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LOK SABHA
THE CUSTOMS BILL, 1962

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(Report of the Select Committee)

(Presented on the 5th November, 1962)



LOK SABHA SECRETARIAT
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REPORT OF THE SELECT COMMITTEE

1. I, the Chairman of the Select Committee to which the Bill* to consolidate and amend the law relating to customs was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 15th June, 1962. The motion for reference of the Bill to a Select Committee was moved by Shri B. R. Bhagat, Deputy Minister in the Ministry of Finance, on the 19th June, 1962 and was adopted on the same day (*Appendix I*).

3. The Committee held thirteen sittings in all.

4. The first sitting of the Committee was held on the 21st June, 1962 to draw up a programme of work. The Committee at this sitting decided to hear evidence from associations etc. desirous of presenting their suggestions or views before the Committee and to issue a press communique, inviting memoranda for the purpose. The Chairman was authorised to decide, after examining the memoranda submitted by the associations as to which of them should be called upon to give oral evidence before the Committee.

5. 45 memoranda/representations on the Bill were received by the Committee from different associations, public bodies and individuals as mentioned in *Appendix II*.

6. At their Second to Seventh sittings held on the 30th and 31st July, 1st, 2nd and 11th August, and 1st September, 1962, respectively, the Committee heard the evidence given by the representatives of nineteen associations etc. and one individual specified in *Appendix III*.

7. The Committee have decided that the evidence given before them should be laid on the Table of the House *in extenso*.

8. At their Sixth sitting, it was suggested that the Committee might undertake an on-the-spot study tour of some of the Customs Offices to acquaint themselves with their working. At their Seventh sitting, the Committee was informed that the proposal had been discussed with

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 15th June, 1962.

the Speaker who was agreeable to such a tour being undertaken by a small sub-Committee. Accordingly, a sub-Committee consisting of ten members visited Calcutta from the 10th to the 13th October, 1962 (*Appendix IV*).

9. During their stay at Calcutta, the sub-Committee visited the various departments of the Customs Organisation located in the Customs House, Dum Dum Airport, docks and jetties at the Calcutta port and land customs check posts at the Petropol Road and the Petropol Railway Station. The sub-Committee looked into the working of these establishments and also questioned in detail the authorities and others concerned whom they met for eliciting first hand information on the provisions of the Bill.

10. The Committee considered the Bill clause by clause at their Eighth to Twelfth sittings held from the 15th to 19th October, 1962.

11. The Report of the Committee was to be presented by the last day of the first week of the Second Session. As this could not be done, the Committee requested for extension of time on the 8th August, 1962 which was granted upto the last day of the first week of the Third Session.

12. The Committee considered and adopted the report on the 9th November, 1962.

13. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

14. *Clause 11.*—The Committee are of the view that the purposes mentioned in sub-clause (2) of the clause for which importation or exportation of goods may be prohibited should specifically include the implementation of any treaty, agreement or convention with any country.

The other amendment made in the clause is of a drafting nature.

The clause has been amended accordingly.

15. *Clause 13.*—The Committee have given thought to the clause and are of the opinion that when the imported goods are not under the importer's control, he should not be required to pay the duty on any goods that may be pilfered before the Customs Officer makes an order for clearance of the goods.

The clause has been amended accordingly.

16. *Clause 14.*—The Committee consider that the nomenclature 'normal price' may cause some difficulty in determining the value of goods for the purposes of assessment. They, therefore, feel that the word 'normal' should be dropped and other drafting changes may be made.

The clause has been amended accordingly.

17. *Clause 23.*—The Committee feel that provision regarding sale in sub-clause (2) may be transferred to clause 48 which deals with similar matters.

The other amendments to this clause are of a consequential or drafting nature.

The clause has been amended accordingly.

18. *Clause 28.*—The Committee are of opinion that some time limit should be laid down within which a notice may be served upon an importer or an exporter, as the case may be, for payment of duty not levied, short-levied or erroneously refunded by reason of collusion or wilful mis-statement or suppression of the facts on his part, and they feel that a period of five years would be adequate for this purpose.

The clause has been amended accordingly.

The other amendment is of a drafting nature.

19. *Clause 29.*—The Committee feel that specific provisions should be made in the Act itself regarding action to be taken by the person in charge of a vessel or an 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.

The clause has been amended accordingly.

20. *Clause 30.*—The Committee consider that as in the Sea Customs Act, 1878, a period of 24 hours after the arrival of the conveyance may be allowed for the delivery of the import manifest or import report.

The clause has been amended accordingly.

21. *Clause 36.*—The amendment made in the clause is clarificatory in nature.

22. *Clause 41.*—The Committee are of opinion that the export manifest or export report may be allowed to be delivered after the departure of the conveyance on the lines of the provision in the Sea Customs Act, 1878, but the period within which such manifest, etc. may be delivered may be increased to seven days from the existing five days.

The clause has been amended accordingly.

23. *Clause 47.*—The clause has been re-drafted to make the intention clear.

24. *Clause 48.*—The amendment to the clause is consequential to the amendment made to clause 23 (2).

The Committee feel that the words 'arms' and 'ammunition' should be defined as in the Arms Act, 1959.

The clause has been amended accordingly.

The other amendment is of a drafting nature.

25. *Clause 51.*—The clause has been re-drafted to make the intention clear.

26. *Clause 74.*—The Committee consider that the drawback allowable on re-export of duty paid goods should be ninety-eight per cent instead of ninety-five per cent.

The clause has been amended accordingly.

27. *Clause 88.*—The Committee are of the view that the Act itself should provide on the lines of the international agreements that the whole of the duty should be allowed as drawback on fuel and lubricating oil taken on board any foreign going aircraft as stores.

The clause has been amended accordingly.

28. *Clause 101.*—The Committee feel that this clause should not specifically apply to precious stones other than diamonds.

29. *Clause 102.*—The Committee are of the opinion that search of persons under clause 100 and clause 101 should be conducted in the presence of two or more witnesses.

They also feel that when a person is to be taken to a gazetted officer of Customs or magistrate, that should be done without unnecessary delay.

The other amendment is of a drafting nature.

The clause has been amended accordingly.

30. *Clause 104.*—The Committee are of the view that an officer of Customs arresting a person under the clause should have the power to release the arrested person on bail or otherwise similar to the power conferred on the officer-in-charge of a police station under the Code of Criminal Procedure, 1898, so as to obviate the necessity of detaining an arrested person till he can be taken to a magistrate.

The Committee feel that sub-clause (3) being merely a repetition of the provisions of the Criminal Procedure Code should be omitted.

The Committee are also of the opinion that the offences under this Act should be non-cognizable as at present although the maximum punishment in respect of certain offences is being enhanced to five years imprisonment.

The clause has been amended accordingly.

31. *Clause 105.*—The Committee feel that the record containing the grounds of belief, etc., to be maintained under the provisions of section 165 of the Code of Criminal Procedure 1898 should be forwarded to the Collector of Customs and not to the magistrate in order to enable the former to keep proper control over the Customs officers authorising search of premises.

The clause has been amended accordingly.

32. *Clause 107.*—The Committee feel that sub-clause (c) should be omitted.

The clause has been amended accordingly.

33. *Clause 108.*—The Committee consider that the power to summon persons to give evidence or produce documents should be conferred only on a Gazetted Officer of Customs.

The clause has been amended accordingly.

34. *Clause 110.*—The Committee are of the view that when any goods are seized, proceedings in the nature of a show cause notice should be started within six months of the seizure but this period may on sufficient cause being shown be extended by the Collector of Customs for a further period of six months. If the show cause notice is not issued within the specified period, the goods should be returned to the person from whom they were seized.

The Committee also feel that in order to obviate any hardship or inconvenience to a person from whom any documents are seized, he should be entitled to make copies thereof or take extracts therefrom.

The clause has been amended accordingly.

35. *Clause 112.*—The Committee feel that sub-clause (a) as drafted may not be comprehensive enough to bring within its scope all persons who abet the doing or omission of any act which would render any goods liable to confiscation under clause 111. This sub-clause has, therefore, been omitted, and an addition made to sub-clause (b) to cover such abettors.

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The amendment to sub-clause (c) is of a clarificatory nature.

They further feel that the penalty under the clause should be enhanced from three times the value of the goods or one thousand rupees whichever is the greater, to five times the value of the goods or one thousand rupees, whichever is the greater.

The clause has been amended accordingly.

36. *Clause 113.*—Item (k) of the clause has been re-drafted to provide that goods cleared for exportation under a claim for drawback would be liable to confiscation if they are not loaded for exportation on account of any wilful act, negligence or default of the exporter or after having been loaded are unloaded without the necessary permission.

37. *Clause 114.*—The clause has been amended on the lines of the amendments made to clause 112.

38. *Clause 118.*—It was represented to the Committee that the clause, though identical with an existing provision in the Sea Customs Act, 1878, would cause hardship in certain cases where the smuggled goods may after importation happen to be kept in a package along with non-smuggled goods. The Committee noted that essentially the intention was to apply the clause only to such other goods as are imported in a package along with the goods liable to confiscation.

The clause has been re-drafted to cover such goods only.

As regards exports, the amendment is of drafting nature only, recasting the provision on the same lines as for imports.

39. *Clause 120.*—The Committee feel that since the provision regarding transfer of onus of proof was contained in clause 123, this clause should not also transfer to the owner the onus of proving that a part of the goods has not been smuggled. The Committee were, therefore, of opinion that where a case falls under the proviso to sub-clause (2), only such part of the goods the value of which is equal to the value of the smuggled goods should be liable to confiscation.

The clause has been amended accordingly.

40. *Clause 123.*—The Committee are of the opinion that precious stones other than diamonds should not be specifically included in this clause.

The clause has been amended accordingly.

41. *Clause 125.*—The amendment made to the clause is of a clarificatory nature.

42. *Clause 128.*—The Committee are of the view that appeals against the orders of officers of Customs below the rank of Collector should be heard by Appellate Collectors of Customs who should not be entrusted with any other functions under this Act.

The Committee are also of the view that the power to enhance penalty or fine in lieu of confiscation or to confiscate goods of greater value should not vest in the Appellate Collector of Customs.

The other amendments are consequential to the amendment to clause 28.

The clause has been amended accordingly.

43. *Clause 130.*—The Committee feel that the Collectors of Customs should not be vested with the powers of revision.

The other amendment is consequential to the amendment to clause 28.

The clause has been amended accordingly.

44. *Clause 131.*—The Committee are of the opinion that the Central Government should have the power to revise of its own motion any order in appeal or an order in revision. The Committee also consider that the Central Government should have the power to enhance duty or penalty or fine in lieu of confiscation, etc.

The clause has been amended accordingly.

45. *Clause 135.*—The Committee consider that in order to check large-scale smuggling, deterrent punishments are called for. They are, therefore, of the view that where the offence concerns any goods to which clause 123 applies and the market-price of which exceeds one lakh of rupees, the imprisonment may extend to five years and that except for special and adequate reasons to the contrary, the minimum punishment in such cases should be six months' imprisonment.

The clause has also been revised to make it clear that persons who in any manner deal with smuggled goods after these have been imported shall be liable to prosecution if such persons had knowledge or reason to believe that the goods were smuggled goods.

46. *Clause 136.*—The Committee feel that among the offences by Customs Officers, the offence of illegal search and illegally authorising another officer to search premises, should be included.

They further feel that punishment for such offences should be more severe. Accordingly, a term of imprisonment which may extend to six months has been provided for.

The clause has been amended accordingly.

47. *Clause 138.*—The amendment to the clause is consequential upon re-draft of clause 135.

48. *Clause 140.*—The Committee consider that, as in other Acts, the word 'and' occurring in the proviso to sub-clause (1) should be substituted by the word 'or'.

49. *Clause 142.*—The Committee are of the view that the manner of recovery provided in this clause should also be applicable where the terms of any bond, etc., executed under this Act, provide a contractual obligation that the amount of the bond may be so recovered.

The clause has been amended accordingly.

50. *Clause 144.*—The Committee are of the view that a sample should be restored to the owner, if practicable, without a request being made to that effect by the owner. They further consider that in case the duty on the sample consumed or destroyed during the course of any test or examination is not less than five rupees, such duty should not be charged.

The clause has been amended accordingly.

51. *Clause 145.*—The amendment made in the clause is clarificatory in nature.

52. *Clause 147.*—The Committee feel that it should be clarified that if the owner, importer or exporter proves to the contrary, the presumption under sub-clause (2) should not be raised against him.

They also feel that it should further be provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any wilful act, negligence or default of the agent, such duty should not be recovered from the agent unless in the opinion of Assistant Collector of Customs the same cannot be recovered from the owner, importer or exporter.

The clause has been amended accordingly.

53. *Clauses 150 and 153.*—The amendments made in the clauses are of a clarificatory nature.

54. *Clause 159.*—The Committee are of opinion that notifications issued under clause 43 should also be laid on the Table of both Houses of Parliament.

The clause has been amended accordingly.

55. The recommendations of the President have been obtained under Article 117(1) of the Constitution in respect of the amendments made in the Bill.

56. The Select Committee recommend that the Bill as amended be passed.

NEW DELHI;
The 9th November, 1962.

S. V. KRISHNAMOORTHY RAO,
Chairman,
Select Committee.

MINUTES OF DISSENT

I

We regret we cannot agree with the majority report of the Select Committee on the following clauses:

This is a new legislation on land, air and sea customs and in order to check smuggling the law is to be made more drastic but in our anxiety to do this we should take care that the innocent traders may not be unnecessarily harassed. By keeping this point of view in our mind we are giving this minute of dissent.

(1) Clause 11(v) should be deleted. This is giving too much powers to the Customs authorities. Similarly sub-clauses (e), (j) and (n) should be deleted as it overlaps the provisions of other enactments.

(2) Clause 14 requires some change. The importer loses his goods as well as he is charged with duty for the same.

(3) In clause 105 the Customs Officer should not be authorised to make search without obtaining the search warrant from a Magistrate. Therefore, the provision should be that an application should be made by the proper officer to the Magistrate who may issue a warrant for search of goods, things or documents specifying therein the place of such search and nature of the offence.

(4) In clause 118 a proviso should be added that other goods shall be confiscated only if the owner thereof knowing that any goods are smuggled goods places other goods with them but not otherwise. The term 'package' should also be defined as connotation of package is too vague and very wide.

(5) Clause 123 is about burden of proof. It will be very unjust to place burden of proof on the accused or on the purchaser of goods, so explanation to this clause should be added that if the person concerned proves to the satisfaction of the Court the source from which he had received or purchased the goods, the onus of proof shall be deemed to have been discharged.

(6) Clause 131 is against the recommendation of the Badhwar Committee report. In Chapter XXI, page 81, of the said report, it is said:—

“We find that the Taxation Enquiry Commission examined this matter and came to the conclusion that, in the interest 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.”

In line with the above recommendation, we suggest the following amendment:—

“The Central Government shall constitute a Tribunal which should consist of at least one Judicial Member who should be a serving or retired High Court Judge and one member who has had experience of customs administration and one representative of the association of the Import and Export Trade.

The Central Government shall ordinarily appoint a Judicial Member of the appellate Tribunal to be the President thereof.”

(7) In clause 147 the clearing agent should be responsible for some fixed period only and for the mistake of the owner the clearing agent should not be liable to punishment.

NEW DELHI;
The 9th November, 1962.

NARENDRASINGH MAHIDA
RAMCHANDRA VITHAL BADE

II

The Sea Customs Act was enacted in the eighth decade of the nineteenth century, the Land Customs Act in the third decade of the twentieth, and while there is no Air Customs Act the administration of air customs is governed by rules made under the Indian Aircraft Act which is half a century old. The Customs Bill, 1962, seeks to consolidate the provisions relating to sea, land and air customs into a single comprehensive measure. Such an attempt at codification is welcome and has been long over due. The Bill now on the anvil of Parliament contains many features which are salutary, desirable and even an improvement on the existing law; but there are certain provisions therein which, I am sorry to say, do not commend themselves to me. I am accordingly constrained to append a note of dissent, mainly in respect of the here-in-after mentioned clauses. Lack of time has prevented me from listing all the clauses with which I do not agree.

(1) *Clause 102(1)*.—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.

(2) *Clause 105*.—Human nature being what it is, and power being often an inebriating thing, there should be a safeguard against possible abuse of authority. That can only be done in this case by providing for a wholesome restraint to the effect that no such search shall be made without a magisterial warrant. In this connection I should like to make it perfectly clear that while smuggling and other anti-social, anti-national malpractices should be severely, even drastically dealt with, the law should not become an engine of persecution or harassment of honest traders or other citizens. The task of the conscientious legislator, particularly so in a modern democratic State, is to ensure that the exercise of more and more power by the executive does not make serious inroads upon the legitimate rights and liberties of the individual.

(3) *Clauses 106 and 118*.—The word 'package' should be so defined as to admit of no ambiguity.

(4) *Clause 123.*—This clause should contain, if possible, a provision or an explanation stating when or how the onus of proof on the person concerned should be deemed to have been discharged, and consequently shifted to the person by whom the goods were seized or to the prosecution.

(5) *Clauses 128—131.*—I agree with the recommendations of the Customs Reorganization Committee (Badhwar Committee) with regard to the appellate and revisional machinery, and am therefore of the view that these clauses should be amended in the light of those recommendations.

(6) *Clause 144.*—The words 'if practicable' be deleted.

(7) *Clause 161.*—Every order made under this section should be laid before Parliament for approval or such modification as Parliament may deem necessary.

NEW DELHI;

HARI VISHNU KAMATH.

The 12th November, 1962.