

Best and Co. Vs. Additional Collector of Customs and anr.

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Court : Kolkata

Decided On : Dec-18-1964

Reported in : AIR1965Cal478,1965CriLJ465

Judge : H.K. Bose, C.J. and ;B.C. Mitra, J.

Acts : Imports and Exports (Control) Act, 1947 - Sections 3(2) and 5; ;Imports and Exports (Control) (Amendment) Act, 1960; ;Sea Customs Act, 1878 - Sections 19 and 167(8); ;Imports Control Order, 1955 - Rule 5(2)

Appeal No. : Appeal No. 254 of 1963

Appellant : Best and Co.

Respondent : Additional Collector of Customs and anr.

Advocate for Def. : A.C. Mitra and ;A.K. Banerji, Advs.

Advocate for Pet/Ap. : Sankar Ghose and ;Dipankar Gupta, Advs.

Disposition : Appeal allowed

Judgement :

B.C. Mitra, J.

1. This is an appeal against the judgment and order of Banerjee, J., dated September 2, 1963, discharging a rule under Article 226 of the Constitution,

obtained by the appellant for the issue of appropriate writs and orders, to rescind, recall and/or withdraw the order dated March 17, 1962, made by the respondent No. 1, imposing on the appellant a personal penalty of Rs. 25,000/- and directing confiscation of certain machinery and also imposing a penalty of Rs. 20,000/- in lieu of such confiscation.

2. The appellant is a manufacturer of various trunk and suit case fittings. With a view to manufacture bifurcated rivets the appellant arranged for import of certain machinery from West Germany through Messrs. Stahlunion Co. Ltd., the Calcutta branch of a company carrying on business in London. This company is the agent of the manufacturers of the machinery in West Germany. For the purposes of importing the said machinery, the appellant applied for, and obtained a licence dated March 31, 1959, for such import. The particulars of the machinery to be imported, were set out in the licence, including its value which was specified as 'C.I.F. value Rs. 45,000/-'. The license was issued subject to certain conditions. The conditions which are material for the purpose of the appeal are as follows

'1. The above application is accepted and import licence is granted having quantity and value as the limiting factor and is not valid for clearance if the actual value of any item exceeds the C.I.F. value indicated in the licence by more than five per cent.

2. This licence is issued subject to the conditions that the goods will be utilised only for use in licence-holder's factory and that no portion thereof will be sold or permitted to be sold by any other party.'

3. On arrival of the goods at the port of Calcutta, the appellant submitted a bill of entry, a copy of which is annexed to the petition and marked 'B'. In this bill of entry, the real value of the machinery was stated to be Rs. 44,978.42. The value stated therein for the purpose of assessment of customs duty was also the same. On payment by the appellant of the customs duty assessed on the machinery, the same was cleared on July 4, 1960.

4. On May 6, 1961, the premises where the appellant carried on business was searched by the customs authorities on the ground of misdeclaration of the value

of the imported machinery and several documents were seized. The search was followed by a notice on the appellant to show cause why penal action should not be taken against it under Section 167(8) of the Sea Customs Act. This notice is dated June 19/20, 1961, and June 26, 1961, was fixed as the date of hearing. The charge against the appellant in this notice was that it appeared that the C.I.F. value of the machine was Rs. 51,730.74 nP. whereas the C.I.F. value declared was Rs. 44,843.61 nP. It was also stated in the notice that goods valued at Rs. 6730.74 nP. were imported without a valid licence in contravention of the Import Trade Control Order No. 17/56 of December 7, 1955, read with Section 3(1) of the Imports and Exports (Control) Act and Section 19 of the Sea Customs Act. The appellant was called upon to show cause why penal action should not be taken against it under Section 167(8) of the Sea Customs Act.

5. The notice mentioned above was amended by another notice dated September 21, 1961. In this notice it was stated that it was found necessary to amend the original notice as it appeared that the licence was granted to the appellant having quantity and value as the limiting factor, and it was not valid for clearance if the actual value exceeded the C.I.F. value by more than five percent. It was further stated in the notice that by reason of this condition, it was not merely a part of the machine that infringed the Import Trade Control Restrictions, but the whole machine was imported in contravention of such restrictions and accordingly the whole machine was liable to be confiscated. The charge in this notice was that the appellant was a person concerned in the unauthorised importation of goods already cleared and declared to be worth Rs. 44,843.61. Accordingly the appellant was called to show cause why penal action should not be taken against it under Section 167(8) of the Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act, 1947.

6. The appellant submitted its explanations to the charges made in the said two notices, but the respondent No. 1 rejected such explanations and made an order by which he held that the appellant, as the buyer agreed to pay to the seller a sum of Rs. 52,087.07. He held that in effect there was an under-valuation of the machinery to the extent of Rs. 4441/- and that the machinery had been imported without a valid import licence in contravention of the Government of India Import

Trade Control Order No. 17/55 of December, 1955, read with Section 3(1) of the Imports and Exports (Control) Act and Section 19 of the Sea Customs Act. In the view taken by the respondent No. 1, he made the order imposing the penalty and also confiscating the goods and a fine in lieu thereof as hereinbefore mentioned.

7. Thereafter the appellant obtained a rule under Article 226 of the Constitution which Banerjee, J., discharged. This appeal is against this order discharging the rule obtained by the appellant.

8. It was held by Banerjee, J., that the amended Section 5 of the Imports and Exports (Control) Act, to which we shall presently refer, made contravention of any order as well as contravention of any condition of a licence, penal under the Sea Customs Act. The view taken by the trial Court was that prior to the importation on March 7, 1960, Section 5 of the Imports and Exports (Control) Act was amended, and by such amendment a violation of conditions of licence for the import of goods was made punishable under the Sea Customs Act. It was further held that since the appellant imported machinery valued at more than the limits of the value imposed by the licence, it contravened the provisions of Section 167(8) of the Sea Customs Act during the course of the import and made itself liable to the penalty provided by that section.

9. Mr. Sankar Ghose, learned counsel for the appellant, contended that assuming that the charge brought against his client was true and correct, it could be held guilty of violation of the condition No. 1 of the licence set out above, and not of any of the terms of the Imports Control Order, 1955. He contended that for a breach of a condition in the licence, his client might be punished with imprisonment or a fine both as provided by Section 5 of the Imports and Exports (Control) Act as amended. He argued that by the amendment of Section 5 of the Imports and Exports (Control) Act, the only change that has been made is that a contravention, or attempted contravention, or abetment of a contravention, of a condition of a licence granted under the Act has been made punishable with imprisonment for a term which may extend to one year or with fine or with both. It was argued that the scope of punishment under the Sea Customs Act, for violation of a condition of licence was not enlarged by the amendment of Section 5 of the Imports and

Exports (Control) Act.

10. Learned counsel for the appellant next referred to the condition No. 1 in the licence and Clause 17 thereof, and contended that the two together made it clear that the quantity and value of the machinery were the limiting factors of the licence. Mr. Ghose argued that assuming that his-client had broken the condition relating to the value of the goods, it was liable to be punished for violation of the Imports and Exports (Control) Act. But both the notices served upon the appellant made it clear that penal action was proposed to be taken against it under Section 167(8) of the Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act, 1947, on the ground that appellant was a person concerned in the offence of unauthorised importation. The order dated March 17, 1962, was also made under Section 167(8) of the Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act.

11. The conditions in the licence set out above were imposed by the licencing authority in exercise of the powers under the Imports Control Order, 1955, which was issued by the Central Government in exercise of its powers under Sections 3 and 4(a) of the Imports and Exports (Control) Act, 1947. Sub-clause (2) of Clause 5 of this order is as follows:

'A licence granted under this order may contain such other conditions not inconsistent with the Act or this order as the licencing authority may deem fit.'

The conditions in the licence granted to the appellant were imposed by the licencing authority in exercise of the powers under this Clause.

12. Learned counsel for the appellant contended that the charge against the appellant, as laid in the said notices served upon him. made it amply clear that the appellant was charged with a breach of condition in the licence imposed by the licencing authority in exercise of its powers under the said Clause 5(2) of the Imports Control Order, 1955, and there was no charge for a violation of any of the provisions of the Imports Control Order itself. It was argued that on the charge aslaid, the appellant could at the worst, be held guilty of a violation of the condition of the licence and therefore, if could not be punished under the provisions of

Section 167(8) of the Sea Customs Act.

13. Referring to the amendment of Section 5 of the Imports and Exports (Control) Act, Mr. Ghose contended that there was nothing in the amendment to show that the scope of the punishment under the provisions of the Sea Customs Act was enlarged. He argued that the liability of a party to punishment for contravention of any order made under the Imports and Exports (Control) Act, and also the liability to punishment for a breach of condition of a licence granted under the said order, under the provisions of the Sea Customs Act, remained what, it was before the amendment of Section 6 of the Imports and Exports (Control) Act, The net result of the amendment, Mr. Ghose contended, is that if a condition of a licence is contravened, the party is liable to the punishment provided by the Imports and Exports (Control) Act and not to the punishment provided under the Sea Customs Act. Mr. Ghose's contention was that whereas a breach of condition of a licence was not punishable under Section 5 of the Imports and Exports (Control) Act, as it stood before the amendment, such a breach was made punishable by the amendment of the Section. But the liability to punishment under the provisions of Sea Customs Act remained what it was before the amendment of Section 5 of the Imports and Exports (Control) Act.

14. In our opinion, this contention of Mr. Ghose is well founded. The scope of punishment under the Sea Customs Act was not enlarged by the amendment to Section 5 of the Imports and Exports (Control) Act. There is nothing in the amended Section 5 of the Imports and Exports (Control) Act to warrant a conclusion that the provisions of the Sea Customs Act can be invoked to punish a breach of a condition of a licence granted under the Imports and Exports (Control) Act.

15. Mr. Ghose next argued that the breach of a condition of a licence could not be punished under Section 167 (8) of the Sea Customs Act. He argued that assuming that his client had broken the conditions in the licence, such a breach was not a violation of either any of the provisions of the Imports and Exports (Control) Act or of the Imports Control Order, 1955. There is no charge against the appellant that the goods were imported without a licence and therefore there was no

contravention of Rule 3 of the Import Control Order. Again there is no charge against the appellant that it had contravened the conditions specified in Sub-rule (i) of Rule 5 or any of the conditions specified in Sub-rule (iii) of Rule 6. The charge against the appellant is that on an import licence restricted in value, it imported goods in excess of the value in violation of condition No. 1 in the licence, which was imposed by the licencing authority in exercise of its powers under Clause (2) of Rule 5 of the Import Control Order. This being the charge against the appellant, learned counsel contended, that his client could not be punished under the provisions of Section 167(8) of the Sea Customs Act. It was argued that as Section 167(8) was not attracted at all, the proceedings taken by the respondent No. 1 under Section 167(8) of the Sea Customs Act and the punishment imposed upon the appellant under that Section by the impugned order, are illegal and void and the respondent No. 1 had acted entirely without jurisdiction, in making the impugned order under Section 167(8) of the Sea Customs Act. It was further argued that the order having been made without jurisdiction, it must be quashed and set aside as it was made in violation of the statutory provisions. The only charge which the appellant was called upon to answer was a charge under Section 167(8) read with Section 3(2) of the Imports and Exports (Control) Act, 1947. Sub-section (2) of Section 3 of the Imports and Exports (Control) Act, 1947, provides that all goods to which any order under Sub-section (1) applies shall be deemed to be goods of which the import, and export have been prohibited or restricted under Section 19 of the Sea Customs Act and all the provisions of that Act shall have effect accordingly. But the offence with which the appellant was charged was a violation of a condition in the licence- which was imposed under Rule 5(2) of the Imports Control Order, 1955. As there was no contravention at Import Control Order of 1955, under which the condition in the licence was imposed, it was argued that no penalty could be imposed on the appellant under Section 167(8) of the Sea Customs Act.

16. In support of this contention. Mr. Ghose relied upon the majority view of the Supreme Court in *East India Commercial Co. Ltd. Calcutta v. Collector of Customs, Calcutta* : 1983(13)ELT1342(SC) . In that case the appellant company applied for and obtained a licence, for import of fluorescent tubes and fixtures. The licence was subject to a condition that the goods were to be utilised only for

consumption in the licence-holder's factory and no portion thereof was to be sold to any party. The importer took delivery of the goods on payment of customs duty, but the customs authorities subsequently seized the goods on the allegation that the importer was selling the goods to various parties. A criminal prosecution was launched against the director of the company which imported the goods under Section 5 of the Imports and Exports (Control) Act, 1947, which ended in his discharge. On an application for revision, the Criminal Revision Bench of this Court held that Section 5 of the Imports and Exports (Control) Act, 1947, penalised only a contravention of an order made under the Act, but did not penalise the, contravention of the conditions of licence issued under the Act or under a statutory order made under the Act. Thereafter the customs authorities started proceedings under Section 167(8) of the Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act, 1947, and called upon the respondent to show cause why the sale proceeds of the goods, which were held by a Magistrate, should not be confiscated and why penal action should not be taken against it. In the notice served on the importer, it was stated that the licence was issued on the condition that the goods should be utilised only for consumption as raw materials in the factory of the licence-holder and should not be sold for being utilised by any other party. It was also stated that the licence-holder had sold a part of the goods imported to others in breach of this condition and by reason of such breach the sale proceeds of the goods imported were liable to be confiscated. An application was moved under Article 226 of the Constitution for issue of appropriate writs against the customs authorities restraining them from continuing the proceedings initiated by them. The matter ultimately went to the Supreme Court and by the majority judgment it was held that when goods were imported under a valid licence, the fact that the licence was obtained by misrepresentation did not make the licence non est so that the goods were to be deemed to have been imported without a licence in contravention of the order issued under Section 3 of the Imports and Exports (Control) Act, 1947, nor could the breach be dealt with under Section 167 (8) of the Sea Customs Act. It was further held that a breach of a condition in the licence was not a contravention of the order under which the licence was issued and such a breach of a condition of the licence did not attract Section 167(8) of the Sea Customs Act. Dealing with this question, the Supreme

Court held at page 1905 of the report as follows:

We shall now proceed to consider the merits. Sub-section (2) of Section 3 of the Act clearly lays down that all goods to which an order under Subsection (1) thereof applies shall be deemed to be goods of which the export or import have been prohibited or restricted under Section 19 of the Sea Customs Act. Therefore, Section 167 (8) of the Sea Customs Act can be attracted only if there was a contravention of the order issued under Section 3 of the Act. Does any order so issued by its own force impose such a condition?'

The Supreme Court thereafter proceeded to consider the Import Trade Control Notification and by referring to condition (v) of Clause (a) of the said Notification held that the condition imposed in the licence could not be treated as a condition which was imposed from an administrative point of view, but was a condition which affected the rights of the parties. It upheld the conclusion of the Criminal Revision Bench of this Court that on a construction of Section 5 of the Imports and Exports (Control) Act, 1947, read with Section 3(2) thereof, it should be held that the Sections contemplate a penalty for contravention of an order made or deemed to have been made under the Act and not a contravention of a condition imposed by the licence issued under the Act or issued under a statutory order made under the Act. It was thereafter held that the customs authorities could not initiate proceedings under Section 167(8) of the Sea Customs Act in respect of a contravention of a condition of the licence, as the licence was neither a part of an order nor a condition laid down by the order within the meaning of Section 3 of the Imports and Exports (Control) Act, 1947. For that reason, it was held that the customs authorities had no jurisdiction to take action under Section 167(8) of the Sea Customs Act on the ground that the condition inserted in the licence was subsequently infringed by an importer. Dealing with Section 167(8) Of the Sea Customs Act, it was held that the essence of the offence under that Section was a contravention of an order made or deemed to have been made under the Act. Orders under the Sea Customs Act can only be made by the Central Government in exercise of the power conferred upon it by Section 3 of the Imports and Exports (Control) Act. Dealing with the question of punishment imposed under Section 167(8) of the Sea Customs Act, it was held that Section 3(2) of the Imports and

Exports (Control) Act did not expressly or by necessary implication empower the authority concerned to confiscate the goods imported under a valid licence, because a condition of the licence, not imposed by the Order, is infringed or violated. It was held that even assuming that the allegations made in the notice in that case for violation of a condition of the licence were true, the customs authority had no jurisdiction to proceed under Section 167 (8) of the Sea Customs Act.

17. Relying upon this decision. Mr. Ghose argued that the majority view of the Supreme Court was that a breach of a condition in the licence, which had been issued under the Imports Control Order, was not a breach of Order itself so as to attract the penal provisions of Section 167 (8) of the Sea Customs Act's, He was argued that Rule 5(2) of the Import Control Order by its own force did not impose the condition in the licence which has been alleged to be broken by the appellant. That rule authorised the licencing authority to impose conditions in the licence and a breach of such a condition could not be treated as a breach of the Imports Control Order itself. That being so, Mr. Ghose argued that Section 167(8) of the Sea Customs Act was not attracted at all and the penalty imposed under the provisions of that Section is illegal and must be quashed or set aside. It seems to us that Mr. Ghose's contentions are well founded. The condition which the appellant is alleged to have broken is a condition which was imposed in exercise of the powers under Rule 5(2) of the Imports Control Order, 1955. But breach of such a condition in the licence would not attract the penal provisions of Section 167(8) of the Sea Customs Act.

18. The learned standing counsel sought to distinguish the decision of the Supreme Court by referring to Clause (a)(v) of the Notification issued by the Ministry of Commerce. He argued that the decision of the Supreme Court was based on the ground that that order empowered the licencing authority to impose a condition from an administrative point of view and it was held by the Supreme Court that the impugned condition was not a condition imposed from an administrative point of view. Therefore, Mr. Mitter argued that the decision of the Supreme Court having been based on the terms of the said order, must be confined to cases where a condition was imposed by the licencing authority from an administrative point of view. He argued that in that view of the matter the

decision of the Supreme Court did not help the contentions raised on behalf of the appellant.

19. We cannot accept this contention of Mr. Mitter. The S.C. not only took into consideration the terms of the notification of the Department of Commerce of the Government of India being Notification No. 23-ITC/43 dated July 1, 1943, (which was issued in exercise of the powers conferred under Sub-rule (3) of Rule 84 of the Defence of India Rules) in Clause (a) (v) of which the question of expethency from the administrative point of view has been mentioned, as discussed above, but the Supreme Court also took into consideration another notification of the Ministry of Commerce of the Government of India dated July 26, 1948, and it was after considering the terms of both the said notifications that the majority of the Court came to the conclusion that infringement of a condition in the licence is not an infringement of the order under which the license was issued so as to attract Section 167 (8) of the Sea Customs Act. In the majority view of the Supreme Court, it is not enough for the purpose of attracting Section 167(8) of the Sea Customs Act hat there should be a breach of a condition in a licence, but the order under which the liceance is issued should prima facie impose a condition in the matter of issuing a licence for the import of the goods so that breach of such a condition would be a breach of the order itself and it is only when a breach of the order under which the licence is issued is committed that Section 167(8) of the Sea Customs Act is attracted. We have earlier in this judgment referred to Rule 5(2) of the Imports Control Order, 1955. There is nothing in that sub-rule imposing restrictions as in condition No. 1 of the conditions in the licence. That being so. we cannot hold that a breach of a condition in the licence is a breach of the order itself so as to make the appellant liable to the penalties under the provisions of Section 167(8) of the Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act, 1947. In that view of the matter we hold that the order of the respondent No. 1 being order No. 92 dated March 17, 1962 cannot be sustained and must be quashed.

20. We should now deal with another argument advanced by Mr. Ghose on the question of his client's liability to punishment after clearance of the goods, though our findings on the question of applicability of Section 167(8) of the Sea Customs

Act are enough to dispose of this appeal. Mr. Ghose argued that condition No. 1 in the licence provided that the licence would not be valid for clearance if the actual value of the goods exceeded the C.I.F. value mentioned in the licence by more than five per cent. It was argued that the goods had been cleared long ago and clearance of the same was not stopped for breach of the condition. Once the goods had been cleared, Mr. Ghose argued, the customs authorities had no right to initiate proceedings for breach of the terms and conditions of the licence. The penalty for breach of condition is provided in the condition itself and that penalty alone could be imposed, namely, a refusal to clear the goods for breach of the condition. It was argued that the restriction regarding value of the goods is a condition on the clearance under Section 3(8) of the Imports and Exports (Control) Act, 1947, and that clearance having been allowed long before the proceedings under Section 167(8) were started, such proceedings could not be started at all. We are not impressed by this argument of Mr. Ghose. Section 19 of the Sea Customs Act has conferred upon the Central Government the power to restrict the import and export of goods and Section 3(1) of the Imports and Exports (Control) Act, 1947, has empowered the Central Government to promulgate orders making provisions for prohibiting, restricting or otherwise controlling in all or in specified classes of cases, the import and export of goods and by Section 3(2) of the same Act, Section 19 of the Sea Customs Act has been made applicable to all goods to which any order under Section 3(1) of Imports and Exports (Control) Act, 1947, applies. Under Section 5 of the Imports and Exports (Control) Act, it is not only the attempt to contravene any order under the Act, but also actual contravention of the same, that has been made punishable. There is therefore no substance in Mr. Ghose's contention that merely because the contravention of the restriction on the import had already taken place long ago and the goods have been cleared, the appellant was not punishable under the Sea Customs Act and the Imports and Exports (Control) Act and the order made therein. Indeed, Mr. Ghose had conceded that for the breach of the condition his client might be punishable under Section 5 of the Imports and Exports (Control) Act, 1947, but not under Section 167(8) of the Sea Customs Act. There is no warrant for the proposition that once the goods have been cleared, the importer cannot be punished for violation of the terms of the licence or for contravention of the provisions of the Import Control

Order and the Imports and Exports (Control) Act.

21. The learned Standing unset that this contention on behalf of the appellant by referring firstly to Section 5 of the Imports and Exports (Control) Act and then Section 19 of the Sea Customs Act. He submitted that restrictions have been imposed on the import of certain goods under the Sea Customs Act, and the Imports and Exports (Control) Act has prescribed punishment for contravention or attempted contravention of any order made under the Act or a breach of a condition of a licence granted under any such order. He argued that the provisions in the statute clearly contemplate cases where goods have been already cleared in the importer, and if it is to be held that once the goods have been cleared the importer cannot be punished for violation of the provisions of the statute or for a violation of the statutory orders or for a breach of condition of the licence, the purpose of all the penal provisions will be completely defeated. In our view the learned Standing Counsel is right in his contention. It cannot be said that once the goods have been cleared through the customs, the importer is entitled to claim that he cannot be punished whatever may be the nature of contravention of the Statute or the orders made thereunder or the condition of the licence. In support of his contention. Mr. Mitter referred to a decision of the Judicial Committee in *Maritime Electric Co. Ltd. v. General Dairies Ltd.*, (1937) A.C. 610.

In this case there was a mistake in reading the meter regarding supply of electric energy over a period of 28 months with the result that the party was charged only for a very small portion of the electric energy consumed. It was held that the appellants were not estopped from recovering the actual amount although there was omission to do so. We do not think that this decision helps Mr. Mitter's contention inasmuch as this was a case where there was a mistake in taking the meter reading and it was held that although there was a mistake on the part of the suppliers of electric energy, they were not estopped from claiming the actual amount. The basis of the decision was a mistake committed in calculating the charges for the supply of electric energy. But in our view the contention of the appellant that goods having once been cleared, no penalty can be imposed for violation of the conditions of the licence, or of the provisions in the Imports and Exports (Control) Act, 1947, or of the Import Control Order 1956, cannot be

accepted on the grounds discussed above.

22. This matter was set down for judgment on December 8, 1964. Before the judgment was delivered however, the learned Standing Counsel asked for leave to add to his arguments which he had already concluded. We gave such leave and the matter was set down for further arguments on December 15, 1964, when the learned counsel for both parties made certain further submissions.

23. The learned Standing Counsel referred to the decision of the Supreme Court in *Abdul Aziz v. State of Maharashtra* : 1963 CriLJ403 . This was an appeal against an order convicting the appellant of the offence under Section 5 of the Imports and Exports (Control) Act, 1947, for contravention of the Imports (Control) Order, 1955. The appellant was the chairman of a co-operative Society and as such, applied for and obtained a licence for import of art silk yarn by the co-operative society. The licence that was issued, was subject to a condition that the goods would be utilised only for consumption as raw material in the licence-holder's factory and no portion would be sold to any party. The appellant caused the goods to be imported through a firm of financiers. Part of the goods were utilised in accordance with the condition mentioned above, but part was sold by the financing firm. The appellant and other members of the society were prosecuted for violation of Section 5 of the Imports and Exports (Control) Act. They were acquitted by the trial court, but were convicted on appeal. There was a further appeal to the Supreme Court and dealing with this appeal, the Supreme Court referred to its earlier decision in : 1983(13)ELT1342(SC) (supra) and distinguished that case on the ground, that the condition there was imposed prohibiting the importer from selling the goods, under the terms of the Notification No. 2/ITC/48 dated March 6, 1948. which provided for imposing a condition in the licence to the effect that the importer should not dispose of the goods without the written permission of the licencing authority or any person authorised by him. It was held that the licencing authority under the said notification was competent to impose only such conditions as might be expethent from the administrative point of view. But it was held in the case of : 1963 CriLJ403 that the licence was issued under the Imports (Control) Order 1955, Clause 5(2) of which was wide enough to permit the imposition of a condition which was outside the provisions of the said Notifications. It was further

held that breach of a condition of the licence was a contravention of Sub-clause (iv) of Clause 5 of the Imports (Control) Order, 1956, and that if the licensee did not comply with the conditions of the licence about the use of the imported goods, he contravened the order under the Act and hence made himself liable to punishment under Section 5 of the Imports and Exports (Control) Act, 1947.

24. Relying upon this decision, the learned standing counsel argued that the condition which the appellant had contravened was imposed under the terms of the Imports (Control) Order, 1955, and therefore a breach of such condition was a contravention of the order itself, and that being so, the appellant was liable to punishment, not only under Section 5 of the Imports and Exports (Control) Act, 1947, but also under Section 167(8) of the Sea Customs Act.

25. The argument advanced by the learned Standing Counsel sounds attractive, but on a careful consideration of the matter, it seems to us that the decision, of the Supreme Court in : 1963 CriLJ403 (supra) does not help his client. It cannot be overlooked that in that case the Supreme Court was only considering the question of punishment under the Imports and Exports (Control) Act, 1947. The question of punishment under any of the provisions of the Sea Customs Act was not considered by the Supreme Court at all. Then again the Supreme Court held that the appellant in that case was liable to punishment under Section 5 of the Imports and Exports (Control) Act, 1947, on account of contravention of a condition of the licence.

26. But while considering the question of liability to punishment under Section 167(8) of the Sea Customs Act. the Supreme Court had held in the earlier decision in : 1983(13)ELT1342(SC) (supra) that Section 167(8) of the Sea Customs Act could be invoked only if an order issued under Section 3 of the Imports and Exports (Control) Act, 1947 was infringed during the course of the import and export. Taking into consideration the two decisions of the Supreme Court, it seems to us that the position is that while penalty under the Sea Customs Act can be invoked for infringement of an order under Section 3 of the Imports and Exports (Control) Act, which infringement took place during the course of import and export such penalty cannot be imposed under the Sea Customs Act for breach of a

condition of the licence after the goods have been cleared by the Customs authorities. In such circumstances the importer would be liable to punishment for violation of the Imports (Control) Order, 1955, as provided in Section 5 of the Imports and Exports (Control) Act, 1947.

27. There is one other matter which seems to us to be decisive. In Section 167(8) of the Sea Customs Act, it is provided that the penalty therein mentioned has reference to Sections 18 and 19 of the Sea Customs Act. Section 19 of the Act confers upon the Central Government the authority to prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of India. This section therefore deals with restriction on the import or export of a class of goods and does not deal with the restriction on the value of the goods. Three restrictions regarding the value of the goods imported are imposed by the Central Government in exercise of its powers under Section 3 of the Imports and Exports (Control) Act, 1947. It is in exercise of the power conferred upon the Central Government under this Section that the Imports (Control) Order of 1955 was promulgated and the condition in the licence restricting the value of the imported goods was imposed under Rule 5(2) of the Imports (Control) Order, 1955.

28. Mr. Ghose contended, and we think rightly, that Section 19 of the Sea Customs Act was not violated in this case at all, because the import of the machinery which his client imported was not prohibited or restricted, in fact a licence was issued for import of the machinery with a condition regarding its value, but no condition regarding the class of machinery as contemplated by Section 19 of the Act. He argued that if his client was held liable for the breach of a condition regarding the value of the machinery, it would not be a case of an infringement of Section 19 of the Sea Customs Act, but it would be a case of violation of the Imports (Control) Order 1955, and therefore his client might be punishable under Section 5 of the Imports and Exports (Control) Act, 1947.

29. Mr. Ghose further argued that even if it was held on the authority of the decision of the Supreme Court in : 1963 CriLJ403 (supra) that a breach of the condition in the licence was a breach of the Imports (Control) Order 1955, the penal provisions in Section 167(8) of the Sea Customs Act could not be invoked

and applied for imposing any penalty upon the appellant. He contended that a licence having been issued to his client for the import of the machinery, a breach of a condition regarding the value of the imported machinery would be punishable under Section 5 of the Imports and Exports (Control) Act, 1947, for contravention of the Imports (Control) Order, 1955, issued under Section 3 of the Imports and Exports (Control) Act. A breach of a condition regarding the value of the imported goods. Mr. Ghose argued, could not attract the penal provisions of Section 107(8) of the Sea Customs Act. In our opinion, Mr. Ghose's contentions are well founded. The goods were imported under a valid licence and were cleared by the customs authorities and therefore there was no infringement of any order issued under Section 3 of the Imports and Exports (Control) Act, 1947, during the course of the import of the goods. As in the case of : 1983(13)ELT1342(SC) (supra), the goods were imported under a valid licence, but the appellant has been found to have violated a condition of the licence regarding its value, such condition having been imposed under the Imports (Control) Order, 1955. A violation of such a condition is punishable under Section 5 of the Imports and Exports (Control) Act, 1947, but not under Section 167(8) of the Sea Customs Act.

30. For the reasons mentioned above, this appeal is allowed. The judgment and order of Banarjee, J. dated September 2, 1963 are set aside. Let a writ in the nature of certiorari issue for quashing the order dated March 17, 1963 and also a writ in the nature of mandamus issue commanding the respondents to forbear from giving effect or any further effect to the order dated March 17, 1962. Each party to bear and pay its own costs.

31. The undertaking given on behalf of the appellant is dissolved.

Bose, C.J.

32. I agree.