

BOMBAY HIGH COURT

Amichand Vallamji

Vs

M.G. Abrol

(Mudholkar, C.J. Shah, J.)

07.09.1960

JUDGMENT

Shah, J.

1. This is an appeal filed by the Additional Collector of Customs, Bombay, and the Union of India, against the order passed by Mr. Justice K. T. Desai, by which the order passed by the Additional Collector of Customs confiscating certain quantity of gold belonging to the respondents was quashed, and a writ of mandamus was issued requiring the Additional Collector to withdraw the order that he had passed.

2. The respondents carry on business in Bombay as dealers in bullion in partnership in the firm name and style of Messrs. Ambalal Amichand and Co. at 101 Shaikh Memon Street, Bombay. In the petition that they filed in this Court, they stated that they were one of the leading bullion merchants in the city and used to buy and sell gold in a largo way in diverse forms. It was alleged that on 12-9-1955 respondents in the usual course of their business sent about 385 tolas of gold from their stock to the Bombay Bullion Association Refinery for the purpose of melting and assaying. It was further alleged that as the respondents required more gold of the same liness they sent a further quantity of 1151 tolas of gold from out of their stock with one of their employees named Jitendra Bhagwandas, to have the same melted with the earlier lot in order to have one lot of uniform fineness with one certificate of assaying. The petition went 011 to allege that as their employee Jitendra was about to hand over the 151 tolas of gold to an employee of the Refinery for being put in the same crucible in which the earlier lot of 385 tolas of gold had been put, he was stopped by one B. M. Kamat, an officer in the Customs Department. It was further alleged that Kamat took charge of the said 151 tolas of gold within the premises of the Refinery and that thereafter Kamat and the said Jitendra went to the respondents' shop with the said 151 tolas of gold. The respondents alleged that Kamat, alter going to that shop, checked the stock of gold with their stock as shown in their books of account and other documents and found that there was a shortage of about 24 tolas of gold, which had to be explained by tho respondents.

The said Kamat, according to the respondents, made the alleged shortage of gold of about 24 tolas an excuse to seize the entire quantity of gold weighing 151 tolas. A panchnama was thereafter made on the same day in connection with the said seizure of gold. According to the respondents, the panchnama recited that the panchas were called by Customs Inspector Mr. Kishinchand N. Vazirani and Customs Preventive Officers M/s. B. M. Kamat and G. S. Shiroor and P. M. Ranade in the Rummaging Division, New Customs House, Bombay, to witness the taking over of the gold bullion from Amichand Vallamji. In the said panchnama the gold was stated to consist of three lots: (1) Three pieces of odd shapes and sizes weighing approximately 64 tolas stated by the respondents to have been purchased from Shantilal Kalidas on Saturday the 10th September 1955; (2) Two pieces of odd shapes and sizes weighing approximately 46 tolas, stated to have been purchased by the respondents from the said Shantilal Kalidas on 12th September 1955; and (3) Two pieces of odd shapes and sizes weighing approximately 41 tolas, stated to be forming part of the quantity purchased by the respondents from Mulchand Jitaji on 9th September 1955. The respondents thereafter quoted a passage from the panchnama showing that all those three pieces of gold were taken charge of by the Customs Officers to facilitate inquiries after they were placed in a cloth bag, which was sealed by Amichand with his key as desired by Amichand himself. The respondents further went on to allege in the petition that the said Shantilal Kalidas and Mulchand Jitaji were well known bullion merchants in the market, doing business for a number of years past and were registered dealers under the Bombay Sales Tax Act. They alleged that the statement of the said Shantilal Kalidas was recorded by the Customs Officer on the very same day, that the books of the said Shanti-lal Kalidas and the said Mulchand were produced, which showed the purchase of the aforesaid gold by the respondents; and that on 16th September 1955, 41 tolas of gold which had been purchased from Mulchand Jitaji out of the three lots which were seized by the Customs Officers, were released by the Customs Department, the Customs Officers being satisfied that that gold was not smuggled. According to the respondents, the Assistant Collector of Customs, Preventive Department, issued a show cause notice on 9th August 1956 against the firm of Ambalal Amichand and Co. to show cause why the balance of the gold should not be confiscated. In the notice it was stated that the said Jitendra was noticed by an Intelligence Officer of the Customs House rushing hurriedly straight to the place where gold was melted in the Bombay Bullion Refinery, without waiting near the counter where gold was weighed before melting. Inasmuch as his behaviour appeared to be suspicious, the notice went on to state, he was followed by the Intelligence Officer inside the Refinery where he was seen taking out some gold pieces in the form of Rawa and handing over the same to one of the servants of the Refinery for placing the same in the furnace. Jitendra was questioned as to why he did not get the gold weighed, to which he replied that the gold pieces which he was handing over were in addition to the gold which had already been handed over to the Refinery for melting. It was further stated in the notice that a casual perusal of

the account books of the shops from where the gold was purchased by Messrs. Ambalal Amichand and Co. showed the acquisition of some quantity of gold in excess by the latter, and that as Messrs. Ambalal Amichand and Co. could not give a satisfactory explanation to the Customs Officers regarding the discrepancy found in the accounts, all the three lots of gold were brought to the Customs House and taken over in the presence of the panch witnesses for taking suitable action under the Sea Customs Act. It was further stated in that notice that two out of the aforesaid lots of gold could not be released for reasons following:

"Shri Shantilal Kalidas said in his statement that he had purchased the gold pieces covered by item (1) (weighing about 64 tolas) from one Shri Prabhli-das who is neither a Dalai nor a broker in the bullion bazar and whose address is also not known to him. He had further stated that the gold pieces covered by item (2) (weighing about 46 tolas) had been purchased by him from another gentleman Shri Amritlal Kalyanji from Dawa Bazar who is not known in the bullion bazar. His address is also not known to Shri Shantilal Kalidas. He was given sufficient time to produce these men, viz. Messrs. Prabhudas and Amritlal Kalyanji before the Customs, but has not produced these men to the Customs. On suspicion the said gold was detained as there is sufficient reason to believe that the gold was not legally imported. The onus of proof regarding the legal importation of the gold in question rests with the party. In this case the party has failed to discharge this onus. Further, import of the gold bullion can be legally effected only if authorised by an import permit issued by the Reserve Bank of India. No such permit is forthcoming. In so far as the legal importation of the said gold has been established, it is deemed to have been imported into India in contravention of the Reserve Bank of India's notification No. 12(11) (P. J./48 of 25-8-48). An offence attracting the provisions of S. 167(8) of the Sea Customs Act read with Section 23A of the Foreign Exchange Regulations Act is thereby disclosed". It appears that the respondents sent a reply to this notice by their letter dated 20th September 1956, contending that the certificate of fineness in respect of the gold that had been seized, issued by the Indian Government Mint showed that the gold was of indigenous origin, that the said gold was in the form of Rawa, a form in which indigenous refined gold was made, that they had purchased the said gold from the said Shantilal Kalidas, that there was a Dharma Khata Chit of weightment in respect of the said gold and that they were bona fide purchasers of the said gold. By the same letter the respondents further stated that they dealt in gold to the tune of thousands of tolas, that every day they purchased and sold a very large quantity of gold, that they had their own Lagdis bearing their distinctive trade mark, which was popular in the market, and that Lagdis bearing that mark in sizes of quarter tola, half tola, one tola and five tolas were popular in the market and were sold by them. They further contended that before Section 178A of the Sea Customs Act could be made applicable, the goods must be seized in the reasonable belief

that they Were smuggled goods, that in the present case the goods were not seized under any such belief, and that, therefore, the presumption contemplated by that section would not arise. They denied that any offence had been committed by them or that the goods were liable to confiscation. On 12th October 1956 a personal hearing was given to the respondents by the Additional Collector of Customs, and on 27th October 1956 an order was passed by him confiscating the said gold outright under the provisions of Section 167(8) of the Sea Customs Act read with Section 23A of the Foreign Exchange Regulation Act. The said order inter alia stated as follows:

"On 12-9-1955, Customs Officers in plain clothes on duty in the Zaveri Bazar detained one Shri Bachu-bhai alias Jitendralal Bhagwandas, an employee of Messrs. Ambalal Amichand and Co. with certain gold in his possession and the gold weighing in all about 152 tolas, details as in the margin, was seized under Section 178 of the Sea Customs Act pending further enquiries into the legal origin of the gold as there were certain circumstances which made the officers suspicious that the gold was liable to confiscation. Enquiries were then made, Messrs, Ambalal Amichand and Co. the owners of the gold, were able to satisfy this Department of the legal origin of the gold covered by item 3 shown in the margin (weighing about 41 tolas). These two pieces of gold weighing about 41 tolas were therefore returned to Shri Ambalal Amichand on 16-9-1955. In respect of the other gold there was reasonable belief to hold that the same had been smuggled into India and Messrs. Ambalal Amichand and Co. were unable to satisfy this Department as to the legal origin of the gold. They were served with a show cause notice on 9-7-1956 giving therein the reasons for the Department's belief that the gold was not legally imported."

3. The respondents by their petition contended that the said order dated 27th October 1956 was bad, illegal, void and inoperative in law and prayed, for the issue of a writ of certiorari or a writ in the nature of certiorari, or a direction, order or Other appropriate writ under Article 226 of the Constitution of India against the first appellant, the Additional Collector of Customs, calling for the records of the case relating to the said order dated 27th October 1956 and quashing and setting aside the same. They also prayed for the issue of a writ of mandamus or a writ in the nature of mandamus, or a direction, order or other appropriate writ under Article 226 of the Constitution of India against the appellants ordering the appellants to withdraw and set also the said order dated 27th October 1956 and to return to the respondents the said gold wrongfully confiscated by the appellants. The Collector of Customs filed an affidavit in reply denying the allegations made by the respondents in the petition. In the course of this affidavit, in paragraph 8 thereof it was inter alia stated:

"I say that the servant of the petitioners, Jitendra Bhagwandas, was observed

running hurriedly straight to the place where gold is melted in the Bombay Bullion Refinery at Zaveri Bazar without waiting near the counter where gold is weighed and is taken over by the officials of the refinery before melting. I say that the behaviour of Jitendra Bhag-wandas aroused the suspicions of Mr. Kamat, Intelligence Officer of the New Customs House in plain clothes on duty near the Bombay Bullion Refinery.I say that the conduct of the petitioners in attempting to get the gold melted in the refinery without entering the particulars in the refinery's books was suspicious and open to question

I say that Mr. Kamat was justified in suspecting from the manner and behaviour of Jitendra and the unusual haste of his actions and the irregularity of the procedure followed by him and other attendant circumstances that the said 151 tolas were not of lawful origin".

In paragraph 9 of the affidavit in reply it was inter alia stated as follows:

"I say that the shortage of the gold amounting to 24 tolas was an additional factor which further confirmed the suspicion originally entertained by Kamat about the illegal origin of the said gold".

In paragraph 17 of that affidavit with reference to para 11 of the petition the Additional Collector of Customs stated as follows:

"I deny that the said gold was not seized under the reasonable belief that the same was smuggled gold as alleged therein. I deny the allegations and submissions made in the said reply and referred to in the said para".

In paragraph 18 of the affidavit, with reference to paragraphs 12 and 13 of the petition, it was inter alia stated as follows:-

"I say that I entertained a reasonable belief that the petitioners' gold was smuggled gold. I therefore most respectfully submit that it is not competent to this Hon'ble Court to question my belief which was entertained by me in good faith. I say that the reasonable belief referred to in Section 178-A of the Sea Customs Act relates to a subjective appreciation of the factors relating to the formation of the belief. I therefore submit that this Hon'ble Court cannot question the reasonableness of my said belief."

4. It was contended on behalf of the respondents before Mr. Justice K. T. Desai, who heard this petition that Section 178-A of the Sea Customs Act was ultra vires of the Constitution and that, therefore, the order impugned by the petition required to be set aside. It was further contended on

merits on behalf of the respondents that even if Section 178-A of the Sea Customs Act was not ultra vires as alleged by them, the gold in question was seized by the Customs Officers on their own showing merely on suspicion that it was smuggled gold and not under any reasonable belief that it was smuggled gold. The learned Judge, before whom the hearing went on for several days, came to the conclusion that Section 178-A of the Sea Customs Act was ultra vires of the Constitution and that, therefore, according to him, the order, which was challenged by the respondents in the petition, deserved to be set aside. The learned Judge further went on to decide the petition on merits on the assumption that Section 178-A of the Sea Customs Act was not ultra vires, and he held that inasmuch as 011 the material on record the Customs Officers seized the gold merely on suspicion which was aroused by reason of the movements of Jitendra and the inability of the respondents to satisfy the Customs Officers from their books of account as to whether the amount of gold which Was sent to the refinery for melting was theirs or not, the order passed by the Additional Collector of Customs was not tenable and that for that reason also it deserved to be set aside. The learned Judge accordingly allowed the petition filed by the respondents, issued the writ of certiorari quashing the order passed by the Additional Collector of Customs and also issued a writ of mandamus requiring the Additional Collector of Customs as well as the Union of India to withdraw the order that was passed and/or to cancel it. It is against that order of the learned Judge that the Additional Collector of Customs and the Union of India have filed tnc present appeal.

5. It was contended by Mr. Gupte, the learned counsel for the appellants, that the learned Judge in the Court below was in error in coming to the conclusion on merits that the gold in question was not seized under the reasonable belief that it was smuggled. In order to sustain this argument Mr. Gupte sought to put a construction upon Section 178-A of the Sea Customs Act which, according to him, would lead to the conclusion that the reasonable belief that was required to be entertained with regard to the seizure of any gold is the reasonable belief at the time of the inquiry and not necessarily at the time when the gold is seized. In other words, it was contended that on a reasonable construction of Section 178-A of the Sea Customs Act it would be enough for the purpose of throwing the burden of proof that the gold seized was not smuggled gold on the party from whom it was seized that the inquiry officer, after considering the circumstances in which the gold was seized, came to the conclusion that there was a reasonable belief in his mind that the gold that was seized was smuggled. According to the learned counsel, there is no specific reference to any particular time at which the reasonable belief should exist in the section itself and, therefore, looking to the circumstances which generally attend upon the seizure of any smuggled gold or bullion, when it is not possible for the Customs Officer to have a reasonable belief that the gold that is seized is smuggled except after due investigation, it must be held that the Legislature intended the reasonable belief as regards the nature of such gold to exist not at the time when it was seized, but at the time when the inquiry is started by the Customs Officer with a

view to decide as to whether the gold which was seized should be confiscated or not and whether the person from whom it was seized should be made liable to any penalty under Section 167(8) of the Sea Customs Act. We are afraid, however, that we cannot accept Mr. Gupte's contention. The language of the section itself, in our opinion, is too simple to admit of any equivocal interpretation. We had an occasion to deal with this question only recently in Appeal No. 62 of 1959 decided on 25th August 1960, which arose out of Miscellaneous Petition No. 1 of 1959, and we have expressed our opinion on the basis of the interpretation of Sections 178 and 178A of the Sea Customs Act that the provision of Section 178A would be attracted where it is shown that the Customs Officer seizing the gold had, at the time of actual seizure, either at the place where it was found or in the Customs House where it was seized under a panchnama, a reasonable belief in his own mind that the gold that he was seizing was smuggled gold. The Inquiry Officer thereafter would issue the notice to show cause to the person from whose possession the gold was seized, as to why the gold which was seized should not be confiscated under Section 167(8) of the Sea Customs Act. But he would do that only after considering the material placed before him by the investigating officers in order to enable him to find, as claimed by the investigating officers themselves if at all, that the gold seized by them was under a reasonable belief that it was smuggled gold. What the Inquiry Officer, as expressed by us in the judgment in that case, should do is to consider the material placed before him by the investigating officers before issuing the show cause notice itself, so that in case he comes to the conclusion that there was such a reasonable belief in the minds of the seizing officers at the time of the seizure, he could straightaway point out to the persons to whom the notice is addressed that the burden would lie upon them to show that the gold that was seized by the officers was not smuggled. In other words, we are of the opinion that it is at the stage of issuing the show cause notice that the Inquiry Officer has got to decide upon the course that he would adopt, viz., whether, if he is not satisfied that there was such a reasonable belief in the minds of the Customs Officers who seized the gold at the time of the seizure, he would require the Customs Department itself to produce necessary evidence to show that the gold was smuggled, or, in case he is satisfied on the material placed by the Investigating Officers before him that there existed in the minds of seizing officers a reasonable belief that the gold they had seized was smuggled gold at the time of the seizure thereof call upon the persons to whom the notice is addressed to adduce all the evidence that they would desire for the purpose of showing that the gold was not smuggled gold. As stated above, the words used in Section 178A are too simple to admit of any doubt as to their true construction. The reasonable belief referred to in that section can only refer to the point of time when the gold is seized. If, on the other hand, after further investigation by the Customs Officers, following upon the seizure of gold merely upon suspicion that it was smuggled, the Customs Officers come into possession of more evidence, which would lead to a reasonable belief that the gold was really smuggled gold, that in our opinion, would not avail the

Inquiry Officer for the purpose of acting under Section 178A of the Sea Customs Act. Nor is it contemplated by the section that the reasonable belief should be of the Inquiry Officer, who makes the inquiry into the question as to whether the gold which was seized by the Customs Officers should be confiscated or not.

6. The view, which we have already expressed in Appeal No. 62 of 1959, on this question of the interpretation of Section 178A of the Sea Customs Act, seems to be fortified by a recent decision of the Madras High Court in *Nathella Sampathu Chetty v. Collector of Customs, Madras*, . In that case, it was contended on behalf of the Customs that the words "reasonable belief" as used in Section 178A of the Sea Customs Act were only descriptive of the smuggled goods seized and that the terms of the section did not prescribe the existence of the reasonable belief as a condition precedent to be satisfied before the burden of proof could be imposed on the person from whom the goods were seized. The learned Judges, however, did not accept that contention and observed as follows at p. 149:

"Such a result could be achieved only if we delete the words from Section 178A(1) 'in the reasonable belief that they are smuggled goods' and read the section as 'where any goods to which the section applies are seized under this Act, the burden of proving they are not smuggled goods shall be on the person from whose possession the goods were seized'. Such a reading is not permissible to interpret the plain words of the section". Then on the same page the learned Judges further observed as follows:

"We must uphold the contention of the learned counsel for the petitioners that unless it is established that the gold was seized in the reasonable belief that it was smuggled gold, Section 178A(1) cannot apply. The reasonable belief must be that of the officer who effected the seizure. It is belief and reasonable belief that the section requires, and not for instance mere suspicion which is all that Section 178 requires to justify arrest, or Section 180 requires to justify seizure and detention of goods. The reasonable belief that precedes or at least coincides with the seizure; formation of the belief subsequent to the seizure, however well-founded that belief is, will not satisfy the requirements of Section 178A(1)", This is precisely the view that we have taken in Appeal No. 62 of 1959. Mr. Gupte, after referring to this decision of the Madras High Court, sought to contend the same way as the learned Advocate General did in that case, but without success. Mr. Gupte also invited our attention to several other sections of the Sea Customs Act for the purpose of showing that the reasonable belief contemplated by Section 178A of the Sea Customs Act could as well be the belief of the Inquiry Officer at the time when he issues the show cause notice to the person from whom the gold is seized. In our opinion, however, it is not necessary to refer to other sections when Section 178A itself is so clear and plain in its language and meaning. As a matter of fact, a perusal of some of the

sections of the Act makes it abundantly clear that the Legislature has clearly borne in mind the distinction between 'a seizure on suspicion' and 'a seizure in the reasonable belief. For instance, in Section 180 of the Act there is a reference to seizure by a police officer on suspicion of things that have been stolen. The provision of this section itself makes it abundantly clear that the Legislature did not intend to use the words, or rather expressions, "on suspicion" and "in reasonable belief" interchangeably. They had in their mind a clear distinction between these two expressions, and wherever they thought, in pursuance of their policy in enacting the legislation, that one or the other expression should be used, they have done so. Referring to Section 178A of the Act, it is necessary to remember that it was only on account of the difficulties pointed out by the Customs Officers to the Government that it was almost impossible for them to prove in every case of seizure of bullion or precious stones that the articles seized were smuggled and thereby curb the racket, which according to the Customs Officers prevailed in this country, with regard to smuggling of gold and precious stones, that the Government considered that their difficulties might be removed by introducing a new section in the Sea Customs Act. At first, it appears, the section was so worded that entirely arbitrary powers were given to the Customs Officers in regard to seizure of precious metal and precious stones, and the Government had made no secret of the object which it had in view while formulating the policy in regard to the amendment which was sought to be made in the Act. By this section the Government proposed to give absolute authority to Customs Officers to seize precious metal and precious stones, wherever they suspected them to be smuggled, and immediately call upon the persons from whom they were seized to show that they were not smuggled. Realising, however, the danger of the exercise of such an arbitrary power to the common people in 'the country, Parliament advisedly amended the proposed section by adding the words "in the reasonable belief that they are smuggled goods" after the words "are seized under this Act" in Sub-section (1) of Section 178A of the Act. By adding these words Parliament placed a restriction upon the powers of the Customs Officers to the extent that the person from whom any goods falling within the ambit of Section 178A were seized by them could be called upon to prove that they were not smuggled goods only where they were seized in a reasonable belief that they were smuggled goods. The amendment introduced by Parliament in the section, in our opinion, is a salutary one. It is well known that a person accused of an offence cannot be called upon to explain or to prove his innocence. Section 178A, which was proposed by the Government really was opposed to this cardinal principle of criminal law. Such a principle cannot be violated Or an enactment contrary to such a principle cannot be made. Obviously, therefore, Section 178A could not be enacted unless there were proper safeguards provided for those who were sought to be held guilty in regard to the import

and export of unauthorised goods and articles. It was with this end in view, it appears, that Parliament, though not objecting to the persons from whom certain types of goods were seized, being called upon to show that such goods were not smuggled goods provided by the amendment that the burden of proving that they, were not smuggled goods could not lie upon the person from whose possession the goods were seized unless and until they were seized by the Customs Officers in a reasonable belief that they were smuggled goods. The construction, therefore, to be put upon Section 178A of the Act is, in our opinion, plain enough and it is that the Customs Officers should seize the goods covered by Section 178A in a reasonable belief that they are smuggled goods before the burden of proving that they are not smuggled goods could lie on the person from whose possession such goods were seized. This position would be very much clear if it can be contrasted with a case where Customs Officer seizes any of such goods merely on suspicion that they are smuggled. A suspicion can arise from the peculiar kind of movement on the part of the person who is suspected to be in possession of some smuggled goods. It may arise from the kind of dealing that a person might be having in regard to certain goods, which the Customs Officer might thereupon suspect to be smuggled. One may conceive of a number of other ways in which a suspicion may arise in the mind of the Customs Officer that any particular person is possessed of smuggled goods. A belief, on the other hand, cannot arise merely in the circumstances in which a suspicion can arise. A belief in the existence of a thing requires a more solid foundation than in the case of a mere suspicion. It may be based upon some definite information acquired from a reliable source that a certain person is in possession of smuggled goods. The belief again, as required by Section 178A of the Sea Customs Act, must be a reasonable one, not a belief of a man who just catches at some slight circumstance which only creates a sort of guess or speculation in his mind that something might exist or might not exist. The belief must be such as any other reasonable man in the circumstances of the case would entertain about the existence or non-existence of a thing. In regard to Section 178A of the Act the reasonable belief may be based upon some definite information acquired from a reliable source that a certain person is in possession of smuggled goods. The Customs Officer receiving such Information again must be confident about the validity and the reliability of the source of information itself. It may arise, for instance, in cases where in the presence of a Customs Officer in disguise, some shady dealing in regard to some goods takes place, whereupon he may be able to find sufficient material to entertain a reasonable belief that the dealing, to which he was a witness, was in respect of smuggled goods. The restrictions placed upon the powers of the Customs Officers under Section 178A of the Act cannot be lightly treated. They are serious and it is necessary that the Customs Officers themselves should realise the importance thereof. They are intended to check the

exercise of the powers given to them under Section 178A of the Act arbitrarily and without any foundation at all, to the harassment of the general public. It would be necessary therefore, that before any person could be called upon to prove that the goods seized from him were not smuggled goods, the Customs Officer making the seizure must proceed upon the foundation of a reasonable belief inspired in him by some definite materials by way of some definite information or otherwise; so that he could be said to seize the goods in the reasonable belief that they were smuggled goods. It will be then for the Inquiry Officer to enquire and be satisfied as to whether the Customs Officer who had seized the goods was not wrong in his belief that the goods that he had seized were smuggled goods, or, in other words, he had a reasonable belief that the goods were smuggled goods at the time of seizure. In case the Inquiry Officer is satisfied that the goods were seized in such a reasonable belief he would specify the same in the show cause notice which he would thereafter issue to the person from whom the goods were seized and call upon him under Section 178A of the Act to prove that the goods were not smuggled goods.

7. In our opinion, therefore, it is difficult to accept Mr. Gupte's contention that the reasonable belief, which is contemplated by Section 178A of the Sea Customs Act, may either be the belief in the mind of the Inquiry Officer at the stage of the inquiry, or in the mind of the seizing officers themselves even after the seizure took place. In our opinion, there is one and only one construction possible of this section, so far as the point of time at which the reasonable belief should exist in regard to the seizure of any smuggled goods is concerned and the construction is that wherever the goods are seized, the officer seizing the goods must at the time of seizure have a reasonable belief in his mind that the goods that he was seizing were smuggled goods. Any subsequent acquisition of such belief would be of no avail. If this amended provision contained in Section 178A of the Sea Customs Act is not found to further the object of the Legislature in enacting the section, it would be open to the Legislature to amend the section. But so far as we are concerned, we must give the natural meaning to the words employed in the section itself and construe it in a manner consistent with the canons of construction of statutes. Accordingly, the contention raised by Mr. Gupte that Section 178A of the Act should be construed in the manner which he suggested cannot be accepted.

8. Mr. Gupte then contended that on merits it could be said that the Customs Officer, who seized the gold in question, had a reasonable belief in his mind that it was smuggled gold. We are afraid, however, that Mr. Gupte's arguments on this question were entirely halting. Had it not been for the fact that he was not strong on this aspect of the case on merits, he would not have taken great pains in persuading us to put a construction upon Section 178A of the Act which he wanted us to put. As a matter of fact, the order itself, which is the subject matter of the challenge in this

petition, proceeds by saying that the gold in question was seized on suspicion, pending further inquiries into the legal origin thereof. The words actually used in the order are as follows:

"On 12-9-1955, Customs Officers in plain clothes on duty in the Zaveri Bazar, detained one Shri Bachubhai alias Jitendra Bhagwandas, an employee of Messrs. Ambaial Amichand and Co. with certain gold in his possession and the gold weighing in all about 152 tolas, details as in the margin, was seized under Section 178 of the Sea Customs Act pending further inquiries into the legal origin of the gold as there was certain circumstance which made the officers suspicious that the gold was liable to confiscation". The order then goes on to say that after recording certain statements of persons, from whom the respondents claimed to have purchased the gold in question, it was found that the respondents were able to satisfy the Department about the legal origin of the gold weighing about 41 tolas, and that, therefore, that quantity of gold was released on 16th September 1955. Besides, in paragraph 5 of that order it is stated as follows:

"Under the circumstances I hold that there are valid reasons for believing that the gold has been smuggled into this country".

in relation to this statement in the Order, the Additional Collector of Customs in his affidavit in reply has stated as follows in paragraph 18 thereof:

"I say that I entertained a reasonable belief that the petitioners' gold was smuggled gold". It is significant to note that nowhere in the affidavit, nor in the order that was passed, has it been stated that the Customs Officer who seized the gold had ever any reasonable belief in his mind at the time of seizure that the gold 'that he had seized was smuggled gold. On the contrary, there is ample evidence on the record in this case to show that the gold was seized merely on suspicion aroused by the movements within the premises of the refinery of the respondents' employee Jitendra, and by the failure of the respondents to satisfy the Customs Officer with regard to the acquisition of the gold that they had sent to the refinery for melting. It may be noted that what the Customs Officer had found on examination of the books of account of the respondents was only that 24 tolas of gold were unaccounted for. That, however, cannot justify the seizure of the entire quantity of 151 tolas of gold, nor can it legitimately create a reasonable belief in the mind of the Customs Officer that the entire 151 tolas of gold was smuggled gold. As stated by the Additional Collector of Customs himself in the Order, which is the subject matter of challenge in this petition, these were the two circumstances which aroused the suspicion of the Customs Officer with regard to the 151 tolas of gold which he had seized on the ground that it was smuggled gold. In these circumstances, therefore, in our opinion the learned Judge in the Court below was perfectly right in coming to the conclusion that the

Customs Authorities had failed to prove that the gold that was seized by one of their officers was seized in a reasonable belief that it was smuggled gold, and that, therefore, they could not call upon the respondents to show that the gold that was seized by them was not smuggled gold. In other words, the Department could not avail of the provision of Section 178A of the Sea Customs Act and, therefore, nothing would really turn on the failure of the respondents to satisfy the Customs Authorities, that the gold that was seized by them was not smuggled gold. It was for the Customs Officer who had seized the gold to satisfy the Inquiry Officer that the gold was smuggled as a matter of fact. In view, however, of the fact that the Inquiry Officer made an order under Section 178A of the Sea Customs Act, and in so far as he found that the gold was seized merely on suspicion, but that after investigation and as a result of the inquiry before himself he had a reasonable belief that the gold was smuggled, the Additional Collector of Customs, in our opinion, had no power to make the order that he has passed, confiscating the gold under Section 167(8) of the Act. We agree with the finding of the learned Judge that the Customs had failed to prove that the gold in question was seized under the reasonable belief that it was smuggled gold, and accordingly we concur in the order passed by the learned Judge.

9. It may be noted that although the learned Judge had decided that Section 178A of the Act was ultra vires the Constitution, the point was not really canvassed before us on account of the decision on the same question by a Division Bench of this Court in *Pukhraj v. D. R. Kohli*, 61 Bom LR 1230, which held that Section 178A of the Sea Customs Act was not ultra vires the Constitution at all. The argument in this appeal, therefore, turned on the merits of the order challenged by the respondents in their petition, and it was in the course of the arguments on merits in this appeal, that Mr. Gupte, the learned counsel for the appellants, contended that Section 178A of the Sea Customs Act should be construed differently from the manner in which we had done it in Appeal No. 62 of 1959 and also the manner in which the Madras High Court had done it in the case referred to above. We may mention that although the point as regards the vires of Section 178A of the Act was not canvassed before us, in view of the decision of the Division Bench of this Court, Mr. Joshi, the learned counsel for the respondents, submitted that if an occasion arose, the right should be reserved to him to agitate the Question in a higher Court. Surely, there could not be any objection to our accepting this submission and all that we can say is that Mr. Joshi would be very much welcome to agitate the question in the higher Court, if the occasion arose for him to do so.

10. In the result the appeal is dismissed.

11. With regard to costs, it may be noted that in the trial Court the respondents had impugned the order of the Additional Collector of Customs on two grounds: (1) That the order was bad in law, inasmuch as Section 178A of the Sea Customs Act, on the basis of which the order was made,

was ultra vires the Constitution, and (2) that even on the assumption that Section 178A of the Act was intra vires & valid in law, the order of the Additional Collector of Customs was bad inasmuch as it was not proved that the seizure of the gold in question was effected by the Customs Officer concerned in a reasonable belief that it was-smuggled gold. The trial Court accepted both the contentions raised by the respondents in their petition and accordingly made the order for costs in their favour, as on a long cause scale. In the appeal before us the appellants, viz., the Additional Collector of Customs and the Union of India, did not have to challenge the decision of the lower Court on the question as to the vires of Section 178A of the Act, because of the decision of the Division Bench of this Court in their favour. The appeal was confined only to the question on merits, viz., as to whether the Customs Officers who seized the gold did so in a reasonable belief that it was smuggled gold. The result is that whereas the respondents succeeded on both the points in the trial Court, they can be said to have lost on the first of the two points in this Court, by reason of the decision of the Division Bench of this Court, whereas the appellants before us, having lost on both the points in the lower Court, succeeded on the first of the two points before us, because they had not to argue the point as to the vires of Section 178A of the Act, in view of the decision of the Division Bench of this Court. The most equitable order for costs in these circumstances would, in our opinion, be that so far as the costs in the trial Court are concerned, the appellants before us shall pay the costs of the respondents in so far as the second issue on the merits was concerned, but as regards the first question, in reference to the vires of Section 178A of the Act, the respondents shall pay the costs of the appellants. Both these costs will be taxed as on long cause scale. So far as the costs of this appeal are concerned, the appellants have failed on the only issue that they argued before us, and therefore, according to the ordinary rule that the costs should follow the event, they shall pay the costs of the appeal to the respondents. These costs shall likewise be taxed on the ordinary scale.

12. Liberty to the respondents to withdraw the sum of Rs. 500 deposited by the appellants, towards their costs of this appeal.

13. Mr. Joshi on behalf of the respondents agrees' that his clients will not call upon the appellants to return the gold, which is the subject matter of their petition, to them for one month from today.

14. Appeal dismissed.

