

CALCUTTA HIGH COURT

Charandas Malhotra

Vs.

Assistant Collector of Customs

A.F.O.O. No. 218 of 1966

(D.N. Sinha, C.J. and A.K. Mukherjea, J.)

12.05.1967

JUDGMENT

Sinha, C.J.

1. The facts in this case are shortly as follows : The appellant Charandas Malhotra carried on business under the name and style of "Wallton Watch Company" as the sole proprietor thereof at No. 12. Chowringhee Road. Calcutta. In the petition it has been stated that the appellant used "to carry on another business under the name and style of "Welcon Watch Co." at No. 170, Mahalma Gandhi Road, Calcutta, which business was closed in the year 1955 and its stock-in-trade was transferred to the appellant's present business. On the 19th of March, 1963 the respondents nos. 1 and 2 caused a search to be conducted by their Rummaging Staff at the appellant's place of business as aforesaid at No. 12. Chowringhee Road. Calcutta. It is said that the search was conducted from 10-80 A.M till midnight of 19th March, 1963. As a result of the said search, 218 watches of foreign make were found in the appellant's shop. On scrutiny of documents produced, 87 watches were released and the balance 131 watches were seized. On that date, a statement was taken from the appellant, a copy whereof is set out at page 12 of the paper book. In that statement he inter alia said as follows :

"I have produced Bills against some of the watches for your inspection. I am however, very unwell and I am not in a position to produce further vouchers or receipts against watches shown in the Inventory. I shall however, produce the same for your inspection as early as possible.

I do state that I purchased twenty four watches from the Custom House Sales in the year 1957 or 1958. Out of this quantity I have sold all except two watches which I have produced to you and which I surrender herewith to you." On the 28th March, 1963 the appellant wrote to the Assistant Collector of Customs etc. asking him as to when he could attend with the necessary documents for verification and release of the seized articles. As there was no reply to this, a reminder was given on the 8th April, 1963 complaining that owing to seizure of the watches normal business could not be resumed. To this also there was no reply and on the 17th April, 1963 another

reminder was given stating that the appellant's business had come to a standstill. On the 4th May, 1963 the appellant wrote another letter which contained the following statement :

"This is to state that most of the watches seized are very old stock some of which were owned by my other concern, Welcon Watch Co., 170, Mahatma Gandhi Road which was closed in the year 1955 and its stock-in-trade was transferred to the allied concern.

Purchase vouchers for (sic) other vouchers are being submitted to you and you are requested to please expedite release of the watches."

2. There was another letter dated 6th May, 1963 which refers to one voucher being shown which was destroyed by white ants. With the letter, the appellant submitted 62 vouchers and other documents in respect of 131 watches seized on the 19th March, 1963. It is stated that the vouchers related to 126 watches. On the 21st of June, 1963 the Rummaging Inspector wrote to the appellant as follows :-

"Please refer to your letter dated 6th May, 1963 forwarding vouchers, bills, invoice, etc. relating to the seized watches. These vouchers, however, do not cover all the watches seized from you and your representative Sri Sunderlal Lala who came to deliver the abovementioned vouchers assured that the remaining vouchers would be submitted as soon as possible but none of them has since been forwarded.

You are accordingly requested to send the wanting vouchers immediately and at least within a week hereof. You are also requested to produce your Stock Book within the same period for verification of your Stock of watches." There is a letter dated 25th June, 1968 by Messrs. Benson Watch Company relating to three Benson Watches which were seized. They stated that these watches were sold long time back and it was not possible for them to trace out such old documents. They however certified that for many years, Welcoa Watch Co. was a regular customer of theirs and they had bought watches with the brand name "Benson". They had never come across any suspected smuggled watches with brand name "Benson". On the 5-7-1963 the appellant wrote to the Rummaging Inspector with regard to one watch with brand name "Emes" which was purchased long ago from Messrs. M.S. Watch Co., 138, Radha Bazar Street, Calcutta. He said that he had lost the purchase vouchers but had asked the sellers to look up their record. A request was made that the customs authority should contact the seller for certification as to whether in fact the watch was sold to the appellant by them. On the 18th of September, 1963, 11 more watches were released and on the 27th of February, 1964, 10 more watches were released. Ultimately, a show cause notice dated the 6th March, 1964 was issued upon the appellant which is the subject matter of this application. Before we deal with the show cause notice, it will be necessary to deal with certain provisions of the Customs Act, 1962 (Central Act 52 of 1962) (hereinafter referred to as "said Act"). The said Act is an Act to consolidate and amend the law relating to customs. Under Section 160(1) of the said Act, several statutes were repealed, including the whole of the Sea Customs Act, 1878 and the Land Customs Act, 1924. Section 111(d) of the said Act provides that any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under the said Act or any other law for the time being in force, from a place outside India, were liable to confiscation. It is not disputed that watches were prohibited

goods if imported without proper licence. Section 110 of the said Act is important and the relevant part thereof is set out below :-

"110(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

(2) Where any goods are seized under Sub-Section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months".

The only other provision that requires to be considered is Section 124, the relevant part whereof is set out below :-

"124. No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter".

I have already stated that 131 watches were seized on the 19th March, 1963 and he show cause notice was given on the 6th March, 1964. Between these two dates there were two extensions in terms of the proviso to Section 110(2) of the said Act. They were made as follows : The first extension was made on the 19th September, 1963. In an affidavit affirmed by M.L. Wadhawan, Assistant Collector of Customs (Preventive) it is stated in paragraph 17(b) as follows :-

"On 19-9-63 an extension of time initially for 4 months was sought and granted by the Additional Collector of Customs on the ground that on conclusion of local enquiry it was necessary that enquiries in respect of 85 watches out of 131 watches seized were to be made at Delhi and Bombay.

Although the enquiries at Delhi and Bombay were concluded within the extended period, there was hardly any time left to complete these reports of enquiry and to draw up the show cause. Notice within the said period. As such a further extension of time for a period of further two months was sought which was granted by the Additional Collector of Customs thus extending the time till 17th March, 1964".

3. What happened was that on the 18th September, 1963 an ex parte application was made for extension of time for four months without any reference to the appellant and on the 19th September, 1963 the prayer was granted by the Additional Collector of Customs. The four months' extension would have expired on the 19th January 1964. On the 3rd January 1964 a

second extension for two months was applied for by Shri S.N. Gupta. This was also done ex parte and without reference to the appellant. On the 20th February, 1964 the Collector of Customs granted a further extension of two months. With regard to the second extension. Shri Sachhidananda Banerjee in his affidavit affirmed on 16th December 1965 states as follows in paragraph thereof.

"As the enquiries could not be completed within the said extended time, a further four months' time was prayed for on 3rd January 1964 and on 20-2-64 the Additional Collector of Customs granted further two months' extension for serving show cause notice. The enquiries were thereafter completed and a show cause notice was issued on the petitioner on 6th March 1964."

It will be observed that the two statements made by two Customs Officers, mentioned above are directly contradictory. Wadhawan said that the second extension was necessitated because, although the enquiries were concluded there was no time left to complete the reports or to draw up a show cause notice. Banerjee states that as the enquiries could not be completed within the extended time, a second extension was found necessary and that the enquiries were thereafter completed and show cause notice issued on 6th March 1964. On the 6th March, 1964 a show cause notice was issued by the Additional Collector of Customs and Superintendent of Preventive Service a copy whereof is set out at pages 25 and 26 of the paper book. The relevant part thereof is set out below :

"In course of search on 19-3-1963 of the shop of M/s. Wallton Watch Co 218 Gents and Ladies watches of foreign origin, were found. The Proprietor of the shop Sri Malhotra could not, however, produce on the spot documents to cover legal importation of 131 watches and made a statement that he would produce the vouchers and the receipts as early as possible. The watches i.e. 131 pcs were accordingly seized and brought to Custom House.

2. On 7-5-63 M/s Wallton Watch Co. produced a number of vouchers to cover 125 pcs of watches and assured that they would produce vouchers in respect of the remaining 6 watches later on but the party failed to do so in spite of repeated reminders.

3. On scrutiny of these vouchers and on completion of enquiries so far made. 21 pcs of watches have been released to the party. In case of most of the remaining watches, the parties or firms from whom the watches in question were bought by M/s. Wallton Watch Co, either do not exist or they stated to have destroyed their old records and are, therefore, not in a position to furnish the particulars of legal importation of the watches sold by them.

4. Importation of the watches without a valid Import Trade Control License is prohibited under Section 11 of the Customs Act, 1902 read with Section 3(1) of the Imports and Exports (Control) Act, 1947 and in accordance with the provisions laid down in para 2 of Section 123 of the Customs Act, 1962, the burden of proving that the watches are not smuggled shall be on the person from whose possession the watches were seized. M/s. Wallton Watch Co. have failed to prove the legal importation of the remaining 110 pcs of watches

5. M/s. Wallton Watch Co are accordingly directed to explain within a week from the date of receipt of this Notice why the aforesaid 110 pcs of watches should not be confiscated under Section 111 (d) of the Customs Act, 1962 read with Section 3 (2) of the Imports and Exports (Control) Act and the notifications issued thereunder. They should also explain within the same period why penal action also should not be taken against them in accordance with provision of Section 112 of the Customs Act, 1962."

4. The points argued before us are as follows : The first point relates to the extension of the dates for issuing the show cause notice under the proviso to Sub-Section (2) of Section 110 of the said Act. From a plain reading of Sub-Section (2), it appears that a notice under Section 124(a) of the said Act must be given within six months of the seizure of the goods. If no such notice is issued, then upon the expiry of six months from the date of the seizure, the person from whose possession the goods were seized, acquires the right to have the goods returned to him. This period of six months may on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months. The learned Judge in the court below relied on a decision of the Supreme Court, dealing with Section 62 of the Motor Vehicles Act - *Madhya Pradesh State Road Transport Corporation v. B.P. Upadhaya*¹, where it was held that there might be any number of extensions provided that each extension was for a period of not more than six months. In our opinion, the learned Judge is not justified in construing one statutory provision by a decision dealing with the interpretation of another statutory provision, the wordings of which are substantially different. Before us, fortunately, both parties agreed that the maximum period for which the notice can be postponed is one year from the time of the seizure. The contest between them was as to whether within this time there could be one or more extensions than one. On behalf of the appellant, it is argued that there can be only one extension and that for a period not exceeding six months. If the power is exercised and an extension granted for a period of less than six months. It is submitted that the power is exhausted. In my opinion this is not correct. Upto six months from the date of the seizure no question arises. Thereafter, the term can be extended for as many times as is found necessary, provided that in each case sufficient cause for such extension was shown and the over-all period did not exceed another six months, that is to say up to one year from the date of the seizure. In this case, the point of ultimate limit is not of much importance because the show cause notice was in fact issued within the maximum period of one year. But the more difficult question is as to whether these extensions can be made ex parte. that is to say by one party behind the back of the other. In the present case, both the extensions were made ex parte. It is said that officials of the Customs Department found that they had either not completed the enquiry or not completed the report of the enquiry (on this point there is considerable conflict of evidence) and therefore an application is said to have been made informally by way of a note given by some officer or other and placed before the Additional Collector of Customs and he merely endorsed his approval. In the present case, even if the first extension on the 18th September 1963 was justified, the ex parte order made on 20th February 1964 cannot be justified. Notice under Section 124 must be given within six months of the seizure of the goods. If it is not so given then the goods have to be returned. Upon the expiry of the six months, or any extended lime under the proviso, a right for the return of the goods vests in the person from whose possession they were seized. The learned Judge in the Court

¹(1965) 2 SCA 362

below has held that the extension can be made even after the prescribed time has expired.

Assuming that this can be done, what is the position with regard to the second extension ? It will be remembered that the goods were seized on the 19th March 1963. The six-months' time would expire on the 19th September 1963 when it was extended for another four months. This extension would expire on the 19th January 1964. The application for extension is said to have been made on 3rd January 1964. Since, on the 19th January 1964 no extension order had been made, the right devolved on the appellant to receive back the seized goods. The actual order for extension was made, nearly a month afterwards. By such extension the vested right was being taken away. So, we have two things to consider. Firstly, a vested right was being taken away and secondly, an order can be made under the proviso to Sub-Section (2) only if there was "sufficient cause" shown for such extension. If the Collector of Customs has to consider whether the cause shown was sufficient or not and especially as it affected a vested right, he was necessarily called upon to deal with the question with a judicial approach, in the sense that he would have to hear the pros and cons from nil parties affected and then come to a decision as to whether the cause shown was "sufficient", so as to warrant the taking away of a vested right. In my opinion, under such circumstances, a determination requires a judicial approach and cannot be done *ex parte*. The principles are set out in a Supreme Court decision-*Lala Shri Bhagwan v. Ram Chand*². It was held by Gajendragadkar, C.J. that authorities or bodies which are given jurisdiction by statutory provisions to deal with the rights of citizens, may be required by the relevant statute to act judicially in dealing with the matters entrusted to them. It may be done expressly or by implication. An obligation to act judicially may be inferred from the scheme of the relevant statute and its material provisions. In such a case, the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its power. Power to determine a question affecting the rights of citizens implies a limitation that the power should be exercised in conformity with the principles of natural justice. In that case, the Supreme Court was considering the provisions of the U.P. (Temporary Control of Rent and Eviction) Act (3 of 1947). Briefly speaking, the tenant was given protection under the U.P. Act from eviction, except on certain grounds. Apart from the seven grounds specified, there was a clause that if the landlord obtained the permission of the District Magistrate he could sue the tenant for eviction. From an order of the District Magistrate a revision lay to the Commissioner and the State Government could revise the order of the Commissioner. The point that arose was as to the nature of the proceedings before the District Magistrate, the Commissioner and the State Government. It was held that these proceedings dealt with the question of the rights of the landlord and tenant and therefore, the District Magistrate as well as the Commissioner and the State Government were required to adopt a judicial approach. Speaking about the position of the State Government as a judicial authority, the learned Chief Justice said as follows :

"It is true that the State Government is authorized to call for the records *suo motu*, but that cannot alter the fact that the State Government would not be in a position to decide the matter entrusted to its jurisdiction under Section 7-F, unless it gives an opportunity to both the parties to place their respective points of view before it. It is the ends of justice which determine the nature of the order which the State Government would pass under Section 7-F and it seems to us plain that in securing the ends of justice, the State Government cannot but apply principles of natural

² AIR 1965 SC 1767

justice and offer a reasonable opportunity to both the parties while it exercises its jurisdiction under Section 7-F."

The position was recognised in its broad sense in the classical judgment of Atkin L.J. in *R. v. Electricity Commissioners*³. in the following words :

"The operation of the writs (of prohibition and certiorari) has extended to control the proceedings of bodies which do not claim to be and would not be recognized as, courts of justice. Whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs".

5. In my opinion, the principle fully applies to the facts of this case. As long as the period of issuing notice has not expired, it might be one thing. But quite a different set of circumstances arise when the period has expired and the right to the return of the goods is vested in the person from whose possession the goods are seized. If you are to take away the right you can only do that for a "sufficient cause". How can the officer concerned decide as to whether a "sufficient cause" has been shown, so as to divest a vested right, unless he hears the parties affected. Even after the supplementary affidavits were filed in this case, it is extremely doubtful whether a sufficient cause has been shown. As I have slated above, the two affidavits are contradictory. If in such circumstances the court feels difficulty to decide such a question, it is not to be expected that the Additional Collector could decide whether "sufficient cause" has been shown without hearing both sides. I am not suggesting that the hearing should be as if it was in a court of law. But some opportunity would have to be given to a person who has a vested right to the return of the goods to be heard in his defence, before that right can be taken away. Even though it is an executive action, the statutory provisions require that a judicial approach should be adopted. In this case it was not so adopted and in my opinion the second extension cannot be supported.

6. The next question is as to what is the effect of the second extension being invalidated. So far as Section 110 is concerned, it deals, not with the issue of notice but with the seizure of the goods and the return thereof. In other words, if the provisions are not satisfied the goods seized have to be returned. Therefore, since the extension had not been properly granted the appellant is entitled to the return of the goods. That by itself may not invalidate the notice itself For that purpose we have to travel to the next point taken, namely the nature of the notice which has been issued under Section 124 of the said Act. The point taken is that the notice that has been issued is so vague and uncertain that the appellant had no reasonable opportunity of defending himself I have already set out above Section 124 of the said Act. The notice is therefore a statutory notice and conditions laid down in the section must be strictly followed. If it is necessary to inform a person whose goods are being confiscated, or who is sought to be penalised, of the grounds upon which it is done, it follows that such grounds must be clear and specific so that the person to whom notice is given may have a proper opportunity of defending himself. In this connection reference has to be made to Section 123 of the said Act which is in the following terms :

³(1942) 1 K.B. 171

"123 (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized.

(2) This section shall apply to gold, diamonds, manufactures of gold or diamonds, watches and any other class of goods which the Central Government may by notification in the Official Gazette specify".

7. The onus which has been imposed by this section is a fearful one. At all time, the proving of a negative fact is extremely difficult. If a person is to discharge this heavy burden imposed by law, he must be given every possible opportunity of doing so. Therefore, it necessarily follows that the grounds given must be clear, specific and unambiguous, the words "reasonable opportunity" are used in Section 124. A man cannot be said to have a reasonable opportunity, if the grounds given are vague, unspecific, uncertain or ambiguous. It must also be remembered that the provisions of the Customs Act which result in confiscation, fine etc. are penal in character. In *Amba Lal v. Union of India*⁴, Subba Rao, J. (as he then was) dealing with Section 178A of the Sea Customs Act which corresponded to Section 123 of the said Act. said as follows –

"This Court has held that a custom officer is not a judicial tribunal and that a proceeding before him is not a prosecution. But it cannot be denied that the relevant provisions of the Sea Customs Act and the Land Customs Act are penal in character. The appropriate customs authority is empowered to make an enquiry in respect of an offence alleged to have been committed by a person under the said Acts, summon and examine witnesses, decide whether an offence is committed, make an order of confiscation of the goods in respect of which the offence is committed and impose penalty on the person concerned. See Sections 160 and 171A of the Sea Customs Act and Sections 5 and 7 of the Land Customs Act. In such a situation though the provisions of the Code of Criminal Procedure or that Evidence Act may not apply except in so far as they are statutorily made applicable, fundamental principles of criminal jurisprudence and of natural justice must necessarily apply."

It is well known that in criminal cases, an accused must be charged in a way that leaves no doubt as to the offence that he is said to have committed. Let us now come to the facts of the present case. The Chowringhee shop of the appellant was raided and a number of watches of foreign make were found. It is said that he was able to satisfy authorities about the source of some of the watches but not of the others and consequently a number of watches were seized and taken away. They were then delivered to the authorities along with a number of documents. His case was that these watches were of old stock. He had been carrying on another business in the name of Welcon Watch Co. at 170 Mahatma Gandhi Road, Calcutta which had been closed in the year 1955 and its stock-in-trade was transferred to the Chowringhee shop. He said that it is very difficult for him to produce documentary evidence of the purchase of each watch. But he gave certain names of dealers in watches from where he had purchased and asked the Customs authorities to enquire of them directly. The notice under Section 124, the relevant part whereof has been set out above, states that on the completion of enquiry, 21 pieces of watches have been released but in

⁴ AIR 1961 SC 264

case of "most" of the remaining watches parties or firms from whom watches in question were bought by the appellant either did not exist or they stated that they had destroyed their old records and were therefore not in a position to furnish legal importation of the watches sold by them. It is obvious that the word "most" is meaningless because unless the appellant is told as to

which of the dealers whose names had been supplied did not exist and which of them stated that they have no records it is impossible or the appellant to make his own enquiries or to answer the charge. That these particulars were known to the respondents appears from the supplementary affidavit of Wadhawan where in paragraph 12 he has given a list of the firms who are not in existence at the address given by the petitioner as also list of the firms in existence who could not produce documents showing legal entry of the relevant watches. This was so stated in a supplementary affidavit which was directed to be filed in the court below. In answer to it the appellant has said that all the firms mentioned by him were in existence from where the watches were purchased and if he had been given the proper particulars and an opportunity of doing so he would have adduced evidence to show that the firms in question were in existence at the time of the purchase. He further said that he was at no time told which of the firms had failed to produce their records.

8. It is plain to me that the notice is vague and unspecific and does not give a reasonable opportunity to the appellant to defend himself Mr. Kar has cited a Bench decision of the Andhra Pradesh High Court *Devi Chand v. Collector of Central Excise, Hyderabad*⁵. which appears to us to be completely against him and which supports the proposition I have stated above. The facts of that case were as follows. A penalty was imposed on the petitioner for abetting the offence of smuggling. The offence was in the nature of conspiracy within the meaning of Section 107 of the Penal Code. The form of abetment alleged against the petitioner was abetment by conspiracy as contemplated by Section 107 of the Indian Penal Code. The co-conspirators of the petitioner gave statements and although the petitioner wanted to see the statements he was not allowed to do so. This was held to be contrary to the rules of natural justice. The nature of accusation being abetment by conspiracy, it was held that the petitioner had a right to know whether the statements by his co-conspirators contained any incriminating matter which could be used against him or whether there was anything to those statements which was helpful to him to combat the charge of conspiracy. The principles laid down may well be applied to the facts of the present case. The watches seized from the possession of the appellant are sought to be confiscated and a penalty is sought to be imposed upon him on the basis that the goods are smuggled goods. In evidence thereof it is said that the appellant cannot satisfactorily discharge the onus under Section 123 of the said Act by showing that the goods were not smuggled. He has given reference to the names of various dealers from whom he had purchased the watches many years ago. If upon investigation it is found that some of them do not exist or if others said that they are not in a position to furnish particulars, then the appellant has to be given details thereof. He must be told as to which of the firms cannot be traced at the given address so that he may prove either that they existed at the time of the purchase or that they had shifted to some other address. The statements by the firms concerned must be made available to the appellant. If they have stated that their old records have been destroyed, that is a matter that is not the direct responsibility of the appellant. It is not to be expected that firms would keep their records indefinitely for the benefit of their purchasers or the Customs authorities. The appellant

⁵ AIR 1965 And Pra 415

should be given an opportunity of proving the purchase by other means or to show that the records had been genuinely destroyed. He however, was not in a position to do any of these things upon the vague language of the paragraph 3 of the notice.

9. Not only are the charges made vague and unspecific, the Additional Collector of Customs in para 4 of the notice says that the appellant had "failed to prove the legal importation of the

remaining 110 pieces of watches." In other words, the adjudicating officer has already made up his mind, although Section 124 says that he should not do so without giving an opportunity to the person affected of making representation against the proposed grounds of confiscation or penalty. The object of a notice under Section 124 is to give to the person affected an opportunity to prove legal importation and not to disprove a conclusion already arrived at by the authorities.

10. The next point with respect to notice is that it proposes to levy a penalty in accordance with the provisions of Section 112 of the said Act, but does not make the necessary allegations in order to support it. This may be explained as follows : Where any goods are smuggled, the authorities are entitled to seize and confiscate the same wherever they find it. In other words, it is the goods that are tainted and it does not matter as to how and where they are found. But penalty under Section 112 is another matter altogether. Penalty can only be inflicted when, in relation to such goods, a person has done something or omitted to do something according to law. In *Gian Chand v. State of Punjab*⁶, Ayyanger, J. was referring to the provision of Section 167(81) of the Sea Customs Act, 1878 which provided for a penalty in respect of goods which were smuggled. The learned Judge pointed out that two matters had to be established before a person is held guilty of the offence stated therein. Firstly, that the goods were smuggled i.e. imported into the country either without payment of duty or in contravention of any restriction or prohibition imposed by statute and secondly, that the accused knowing that the goods were of that character did the acts specified in the latter part of the provision. Section 112 of the said Act also requires such knowledge. Thus, whereas confiscation can be ordered irrespective of knowledge of the person in whose possession goods are found, the imposition of a penalty requires deliberate action and knowledge. There is, however, no fact stated in the notice, nor is it alleged that the appellant did or omitted to do anything which he was required to do under the law and/or he had any knowledge that the watches seized had been smuggled into the country. For all we know, the watches may have been smuggled but the appellant did not know of it. In such circumstances, he would not be liable to penalty. The result is that he has been asked to show cause why he would not be penalized in accordance with the provision of Section 112 of the said Act, without charging him with the ingredients of the offence which would expose him to a penalty. He therefore, can neither give a proper answer nor adequately defend himself.

11. In our opinion, for the reasons set out above the notice under Section 124 dated 6th March, 1964 is not in accordance with law and must be quashed and/or set aside.

12. Before I conclude, I must notice an argument put forward on behalf of the appellant and it is as follows : It is argued that under Section 111(d) any goods which were imported contrary to any prohibition imposed by or under the said Act or any other law for the time being in force, was liable to confiscation. It is argued that under Section

⁶ AIR 1962 SC 496

160(1) read with the Schedule, both the Sea Customs Act and the Land Customs Act had been repealed as a whole. It is then argued that an illegal importation before coming into force of the said Act cannot be said to fall under Sub-Section (3) of Section 160 nor under Sub-Section (4) because the goods were not subject to the control of the Customs at the commencement of the said Act. This is a point which is not free from doubt. In the facts of the present case, however, we are not called upon to decide it because there is no evidence placed before us to show that the watches in question, or any specified portion thereof, had been imported into India before 1962, that is to say before the commencement of the said Act. The appellant has said somewhere that

"most" of the watches were purchased by him before 1962, Mr. Kar has argued that if the word "most" as used in the notice be held to be unspecific it cannot be differently interpreted in the case of the appellant I think Mr. Kar is right in his argument and for the reasons stated this point does not arise to be considered in this case.

13. Lastly, I must mention a point raised by Mr. Kar in course of argument. He says that in the demand for justice sent by the solicitor for the appellant dated 13th March, 1964 an admission has been made that most of the watches seized had been illegally procured. In our opinion there is no such admission. The two clauses that are relevant in the said letter are clauses (7) and (9) the relevant part whereof is set out below :

"(1) Our client contends that the aforesaid search and seizure were wrongful, illegal and without any justification whatsoever.

Most of the said watches which were seized as aforesaid had been duly and legally acquired by our client in the usual course of his said business long prior to 1962.

(9) The information and evidence furnished by our client as aforesaid conclusively show that the said watches were duly, legally and properly acquired by him and that he is the owner thereof."

It is clear that they contain no admission as argued by Mr. Kar.

14. For the reasons stated above this appeal must succeed and the order of the learned Judge in the court below is set aside. The Rule is made absolute and the notice dated 6th March 1964 given by the Assistant Collector of Customs and Superintendent Preventive Service, a copy whereof is set out at pages 25 and 26 of the paper book, is quashed and/or set aside. There will be no order as to costs. The seized watches should be returned forthwith.

15. The operation of this order will remain stayed for three weeks from this date, as prayed for.

Arun K. Mukherjea, J.

16. I agree.

Rule made absolute.