CALCUTTA HIGH COURT

Sheikh Mohammed Sayeed

Vs.

Assistant Collector of Customs for Preventive

Matters Nos. 332 and 359 of 1966

(B.C. Mitra, J.)

05.06.1969

ORDER

B.C. Mitra, J.

1. This is an application for appropriate writs and orders directing the respondents to recall and cancel the seizure of the petitioner's goods and also an order dated December 5, 1965, authorizing detention of the petitioner's goods and from giving any effect to the said order. There is a further prayer for a writ in the nature of mandamus directing the respondents to release and return to the petitioner the goods, books, papers and documents seized by the Customs authorities and a further writ restraining the respondents from starting any proceedings on the basis of the seizure and also detention of the goods.

2. The petitioner is the sole proprietor of a firm known as Anglo-Swiss Watch Company. On December 1, December 2, December 3 and December 5, 1965 the Customs authorities conducted searches at the petitioner's business premises and also in the show-room, factory and residence of the petitioner and seized various goods and documents. Thereafter the Customs Officers made inquiries and investigations regarding the violation by the petitioner of the Import and Export Control Act, 1947, the Sea Customs Act, 1878 and the Customs Act, 1962. It is alleged that with regard to the import of parts of Watches, Clocks and Time-pieces, show cause notices under the Customs Act, 1962, could not be served upon the petitioner within the prescribed period of six months from the date of the seizure as required by Section 110 (2) of the Customs Act, 1962.

3. On December 5, 1965, an order was made by the Customs authorities under the proviso to Section 110 (1) of the Customs Act, 1962, whereby the petitioner was directed not to remove, part with or otherwise deal with the goods except with the previous permission of the respondents No. 3. With regard to this order the petitioner's case is that there was no material on the basis of which the respondents could have any reason to believe that the goods or any of them were liable to confiscation under the Act. In the petition there is a challenge to the vires of Section 110 of the Customs Act, 1962, on the ground that it confers upon the Customs Officer an absolute arbitrary, untrammeled and uncontrolled power without laying down any standard or

principle for his guidance and enables a Customs Officer to pick and choose any person for the favor of giving premission to deal with the goods so detained and for that reason the said provision is violative of Article 14 of the Constitution, as it denies equal protection of laws to the owner or holder of goods. There is also a challenge to the vires of Section 110 (3) of the Customs Act, 1962, on the ground that it is violative of Articles 14, 19 (1) (f) and (g) and 31 (1) of the Constitution.

4. The seizure of the goods was followed by criminal proceedings against the petitioner and by an order dated 29th June 1966 the petitioner was discharged from one of the said proceedings and by another order dated August 26, 1967, the petitioner was again discharged in a second criminal case in which a proclamation was issued against the petitioner. This proclamation was also recalled.

5. In exercise of the powers under the proviso to section 110 (2) of the Act, an order was made whereby the period of six months was extended by two months with effect from June 1, 1966 and this order of extension was communicated to the petitioner by a letter dated May 30, 1966. The petitioner's contention is that the said order of extension was passed ex parte and without giving the petitioner an opportunity to show cause against the said extension and without hearing him. It was also contended that it was incumbent on the Customs authorities to serve notice on the petitioner before making the order of extension and also to give him an opportunity of being heard, on the question whether extension of time should be granted or not. It is alleged that there was no cause or sufficient cause justifying extension of time and the order was passed without jurisdiction and for that reason is null and void.

6. On July 7, 1966, the petitioner moved this Court for a Rule Nisi and also for an order of injunction. On that date a Rule Nisi was issued and also an order of injunction restraining the Customs authorities from taking any steps on the basis of or in connection with the order of detention whereby the petitioner was restrained from removing, parting with or otherwise dealing with the goods mentioned in the Schedule to the order. The injunction also restrained the Customs authorities from taking any steps on the basis of or in connection with the order of extension of the period of detention by two months as communicated by the letter of May 30, 1966, or from issuing any notice or initiating any proceedings whatsoever against the petitioner.

7. On May 31, 1966, the six months period prescribed by Section 110 of the Customs Act, 1962, for issue of a show cause notice under Section 124 of the Act expired. By a letter dated May 30, 1966, the petitioner was informed that the Additional Collector of Customs, on sufficient cause being shown, had extended the period by two months with effect from June 1, 1966. This extended period of two months expired on July 31, 1966, but before the expiry of this period however the petitioner obtained the Rule Nisi and the order of injunction mentioned above. On September 27, 1966, by consent of parties an order was made by this Court whereby the interim order already passed was modified so as to enable the Customs authorities to serve show cause notices on the petitioner. The order was made without prejudice to the rights and contentions of the parties and it was also ordered that the petitioner's contentions regarding the validity of the show cause notices was to be dealt with by the Court at the hearing of the Rule Nisi.

8. Although in the petition the vires of Section 110 of the Act and the sub-sections there under has been challenged on the ground of violation of Articles 14, 19 (1) (f), (g) and 31 (1) of the

Constitution, the only question canvassed before me, was that the extension of two months granted by the Assistant Collector of Customs was bad, as the order was made without hearing the petitioner and without giving him an opportunity of showing cause as to why such an order of extension should not be made. It was contended that in exercising the power of extension under the proviso to Section 110 (2) of the Act, the Customs Officer was acting quasi-judicially and he was therefore bound to hear the objections of the petitioner to such an order of extension, before granting the extension. It was argued that the statute required the Customs Officer in dealing with an application for extension under the proviso to Section 110 (2) to adopt a judicial approach. The statute required, it was further argued, that an order for extension could be made on sufficient cause being shown and this requirement of the statute, it was submitted, quite plainly indicated that the Customs Officer should act judicially or at any rate quasi-judicially and for that reason the petitioner who would be vitally affected by an order of extension, should be given an opportunity of showing cause against such an order and of being heard with regard to the objections that he may have, to such an order being made. In this case no such opportunity was given to the petitioner and the order of extension was made without considering the petitioner's objections to such an order. The extension order was made, it was submitted, in violation of the rules of natural justice and was therefore illegal and should be struck down. It was next contended that the extension order being bad, the petitioner has acquired a vested right to the return of the goods and also of the books and documents which had been seized. The respondents, it was further submitted, were not entitled to retain the goods any longer and were bound to return the same to the petitioner as required by the statute.

9. The argument in substance is that a valid order for extension to retain the goods beyond the period of six months, could be made only upon notice to the party whose goods had been seized and after giving him an opportunity of being heard and of making representations against such an order of extension; and if an order was made without hearing the party and without giving him an opportunity of making representations against the proposed order of extension, such an order would be clearly violative of the rules of natural justice, as the statute required the Customs authorities to have a judicial or quasi-judicial approach to any request for extension of time.

10. The next contention on behalf of the petitioner was that even assuming that the order of extension was validly made, the period of extension expired on July 31, 1966 and as no show cause notice was served within the extended period, the petitioner was entitled to the return of the goods, as also of the books and documents seized by the Customs authorities. Several show cause notices dated 1-10-66, 3-10-66, 15-10-66 and 8-11-66 were issued and served on the petitioner. These notices, it was argued, were clearly served beyond the extended time which expired on July 31, 1966. Leave to serve show cause notices was obtained by the petitioner from this Court on September 27, 1966, on which date by consent of parties the order of injunction was modified to enable the respondents to serve show cause notices on the petitioner. This leave was obtained after expiry of the extended period and thereafter the show cause notices were served as mentioned above. It was therefore submitted that as no show cause notice was served upon the petitioner within the period prescribed by the statute, the respondents were bound to restore the goods, books and documents seized, to the petitioner and the respondents had no authority in law to withhold or retain them any longer.

11. In my view there is no merit in the contention that the respondents are bound to restore to the petitioner all that was seized, as the show cause notices were served beyond the extended period.

By the order of ad interim injunction passed by this Court the respondents were restrained from taking any steps in connection with the seizure and order of detention dated December 5, 1965 and also from issuing any notice or initiating any proceeding whatsoever against the petitioner. The respondents were restrained from issuing the show cause notices and therefore, even though time was extended by two months from June 1, 1966, they could not possibly serve a show cause notice in violation of the ad interim injunction issued by this Court. Having regard to the ad interim injunction, it was not open to the respondents to serve any show cause notice on the petitioner for commencing proceedings which may terminate in an order for confiscation of the goods under Section 111 and an order imposing penalty under Section 112 of the Act. This is precisely what the petitioner apprehended and it was on his prayer that the order of injunction was made restraining the respondents from taking any steps whatsoever in connection with the search and seizure of the goods. The order of injunction was wide and comprehensive in its terms and having obtained this order it is not open to the petitioner now to contend that the show cause notices were not served upon him within the period prescribed by the statute I shall revert to this question later in the judgment.

12. In support of the contentions mentioned above Mr. A. K. Sen learned counsel for the petitioner relied upon a Bench decision of this Court, *Charan Das Malhotra v. Assistant Collector of Customs and Superintendent Preventive Service*[1], In that case also the appellant carried on the business of a watch dealer and a search was conducted at his place of business. Several watches of foreign make were seized on March 19, 1963 and a show cause notice was issued on March 6, 1964. Between the dates of the seizure and the issue of the show cause notice, two extensions were granted under the proviso to Section 110 (2) of the Act. The first extension was granted on September 19, 1963, for four months and a second extension for two months was granted extending the time till March 17, 1964. The first extension for four months granted on September 19, 1963, expired on January 19, 1964. The second extension of two months, however, was granted after the expiry of the first extension on January 19, 1964, as the order of second extension of two months was made on February 20, 1964. The show cause notice under Section 124 of the Act in that case was given on March 6, 1964. Admittedly therefore in this case the second extension was granted after the expiry of the first extension on January 19, 1964. The contention of the appellant was that both the extensions were granted ex parte and without notice to him. It was held, however, that even if the first extension granted on September 19, 1963, was justified the ex parte order made on February 20, 1964, by which a second extension of two months was granted could not be justified. It was further held that notice under Section 124 of the Act must be given within six months of any extended time and if it was not so given, the goods seized must be returned to the person from whom they have been seized. It was further held that the first extension expired on January 19, 1964 and since on that date no extension order was made, the right to the return of the goods devolved on the appellant. The second extension was granted on February 20, 1964, a

[1] AIR 1968 Cal 28

month after the expiry of the first extension and by this order of extension, it was held, a vested right of the appellant was being taken away. It was also held that as the Collector of Customs had to consider whether the cause shown was sufficient or not specially as it affected a vested right, he should have a judicial approach in the sense "that he would have to hear the pros and cons from all 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." It was held that under those circumstances a determination requires a judicial approach and could not be made ex parte. This

decision to my mind does not uphold the petitioner's contention in the instant case now before me. In that case the second order of extension was admittedly made after the expiry of the first extension of four months, so that immediately on the expiry of the first extension of four months the appellant acquired a vested right to the return of the goods as there was no order of extension on January 19, 1964, on which date, the first extension expired. Secondly in that case the first order of extension was made before the expiry of the initial period of six months and the Division Bench observed with regard to the first extension which also was made ex parte "that even if the first extension on the 18th September, 1963, was justified, the ex parte order made on 20th February 1964, cannot be justified." Quite clearly therefore although the Division Bench held that an order of extension made ex parte after the expiry of the period was bad, it did not hold, that an ex parte order extending the time within the period of six months as prescribed by the proviso to Section 110 (2) of the Act was bad. The question decided in that case was that where the period prescribed by the statute had expired or lapsed in consequence whereof a party had acquired a vested right to the return of the goods seized, such a vested right could not be taken away so as to deprive the party to the return of the goods by an order made ex parte extending the time. In other words it was held that where a party had acquired a vested right to the return of the goods by reason of the expiry of the time within which notice was to be served, such a vested right could not be taken away by an order of extension made ex parte without hearing the party. For these reasons this decision, to my mind, is of no assistance to the petitioner in this case.

13. The next decision relied upon by learned counsel for the petitioner was a decision of this Court reported in *Bibhuti Bhusan Bagh v. I. J. Rao*[2]. In that case on May 5, 1966, various type-writers adding and calculating machines were seized by the Customs Authorities after a search. Before the expiry of the period of six months within which a notice under Section 124 was to be served, the Additional Collector of Customs by an order made on November 3, 1966, extended the initial period of six months for giving notice under Section 124 and within this extended period a notice under Section 124 was served on December 16, 1966. The order of extension, however, in that case, was not served and communicated until December 16, 1966, that is to say, after expiry of the initial period of six months from the date of seizure. Ghose J. relying upon two decisions reported in AIR 1959 Calcutta 219 and (1960) 11 STC 589 (Cal), came to the conclusion that the order of extension though made on November 3, 1966, was to be treated as made on the day when it was communicated to the party namely December 16, 1966 and as by this time the right to get back the goods seized had become vested in the petitioners in that case, the order extending the time was bad. The facts in this case are clearly distinguishable from the facts in the instant case now before me, in which the initial period of six months expired on May 31, 1966, but before the expiry of this period that is

[2](1969) 73 Cal WN 340

to say, on May 30, 1966, the petitioner was informed about the order of extension by two months with effect from June 1, 1966. Ghose J. came to the conclusion that the order of extension was to be treated to have been made on the day on which it was communicated to the petitioners in that case namely, December 16, 1966 and as on that date the petitioners had already acquired a vested right to the return of the goods, such a right could not be taken away without given an opportunity of being heard to the petitioner.

14. The decision reported in (1969) 73 Cal WN 340 was strongly relied upon by the learned counsel for the petitioner in support of his contention that in making the order of extension the Customs Officer must act judicially or quasi-judicially and must have a judicial approach; and

therefore he must give notice to the party whose goods have been seized and give an opportunity of being heard to such a party and if an order was made extending the time without giving such an opportunity and without hearing the party, such an order must be held to be bad and must be struck down. In dealing with this contention it is to be considered, if the pharse "on sufficient cause being shown", in the proviso to Section 110 (2) of the Act requires an objective analysis of the grounds made out for extension of time or merely postulates a subjective satisfaction of the Collector of Customs who is empowered to make the order of extension.

15. The provisions in statute requiring public servants to make confiscatory orders, whenever they have reason to believe that grounds exist for formation of such a reason to believe have received judicial attention in several decisions to which I shall presently refer. It is necessary to go into these decisions to find out if the phrase "on sufficient cause being shown" in the proviso to Section 110 (2) of the Act is a matter of subjective satisfaction of the Customs Officer or postulates an objective analysis, which demands a show cause notice to the party likely to be affected by the order and also an opportunity of being heard being given to him. The first case to which I shall refer in this connection is a decision of the Supreme Court, *Collector of Customs, Madras v. N. Sampathu Chetty*[3], In that case Section 178 (1) of the Sea Customs Act, 1878, which prescribed that where goods to which that section applied were seized in the reasonable belief that they were smuggled goods, the burden of proving that they were not smuggled goods shall be on the person from whose possession the goods were seized, came up for consideration and it was held that if circumstances existed to raise a reasonable suspicion that the goods seized had been obtained illicitly, that was sufficient to constitute in the words of the statute, "a reasonable belief that the goods (gold) were smuggled." It was held to be a matter of subjective satisfaction of the Customs Officer and a suspicion that goods were obtained illegally was sufficient to constitute a reasonable belief.

16. The next case to which I shall refer on this question is also a decision of the Supreme Court *Babulal Amthalal v. Collector of Customs, Calcutta*[4] in which the Supreme Court considered the questions of reasonable belief that the goods were smuggled goods as prescribed by Section 178-A (1) of the Sea Customs Act 1878. In that case several pieces of diamond were seized by the Customs Officer upon a search. This seizure was made in the reasonable belief of the Customs authorities that the diamonds were smuggled goods. Under Section 178-A (1) the burden of proving that the goods were not smuggled goods is on the person from whose possession the goods were seized. Dealing with this provision and also the question of reasonable belief it was held at page 21 of the report as

[3] AIR 1962 SC 316
[4](1958) SCA 13

follows:-

No doubt the content and import of the section are very wide. It applies not only to the actual smuggler from whose possession the goods are seized but also to those who came into possession of the goods after having purchased the same after the same has passed through many hands or agencies. For example, if the Customs authorities have a reasonable belief that certain goods in the possession of an innocent party are smuggled goods and the same is seized under the provisions of this Act, then the person from whose possession the goods were seized, however innocent he may be, has to prove that the goods are not smuggled articles. This is no doubt a very heavy and onerous duty cast on an innocent possessor who for aught one knows, may have

bona fide paid adequate consideration for the purchase of the articles without knowing that the same has been smuggled. The only pre-requisite for the application of the section is the subjectivity of the Customs Officer in having a reasonable belief that the goods are smuggled." The question of 'reasonable belief' was again considered by the Supreme Court in *Pukhraj v. D. R. Kohli*[5], In that case the Collector of Central Excise, Nagpur, passed an order directing confiscation of gold found in the possession of a party and imposing upon him a personal penalty of Rs. 25,000 under Section 167 (8) of the Sea Customs Act, 1878, read with Section 19 of the said Act and Section 23-A of the Foreign Exchange Regulation Act, 1947. It was contended that there were nothing on record to show that the seizure of gold had been effected by the Officer acting on a reasonable belief that the gold was smuggled. It was also contended that the question whether there was a reasonable belief or not was justiciable and since there was no material on the record to show that the belief could have been reasonable the statutory presumption could not be raised. In rejecting this contention the Supreme Court held :

> "After all, when you are dealing with a question as to whether the belief in the mind of the Officer who effected the seizure was reasonable or not, we are not sitting in appeal over the decision of the said Officer. All that we can consider is whether there is ground which prima facie justifies the said reasonable belief. That being so, we do not think there is any substance in the argument that the seizure was effected without a reasonable belief and so is outside Section 178-A."

17. The next case on this point relied upon by the learned counsel for the respondents was a Bench decision of this Court reported in *Nathmall Jalan v. Additional Collector of Customs*[6]. In that case certain gold bars were seized and thereafter a show cause notice under Section 167 (8) of the Sea Customs Act, 1878, read with Section 23-A of the Foreign Exchange Regulation Act, 1947, was served. It was argued in that case that as the bullion was purchased from a dealer at Bombay, the onus of proof that the gold involved was smuggled gold shifted from the party to the Customs authorities and that in those facts there could be no ground for having a reasonable belief that the bullion was smuggled. It was held that the question whether the gold was smuggled gold was a matter of subjective satisfaction of the Customs authorities and that it was not open to the party from whom the gold was seized to challenge the grounds of reasonable belief of the respondents as required by Section 178-A of the Sea Customs Act, 1878.

[5] AIR 1962 SC 1559

[6](1966) 70 Cal WN 349

18. It is to be noticed that the decisions mentioned above have dealt with the question of 'reasonable belief, or 'reason to believe' in the Sea Customs Act, 1878 and the matter with which I am concerned in this case is the phrase 'on sufficient cause being shown' in the proviso to Section 110 (2) of the Act. Under the proviso to Section 110 (2) of the Act, sufficient cause is to be shown to the Collector of Customs and it is he who is to be satisfied about the sufficiency of the cause shown by the department for an extension of time. Section 178-A (1) which was considered by the Supreme Court in Babulal Amthalal Mehta's case, 1958 SCA 13 (supra) and also in Pukhraj's case, AIR 1962 Supreme Court 1559 (supra) runs as follows:-

> "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."

In dealing with the question of reasonable belief in the section quoted above it was held in Pukhraj's case, AIR 1962 Supreme Court 1559 (supra) that the Court does not sit in appeal over the decision of the Customs Officer in dealing with a question as to whether the belief in the mind of the Officer was reasonable or not. In my view the same principles are attracted in construing the phrase 'on sufficient cause being shown' in the proviso to Section 110 (2) of the Act. With regard to the nature and sufficiency of the cause, it is the satisfaction of the Collector of Customs that provides the ground and justification for an order extending the time to complete the inquiry. Objections raised on behalf of the party from whose custody goods have been seized, however strong and cogent they may be, cannot in my view provide any grounds for challenging the legality or validity of an order of the Collector of Customs extending the time under the proviso to section 110 (2) of the Act. If the order of extension is made before expiry of the initial period of six months, or before expiry of the extended period, it cannot in my view be challenged on the ground that notice to show cause, or opportunity of being heard was not given to the party, provided however that such an order of extension is made within the limit of one year prescribed by sub-section (2) and the proviso thereto to Section 110 of the Act.

19. Let me now proceed to test the question from a different point of view. The proviso requires the department to show sufficient cause to the Collector of Customs. What is this cause that the department can show? Quite plainly the cause that can be shown is that the investigation is not complete and that inquiries have yet to be made from persons A. B. and C at places X, Y and Z and that for one reason or another, such inquiries could not be completed either within the initial period of six months or within the extended period, which must not of course exceed a further period of six months. Such is the cause to be shown and such is the cause that can provide the ground for an order of extension. If an order of extension is made after expiry of the initial period of six months or after expiry of the extended period, different considerations will apply, as a statutory right to the return of the goods vests in the party under sub-section (2) of Section 110 of the Act. But if it is held that notice must be given to the party whose goods have been seized, before making an order of extension and that such order of extension can be made only upon hearing the party it must follow that the materials which have been produced before the Collector of Customs by the department, must also be placed before the party and he must be told that inquiries have yet to be made from persons A, B and C at places X, Y and Z. What would be the result of disclosure of such materials to a party who is charged with smuggling and whose dealing with the goods are under investigation? It is obvious that such disclosure would lead to disappearance of or at any rate tampering with material evidence. Such a course of action in my view would defeat the purpose of the investigation itself and is entirely against public interest.

20. The purpose for which six months time has been given by Parliament to the department for serving a notice under Section 124 of the Act and the purpose for which provision has been made for extension of the initial period of six months by a further period not exceeding six months, is quite plain. That purpose is to enable the department to commence and conclude investigation regarding the importation of the goods and subsequent dealings therewith. If the party from whose custody the goods have been seized and who may be charged with smuggling of the goods and against whom an order confiscating the goods and imposing a personal penalty may be made, is informed that investigations with regard to the import of and subsequent dealings with the goods are going to be made, from such and such persons at such and such places, the purpose of the investigation itself and indeed the whole proceedings commencing from search and seizure

would be altogether defeated. The investigation contemplated by the statute, must be made without the knowledge of the party (from whom the goods have been seized) as to the sources at which investigation is to be made. For such an investigation to succeed, it must be made behind the back of the party who has been charged with the offence of smuggling. Parliament in my view did not intend that when an order of extension was made before expiry of the statutory period or extension thereof notice must be given to the party from whom goods have been seized and such a party must be heard by the Collector of Customs before making the order. When Parliament desired that notice should be given, followed by an opportunity of making representations and an opportunity of being heard, provision to that effect has been expressly made in the statute itself. This becomes clear on a reference to Section 124 of the Act in which mandatory provision has been made firstly for giving notice in writing of the grounds on which goods are proposed to be confiscated, or penalty imposed; secondly of giving an opportunity of making the representation and thirdly of giving reasonable opportunity of being heard. Keeping in mind the mandatory provisions regarding service of notice, written representations and opportunity of being heard in Section 124 of the Act, in my view it is not open to the Court in construing the terms of the proviso to sub-section (2) of Section 110 of the Act. In a case in which the order of extension was made before expiry of the initial period of six months, or expiry of subsequent extension not exceeding a further period of six months, to hold that the statute requires by implication though not expressly, that a notice and an opportunity of being heard is to be given to the party. That in my view would have the result of introducing in the proviso to sub-section (2) of Section 110 something which is not there at all. It is true that when statutory authorities are given jurisdiction to deal with the rights of citizen, they may be required to act judicially by the statute and in such cases there may be either an express provision in the statute or such a provision may be implied. In other words when a statutory authority is required by the statute to deal with the rights of citizens, they may be required to act judicially or quasi-judicially by implication, even though no express provision has been made in the statute. But such an implication, in my view cannot be inferred when the Collector of Customs is exercising his jurisdiction under the proviso to Section 110 (2) of the Act. From what I have said above it will be amply clear that in circumstances such as these, namely an investigation following seizure of goods, to hold that the Collector of Customs must act judicially and give notice to the party and also an opportunity of being heard, would defeat the purpose of the investigation itself. To read into the proviso to Section 110 (2) of the Act an implied provision requiring the Customs Officer to act judicially will be altogether contrary to the scheme of the Act in Chapter XIII which deals with search, seizure and arrests.

21. It was argued by learned counsel for the petitioner, that even if it was held that the order of the Collector of Customs was an administrative order and not a judicial or quasi-judicial order, notice should have been given to the petitioner, who should also have been given an opportunity of being heard. In other words, it was contended that even in case of an administrative order, the authority making the order is required to follow the rules of natural justice and should therefore give to the party affected, a notice that an order affecting him may be made and also give such a party an opportunity of being heard. In support of this contention reliance was placed upon a decision of the Supreme Court, *State of Orissa v. Dr. (Miss) Binapani Dei*[7], In that case there was a dispute with regard to the declared age of a Government servant who claimed that her age as recorded in the Civil List and the Service Records of Gazetted Officers should be accepted. The age of superannuation was raised from 55 to 58 from December 1, 1962. But before this alteration in the age of retirement, she was due to retire on April 10, 1965 upon completing 55

years. According to her, her age of birth was April 10, 1910. But upon an inquiry being made on the basis of some anonymous letters she was required to show cause why her date of birth should not be treated to be April 4, 1907. The Government of Orissa thereupon determined the date of birth of the Government servant to be April 16, 1907 and declared that she would be deemed to have retired on April 16, 1962, subject to certain extensions owing to which she was to retire on July 15, 1963. The High Court of Orissa held that the order whereby the Government servant was superannuated on April 16, 1962, on the basis of her date of birth as April 16, 1907, amounted to compulsory retirement before she attained the age of superannuation and was removed from service within the meaning of Article 311 and as the Government servant was not given a reasonable opportunity of showing cause against the order of removal, the order itself was invalid. In order to find out the correct position regarding the age, the Additional Director of Planning was asked to make a report and he made a report regarding the age of the Government servant. This report was not disclosed to the Government servant. It was in these facts that the Supreme Court held that the said authority should have placed all the materials before the Government servant and called upon her to explain the discrepancy and to give an explanation and that although the order was administrative in character, it should have been made consistently with the rules of the natural justice after informing the Government servant of the state of evidence with regard to her age and after giving her an opportunity of being heard. It is to be noticed that in that case question of superannuation of an employee was involved. There was dispute on the question of the correct age and the State Government had collected various materials with regard to her age and these materials were not placed before her and she was not given an opportunity of explaining the discrepancies. It was in the background of these facts that the observation of the Supreme Court that even in case of an administrative order rules of natural justice should be followed was made. This decision, to my mind, does not support

[7] AIR 1967 SC 1269

the petitioner's contention in this case. Certain materials collected behind the back of the Government servant were going to be used against her and she was not informed of such materials, nor was she given an opportunity of explaining the discrepancy arising out of her declared age and the age arrived at on materials collected by the Government and relying on the materials collected by the Government an order of superannuation was made. In the instant case now before me no order has been made against the petitioner to his prejudice nor has any materials collected against him been used. All that has been done was that of order of extension was made in terms of the proviso to Section 110 (2) of the Act. The decision of the Supreme Court mentioned above is not an authority for the proposition that rules of natural justice must be followed in the case of every administrative order and a notice should be served to the party against whom an order is proposed to be made. An order of search and seizure for instance under the Act is also an administrative order and it is an order which is seriously detrimental to the party against whom it is made. But can it be said that notice must be given to the party against whom an order for search and seizure is going to be made and further that the party should be given an opportunity of being heard before making an order of search and seizure? Quite plainly the answer must be in the negative.

22. In support of the contention mentioned above reliance was also placed on another decision of the Supreme Court *Barium Chemicals Ltd. v. Company Law Board*[8], In that case an order of investigation under Section 237 of the Companies Act, 1957, was challenged on the ground that circumstances did not exist and they were not such as to enable the Central Government to form an opinion suggestive of the things set out in sub-clauses (i), (ii) and (iii) under Section 237 (b)

of the Companies Act, 1957. It was held that if it was shown that circumstances did not exist or that they were such that it was impossible for any one to form an opinion suggestive of the aforesaid things, the opinion of the Central Government was challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral ground and was beyond the scope of the statute and was based on grounds extraneous to the legislation. This decision again, to my mind, is of no assistance to the petitioner in this case. Sub-clauses (i), (ii) and (iii) under Section 237 (b) of the Companies Act lays down certain condition precedent to the exercise of the power to appoint Inspectors to investigate into the affairs of a company and it was held that if there was a challenge to the exercise of the power by the Central Government, it must be shown that circumstances did exist to enable the Central Government to form an opinion in the matter so as to exercise its power to direct investigation into the affairs of the company. In the instant case now before me there is no condition precedent to the exercise of the power to extend the time under the proviso to Section 110 (2) of the Act. The decision in Barium Chemicals' case, AIR 1967 Supreme Court 295 (supra) to my mind has no application to the facts of this case. Section 237 (b) of the Companies Act lays down conditions which must exist before the power to order an investigation can be exercised by the Central Government and the majority view of the Supreme Court was that as the existence of 'circumstances' was the condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, had to be proved at least prima facie and that it was not enough to assert that circumstance existed and give no clue to what they were because the circumstances must be such as to lead to conclusions of certain definiteness, on the question of subjective satisfaction of the Central Government as to the existence of the circumstances. A material portion of the
[8] AIR 1967 SC 295
observations runs as follows:-

> "No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out."

It will be amply clear that the questions considered by the Supreme Court in Barium Chemicals' case, AIR 1967 Supreme Court 295 (Supra) were entirely different from the question with which I am concerned in this application. There are no conditions precedent to the exercise of the power to extend the time, nor is there any challenge to the existence of any such conditions precedent.

23. On the same question reliance was also placed by the learned counsel for the petitioner on another decision of the Supreme Court, *Bhagawan v. Ram Chand*[9], In that case the Supreme Court considered the question of the validity of an order of the State Government under the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, on the ground that the State Government did not hear the parties who were affected by it. In that case the landlord applied to the Rent Controller and Eviction Officer under Section 3 of the said Act for permission to sue the tenant for ejectment. This permission was granted and the tenant thereupon appealed to the Additional District Magistrate. The Appellate authority declined to confirm the permission granted to the landlord and remanded the case for fresh hearing. On remand the officer changed his views and rejected the application for permission. The landlord then moved the Appellate authority again

for extending the original order directing him to sue. The appellate authority granted permission to the landlord and thereupon the tenant moved the Commissioner of Agra in revision. This application in revision was allowed and the appellate order granting permission was set aside. Thereupon the landlord went up to the State Government under Section 7-F of the said Act and the State Government directed the Commissioner to revise his order on the ground that it thought the need of the landlord to be genuine. On this direction the Commissioner passed an order cancelling the previous order and confirming the order passed by the Appellate Authority granting permission to the landlord to sue. The landlord thereupon sued the tenant in ejectment and obtained a decree. The matter went up to the Allahabad High Court in second appeal and the only issue in the High Court was if the order of the State Government was valid as it was made without giving the tenant an opportunity of being heard. The Allahabad High Court came to the conclusion that the order of the State Government was invalid as exercising its power under Section 7-F of the Act the State Government did not give an opportunity of being heard to the tenant. Thereafter the matter went up to the Supreme Court and it was held that when an Act conferred jurisdiction and power on any authority to deal with the rights of citizens, it may be required by the statute to act judicially in dealing with matters entrusted to it and that an obligation to act judicially might in some cases be inferred from the scheme of the statute and its provisions. In such cases it was held, it is easy to hold that the authority must act in accordance with the principles of natural justice and that it was not necessary that the obligation to follow the principles of natural justice must be

[9] AIR 1965 SC 1767

expressly imposed on the authority. On the obligation to act judicially the Supreme Court observed at page 1770 of the report as follows:-

> "If it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a tribunal would depend upon the nature of the power conferred on the authority or body, the nature of the rights of citizens the decision of which falls within the jurisdiction of the said authority or body and other relevant circumstances."

This decision also to my mind, is of no assistance to the petitioner in this case. In making the order of extension the Collector of Customs, in my view, was not making any order determining a question affecting the rights of the petitioner. The rights of the petitioner, such as they were, were already affected by the search and the order of seizure. The extension order was made within the period of six months and it cannot therefore be said that the petitioner had acquired any right to the return of the goods. The order of extension merely enlarged the time within which the department was to complete its investigation. There was in my view, no determination of a question affecting the rights of the petitioner. It is to be remembered that the attack in this case was confined to the order of extension and not directed against the order of search and seizure.

24. The next case relied upon by the learned counsel for the petitioner was also a decision of the Supreme Court *M. Gopal Krishna Naidu v. State of Madhya Pradesh*[10], That was again a case relating to certain orders made against the appellant who was a Government servant. The

appellant was suspended from service and was prosecuted under the Indian Penal Code. He was convicted but this conviction was set aside on appeal, for want of a sanction to prosecute. He was prosecuted for the second time on the same charge but this prosecution was quashed on the ground that the investigation was not conducted by the proper authority. In revision the Nagpur High Court held that the Court below was in error in so holding but recommended that the prosecution should not be proceeded with as 10 years had gone by since it was lodged. Thereafter the prosecution was dropped but a departmental enquiry was held on the same charges. The appellant was found not guilty, but the Government disagreed with that view and served a show cause notice for dismissal. On cause being shown, the Government held that the charges were not proved beyond doubt but that the suspension and the departmental enquiry were not wholly unjustified. The appellant was directed to be reinstated with effect from the date of the order, but retire from that date as he had attained the age of superannuation already and the entire period of absence from duty was to be treated as spent on duty for pension only but he was not to be allowed any pay beyond what he had actually received or what was allowed to him by way of subsistence allowance. The appellant thereafter filed a writ petition for quashing the order of reinstatement without pay and for an order directing the Government to treat the period of absence from duty as period spent on duty. This petition, however, was dismissed by the High Court and the matter thereafter went up to the Supreme Court in appeal. It was held that the order passed under the relevant fundamental rule would affect the Government servant adversely if it was made under clauses III and V and that consideration of the case depended on facts and circumstances

[10] AIR 1968 SC 240

in their entirety and an order resulting from a finding of the facts and circumstances would result in pecuniary loss to the Government servant and such an order must be held to be an objective rather than a subjective function. It was further held that the very nature of the function implied the duty to act judicially and if an opportunity to show cause against the action proposed was not given the order was liable to be struck down as invalid on the ground that it was made in breach of the principles of natural justice. This decision, in my view, does not upheld the contentions advanced on behalf of the petitioner. The order made on the face of it caused pecuniary loss to a Government servant and seriously affected the question of his pension and it was held that an order causing pecuniary loss to a Government servant by non-payment of salary and also reducing his pension could not be made without giving him an opportunity of being heard. The questions raised and decided in this case have no application to the question with which I am concerned in the instant writ petition.

25. The next decision relied upon by the learned counsel for the petitioner was also a decision of the Supreme Court, Calcutta *Discount Co. Ltd. v. Income-Tax Officer, Companies District I, Calcutta*[11], In that case the Supreme Court considered the validity of a notice issued under Section 34 of the Income-tax Act, 1922. It was held that Section 34 of the said Act laid down two conditions precedent to the exercise of the power to issue of notice namely that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to tax had been under-assessed and secondly that the Income-tax Officer must have reason to believe that the under-assessment had occurred by reason either of omission or failure on the part of the assessee to make a true return of his income, or omission or failure on his part to disclose fully and truly all material facts necessary for his assessment. It was held that both these conditions precedent must be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or re-assessment beyond four years but within eight years from the end of the year in

question. In the facts of that case it was found that the conditions precedent mentioned above did not exist and the Income-tax Officer therefore had no jurisdiction to issue notices under Section 34 of the Act. This decision again, to my mind, has no application to the question with which I am concerned in this case. There are no conditions precedent to the exercise of the power by the Collector of Customs under the proviso to Section 110 (2) of the Act. The only requirement of the statute is that an order for extension can be made on sufficient cause being shown and whether the cause shown by the department, for extension of time to complete investigation into the charge of illegal importation is sufficient or not, as I have said earlier must be a matter of subjective satisfaction of the Collector of Customs.

26. The next case relied upon by the learned counsel for the petitioner was the decision of the Supreme Court, *Rohtas Industries Ltd. v. S. D. Agarwal*[12], In that case also the validity of an order made by the Central Government under sub-clauses (i), (ii) of clause (b) of Section 237 of the Companies Act, 1956, appointing Inspectors to investigate into the affairs of a company was considered by the Supreme Court. The challenge to the order was on the ground that the Central Government had no material before it from which it could have come to the conclusion that the appellant's business was being conducted in violation of the provisions of the statute. Agreeing with the majority view in Barium

[11] AIR 1961 SC 372
[12]1969-1 SCC 325

Chemicals' case, AIR 1967 Supreme Court 295 (supra) it was held as follows :-

> "For the reasons stated earlier we agree with the conclusion reached by Hidayatullah and Shelat JJ. In Barium Chemicals' case that the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause (1) or the persons mentioned in sub-clause (2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of these conditions is challenged the Courts are entitled to examine whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the Courts. As held earlier the required circumstances did not exist in this case."

For the reasons mentioned by me while dealing with Barium Chemicals' case, this decision also is of no assistance in deciding the questions with which I am concerned in the case.

27. The next case relied upon by Mr. Sen was also a decision of the Supreme Court, *Purtabpore Co. Ltd. v. Cane Commissioner of Bihar*[13], In that case there was a dispute between two sugar manufacturing companies with regard to allotment of sugarcane producing villages in Bihar and U. P. The Cane Commissioner had allotted certain villages to the appellant, but the Chief Minister of Bihar intervened in the matter and passed an order for alteration of the allotment made. On the order of the Chief Minister, the Cane Commissioner revised his earlier order of

allotment and this revised order was challenged in a writ petition. The ground of challenge was that though the order was made by the Cane Commissioner it was in substance the order of the Chief Minister and the Cane Commissioner had abdicated his authority and function and therefore the order revising the earlier allotment was bad. The second ground of challenge was that the Cane Commissioner acted in a quasi-judicial capacity and as no opportunity was given to the appellant for making representation against the order of revision, the order was bad. The third ground of challenge was that even if the order was an administrative order, it was liable to be set aside on the ground of violation of rules of natural justice. The Supreme Court held that though the impugned order was purported to be made by the Cane Commissioner, it was in fact made by the Chief Minister and hence they were invalid. The Cane Commissioner, it was held, merely carried out the orders of the Chief Minister and though the order was that of the Cane Commissioner, he had merely carried out the directions of the Chief Minister and the Chief Minister had imposed his opinion on the Cane Commissioner. It was further held that the power exercisable by the Cane Commissioner was a statutory power and he alone could have exercised that power and he could not abdicate his responsibility in favour of any one and that the Cane Commissioner acted in a quasi-judicial capacity as there was a lis between two contending parties and this lis commenced as soon as one of the parties moved the Government for altering or modifying the reservation made in the earlier order. It was

[13]1969-1 SCC 308 (SC)

further held that the order was bad on the ground that though the Cane Commissioner acted in a quasi-judicial capacity no opportunity for making representation was given to the appellant. I do not see how this decision helps the petitioner in the instant case now before me. There is no question involved in this case of the order having been made by any authority other than that whom the statute has empowered to make the order. There is no question of abdication of power or authority by the Collector of Customs in favor of anybody else and there is no challenge to the order of extension on that ground. Secondly there was no lis between two rival or contending parties. The only question is whether the Collector of Customs should have granted the extension in exercise of the powers under the proviso to Section 110 (2) of the Act. This decision, to my mind, is therefore of no assistance to the petitioner in this case.

28. The next contention of Mr. Sen was that even if an order is an administrative order, the authority making the order must act fairly if not judicially. It was argued that if it was held that the Collector of Customs was not bound to act judicially, he was nevertheless bound to act fairly. In support of this proposition reliance was placed on an English decision Re: H. K. (an infant), (1967) 1 All E. R. 226. In that case a national of Pakistan to whom the Commonwealth Immigrants Act, 1962, applied, had settled in England leaving his wife and family in Pakistan. In order to bring his eldest son to England he forwarded to the Pakistan High Commission in England a sworn declaration dated June 8, 1966, stating that his son was 151/2 years old and that it was his intention to be responsible for and maintain his son in England. A Passport was issued in Pakistan to the son in which his date of birth was given as February 29, 1951. Thereafter the Pakistan national arrived at London Airport with his son and they were interviewed by the Immigration authorities. The Immigration Officer was of the view that the son was not more than 16 years old and thereupon sent the son to the Medical Officer whose opinion was that the son was 17 plus. Thereafter the father and son were again interviewed and this interview was followed by a formal notice in writing from the Chief Immigration Officer to the son refusing him admission. Subsequently it appeared that the son had in his possession a school leaving certificate in Arabic script which showed that the son was bom on February 29, 1951. An

application was made for the issue of Writ of Habeas Corpus to secure release of the son from the custody of the Chief Immigration Officer and there was also a prayer for a Writ of certiorari for quashing the decision refusing the son's admission to the United Kingdom. After referring to an earlier decision of the Judicial Committee under a statute which required the officer to hold an inquiry and specific provision was made for service of notice and for hearing. Lord Parker C. J. held that that was a clear case where the officer was acting judicially or quasi-judicially and he was required to adopt a judicial process and then went on to hold at p. 231 of the report:

> "This, as it seems to me is a very different case and I doubt whether it can be said that the Immigration authorities are acting in a judicial or quasi-judicial capacity as those terms are generally understood. At the same time, however, I myself think that even if an Immigration Officer is not acting in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the sub-section and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not as I see it, a question of acting or being required to act judicially, but of being required to act fairly. Good administration and an honest or *bona fide* decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but of acting fairly and to the limited extent that the circumstances of any particular case allow and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply, which in a case such as this merely a duty to act fairly."

In the same case Salmon L. J. held at page 232 of the report:

> "I have no doubt at all that in exercising his powers under that section, the Immigration Officer is obliged to act in accordance with the principles of the natural justice. That does not of course mean that he has to adopt judicial procedure or hold a formal inquiry, still less that he has to hold anything in the nature of a trial, but he must act, as Lord Parker C. J. has said fairly in accordance with the ordinary principles of natural justice. If for example and this I am sure would never arise, it could be shown that when he made an order refusing admission he was biased or had acted capriciously or dishonestly, this Court would have power to intervene by the prerogative writ."

In the facts of that case, however, it was held that it was impossible to hold that the decision made by the Chief Immigration Officer was not arrived at fairly and that both the father and son knew full well of what they had to satisfy the authorities and they were given ample opportunity to do so and the fact that the officer was not satisfied was not a matter for the Court. It is clear that in that case it was held that an administrative officer must act fairly in dealing with a matter under a statute which did not require the officer to act judicially or quasi-judicially. But this decision, to my mind, is of no assistance to the petitioner in this case, firstly because an immigrant under the English Act was required to satisfy the officer about the age of his son whom he wanted to bring into England for permanent residence. The officer was required to come to a decision on the fact of the correct age and he was empowered either to admit or to refuse admission to the son of the immigrant. Secondly, evidence regarding age is required to be

produced and the officer is required to apply his mind in coming to a decision on the question. In the case with which I am concerned, the party whose goods have been seized is not required by the statute to produce any evidence as to why an order of extension should not be made because all that the statute requires is a cause to be shown by the department and not by the party from whose custody goods have been seized. Secondly there is no charge in this case that the Collector of Customs was biased or had acted capriciously or dishonestly. There is nothing in the petition to show that the order of extension was unfairly made.

29. In support of the same contention reliance was placed on another English decision *R. v. Criminal Injuries Compensation Board, Ex parte Lain*[14], In that case a police constable became blind as a result of shooting by suspect, whom he was about to question. He applied to the Criminal Injuries Compensation Board for compensation under the scheme. He was offered and accepted an interim compensation of £300. Later he committed suicide which was attributable to the injury. His widow became entitled to the interim award and also applied for further compensation. On this application a single member of the Board made a final award of £300. The widow thereupon applied for a hearing before

[14](1967) 2 All E. R. 770

three members of the Board who decided that having regard to other payments made she was not entitled to any compensation and made a nil award. The widow thereupon applied for a certiorari to quash the decision. The contention that the jurisdiction of the Court did not extend to the Board was repelled by Lord Parker C. J. and it was held that the Court had jurisdiction although the Board was not a statutory Board. It was held that the Board was a body of persons, of a public as opposed to a purely private or domestic character, that they were performing public duties and were quite clearly under a duty to act judicially. This decision again, to my mind, is of no assistance to the petitioner as the main question with which the Court was concerned in that case was whether the Board not being a statutory body, the Court had jurisdiction to issue a prerogative writ against its decision. On the question whether an applicant was entitled to the hearing there could be no dispute because the scheme which provided for disposal of the matter by our members of the Board, itself laid down that the applicant would be entitled to a hearing before three other members excluding one who had made the initial decision. It is clear therefore that the constitution of the Board itself provided for a hearing and therefore this decision does not touch the question with which I am concerned in this application.

30. The next case relied upon by Mr. Sen was a decision of the Judicial Committee *De Verteuil v. Knaggs*[15], In that case the validity of an order made by the acting Governor of Trinidad was challenged on the ground that it was not made on a statutory exercise of discretion vested in the Governor, by Section 203 of the Immigration Ordinance No. 161. That section empowered the Governor to transfer the indentures of immigrants "on sufficient ground shown to his satisfaction, that all or any of the immigrants indentured on any plantation should be removed therefrom." The Governor in exercise of this power transferred the indentures and certain immigrants from a particular estate upon a complaint with regard to the treatment and condition of the indentured immigrants on the estate. It was held that the Governor could not carry out the duty entrusted to him without making some inquiry if sufficient grounds had been made out that the immigrants indentured on a particular estate should be removed and that in making such inquiry there was a duty of giving to any person against whom the complaint was made a fair opportunity to make any relevant statement which he might desire to bring forward and a fair opportunity to controvert any statement made to his prejudice. This decision, again, is of no assistance to the

petitioner in this case, because upon a complaint being made against the employer of indentured labourers an inquiry was to be made by the Governor and all that was held was that before coming to a decision the Governor who was to hold the inquiry must give the party against whom a complaint was made an opportunity of making representation against the complaint. An inquiry was to be made on a complaint of a particular nature and quite plainly the person against whom the complaint was made must be given opportunity of making proper representation. To my mind, this decision, has no application to the instant case now before me.

31. I now turn to the next contention of the learned counsel for the petitioner. This was based on the definition of "imported goods" in sub-section (25) of Section 2 of the Act. This definition is as follows :-

> "(25) 'Imported goods' means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption."

[15](1918) A. C. 557

It was argued that the goods in this case had been cleared upon payment of Customs duty and as these goods were cleared for home consumption they were not 'imported goods' within the meaning of the Act. It was argued that the Customs authorities had released the goods upon payment of the duty imposed and this decision of the customs authorities to release the goods could not be revised or rescinded by any authority other than the Central Board of Revenue in exercise of its jurisdiction under Section 130 (1) of the Act. In other words, the argument was that the Customs authorities had released the goods upon payment of the duty assessed; and these goods were meant for home consumption and therefore they ceased to be imported goods within the meaning of the Act; the goods were imported under a valid license and the duty assessed on the import was duly paid. The decision to release the goods upon payment of duty was conclusive and irrevocable; this decision could be revised only by the Central Board of Revenue under Section 130 of the Act. In this case, it was argued, there was no such decision by the Board and therefore the goods which were lawfully imported and which were released upon payment of duty had ceased to be imported goods and no action could be taken with regard to them.

32. This argument though attractive, seems to me to be without merit. The different sections of the Act cannot be read in isolation. The definition of "imported goods" in Section 2 (25) has to be read along with Section 111 of the Act which deals with goods brought from a place outside India. This section is in Chapter XIV of the Act which provides for confiscation of goods and conveyances and imposition of penalties. Under Section 111 (d) of the Act any goods which are imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation. The goods which have been seized in this case cannot be imported into India without a license under the Import Control Act and there is therefore a prohibition in law for the import of the goods except in compliance within Import Control Act. It is true that the goods were cleared from the Customs barrier on the basis of import license produced by the petitioner, but the respondents' case is that the import licenses, on the basis of which the goods were cleared were not genuine. The licenses which were utilized by the petitioner for the purpose of clearing the goods, according to the respondents, were forged licenses. If a license is forged it is no license at all and any import of goods, of which the importation is prohibited by law, cannot be a valid import under the Act. Goods so imported cannot therefore be treated to be lawfully "imported goods" within the definition of that term in

Section 2 (25) of the Act. Since the respondents' case is that the licenses on the basis of which the goods were imported were forged licenses, if the allegation of forgery is true, the goods must be held to have been brought into India contrary to a prohibition imposed by law as contemplated by Section 111 (d) of the Act and in that case such goods are liable to confiscation and the power to seize under Section 110 (1) of the Act can be invoked by the Customs authorities and the goods, though cleared after payment of duty can be seized under Section 110 (1) of the Act. The contention on behalf of the petitioner that the goods having been imported into India for home consumption would cease to be imported goods and the decision of the Customs authorities to release the goods upon payment of the duty imposed cannot be revised by any authority other than the Board in exercise of its power under Section 130 (1) of the Act therefore fails and is rejected.

33. Before turning to the decision relied on by the learned counsel for the respondents in support of the proposition that the order is an administrative order and no show cause notice need therefore be served and no opportunity to make representation need be given, I should refer to one decision relied on by Mr. R. C. Deb learned counsel for the petitioner in Matter No. 359 of 1966. The facts involved in that case are the same and the same questions arise for consideration. Mr. Deb adopted the arguments advanced by Mr. A. K. Sen and supplemented them by certain further contentions. He argued that in Bibhuti Bhusan Bagh's case, (1969) 73 Cal WN 340 (supra) Ghose, J., had given two reasons in making the Rule absolute namely that the order of extension was served and communicated after the expiry of the initial period of six months from the date of seizure and secondly that the Customs Officer was bound to have a judicial approach in making the order of extension and therefore should have given a notice to the party whose goods were seized, before making the order of extension. Mr. Deb submitted that both these reasons were ratio decidendi of the case and that it was not open to the learned counsel for the respondents to contend that the conclusion of Ghose, J that the order of extension was bad on the ground that a show cause notice and an opportunity of being heard was not given to the party, was an obiter dictum. In support of this contention Mr. Deb relied upon a decision of the House of *Lords Jacobs v. London County Council*[16] I accept Mr. Deb's contention that both the reasons given by Ghose J. are to be taken as the ratio decidendi of that case. But as I said earlier while dealing with Bibhuti Bhusan Bagh's case, (1969) 73 Cal WN 340 (supra) the decisions of Ghose J. were based on the facts of that case which are quite distinguishable from the facts in the present writ petition. The order of extension in that case was not served and communicated until December 16, 1966, after the expiry of six months, although it was made within the period of six months and Ghose J. held that the order must be treated to have been made on the day on which it was communicated. In this case, on the other hand, the order of extension was made before the expiry of the period of six months and therefore the facts in this case are quite distinguishable from the facts in Bibhuti Bhusan Bagh's case. By the time the order of extension was served on the party in Bibhuti Bhusan Bagh's case, 1969-73 Cal WN 340 (supra) the six months had expired and it was contended that the petitioner had acquired a vested right to the return of the goods. It was in these facts that Ghose J. came to the conclusion following the Bench decision in Charandas Malhotra's case, AIR 1968 Calcutta 28 (supra) that the Customs Officer should have had a judicial approach and should have given a show cause notice and an opportunity of being heard.

34. Let me now turn to the decisions relied on by the learned counsel for the respondents on the question namely whether the Customs Officer should have a judicial approach in making the

order of extension or whether the order is an administrative order and no show cause notice and opportunity of being heard need be given to the party. The first decision relied upon was a Bench decision of the Mysore High Court reported in *Ganesh Mul Channilal v. Collector of Central Excise and Asst. Collector*[17], *Bangalore.* In that case the same question was raised namely the validity of an order of extension made under the proviso to Section 110 (2) of the Act. Certain pieces of gold were seized under Section 110 (1) of the Act on the ground that there was reason to believe that the goods were liable to confiscation. The seizure was made on February 21, 1963. On September 19, 1963, a communication was sent by the Collector of Customs to the parties which purported to be an order of extension under the proviso to Section 110 (2) of the Act extending the time, within which a notice under Section 124 of the Act could be served,

[16](1950) 1 All England Reporter 737

[17] AIR 1968 Mys 89

till February 20, 1964. This communication was followed by a show cause notice under Section 124 dated December 19, 1963. A writ petition was filed challenging the order of extension and also the seizure of the goods under Section 110 (1). The Division Bench held that there could be hardly any doubt that before an order of seizure could be made the proper officer should have reason to believe that the goods which were proposed to be seized were liable to confiscation and that it was equally clear that the belief which he should form in his mind was a subjective belief on ground which he need not disclose and which were not subject to judicial review. On the question whether a show cause notice should be given by the Collector of Customs before making the order of extension it was held as follows at p. 93 of the report:

> "We take the view that the power created by the proviso to Section 110(2) by the exercise of which the Collector could extend the period for service of the notice, could be exercised by the Collector without hearing the person from whom the goods were seized. That power is an administrative power, through the exercise of which all that the Collector does is to extend the period during which the investigation should be completed before the commencement of the proceedings in which the question has to be decided whether the goods have to be confiscated or not. At that stage, what the Collector has to do is to apply his mind to the question whether there was any special difficulty which constituted Impediments to the completion of investigation within the period of six months to which Section 110 (2) refers and exercise his discretion in favour of its extension if he was satisfied that there was any such justification for non-completion of the investigation. It would surely be a very unusual and inconvenient thing for the Collector at this stage to call upon the person from whom the goods were seized to show cause why the delay should not be condoned or to reveal to him the difficulties which were encountered during the investigation and which was responsible for its non-completion within the prescribed period. Disclosure of these grounds to the person from whom the goods were seized would be against public interest and would be utterly detrimental to the completion of the investigation. We therefore take the view that the petitioner had no right to be heard at the stage when the Collector ordered the extension."

Reliance was next placed on a Bench decision of the Bombay High Court reported in AIR 1967 Bombay 138, *Vasantlal v. Union of India.* In that case the Enforcement Department conducted a

search on the strength of a search warrant and recovered certain diamonds. On the day following the search, a safe was opened and some further packets of diamonds were recovered. All the diamonds remained in the custody of the Enforcement Directorate till September 14, 1964, on which day the Customs Department took charge of the diamonds and seized them under Section 110 of the Customs Act. On March 4, 1965, the Collector of Customs made an order of extension under the proviso to Section 110 (2) of the Act and on May 27, 1965, a further extension of three months was granted. It was contended that as the seizure by the Customs Officer was made on September 4, 1964, the period of six months expired on March 3, 1965 and no order of extension could have been made after that date. It was held that Section 9 of the General Clauses Act applied and the order of extension which was made on March 4, 1965, was made within time. The order of extension was held to be valid although no show cause notice or opportunity of being heard was given to the party. I must point out, however, that the question of validity of the order on the ground that no show cause notice was given by the Collector of Customs in making the order of extension under the proviso to Section 110 (2) and also on the ground of an opportunity of being heard was not given were not canvassed before the Court and these questions were not discussed in the judgment. The order, however, was held to be valid. I have already expressed my views on these questions namely the validity of the order of extension having regard to the fact that no notice to show cause was served upon the petitioner and no opportunity of being heard was given to him. All that I need say at this stage is that with respect I agree with and accept the views expressed by the Division Bench of the Mysore High Court and of the Bombay High Court mentioned above.

35. The next case relied upon by the learned counsel for the respondents was a decision of the Supreme Court *R. S. Sethi Gopi Kisan v. R. N. Sen*[18], In that case upon information received that the appellant was in possession of undeclared gold the Customs authorities issued an authorization under the Defense of India (Amendment) Rules, 1963, (Gold Control Rules) for searching the appellant's premises. The search was accordingly carried out and gold and other articles, foreign currency and documents were seized. Writ petition filed by the parties before the Bombay High Court was dismissed and thereafter the matter went up to the Supreme Court. The first contention was that in the authorization it was not stated that there was a reason to believe that goods were secreted. It was held that though the words 'reasons to believe' were not embodied in the authorization the phraseology used in it had the same effect. The next point decided was that the Section 105 of the Act did not require the Customs Officer to give reasons for his belief and that while it was advisable and proper to give reasons the non-mention of reasons in itself did not vitiate the order. The next question decided was that it was not necessary to set out the particulars of the nature of the goods and of the documents in the authorization. To my mind, this decision is not of any assistance in this case. The question of validity of the authorization on the ground that the reason to believe had not been set out in it or on the ground that goods and documents had not been specified was not canvassed on behalf of the petitioner in this case.

36. The next contention of the learned counsel for the respondents was that the license used by the petitioner for the purpose of clearing the goods was not a genuine license, but was a forged one and therefore there was no license at all; and that being so, the import of the goods was unlawful and the goods even though cleared from the Customs barrier, were liable to confiscation and the petitioner who was responsible for using a forged license for clearing the goods was in addition liable to an order of penalty. In support of this contention reliance was placed on a

decision of the Supreme Court. *Fedco (P) Ltd. v. S. N. Bilgrami*[19], In that case it was held that the entire scheme of control and regulation of imports by licenses was on the basis that the license was granted on a correct statement of relevant fact and that if the grant of the license was induced by fraud or misrepresentation that basis disappeared. It was also held that it would be absolutely unreasonable that such license should be allowed to continue. In my view this contention of the learned counsel for the respondents is well founded. The import of goods on a license, in the case of goods the import of which is prohibited, must be confined to imports made on a license lawfully obtained. If a license is forged and I wish to make it

[18] AIR 1967 SC1298

[19] AIR 1960 SC 415

clear that in this case I do not say that it has been forged, as that would be a matter for determination in other proceedings against the petitioner, there is no license at all. The respondents' case is that the license used by the petitioner is a forged one and if such forgery is proved in appropriate confiscatory and penal provisions of the proceedings, the import of the goods would be unlawful and would attract the Customs Act and other statutes.

37. I shall now proceed to deal with the question of validity of the show cause notices under Section 124 of the Act. The respondents moved an application for modification of the order of injunction made by this Court while issuing the Rule Nisi. That application was disposed of by me by a judgment delivered on March 12, 1968. In opposing the application learned counsel for the petitioner had contended that under the order of extension by two months communicated by the letter of May 30, 1966, the two months extension commenced from June 1, 1966 and expired on July 31, 1966 and no further extension was granted and therefore the extended period expired on July 31, 1966. The notices under Section 124 of the Act were served on 1-10-66, 3-10-66, 15-10-66 and 8-11-66 and in Matter No. 359 of 1966 these notices were served on October 3, 1966 and October 15, 1966. These show cause notices under Section 124 of the Act were issued after the Rule Nisi was issued and the order for interim injunction was made restraining the respondents from taking any steps on the basis of or in connection with the seizure of the goods and the order of detention dated December 5, 1965. I have already dealt with this contention earlier in this judgment. I need not therefore say anything more on this question except that the order of injunction obtained by the petitioner restrained the respondents from taking any steps in connection with the seizure and the order of detention. Quite clearly the show cause notices under Section 124 of the Act could not be issued by the Customs authorities in violation of the order of injunction. The injunction restrained the respondents from issuing the show cause notices under Section 124 of the Act and the respondents became entitled to serve the show cause notice only after the order modifying the order of injunction was made on September 27, 1966. The petitioner had moved the Court for the order of injunction and had obtained the same and it is not open to him to contend that the show cause notices are bad as they were issued beyond the extended period of two months which expired on July 31, 1966,

38. These show cause notices were served, as I noticed earlier, after the Rule Nisi was issued by this Court and is therefore outside the scope of the Rule Nisi and strictly speaking in disposing of this application, I am not called upon to deal with the question of validity of the show cause notices. But by the consent order made on September 27, 1966, the question of validity of the show cause notices is to be dealt with by the Court at the hearing of the Rule. That being the position I have to go into the question if the show cause notices issued by the Customs authorities under Section 124 of the Act are valid.

39. The contention of the learned counsel for the petitioner with regard to these notices is that they are invalid as they were issued beyond the extended period of two months, even assuming the order of extension was good. As I have noticed earlier the order of injunction restrained the respondents from taking any further steps in connection with the seizure and with the order of detention. The respondents could not, even if they wanted to, issue the show cause notices by reason of the order of injunction obtained by the petitioner. The show cause notices were issued, as they could only be issued, after the injunction was modified enabling the respondents to serve the show cause notices. As the order of this Court prevented the respondents from issuing the show cause notices and as they were enabled to issue such notices only after the order made on September 27, 1966, I cannot hold that the show cause notices are invalid because they were issued after the expiry of the extended period of two months. Time in this case for issue of the show cause notices lapsed because of the order of injunction issued by this Court and this injunction was obtained by the petitioner and in my view the petitioner cannot now plead lapse of time as the ground of the invalidity of the show cause notices. In my view, therefore, the show cause notices issued by the Customs authorities under Section 124 (1) of the Act are valid.

40. Let me now examine the question if the respondents had acted fairly in making the order of seizure and detention and also in extending the original period of six months in exercise of the powers conferred by the proviso to Section 110 (2) of the Act. In paragraph 14 of the affidavit-in-opposition affirmed by Maurich Galestine on August 31, 1968, it is said that there were definite materials for the reason to believe that the goods were liable to confiscation, particularly the documents relating to import of watch parts against forged I. T. C. license on account of Messrs. Bhagwan Dass and Company, which was recovered from the show-room at premises No. 6, Dalhousie Square East and the disclosure made in the course of inquiry revealed that the goods were prima facie liable to confiscation. In paragraph 32 of this affidavit it is said that there are systematic infringement of prohibition committed by the petitioner regarding import of parts of watches and time-pieces parts, on the strength of documents recovered from the petitioner's premises which relate to forged import trade licenses valued at Rs. 1,73,946. In paragraph 38 of this affidavit it is said that inquiries made had disclosed that the petitioner with others at Calcutta, Delhi and other places had been party to a conspiracy for unlawful import of watch-parts and time-pieces parts valued at Rs. 25 lacs. In paragraph 12 of the affidavit-in-opposition affirmed by Chittaranjan Dutta on September 12, 1966, in Matter No. 359 of 1966, it is said that there were facts and circumstances to indicate that the petitioner with other person was concerned in the fraudulent importation of the parts of the timepieces, watches etc. against the various forged I. T. C. Licenses including those forged and purported to have been issued for a sum of Rs. 3,08,600 in favor of Sudershan Industries and that documents concerning this firm were recovered from the petitioner's premises and for that reason there was reason to believe that the goods in question were smuggled goods and were liable to confiscation. In paragraph 27 of this affidavit it is said that there was sufficient cause for extension of the period under Section 110 (2) of the Act and that inquiries with regard to systematic infringement of the orders of prohibition committed by the petitioner and others in and outside West Bengal could not be completed within the period of six months from the date of seizure and/or detention.

41. The respondents have disclosed in the affidavits filed on their behalf the materials which provided the reasons to believe, that the goods which had been seized are liable to confiscation. According to the respondents forged licenses had been used by the petitioner for the purpose of

importation of the goods. According to the respondents again the petitioner had entered into a conspiracy with other persons at Delhi and other places for unlawful import of watch parts and time-pieces valued at a large sum of money. Show cause notices under Section 124 of the Act had been served upon the petitioner. He will therefore have the opportunity of disproving the charge of importation of goods on forged license. The allegations in the affidavits-in-opposition, to which I have referred, disclosed in my view, prima facie at any rate, that there were grounds for reason to believe that the goods were liable to confiscation. Sufficiency of the grounds for a reason to believe is a matter of subjective satisfaction of the Customs Officer.

42. Turning now to the impugned order of extension made in exercise of the powers under the proviso to Section 110 (2) of the Act, it is to be noticed that there is no charge against the Collector of Customs that this order has been made capriciously or arbitrarily or dishonestly or that the Collector of Customs was biased against the petitioner. The only ground of attack on the order of extension was that it was made in violation of the rules of natural justice, inasmuch as no notice was served upon the petitioner to show cause why an order of extension should not be made and the petitioner was given no opportunity of being heard. Chapter XIII of the Act deals with searches, seizure and arrest and Section 110 of the Act is in this chapter. The order of extension contemplated by the proviso to Section 110 (2) of the Act is to be made where a notice under Section 124 of the Act could not be served within the initial period of six months. As I have noticed earlier the cause that can be shown for an order of extension is that inquiries from particular persons or at particular places could not be completed within the specified period for one reason or another. If notice is to be served upon the persons whose goods have been seized, that inquiries have yet to be made from particular persons or at particular places, the purpose of the investigation itself would be defeated. Such investigation to succeed must in its very nature be of a confidential character. It must be made in secrecy and behind the back of the party whose goods have been seized. To give notice to the party against whom the investigation is to be made, that inquiries have yet to be made from particular persons at particular places, would not only be contrary to the scheme of the Act but would be against public interest. It can by no means be said that there was lack of fairness on the part of the Collector of Customs in making the order of extension without notice to the party and without giving an opportunity of being heard. The Collector of Customs must be satisfied that there is sufficient cause for making an order of extension. The scheme of the Act, in my view, does not demand that he should have a judicial approach in coming to a decision if there is sufficient cause for making an order of extension when such an order is made before expiry of the time. The satisfaction of the Collector of Customs on the question of sufficiency of the cause is not justiciable and there can be no judicial review of an order of extension duly made by the Collector of Customs, unless such an order is made in violation of the provision in the statute, after expiry of six months fixed by the statute or expiry of the period of extension.

43. The question when an administrative or executive officer is required to act judicially or quasi-judicially is by no means uncertain. As early as 1950 this question came up before the Supreme Court and two tests were laid down which have since been adhered to in all other decisions of the Supreme Court on this question. These two tests were laid down in *Province of Bombay v. Khushaldas S. Advani*[20], After reviewing merely all the decisions on the question it was held at pp. 259-260 of the report as follows :-

> "What are the principles to be deduced from the two lines of cases I have referred to? The

principles, as I apprehend them, are; (i) that if a statute empowers an

[20] AIR 1950 SC 222

> authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

In the instant case the second principle is attracted and applying that principle can it be said that the statute in this case requires the authority to act judicially? On an analysis of the scheme of the Act and the requirement by the statute itself of notice to a party in particular cases, the answer to the question cannot but be in the negative. There is nothing in the statute which requires the Collector of Customs to act judicially and to direct him to act judicially or quasi-judicially and compel him to serve notice upon the party whose goods have been seized before making an order of extension under the proviso to Section 110 (2) of the Act would be contrary to the statute itself and would defeat its purpose.

44. For the reasons mentioned above this application fails and is accordingly dismissed. The Rule is discharged. There will be no order as to costs. All interim orders are vacated.

45. The questions involved in *Sheikh Serajuddin v. The Assistant Collector of Customs*[21] for Preventive and others which was heard along with Matter No. 332 of 1966 are identi Cal For the reasons mentioned in my judgment in Matter No. 332 of 1960 this application is also dismissed. The Rule is discharged. All interim orders are vacated. Each party to pay its own costs.
Petition dismissed.

[21] Matter No. 359 of 1966