CALCUTTA HIGH COURT

C.T.A. Pillai, Complainant

Vs.

H.P. Lohia

Criminal Revn. No. 1124 of 1953

(Mitter and Sen, JJ.)

03.03.1955

JUDGMENT

Sen, J.

1. This revisional application is directed against an order of Sri K. C. Sen, Presidency Magistrate, Calcutta, discharging the accused Hari Prasad Lohia and Manick Chand Lohia in respect of an offence under Section 5, Exports and Imports (Control) Act, 1947. The petitioner C. T. A. Pillai is Assistant Collector of Customs, Calcutta. The accused Hari Prasad Lohia is a Managing Director of a Company styled 'East India Commercial Co. Ltd., with its office at 38 Netaji Subhas Road, Calcutta. The accused Manick Chand Lohia is an employee of Hari Prasad Lohia. The East India Commercial Co. Ltd., has a jute mill at Ellore in Madras State known as Srikrishna Jute Mills.

2. On 27-9-1948, Hari Prasad Lohia as Director of the East India Commercial Co. Ltd., filed an application to the Chief Controller of Imports, New Delhi, for a license for importing 20,000 fluorescent tubes and 2000 fixtures for fluorescent tubes from the United States of America. In the application he specified that the goods were required 'for own use', and not for sale. He was granted a license signed by M. L. Gupta, a licensing officer attached to the office of the Chief Controller of Imports, New Delhi and the license is dated 8-10-1948.

3. In the license granted the following condition was rubber-stamped :

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

This condition was also signed by the licensing officer Mr. M. L. Gupta and there are the words 'for Chief Controller of Imports' below the signature of M. L. Gupta under the stamped condition. After the goods had arrived, report reached the Chief Controller of Imports that the company was violating the condition of the license and was selling the goods to various parties all over India.

The matter was taken up by the Special Police Establishment, Government of India, and the Special Police Establishment submitted a chalan against Hari Prasad Lohia and others. The Assistant Collector of Customs C. T. A. Pillai lodged a petition of complaint against the two accused in respect of the offence under Section 5 of the Imports and Exports (Control) Act, 1947 which appeared to have been committed by them by violation of the condition of the license.

4. The learned Magistrate after examination of 68 witnesses and marking of 243 Exhibits, heard arguments of both the sides on the question whether a prima facie case under Section 5, Imports and Exports (Control) Act, 1947 had been made out. He observed that there was prima facie evidence to show that the accused persons in the name of a bogus Company styled 'the Bengal Electrical Co. Ltd' had sold a portion of the fluorescent tubes and other fixtures to various parties and therefore there was prima facie violation of the condition of the license. The learned Magistrate however held that the accused were not legally liable for the offence under Section 5, Imports and Exports (Control) Act, 1947 because of the following reasons."

(1) The condition that the goods would be utilized for consumption as raw materials or accessories in the license holder's factory and that no portion thereof would be sold to any party, was imposed by an order of the Chief Controller of Imports, New Delhi. The Chief Controller of Imports was purporting to act under clause (a) (v) of the Government Notification No. 2-IT.C/48 of 6-3-1948 which provides "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"; but this delegation of power to the Chief Controller of Imports was ultra vires of the Act.

(2) The Chief Controller of Imports derived his authority to issue license for imports under clauses (IX) and (XIII) of the Government Notification No. 23-1.T. C/43 dated 1-7-1943 which was a Notification issued under Rule 84 of the Defense of India Rules and which Notification was adopted as an order under Section 3 of the Imports and Exports (Control) Act, 1947. (Vide section 4 of that Act). But clauses (IX) and (XIII) could not, according to the Magistrate, be deemed to be orders under the Imports and Exports (Control) Act 1947 and the Government could not by an order under Section 3 of the Imports and Exports (Control) Act authorize the Chief Controller of Imports to issue licenses for controlling imports.

(3) In any case M. L. Gupta, the licensing officer attached to the office of the Chief Controller of Imports, New Delhi, had no authority to sign the license and to sign the stamped condition on the license.

(4) In view of the distribution of powers by Schedule 7 of the Government of India Act, 1935, the Central Government had only power to prohibit, restrict or control imports but could not validly pass any order about the distribution of goods after the same had been imported and that therefore the condition that the goods after import should be utilized by the license holder in his own factory and not be sold was beyond the competence of the Central Government.

5. Mr. G.P. Kar who appears for the complainant C. T. A. Pillai has urged that the learned

Magistrate was wrong on all the above four points and that in view of his finding that there was prima facie evidence that the accused persons in the name of a bogus company had sold a portion of the fluorescent tubes and fixtures all over India, the order discharging the accused should be set aside and the case should be remanded for further enquiry. It has to be considered whether the learned Magistrate was right or wrong on the points mentioned above.

6. It will be convenient to take up the second point first. In our opinion the learned Magistrate was clearly wrong in holding that clauses (IX) and (XIII) of Notification No. 23-I.T.C/43 dated 1-7-1943 could not be deemed to be orders made under Section 3 of the Imports and Exports (Control) Act, 1947 and that under Section 3 of the Act the Central Government had no power to authorize the Chief Controller of Imports to issue license in respect of imports. The Central Government as such does not issue a license; but power of issuing license is always conferred on a prescribed officer under a statutory provision or under an order made under statutory provision and therefore having the force of law. Section 3(1) of the Imports and Exports (Control) Act, 1947 runs as follows :

> "The Central Government may by order published in the official Gazette, make provision for prohibiting, restricting or otherwise controlling, in all cases or in specified classes (?) of cases and subject to such exceptions if any, as may be made by or under the order,
>
> (a) the import, export, carriage coastwise or shipment as ships' stores of goods of any specified description;
>
> (b) the bringing into any port or place in India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried".

It is clear, therefore, that the Central Government may make provision for controlling the import of goods; and one provision for such control which the Government may make by notified order in the provision for the issue of licenses; and this was made by various clauses of the notified Order of 23-ITC/43 dated 1-7-1943. Clause (IX) of the above order refers to goods of any description other than those specified in part I of the Schedule which are covered by a special license issued by the Chief Controller of Imports appointed in this behalf by the Central Government, and clause (xiii) refers to any goods of the descriptions specified in the Schedule which are covered by a special license issued by any officer specially authorized in this behalf by the Central Government. The notified Order No. 23-ITC/43 dated 1-7-1943 is to the effect that import of all goods into India by sea, land or air is prohibited except goods mentioned in the clauses; and if we confine our attention for the moment to clauses (xi) and (xiii) the Notification means that import of goods is prohibited except goods covered by a special license issued by the Chief Controller of Imports or goods covered by a special license by an officer specially authorized in this behalf by the Central Government. Thus in effect the Government made a statutory provision for granting of license for the particular classes of goods mentioned in the Schedule of the Notification. This comes within the terms of Section 3(1) already quoted, namely, making provision for prohibiting, restricting or otherwise controlling the import of goods of specified description. There is no delegation involved in the provision for granting licenses for import by the Chief Controller of Imports or by any other officer specially authorized. It is difficult to understand why the learned Magistrate considered that the Chief Controller of Imports could not be validly authorized by the Central Government to issue license under Section 3(1),

Imports and Exports (Control) Act, 1947. The learned Magistrate referred to Section 2(4), Defense of India Act, 1939 and to the absence of any such provision in the Imports and Exports (Control) Act, 1947. Section 2(4), Defense of India Act, authorized the Central Government to direct that any power or duty which is conferred or imposed upon the Central Government by the Defense of India Rules might be exercised by any officer or authority subordinate to the Central Government specified in that direction. In the case of the Notification 23-ITC/43 dated 1-7-1943, there was no use made by the Central Government of the provision contained in Section 2(4) of the Defense of India Act. Rule 84(3) of the Defense of India Rules is in the same terms as Section 3(1), Imports and Exports (Control) Act 1947 and the notified order 23-ITC/43 dated 1-7-1943 was made purely under the power conferred on Government by Rule 84(3) of the Defense of India Rules without reference to Section 2(4), Defense of India Act.

7. On this point, therefore, we must hold that the learned Magistrate was wrong; that clauses (ix) and (xiii) of the notified Order 23-ITC/43 must be deemed do be the part of an order under Section 3(1), Imports and Exports (Control) Act, 1947 in view of Section 4 of that Act; and that the Chief Controller of Imports was duly authorized by the Central Government to issue licenses for import and that any other officer specially authorized by the Central Government might also issue such licenses.

8. It will be convenient to take up point No. 3 next, namely, that in any case Mr. M. L. Gupta had no authority to issue the license, Mr. G. P. Kar has admitted that before the learned Magistrate the relevant Notification of the Government authorizing Mr. M. L. Gupta was not produced. But Mr. M. L. Gupta deposed as P. W. 44 and stated that he was a licensing officer attached to the office of Chief Controller of Imports, New Delhi, and that he was authorized to issue license for electrical goods falling in Part V of the Schedule attached to notified order No. 23-ITC/ 43 which includes fluorescent tubes; and his authority for issuing such license was not questioned by cross-examination. In this Court Mr. G. P. Kar has further produced the relevant notifications. There is first of all authorization No. 16 dated, New Delhi, the 8th July 1943 by which in pursuance of exception (xiii) to the Notification of the Government of India in the Department of Commerce, No. 23ITC/43 dated the 1st July 1943, the Central Government authorized the executive officers in the office of the Chief Controller of Imports, New Delhi, to issue special licenses covering goods of any descriptions mentioned in Parts II, III, IV and V of the Schedule annexed the Notification. This Notification is signed by K. G. Ambegaokar, Deputy Secretary to the Government of India.

9. Next Mr. G. P. Kar has produced die Notification No. 7(69) dated 26-7-1947. This is an order signed by G. R. Kamat, Joint Secretary to the Government of India and it shows that Mr. M. L. Gupta was appointed to officiate as licensing officer in the office of the Chief Controller of Imports, New Delhi from the afternoon of 8-7-1947.

10. Mr. A. K. Sen appearing on behalf of the accused opposite party has objected that these two notifications are not drawn up in the form prescribed by Section 17 of the Government of India Act, 1935 which requires diat "all executive action of die Dominion Government shall be expressed to be taken in the name of the Governor General".

11. In Authorization N/o. 16 instead of the use of the name of the Governor-General it is stated that die Central Government is pleased to authorize the Licensing Officers in the office of the

Deputy Chief Controller of Imports, Calcutta, to issue special licenses covering any goods of the descriptions specified in Parts II to V of the Schedule annexed to the said Notification. This is the only deviation from the form prescribed in section 17 of the Government of India Act and the authorization is duly made by a Deputy Secretary to the Government of India. Notification No. 7(69)-ITC/47 is not expressed to be made in the name of the Government of India or the Central Government but it is authenticated by the Joint Secretary to the Government of India and there is no reason to doubt that this represents an order of the Government of India. It has been held by die Supreme Court that the provisions which are contained in sections like Section 17, Government of India Act, are only directory and not mandatory. In this connection reference should be made to the case of *Dattatraya Moreshwar v. State of Bombay*[1], In that case, their Lordships were concerned with similar provisions in Article 166 of the Constitution. S. R. Das, J., (at p. 185, 2nd column) accepted the contention of the Attorney General that an omission to make and authenticate an executive decision in form mentioned in Article 166 does not make the decision illegal, for the provisions of that Article like their counterpart in the Government of India Act, are merely directory and not mandatory. His Lordship observed that when there was evidence to show that the order was really the order of the Government, the omission to make and authenticate an executive decision in the form prescribed by Article 166 would not make the order bad. This was also the opinion of the other learned Judges who constituted the Bench of the Supreme Court.

12. Mr. A. K. Sen has urged that in any case where the order is challenged it is for the prosecution to give evidence to show that the order was in fact the order of the Government. In this particular case however, there is no reason to doubt that the two Notifications represent the Government of India. Further, G. R. Karnat who signed one of die Notifications deposed as a witness in the case, being P. W. 51, and stated that "all Govt. Notifications regarding Import Control used to be published under my signature as Jt. Secy." Under the rules of business a Joint Secretary and Dy. Secretary and also assistant and under secretaries are entitled to authenticate the order of the Government and there is no reason to think that the orders authenticated by them are not orders by the Government. Accordingly it must be held that M. L. Gupta had authority as licensing officer attached to the office of the Chief Controller of Imports, New Delhi, to issue the license.

13. Mr. A. K. Sen has also urged that Authorization No. 16 of 8-7-1943 cannot be deemed to be an order made under the Imports and Exports Control Act, 1947 as Section 4 thereof provides merely that all orders made under Rule 84 of the Defense of India Rules shall continue in force and be deemed to be orders under the Act; while the Authorization in question is an order made under clause (xiii) of No. 23-ITC/43 i.e. an order made under a provision of an order made under Rule 84 and not an order made under Rule 84 itself, and that the authorization is therefore no longer valid. We cannot however accept this argument. Notification No. 23-ITC/43, being an order made under Rule 84 of the D. I. Rules is continued in force by Section 4 of the Act; and the Notification having continued to be in force, all appointments made and all action taken thereunder must continue to be valid.

14. Mr. Sen has also challenged the validity of the license because the license itself is signed by M. L. Gupta as a licensing officer attached to the office of the Chief Controller

[1] AIR 1952 SC 181

of Imports, but the condition stamped thereon is signed by M. L. Gupta not in his own right but

'for' the Chief Controller! of Imports. We do not however agree that this mode of signing the license invalidated the same. The license was properly signed by M. L. Gupta, a licensing officer attached to the office of the Chief Controller of Imports, and authorized to sign such licenses by the Authorization dated 8-7-1943. The condition added by being stamped on is part of the license and need not have been separately signed at all; if signed for authentication by the licensing officer, it might merely have been signed or initialed by him without addition of his designation and without stating that he was signing for the Chief Controller of Imports. The addition of the description 'for the Chief Controller of Imports' was at most an irregularity and could not invalidate the license. From the evidence of M. L. Gupta who deposed as P. W. 44 and G. R. Kamat, P. W. 51 who was then the Chief Controller of Imports, it can be understood how the license came to be signed in the rather peculiar manner. There was the standing instruction of the Chief Controller that all actual consumer cases were to be put up personally to him with the recommendation or opinion of the Deputy Chief Controller, and when the Chief Controller approved the issue of a particular actual consumer import license the particular licensing officer in charge of that particular description of goods would issue the license. In accordance with the standing order of the Chief Controller the condition restricting the user of the goods imported under an actual consumer's license to the own use of the license holder was stamped on the license by tile licensing officer who issued such license. So apparently the condition was signed 'for the Chief Controller of Imports' to indicate that the condition had been imposed by the authority of the Chief Controller of Imports, though as already pointed out above there was no need to sign the condition added separately. Mr. Sen has urged that, assuming for the moment that such a condition could be validly imposed under clause (a) (v) of No. 2-ITC/4S, it should have been a condition that the licensing authority considered expedient himself and not a condition added by the order of his superior officer; and that if imposed under such order, it was invalid. This takes us to the question who is the licensing authority. The term is not defined in the Act or in the orders under the Act; No. 2-ITC/48 clause (a) begins by referring to an officer issuing a license but refers to the licensing authority in sub-clauses (i), (iv) and (v). It is clear from the evidence that the office of the Chief Controller of Imports, New Delhi, works as one unit for the purpose of licensing although several licensing officers are attached to the office, all applications are made to the Chief Controller and all important cases requiring the exercise of discretion, like actual consumers' applications as opposed to regular importers' applications, are put up to him for decision and order, though after he has passed the order, the attached licensing officer dealing with the particular class of goods actually issues the license. Accordingly the Chief Controller of Imports must for the purpose of licenses issued by the New Delhi office be deemed to be the 'licensing authority' for the purpose of clause (a) (v) of No. 2-ITC/48. This view finds support from the contents of Chapter II of "Import Trade Control - Hand book of Rules and Procedure, 1952" issued by the Government of India, Ministry of Commerce and Industry. There would be chaos if the ten or eleven licensing officers attached to the office of the Chief Controller of Imports, New Delhi were each free to impose such condition as he considered expedient; the condition must be settled and standardized by the Chief of the office. We would hold therefore that the condition was rightly settled by and imposed under the order of the Chief Controller of Imports as the "licensing authority" even though the term "licensing authority" may in other contexts include the licensing officer issuing the license.

15. Next we take up the question whether the Chief Controller of Imports had the authority to prescribe the condition which was actually stamped on the license issued viz., that the goods imported should be used for the purpose of the licensee's factory and should not be sold to any party.

16. Mr. A. K. Sen has urged that the provision under which the condition was prescribed was clearly a provision of delegation of the power of the Central Government to the licensing authority viz., the Chief Controller of Imports, New Delhi, and that this delegation was ultra vires of the Act. The position is as follows : Under Section 3 (I) of Imports and Exports (Control) Act, 1947, the Central Government may by order published in the Gazette make provision for prohibiting, restricting or otherwise controlling imports.

17. Notification No. 23-ITC/43 dated 1-7-1943 is as already found, an order under Section 3 (1) of the Imports and Exports (Control) Act, 1947, and it provides that nobody shall bring into India any goods whatsoever except (cl. ix) goods covered by a special license issued by the Chief Controller of Imports or (cl. xiii) goods of the description specified in the schedule covered by special license issued by an officer specially authorized. In respect of such a license as is mentioned in clauses (ix) and (xiii) the subsequent order viz., Notification No. 2-ITC/48 dated the 6-3-1948 provides "that any officer issuing a license under clause (viii) to (xiv) of the Notification No. 23-ITC/43 may issue the same subject to one or more conditions stated below. The first four clauses contain specific conditions e.g. that the goods shall not be disposed of without the written permission of the licensing authority, that the goods shall not be sold or distributed at a price more than that which may be specified in the license and so on. Clause (v) provides 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 Act".

18. Mr. G. P. Kar has urged that under Section 3 (1) of the Act the Central Government may make provisions for, amongst other things, controlling import; and when the Central Government after prescribing that goods shall not be imported except under a special license, and after prescribing four specific conditions which may be imposed in such special license, has provided that any other condition not inconsistent with the provisions of the Act may be imposed by the Licensing Authority, this does not amount to delegation of power conferred upon the Central Government under Section 3 (1) of the Act, but that the Central Government have made provision for controlling imports by the two published orders, and the discretion given to the licensing authority to impose any other condition is only to provide for particular cases. In this particular case when the accused Hari Prasad Lohia filed an application for license, he himself mentioned that the goods were required by him not for sale but for own use for equipping his factory. In the circumstances the imposition of the condition that the goods shall not be sold but shall be used by the licensee for equipping his factory must be deemed to be a condition which can be validly imposed by the Chief Controller of Imports in the particular case under clause (a) (v) of the Notification No. 2-ITC/48 and the condition cannot be regarded as bad as having been made under a delegated power.

19. Next there is the 4th point which is a constitutional point viz., that the Central Government having authority for making law regarding imports and exports and not having authority to make law regarding distribution of goods imported, the Notification No. 2-ITC/48 must be deemed to be ultra vires as exceeding the powers of the Central Government. The learned Magistrate has in this connection referred to item No. (19) in List I of the seventh Schedule of the Government of India Act, 1935, which reads "Import and export across customs frontiers as defined by the Dominion Government" and item (29) of List II which reads "Production, supply and distribution

of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Dominion Control", and he has observed that the goods having once been imported into India, the question of' sale thereof falls within item 29 of the List II and is therefore the jurisdiction of the Provincial Government and the Central Government therefore could not make any provision of what should be done of the goods after import e.g restriction of sale of goods by permit sought to be done by condition (a) (i), price control sought to be done by condition (a) (ii) or restriction to own user of the holder of the license by the condition imposed by the Chief Controller under clause (a) (v).

20. In supporting the reasoning of the learned Magistrate, Mr. A. K. Sen has referred to the definition of 'import' as contained in the Imports and Exports (Control) Act 1947. In Section 2, clause (b) 'import' and 'export' are defined as meaning 'bringing into and taking out of India by sea, land or air'. Mr. Sen has therefore urged that mere bringing into India of goods by sea, land and air amounts to import and the Central Government may legislate only as to the bringing of goods into India by land, sea or air, and cannot legislate as to what is to be done with the goods after import.

21. Mr. Sen has also referred to two decisions of the Privy Council which are however decisions under the Constitution of Canada. The cases in question are *Attorney-General for Canada v. Attorney General for Alberta*[2], and In re Board of Commerce Act, 1919 and the Combines and Fair Prices Act, 1919, 1922-1 AC 191. In the first case the courts were concerned with the validity of the Insurance Act, 1910, by which the Canadian Federal Government sought to regulate insurance business by introducing a licensing system. It was held by the Privy Council that the authority conferred by the British North America Act, 1867, Section 91, to legislate as to the regulation of trade and commerce did not extend to the regulation by a licensing system of a particular trade in which Canadians would otherwise be free to engage as it would interfere with the right of the Provincial Legislative Authority to make laws as to "civil rights" in the Provinces. In the other case, the attempt to prohibit combines and regulate fair prices was held to be not within the competence of the Dominion Parliament as interfering with the power of the Provincial Legislature to legislate on "property and civil rights" in the Provinces which were Provincial subject-matters in Canada. It should be observed in relation to these rulings that they cannot be accepted as a guide in assessing the relative powers of the Central Government and the State Governments in India, because the decisions under other Constitutions necessarily turn upon the particular wording of the Constitution in question. In respect of the interpretation of the previous Indian Constitution i.e., the Government of India Act, 1935 there are also certain Privy Council rulings in which it has been held that in deciding whether a particular legislation is within the competence of the Central

[2]1916-1 AC 588

Government or of the Provincial Government, as the case may be, the pith and substance of the legislation rather than its form should be looked into. Reference may be made in this connection to the case of Governor-General in *Council v. Province of Madras*[3], The Central Government challenged the Madras General Sales Tax Act of 1939 as ultra vires of the Madras Legislature in so far as it imposed a tax on first sales in Madras on excisable goods manufactured in India. The Provincial Government had the power to impose a tax on the sale of goods under Entry No. 48 of the Provincial Legislative List, whereas duty on excise was a central subject under Entry No. 45 of the Federal Legislative List. The Privy Council however held that the Madras General Sales Tax Act was valid and in this connection made the following observation:

"For in a Federal constitution, in which there is a division of legislative powers between Central and Provincial Legislatures, it appears to be inevitable that controversy should arise whether one or other Legislature is not exceeding its own and encroaching on the other's, constitutional legislative power, and in such a controversy it is a principle which their Lordships do not hesitate to apply in the present case, that it is not the "name of the tax but its real nature, its 'pith and substance' as it has sometimes been said, which must determine into what category it falls." There are observations to the same effect in another Privy Council ruling relating to the interpretation of the Government of India Act, 1935 viz., *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna*[4], In that case the question was whether the Bengal Money Lenders Act, 1940, was ultra vires in so far as it affected Promissory Notes and Banking which were Federal subjects. The Privy Council held that the Bengal Money Lenders Act, 1940, deals in pith and substance with money lending and is therefore wholly within the powers of the Provincial Legislature although it incidentally trenches upon matters like Promissory Notes and Banking reserved for the Federal Legislature.

22. The Supreme Court of India dealt with the question in the case of *State of Bombay v. F. N. Balsara*[5], The Supreme Court held inter alia as follows :

"Of the principles which govern the interpretation of the Legislative Lists, one is that none of the items in each List is to be read in a narrow or restricted sense; and the second is that where there is a seeming conflict between an entry in List II and an entry in List I, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction." Their Lordships further observed as follows :

"The validity of an Act is not affected if it "incidentally trenches on matters outside the authorised field. Therefore it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another legislature."

The question is if these principles are applied whether the provisions contained in

[3]49 Cal WN 381: (AIR 1945 PC 98) [5] AIR 1951 SC 318

[4]51 Cal WN 599 : AIR 1947 PC 60

Notification No. 2-ITC/48 would be found to be within the competence of the Central Government. The Imports and Exports (Control) Act taken with the two Notifications Nos. 23-ITC/43 and 2-ITC/48 deal primarily with the question of imports and exports. It is within the competence of the Central Government to prohibit import altogether or to restrict or control it by prescribed provisions. In a certain case therefore if the Central Government, in respect of goods of which import in general is prohibited, permits import for the limited purpose of equipping the licensee's own factory, the provision which enables this to be done cannot be regarded as beyond the competence of the Central Government. Such a provision would deal primarily with the

question of import into India. The question of what is to be done with the imported goods after the same have been imported, cannot altogether be dissociated from the question of prohibiting, restricting or controlling imports. Government is certainly entitled to allow or disallow an application for import after looking into the purpose tor which the import is to be made and therefore if the purpose for which the import is allowed is specified in the license that would be a valid provision and not beyond the competence of the Central Government dealing with imports.

23. Mr. Sen has urged that clause (a) (ii) deals with price control and it has been urged that this is a matter relating entirely to the distribution of goods. It may be observed however that price control does not come strictly within the scope of distribution of goods. In the Canadian case, 1922-1 AC 191 it was urged before the Privy Council that the subject of price control was not within the normal course of regulation of trade and commerce and this argument was accepted by the Privy Council. Under the Indian Constitution, price control is a separate item included in the 3rd List, being item No. 34 of that List. The 7th Schedule of the Government of India Act does not contain the item 'price control', and if the question of price is regarded as a question of contract between the purchaser and the seller, the subject would come under the 'contracts' which is included as item No. 10 of the concurrent legislative list of List No. 3 of the Government of India Act and therefore the Central Government might be regarded as having jurisdiction in that matter. In the case *State of Bombay v. F. N. Balsara*, the Supreme Court interpreted 'import' as not including either sale or possession of the article imported into the country by a person residing in the territory in which it imported and therefore held that there was no conflict between entry No. 19 of List I and entry No. 31 of List II, relating to the possession and sale of intoxicating liquors. For the purpose of the case, the Supreme Court of India disapproved of the American view that 'import' includes the sale of the imported goods immediately after import, which was held by the Supreme Court of America in the case of *Brown v. Maryland*[6], Marshall, C. J., of the Supreme Court of the United States observed as follows :

> "Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorize importation but to authorize the importer to sell."

For the purpose of considering the validity of the Madras Prohibition Act, 1949, which

[6](1827) 25 US 419

was based on the power of the Provincial Legislature to legislate on the possession and sale of intoxicating liquor, the Supreme Court held that such possession and sale would not exclude possession of foreign liquor imported into the country and that it comes within the scope of the Act and the Act would not be invalid as trenching on the legislative power of the Central Government relating to import; for this purpose therefore, the word 'import' was interpreted as meaning only entry into the country and not subsequent possession and sale. Generally, however, there is no reason to understand the term 'import' in that restricted sense. As already stated, the purpose for which the imported goods are proposed to be used is an essential factor for the consideration whether or not import should be prohibited or allowed and unless the imported goods can be controlled so as to be used for the specified purpose, there can be no effective controlling of imports.

24. We, hold therefore that the provision made by Order No. 2-ITC/48 relating to the imposition of conditions relating to imported goods is not outside the competence of the Central Government and therefore Notification No. 2-ITC/48 is valid.

25. This disposes of the reasons given by the learned Magistrate for holding that the condition imposed by the license was bad and that contravention thereof did not amount to an offence under Section 5, Imports and Exports (Control) Act, 1947.

26. Mr. Sen appearing for the opposite party has raised another important point, namely, that Section 5, Imports and Exports (Control) Act, 1947, does not impose any penalty for contravention of any condition imposed by the license but it only penalizes contravention of an order made or deemed to have been made under the Act and that in this case no order made under the Act was directly contravened but only a condition imposed by the license was contravened and therefore no offence under Section 5, Imports and Exports (Control) Act, 1947 was committed. Section 5 of the Imports and Exports (Control) Act, 1947, reads as follows :

> "If any person contravenes 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, 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."

27. It is clear, therefore, that the section penalizes only contravention of any order made or deemed to have been made under the Act. But the question is whether contravention of a condition imposed by a license issued under the Act or issued under a statutory order made under the Act is also an offence under Section 5, Imports and Exports (Control) Act, 1947. Although a license is granted under a statutory order made under the Act and conditions may be imposed in the license under another statutory order made under the Act, it is difficult to hold that the license or the conditions in the license amount to an order made or deemed to be made under the Act. Notification No. 23-1TC/43 dated 1-7-1943 merely provides that no goods shall be imported except goods covered by a special license issued by an authorized officer. Notification No. 2-ITC/48 dated 6-3-1948 authorizes a licensing officer to impose one or more conditions prescribed by that order and a licensing officer, therefore, may impose a condition in view of the provisions of Notification No. 2-ITC/ 48. But if the licensee contravenes the condition Imposed by the license it can hardly be said that he has contravened the order under this Act i.e., the Notification No. 2-ITC/48. The order No. 2-ITC/ 48 does not directly impose any duty but it gives power to the licensing officer to impose certain conditions. But contravention of such condition imposed by the licensing officer cannot prima facie be regarded as contravention of the notified order itself. Mr. G. P. Kar has urged in this connection that under the first Notification No. 23-ITC/43 dated 1-7-1943 nobody can import any goods except goods under a special license and under 2-ITC/48 a condition may be imposed in the special license granted, and therefore contravention of a condition of the license under which goods may be imported amounts to contravention of the notified order itself. There might be some substance in this argument if clause (xiii) oi: Notification No. 23-1TC/43 had contained a term like "under the terms or conditions of the license." There is no such term in clause (xiii). Clause (xiii) refers to

goods 'covered' by a special license. When there is a special license covering certain goods and there is a condition imposed in the special license it cannot be said that by breach of the condition there has been any breach of Order 23-ITC/ 43 or of the subsequent Notification No. 2-ITC/48. It may be mentioned that the difficulty apparently was realized in Pakistan and therefore the Imports and Exports (Control) Act, 1947 was first amended by an Ordinance and then by the Imports and Exports (Control) Act, 1950 of Pakistan. Section 3(2) of that Act provides that 'no goods of the specified description shall be imported or exported except in accordance with the conditions of a license to be issued by the Chief Controller or any other officer authorized in this behalf by the Central Government. The penal Section, Section 5, refers not only to contravention of an order or rule made under the Act but also to the contravention of any condition imposed by the license. Similarly, in the Bengal Excise Act, Act V of 1909, Section 45 refers not only to contravention of a provision of the Bengal Excise Act or any rule made thereunder, but also refers to default in complying with any condition imposed upon a licensee by a license granted under the Excise Act. It is clear that unless the penal section itself includes the contravention of a condition of the license as an offence, it is not possible to hold that the licensee by merely committing breach of a condition imposed by a license has committed the offence which consists in contravention of an order made or deemed to be made under this Act. In this view, therefore, although the reasons given by the learned Magistrate have not been considered by us as sound, it is clear that the prosecution of the opposite party under Section 5 of the Imports and Exports (Control) Act, 1947, must fail.

28. Accordingly this application fails and the Rule is discharged.

Mitter, J.

29. I agree.

Rule discharged.