

(3) Discussion on the Fourth Report of the Commissioner for Linguistic Minorities laid on the Table of the House on the 6th September, 1962 on a motion to be moved by the Minister of State in the Ministry of Home Affairs.

(4) Consideration and passing of the following Bills as passed by Lok Sabha:

(i) The Defence of India Bill, 1962.

(ii) The State Associated Banks (Miscellaneous Provisions) Bill, 1962.

ALLOTMENT OF TIME FOR CONSIDERATION OF THE INDIAN TARIFF (AMENDMENT) BILL, 1962

MR. CHAIRMAN: I have to inform Members that under rule 162 (2) of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I have allotted one hour for the completion of all stages involved in the consideration and return of the Indian Tariff (Amendment) Bill, 1962 by the Rajya Sabha, including the consideration and passing of amendments, if any, to the Bill.

THE CUSTOMS BILL, 1962—contd.

श्री विमलकुमार मन्नालालजी चौरीड़तः (मध्य प्रदेश) : माननीय सभापति महोदय, कल में कस्टम विधेयक पर जो चर्चा कर रहा था उस समय इस बात पर प्रकाश डाल रहा था कि हमारे जो व्यापारी हैं वे भी तस्कर व्यापार में इतने अधिक होशियार हैं कि आज हमारे गांव गांव में और नगर नगर में

तस्कर व्यापार की चीजें उपलब्ध हो सकती हैं। जो स्थान ऐसे हैं जहां कि पोर्ट है—चाहे एयर पोर्ट हो चाहे सी पोर्ट हो—वहां पर तो इनका अड्डा बना हुआ है जहां पर सरे आम तस्कर के व्यापार की वस्तुएं मिलती हैं। यह बातें कस्टम विभाग के कर्मचारियों से छिपी हुई हों, ऐसी बात नहीं है। दिल्ली का उदाहरण ले लीजिये। दिल्ली में भी एयरपोर्ट है, दो हैं, और यहां शंकर मार्केट और कनाट सर्कस या कनाट प्लेस जो कहे वह इस बात के लिये मशहूर हैं कि यहां पर घड़ियां, फाउंटेन पेन, ट्रांजिस्टर सेट्स वगैरह जो विदेश से तस्कर व्यापार द्वारा लाये जाते हैं अच्छी तरह से अच्छी तादाद में विक्रय होते हैं। यह किसी से छिपा नहीं है। इतना ही नहीं, तस्कर-व्यापारियों के बारे में अखबारों में समाचार मिलते हैं, जैसे कि कुछ दिन पहले अमृतसर में किसी की एक मोटर पकड़ी गई थी जिसमेंसे सोना निकला था, केवल एक पिन का प्वाइंट उसमें था जिसके द्वारा वह सारा खुलता था और उसमें से काफी सोना निकला था। तो ऐसे कई उदाहरण हैं कि तस्कर के व्यापारी इतनी होशियारी से काम करते हैं कि कस्टम के अधिकारियों को भी धोखा दे देते हैं। उसी लक्ष्य को रख कर इस विधेयक में बहुत से परिवर्तन किये गये हैं—उनमें से कुछ तो प्रशंसनीय हैं—मगर इस बायस से, इस दृष्टिकोण से कि तस्कर के व्यापारी बहुत तेज हैं इतने व्यापक अधिकार छोटे छोटे अधिकारियों को भी इस विधेयक में दिये गये हैं कि जिससे कई व्यापारियों की इज्जत खतरे में है। यह निर्विवाद है कि कस्टम के कर्मचारी भी पूरे के पूरे कोई भले आदमी हों ऐसा नहीं कहा जा सकता है। कहीं आप चले जाइये अगर आपको कोई चीज एक्सपोर्ट करनी है तो उसके लिये फारमैलिटीज पूरी करने वास्ते जब तक १०, ५ चक्कर दफ्तरों के न लग जायें और उनके कर्मचारियों को इनाम-इकरार देकर खूश न कर दिया जायें तब तक वह काम नहीं होता है। अगर आप

विदेश से लौट कर आये और विदेश से लौट कर आने पर यदि उन्होंने आपके पास अधिक सामान देखा तो वहां के कर्मचारी सीधे ही बिना किसी हिचकिचाहट के कैसा यह आदमी है, किस स्तर का है, क्या है और क्या नहीं है—सिर्फ यह देखते हैं कि राजनीति से तो सम्बन्ध नहीं रखता है—बिस्तर वगैरह खोलने को कहते हैं। अगर कोई ऐसा आदमी है कि वह इनाम-इकराम दे देता है, चाय पानी की व्यवस्था कर देता है तो ठीक है और अगर चाय पानी की व्यवस्था नहीं होती है तो परिणाम यह होता है कि उसको बिस्तर वगैरह, जितनी सामग्री है शुरू से आखिर तक, खोलनी पड़ती है। अगर चाय पानी की व्यवस्था की जाती है तो चाहे उसमें सोना भर कर लाये कुछ नहीं होता। कई केसेज में, उनकी मशीन वगैरह डिटेक्ट करती है, कई अच्छे अफसर भी हैं, मैं यह नहीं कहता कि सभी बुरे हैं, मगर कई केसेज हैं कि चाय पानी से खुश कर दिया तो उसका सारा काम चल गया। एक उदाहरण मुझे मालूम है। एक सन्यासी विदेश से लौट कर थोड़े दिन पहले आये। उनको वहां पर भेंट में ट्रांजिस्टर सेट भी मिला, टेप रिकार्डर मशीन भी मिली, टाइपराइटर भी मिला, फाउंटनपेन भी मिले, सब कुछ मिला। वह सन्यासी ठहरे, उनको नियम वगैरह कुछ मालूम नहीं, फिर भी उन्होंने कहा कि जो कुछ भी नियम से होता है उसको करना चाहिये। उनको यह भ्रम भी था इसके बारे में कि विदेश के उच्चाधिकारी ने यह लिख कर दे दिया था कि इनको यह सब भेंट में मिला है अतएव यहां टैक्स नहीं ले सकते उन्होंने सारी स्थिति सम्बन्धित लोगों को बतला दी। थोड़ी देर बाद कस्टम के अधिकारी अपने एजेंट से कहलवाते हैं कि चाय पानी का इन्तजाम हो जाय तो पूरा आपका सब सामान चला जा सकता है। उन्होंने कहा कि जहां तक प्रसाद का सवाल है प्रसाद मैं दे सकता हूं लेकिन चाय पानी का, पैसे का, जो सवाल है

वह मैं पूरा नहीं कर सकता हूं क्योंकि मैं दुनिया में प्रवचन करता हूं कि ईमानदारी से जीवन यापन करना चाहिये और मैं खुद ही इस मामले में वैसा करूं, ऐसा नहीं हो सकता है। तो परिणाम यह हुआ कि शुरू से आखिर तक हैरेसमेंट हुआ, लम्बी चौड़ी सारी कार्यवाही की गई और जो कुछ उनको देना था टैक्स, पेनल्टी वगैरह वह सारा दिया। मेरे कहने का तात्पर्य यह है कि यह चाय पानी की व्यवस्था इतनी अधिक व्यापक हो रही है कि जहां पर भी कस्टम के

श्री तारकेश्वर पांडे (उत्तर प्रदेश) : जाड़े में तो कृपा करके बन्द न कीजिये, जाड़े भर तो पीने दीजिये।

श्री विमलकुमार मन्नालालजी चौरङ्गिया : मुझे नहीं मालूम था कि हमारे यहां के कुछ सदस्य भी इसका केवल लिटरल मीनिंग लेंगे। मेरे कहने का अर्थ यह है कि अपने यहां पर कस्टम के अधिकारियों में भ्रष्टाचार काफी व्यापक रूप में फैल रहा है और इसको रोकने की दृष्टि से हमारे शासन द्वारा इस विधेयक में कोई कार्यवाही नहीं की गई और इसके बावजूद जो छोटे छोटे अधिकारी हैं उनको इतने अधिक अधिकार दे दिये गये हैं कि इससे भ्रष्टाचार बढ़ने की सम्भावना ज्यादा है, कम होने की कम है। इसका एक और उदाहरण मंत्री जी स्वयं अपने डिपार्टमेंट के कागजों से देख सकते हैं कि गोआ के लिबरेशन के पश्चात् गोआ के व्यापारियों को वह सिगरेट लाइटर में जो पत्थर लगाया जाता है उसको इम्पोर्ट करने के कितने रुपयों के लाइसेंस दिये गये लेकिन उसके कुछ दिन बाद से ही वह पत्थर गोआ में मिलता नहीं है। तो वह कहां चला गया। खपत गोआ में इतनी नहीं है जितना लाइसेंस दिया गया। तो इसका कारण क्या है। और इसका एक मात्र कारण यह है कि अधिकारियों से मिल कर सारी व्यवस्था ठीक ठाक जम जाती है। कई स्थानों पर तो माल पर तथा मासिक भी बंधा हुआ है, २० या २५ प्रतिशत बंधा हुआ है

[श्री विमलकुमार मन्नालालजी चौरडिया]
 अधिकारियों का, कोई भी कस्टम से इम्पोर्ट करके लाये उसे २०, २५ प्रतिशत तक मिल जाता है और उसका काम हो जाता है। कहीं भी चले जाइये स्मगलिंग का, तस्कर के व्यापार का सामान मिल जाता है। ऐसी स्थिति में इस दृष्टि से हमने कुछ सोचा नहीं। तो इसके बारे में भी विचार किया जाना चाहिये। केवल एक ही पक्ष को लेकर के कि व्यापारी बदमाश होता है, घन्घा करने वाला बदमाश होता है, उसी एकमात्र लक्ष्य को सामने रख कर इसमें कई प्रतिबन्ध लगाये हैं—कई तो सराहनीय हैं, आवश्यक हैं, जो चोरी करते हैं, गुनाह कराते हैं उनको बिलकुल दण्ड दिया जाना चाहिये—मगर दूसरे पक्ष के लिये भी हमें व्यवस्था करनी चाहिये। दूसरे पक्ष के लिये मैं सुझाव दूंगा कि इस विभाग में भी सड़के कपड़ों में रहने वाले इंटलिजेंस डिपार्टमेंट के लोग होने चाहियें जो इस बात का पता लगायें कि वास्तविक स्थिति क्या है और किसी के पकड़े जाने के बाद अगर उसे सख्त से सख्त सजा नहीं दी जायगी तो फिर इसका कोई इलाज नहीं हो सकता है। वैसे तो हमारे मंत्री जी को देखना चाहिये किन्तु, मंत्री जी को सब पहचानने लगे हैं, तो मंत्री जी अपने किसी प्रिय सन्तरी को ही भेजें और देखें कि क्या स्थिति है और उसके साथ क्या व्यवहार होता है, उसमें विश्वास करके देखें तो उनको पता चल जायगा कि ये कस्टम के कर्मचारी या कस्टम के अधिकारी या कस्टम के चपरासी कितने सारे ट्रांजक्शंस में इन्वाल्व्ड हैं और किस तरह से भ्रष्टाचार करते हैं। अतएव इस दिशा में भी हमारी सरकार को प्रयत्न करना चाहिये। जहां तक इस बिल का सवाल है, इस बिल में कई बातें एम्बी-ग्युअस रखी गई हैं जो अभी भी समझ में आने सरीखी नहीं हैं। अपने अधिकारों का दुरुपयोग अथवा सदुपयोग, जैसा भी कोई चाहे, वह करने का अधिकार दिया गया है। केवल अधिकार देकर काम नहीं चल सकता,

जैसे बन्दर को उस्तरा दे दें तो वह अपनी नाक काटने लगता है। ऐसी स्थिति में हमारे इस कानून में जो अधिकार दिये गये हैं, छोटे स्तर के लोगों को भी ऊंचे अधिकार दिये हुए हैं, उनसे उनका दुरुपयोग होने की आशा हो सकती है। इसलिये अधिकारों का दुरुपयोग होने से रोकने के लिये हमारे शासन को कुछ न कुछ प्रयत्न करना चाहिये, जो किया नहीं है।

अब जहां तक बिल का सवाल है, इसमें मार्केट प्राइस की डेफिनिशन का उदाहरण ले लीजिये। डेफिनिशन में कहा है :

“‘market price’, in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India;”

अगर कोई आदमी बम्बई से कोई चीज एक्सपोर्ट करना चाहता है या उसने बम्बई में कोई चीज इम्पोर्ट की इंडिया के दूसरे भाग कलकत्ता में तो वहां अधिक कीमत पर वह मिलेगी, ट्रांसपोर्ट की कीमत से या कई और कारणों से। ऐसी स्थिति में सारी इंडिया के मान से कीमत मान कर चलना कुछ न्यायोचित नहीं लगता। जहां पर वह सामान है, जहां से वह एक्सपोर्ट करना चाहता है दूसरे स्थान को अथवा जहां पर आयात किया है उसी स्थान का मार्केट प्राइस देखना चाहिये। मगर यहां पर जो “इन दि आर्डिनरी कोर्स आफ ट्रेड इन इंडिया” सारे भारतवर्ष के लिये एक ही प्राइस लागू होता है। और जहां तक यह एसेसिंग का काम होता है वहां पर भी हिसाब किताब सुनने में आया है कि अगर कोई आदमी कोई सामग्री इम्पोर्ट एक्सपोर्ट करना चाहता है, उसकी वैल्यू का एसेसमेंट करना चाहता है, अगर उसने इनाम इकराम दे दिया तब तो वेल्यूएशन—valuation—कम हो गया नहीं तो उसका—valuation—कफो बढ़ जाता है। इसमें दो मत नहीं और इसके नियंत्रण के लिये सरकार को कुछ न कुछ प्रयत्न करना चाहिये।

आगे धारा ३, ४ और ५ में आफिसरों की श्रेणी बताई गई है और हमारे मंत्री जी ने अपने कुछ नोट्स दिये हैं, मैं उसको पढ़ कर बताऊं :

"Clause 3.—This is a new provision which specifies the classes of officers of Customs. The existing statutory designation of "Chief Customs Officer" and the "Customs Collector" are being replaced by the actual designation of the officers."

यानी इसमें तो हमारे मंत्री जी ने ऐसी अच्छी भावना जाहिर की है। मंत्री जी ने आफिसर्स कौन कौन रहने वाले हैं इसका स्पष्टीकरण करके उनके नामों का लेबल लगाकर विधेयक में रख दिया है। अगर विधेयक में देखा जाय तो उसमें इस सम्बन्ध में (ए) (बी) (सी) के बाद (डी) और (ई) भी कर दिया है। एसिस्टेंट कलेक्टर आफ कस्टम्स के बाद आगे प्राविजन रखा है :

"(e) such other class of officers of customs as may be appointed for the purposes of this Act."

यानी अन्य किसी को अप्पॉइन्ट करने का अधिकार बदस्तूर कायम है। आगे की धारा ४(२) में लिखा है : "बिलो दी रैंक आफ असिस्टेंट कलेक्टर आफ कस्टम्स"—उसको भी आफिसर का डिजिनेशन दिया जा सकता है। धारा ४(२) में लिखा है :

"Without prejudice to the provisions of sub-section (1) the Central Government may authorise the Board, a Collector of Customs or a Deputy or Assistant Collector of Customs to appoint officers of customs below the rank of Assistant Collector of Customs."

यानी उनको इतने व्यापक अधिकार दे दिये गये हैं कि वे चाहे जिसको असिस्टेंट कलेक्टर के रैंक के नीचे रख सकते हैं, उनको अधिकार है कि वे ऐसा करें चाहे न करें—यह उनके विवेक पर निर्भर करता है। उनको पावर

है, किसी चपरासी, लोअर डिविजन क्लर्क को भी आफिसर का डिजिनेशन देकर काम करा सकते हैं। और इसके आगे व्यवस्था की गई है कि धारा ५(२) में :

"An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him."

अगर मान लीजिये किसी एसिस्टेंट कलेक्टर साहब ने किसी लोअर डिविजन क्लर्क को काम दे दिया कि यह तुम करो और जो अपर डिविजन क्लर्क है वह भी बिना आफिसर का डिजिनेशन पाए उस काम में मदद कर सकता है, उस काम को कर सकता है। तो इस तरह के जो व्यापक अधिकार इसमें दे दिए गए हैं, बिना सीमा के, उन पर नियंत्रण करना अत्यन्त आवश्यक था।

इसके साथ साथ धारा ११ में हमारी सरकार ने एक नया प्राविजन डाला है। पुराने विधान में जो धारा १८ और १९ थी उनसे इसमें काफी व्यापक अधिकार हमारी सरकार ने प्राप्त किये हैं। उसके अन्तर्गत (ए) (बी) (सी) (डी) (ई) तक था और अब न जाने क्या क्या लगा रहे हैं, (एस) (टी) (यू) (व्ही) तक इन्होंने अधिकार ले लिये हैं कि इन कामों के लिये सरकार चाहे तो किसी का इम्पोर्ट अथवा एक्सपोर्ट बन्द कर सकती है। कस्टम विभाग का मुख्य उद्देश्य यह होना चाहिये कि जो अन्य विधान हैं उनके अन्तर्गत जो हमारी ड्यूटीज फिक्स हैं, इस चीज पर इतनी कस्टम ड्यूटी होने वाली है, इस चीज को एक्सपोर्ट करना है तो इतनी ड्यूटी होनी है, यह हमारे कस्टम डिपार्टमेंट का काम होना चाहिये। चोरी न होने दे, तस्कर व्यापार न चलने दे। मगर कस्टम डिपार्टमेंट ने यह अधिकार प्राप्त किया है कि हमारे यहां किसी चीज की कमी है तो हम उसका एक्सपोर्ट बन्द करेंगे या हमारे यहां बाहर से आने वाली चीज की वजह से इन्डस्ट्रियल

[श्री विमलकुमार मन्नालालजी चौरड़िया]
डेवेलपमेंट कम हो जायेगा तो उस चीज का आयात बंद कर सकते हैं, यह अधिकार भी कस्टम विभाग अपने ऊपर ले रहा है। वैसे तो सदन के सदस्यों को मालूम है कि हमारे यहां पहले से ही कितने ही ऐक्ट्स हैं जो इन सब चीजों का नियंत्रण करते हैं, जैसे कि इम्पोर्ट एंड एक्सपोर्ट कंट्रोल ऐक्ट, सेंट्रल बोर्ड ऑफ रेवेन्यू ऐक्ट, मरकेन्टाइल ऐक्ट, फ़ारेन एक्सचेंज रेगुलेशन ऐक्ट, मरचेंट शिपिंग ऐक्ट, पोर्ट ऐक्ट आदि कई ऐसे ऐक्ट हैं जिनके अन्तर्गत उन चीजों का नियंत्रण होता है और उसमें मुख्य है हमारा एक्सपोर्ट एंड इम्पोर्ट कंट्रोल ऐक्ट। और इसमें जो शब्द धारा ११ में दिये हैं वे इस प्रकार हैं :

"If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2) it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description."

इसमें उन्होंने सारे अधिकार अपने पास रख लिये कि गजट में शायद करने के बाद वे चाहे जिस का आयात या निर्यात बन्द कर सकते हैं। उदाहरण के लिये मैं एक दो आइटम्स लेना चाहता हूँ, धारा २ का (डी) आइटम :

"prevention of shortage of goods of any description".

अगर किसी सामान की न्यूनता महसूस होती है तो वे प्रतिबन्ध लगा सकते हैं। उदाहरण के लिये, हमारे कामर्स एंड इन्डस्ट्री डिपार्टमेंट को कहा गया कि हमारे यहां विदेशी मुद्रा की कमी है इसलिये हम चाहते हैं कि यहां से शक्कर का निर्यात किया जाय,

तो लाइसेंस दिये गये, उनसे कहा गया कि लोगों को एक्सपोर्ट करने के लिये परमिशन दे दो। हमारे मोरारजी साहब के डिपार्टमेंट को, वित्त विभाग को, ऐसा लगा कि अगर शक्कर का निर्यात हो गया तो शक्कर महंगी पड़ जायगी, इससे लोगों को बहुत फ़ट्ट होगा तो वे रोक सकते हैं। कहने का मतलब यह है कि इस कानून के अन्तर्गत, इस अधिकार के तहत अगर किसी ने एक्सपोर्ट की व्यवस्था की हो तो वह सारा गड़बड़ में पड़ सकता है। हमारे डिपार्टमेंट में कोऑर्डिनेशन का भी अभाव है, एक ही काम के लिये अलग अलग अथॉरिटीज़ हैं। एक डिपार्टमेंट चाहता है लाइसेंस दें, दूसरा कहता है कि लाइसेंस देना आवश्यक नहीं और ऐसी स्थिति में शक्कर पोर्ट में पड़ा सड़ता रह सकता है। अब कोई जाकर शाह साहब के पीछे पड़े कि हमें लाइसेंस दिला दो। तो इस बिल के अन्तर्गत हमारा फ़ंक्शन होना चाहिये कि किस किस आइटम पर ड्यूटी लेनी चाहिये, मगर इसके बजाये हम दूसरे के अधिकारों पर अतिक्रमण कर रहे हैं और हम चाहते हैं एक्सपोर्ट इम्पोर्ट की नीति में भी दखल दें, इस तरह की जो व्यवस्था हम रखते हैं यह ठीक नहीं। मैंने उदाहरण के लिये एक ही आइटम बताया, और भी कई एक आइटम हैं लेकिन यहां उनकी चर्चा नहीं करता क्योंकि मंत्री जी स्वयं देख सकते हैं कि वास्तविक स्थिति क्या है और उनसे लाभ या हानि क्या हो सकती है।

अब मुझे धारा १७(१) के बारे में निवेदन करना है :

"17. (1) *Assessment of duty.*— After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer."

इसमें जो "अनड्यू डिले" शब्द है वह कोई बुरा नहीं है और जैसा कि माननीय मंत्री जी ने कहा कि शीघ्र ही निर्णय हो जायगा वैसे भी यहां उत्तर दिये जाते हैं शीघ्राति-शीघ्र काम हो जाएगा। तो इसके सम्बन्ध में मुझे यह कहना है कि यह शीघ्रातिशीघ्र कितने वर्षों की, कितने महीनों की होगी, इसका इसमें कोई उल्लेख नहीं रहता है। इसमें अवधि छपी न रहने से इसमें कोई बन्धन नहीं रहता है और न कोई सीमा ही रहती है। इस बारे में कई बार शिकायत सुनी गई और देखी गई है कि जो लोग एक्सपोर्ट और इम्पोर्ट का काम करते हैं उन्हें अपने माल का टेस्ट अथवा जांच कराने पर काफी समय लग जाता है और कष्ट भी होता है। उनके माल पर ड्यूटी असेस न होने से सरकार को भी नुकसान होता है और व्यापारियों को भी हर तरह की परेशानी होती है। भारत चेम्बर आफ कामर्स ने इस बारे में एक सुझाव दिया है कि माल पर ड्यूटी और असेसमेंट करने के लिए अधिक से अधिक सात दिन की अवधि की सीमा बांध देना चाहिये। आजकल यह होता है कि व्यापारियों को दफ्तर के चक्कर लगाने पड़ते हैं फिर भी उनका असेसमेंट नहीं हो पाता है। बगैर रुपये पैसे दिये उनका असेसमेंट का काम नहीं होता है और आने जाने में लोगों को तकलीफ का सामना करना पड़ता है। भारत चेम्बर आफ कामर्स ने जो प्रतिवेदन दिया है वह इस प्रकार से है :

"The Chamber is of opinion that a time limit for inspection and assessment of duty after assessment and testing of samples shou'd be fixed and in no case should the whole process take more than a week. At present the aforesaid process is often delayed and often takes an unduly long time with harassment of the importers and even loss to them owing to pilferage of the consignment while in the Import Controller's custody."

इस तरह की चेम्बर वालों की भावना है और इस तरह की प्रैक्टिस डिफिकल्टी वे अनुभव करते हैं। इस अवधि के बन्धन के अभाव में लोगों को वहां के आफिसरों की खुशामद करनी पड़ती है जिससे उन्हें तरह तरह की परेशानी का सामना करना पड़ता है। अगर हम विधेयक में इस तरह का कोई प्रबंध कर दें कि सात दिन के अन्दर कर्मचारियों को लोगों के माल की जांच, टेस्ट आदि का काम पूरा कर देना चाहिये तो इससे लोगों को बहुत फायदा होगा और वे परेशानी से बच जायेंगे। अगर इस तरह का प्रबंध हो जायेगा तो वे लोग सात दिन तक कर्मचारियों को किसी प्रकार का पैसा नहीं देंगे क्योंकि उनको डर रहेगा कि सात दिन के बाद कोई बड़ा अफार हमारा काम देखने आयेगा और जब उसे मानूम होगा कि इस माल का असेसमेंट सात दिन के अन्दर नहीं हुआ तो उसको फटकार मिलेगी।

इस तरह की सुविधा के अभाव में आजकल भ्रष्टाचार बहुत बढ़ रहा है और सरकार केवल तस्कर व्यापार को ध्यान में रख कर इस बिल में संशोधन कर रही है। लेकिन उसे इन कष्टों की ओर भी ध्यान देना चाहिये। जब हम इस बिल में संशोधन कर रहे हैं तो कस्टम अधिकारियों और कर्मचारियों द्वारा दिये जा रहे इन कष्टों की ओर भी ध्यान देना चाहिये और उसको दूर करने की कोशिश करनी चाहिये। इसके अभाव में दोनों पक्षों का नुकसान होता है। व्यापारियों को समय में माल नहीं मिलता है, माल खराब हो जाता है और सरकार की जगह घिरी रहती है।

इसी तरह से धारा १७(३) के बारे में मुझे यह कहना है कि असेसमेंट करने के लिए अधिकारी चाहे जो कागजात मंगाये उसके बारे में दो मत नहीं हो सकते हैं लेकिन इस संबंध में मुझे यह निवेदन करना है कि अक्सर यह देखने में आता है

[श्री विमलकुमार मन्नालालजी चौसड़िया]
कि जब कोई व्यापारी माल मंगाता या भेजता है तो उसको अपने माल का असेसमेंट कराने में काफी समय लग जाता है। जब व्यापारी अधिकारियों के पास जाते हैं तो उनसे कहा जाता है कि आज यह लेजर लाओ, आज यह बिल लाओ, आज यह कागज लाओ। इस तरह से अधिकारी बीसियों कागज अलग अलग दिन मंगाते हैं और व्यापारी इन चक्करों में परेशान हो जाता है। इस संबंध में मुझे यह निवेदन करना है और यह अत्यन्त आवश्यक है कि असेसमेंट करने के लिए एक ही दिन रखा जाना चाहिये और एक ही बार सब कागज मंगा लिये जाने चाहियें, सब कागजात की जांच कर ली जानी चाहिये ताकि बार बार आने की परेशानी से लोगों को बचाया जा सके। इस तरह की सुविधा के अभाव में तरह तरह की गड़बड़ियां होती हैं जो आजकल अनुभव की जाती हैं। इसलिए सरकार से प्रार्थना है कि माल का असेसमेंट करने के लिए एक ही दिन रखा जाना चाहिये ताकि सरकार और व्यापारियों दोनों को कष्ट न हो।

अब मुझे धारा २७ के बारे में कहना है। इस धारा में ड्यूटी के रिफण्ड के क्लेम के बारे में कहा गया है और हमारी कमेटी ने इस बारे में बहुत अच्छा संशोधन किया है। पुराने कानून के मातहत रिफण्ड करने के लिए सिर्फ तीन महीने की अवधि थी लेकिन इस बिल में ६ महीने की अवधि कर दी गई। इस संबंध में भी मेरा यह सुझाव है कि अगर किसी कर्मचारी ने गलत क्लासीफिकेशन की वजह से किसी माल पर अधिक ड्यूटी लगा ली हो और जिसका माल है वह उस बारे में अपील नहीं करता, बाद में भी नहीं करता, परन्तु जो दूसरे उसके साथी हैं, उनमें से एक आदमी अपील करता है और गलत क्लासीफिकेशन की वजह से जो ज्यादा ड्यूटी लगाई गई थी

वह उसको वापस हो जाती है, तो न्याय यह कहता है कि जिन लोगों के माल पर गलत क्लासीफिकेशन की वजह से ज्यादा ड्यूटी लगाई गई है और जिन्होंने अपील नहीं की है उन्हें ज्यादा ड्यूटी वापस मिलनी चाहिये। इसका नतीजा यह होता है कि जब कोई आदमी अपील करेगा तो उसको तो ६ महीने के भीतर अपील करने से गलत ड्यूटी लगने का लाभ मिल जायेगा और बाकी आदमियों को नहीं मिलेगा। इसलिए सरकार से मेरा यह निवेदन है कि बाकी आदमियों को भी यह लाभ अर्थात् ६ महीने के बाद भी रकम वापस मिलना चाहिये। हमारे विभाग के अधिकारियों और कर्मचारियों का यह कर्तव्य है कि अगर विभागीय कर्मचारी के गलत क्लासीफिकेशन की वजह से किसी पर ज्यादा असेसमेंट हो गया हो और बाद में अधिकारियों के ध्यान में यह बात आई हो कि हमारी ओर से गलती हो गई, इसलिए इस तरह की रकम को देने और रिफण्ड का अधिकार होना चाहिये। इसलिए मेरा निवेदन है कि इस बिल में इस तरह की व्यवस्था हो जायेगी तो बहुत अच्छा है।

अब मैं चेप्टर १३ के संबंध में माननीय मंत्री जी का ध्यान दिलाना चाहता हूं जिसमें सर्च करने की व्यवस्था है। इसके अन्तर्गत सबसे पहले मैं धारा १०२ की ओर ध्यान दिलाना चाहता हूं। १०२ धारा पुरानी १०७ धारा के अनुकूल है। धारा १०२ "१" में यह दिया हुआ है...

"When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest gazetted officer of customs or magistrate."

तो इसमें जो यह लिखा है "If such person so requires". इससे भयंकर गड़बड़ होने की सम्भावना है। इस बिल में यह दिया हुआ है कि अगर किसी आदमी का सर्च करना है और कस्टम अधिकारी उससे सर्च देने के लिए कहता है और वह आदमी उसको सर्च कराने से इन्कार कर देता है और कहता है कि मुझे किसी गजेटेड आफिसर या मजिस्ट्रेट के पास ले जाओ जो सर्च कर सकता है। किन्तु वह ले जावे नहीं और गलत ही कह दे कि इसने नहीं कहा तो इस बिल में जो यह भ्रम होने की सम्भावना है इसका अच्छी तरह से स्पष्टीकरण किया जाना चाहिये। मेरा निवेदन यह है कि सर्च का जो काम है वह किसी गजेटेड आफिसर या मजिस्ट्रेट के ऊपर छोड़ देना चाहिये। नीचे के कर्मचारियों के ऊपर यह काम छोड़ना ठीक नहीं है। इससे बहुत गड़बड़ होती है और इस चीज को रोकने का प्रयास किया जाना चाहिये।

इसी तरह से धारा १०५ "power search premises".

इसके संबंध में मुझे यह कहना है कि अगर किसी आदमी के मकान की तलाशी लेनी है तो अधिकारी बगैर वारन्ट के ले सकता है। लेकिन पुराने कानून में इस तरह की व्यवस्था थी कि बगैर मजिस्ट्रेट के वारन्ट के वह किसी की तलाशी नहीं ले सकता है। इस तरह के व्यापक अधिकार छोटे अधिकारियों को देना ठीक मालूम नहीं देता है। इसका नतीजा यह हो सकता है कि चोरों के साथ भले आदमियों के साथ भी दुर्व्यवहार हो सकता है। इस बिल में यह लिखा है कि अधिकारी खुद सर्च कर सकता है या किसी को अधिकार दे सकता है :

"If the Assistant Collector of Customs, or in any area adjoining the land frontier or the coast of India

an officer of customs specially empowered by name in this behalf by the Board, has reason to believe"

इसमें भी कुछ शंका की बात है :

"That goods liable to confiscation or any documents or things which in his opinion will be useful or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things".

तो इस तरह से इस बिल में अधिकारियों को व्यापक अधिकार दिये गये हैं कि वे किसी को भी बंद कर सकते हैं और सर्च कर सकते हैं। जैसा कि मैंने धारा तीन, चार और पांच के बारे में चर्चा की थी कि इस तरह से पावर के मिसयूज होने की सम्भावना है और उसके नियंत्रण पर ध्यान दिये जाने की बहुत आवश्यकता है। हमारे मंत्री जी ने भी जो नोट्स दिये हैं उसमें भी यह हवाला दिया है कि सेल्स टैक्स अधिकारी विद-आउट वारेन्ट के सर्च कर सकता है लेकिन मेरा निवेदन है कि वह केवल रजिस्टर्ड डीलर का ही सर्च कर सकता है। लेकिन इस बिल में अधिकारी 'रीजन टू बिलिभ' के आधार पर किसी भी भले आदमी के घर में सर्च कर सकता है। इस तरह का अधिकार बड़े अधिकारियों के पास रहना चाहिये ताकि छोटे कर्मचारी इस अधिकार का मिसयूज न करें।

अब धारा ११८ में देखें। यह इतना खतरनाक प्राविजन है कि यह तस्कर व्यापारियों तक सीमित होता तो कोई सवाल नहीं है, मगर किसी आदमी से अगर जेन्युनली गलती हो जाय तो उसको भी इतनी सख्त सजा मिल सकती है। धारा ११८(ए) यह है :

"Where any goods imported in a package are liable to confiscation, the package and any other goods

[श्री विमलकुमार मन्नालालजी चौराडिया]
imported in that package shall also
be liable to confiscation."

अगर किसी पैकेज में ऐसी सामग्री मिल गई जो जब्त किये जाने के काबिल है तो वह सारे का सारा पैकेज हमारी सरकार जब्त कर लेगी। उदाहरण के लिए मान लीजिये मैंने कुछ डाइमंड विदेश से मंगाये और २५० कैरट के डाइमंड मंगाये और उसमें भूल से या किसी की गलती से एक कैरट भी ज्यादा आ जाता है, २५० की जगह २५१ कैरट आ जाता है, तो वह सारे का सारा पैकेज सरकार जब्त कर लेगी। इस गलती के कई पक्ष हो सकते हैं। जहां से कोई चीज डिस्पैच हुई है वहां तौलने में कोई गलती हो सकती है। हमारी सरकार तो यह मान करके चल रही है कि जानबूझ करके ऐसा करते हैं, एक कैरट ज्यादा प्राप्त करने के लिए उसको इंस्टिगेट किया गया होगा। मगर दूसरा पक्ष यह भी हो सकता है कि अगर वहां तौलने में कुछ गड़बड़ हो गई या किसी और कारण से ऐसा हो गया तो सारे का सारा पैकेज जब्त हो जायगा। ऐसा इसमें प्राविज्ञान किया गया है। इसी तरह से कई उदाहरण हो सकते हैं। अगर किसी ने ५० डाइमंड मंगवाये और उनके साथ एक डाइमंड ज्यादा आ गया, चाहे उसको जानबूझ करके किसी ने भेजा या गलती से आ गया, तो ऐसी स्थिति में मैं यह समझता हूं कि एक डाइमंड की स्मॉलिंग करने के पीछे, एक डाइमंड के भूल से आ जाने के पीछे, अगर हम सारे के सारे पैकेज को जब्त कर लें तो यह बात न्याय संगत प्रतीत नहीं होती। इसलिए इस दिशा में भी हमारी सरकार को कुछ विचार करना चाहिये। इसके अधीन बहुत ही व्यापक अधिकार दिये गये हैं और जैसे इम्पोर्ट के लिए मैंने शंका बतलाई, वही एक्सपोर्ट के लिए भी हो सकता है। कभी कभी ऐसा भी हो सकता है कि मैंने ४५० कैरट का आर्डर

दिया और हमारे डाहयाभाई पटेलजी ने ५०० कैरट का आर्डर दिया तो उसमें क्या होता है कि मिस्टेक से एक का लेबल दूसरे पर चिपका दिया गया तो मेरे पैकेज पर ५० कैरट ज्यादा होने की वजह से हमारा विभाग यह विचार नहीं करेगा कि यह गलती हुई। तस्कर के व्यापारी बहुत तेज होते हैं। मैं उनके लिए कुछ नहीं कहता। लेकिन जो जेन्युइन मिस्टेक हो जाती है उसके लिए आपने क्या प्राविज्ञान रखा है, क्या बचाव का सावधान रखा है? आपने इसमें कोई ऐसी व्यवस्था नहीं की है। इसलिए इस ओर भी ध्यान दिया जाना चाहिये।

SHRI AKBAR ALI KHAN (Andhra Pradesh): Dahyabhai is an expert. He will not allow any such things.

वित्त मंत्रालय में उपमंत्री (श्री बी० आर० भगत) : माननीय सदस्य ऐसे उदाहरण दे रहे हैं जो कभी नहीं होते।

श्री विमलकुमार मन्नालालजी चौराडिया : मैं आपसे पूछता हूं कि जो बिल बनाया जाता है उसके बारे में हमें सब तरह की कल्पनाएं करनी चाहियें? अगर हम केवल आज तक जो हुआ है उसी के आधार पर बिल बनाना चाहते हैं तब तो मुझे कुछ नहीं कहना है। बहुत सी मिस्टेक्स हो सकती हैं। वैसे मैं न ऐसी जगह रहता हूं जो न तो सी पोर्ट है और न मेरा ऐसे व्यापारियों से सम्बन्ध है जो यह काम करते हैं और जो मुझे ये सब बातें बतायें। हमारे मंत्री जो अच्छी तरह जानते हैं कि वहां क्या होता है और क्या नहीं होता है। मगर मैं ऐसे केसेज की प्रोबैबिलिटीज बतलाता हूं, उसका जवाब आप दीजिये कि अगर गलती से किसी के पास कोई चीज आ जाती है तो उसके लिए आप क्या करेंगे अगर आप उसका पूरे का पूरा पैकेज

कॉफिफैक्ट कर लेंगे तो उससे अन्याय होने की संभावना है। धारा १२० में जहाँ सामग्री का फार्म बदल लिया गया है, उसके जब्त करने के लिये है। बेज-वाडा के ज्वेलर्स ने जो मेमोरैंडम दिया है उसमें उन्होंने सारी स्थिति का विवरण दिया है। उसमें उन्होंने सोनावाला के केस का विवरण दिया जो सुप्रीम कोर्ट के द्वारा दोषमुक्त हुये। उन जैसे प्रकरणों को गिरिफ्त में लाने के लिए यह सारी की सारी व्यवस्था इसमें की गई है। इस लिए हमको ऐसा प्राविजन इसमें रखना चाहिये कि ऐसे केसेज जो जेन्युइन हैं, जिनमें भूलचूक में कोई चीज मंगाई गई, उनमें उनको सजा न मिल जाय। अभी उनके बचाव का कोई रास्ता नहीं है। इसलिए हमारे मंत्री जी इसका स्पष्टीकरण करने का कष्ट करे और अगर ऐसी व्यवस्था नहीं है तो की जानी चाहिये। वैसे बहुत जल्दी है, इमर्जेंसी का काम है और हमें कानून बनाना है और तत्कर व्यापार को रोकना है वैसे यह काम चलता आ रहा है, और चलता रहेगा। हमारे देश में हर वर्ष कई करोड़ रुपये का तत्कर व्यापार होता है, उसको रोकना चाहिये, लेकिन सख्त से सख्त कानून होने पर भी उसका रोकना कठिन है।

धारा १२३ में है "Burden of proof in certain cases". साधारण जुरि-स्पूडेंस यह कहता है कि अगर मैं किसी से कहता हूँ कि तू चोर है तो मैं यह प्रमाणित करूँ कि उसने कैसे चोरी की, क्या चोरी की। इसमें यह अधिकार दिया गया है कि अगर किसी के हाथ में घड़ी है तो हमारे डिपार्टमेंट का कोई अधिकारी उसको पकड़ करके यह कह सकता है कि यह स्मगल्ड घड़ी है You prove that it is not smuggled goods. यह मैं मानता हूँ कि

हमारे देश में ट्रांजिस्टर सेट, घड़ियाँ और ऐसी कई चीजें काफी मात्रा में तत्कर व्यापार में आती हैं। इसमें प्रति-बन्ध ट्रांजिस्टर सेट पर नहीं लगाया गया है। वैसे आज ट्रांजिस्टर सेट हमारे फैशन की वस्तु बन गया है और कई हाथों में हम उसे देखते हैं। किन्तु उनमें कितने स्मगल्ड smuggled हैं, कितने इम्पोर्ट होकर आये और उनपर टैक्स लगा, इसका सर्वे माननीय मंत्री जी करायें तो ठीक पता लगेगा। मुझको ऐसा लगता है कि ट्रांजिस्टर सेट करीब करीब ५० प्रतिशत ऐसे होंगे जोकि छिपे छिपे ही चले आते हैं और बिकते हैं। ऐसी स्थिति में जो आप इसमें यह प्रतिबन्ध लगा रहे हैं कि बर्डेन आफ प्रूफ उस आदमी पर होगा जिसके पास चीज हो, यह उचित नहीं है। इस कानून के अन्तर्गत हम इतने व्यापक अधिकार कस्टम के अधिकारियों को दे रहे हैं कि अगर भगत साहब मंत्री न रहें और किसी कस्टम के अधिकारी को उनसे द्वेष हो और वह भगत साहब के हाथ में घड़ी देखे तो वह उनको पकड़ करके यह कह सकता है कि यह घड़ी स्मगल्ड है। फिर burden of proving that they are not smuggled goods. इसके लिए पूरे का पूरा भार इनपर पड़ता है। केवल इसका भार नहीं कि आपने कहाँ से प्राप्त किया, इसका भार भी कि स्मगल्ड नहीं है यह आपको प्रमाणित करना पड़ेगा। मैं यह चाहता हूँ कि अगर आप सचमुच भले आदमियों को इसकी गिरफ्त से बचाना चाहते हैं, जो मार्केट में जा करके ईमानदारी से चीजें खरीदना चाहते हैं उनको बचाना चाहते हैं, तो इसके लिए यह अत्यन्त आवश्यक है कि आप ऐसी व्यवस्था करें यदि वे यह प्रमाणित कर दें कि अमुक स्थान से मैंने यह चीज खरीदी है और वहाँ जाकर जिससे उन्होंने चीज खरीदी है उसको बता दें तो उसका बर्डेन आफ प्रूफ उनपर न रह करके सोर्स पर जाना चाहिये जहाँ से उन्होंने खरीदी है और

[श्री विमलकुमार मन्नालालजी चौरडिया]

उनको मुक्त किया जाना चाहिये। हमारे विधान की जो धारा है उसके अन्तर्गत ऐसा नहीं है। उसके अन्तर्गत जिसके पास चीज पकड़ी जायगी उसको प्रमाणित करना पड़ेगा कि वह चीज स्मगलड नहीं है। ऐसी स्थिति में इसमें भी संशोधन की आवश्यकता है।

धारा १३५, इसमें हमारे मंत्री जी ने जो सजा बढ़ाई है उसके लिए मैं बहुत बहुत धन्यवाद देता हूँ। किन्तु मैं यह चाहता हूँ कि आप जैसी सख्ती तस्कर व्यापारियों के साथ करना चाहते हैं, वैसी ही सख्ती आपको कस्टम के अधिकारियों के साथ करनी चाहिये। आप अपने इंटेलिजेंस डिपार्टमेंट के लोगों को वहां भेज करके देखें कि वहां क्या होता है और क्या नहीं होता है। यदि आप ऐसे दो तीन आदमियों को सख्त सजा दे दें जो बदमाश हों, चोरी करते हों, तो मैं विश्वास के साथ कह सकता हूँ कि आज जो हमारे यहां पर अष्टाचार और तस्कर व्यापार चल रहा है उसमें बहुत कुछ फर्क हो जायेगा। आज ऐसी स्थिति है कि अमृतसर के पास जो बागा बाडर है वहां पर मैं गया था तो वहां के लोग कहने लगे कि यहां पर इलायची और लौंग के थैले के थैले इधर से उधर तस्कर व्यापार में आते जाते हैं। छोटी चीजें तो जाती ही हैं, किन्तु ऐसी बड़ी बड़ी चीजें भी जाती हैं। इसी प्रकार हमारे राजस्थान में बाड़मेर का बाडर है जो अभी फिक्स नहीं हो पाया है। हमारे राजस्थान के भूतपूर्व मुख्य मंत्री श्री व्यास जी कहते थे और वे अभी भी कहते हैं कुएं से पानी भरने की रस्सी हिन्दुस्तान में है और कुआं पाकिस्तान में है और मकान हिन्दुस्तान में है और उसकी खिड़की खुलती है पाकिस्तान में। तो जहां ऐसी सीमाएं हों वहां हम क्या नियंत्रण कर सकते हैं। आज जयपुर में

व्यापारियों के पास जो बहुत सी कच्ची सामग्री नग बनाने की आती है वह तस्कर व्यापार के मार्फत आती है। और बराबर चली आती है। उसको रोकने का किसी तरह का प्रबन्ध नहीं है और उसको रोकने के लिए हमारे पास जो शक्ति चाहिये उसका अभाव है। फिर भी हम यह जो प्रतिबन्ध तस्कर व्यापारियों पर लगा रहे हैं, इसके साथ हम अपने कर्मचारियों पर भी प्रतिबन्ध लगायें तो ज्यादा अच्छा होगा।

इसी तरह से धारा १४७ में क्लियरिंग एजेंट्स पर बहुत ज्यादा जिम्मेदारी हमारी सरकार ने लगा दी है और इस सम्बन्ध में उनका जो रेप्रिजेंटेशन है उसको मंत्री जी ने पढ़ा होगा और मैं उसको दोहराना नहीं चाहता। मगर इसमें आपने जो इम्प्लाइड मान लिया है, यह इम्प्लाइड मानना ठीक नहीं है। इसमें ये शब्द हैं :

“When any person is expressly or impliedly authorised . . .”

एक्सप्रेसली अथाराइज्ड, इसके लिए उसके खिलाफ आप कार्यवाही करें तब तो एक औचित्य है। मगर आप अपनी मर्जी से यह समझ लें कि यह इम्प्लाइड है और उसके आधार पर इस विधान की धाराओं के तहत दोषी बना कर उसके मकान को नीलाम कर दें, उसकी सामग्री नीलाम कर दें तो यह न्यायसंगत प्रतीत नहीं होता। इसलिये मैं माननीय मंत्री जी से प्रार्थना करूंगा कि इस दिशा में भी वह कुछ सोचें और मैंने जो संशोधन दिये हैं उन पर विचार करें।

अन्त में पुनः यही निवेदन करना चाहता हूँ कि तस्कर के व्यापारियों के साथ सख्ती से व्यवहार करना चाहिये और हमारी जो इतनी लम्बी चौड़ी बाडर है जिसका

नियंत्रण आपके पास नहीं है उसके नियंत्रण की व्यवस्था भी करनी चाहिये । हमारे जो कमचारी हैं वे बिना भेंट पूजा के कुछ काम करते नहीं हैं । उनका व्यापारियों से बंधा हुआ है और अगर किसी फर्म का कोई कर्मचारी या अफसर विदेश के लिये गया और विदेश से लौट कर आया तो वह केवल इतना कह देता है कि वह फज़ान फर्म का है जिसको एक मासिक आय जैसी बंधी हुई है । पुलिस थाने में जैसा बंधा होता है कि अमुक थाने पर थ.ने.शर को ट्रांसफर कर दिया जाय तो उसको अमुक रकम देना पड़ती है इस तरह से अमुक थाना दिया जाता है वैसी ही स्थिति हमारे इस कस्टम डिपार्टमेंट की है । कई स्थान ऐसे हैं जहां फर्मों से आय बंदी हुई है, अलग अलग फर्म से उनको बिल्कुल मासिक या बिल्कुल ईयरली ऐसा बंधा हुआ है । मेरे एक मित्र अभी इंग्लैंड से आये थे । उनके साथ एक और आदमी थे, चूंकि वह अमुक फर्म के थे और उनका बंधा हुआ था तो उनका सामान भी खोलने की ज़रूरत नहीं पड़ी जबकि उनके पास काफी सामग्री थी । मेरे मित्र का किसी फर्म से सम्बन्ध नहीं था तो उन्होंने सारे का सारा बताया और जो वैधानिक कार्यवाही थी वह उनके साथ बराबर हुई । तो इस तरह का जो भ्रष्टाचार हो रहा है उसको नियंत्रण में लाने की बहुत ज्यादा आवश्यकता है । इसके अभाव में लोगों में अविश्वास बढ़ता जा रहा है और जो शक्ति है, जिन हाथों से हम उसका उपयोग करना चाहते हैं, जब तक वह साफ नहीं रखते तब तक हम कामयाब नहीं हो सकते चाहे हम जितने भी व्यापक अधिकार इस कानून के तहत दे दें । ये व्यापक अधिकार जिन लोगों के द्वारा एक्जीक्यूट किये जाने वाले हैं उनको सक्षम नहीं बनाते हैं तो जैसे अब तक आप इस काम में फेल्योर रहे हैं वैसे ही आगे भी फेल्योर रहेंगे । आप निम्न स्तर के अधिकारियों को जो व्यापक अधिकार दे रहे हैं वह न दें और जो ऊंचे स्तर के अधि-

कारी हैं, जो ईमानदारी से काम कर सकते हैं उनको ये अधिकार दें और जो बेईमानी करता है उसको ऐसी सख्त सज़ा दें कि वह माडेल के रूप में हो जिससे कि दूसरे लोग उस तरह का गुनाह करने से वंचित रहें ।

SHRI K. SANTHANAM (Madras): Mr. Chairman, I welcome this Bill. This is a Bill to consolidate the Sea Customs Act, the Inland Bonded Warehouses Act and the Land Customs Act. This has gone through the Select Committee and therefore it is not worthwhile dealing with the Bill in detail. So I propose to confine myself to a few salient points in relation to this Bill.

What should be the objectives of a Bill like this? In my view there should be five objectives and we should test whether this Bill fulfils those objectives. The first objective should be the prompt collection of customs duty and prevention of evasion. The second is economic and efficient use of our port facilities. The third is prevention of corruption and collusion between our officials and the merchants who are importing or exporting. The fourth objective should be prevention of smuggling and the last should be simplicity of procedure so that our import and export trade is facilitated and there should be avoidance, or at least the minimum, of harassment to those who are engaged in our import and export trade. Attempts have been made to fulfil all these objectives and to that extent I congratulate both the Government and the Select Committee. Still I am afraid that this Bill will have to be revised pretty soon because there are still many loopholes.

For instance, let us take clause 13. It says:

"If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are re-

[Shri K. Santhanam.]

stored to the importer after pilferage."

In the original Bill it was said that the importer shall be liable to duty because it is a frequent phenomenon that both in the Railway Goods sheds and the warehouses of the ports there is collusion between the officials and the merchants and the merchant himself pilfers his own goods in order to escape the customs duty. Therefore in the original Bill it was said that he shall pay the duty but somehow the Select Committee in their wisdom thought that it would be too hard on the merchants to have the goods pilfered and also to have to pay duty. So they have inserted the word 'not' with the result today that even in cases of collusion the merchant will get his goods and at the same time escape the duty also. I think a *via media* should have been adopted that the duty must be paid first and later he should be entitled to a refund on proving that the goods had been really lost and that he had nothing to do with it. Otherwise I think the existing state of things will continue in which a large amount of goods will be pilfered and the Government will also lose the duty

PANDIT S. S. N. TANKHA (Uttar Pradesh): On whom will the burden of proving lie?

SHRI K. SANTHANAM: I say there would be an enquiry as to how it was pilfered, as to whether it was due to the negligence of the port authorities or those who were bound to safeguard it. There are many cases of bulky goods the safeguarding of which is the liability of the importer. There are some categories of goods the safeguarding of which is the liability of the port authorities in which case it should be shown that the pilferage was due to the negligence of the authorities in which case, of course, the merchant should not be liable to pay duty.

SHRI AKBAR ALI KHAN: That is what it says.

SHRI K. SANTHANAM: Here it simply says that wherever a person says that a thing has been pilfered, he can escape duty and no enquiry is bound to take place. Otherwise there was no justification in saying in the original Bill that the importer shall pay the duty. I think the hon. Minister will please explain why it was put like that in the original Bill and why a "not" has been inserted in the Select Committee.

In clause 14 it is said that the value of the goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, etc. etc. I have no objection to this particular provision but it should be said here, 'or the price as shown in the Bill of Lading, whichever is higher' because sometimes it may be very difficult to ascertain the market price or the Bill of Lading price may be higher. In such a case why should not the Bill of Lading price be taken into account? That would have been a wise provision.

Then in clause 17(4) it is said that if on examination it is found that the goods described are different from what they actually are, then the officer may re-assess them to duty. That is not sufficient. If a person says that a certain kind of goods is being exported or imported and on inspection if it is found that the goods are of a different kind, then it is not enough to levy the excise duty alone; he must be liable to condign punishment and penalty. There is no provision for such penalty in clause 17(4). Then, Sir, in many places I find that a long period is given. For instance in clause 20 it is said that the duty may be refunded if the exported goods are re-imported within a period of three years. Why should such a long period be given in these days? A man should not be allowed to re-import the goods, which he exports today after three years and then say that the duty must be refunded. Similarly, in the case of ports long periods are given for keeping them. There are many merchants . . .

SHRI B. R. BHAGAT: Sometimes they send goods for exhibitions in foreign countries.

SHRI K. SANTHANAM: Why should he take three years in these days, when it takes only thirty days maximum for a ship from America to arrive here?

SHRI B. R. BHAGAT: They move from one exhibition to another in various countries and it takes a long time.

SHRI K. SANTHANAM: But you have not confined this period only to exhibitions.

SHRI AKBAR ALI KHAN: That is the idea behind the provision.

SHRI K. SANTHANAM: Why should you make a general exemption? You should have confined it to such exhibitions.

SHRI AKBAR ALI KHAN: This arises in such cases mostly.

SHRI K. SANTHANAM: No. A man may export it. He may not be able to sell it and then get it re-imported.

MR. CHAIRMAN: Mr. Santhanam, you proceed with your argument.

SHRI K. SANTHANAM: I have said that economic and efficient use of port facilities is necessary. There are many merchants who import goods speculatively, put them in the port warehouses, wait for the fluctuations in the market and then sell them when the market goes up. Otherwise, they treat the port warehouses as godowns if the market goes down. That means they more or less prevent the use of warehouse facilities by others. That is why often we find that our ports at Calcutta and Bombay especially get very congested and new imports and exports could not be accommodated in the warehouse. So, why have you allowed as long a period as three years for things to be kept in those warehouses?

SHRI ROHIT M. DAVE (Gujarat): What about demurrage? The demurrage will be so exorbitant that no one would keep it for such a long time.

SHRI K. SANTHANAM: We know how these merchants act afterwards. They make a petition to the port authorities for grace and get all sorts of concessions. In any case three years is a long period. I can understand up to one year. Ordinarily two months or three months or a period up to one year may be allowed. There is no justification for allowing a period of three years for using the public warehouses, which must be available to other merchants, as godowns. Again, they allow all kinds of manufacture to take place within the warehouses. I do not see why this should be done. If a man wants to import certain goods and wants to convert them into other goods, he must find his own place to convert them and bring them to the warehouse. Now, these warehouses can be used as a kind of workshop for the convenience of the merchants.

Again, I have said that prevention of corruption and collusion is very important. For this purpose a minimum amount of discretion should be given to the authorities. To the extent all the parties, the merchants, importers and exporters conform to the rules, there should be very little scope, but considerable discretion is vested in them. For instance, an officer can confiscate and then he can convert that confiscation into a fine. Naturally this gives a lot of scope for negotiation between the officer and the merchant and this gives rise to all kinds of abuses. For instance, in clause 74(1)(b) in the case of drawbacks, it says:—

“the goods are entered for export within two years from the date of payment of duty on the importation thereof.

[Shri K. Santhanam.]

Provided that in any, particular case the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit."

Not only two years, he may be given a further period. And then next, it says:—

"Notwithstanding anything contained in sub-section (1), the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government, having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette, fix."

As I read it, a man can import goods, use them, then re-export them and claim drawback. I think this is a wholly objectionable procedure. When a man imports goods and uses them, why should he get any kind of drawback when he re-exports them? I think this is liable to grave abuses and all kinds of collusion.

Then, the previous speaker spoke about smuggling, how smuggled goods are being sold openly in all the port towns. There are well-known shops in Bombay where you can go and buy any kind of goods. In fact, they say you can get all kinds of watches which are smuggled from Singapore or other places, all kinds of nylon goods, transistors, etc. It is difficult to imagine why the Government should find it so difficult to deal with them because these things are prevented from being imported. There is no import licence at all for many of these goods and yet there are stocks of watches, which are not allowed to be imported, to be found and they are being openly sold. What exactly is the difficulty for the Government to declare that he should have a proper licence if any of the imported goods are to be sold by any-

body. Where anybody sell's such goods without a licence, either the goods should be confiscated or he shall be liable to fine and other penalties. Somehow smuggling has become an open trade. It is not even a secret trade today and it is a pity that no steps are proposed in this. There are some penal provisions applicable only when he is caught while taking away from the port or taking it to the port.

SHRI AKBAR ALI KHAN: Even the car can be confiscated.

SHRI K. SANTHANAM: Yes, the car could be confiscated, but all kinds of cars are sold at fancy prices and still I do not see anybody taking any kind of action.

Then, I find a lot of harassment of the poor people, passengers and others who carry small baggages and come from many places. For instance, persons coming from Malaya, Ceylon and other places are put to a great deal of harassment. They are made to wait for a long time in the customs places often. Of course, they do sometimes smuggle gold and other things and some steps have to be taken to check them. But I do not see why a simple procedure should not be adopted even at the port of embarkation. There should be our agents who will distribute to them proper forms in which they will be asked to enter every item and article which is liable to import duty. As soon as they land they must be allowed to present that document to the authorities who may be able to make a random check. Out of ten persons, they may check one or two persons. That would be all right. After a random check, they should be allowed to go. Now, many people come at night in Madras. They are asked to stay at the port for a whole night and probably the next day also. And then they are subjected to all kinds of harassment and many people suffer from it. I think steps should be taken to simplify the procedure. By and large trust the

honesty of people and see that the fear of God is put in them by random checks and severe punishments where they are caught. Otherwise 12NOON no passenger by any ship should be detained for more than an hour or two. In fact many tourists have been complaining that our customs procedure is so cumbrous that it is a difficult thing to come to India or go away from India, and I think the Customs authorities should not only codify the law but have a watch on the procedure. They should see how the present Bill is operating and bring forward suitable amendments both to the machinery and to the procedure.

Again, Sir, in the case of powers of revision, I do not see why, when the Board of Revenue have settled a thing, the Government should have the power on its own initiative to revise the orders and sentences. It is here that political influences will be brought to bear. As far as possible all these should be kept outside the jurisdiction of the executive Government. They should have nothing to do with those things. Either they should set up a proper judicial body at the Centre to which anybody can appeal or they should allow the authorities to settle the matter in any way they like. There is a very objectionable clause here, and that is clause 131(3):

"The Central Government may of its own motion annual or modify any order passed under section 128 or section 130."

What are the Central Board of Revenue? They are the highest officials of the Government of India. Therefore, what is this Government which wants to annul or revise the decision of the Revenue Board? It can only be at the Ministerial level. Sometimes it may be for good purposes, I am not saying that Ministers always do their things for *mala fide* purposes, but whether it is *bona fide*

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or *mala fide* I think it is wise for them to keep out of this business. Whether it is income-tax or customs or excise or anything, I think the executive Government should have nothing to do with it.

SHRI AKBAR ALI KHAN: It should be given to the High Court.

SHRI K. SANTHANAM: I have no objection to any revision petition and the parties concerned may go with that to a court of law unless they want to establish a Court for all these purposes, for the customs purposes; they can have a Court, it is a sufficiently big Department.

Therefore, Sir, in all these ways the Customs administration should be made efficient, and as far as possible while facilitating the smooth flow of imports and exports, there should be as little opportunity as possible for any kind of collusion, cheating, corruption or other abuses. Thank you.

SHRI DAHYABHAI V. PATEL (Gujarat): Sir, I feel that the Bill as it has come before us has got many welcome features, as has been pointed out by previous speakers. There was a necessity of codifying the law in this respect. Certain enactments had become out of date, certain procedures did not suit the requirements of the present mode of transport and trade and customs. Therefore, a revision of the thing was very necessary. The Select Committee, I think, has done a good piece of work. Perhaps there have been a few omissions, as the previous speaker has tried to point out, but generally the Bill is a welcome feature. There are many salutary provisions in the Bill as it has come before us, and therefore it has to be welcomed. However, I wish to draw your attention only to two points.

Clause 105 gives power of search. I think the power that is sought to be taken by Government is too drastic and is liable to be abused. Perhaps a little restraint on the authority to issue such search warrants being con-

[Shri Dahyabhai V. Patel.]

fined to persons in authority like a Magistrate—and nobody less than a Magistrate, not merely Customs Officers—would meet this objectionable feature.

The other objectionable feature to my mind is clause 123. While the provision is rather wide, the burden of proof is sought to be put on the owner, which may not be possible and is liable to abuse. Sir, a few days ago along with some other Members of Parliament I went and bought this watch that was sold by the Customs. They were watches confiscated by the Customs, and the Customs offered them for sale by auction, and several of us, a few Members of Parliament and a few friends, bought them at the prices fixed by Government. What I am trying to point out is, under these circumstances suppose I buy this watch and present it to a friend, how is that friend going to prove that this is not a smuggled watch? If he is not able to prove that this is a smuggled watch, under the drastic and wide provisions that are given under this Bill he will have to face the penalties. I am all for trying to stop smuggling, it is admitted that smuggling is rampant, but while giving wide authority and power to the officers of the Customs Department, I think there is a little need for discretion in this. Otherwise the authority is liable to be abused.

Sir, I wanted to refer to only these two points. Otherwise I welcome the Bill and support it.

SHRI SURESH J. DESAI (Gujarat): Sir, I welcome this Bill which is before the House. Before I offer my remarks on the provisions of the Bill, I completely endorse the remarks which my hon. friends, Shri Dave and Shri P. N. Sapru, made about the necessity of associating this House when the Bill was at the Select Committee stage. To my mind, Sir, this is a Bill which deals with the procedure. It does not deal with the rates

of duty or with the tariff. It is a Bill dealing with procedure and it has got a vital bearing on the trade, commerce and industry of the country, and at several points the Bill impinges also upon the fundamental rights of the citizens of this country. With such an important measure, Sir, to my mind the Rajya Sabha should have been associated at the Select Committee stage. It has been very disappointing to us that in such a vital matter we had been kept out. Now, coming to the Bill itself, the need to consolidate and codify the Law of Customs has been felt since a long time. The present law is contained in three statutes, the Sea Customs Act of 1878, the Land Customs Act of 1924 and the Indian Aircrafts Act of 1911. All these three statutes have become more or less obsolete. During the last 84 years, since the Sea Customs Act was passed, economic conditions in the country have vastly changed. At that time India was more or less an agricultural country exporting primary agricultural produce and importing all sorts of manufactured articles, mostly consumer articles. Cotton piece-goods, woollen cloth, silk cloth, cement, sugar, drugs, pharmaceuticals, medicines and every sort of consumer articles which were manufactured outside the country we used to import in those days. Now, after our First Five Year Plan and the Second Five Year Plan, we have got sizable industrial development in the country. Now, we are importing more or less industrial raw materials, machinery, accessories and components and spare parts and we are also exporting a number of manufactured articles. So, in the context of our present economy, the need to codify and consolidate the Law of Customs was a long-felt one, and it is good that the Government have come forward with this Bill.

The Bill contains a number of salutary provisions. There is a vast improvement on the existing Law of Customs, for instance, in the matter of drawback of import duty, valua-

tion of goods for the purpose of export duty, import duty on accessories and machinery, remission of duty in the case of damage or deterioration of goods and provision relating to re-imports. The Select Committee has also gone through it very carefully. They have done their work very well and in some respects the Select Committee has further improved the Bill.

I would refer to one particular matter in which the Select Committee has improved the Bill. Why I have particularly mentioned it is because my hon. friend, Mr. Santhanam, referred to it just now. I would like to explain the provisions of clauses 13 and 23 which deal with pilfered goods. The existing law in this case is that when a portion of a consignment is pilfered and if the consignee takes delivery of the consignment, he has to pay duty on the whole consignment. If he abandons the consignment, then he has not to pay any duty. Only if he takes delivery of the consignment, he has to pay duty. That is the existing law. The original Bill kept the provision that in case delivery is taken and a portion of the consignment is pilfered, then he pays duty on the whole of the consignment. In addition to that, it was provided that when the consignment was abandoned, then also he had to pay duty on the pilfered portion of the consignment. That was in the original Bill. Now, that was certainly inequitable. After all, when the consignment is abandoned, he does not take delivery of the consignment or any portion of it. Nothing comes to him. Why should he be liable to pay duty? There is a misapprehension in what Mr. Santhanam has said. When the goods arrive and before the order for clearance is passed, the goods are not in the custody of the importer. They are in the custody of the Port Trust authorities or with the Port Commissioners whoever they may be. They are not in the custody of the consignees themselves. How can the consignee be made liable to duty when the pilferage has occurred

when the goods are with the Port Trust authorities or with the Port Commissioners? But he was made liable to duty if he took delivery of even a part of the consignment. He was sought to be made further liable even if he abandoned the consignment. The Select Committee, I think, very equitably and very reasonably made the provision that in case the consignment is not taken delivery of, then neither on the pilfered portion nor on any portion is the consignee liable to pay any duty. I will read out to you Sir, the relevant clause 13 which says—

“If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.”

This is a very reasonable provision.

Clause 23 also further states about this pilfering of goods. It says:

“(1) Where it is shown to the satisfaction of the Assistant Collector of Customs that any imported goods have been lost or destroyed, at any time before clearance for home consumption, the Assistant Collector of Customs shall remit the duty on such goods.

(2). The owner of any imported goods may at any time before an order for clearance of the goods for home consumption has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.”

If he abandons the consignment, naturally he should not be made liable to pay the duty. It is a reasonable provision and I do not think that

[Shri Suresh J. Desai.]
any objection should be raised against it.

Then I would come to the other provisions on which I would like to offer some remarks. Firstly, I will take clause 105 because it has been referred to by other Members also. Clause 105 authorises the Assistant Collector of Customs to issue a search warrant and he can give this search warrant to any officer of the Customs. Yesterday when my hon. friend, Mr. P. N. Sapru, was speaking on this Bill, he was under the impression that it was the Assistant Collector of Customs or the Collector of Customs himself who was going to search. That is not the case. Any officer of the Customs may be empowered by the Assistant Collector of Customs to go and search any premises. Sir, according to the existing law, any officer of the Customs has to approach a magistrate and has to get a search warrant from the magistrate and then only he can go and enter any premises. Now, this is something fundamental with our judicial system. This is fundamental with our system of jurisprudence or the system of law we have been following. Here the judiciary is supreme. For entering any premises, we have got to get an order from a magistrate. How can a Collector of Customs or an Assistant Collector of Customs issue a search warrant? And what will happen? Everybody knows how the Customs Department is functioning. An officer of the Customs may keep blank orders signed by the Assistant Collector of Customs, he will only fill in the name of the party at whose house a search is to be carried out and the date, and he will go on carrying out the search. This may happen. What I say is, this is something against our system of jurisprudence. Our system is that it is only the judicial magistrate who can issue a search warrant. How can a Collector of Customs or an Assistant Collector of Customs do that by just putting their signatures on blank papers? It will amount to that. They will just put their signatures on blank

papers, will issue them to the officers of the Customs and those officers may search any premises at any time. When the hon. Deputy Minister was speaking, he gave the instances of U.K. and Australia. But there the officers of the Customs—and the average citizen also—are very conscious of the civil liberties of the citizens. Here in India, unfortunately, we have not reached that stage of maturity where civil liberties are valued so much. Every officer of the Government, especially every officer of the Customs, should value the civil liberty of a consignee. But, unfortunately, we have not reached that stage. The hon. Deputy Minister also said that the search warrant would have to be obtained late at night and the magistrate might be sleeping. The Assistant Collector of Customs might also be sleeping at that time. It is not that . . .

SHRI SONUSING DHANSING PATIL (Maharashtra): He has also to see to it. This happens to the citizens. The general level of character of the officers obtaining in other countries is not up to the mark and it is like that.

SHRI SURESH J. DESAI: You are strengthening my case. That is exactly why I say that more steps should be taken to protect the civil liberties of the people. After all crimes occur in every country; crimes do not occur in our country only; they occur in every country. There the officers, apart from performing their duty and functioning, are more conscious of the civil liberties of the people also, the citizens also. Moreover, this practice is against the fundamental system of our jurisprudence. It is the function of the judiciary to issue search warrants, and why should an Assistant Collector of Customs be given the power to issue search warrants? What I was saying was that if the Magistrate may be sleeping at night when the search warrant has to be issued, equally the Assistant Collector of Customs may also be sleeping at that time. But suppose the search warrant has to be issued merely by a

sort of just signing on blank papers only, then this difficulty will be obviated, that the Assistant Collector of Customs may be sleeping at that odd hour. Because the search warrant will be already there duly signed and merely the names will have to be filled in and the dates will have to be filled in. I am very much afraid that such a contingency will arise, and in order to guard against that it is better to keep our legal system as it is and not import this sort of new conception that an Assistant Collector of Customs should be given the power to issue search warrants to search private premises.

[THE DEPUTY CHAIRMAN in the Chair]

Then, Madam, I will go to the provision about smuggled goods. There has been quite a lot of discussion on this item also. I will first refer to sub-clause 120(2):

"Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation."

This is perfectly all right. Then there is the proviso:

"Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation."

Now this is considered to be an improvement on what the provision is under the existing law. But at the same time there is a sort of mixing up of several conceptions here. One is a smuggler; then there is an accomplice of a smuggler, then a person who buys goods from a smuggler knowing that they are smuggled goods and the fourth is a person who buys goods from a person without knowing that they were smuggled goods and is able to prove that he did so. These are four different conceptions and here all the four different conceptions

are mixed up. If anybody has got smuggled goods in his house, such goods are liable to confiscation. Very well. Those goods are liable to confiscation because they are smuggled goods and are in his house. Then again clause 121 says that the price money he paid to the person from whom he bought the goods is also liable to be confiscated because that is of smuggled goods; I mean the goods are liable to be confiscated because they are smuggled goods, even though they were purchased without this knowledge. At the same time the price money which he paid to the other man, who is presumed to be a smuggler or an accomplice of a smuggler, is also liable to be confiscated. Now this is something which is not equitable. After all, if the goods are confiscated at the house of the man who possesses them; who is the owner of these goods, though he can prove that he had not purchased the goods with any knowledge that they were smuggled goods, though he is able to prove that he purchased the goods in a *bona fide* manner without knowing that they were smuggled goods, still he can part with the goods, because they are smuggled goods, and the goods are taken away. Then again the price of goods, which he paid to the other man, that is also liable to be confiscated. If the price money paid to the seller who may be a smuggler or his accomplice is confiscated, then why should the goods also be confiscated from the *bona fide* possessor? This, Madam, is something which is not equitable. Here the four conceptions are all mixed up, the four conceptions which are very clear, a smuggler, an accomplice of a smuggler, a person who buys smuggled goods with the knowledge that they are smuggled goods and a person who buys smuggled goods without knowing that they were smuggled goods and who is able to prove that he did not know it, that he did not know that they were smuggled goods. These four conceptions are entirely different and they need not be mixed up.

[Shri Suresh J. Desai.]

Again there is a mixing up in clause 123. In clause 123 the burden of proving that the goods were not smuggled is placed upon the person who is in possession of the smuggled goods. Now this is also against one of the principles of our legal system, one of the principles of our jurisprudence, that the burden of proving is always on the prosecution; the burden of proving cannot be on the accused. This is one of the fundamental principles of our jurisprudence. Apart from that there is a mixing up here of what is proving that it is smuggled goods and proving that he has come into *bona fide* possession of the smuggled goods. A man, after all, can prove that he has come into *bona fide* possession of these goods. A man cannot go on proving that these are not smuggled goods. Actually, what are smuggled goods? Smuggled goods are goods which are imported into the country without payment of duty. Now if a man purchases jewellery worth a lakh of rupees and if there is a suspicion, he can produce the voucher, he can produce the cheque book. He can say very well that for five years or ten years he has been in possession of this jewellery. Here the presumption, in all reasonable probability, is that the goods are not smuggled. After all he can prove only this thing, but he cannot prove whether, on this particular jewellery or the diamonds which are there in the ornaments, duty was paid or not. That is a different matter absolutely. These are two different conceptions; the fact whether or not duty was paid on the diamonds which the ornaments contain is one thing, and how he came to be in possession of the ornaments is quite a different thing. These two are different notions completely. Why should they be mixed up? After all the man may be required to prove how he came into possession of these smuggled goods. He can produce his cheque book, he can produce the voucher. He can say, "Very well, for the last five years I am in possession of this". He can do all these things.

But how can he prove that these are not smuggled goods? It is impossible. For a *bona fide* purchaser of jewellery it is impossible to prove that every part of it is not smuggled at all. Suppose he has purchased gold ornaments for a lakh of rupees, how can he prove that every portion of that gold is not smuggled? After all he purchased them from a genuine dealer. He can say that he purchased them from that particular genuine dealer, but whether that genuine dealer is getting smuggled goods in his house or not, how can this man prove, how can a *bona fide* purchaser prove? Here is again a mixing up. Madam, this is a fiscal statute where we should be very exact, and this sort of loose notions and of mixing them up together in a financial enactment is something very objectionable. In this Bill, these notions are very loose and have all been mixed up, and this is something also against the fundamental system of our jurisprudence.

Then I will go to another clause, clause 127, which provides that if goods are smuggled goods and are found with a person, then the man will be penalised; a penalty will be imposed on him. The goods will be confiscated. At the same time he will be liable to prosecution also. Now this is also another point which is against our system of jurisprudence. We provide that for the same offence a man cannot be prosecuted twice. It is our fundamental system of law that a man cannot be prosecuted twice for the same offence. Once he is prosecuted and discharged, the man goes away. Now here he is virtually prosecuted twice. When the Collector of Customs or the Assistant Collector of Customs confiscates the goods and imposes a fine, that is something like a punishment, it is like a prosecution and the man has been penalised. Then, again under the criminal law the man is penalised. This sort of double prosecution is something which is against the principles of our law. And that also should not have been there. After all a

greater and bigger penalty may be provided for, the Assistant Collector of Customs can fine him Rs. 10,000, Rs. 20,000, Rs. 1,00,000, Rs. 5,00,000; to any extent he can fine, or the goods may be confiscated and the man should be handed over to the police, but to say that the Collector of Customs can impose a penalty and confiscate the goods and still a prosecution awaits him is against the system of law which we are following.

SHRI AKBAR ALI KHAN: This is the present law.

SHRI ROHIT M. DAVE: There are a number of cases in which the most severe punishments under the criminal law are also given. It is not at all against our law . . .

SHRI AKBAR ALI KHAN: The present law is the same. He can be proceeded against in a criminal court while also being answerable to the customs authorities.

SHRI SURESH J. DESAI: I am sorry I have not made myself clear. Under our criminal law a man cannot be prosecuted twice. Here you are imposing a penalty on the man in addition to confiscating his goods and at the same time a prosecution is awaiting him. It should not be both. You can impose a bigger penalty, or penalty need not be imposed on the man and he can be prosecuted only—any of the two. Both the things should not be there because that is also against the system of jurisprudence. That is all my submission.

SHRI ROHIT M. DAVE: Is there not imprisonment as also fine? This is something like that. You can have both, imprisonment as well as fine. There are a number of cases in which you have both. There is nothing against law.

SHRI SURESH J. DESAI: I could not get him.

SHRI AKBAR ALI KHAN: Mr. Dave says that the present law is similar, namely, he is responsible before the Customs authorities as well as before the criminal court. You want even the present law to be modified.

SHRI SURESH J. DESAI: I am sorry I cannot get the point which the hon. Member is making.

Madam, we go to clause 26 which says that if the goods are re-imported, the export duty which was paid on them while they were exported, will be refunded. But what happens to the cess? Cess has also got to be refunded. The clause does not mention that. The Customs Reorganisation Committee specifically mentioned that the cess has also to be refunded but no provision for that has been made here.

Then, I go to clause 128 about appeals. Now the appeals lie to the Assistant Collector of Customs or to the Central Board of Revenue. Just as in the Income-tax law we have got an independent tribunal, or in the Foreign Exchange Regulations we have got an Appellate Board, similarly for Customs also it is very necessary that there should be an independent tribunal or an independent authority to which all the cases should be referred. Because very often it happens that in important cases it is not merely the lower officer who is investigating the case but the whole hierarchy is interested in it when it is a big case. Then, the appeal has to be made to the same persons. That is something which is not very fair. An appeal lying to the same Assistant Collector of Customs who is interested in detecting the case and bringing the culprit to book is something which is not very fair. That is not in the interests of justice. I am not suggesting this with a view, in any way, to impairing the process which the Customs follow. Let them follow their process and bring the culprit to book. But after that, when the appeal has to be made, it should be made to

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an authority which can function with justice, an authority in which the accused must have full confidence and the public also have full confidence. For that very reason in the Income-tax law we have provided for tribunal, in the Foreign Exchange Regulations we have provided for an independent appellate authority. Similarly, for Customs also we should provide for an independent appellate authority.

Madam, these are in the main the provisions about which I wanted to offer remarks. I am very happy that the law of Customs is codified. It is a vast improvement on the existing law which had become obsolete, as I said before. Certainly we have to congratulate the Ministry of Finance for bringing forward this legislation as also the Select Committee for all the good work they have done.

Thank you, Madam.

SHRI N. B. MAITI (West Bengal): Madam Deputy Chairman, all sections of the House, I find, have welcomed the Bill though certain objections had been raised on certain points. It has been pointed out by many of the Members here that it is unfortunate that Members of the Rajya Sabha were not associated at the Select Committee stage the reason being that it is a Money Bill. Though the Bill deals with money matters, it deals only with the policy that will be governing money matters, not the amounts of money actually. Therefore, I do not find any reason why Members of the Rajya Sabha should not have been associated at the Select Committee stage. It is hoped that some sort of representation, or whatever it might be, will be made to the proper authorities that a Bill dealing with policy matters and not with financial matters as such should also be open to Members of the Rajya Sabha to associate themselves with, if a Select Committee is formed for the purpose.

Now, Madam, leaving that point aside, I, as other Members have done, welcome the Bill because it is a long-felt one and it should have been presented long before. Even then at this late stage it is welcome.

Madam, certain points have been raised by certain Members and my friend, the previous speaker, honourable Mr. Desai has spoken rather fervently on certain points in contradiction to what had been said by certain other Members, particularly Mr. Santhanam and hon. Mr. Sapru. I believe, Madam, that the points raised by our friends will be tested in course of time as experience is gathered. Not only in this House but also in the other House certain points were raised, and I believe these would be left to the working of the measure, and in course of time, there is no doubt that this Bill will come up again for certain amendments.

Madam, what I specially want to point out to the Government is this. We have got our Himalayan border exposed to smuggling and other things. So long we were dealing with our coastal areas and some areas bordering Pakistan on the eastern and the western sides. But today the whole Himalayan border has been exposed. I do not know how the Customs authorities will deal with this problem. Now the Himalayas are no more barriers from Ladakh on the western side to the Lohit river in the east. Any number of articles could be smuggled from the other side of the Himalayas into this country. That position has got to be considered. I particularly invite the attention of the Central Government and, through them, the Customs authorities to this matter. I do not know how they will do it but this should not be left for a future date when the country comes to be settled but even now this is very much required. With these words I thank you for giving me an opportunity. I only wanted to point out the last point.

SHRI M. P. BHARGAVA (Uttar Pradesh): Madam Deputy Chairman, I associate myself with the remarks made by most of the previous speakers about the non-inclusion of the Rajya Sabha Members in the Select Committee to which the Bill was referred. Even before the Bill was referred to a Select Committee by the other House, the House is probably aware, the question was raised in this House and I was glad to note that the Government was not objecting to the association of the Rajya Sabha in the Select Committee for this Bill and therefore I feel that it is high time that this question is taken up by the Chairman of this House with the Speaker of the other House and some sort of working arrangement arrived at about the Money Bills.

I was going through the proceedings of the other House and I was surprised that some Members of the other House have very hazy notions about the Constitution and they sometimes make pronouncements which are against the provisions of the Constitution. I will refer in this connection . . .

SHRI AKBAR ALI KHAN: Is it appropriate that we should refer to the speeches of the Members of the other House and make observations?

SHRI M. P. BHARGAVA: If in that House something can be said about this House, certainly we are within our rights to say something about what happened in the other House.

THE DEPUTY CHAIRMAN: It is quite relevant.

SHRI M. P. BHARGAVA: I will read out what happened:

"I have another suggestion, which is very awkward for me to make. But I say that we cannot have . . ."

mark the words please—

" . . . the luxury of having Rajya Sabha . . ."

SHRI SHEEL BHADRA YAJEE (Bihar): Shame.

SHRI M. P. BHARGAVA: " . . . and the Councils in the States. They should be abolished. One House is enough; Lok Sabha is enough. The other State Assemblies are there. Why should we have this luxury of a House of Lords and House of Elders? Let us suspend, at least for six or eight months, the Councils and the Rajya Sabha."

SHRI SHEEL BHADRA YAJEE: Are we Lords?

SHRI M. P. BHARGAVA: This is the statement which I wanted to bring to the notice of the hon. Members of this House and I am sure after hearing what has been said, Mr. Akbar Ali Khan will not have the same objection which he raised.

SHRI SONUSING DHANSING PATIL: Was he not called to order?

SHRI M. P. BHARGAVA: I do not know. It is not in the proceedings.

SHRI AKBAR ALI KHAN: That is a debatable point. That has been raised on more than one occasion as to whether the Upper House should remain. We differ from them but I think there is nothing personal . . .

SHRI M. P. BHARGAVA: I may tell Mr. Akbar Ali Khan that I have not brought this with any personal motive. I have also refrained myself from even naming the person who made the remarks. It is the principle on which I am speaking and if the hon. Member knew the provisions of the Constitution then he would have refrained from making these remarks. There is a definite provision in the Constitution how the Upper Houses can be abolished. By merely one Member getting up and saying that this House should be abolished, that cannot be done. That is what I object to and that is what I wanted to bring to the notice of hon. Members.

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Coming to this Bill, I have stated about our non-inclusion. Even then I must pay a tribute to the Select Committee of the Lok Sabha which dealt with this Bill. They have done a good job and at several places they have made the provisions very much more clear, very much more explicit and the amendment of several clauses which they have handled and which they have suggested is a good work done.

I will come to some of the major things which have been changed from the Bill as it was introduced in this House of Lords and House of Elders? has emerged from the Select Committee. First, I will refer to clause 11 where it has been said:

"11. (1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description."

Sub-clause (2) gives the purposes referred to in sub-clause (1) and there is a long list of certain categories in which a very important category was omitted in the Bill as it went to the Select Committee and which has been added and it is sub-clause 2(r) which reads:

"the implementation of any treaty, agreement or convention with any country."

This is a very important aspect of the whole question of customs, imports and exports and this was a very big omission which was there in the Bill and which has been rectified by the Select Committee.

Coming to the last sub-clause, it reads:

"any other purpose conducive to the interests of the general public".

This, to me, seems a very wide covering clause and I would request the hon. Minister to consider even at this stage if the wordings could be changed so as to make this less wide and still keeping it consistent with the purpose for which it is meant. It is on page 7 and reads:

"any other purpose conducive to the interests of the general public."

Somehow this word 'conducive' does not appeal and it looks as if it is a very wide power which is being given.

Next I come to clause 13 about which Mr. Suresh Desai has already spoken. Others have also spoken. Till now the position was that if any consignment was received, by the Customs authorities and it had not been cleared and in between this period of arrival and clearance any pilferage occurs or any goods are stolen, then according to the existing law, the importer has to pay the duty on even those goods which would not come to his possession even after taking delivery and which had been pilfered before he actually took delivery of those goods. That was obviously a very unjust position, because a person cannot be held responsible or liable to pay duty on the goods that are not delivered to him, due to somebody else's fault, and the goods get pilfered from the store of the Customs authorities, or when in transit. Therefore, this provision that has now been made is a very healthy provision and if we read the clause in the Bill as introduced and the clause as it now stands, I think the whole position will become very clear. As introduced, the clause ran thus:

"If any imported goods are pilfered after the unloading thereof and before clearance for home consumption or deposit in a warehouse, the importer shall be liable to pay the duty leviable on such goods."

And the improved clause as it stands in the Bill passed by the Lok Sabha, that is to say, as it has emerged from the Select Committee, is like this:

"If any imported goods are pilfered after the unloading thereof"

—and here the words have been added:

"and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not"

—the word "not" was not there before:

"the importer shall not liable to pay the duty leviable on such goods except"

and then comes the exception:

"except where such goods are restored to the importer after pilferage."

I think this is a very healthy clause now and the House should welcome it.

Next I come to clause 14. The old clause 14 in its sub-clause (1)(a) spoke of "the normal price". I personally feel, Madam, that this expression "the normal price" is a very vague term in any statute. Therefore, I welcome the change made here by the Select Committee. They have dropped the word "normal" now and in the present Bill it runs thus:

"(a) the price at which such or like goods are ordinarily sold."

The word introduced here is "ordinarily", and it makes the position clear. We can immediately find out what is the market price and so it is much easier in that way.

Next I come to clause 29. If we examine the old clause 29 and the new clause, the House will be able to see that a vast improvement has been made by the Select Committee. The old clause read thus:

"29. The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land—

(a) for the first time after arrival in India; or

(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft;

at any place other than a customs port or a customs airport, as the case may be, unless he is compelled to do so by stress of weather, accident or other unavoidable cause."

In the new clause, or rather in the clause as it now stands, what was given in a sentence has been made explicit. Previously the words were:

"unless he is compelled to do so by stress of weather, accident or other unavoidable cause."

That was in one sub-clause. Now they have made it into two sub-clauses. The first one deals with the subject-matter as before. In the second sub-clause they have made the provision clearer regarding accidents, going astray due to weather and so on. Now it reads thus:

"(2) The provisions of sub-section (1) shall not apply in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft—

(a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall on demand produce to him the log book belonging to the vessel or the aircraft;

(b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers

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to depart from the vicinity of, the vessel or the aircraft;

(c) shall comply with any directions given by any such officer with respect to any such goods,'

and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft:

Provided that nothing in this section shall prohibit the departure of any crew or passengers from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health, safety or the preservation of life or property."

For thus making this clause very clear I am very grateful to the Select Committee.

Now I come to clause 102 and to the Note of Dissent given by some Members there. One of the Notes says:

"It should be so amended as to provide that the person about to be searched should be clearly told that he has a legal right to be taken before a magistrate or a Gazetted Officer of Customs, and only if he opts otherwise, he may be searched by the officer himself. The facile assumption or dictum that every one is supposed to know the law with all its details is not wholly tenable in our country where the vast majority of the people are illiterate, at best semi-literate."

This clause 102 provides that if any person found to be having some smuggled goods wants to be taken to an officer of customs, he shall be taken. That is what is provided here. Now, the law of customs or for that matter any other law is not very clearly and easily known to everybody, and as has been stated in this Note of Dissent—I partly agree with

what is stated in the Note—I feel that some more specific provision ought to have been made in this clause to take the person concerned to the customs officer, if he so wanted. This is not very specific, as it is. I do not know whether the hon. Minister is in a mood to accept any changes in the Bill as it has come to us; but if he is, I think some amendments could be moved.

SHRI B. R. BHAGAT: How can I accept an amendment without seeing it?

SHRI M. P. BHARGAVA: I have stated what I had in mind and what I wanted to be amended.

In the same clause a very good change has been made by the Committee to which I would like to invite the attention of the House. In sub-clause (5) it has been provided that:

"No female shall be searched by any one excepting a female."

THE DEPUTY CHAIRMAN: Mr. Bhargava, you may continue after lunch. The House now stands adjourned till 2.30 P.M.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at half-past two of the clock, THE DEPUTY CHAIRMAN in the Chair.

SHRI M. P. BHARGAVA: When the House adjourned I was speaking on clause 102. During the recess I had the opportunity of looking at the amendments given notice of by Shri V. K. Chordia and I find that for clause 102 he has given an amendment for deleting the words "if such person so requires". I am inclined to support this amendment because this will make it obligatory for the customs' employees who meet the person who has smuggled goods to take him to the customs officer necessarily. So, I

would request the Minister to see if it is not possible for him to delete these words.

A lot has been said about clause 105, for and against. I fully support the new provisions contained in clause 105.

I welcome the change suggested by the Joint Committee in clause 108. The former proposition was "any officer of customs empowered in this behalf by general or special order of the Collector of Customs" and now it has been made more specific to say "any gazetted officer". This is an improvement from the old position.

I now come to clause 123 which deals with the burden of proof. Whatever has been provided is good but still I find a lacuna. It only talks of the person concerned proving that the goods in his possession are not his goods. I personally feel that the man should be discharged from the onus of proof. There is an amendment given notice of in this connection by Mr. Chordia. I would have liked the amendment to say that after proving that he has not smuggled the goods in his possession, the person concerned should be discharged from the responsibility or onus of proof. I would like some such amendment to be inserted in clause 123.

There is a big Note of Dissent in regard to clause 131 and I am inclined to support it. The House is probably aware that a committee presided over by Mr. Badhwar was appointed to go into the various questions on this subject and that committee made some recommendations. The committee says:

"We find that the Taxation Enquiry Commission examined this matter and came to the conclusion that, in the interests of the appellants themselves, it would be unwise to disturb the appellate machinery

provided at present. But, at the stage of revision by the Government of India of appellate orders, they recommended the setting up of a Tribunal consisting of at least one Judicial member who should be either a serving or a retired High Court Judge and one member who has had experience of Customs Administration. We agree with the Commission's views except to the extent that we consider that the association of a suitable representative of the Import-Export Trade as an additional, or third member of the Tribunal would be an improvement and would help to secure more informed, and therefore, more objective decisions."

I understand that some amendments were given notice of by Members in the Joint Committee, for this appellate machinery being provided. I do not know what came in the way of the Government not accepting this suggestion. I would like the hon. Minister to take the House into confidence and give us some idea of the difficulties that came in the way of the Government not accepting the suggestion for a Tribunal of the sort suggested by the Badhwar Committee or the Taxation Enquiry Committee for a different purpose. This is as far as clause 131 is concerned.

I welcome the decision and the redrafting of clauses 135 and 136 and before I end I would like to say a word about clause 161, the last clause in the Bill. In earlier clauses it has been provided that all the notifications made under this Bill would be placed before the Houses of Parliament. This is a very healthy provision and I would, therefore, urge that all the rules made under this enactment should also be placed before both the Houses of Parliament. That, I find, is not the intention of clause 161 which says:

"If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments repealed

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by this Act to the provisions of this Act, the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to be necessary or expedient for the purpose of removing the difficulty”.

Therefore, I would have liked a provision to be made that all such rules will be . . .

SHRI B. R. BHAGAT: Orders, not rules.

SHRI M. P. BHARGAVA: All such orders should be placed.

SHRI B. R. BHAGAT: Only rules and notifications are . . .

SHRI M. P. BHARGAVA: I quite follow your distinction between the two but still it would have been better if such orders were also caused to be placed before both the Houses of Parliament.

श्री कृष्ण चन्द्र (उत्तर प्रदेश) : माननीया सभानेत्री जी, यह कस्टम्स बिल जो आज इस सदन के सामने प्रस्तुत है, इसकी लोकसभा की सेलेक्ट कमेटी ने, प्रवर समिति ने, अच्छी तरह से छानबीन की है। जब यह नया बिल बनाया गया तो इस सम्बन्ध में पहले जो हमारा कानून था, उसमें काफी सुधार गवर्नमेंट की तरफ से किया गया और फिर जब प्रवर समिति में वह बिल गया तो उसकी छानबीन वहां की गई और आज यह बिल और अधिक सुधर कर इस सदन के सामने प्रस्तुत है। मैं इसका स्वागत करता हूं और इसका समर्थन करता हूं। सेलेक्ट कमेटी के, प्रवर समिति के, सदस्यों ने इस बिल की छानबीन करने में काफी मेहनत की है और मैं समझता हूं कि वह इस सदन के धन्यवाद के पात्र हैं।

अब मैं इस बिल की कुछ धाराओं के सम्बन्ध में अपने विचार प्रस्तुत करूंगा जैसा कि और भी माननीय सदस्यों ने किया है।

पहले मैं धारा १३ को लेता हूं। इस के संबंध में यह है कि अगर माल को छुड़ाने से पहले, क्लीयरेंस करने से पहले, उस माल में से कोई पार्ट, कोई परिमाण चोरी चला जाता है, तो अभी तक जो कानून था, उसके अनुसार उस पर कस्टम्स का कर ले लिया जाता था।

अब इस कानून में प्रवर समिति ने यह संशोधन कर दिया है कि उस पर कर नहीं लिया जायगा। कुछ माननीय सदस्यों ने इस सम्बन्ध में यहां पर यह निवेदन किया है कि ऐसा करना कानून के अन्दर एक छेद छोड़ देना होगा और इस से बहुत बुरे परिणाम भी निकल सकते हैं। मैं इस सम्बन्ध में यह निवेदन करूंगा कि हर व्यवस्था में छेद कहीं न कहीं तो रह ही जायगा। इस कानून के सम्बन्ध में दो दृष्टिकोण हैं, जैसाकि सदन के सामने प्रस्तुत किये गये हैं। माननीय श्री चौरड़िया जी ने कहा है कि जहां कस्टम्स वालों के लिये उनके अधिकारों का, उनके कर्तव्यों का पालन करने के लिये सारी सुविधायें इस विधेयक में रखीं वहां साथ ही यह भी जरूरी है कि कस्टम्स के अधिकारी किसी माल का आयात करने वाले को बिना किसी कारण के खवामख्वाह न सताने पायें, जितना कम उनको सताने का मौका मिले, उतना हमको करना चाहिये। जब माल उस बेचारे को मिला ही नहीं है, माल उन की निगरानी में, कस्टम के अधिकारियों के कब्जे में था, उनकी निगरानी में था, जब वह माल चोरी चला गया, तो एक तो उस का माल चोरी चला गया और उस पर उस के ऊपर कर भी लगाना यह उसके साथ ज्यादाती है और इस वास्ते जो संशोधन प्रवर समिति ने किया है, मैं उसका समर्थन करता हूं।

धारा १४ मूल्यांकन की बाबत है और उसके सम्बन्ध में माननीय सदस्य चौरड़िया जी ने कहा है कि यह गोल मटोल है, इसको और निश्चित करना चाहिये। इस

सम्बन्ध में मैं यह निवेदन करूंगा कि पहले जो हमारा कानून था, उसमें जो व्यवस्था इस सम्बन्ध में थी, वह तो बहुत ही गोल थी। उसको निश्चित करने की कोशिश प्रवर समिति ने की है और बहुत हद तक उसको निश्चित कर दिया है और मैं समझता हूं कि वैसे तो हर चीज में दिक्कत हो सकती है लेकिन इस से जो पहले दिक्कत होती थी आयात-कर्त्ता को, उस दिक्कत में बहुत कुछ कमी हो जायगी।

धारा ११० में माल को कब्जे में लेने की व्यवस्था है—कुछ सूरतों में कस्टम्स अधिकारी माल को अपने कब्जे में ले सकते हैं, रख सकते हैं। इस संबन्ध में मैं यह अर्ज करूंगा कि प्रवर समिति ने जो इसमें सुधार किया है, वह भी एक बहुत अच्छा सुधार है और वह आयातकर्त्ता के पक्ष में है। उन्होंने यह सुधार किया है कि इसमें यह शर्त लगा दी जाय कि यदि छः मास के अन्दर उस माल की बाबत आयात-कर्त्ता को कोई इस बात का नोटिस नहीं दिया जायगा कि वह इस बात का जवाब दे कि वह माल उसका क्यों न जप्त कर दिया जाय, अगर छः महीने के अन्दर इस किस्म का नोटिस उसके पास नहीं जायगा, तो छः महीने की अवधि के बीतने के बाद वह माल उन्हें कब्जे से छोड़ना पड़ेगा। वह छः महीने की अवधि, किन्हीं खास कारणों से बढ़ाने का भी अधिकार रखा है। यहां प्रवर समिति ने कम से कम एक मुद्दत तो बांध दी है, यह बहुत अच्छा सुधार है और सरकार में समर्थन करता हूं।

धारा १२३ में चोरी से माल लाने का वर्णन है। इस पर भी हमारे यहां माननीय सदस्यों ने भिन्न भिन्न रायें अपनी दी हैं। एक तरफ तो यह कहा जाता है कि यह तस्कर का व्यापार बहुत बढ़ गया है, ऐसी ऐसी दुकानें धम्पई में खड़ी हैं, जहां चोरी से आई हुई चीजें खुले आम लोगों में बिकती हैं। एक तो यह दृष्टिकोण है, और इस दृष्टिकोण के लोगों की बहुत खबरें आंग है कि कस्टम्स के कानून को ऐसा पक्का और

मजबूत बनाया जाय कि उसमें इस सम्बन्ध में कोई छेद न रहने पाये कि जिससे किसी तरह से कोई आदमी, तस्कर का व्यापार करने वाला, इस कानून के फंदे से निकल जाय। दूसरी तरफ यह दृष्टिकोण कुछ माननीय सदस्यों ने रखा कि अगर किसी के पास चोरी से आया हुआ माल पाया जाता है, जैसे किसी के पास कोई घड़ी पाई गई और वह घड़ी उसके हाथ में है, तो अब अगर उसको कोई पकड़ ले कि यह घड़ी तुम्हारी चोरी से आई हुई है, तो कानून के अन्दर यह व्यवस्था है कि उसका सबूत देने की जिम्मेदारी उसके ऊपर है कि वह यह साबित करे कि यह माल जो उसके पास है, जो घड़ी उसके पास है, यह चोरी से नहीं आई है, अच्छे रास्ते से आई है। यह वाकई उसके लिये साबित करना मुश्किल है। अगर वह इस बात को बता देता है और प्रमाणित कर देता है कि मैंने नेकनीयती के साथ यह घड़ी अमुक व्यक्ति से, अमुक दूकान से खरीदी है, मेरे पास रसीद है, सबूत है, तो फिर उसको परेशान नहीं करना चाहिये। मैं नहीं समझता कि इस मौजूदा दफा में उसको यह मौका मिलेगा या नहीं। अगर उसको यह मौका मिल जाता है, तब तो कोई संशोधन करने की जरूरत नहीं है। मेरे खयाल में मौका नहीं मिलता। तो फिर कैसे चौरङ्गि जी ने उसमें एक संशोधन रखा है, अगर उसमें सुधार कर दिया जाय, भार्गव साहब ने उस सम्बन्ध में यह कहा है कि उसकी शब्दावली ठीक तरह से नहीं है, उसकी शब्दावली को सुधार लिया जाय—अगर उस को सुधार कर रख लिया जायगा, तो मैं भी समझता हूं कि सरकार को कस्टम्स के कानून को पक्का बनाने में कोई भी दिक्कत नहीं होगी। वह पक्का रहेगा, उसमें कोई कमचोरी नहीं आयेगी। साथ ही जो बेचारा नेकनीयती से घड़ी लिये हुए है, उसे भी परेशानी नहीं होगी।

वर्तमान व्यवस्था में भी लोगों को परेशानी की ज्यादा गुंजायश तो नहीं है,

[श्री कृष्ण चन्द्र]

क्योंकि यह धारा हर एक माल की चोरी के बीरे में लागू नहीं होती, बल्कि चंद चीजें हैं जिनका आना इस देश में आज बंद किया हुआ है, उनका तस्कर व्यापार अगर कोई करेगा तो उन्हीं के लिये ही यह धारा लागू होगी और माल के लिये लागू नहीं होगी। घड़ी भी उनमें एक है। जो लोग घड़ी खरीदते हैं, वे जानते हैं कि ट्रान्जिस्टर सेट तथा घड़ी वगैरह आने की यहां पर बंदिश है और अगर कोई घड़ी खरीदता है तो वह ठोक बजा कर, तहकीकात करके और इत्मीनान के साथ देखेगा कि वह कोई ऐसे आदमी से तो नहीं खरीद रहा जो तस्कर का व्यापार करता है। कुछ थोड़ी सी चीजें हैं, जो पाबन्दी के अंदर आती हैं, इस बास्ते खरीदारों को इस बात का पूरा मौका है कि अच्छी बरह से छानबीन करके ही खरीदें।

धारा १२८ अपील के बारे में है। अभी तक हमारे कानून में यह व्यवस्था थी कि कस्टम्स अधिकारी के किसी हुक्म से या किसी आदेश से यदि किसी को शिकोयत हो तो उस की अपील वह कर सकता था और यह अपील कस्टम्स के कलेक्टर सुना करते थे। कस्टम्स के जो कलेक्टर हैं, वे इस महकमे के सबसे बड़े अफसर हैं, उनकी पूरी जिम्मेदारी है कि कस्टम्स से होने वाली आमदनी घटने न पाये। अगर वह आमदनी घटती है, तो उस में उन की भी जिम्मेदारी आती है, वह भी उसके जिम्मेदार ठहराये जाते हैं। इसलिये उनकी कुदरती तौर पर, स्वाभाविक रूप से हमेशा यह चेष्टा होगी कि कस्टम्स के अधिकारी ने जो भी निर्णय दिया है, उसका वह जहां तक हो समर्थन करे, ताकि आमदनी जो होने वाली है, उसमें कोई घटोत्तरी न होने पाये। उसका सुधार भी प्रवर समिति ने किया है और वह इस तरह से किया है कि कलेक्टर, जो कस्टम्स के विभाग का अधिकारी है, वही अपील नहीं सुनेगा, बल्कि उसके लिये एक अपील सुनने वाला कलेक्टर अलग होगा, जिसको महज

अपील सुनने का अधिकार होगा और उसका कस्टम्स के महकमे के इंतजाम से कोई संबंध नहीं होगा। इस बास्ते वह निष्पक्ष राय उस अपील के सुनने में रख सकेगा, उसके ऊपर किसी का असर नहीं होगा।

माननीय सदस्य सप्रू साहब ने इस संबंध में एक सुझाव रखा है—यह हो जाय तो बहुत ही अच्छा है—कि वह अपीलेट कलेक्टर हमारे वित्त मंत्रालय के मातहत न रहे, बल्कि वह किसी दूसरे मंत्रालय के मातहत रहे तो वह और स्वतंत्र रूप से निर्णय दे सकेगा। लेकिन मैं समझता हूं कि इस की ज्यादा जरूरत नहीं है। हम यह अपेक्षा नहीं कर सकते, किसी को यह सन्देह नहीं हो सकता कि हमारा जो रेवेन्यू विभाग है, माल विभाग है, जो गवर्नमेंट आफ इंडिया के मंत्रालय से सम्बन्धित है, वहां पर किसी की ऐसी कोई ज़बर्दस्त इवाहिश है कि किसी को कस्टम के संबंध में सताया जाय या परेशान किया जाय, हमारी आमदनी कस्टम के जरिये बढ़ती जाय और लोगों ने ज्यादा से ज्यादा कस्टम वसूल किया जाय, इस तरह की धारणा वहां नहीं है। अपीलेट कलेक्टर का कस्टम के इंतजाम से और उसकी व्यवस्था से कोई संबंध नहीं है। वह स्वतंत्र रूप से अपना निर्णय दे सकेगा।

तस्कर व्यापार के संबंध में जैसा मैंने पहले कहा कि प्रवर समिति ने देश की मांग के अनुसार उसमें संशोधन कर दिये हैं और भविष्य में तस्कर का व्यापार करने वालों को कड़ी से कड़ी सज़ा मिलेगी। इसकी व्यवस्था कानून में कर दी है। प्रवर समिति ने इस विधेयक में ऐसे संशोधन किये हैं, जिस से तस्कर व्यापार करने वालों की सज़ा कड़ी हो जाती है। उन्हें कम से कम ६ महीने की और ज्यादा से ज्यादा ५ वर्ष की सज़ा मिलेगी। इस तरह की सज़ा की व्यवस्था हो जाने पर आशा है, देश में तस्कर व्यापार कम हो जायगा।

श्री भार्गव साहब ने जो बात कही कि जो भी नियम तथा रूल्स बनाये जायेंगे वे इस

सदन के सामने रखे जाने चाहियें, दोनों सदनों के सामने रखे जाने चाहियें, इस तरह की व्यवस्था धारा १५६ में मौजूद है। मैं उनके इस प्रस्ताव का समर्थन करता हूँ कि सरकार इस संबंध में समय समय पर जो आदेश निकाले, उन्हें भी रूल्स एंड रेगुलेशन के साथ सदन के सामने रख दे तो बहुत अच्छा होगा। रूल्स बनाने का अधिकार इस विधेयक के अन्तर्गत सरकार ने अपने हाथ में ले लिया है। इस संबंध में मैं माननीय वित्त मंत्री जी से कुछ बातें निवेदन करूंगा और आशा करूंगा कि नियम बनाते समय वे इन बातों पर ध्यान रखेंगे, इससे जो दिक्कतें इस समय हैं, वे दूर हो जायेंगी।

माल विभाग का भी विभाजन इस वक्त है, उदाहरण के लिए चीजें मिलती हैं। कुछ चीजें उबर भी हैं और उबर भी हैं। माल का एक विभाजन कस्टम विभाग ने बनाया हुआ है। आयात का लाइसेंस देने का काम एक दूसरा विभाग करता है। उसने भी माल का विभाजन किया हुआ है। अर्थात् इम्पोर्ट टैरिफ और एक्सपोर्ट टैरिफ अलग है। एक तो इन दोनों विभागों में इतनी भारी विभिन्नता है कि लोग मुश्किल में पड़ जाते हैं। इसलिये इस बात की मांग है कि जो टैरिफ कंट्रोल क्लासिफिकेशन और कस्टम टैरिफ क्लासिफिकेशन है, उनको एक ही तरह का जहां तक हो सके बनाया जाय ताकि लोगों को दिक्कत कम हो।

एक बात इसके सम्बन्ध में और निवेदन करनी है। आजकल जो माल का विभाजन है, वह अजीब किस्म का है, उसमें यह देखने में आता है कि अगर किसी को किसी मशीन या उपकरण का हिस्सा, पुर्जा मंगाना होता है तो उस पर टैक्स ज्यादा लगता है। लेकिन मशीन के साथ जब उसे मंगाया जाता है, चाहे वह फ़ालतू ही हो, तो उस पर टैक्स कम लगता है। इसका नतीजा यह होता है कि इस देश के उद्योग को प्रेरणा नहीं मिलती। यदि एक आदमी पुर्जा मंगाना चाहे और उससे वह मशीन इस देश में

बनाना चाहे तो जब वह पुर्जा मंगाता है तो उसको ज्यादा टैक्स देना पड़ता है। नतीजा यह होता है कि हर आदमी पूरी मशीन आयात करता है, क्योंकि उस पर टैक्स कम लगता है। इस तरह से यहां जो लोग पुर्जे बना कर मशीन बनाते हैं वे बाहर की मशीनों से मुकाबला नहीं कर सकते हैं। इस प्रकार के जो क्लासिफिकेशन बनाये गये हैं, रूल्स बनाये गये हैं, उनमें, मेरा निवेदन है, अब इस बात का लिहाज रखा जाना चाहिये कि आयन्दा जो लोग पुर्जे मंगाये उनको सहाय्यता मिले। उन पर टैक्स कम लगे। टैक्स ज्यादा होने की वजह से लोग पूरी मशीन मंगाते हैं और साथ ही साथ पुर्जे भी मंगा लेते हैं, ताकि एक मशीन के साथ दूसरी मशीन के पुर्जे भी मिल जायें। इस का नतीजा यह होता है कि लोग पुर्जे नहीं मंगाते हैं और इस तरह से पूरी मशीन ही मंगाते हैं। इससे देशी उद्योग को नुकसान होता है। इस तरह की जो गड़बड़ी क्लासिफिकेशन से हो रही है वह ठीक नहीं है। इसलिये मैं माननीय मंत्री जी से प्रार्थना करूंगा कि क्लासिफिकेशन बनाते वक्त वे इन सब गड़बड़ियों को दूर करेंगे। अंत में मुझे यही कहना है कि मैं इस बिल का समर्थन करता हूँ और पूर्ण रूप से समर्थन करता हूँ।

SHRI B. R. BHAGAT: Madam Deputy Chairman, I am grateful to the hon. Members who have participated in this debate yesterday and today and I am glad to note that, although some hon. Members did point out what, according to them, are certain deficiencies in the Bill or certain loopholes as they described in some of the clauses, on the whole, they have welcomed this measure. They have referred to various clauses and a number of hon. Members have referred to the same clauses. First of all, I should like to refer to the hon.—a distinguished jurist as he is—Mr. Sapru, who has dealt with certain points of law and certain other

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clauses. I must confess that it is not with a view to joining issue with him on any point of law—because he has been a very distinguished jurist and my knowledge of law is very perfunctory—but it is with a view to clarifying certain points which he has raised that I want to refer to him. Before I do that let me mention one point of procedure that he raised. In that connection he referred to the Badhwar Committee and said that although the Committee submitted its report in 1958, the Government introduced the Bill only in 1962. And then he asked: Why this long period of gap? Madam,

the hon. Member would have seen that the terms of reference of that Committee were such as to deal with the procedure and organisation and not with the law as such. They were mainly concerned with procedure and organisation, and they have referred to certain aspects of law while considering those procedures and organisation and have suggested some change in the law. So it was not as if they were suggesting on the measures of legislation.

SHRI ROHIT M. DAVE: An important change relates to the burden of proof. Is that procedure or substantive law?

SHRI B. R. BHAGAT: I am saying that according to the terms of reference the Committee was asked to enquire into the procedures and organisation of the Customs Department and not the law. While going into the procedures and organisation, they came across certain aspects of things and they suggested certain changes in the law. It may be that they did suggest a certain, what the hon. Member calls, substantive point of law. They did suggest something, but my point is this: it was not as if this Committee was asked to suggest changes in the law or to make recommendations as to how the law should be changed. So, when this Committee's report came and when we implemented the recommendations as regards proce-

dures and organisation, we were also considering some of the suggestions which they had made regarding changes in the law, and that took some time. That was considered very carefully in the Department, and therefore after going through the entire gamut of this law we have been able to bring forward this Bill. If it is said that when the report was submitted three or four years back this legislation has come only now, well, I could only say that there is no relation between the two.

Then, Sir, I refer to clause 123 on which a number of hon. Members have spoken and in which the important question of the transfer of onus of proof to the persons from whose custody the goods are seized features. Sir, it should be appreciated and I want to emphasize this fact that this is not a new provision. This clause corresponds to section 178A of the Sea Customs Act. This provision was introduced in 1955 on the recommendation of the Taxation Enquiry Commission's Report. The provision has thus been on the Statute Book for over seven years, and if for the past seven years traders have not found any real difficulty, I do not see how in future difficulty is going to arise.

Another point of importance which I would like to stress is that the onus of proof is transferred to the owner. It is only so in the case of gold, diamonds, and watches, commodities in which smuggling is rampant. Particularly in gold it has assumed such a proportion, of which the House is aware, that it has made a very serious inroad into our foreign exchange reserves. We have to take note of it. Therefore, it is only in the case of these items in which smuggling is going on on a very large scale that this burden of proof is sought to be transferred to the persons from whose custody the goods are seized. As for the point that it is a departure from the principles of natural justice, if we look at it from this point of view—I refer to this question because this was taken to the Supreme Court in

some cases recently and the judgment delivered by them deals with this point—I will do well to quote from their judgment. It reads as follows:—

"It would be apparent that this is in line with a great principle underlying the structure of the rights guaranteed by article 19, that is a balancing of the need for individual liberty in the matter *inter alia* of the right to hold property or of the right to trade with the need for social control in order that the freedoms guaranteed to the individual ~~subserve~~ the larger needs, moral, social, economical and political, of the community and thus ensure orderly progress towards the goal indicated by the Preamble."

I would like the House to note what a distinguished Judge and the Chief Justice of the Supreme Court have said:

"It would follow that the reasonableness of the restraint would have to be judged by the magnitude of the evil which it is the purpose of the restraint to curb or eliminate."

That is the significant line. Then the Supreme Court goes on:

"That the restrictions are in the interest of the general public is beyond controversy. But is the social good to be achieved by the legislation so disproportionately small that on balance it could be said that it has proceeded beyond the limits of reasonableness? We would answer this in the negative."

Actually they have suggested even going beyond this by a special law or some such thing when the social good is in danger. The only point is that the burden of proof is to be transferred not in a general way but in respect of certain goods in which the whole country, the whole House, both Houses of Parliament are agreed that it has become a great social evil. It is not for the first time that there has been this departure. There have been various judgments of Courts, and the

Speaker in the other House was good enough to point out that in recent times there have been certain departures from the principles of natural justice when very great social principles and the general well-being of the country were involved. So, this is in the nature of such departures which are wholesome and which do not nullify but rather strengthen the principles of natural justice.

Then another point was made about the tribunal. It was said that as in the income-tax law there should be an independent tribunal for the customs. Without any disrespect to the principles of an independent tribunal, let me emphasize this fact that there is a difference between the principles involved in revisions and appeals in income-tax cases and similar principles in appeals and revisions in customs cases. In the former it is a question of interpretation of the law. Whenever there are appeals in income-tax cases, it is the interpretation of the law which naturally the tribunal goes into, where all the judicial technicalities should be observed and are being observed. But in customs cases and particularly cases involving smuggling, it is not the points of law that are involved. It is rather merely the appreciation of facts that is involved. So far as appreciation of facts is concerned, I may venture to differ from my hon. friend, the elder statesman of this House, Shri Sapru, that a judicial mind is necessarily in a better position to appreciate facts than an experienced administrative officer. On this point I beg to differ. Senior officers of the Government who have had years of administrative experience of the working of a particular Department and who have considerable knowledge of the working of the trade and who are fully aware of the canons of natural justice, these senior officers are in my opinion equally suited, perhaps better suited to appreciate facts in a customs appeal than judicial officers who may perhaps be better equipped for sifting the niceties of a statutory enactment

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but who may have no experience of the working of the Customs Department.

SHRI AKBAR ALI KHAN: The suggestion was that one member should be judicial, not all.

SHRI B. R. BHAGAT: Then as for the actual working, this point that I have made is also corroborated by the actual working in appeal cases. I have tried to collect figures for three years to show as to how this scheme has been working. The total number of appeals decided in 1960 was 421. Of these, 160 were rejected.

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डिया : ४२० या ४२१ ।

SHRI B. R. BHAGAT: I am surprised that the hon. Member is observed with 420.

SHRI V. M. CHORDIA: I could not follow. I am noting them here. I do not know whether it is 420 or 421.

SHRI B. R. BHAGAT: I am rather surprised . . .

SHRI V. M. CHORDIA: What is the number?

SHRI B. R. BHAGAT: It is 421. The number of appeals rejected is 160, that is 38 per cent and the number of appeals in which relief was given is 261, that is 62 per cent. This is at the appeal stage. Then in the revision to the Government from those rejected, the number of revisions decided is 394. The number rejected is 155, that is 39 per cent and accepted is 60 per cent. Similarly, in 1962, the number of appeals rejected is 50 per cent and accepted is 50 per cent. Now, of those rejected, 42 per cent has been accepted and refund is given. In 1961 39 per cent was rejected. Of that 39.36 per cent has been accepted at the revision stage. So, if you see the actual working in the appeals, you will find that in about two-thirds of the cases, relief is given and the

appeals are accepted, and this will show that the appellate authorities are not working with any bias. They are doing things in an open-minded way, and wherever reliefs on points of facts and appreciation of facts are due, they are being given.

Then, a point was made in a similar connection by my friend, Shri Santhanam, as to why the Government should have the power to modify or annul the appeals decided. I think that he has not been able to appreciate the changes that have been introduced. Now, we have independent Appellate Collectors who will decide cases in appeal from below the Collectors. They will have nothing to do with the day-to-day functioning of the department so that they will have an open mind. Now, in income-tax cases from the Commissioner, the appeal can go to the Tribunal. From the Appellate Collectors similar provisions do not exist. In some cases, if the decision has been very harsh, what is the remedy? Therefore, if the culprit has been let off lightly due to some collusion or something, there should be the enhancement of the fine or punishment, and who should have the power? Is it the Collector or any other superior officer? So, the Select Committee decided that the powers of enhancement should be with the Government at the highest stage. Similarly, any modification may be made by the Board. That is why such a revision was introduced by the Select Committee and I think it is quite healthy and it should be welcomed.

Then, Shri Santhanam raised a number of other points with which I would like to deal briefly. He asked why the goods should be allowed to remain in the warehouses for three years, and he feared in this connection that it would cause congestion in the warehouses. The practice in most of the countries of the world is to allow a period of three to five years. These warehouses are different from the transit sheds on the wharf where there is sometimes congestion. The laying

down of the time-limit of three years for warehousing does not cause any congestion in the transit sheds. The time-limit of three years is there in the existing Act also. It is not a new provision.

Then he said that there were private warehouses, called bonded warehouses, in which they allowed the manufacturers to keep their goods under a bond for re-export. He asked why it should be allowed. It is being allowed in the interests of export. If the goods are in the bonded warehouses, we can exercise control. We allow such goods to be there duty-free. Then they go into the process of manufacture and they are exported from the bonded warehouses and they do not go out in any unauthorised way. That is why we allow it. He objected to it but I think it is a very salutary provision and it is in the interests of export.

Then, he said about drawbacks on used goods that they might be used and then again re-exported and that therefore the drawbacks given on them were unjustified. I may mention regarding drawbacks on used goods that the rate of drawback on such goods will not necessarily be 98 per cent. As indicated in clause 74(2) of the Bill, the Central Government has the power to fix different rates of drawbacks. So, it will be much less and we will take into consideration the depreciation of value and the other circumstances.

Then, Shri Chordia made a general allegation that there was quite a lot of corruption in the department. This is not the first time that he has made such an allegation.

श्री विमलकुमार मन्नालालजी चौरङ्गिया:
आप अगर अभी भी जांच करवाने को तैयार हों तो मैं प्रमाणित करने को तैयार हूँ। मैं तैयार हूँ आप तैयार हो जाइये।

SHRI B. R. BHAGAT: One of the ways in which he described the unreasonableness of the Customs Officers

was like this. Suppose that a particular officer has got some ill-will. He named me and said that I am a Minister and tomorrow I may not be a Minister. The officer can come and seize my watch and say that it is a smuggled one. I am sorry to say that it is hardly likely. It betrays a bias against the officers. It has never happened. But even so, if he goes through the Bill, he will find that there is a provision for it. Suppose the watch is seized. The officer of the Customs must have reasonable belief that the watch is a smuggled one. Mr. Chordia is wearing a watch. Maybe it is new. No Customs officer, however high and mighty he may be, will dare to go and touch him and say that it is a smuggled watch because he would not have a reasonable basis of belief to say that. Then, suppose he did that. We have taken powers in another clause, clause 136, to prosecute that officer if it is shown that he has done it deliberately or wilfully or without any reasonable basis of belief. Then, he can be prosecuted. That is a special power that we have taken under this Bill that such an officer can be prosecuted. So, to base his judgment on such a preconceived bias against such officers, I do not think, is a very healthy thing. But even so, we do not deny that there is corruption in this department or in any other department. Apart from being an administrative evil, corruption is a social evil also. Constituted as we are in the society, our outlook, our way of life, our sense of values, public values, all these are there. Some hon. Member asked why we were giving them more powers, and said that in western countries, they gave more powers to the Customs officers, to the administrative officers because they were very conscientious. Then, some hon. Members retorted that they were more conscientious because the people were also more conscientious. I do not say that we are not very much less conscientious. But the point is this: Corruption cannot be rooted out by providing any administrative mechanism. A proper psychology has

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to be created. Of course, we must be armed with all the powers for dealing with such defaulting officers or whoever he may be. But my main point is that in these respects no generalisation will help to condemn in a general way that the whole department is corrupt, that every officer is corrupt and therefore no power should be given, well, Sir, that will defeat the very basis, the very purpose of this Bill because, while speaking on the motion . . .

श्री विमलकुमार मन्नालालजी चौराड़िया :
मेरा खयाल है किसी ने ऐसा तो नहीं कहा कि सब करप्ट हैं। कुछ लोग हैं और इसके लिये हमें प्राकाशन लेना चाहिये यह कहा गया है। यह नहीं कहा गया कि सब करप्ट हैं।

SHRI B. R. BHAGAT: He said that these powers are being given, and because the officers are corrupt, they will abuse them and that is why he dramatically gave an example and said that they come and say, "This watch is smuggled", and we have no remedy there. The point is not this. Wherever we have taken powers, our idea has been to give only such powers as are adequate to stop smuggling. While making the motion about this I explained that the purposes of the Bill were two, one to facilitate and help trade, and we have given some examples in which we have tried to give facilities to trade whether the goods are in bonded warehouses or with the port authorities. Mr. Santhanam took objection as to why we have changed the wording and put "not" in clause 13 to read "not be liable to pay the duty" etc., and said that the importer himself may pilfer the goods and may escape duty. But that is not the point. Now if he pilfers, we have other powers to confiscate the goods, but we wanted to provide for genuine cases where the goods are with the port authorities and pilferage takes place before he takes delivery of the goods, and here we say we will not charge the duty

on the goods to the extent that they are pilfered.

Then regarding clause 118 it was asked what happened where a diamond, which was a smuggled diamond, was mixed up with other diamonds in a packet. If it could be found out that the packet contained a smuggled diamond, then we will not separate them and seize and confiscate the smuggled diamond only. The whole packet will be confiscated. This separation and confiscation of the smuggled diamond only will take place in the shops or in the towns and cities, where they deal in diamonds and where, say, of the ten diamonds, nine may be from a different source and one may be a smuggled one, in a shop or in a city. But in the actual importation, when a person imports them, either the whole lot is smuggled or is not because, if he imports ten diamonds, it would not be that five would be smuggled and five would be against proper import licence. So on this point we have made a distinction, and in the case of actual importation in the port, well, if smuggled diamonds are found out, the whole package will be confiscated. But we have given relief in the case of shops or in cities where the hardship may be genuine. So my point is this that wherever we have felt that we can help genuine trade or genuine exports we have tried to liberalise the provisions. But the other feature of the Bill is to tighten anti-smuggling measures and these are the powers which we seek whether it is in the matter of the onus of proof or in the matter of giving more powers to the customs officers. Now in the matter of the issue of search warrants objection was raised as to why the Assistant Collectors of Customs are empowered to search premises. It is not a new power, and it is not only in this country. In U.K. or Australia such powers are given to the revenue officers. Even in this country, in the matter of sales tax or income-tax or estate duty such powers to search premises are given to the officers of those departments and I fail to under-

stand why on such an important measure, when the whole House is convinced that smuggling, particularly of gold, has assumed a very dangerous proportion, and when we want to check that, to curb that and want to give powers to the Assistant Collector of Customs with that end in view, why such a provision is objected to. On the one hand the point is emphasised that smuggling should be prevented and there I am one with the Government and am one with the House and that is being said. On the other hand, whatever powers we want to take, whatever preventive powers we want to have, well, they are objected to. So I think that attitude will not help, because there is an inherent contradiction in it, and in all the powers that we are seeking to have we are guided by the sole motive of not only stream-lining the measure, simplifying the measure so as to facilitate trade and export, but also to strengthen the administration to deal effectively and successfully with the menacing proportions of smuggling of gold or other goods.

[THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) in the Chair.]

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That the Bill to consolidate and amend the law relating to customs, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): We shall now take up the clause by clause consideration of the Bill.

Clause 2—Definitions

SHRI V. M. CHORDIA: Sir, I beg to move:

1. "That at page 3, lines 20-21, for the words 'trade in India' the words 'trade at place of clearance in India' be substituted."

माननीय उपसभाध्यक्ष महोदय, यह जो संशोधन रखा है यह मार्केट प्राइस की परिभाषा के संबंध में रखा है। अभी जो परिभाषा है वह इस प्रकार है:

"'market price', in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India;"

अब मैं निवेदन करता हूँ कि जैसे मान लीजिए बम्बई में कोई ऐसी चीज है जिसकी मार्केट प्राइस तय करनी है इस कानून के तहत, जिस पर हमको इम्पोर्ट ड्यूटी या एक्सपोर्ट ड्यूटी लगानी है तो उसका जो एसेसमेन्ट या वैल्यूएशन (valuation) करना होगा वह मार्केट प्राइस के आधार पर हो सकेगा। मार्केट प्राइस हमारे यहां जो डिफाइन की गयी है वह यह है:

"wholesale price of the goods in the ordinary course of trade in India"

अब भारतवर्ष में बम्बई में अलग भाव हो सकता है, कलकत्ते में अलग भाव हो सकता है। ट्रान्सपोर्ट के खर्च की वजह से कोई ऐसी चीज हो सकती है जिसका बम्बई में कम भाव हो, कलकत्ते में अधिक हो, कोई चीज ऐसी हो सकती है जिसका कलकत्ते में अधिक भाव हो, बम्बई में कम हो। तो ऐसी स्थिति में हम इन्डिया की कीमत के आधार पर चलें तो एक कीमत नहीं हो सकती है। हमारा देश छोटा देश नहीं है। ऐसी स्थिति में जिस चीज का वैल्यूएशन (valuation) करना हो, मार्केट प्राइस तय करना हो, उसी स्थान के मार्केट प्राइस के आधार पर निर्णय लेना चाहिये, न कि भारतवर्ष के आधार पर, जिससे कि ठीक निर्णय पर आने की संभावना नहीं है और ऐसी स्थिति में यह संशोधन इसी आशा से रखता हूँ कि मार्केट की जो परिभाषा रखी है और उसका बहुत व्यापक रूप दिया गया है उसको निश्चित करके रख दीजिए। यानी दिल्ली में किसी चीज के प्राइस का वैल्यूएशन

[श्री विमलकुमार मन्नालालजी चौरड़िया]
(valuation) करना चाहते हो, तो दिल्ली में उसकी क्या कीमत है, वह आपको तय करना चाहिये। यह नहीं कि आप कलकत्ता और बम्बई में जो कीमत है उसके आधार पर वह कीमत रखें। अगर आप बम्बई और कलकत्ता के आधार पर उसका निर्णय करें तो वह कुछ न्यायसंगत प्रतीत नहीं होता। इसी आशय से संशोधन रखता हूँ। मंत्री जी चाहें तो स्वीकार करें, चाहे अस्वीकार करें।

The question was proposed.

श्री बी० आर० भगत : मैं यह संशोधन मंजूर करने से लाचार हूँ क्योंकि माननीय सदस्य ने जो मार्केट प्राइस की बात कही है कि एक जगह जहाँ क्लीयरेन्स हो वहीं से होना चाहिये, इसमें कई दिक्कतें पैदा हो जायेंगी। एक तो वे शायद यह सोचते हैं कि सिर्फ कस्टम ड्यूटी लगाने के लिये जो कीमत हम सोचते हैं, उसी के लिये मार्केट प्राइस की जरूरत होती है। अगर यह बात है तो उसमें तो मार्केट प्राइस लिखी भी नहीं, क्लॉज १४ में मार्केट प्राइस नहीं लिखी है। वह हम दूसरे ढंग से सोचते हैं। मगर अभी दिक्कत यह है कि अगर मार्केट प्राइस को जहाँ चीज आती है, क्लीयरेन्स होता है, वहीं रखेंगे; तो जैसा कि हमारा एक्सपोर्ट बहुत जगहों से होता है, कोई मामूली पोर्ट ट्यूटीकोरिन से अगर कोई चीज एक्सपोर्ट होती है, तो हो सकता है, वहाँ पर उस चीज की कीमत कोई न हो; तो उसकी कीमत जानने के लिये हमारा मार्केट प्राइस होलसेल प्राइस में सबसे ज्यादा होगा, वही कीमत रखेंगे। ड्राबैक देना है, किसी चीज के एक्सपोर्ट के लिये ड्राबैक देना है, वहाँ उसकी कोई कीमत नहीं होगी इसलिये हम जो सबसे बड़ा बाजार होगा, होलसेल बाजार, उसकी कीमत लेंगे। इसी तरह से स्मगलड गुड्स के बारे में है क्योंकि आप माननीय सदस्यों को मालूम है कि हमारा कोस्टल लाइन बहुत बड़ा है और कस्टम बॉन्ड भी बहुत बड़ा है और जहाँ हम माल

पकड़ते हैं वहाँ न कोई बाजार होता है तो वहाँ क्लीयरेन्स का हम मार्केट प्राइस नहीं रख सकते। इसलिये अगर हम उनका संशोधन मानें तो हमें बड़ी कठिनाई होगी और इसलिये हम यह संशोधन मानने से लाचार हैं।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Would you like to press it or would you withdraw?

SHRI V. M. CHORDIA: I will not withdraw.

SHRI B. R. BHAGAT: He never withdraws.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

1. "That at page 3, lines 20-21, for the words 'trade in India' the words 'trade at place of clearance in India' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That clause 2 stand part of the Bill."

...

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 to 16 were added to the Bill.

Clause 17—Assessment of duty.

SHRI V. M. CHORDIA: The question is:

2. "That at page 8, line 33, after the words 'undue delay' the words 'but not exceeding a week' be inserted."

माननीय उपसभाध्यक्ष महोदय, यह जो संशोधन रखा है, उसका मतलब यह है कि माल के असेसमेन्ट कराने में जो लोगों को तकलीफ होती है वह दूर की जाय। जो लोग इम्पोर्ट और एक्सपोर्ट का काम करते हैं, उन्हें

अपने माल का असेसमेन्ट कराने में काफी बाधा का सामना करना पड़ता है। माननीय मंत्री जी का मानना करना पड़ता है। माननीय मंत्री जी ने इस बिल में जो "अनड्यू डिले" का शब्द रखा है, उसकी कोई मियाद नहीं है, उसकी कोई सीमा नहीं है। इसलिए मंत्री जी यह प्रार्थना है कि आप इस बारे में कोई निमित्त बांध दें कि इतने दिनों के अन्दर असेसमेन्ट कराने की बात हो जायेगी, तो इसका नतीजा यह होगा कि जो वहाँ पर गड़बड़ी चलती है वह बन्द हो जायेगी। आजकल देखने में यह आता है कि असेसमेन्ट करने में बहुत भ्रष्टाचार होता है। अगर आप सात दिन की अवधि रख देते हैं तो जो अच्छे कर्मचारी हैं वे तो पहले भी अपना काम जल्दी कर लेते थे और अब भी करेंगे, लेकिन जो कर्मचारी असेसमेन्ट के काम में देरी लगाते हैं, भ्रष्टाचार करते हैं, उनके ऊपर एक तरह से चैक हो जायेगा और उन्हें सात दिन के अन्दर अपना काम पूरा करना पड़ेगा। इसलिए मैंने यह संशोधन रखा है, जिससे असेसमेन्ट का काम जल्दी हो सके। इसके साथ ही साथ मैं माननीय मंत्री जी के सामने यह उदाहरण भी रख देना चाहता हूँ कि एक विदेशी ने कुछ पेंटिंग्स भारतवर्ष से खरीदी और वह उनको यहां से भेजने के लिए बम्बई कस्टम पर गया लेकिन एक काफी असेस तक निर्णय नहीं हुआ और बरसात में उसका पेंटिंग वहीं पर बिगड़ गया; उनका असेसमेन्ट विभाग से नहीं हो सका, लेकिन उन सारी पेंटिंग्स का असेसमेन्ट हो गया। इस तरह से इस काम में इतनी देरी होती है तो क्यों नहीं इसमें आप बन्धन लगा देते हैं जिससे यह काम एक निश्चित अवधि के अन्दर पूरा हो जाय।

अगर हम सात दिन की अवधि निश्चित कर देते हैं तो आजकल जो गड़बड़ असेसमेन्ट करने में हम देखते हैं, वह दूर हो जायेगी। असेसमेन्ट न होने की वजह से लोगों का माल चुरा लिया जाता है, माल खराब हो जाता है और जगह भी घिरी रहती है। इसलिए मुझे आशा है कि सरकार मेरे इस संशोधन को स्वीकार कर लेगी।

The question was proposed.

श्री बी० आर० भगत : अगर इस संशोधन को मान लिया जाय तो इसमें बहुत दिक्कत होगी। बहुत सी चीजें जो आयात होती हैं ऐसी होती हैं, जिनको कस्टम हाउस की लैबोरेटरी में जांच करने के लिए बाहर भेजना पड़ता है। इस तरह से जो चीज जांच के लिए जायेगी, उसके आने जाने में काफी समय लग सकता है और जांच में भी समय लगेगा। इसलिए अगर हम एक हफ्ते की मियाद की बात को मान लेते हैं तो इसमें एडमिनिस्ट्रेटिव दिक्कत होगी। इस बिल में जो "अनड्यू डिले" का शब्द रखा गया है, उसका यह मतलब है कि एडमिनिस्ट्रेटिव तरीके से जितनी जल्दी हो सके यह कार्य किया जाय। यह बात ठीक है कि कभी कभी बहुत देरी लग जाया करती है और सरकार की यह कोशिश होती है कि जल्दी से जल्दी और ज्यादा से ज्यादा गुड्स क्लियर हो जाये। अगर हम मियाद की बात मान लेते हैं, तो हमें कानूनन उस काम को किसी न किसी तरह से करना ही होगा, जो कि एडमिनिस्ट्रेटिव दृष्टि से ठीक मालूम नहीं देता है। इसलिए मैं माननीय सदस्य का संशोधन स्वीकार नहीं कर सकता हूँ।

THE VICE-CHAIRMAN (SHRI ARBAH ALI KHAN): The question is:

2. "That at page 8, line 33, after the words 'undue delay' the words 'but not exceeding a week' be inserted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That clause 17 stand part of the Bill."

The motion was adopted.

Clause 17 was added to the Bill.

Clauses 18 to 26 were added to the Bill.

Clause 27—Claim for refund of duty.

SHRI V. M. CHORDIA: Sir, I move:

3. "That at page 13, after line 18, the following further proviso shall be inserted, namely:—

'Provided further that the limitation of six months shall not apply in cases where duties are realised or collected in excess due to a wrong classification or misrepresentation on the part of the customs authorities regarding the basis of duty realised or collected and where subsequently the mistake is detected or found out and such excess duty shall be refundable.'

उपसभाध्यक्ष महोदय, इस विधेयक में पुराने विधेयक की अपेक्षा जो संशोधन किया गया है, उसके लिए मैं आपको धन्यवाद देता हूँ। पुराने बिल में क्लेम रिफंड करने के बारे में तीन महीने की अवधि थी लेकिन इस बिल में वह छः महीने कर दी गई है, जो कि बड़ी खुशी की बात है। एक और काम रह जाता है जिसे मैं ने अपने प्रोवाइजों में स्पष्ट किया है। वह इस प्रकार से। अगर दस आदमी किसी मशीन का इम्पोर्ट करते हैं और किसी कर्मचारी की गलती की वजह से उस पर दूसरे आइटम के अन्तर्गत टैक्स लगा लिया जाता है तो अगर दस आदमियों में से एक आदमी अपील करता है और उसको रिफंड मिल जाता है तो न्याय के अनुसार दूसरे ९ आदमियों को भी मिलना चाहिये। इसलिए मेरे संशोधन का मतलब यह है कि जब इस तरह की गलती कर्मचारियों

की ओर से हो जाती है तो ६ महीने की अवधि बीत जाने के बाद भी उन लोगों को रिफंड मिलना चाहिये। यही मेरे संशोधन का आशय है और मुझे आशा है कि माननीय मंत्री जी मेरा संशोधन स्वीकार कर लेंगे।

The question was proposed.

श्री बी० आर० भगत : माननीय सदस्य ने शायद क्लॉज २८ को नहीं देखा जिसमें यह कहा गया है कि अगर किसी गलती की वजह से इस तरह की बात हो गई तो कस्टम आफिसर सबको नोटिस देगा और अगर वे ६ महीने के भीतर क्लेम के लिए अपील कर सकते हैं। अगर ६ महीने के बाद इस तरह के क्लेम को माना जाये, तो दिक्कत यह होती है कि जो माल मंगाता है वह उस अवधि के समाप्त होने के बाद अपना सामान बेच देता है और फिर जो असेसमेन्ट करने में गलती हुई हो उसको ठीक करने में दिक्कत होती है। फिर भी जब कभी इस तरह के केसेज हो जाते हैं तो अधिकारी उन पर गौर करते हैं; समय के बाद में जो कुछ सहूलियत दे सकते हैं वे देते हैं। इसलिए माननीय सदस्य के संशोधन का मानना उचित नहीं होगा।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Do you press it?

SHRI V. M. CHORDIA: Yes, Sir.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

3. "That at page 13, after line 18, the following further proviso shall be inserted, namely:—

'Provided further that the limitation of six months shall not apply in cases where duties are realised or collected in excess due to a wrong classification or misrepresentation on the part of the customs authorities regarding the basis of duty realised or collected and where subsequently the mistake is detected or found out and

such excess duty shall be refundable."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That clause 27 stand part of the Bill."

The motion was adopted.

Clause 27 was added to the Bill.

Clause 28—Notice for payment of duties not levied, short-levied or erroneously refunded.

SHRI V. M. CHORDIA: Sir, I move:

4. "That at page 13, line 34, for the words 'proper officer may' the words 'proper officer shall' be substituted."

माननीय उपसभाध्यक्ष महोदय, यह जो संशोधन रखा गया है, यह इस उद्देश्य से रखा गया है कि इस क्लॉज में यह है :

"notice on the person chargeable with the duty which has not been levied or which has been so short-levied or to whom the refund . . ."

तो यह वसूली के लिए नोटिस है। गवर्नमेंट की तरफ से वसूली करनी हो, तो विदिन सिक्स मंथ्स आफिसर चाहे तो, जिसे वसूली करनी हो, उनको नोटिस दे करके उनसे वसूली कर सकता है। मेरा यह निवेदन है कि इसमें "मे" —may— रखने की वजह से दो तरह की शंकाएँ पैदा होती हैं। एक तो वह आफिसर, जिसको सरकारी पैसा वसूल करना है, वह लापरवाही बरत सकता है। दूसरे शब्द "मे" —may—रखने की वजह से वह छः महीने के बाद भी चा तो नोटिस दे करके वसूल कर सकता है। इस सम्बन्ध में मैं यह जानकारी चाहता हूँ कि यदि विदिन सिक्स मंथ्स किसी ने माल दूसरे को बेच दिया तो उसकी वसूली किसकी तरफ होगी। मैं प्रार्थना करूँगा कि

"मे" —may— की वजह से हमको ऐसा भ्रम होता है कि इसमें ऐसी गुंजाइश है कि आफिसर चाहे तो छः महीने के बाद भी वसूली करने के लिए नोटिस दे सकता है। ऐसी स्थिति में "शैल"—shall— शब्द का उपयोग करने से उस पर बन्धन होगा कि "विदिन सिक्स मंथ्स"—within six months—उसे जो कुछ करना हो, करे और छः महीने के बाद उसको कुछ करने का अधिकार नहीं रहेगा। इसी से मैंने यह संशोधन दिया है और मुझे आशा है कि इस पर या तो आप संतोषजनक उत्तर देंगे या स्वीकार करेंगे।

The question was proposed.

श्री बी० आर० भगत : इसमें काफ़ी व्यावहारिक अड़चन पड़ेगी। अगर छः महीने न पता चले और फिर उस पर ड्यूटी लगे तो यह चूँकि बिल्कुल जायज़ नहीं होगा और इससे दिक्कत होगी, इसलिए "मे" शब्द का प्रयोग ही अच्छा है।

श्री धिमलकुमार मन्नालालजी चौरडिया : तो फिर छः महीने काहे को रख दिये। खुला खाता रख दीजिये।

श्री चन्द्र शेखर (उत्तर प्रदेश) : तब पब्लिक को भी दीजिये छः महीने का अधिकार।

[THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

4. "That at page 13, line 34, for the words 'proper officer may' the words 'proper officer shall' be substituted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That clause 28 stand part of the Bill."

The motion was adopted.

Clause 28 was added to the Bill.

Clauses 29 to 101 were added to the Bill.

Clause 102—Persons to be searched may require to be taken before Gazetted Officer of Customs or Magistrate

SHRI V. M. CHORDIA: Sir, I move:

5. "That at page 34, line 16, the words 'if such person so requires' be deleted."

माननीय उपसभाध्यक्ष महोदय, अभी विधेयक की धारा १०२ इस प्रकार है :

"When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest gazetted officer of customs or magistrate."

हम इसमें से ये शब्द कम करवाना चाहते हैं :

"if such person so requires"

ये शब्द रखने की वजह से वह जो अधिकारी उसको सर्च करना चाहते हैं उन पर यह बाधक नहीं होगा कि वह गजेटेड आफिसर या मैजिस्ट्रेट के पास ले जाये। इसके अभाव में वे खुद सर्च कर सकते हैं, चाहे वह कहता रहे कि मुझे किसी गजेटेड आफिसर या मैजिस्ट्रेट के पास ले चलो। इक्विप्रिटी और जुडिशियरी में अथवा एक विज्ञप्त अधिकारी में और एक साधारण आदमी में बहुत फर्क होता है और अगर कोई आदमी यह कहता रहे कि मुझे सर्च करने के लिए किसी गजेटेड आफिसर के पास ले चलो और उसको वहां न ले जाया जाय, तो उसको कोई इसका प्रमाण मिल नहीं सकता, क्योंकि कस्टम आफिस की चहारदीवारी में सब कस्टम के लोग होते हैं। वहां पर अगर कोई कहे कि मुझे आप सर्च करना चाहते हैं तो मुझे किसी गजेटेड आफिसर या मैजिस्ट्रेट के पास ले चलिये और अगर उसकी कोई सुनवाई न हो, तो उसका प्रमाण देना उसके लिए असंभव

हो जायेगा। मैं यह नहीं कहता कि उसको सर्च करने के लिए किसी मैजिस्ट्रेट के पास ही ले जाया जाय, बल्कि यदि आप उसकी सर्च कस्टम आफिस के ही किसी गजेटेड आफिसर या जिम्मेदार आदमी के सामने लेंगे, तो वह अधिक न्यायसंगत होगा। नहीं तो शंका सब जगह हो सकती है और शंका का कारण देना हम नहीं चाहते। इसीलिए ये शब्द कम करने की मैंने अपेक्षा की :

"if such person so requires"

और मैं आशा करता हूं कि मंत्री जी इसे स्वीकार करेंगे।

The question was proposed.

SHRI ROHIT M. DAVE: Sir, I entirely agree with the mover of the amendment that some protection is necessary to a person especially if he happens to be somewhere, on some land frontier where also there are customs areas and there is a possibility that an illiterate person or semi-illiterate person crossing over the land frontier might be harassed by some petty officials in the customs area, if this type of provision which is here is kept as it is. At the same time, I oppose the amendment because of the fact that it is likely to create more difficulties in other respects because if this amendment is accepted, it might come to this: Suppose I am about to emplane. Some officer comes to me and says: "You are suspected of carrying certain goods which are contraband and therefore you are to be searched." I have nothing on my person and I may immediately tell the officer: "All right, search me, there is nothing with me, my plane is going away and I am not prepared to wait." If on the other hand, this amendment is accepted, it would mean that compulsorily I will have to be taken to some gazetted officer with the result that some time might be lost in the process and thereby I might lose my plane or ship or any other transport which I am about to get in. So while the amendment and the purpose behind this amendment are very desirable, I am afraid it might create cer-

tain difficulties and therefore the Government might find some way out for protecting the illiterate and semi-literate who might be harassed in this way. Perhaps they might do it by some rules or something but some protection which the mover of the amendment has in mind is necessary, though the amendment as such is more likely to create difficulties than solve them.

SHRI B. R. BHAGAT: Sir, I am sorry that I am not able to accept this amendment for the simple reason that the same facilities or some conveniences that are meant to be provided to the person concerned will be denied in some cases if we accept this amendment. For example, according to this amendment if the person who is searched while crossing the border or any airport or a seaport so wants, he will be taken to the nearest gazetted officer or magistrate. The hon. Member has cited the example of emplaning a plane. Usually in most of the airports, there will be a gazetted officer and if he wants it, the difficulty will not arise but we have a very long land customs border and the idea is to prevent the smugglers, not the illiterate or semi-literate persons. Everybody comes, he is asked or searched. That is the usual practice. We search a number of passengers each day and they pass on. There is no question further. This is to prevent smuggling, and the smugglers, even if they may be illiterate or semi-literate, are very knowledgeable and they are conscious of the law. They would not be the persons who do not know that, if they want to, they have the power, but the real difficulty would be in such far-off or out-of-the-way places in the borders. There they are crossing and they are to be searched and if we remove this, they have to be taken to the gazetted officers who may be 25, 30 or 50 miles away or to a magistrate who may be so far away. So necessarily they would have to be detained. In other cases, if he wants to be searched, if he is innocent, he would pass out but if he insists that

he should be taken, there might be several hours' delay or even a delay of overnight because he has to be taken to the gazetted officer and the officer cannot leave his work and take him to the nearest gazetted officer. It is for this simple reason that this provision is there. This is only enabling. Everybody will know that if he wants or if there is genuine need for it, he can ask and he will be taken.

श्री बिसलकुमार मन्नालालजी चौरड़िया :
जो तर्कपूर्ण दलील माननीय दवे साहब ने दी है और जो उत्तर माननीय मंत्री जी ने दिया है उसके प्रकाश में मैं अपने इस संशोधन को वापस लेने की इच्छा चाहता हूँ ।

Amendment No. 5 was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That clause 102 stand part of the Bill."

The motion was adopted.

Clause 102 was added to the Bill.

Clauses 103 and 104 were added to the Bill.

Clause 105—Power to search premises.

SHRI V. M. CHORDIA: Sir, I beg to move:

6. "That at page 36, line 15, after the words 'he may' the words after obtaining search warrants from the magistrate of the area' be inserted."

जहाँ तक व्यक्ति विशेष की सर्च लेने का सवाल था, तो दलील दी गई कि जहाज उड़ रहा हो और वहाँ गजेटेड आफिसर नहीं मिले तो सारी गड़बड़ी हो जायगी, मगर मकान कहीं जाने वाला नहीं है, स्थान कहीं जाने वाला नहीं है, सामग्री जाने वाली नहीं है, क्योंकि हमारे कस्टम डिपार्टमेंट के कर्मचारी उसको घेर लेते हैं ।

*For text of amendment, vide col. 2328 *supra*.

श्री बी० आर० भगत : सामग्री चली जाती है ।

श्री विमलकुमार मन्नालालजी चौरडिया : जैसा भय बता रहे हैं, वैसा नहीं है । या तो विभाग के उन कांस्टेबलों पर शक है कि वह गड़बड़ स्वयं कर देते हैं नहीं तो मुझे ऐसा विश्वास है कि जब कहीं भी कुछ खबर लगती है, तो कस्टम्स के कर्मचारी ऐसा प्रयास करते हैं कि चारों तरफ से घेर लिया जाय ताकि कहीं से सामान बाहर न निकल जाय । मैं प्रार्थना करूंगा कि एग्जीक्यूटिव के ब्रेन में और जुडीशियरी के ब्रेन में कुछ फर्क है ; और हम एग्जीक्यूटिव की हैसियत से सोचते हैं कि कहीं गड़बड़ न हो जाये, लेकिन किसी बेचारे की इज्जत पर हम हमला न कर दें और किसी निराधार कारणों की वजह से किसी की सर्च न ले लें, यह भी देखना है । इसका एक खास कारण यह है कि हमने अधिकारियों की फौज तैयार की है और इसमें "आफिसर्स" कायम करने के व्यापक अधिकार रखे हैं, उसको देख कर इसके मिसयूज होने का अधिक भय है, और उसको रोकने के लिये यह अत्यंत आवश्यक है कि जब तक सर्च वारंट मैजिस्ट्रेट से प्राप्त न करें, तब तक किसी की सर्च न लें । इसका प्राविजन ऐसा है :

"If the Assistant Collector of customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things."

वह आफिसर खुद सर्च करता है तो उस पर भी विश्वास किया जा सकता है, लेकिन

असिस्टेंट कलेक्टर साहब किसी को भी एप्वाइंट कर सकते हैं । धारा ३ में आखिर में, जो आफिसर्स के पद बनाये गये हैं, उसमें असिस्टेंट कलेक्टर आफ कस्टम्स हैं और धारा ४ (२) के अन्तर्गत उस आदमी को उसके नीचे के आफिसर बनाने का अधिकार दिया गया है । वह इस तरह से है :

"Without prejudice to the provisions of sub-section (1) the Central Government may authorise the Board, a Collector of Customs or a Deputy or Assistant Collector of Customs to appoint officers of customs below the rank of Assistant Collector of Customs."

तो उनको भी अधिकार दे रखा है और मुझे भय है कि उसकी वजह से सारी गड़बड़ होने की सम्भावना है । जो शंका हवाई जहाज से उड़ जाने के बारे में है, वह इसमें नहीं है । ऐसी स्थिति में मैं प्रार्थना करूंगा कि वारंट ले करके सर्च करने का अधिकार इसमें रखा जाये, तो अच्छा होगा, नहीं तो जैसा श्रीमान ठीक समझें ।

The question was proposed.

श्री बी० आर० भगत : इस धारा पर काफी बहस हो चुकी है और अभी थोड़ी देर पहले मैंने सदन को समझाया है कि अगर हर बार असिस्टेंट कलेक्टर को या कस्टम्स आफिसर्स को मैजिस्ट्रेट से वारंट लेने के लिये जाना पड़े तो स्मर्गलिंग का जो सामान है या जो डाक्यूमेंट्स वगैरह हैं, वे गायब हो जाते हैं या बर्बाद कर दिये जाते हैं । इसलिये मकानों को या जहां वह छिपा हो, उन स्थानों को सर्च करने, उनकी छानबीन करने के लिये यह अधिकार कस्टम्स आफिसर्स को होना चाहिये और जैसा कि मैंने बताया कि इंकमटैक्स में भी, सेंट्रल एक्साइजेज में भी, सेल्स टैक्स में भी और स्टेट एक्साइजेज में भी ऐसा अधिकार है । यह कोई नया अधिकार नहीं है । इसलिये अगर हम यह संशोधन मान लें, तो हम स्मर्गलिंग

के काम को रोक नहीं सकते और यह जरूरी है कि ये अधिकार कस्टम्स आफिसर को हों।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

6. "That at page 36, line 15, after the words 'he may' the words 'after obtaining search warrants from the magistrate of the area' be inserted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That clause 105 stand part of the Bill."

The motion was adopted.

Clause 105 was added to the Bill.

Clauses 106 to 117 were added to the Bill.

Clause 118—Confiscation of packages any their contents.

SHRI V. M. CHORDIA: Sir, I move:

7. "That at page 43, for clause 118, the following be substituted, namely:—

'118. (a) Where any goods imported in a package are liable to confiscation it will be confiscated.

(b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation it will be confiscated.'

Sir, I have slightly changed my amendment.

यह मैंने संशोधन दिया है और मंत्री जी ने जो जवाब दिया, वह मुझे कुछ तर्कयुक्त लगा नहीं। मंत्री जी ने कहा कि ऐसा हो नहीं सकता कि विदेश से कोई इम्पोर्ट आये और उसमें स्मगलिंग का सामान नहीं आ सके। मैंने बिल्कुल स्पष्ट शब्दों में कहा

था। उदाहरण के लिये यह ले लीजिये कि किसी ने १० डाइमंड्स बाहर से मंगवाये और उसमें भूल से एक और डाइमंड आ जाता है, जिसका आपके यहां डिक्लेयरेशन नहीं है, जिसका बिल नहीं है, जिसकी कोई व्यवस्था नहीं है तो ऐसी स्थिति में जो एक डाइमंड पैकेज में है, वह जब्ती के काबिल है या नहीं, इस कानून की धारा के अन्तर्गत, इस विधान की धारा के अन्तर्गत आप उस एक डाइमंड को, जो कि बिना बिल के है, बिना ड्यूटी के है, बिना डिक्लेयरेशन के है, उस पैकेज के अन्तर तो आप सारे के सारे डायमन्ड जब्त कर लेंगे। जो कानून की व्यवस्था है, उसके अनुसार ऐसी स्थिति में एक डाइमंड की घजह से सारे दसों डाइमंड जब्त हो जायेंगे। वैसे ही भेजने के समय भी हो सकता है। वह यह कि सम्भवतः पैकेज में भूल से गड़बड़ हो सकती है। तो ऐसी स्थिति में जब कि हमको अपने कानून के अन्तर्गत दूसरी पेनल्टीज लगाने का अधिकार है— इस तरह से स्मगल हो कर गुड्स आये, तो उसके ऊपर क्या क्या कार्यवाही की जाय— एक डाइमंड के पीछे या एक कैरेट के पीछे २५० कैरेट को जब्त कर लेना यह कोई न्यायसंगत बात प्रतीत नहीं होती।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): To have effective control on smuggling.

श्री विमलकुमार मन्नालालजी चौरडिया : उसके साथ अगर न्याय को एक तरफ रख कर केवल डंडा हाथ में रख कर काम करना चाहते हैं तो मुझे कुछ कहना नहीं है। इसके बारे में जितना भी कंट्रोल चाहिये, वह एक साल तक देकर देखने को तैयार हूं, लेकिन मुझे इसमें शक है कि आप इसको रोक सकेंगे। मुझे डाउट है, क्योंकि जिस एजेंसी से काम लेते हैं, वह एजेंसी इतनी गन्दी है उसके हाथ इतनी गन्दगी से भरे हुए हैं कि इसकी सफाई करने में ही इतना समय लग जाने वाला है और उसमें ही यह समय पूरा हो जायेगा।

[श्री विमलकुमार मन्नालालजी चौरडिया]
तो ऐसी स्थिति में हम यह प्रार्थना करते हैं कि काम करने के पीछे, लक्ष्य की प्राप्ति के पीछे हम न्याय को एक तरफ न रख दें। हम यह जरूर चाहते हैं कि आपको, आपके अधिकारी को, जो कोई स्मगलर मिले, उसे अधिक से अधिक सजा दी जाय और उसे जरूर देना चाहिये, लेकिन अगर किसी ने इम्पोर्ट किया अपने किसी काम के लिये या मैंने एक अंगूठी मंगवाई और उसका वजन ज़रा सा बढ़ गया, तो सारी ज़ब्त हो जायगी, बिल में थोड़ी सी व्यवस्था नहीं, उस की बचत के लिये। अगर तोलने में गड़बड़ हो गई, तो उसकी वजह से सारे का सारा माल ज़ब्त कर लेना यह ठीक नहीं है। इसी आशय से यह संशोधन दिया है। आप दूसरे कानून की धाराओं के अन्तर्गत जितना भी उनको सज़ा देनी है, जो हैबिचुअल स्मगलर्स हों, उनको दीजिये, लेकिन जिनसे भूल हो गई हो, उनके साथ रियायत कीजिये। मगर इस में जो बंधन आप लगा रहे हैं, उससे छुटकारा नहीं। अगर एक पैकेट में ज़रा भी चीज़ स्मगलिंग की मिलती है, तो सारे का सारा पैकेट, उसमें एक लाख का दूसरा सामान भी हो, तो उसको ज़ब्त करने का आपको अधिकार है। उससे छुटकारा लेने के लिये यह संशोधन दिया, जो कृपा करके स्वीकार करें।

The question was proposed.

श्री बी० आर० भगत : मुझे अफ़सोस है कि फ़ैक्ट्स को बिना समझे, बिना देखे माननीय सदस्य ऐसी लम्बी चौड़ी बातें कह देते हैं और कस्टम अधिकारियों को कहते हैं कि इतने गंदे हैं कि बहुत साल लगेंगे। अगर वे देखें कि ८० साल से जो ऐक्ट चला आ रहा है, उसमें जो अधिकार हैं कस्टम अधिकारियों को, वे जितने अभी हमने सेलेक्ट कमेटी के द्वारा दिये हैं, उनसे ज्यादा हैं और यही नहीं, यू० के० में और दूसरे देशों में

जो अधिकार हैं, वे भी ज्यादा हैं। सेलेक्ट कमेटी में जाने के पहले यह था कि पैकेज में आई हुई किसी चीज़ को—गाड़ी हो, कन्वेयेन्स हो, शिप हो—सब को ज़ब्त करने का अधिकार था; मगर सेलेक्ट कमेटी में उस में थोड़ी सी छूट देने की कोशिश की गई कि अगर शहर में किसी दुकान में पाया जाय कि दस हीरे हैं, उसमें एक स्मगलर है, नौ स्मगलर नहीं हैं, तो उसमें छूट दें। छूट हम ने दी और बाकी छूट हम नहीं दे सकते। अब माननीय सदस्य कहते हैं, स्मगलिंग जैसे होता है, वैसे होता रहे। उनका कहना था कस्टम अधिकारी गंदे हैं, उनके छने से स्मगलिंग गंदी होती है। उन्होंने हीरे को पत्थर समझ लिया है। उन्होंने कहा है, गलती से १० की जगह ११ आ जायें। अगर सचमुच में कोई चीज़ गलती से आये, और उसकी कीमत में मार्जिनल फर्क हो, मेटैरियल फर्क न हो तो इस कानून में अधिकार है कि कस्टम आफ़िसर छूट दे सकता है, अगर मेटैरियल व्हेल्यू डिफ़र न करे। यह तो हमारे पास अधिकार है। स्मगलिंग खुले तौर से होता नहीं। दस हीरे स्मगलिंग के तौर से आयेंगे नहीं, यह आम तौर से किसी दूसरी चीज़ के साथ मिला होता है, ऐसी चीज़ों के साथ, जो आम तौर से आती हैं। जो लाइसेन्स गुड्स होती हैं, उनके साथ भी स्मगलर चीज़ें मिली हुई आती हैं, स्मगलर गुड्स के साथ दूसरे गुड्स भी गंदे रंगे होते हैं टेन्टेड गुड्स होते हैं। हम उनको कैसे छोड़ सकते हैं, जबकि स्मगलिंग को बढ़ाने में वे सहायक होते हैं। इसलिये उनको छोड़ने का मतलब होगा, स्मगलिंग का दरवाज़ा पूरा खोल दिया जाय और देश की तबाही हो जाय।

THE VICE-CHAIRMAN (SHRI
AKBAR ALI KHAN): The question is:

7. "That at page 43, for clause 118, the following be substituted, namely:—

'118. (a) Where any goods imported in a package are liable to confiscation it will be confiscated.

(b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation it will be confiscated."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That clause 118 stand part of the Bill."

The motion was adopted.

Clause 118 was added to the Bill.

Clauses 119 to 122 were added to the Bill.

Clause 123—Burden of proof in certain cases.

SHRI V. M. CHORDIA: Sir, I beg to move:

9. "That at page 44, after line 29, the following proviso be inserted, namely:—

'Provided that if the person from whose possession the goods were seized shows the source from where he obtained such goods the burden of proof thereof shall shift to the source.'

माननीय उपसभाध्यक्ष महोदय, मुझे इस बात का बहुत खेद है कि इस धारा पर चर्चा करते समय मैंने एक ऐसा उदाहरण दे दिया, जो मंत्री जी को अप्रिय लगा। मेरी यह इच्छा नहीं थी कि माननीय भगत साहब का दिल दुखे, परन्तु जहां उनके हाथ की घड़ी और कस्टम अधिकारी का सम्बन्ध बताया, तो उनको थोड़ा बुरा लगा। मैं नहीं चाहता था उनकी भावना को घक्का लगे...

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श्री बी० आर० भगत : मुझे कोई घक्का नहीं लगा। मैं तो बता रहा था।

श्री विमलकुमार मन्नालालजी चौरङ्गिया : जाहिर है, निशाने पर गोली लगी थी, ऐसा मुझे लगा। उस बात को दो बार उन्होंने रिपीट किया, उससे मुझे लगा "ही हैज फ़ैल्ट इट"—He has felt it—अगर ऐसा है, तो मेरी कभी भी यह इच्छा नहीं थी कि मंत्री महोदय का दिल दुखाऊं। परन्तु मैं यह बता देना चाहता हूं कि यह उदाहरण देने से उनके मन में ऐसी भावना पैदा हुई जैसेकि उनको बुरा लगा...

श्री ए० बी० राजवेदी (उत्तर प्रदेश) : वे यह रहे हैं, नहीं लगा।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): He is "bhagat".

श्री विमलकुमार मन्नालालजी चौरङ्गिया :

बाई नेम। तो मेरा यह निवेदन है कि मैं ने यह संशोधन इसीलिये दिया कि किसी भी आदमी के साथ ज्यादाती न हो। क्योंकि यह बात निर्विवाद है कि आज भारतवर्ष में इतनी स्मगल वस्तुएं हैं कि चाहे बड़ा से बड़ा आदमी हो, वह मंत्री के पद पर हो या संतरी के पद पर हो, उस के पास कुछ न कुछ निकल सकता है। उस का कारण यह है कि हमारे यहां का कस्टम डिपार्टमेंट बहुत एफीशियेंट है, जैसाकि भगतजी कहते हैं, बहुत एफीशियेंट होने की वजह से सम्भवतः ऐसा हो कि गली गली में, घर घर में स्मगल की हुई वस्तुएं मिलती हैं। तो इस दिशा में कुछ नियंत्रण करने की अत्यन्त आवश्यकता है और इस तरह का प्राविजन देने की आवश्यकता है। इस तरह की वस्तु को चट से पकड़ कर कहना चाहिये कि यह स्मगलिंग की वस्तु है, या तो तुम प्रमाणित करो यह नहीं है। ऐसी व्यवस्था हम कर्मचारियों के हाथ में देना चाहते हैं कि अगर कोई ट्रांजिस्टर सेट या कैमरा लिये खड़ा है या हाथ में घड़ी बांधे खड़ा है, तो उससे पूछताछ की जा सके कि कहां

[श्री विमलकुमार मन्नालालजी चौरड़िया]

से यह लाये । कोई यह कहे कि हमारे मित्र लंदन गये थे वहां से ले आये या शंकर मार्केट की दूकानों से खरीदी, तो उसकी जांच उस सोर्स से ही होनी चाहिये । तस्कर रोकने के लिये अत्यंत आवश्यक है कि हमारी सरकार के पास इस तरह का अधिकार हो कि वह ऐसे लोगों पर नियंत्रण करे और ऐसे लोगों को पकड़ कर या तो उनसे पूछे, तुम कहां से लाये । अगर वे बता दें कि अमुक स्थान से लाये तो सिद्ध करने का भार हट जाना चाहिये । इसलिये अत्यंत आवश्यक है कि इस तरह का प्राविजन हो । अगर कोई आदमी ईमानदारी से कोई चीज खरीदता है और उसको नहीं मालूम कि स्मगलिंग का माल है या क्या है, और इसके कारण अगर उसके ऊपर पूरा बर्डन डाल दें कि . . .

श्री बी० आर० भगत : यह किस क्लाज पर बहस हो रही है ?

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Clause 123.

श्री बी० आर० भगत : आप अपने अमेंडमेंट पर नहीं बोल रहे हैं ?

श्री विमलकुमार मन्नालालजी चौरड़िया : अपने अमेंडमेंट पर बोल रहा हूं, श्रीमन् ।

SHRI B. R. BHAGAT: I am sorry I don't have it.

श्री विमलकुमार मन्नालालजी चौरड़िया : मेरा खयाल है, मुझे अपना अमेंडमेंट रिपीट करने की जरूरत पड़ेगी :

"That at page 44, after line 29, the following proviso be inserted, namely:—

'Provided that if the person from whose possession the goods were seized shows the source from where he obtained such goods the burden of proof thereof shall shift to the source.'

अगर मंत्री जी कहेंगे कि इसमें सारी व्यवस्था ऐक्ट के भीतर है, तो भी देखा जाये तो जो संशोधन मैंने दिया है, उसको स्वीकार करने में क्या आपत्ति है । इसमें तो सूचना

मांगी गई है । दी बर्डन आफ प्रूफ देयरआफ शैल शिफ्ट टु दी सोर्स ।

(Interruptions)

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): You go on, Mr. Chordia. This is an attempt to take your time.

श्री विमलकुमार मन्नालालजी चौरड़िया : मेरे टाइम का सवाल नहीं है, उनका टाइम जा रहा है । अगर किसी को शंका है तो उसको दूर करना मेरा फर्ज है । ऐसी स्थिति में जो संशोधन प्रस्तुत किया है वह इसी आशय से प्रस्तुत किया है और मैं उम्मीद करता हूं कि मंत्री जी इसको स्वीकार करेंगे ।

The question was proposed.

श्री रमेशचन्द्र शंकरराव खांडेकर (मध्य प्रदेश): उपसभाध्यक्ष महोदय, हमारे मित्र श्री चौरड़िया जी ने जो संशोधन रखा है उसमें थोड़ा सा तथ्य मालूम पड़ता है और मैं उसका समर्थन करता हूं । अगर कोई आदमी गुनाहगार है और वह अपने गुनाह के बारे में बतला देता है कि मैंने यहां से यह चीज ली है, तो जिस आदमी ने उसको चीज दी है, उसको गुनाहगार माना जाना चाहिये । लेकिन हमारे यहां जो पुरानी प्रथा चली आती है उसी के अनुसार काम किया जा रहा है । इस समय हमारा जो कानून है उसको बरतने में काफी कठिनाई होती है । जैसा कि माननीय मित्र चौरड़िया जी ने कहा कि इस तरह के स्मगल मामलों को पकड़ने में और रोकने में जिस तरह का स्तर हम लोगों में होना चाहिये, वैसा नहीं है । अधिकारी लोग अपनी ताकत का दुरुपयोग कर सकते हैं, ऐसी मेरी धारणा है । इसलिये जो संशोधन दिया गया है, उसको मानने में कोई आपत्ति नहीं होनी चाहिये । एक दफा मालूम हो जाने के बाद "बर्डन आफ प्रूफ" का भार दूसरे के ऊपर चला जाता है ।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): But this is limited only to three articles, gold, watches, etc.

SHRI R. S. KHANDEKAR: But these are the most common articles.

इसलिए सरकार को यह अधिकार दिया गया।
अब कानून में मसलब यह है कि अगर कोई
व्यक्ति यह बतला देता है कि मैंने यहां
से यह चीज ली है, तो गुनाह का भार उस
व्यक्ति के ऊपर चला जाना चाहिये, इस
विषय में इस दृष्टि से श्री चौरडिया जी के
समर्थन का समर्थन करता हूं।

SHRI B. R. BHAGAT: I am sorry I cannot accept this amendment because I must emphasise again that this will open the flood gates of smuggling if the burden of proof will be discharged as soon as the source is declared. If we accept this amendment, it will mean that we will not be able to prevent any smuggling. I can give an example. I shall give a symbolic example and my friend, Mr. Chordia, should not take any offence.

Suppose he has a friend A—whoever he may be—and he smuggles some goods, watch or gold or something, and he sells it to another friend B and from B it is recovered. That is, suppose we have been able to trace that B is holding smuggled goods. Now we go to B who is having that watch or gold and he says: "Yes; it is nothing. I have got it from A." He has declared the source and the burden is discharged and we cannot do anything. This is a trap in which probably unknowingly Mr. Chordia is falling but in which I am not going to fall.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The amendment has been moved and both the parties have explained their point of view. I shall now put it to vote.

The question is:

9. "That at page 44, after line 29, the following proviso be inserted, namely:—

'Provided that if the person from whose possession the goods were seized shows the source from where he obtained such goods the

burden of proof thereof shall shift to the source.'

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That clause 123 stand part of the Bill."

The motion was adopted.

Clause 123 was added to the Bill.

Clauses 124 to 130 were added to the Bill.

Clause 131—Revision by Central Government.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): There is one amendment by our energetic friend, Mr. Vinay Kumar Chordia.

SHRI V. M. CHORDIA: Thanks for the compliment.

Sir, I move:

8. "That at page 47, for lines 11 and 12, the following be substituted, namely:—

'131. (1) The Central Government shall constitute a tribunal which shall consist of at least one judicial member who shall 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. The tribunal may on application of any person aggrieved by . . .'

SHRI B. R. BHAGAT: Sir, he has spoken already.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Yes; you have spoken already. We can put it to vote.

श्री विमलकुमार मन्नालालजी चौरडिया :
पहले मैं एग्जीक्यूटिव के बारे में कह रहा था
और अब मैं जूडीशरी के बारे में कहना चाहता

[श्री विमलकुमार मन्नालालजी चौरड़िया]
हूँ। मेरे सारे संशोधन का मुख्य उद्देश्य यह है कि आपने कानून के अन्तर्गत सारे अधिकार एग्जीक्यूटिव को दे दिये हैं। हम यह चाहते हैं कि कुछ न कुछ काम, अन्तिम काम, जो है वह जुडीशरी (Judiciary) की मार्फत होना चाहिये। जुडीशरी—(Judiciary) का इसमें कहना हो, ऐसी व्यवस्था हम चाहते हैं। हमारे मित्र श्री भगत ने जो दलीलें दी थीं [उसमें इण्टरप्रिटेशन आफ लॉ (Interpretation of Law) नहीं है, उसमें एप्रीसिएशन आफ फैक्ट्स (Appreciation of facts) है। केवल एप्रीसिएशन आफ फैक्ट होता तो कानून बनाने की जरूरत नहीं है। इन प्रकरणों में फैक्ट्स तथा ला मिक्सड क्वेश्चन है। अभी तक फैक्ट्स (facts) के आधार पर एग्जीक्यूटिव (Executive) काम करती रही है। अब अन्तिम सीढ़ी पर इण्टरप्रिटेशन आफ लॉ (Interpretation of Law) की जरूरत है। हमारे कहने का मतलब यह है कि अगर हम न्याय करना चाहते हैं तो जो अन्तिम सीढ़ी है उसमें जुडीशरी (Judiciary) का एक आदमी होना चाहिये। उसके अन्तर्गत एक ट्रिब्यूनल हो और उसमें एक जुडीशरी का भी आदमी हो, यही हमारी मांग है। इसके समर्थन में जो टैक्सेशन इन्क्वारी कमेटी (Taxation Enquiry Committee) की रिपोर्ट है और जिसे सरकार ने बिठाया था, उसी के शब्द मैं माननीय मंत्री जी के सामने पढ़ कर सुना देना चाहता हूँ। शायद माननीय मंत्री जी को मेरी बातों पर विश्वास न आये लेकिन इस टैक्सेशन इन्क्वारी कमेटी में जो विद्वान् लोग थे और जिन्होंने यह रिपोर्ट बनाई है उनके शब्दों पर उन्हें अवश्य विश्वास आ जायेगा।

“One of the important suggestions made to us in connection with the administration of customs is this,

The present appellate machinery should be radically altered so as to make the appellate authority completely independent of the Ministry of Finance.”

बिल्कुल क्लियर कट कह दिया है और आगे भी पेज ३१६ में यह कहा है :

“We would leave the present appellate powers of the Central Board of Revenue as they are but suggest that revision petitions against the customs should be disposed of by a tribunal which should be independent of the Ministry of Finance and should consist of at least one judicial member who should be either a serving or a retired High Court Judge and one member who has had experience of customs administration.”

यह तो टैक्सेशन इन्क्वारी कमिशन ने अपने ५३-५४ की रिपोर्ट में प्रस्तावित किया है और उसके बाद भदवार कमेटी ने जो कुछ कहा है वह भी मैं माननीय मंत्री जी के सामने पढ़ कर सुना देना चाहता हूँ :

“We agree with the Commission's views except to the extent that we consider that the association of a suitable representative of the import export trade as an additional or a third member of the tribunal would be an improvement and would help to secure more informed and therefore more objective decision.”

अभी माननीय मंत्री जी ने कहा कि हमें फैक्ट्स (facts) आधार पर काम करना चाहिये लेकिन केवल फैक्ट्स के आधार पर कानून कहीं ठीक तरह लगाया गया है? इसलिए हमने ट्रिब्यूनल में तीन आदमियों को रखने का सुझाव दिया है जो इस प्रकार से हैं। एक तो हाईकोर्ट का वर्किंग या रिटायर्ड जज हो जो न्याय के आधार पर, कानून के आधार पर सारे प्रकरण को

तौले दूसरा who has had experience of customs administration हम इस विभाग के अधिकारियों का अधिकार खीनना नहीं चाहते हैं और उनके विभाग के अधिकारियों को भी इसमें अवश्य रखना चाहते हैं जो विभागीय कठिनाई बताएं। तीसरा रिप्रेजेंटेटिव एक्सपोर्ट और इम्पोर्ट ट्रेड वालों का होना चाहिये ताकि जो वेल्यूएशन लगाने में गड़बड़ी होती है किसी तरह की कमी रह जाती है, उसको बतला सके। सारांश में श्री जी ने अपने भाषण में कहा कि जो चीजें हैं विसीजन किया गया है और जो चीजें बचायी हैं, हम इस बारे में कुछ नहीं कहना चाहते हैं कि आपने अवश्य विसीजन किया है या आपने अवश्य विसीजन किया है। हमारा मतलब यह कहना चाहते हैं कि जितने भी चीजें किये जायें वे सब मैरिट पर निर्णीत किये जाने चाहियें। इस बात का हम भी नहीं है कि वे कैसे स्वीकृत होते हैं या अस्वीकृत होते हैं बल्कि हम तो सिर्फ यह चाहते हैं कि जितने भी आप केस करते हैं, वे केवल मैरिट के आधार पर ही पर निर्णीत किये जाने चाहियें। हम तो यह चाहते हैं कि सबको न्याय मिलना चाहिये और न्याय के लिए इस तरह का दृष्टिकोण आवश्यक है कि इस सारे काम में एग्जीक्यूटिव के साथ-साथ जुडीशरी का भी आदमी होना चाहिये। हम आपके रोटिन काम में जुडीशरी के लिए प्रार्थना नहीं करेंगे, हम यह अधिकार बराबर आपको देते रहेंगे कि आप एग्जीक्यूटिव का काम करते रहें, लेकिन जो अंतिम रिवीजन का मामला है उसके संबंध में हम यह कहना चाहते हैं कि उसके लिए आप ट्रिब्यूनल बना दीजिये जिसमें तीन आदमी हों जैसा कि भदवार कमेटी ने भी अपनी रिपोर्ट में लिखा है। मैं इससे ज्यादा अथारिटी को इस संबंध में कोट नहीं कर सकता और माननीय सप्रू साहब भी मेरी बात का समर्थन करेंगे। इसलिए मेरी प्रार्थना है

कि मैंने जो संशोधन दिया है उसको स्वीकार किया जाना चाहिये। मैं इस संबंध में कोई इन्फरेन्स लेना नहीं चाहता हूँ लेकिन मैं माननीय मंत्री जी को यह बतलाना चाहता हूँ कि जितनी भी रिविजन्स होती हैं, वे बड़े-बड़े व्यापारियों की ही होती हैं और पेंडिंग पड़ी रहती हैं और चुनाव के समय चन्दे के वेरियेशन के हिसाब से उन पर डिसीजन किया जाता है।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): That is irrelevant.

श्री विमलकुमार मन्नालालजी चौर-
दिया: तो मेरे कहने का मतलब यह है कि चन्दे के आधार पर इनकी अपीलों का विसीजन नहीं होना चाहिये बल्कि न्याय के आधार पर किया जाना चाहिये। इसीलिए हम इस तरह की व्यवस्था चाहते हैं कि इस काम को करने के लिए कोई स्वतंत्र ट्रिब्यूनल हो जो न्याय के आधार पर फैसला दे। यह बात नहीं होनी चाहिये कि अमुक-अमुक व्यक्ति कितना चन्दा देगा उसी के हिसाब से उनकी अपीलों को डिसाइड किया जाये। यह चीज हम नहीं चाहते हैं। हम तो न्याय के आधार पर फैसला चाहते हैं और इसीलिए मैंने यह संशोधन रखा है और आशा करता हूँ माननीय मंत्री जी इसे स्वीकार करेंगे।

The question was proposed.

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Vice-Chairman, I wish to express my strong sympathy with and support for this amendment. The position as I see it is that the revising authority will be the Central Government. Now, the Central Government may mean a Secretary of the Central Government. It may mean a Joint Secretary, Deputy Secretary or Under Secretary. The Minister may never exercise his mind on the question involved. I think it is a most unsatisfactory state of things to leave the final decision, in a matter of this character, to the Central Government. My friend, Mr. Chordia, has very well pointed out that

[Shri P. N. Sapru.]

this recommendation has the support of the Badhwar Committee, the Taxation Enquiry Commission and the Constitution. I do not swear by the constitution of this tribunal. Modifications can be considered, but the constitution suggested is *prima facie* a reasonable one. There should be a judicial officer of a high stature. There should be a member who has had experience of customs administration, and another member who has had some administrative experience. Now, in a tribunal of this character, the judicial element will not be the dominant element. It will be in a minority. I have faith in the judicial element. My respected and brilliant friend, Mr. Bhagat, has no faith in the judicial element, but that is neither here nor there. But I would say that the constitution of the tribunal is one which will vastly improve the working of the revising authority contemplated by this measure. As a matter of fact, the revising authority itself will be subject to article 226, to a further revising authority, namely, the High Court, and that power cannot be taken away by any enactment in a Bill of this character. Therefore, I think that there is a strong reason, a convincing reason, behind the amendment proposed by my friend, Mr. Chordia.

Mr. Vice-Chairman, one of the principles embedded in our system of jurisprudence is that not only must justice be done but justice must seem to be done and for that reason I think it is essential that this amendment should receive the support of this House. I hope that Mr. Bhagat will be able to accept it.

SHRI M. P. BHARGAVA: Sir, I have to say two words about this. I have heard what Mr. Chordia and what Mr. Sapru have said and I would only like to point out the evidence in this connection given about clause 131. It reads as follows:—

"Shri Dehejia: Clause 131 provides for revision by Central Government. The first appeal lies to a departmental officer.

Shri Mehta: . . ."

He was the representative of the All India Manufacturers Association and this is very important. He said:—

"Shri Mehta: Sometimes our experience is that when against a decision of a particular appraiser we go to the Assistant Collector of Customs, the Assistant Collector of Customs calls the same appraiser and asks him to listen to the appeal."

The hon. Finance Minister intervened and said:—

"Shri Morarji Desai: That is wrong. If that happens you must let us know and we will stop it quickly.

Shri Gupta: That is why we have made this suggestion.

Shri Morarji Desai: But that does not solve the problem.

Shri Dehejia: The first appeal goes to a departmental officer and the revision goes to the Central Government.

Shri Mehta: There are three stages—the appraiser, the Assistant Collector and then the Collector.

Shri Dehejia: There cannot be a second appeal. The second one is the revision.

Shri Mehta: We do hope that you will reconsider our suggestion about the independent tribunal."

That is what happened at the evidence stage about clause 131 and, therefore, I see a lot of weight in what Mr. Chordia has said.

SHRI R. S. KHANDEKAR: Sir, I want to say a word about this. I had no mind to take part in this debate, but I followed the debate very carefully and also heard the learned reply of the hon. Minister. I was inclined not to agree with some of the points

when he referred to this clause. He said there were several tribunals in other Acts, for example, the Income-Tax Act, the Sales Tax Act, etc. because there is the interpretation of law. May I point out that this is a voluminous Bill of 161 clauses and there is every likelihood of interpreting some of the clauses in this Bill also? It is not only a mere procedural Bill. May I point out that in so many ways irregularities always happen? When the whole judiciary is in the hands of the executive, the whole purpose goes away. Nowadays we find that the Government is trying to bring forward such legislation which debars the courts from taking cognisance. There are legislations which debar even lawyers and advocates from appearing before these tribunals. Therefore, this is not a very good practice and this is telling upon our Fundamental Rights, also on a healthy democracy. So, I would say that the amendment moved by my hon. friend, Mr. Chordia, has substance. The whole thing should not be in the hands of the executive. The hon. Minister said the appellate and revisionary powers are with the Central Government, but may I point out that after all the Central Government are the executive authorities? There is always a tendency in the higher circles to protect their subordinate officers and whenever any appeal for revision comes up against their subordinate officers, it is likely that in respect of those revisions the subordinate officers will always be protected. Therefore, this amendment has much weight. As my learned friend, Dr. Sapru, has pointed out in his speech, even though there is an effort to debar the judiciary, article 226 of the Constitution is there and any irregularity caused by the executive will be dealt with in the High Court. In that case, why not have the regular procedure whereby all the facts of law will be considered properly when the advocates appear before them? I am not suggesting that there should be protracted litigation in this matter, but the authority should be independent of the executive. That is my submission.

SHRI B. R. BHAGAT: Mr. Vice-Chairman, I know how difficult it is to tread on the judicial susceptibilities of hon. Members and much more so of the distinguished jurist, who has lent his support to this amendment, but I still maintain—as I have pointed out by facts as to how the appeal cases have been disposed of—that this is not income-tax. Whatever may be the number of clauses, they mostly relate to facts, i.e., the actual facts of importation or otherwise classification. Even in regard to classification of things, they are not interpretations of law. They are appreciations of facts and more so I would like to emphasise this point. As I said, we have to prevent smuggling which is spreading not only in gold but also in a large number of other things and the ordinary processes of judiciary, with the very refined observance of judicial technicalities in all the cases, will defeat the purpose. Recently, to add to smuggling, there has been under-invoicing which is growing in certain industries like jute and others. The intricacies of those matters are such that they cannot be left, with all respect, to a tribunal like this. They will not be able to appreciate the facts and conditions of trade so well as the Department will be able to do. I must say that this matter was very carefully considered by the Select Committee. After careful consideration they have evolved a compromise that in the lower stage, at the stage of the Collectors, we should provide an independent appellate authority, and therefore this Bill provides, as it has emerged from the Select Committee, that there would be independent Appellate Collectors who will do nothing but hear appeals, who will have nothing to do with day-to-day cases or with the administration of the Department. Officials like the same Appraiser who has given the value or the same Assistant Collector who has executed it will not be called upon to hear appeals, will not be there. We want to completely eliminate them. That is why independent Appellate Collectors, have been provided. When it comes to the higher

[Shri B. R. Bhagat.]

stage, when it comes to the stage of the Revenue Secretary who hears the revision, he is not a part of the Board. He is a part of the Government. He is not in day-to-day touch with the implementation of the Customs Act or the administration of the Customs Department of which the head is the Member of Customs. The Secretary is an independent wing, and then above him is the Minister. So even at the higher level there will be an independent authority being brought to bear on it. But I want to emphasize that, with all respect, I do not want to minimise the judicial aspect of it and the Members' anxiety to have an independent tribunal. But the practical and other difficulties and the difficulties of the special nature of the cases coming, the customs cases, cases of under-invoicing, smuggling cases, which are very long drawn out and protracted involving investigations, all these have got to be appreciated, and this can only be done by persons who are in the know of things, who have administered it and who know it and who can also bring to bear an independent mind over it. Therefore, I would beg the House, knowing what they feel about having an independent tribunal, that they should accept the clause as it is and not the amendment which will defeat the very purpose of tightening the anti-smuggling measures.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

8. "That at page 47, for lines 11 and 12, the following be substituted, namely:—

'131. (1) The Central Government shall constitute a tribunal which shall consist of at least one judicial member who shall 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. The Tribunal may on application of any person aggrieved'

SOME HON. MEMBERS: Sir, we want a division on this.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I request those in favour of the amendment to kindly stand up. If necessary, I shall decide it later on.

PROF. M. B. LAL (Uttar Pradesh): I think it is a question of principle whether an independent authority should or should not be there, and therefore division should be there so that the names of those who favour the amendment may be recorded in the proceedings.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): If after ascertaining the situation you still insist, then I will consider it. Those in favour of the amendment may please stand up. (After a count) Nine.

Those against the amendment may please stand up. (After a count) Nineteen.

The position is very clear.

PROF. M. B. LAL: We press for a division so that those who are in the lobby may be able to come and those who are opposed to this executive tribunal may be able to record their votes.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): May I request the experienced Professor Member of this House to give me the rule under which he can demand this unconditionally?

SHRI BHUPESH GUPTA (West Bengal): I want to submit to you, Sir, that we think there are many Members who are outside the House, in the lobby, and this is an important amendment from the point of view of jurisprudence and law as is made out. So they should be given an opportunity to participate in the voting and this cannot be done until the bell is rung; or if you like, you can adjourn the House for a little while to get them. Rules and everything can be interpreted according to your discre-

tion. You have absolute discretion in this matter. Rules do not say that the Chairman has no discretion.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The rule says that I could ask the Members to stand up and then the matter could be decided.

SHRI BHUPESH GUPTA: You kindly read out the rule. Can I have it?

PROF. M. B. LAL: I appeal to the Chair for exercising discretion in favour of division.

SHRI BHUPESH GUPTA: Will you kindly read the rule, Sir?

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): All right, I order for division.

SHRI BHUPESH GUPTA: What has happened to the rule?

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I order for division.

[THE DEPUTY CHAIRMAN in the Chair.]

THE DEPUTY CHAIRMAN: The question is:

8. "That at page 47, for lines 11 and 12, the following be substituted, namely:—

'131. (1) The Central Government shall constitute a tribunal which shall consist of at least one judicial member who shall 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. The Tribunal may on application of any person aggrieved by . . .'

The House divided.

THE DEPUTY CHAIRMAN: Ayes—17; Noes—46.

AYES—17

Chordia, Shri V. M.

Dave, Shri Rohit M.

Galkwad, Shri B. K.

Gupta, Shri Bhupesh.

Jaipuria, Shri Sitaram.

Khan, Shri Akbar Ali.

Khandekar, Shri R. S.

Khobaragade, Shri B. D.

Lal, Prof. M. B.

Misra, Shri Lokanath.

Nair, Shri M. N. Govindan.

Saksena, Shri Mohan Lal.

Sapru, Shri P. N.

Singh, Shri D. P.

Sinha, Shri Ganga Sharan.

Vajpayee, Shri A. B.

Wadia, Prof. A. R.

NOES—46

Ammanna Raja, Shrimati C.

Anwar, Shri N. M.

Atwal, Shri Surjit Singh.

Bharathi, Shrimati K.

Das, Shri N. K.

Dasgupta, Shri T. M.

Deokinandan Narayan, Shri.

Desai, Shri Suresh J.

Devaki (Gopidas), Shrimati.

Doogar, Shri R. S.

Karmarkar, Shri D. P.

Koya, Shri Muhamed.

Krishna Chandra, Shri.

Lakshmi Menon, Shrimati

Malviya, Shri Ratanlal Kishorilal.

Maya Devi Chetty, Shrimati.

Mitra, Shri P. C.

Mohanty, Shri Dhananjay.

Muhammad Ishaque, Shri.

Nagpure, Shri V. T.

Patil, Shri Sonusing Dhansing.

Puttappa, Shri Patil.

Ramaswamy, Shri K. S.

Ramaul, Shri Shiva Nand.

Rao, Shri B. Ramakrishna.

Rao, Shri V. C. Kesava.

Ray, Shri Ramprasanna.

Reddi, Shri J. C. Nagi.

Reddy, Shri N. Narotham.

Reddy, Shri N. Sri Rama.
 Rohatgi, Dr. Jawaharlal.
 Samuel, Shri M. H.
 Shah, Shri M. C.
 Shakoor, Moulana Abdul.
 Shanta Vasisht, Kumari.
 Sharma, Shri L. Lalit Madhob.
 Sherkhan, Shri.
 Shukla, Shri M. P.
 Singh, Thakur Bhanu Pratap.
 Singh, Dr. Gopal.
 Singh, Shri Vijay.
 Tankha, Pandit S. S. N.
 Tara Ramachandra Sathe, Shrimati.
 Uma Nehru, Shrimati.
 Vijaivargiya, Shri Gopikrishna.
 Yajee, Shri Sheel Bhadra.

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

"That clause 131 stand part of the Bill."

The motion was adopted.

Clause 131 was added to the Bill.

Clauses 132 to 161 were added to the Bill.

The Schedule was added to the Bill.

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

SHRI B. R. BHAGAT: Madam, I move:

"That the Bill be passed."

The question was proposed.

श्री विमलकुमार मन्नालालजी चौरङ्गिया:
 यह बिल जब पास होने के करीब आ गया है और अब वापस जाने को है तो मैं इस समय मंत्री जी से कुछ निवेदन कर देना चाहता हूँ। तस्कर व्यापारियों का जो ढंग है वह तो मंत्री जी मुझसे ज्यादा जानते होंगे क्योंकि उनके सामने कई प्रकार के केसेज आते हैं मगर अभी अभी यह भी

जानकारी मिली है कि ये इन्वाइसेज का अन्डर वेल्यूएशन करके और कस्टम्स से बचने के लिये कई लोग अपना अपना ढंग अपनाते हैं। यहां से कम कीमत पर इन्वाइस करके बाहर ज्यादा कीमत का माल भेजते हैं। यहां से एक्सपोर्ट करते वक्त कम ड्यूटी लगाते हैं और वहां से माल मंगवाते वक्त अन्डर वेल्यूएशन की कीमत पर माल दिखलाते हैं। इसी तरह हांगकांग एक फ्री पोर्ट होने से वहां से माल भेजा जाता है कम कीमत बताकर और वहां से विदेशी मुद्रा में हिसाब कर इंग्लैंड से जो सामान मंगवाया जाता है उसमें अन्डर वेल्यूएशन करके कस्टम के सामने आता है। तो इस तरीके पर भी विभाग वालों को ध्यान देना होगा।

दूसरा निवेदन मैं पुनः यह करता हूँ कि हमारे कर्मचारियों में जो भ्रष्टाचार व्याप्त है उसको रोकने के लिये कोई विशेष इन्टेलीजेन्स डिपार्टमेंट कायम करना चाहिये और उसका पूरा उपयोग लेना चाहिये जिससे ये छोटे कर्मचारी या बड़े कर्मचारी जो भ्रष्टाचार में उलझे रहते हैं उन्हें वे अपने अपने ढंग से पकड़ कर उनके साथ सख्ती से व्यवहार करें, यह प्रार्थना है। इन दो शब्दों के साथ मैं प्रार्थना करता हूँ कि इस कानून का अच्छी तरह से उपयोग करना चाहिये।

SHRI BHUPESH GUPTA: Madam, I would like to speak on this Bill. I did not say anything on this subject but I would like to say only one or two words as far as the administration is concerned. It is not merely that we are going to have a Bill or a law of this kind, as we should have. We support it. But I think that the administration has to be considerably overhauled in order to deal with the situation. I was not here when the debate took place. I do not know whether certain matters were brought to the notice of the Government. I come from Calcutta where, as everyone knows, we have got the Sea Customs Department at the Cal-

cutta Docks. And we have also got the Land Customs Department functioning there in relation to East Pakistan.

Towards the end of September, suddenly a huge car with all kinds of contrivances and mechanisms in it, with cavities and so on was found entering West Bengal from East Pakistan. It was a very expensive car the like of which many people had not seen. And by persons competent, it was found that it had got all kinds of cavities which disgorged smuggled gold. An American driver was there. He was apprehended. I am not concerned with individuals. Here, a huge quantity of gold was found. It is a good thing. I give credit to the Customs authorities. They got scent of it and they were on the lookout and as soon as the gentleman drove into the Indian side of the border, the car was searched. He was asked questions. He wanted to pose as a tourist. But they had information and naturally the car was searched and so on. I think that Rs. 22 lakhs or Rs. 24 lakhs worth of gold was found.

Now, what happened? It was revealed. First of all, things would not go to the press, easily. Ultimately it was found out. It found its way to the press. It was revealed in the course of the investigation that this very car was seen in Calcutta about two or three years ago and nobody knew what happened to that particular motor car afterwards. It was an extraordinary type of car. What happened to it, nobody knew. It reappeared after a lapse of time. Maybe it had come earlier also from East Pakistan with its cargo of a huge quantity of gold. And then, just about that time, another car was seen in that area. Though the police was tracing that car, it could not be found out and there was a search for it in Calcutta. Then, that car suddenly surrendered itself. It was taken to the Customs Department and it was kept there. Who brought it and how, about all these things we would like to know a little. You see

how the big men with big social connections and so on indulge in this kind of smuggling and they can do whatever they like.

Then, all the newspapers were trying to find out things, as to what had happened. It was a very mysterious thing. Then, well, some people from the Customs Department perhaps and also from the Detective Department of Calcutta saw to it that things were put out in the press, the number of the car, its make, everything. And it was also reported in the newspapers that when that car was allegedly missing, some big industrialist was seen driving that car. And where it went, nobody could say.

Now, this is an example. I would like to know how you are going to tackle such things. Later on, we did not get any information, nothing. There was a hush in the press and in the Customs Department. I do not know who paralysed them. Nothing was known. Maybe, it is under investigation. But everybody in Calcutta knew that big people were involved in the whole business. And then, when that American gentleman, that tourist, was asked as to wherefrom he came, he said that he was coming from Japan or from somewhere and that he was going *via* India somewhere. He said all this kind of things. And those things were, of course, contradicted later on when the investigations revealed the facts. It is feared that Calcutta is the centre of such gold smuggling activities. From East Pakistan it comes just as from Karachi side it comes to Punjab. And then the transactions take place. There must be nests of smugglers in Calcutta connected with big business. This was also suspected and openly spoken about and written about in the newspapers. But we have not known what has happened. Was anybody arrested apart from that unlucky American, tourist or whatever you call him. Apart from him nobody seems to have been arrested. It was

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quite clear that he was coming here to somebody, I mean to Calcutta, to deliver things, or to have some transactions from Pakistan, from this side or that side. The information was intercepted and successfully the car was detected. Now if that is so, then we would like to know how the customs investigated into this matter in order to find out and detect his contacts in Calcutta. Now nothing, nothing in particular has been done, it seems. We would like to know in such circumstances how the customs authorities function. Then this is a very very important case. All the newspapers wrote about it. Pictures of the car appeared in the newspapers and on the side door—this is a very interesting thing—suddenly a button was pressed by mistake or anyway the customs authorities perhaps knew even that. Then the side door opened. A cavity came to notice and from the cavity gold bars started falling. How I wish I got that car, I mean many of us would like to. You see, gold bars started falling. Then it was searched. Then all kinds of cavities, all kinds of contrivances were found inside the car, the like of which we do not have in ordinary cars, even in very expensive modern cars who do not have. A sort of this car was passing to and fro along the border, and only by chance, or may be due to a certain good person intervening in this matter, it was detected; it was caught.

Now, Madam, one example my good friend has mentioned here, about under-invoicing and over-invoicing. This is a flourishing trade in Calcutta. It is a very normal trade; I mean, you do not require parliamentary speeches to be made in order to bring it to the notice of the Government. Anyone who goes to Calcutta would see that, how things are being smuggled, how Government is being cheated, how the customs authorities are being cheated by very influential business circles who indulge on a large scale in under-invoicing and over-invoicing.

We lose, I think, crores and crores of rupees in foreign exchange on account of that. This is another side of it. Some searches took place. Well, what happened to them? How many people have been arrested? Well, I do not know whether the Defence of India Rules apply to them. It does not seem to. Anyhow there is the ordinary law. They can be apprehended and arrested. Things are done. The employees know and it comes out in the papers—names even are indirectly given, but to be on the right side of defamation cases names are not properly given, but sufficient indication is given by the newspapers in Calcutta, as to where the Government should look for in order to catch such people. Nothing is done. I do not blame the customs authorities for it. I blame people very high up, who pull wires and prevent such things perhaps. Otherwise these people should have been arrested.

Now you have the British companies—Jardine Henderson about which here, on the floor of this House, answers have been given. Their ships have been found carrying gold worth about Rs. 25 lakhs or Rs. 30 lakhs. The company had been fined Rs. 30 lakhs or so—like that. Many of their ships had been found carrying contraband gold, and that company is still allowed to carry on. Recently, the 'Rutheverett', I believe and she was caught, but anyway this is a common trade with them. Ships come to Calcutta Port, to Calcutta Docks, and a little search reveals gold. It is a good thing—Government catch the gold. It comes to the revenue department of the Government, but one does not know how much gold slips through the fingers of the Government. Now here is a company. Have you done anything about it? How much gold has one to smuggle into the country in order to be qualified to be debarred from trade? I would like to know. There does not seem to be any restriction whatsoever. Now this is going on.

Come to the Calcutta airport—another we have got also. All these things we have—Calcutta is very fortunate that way. We have got the airport there, the Dum Dum airport. Watches, some people come with in a suit case, supposed to be very respectable people, received at the airport by respectable people coming in big cars, and so on. And when you open the suit case, you find a good many watches; it contains thousands of watches—perhaps in one little suit case—like that. And similarly other things are brought. I know of a case, where in one particular place—not in Calcutta—in another airport—a big official of the Government went to receive a person coming by air, and the customs authorities caught him. Naturally they wanted to proceed with this matter perhaps, but then, well, it was found out that some big shot had come to receive. I do not know what happened later on. Now, Madam Deputy Chairman, such things are happening on a large scale. I think that Government should do something about it, this kind of smuggling and the matter of under-invoicing and over-invoicing. Well, we read about cases here; a lot of farce is made about a particular case, where a lady is giving evidence, and somebody is demanding that she should be accused and not be a witness only. Well, she can be whatever she likes—I am not concerned with it.

THE DEPUTY CHAIRMAN: This matter is *sub judice*.

SHRI BHUPESH GUPTA: No, no. Madam; I have not mentioned any case at all. No Madam, do not make it *sub-judice*. I would request you not to refer to *sub judice* cases. Now, a lady is not *sub judice*, as far as we can make out. Now you see what is happening. Now do not make too much show about it. Do it. Perhaps some people like to write about such interesting cases when such ladies become, well, witnesses. Some people like to write

such things, I know. I have no time for it. But what is the use of publishing it so much when other ladies in comparable situations are doing this thing? This is going on. Therefore, I say, the Government of India, the department concerned, should look into this matter. But I tell you that if you want to crush this smuggling business, if you want to find out the culprits who indulge in over-invoicing and under-invoicing, do not go after a young lady only. Go after the big shot in the industry and commerce. Do not go after glamour ladies only. Find out the patrons of such ladies who send them abroad, who send them on a mission, make them go round the country, meet ambassadors, diplomats and so on and utilise such agencies with a view to smuggling. This is done not by small petty people who are not well placed in life. This is done by people who occupy very high places in society, and if parliamentary practice had not prevented, I would have given you right away at least half a dozen names of such people from Calcutta who indulge in such practices. I think the hon. Minister who is smiling knows it.

SHRI B. R. BHAGAT: I am only requesting that you contribute to this anti-smuggling measure by allowing this Bill to be passed today.

SHRI BHUPESH GUPTA: Oh, I see. Are you in doubt that this Bill will not be passed?

SHRI B. R. BHAGAT: Today.

SHRI BHUPESH GUPTA: If passing it today means that you will do much better, I will do it, and it will be passed today, but show a little responsiveness to what we are saying. I ask you, do you or do you not know the names of those people who are making fun of your customs authorities and trying to evade customs regulations and who are carrying on this kind of contraband trade in gold watches and various other things? Tell us whether you know this thing. If you do not know these names, I

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say the Government department is failing on a vital matter. Ask for our assistance. Give us the protection. Give us the protection and the names will be made available to you. Is it not a fact that the names were almost suggested in the newspapers of Calcutta when that mysterious car which brought in such a huge cargo of gold was apprehended by the customs authorities? What have you done to that? How many places have been searched? How many people have been arrested? How many account books have been taken for examination and so on? I would like to know. Why Jardine Henderson, which is indulging in this manner, according to the replies to the questions that were given in this House in contraband trade, whose ships have been caught with contraband gold, is not being denied the facility for this kind of trade and penalised in a heavy way? I would like to know from the Government. Or is it that certain other extraneous considerations come in the way? These are my problems.

As far as the Customs authorities are concerned, I also travel abroad and I know that some of them are very good people. I do not say they are bad. There is a dangerous tendency on the part of big people to pretend that all small men on the Customs counter are corrupt and they can be bought. I know that some people there can be bought but there are good people also. But what happens when they know that those people who are indulging in smuggling are very highly connected with the Administration? Naturally, they are afraid of losing their job. So, what happens when a Customs Officer sees that a prospective smuggler, or an actual smuggler, or some such person has arrived from a certain foreign country to be received at the airport by some people . . .

AN HON. MEMBER: Woman.

SHRI BHUPESH GUPTA: . . . man or woman very highly placed in life? What happens to them? You can understand this kind of thing. Therefore, Madam Deputy Chairman, these are vital matters for consideration. The Intelligence Department should be good, I entirely agree with Mr. Chordia. But then even the Intelligence Department cannot function if the Government does not have the courage to strike at the real culprits in this matter. All I can say is this: Arrest a dozen of culprits in Calcutta, multimillionaires, who are connected with it. Put them, if you like, with us, under the Preventive Detention Act in the Dum Dum Central Jail. You may lose some multimillionaires but you will gain tons of gold and other things through their detention. That is what I say. But never dare you strike against them. And whenever you dare to strike, naturally, the small man is arrested. And when he gets hold of any witness and produces him in the court, you make a lot of fuss and create thriller stories. The big man gets away. This is not good. Something more has to be done. The Minister in the Department, I say, should be responsible directly for the Customs operation and he should be answerable for what happens. He should take the suggestion of Members of Parliament and other public men in this matter in order to reorganise the Customs Department and, what is more, to link up this Department with other relevant departments of the Government. It will enable them to prevent such malpractices and corruption.

Wherever you go—Hongkong—do you not know that there is a pipeline from Hongkong to Calcutta through which gold flows, not oil?

THE DEPUTY CHAIRMAN: Mr. Gupta, how long will you take?

SHRI BHUPESH GUPTA: I am finishing. He wants it to be passed just now. There is a pipeline of gold

bowling. Make some investigation in Hongkong through your agencies. Anybody who has gone to Hongkong knows where to look for it. Many of your officers pass through Hongkong. They should have told you. It is possible with a little of investigation to detect the sources. There are other places also in the Middle East and other countries. You can easily find out the places from where gold flows to India and vice versa. Calcutta, of course. Find out. It is much easier. All these things should be done. Vigorous efforts are called for. And I would ask Mr. Bhagat to please throw some light about the great car that he caught and why the tourist and the gold bars were taken into custody. What about the connections and contacts in Calcutta? How many of them had been arrested?

As far as the under-invoicing and over-invoicing are concerned, well, I know the Government are investigating into a number of cases. Why are these barons not being seized? Why are these people not being arrested? Why are licences still being given? These are matters which should be divulged to the House. They involve no security reasons. They involve no defence secret. They involve no Ministerial secrets there. They should be revealed to this House or else we will be compelled, even at the cost

of being reprimanded by you, Madam Deputy Chairman, to reveal on the floor of the House the names of those people who are engaged, the high-ups in the administration, who are connected with that.

SHRI B. R. BHAGAT: Madam Deputy Chairman, I have nothing more to add except to assure the hon. Member who spoke last that one of the aims of the Bill is to tighten the anti-smuggling measures. Government will do everything possible to put down smuggling in whatever form or shape it is there.

SHRI BHUPESH GUPTA: Is that all he has to say?

THE DEPUTY CHAIRMAN: That is all for the present.

The question is:

"That the Bill be passed."

The motion was adopted.

THE DEPUTY CHAIRMAN: The House stands adjourned till 12 noon on Monday.

The House then adjourned at five minutes past five of the clock till twelve of the clock on Monday, the 26th November, 1962.