

course of payment during the year ending the 31st day of March, 1963, in respect of 'Defence Capital Outlay'."

DEMAND NO. 144—CAPITAL OUTLAY OF THE DEPARTMENT OF ATOMIC ENERGY

"That a supplementary sum not exceeding Rs. 1,000 be granted to the President to defray the charges which will come in course of payment during the year ending the 31st day of March, 1963, in respect of 'Capital Outlay of the Department of Atomic Energy'."

15.39 hrs.

APPROPRIATION (No. 5) *BILL, 1962

The Deputy Minister in the Ministry of Finance (Shri B. R. Bhagat): I beg to move for leave to introduce a Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1962-63.

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1962-63."

The motion was adopted.

Shri B. R. Bhagat: I introduce† the Bill.

I beg to move:†

"That the Bill to authorise payment and appropriation of certain

further sums from and out of the Consolidated Fund of India for the services of the financial year 1962-63 be taken into consideration."

Mr. Deputy-Speaker: The question is:

"That the Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1962-63 be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clauses 2, 3 and the Schedule stand part of the Bill".

The motion was adopted.

Clauses 2, 3 and the Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Long Title were added to the Bill.

Shri B. R. Bhagat: I move:

"That the Bill be passed".

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

15.41 hrs.

CUSTOMS BILL

The Deputy Minister in the Ministry of Finance (Shri B. R. Bhagat): I beg to move:

"That the Bill to consolidate and amend the law relating to

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†Introduced/moved with the recommendation of the President.

[Shri B. R. Bhagat]

customs, as reported by the Select Committee, be taken into consideration".

On the 19th June 1962, the House had adopted a motion referring the Customs Bill 1962 to a Select Committee. The Select Committee has presented its report to the House. Having regard to the nature of the Bill, the Select Committee decided to invite through a press communiqué the views and comments of the public, and in response to this, 45 memoranda were received. The Committee gave an opportunity to 19 Chambers and Associations and one individual to give oral evidence before it.

15.42 hrs.

[MR. SPEAKER *in the Chair*]

The Report of the Select Committee contains the reasons for the changes made by it, and I do not want to take the time of the House by repeating them. However, it is necessary to touch upon some of the more important changes and also to comment on the important points mentioned in the minutes of dissent. I will first refer to the changes which concern the trade and will then refer to the changes made in anti-smuggling measures.

Clause 13 of the Bill as introduced provided that if any goods are pilfered while in the docks, the importer shall be liable to pay the duty leviable on such goods. This provision was introduced, as such pilfered goods do go into consumption and customs duty is legitimately due. A stronger reason, however, was to expedite clearance of goods from the docks, as pilferage is more common for goods which lie unattended to for some time. The witnesses appearing before the Committee, however, stressed that as the goods are not under the control of the importers, it will not be equitable to charge customs duty from

the importers, should the goods happen to be pilfered. The Select Committee have accepted this contention and have amended the clause accordingly.

Clause 128 specifies the appellate authorities. It was represented to the Committee that on the lines of the income-tax department, the officers hearing appeals in customs cases should be different, at least at the level of Collectors, from the officers entrusted with the execution of the Customs Act. The suggestion found favour with the Committee and they have recommended that appeals against the orders of officers lower in rank than the Collector of Customs may be heard by an Appellate Collector of Customs.

Clause 131 provides that a person feeling aggrieved by an order of appeal may apply for revision to the Central Government. Sarvashri Bade, Kamath and Narendra Singh Mahida have stated in their minutes of dissent that such applications should be heard by an independent tribunal, and not by the Central Government. They have referred to the recommendation of the Taxation Enquiry Commission. When the Commission made this recommendation, the issue was very carefully considered by Government and it was decided not to accept it on account of a number of considerations. As the Commission itself had pointed out, the Customs Department, if it were to function efficiently, must not be tied down by too scrupulous a regard for technicalities. Smuggling of gold, the import of banned or partially banned articles, the undervaluation of exports are major problems which the Customs Department has to contend with. They affect not only the revenues of the Government but also the foreign exchange resources which are so vitally important. Penalties for these violations have to be in keeping with the changing trends. A number of incidental matters have to be taken into account. A tribunal is apt to place an undue

emphasis on technical aspects of procedure and is likely to make effective work by Customs difficult of accomplishment. By its very nature, it would be divorced from the trends in violation of law and would tend to be unduly academic. Numerous court decisions have shown how the experiment of a judicial type of tribunal has worked in income-tax matters. On the other hand, an analysis of the decisions taken by the Central Board of Revenue in appeal and revision and by Government in revision shows that revenue has not entered into consideration at all in deciding these matters and all benefit of doubt has gone to the assessee. Furthermore, in most indirect revenue cases unlike in direct revenue cases, the questions have been of appreciation of facts rather than of interpretation of law. Moreover, on points of law remedy by way of writ and applications to courts is open and is being resorted to.

Another point stressed before the Committee was in regard to the liability of the clearing agents who are entrusted by the importers and exporters with the task of clearing the goods through Customs. Sub-clause (3) of clause 147 describes the liability of the clearing agents. This sub-clause is on the same lines as section 4 of the Sea Customs Act, 1878. But the clearing agents do not want to be held responsible for any short levy of duty except where such short levy is caused by any wilful act, negligence or default of the clearing agent. Sarvashri Bade and Mahida have in their minutes of dissent supported this stand. Some of the clearing agents had agitated this matter before the Supreme Court recently whereupon the Court decided that the existing provision did not offend against the Constitution. The Committee felt that the only relief that could be given was that except where short levy has been due to the fault of the clearing agent, recovery from him should be made only if it has not been found practicable to make such recovery from the importer. It is perhaps

too well known a fact to need reiteration from me that instances of clearing agents suggesting doubtful means to importers and exporters are not uncommon.

The most important part of the Bill is the strengthening of the anti-smuggling provisions. Sarvashri Bade, Kamath and Mahida have in their minutes of dissent expressed apprehension that the power to search premises may be misused by some Customs officers. The reasons why it is necessary to take this power have been mentioned in detail in the Notes on clause 105. The objection of possible misuse could be advanced in respect of any power that may be given to officers in order that they should be enabled to discharge their duties effectively. Clause 136 of the Bill provides for prosecuting the officers who knowingly misuse their authority. Moreover, the proper remedy for unscrupulous or over-zealous officers is administrative control. Having appointed our officers and subjected them to the strictest discipline, it will be very inappropriate to show lack of confidence in them at every step. Little is gained and much is lost by crippling them at every turn. Nothing can do greater disservice in killing their initiative. The problem that we face in smuggling is serious. We have to tackle it boldly. It cannot be tackled if we do not have a machinery with adequate powers to cope with it. I think it is desirable to appreciate that law-breakers know no rules and operate at a very great advantage. In matters like smuggling, they use the most modern means, and expense is no consideration to them. They are not accountable to anyone. They employ watches and informants. They keep a vigilant eye on all movements of officers. In carrying out searches, surprise is the most essential element. Every safeguard means an additional opportunity to the smuggler to evade the law. As it is dangerous to give too many powers, it is also dangerous to have too many safeguards.

[Shri B. R. Bhagat]

They hamper good officers and provide an excuse to others for not acting

I will next refer to clause 107. Sub-clause(c) of this clause empowered specially authorised Customs officers to require any person to make a statement in writing in connection with any enquiry into smuggling and to sign such statement. It has been the experience of Customs officers that if statements are not taken immediately after the contravention comes to light, the guilty persons are very often able to concoct a story regarding the origin of smuggled goods and to cook up evidence.

Shri Hari Vishnu Kamath (Hoshangabad): On a point of order, Sir. I am rather unwilling to raise this point, but when a Minister is making an interesting speech on an important Bill, there must be a quorum at least in the House. This is official business, and the Government cannot provide a quorum!

Mr. Speaker: I am perplexed what the point of order is.

Shri Hari Vishnu Kamath: Government cannot provide a quorum for this important Bill. It is a good speech he is making.

Mr. Speaker: Let the bell be rung The hon. Minister may proceed now.

Shri B. R. Bhagat: While appreciating this, the Committee felt that on the whole there is little advantage in compelling persons to sign their statements. Statements can be recorded and used in the normal way under the Evidence Act. The Committee have, therefore, recommended the deletion of this sub-clause.

Another clause that called for some consideration was clause 118, which is the same as the provision in section 168 of the Sea Customs Act, but it was represented to the Committee that hardship would be caused where a

broker or agent may keep in one package the smuggled goods of one client and the non-smuggled goods of another client or where some of the goods kept in a package by a trader may be smuggled goods without his being aware of their smuggled character. These complications arise only where the provisions of this clause are applied to seizures made in the town from brokers and traders who may have received goods from different sources. Essentially, the intention was to cover only such goods as may be imported along with smuggled goods in the same package. The Committee have, therefore, amended the clause to restrict its scope to such accompanying goods only. Sarvashri R. V. Bade and N. S. Mahida have appended a minute of dissent to avoid hardship in the type of cases that I have just now referred to. I think the amendment made by the Committee takes care of such cases.

It was represented to the Committee that the proviso to sub-clause (2) of clause 120, as drafted originally, would cause hardship to certain innocent owners also. The proviso has been redrafted to make the intention clear.

Clause 123 which corresponds to section 178A of the Sea Customs Act has been commented upon in the minutes of dissent. It has been said that if the source from which the goods have been obtained is proved, the burden of proof should be deemed to have been discharged. It is not possible to accept this suggestion because then it will not be possible to confiscate any smuggled goods once they have been passed on from the smuggler to any other person, as such other person would then be able to show that he had purchased the goods from the smuggler. **Shri H. V. Kamath** in his minute of dissent has suggested that some explanation should be added stating when the burden shall be deemed to have been discharged. He has not suggested any particular explanation.

Shri Hari Vishnu Kamath: I will do that now, in my amendment.

Shri B. R. Bhagat: In fact, the whole difficulty is that it is not practicable to lay down any hard and fast rules as to when the burden should be deemed to have been discharged. There are a number of court decisions on the point. It must depend upon the merits of each case. I may add for the information of the hon. Members that some of the bullion merchants had recently urged before the Supreme Court that section 178A of the Sea Customs Act is *ultra vires* of the Constitution, as it imposed unreasonable restrictions, but the Supreme Court decided that, considering the magnitude of the evil of gold smuggling, the restriction imposed was in its judgment reasonable.

I now come to clause 135 which provides for the prosecution of smugglers and their accomplices. The maximum punishment provided in the clause as originally drafted was imprisonment for two years. The Committee felt that in order to stop organized smuggling, deterrent punishments are called for. The Committee were of the view that in the case of gold, diamonds, watches and such other goods as may be notified by the Central Government, if the market-price of the smuggled goods exceeds rupees one lakh, the maximum imprisonment should extend to five years and it should further be provided that in the absence of special and adequate reasons to the contrary, the accused shall be sentenced to a minimum imprisonment of six months. I may add that as a result of this enhancement of maximum punishment, such offences will become non-bailable which would give discretion to the magistrates to grant bail or not, depending upon the merits of each case.

These are some of the salient features of the Bill as it has emerged from the Select Committee. With these words, I move.

Mr. Speaker: Motion moved:

"That the Bill to consolidate and amend the law relating to customs, as reported by the Select Committee, be taken into consideration."

Shri Warior.

Shri Hari Vishnu Kamath: Before you proceed to call the hon. Member, I would like to refer to the time allotted which is 5 hours, and I would request you, if you find that the House is willing and so disposed, to increase it to 6 hours. The extra one hour is always at your discretion.

You may also allocate the time between the general discussion and clause by clause consideration. I suggest it may be equally divided, 3 and 3 hours.

Mr. Speaker: We cannot presume that the House would just increase the time at this stage. This is no stage. We decided we would spend five hours. Let us proceed. If at the end it is not adequate, that would be the occasion.

He wanted three hours for the general discussion and three hours for the clauses. I am making it three hours for the general discussion and two hours for the clauses. I take it we are agreed on it and that we will conclude the general discussion within three hours.

Shri Warior (Trichur): I welcome this Bill because, as has been said even at the time of the Bill going to the Select Committee, the existing law is 80 years old. It is only proper and opportune that the old Act goes and the new one comes in, because we have got the experience of the last 80 years in working that Act, and these years have also witnessed very many historical changes, and changes in the pattern of trade, legal as well as illegal. Hence this experience should guide us in the formulation of new clauses if necessary, and the new Bill.

Mr. Speaker: Legal and otherwise he might say, not illegal.

Shri Warior: I accept that formulation, legal and otherwise.

It is quite clear from the Bill itself and from the introduction speech of the Minister last time as well as now, that it is not only legal trade that is going on. In fact, the most important section of the Bill is for stopping or curbing smuggling. Smuggling is, I thought, an illegal act, or rather, in fashionable language, illegal trade.

Mr. Speaker: Yes, certainly I would agree there.

Shri Warior: At the same time, this customs business should not be a harassment to law-abiding and ordinary business men and traders as well as passengers going abroad and coming in. We have known many cases in which people, especially tourists, have complained to the Government and in the press that they were harassed too much while coming to India for every small thing, questioning them, opening their boxes and doing so much of harassment. That is well known and I do not want to expand that. We have experienced not so much of harassment in other countries and when people make statements of the things they have, it is taken more or less for granted and they are let off. Certain persons who could not produce any credential at all or whose credentials are suspect are put to some harassment. It is necessary to examine them thoroughly. This Act has gone much forward and has much progressed from the late Act in giving so many facilities and concessions also and introducing so many simplifications in procedure for the traders and travellers. That is all good. Facilities must be given more and more to internal and external trade also especially in view of the present condition of our foreign exchange.

16 hrs.

In British times people were not wishing to enter into foreign trade simply because so many forms had to be filled and the office should have so many experts to do this as even a simple mistake somewhere was enough to invite clarifications and queries lasting for months and months and the entire business would get stuck up. Internally also we have come across many instances such as, taking loans from co-operative societies, etc. where many returns and forms have to be filled up but finally the result may not be very satisfactory. I mince my words and say not satisfactory. It was a negative attitude in the old British days and it had to be eliminated. They suspected every Indian and naturally so. They suspected that all the persons except themselves were smugglers, cut throats, niggards and what not. Now things have changed. If Mr. Kamath were a customs officer, he cannot suspect me much more than he suspects himself because I am of the same colour, at least of the same skin. Even though all sorts of illegal things go on nobody can suspect the other much more than even the Britisher had suspected the Indians in former times. Hence all these things must be simplified. It is right that concessions are given even on the rates of imported goods for re-export. That is a welcome provision. Goods are imported and kept in the warehouse and are re-exported. Naturally we get some foreign exchange out of that.

There is another section in this trade—the practice of under invoicing. That has come to light even from the Tyagi enquiry committee. In that report something has been mentioned. I am not going into the details. If the actual worth is Rs. 2 crores, the invoice and the ship documents show only half of that and the other half is credited in the name of somebody, leading to foreign balances and all sorts of manipulations and speculations and smuggling. It is a two-way traffic. With all its enforcement direc-

torate and so on, Government able to curb this tendency growing day by day. Even more cases are coming and it has become practically to distinguish who is a trader and who is not. Try to make profit and if is impotent enough to find persons indulging in this they take advantage of it huge profits. So, these goods must be properly proper duties must be levied. I searched in vain for something in this Bill for doing so.

Shri Hari Vishnu Kamath: The hon. Minister is listening is not proper to be speaking while the hon. Member is speaking his points.

Shri Warior: He may be listening with one ear and listening Minister of Parliamentary another ear.

Mr. Speaker: He is listening Warior with one ear but listening Mr. Kamath with both the ears.

Shri Warior: In implementing the Act, we may experience some difficulties for certain amendments and a new Act can be made complete.

I do not have a soft corner for those people who are smuggling. In recent times the best gold business.

Mr. Speaker: That might be so always.

Shri Warior: No, Sir, I am telling you..... (In the House) They add some other all and that gold business is right but that does not fetch profit. In the long run it is not profitable..... (An Hon. Member Punjab) I do not single out Punjab. The entire West is full of these people, smuggling so many other parts including My town is not a big town.

torate and so on, Government is unable to curb this tendency which is growing day by day. Every day more and more cases are coming to light and it has become practically impossible to distinguish who is a respectable trader and who is not. Trade is after all to make profit and if Government is impotent enough to find out the persons indulging in this, naturally they take advantage of it and pile up huge profits. So, these under-invoiced goods must be properly valued and proper duties must be levied on them. I searched in vain for some provision in this Bill for doing so.

Shri Hari Vishnu Kamath: I hope the hon. Minister is listening, Sir. It is not proper to be speaking to somebody while the hon. Member is making his points.

Shri Warrior: He may be listening to me with one ear and listening to the Minister of Parliamentary Affairs with another ear.

Mr. Speaker: He listens to Shri Warrior with one ear but he will listen Mr. Kamath with both the ears.

Shri Warrior: In implementing this Act, we may experience certain needs for certain amendments and then this Act can be made complete.

I do not have a soft corner for those people who are smuggling goods. In recent times the best business is gold business.

Mr. Speaker: That might have been so always.

Shri Warrior: No, Sir, that is what I am telling you.....(*Interruptions.*) They add some other alloy to gold and that gold business might be all right but that does not fetch as much profit. In the long run it has collapsed..... (*An Hon. Member:* Not in Punjab) I do not single out any province. The entire West coast line is full of these people, smugglers, from so many other parts including Kerala. My town is not a big town. There,

we had only three or four gold merchants and the other merchants were traders in cloth, provisions, etc. Nowadays, clothes, stationery and other sundries have gone. Now, it is flooded with gold merchants and I am told that one of the biggest gold merchants of India is going to have a house there. It is a small town of 75,000 people.

Shri Hari Vishnu Kamath: Which town?

Shri Warrior: I will not mention the name of my town. He can know it from the directory. But that is not the point. The point is, all of a sudden, you find new merchant princes building huge skyscrapers which peep into the horizon even in small places in the poorest of the States, namely, Kerala.

Mr. Speaker: Why should the hon. Member choose his town for this thing?

Shri Warrior: Because it is a centralised place, a town from where one can operate in the east up to Coimbatore and Erode in Madras State, in the west up to Cannanore, Mangalore and Udipi and in the south up to Cape Comorin.

Shri Hari Vishnu Kamath: Point of vantage.

Shri Warrior: Strategic place. This is about the gold business. How is this gold coming? Recently we had a press report that gold was taken out from the sea-bed near Bombay or Varsova or some port. There are even markings made in the sea which the customs people may not know. There are markings showing such and such a degree, so many feet, so many metres, and so on. They have pegs and in all those peg points, these gold bars are deposited by what they call sailing vessels or *kotiya*. Only those people who transact this business know that. Then these people go there and take out the gold from a particularly specified peg in the sea bottom. After all, the person may have been a pan-shop businessman or a small hotel or restaurant man, but all of a sudden,

[Shri Warior]

you can see that his skyscraper goes into the horizon. And the people are amazed how wealthy he is; how Shukra or Kubera who is the Lord of Wealth, has, all of a sudden, showered his blessings on that man, at night, because, during day-time we do not know whether Kubera is coming there. Nobody is there to interfere with. The Government is keeping mum. They see it in front of them. How does this chap get so much of money? The customs people go there; the income-tax people go there; the police people go there. For what? To bow down their heads and not to unearth the place from where that chap has got the gold.

You will see that all these penal clauses will be evaded. The only clause in which they have some apprehension, I am told, is the clause under which they could be put in prison, because they cannot afford to be in like that! A gold smuggler, when he was sent to prison for six months, told the magistrate: "Impose a fine of even a lakh of rupees. I do not mind it. But do not send me to prison." One day in prison means so much for him. It is a loss of more than Rs. 1 lakh. That is the position in India. I do not know for what earthly business they are doing all this. And this has become a veritable attraction for even the law-abiding citizens with some common intelligence to go in for this business and amass wealth. That is the tragedy of the whole thing. Ordinarily, the law-abiding, very nice citizens, would not have any inclination for any sort of these vices. But they are also attracted.

For instance, I am an ordinary citizen. I am working for the public in the political field. When I see a chap who was nothing the other day, but who, all of a sudden, has a Plymouth car and goes about with all pomp and glory and has influence throughout, from the district collector or the Min-

ister down to the last man in the hierarchy, naturally, I am also attracted. I am also inclined to do something in that business, and feel why I also should not have a pie in the whole thing. Why should I be denied? Why should I have a self-denial for that? What is the object? What is the aim? Any decent man will also be attracted, and decent men are attracted to it. These places have become the worst cess-pools in our cities and the contamination is spreading to the countryside. You do not know what sort of crimes they have perpetrated and what sort of unimaginable things they are doing with that ill-gotten money. I do not know how many of these people are now patriotically coming forward to fill the coffers of the defence fund. They may be willing to contribute Rs. 1 lakh, Rs. 2 lakhs or even Rs. 1 crore; the only thing they want is they should be left alone, because in a day, month or year they will make up the whole amount. I am reminded of an experience in 1920-21. When Mahatma Gandhi came to all the villages to collect gold bangles, we were in the initial stage of the nationalist movement and some small girls also gave their bangles and their rings, because others did like that. But at night, they began to cry for another set of bangles, because they did not know that they had been taken away. This is just like that. We cannot allow these things to continue.

What about other smuggling methods that are adopted? I do not think the law as envisaged in these provisions will be able to tighten up the ring as long as our economy is controlled. Either we have a free trade movement by opening out all ports for free trade without any embargo or, if we want to have a controlled economy, surely this belt must be tightened and there should be no loophole, no lacuna, to allow these people to escape from the clutches of the law.

It is good that some improvements have been made. But I would suggest

that whether it is Rs. 1,000 or Rs. 1 lakh or Rs. 1 crore, the punishment must be very severe. There should not be just 'deterrent punishment' in the ordinary sense of the term. I do not know what is meant by deterrent punishment. I had some deterrent punishment, but that has not deterred me. When I was a young boy in the Congress movement, 10 or 15 policemen gave a massage with granite stones on my back. That was a deterrent punishment and I could not drink water for days. Even that will not deter these people who are up to do any mischief and who will resort to any illegal method if they can get this illegal gain.

I should say something about the cases of smuggling watches. As a political worker—as a Congressman, a socialist and a communist—I have experience for the last 30 years. Our cases are decided within one hour's time. We are produced in the court and sent to jail. But there are certain cases of smuggling watches going on as if it is a cinema. Just as some boys are going to the cinema daily, the only item in which some youngsters are interested in the newspapers is the report about some smuggling cases or a particular smuggling case because it has much of comedy and much of interest. Why should we lose money like that? When we are talking of economy in paper, stationery and other expenses, why should we not economise the legal procedure there? Put them in the dock and send them to the jail. That is the end of it. But there the law comes in with all its paraphernalia.

Mr. Speaker: Can we use the services of Members of Parliament to take up this job during the recess?

Shri Warior: We can. If we have the will we can do it. Even the existing police can do that. They have done it. I speak from my own experience. I was roused at four o'clock in the morning from my home and by four o'clock in the evening I was sent

to the Central Jail. How was it possible?

Mr. Speaker: At least he can check them.

Shri Warior: It is only policemen who have done that to me. They can do that to the smugglers also. If there is a will it can be done. This is not a thing to be lightly looked upon. This has become the most contagious disease in our economy today. Unless these people know that they will not be permitted to operate for long terms they will not stop it. I do not know, they may even do that from the jail.

So much about smuggling. I do not want to talk about watches, diamonds, jewels and other things. So many things are coming into India. But I want to say one thing. There is the plea of private property. Supposing I am bringing a watch or two or even a dozen watches for my personal use, I will say that they are for my personal use. What is the cost of a watch? It is just half of what we have to pay for the same watch in our Indian market because of the controlled economy, the duty charged and all that.

Shri Yashpal Singh (Kairana): The difference is only Rs. 10.

Shri Warior: Who says so? A watch which costs outside about Rs. 200 costs here about Rs. 600. Supposing I bring one from Penang, Singapore, Iran or Baherin—Moscow is not very good for watches—as soon as my friend looks at it he will ask from where I got it. When I tell him that I got it from Penang, he will ask how I got it. Naturally I will tell him that I got it for my personal use. What will be his attitude? He will at once think, why he should not also get a watch like that. Anybody will think like that. When they see a clean, new watch which is not available so readily at a reasonable price in the Indian market, at least all the youngsters—all the Adwanis and Gidwanis—will be

[Shri Warior]

attracted. They will begin to search the method or the *modus operandi* of getting it. They will start with one watch. But they will not rest with one watch, they will actually start a business—they will bring two, three, then 100, then 1000 watches and so on. 3000 watches have arrived in Delhi once. How? These are just like epidemics in economy. It will not rest at the place it starts. We cannot contain it. Unless it is nipped in the bud it will spread.

Mr. Speaker: The hon. Member has already taken 25 minutes. He should try to conclude now.

Shri Warior: I will remind you, Sir, with all humility, that when this Bill was introduced actually there was no one to speak. It is only now that some people may take some interest. I am only provoking their interest.

Mr. Speaker: He should not provoke that interest so much that I might be put into difficulty.

Shri Warior: I will only give my opinion about two or three clauses and then conclude. About clause 105, which is replacing section 172 of the existing Act, there is some controversy. Going through the notes of dissent I find that that there are certain things in which we do not find agreement. Formerly it was the custom or practice for the searching officers to get a warrant from the magistrate. That procedure is eliminated by the present enactment. An officer of the customs department is given the power to search without a warrant. Of course, even now that right exists in some other departments, but that by itself will not be a justification for this sort of procedure. According to the Police Manual, even the police can search any premises without any warrant. But, then, there is a provision in the Criminal Procedure Code, I am told, that after the search at least, the police should inform the magistrate that a search has been made. Why is it so provided? It is patently clear. When

an officer is searching the premises of a private citizen, the question of the individual right and proper justice come into play. Suppose nothing incriminating is found. On the contrary, there are instances of implanting things. What is the protection for the private citizen against that? Suppose some contraband is implanted in the house. This provision is specially made to facilitate night searches; not day searches alone. In the day time it is quite possible to approach any magistrate to get a warrant. In the night it may not be possible because the magistrate may not be at the station and the search may be imminently necessary, an immediate urgent necessity. Then, what should be the remedy? Of course, the house must be searched. But what is the protection for the individual if nothing incriminating is found? There may be rivalry, jealousy or some sort of misunderstanding between the individual and the officer concerned. So, in the larger interests of the public, there must be a provision that the searching officer must inform the magistrate in writing after the search is over that a search has been made. That is not provided, though it should have been done. But it is late in the day to suggest any amendments for that.

Then there is the question of onus of proof. According to the present provision, anybody could be made to prove it. Suppose a person has got a smuggled diamond. If he can supply the address and the title of the person from whom he has bought it, that must be the end of the matter, so far as he is concerned, and the police or authorities must go to that address for finding out the source of the diamond. There are so many people in the country who are attracted by so many things, who become victims. Suppose in the port of Calcutta or Bombay I am offered a good watch. I will not take it if it is offered by a stranger. But suppose it is offered to me by a person who is known to me, whose address is known to me, and he tells

me "this is a genuinely—obtained watch, not a smuggled watch, a watch on which duty has been paid" and I take it and I am interrogated, if I give the address of the person from whom I obtained it, I must be let off. as my *bona fides* are clear. The police can go to that address and by enquiries find out whether that is a smuggled watch or not. If it is a smuggled watch, let them by all means take action against the person who has supplied it to me. So, I think the onus of proof must remain with the other side, or at least with the person from whom it was obtained. The owner alone should not be penalised for that matter. If actually there is the other story also that I might hide, then there is no letting off. Then I will be caught and I will be having the punishment as provided for by this Bill.

Then, there is a provision for an appellate tribunal. I can understand the two gentlemen there. One is a retired or a serving High Court Judge and the other is an official of the Ministry or of the Customs. Then another one is a representative of the trade and industry. The interests of the trade and industry can be safeguarded by some eminent lawyers who appear before the Tribunal. Why should the fifth column be employed inside? I do not want to make any insinuation, but actually whose interest is he safeguarding?

Shri Harish Chandra Mathur (Jalore): Is it a direct accusation; it is not an insinuation.

Shri Bade (Khargone): Is it possible to say that there is no honest trader in the country at all?

Shri Warrior: Who said that? Why should Shri Bade impute such a thing to me? When he gets a chance he can very well say that there are traders who are dishonest and those dishonest men may also come as representatives on the Board or Tribunal.

Mr. Speaker: Shri Bade can also advance the argument that to catch a thief set a thief.

Shri Warrior: So, I think, instead of having that gentleman of the trade and industry on the Board, the best man will be somebody from the Ministry of Commerce who may be placed on that Tribunal because he knows which are the things that are coming, which are the things that are going and what is the position of the trade. There are so many things in the trade, but I will not go into that because my time is up; otherwise, I would have said all that.

Some years back the Government calculated that through a licence to import parts of certain machinery they will be having, say, Rs. 1 lakh worth, but actually it went upto Rs. 3 lakh with the same amount sanctioned. The Commerce Ministry was baffled. They could not know how these things were coming and wherefrom they were coming. So, the Commerce Ministry must have a man on the tribunal for taking more interest in what is going on in the underworld and who the persons really are to be brought to the fore. Of course, we can make these changes after working for some time and getting some experience.

I support the Bill.

Shri Narendra Singh Mahida (Anand): Mr. Speaker, Sir, I welcome this measure for improving upon and co-ordinating the Customs Act. I was one of the members of the Select Committee and I have given my minute of dissent. I am thankful for the arrangements which the Ministry made for us to visit the various places at Calcutta. Customs Officers were very co-operative at Calcutta.

We have also generally agreed on many of the clauses. Many of our amendments have also been taken note of and I am glad that particularly 'precious stones' have been removed from the various clauses and concentration has been made only on dia-

[Shri Narendra Singh Mahida]

monds, gold and watches, eliminating precious stones which had no chances of smuggling. They are only imported in raw form for exportation. So, I welcome that because it concerns some of my parts of the country where precious stones dealers are concerned.

In our anxiety to curb smuggling in India we should be careful to see that innocent people are not harassed. There has been quite an upheaval in the merchants dealing in diamonds and gold on this Bill. The witnesses have said that those who are smugglers you can hang them but an innocent tradesman should not be made to suffer. My plea has been that in having these rules or laws, we should see that innocent Tradesmen are safeguarded and they are not made to suffer. I have many cases which I have brought to the notice of the Ministry and to our Chairman of the Select Committee that sometimes wrong persons have been taken into custody and kept in jail even for a night, people who had nothing to do with smuggling were harassed. Of course, the Finance Minister had assured that he would look into the matter and see that such incidents do not happen. But, these incidents have been happening. That is the reason why we took up some of the clauses for correction so that honourable and innocent traders who have nothing to do with smuggling are not troubled. Mr. Kamath and a few of us assured the Finance Minister that we did not speak on behalf of the smugglers at all. We desired that stringent measures should be taken against smugglers. We had even suggested enhancement of punishment which had been proposed originally. The sentence of 2 years, we said should be five years and also fines should be increased. That suggestion has been taken note of and the Government have made suitable changes in the clause. There are some suggestions which I have to make to the Finance Minister for re-consideration, particularly about the burden of proof.

That refers to clause 123. I am dissatisfied with the present clause. That the burden of proof should be on the trader himself is improper. If there is one smuggled diamond in a package, how are we to verify it, that particular diamond is smuggled and the rest is not? In the present clause, 118 it is mentioned that the whole package is to be confiscated without defining the smuggled diamond. That is not a proper method. It is anomalous. Burden of proof is very difficult in the case of a diamond. Diamonds are owned in this country for hundreds and thousands of years. It is a very ancient trade. I cannot support the move of the Government to confiscate the whole of the goods. Even for example, a piece of gold. You can catch them. Supposing an innocent person buys a piece of gold. That gold is being taken away from him and he is asked to explain where he got this gold from. My suggestion is, the moment he says that he bought from such and such a person and gives the bill, he should be discharged and his goods should be given to him. That particular part may be cut out from the piece of gold or whatever jewels there are. He should not be made to suffer. This onus is a very dangerous thing where anybody can be caught, any Member of Parliament even. Or, for general purposes, any public person may be caught and he may be asked to explain where he bought this watch or diamond or piece of gold. It is very difficult to say. For watches you can say. For gold and diamond, it is very difficult to say. My plea is that the onus of proof in clause 123 should be reconsidered very seriously. Innocent people should not be made to suffer or look like accused. The Government and its executive always want a lot of power. We are prepared to give power in cases of emergency but not in the case of normal civil life where the executive wants to be all powerful. Smuggling will go on. That has been going on for thousands of years everywhere. We can minimize it. I personally say from my experience, in the running of an

air service, that India is a paradise for smugglers whatever measures you take. We have a very huge coast line. In the western region,—particularly in the State of Gujarat I can say—there is not even one steam launch to catch the smugglers on the high seas. Do we think smuggling is done inside the country? Smuggling is done on the sea coasts and on our borders. There are also international lines on which we have no control. Supposing a steamer or a cargo ship or a small ship coming from foreign lands stops away from our territorial waters, that is, at a distance of more than ten or twelve miles, and a country craft goes there, it can bring various goods from that ship. How are we going to check those international high-sea border lines? It is not a question of only gold and diamonds but various other goods.

Now, these winter months are coming, and I am sure Bombay will be dumped with foreign liquors. Where do these foreign liquors come from? It is not from the Embassies alone, but these are being regularly brought into this country from various sources. So, the correct way to check smuggling is to have more sea-going launches, and more stringent measures to safeguard our sea-coasts and air-ports.

Sometime back we heard in Delhi even that certain ammunitions were being brought in by aeroplanes. It is not necessary that an aeroplane should land only at the air-ports. We have very flat land, we have deserts in Rajasthan and other places, where a small plane coming from Pakistan or from other areas can land without any necessity of informing any of our international air-ports. They can just safely land, dump goods and go away. Goods like diamonds—gold—watches—etc. can be brought in very easily in this manner.

I am amazed that gold smuggling has been going on for such a long time, and a fabulous amount of gold has been caught. Lately, in Bombay alone, about Rs. 35 lakhs worth of gold has been caught. We have no sympathy

with the smugglers. Probably, now the Finance Ministry may expect that gold smuggling may not go on for long, because there is every possibility that the prices of gold will come down, and a lot of gold is also being given to the National defence Fund. There are some possibilities which I would request the Finance Minister to enquire into. Now, there are so many Indians living in foreign countries, and they want to come back. Suppose they bring gold or diamonds, and they declare them at the air-ports or the sea-ports, will those goods be confiscated even if they have been truthfully declared? Or will they be allowed to bring in those goods and invest them in the National Defence Fund or the gold bonds? That is a question which I wish to put to the hon. Finance Minister, because there have been some enquiries in this regard, particularly, from South Africa where there are a lot of Indians who are desiring to come back.

As far as smuggling is concerned, we were surprised to see in Calcutta how this gold is being brought in and how diamond is being brought in. They were brought even in the image of Laughing Buddha. We saw at the Calcutta Customs Office the various means by which people have been bringing in those prohibited goods.

It is also very surprising that respectable people also have been doing these things. Very stringent measures are the only deterrents whereby we can prevent these things. But I would personally say that our international information agencies should be explored more, because most of the goods are being brought by foreigners and also by our people who are going to foreign countries. Sometimes, I have heard also that big people involved in smuggling are being let loose easily.

Shri Sonavane (Pandharpur): By whom?

Shri Narendra Singh Mahida: I would not name them in the House. I know of some cases.

Mr. Speaker: He can hold the Finance Minister responsible for everything?

Shri Narandra Singh Mahida: I do not say that the Finance Minister is responsible.

Mr. Speaker: Ultimately, he is responsible here in the House. Therefore, the hon Member can say that.....

Shri B. R. Bhagat: I think some hon. Member asked the question 'By whom?' and he is only replying to it.

Shri Sonavane: I asked 'let loose by whom?' I wanted to know whether my hon. friend was referring to the customs officials or to somebody else.

Shri B. R. Bhagat: Or to the court.

Shri Narendra Singh Mahida: We know many things which we cannot say here, because it is not proper, and it is no use naming persons who are not here in the House. All the foreign going persons practically know these methods of how to bring in money into this country. So, it is not very difficult to say that. But, normally, the people involved are of a high status. My purpose in saying this is that normally the people involved in smuggling are people of high status, and so, this is not a question relating to the common or ordinary traders. So, experts are required for this purpose. This is the business of experts. I shall not say much more about them. My purpose is only to stress that innocent people should not be harassed.

Even when witnesses appeared before us in the Select Committee, they were all saying with one voice that they supported the Government in whatever measures Government wanted to take, but as far as the ordinary traders are concerned, they should not be made to suffer in their routine business. My plea is that the Finance Ministry should reconsider clause 123 and see that the burden of proof is not placed on the traders. I appeal to the House to see that this change is

brought about in the Bill and the present provision is not allowed to be passed in the manner presented to the House.

Then there is a suggestion regarding clause 131. The Badhwar Committee has also made a recommendation about it referring to the Taxation Enquiry Commission's view about this. My suggestion is that the Central Government should constitute a Tribunal which should consist of at least one Judicial Member who should be a serving or retired High Court Judge and one member who has had experience of customs administration and one representative of the association of the import and export trade. These cases should be tried by such a tribunal. They cannot be dealt with by customs officials themselves. No such power should be given to one particular department. Smuggling should be stopped. But this tribunal should be there; no one-sided measures should be taken.

Then there is clause 105 under which a customs officer can search any premises as he likes. These are very wide powers. We must restrict these powers. Without obtaining search warrant from a Magistrate, no house of a person should be searched. This is very necessary; otherwise, it infringes our place at home and our human rights. I appeal to the House; clause 105 should be considered in detail and no such power should be given to customs officials. They say that smugglers will not be caught without this power. Let them not be caught. I am not afraid of it. How many smugglers are there? But no innocent man should be taken into custody without any warrant; his house should not be searched in any manner they like as is provided here. These powers are bound to be abused. I have pleaded in the Select Committee that these powers should not be given to customs officials, that before examining a person or arresting him or searching his house, a warrant must be obtained from the Magistrate. I again

plead through you to the Finance Ministry to look into clause 105 and see that no premises are searched without a warrant. This is our elementary citizens' right. In a democracy, we should not function in such a manner. In order to check smuggling, and smugglers, we should not be penalised unnecessarily. Cases have happened. It is not that I am just saying this. Our Chairman had met a deputation also in Calcutta where he was informed that persons were searched without any reason. Nothing was found on them. If something was found and they were taken into custody, that would have been all right. But that was not so. There was a case of a very reputable firm of 100 years' standing whose premises were searched and nothing was found. After all, honest traders have their long established reputation. Suppose a man is taken into custody on a Saturday; he has to remain there in jail till Monday, even though there is a provision saying that he must be produced before a Magistrate within 24 hours. So there will be no magisterial inquiry during this period. These are very wide powers which we are giving.

My objections are to clause 105 about the power to search premises without warrant and to clause 123 in regard to burden of proof. If Government come forward and make suitable amendments to these provisions, or if the House does that, I shall support this Bill; otherwise, I shall not support it.

श्री बड़े (खारगोन) : अध्यक्ष महोदय, यह जो कस्टम्स बिल हाउस के सामने आया है उस के वास्ते मैं शासन को बधाई देना चाहता हूँ। इस का कारण यह है कि ८० सालों के बाद शासन ने जागरूक हो कर सी, लैंड और एअर तीनों के कस्टम्स लाज को एक जगह लाने का कष्ट किया है।

इस बिल के लिये जो सेलेक्ट कमेटी नियुक्त की गई थी, मैं भी उस का मेम्बर था। इस लिये जिन क्लोजेज से मेरा मतभेद

था उन के सम्बन्ध में मैंने डिसेंटिंग नोट दिया है। जब यह कस्टम्स बिल यहां लाया गया था तो मुझे ऐसा लगा कि कस्टम्स का जो उद्देश्य होता है वह उस से पूरा नहीं हुआ। यह सिर्फ एक एन्टी स्मग्लिंग लेजिस्लेशन है, मुझे ऐसा प्रतीत हुआ, और इसी लिये मैंने इस पर बहुत से अमेंडमेंट दिये थे और कमेटी ने उन के ऊपर विचार भी किया। कस्टम का उद्देश्य यह है . . .

श्री ब० रा० भगत : कमेटी ने इन की सराहना भी की है।

श्री बड़े : जी हां मेरी सराहना की है और मैं कमेटी को धन्यवाद देता हूँ . . .

अध्यक्ष महोदय : कमेटी आप को धन्यवाद देती है और आप कमेटी को धन्यवाद देते हैं।

श्री बड़े : मैं कमेटी को धन्यवाद देता हूँ लेकिन मैं केवल ५० या ६० फीसदी धन्यवाद ही दे सकता हूँ। अगर उस ने मेरे तमाम अमेंडमेंट्स पूरे के पूरे सौ फीसदी मान लिये होते तो मैं उस को सौ फीसदी धन्यवाद दे देता लेकिन चूंकि उस ने सब के सब नहीं माने हैं इसलिये मेरा धन्यवाद भी १०० फीसदी न हो कर ५० फीसदी ही है।

कस्टम्स बिल जिस रूप में पेश किया गया है और उस में स्मग्लिंग आदि की जो डेफिनीशन दी गई है उस से यह बिल मुझे तो एक एंटी लेजिस्लेशन बिल लगता है। कस्टम्स बिल के पेज ४ पर स्मग्लिंग की यह डेफिनीशन दी गई है :—

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

[श्री बड़े]

यह लेजिस्लेशन स्मगलिंग चैक करने के वास्ते बना है। लेकिन मैं बतलाना चाहता हूँ कि यह स्मगलिंग की डैफ़नीशन दूसरे ऐक्टों में जो बाहर के ऐक्ट्स हैं उन से अलग है। इस में केवल यह दिया है कि जो गुड्स कनफ़िस्केशन के लायक हैं वही स्मगलड गुड्स हैं। अब कनफ़िस्केशन के लायक गुड्स दूसरे भी होते हैं जिन पर कि ड्यूटी नहीं दी जाती है। कुछ अन्य अन्य तरह के गुड्स इस में दिये हुए हैं जोकि स्मगलड गुड्स होते हैं। अब कस्टम का उद्देश्य इम्पोर्ट और एक्सपोर्ट को बराबर कायम रखना होता है और ट्रेड को लाभप्रद बनाना होता है। ट्रेड को उत्तेजना देने के वास्ते कस्टम और टैरिफ़ के कानून बनाये जाते हैं। कस्टम के कानून को जब कोई तोड़ना चाहे और स्मगलिंग करना चाहे उस तो के वास्ते पनिसमेंट रक्खा जाता है। कस्टम कानून के बनाने का यह उद्देश्य होता है लेकिन स्मगलिंग की जो डैफ़नीशन इस में दी हुई है कि उस को कैसे चैक किया जाना है उस को बेखने से तो मुझे एक अमरीकन न्यूजपेपर में "दी सशपिशस ट्रेन" के नाम से जो कार्टून छपा था, उस की याद आ जाती है। हम चाहते हैं कि स्मगलिंग चैक हो लेकिन हमारी हालत उस कार्टून की तरह हो रही है कि

The guard was suspecting the driver, the driver was suspecting the guard, and the passenger was suspecting both.

वही चीज इस में दिखाई दे रही है।

Government was suspecting the traders, traders were suspecting the Government, and we were suspecting both.

इस तरह की स्थिति इस कमेटी में हो रही थी। मैं यह चाहता था कि गवर्नमेंट जो व्यापारियों की तरफ इतनी स्ट्रिक्ट हो रही है वह नहीं होनी चाहिये। ट्रेडर्स की कमेटी के सामने

जो गवाही हुई उस में उन्होंने ने कहा कि गवर्नमेंट इस तरह का लेजिस्लेशन पास कर के हमारे ऊपर अन्याय कर रही है। मौजूदा शकल में बिल कर के गवर्नमेंट सूखी लकड़ी के साथ गीली लकड़ी भी जलाना चाहती है। हम यह चाह रहे थे कि दोनों के बीच में कोई गोल्डन मीन निकल आये। लेकिन जब गवर्नमेंट ने कोई तबदीली इस में नहीं की तो लाचार हो कर मुझे यह डिस्सैटिंग नोट देना पड़ा। शासन इस पर बिलकुल ऐडामेंट रहा कि नहीं यह इसी रूप में रहना चाहिये तब मैं ने अपना यह डिस्सैटिंग नोट दिया।

अध्यक्ष महोदय, इस के बाद जब मैं ने यह देखा कि इस में यह दिया हुआ है कि पिल्फ़ेज और थैफ़्ट्स होने पर भी ड्यूटी लेनी चाहिये, तो मैं ने इस बारे में अमेंडमेंट दिया और कमेटी ने उसे मान्यता दे दी। मैं ने बतलाया कि यू० के० के ऐक्ट में प्राविजन नहीं है और यह खुशी की बात है कि कमेटी ने मेरा सुझाव मान लिया और पिल्फ़ेज के सैक्शन में उन्होंने ने अमेंडमेंट कर दिया है। शासन ने मेरे अमेंडमेंट को मान लिया है।

इस के साथ ही साथ मुझे यह निवेदन करना है कि पैकेज के बारे में इस में एक विचित्र सैक्शन रक्खा हुआ है। अगर एक पैकेज में २० डायमंड हों और उन २० में से एक डायमंड स्मगलड हो वह पूरा डायमंड का पैकेज स्मगलड समझा जाएगा। The

whole package will be confiscated मैं ने इस के बारे अपनी डिफ़कल्टी कमेटी के सामने रखी थी और आज फिर उसे हाउस के सामने रखता हूँ कि यदि एक पैकेज में २०-२५ डायमंड हों और उन में से एक डायमंड स्मगलड हो तो पूरा का पूरा पैकेज कैसे कौनफ़िसिकेट हो सकता है? यह आखिर कैसा न्याय है?

अध्यक्ष महोदय : अभी आप ने कहा कि सूखी लकड़ी के साथ गीली भी जलेगी ।

श्री बड़े : ऐसा नहीं होना चाहिये यह मेरा कहना है ।

श्री शिव नारायण (बांसी) : उस की चैकिंग के लिये आप क्या उपाय बतलाते हैं ?

श्री बड़े : सुनिये मैं बतलाता हूं । पेज ४३ पर ११८ (ए) में इस तरह का प्राविज्ञान है :—

118(a). "Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation."

पैकेज की डैफ़ीनीशन कोई नहीं है । मैं ने शासन से इस की डैफ़ीनीशन के बारे में पूछा तो बतलाया गया कि पैकेज माने बंडल और बंडल यानी पैकेज और यह तो ठीक वही बात हुई कि अम्बरैला माने छतरी और छतरी माने अम्बरैला : उस के आगे शासन नहीं जाता है । मैं ने कहा कि यह प्राविज्ञान दूसरे ऐक्ट्स में नहीं है । उन में यह प्राविज्ञान ऐसे है

Knowing that it is a smuggled diamond it is packed into a package, then it can be confiscated.

इस तरह का प्राविज्ञान इस में होना चाहिये था लेकिन चूंकि शासन ने इसे नहीं माना इसलिये मैं ने इस के बारे में अपना डिस्सेंटिंग नोट दिया है । ऐसा प्राविज्ञान किसी ऐक्ट में नहीं है और मौजूदा शकल को कायम रखना ट्रेडर्स के साथ अन्याय करना है । मैं कहता हूं कि फौरेन ऐक्ट्स आप सारे देख लीजिये । मैं ने खुद उन को स्टडी किया है लेकिन इस तरह का प्राविज्ञान कहीं नहीं है । शासन की इस प्रकार की एंज्जाइटी कि तमाम

जितनी भी स्मगलिंग है उस को हम बन्द कर दें, उस के लिये इस प्रकार का हार्श और सख्त कानून बनाना मुझे कुछ उचित नहीं मालूम देता है और मैं तो समझता हूं कि कानून जितना सख्त बनाया जायेगा करप्शन उस से उतना ज्यादा बढ़ेगा । उस में से लूपहोल्स निकल आयेंगे । तमाम लूपहोल्स को प्लग करना मुश्किल है । इस के लिये मेरा तो अपना विचार यह है कि शासन को जनता की अग्रीनेस्टी में और ईमानदारी में विश्वास करना चाहिये जोकि इस में नहीं किया जा रहा है । सैक्शन १२३ में बर्डन ऑफ़ प्रूफ़ के बारे में यह प्राविज्ञान दिया हुआ है :—

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

मैं ने अग्रीवैक्शन यह लिया कि स्टोलैन प्रापरटी रखी है तो क्रिमिनल प्रोसीज्योर ऐक्ट में और एविडेंस ऐक्ट के मुताबिक स्टोलैन प्रापरटी यदि कोई व्यक्ति लेता है, यदि मैं स्टोलैन प्रापरटी ले लूं तो मेरी बाबत प्रोसीक्यूशन को यह साबित करना पड़ेगा कि मेरे को यह नौलिज थी कि यह स्मगल्ड गुड्स हैं । अगर प्रोसीक्यूशन यह साबित कर देता है और knowing that it was stolen property उसे मैं ले लेता हूं तो यह गुनाह है । लेकिन इस में यह साबित करने का बर्डन कि वे स्मगल्ड गुड्स नहीं हैं यह उन लोगों पर पड़ेगा जिन के कि कब्जे से वह सामान पकड़ा जायेगा । इस बारे में मेरा सुझाव था कि अगर यह बतला दे कि कहां से वह प्राप्त हुआ है सोर्स बतला दे तो उसे काफ़ी समझा जाये । मसलन मेरे पास से डायमंड या वाच बरामद होती है और मैं ने कह दिया कि इन्हें मैं ने एक्स से लिया है और एक्स ने कह

[श्री बड़े]

दिया कि वाई से लिया तो यह सफिशिएंट प्रूफ है। लेकिन यदि मौजूदा शकल को बनाय रखा गया और बर्डन ऑफ प्रूफ लोगों पर ढाला गया तो इससे लोगों के प्रति अन्याय होने की सम्भावना है।

पैकेज के बारे में मैं ने यह कहा था कि उसकी डैफ़ेन्डीशन कर देनी चाहिए। अगर पैकेज की डैफ़ेन्डीशन नहीं करते हैं तो फिर कोर्ट में इसके उल्टे सीधे मतलब निकाले जायेंगे और जो शासन चाहता है वह होगा नहीं।

Dr. M. S. Aney (Nagpur): Where any goods to which this section applies are seized in the reasonable belief that they are smuggled goods.....On this point you can cross-examine the petitioner and show that there is no ground for reasonable belief. The burden of proof will then not be on the accused.

श्री बड़े : १२३(१) में यह दिया हुआ है :—

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

मेन बर्डन ऑफ प्रूफ किस पर जायेगा ?
Accused is always said to be innocent when he stands on the dock.

प्रोसीक्यूशन को यह साबित करना पड़ेगा कि उसको नौलेज थी कि यह स्मगल्ड गुड्स हैं। लेकिन यहां यह न हो कर burden of proof will be on the accused first जो आर्डनेरी प्रिंसिपल जस्टिस का है वह इस बिल में निहित नहीं किया गया है। इस वास्ते मैं ने अपना यह डिस्सैटिंग नोट दिया है।

17 hrs.

अध्यक्ष महोदय, इसके बाद १३१ के बारे में मैं ने डिस्सैटिंग नोट दिया है। एपैलेट एथारिटी के लिए एक स्पेशल ट्रिब्यूनल मुकर्रर होना चाहिये। इस बारे में अभी एक माननीय सदस्य ने जो भाषण दिया वह ऐसा कहते थे कि इस ट्रिब्यूनल में जो ट्रेडर्स की असोसियेशन है उन का एक रिप्रेजेंटेटिव क्यों होना चाहिये। यदि इसी एजम्पशन, प्रिजम्पशन या इनफ़रेंस पर चलें कि यहां से वहां तक सब डिसग्रानेस्ट हैं, तब तो दूसरी बात है, लेकिन ऐसी तो बात नहीं है। इतना ही नहीं, बंधवार कमेटी ने पेज ८१ पर यही सिफ़ारिश की है, जिस का मैं ने कोटेशन दिया है। अगर बंधवार कमेटी के सदस्य भी यही समझते हैं और ट्रेडर्स और दूसरे लोगों ने भी यही कहा है, तो फिर हमारे मेम्बर साहबान जो कुछ कहते हैं, उसको बराबर नहीं मानना चाहिये। वे चाहते हैं कि जितने भी व्यापारी स्मगलर्स हैं, उन सब को पर्ज करना चाहिए। जो इस दृष्टि से चलते हैं, जिन के ऐसे आइडियाज़ हैं, वे जरूर यही कहेंगे कि ट्रेडर्स की एसोसियेशन का कोई आदमी नहीं होना चाहिये। उस में दो आदमी रखे गये हैं—एक हाई कोर्ट का जज और दूसरा एडमिनिस्ट्रेशन या कस्टम्स का एक आफिसर। मैं शासन को धन्यवाद देता हूं कि उस ने एपैलेट एथारिटीज की बहुत चोज़ की हैं। अभी कलकत्ता हाई कोर्ट ने जजमेंट दिया था कि दि इन्वेस्टीगैटिंग आफिसर शुड नाट बि बि एडजुटिकेटिंग आफिसर। इस लिए कस्टम्स कमिशनर का जजमेंट क्वेश किया गया और फिर प्रकरण वापस भेज दिया गया। उन्होंने अलग अलग आर्थर्स के क्वोटेशन्स दिये और कहा कि कस्टम्स बिल हो या कोई फ़िस्कल बिल हो, जो एडमिनिस्ट्रेटिव आफिसर होगा, या कभी भी एडजुटिकेटिंग आफिसर नहीं होना चाहिये, क्योंकि ऐसा होने से उस में बाधा पड़ेगी।

जाडिस्ट आई रहती है और वह उस के मुताबिक ही जजमेंट देता है ।

जहां तक डीले का प्रश्न है, बधवार कमेटी ने कहा है कि इस में बहुत देर लगती है । हम ने भी कहा है कि ट्रिब्यूनल होना चाहिये । वह ट्रिब्यूनल रिविजनरी अथारिटी पर रखा हुआ ई, लोअर कस्टम आफिसर्ज का नहीं । अभी शासन ने इस बिल में प्राविजन रखा है कि जो इन्वेस्टीगेटिंग आफिसर होगा, वह न होते हुए ऐपेलेट अथारिटी अग्र रहेंगे । कस्टम आफिसर्ज में ही रहेगा, ऐसा प्राविजन रखा है, क्योंकि हाई कोर्ट का जजमेंट आने से शासन ज्यादा हुशियार हो गया है और उस ने इस बिल में यह प्राविजन डाल दिया है । पेज ८१ पर लिखा है, "डीले इन ऐपेलेट एंड रिविजन प्रोसीडिगज" ।

अध्यक्ष महोदय : क्या माननीय सदस्य दो तीन मिनट में खत्म कर देंगे ?

श्री बड़े : नहीं मैंने अभी पांच प्राविजन पर बोवना है ।

Shri Sonavane: What is the time allotted to each hon. Member? If some Members exhaust the time in the beginning, later on, other speakers would not get any opportunity.

Mr. Speaker: There was no hon. Member who had expressed his intention to speak. I was told that there was no Member at all. Otherwise, I would have regulated the time. The hon. Member ~~will~~ continue his speech tomorrow

17.03 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, 21st November 1962|Kartika 30, 1884 (Saka).