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May 4.

EAST INDIA COMMERCIAL CO., LTD., CALCUTTA AND ANOTHER

v.

THE COLLECTOR OF CUSTOMS, CALCUTTA

(A. K. SARKAR, K. SUBBA RAO and J. R. MUDHOLKAR, JJ.)

Import—Law enabling Government to issue notifications prohibiting or restricting Import—Import licence—Breach of conditions—If amounts to import without licence—Law declared by High Court—If binding on authorities or tribunals under its superintendence—Sea Customs Act, 1878 (8 of 1878), ss. 19, 167(8)—Imports and Exports (Control) Act, 1947 (18 of 1947), ss. 3, 5—Constitution of India, Arts. 226, 227.

On October 8, 1948, the appellant company was granted a licence to import from the U. S. A. a large quantity of electrical instruments. The licence was issued subject to the condition that the goods would be utilised only for consumption as raw material or accessories in the licence holder's factory and that no portion thereof would be sold to any party. After the goods arrived in India in February-March, 1949, the company took delivery of them on payment of customs duty. On information alleged to have been received by the authorities concerned that the goods were being sold in the market in breach of the conditions of the licence, the Police, after obtaining a search warrant from the magistrate seized a large stock of the goods from the godown of the appellant. On January 12, 1951, the customs authorities filed a complaint before the Magistrate under s. 5 of the Imports and Exports (Control) Act, 1947, against the second appellant, who was a director of the company, and others, on the allegation that the accused persons had, in violation of the conditions of the licence, disposed of portions of the goods covered by it. The Magistrate discharged the accused and his order was confirmed by the High Court on March 3, 1955, on the ground that s. 5 of the Act penalised only a contravention of an order made or deemed to have been made under the said Act, but did not penalise the contravention of the conditions of licence issued under the Act or issued under a statutory order made under the Act. On January 16, 1953, the High Court made an order directing the seized goods to be sold and the sale proceeds kept with the Chief Presidency Magistrate. On August 28,

1955, the Collector Customs served a notice on the appellants under s. 167(8) of the Sea Customs Act, 1878, read with s. 3 (2) of the Imports and Exports (Control) Act, 1947 to show cause why the moneys lying with the Chief Presidency Magistrate representing the imported goods should not be confiscated and also why penalty should not be imposed on them, inasmuch as they had infringed the conditions of the licence issued to them by selling a portion of the goods imported to others. The appellants filed an application under Art. 226 of the Constitution of India before the High Court of Calcutta praying for a writ of *prohibition* restraining the respondent from proceeding with the enquiry on the ground that it was without jurisidiction.

Held, (*Per* Subba Rao and Mudholkar, JJ., Sarkar, J., dissenting), that : (1) that the application under Art. 226 of the Constitution was maintainable, because, if on a true construction of the provisions of law under which the notice was issued, the respondent had no jurisdiction to initiate proceedings in respect of the acts alleged to have been done by the appellants, the respondent could be prohibited from proceeding with the same.

(2) under s. 167(8) of the Sea Customs Act, 1878, read with s.3(2) of the Imports and Exports (Control) Act, 1947, only the goods imported in contravention of an order under the latter Act were liable to be confiscated, but the section did not expressly or by necessarly implication empower the authority concerned to consficate the goods imported under a valid licence on the ground that a condition of the licence not imposed by the order was infringed or violated. The infringement of a condition in the licence was not an infringement of the order and did not, therefore, attract s.167(8) of the Sea Customs Act.

(3) public notices issued by the Government of India governing the issue of import licences were not orders issued under s. 3 of the Imports and Exports (Control) Act.

(4) in the present case, as the goods were imported under a valid licence they could not be considered as goods either prohibited or restricted within the meaning of s. 167 (8) of the Sea Customs Act and, therefore, the Collector of Customs had no jurisdiction to proceed with the enquiry under that section.

Per Subba Rao and Mudholkar, JJ.—The law declared by the highest Court in the State was binding on authorities

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or tribunals under its superintendence and that they could not ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. Consequently, the High Court of Calcutta, having by its order dated March 3, 1955, held that a contravention of a condition imposed by a licence issued under the Act was not an offence under s. 5 of the Act, the notice dated August 28, 1955, signifying the launching of proceedings contrary to the law laid down by the High Court, was invalid.

Per Sarkar, J.—(1) The application under Art. 226 of the Constitution was not maintainable, because the Collector had jurisdiction to decide what was a breach of an order and, therefore, whether the breach of a condition of a licence was breach of an order.

(2) Even assuming that the decision of the High Court dated March 3, 1955, was binding on the Collector, that would not affect his jurisdiction in the present case to decide whether the goods were liable to confiscation.

(3) A breach of a condition of a licence issued under an order made under the Imports and Exports (Control) Act 1947, was a breach of the order itself.

(4) Where after crossing the customs barrier lawfully, goods are disposed of in contravention of a restriction duly imposed, they must be considered to have been imported contrary to the restriction.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 383 of 1960.

Appeal by special leave from the judgment and order dated January 5, 1959, of the Calcutta High Court in Appeal from Original Order No. 54 of 1957.

A.V. Vishvanatha Sastri, E. R. Mayer, Noni Kumar Chakravarti and *B. P. Maheshwari*, for the appellants.

Daulat Ram Prem and *D. Gupta*, for the respondent.

1962. May 4. Sarkar J. delivered his own Judgment and the judgment of Subba Rao and Mudholkar, JJ., was delivered by Subba Rao, J.

SARKAR, J.—The appellants had brought into India from the U.S.A. a large quantity of electrical instruments under a licence. The respondent, the Collector of Customs, Calcutta, started proceedings for confiscation of these goods under s.167(8) of the Sea Customs Act, 1878. The appellants contend that the proceedings are entirely without jurisdiction as the Collector can confiscate only when there is an import in contravention of an order prohibiting or restricting it and in the present case the Collector was proceeding to confiscate on the ground that a condition of the licence under which the goods had been imported had been disobeyed. The appellants, therefore, ask for a writ of prohibition directing the Collector to stop the proceedings. The question is, has the Collector jurisdiction to adjudicate whether the goods are liable to be confiscated? The decision of that question, however, depends on certain statutory provisions and the fact of the case to which, therefore, I shall immediately turn.

Sub-section (1) of s. 3 of the Import and Exports (Control) Act, 1947, provides that the Government may by order prohibit, restrict or otherwise control the import of goods. By Notification No. 23-I.T.C./43 issued under r. 84 of the Defence of India Rules which by virtue of s. 4 of the Act of 1947 is to be deemed to have been issued under that Act, it was ordered that no electrical instrument could be brought into India except under a licence. By another order made under s. 3 of the Act and contained in Notification No. 2-ITC/48, dated March 6, 1948, it was provided that the licence to import electrical instruments might be issued suject to the condition that the goods would not be disposed of or otherwise dealt with without the written permission of the licensing authority.

The first appellant is a company and the second appellant, one of its directors. On October 8,

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1948, a licence was granted to the appellant to import from the U.S.A. a large quantity of electrical instruments, namely fluorescent tubes and fluorescent fixtures. In the application for the licence it was stated that the goods were not required for sale but for modernising the lighting system of the appellant's factory at Ellore in Madras. The licence was issued subject to the condition that the goods would be utilised only for consumption as raw material or accessories in the licence holder's factory and that no portion thereof would be sold to any party.

The goods duly arrived in India and were cleared out of the customs sometime about the end of February, 1949. Soon thereafter, the authorities concerned are said to have got information that the goods were being sold in the market in breach of the condition of the licence. Thereupon the police took steps and after obtaining a search warrant from a Magistrate in Calcutta on August 12, 1949, seized a large stock of the goods from the godown of the appellents.

Thereafter on January 12, 1951, two proceedings were started. One of them was a prosecution of various officers of the appellant company including the second appellant under s. 420 read with s. 120 of the Indian Penal Code on the allegation that the licence had been obtained on false and fraudulent representations as there was no intention at any time to use the goods for any factory. After certain proceedings to which it is unnecessary to refer, the accused persons were discharged by a Presidency Magistrate of Calcutta on July 27, 1953, under s. 253 of the Code of Criminal Procedure and the prosecution under ss. 420 and 120B of the Penal Code came to an end. The learned Magistrate held that it had not been proved that the licensing authority had been deceived by any representation of the accused officers of the company nor that "right

from the time of applying for the licence, the intention was to sell the goods or part thereof".

The other proceeding was a prosecution of the second appellant and another person under s. 5 of the Act of 1947. That section provides that "if any person contravenes any order...under this Act, he shall...be punishable with imprisonment...". It was alleged that the accused persons had in violation of the conditions of the licence disposed of portions the goods covered by it and, therefore, committed an offence under s. 5 of the Act of 1947. This proceeding resulted in a acquittal by the trial Court which was confirmed by the High Court at Calcutta on March 3, 1955. Sen J., who delivered the judgment of the High Court said that it was difficult to hold that a condition of the licence amounted to an order under the Act and unless the penal section included the contravention of the condition as an offence it could not be held that such a contravention amounted to an offence under the section.

While these proceedings were pending an order was made by the High Court on January 16, 1953, directing the seized goods to be sold and the sale proceeds kept with the Chief Presidency Magistrate, Calcutta. Pursuant to this order the goods were sold for a sum of Rs. 4,15,000 and the sale proceeds have since been lying with the Chief Presidency Magistrate.

After the aforesaid proceedings had come to an end, the Collector of Customs, Calcutta on August 28, 1955, served a notice on the appellant to show cause why the moneys lying with the Chief presidency Magistrate representing the imported goods should not be confiscated under s. 167(8) of the Sea Customs Act read with s. 3(2) of the Act of 1947 and why further penalty should not be imposed on them under these provisions. It is this notice which gave rise to the proceedings with which we

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are concerned. The notice stated that a prohibition on the import of the goods except under a special licence and subject to the conditions stated in it was imposed under s. 3(1) of the Act of 1947 and that by virtue of this prohibition the importation of the goods would be deemed to be illegal unless "(1) at the time of importation of goods were covered by a valid special licence which had not been caused to be issued by fraudulent misrepresentation, (2) after importation the goods or any part of them were not sold or permitted to be utilised by any other party, except the importers for consumption as raw material." It also stated that investigation had revealed that portion of the goods were sold by the appellants to other people.

After receipt of the notice the appellants moved the High Court at Calcutta under Art. 226 of the Constitution for a writ of prohibition prohibiting the respondent, the Collector of Customs, Calcutta, from taking any proceeding pursuant to the notice under ss. 167 and 182 of the Sea Customs Act against the appellants. The application was first heard by Sinha, J., and was dismissed. An appeal by the appellants to an appellate bench of the High Court also failed. The appellants have now approached this Court in further appeal by special leave.

Sub-section (2) of s. 3 of the Act of 1947 provides that "all goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under s. 19 of the Sea Customs Act, 1878 and all the provisions of that Act shall have effect accordingly". Section 19 of the Sea Customs Act is contained in Chapter IV of that Act. Section 167(8) of the Sea Customs Act states the "If any goods, the importation or exportation

of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction ... such goods shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty". Section 182 of this Act authorises various Customs Officers including a Customs Collector to adjudicate on questions of confiscation and penalty under s. 167(8).

As earlier stated the question is one of jurisdiction. The contention of learned conusel for the appellant is that under s. 167(8) of the Sea Customs Act read with s. 182 of that Act under which the Collector of Customs is proceeding, he has jurisdiction only to decide whether goods have been imported contrary to the prohibition or restriction imposed by an order made under s. 3(1) of the Act of 1947 but he has no jurisdiction under these sections to decide any question of confication of goods for breach of a condition of a licence issued under such an order. It is said that it appeared from the notice served by the Collector that he was proceeding to decide whether the goods were liable to confiscation because they had been disposed of in breach of the condition of the licence under which they had been imported which he has no jurisdiction to do and hence the appellants were entitled to a writ of prohibition which they sought. For the purpose of this argument the appellants proceed on the assumption that there has been a breach of the condition but this they do not, of course, admit.

The basis of the appellant's contention is the proposition that a breach of the conditions of a licence is not a breach of the order under which the licence was granted and the condition imposed and that no offence under s. 167(8) of the Sea Customs Act is committed if a condition of the

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licence is contravened. In my view this proposition is not well founded. But assume it is correct. Even so it seems to me that there is no lack of jurisdiction in the Collector in the present case. He has admittedly jurisdiction to decide whether there has been a breach of an order. It follows that he has jurisdiction to decide what is a breach of an order and, therefore, whether the breach of a condition of a licence is breach of an order. To say that the breach of a condition is not a breach of an order is only to set up a defence that the goods cannot be confiscated for such a breach. Such a contention does not oust the jurisdiction of the Collector to decide whether the breach of a condition is breach of an order. If the Collector decides that the breach of a condition is a breach of an order, his decision, on the assumption that I have made, would be wrong but it would not be a decision made without jurisdiction. This is the view which all the learned Judges of the High Court took and it seems to me to be the correct view.

Further I think in the present case one of the allegations in the notice is that the goods had been imported without a licence and therefore in direct violation of an order made under s. 3(1) of the Act of 1947. Clearly, the Collector has jurisdiction to decide the question raised by such an allegation. Now the notice served by the Collector on the appellants contains a statement that an importation of goods would be illegal unless it was covered by a licence which has not been procured by fraudulent misrepresentation and that in the present case the licence had been obtained by fraudulent misrepresentation. The notice hence alleges that the goods had been imported really without a licence, that is, in breach of an order. Even if it be assumed, as the appellants contend that an importation under a licence fraudulently

procured is not an importation without a licence, that would only show that there has been no importation without a licence, that is, in breach of an order, but it would not deprive the Collector of his jurisdiction to decide that question. Likewise the fact that a Magistrate has decided that the licensing authority had not been deceived by the appellants in the matter of the issue of the licence which, if binding on the Collector, would only show that the licence had not been fraudulently procured and cannot affect the Collector's jurisdiction in any way.

It is also said that the decision of a High Court on a point of law is binding on all inferior Tribunals within its territorial jurisdiction. It is, therefore, contended that the Collector is bound by the decision of Sen. J., to which I have earlier referred, that the breach of a condition of a licence is not a breach of the order under which the licence was issued and the condition imposed. As at present advised I am not prepared to subscribe to the view that the decision of a High Court is so binding. But it seems to me that the question does not arise, for even if the decision of the High Court was binding on the Collector, that would not affect his jurisdiction. All that it would establish is that the Collector would have, while exercising his jurisdiction, to hold that the breach of a condition of the licence is not a breach of an order. Its only effect would be that the appellants would not have to establish independently as a proposition of law that a breach of a condition of a licence is not the breach of an order under which it had been issued but might for that purpose rely on the judgment of Sen, J.

I think, therefore, that the Collector has jurisdiction in this case to decide whether the goods were liable to confiscation. If he has this jurisdiction, he has clearly also the jurisdiction to

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decide whether the appellants are liable to have a further pecuniary penalty imposed on them under s. 167(8) of the Sea Customs Act. If this is the correct view, as I think it is, then the appellants are not entitled to the writ.

But suppose I am wrong in what I have said so far about the Collector's jurisdiction. Suppose as the appellants contend, he had in this case no jurisdiction to decide whether the goods are liable to confiscation. That would be because the breach of a condition of a licence is not a breach of an order under which it was issued and the Collector has no jurisdiction to decide whether it is so or not. This is how the appellants themselves put it. It has not been contended, and indeed it cannot be, that if the breach of a condition of a licence is the breach of an order under which it was issued, the Collector would have jurisdiction to decide whether in the present case the goods are liable to confiscation.

I am unable to agree that the breach of a condition of a licence issued under an order made under the Act of 1947 is not a breach of the order. In my view, such a breach is a breach of the order itself. Subsection (1) of s 3 of the Act of 1947 empowers the Government to make orders prohibiting, restricting or otherwise controlling the import of goods. Now clearly, one method of restricting or controlling the import of goods would be to regulate their use or disposition after they had been brought into India. Therefore, under the Act of 1947 the Government has power to restrict or control imports in this way; it could lawfully drovide that the goods would not after import be dealt with in a certain way. It would follow that Notification No. 2-ITC/48 was quite competent and *intra vires* the Act and, therefore, the condition in the licence issued in this case that the goods would not be sold after they had been brought

into India had been legitimately imposed. The contrary has not indeed been seriously contended. When, therefore, such a condition is contravened, it is really the order authorising its imposition that is contravened. That seems to me to be the clear intention of the legislature for otherwise the efficacy of the Act of 1947 would be largely destroyed. That Act was intended to preserve and advance the economy of the State on which the welfare of the people depended. In such a statute large powers have to be given to the Government and they were undoubtedly so given in the present case. The statute clearly intended and it should be so read that these power could be effectively exercised. Therefore the breach of a condition of a licence legitimately imposed in exercise of that power has to be read as a breach of the order by which the power was exercised and the condition imposed. It follows that the Collector has jurisdiction to decide whether there has been a breach of a condition of a licence and whether, therefore confiscation should be ordered under s. 167(8) of the Sea Customs Act and further penalty imposed.

I observed that Sen, J., in dealing with the argument advanced on behalf of the customs authorities that a breach of a condition of a licence imposed under an order issued under the Act would be a breach of that order said that there might be some substance in it in the present case, if notification No. 23-ITC/43 which provided that electrical instrument could not be imported without a licence had itself provided that the licence might impose condition as to how the goods were to be dealt with after they had been brought into India but that that had not been done. I am unable to appreciate this reasoning. Notification No. 23-ITC/43 has to be read along with Notification No. 2-ITC/48. The latter provided that a licence to import might be issued subject to a condition like

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the one which we have in the present case. The licence that was issued in this case was subject to these notifications and was issued under both of them. The position, therefore, is the same as if one order had provided that the goods could not be imported except under a licence which could impose the condition. I am unable to agree with Sen, J., and also Sinha, J., who expressed the same view without giving any reason to support it.

I find that the view that I have taken is supported by authority. *Willingale* v. *Norris* (1) is a case fully in point and is a much stronger case That case dealt with a prosecution under s. 19 of the London Hackney Carriages Act, 1853, which provided that "for every offence against the provisions of this Act for which no special penalty is hereinbefore appointed the offender shall be liable to a penalty not exceeding forty shillings." A cab driver was prosecuted under the section for breach of a regulation made under s. 4 of the Hackney Carriages Act, 1850. Section 21 of the Hackney Carriages Act, 1853, provided that the Acts of 1850 and 1853 were to be considered as one Act. The driver was held liable to be penalised under s. 19 of the Act of 1953. It was observed at p. 66.

> "How are the words 'against the provisions of the Act' to be read ? The two statutes are to be construed as one. In my opinion, to break the regulations made under the authority of a statute is to break the statute itself, and therefore s. 19 of the London Hackney Carriages Act, 1823 must be read thus: 'For every offence against the regulations promulgated under these two Act, which are to be read as one, a penalty not exceeding forty shillings may be imposed'."

(1) [1909] 1 K.B. 57, 66.

That case received the full approval of the House of Lords in *Wicks* v. *Director of Public Prosecutions* (1) where Viscount Simon said,

> "There is, of course, no doubt that when a statute like the Emergency Powers (Defence) Act, 1939, enables an authority to make regulations, a regulation which is validly made under the Act, i. e., which is *intra vires* of the regulation-making authority, should be regarded as though it were itself an enactment."

I think these observations fully apply to an Act like the Imports and Exports (Control) Act. Then I find that in our country too the same view has been taken. Thus in *Emperor* v. *Abdul Hamid* (2), Mullick, J., observed,

> "When a notification is issued by an executive authority in exercise of a power conferred by statue, that notification is as much a part of the law as if it had been incorporated within the body of the statute at the time of its enactment."

It has, therefore, to be held that where an order passed under the Act authorises the impostion of a condition a breach of the condition would be punishable as a breach of the order under the Act.

I might now notice another argument. It was this: Under s. 167 (8) of the Sea Customs Act, it was the import in contravention of the restriction that was an offence. The contention was that once the goods had been imported validly, that is to say, once they had been allowed to cross the Customs barrier under a valid licence, there could not be an import contrary to any prohibtion or restriction. It seems to me that this is taking too narrow a view of s. 167 (8). Suppose the order under s. 3 (1) of the Imports and Exports (Control) Act had itself

(1) [1947] A.C. 362, 365. (2) A.I.R. 1923 Pat. 1.

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said that goods imported shall not be sold in the market without the permission of a certain authority and the goods imported were notwithstanding this sold without such permission. It would to my mind make nonsense of s. 167 (8) if it were to be said even in such a case that the goods had not been imported in contravention of the restriction imposed by a legitimate order duly made. I have earlier stated that the coditions in the licence have to be treated as conditions contained in an order issued under the Act of 1947 itself. Therefore, the breach of such a condition would amount to a contravention of an order restricting the import of goods. Such a contravention is clearly punishable under s. 167 (8). The word "import" has not been defined in the Sea Customs Act. In order that the Act of 1947 does not become infructuous, which result the legislature could not have intended, it must be held that where after crossing the Customs barrier lawfully, goods are disposed of in contravention of a restriction duly imposed, they have been imported contrary to the restriction.

It remains only to consider the argument that under the Sea Customs Act only the goods imported can be confiscated and therefore, the money now lying with the Presidency Magistrate cannot be confiscated. I think this argument is wholly untenable. The money represents the goods. The order for sale was made by the High Court with the consent of both the parties because the goods were deteriorating. Therefore there can be no doubt that the sale proceeds of the goods which could be confiscated, can also be confiscated.

I think that the appeal fails and should be dismissed.

Subba Rao J.

SUBBA RAO, J.—This appeal by special leave is directed against the judgment of a division Bench of the High Court at Calcutta dated January

5, 1957, confirming the order of a single Judge of that Court dismissing the petition filed by the appellants under Art. 226 of the Constitution.

The dispute which culminated in this appeal has had a tortuous career and had its origin in the year 1948. To appreciate the contentions of the parties it is necessary to survey broadly the events covering a long period. The appellants are Messrs. East India Commercial Co., Ltd., a company having its registered office in Calcutta and the Director of that Company. On September 27, 1948, the appellant-Company filed an application with the Chief Controller of Imports, New Delhi, for the grant of a licence to import 20, 000 fluorescent tubes and 2,000 fluorescent fixtures from the United States of America. The application was accompanied by a covering letter. In the application it was mentioned that the goods were required for the Company's own use as industrial raw material or accessories; but in the covering letter it was stated that the goods were required primarily for their mills at Ellore in the Madras Presidency where they where planning to arrange for an up-to-date lighting system. The Chief Contoller of Imports issued a special licence to the appellants on October 8, 1948. The licence granted was in respect of fluorescent tubes and fixtures of the approximate CIF value of Rs. 3,33,333 equivalent to $100,000 and the shipment was to be made within one year from the date of issue of the licence. The licence issued had a rubber stamp which ran thus:

> "This licence is issued subject to the condition that the goods will be utilised only for consumption as raw material or accessories in the licence holder's factory and that no portion thereof will be sold to any party."

The licence did not impose any restriction as regards the number of tubes and fixtures to be

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imported, but a ceiling was placed on the value of the goods as stated supra. Between March 21, 1949, and March 26, 1949, the appellants took delivery of the said tubes and fixtures of the specified value and cleared them on payment of customs duty. The number of tubes and fixtures imported was larger than that mentioned in the application, but it is common case that the value did not exceed the ceiling fixed under the licence. On information alleged to have been received by the Chief controller of imports that the appellant-Company was selling the goods to various parties, the matter was placed before the Special Police Establishment Government, of India, New Delhi. On August 31, 1949, the said Police establishment obtained a search warrant from the Chief presidency Magistrate, Calcutta, and seized, among others, from the appellants' godown a large stock of fluorescent tubes and fixtures, and left them with the appellants on their executing a bond. It may be mentioned at this stage that the value of the stock imported was about Rs. 4,66,000 i. e., the purchase price of Rs. 3,33,333, together with the customs duty paid on the said goods. In the sale subsequently made at the instance of the High Court, the stock seized fetched a sum of Rs. 4,15,000. On December 9, 1950, the appellants filed an application before the Chief Presidency Magistrate, Calcutta, for the return of the seized goods, whereupon the learned Magistrate called for a report from the Special Police Establishment, New Delhi. On January 9 12, 1951, the said Police Establishment submitted a Challan against appellant No. 2 and others for alleged offences under s. 420/120B of the Indian Penal Code and the same was registered as Case No. C. 121 of 1951. On the same day, the Assistant Collector of Customs filed a complaint before the said Magistrate against appellant No. 2 and others for committing an

offence under s. 5 of the Imports and Exports (Control) Act, 1947 (hereinafter called the Act, for having sold a portion of the stock of fluorescent tubes and fixtures in contravention of the terms of the licence and the same was registered as Case No. C. 120 of 1951. On June 28, 1951, the learned Presidency Magistrate discharged all the accused in both the cases under s. 253 of the Code of Criminal Procedure after holding that no *prima facie* case had been made out against any of them. Two revisions were filed against that order in the High Court—one by the State and the other by the Customs Authorities. Chunder, J., who heard the revisions, set aside the orders of discharge made by the Presidency Magistrate and remanded the cases for fresh disposal. On June 8, 1952, the appellants filed an application before the Chief presidency Magistrate for the release of seized goods on the ground that they were deteriorating, but that was dismissed. But in a revision against that order, the High Court on January 16, 1953, directed the goods to be sold by the Presidency Magistrate and the sale proceeds to be kept in his custody. The goods were sold accordingly and they fetched a sum of Rs. 4,15,000 and the money has since then been in the custody of the said court. After remand, the Presidency Magistrate took the evidence of innumerable witnesses for the prosecution and for the defence, considered a number of documents and discharged appellant No. 2 in both the cases. He held that appellant No. 2 was neither guilty of the offence under s. 420 of the Indian Penal Code, as, in his view, there was no fraudulent or dishonest inducement at the time the application for licence was made, nor of any contravention of the provisions of the Act. Though he discharged appellant No. 2. he did not make over the sale proceeds to him. though the said appellant filed an application for payment of the same: the learned Magistrate adjourned the said application

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till August 29, 1953. The Assistant Collector of Customs filed a revision to the High Court against the order of discharge of appellant No. 2 passed in case No. C. 120 of 1951 and the same was registered as Criminal Revision No. 1124 of 1953; he also obtained an interim stay of the return of the money to appellant No. 2. Bnt no revision was filed against the order of the Presidency Magistrate discharging appellant No- 2 of the offence under s. 420, Indian Penal Code. The Criminal Revision (No. 1124 of 1953) came up before a division Bench of the Calcutta High Court, Consisting of Mitter and Sen, JJ., and the learned Judges, by their judgment dated March 3, 1955, dismissed the revision holding that there had been no contravention of the order made or deemed to be made under the Act. The learned Judges construed s. 5 of the Act and held that the said section penalised only a contravention of an order made or deemed to have been made under the said Act, but did not penalise the contravention of the conditions of licence issued under the Act or issued under a statutory order made under that Act, and dismissed the revision. On March 24, 1955, the appellants filed an application before the Chief Presidency Magistrate for making over the sale proceeds to them; and the said Magistrate issued a notice to the Assistant Collector of Customs and also to the Delhi Special Police Establishment to show cause on or before April 19, 1955. On April 19, 1955, the Superintendent, Special Police Establishment, did not show cause, but the Assistant Collector of Customs asked for an adjournment and the same was granted till May 7, 1955; and again on May 7, 1955, he took another adjournment of the hearing of the application on the ground that departmental proceedings were pending against the appellants. On May 9, 1955, the appellants filed a revision in the High Court, presumably, against the order adjourning the application and the said revision was numbered as Revision Case No. 582 of 1955 and it was adjourned from time to time at

the request of the respondent. On May 28, 1955, the respondent started a proceeding purported to be under s. 167(8) of the Sea Customs Act, read with s. 3(2) of the Act and called upon the appellants by notice to show cause within seven days from the date thereof why the said proceeds, namely, Rs. 4,15,000 should not be confiscated and also why Penal action should not be taken against them. It was stated in the notice that the special licence was issued on the express condition that the goods covered by the said licence should be utilised for consumption as raw material or assessories in the factory of the licence holder and that no part thereof should be sold or permitted to be utilised by any other party, that the appellants sold a portion of the goods imported under the said licence to others in Breach of the said condition and that, as the appellants infringed the said condition, the goods, or the money substituted in its place, were liable to be confiscated. On June 3, 1955, the appellant filed an application in the High Court at Calcutta under Art. 226 of the Constitution for the issue of an appropriate writ, including a writ in the nature of prohibition, against the Collector of Customs from continuing with the proceedings initiated by him. The application, in the first instance, came up before Sinha, J., who by his order dated March 18, 1957, dismissed the application as premature; but, in the course of his judgment, the learned Judge agreed with the earlier division Bench, which disposed of the revision against the order of discharge, that a breach of a condition alone would not be a violation of the order passed by the Central Government, but he observed that the learned Judges on the earlier occasion did not decide the question as to what was permitted to be imported: he drew a distinction between a licensee who imported goods perfectly *bona fide* for his own consumption but

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who later changed his mind and a licensee who, even from the inception, knew that he did not require the goods for his own use, but entered into the transaction fraudulently; in the second situation, he learned Judge proceeded to state, the goods imported were never goods required for the petitioner's company for its own use. The appellants preferred an appeal to a division Bench of of the High Court, consisting of Das Gupta, C.J., and Bachhwat, J. The learned Judges dismissed the appeal solely on the ground that it was within the jurisdiction of the Collector of Customs to ascertain whether there had been a contravention of the relevant provisions of the Act as would entail an order of confiscation and that, therefore, Sinha, J., was right in refusing to issue a writ; but they made it clear that all the questions raised in the case were left open for decision by the Chief Controller of Imports. Hence the present appeal.

Mr. Vishwanatha Sastri, learned counsel for the appellants, raised before us the following points: (1) The Assistant Collector of Customs has no jurisdiction to initiate proceedings under s. 167(8) of the Sea Customs Act, 1878, read with s. 3(2) of the Imports and Exports (Control) Act, 1947, in the circumstances of the case, and therefore, the High Court should have issued an order in the nature of a writ of prohibition restraining him from proceeding with the said inquiry. (2) A division Bench of the High Court of Calcutta in Criminal Revision No. 1124 of 1953, to which the respondent was a party, declared the law on the construction of the provisions of s.5 of the Act, read with s.3(2) thereof, viz., that it penalizes only a contravention of an order made or deemed to have been made under the Act and not a contravention of a condition imposed by the licence issued under the Act or issued under a statutory order made under the Act; and

after that declaration, which is binding on all the authorities and tribunals within the territorial jurisdiction of that court, the respondent has no jurisdiction to ignore the said order and proceed with a fresh inquiry in direct contravention of the law so declared. (3) That apart, the proposition so laid down by the said division Bench is sound and, if so, the respondent could not initiate proceedings under s. 167(8) of the Sea Customs Act in respect of a contravention of a condition of the licence, as it is neither a part of an order nor a condition laid down by the Order within the meaning of s. 3 of the Act. (4) The chief Controller of Imports has no jurisdiction to take action under s. 167(8) of the Sea Customs Act on the ground that a condition inserted in a licence is subsequently infringed by an importer, for it is said, the rule only enables the Customs Authorities to confiscate the goods imported without a license whereas in the present case the goods were imported under a valid subsisting licence. (5) Clause (8) of s. 167 of the Sea Customs Act does only authorize the confiscation of goods so imported and not the sale proceeds of the said goods, for the reason that the said money could not conceivably be goods in any sense of the term.

Mr. Prem, learned counsel for the respondent, argued contra. His argument may be summarized thus: (1) The Collector of Customs has jurisdiction to consider under s. 167(8) of the Sea Customs Act whether the goods are imported contrary to the restrictions imposed under the Act, and, therefore, the High Court could not issue a writ of prohibition against the said authority from proceeding with the inquiry. (2) The notice issued is not a statutory notice but is only an intimation to the appellants of the initiation of the proceedings and, therefore, the question of jurisdiction could not be decided on the contents of the said notice. (3) The Customs Authorities have a concurrent jurisdiction with the

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criminal Court to deal with matters entrusted to them under the Acts and, therefore, the findings of a criminal court or even of a High Court on the same or similar matters could not bind them and they could come to a different conclusion of their own both on the question of law as well as on facts from those of criminal courts, though the decision of the High Court may have persuasive influence on them. (4) The condition imposed in a licence is under the relevant order issued by the Central Government in exercise of its power under s. 3 of the Act, and, as the appellants infringed that condition, the goods imported are liable to be confiscated under s.167(8) of the Sea Customs Act, read with s.3(2) of the Act. (5) As the appellants imported goods on a misrepresentation, in law the import must be deemed to be one made without a licence and therefore the goods imported are goods either prohibited or restricted within the meaning of s. 167(8) of the Sea Customs Act. (6) The Customs Collector has jurisdiction to confiscate goods after they have left the customs barrier, and, as the money in deposit in court is the proceeds of the sale directed to be held by the High Court in the interest of both the parties, it represents the said goods, and, in any view, as the order of the High Court is binding on both the parties, it is not open to the appellants to plead that the goods are not represented by the said money.

The first question is whether the petition filed by the appellants under Art. 226 of the Constitution for the issue of a writ in the nature of prohibition is maintainable in the circumstances of the case. A writ of prohibition is an order directed to an inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or

contrary to the laws of the land, statutory or otherwise: *Mackonochie* v. *Lord Penzance*(1) and Halsbury's Laws of England, 3rd Edn: Vol. 11, p. 52.

The argument of learned counsel for the appellants is that on the face of the notice dated May 28, 1955, issued by the respondent, the latter has no jurisdiction to initiate proceedings under s. 167(8) of the Sea Customs Act, read with s.3(2) of the Act. Learned counsel for the respondent argues that the said notice is not a statutory notice but only a memorandum informally sent to the appellants intimating them that proceedings have been started against them, that the said notice is neither full nor exhaustive and that jurisdictional facts could be ascertained only by the Customs Collector in the course of the said proceedings on full inquiry. We do not see any justification for this argument. The respondent proposed to take action under s. 167(8) of the Sea Customs Act, read with s. 3(2) of the Act. It cannot be denied that the proceedings under the said sections are quasi-judicial in nature. Whether a statute provides for a notice or not, it is incumbent upon the respondent to issue notice to the appellants disclosing the circumstances under which proceedings are sought to be initiated against them. Any proceedings taken without such notice would be against the principles of natural justice. In the present case, in our view, the respondent rightly issued such a notice wherein specific acts constituting contraventions of the provisions of the Acts for which action was to be initiated were clearly mentioned. Assuming that a notice could be laconic, in the present case it was a speaking one clearly specifying the alleged act of contravention. If on a reading of the said notice, it is manifest that on the assumption that the facts alleged or allegations made therein were true, none of the conditions laid down in the specified sections

(1) (1881) 6 App. Cas. 424.

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was contravened, the respondent would have no jurisdiction to initiate proceedings pursuant to that notice. To state it differently, if on a true construction of the provisions of the said two sections the respondent has no jurisdiction to initiate proceedings or make an inquiry under the said sections in respect of certain acts alleged to have been done by the appellants, the respondent can certainly be prohibited from proceeding with the same. We therefore, reject this preliminary contention.

The next question is, what is the true construction of the provisions of the relevant sections? It would be convenient at this stage to read the relevant parts of ss. 3 and 5 of the Act and ss. 19 and 167(8) of the Sea Customs Act.

Imports and Exports (Control) Act, 1947

Section 3. (1) The Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order:—

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

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

(2) All goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under section 19 of the Sea Customs Act, 1878 (VIII of 1878) and

all the provisions of that Act shall have effect accordingly, except that section 183 thereof shall have effect as if for the word "shall" therein the word "may" were substituted.

Section 5. Penalty—If any person contravenes or attempts to contravene, or abets a contravention of any order made or deemed to have been made under this Act, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act, 1878 (VIII of 1878), as applied by sub-section (2) of section 3, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

The Sea Customs Act, 1878.

Section 19. The Central Government may from time to time, by notification in the Official Gazette, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of India across any customs frontier as defined by the Central Government.

Section 167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third

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column of the same with reference to such offences respectively :—

Offences	Section of this Act to which offences has reference.	Penalties
8. If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction.	18 and 19	such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

The essence of the offence is a contravention of any order made or deemed to have been made under the Act. All orders under this Act can only be made by the Central Government in exercise of the power conferred upon it by s. 3 of the Act, and "all orders made under r. 84 of the Defence of India Rules or that rule as continued in force by the Emergency Provisions (Continuance) Ordinance, 1946 (XX of 1946), and in force immediately before the commencement of this Act, shall continue in force and be deemed to have been made under this Act". The contravention of only these two categories of orders attracts the provisions of s. 19 of the Sea

Customs Act. By reason of s. 3(2) of the Act, all goods to which any order under sub-s. (1) of s. 3 applies shall be deemed to be goods of which the import or export has been prohibited under s. 19 of the Sea Customs Act and all the provisions of the Sea Customs Act, with some modifications—with which we are not concerned now—shall apply. This provision in its turn attracts, along with others s. 167 (8) of the Sea Customs Acts, and under that section, read with s. 3(2) of the Act, the goods imported in contravention of an order under the Act shall be liable to be confiscated. But the section does not expressly or by necessary implication empower the authority concerned to confiscate the goods imported under a valid licence on the ground that a condition of the licence not imposed by the order is infringed or violated. If that be the true construction of the said provisions, the question arises whether in the instant case the allegations made in the notice bring the goods imported within the scope of the provisions of s. 167(8) of the Sea Customs Act. We shall now proceed to deal with that question.

As we have already noticed in the earlier stage of the judgment, the notice issued by the respondent charges the appellants thus:

> "One of the conditions of the special licence was that the goods would be utilized for consumption as raw material or accessories in the factory of the licence-holder and no part thereof would be sold to other parties, but in contravention of that condition the appellants sold a part of the goods imported to a third party and as the goods had been caused to be issued by fraudulent misrepresentation, they were liable to be confiscated under s. 167(8) of the Sea Customs Act."

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Section 167 (8) of the Sea Customs Act can be invoked only if an order issued under s. 3 of the Act was infringed during the course of the import or export. The division Bench of the High Court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under s. 5 of the Act. This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Art. 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territoriai jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the sub-ordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefor, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its supreintendence, and that they cannot

ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction.

We shall now proceed to consider the merits. Sub-section (2) of s. 3 of the Act clearly lays down that all goods, to which an order under sub-s. (1) thereof applies, shall be deemed to be goods of which the export or import has been prohibited or restricted under s. 19 of the Sea Customs Act. Therefore, s. 167(8) of the Sea Customs Act can be attracted only if there was a contravention of the order issued under s. 3 of the Act. Does any order so issued by its own force impose such a condition? The Import Trade Control Notification dated July 1, 1943, reads thus:

> The notification of the Government of India in the late Department of Commerce No. 23 ITC/43, dated the Ist July, 1943, incorporating all amendments upto the 25th November, 1951.
>
> In exercise of the powers conferred by sub-rule (3) of rule 84 of the Defence of India Rules the Central Government is pleased .....to prohibit the bringing into British India by sea, land or air from any place outside India of any goods of the descriptions specified in the Schedule hereto annexed except the following, namely:
>
> .....
>
> (xiii) any goods of the descriptions specified in the schedule which are covered by a special licence issued by any officer specially

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authorised in this behalf by the Central Government.

It is not disputed that the goods imported in the present case were specified in the schedule. This order *prima facie* does not impose a condition in the matter of issuing a licence for the specified goods. On March 6, 1948, another notification No. 2-ITC/48 was issued by the Ministry of Commerce. The relevant part of it reads:

> In exercise of the powers conferred by sub-section (1) and sub-section (3) of section 3 of the Imports and Exports (Control) Act, 1947 (XVIII of 1947), the Central Government is pleased to make the following order, namely :—
>
> (a) any officer issuing a licence under clauses (viii) to (xiv) of the Notification of the Government of India in the late Department of Commerce No. 23-ITC/43, dated the Ist July I943, may issue the same subject to one or more of the conditions stated below :
>
> (i) that goods covered by the licence shall not be disposed of or otherwise dealt with without the written permission of the licensing authority or any person duly authorised by it;
>
> .....
>
> (v) that such other conditions may be imposed which the licensing authority considers to be expedient from the administrative point of view and which are not inconsistent with the provisions of the said Act.
>
> (b) Where a licensee is found to have contravened the order or the terms and conditions embodied in or accompanying a licence,

the appropriate licensing authority or the Chief Controller of Imports may notify him that, without prejudice to any penalty to which he may be liable under the Imports and Exports (Control) Act, 1947 (XVIII of 1947), or any other enactment for the time being in force, he shall either permanently or for a specified period be refused any further licence for import of goods.

It will be seen from this order that it does not provide for a condition in the licence that subsequent to the import the goods should not be sold. Condition (v) of cl. (a) only empowers the licensing authority to impose a condition from an administrative point of view. It cannot be suggested that the condition, with which we are now concerned, is a condition imposed from an administrative point of view, but it is a condition which affects the rights of parties. Learned counsel for the respondent argues that a public notice issued by the Government on July 26, 1948, is an order made in exercise of the power conferred on the Central Government under s. 3 of the Act and that the order directs the imposition of a condition not to sell to a third party the goods permitted to be imported and that that condition was contravened. The public notice dated July 26, 1948, was published in the Gazette on July 29, 1948. The relevant part of it reads :

Government of India

MINISTRY OF COMMERCE

PUBLIC NOTICES

New Delhi, the 26th July, 1948

Subject :—Principles governing the issue of import licences for the period July-December, 1948.

No. I (13)-I.T.C./47 (i). The following decisions made by the Government of India

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governing the issue of import licences for goods falling under Parts II to V of the Import Trade Control Schedule for the licencing period July-December, 1948 are hereby published for general information. These decisions do not apply to goods falling under Capital Goods and H.E.P. Licensing procedure which has been prescribed in the Public Notice issued on 10th April, 1948.

Under paragraph 5, importers are requested to study the Appendix carefully and avoid making applications for import licences for articles which will not be licensed; para. 7 prescribes the form of application; para. 8 says that in the case of articles which are subject to overall monetary limits, where goods are raw materials and accessories used in Industrial concerns, applications from actual consumers of goods will receive consideration, and that actual consumers should clearly specify in their application their past and estimated consumption of the article concerned as required in para. 6 of the form of application. Paragraphs 6 to 10 deal with would-be applicants. Paragraph 11 says that no time limit has been fixed for receiving applications from importers who are actual consumers of industrial raw material and accessories and who have imported the commodities concerned during any financial year between 1938-39 and 1947-48 (inclusive) and that it is hoped to deal with these applications chronologically as and when received. Paragraph 13 describes the authorities to whom applications should be made. A perusal of this notice shows that it is intended to give information to the public as regards the procedure to be followed in the matter of filing of applications by different categories of applicants. It not only does not on its face purport to be a statutory order issued under s. 3 of the Act, but also the internal evidence furnished by it clearly shows that it could not be one

under that section. That apart, this order does not amend the previous orders or direct the imposition of a condition on an importer not to sell the goods to a third party or provide for a penalty for doing so.

Learned counsel for the respondent asserts that the said public notice is an order made in exercise of the power conferred on the Central Government under s. 3 (1) of the Act. On the other hand, learned counsel for the appellants contends that public notices are not such orders but only information given to the public for their guidance.

Firstly, the said notice does not purport to have been issued under s. 3 (1) of the Act, whereas the orders referred to earlier, that is, notifications Nos. 23-ITC/43 and 2-ITC/48 and similar others, were issued by the Central Government in exercise of the power conferred on it by sub-r. (3) of r. 84 of the Defence of India Rules or s. 3 (3) of the Act, as the case may be. The Central Government itself makes a clear distinction in the form adopted in issuing the notice. Secondly, while the notifications issued under s. 3 of the Act are described as orders, the notices are described as "public notices"; while the notifications under s. 3 of the Act regulate the rights of parties, the public notices give information to the public regarding the principles governing the issue of import licences for specified periods. It is also clear that the orders issued under s. 3 of the Act, having statutory force, have to be repealed, if the new order in any manner modifies or supersedes the provisions of an earlier order; public notices are issued periodically without repealing or modifying the earlier notices or notifications. For instance, on December 7, 1955, the Central Government in exercise of the power conferred by ss. 3 and 4-A of the Act made an order and under cl. 12 thereof the orders contained in

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Schedule IV were repealed; Schedule IV only mentioned five notifications issued under s. 3 of the Act, but no public notice was included in that list. To put it differently, orders made under s. 3 of the Act have statutory force, whereas public notices are policy statements administratively made by the Government for public information. The foreword to the Import Trade Control Hand-book of Rules and Procedure, 1952, under the signature of the Secretary to the Government of India, in the Ministry of Commerce and Industry brings out this distinction thus :

> "In the past the half-yearly publication on Import Control, popularly known as the "Red Book", has included not only a statement of policy for the ensuing six months but also a reproduction of various notifications relating to Import Control and detailed information on points of procedure".

It is true the Chief Controller made an affidavit in the High Court that the policy-statements are issued under s. 3 of the Act. But, as we have said, that is only on information which has no support either in the form adopted or the practice followed or the matter incorporated in the notifications. We have no hesitation in holding that public notices are not orders issued under s. 3 of the Act.

It follows from the above that the infringement of a condition in the licence not to sell the goods imported to third parties is not an infringement of the order, and, therefore, the said infringement does not attract s. 167 (8) of the Sea Customs Act.

Nor is there any legal basis for the contention that licence obtained by misrepresentation makes the licence *non est*, with the result that the goods should be deemed to have been imported without

licence in contravention of the order issued under s. 3 of the Act so as to bring the case within cl. (8) of s. 167 of the Sea Customs Act. Assuming that the principles of law of contract apply to the issue of a licence under the Act, a licence obtained by fraud is only voidable : it is good till avoided in the manner prescribed by law. On May 1, 1948, the Central Government issued an order in exercise of the power conferred on it by s.3 of the Act to provide for licences obtained by misrepresentation, among others, and it reads:

> "The authorities mentioned in the Schedule hereto annexed may under one or other of the following circumstances cancel licences issued by any officer authorised to do so under clauses (viii) to (xiv) of the notification of the Government of India in the late Department of Commerce, No. 23-ITC/43, dated 1st July 1943, or take such action as is considered necessary to ensure that the same is made ineffective, namely:—
>
> (i) when it is found subsequent to the issue of a licence that the same has been issued inadvertently, irregularly or contrary to rules, fraudulently or through misleading statement on the part of the importer concerned; or
>
> (iii) when it is found that the licensee has not complied with any one or more of the conditions subject to which the licence may have been issued.

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SCHEDULE

Clauses	Licensing Authority	Cancelling authority
Clause (xiii)	Any officer authorised by the Central Government.	Chief Controller of Imports and/or Government of India.

This order, therefore, authorised the Government of India or the Chief Controller of Imports to cancel such licences and make them ineffective. The specified authority has not cancelled the licence issued in this case on the ground that the condition has been infringed. We need not consider the question whether the Chief Controller of Imports or the Government of India, as the case may be, can cancel a licence after the term of the licence has expired, for no such cancellation has been made in this case. In the circumstances, we must hold that when the goods were imported, they were imported under a valid licence and therefore it is not possible to say that the goods imported were those prohibited or restricted by or under Ch. IV of the Act within the meaning of cl. (8) of s. 167 of the Sea Customs Act.

It follows that on the assumption that the allegations made in the notice are true, the tribunal has no jurisdiction to proceed with the inquiry under s. 167(8) of the Sea Customs Act.

Learned counsel for the appellants further contends that s. 167(8) of the Sea Customs Act applies only to an act done before or during the course of an import or export into or out of India in contravention of the prohibition or restrictions

imposed under s.3 of the Act and that, as in the instant case the breach of the condition was committed subsequent to the importation of the concerned goods, the said goods could not be confiscated under the said section. But we do not propose to express our opinion on this question, as it does not arise in view of our findings on other questions raised in the case.

Before closing we may briefly notice one more contention raised by learned counsel for the appellants. It is said that, as the goods imported were converted into money, the Customs Collector has no jurisdiction to confiscate the same and that he can, at the best, only trace the goods in whosesoever hands they may be. We have pointed out that the goods were sold only at the instance of the court in the interest of both the parties, as they were deteriorating. The order is binding on the parties. The sale proceeds are preserved for the benefit of the party who finally succeeds. In the circumstances it is not open to the appellants to argue that money deposited in the court does not represent the goods.

In the result, the order of the High Court is set aside and the appeal is allowed with costs. There will be an order of prohibition restraining the Customs Authority from proceeding with the inquiry under s.167(8) of the Sea Customs Act.

BY COURT: In view of the majority opinion of the Court, the appeal is allowed with costs. There will be an order of prohibition restraining the Customs Authority from proceeding with the enquiry under s. 167(8) of the Sea Customs Act.

Appeal allowed.