapter XIV of the Act. Whereas confiscation is of the goods, penalty is imposed on any person who is found to have

contravened the law and who is found engaged in improper importation of goods, improper export of goods, not accounting for goods, and

contravening any provisions of the Act or abetting any such contravention or failing to comply with any of the provisions of the Act. Notice u/s 124

may be for imposition of penalty for the above reasons and purposes or for confiscating any goods for the above reasons and purposes. In a given

case when there is a notice for the purpose of confiscation only and not for imposition of any penalty there can be imposition of fine in lieu of

confiscation as provided under Sec. 125 of the Act. This must mean that when fine is imposed in lieu of confiscation the goods are confiscated and

the officer who decided to impose fine in lieu of confiscation has given the goods to the owner of the goods or where such owner is not known the

person from whose possession or custody such goods have been seized. Goods thus realised to the owner or person from whose possession or

custody such goods have been seized, are goods confiscated and thus appropriated as confiscated goods.

10. Proceeding further one may find that an order to confiscate any goods or to impose penalty is subject to appeal and appellate authorities are

given wide powers in this behalf to pass such orders as they deem fit confirming, modifying or annulling the decision or order appealed against or

remitting the case back to the authority which passed such order or decision with such directions as the appellate authority may think fit for a fresh

adjudication or decision, as the case may be, after taking additional evidence, if necessary. Besides such provisions for appeals in Chapter XV

there are other provisions giving powers of revision to the Collector of Customs or the Board as well as to the Central Government and a

statement of case to High Court and to the Supreme Court in certain cases as well as how the case will be heard by the High Court and that, the

decision of the High Court shall be subject to appeal to Supreme Court. For our purpose, however, what is relevant is to notice that there is

nothing in the language of Section 124 of the Act to indicate that once a notice for the purpose of confiscation of any goods is issued there cannot

be any other notice u/s 124 for imposing penalty on any person for violations attracting penalties. True, any notice u/s 124 shall be for the specific purpose of making an order of confiscation of goods or imposition of any penalty under Chapter XIV of the Act but there can be more than one reason or ground for confiscation of goods for improperly importing goods and similarly for improperly exporting goods. There can be action for concealing smuggled goods, goods mixed-up with other goods in such manner that the smuggled goods cannot be separated from such other goods, or smuggled goods sold to another person. In such cases also there can be a notice u/s 124 for the purpose of confiscation of goods besides notice for imposition of penalty for not accounting for goods or for contravention, etc. of the provisions of the Act. Chapter XVI deals with offences and prosecutions giving a further clue to the scope of the enquiry under Sections 107 and 108 of the Act. There may not be a ground found for a notice u/s 124 in a given case yet there may be sufficient materials for action for punishment under Sections 132, 133, 134, 135 and 135A of the Act on the basis of what is found by the proper officer of customs during the course of enquiry in connection with smuggling of any goods.

11. From the above thus it is possible to hold that only because a notice u/s 124 has been issued on certain grounds for confiscation of the goods

or for imposing any penalty on any person it will not be correct to say that there shall be no further enquiry u/s 107 or Section 108 of the Act.

12. The power to hold enquiry, as we have found, is founded on the suspicion that certain persons are engaged in smuggling. It is wide to cover all

situations and circumstances, but wider the power the greater the responsibility of the officer holding the enquiry. It will be again only spelling out

what may follow an order u/s 124 which order may be for confiscating any goods and imposing any penalty on any person engaged in smuggling of

goods or only for confiscating the goods without any penalty or only penalty without an order for confiscating the goods. The notice accordingly

may be for confiscating the goods only and not for imposing any penalty or for both confiscating the goods as well as imposing the penalty or for

imposing penalty only and not confiscating the goods. When confiscation of goods is ordered or in lieu of confiscation fine is imposed and goods

are given to the owner or where such owner is not known the person from whose possession or custody such goods have been seized it is obvious

that goods are fully appropriated after confiscation and there are no goods which are liable to confiscation any more available. There cannot

therefore be a second action for confiscation or the goods which had already been confiscated. But still, after confiscation of the goods if anything

is left for imposition of penalty, there is no reason why a fresh notice cannot issue u/s 124 of the Act.

13. On analysis of the relevant provisions of law thus we can safely sum up as follows :

(1) Any officer of customs empowered by general or special order of the Collector of Customs during the course of any enquiry in connection with

smuggling of any goods, can require any person to produce or deliver a thing relevant to the enquiry and examine any person acquainted with the

facts and circumstances of the case but any Gazetted Officer of Customs alone shall have the power to summon any person whose attendance is

necessary either to give any evidence or to produce a document or any other thing in any enquiry which such officer is making in connection with

smuggling of any goods. This enquiry is preliminary to an enquiry u/s 124 of the Act before making any order to confiscate the goods under

Sections 111, 113, 115, 118, 119, 120 and 121 of the Act or to impose any penalty on any person under Sections 112, 114, 116 and 117 of the

Act and also with respect to offences punishable under Sections 132 to 135 and 135A thereof.

(2) The power to hold enquiry under Sections 107 and 108 of the Act shall be available to the proper officer so long as he has reason to believe

that any person has secreted about his person any goods liable to confiscation or any documents relating thereto or secreted in any place any

goods liable to confiscation or any documents or things which in his opinion will be used for or relevant to any proceedings under the Act or that

any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the

smuggling of any goods or in the carriage of any goods, which have been smuggled. The power to hold enquiry under Sections 107 and 108 shall

not come to an end only with the seizure of goods, documents and things, but shall continue until appropriate action to confiscate the goods, to

impose penalty on any person engaged in the smuggling of goods or to prosecute for the offences, are concluded in accordance with law.

(3) The reason to believe that any person has secreted about his person or in any place or used any aircraft, vehicle or animal or any vessel for

smuggling of any goods, etc. however, may not come to an end with the confiscation of the goods found smuggled. Such belief may be founded on

the facts revealed subsequent to the confiscation that any person has done acts attracting the provisions for confiscation of goods or for imposition

of penalty or for otherwise prosecution and punishment. If the goods are already confiscated there may not be any use of a new ground for

confiscation but such new ground can be used for the purpose of penalty and prosecution for punishment for acts attracting such of the provisions

of the Act which speak of imposition of penalty and punishment.

14. Adverting to the facts of the instant case while there may be something in the conduct of the respondents that appeared to the Court not

warranted on the facts of the case, for which reason the Court ordered for release of the goods on certain conditions, such release of the goods

under the orders of the Court, however, was not enough to take away the jurisdiction of the proper officer to initiate appropriate action and if

goods were released on conditions and are found not available for confiscation, for that reason to seek confiscation of the sale proceeds of

smuggled goods (Section 121 of the Act). The last consignment it appears, however, has been subjected to notice under Sec. 124 of the Act,

confiscation and some penalty, but option has been exercised to release the goods on payment of fine in lieu of confiscation. The impugned notice

under Sec. 108 of the Act reads as follows :

...Whereas I, R. Mohandoss, Assistant Director, Directorate of Revenue Intelligence, Madras, am making enquiries in connection with

investigation into alleged evasion of custom duty on the import of Lupofresh Brewery HOP Extract Pellets in the name of M/s. Integrated Exports

M/s. Trio Imports and Exports (P) Ltd. and of Arasan Industries and cleared through Madras Air Cargo and Trivandrum Airport.

And whereas, I consider your attendance necessary to :

(a) Give evidence and

(b) produce documents or thing(s) of the following description in your possession

or powers :-

All documents relating to import of said consignment and sales thereof available with you.

Now therefore, in exercise of powers vested in me u/s 108 of the Customs Act, 1962, I do hereby summon you to appear me (sic) in person in

the Office of the Deputy Director, Directorate of Revenue Intelligence, 14, Gopalakrishna Iyer Road, T. Nagar, Madras-600 017 on 20-11-

1991 at 10.00 a.m./p.m. for the purpose hereinbefore mentioned.

You are not to leave this office without leave, and if the case is adjourned, without ascertaining the date of adjournment.

Non-compliance with these summons is an offence under Sections 174 and 175 of the Indian Penal Code.

You are informed that giving false evidence in this proceedings is an offence punishable u/s 193 of the Indian Penal Code, 1860....

15. This notice is clearly with respect to the alleged evasion of customs duty on the import of Lupofresh Brewery HOP extract Pellets in the name

of M/s. Integrated Exports, M/s. Trio Imports and Exports (P) Ltd. and of Arasan Industries and cleared through Madras Air Cargo and

Trivandrum Airport, a comprehensive notice relating to the import of goods which were ordered to be released to the writ petitioner/respondent

herein by this Court in several writ proceedings as well as one which ended with the order of confiscation and penalty (fine in lieu of confiscation).

16. During the pendency of this appeal, however, the enquiry has been completed. The impugned notice has exhausted its purpose. All that needs

a clarification by us is that in the case in which goods have been released under orders of this Court there is still a possibility of confiscation of sale

proceeds thereof but in the case in which goods have been released on payment of fine in lieu of confiscation it is not permissible. If any other

action is possible on the basis of the materials collected in course of the enquiry it is obvious that the appellants/respondents are competent to take

such materials to the appropriate forum for appropriate action. It is stated, however, that the writ petitioner/respondent has filed an appeal against

the order passed after the notice u/s 124 of the Act. It is also stated that the department has brought some additional grounds and additional

evidence before the Appellate Tribunal. The Tribunal's power in this behalf is not

in dispute. It will be pre-judging if we say one way or the other how the appellate Tribunal shall react to such materials.

17. Since we have found that the notice has exhausted its purpose no specific direction in this behalf is necessary. In view of what we have found above, however, the judgment of the learned single Judge shall be deemed to be set aside in so far as he has held that the notice under Sec. 108 of the Act is without jurisdiction. The appeal is allowed to the extent indicated above. No costs.