

smuggled goods, The other person is then called upon to prove that they are not smuggled goods. Before he can demolish that belief of the Customs Officer he should know the grounds on which he holds that belief. Unless he knows the grounds of that reasonable belief under which the Customs Officer acts, how can he demolish that belief?

**Shri Dehejia:** This very point was taken up in the Supreme Court and the Court has held that the provision is *intra vires*.

**Shri Shah:** The Supreme Court has held that the provision is constitutionally valid.

**Shri Dehejia:** This very point was raised by the defence in that case.

**Shri Shah:** I can assure you that I have carefully studied it and this point was not before the Supreme Court at all. The point before the Supreme Court was whether this is a reasonable restriction on trade under Article 19(a) (f) and 19(1)(g) of the Constitution. They held that it is a reasonable restriction. So, the point that I was making was that whenever any action is taken on the ground of reasonable belief or having reason to believe a particular thing, the grounds of such belief should be told to that person within a particular time so that he can reply to that. He should know what the case is that he has to meet.

**Shri Morarji Desai:** This is a reasonable request. We should give them the grounds when they ask for them. We must provide sufficient safeguards. If we take extraordinary powers, we must do that.

**Shri Dehejia:** May I put a question?

**Shri C. C. Shah:** If he is to be able to reply to it to your satisfaction, grounds should be given.

**Shri Dehejia:** For the purpose of this section, the onus of proof is put on the person. It does not mean that one has to prove or give the reasons. This has been maintained in a number of judicial proceedings.

**Shri C. C. Shah:** The purpose of this section, as I understand it, is this. The department is unable to prove that these are smuggled goods. The information in their possession leads them to a reasonable belief. They are not doing this on suspicion, but they are doing it on the reasonable belief that these are smuggled goods. And, then, the burden is shifted upon the other person to prove that these are not smuggled goods. Unless he is given the information which you have received on which your reasonable belief is based, how can he reply to it?

**Shri Dehejia:** But then, the ground is mentioned in the show-cause notice itself.

**Shri Shah:** It gives certain facts on the basis of which they say that these are smuggled goods.

**Shri Morarji Desai:** If it is given in show-cause notice, that is enough. If you give it once in the show-cause notice, that is quite enough. It is not at all necessary to give it afterwards once again separately.

**Shri Abrol:** Clause 124 provides for this.

**Shri Shah:** Clause 124 says as follows:

"No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in writing informing him of the ground on which it is proposed to confiscate the goods or to impose a penalty . . ."

That is quite different from giving the grounds of reasonable belief.

Under Section 123, where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the

goods were seized. Confiscation comes under clause 124(1), if, after reasonable belief, he thinks that these are smuggled goods.

**Shri Dehejia:** There might be an informer who has come and said that such and such goods are coming at such and such a place and that they are smuggled goods. It will be possible to say that such and such information has been received. Will it be possible to say that such and such a man has sent the information?

**Shri Shah:** Not the name.

**Shri Morarji Desai:** Certain information comes that certain goods are coming at such and such a place which are smuggled. You should immediately attach the goods. That is enough ground for doing it. He says that there are reasons in believing that these are smuggled goods. Grounds ought to be given, but not the name of the informer.

**Shri Prabhat Kar:** Section 124 provides as follows:

"No order confiscating any goods or imposing any penalty on any person shall be made under this chapter unless the owner of the goods or such person is given a notice in writing informing him of the ground on which it is proposed to confiscate the goods or to impose a penalty".

The witness says that this can only be the opinion of the Customs officer.

**Shri Shah:** Reasonable belief of that officer.

**Shri Morarji Desai:** The ground will be that such goods are smuggled. Therefore, they are confiscated. That is a sufficiently valid ground for confiscation.

**Shri Prabhat Kar:** Will he give the grounds? Will he say "These are the reasons and this is the information on the basis of which we believe the goods to be smuggled"?

**Shri Morarji Desai:** That is what should be made clear. If it is known that certain goods are smuggled, they are confiscated. The reasons are given.

**Shri Shah:** The Customs officer investigating the case has to be satisfied that there are grounds for a reasonable belief that these are smuggled goods. Reasonable belief of the Customs officer is a ground for confiscation.

**Shri Dehejia:** The section for confiscation says that the goods are in fact smuggled.

**Shri Ramchandra Vithal Bade:** If, instead of saying 'reasonable belief' we say 'reasonable ground', will that suffice?

**Shri C. C. Shah:** That will not make a difference. Ground has to be given.

**Shri Morarji Desai:** Ground can be given, but it cannot be proved to anybody's satisfaction.

**Shri Shah:** Belief is a term much stronger than suspicion. We have no complaint with the word 'reasonable belief'. All that we want is that the ground of belief should be given. How is it that he comes to the reasonable belief?

**Shri Prabhat Kar:** Goods can be confiscated only on the ground that they are smuggled.

**Shri Shah:** But in this case it is presumed that they are smuggled. Therefore, they are confiscated. The other man has to prove that they are not smuggled.

**Shri Morarji Desai:** You have purchased the goods at such and such a place.

**Shri Shah:** That does not mean that they are smuggled.

**Shri Morarji Desai:** You might receive them in a bonafide manner, but once they are smuggled goods, they are liable to confiscation. All smuggled goods are liable to confiscation.

**Shri Shah:** How to prove that they are not smuggled? I am a bonafide purchaser. You may be a bonafide purchaser and yet the goods may be smuggled. Smuggled goods have not been defined here. It means goods on which duty has not been paid and which come without the permission of the Reserve Bank. It is impossible for the department to prove that they are smuggled. The difficulties arise only because of that.

I have purchased certain gold in the ordinary course of my business. It is a *bona fide* transaction. It is sold by a well-known merchant. I pay the price. I have not the least suspicion that these are smuggled goods. Then, I should be protected.

**Shri Dehejia:** He personally, or the goods?

**Shri Shah:** Both. If the person has reason to believe that he has purchased goods which are smuggled goods, the goods should be confiscated. But if he proves his bonafide, that is different. I will give the illustration of a case in connection with clause 120, sub-clause (2). There it is provided that 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. I will tell you one case which may be of interest to you.

One sweeper was arrested at an airport and he was in possession of 100 tolas of gold coming from Pakistan. Those 100 tolas were confiscated. Then he was interrogated. He said that 8 days ago he got another 100 tolas. Then he was asked as to what he did with that. He said that he gave that to one John Lobo. He was traced and it was found that he gave it to one goldsmith. The goldsmith was traced. He was interrogated. The goldsmith said that he added some copper to it and what was 100 tolas has become 103 tolas. That goldsmith was a well-known trader in the bazaar. He sold it to a choksi in the gold market who he was having a standing of 100 years

old, namely, Chimanlal Mohanlal. He sold it to one Vali Mohammad. He has a refinery of his own. He purchased that bar from Chimanlal Mohanlal and paid the full price of it. At the same time he purchased from Chimanlal Mohanlal two other bars of 100 tolas and 42 tolas and paid the price for it. On the same day, Vali Mohammad had purchased 250 tolas of gold from another merchant. Then two of his constituents also brought gold to him for being refined in the refinery. So, all the gold which contained 100 tolas of gold which was originally smuggled was put in a crucible and it became a bar of 750 tolas.

**Shri Morarji Desai:** So, it cannot be identified.

**Shri Shah:** Out of that, these two constituents were given pieces corresponding to their own gold. One was given a piece of about 100 tolas and another was given a piece of about 142 tolas. The remaining 450 tolas of gold remained with Vali Mohammad. When the Customs officials began to enquire into it, 100 tolas of smuggled gold had gone into the crucible. The siezed 450 tolas of gold from Vali Mohammad and the rest from the other two constituents. The collector investigating the case could not say which 100 tolas had gone into the bar.

**Shri Morarji Desai:** Nobody could say that.

**Shri Shah:** What he said was, "I will keep all this gold—650 tolas." He told Vali Mohammad, "I will not release your 45 tolas of gold unless you pay a penalty of Rs. 8,000." He told the other man, "I will not release your 100 tolas of gold unless you pay a penalty of Rs. 2,300. Similarly, he told the third person "unless you pay a penalty of Rs. 1,800 I will not release your gold."

So, all the three persons who had not even the least suspicion that any smuggled gold had come to them, who purchased this gold from a well-known choksi in the bazaar and had paid the full price—only 100 tolas of smuggled

gold had gone into a bar of 750 tolas—had to pay the penalty. Otherwise all the gold—750 tolas—would have been confiscated.

**Shri Morarka:** What should have been done?

**Shri Dehejia:** What should have been confiscated? Here is the case. Let us discuss it in full step by step.

Now, John Lobo is not a merchant in gold. He is an ordinary person. The goldsmith had taken this gold from John Lobo. At least, at that stage he should have the reason to believe that it was not ordinary gold.

**Shri Shah:** But Chimanlal Mohanlal did not know about it. The goldsmith was a well-known merchant in the bazaar.

**Shri Morarji Desai:** They are all well-known. I will have to do something drastic. And what that drastic thing is, I do not know yet. I have got to do something drastic about this gold business. Otherwise, it is becoming terrible.

**Shri Shah:** Chimanlal Mohanlal purchased from the goldsmith. Vali Mohammad purchased from Chimanlal Mohanlal choksi which is of hundred years standing and they sell hundreds of tolas of gold everyday. Had Vali Mohammad any reason to suspect that it was smuggled gold?

**Shri Morarji Desai:** All this is all-right. I agree with you. But tell me what is to be done?

**Shri Shah:** What the Association says is this. If I am in possession of gold which is believed to be smuggled, I must be given an opportunity to prove to you that I have genuinely purchased from the market.

**Shri Morarji Desai:** I am not bothered about as to what is in your possession. I am bothered about this that a lot of gold is smuggled and it cannot go into the country, unless all these people get into it one way or the other. How am I going to prevent it? At what stage should I take the

step? And what step should I take to prevent this smuggling? You can send your suggestions later on to me. You need not do it here.

**Shri R. Ramanathan Chettiar:** May I know what is your concrete suggestions? An association like yours with a long standing can suggest the ways by which these mal-practices could be put an end to. Human nature being what it is there are likely to be mal-practices. We would like to know what your concrete suggestions are in order to put an end to this evil. Gold worth crores of rupees is smuggled into this country and the Government would like to put an end to it. Have you got any remedies to suggest?

**Shri Bade:** Mr. Chairman, I want to put one thing to the witness. There was such a case in my province where hundred rupees and one piece of gold were stolen and it was given to a merchant who put it in his safe and this was mixed up with his other gold. Then the police went there and asked him to give hundred rupees and one piece of gold which was mixed up with other gold. So, here the Customs officer did not confiscate the whole thing. The case which you cited may be an exception. It is not as a rule that the whole thing is confiscated. I do not think that the Customs officer under the law is empowered to confiscate the whole lot.

**Shri Shah:** Under clause 120, the Customs officer can seize the whole lot. There appears to be some misunderstanding about it. This is what it means. In this case, Vali Mohammad will have to prove that it is not smuggled gold. He has to prove that the duty was paid and that it was imported on Reserve Bank permit which he cannot prove. All that he can prove is that he genuinely purchased it from the market in the ordinary course of business. He does not know which gold is duty paid and which gold is not duty paid.

**Shri Morarji Desai:** What can the Government do?

**Shri Shah:** I appreciate that. There are difficulties. On behalf of the Association I would like to say that we are prepared to extend our fullest cooperation in putting down this evil of smuggling.

**Shri Morarji Desai:** Give me the remedy. Otherwise, I can provide the remedy which you would not like.

**Shri Shah:** If a person is in possession of gold for which there is a reasonable belief that it is smuggled gold, then he must be called upon to give a satisfactory explanation as to how he has come into possession of this gold. If he proves that he has purchased it from 'X' person, then action should be taken against 'X' person and not against the merchant.

**Shri Morarka:** Even if the 'X' person is a sweeper as is in this particular case? The 'X' person may have spent away the money and he may have neither money nor gold.

**Shri Shah:** Vali Mohammad says, he has purchased from a well-known merchant. You go to that well-known merchant. Then you go to the goldsmith who has purchased gold from a man who was not a gold dealer. He either purchased it knowingly that it was smuggled gold or at least he could have reason to believe that this was smuggled gold.

**Shri Dehejia:** May I ask one thing. In this particular case the penalty imposed was Rs. 8000 plus Rs. 2300 plus Rs. 1800—all told Rs. 12100. If you take the price of gold obtaining at that time that was the price of 100 tolas of gold. The total penalty put was equivalent to the value of 100 tolas of gold and not equivalent to the value of 750 tolas of gold.

**Shri Shah:** Yes. The point is only this as to who should be penalised. In this case it is a purchase from Chamanlal Mohanlal Choksi and he is a well-known merchant whom you could have caught. Why should Vali

Mohammad be called upon to pay a penalty of Rs. 8000 who had nothing to do with the smuggling of gold? Why should two other constituents of Vali Mohammad be penalised? Their gold was not smuggled gold. Because it was put into the same crucible, they were penalised. Why should they be penalised?

**Shri Shah:** Mr. Wali Mohammad should not have been penalised. Chamanlal Choksy should not be penalised if he points out the man who should be penalised. If he fails to point out the man, or if he points out somebody from whom he purchased knowing it to be smuggled, or having reason to believe that it is smuggled, he is an accomplice.

**Shri Dehejia:** I do not know whether you are aware that crores and crores worth of gold is being smuggled into Bombay every year.

**Shri Shah:** A very large quantity; there is no doubt about it. We entirely agree that a considerable quantity of gold is being smuggled. Our only submission is that bona fide people who have honestly purchased gold after paying the full price—all of them very well-known merchants in the bazaar—should not be penalised.

It is a question of balancing the various factors which arise in the trade. One possibility is that Government may take over the entire trade in gold and then, of course, the question of smuggling would not arise. If, however, trade in gold is permitted, if, for example, this bar which Vali Mohammad melted in the crucible had been given delivery through the clearing house in a forward purchase and the purchaser took delivery of it by paying the full price, what would be the consequence? Or if the bar of 750 tolas had been pledged by Vali Mohammad with the State Bank and the Bank had advanced Vali Mohammad Rs. 1 lakh, what would be the consequence?



**Shri Dehejia:** Even then the 750 tolas of gold would be liable to confiscation.

**Shri Morarji Desai:** All that is understood. But it does not take us anywhere. This is not a problem for this Committee; it is a problem for you.

**Shri Shah:** The problem for this Committee is that when you are making a law which makes it very difficult to carry on this trade—I must say makes it almost impossible. . . .

**Shri Morarji Desai:** It will be good if it is made impossible. I shall be very happy. That alone will stop the smuggling. That is the basic conclusion I have come to.

**Shri Dehejia:** Can a large quantity of smuggled gold be disposed of without the complicity of well known bullion merchants?

**Shri Morarji Desai:** Some well known merchants, not all.

**Shri Dehejia:** But many people finance this.

**Shri Morarji Desai:** If they can make a good bargain, they make it anywhere.

**Shri Mahida:** Can your Association take any responsibility in this matter?

**Shri Morarji Desai:** I want to make it impossible. That is why this clause is put. If they do not do any business, I shall be very glad.

**Shri Morarka:** May I ask one question of Mr. Shah. In the illustration which Mr. Shah gave what is to happen to the gold. Should the Customs be entitled to confiscate the 100 tolas, or all the gold in whoseever's hands it may be.

**Shri Morarji Desai:** What he said was that when it is traced to different persons the person who can be

charged with not having exercised caution should be penalised.

**Shri Morarka:** This is like stolen property. You cannot transfer title to stolen property.

**Shri Morarji Desai:** His suggestion is that the gold is not to be taken; only a fine is to be levied. That is his suggestion.

**Shri Shah:** If the gold can be identified, it can be confiscated.

**Shri Morarji Desai:** I readily agree that if it becomes impossible, let it become impossible. I have come to a blind alley where I have to take action.

**Shri Shah:** It is a matter for the Select Committee and Parliament to decide.

**Shri Prabhat Kar:** It is admitted that in the bar of 750 tolas 100 tolas is smuggled. So the question is not of any doubt; it is one of certainty and the gold will have to be confiscated.

**Shri Shah:** Clause 120 goes much beyond what you are stating the whole can be confiscated.

**Shri Morarji Desai:** I would say this. As a citizen if I am in possession of goods which I have acquired from *bona fide* people, but are found to be stolen goods, I would have no objection to get it forfeited. I would agree to it as a citizen. I have come to this desperate solution.

**Shri Shah:** You have used the correct word.

**Shri Morarji Desai:** The interest of the country is far more important than the interest on any particular trade.

**Shri Ramanathan Chettiar:** Unless we take very stringent measures we cannot put down this gold smuggling.

**Shri Morarji Desai:** It is a very dangerous thing that is happening all the while. It is increasing every year. This trade is being maintained on

that only. No gold is being produced in the country.

**Shri Shah:** There is enough stock.

**Shri Morarji Desai:** There is stock; but the stock does not come out for sale.

**Shri Bade:** I think what he means to say is that innocent people should not be made to suffer.

**Shri Ramanathan Chettiar:** Today the world price of gold is much less than the price in our country.

**Shri Morarji Desai:** There is acute scarcity of gold in the country and there is the hunger of the people to buy.

**Shri Ramanathan Chettiar:** That leads to smuggling. Unless we take stringent measures to put it down, we cannot succeed.

**Shri Morarji Desai:** It is for us to decide; it is not possible to get anything from them.

**Shri Morarji Desai:** I will have to find a solution, whatever may be the risks. Even if it appears monstrous I will have to do it.

**Shri Ramanathan Chettiar:** May I enquire from them whether the Bullion Association have thought of evolving a code of conduct at least among their own members?

**Shri Morarji Desai:** You are expecting the impossible from them. Can I suggest any code of conduct to them? I cannot. Therefore, how can they suggest any code of conduct? They cannot. It is impossible.

**Shri Bade:** Mr. Shah, with regard to clause 120(2), do you want to delete this proviso or do you want to amend it?

**Shri Shah:** In the proviso we want only an amendment that a *bona fide* purchaser who has received it without knowing or without having reason to believe that it is smuggled goods should not be penalised.

**Shri Morarji Desai:** He will not be liable for prosecution, but for confiscation he should be liable.

**Shri Shah:** Only of the gold that is smuggled, not the whole lot.

**Shri Morarji Desai:** The whole lot—lock, stock and barrel. I would say that even his property should be confiscated. Then and then only will this stop. I want to put dread into the minds of the people and to stop this.

**Shri Bade:** Mr. Shah, would you say that it should be confiscated and not forfeited?

**Shri Shah:** There is no difference between confiscation and forfeiture.

**Chairman:** Anything else?

**Shri Shah:** There is one thing more. As regards the provisions for appeals, revisions and reviews, their request is that just as in Income-tax and Sales Tax there should be a tribunal to hear appeals. That is their request.

**Shri Morarji Desai:** The request is before the Committee. The Committee will consider it.

**Shri Shah:** Another thing is that in clause 121 the provision is that the sale proceeds may also be taken away. Their only request is this. Where any goods are purchased by any person having knowledge that they are smuggled, the provision is all right. But when you say "or reason to believe" this is very wide and therefore these words should be omitted. If he has knowledge that they are smuggled goods, the sale proceeds may be confiscated. But the words "or reason to believe" should be omitted.

**Shri Morarji Desai:** They are the same thing.

**Shri Shah:** They are not the same. Parliamentary legislation does not use redundant words. That is what I know of.

**Shri Morarji Desai:** They are not redundant.

**Shri Shah:** So they are different.

**Shri Dehejia:** In this case you mentioned would the boldsmith have knowledge or reason to believe?

**Shri Shah:** He would have reason to believe.

**Shri Morarji Desai:** Therefore both things are required.

**Shri Shah:** Where you forfeit the smuggled goods it is all right but when it comes to the sale proceeds...

**Shri Morarji Desai:** Even the sale proceeds. Unless there are monstrous provisions there is not going to be a solution to this. And these are monstrous provisions. I am not denying that. These are not ordinary provisions. But they are very necessary.

**Shri Kasturchand:** (Spoke in Gujarati).

**Shri Morarji Desai:** Shri Kasturchand says that this will be a very great hardship to the people who do *bona fide* transactions. I say this is a hardship and we cannot afford to take away the hardship.

**Shri Hari Vishnu Kamath:** The hardship may be minimised. That is all that we can do. Life is hard for every one.

**Shri Morarji Desai:** We can try to do that. That is for the Committee to consider.

**Shri Trikamlal:** This will stop the trade completely everywhere in India.

**Shri Morarji Desai:** That also may be necessary.

**Shri Trikamlal:** Suppose a man has ten or fifteen tolas of gold and he goes to somebody asking him to finance against it. Nobody would finance against that gold.

**Shri Morarji Desai:** He will preserve the gold and not incur any debt. He will save himself.

**Shri Kasturchand:** (Spoke in Gujarati).

**Shri Morarji Desai:** He says that this won't be accepted by the coun-

try or that this will not become current. I say we have got to change the customs, the habits, the traditions. We have not kept our modes of dress, food and actions. The joint family has broken up.

**श्री कस्तूरचन्द :** मैं यह कहना चाहता हूँ कि चूँकि स्मगलिंग का काम थोड़े से ही आदमी कहते हैं, इसलिए सारे देश के आदमियों का पीनलाइज करना ठीक नहीं है ।

**श्री मोरारजी देसाई :** मैं इन्टरनेशनल प्राइस पर सब का सोना खरीदने के लिये तैयार हूँ ।

**Chairman:** Thank you.

*(The witnesses then withdrew.)*

### III. THE MADRAS JEWELLERS' AND DIAMOND MERCHANTS' ASSOCIATION, MADRAS

*Spokesmen:*

1. Shri V. Pandurangiah
2. Shri Harendra Mehta
3. Shri P. Gopalakrishniah
4. Shri Kanayalal Mehta.

*(Witnesses were called in and they took their seats.)*

**Chairman:** Your Memorandum has been distributed to all the Members of the Committee and they have gone through it. If you want to supplement it you may now do so.

**Shri Harendra Mehta:** Here are diamonds in various forms in which they are cut for demonstration. (Shown to Members).

**Shri Morarji Desai:** How many diamond merchants are there in Madras?

**Shri Pandurangiah:** Two-hundred and twenty recognised traders who deal in diamonds and jewellery.

**Shri Morarji Desai:** In Madras city All over Madras?



**Shri Pandurangiah:** Diamond merchants, dealers in gold ornaments, about 5000 people.

**Shri Morarji Desai:** In Madras they use diamonds more than in other places.

**Shri Pandurangiah:** Yes. Diamonds of a particular quality are used in Madras, mostly the better quality ones.

**Shri Morarji Desai:** Because it is said that in marriage, every girl must have one just as every girl must have some gold in our State.

**Shri Pandurangiah:** At least one pair of ear drops of good quality, without flaw. There is some sentiment attached to it. They will even borrow to buy this.

**Shri Morarji Desai:** On how many clauses do you want to speak?

**Shri Pandurangiah:** What we have to say will be in a general way. We are worried about certain aspects of this Bill.

**Shri Morarji Desai:** The idea is to put fright into the minds of the people concerned.

**Shri Pandurangiah:** In the process of doing that, you are frightening the very existence of the trade. We feel that certain peculiar aspects of this trade have to be explained as they may not be known to you. We are confident that if what we have in mind is made known to Government, there will not be any trouble. I would like to make my submissions with only one or two general remarks. This is an industry which has been going on for thousands of years. It fills a definite need in the social economy of the country. People need certain commodities and jewellers have to exist. I do not want to cite the Parkinson law, I will only say that we the *bona fide* jewellers in India have got a right to be protected by the Government against seizure, arrest, being taken before a magistrate, being paraded in the streets and then

being left without a defence and without a definite means of protecting ourselves. We only request that the honest trader should be protected from being harassed. If in the process of trying to check smuggling, *bona fide* traders are put to trouble, I submit that it is the duty of the Government to protect them. We have got as much right to exist as anybody else because there is need in this country for our services. This Bill has put a fright into the mind of every jeweller, and they have been asking: are we to be wiped out? If that is so we would like to have a statement to that effect that we should change our business.

**Shri Prabhat Kar:** May I know whether all this picture of handcuffing and parading in the street etc., did take place?

**Shri Pandurangiah:** I can prove any statement that I am making to be a fact. Any point I am submitting I am prepared to prove with facts and figures.

**Shri Prabhat Kar:** I only wanted to know whether any one of your members was handcuffed and paraded in the streets?

**Shri Pandurangiah:** Yes, it happened, and the Association took up the matter. The matter went to the highest persons. We made representations to the I.G. of Police in Madras on this specific instance, and we have been given a letter saying that the members of our Association will be treated with the utmost consideration in future. I have got the letter in the files of the Association. I can produce it.

**Shri Bakar Ali Mirza:** What was the case in brief?

**Shri Pandurangiah:** The case was that the man bought a property which was supposed to be smuggled or stolen. The man was handcuffed, paraded in the streets, beaten, and the matter became so serious that it

had to be taken up with the State Ministry and the I.G. of Police, and written representations were made. A letter was received from them that consideration would be shown to the members and that safeguards would be made, and that in similar cases, the Association officials would be allowed to give evidence and their evidence would be taken.

**Shri Hari Vishnu Kamath:** Was it proved that it had not been smuggled?

**Shri Pandurangiah:** Yes. It was released.

**Shri Prabhat Kar:** Was it by the customs authority?

**Shri Pandurangiah:** Yes, customs and police. In a case of goods smuggled, stolen or unaccounted, whether the action is taken by income-tax, police or excise ...

**Shri Dehejia:** Under the Police Act of a State, when some goods are found which cannot be accounted for, the police have certain powers. It may have exceeded its powers in a particular case.

**Shri Pandurangiah:** We do not object to that, we only object to the manner in which that Act was enforced.

**Dr. L. M. Singhvi:** Were those proceedings initiated under the Police Act or was it done by the police at the instance of the customs authorities? Who filed the F.I.R.?

**Shri Pandurangiah:** Customs.

**Shri R. Ramanathan Chettiar:** Where was it confiscated and where was the person arrested?

**Shri Pandurangiah:** This happened in Madura. It was brought by the customs, and then we took it up.

**Shri R. Ramanathan Chettiar:** Land customs?

**Shri Pandurangiah:** Land customs or sea customs, I suppose it is the same.

**Shri Morarji Desai:** When was this?

**Shri Pandurangiah:** About two years back.

**Shri Dehejia:** Could the I.G.P. give that undertaking in respect of a customs officer?

**Shri Pandurangiah:** The police ill-treated the person, and we submit that whatever may be the case, we the organised Association will come to the help of the police, but we do not want vindictive action to be taken against any one.

**Shri R. Ramanathan Chettiar:** This is a matter for the police. I do not think the customs come into the picture at all.

**Shri Hari Vishnu Kamath:** You mean to say that powers conferred on any officer are likely to be abused?

**Shri Pandurangiah:** Yes, it is only from that point of view. That is why I submit that this Bill and its whole spirit has put a fright into the minds of *bona fide* traders. We are asking this simple question: will we be permitted to live and do our business? If some one person smuggles somewhere, why should the normal *bona fide* trade suffer? We have no objection to the smuggler being caught red-handed, he may not have any defence, and we will not go to his rescue.

**Shri Hari Vishnu Kamath:** In the case mentioned by you, did your Association proceed against the police officer who committed excess?

**Shri Pandurangiah:** Yes, we did. We made a representation. We did not make a complaint in a court of law. We made a representation to the I.G. and the Commissioner, because they were sympathetic at that level.

**Shri A. V. Raghavan:** It was open to you to take common law proceedings.

**Shri Pandurangiah:** After the man was handcuffed, paraded in the streets, beaten in the police station, what benefit or what satisfaction do we get out of proceeding against him when the damage has been done?

**Shri A. V. Raghavan:** It will be an example to others not to do it.

**Shri Pandurangiah:** Short of going to a court of law, we did everything possible. The position is this. If a man is caught in the street with a packet of Lucky strike in his pocket and is taken to a police station and asked to explain, he cannot reasonably account for that packet unless he says that he came by a plane and bought the packet on the plane. The packet has got the mark and the tobacco is fresh. A watch has got a registered number engraved at the back. Whenever we send it for repairs, they say the particular number watch is being repaired. Identification is possible. In a fountain pen, the parts and other things are named, stamped, engraved, and even if a spurious engraving is done, by magnification it can be found out whether it is the original part of the pen or an imitation. In the case of the diamond, which is a transparent article, which is cut either in this country or elsewhere, the excellence and skill of the cutting in India being equal to any other part of the world, the only identification that a man can give is as to where he purchased it. If it is 10 per carat or 20 per carat, one of small size and mixed up with other items, it is impossible for Government to lay down any particular procedure; nor is it possible for the owner of diamonds or the possessor of diamonds to defend. At the level where it is smuggled, either in the aircraft or within the customs precincts, it can be caught and the man cannot have any defence. Supposing you catch one person with 100 carats of diamonds, he cannot say he bought it in his grandfather's time or that they are his wife's jewellery; he has to account for them. But, once he gets into the street, in the country, he is just like a convict escaping from jail and shedding off the dress of the

prison and putting on civilian dress and joining any party in a maidan of 10,000 people. There can be no justification for burning up all the 10,000 people so that this one man cannot escape.

In the same way, we the jewellers buy in a *bona fide* manner from individuals. The source of supply is from the rough diamonds which are imported into the country and cut. Large quantities of diamonds had been imported by princes all these years because of the diplomatic privilege. They are being sold. Till 1947, we ourselves were importing as many diamonds as we could possibly get. There was no restriction on the diamonds until 30th June, 1947. We could get anything; and the diamond imported into the country on the 15th of June 1947 cannot be distinguished or differentiated from diamonds smuggled today and brought into the country. Indian mines are there. Diamonds are still being mined in a small way and rough diamonds are being imported under the Export Promotion Scheme or under the import controls. A diamond in your hand may be a million years old; it is ageless. The diamond does not change for years. It is not like emerald which will be watered down. Diamond is a thing which will defy such an operation. It will be permanent even after hundreds of years.

**Shri Hari Vishnu Kamath:** What is supposed to be the average life-time of a diamond?

**Shri Pandurangiah:** The geologists say that they must have been created by nature millions of years back. If any diamond can be proved to have been with any particular person before the year 1900, you can safely say that it is of Indian origin and, therefore, cannot come under the purview of smuggling. Because the discovery of mines and mining of diamonds in Africa was done between 1895 and 1898 and it was not until 1905 to 1908 that diamonds in quantities entered this country. From 1905-1908 to 30th June, 1947, diamonds were freely

being imported. Even South Africa was selling diamonds to us until 1945.

**Shri Hari Vishnu Kamath:** Is there any test by which you can discover how many years back a particular diamond was cut and polished?

**Shri Pandurangiah:** Regarding cutting and polishing we can broadly classify them into what are known as having been popular in the twenties or before. But, if it is a question of a diamond cut after 1935, it will be absolutely impossible to identify because there has been no broad change in the style and manner of cutting. The angle at the top and the angle at the bottom, the number of facets, the proportion of the girdle, that is the base, to the diameter, that is the top table, there has been no broad change from 1930 and 35 till now.

**Shri Hari Vishnu Kamath:** Is the technique the same in Europe and in India?

**Shri Pandurangiah:** Yes, Sir. It is identical because it is a question of pure geometry. 30 to 32 degrees is the limit for the top and 27 degrees for the bottom; 24 facets at the bottom and 32 facets at the top; one at the top and one at the bottom; total 58. It is pure and simple geometry. If a diamond is not cut that way, it will be considered to be badly cut and badly shining, and, therefore, not worthy of being called a good diamond.

I submit once again that it is transparent. In a transparent stone, that is diamond, which is with me from 1920, if I do not like the cutting, I can send it to one of the diamond cutters anywhere where cutting is done and have it re-shaped. It will look as if it is newly cut. Cutting is a thing which is done by human hands, capable of changing the shape of a diamond to bring out its best brilliance and, therefore, it is a question of craftsmanship. Our cutters, particularly in the Surat area, are so experienced that some of the biggest and most valuable diamonds

are cut and polished in India. Surat and Navasari are the places where diamonds are cut.

**Shri Mahida:** Cambay also.

**Shri Pandurangiah:** It is for rubies and sapphires.

**Shri Hari Vishnu Kamath:** It is the Minister's constituency.

**Shri Morarji Desai:** I am allowing him to hear fully if he wants to. I have taken a lesson from him.

**Shri Hari Vishnu Kamath:** My constituency produces *tarboojas* and *kharboojas*.

Another question is, so far as uncut diamonds are concerned, can you distinguish *deshi* from *videshi*?

**Shri Pandurangiah:** It is not possible. In the olden days, luckily nature did not differentiate politics or geography. The discovery was made under identical circumstances; when the pressure exceeded so much, when the temperature exceeded so much, carbon became diamond.

**Shri Hari Vishnu Kamath:** There is difference between man and man in one part of the world and the other.

**Shri Pandurangiah:** God's presentation of humanity being two eyes and two ears, in the same manner....

**Shri Hari Vishnu Kamath:** The ethnic qualities of mankind vary from part to part of the world. They are quite different.

**Shri Pandurangiah:** May I submit that these qualities are man-made and not God-made?

**Shri Hari Vishnu Kamath:** I do not speak about the physical qualities, but about the ethnical ones.

**Shri Morarji Desai:** Every child in any part of the world cries in the same manner, smiles in the same manner; its gutters function in the same manner. It is only after they come in contact with people like us that they differ.

**Shri Hari Vishnu Kamath:** I do not talk of the inner qualities; but I am speaking of the external variations.

**Shri Pandurangiah:** My submission is general and not with regard to particular clauses because I am not worried about the clauses. If you understand the thing, then, you will so frame the clauses to suit us.

**Shri Morarji Desai:** We are not worried about you or how you carry on your business. We are worried about smuggling.

**Shri Pandurangiah:** With regard to smuggling I would submit this. People are smuggling because a climate has been created for that. I do not wish to say who created this climate.

**Shri Morarji Desai:** Nobody creates the climate; it is the smugglers who create the climate for themselves.

**Shri Pandurangiah:** You may take as much strong action against smuggling as you like. We do not plead for them. We are not here as representatives of the Smugglers' Association. I do not know whether the hon. Minister is aware that in other countries there are smugglers' associations in existence.

**Shri Morarji Desai:** I do not know; this is the first time I hear of it.

**Shri A. V. Raghavan:** Are they legal associations?

**Shri Pandurangiah:** They are known as Smugglers' Associations.

**Shri Morarji Desai:** They may be like a gang of dacoits; they cannot be associations.

**Shri Pandurangiah:** They may not be legal but illegal. They call themselves associations.

It is not legal; it is illegal. We want to state that the prejudice which seems to be in the minds of the Government that we are connected in some way with illegal transactions is not justified.

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**Shri Morarji Desai:** No illegal transactions can take place unless those who do the legal transactions get mixed up. Not all of them. Some do get mixed up. Otherwise no illegal transaction can remain there.

**Shri Pandurangiah:** Clauses 101 to 105 relate to the power to search, arrest, etc. We wish to submit that in the case of arrests, etc. the present provision which asks them to go to the Magistrates should be continued. It has a salutary effect. The *bona-fides* of merchants who are known for their honesty and integrity are known to the Magistrates who do not generally give permission to arrest unless they have got strong reasons to believe that there is some truth in what the police or customs officers say. Once a place is searched, the customs people come in and then the whole business is paralysed. I have known instances where even for ten hours officers sat there and refused to allow a person to go even to the WC or receive telephone calls in the normal course or the customers to come in.

**Shri Morarji Desai:** I can understand about the telephone calls not being allowed but I cannot understand about a person not being allowed to go to the WC. If any officer had done like that I am prepared to be very stern on it.

**Shri Pandurangiah:** What can the poor person do? I wanted to come to his help. He was very frightened. He was not allowed to talk to his lawyer or friends and when I wanted to see him I was not allowed. I am the President of the association.

**Shri Morarji Desai:** Nobody is allowed except panchas when the search is going on; no lawyer can be allowed. After the search is over, a lawyer or others may be allowed to go in or see him.

**Shri Gopalakrishnaiah:** Sometimes coercion takes place.

**Shri Morarji Desai:** We have also got provisions to put fright in the officers if they do improper things. But you must write to us.



**Shri Anand:** Another impression created by you is that under the present Act one requires the permission of the magistrate to arrest a person. It is not so. You can see section 173 of the existing Act; it is not necessary to get permission from the magistrate.

**Shri Pandurangiah:** I was thinking of search warrants.

**Shri Mehta:** Our request is that search warrants may be issued by the magistrates. It happens sometimes that people are kept in custody the whole night and they are even beaten.

**Shri Morarji Desai:** That is illegal. Suppose you are beaten, unless you complain how can action be taken. Unless you are courageous enough to complain, how can any provision help you.

**Shri Mehta:** If the presence of a lawyer is allowed at that time it will be of help.

**Shri Morarji Desai:** But if he beats before the lawyer comes? He cannot be accompanied by a lawyer everywhere. A lawyer can see him after the search is over; nobody prevents that.

**Shri Hari Vishnu Kamath:** At what stage of the proceedings would you need the services of a lawyer?

**Shri Mehta:** After the search is over, immediately a lawyer should be allowed.

**Shri Morarji Desai:** Nobody prevents that. If you want that it should be incorporated in law, how can we do that?

**Shri Mehta:** In practice they do not allow the lawyer to come. An ordinary person does not know the law. The officer says that the presence of any lawyer is not allowed.

The officer will say, "you cannot get a lawyer." The ordinary man will not know the law. After the officer makes the search and finishes it, the man will say that he wants to be brought in.

**Shri Morarji Desai:** What for?

**Shri Mehta:** To put questions.

**Shri Morarji Desai:** The officer leaves after the search.

**Shri Mehta:** The *mahazar* is there. The statement is taken there.

**Shri Morarji Desai:** If the statement is taken the lawyer will not be allowed.

**Shri Mehta:** He comes to the customs house or to the customs officer and he is detained there for a number of hours; sometimes from one to eight hours.

**Shri Morarji Desai:** He cannot be detained.

**Shri Mehta:** That is the prevailing practice.

**Shri Hari Vishnu Kamath:** You are afraid that the customs officer may force the man to make a statement.

**Shri Mehta:** Yes; and so, he can be in for greater trouble on the next occasion.

**Shri Morarji Desai:** That is what happens when confessions are taken by the police. They are taken into account.

**Shri Mehta:** In the present Act, it is being said that confession before the police officer or the customs officer is going to be a *pucca* document.

**Shri Hari Vishnu Kamath:** The Committee will consider that. It is a reasonable suggestion.

**Shri Mehta:** We request the Committee to consider this aspect very sympathetically.

**Shri Himatsingka:** We cannot make it provisional.

**Shri Morarji Desai:** He wants that he should be allowed.

**Shri Mehta:** He should not be disallowed. If he wants, he should be allowed.

**Shri Morarji Desai:** That depends on the discretion.

**Dr. L. M. Singhvi:** I would request the witness to tell us if it is within his knowledge—if there is any specific instance within his knowledge—where there was an extortion of a statement by a customs official though there is nothing in law to force a man to make his statement. It is open to the persons charged to make a statement only after he has consulted his lawyer—he cannot be forced to make a statement until he has consulted the lawyer—but are they making their statement on the basis of any specific case within their knowledge, or, is it just an anticipatory sort of relief that they are seeking?

**Shri Pandurangiah:** I can give an instance of a man who was kept for the whole night in detention and then a statement was put before him and he was asked to sign it. I had personally to intervene in the matter. He signed the statement.

**Shri Morarji Desai:** When did this happen?

**Shri Pandurangiah:** A year before.

**Shri Morarji Desai:** Did you complain about it?

**Shri Pandurangiah:** I shall briefly tell you what happened. At 1 O'clock in the morning I telephoned to the Collector of Central Excise. I woke him up and asked, "what has happened to so and so, who was arrested at 9 O'clock in the night?" He said he must have returned home. I replied that he had not and that his wife and children were in my house and "they say that the man has not come back. The man has not come back and he is still in your office. Will you kindly check up?" The Collector was known to me personally and therefore he was very courteous and said, "I have ordered that he should be sent back." He then rang up his office and was told that I was correct and that the man was still under detention. He told me, "He is here still. We have given him a bed. We have provided cots for him for sleeping." I asked "Why should he be there? Please let me know." He said, "We have had a

trunk call to Bombay for a certain information, and until that information is checked, I am detaining him for the whole night."

**Shri Morarji Desai:** That becomes necessary. Otherwise, he will get into contact with others and whitewash the whole evidence.

**Shri Pandurangiah:** I said that the Collector was not quite correct in doing so, because the moment the man was arrested, trunk call had already been made by his relations and it would not help anyone by detaining him there.

**Shri Morarji Desai:** The man does not have the telephone for contacting anybody.

**Shri Pandurangiah:** But his relations do it.

**Shri Hari Vishnu Kamath:** Was he detained for more than 24 hours?

**Shri Pandurangiah:** From 9 O'clock in the night to 7 O'clock in the morning.

**Dr. L. M. Singhvi:** Was the man made to sign a statement?

**Shri Pandurangiah:** He was made to sign and he signed it.

**Dr. L. M. Singhvi:** What happened after that?

**Shri Pandurangiah:** Actually, I do not know whether the statement was believed in or not. But ultimately those goods were confiscated.

**Shri Morarji Desai:** You must have gone to court. What happened then?

**Shri Pandurangiah:** I think one or two packets which were identifiable were returned to him and the rest was confiscated.

**Shri Morarji Desai:** Then there was a case for confiscation. All these things have to be done. Otherwise nothing can be identified. We have got to be very harsh on this.

**Shri Pandurangiah:** But they were not able to prove from the accounts.

**Shri Morarji Desai:** You have just said that and you have gone to court.

**Shri Pandurangiah:** Two packets which could be identified were returned by the court.

**Shri Morarji Desai:** So, it was on a proper basis. There must have been a mistake in respect of one or two packets. But this means he was a man who was dealing with all these things. Why are you trying to save him?

**Shri Pandurangiah:** I am not trying to do that. I only say that he was detained for the night.

**Shri Morarji Desai:** I do not think there was anything wrong in his having been detained.

**Shri Pandurangiah:** We said that his wife and children were in my house.

Now, we come to section 118. Under this, when packages get mixed up with other things, when there is a suspicion, the whole stock can be confiscated. If this is literally followed, even if five out of 100 diamonds are suspected to be smuggled, all the 100 diamonds are to be confiscated.

**Shri Morarji Desai:** Can you not separate the diamonds?

**Shri Pandurangiah:** It is such that you cannot separate it.

**Shri Morarji Desai:** Then what has to be done?

**Shri Pandurangiah:** If, out of four carats, one and a half carats are suspected, then they can be taken out.

**Shri Morarji Desai:** That could be done, if it is possible. But, if all of them are of the same size, what could be done? The whole thing is to be confiscated.

**Shri Pandurangiah:** But is it fair? It may not be possible either for the prosecution or for the defence to distinguish them.

**Shri Mehta:** When there is information that something has been smuggled into the country, there may be

also some information as to the quantity of goods that have been smuggled. Suppose the quantity of smuggled goods is about 100 carats, if there is reasonable evidence that the total quantity is 500 carats, then, 100 carats alone will be confiscated.

**Shri Morarji Desai:** All the stock will be forfeited and confiscated so that the God-fear will be in their minds and they may not repeat it again. The whole stock will be forfeited.

**Shri Pandurangiah:** How do you protect the ordinary *bona fide* trader?

**Shri Morarji Desai:** A *bona fide* person is one who does not mix up things. Once it is proved that all these are mixed up and smuggled goods, I do not know what you want us to do.

**Shri Hari Vishnu Kamath:** Your case is that only he should be liable to punishment who, knowingly or wilfully, mixes smuggled goods with the genuine goods. Then, there could be no objection.

**Shri Morarji Desai:** Clause 120 says:

"(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;"

**Shri Gopalakrishniah:** The goods are seized even on suspicion. The whole thing is taken away first.

**Shri Morarji Desai:** If it is proved the whole thing is taken away.

**Shri Gopalakrishniah:** If the prosecution has got a proper, reasonable belief, if they have reasonable evidence, it can be done.

**Shri Morarji Desai:** Before a proper investigation is made they cannot do it. But on suspicion also, it must be done.

**Shri Gopalakrishniah:** Then where is the safety?

**Shri Morarji Desai:** There should be no safety for it.

**Shri Prabhat Kar:** If it is already a proved matter, all these things will not arise.

**Shri Mehta:** Whether the business we are carrying on is legalised....

**Shri Morarji Desai:** All illegal business is mixed up with legal business.

**Shri Mehta:** I perfectly agree with you. Let me give a concrete example. A has 1,000 carats of smuggled diamonds and he sells 500 carats to B. B sells out of these 500 carats to C. C is a *bona fide* purchaser. He has got a voucher from B and he has paid B through a cheque. After sometime it is found by the department that A has smuggled the diamonds and sold it to B, who has in turn sold it to C. C is in possession of a *bona fide* bill and he has paid through a cheque. How is C responsible? How does he know that the diamonds he purchased are smuggled ones?

**Shri Morarji Desai:** C will not be prosecuted, but the goods will be confiscated.

**Shri Mehta:** What mistake has he committed that he should lose the goods he has paid for?

**Shri Morarji Desai:** Smuggled goods should not be allowed to remain with anybody.

**Shri Hari Vishnu Kamath:** He says, C has purchased them without the knowledge that they are stolen. Under the IPC, he is not punishable.

**Shri Morarji Desai:** That is why he is not proceeded against.

**Shri Bade:** There was a case which happened in Indore. An advocate purchased motor car from Calcutta and it was stolen. It was confiscated in Indore. When he proved that he was a *bona fide* purchaser, the court ordered that the car should be restored to the original owner.

**Shri Gopalakrishniah:** In this case, identification is not possible.

**Shri Mehta:** Suppose I have purchased 100 carats of diamond by voucher and I have a stock of 500 carats. All my stock of 500 carats will be confiscated by the department.

**Shri Morarji Desai:** Under the proviso, the 400 carats out of that will be saved and restored to you when you prove that they are not smuggled.

**Shri Mehta:** To get relief for my 400 carats, it will take 2 years. My entire assets will be in your hands and I am out of business.

**Shri Morarji Desai:** There can be never 500 carats in one packet. It is pure imagination. How many carats were there in the packet you showed to me?

**Shri Mehta:** 10 carats. But under the present law, my entire stock will be confiscated.

**Shri Bade:** Your point is that the whole thing should not be confiscated. That is the difficulty for the committee also. The previous witnesses also have mentioned it. We will discuss it and come to a decision.

**Shri Morarji Desai:** It is for the committee to decide.

**Shri Dehejia:** Under which clause do you fear that the entire stocks will be confiscated?

**Shri Mehta:** Clause 118.

**Shri Morarji Desai:** He is wrong when he says that the whole stock will be confiscated. By overstating your case, you lose your case. Has it ever happened?

**Shri Mehta:** Yes. In Madras last year Rs. 1½ lakhs worth of goods were confiscated. There were nearly 22 packets ranging from 2 carats to 25 carats in each packet. Still no decision has come from the excise officer.

**Shri Morarji Desai:** You give me the details before you go and I will

look into that. Not only this case, but in other cases also, if there has been harassment or wrong use of power, if you bring it to our notice, we will go into each case. If any officer harasses you and if you come in appeal, I will certainly punish him.

**Shri Mehta:** Thank you.

**Shri Bade:** So far as this case is concerned, the Minister has given the assurance. That is all right. But we are here to consider the whole problem which you have raised.

**Shri Mehta:** Our point is that the diamond is indistinguishable.

**Shri Bade:** Can you throw some light on clause 115 about confiscation of conveyances?

**Shri Pandurangiah:** They confiscated a motor car just because smuggled watches were kept under the seat.

**Shri Morarji Desai:** There is nothing wrong in that.

**Shri Pandurangiah:** It was the watches which were smuggled and not the car.

**Shri Morarji Desai:** Under the former Act, we have confiscated several motor cars. They have gone to the courts and lost. It is not a new provision. Cars are used for smuggling, kidnapping, dacoity, etc. In such cases, they are bound to be confiscated.

**Shri Mehta:** The first man who knowingly smuggled should be punished.

**Shri Morarji Desai:** Suppose from you shop some diamonds were stolen and after changing several hands, they are found in somebody's possession and that person was a *bona fide* purchaser. The diamonds must be restored to you, but so far as the *bona fide* purchaser is concerned, his remedy is against the person from whom he purchased.

**Shri Mehta:** Where one packet of 500 carats is sold in the same condition, that is absolutely justified. Supposing it is not sold in the same condition. We have shown that it is not possible to distinguish the diamond. How can we prove that it is duty paid or not?

**Shri Morarji Desai:** Even if you trace it, how can the goods not be returned to the original owner?

**Shri Pandurangiah:** Then we come to clause 123 which deals with the burden of proof. This is a point on which we are feeling very unhappy.

**Shri Morarji Desai:** You are bound to feel unhappy. I also do not feel happy when I have to be heard.

**Shri Pandurangiah:** I hope this applies to individuals and also dealers. The individual concerned can only say that he bought it. How can he be expected to prove anything beyond that? How can he prove that it is not a smuggled thing.

**Shri Morarji Desai:** If it is proved that it is *bona fide* purchase he will not be prosecuted.

**Shri Bade:** According to section 123 you are to prove two things. You have to prove that you are a *bona fide* purchaser and, secondly, that the goods are not smuggled goods. You want to remove the second part.

**Shri Pandurangiah:** The thing might have passed through hundred hands. It would not have even been bought, it might have been polished locally or an old-cut diamond might be re-cut. How can I prove that it is not a smuggled diamond?

**Shri Morarji Desai:** We have said, therefore, that the grounds for seizure will be conveyed to you. You can prove that those grounds are not valid.

**Shri Pandurangiah:** He can at best prove that it was bought in a *bona fide* manner.



**Shri Morarji Desai:** Supposing somebody gets something from Connaught Place which has been smuggled, what am I to do?

**Shri Pandurangiah:** They are all branded goods. I am talking of goods which are not branded. It is as difficult for the prosecution to prove that it is not smuggled or smuggled as it is for the possessor.

**Shri Morarji Desai:** The misfortune is that regular dealers also deal in this matter.

**Shri Pandurangiah:** At least to save one honest man hundred people can be allowed to go.

**Shri Morarji Desai:** In some matters like the matter of smuggling, I am not prepared to subscribe to it. If I have reasonable grounds, I cannot help it. I know that is a very well known axiom of law, but I am very much worried about smuggling.

**Shri Pandurangiah:** But you cannot hurt an honest man. Then you will be committing a great sin, that is all that I can say.

**Shri Morarji Desai:** I will pay for it in the interest of society.

**Shri Hari Vishnu Kamath:** It is the view of the Executive, not necessarily of the Parliament.

**Shri Morarji Desai:** Why of the Parliament; it is yet the view of the Committee even.

**Shri Hari Vishnu Kamath:** This is a Committee of Parliament, and that is why I said "Parliament".

**Shri Pandurangiah:** He is dealing in a commodity which is not identifiable. It is the duty of the State to protect him.

**Chairman:** Provided he proves his *bona fide* he will be protected. The clause is quite clear.

**Shri Pandurangiah:** This is a thing which you cannot prove. It is not like a packet of cigarettes.

**Shri Hari Vishnu Kamath:** Can you suggest any concrete measures to prevent smuggling and to catch smugglers?

**Shri Pandurangiah:** Please give me a seat on the other side, then I will show how to prevent smuggling.

**Shri Morarji Desai:** Without sitting here why don't you show me? You are not a good citizen if you know it and you do not tell me.

**Shri Pandurangiah:** I have no powers to exercise. You tighten your defence on the shores. It is only through a sense of frustration and despair that the Government is bringing hardship on honest people so avowedly and so openly.

**Shri Dehejia:** What is the length of our shores?

**Shri Pandurangiah:** It is not the length of the shores that matters. Smuggling is done through a few channels; the Government knows it and the public also know it.

**Shri Morarji Desai:** It is done in any part of the shores; it is not only at a few places. You cannot keep a sentinel at every few yards.

**Shri Mehta:** As far as gold is concerned, Sir, I would like to make one suggestion. Gold from the Kolar gold field is not now sold to the public. I understand that the quantity of gold now taken out from there is about 20,000 to 25,000 tolas every month. If that goes to the market most of the gold smuggling is likely to be eliminated.

**Shri Morarji Desai:** Rs. 50 crores worth of gold has to be sold every year, and only then it will go. From where am I to bring it? Who will give it?

**Shri Pandurangiah:** Allow us to find the foreign exchange, and we will bring it.

**Shri Morarji Desai:** Where will you get the foreign exchange?

**Shri Pandurangiah:** In the international market, there is a free market and a controlled market. I can go and buy any amount of gold and silver from an uncontrolled market in London or Belgium.

**Shri Morarji Desai:** How will you pay for it?

**Shri Pandurangiah:** By selling it.

**Shri Morarji Desai:** By selling it in India?

**Shri Pandurangiah:** Anywhere. We will send our goods there.

**Shri Morarji Desai:** What goods? You give me a practical proposition and I am prepared to consider it. Do not think that you are more brilliant than all the people sitting here.

**Shri Pandurangiah:** It is not that. We actually speak from a feeling of hurt.

**Shri Morarji Desai:** I do not think I am unmindful of that hurt. I would not have been fit to sit here if I did not take into account the feeling of the people.

**Shri Pandurangiah:** You said that you are willing to hurt honest people.

**Shri Morarji Desai:** I have to do that sometimes.

**Shri Hari Vishnu Kamath:** Reluctantly.

**Shri Gopalakrishniah:** You admit that there is large scale smuggling in gold and jewellery.

**Shri Morarji Desai:** It is a known fact.

**Shri Gopalakrishniah:** Thereby our country is losing foreign exchange to a large extent. Therefore, why not Government take up this matter and sacrifice some foreign exchange.

**Shri Morarji Desai:** From where to sacrifice? I will have to do it continuously for ten years and hold up other industrial developments.

**Shri Gopalakrishniah:** By importation of gold naturally the market will come down.

**Shri Morarji Desai:** The moment I do that, nobody will give me a loan. You do not understand the implications of it. I wish you were in my position and I were in your position. You think it is so easy.

**Shri Mehta:** The gold from the Kolar gold field may not be sufficient for the country. In the international market the price is Rs. 60 to Rs. 62 a tola. If the Kolar gold field gold is sold to the public....

**Shri Morarji Desai:** It is only infinitesimal. That won't do.

**Shri Mehta:** But the price factor will be such that there will be no smugglers. The smugglers will not then think it fit to bring gold to the country.

**Shri Morarji Desai:** That is a smaller amount. If you are to sell it, that will not solve the problem. Only that much will be sold at that low price, because the demand is greater.

**Shri Pandurangiah:** Coming to clauses 111 and 113, in respect of goods in excess of the invoice some limit should be put. If it is shown as 100 kilo and if it exactly weighs 102 kilo, the person concerned should not be penalised. If, on the other hand, if it is shown as 100 kilo and the actual weight is 500 kilo, certainly the person concerned can be penalised. I suggest that some limit may be indicated there so that there may not be any ambiguity about it.

**Shri Morarji Desai:** If it exceeds the weight shown in the invoice, the difference alone will be confiscated. So, why should you bother about it?

**Shri Pandurangiah:** Suppose a person declares 100 kilo and the consignment actually weighs 102 kilo?

**Shri Morarji Desai:** Only the excess of 2 kilo will be confiscated.

Shri Pandurangiah: In such cases,  
a *bona fide* mistake can occur.

Shri Morarji Desai: All that will  
be taken care of by executive action.  
We will try to take care of all *bona  
fide* people.

Shri Pandurangiah: That is all what  
I wanted to submit. If I have exceed-  
ed my limits, please forgive me.

Shri Morarji Desai: No, you have  
not. You were invited to give evi-  
dence and you have given evidence.

Shri Hari Vishnu Kamath: You  
have been well within your limits.  
You may go in peace.

(The witnesses then withdrew).

(The Committee then adjourned.)

**SELECT COMMITTEE ON THE CUSTOMS BILL, 1962**

**MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL,  
1962**

*Saturday, the 11th August, 1962 at 09.40 hours*

**PRESENT**

Shri S. V. Krishnamoorthy Rao—*Chairman.*

**MEMBERS**

- |                              |                           |
|------------------------------|---------------------------|
| 2. Shri J. N. Hazarika       | 6. Shrimati Savitri Nigam |
| 3. Shri Narendrasingh Mahida | 7. Shri R. V. Reddiar     |
| 4. Shri Bakar Ali Mirza      | 8. Shri M. Shankaraiya    |
| 5. Shri Shankarrao Shantaram | 9. Shri Sumat Prasad      |
| More                         | 10. Shri Bali Ram Bhagat. |

**DRAFTSMEN**

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

**REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS**

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

**SECRETARIAT**

Shri A. L. Rai—*Deputy Secretary.*

**WITNESSES EXAMINED**

**I. THE BOMBAY DIAMOND MERCHANTS' ASSOCIATION, BOMBAY**

- |                                |                            |
|--------------------------------|----------------------------|
| 1. Shri Chandrakant B. Jhaveri | 3. Shri Mahendra G. Mehta. |
| 2. Shri Ramniklal B. Jhaveri   |                            |

**II. ANDHRA PRADESH GOLD, SILVER, JEWELLERY AND DIAMONDS MERCHANTS' ASSOCIATION, RAJAHMUNDY**

- |                                  |                                 |
|----------------------------------|---------------------------------|
| 1. Shri Sampat Kumar Bang        | 3. Shri V. L. N. Venkataramayya |
| 2. Shri Kovilmundi Venkataswarao | 4. Shri Nimmala Sambasiva Rao.  |

**III. TRICHY SHROFF AND JEWELLERS' ASSOCIATION, TIRUCHIRAPALLI**

- |                        |                                    |
|------------------------|------------------------------------|
| 1. Shri Rajamannar     | 4. Shri M. Veerasami Naidu         |
| 2. Shri R. Madhava Rao | 5. Shri K. P. Lakshmana Padayachi. |
| 3. Shri P. Ramaswami   |                                    |

**IV. THE INDIAN NATIONAL STEAMSHIP OWNERS' ASSOCIATION, BOMBAY**  
Shri K. K. Kothawala.

# **I. THE BOMBAY DIAMOND MERCHANTS' ASSOCIATION, BOMBAY**

## **Spokesmen:**

1. Shri Chandrakant B. Jhaveri
2. Shri Ramniklal B. Jhaveri
3. Shri Mahendra G. Mehta.

# **II. ANDHRA PRADESH GOLD, SILVER, JEWELLERY AND DIAMONDS MERCHANTS' ASSOCIATION, RAJAHMUNDRY**

## **Spokesmen:**

1. Shri Sampat Kumar Bang
2. Shri Kovilmundi Venkataswarao
3. Shri V. L. N. Venkataramayya
4. Shri Nimmala Sambasiva Rao.

*(Witnesses of the above two associations were called in together and they took their seats).*

**Chairman:** Since the points which you want to place before us and the difficulties which you are facing are likely to be common, I have called the representatives of both the Bombay Diamond Merchants' Association, Bombay and the Andhra Pradesh Gold, Silver, Jewellery and Diamond Merchants' Association, Rajahmundry together. I hope neither of you has any objection to this procedure.

**Shri C. B. Jhaveri:** Not at all.

**Shri Bang:** No, Sir.

**Chairman:** We have circulated both the memoranda to all the Members of the Committee. Instead of repeating what you have stated in the memorandum, if you want to add anything to substantiate your arguments or stress some points, you may now do so.

**Shri C. B. Jhaveri:** In order to substantiate the points which we have raised in our memorandum, we want to show how practically certain clauses of the Bill will affect our trade. I will particularly refer to the mixing of diamonds in packed lots when the goods are in packets under clause 118 and sub-clause (2) of clause 120. Here we may be permitted to demonstrate how difficult it is, if not impossible, for the trade in general, individual merchants, tradesmen and even to the customers to differentiate between imported goods and goods manufactured here in our country,

because the cutting and polishing of diamonds has reached to such a perfection that we have got the best cutters and polishers, and it has been accepted not only within the country but even by foreign associations and institutions. To substantiate our argument we would like to place before you the May issue of a magazine published from Belgium so that you may read only two lines of one paragraph to know in what esteem they hold us.

We do know that a certain amount of smuggling is going on in the diamond trade and we do not mind the preventive steps which the Government want to take, and the authorities or powers to be given to the customs officers for the purpose of checking smuggling. But here we want to point out that because of these measures the innocent traders, the *bona fide* traders, should not be harassed or put to unnecessary inconvenience and it should not result in a reduction of trade. Even the customers are scared of these provisions.

Here we want to point out that we buy diamonds not only from the market but we import them also. Of course, at present only uncut diamonds are permitted to be imported against a licence. The uncut diamonds are cut and polished here in India and are sold by the merchants and manufacturers. The traders in their turn sell them to the customers, and these deals are made in good faith and bills are passed even when we buy from the customers. In India we have goods worth crores of rupees since centuries past and these lots also come into the market for sale. We buy from the customers also, in good faith, in loose form or in the form of jewellery. We pay them by cheques, official bills are passed and receipts are given. In spite of that, if subsequently it is proved or it is stated by the customs officer or the Customs Department that the particular lot was smuggled, under the provisions of sub-clause (2) of clause 120, if the smuggled goods are mixed up with other lots, the entire lot is liable to be confiscated.



**Chairman:** You say that they may smuggled diamonds and that you cannot separate them out, but at the same time you want smuggling to be prevented. What is the remedy you suggest for it then?

**Shri C. B. Jhaveri:** The remedy is the preventive steps taken by the Department. We have no objection to their being taken.

**Shri B. R. Bhagat:** This provision is preventive step.

**Shri C. B. Jhaveri:** If the authorities are able to prove that the goods are smuggled. . . .

**Chairman:** The dealer must know the source of the diamond.

**Shri C. B. Jhaveri:** When I purchase a lot from a merchant or a customer, I get the bill and I am able to point out from whom I have purchased.

**Shri B. R. Bhagat:** Clause 120(2) will take care of that because you will be able to prove that whatever smuggled goods were there were not within your knowledge.

**Shri C. B. Jhaveri:** It is impossible to separate them. The clause says that if they are mixed up and it is not possible to separate them from the lot, the whole lot is liable to confiscation. Suppose, we have a packet of 100 carats of diamonds. We buy it in the market from a merchant and he gives us a bill. We make the payment by cheque. Now if in that lot of 100 carats I mix up 10 carats from my purchases and subsequently the Customs authorities suspect that those 10 carats were smuggled goods, then only on suspicion and reasonable belief our whole packet of 110 carats would be liable to confiscation.

**Shri S. S. More:** You say that you purchase certain diamond from a merchant and you mix it with your original stock. The Customs officer comes and reasonably feels that a particular diamond in that stock is smuggled and you say that you will refer to the merchant from whom you have purchased it. But at this stage can

you distinguish this particular diamond or separate it?

**Shri C. B. Jhaveri:** No; it is absolutely impossible.

**Shri S. S. More:** Then there is the possibility of the merchant whose bills you produce saying that he did not sell that diamond to you. When you purchase diamond pieces and mix them up with your original stock, the identity of a particular diamond is lost. So, what is the remedy?

**Shri C. B. Jhaveri:** That is why we have stated that *bona fide* traders . . .

**Shri S. S. More:** What is your definition of *bona fide* traders?

**Shri C. B. Jhaveri:** I would put it this way. We not only buy from merchants but we also buy from the customers.

**Shri S. S. More:** Every smuggler, unless he is detected, will pretend to be a *bona fide* trader.

**Shri C. B. Jhaveri:** That is correct. When we are approached either by a customer or by a merchant, we are shown the goods. Then, when we buy them, bills are passed and payments are made by cheque.

**Shri S. S. More:** What is there to show that a particular diamond is a subject of a particular bill?

**Chairman:** He may deny it. He may say, "I did not sell this diamond."

**Shri C. B. Jhaveri:** If he denies, the case against purchaser would not stand.

**Chairman:** There is also this possibility. Suppose a man convicted of theft comes to you and sells a diamond. You mix it up with your stock. Afterwards he says, "I did not sell this diamond." Now, so far as the Customs authorities are concerned, the fact that you purchased a diamond from such a man is *prima facie* proof that it is a smuggled diamond.

**Shri C. B. Jhaveri:** If the man denies that he has sold his goods to us, where is the proof that we have

bought smuggled goods?

**Shri B. R. Bhagat:** You must have voucher, receipt and all that.

**Shri C. B. Jhaveri:** That is correct. But if somebody denies that it has been sold to us, the case against me would not stand.

**Chairman:** We expect you to help the Government.

**Shri C. B. Jhaveri:** That is why we say that there must be a way out.

**Chairman:** What is the remedy that you suggest?

**Shri C. B. Jhaveri:** At present what happens is that if smuggled goods are found in the possession of someone, they are seized and a show-cause notice is issued. So far, it is well and good. But when the whole lot is to be seized and is made liable to confiscation, the whole trade would come to a standstill.

**Shri B. R. Bhagat:** If some such provision is not there and if smuggled goods are found in a packet which cannot be separated from the other goods, we may not be able to confiscate smuggled goods.

**Shri C. B. Jhaveri:** That is correct.

**Shri B. R. Bhagat:** There was a reference in the Bombay High Court.

**Chairman:** There is a provision in Clause 120 which says:

"Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, such part of the goods as is proved by him to have not been smuggled, shall not be liable to confiscation."

**Shri C. B. Jhaveri:** I would like to ask a question. If I buy goods in good faith, take a bill from the seller and pay him by cheque, can it not be said that those goods which I bought were bought in good faith and that they were not supposed to be smuggled?

**Shri S. S. More:** How are you going to prove the identity of those goods when you mix them up with the other honestly procured ones?

**Shri C. B. Jhaveri:** My point is this. Suppose, someone has sold me some smuggled goods in a *bona fide* deal and I have mixed it up with my regular stock. Now, the stocks are maintained on a quantitative basis. We keep them in different packets according to quality and size. When I purchase one packet, that packet may not have been mixed up only with one lot because I would sort them out and mix them up with different qualities and different sizes so that it would mean that one packet of smuggled goods would be distributed among other lots. That would mean that the whole stock would be liable to confiscation.

**Shri Shankaraiya:** Once the smuggled goods are mixed up with stock, they will not be able to distinguish them. They also say that if they prove that they are *bona fide* purchasers and have purchased them proper persons in consideration, the goods should not be seized. I want to know from them how they can prove that that particular packet was purchased from a *bona fide* person. It may have been smuggled goods and may have been kept somewhere else. How can they say that the seized article itself was an article purchased *bona fide*?

**Shri C. B. Jhaveri:** Suppose, we are asked to point out where a particular lot purchased from a particular person was. Then, we can say that we have mixed it up with our stock. That much we can say, that is, we have purchased it and have mixed it up with the other packets. In that case if the whole lot is made liable to confiscation, the whole business would come to a standstill. It not only affects the trader but even the customers are scared. Suppose, a merchant sells some goods to a customer and later on it is proved that they were smuggled goods, what would be the position?

**Shri Bakar Ali Mirza:** There is one difficulty which I would like to point out. My hon. friend has mentioned about this already. He asked: how can you identify a particular gem? It cannot be identified in the case of the buyer. If a gem is not identifiable there, probably the gem is still with the seller. How do you say that this particular diamond that this man has sold is a smuggled one? He sells hundreds of diamonds to anyone. Right through, why should the buyer alone be made to prove this, while this thing cannot be proved anywhere else?

**An Hon. Member:** There is the section 116 of the existing Act.

**Shri C. B. Jhaveri:** May I speak on this? An Hon. Member has said about this and I wish to say something on this point.

**Shrimati Savitri Nigam:** I would like to know about certain points . . .

**Shri B. R. Bhagat:** Not only that, but even the U.K. Act makes a similar provision.

**Shri C. B. Jhaveri:** Now, may I seek your permission to make certain clarifications?

**Shrimati Savitri Nigam:** I would like to say something. Suppose you buy a packet of diamonds. It may be having 10 carat weight. Later on you realise that the *bona fide* merchant from whom you had got that, got that from somewhere else and that was a smuggled one. Now the question which arises is this. Would you have any objection if, from any of your packets, 10 carat weight of diamonds which is proved to be a smuggled one, is taken out?

**Shri C. B. Jhaveri:** That is one concrete suggestion. If there are hundred packets and if 10 carat weight of diamonds is supposed to be a smuggled one, if an equivalent quantity is taken away from that packet, that is a good suggestion, no doubt. But it is certainly unfair if the whole packet is liable to be confiscated. I am

referring to sub-section (2) of clause 120.

**Shrimati Savitri Nigam:** When you purchase diamonds, do you also mention in your bills about the weight of each diamond? Are you aware of the weight of each diamond or not?

**Shri C. B. Jhaveri:** The weight of the whole lot is mentioned in our bills and the price. The amount is mentioned.

The hon. member has just suggested that if an equivalent quantity of the goods supposed to be smuggled is taken away from the packet, that would be a good thing. Old section 168 relates to section 118 of the new bill. I am objecting to sub-section (2) of section 120. Section 120 is absolutely a new provision.

In many cases we have found that people have failed to satisfy the customs authorities according to their complete satisfaction. In fact, in spite of producing all material proofs, bills and particulars of the party from whom this was purchased etc., the arguments are not accepted, that is, they have failed to prove this to the satisfaction of the Customs authorities.

**Shri Mahida:** I would like to put one question to the witness. May I know whether smuggling has increased after 1947 or decreased after 1947?

**Shri C. B. Jhaveri:** Before 1947, there was no smuggling. There was absolutely no high duty. The duty was only 6 per cent then. There was no licence. In the month of July, 1947, the import of diamonds was prohibited and it was put under established licence system. In 1953, even the cut and polished diamonds were not allowed to be imported. Since 1953, only uncut diamonds are allowed to be imported into India. The duty has since been raised from 6 per cent at one time to 20 per cent. The higher amount of duty and the short supply of goods has also led to smuggling like this.

**Shrimati Savitri Nigam:** You just now said that you are not satisfied with certain proviso in this regard. You said that people are not in a position to prove to the satisfaction of the customs authorities. Now, I would like to know from you concrete instances. Have you got concrete cases like that? Can you cite those instances?

**Shri C. B. Jhaveri:** Yes. I will give certain cases. There are many cases like that. I know of one case particularly. A raid was made in 1957, and after 4½ years, the case was dismissed by the Customs Collector in the Central Board of Revenue. After 4½ years, the packet of diamonds was returned to the owner. If necessary, my Association would try to submit such cases with the details.

**Chairman:** You have got only one case now.

**Shri C. B. Jhaveri:** There were a number of cases where the goods have been seized and the buyer had been given show-cause notice. One of the sections mentioned is 178(a) of the Sea Customs Act. Somebody questioned the validity of section 178(a). He went up to the court and the matter went right up to the Supreme Court. Now, we were advised that no such case will be finalised till the Supreme Court had given its decision on that case. That is why all these cases had to be kept pending for the time being. Only for the last six months we have taken them up.

**Chairman:** Customs are not responsible.

**Shri Shankaraiya:** Your association is interested in preventing smuggling and in seeing that the interests of *bona fide* merchants are safeguarded. You yourself say that in case of smuggled goods, the merchants should be punished. You say that *bona fide* merchants should not be harassed. Under the canons of your business, can you point out any means by which this smuggling could be prevented? Can you point out any means by which

merchants conniving with the smugglers can be exposed?

**Shri C. B. Jhaveri:** It is very difficult for an Association to find out or give details. I was referring to the sub-section. Because of a certain quantity of smuggled article, the whole thing is to be confiscated. The suggestion is that the merchant may be asked to deposit an equivalent amount of the goods. Suppose the Customs authorities say that smuggled goods worth Rs. 10,000 are mixed up in a lot containing Rs. 50,000 worth of diamonds. They may either take an equivalent quantity of the same quality of diamonds or an equivalent amount of the smuggled goods. They may be asked to deposit that till the pending of the final decision of the case. That would be a good suggestion. That would keep the trade smooth; otherwise, the trade would come to a standstill. It is not only the trade and the industry which suffer but the customers also suffer. It is very difficult to find out whether a particular packet of diamonds is smuggled or not. How am I to know whether it is smuggled or not? Any customer would just come to my shop and offer me diamonds for sale.

**Shri B. R. Bhagat:** They are very few. That is rare.

**Shri Venkataramayya:** In the case of gold, they are many.

**Shri Narendrasingh Mahida:** You just inform the police and find out whether it is smuggled or not.

**Chairman:** Mr. Venkataramayya, have you anything to say on this?

**Shri Venkataramayya:** Mr. Chairman, Sir, you have asked us to suggest the measures for preventing this smuggling. At the outset, I would like to say that the Act does not give a proper definition of the smuggled goods. First of all, the lacuna is with regard to the definition of smuggling itself.

**Shri Dehejia:** That is defined in the Bill.

**Shri Anand:** The definition is given in clause 2 (39) of the Bill.

**Shri Venkataramayya:** That is not the proper definition.

**Shri B. R. Bhagat:** How?

**Shri Venkataramayya:** It is very difficult to distinguish between smuggled goods and other goods. How to distinguish them? That is the point. With regard to gold, any customer can come and offer gold for sale. In the case of diamonds, of course, the number is very low. In the case of gold, the purchasers and sellers are in good number. Especially in our country everybody possesses gold and it is sold in time of need. This Bill creates a lot of difficulties for an ordinary merchant, an ordinary broker, an ordinary customer and an ordinary agent. An ordinary agent earns a commission of only 10 nP. out of a sale of a few rupees.

Mr. Chairman, will you please tell us how it is possible in Customs, on any rational basis, to distinguish between the smuggled gold and the other gold? How to safeguard the interests of the commoner, leave apart an ordinary merchant? Even respectable persons can be questioned. I am wearing this ring and tomorrow anybody can say that it is a smuggled one. It can be confiscated. I am even liable to prosecution. Under the present Act, I could be arrested also.

**Shri B. R. Bhagat:** If the Customs officer says that it is a smuggled good, then he will have to state the reasons.

**Shri C. B. Jhaveri:** It is only on suspicion.

**Shri B. R. Bhagat:** It is on reasonable belief.

**Shri C. B. Jhaveri:** But that reasonable belief is never revealed to the party.

**Shri Venkataramayya:** This clause 120 is a new introduction. This has

been introduced only to circumvent the recent judgement of the Nagpur High Court.

**Shri S. S. More:** Can you give the reference?

**Shri Venkataramayya:** This is Bombay 62, All India Reporter 1961, Pledge 48 under AIR 1961.

Now, Sir, your question is how to prevent smuggling. This Association of Andhra Pradesh has submitted suggestions as to how to safeguard the interest of the merchants. Suppose, without the knowledge of the merchant, one tola or two tolas of smuggled gold have been mixed with a rod of 250 tolas or 300 talas of gold. Now, under the law, the whole thing can be confiscated. The business will come to a standstill.

**Shri S. S. More:** You are taking extreme cases in order to emphasize a general proposition. Do you really believe that the Customs people are so unreasonable that they will not accept your reasonable explanations?

**Shri Venkataramayya:** I may give you a case where gold plates duly marked by the India Government mint and the Bombay Bullion Association had been sized and removed.

**Shri S. S. More:** Have you gone in for appeal in such cases?

**Shri B. R. Bhagat:** Where is the case?

**Shri Venkataramayya:** I can submit it.

**Shri B. R. Bhagat:** Is there only one case or more?

**Shri Venkataramayya:** Only one case.

**Shri B. R. Bhagat:** Was it together with other gold or was it separate? These things will have to be taken into account.

**Shri Venkataramayya:** We purchase gold from different people, people who are in need of money. We purchase gold, which is all mixed up. We cannot say which part of

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the gold is smuggled and which part of the gold is not smuggled. There may be an isolated case of a merchant who may have smuggled gold, but the other ninety-nine merchants may be *bona fide* sellers.

**Shri B. R. Bhagat:** Those who deliberately purchase smuggled gold and mix it with other gold are the only persons who are to be dealt with.

**Shri Venkataramayya:** I seek a clarification. How to distinguish between the smuggled gold and the other gold?

**Shri B. R. Bhagat:** This presumption is already there in the case of stolen property. Where the property is proved to be stolen, the whole property is confiscated.

**Shri Venkataramayya:** The case of stolen property is different. When we purchase gold from a new party, unless we know the party, we take their address and all that.

**Shri B. R. Bhagat:** No action is taken against you, if you do not know it. The fact is that the gold is smuggled and the goods are seized. That is the point.

**Shri C. B. Jhaveri:** In the case of stolen goods, the party whose goods are stolen comes and points out the particular goods, these are my goods stolen and those goods are seized. If some one says that I have purchased stolen goods, my whole stock would not be confiscated or seized. Only the particular lot which is proved to be stolen or which is pointed out by the person as stolen will be taken away by the police and not the whole stock.

**Chairman:** Stolen article is sold to you. You melt it and make it into a bar. It cannot be said which portion of that bar is stolen and which is not stolen.

**Shri Venkataramayya:** The quantum is specified. Supposing there is stolen gold and it is proved or the charge is made. To what extent it is

stolen and to what extent wrongful purchase is made will be known. That extent will be taken away by the department. The provision here is so arbitrary. Even if one tola is stolen and it is in 100 tolas, it must be taken away by the department and confiscated. These cases will be taken to the High Court and the Supreme Court.

**Chairman:** What is it that you want to be done?

**Shri Venkataramayya:** I agree with my hon. friend.

**Chairman:** Only so much of the property as is found to be smuggled should be confiscated . . .

**Shri Venkataramayya:** Is alleged to be smuggled.

**Chairman:** . . . and you go scot-free for smuggling.

**Shri C. B. Jhaveri:** The goods will be taken away by the customs. You may ask for security.

**Chairman:** Penalty?

**Shri C. B. Jhaveri:** The penalty may be there after the case is decided. That is a different matter. If it is proved that the particular goods is smuggled, if it is proved that the purchase was intentionally made after knowing that the goods were smuggled, the penalty would be there.

**Chairman:** The Committee will consider the point.

**Shri Venkataramayya:** One more submission. All the business, diamond or gold, whatever the category or level of the merchant or the business, we have necessarily to depend on the bank for overdraft facilities or loans or something like that. Supposing the entire bar, the entire stock has been confiscated by the department, the whole business will be at a standstill. We cannot have any credit facilities in the bank.

**Shri C. B. Jhaveri:** To substantiate my hon. friend's suggestion, would any bank finance on any bullion or silver or gold stock with the bank? Would

it be possible for any merchant or dealer to prove to the bank that it does not contain any smuggled gold or silver or diamond?

**Shri Venkataramayya:** We will invest 25 per cent; 75 per cent will be invested by the banks. The whole business would come to a standstill. We cannot move an inch if clause 120 is passed. With regard to the proviso that the hon. Member has pointed out, actually it is an eye-wash. The burden of proof has been thrown on him. It is only to circumvent the judgment of the Supreme Court in the recent case. The burden of proof is on the merchant. Supposing there are 200 tolas and 100 purchases. If it is proved, all the gold of the 100 people has to be confiscated. They have to go to the officer or the court and prove their bona fides that their gold is not smuggled or that they had no reason to believe or no knowledge, that they were innocent.

**Shri B. R. Bhagat:** That is true. It has been very deliberately done. Smuggling has assumed dangerous proportions. It will not affect bonafide transactions.

**Shri Venkataramayya:** It should be reasonable. All these persons are men with respect and honour. There should be reasonable opportunity. What is the safeguard given to the merchants?

**Shri Bakar Ali Mirza:** The purpose of the clause is not to recover smuggled gold like stolen goods. The purpose of the clause is to make the punishment deterrent. If you want, it may be modified. You have to suggest something deterrent which will satisfy you and also achieve the purpose of this clause.

**Shri Venkataramayya:** The punishment may be deterrent to the smuggling merchant. They may take even criminal action to which we are agreed. We have no objection to that.

**Chairman:** This is against the smuggler and against the trader who helps

the smuggler. You should not grudge this.

**Shri Venkataramayya:** We are pleading for the bona fide merchant.

**Shri C. B. Jhaveri:** We have stated in the memorandum also that we have no sympathy for the smuggler. Preventive action may be taken. At the same time, safeguards should be there for bona fide persons.

**Shri Shankaraiya:** Smuggling is going on. Smugglers do not directly come into contact with the buyer or the consumer. All the smuggled goods whether gold, diamond or anything must pass through the channel of business. After arguing all these points, have they any concrete suggestion to make to prevent smuggling? Leaving the second question whether the smuggled goods should be confiscated or not, which is a separate matter, to prevent smuggling, because smuggled goods can only go into the market, to the consumer, through the channel of trade, what is the remedy that they are going to suggest?

**Shri C. B. Jhaveri:** On behalf of my committee, in the preamble, in the beginning I have said that the reason for smuggling is the high percentage of duty, that is 20 per cent.

**Shri B. R. Bhagat:** Can the levy of an import duty be a reason for smuggling?

**Shri C. B. Jhaveri:** I have been asked to suggest ways and means to stop smuggling. There are two things. Shortage of supply and higher import duty. These are the two reasons which lead to smuggling.

**Shri B. R. Bhagat:** Will that be a reason? The reason is, some of the people want to have an illegal profit and undesirable profit out of the situation.

**Shri C. B. Jhaveri:** These are the incentives.

**Shri B. R. Bhagat:** Can they be incentives? I am surprised. If you put

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an import duty, can it be an incentive for bona fide citizens to smuggle?

**Shri C. B. Jhaveri:** You may object to the word incentive. They are tempted because there is a big margin.

**Shri B. R. Bhagat:** It is undesirable anti-social persons—they are utilising the national situation for their personal profit. That cannot be an incentive. That cannot be the reason.

**Shri Narendra Singh Mahida:** What is the actual import duty realised from these diamond merchants?

**Shri B. R. Bhagat:** What is the price differential?

**Shri C. B. Jhaveri:** At present, the import of diamonds is only against the export promotion scheme. There is a total ban on established imports. Whatever imports are permitted are against only the exports we make and the foreign exchange earned. We are entitled to import for 80 per cent of the foreign exchange earned. First, we are expected to export diamonds, whatever stock we have. Against that, we are issued a licence for 80 per cent. Annual import under the export promotion scheme comes to a little over Rs. 150 lakhs.

**Shri B. R. Bhagat:** What is the value of the uncut and cut diamond? What is the price differential?

**Shri C. B. Jhaveri:** The difference between the un-cut and cut would be, 20 per cent import duty, 30 to 40 per cent manufacturing expenses, that is labour charges, polishing charges in the country. We are allowed to import only cut diamonds.

**Shri B. R. Bhagat:** Twenty plus 30 or 40: that is 60. Then, the profit of the merchant.

**Shri C. B. Jhaveri:** Profit of the merchant.

**Shri B. R. Bhagat:** How much?

**Shri C. B. Jhaveri:** You can put it at 10 per cent., to be reasonable.

**Shri Dehejia:** Does any diamond merchant do business at a 10 per cent profit?

**Shri C. B. Jhaveri:** It may differ with the income-tax authorities.

On behalf of my committee, I would request the complete deletion of sub-clause (2) of clause 120. As the hon. Member suggested, I have put in another suggestion. An equivalent quantity may be taken away from the packet of diamonds or an equivalent amount may be deposited. The customs can take security deposit till the disposal of the case.

**Shri Bakar Ali Mirza:** There is no suggestion by the Members. It is a question of getting your reaction. Do not regard it as a suggestion from any Member.

**Shri B. R. Bhagat:** We may take it as his suggestion.

**Shri Venkataramayya:** Clause 121: This also runs parallel to clause 120. Supposing in 200 tolas of gold, the Department says that five or ten tolas are smuggled, then the whole of the goods will be confiscated. It is not earmarked in any particular quantity as to how much of it consists of smuggled goods.

**Shri S. S. More:** On the contrary, I would suggest that we are erring on the side of moderation. When there is knowledge or reason to believe that they included any smuggled goods, then it is very reasonable to take such proceedings.

**Shri B. R. Bhagat:** Knowledge that they included smuggled goods should be there.

**Shri Venkataramayya:** My point is that it is not specific.

**Chairman:** There is no ambiguity about it. It is only where any smuggled goods are sold by a person having knowledge or reason to believe that they are smuggled goods, that the sale proceeds are liable to be confiscated.



**Shri Venkataramayya:** The wording here is that the sale proceeds thereof shall be liable to confiscation.

**Shri B. R. Bhagat:** 'Thereof' means 'of the smuggled goods'. That is, the intention.

**Shrimati Savitri Nigam:** I think that this provision is very clear and it gives protection to the bona fide merchants who will not be having any knowledge that it included any smuggled goods; it is only when they have the knowledge that it included smuggled goods that this provision will be binding.

**Shri S. S. More:** As a matter of fact, the possession of smuggled goods is made more rigorous than the selling of smuggled goods.

**Shri C. B. Jhaveri:** My Association has not gone into details in our memorandum. But, if the sale proceeds of the smuggled goods are to be confiscated, will it not be possible for the Customs Authorities if they are able to catch the smuggler, to point out that the goods are smuggled goods, and recover that amount from the smuggler? Suppose I become the purchaser of those goods from the smuggler; then the sale proceeds remain with the smuggler. So, is it not possible to recover the amount from the smuggler?

**Shri S. S. More:** You can pursue the smuggler; when the goods are proved to be smuggled, the sale proceeds have to be confiscated.

**Shri C. B. Jhaveri:** If the sale proceeds have to be recovered from the smuggler, then sub-clause (2) of clause 120 would go out automatically. If you are able to catch the smuggler and prove that he has sold smuggled goods, then why not recover the sale proceeds from him?

**Chairman:** Clause 120 is quite different from clause 121.

**Shri C. B. Jhaveri:** My point is this. Suppose I am the merchant and I am the purchaser, and the seller is the smuggler; if the seller is found out,

why not collect the sale proceeds from the seller?

**Shri S. S. More:** When a person has the knowledge or the reason to believe that the goods were smuggled should he be allowed to escape scot-free? It is only those persons who have the knowledge or the reason to believe that the goods are smuggled goods who are to be punished, by the confiscation of the sale proceeds. When a person sells it with the knowledge that it is smuggled goods, he should also become equally guilty.

**Shri C. B. Jhaveri:** I want to seek a clarification on this. Since the smuggler would be the seller, if the sale proceeds are to be collected, the same may be collected from the smuggler.

**Chairman:** Clause 120 refers to smuggled goods, while clause 121 refers to sale proceeds of the smuggled goods. The two are quite different.

**Shri Venkataramayya:** The amendment that I would suggest to clause 121 is this. From this clause, the words 'reason to believe' should be deleted and it should be made clear that the knowledge referred to will not be presumed but will be proved by the Customs Authorities. Further, by this clause, power is given to seize Indian currency and cash on hand in business, which can jeopardise or completely paralyse the business, if an action is taken pursuant thereto, and as such, the provision should be enacted that until the adjudication order is passed, the sale proceeds cannot be seized or detained, as sale proceeds being money have no ear-mark, and as such, there is no need or requirement of effecting the seizure on the one hand, while great prejudice will be caused by doing so, on the other.

**Shrimati Savitri Nigam:** Do you have any objection if the sale proceeds are confiscated from the smuggler as well as the merchant who has purchased the goods knowing that they were smuggled goods?

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**Shri C. B. Jhaveri:** We have no sympathy with anyone who has purchased the goods knowing that they are smuggled goods; deterrent punishment may be given in such cases.

**Shri S. S. More:** You should have no sympathy with persons who sell goods knowing that they are smuggled goods.

**Shri Venkataramayya:** We entirely agree with the term 'knowledge', but the words 'reason to believe' are the most ambiguous ones. Knowledge is different from reason.

**Shri B. R. Bhagat:** That is a very well-known legal terminology.

**Chairman:** That term is found in most other penal sections.

**Shri S. S. More:** Take the instance of the penal provisions in regard to stolen goods. There also, the term 'reason to believe' has been used.

**Shrimati Savitri Nigam:** The witnesses are keen that smuggling should be stopped. I would like to make a suggestion to them. Why should they not start a form in which any seller will have to state wherefrom he has got the goods, in which year he got those goods and so on? If they could do like that, then they will be in a better position to assess whether the seller is a bona fide person or he is a smuggler.

**Shri C. B. Jhaveri:** At the time of purchase, we take the address of the person, and it is only when we are satisfied that the person is a bona fide seller and we have no doubt whatsoever, that we purchase the goods. After all, when we purchase gold or silver, we have to take every precaution, and unless we are satisfied about the bona fides of the seller, we do not make the purchase; and we have to take adequate precaution also against stolen goods being sold.

**Shri S. S. More:** It is not our function to suggest how you should carry on your trade.

**Chairman:** A genuine merchant will never risk his reputation. These

precautions are always taken by those who are genuine merchants.

**Shri S. S. More:** You will agree that there are smugglers and some people who belong to your trade are partners in that game.

**Shri C. B. Jhaveri:** Not only persons belonging to our trade but even outsiders, and those who are not interested regularly in this trade are there in that game.

**Shri S. S. More:** They too will come under punishment under some other provision.

**Shri C. B. Jhaveri:** Regarding clause 123, I should like to say a few words. This corresponds to section 178A of the present Act, and this relates to the onus of proof.

Here, the onus of proof has been shifted to the person from whom the goods are seized. This provision was enacted, I think, in 1957. Prior to 1957, the onus of proof was on the authorities. In 1957, it was shifted to the person from whom the goods were seized. Since then, we have experienced that it is absolutely impossible for the merchants to discharge the proof to the satisfaction of the customs authorities. In spite of producing all the vouchers, the necessary bills, the regular payments made, and knowledge or reasonable belief and so on, the goods are confiscated or the onus of proof is not discharged.

**Shri C. B. Jhaveri:** I submit that once a merchant is asked to prove from where the goods came into his possession and he does so by pointing out the party from whom he purchased the goods, the onus of proof should be deemed to have been discharged. But here we are asked to prove the negative, that we have not done something. This is against the provision in the Indian Penal Code.

**Chairman:** Suppose the goods change half a dozen hands in half an hour. That is what usually happens. So it has to be traced back.

**Shri C. B. Jhaveri:** Diamonds are things which have no trade mark. There are no markings on them. The goods are absolutely not identifiable.

**Chairman:** We are concerned mainly with smuggled diamonds and gold.

**Shri C. B. Jhaveri:** If I am able to produce my immediate vendor or point out the party, the onus of proof should be deemed to have been discharged.

**Shri S. S. More:** Section 123 corresponds to the old section 178-A. This matter had also gone to the Supreme Court and the Court had made certain observations. The point is that we cannot lay down what measure of evidence is required. We must assume that the customs officers are doing their duty in a reasonable manner. What particular interest have they? This is a matter of evidence. No legal provision can lay down the quantum of evidence that is required for carrying satisfaction to the customs officers. If a particular officer has acted whimsically, you can go to the higher court.

**Shrimati Savitri Nigam:** The customs officer may be a very good man or a very bad man. So we should not depend on that. What we should do is to make the provision clear here, whatever may be the nature of the customs officer. The smuggler has to be caught. The last portion of the clause 'from whose possession the goods were seized' makes the smuggler free from the responsibility of proving. The burden lies on the person who possesses it. The person who has smuggled, who has been found guilty of smuggling, should also be roped. He should be roped in first. Where the person from whom it is seized is unable to prove from where and from whom he got it, he should be caught. The burden of proof should also lie on the person from whom he has bought it, that is, in addition to the man from whom the goods were seized proving that he got it from A, B or C.

**Shri S. S. More:** Such a provision will lead to fabrication of evidence . .

**Chairman:** We will discuss that later among ourselves.

**Shri S. S. More:** I am pointing out to the witnesses the various dangers that the provision will be susceptible to.

**Shri C. B. Jhaveri:** This would only affect the bona fide traders; the smugglers will go free. They sell to the traders. The traders go into the market and sell the goods. When the goods are found in possession of the trader, he is asked that the goods are not smuggled. That is why my Committee has suggested that if we are in a position to point out the immediate vendor, we should be deemed to have discharged the onus of proof.

**Shri Dehejia:** Do you accept that large quantities of diamonds and gold are smuggled into the country?

**Chairman:** They have accepted it.

**Shri Dehejia:** Also that these quantities cannot be disposed of without going through the trade channels?

**Shri C. B. Jhaveri:** Not necessarily.

**Shri Dehejia:** Rs. 30-40 crores worth of such goods cannot be disposed of privately.

**Shri C. B. Jhaveri:** I would not be the proper person to reply to that. The total consumption in our country is only Rs. 3 crores worth of diamonds a year.

**Shri Dehejia:** That is legally imported.

**Shri C. B. Jhaveri:** It is calculated on past record.

**Shri Dehejia:** You mentioned a little while ago that diamonds are also exported?

**Shri C. B. Jhaveri:** Yes.

**Shri Dehejia:** When smuggled diamonds are re-exported, the person gets entitlement for import of diamonds.



**Shri C. B. Jhaveri:** There is some misunderstanding. Export is not of the imported goods. We are exporting only such goods which our country possesses since centuries. We are able to export only big-size diamonds which fetch very high prices in U.K. and other continental countries and America. Imported goods are permitted for home consumption. It is only against our export of the bigger-size diamonds and good quality demands that we are allowed to import.

**Shri Dehejia:** Are there restrictions on the size of diamonds which can be exported?

**Shri C. B. Jhaveri:** Your department will be able to find out the sizes of the diamonds exported.

**Shri Dehejia:** Diamonds are the easiest to smuggle.

**Shri C. B. Jhaveri:** It is so.

**Shri Dehejia:** So it requires special care in handling.

**Shri C. B. Jhaveri:** That is what we have mentioned in our memorandum, that we have no sympathy for the smugglers. At the same time, we want that the bona fide trader is protected and no innocent person is victimised.

**Shri Venkataramayya:** Clause 123 was originally section 178-A which came before the Supreme Court (AIR 1962 page 316). While upholding the constitutional validity of this section, the Supreme Court has made it clear that the said section can apply only to seizures which are effected by the seizing officer on the reasonable belief that the goods which he was seizing were smuggled goods and which belief he must have either before or at the time of seizure. Further, the said belief is not a subjective belief but an objective fact which may be investigated into, and has to be investigated, by the adjudication officer. Further, all materials on which such belief is based....

**Shri S. S. More:** You need not read the whole of the decision.

**Shri Venkataramayya:** I only say that I may be permitted to state that the proof may be subjective proof and objective proof and this may be incorporated in the section.

**Chairman:** The clause says, 'under reasonable belief'. What is reasonable belief is a question of fact which has to be decided on merits. It cannot be incorporated in the section. It is only the general principle that can be incorporated. What is quoted in the Supreme Court judgment are the words used here in the clause, 'are seized under the Act in the reasonable belief'.

**Shri S. S. More:** Reasonable belief cannot be subjective; it cannot be capricious. The court is not entitled to go into the sources of reasonable belief.

**Shri Venkataramayya:** It is only that particular portion which is useful to the officers that has been incorporated in the clause.

**Chairman:** What is reasonable belief is a question of fact and it cannot be incorporated in the section.

**Shri C. B. Jhaveri:** Regarding 123, if my memory does not fail me, in 1957 when this onus of proof was shifted on to the person, the question was raised in the Lok Sabha. If someone is asked to prove that his watch is smuggled or not, what would be the proof given by him? Can anyone prove it? At best he can produce a bill or a voucher from the shop wherefrom he purchased it. In the same way if we are able to point out the person from whom we got it and his address, then the onus should be considered to be discharged.

**Chairman:** Yes.

**Shri Venkataramayya:** With regard to gold, I have to say a word. Gold may be specifically defined. Gold includes all types of gold, that is, even

gold which are indisputably not imported gold nor can they be even suspected to be imported gold. As the section stands, any article of gold can fall within the purview of the section which is not the intention of the section, which is a protective provision. As such, it is respectfully suggested that the definition of gold should be indicated to mean that it is gold of a fineness exceeding 99.80 and gold having foreign markings thereon.

**Shri S. S. More:** If the section is made applicable only to the finest quality, it means you are giving a charter to the smuggler to import gold of inferior quality.

**Shri Venkataramayya:** The question is, how to distinguish between gold that is smuggled and gold that is not smuggled.

**Shri Shankaraiya:** By defining percentage it cannot be avoided or prevented.

**Shri Dehejia:** Is it a very difficult job to reduce the purity of gold?

**Shri Venkataramayya:** It is not very difficult.

**Shri Dehejia:** Would not your definition then mean that all gold that is smuggled will escape?

**Shri C. B. Jhaveri:** I would not take much time of the hon. Members. I would just make a few suggestions only with regard to two clauses. 101 is new; power to search suspected persons; and 105 is corresponding to section 172 of the present Act, authorising search of premises. Up till now these powers were to be taken on a warrant from a magistrate. If these powers are to be vested in the customs officers, then they should be of a considerably high rank so that these powers may not be misused.

**Shri Dehejia:** Under what section of the present Act do you say that it has to be done on a warrant from the magistrate?

**Shri C. B. Jhaveri:** I mean generally a search is made under a warrant

from a magistrate. Under clause 105, where certain documents have to be searched, the authorisation to be given should be to one who must be not below the rank of Assistant Collector.

**Chairman:** Under 105, it is the Assistant Collector or an officer specially empowered by him. I think there is no difficulty in this.

**Shri C. B. Jhaveri:** Thank you, Sir. I once again request the members of this committee to consider the views expressed by my Association.

*(The witnesses of the Bombay Diamond Merchants' Association, Bombay, then withdrew).*

**Shri Venkataramayya:** Section 125 provides for an imposition of fine in lieu of confiscation. It is suggested that in cases where an order of confiscation is made and it is not proved that there was any *mens rea* on the part of the owner, then the Customs Officer is bound to give an option of redemption of the goods and cannot, in such cases, make an order for outright confiscation.

**Shri S. S. More:** The previous Section speaks about confiscation of goods and the ground on which it is proposed to confiscate the goods. Goods are confiscated only after reasonable time and opportunity are given to the person. Now my friend wants to amend the section so as to make all sections mala fide. That is a special concession given to you.

**Chairman:** Why do you want to change this?

**Shri Venkataramayya:** Section 139 provides for the raising of certain presumptions in connection with the documents and statements seized and recorded under the Act. It is submitted that the same is directly contrary to the provisions of the Indian Evidence Act and Article 20 of the Constitution and as such illegal and bad in law and should be deleted. I may submit that in the Evidence Act there are special procedures in regard to recording of the statements and the same may be adopted here too.

**Shri Shankaraiya:** May I bring to the notice of the Members that the provisions in the Evidence Act will be applicable only to extraordinary circumstances. In the Customs, as you are aware, we are dealing with the extraordinary circumstances and hence the things which cannot be done in the ordinary course are done in extraordinary circumstances. Hence the provisions of the Evidence Act be applied here.

**Shri S. S. More:** With regard to the prosecution, we have to assume that it has gone to the Court of Law. In the Court of Law it is expected that the Customs Officer should prove that the documents which have been seized from a person are according to the Evidence Act.

**Chairman:** You can say that the document has been surreptitiously introduced.

**Shri S. S. More:** How can there be a room for any surreptitiousness here?

**Shri Venkataramayya:** Sections 107 and 108 give power to examine and summon persons. Since under Section 107, examinations can be conducted without issuing summons, Section 108 will be circumvented in that case. Further, recording of statements and production of the goods should be provided to be made in the presence of independent Panchayats and in the presence of legal advisers of the parties, if they so desire, to protect against these statements which are being extorted and obtained. Further, mandatory provisions should be made that the copies of statements recorded should be furnished and handed over forthwith. It should be expressly provided that no statements or documents obtained are produced in any criminal proceedings which should be instituted against the said parties subsequently. We have to ensure and give effect to the protection provided for by Article 20 of the Constitution.

**Shri S. S. More:** Then what is the use of recording of statements?

**Shri Venkataramayya:** Before an Income-tax Officer, they are all confidential matters. Some safeguard is given to the merchants. In the end, I must say that we are all respectable citizens. The people who have been arrested for smuggling gold etc. should be treated with respect. I submit to the Chairman and Members that by taking this stand by Government that these smugglers must be arrested and punishments should be given, this not only affects the merchants but every person who is in possession of any quantum of gold. Any person possessing the goods which are smuggled can be taken into custody and by seizing or confiscating the jewellery etc. not only the traders but all the citizens might be harassed.

With these I thank the Chairman and Members for your patient hearing.

*(The witnesses of the Andhra Pradesh Gold, Silver, Jewellery and Diamonds Merchants' Association, Rajahmundry, then withdrew).*

### III. TRICHY SHROFF AND JEWELLERS' ASSOCIATION, TIRUCHIRAPALI.

*Spokesmen:*

1. Shri Rajamannar
2. Shri R. Madhava Rao
3. Shri P. Ramaswami
4. Shri M. Veerasami Naidu
5. Shri K. P. Lakshmana Padayachi.

*(Witnesses were called in and they took their seats).*

**Chairman:** You represent the Trichy Shroff and Jewellers' Association, Tiruchirapalli.

**Shri Madhava Rao:** Yes, Sir. The names of my friends here are: Shri Rajamannar, Shri Ramaswami, Shri Veerasami Naidu and Shri Lakshmana Padayachi.

**Chairman:** We have received your memorandum; it has been circulated to Members here. You need not go through that memorandum again. If

you want to add anything more, you may do so.

**Shri Madhava Rao:** We want to stress our view regarding chapters 13 and 14—clauses 101 to 105—searching and arrest of persons.

**Chairman:** You have referred to them in your memorandum. You want to add anything?

**Shri Madhava Rao:** We wish that recording of evidence must be directed to be made before the legal advisers of parties if they so desire. Copies of statements should also be furnished forthwith.

**Chairman:** It is not possible. He is a customs officer; it is not a court to give you copies.

**Shri Madhava Rao:** The party should know what is in the statement. The evidence should not be used against the party.

**Chairman:** But it is not a court case; it is a fiscal matter.

**Shri Madhava Rao:** Clause 118 refers to smuggled goods. The whole package could be confiscated. We desire that only the gold of the particular description should be confiscated. Otherwise, as it stands now the whole package could be confiscated. There is also no definition of 'package'; it should be defined.

Section 121 refers to confiscation of sale proceeds. We feel that till adjudication the amount should be with the party. If it is proved or established that the sale proceeds relates to smuggled goods it is right. But till such time as the adjudication proceedings are over the amount should be allowed to be with the party.

**Chairman:** But if he is a bona fide person doing business, he does not come there at all. He must have knowledge of the case: there must be reasonable belief that they are smuggled goods and he sells the goods. Why should you object to it?

**Shri Madhava Rao:** Supposing there is Rs. 10,000 in the cash box. The money in that box can be confiscated.

**Chairman:** They will take only the sale proceeds.

**Shri S. S. More:** Besides, will you not make a voucher? You will take particular care to prepare a voucher and when the voucher is there, the sale proceeds will be according to the voucher.

**Shri Madhava Rao:** I come to clause 123. The burden of proof must be on the officers. Merchants are bona fide persons. Proof can only be by the officers.

Besides, several lakhs of merchants are doing business bona fide and to the satisfaction of the purchasing public and they are also law-abiding. Therefore, if the Bill is passed as it is, the entire business people will suffer and they do not have any safeguard from the Government. It is also earnestly prayed that any action by the customs authorities should be through or by the order of the court.

**Shri S. S. More:** What is the clause you are discussing?

**Chairman:** That is his general conclusion. I may say that genuine merchants need not have any fears at all; it is only a smuggler who will come into trouble. You should not protect such people; you should help the Government to find out the smugglers. There is a lot of smuggling in gold and diamonds. You know it. How are you going to help the Government in preventing this smuggling?

**Shri Madhava Rao:** Our submission is that bona fide merchants should not be put to harassment.

**Chairman:** How many bona fide merchants have been harassed in your place? Can you give one instance? None. They why should you fear?

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**श्री रामास्वामी :** मि० चेअरमैन, मैं आपकी इजाजत से हिन्दी में बोलना चाहूंगा। मैं बतलाना चाहता हूँ कि त्रिचनापल्ली के एक बोनाफाइड बुलियन और ज्वेलरी के व्यापारी जिनका कि नाम श्री के० सम्बाशिवम् है उन को सन् १९५२ में पकड़ा गया था। अभी तक उनका केस पंजाब हाई कोर्ट में चल रहा है और आज तक उन के केस का फैसला नहीं हुआ है। मेरा निवेदन है कि इस तरह से जो बोनाफाइड ट्रेडर्स हैं उन को जो इस तरह से हैरेस किया जाता है वह न किया जाना चाहिये। हम तो बोनाफाइड मर्चेंट्स हैं हम को स्वतंत्रतापूर्वक बिना हैरेस किये अपना व्यापार करने दिया जाये। अब इस तरह के हमारे सरीखे बोनाफाइड व्यापारियों को आप लोगों को प्रोटेक्ट करना चाहिये। अब इस के लिए अगर आप के पास आकर नहीं बोलेंगे तो किस के पास बोलेंगे ?

**चेअरमैन :** आप उस केस के डिटेल्स पार्टी का नाम और केस का नम्बर दे दीजिये।

**श्री ब० रा० भगत :** उस केस के डिटेल्स दे दीजिये और पार्टी का नाम आदि दे दीजिये।

**श्री रामास्वामी :** जी हां, मैं दिये देता हूँ।

**Chairman:** All right. Anything else?

**श्रीमती सावित्री निगम :** यदि आप ने इस ऐक्ट को पूरे तरीकें से पढ़ा है तो कृपया यह बतलाइये कि इस के वे कौन कौन से क्लॉजेज हैं जिन में कि आप संशोधन चाहते हैं ?

**श्री रामास्वामी :** अब इस समय तो नम्बर हमें याद नहीं है लेकिन जनरली इतना मैं अवश्य निवेदन करूंगा कि आज कस्टम्स वाले बोनाफाइड व्यापारियों को भी काफी परेशान करते हैं और उस के कारण हम लोगों को बहुत तकलीफ है। बोनाफाइड मर्चेंट्स को आप को अवश्य प्रोटेक्शन देना चाहिए।

**चेअरमैन :** अब किमिनल प्रोसीज्योर कोड में भी इसी तरह का सैक्शन है और बिना वारंट के गिरफ्तार कर सकते हैं इसलिए यहां पर यह कोई स्ट्रेंज सैक्शन नहीं है।

**श्री रामास्वामी :** लेकिन बोनाफाइड मर्चेंट को तो बचाना चाहिए और उसको परेशान नहीं करना चाहिए।

**श्रीमती सावित्री निगम :** क्या मैं पूछ सकती हूँ कि अगर जो कस्टम अफसर गिरफ्तार करता है वही आप की बेल ऐक्सैप्ट करे तब तो कोई आप को ऐतराज न होगा ? उस हालत में तो कोई परेशानी और अपमान की बात न होगी ? मान लीजिये कस्टम अफसर ने देखा कि कोई आदमी स्मगलड गुड्स रखता है और उस ने कहा कि मैं आपको गिरफ्तार करता हूँ और उसी वक्त वह आदमी अपनी सिक्युरिटी दे कर बेल करवा ले तब तो कोई अपमान नहीं होगा ? अगर कस्टम अफसर को खाली गिरफ्तार करने के लिए ही नहीं बल्कि उसको बेल करने के लिए भी एथोराइज कर दिया जाय और बजाय इसके कि बेल के लिए उसे मजिस्ट्रेट के सामने जाना पड़े वही कस्टम अफसर उसकी बेल भी ऐक्सैप्ट कर सके तब तो उसका कोई अपमान नहीं है और उस हालत में तो आपकी शिकायत दूर हो जायेगी ?

**श्री रामास्वामी :** हम यहां पर स्मगलर्स के लिए प्लीड नहीं करना चाहते लेकिन यह अवश्य कहना चाहेंगे कि जो रीजनेबुल पार्टीज हैं बोनाफाइड मर्चेंट्स हैं उनको अवश्य प्रोटेक्शन देना चाहिए और आज के दिन उनको कस्टम अफसरों द्वारा जो परेशान किया जाता है वह बन्द होना चाहिए। बस हमें आप लोगों के सामने यही निवेदन करना है।

**Chairman:** You have given only one instance for all these eighty years during which the old Act has been in force. The present Bill is more liberal.



So genuine merchants need not have any fear.

*(The witnesses then withdrew).*

#### IV. THE INDIAN NATIONAL STEAMSHIP OWNERS' ASSOCIATION, BOMBAY.

*Spokesman:*

Shri K. K. Kothawala.

*(Witness was called in and he took his seat).*

**Chairman:** Your Memorandum has been distributed to the Members of the Select Committee. If you want to add anything to it or make some other submission, you may do so.

**Shri Kothawala:** Sir, with your permission I would like to take up the more important points that are agitating us.

**Chairman:** You are concerned only with one clause, is it not?

**Shri Kothawala:** I shall take up clause 41(1), clause 42 and also clause 30(1).

**Chairman:** Very well, you may go in the chronological order.

**Shri Kothawala:** Clause 30(1) deals with the import general manifest to be submitted by shipowners or shipping agents. The wording of the present Bill is:

"The person-in-charge of a conveyance carrying imported goods shall, immediately after arrival thereof at a customs station, deliver to the proper officer, in the case of a vessel or aircraft, an import manifest, and in the case of a vehicle, an import report, in the prescribed form."

The existing Act gives the shipowner twenty-four hours from the time of arrival of the vessel within which to submit his import general manifest to the Customs. That, to our mind, is most essential. In fact, even this twenty-four hours' time-limit given to us makes us literally race for submitting the final import general manifest. In the case of the Import Gen-

eral manifest, I may add that there is a system of prior entry which enables us to submit the final IGM in 24 hours of the arrival of the vessel. But the words "immediately after the arrival of the vessel" are not clear or distinct as the words "24 hours of the arrival of the vessel." If it is Sunday or a holiday intervening, we can get the advantage of the following working day. So, I would submit respectfully that the present wording in the present Act, may be retained and the words "immediately after the arrival of the vessel" may be deleted.

**Shrimati Savitri Nigam:** What is your suggestion?

**Shri Kothawala:** I said that in the present context of the Act, "24 hours of the arrival of the vessel" may be retained in the new Bill also.

**Chairman:** So, you object to the words "immediately after arrival".

**Shri Dehejia:** What is the difficulty about it?

**Shri Kothawala:** The difficulty is, sometimes, the manifest of the port of shipment is not received by us before the arrival of the vessel.

**Shri Dehejia:** The goods are on the vessel and it is the person in charge of the vessel who is to attend to them.

**Shri Kothawala:** I would like to clear the misconception. The words "master of the vessel" should be less freely used these days in the context of the modern development and the words "shipowner or the agent" should be employed more and more.

**Shri Dehejia:** The words here are "person-in-charge of the vessel." The point is, he is the person who has received the goods on his ship. There has been a fair interval. It is not within a couple of hours that the vessel is touching another port. Some time has passed between the last port and the arrival at another port. He has time to prepare the document.

**Shri Kothawala:** The items must be entered in the prescribed form. It is



not the port manifest that is submitted to the customs.

**Shri Dehejia:** The forms are kept on the ship.

**Shri Kothawala:** At the moment, the agents are functioning at the smallest ports. The clerical work of submitting the manifests is undertaken not by the personnel of the ship but by the office of the company or the agent of the company.

**Shri Dehejia:** Why should it not be the person on the ship? Is there any difficulty?

**Shri Kothawala:** It has been found that the personnel there are not doing justice to clerical work as much as the office personnel who are supposed to be working for the company, the customs section of the office.

**Shrimati Savitri Nigam:** Don't you think it will be in your interests to give it as soon as possible?

**Shri Kothawala:** I submit that 24 hours is not much of a delay.

**Chairman:** You will be satisfied if the original clause is retained.

**Shri Kothawala:** Yes.

**Shri Anand:** Is it not a fact that most of the manifests are presented even before the ship arrives?

**Shri Kothawala:** I prefaced my remarks by saying that under the prior entry system a large number of items are to be submitted to the customs in our import general manifest, but the final manifest is to be submitted within 24 hours of the arrival of the vessel.

**Shri Anand:** If you refer to clause 30(3) you will find that it does not lay down any time-limit.

**Shri Kothawala:** Discretion has been given.

**Shri Anand:** It is much more than 24 hours.

**Shri Kothawala:** It may or may not be, but after all the discretion is there.

**Shri Anand:** Considering the merits of the case, the customs officer will be prepared to extend the time as necessary.

**Shri Kothawala:** I agree, but he may say that "we find you at fault in not submitting the manifest immediately on the arrival of the vessel." There may be penalisation and unnecessary complication.

**Shri B. R. Bhagat:** You prefer to have the 24 hours limit.

**Shri Kothawala:** I would prefer the words "24 hours" to the words "immediately on arrival of the vessel" which can have a different interpretation.

**Shrimati Savitri Nigam:** You just now said that instead of the "master" it should be the shipowner or the agent. Could you give us some more reasons for this suggestion?

**Shri Kothawala:** I would submit that today, except for the most outlandish ports, the position is that the shipping companies have their own branch offices or agencies. The old concept of the master of the vessel submitting the various documents to the customs and other authorities is an obsolete one. The master or the other personnel of the ship do very little clerical work *vis a vis* the public authorities, major or minor. They do clerical work only *vis a vis* their company or the shipowners. Most of the work connected with the reports to be filed is essentially done by the shipping companies' offices, say, at the ports of Bombay or Calcutta or the shipping companies' agents at ports like Madras and Cochin, as for example, the Scindia Steam and the India Steam Navigation Company, and indeed almost all the Indian shipping lines.

**Shri Dehejia:** If you see clause 148 (1), you will find that the agent is enabled to do all the work. The power is given to the agent. Everything can be done by the agent.

**Shri Kothawala:** That is quite true. But it is much more clear in the present Act. Master includes the shipowner or the agent. In fact, in my

opinion, the emphasis should be more on the shipowner or the shipping agent doing this or that rather than the master.

**Shri S. S. More:** The master of the vessel appears in clause 31 and nowhere else. It is only the "person-in-charge" everywhere.

**Shri Kothawala:** I would read it as the person in charge as intended to be the master of the vessel, taking in and out the vessels. It cannot be the manager or the agent of the shipowner. If it is the intention that by the "person-in-charge", it is intended to cover the manager and the assistants working in the offices or the agencies I am happy.

**Shri B. R. Bhagat:** That is not the intention.

**Shri Kothawala:** Section 5 of the Act definitely says that the master includes owners and agents of the vessel.

**Shri Shankaraiya:** The witness says that the manifest should be filed within 24 hours of the arrival of the ship. According to him, there will be branch officers and they will have enough staff there. Whenever the goods are taken aboard on the ship, the owner or the master, whoever he may be, will be in the know of things. The staff who are putting the things on board the ship will have sufficient knowledge of the things. Why should not that office, which sends the cargo, send the manifest? Why should the office where the ship arrives be asked to file the manifest?

**Chairman:** We will discuss that afterwards.

**Shri Kothawala:** The IGM or the import general manifest, which we are required to submit to customs, is in a certain form which is laid down in the customs manual. Even the size and quality of the paper are prescribed. The order in which the manifest should be submitted is also laid down in the manual. First the local cargo should be shown separately at the top. Then the cargo intended for transshipment to other ports is required to be

shown. Then the retention cargo, intended to be carried in the same vessel to Cochin, Calcutta, Karachi or any other port is to be shown. Government cargo is to be shown separately. Hazardous cargo is to be shown separately. It is the office in Bombay who will put up the IGM in that form to the Collector of Customs. The various manifests of the ports of shipments, from which we prepare our IGM, will not serve the customs purposes. If the customs are willing to accept those manifests, a lot of our time and labour will be saved. But I doubt very much whether the customs authorities will agree. During the period of the strike, we requested that the manifests of the ports of shipment may be treated as IGM. After great hesitation, they agreed to it purely as a temporary measure for the duration of the strike only. If you can find a way out and institute something in the rules or the manual by which the manifests of the ports of shipment would be accepted, we would be happy. Otherwise, we require 24 hours from the time of arrival of the vessel.

**Chairman:** That will be considered.

**Shri Dehejia:** So, you want that in section 30, instead of the word 'immediately' it may be within 24 hours and sub-clause (3) should be deleted.

**Shri Kothawala:** That would be in conformity with sections 62 to 66.

**Shri Dehejia:** Would you be satisfied if it is provided that within 24 hours, he can amend it without the special sanction of the customs officer?

**Shri Kothawala:** I am very grateful to you.

**Shri Anand:** A supplementary manifest can be put in within 24 hours, after filing the main manifest immediately on arrival. That is the suggestion.

**Shrimati Savitri Nigam:** If 24 hours time is provided, is there any necessity to have sub-clause (3) in clause 30?

**Shri Kothawala:** That can be retained to our advantage.

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**Shri Dehejia:** Let there be one scheme and let it be consistent.

**Shri Kothawala:** It should be 24 hours read with sub-clause (3). After 24 hours, we can ask for extension of time with the permission of the Collector of Customs.

**Chairman:** The committee will think over it.

**Shri Kothawala:** Then, clause 41 deals with export general manifest. The present sections 62 to 66 clearly gives the ship-owner 5 days' time from the sailing of the vessel or more correctly from the obtaining of the port clearance. Now clause 41 says that the Collector of Customs may extend the time-limit in his discretion, but normally, the EGM should be filed by the master—I hope, by the agent also—before the departure of the vessel and before obtaining the port clearance. This, I respectfully submit, is most difficult, if not impossible. Even now when 5 days' time-limit is given, there are occasions when we request the Collector of Customs to extend it by two days because there are hundreds of shipping bills and it takes a lot of time to prepare the EGM as laid down in the manual. Our experience is we have to work a lot of over-time in order to compile the EGM within 5 days of the port clearance, which in turn is 24 hours before the departure of the vessel. So, the Collector of Customs might turn round in future and tell us that he has no authority to give us five days or seven or ten days. In his own discretion he may give time, which is not as good as laying it down in the Act itself. Five days are provided under the present Act.

**Shri Dehejia:** Information in respect of export goods is available with you at the time the ship is about to leave. Therefore there is no question of collecting any further information from any source.

**Shri Kothawala:** The shipping bills are not in our hands.

**Shri Dehejia:** After all, there is a provision that nothing can be loaded unless the necessary bill has been passed. So, that information is available with you. It is merely a question of compiling.

**Shri Kothawala:** It is also a question of obtaining the information from our dock staff and also from the Bombay Port Trust occasionally.

**Shri Dehejia:** Actually, the goods cannot be loaded without a bill of lading being given.

**Shri Kothawala:** The bill of lading is given much later.

**Shri Dehejia:** Clause 40 says:

“The person-in-charge of a conveyance shall not permit the loading at a customs station—

(a) of export goods,...., unless shipping bill or bill of export or a bill of transshipment,...., has been handed over to him by the exporter;”.

The shipping bill is with you and all that you have to do is to prepare a consolidated statement.

**Shri Kothawala:** May I submit that the shipping bill travels through several hands, that is, the mukaddams and even the stevedores and the shipping staff? Finally a mate receipt is issued and handed over to the Port Trust. The Port Trust do not part with the mate receipt and give it to a shipper of goods till their dock dues are settled. In turn, the shipper is not able to present the mate receipt for exchange with a bill of lading till after two or five and sometimes seven or ten days of the sailing of the vessel. But I will not unnecessarily emphasise on the issue of the bill of lading because though we would like to prepare the EGM after the bills of lading are prepared and issued to shippers we generally prepare it from the shipping bills. It is our unfortunate experience that when the mate receipt is produced, there is sometimes

a discrepancy between the mate receipt and the shipping bill so that there is a discrepancy between our bill of lading and the EGM which has already been submitted to the Customs. In order to avoid such discrepancies we would like the bill of lading to be issued to shippers and our export general manifest to be prepared from the bills of lading which will be a more authentic document because the shipping bill might show or miss to show short-shipment whereas our mate receipt will only be in respect of the quantity shipped on board. So, we have five days in which to sort out any such discrepancy. I do not submit that these discrepancies are in each and every case, but occasionally we do come across them. In order to sort out these discrepancies and to prepare the EGM in the prescribed form, five days' time limit has been found to be just sufficient. If I may say so, if that minimum comfort is removed, it will act as a hardship to the ship-owner.

**Shri Anand:** Is it not a fact that even under the present Act you are supposed to present the manifest at the time of applying for port clearance and it is only where the Customs authorities think that it is not necessary and you apply for it that they give you the permission to put in the manifest within five days after the departure of a vessel? Even under the existing Act the provisions are more or less the same as now proposed except that we have removed this time limit of five days and it will depend upon the Customs authorities to see whether to see whether to give five days or seven days.

**Shri Kothawala:** The Act also lays down that the EGM should be submitted prior to the departure of the vessel and prior to the obtaining of the port clearance. But it is to be read with section 66 which gives us the benefit of five days.

**Shri Anand:** That is discretionary.

**Shri Kothawala:** I might add that under an agreement with the Customs

by shipowners which also is provided under section 66 we are not only given five days for the submission of the EGM and 24 hours for the submission of the IGM but we are even permitted to obtain port clearance without the submission of the required papers provided we give an indemnity or a bond to produce those papers within 24 or 48 hours after the sailing of the vessel.

**Shri Dehejia:** There is a very material change between the old Act and the new Bill. The old Act was only in respect of sea-going vessels. The new Bill is in respect of all kinds of conveyances. So, if five days are given in the case of an aircraft, the export goods would reach their destination and would be discharged.

**Shri Kothawala:** I quite agree.

**Shri Dehejia:** So, what you mean to say is that for a shipping company the provision may be different and for aircraft and motor vessels it may be something else?

**Shri Kothawala:** I am representing the shipping interests.

**Shrimati Savitri Nigam:** I would like to have a clarification. On page 16 at the end there is a proviso to clause 41 which says:

"Provided that if the proper officer is satisfied that there was sufficient cause for not delivering the export manifest cause for not delivering the export manifest or export report or any part thereof before the departure of the conveyance, he may accept it after such departure."

Now, you just now suggested that it should be not less than five days. Do you want it to be after the departure of the vessel or before that?

**Shri Kothawala:** I would like it to be after five days of departure. But that is only confined to the discretionary power.

**Shri S. S. More:** In that case five days will be the compulsory period and discretion will come only after the lapse of five days.

**Shri Kothawala:** The present Act provides for five days. That is the minimum.

**Shrimati Savitri Nigam:** This was enacted in 1878. Now everything has been modernised and therefore it should be shortened.

**Shri Kothawala:** Loading of cargo on a ship in 1962 is definitely more than the average cargo loading during the 1870.

**Shrimati Savitri Nigam:** I was suggesting that if it could be done in two or three days instead of five days it would be better.

**Shri Kothawala:** From actual experience we have found that because the ship is loaded with hundreds of items five days are just sufficient.

**Chairman:** The old Act is about sea customs only but the present Bill is for air and motor vessels also. However, we will consider this point and see how best we can accommodate you. In the case of air travel within 24 hours the goods will be thousands of miles away.

**Shri S. S. More:** He is comparing this particular proviso with section 66 of the present Act. This proviso is more liberal than section 66. It gives discretion to the Customs officer. According to the proviso, if the officer is satisfied, he may grant him time even for 15 days.

**Shri Kothawala:** But my difficulty arises if the officer is unfortunately not so liberal.

**Chairman:** He cannot be so unreasonable.

**Shri Kothawala:** I agree. But if five days protection is given to me in law, it would be better.

**Shri Kothawala:** The minimum of five days' limit also would be very helpful and in conformity with the present Act. I am sorry to emphasise the present Act again, but the volume of trade has increased also.

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About section 32, as we have mentioned in our memorandum, it is more a trade angle than a shipping company's angle. I have mentioned it for two reasons. It is attempted to be laid down that cargo manifested for a particular customs port must be discharged at that port. The idea is, consignees after shipping their cargo from, say, Liverpool, suddenly discover that the cargo has been wrongly manifested for Bombay but it should go to Calcutta. Then they come to the shipping company saying that the exigencies of trade and business require the landing of that cargo in Calcutta. We ask them to get the permission of the customs for amending the manifest.

**Chairman:** It is provided here "except with the permission of the proper office".

**Shri Kothawala:** I hope such permission will be liberally coming forward because in the present Act there is no such amenity. If this permission is not granted the trade will be inconvenienced. Between one Indian customs port and another Indian customs port we hope the objection should not be very serious. I am thinking of my company's stores—shipping stores. I will, Sir, with your permission give you an instance. We had shipping stores in transit ordered by vessel A for receiving vessel B from Liverpool. By the time A arrived, the receiving ship happened to be in Calcutta. It would have been of no use our discharging the shipping stores at Bombay and transshipping it to Calcutta. We requested for permission of the customs for amendment of the manifest from 'local' to 'same bottom'. In anticipation of the sanction we retained the cargo on board and discharged it at Calcutta. We received a strong letter from the customs asking us to explain why prior to receipt of the sanction this was done. It is shipping stores in transit. It does not go out into the town. It does not even attract customs duty. In such cases some leniency should be shown.



**Shri Dehejia:** The stores would have gone on bond to the port of landing.

**Shri Kothawala:** It goes out on bond to Calcutta where also it does not attract duty because it is transferred to another vessel.

**Shri Anand:** I hope you are also aware of cases where when the goods are still on board or on the high seas attempts have been made for changing the IGM fraudulently to avoid complications with the customs. Where the goods were unauthorised excuses were given that the goods were not meant for an Indian port and were to be carried to ports outside India.

**Shri Dehejia:** When they find that the customs officers at Bombay are a bit vigilant they might say that the goods are going to Hong Kong.

**Shri Kothawala:** It is not so much our interest as the interest of the trade. Important companies like the Hindustan Lever or Tatas come to us saying that instead of Bombay the goods may be discharged at Calcutta. We say that if the storage permits we have no objection, because it is rather difficult from the storage point of view. We always say that we will make an endeavour, whatever expenses are incurred will be debited to them, and they must obtain the permission of the customs. The trade has also told us that it is extremely difficult to obtain the permission of the customs even in bona fide cases. This new Bill will make it still more difficult.

**Shri Dehejia:** Import licences may be accepted in a particular way at a particular port, and importers may have come to know that by taking the goods to a smaller port like Bhavnagar or Porbandar they may have less vigilance.

**Shri Kothawala:** Import cargo have to be accounted for sufficiently at every port.

**Shri Dehejia:** I am only saying that when we are talking technically let us be clear as to what could happen technically.

**Shri Kothawala:** There is one more point which is not covered by our memorandum. It is about retention cargo. The present Act as well as the proposed Bill says that the details of the retention cargo are also to be given in the same fashion as for local cargo or transshipment cargo. But by public notices the Customs have given us this concession in Bombay, Calcutta, Madras, and other places that in the case of retention cargo or 'some bottom' cargo we only say the port of shipment, the port of discharge and the total number of packages, we do not show them item-wise as in the case of local cargo or transshipment cargo. In the case of local cargo and transshipment cargo they have to be shown item-wise because they have to be delivered to separate consignee or the cargo has to be off-loaded at one port and then shipped to another port. But for 'same bottom' cargo the details are hardly necessary at Bombay for Calcutta 'same bottom' cargo, because in the Calcutta IGM those details will be furnished as local cargo. Recently the Calcutta Customs have advised the shipping companies that for retention cargo or 'same bottom' cargo full details of marks and other things should be given. Fortunately, Bombay Customs have not raised this question. In case they also do it, it is going to make it very difficult for us. In the 'same bottom' cargo there may be hundreds of items. It would load the IGM considerably. After all, those details will be reflected in the Calcutta or Madras IGM where the cargo becomes local and therefore we are bound to discharge the cargo according to the IGM. I would, therefore, suggest that in the new Bill that is under consideration one treatment may be given to transshipment cargo and local cargo and a separate treatment may be given for 'same bottom' cargo for showing it in the IGM.

**Shrimati Savitri Nigam:** I think that transshipment could be made without landing that cargo at the port?

**Shri Kothawala:** Actually it is carried in the same bottom of the ship.

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From Liverpool to Calcutta the ship touches Bombay, then Madras and then goes to Calcutta. The Calcutta cargo which is in a separate storage is retained at Bombay and Madras while the ship discharges Bombay and Madras cargo. When the ship arrives at Calcutta the same 'same bottom' cargo becomes local cargo in Calcutta port and is shown in the IGM and is accordingly discharged in Calcutta. For the first time it becomes local cargo and we have to account for every single package. So, it does not come out of the ship at all. Even if it comes, we are bound, even under the terms of the bill of lading, to carry it at our expense to Calcutta and deliver it in Calcutta and satisfy the Customs at Calcutta that that cargo has not short-landed.

**Shri Anand:** As you may have noticed from clause 30, it does not lay down the form in which the I.G.M. is to be submitted. It has to be submitted in the prescribed form. It does not say anything even about the local cargo, or transshipment cargo etc. So, what you are saying can be dealt with under the regulations and rules and whoever contravenes those rules would be dealt with accordingly. But that cannot be put in the Act itself.

**Shri Kothawala:** Since the Bill is on the anvil, our difficulties *vis-a-vis* customs at various ports could be considered and if we could lay down a rule of law in this regard that would be better. That is what we wish to submit.

**Shrimati Savitri Nigam:** Have you got any model amendment to suggest about this point?

**Shri B. R. Bhagat:** That need not be put in the Act.

**Shri Kothawala:** It may be put in the rules.

**Chairman:** The rules are all laid down on the Table of the House. You may please be watchful and you will come to know that. All such rules are laid on the Table of Parliament.

**Shri Kothawala:** About confiscation of vessels, I wish to say something. We have referred to that in our Memorandum. This relates to Clause 115 of the new Bill.

We were worried about search of documents without obtaining the necessary permission of magistrate, but we thought it better not to bring it up as an agitational approach. But, when it comes to confiscation of vessels, we wish to say something. Clause 115 allows confiscation of vessels even when alterations or adaptations in vessels for the purpose of concealing goods are made without the knowledge or privity of the owner or the master of the vessel. Sometimes, during the voyage, some people conceal contraband without the knowledge of the owner of the vessel. That concealment is unknown to the ship-owner, but if such a concealment is found, he is punished.

**Shri B. R. Bhagat:** Is it a practical proposition or a theoretical proposition? I don't think it is ever done without his knowledge.

**Shri Kothawala:** It could be done without his knowledge. The ingenuity of the smuggler knows no bounds.

**Shri Anand:** It is not a new section. It is an old section.

**Shri Kothawala:** Confiscation of ships is not warranted.

**Shri Dehejia:** It comes under clause 52(a) read with clause 167.

**Shri Kothawala:** While the entire Bill is on the anvil, may we not take this up? That is why I suggest modifications.

**Shri Dehejia:** You are most welcome to make suggestions. It repeats something which already existed in the old Act.

**Shri Kothawala:** We would like its rigorous to be less. If this could be done in the new bill, it is worthwhile.

**Shri B. R. Bhagat:** The problems are more. Do you want this to be less rigorous?

**Chairman:** The space in the ship is altered to send certain smuggled goods, contraband gold bars, etc. That cannot be done surreptitiously without the knowledge of the ship-owner.

**Shri B. R. Bhagat:** Without confiscating the vessel, this cannot be enforced.

**Shri Kothawala:** One officer on duty cannot go to the various places in the ship. One officer works during night duty. Another comes for day shift. Now, one officer cannot go to all the places. If any mischief is done unknown to the officer of the ship, the vessel is confiscated once the place of concealment is detected. This can be done if the ship-owner's guilt, his indifference or his negligence is established.

**Shri Dehejia:** The ship owners may have better check over their crew. After all they are their employees.

**Shri Kothawala:** At various ports, labourers come in to take the cargo. There are passengers at various places.

**Chairman:** Section 115 gives instances where conveyances shall be liable to confiscation. It says:

"The following conveyances shall be liable to confiscation:—

(a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered, or fitted in any manner for the purpose of concealing goods;

(b) any conveyance from which the whole or any part of the goods is thrown overboard, stayed or destroyed so as to prevent seizure by an officer of customs;

(c) any conveyance which having been required to stop or land under section 106 fails to do so..."

Now, it is only in such instances that confiscation takes place. That cannot be condoned. There are certain things

which cannot be done without the connivance of the ship-owner.

**Shri Anand:** The ship owner has to have knowledge in certain types of cases. Clause 115, sub-clause (2) says as follows:

"Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all such precautions against such use as are for the time being specified in the rules"

**Shri Kothawala:** How can the owner prove his innocence?

**Chairman:** This is to be done when a *prima facie* case is established.

**Shri Kothawala:** I agree, if a *prima facie* case is proved against the owner.

**Chairman:** All such cases are specified in sub-clause (a) to (3) under clause 115. Suppose some quantities of cotton bales are missing and some quantities of silver bars are put in their place. You cannot say that you have no knowledge. It is only in such cases that confiscation is contemplated.

**Shri Kothawala:** It can be extended to any cargo and the ship can be confiscated. Because we are unable to account for the cargo, we are answerable. The Association suggests that confiscation should be resorted to only if it is proved that such adaptations or alterations are made with the knowledge or privity of the owners of the vessel.

**Shri S. S. More:** Are there instances where the vessels were confiscated? Can you cite some instances?

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**Shri Kothawala:** In Calcutta, there was recently an incident relating to a foreign vessel. You will remember that.

**Shri Dehejia:** That matter went to the court. It is still pending in the court.

**Shri Anand:** In that case, Rs. 25 lakhs worth of gold was discovered there.

**Shri Dehejia:** That is still pending in the court.

**Chairman:** Thank you for the evidence.

**Shri Kothawala:** Thank you.

*(The witness then withdrew).*

*(The Committee then adjourned).*

**SELECT COMMITTEE ON THE CUSTOMS BILL, 1962**  
**MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL,**  
**1962.**

*Saturday, the 1st September, 1962 at 09.35 hours.*

**PRESENT**

Shri S. V. Krishnamoorthy Rao—*Chairman.*

**MEMBERS**

- |                                 |                                     |
|---------------------------------|-------------------------------------|
| 2. Shri Tridib Kumar Chaudhuri. | 10. Shri Shankarrao Shantaram More. |
| 3. Shri R. Ramanathan Chettiar. | 11. Shri Prabhat Kar.               |
| 4. Shri N. T. Das.              | 12. Shri A. V. Raghavan.            |
| 5. Shri J. N. Hazarika.         | 13. Shri Shivram Rango Rane.        |
| 6. Shri Hari Vishnu Kamath.     | 14. Shri R. V. Reddiar.             |
| 7. Shri Narendrasingh Mahida.   | 15. Shri M. Shankaraiya.            |
| 8. Shri Bakar Ali Mirza.        | 16. Shri Sumat Prasad.              |
| 9. Shri R. R. Morarka.          | 17. Shri Bali Ram Bhagat.           |

**DRAFTSMAN**

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

**REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS**

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

**SECRETARIAT**

Shri A. L. Rai—*Deputy Secretary.*

**WITNESSES EXAMINED**

**I. BENGAL NATIONAL CHAMBER OF COMMERCE AND INDUSTRY, CALCUTTA**

- |                         |                            |
|-------------------------|----------------------------|
| 1. Shri D. N. Mukerjee. | 3. Shri B. C. Sen.         |
| 2. Shri A. N. Daing.    | 4. Shri A. R. Dutta Gupta. |
11. SHRI D. N. MUKERJEE, RETIRED COLLECTOR OF CENTRAL EXCISE AND CUSTOMS AND ADVOCATE, CALCUTTA HIGH COURT, CALCUTTA

**III. THE BOMBAY GENUINE PEARL DEALERS ASSOCIATION, BOMBAY**  
Shri Jawahar M. Jhaveri.

**IV. THE PEARLS IMPORTERS AND EXPORTERS ASSOCIATION, BOMBAY**  
Shri Pravin M. Nanavati.

## V. THE LEADING BULLION MERCHANTS, DEALERS AND COMMISSION AGENTS OF BOMBAY

1. Shri Valimahammed Gulamhusain.
2. Shri Amichand Valamji.
3. Shri Kantilal Chunilal.
4. Shri Dolatram Bherumal.
5. Shri P. Gopalekrishnah.
6. Shri Kapurchand Chimanlal.
7. Shri J. R. Gagrath.

## I. BENGAL NATIONAL CHAMBER OF COMMERCE AND INDUSTRY, CALCUTTA.

*Spokesmen:*

1. Shri D. N. Mukerjee.
2. Shri A. N. Daing.
3. Shri B. C. Sen.
4. Shri A. R. Dutta Gupta.

*(Witnesses were called in and they took their seats).*

**Chairman:** Gentleman, we have got your memorandum. It has been circulated to the members. If you have got anything to add, we are ready to hear you.

**Shri Mukerjee:** In the first place, Sir, the Chamber expresses their sincere thanks to this Committee for having given them an opportunity to appear before this Committee to present their views. Secondly, the Chamber is very grateful to the hon. Finance Minister for having overhauled the Customs Law which was originally introduced in this country in 1878, and that old Customs Law has now been consolidated with the Land Customs Act of 1924 and the Indian Aircraft Act. This has been a great uphill task for the hon. Finance Minister and the Chamber sincerely appreciates that this has now been done and made possible.

The Chamber has felt that in the new Bill the necessities of the trade which the trade had been asking for the last few years have been considerably met and they have got some concessions which they greatly appreciate. The trade necessities have been considerably fulfilled and the planned economy which is desired to be protected in this country has also been sufficiently attempted to be met in the Bill. The Chamber is also grateful

that the facilities and concessions which have been granted to the trade will be very helpful in having a close co-operation between the trade and the Government.

I may mention some of the most outstanding changes which have been made.

**Chairman:** I would request you, Mr. Mukerjee, to come to the provisions of the Bill. If you have got any objection to any particular clause you may mention that. Similarly, if you have any suggestions to improve them, you can straightway give them.

**Shri Mukerjee:** We have, Sir, in our memorandum, represented our views specifically according to the clauses. We now want to lay emphasis on a few of the clauses and want further clarification.

The first clause which I shall refer to is clause 14. This refers to the determination of assessable values. There has been a long dispute in the past about this fixation of assessable values, and we appreciate that this clause has been drafted on a more realistic basis. But then, we would like to have a clarification as to whether this "normal price" will also include the landing cost, because "normal price" has been defined as the price of the seller to the buyer. By that we understand that the price which the seller will charge to the buyer in the ordinary course of international trade will be the price. That is to say, generally, we understand that the CIF or the FOB price will be the "normal price" in the international trade. But, after the goods are landed there are some small landing costs. The question whether that landing cost would also be included. In fact, we have



suggested that an explanation may be added to this clause just to clarify whether it will include the landing cost and whether it will include the discounts. Discounts are now allowed in the international trade and the discounts vary from seller to seller and from buyer to buyer. More or less, there is no fixity about these discounts. It depends upon the quantity purchased at a time and the bargaining of price. The question is whether these things should be clarified by an explanation. We have suggested that it should be done because otherwise it might leave chances for future disputes.

Then again, we have pointed out that the same goods or similar goods when manufactured in different countries, are supplied at different prices. Of course, we understand that "normal price" means the price of the different international markets. But sometimes it happens that from the same international market goods of the same type are sold to buyers in the buying country at different prices. The question is whether the "normal price" should be accepted for each individual sale to the different buyers who are allowed different discounts. How should these things be dealt with?

Then again, there is the question of forward sale price. Goods are sometimes found sold at a cheaper price or at a higher price according to the forward contracts and the same goods when supplied at later date may be sold at a lower or higher price. In this case, what would the "normal price" mean? Would it mean the price at which that forward contract has been made or the price which is current at the time when the goods reach the buying country?

**Chairman:** What do you want it to be?

**Shri Mukerjee:** We want that in the case of forward contracts the price which is contracted should be accepted as the normal price and in case different prices are obtaining in the same international market, if it is

proved that there is no special relationship between the buyer and the seller and the prices have been arrived at by independent bargaining, the prices should be accepted, although they are different and although they are from the same international market. These things should be clarified.

**Shri Ramanathan Chettiar:** Could you clarify the point about forward prices? Do you want it to be like, for example, phadka market price in regard to jute in Calcutta?

**Shri Mukerjee:** Sometimes goods are ordered ahead of the manufacture and the prices are settled even before the goods are manufactured in the manufacturing country. So, we should take into account not only jute contract but also the prices of other goods in general.

**Shri Ramanathan Chettiar:** Probably you are referring to exportable commodities and not in regard to imports.

**Shri Mukerjee:** Both imports and exports because in the case of imports also there are some forward contracts.

**Shri Ramanathan Chettiar:** What are the articles of import which will come under this category?

**Chairman:** He has referred to some machinery.

**Shri Ramanathan Chettiar:** How could there be a forward contract on that?

**Shri Mukerjee:** Machinery is manufactured in the manufacturing country. Orders are placed well ahead. The prices are fixed by contract and the components of the same machinery may be supplied at a later date at a higher or lower price.

**Shri Ramanathan Chettiar:** I would like to point out that it happens only in very few cases in regard to certain items. When we import from the United States they say that the price is subject to the ruling market price on the day of manufacture or delivery. But I do not think this will apply to any article or components that we may have to import from the United Kingdom or any of the Con-

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tinental countries. I think this would apply more in regard to jute and shellac that are exported from our country rather than in regard to imports from foreign countries.

**Shri Mukerjee:** Then I will refer to clause 18, although it is a small point. It refers to the provisional assessment of duties. It happens that when goods are imported and an assessment cannot be done immediately, after some enquiries the goods are provisionally assessed to duty and a bond is taken from the importer to pay the difference in duty in case when the final assessment is made there is additional duty involved. The provision that has been made is for a security bond, which means the importer has to pay cash security in Government papers for the goods imported. We suggest that surety bond may also be allowed to be accepted and in case cash security is insisted, the cash should not exceed twice the value of the difference in duty between the provisional assessment and the estimated final assessment, because if it is left to the discretion of the officer and if the discretion is not exercised properly, it might happen that he might demand any lump sum as cash security which the importer is unable to pay. Therefore, it is suggested that the surety bond as well as the security bond should be limited to the difference between the two duties.

**Chairman:** You need not repeat what is contained in the memorandum, because we have gone through it. If you want to lay stress on any particular point or bring in additional points, you may do so.

**Shri Mukerjee:** In clause 28 provision has been made that a show cause notice may be issued. We suggest that the show cause notice may be provided as a compulsory item. So, instead of the word "may" the word "shall" may be used.

**Shri S. S. More:** In this particular clause, if you interpret it in that particular context, the word "may" has the force of "shall".

**Shri Mukerjee:** Then we will not press that. Then, in the same clause the time given is six months. We have suggested that the show-cause notice may be issued within three months and the proceedings may be finalised within six months. That is to say, whether the importer has to pay any additional duty must be decided within six months but the show-cause notice may be issued earlier, that is, within three months.

**Shri S. S. More:** Would you not allow some time for the customs authorities for reaching their own conclusions before they issue the notice?

**Shri Mukerjee:** In the clause the provision that has been made is that the show-cause notice will be issued within six months and there is no limitation as to the time for arriving at a decision. This means that the importer is held in suspense for an unlimited time which is not proper.

Then I refer to clause 105, sub-clause 1. The power of issuing search warrants is proposed to be delegated to officers upto the rank of Assistant Collectors. We have not supported it. We emphasise that this may lead to great abuses of power, more particularly on account of the fact that search warrants under this clause may be issued for the seizure of documents of the importer for any proceeding and 'any proceeding' may include a proceeding for the payment of additional duty and adjudication proceedings. If in an adjudication proceeding relating to an investigation whether the importer is liable to any additional duty a search warrant is issued by an Assistant Collector and the documents of the businessman are seized and brought to the customs house, nobody knows when they will be released. He will be subjected to great inconvenience. The power is at present confined to the magistrate and in case the business accounts are not released the businessman can approach the magistrate and a quick decision is made. But when the decision is left to the departmental officer who himself has

issued the search warrant, there may be harassment of the business people.

**Shri S. S. More:** Apprehensions are expressed here that by the time the officer concerned goes to the magistrate, somehow delays take place and the prospect of securing certain documents is marred. In order to prevent the possibility of such delays, it will be better if we retain the provision as it appears in the Bill and to the aggrieved party who feels that documents are not being returned promptly we may provide some remedy by providing for some representation to the District Magistrate or somebody else.

**Shri Mukerjee:** Where a magistrate is readily available and the customs officer approaches him for the issue of a search warrant, the magistrate makes enquiries into the truth of the allegation and unless there is a prima facie case, he refuses to issue a search warrant; whereas, if it is left to the departmental officer and if the officer is not scrupulous enough or cannot exercise his discretion correctly, there will be harassment. Of course, we have suggested that in the case of border areas where smuggling goes on and it is not possible to find a magistrate there would be no harm in giving the power of issuing search warrants to senior officers of the Department.

**Chairman:** We have got a long land customs barrier and we cannot have magistrates at every place. So, necessarily power has to be given to the customs officers.

**Shri B. R. Bhagat:** Even in income-tax and sales tax cases such power is vested in the administrative officers.

**Shri Mukerjee:** In the case of income-tax officers the power is exercised in a different way. But here there is the power of seizure of the property of the person. In the case of income-tax the warrant authorises the seizure of documents of assesseees and not the personal property of the individual. An analogous case is that of the State excise authorities who have got to deal

with excisable goods and there the power of search warrants is restricted to the magistrate or to the Collector of the District and not to any subordinate official. They also have got to work on the border.

**Chairman:** Even here it is a gazetted officer, that is, the Assistant Collector of Customs, who is authorised to issue a search warrant just as the magistrates.

**Shri Mukerjee:** The Assistant Collector of Customs may be biased, but in the case of the magistrate there cannot be any allegation of bias.

**Shri Dehejia:** The witness quoted some excise law. We have got the Bengal Excise Act and he may be familiar with that. Could he quote from there some case where it requires a magistrate's order?

**Chairman:** There section 70 gives the power to the Excise Officer. Such powers are there in many Acts.

**Shri Mukerjee:** Kindly see section 69 of the Bengal Excise Act.

**Chairman:** There also it is 'any officer or magistrate'.

**Shri Mukerjee:** There it is 'any collector or magistrate' and not any subordinate officer.

**Chairman:** But section 70 immediately follows section 69.

**Shri Mukerjee:** But we have suggested that in the case of the border areas where there may be any necessity for issuing a search warrant senior officers may be empowered to do so. The power of issuing search warrants may be given in the case of land customs to the Superintendent who is readily available there.

**Chairman:** All right, we will consider it.

**Shri Hazarika:** When an officer is specifically empowered for that purpose, he is as good as a magistrate.

**Shri Mukerjee:** I will only repeat that he is a departmental officer.

The next clauses I would refer to are clauses 107 and 108. 107 is a new clause giving the power of investigation to the customs officers to examine persons and require them to produce documents or to make and sign statements, just like police officers. In view of this new clause 107 we do not feel the necessity of clause 108. The distinction between clause 107 and clause 108 is that in the case of clause 108 any person can be summoned, by the officer empowered, to appear before him and to give evidence and to produce documents. And this is in the existing Act also, the corresponding section in the existing Act being 171A. Now, it has been found by experience that this power of summoning persons has been delegated to subordinate officers even of the rank of preventive officers on the customs side. So a preventive officer can summon a person. And it is a judicial proceeding, for certain purposes—for instance, he cannot give false evidence, he cannot insult the officer who has summoned him. So, the purpose with which section 171A was promulgated in 1955 was to empower the officers to make investigations. But that power is now being taken under clause 107. So the old power, which is embodied in clause 108, need not remain.

The next clause I would refer to is clause 118. It is suggested that the word 'package' be defined. Because, it may so happen sometimes that licit goods may be associated with illicit or smuggled goods in a box. That should not make the licit goods liable to confiscation because the smuggled goods were contained in that box. The dictionary meaning of the word 'package' is bundle. But the keeping of articles in a box in which probably smuggled goods are found should not make the licit goods liable to confiscation. That is why the definition of the word 'package' should be clarified.

The next clause that I would like to refer to is clause 120. Clause 120 says that smuggled goods may be confiscated notwithstanding any change

in their form. If the smuggled goods are gold, and if any ornaments have been manufactured out of that gold and sold from a jeweller's shop, and an innocent person goes and buys that ornament, then those ornaments would be liable to confiscation, and the onus of proving that those ornaments have not been manufactured from smuggled goods is on the citizen who innocently buys those ornaments. So, this clause 120 will bring harassment to innocent citizens. If it is at all retained, it is suggested that the onus of proving that the ornaments were manufactured from smuggled gold should be on the Customs Department. If they are satisfied that it has been made from smuggled gold, then of course it may be confiscated. And there should be provision for compensation to the citizen who has innocently bought those ornaments.

**Chairman:** The provision is already there regarding stolen property, in the Penal Code.

**Shri Mukerjee:** I would next refer to the appeals and revision clauses, that is clauses 128, 130 and 131. We have not referred to this in our Memorandum. We suggest that there should be an independent body for deciding appeals and revisions, as has been recommended by the Badhwar Committee. At the lower levels appeals are generally decided by the Collectors, against the orders of their subordinate authorities. At the lower level, just as in the Income-tax department, there may be an Appellate Collector or Assistant Collector. But, at the higher level, corresponding to the Board of Revenue, there may be a Tribunal as in the case of the Income-tax department. This, we think, will do justice to the citizens.

**Shri Hazarika:** What about clause 123?

**Shri Mukerjee:** The real difficulty, we have explained, has been brought out against clause 120. If there is any suspicion of smuggling and gold is seized from a suspected smuggler, it is

quite right that it is for the person from whom gold is seized to prove that it is not smuggled gold. But, that should not apply in the case of a citizen who has purchased some gold ornaments from an ordinary dealer's shop in the town. He is asked to prove that the gold ornaments have not been manufactured from smuggled gold. Really, he is not manufacturing. He is only a buyer. Here, in clause 123, it is the person who is carrying gold and who is suspected to have smuggled, who is liable. The suspicious person with other case is the dealer who has sold the gold to the citizen. You have seized the gold from the citizen. It is not right to ask the citizen to get proof that the dealer from whom he has bought has not manufactured it from smuggled gold.

We refer back to clause 13. This is a new provision that an importer has to pay the duty on the pilfered goods whether he takes delivery of the goods or not. In the existing Act, there was a provision that he might abandon the goods in which case he has not got to pay duty on the pilfered goods. In this clause 13, now, it has been made compulsory that whether he takes the goods or not, he has got to pay duty on the pilfered goods although the pilfering might not have been done at his instance or there is no proof at least that he has anything to do with pilfering. As a matter of fact, the pilfering is done from the jetty when the goods are in the custody of the Port Commissioner. The law is that if any goods are pilfered and the party makes a claim within five days, then and then only he can claim compensation from the Port Commissioner. Five days is too short a period now. As a matter of fact, on account of the imposition of import control, ordinarily or in most cases, it is not possible to get a clearance of the goods on payment of duty within five days. It will be a great hardship if the importer is asked to pay the duty on the pilfered goods even when he intends to abandon the goods. It is suggested that the existing provision may remain as it is. That is all.

**Shri Hazarika:** It is duty on imports. The good have been imported. Then, it has been pilfered. Duty should be paid by somebody.

**Shri Mukerjee:** Legally, it should be. But, equity demands that a person should not be made to suffer for no fault of his. His only fault is that he imported goods. Pilfering has been done in circumstances beyond his control.

**Chairman:** This matter will be considered by the Committee.

**Shri Hari Vishnu Kamath:** Mr. Mukerjee,....

**Chairman:** He is representing the Bengal Chamber of Commerce.

**Shri Mukerjee:** I am not coming in my personal capacity, because I will repeat the same things.

**Chairman:** Suppose the Committee wants to ask some questions in your personal capacity?

**Shri Mukerjee:** If the Committee desires, I am at your service.

**Chairman:** Then, the other witnesses can retire.

**Shri Dutta Gupta:** I want to say something regarding clause 14. It refers to the value on the basis of which the duty is to be assessed. It has to be done on the basis of normal price. Reference has been made in the note appended to the Bill that this has been framed on the basis of the provision in the G.A.T.T. In the provision what has been mentioned is the actual price and not the normal price. We do not know why this difference has been made. If it is normal price, the price will differ from place to place and in respect of different shipments of similar consignments. Duty has to be assessed on the C.I.F. value of the imports. If it is normal price, some other elements will come into consideration. The basis should be actual price. If the goods are delivered on credit basis, the price will be much higher.



**Chairman:** The point will be considered.

**Shri Dutta Gupta:** Provision has been made in the Bill, for seizure of documents, etc. There should be some time limit for the return of the documents. Otherwise, trade may face great difficulty.

A number of provisions have been made for checking smuggling. While we are at one with the Government that smuggling should be stopped, we do not think that by mere legislation we can stop smuggling.

**Chairman:** What is your suggestion?

**Shri Dutta Gupta:** The point is this. We feel that these provisions have been made to catch hold of the smuggler after the event has taken place. Rather we should think of finding out ways and means to stop smuggling before it takes place. The point is that even for smuggling of goods, the price for that has to be paid to somebody with funds abroad. We should enquire how the funds have been created. Moreover, people are perhaps finding smuggling more profitable, because the internal prices are higher, and perhaps the value of the rupee is also depreciating. So, we must create certain conditions here so that smuggling may not be found to be profitable.

Then, there is a feeling that perhaps there is under-invoicing of the export value, and foreign exchange is thus being accumulated. There might be some provision for checking up the export invoices and the inspection of the goods to see that there is no under-invoicing. At present, Government only act on stray information. I suggest that Government must have a body consisting of trade, the customs officials and the import control authorities etc. to check the prices of the goods and they must have also a machinery for getting market intelligence about prices etc. in a regular manner.

Mr. A. N. Diang will be able to throw more light on this.

**Shri Ramanathan Chettiar:** About smuggling, have you got any concrete suggestions to put down this evil?

**Chairman:** He has said that conditions should be created to check smuggling; he says that those conditions which encourage smuggling should be removed.

**Shri Dutta Gupta:** The point is that however stringent the laws may be, the dishonest man will always find ways and means of avoiding them. On that ground it should not be presumed that every trader is dishonest.

I would submit that smuggling itself cannot take place if the administration is sufficient.

**Shri S. S. More:** After all, a smuggler is a smuggler; we cannot call him a trader.

**Shri Narendra Singh Mahida:** Has any member of your association taken part in smuggling, and has he ever been caught?

**Shri Dutta Gupta:** No, never. But because the provisions are there we thought we must make our submissions.

**Chairman:** Then you should not have any objection to these provisions.

**Shri Dutta Gupta:** For instance, there is a provision that when gold is changed into a certain form, then certain presumptions will be made, and so on...

**Chairman:** These provisions do not apply to honest traders.

**Shri Dutta Gupta:** But in their application, honest people also may be harassed.

**Chairman:** If the person is honest, then he can prove it. You have proved now that there has not been a single case of smuggling by any member of your association.

These provisions are meant to apply only to those persons who are engaged in smuggling.

**Shri Dutta Gupta:** The point is that in applying these provisions, honest people also may suffer.

**Chairman:** But, so far, from your experience, these provisions have not been applied to you, and they have not been misused.

**Shri Dutta Gupta:** But, so far, the laws were not also so stringent.

**Shri Daing:** I would also like to say a word on this.

The chairman had asked us whether there had been any trader or member of our association who had been caught for smuggling, and we had said 'No' in reply to that question.

But the fact remains that often when a genuine trader or importer has imported certain items at world market prices, sometimes the customs officials compare those prices and find them to be lower than those at which certain other firms have imported those particular items, and they argue why the other importer should not be charged the difference in prices as excess duty. It so happens that many times there is an honest trader who as a result of great efforts succeeds in importing goods at prices lower than those at which others import; and he saves foreign exchange for the country. Instead of being appreciated for that, he is being harassed on the ground that he has smuggled the goods at lower prices. This has happened on many occasions.

We, therefore, suggest that there should be some kind of guiding principles by which there will be no harassment to genuine traders. I cannot suggest definitely what those guiding principles should be but some guiding principles should be there.

I may mention some instances in this connection. I may go back to the days when the Ford Motor Co. or the General Motors were here. And the goods which were imported under those brands were fifty per cent higher in price as compared to that of the goods which were imported from the source

from where the General Motors or the Ford Motors had bought them. If the importer bought from those very manufacturers from whom the Ford Motors or the General Motors bought those things, then the goods would be 50 per cent cheaper. But the importers who got those things at those cheaper rates were suspected by the customs officials as being involved in smuggling on the ground that they had not paid the proper price.

So, some guiding principles should be there so that there may not be harassment. As Mr. Dutta Gupta has been saying there has been no case of smuggling in our association, but harassment cases have been numerous, and that is the point at which he was arriving. Where foreign exchange is saved by an importer, he is harassed by the customs officials. So, if there is any ambiguity in regard to this matter, some guiding principle should be laid down.

Of course, it may be a difficult thing. But some proforma may be submitted even for export and that may be checked up. For instance, in an export item, if the items are undervalued, foreign exchange may be secreted out. To stop that, we have to ensure that there is no foreign exchange accumulated outside by anybody; if that is done, then there will not be any under-invoicing also.

To stop this evil of under-invoicing etc. I would humbly suggest that the proforma of the invoices be scrutinised by the import authorities or the customs authorities before an export or import is made. And when the export or import has been effected, there should be no harassment whatsoever. That is my humble suggestion in regard to this matter.

As far as my information goes, Japan is one country, for instance, where when an export is made, the export invoices are submitted to the Export Bureau, and the Bureau puts its stamp on them and gives them permission to export, and then the goods are exported. Here also, a machinery can be

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formed by the customs authorities. The proforma of the invoices may be submitted to them before we export or import, and they may approve of it or stamp it and say 'Yes, you may import these items' or 'you may export these items' as the case may be; if that is done, then there will be no harassment to the trade afterwards by the customs. This is a humble suggestion which may kindly be taken note of.

A lot of foreign exchange which is now being accumulated outside the country on account of this under-valuation of exports will be stopped, once there is this machinery to see that they are not under-valued. Similarly also, a check may be kept that there is no over-valuation of the imports.

When such a machinery is formed, rules and regulations should necessarily be published for the guidance of the trade.

**Shri Hari Vishnu Kamath:** We agree that there should not be any harassment of honest traders. But I am sure you will agree with us that smuggling should be put down with a heavy hand. At the same time, we have to see that honest trade is not harassed or persecuted.

Could you tell us, first, whether smuggling has been for sometime, and is today steadily on the increase in India, from the reports that you get in your big city? You are living in a big city, and you must certainly be getting reports from various sources. Secondly, what alternative provisions or measures would you suggest to put down smuggling or to end smuggling, in place of the provisions which we have proposed in this draft Bill to end smuggling?

**Shri Daing:** This is a very pertinent question, how to check smuggling. As reports go, smuggling is definitely on the increase. As regards this, I have made a humble suggestion, that before export of goods is made, there should be a check on the prices. How do smuggled goods come into India? Obviously foreign exchange

has been paid for the goods abroad. Nobody is going to give goods in charity.

**Shri Morarka:** Over-invoicing of imports and under-invoicing of exports.

**Shri Daing:** Yes. Before goods are exported from the country, there should be a machinery to check whether the prices are fair or not. We have few commodities in India which are generally exported in volume and the fair price can always be verified by a small machinery. If that is done, foreign exchange will not be exported and smuggling will decrease.

**Shri Ramanathan Chettiar:** But is it within our power to control export? The Indian price of gold is higher than the international price. What are the other measures that we can adopt to put down smuggling of gold?

**Chairman:** We have no control over other countries.

**Shri Daing:** This is a tempting commodity for smuggling, because the international price is about 40 per cent less than the Indian price. But for buying gold abroad money has to be exported. A check on that must be kept.

**Shri B. R. Bhagat:** Out of the funds accumulated at the other end, he is paid.

**Shri Dehejia:** Are you aware that there are various other forms of accumulating foreign exchange independently of import-export manipulations? There are probably a dozen ways.

**Shri Daing:** I have not thought of any other method. We would like to know what it is.

**Shri Ramanathan Chettiar:** Should we go into all that?

**Shri Daing:** The other method I can think of is that a certain amount of salaries of foreigners is retained here. But the main thing is the under-invoicing of exports.

**Shri Bakar Ali Mirza:** What about over-invoicing of imports? How to check it?

**Shri Daing:** Yes. The importer should send a proforma of imports to the Bureau of investigation. They should check and compare the prices with the other importers and determine whether the price is fair or not. Before the act is done, this should be done.

**Shri Bakar Ali Mirza:** The goods are imported from the other end.

**Shri Daing:** Yes. The proforma comes and the importer wants to import. Before he establishes a letter of credit, he should send the proforma or invoice to the Bureau to check whether the price is fair or not and whether he can import at that price.

**Chairman:** Thank you. Shri D. N. Mukerjee may stay on.

*(The witnesses, except Shri D. N. Mukerjee, then withdrew.)*

**II. SHRI D. N. MUKERJEE, RETIRED COLLECTOR OF CENTRAL EXCISE AND CUSTOMS, AND ADVOCATE, CALCUTTA HIGH COURT, CALCUTTA**

**Shri Hari Vishnu Kamath:** Has the witness anything to add to his 8-page note?

**Shri Mukerjee:** Nothing substantial.

There is one thing I might suggest as a preventive measure. I do not know how far it would work; I had only thought about it recently. I was wondering whether it would not be worthwhile to licence manufacturers of gold articles.

**Shri Ramanathan Chettiar:** What about dealers?

**Shri Mukerjee:** If the dealers of gold are licensed, they have to maintain some accounts. For the present, we have got no control over these dealers. Everybody must have noticed that in big cities these dealers' shops are springing up like mushrooms. Nobody knows why the number of gold shops in big cities is increasing so

rapidly. So the suspicion is that a lot of gold and other smuggled goods coming into the country are distributed to these dealers and they are kept there in the form of manufactured gold ornaments.

**Shri B. R. Bhagat:** Should they be licensed all over the country, including villages?

**Shri Mukerjee:** If the Central Excise department can license tobacco dealers all over the country, there is no reason why they cannot license these gold dealers everywhere. Then you can keep some sort of check over them as to from where they are obtaining the gold, and how they are disposing of it. That is the only way of expanding preventive control.

**Shri Ramanathan Chettiar:** Gold and bullion come under the State Government.

**Shri Mukerjee:** Gold is to be declared as an excisable commodity in the Central Excises Act.

**Shri Narendra Singh Mahida:** Apart from those dealing in gold, will you not include the gold smelters?

**Shri Mukerjee:** Naturally, that is also manufacture, because under the definition of manufacture under the Central Excise Act, any process ancillary to manufacture is also manufacture. So, starting from the gold factories in Mysore or the banks, these small dealers should be licensed, and their accounts books and stocks will have to be checked from time to time. That is the way of having effective preventive control over them. At present we have no control, and that is why these things are increasing, and with the increase in the number of shops disposing of the gold, the smugglers get an incentive to smuggle gold into the country.

**Shri J. N. Hazarika:** Do you suggest the Central Government should give a gold quota?

**Shri Mukerjee:** At present, licit gold is purchased from the Mysore gold factory through the banks. Then

there are the old gold ornaments sold by the citizens to the dealers which are melted and refined and then there is smuggled gold. These are the three sources of gold.

**Shri Ramanathan Chettiar:** The major portion is illicit gold?

**Shri Mukerjee:** That is very difficult to say. It may or may not be. We have at present no statistics. It is only an estimate of smuggling.

**Shri Ramanathan Chettiar:** When you license, don't you indirectly legalise and encourage smuggling?

**Shri Mukerjee:** No, not at all. Rather, we control the dealing in smuggled gold.

**Shri Ramanathan Chettiar:** Today gold import is banned.

**Shri Mukerjee:** But there is enough of gold in the country.

**Shri Ramanathan Chettiar:** As far as the gold from the Kolar Gold Fields is concerned, it is very limited in quantity, and as for the old ornaments that are sold, you know that very few people part with them even in the villages, because of traditional habits.

**Shri Mukerjee:** It is not a fact that very few part with them. It depends on the rise in price. If the prices rise high, they dispose of the gold. If the prices go low, they will not.

**Shri Ramanathan Chettiar:** You can have a rough estimate. You cannot actually arrive at an accurate figure.

**Shri Mukerjee:** You can only have a fairly accurate estimate of the dealings when we license these gold dealers.

**Shri J. N. Hazarika:** Your suggestion is for internal control. Without any control on the borders, do you think it will be sufficient?

**Shri Mukerjee:** The customs people have got their preventive checks at the border, and the internal checks in the hinterland will be done by the licensing of these shops. What else

can you do? That is the only way you can extend your preventive checks.

**Shri Narendra Singh Mahida:** Do you suggest that just like tobacco checking, we can have a department of Central Excise for gold?

**Shri Mukerjee:** Yes. Even now, in spite of the licensing of tobacco shops, there is smuggling of tobacco from the growing areas, and there are preventive officers to check them, but they are evading quite a lot.

**Shri Narendra Singh Mahida:** But tobacco earns money. Do you think this system will earn money for the Government?

**Shri Mukerjee:** We have got the Central Excise staff all over the country, and it will not cost the Central Government more than at present to license the gold shops.

**Shri Narendra Singh Mahida:** I think it is a good idea.

**Shri Ramanathan Chettiar:** You must have experience of land customs also. Apart from licensing of gold dealers and gold manufacturers, what other remedial measures would you suggest to check this gold smuggling both by land and sea?

**Shri Mukerjee:** We have sufficient preventive staff, but the only way is to exercise effective control over them. If you can make our officers wholly honest, smuggling will be stopped.

**Shri S. S. More:** What is your suggestion for making them honest?

**Shri Mukerjee:** Cent per cent honesty cannot be secured in any establishment, but if the officers are contented, and if the higher officers are honest, and they work properly, there may be an improvement.

**Shri Hari Vishnu Kamath:** About 90 per cent?

**Shri Mukerjee:** It is very difficult to say, but I do not know whether it would be proper for me to disclose



one thing. I speak subject to correction, and I do not vouchsafe for its correctness and I do not want that it should go outside this Committee. The information which I have received from my clients now and then is that only 10 per cent of the gold that is smuggled into the country is detected.

**Shri Dehejia:** May be the estimate is right.

**Shri J. N. Hazarika:** You were saying that if the higher officers were honest, the rest also will be honest. Do you know of any case—I do not want any name—of a person who acted with vigilance, or persons who are not supposed to be contended with their pay etc.?

**Shri Mukerjee:** Generally, the standard of honesty amongst the supervisory officers is very good.

**Shri Hari Vishnu Kamath:** Just now you referred to your clients, the information that you got from your clients. Can you tell the Committee whether by your clients you mean honest people who are wrongly or falsely prosecuted as smugglers?

**Shri D. N. Mukerjee:** No, it is not that. In the course of friendly conversation, I have got that information. It is not out of any prejudice that they have complained to me, but this has been talked about not from one source, but from many sources, as to how much of it is detected. That is the point.

**Shri Hari Vishnu Kamath:** You said clients. The word is clients.

**Shri Mukerjee:** I mean clients, not one client. It may or may not be true, but the department, I think, has got full information that much of it escapes; what percentage escapes it is very difficult to say.

**Shri S. S. More:** You say that from your clients' information only 10 per cent is detected. You were also an important officer. What does your experience tell you, what percentage of it is detected?

**Shri Mukerjee:** When I was in office, it was not possible for me to get this information. But, when I was out of office and in touch with the other side of the world, then, this information was collected.

**Shri S. S. More:** Do you mean to suggest that the experience of the officers is always one-sided?

**Shri Mukerjee:** Yes, it is my belief that the informers who assist the department in the detection of smuggling know all these things. And, I would not be surprised if officers in the department also know, as Shri Dehejia was just now saying, that my information was about the same as his.

**Shri Dehejia:** Not that I have any particular information.

**Shri Hari Vishnu Kamath:** As a former Collector of Customs, and now as an advocate, you have had access to many sources of information to which other might not have. You have heard of the death of A. K. Mitra at Vienna when he was engaged in checking and finding out the smugglers in Europe. Have you got any information about this matter?

**Shri Mukerjee:** I have no information.

**Shri Ramanathan Chettiar:** As Collector of Customs, have you come across any smuggling in the diplomatic bags?

**Shri Mukerjee:** I was not Collector of Sea Customs; but I was Collector of Land Customs, and so I had not the experience of smuggling through Embassies.

**Shri Ramanathan Chettiar:** Our trade is increasing because of our planned economy. Do you think the present staff in the Sea Customs, at the Airport and also and customs will be able to cope with the amount of work?

**Shri Mukerjee:** It all depends on the supervisory officers.

**Shri Ramanathan Chettiar:** Do you think we should increase the strength of the establishment; or will they be adequate to cope with the work?

**Shri Mukerjee:** I cannot say about it.

**Shri Ramanathan Chettiar:** From your experience, do you think the staff is inadequate or insufficient to cope up with the work even in land customs?

**Shri Mukerjee:** Of course, we started the land customs in 1948. At that time we were given sufficient staff. But the smuggling that followed showed that our staff was inadequate, and more staff would be necessary. As a matter of fact, since then the staff has been increased by at least 4 times or more than that.

**Shri Ramanathan Chettiar:** From your experience you think that the supervisory staff is fairly above board?

**Shri Mukerjee:** That is my belief and my information too. The standard of the subordinate staff can be increased by efficient work of the supervisory staff; and we should not mind increasing the supervisory staff and control the subordinate staff for it will have a very good effect on smuggling.

**Chairman:** I think we should conclude now because there are other witnesses.

**Shri Hari Vishnu Kamath:** Just one question, Sir. Mr. Mukerjee, you have submitted a useful and interesting memorandum to the committee wherein, at several places, you have commented on the new provisions that the Bill seeks to embody. You have said that the new powers are likely to be abused. That is the word you have used. You have had a fairly vast experience as an administrator of the old law for quite a few years, I believe.

**Shri Mukerjee:** As Collector of Central Excise and Customs I was for three years.

**Shri Hari Vishnu Kamath:** During that period of your administrative ex-

perience, and even earlier, did you come across any cases where the power conferred under the old law—that is the present law—had been abused by the officers subordinate to you? Did you take any action on them?

**Shri Mukerjee:** No; my experience is that powers which were given to the Customs department in 1955 are the powers which are being abused to some extent.

**Shri Hari Vishnu Kamath:** You know of instances, not stray instances, but several instances?

**Shri Mukerjee:** Yes.

**Shri Hari Vishnu Kamath:** Now, Sir, the very last question. It is a rather hypothetical question and may be a semi-personal one. If this Bill is passed into law, would you be happy to function as Collector of Customs under this Act? From your experience, do you think that this will be more efficient to prevent smuggling than the present law?

**Shri Mukerjee:** Yes, I think so. The proposed law will be more efficient than the present law and very beneficial in preventing smuggling.

**Shri Hari Vishnu Kamath:** As Collector, do you think you will be able to prevent abuse of powers?

**Shri Mukerjee:** If the Collector is alert, he can do a lot in stopping the abuses by subordinate officers.

**Shri Hazarika:** How did you ascertain that the powers were abused? Did you find them assisting the importers and smugglers?

**Shri Mukerjee:** That experience has been gained in the course of investigating the cases of my clients for the last 11 years. When I was Collector I administered the law. But, on the other side, when I collected the evidence against the department, I found that the officers were abusing their powers in some cases. That is the experience gained from the papers of my clients.

**Shri Hazarika:** Not as official?

**Shri Mukerjee:** As official, I only administered the law. But, as an advocate....

**Shri Hazarika:** You must have got some cases acquitted and so on.

**Shri Bakar Ali Mirza:** Witness gave information that about only 10 per cent of smuggled gold is detected and also said that he wanted this information only for the committee and not to go out. In that case, you will have to expunge some of the remarks; otherwise, they are likely to be published.

**Shri Mukerjee:** In the memorandum which has been signed by me; it has been stated that if the witness desires, he may say that it may not be published. That was why I mentioned it.

**Shri Bakar Ali Mirza:** Do you insist on that? After all, the information given is not so confidential.

**Shri Morarka:** I do not think even if he insists we can do it now, because he knew that it is liable to be published and now he cannot take out anything from whatever he has said.

**Shri Bakar Ali Mirza:** Let us be clear from the point of view of the witness.

**Shri Hari Vishnu Kamath:** You say that in a city like Calcutta, for instance, there are innumerable hawkers and small shops selling gold, gold manufactures, watches etc. which are sometimes smuggled; you have said so in your memorandum. Are they still prospering and still flourishing?

**Shri Mukerjee:** They are prospering and still flourishing.

**Shri Narendra Singh Mahida:** Can you say that smuggling of gold is done more by ships or by air?

**Shri Mukerjee:** We find that in the newspapers.

**Shri Narendra Singh Mahida:** In your experience, have you come across any instance where a big

smuggler was caught and some political or official pressure was brought to release him?

**Shri Mukerjee:** Not in my experience; as collector of customs I had not any opportunity of detecting cases of gold smuggling at that time; I was in 1943—48 the collector. Since then it has increased.

**Shri Dehejia:** You mentioned a little while ago that the land customs staff has multiplied about four times in the course of the last few years. Do I take it that you were referring to the entire Central excise staff and not only the land customs staff?

**Shri Mukerjee:** That is my case. The land customs and the central excise are a combined establishment.

**Shri Dehejia:** That is to say, you say that the Central excise staff has increased more than four times.

**Shri Mukerjee:** Yes.

**Shri Dehejia:** You mentioned that we had adequate preventive staff. Is it possible for you to give the number of men for manning the land border and the coast? You are used to the idea of land customs patrolling.

**Shri Mukerjee:** I am talking of the East Pakistan border.

**Shri Hari Vishnu Kamath:** When did you retire?

**Shri Mukerjee:** 1951.

**Chairman:** Thank you, Mr. Mukerjee.

*(The witness then withdrew.)*

### III. THE BOMBAY GENUINE PEARL DEALERS ASSOCIATION, BOMBAY

**Spokesman:** |

**Shri Jawahar M. Jhaveri.**

### IV. THE PEARLS IMPORTERS AND EXPORTERS ASSOCIATION, BOMBAY

**Spokesman:** |

**Shri Pravin M. Nanavti.**

*(Witnesses of the above two associations were called in together and they took their seats.)*

**Shri Hari Vishnu Kamath:** There are two associations. Which one is coming now?

**Chairman:** Both the associations the Pearls Importers and Exporter Association and the Bombay Genuine Pearl Dealers Association are giving evidence together.

**Shri Nanavati:** Sir, we have already submitted a memorandum.

**Chairman:** Whatever has been given in the memorandum need not be repeated. If you want to supplement anything, you may do so.

**Shri Nanavati:** Members of my association are importing and exporting pearls after processing them approximately Rs. 1.25 crores worth of processed pearls are exported abroad annually. This comes under the export promotion scheme and we are importing regularly these pearls from abroad for processing. There are two kinds of pearls—real pearls and cultured pearls and there is a 20 per cent duty on cultured pearls. We have Real pearl fisheries in Tuticorin and the pearls produced here are absolutely similar in all respects to those imported from abroad, other than the cultured pearls. There is no duty and almost all pearls that are coming here are to be exported and they are exported regularly. There is no reason therefore why these clauses should be made applicable to us, I mean, clauses 108, 120, etc. That will harm the trade. It is an handicraft industry and thousands of workers are employed in that industry. It is a foreign exchange earner also. Our special request is that as far as possible pearls should not come within the purview of these clauses. We are mainly concerned with exports and exports will increase if substantial aid are granted, as is being done today.

Our major difficulties are with clause 14 which provides for 'Normal price'; under-invoicing and over-invoicing are alleged. I can show you some of the pearls imported from

abroad. It is a special industry; they have not been standardised nor are they regulated by any laws of demand and supply. There is no normalcy of price; there is abnormalcy with regard to them. For instance, this packet which I have placed here contains millions of pearls; each pearl is of different value. When we go to buy, we see these things.

If I go 20, 30 or 40 miles deep into the interior and meet the fishermen, etc., I can get the things 30 per cent cheaper. Sometimes some people import from Kobe and some people get the pearls through Bombay; the shipment is from Kobe through Bombay. Thus, there is some importation of cultured pearls from Japan. There will be natural disparities in prices and this is normal in the trade. It does not mean that it is purposely made or that it is man-made. The agent concerned may not know the price at all. Or, if it is known, he has no control, while we who trade in it know the price; we have control because we procure it or fetch it. There will be a natural disparity up to 30 to 40 per cent. So, the customs will allege that something has happened. Even today, there are two different prices. When you try to apply this price control normal price or abnormal price and so on, in considering that there is some malpractice in the trade, you will apply the penal clauses, and we will have a virtual stoppage of the business, all the time we will be in trouble. We have made a special request to you in this connection, namely, that as far as pearls and finished products of the pearls are concerned, there is no comparison with the other commodities that are manufactured.

**Shri Ramanathan Chettiar:** In your memorandum, you say that Rs. 1.25 crores worth of pearls are exported. It does not indicate how much pearl is imported.

**Shri Nanavati:** If we export Rs. 1.25 crores worth of pearls, against that export, we get licence to import 80

per cent. If my export is Rs. 1 crore, I get Rs. 80 lakhs by way of licence to import. Naturally, we also import

**Shri Ramanathan Chettiar:** Are not the pearls obtained in Tuticorin taken into account for this purpose?

**Shri Nanavati:** They are separate. Sometimes they fish about Rs. 5 lakhs and sometimes Rs. 10 lakhs worth. Last year they suspended the operations. Maybe this year they will start again. It is not a surety.

**Shri Ramanathan Chettiar:** That is not taken into account for the purpose of import?

**Shri Nanavati:** There is no difference between them as regards appearance. I have purchased pearls from Persian Gulf, Venezuela and from Japan. There is no difference among these pearls in appearance. The mere appearance will not give you any idea about them. The more so when they are processed, and as they are processed, you will forget about their racial entity. You cannot identify as to which variety or race they belong to; you can never be sure of it.

Now, here are some real pearls. The price of this is not marked. They are real pearls. They are not mother-of-pearl. These are at the moment Rs. 5,000 worth. If there is a demand from Paris, and if some lady is asking my business-house to send it, mentioning the particular size, shape etc., so as to wear it as a necklace,—they do not know the price—I may charge it Rs. 5,000 for it. If, on the other hand, I have to sell it myself, without having this demand delivery. I cannot liquidate it even for Rs. 2,000! If I knew that there was demand and that I could get Rs. 5,000, I will export it, whereas another person who does not know anything about it, will have to export it for Rs. 2,000 or Rs. 1,000. When we go to export them, the customs house authorities come in, and more or less similar prices are quoted, with the result that we are stranded. The person is

charged with the offence that he has under-invoiced or over-invoiced. In fact, there is no criterion for any such thing in the trade.

**Shri Ramanathan Chettiar:** Are you justifying your position?

**Shri Nanavati:** I only say that there is genuine cause for grievance. If a lot of pearls go into circulation, nobody knows what the price is. The usual disparity is between Rs. 100 and Rs. 300. I may put the price of a pearl as five shillings. If one is the sender of a pearl, the very pearl may be asked for about seven shillings or eight shillings. This is what happens, and this happening every day.

**Shri Ramanathan Chettiar:** What is mother-of-pearl?

**Shri Nanavati:** It is different. They are shells.

**Shri J. N. Hazarika:** Are they not also imported?

**Shri Nanavati:** Sometimes they are. When they are processed, the difference between it and other real pearls is very little. It is very difficult to distinguish between a Venezuela pearl, Tuticorin pearl and a Persian Gulf pearl.

**Shri J. N. Hazarika:** Then how do you distinguish?

**Shri Nanavati:** By reason of our long experience, we know more or less the difference. All these are considered as curious. People pay a fancy price for them. The difference between a real pearl and other pearls is that of Picasso and other art paintings. For a Picasso painting, those who know will pay one million dollars. Those who do not know, may ask it for ten dollars! That arises because one does not always know what Picasso painting is and what a modern painting is. It is all the creation of man, an illusion.

Further, there is the drilling process. The drilling up to a thickness of one millimetre is done; nowhere else is this done, than in India.



People from elsewhere come to India for this. Our artisans are known to be experts in this since the past 400 or 500 years; perhaps since the dawn of history. But the position is, there is no question of normal or abnormal price in this trade. It is all according to one's whims and fancies. It is very difficult to judge. You are having a number of sections—118, 120, etc., as being applicable to our trade. We are absolutely baffled as to how we can proceed. Even today there are difficulties. What further difficulties will be there in the future, we shudder to think.

I explained the position yesterday in connection with some other appointment here and I show the goods. It is rather difficult to judge these things. There is fancy, there is illusion, in the demands. I pray that these aspects should be considered, because, otherwise, we will lose.

**Shri Hari Vishnu Kamath:** Have you got pearls from different countries? If you have, can we have a look at them?

Now, I would like to refer to clause 101, under Chapter XIII, which deals with searches, seizures and arrest. This clause refers to confiscation in respect of certain goods which have been specified in sub-clause (2). Sub-clause (2) mentions "... (a) gold; (b) manufactures of gold or precious stones; (c) precious stones; (d) watches;" May I know whether the pearls come under the category of precious stones or some other category? If they do not come under this category, then what is it?

**Shri B. R. Bhagat:** They do not come in this list.

**Shri Hari Vishnu Kamath:** Then, why examine them?

**Shri Nanavati:** We have requested that pearls must be excluded from this. But the position is, we are more concerned here with difficulties about prices—under-invoicing and over-invoicing. This cannot be ap-

plied to such commodities which are the creation of artisans and which are demanded for their fancy.

**Shri Dehejia:** You say that pearls must be excluded. Do you mean it should not be defined as goods at all?

**Shri Nanavati:** No; it should be defined as goods. But for the purpose of clause 14, pearls should be excluded.

**Shri Morarka:** If it is excluded, how can the prices be fixed?

**Shri Nanavati:** It has been working all these years without any difficulty.

**Shri Dehejia:** Are you excluded from the present section 30?

**Shri Nanavati:** No, but we have an apprehension that you are trying to become more stringent.

**Shri Anand:** The present provision is more or less the same as the previous section.

**Shri Jhaveri:** The penal provision is now being inserted in the new Bill, which will cause tremendous hardship, because of the particular nature of our business. We are suggesting that the genuine contract price of our commodity is the only criteria of each sale and if it is proved by the department that it is not the genuine price, then only the penal provision should be applied.

**Shri Anand:** Even now under sections 167 (37) any mis-declaration of value or mis-statement is liable to punishment. This new provision is more or less based on that.

**Shri Jhaveri:** We are suggesting that rules may be framed under section 14 by which a Board of valuers may be there, in which members of the trade may be given the due representation and they can value the pearls.

**Shri Ramanathan Chettiar:** As Mr. Anand stated, they come within the purview of Sections 167 and 37 of the present Act. Have you experienced any serious hardship under these sections?

**Shri Nanavati:** Not in many cases, but sometimes we have experienced hardship.

**Shri Narendrasingh Mahida:** Do you get import licences for pearls?

**Shri Nanavati:** We get import licences for pearls on our exports.

**Shri Narendrasingh Mahida:** What is the ratio of imports to exports? Which is more?

**Shri Nanavati:** We export more.

**Shri Dehejia:** When you say you export more, you mean in value and not in quantity, because the value of the pearl goes up by nearly 100 per cent as a result of polishing, etc.

**Shri Nanavati:** Yes.

**Shri Narendrasingh Mahida:** Do you receive any incentives from the Government for export?

**Shri Nanavati:** Yes; there is an Incentive Licence Scheme.

**Shri Narendrasingh Mahida:** Can you disclose the percentage of profit normally?

**Shri Nanavati:** We get roughly 20 per cent, but the profit is getting much lower now.

**Shri Anand:** The profit also depends on the illusion of the buyer.

**Shri Nanavati:** Yes; when the illusion of the buyer is there we sell it at a higher price, and we liquidate the rest of the goods here quickly even at a lower price.

**Shri Hari Vishnu Kamath:** For pearls, it is always a sellers' market and not a buyers' market?

**Shri Nanavati:** It is always a buyers' market.

**Shri Narendrasingh Mahida:** What is the ratio of smuggling of pearls compared to diamonds?

**Shri Nanavati:** Pearls are not smuggled.

**Shri Morarka:** Apart from clause 14 to which the witnesses have referred, their other objections are in regard to clause 111 and clause 113. About clause 111, they want that sub-clauses (1) and (m) should not apply to the pearl trade. I do not understand why. Clause 111 begins by saying:

"The following goods brought from a place outside India shall be liable to confiscation...."

Sub-clause (1) says:

"(1) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77."

Sub-clause (m) says:

"(m) any dutiable or prohibited goods which do not correspond in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof."

What are their apprehensions? Why do they want that these two provisions should not apply to pearl trade? These are anti-smuggling measures. How are these provisions likely to create hardship or harassment only to pearl trade?

**Shri Nanavati:** The position is this. There are cultured pearls and real pearls. Real pearls are non-dutiable and on cultured pearls there is a duty of 20 per cent. Cultured pearls are produced in Japan. Along with it there are what are known as natural pearls. They are absolutely real pearls. But they are produced along with cultured pearls. Sometimes a few pieces of cultured pearls get into a thousand tiny pieces of real pearls. The licences given to us were given separately for real and cultured pearls. Nowadays we are given only one licence and we are asked to write on the Bill of Entry what sort of pearls they are. Supposing on the

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Bill of Entry we mention that they are real pearls and if after they are imported some four or five pieces of cultured pearls are found, they will say that the whole lot is cultured pearls and 20 per cent duty will be charged. Under the new section we will be asked to explain why there was a misrepresentation or misstatement.

**Shri Anand:** Even now is it not a misrepresentation or misstatement under section 167(37) of the existing Act? Have you been penalised under the present Act?

**Shri Nanavati:** The position is, when we get goods released now we are in a way at the mercy of the appraised. When he charges us with misrepresentation we explain to him the difficulty and he leaves us. Now the law is being specially framed and there are certain words put in which are not exactly similar to the old provision. We thought it is better that we bring it to your notice, because tomorrow again you may want to change it and in that case you will be able to consider it in the light of our difficulties that we have placed before you.

Sir, this is a handicraft. These pearls come only for specialised treatment which is done only in India in the world. If we are troubled like this, then the business will come to an end and it will be taken up by Japan as it was being done in the days of the British. Japan have increased their business from Rs. 1 crores to Rs. 25 crores.

Then, there is a sort of pearls known as Biwaco pearls. There also there is the same difficulty. Even if one cultured pearl is found in a lot it will be taken as cultured pearls and duty will be charged at the rate of 20 per cent.

**Chairman:** You have said that the existing provision has not proved to be a hardship. Why should there be any fear about the new provision when it is similar to the existing one?

**Shri Nanavati:** It is our duty, Sir, to bring it to your notice. About sections 118 and 120 you have already been told by other witnesses.

**Shri Hari Vishnu Kamath:** Before you leave, will you tell us the country that makes the best pearls?

**Shri Nanavati:** We make the best pearls. We are the only people who make certain things.

**Shri Jhaveri:** We make the best pearls out of the raw pearls that come.

Sir, I represent the Bombay Genuine Pearl Dealers Association, Bombay. We have already submitted our memorandum. I would only like to stress with regard to sections 118 and 120 of the Act. My friend has already submitted with regard to the practical difficulty about section 14.

Section 118 provides that where any smuggled goods are contained in a packet, the packet and any other goods contained therein shall also be liable to confiscation. In our trade, as we have shown in the memorandum, the goods of our trader are carried sometimes in one packet by a broker. If by chance that broker has got certain packets which contain smuggled goods, the genuine trader may not be in the know of it. But because they will be found in the packet, the whole lot will be confiscated and the man penalised. This is absolutely an unjust provision by which genuine traders of our association will suffer great hardship and trouble. It will violate our right to property and, also, it will kill our business.

With regard to section 120, it is on the same lines as section 118. It says that where smuggled goods are mixed with other goods which cannot be separated, the whole goods can be confiscated. Our trade is such that the goods have got to be mixed up with other goods.

**Chairman:** I learn that there is no smuggling in pearls. I do not know why you should stress this point.

**Shri Jhaveri:** If we are given exemption from sections 118 and 120, I have no point to make.

**Shri Dehejia:** Should we give exemption in all cases where there is no smuggling? In the case of timber there is no smuggling. Should we give exemption to timber also?

**Shri Jhaveri:** The main difficulty will also arise in the case of Section 14, as has been explained earlier. With regard to section 128 which gives power to the Board in an appeal to enhance duty, we feel there is much grievance as far as our Association is concerned. A man goes to the appellate authority because he has suffered unjust penalty from an officer. But here right is given to the appellate authority to enhance the penalty. I think that is prejudicial to the interests of the trade.

**Shri Hari Vishnu Kamath:** Where do you get raw pearls from?

**Shri Jhaveri:** From Japan, Persian Gulf and Venezuele. Only a very small amount is coming from Venezuela.

*(The witnesses then withdrew)*

#### V. THE LEADING BULLION MERCHANTS, DEALERS AND COMMISSION AGENTS OF BOMBAY

**Spokesmen:**

1. Shri Valimahammed Gulamhusain
2. Shri Amichand Valamji
3. Shri Kantilal Chunilal
4. Shri Dolatram Bherumal
5. Shri P. Gopalekrishnah
6. Shri Kapurchand Chimanlal
7. Shri J. R. Gagrat.

*(Witnesses were called in and they took their seats.)*

**Chairman:** We have circulated your memorandum and Members have gone

through it. If you want to emphasize or stress any particular point, or submit something in addition, you may now do so. It is unnecessary to repeat what is contained in the memorandum. Further, since some of you were before the Committee earlier in some capacity or other, you can be brief and to the point.

**Shri Gagrat:** There are three categories of people who are concerned with gold—gold dealers, refiners and commission agents. As far as the Act is concerned, according to the Statement of Objects and Reasons, it is meant to prevent the smuggling of foreign gold into India. With that object of the Act we have no disagreement. But what the proposed Act purports to do is not to check the smuggling of foreign gold but to make trade in gold very difficult by putting all sorts of obstacles in the way of the dealers. What I want to know is, when an Act has been enacted with a particular objective, viz, preventing the smuggling of foreign gold, could it contain provisions which go far beyond the particular object of the Act? We are not going to object to such of the provisions as would apply for checking the smuggling of foreign gold, but we will certainly object to blanket provisions which will cover dealings in indigenous gold and lawfully imported gold. According to us, no rational approach has been made to the question of differentiating between these two categories of gold. Before we go to the relevant provisions of the Bill, our submission is that the clauses travel beyond the limited object of the enactment.

Coming to the provisions, there are some facts which are admitted by Government and which have got to be borne in mind. The first admitted fact is that till 1939 there was no restriction on the import of gold and that till 1946 import of gold was permitted.

**Chairman:** All these points have been mentioned here earlier. Let us come to the provisions of the Bill.

**Shri Gagratt:** I will not go into details, but may I broadly indicate the seven facts which are important? The first fact is that a large quantity of gold has been lawfully imported into India. In fact, between the years 1851 and 1956 gold worth Rs. 353 crores has come into India.

**Shri S. S. More:** What is the basis of your figures?

**Shri Gagratt:** Government of India publications. In the New India Assurance Diary they have set out statistics from governmental records. This fact has been noted also in the judgment of the Supreme Court where Government, faced with this fact, had to admit that this much quantity has come in lawfully.

**Shri S. S. More:** What is the reference of the Supreme Court judgment

**Shri Gagratt:** It is reported in AIR 1962 Supreme Court 136.

**Shri Shankaraiya:** What is the point that you are trying to make by saying that so much gold has been imported and by bringing it to the notice of the Committee?

**Shri Gagratt:** The point that we are making is that it is wrong to assume that any foreign gold either in the possession of a citizen or of a dealer in gold is smuggled gold. Such a large quantity of gold has lawfully come into India and gold is not a commodity which is consumable or perishable. Once it comes in it goes on circulating in different shapes, form and sizes. If those are the facts and figures, how can a provision that any foreign gold which may be found in possession of any citizen or of a dealer in gold is smuggled or presumed to be smuggled, be justified? There must be some rational basis for such presumption.

**Shri Shankaraiya:** May I know whether it has come to your notice

that there has been heavy smuggling of gold and whether any distinction can be made between imported gold that is already available in India and gold that is smuggled?

**Shri Gagratt:** In our representation before you today we are going to suggest that a definition of the word 'gold' should be provided in the Act. To enable you to appreciate that, I want to point out to you seven admitted facts which must be borne in mind and taken into consideration before this legislation is enacted. On the basis of those facts you should consider whether a blanket provision that any gold, even if it is indigenous gold of the lowest fineness, can be presumed to be smuggled gold and is liable to be confiscated, is justified.

I was referring to the Supreme Court judgment which is reported in AIR 1962, page 316. The relevant passage is at page 326. I may read out the passage:

"It is common knowledge that India produces very little gold and that most of the gold available in India is imported gold. A statement has been put in by consent showing the official figures of India's imports and exports of gold from 1851 to 1956, which shows a net import into the country, after deducting exports, of Rs. 353 crores and three lakhs worth of gold."

Then, the other facts are mentioned.

**Shri S. S. More:** But did not the Supreme hold that section 178A is not invalid or *ultra vires*?

**Shri Gagratt:** The Supreme Court had decided on the basis of the section as it was enacted. The Supreme Court was not a legislature to mellow down the tone of the section. But they have said—it is recorded in the judgment—that extreme hardship is being caused to the innocent section of the public as the section stands. Today I am before you to impress upon you as Members of Parliament that although the Supreme Court may be helpless in striking down a



section enacted to achieve the object of checking smuggling as a whole, you can enact the section in such a way as to prevent hardship on the innocent section of the public.

**Shri S. S. More:** Will you please give us a draft so that the evil can be checked? You will appreciate that there is a lot of smuggling going on....

**Shri Gagrat:** I admit that.

**Shri S. S. More:** ....and it has to be checked. If it is to be checked, how are the customs officers going to prove that a particular piece of gold is smuggled or not?

**Shri Gagrat:** If you will bear with me, I will only indicate the seven basic facts which are important to give the background.

**Chairman:** Those facts need not be repeated. There is no use going over the same points. Let us come to the features of the Bill and suggest what remedies you have in view.

**Shri S. S. More:** The problem that we are faced with is to fight effectively the evil of smuggling which is growing and not diminishing. How can the Government machinery fight this evil which is increasing? That is the only question. Could you suggest any practical remedy for this? If you could, we shall be thankful to you. What is the use of enumerating the seven or thirteen facts?

**Shri Gagrat:** Because they are essential to understand the amendments which we propose to suggest. But if you so desire, I will not go into them.

**Shri Ramanathan Chettiar:** Is that Supreme Court decision in Sonavala's case?

**Shri Gagrat:** It is in the case of Nathella Sampathu Chetty from Madras.

**Chairman:** You may take up the particular clauses because all these points that you are mentioning have been stressed before. You yourself had come here earlier

**Shri Gagrat:** I did not come in connection with gold matters.

**Chairman:** It may not be so; but you also admit that there is a lot of smuggling and these provisions are supposed to prevent smuggling.

**Shri Gagrat:** Our object in indicating the facts was that it would indicate to you the harshness of the proposed provisions and the Members will be in a position to appreciate why we are making the comments and suggestions. But if you feel that that need not be done, I shall not do that.

**Shri B. R. Bhagat:** Hardship to whom—the trade or the smugglers?

**Shri Gagrat:** Hardship to the trade and to the citizen who purchases gold.

**Shri Ramanathan Chettiar:** Could you give us your own views about the percentage of smuggling that is detected so that we could have some idea of what the undetected portion is?

**Shri Gagrat:** Unfortunately, we are not possessed of information about the smuggling activities which are going on, but we are not contesting the fact that there is smuggling going on. It affects the trade also and provisions for checking it are necessary. We are not suggesting that the provisions should be done away with. We are only suggesting that the provisions should be enacted to safeguard the trade at the same time.

**Shri Ramanathan Chettiar:** How would the trade react if Government introduced a scheme of licensing gold dealers and gold manufacturers?

**Shri Gagrat:** We have no tangible scheme of that nature. But if there is any possible scheme by which we are not put to any harassment and the interests of the trade are protected and at the same time the objective of the Government is achieved, we will certainly like to consider any such scheme.

**Chairman:** You have no objection?

**Shri Gagrat:** No, we have no objection.

Then, Sir, clause 123 must have been repeatedly placed before you....

**Shri Shankaraiya:** Will you give some definition or some such thing for consideration, the seven points you were mentioning?

**Shri Gagrat:** I was trying to give the seven points, but the Chairman directed me to go to the sections.

**Shri Chettiar:** Sir, let him go briefly to those seven points.

**Chairman:** Yes, just mention the heads.

**Shri Gagrat:** Sir, I will mention only the heads and not elaborate upon them.

The first admitted fact is that in India there is a large amount of validly imported gold.

The second head is that in India, as the government records show, there is also indigenous gold which is available. And, connected with that is the point that our refineries in India refine gold up to a fineness of 99.80. So, there is also indigenous gold and refined gold.

**Shri Abrol:** Is this done in the government mint or in the ordinary refineries?

**Shri Gagrat:** By Wali Mohammed Ghulam Hussain Sonawala & Co., and by the National Refineries.

**Shri Abrol:** They can both refine up to a fineness of 99.80?

**Shri Gagrat:** Yes, it has been done regularly. I can get the audited records and send the same to the Committee.

The third admitted fact is that when a man in the trade or a citizen purchases gold he can only verify two things, and nothing more. In the first place he can verify the fineness

of the gold and, secondly, by physical observation he can see whether the gold has any foreign marks. If the gold is of a fineness of 99.80 and upwards you can say that he should have noticed that such a gold is foreign gold; if the gold has foreign marks you can say that he should have noticed it. Apart from these two things it is not possible to verify anything while purchasing gold.

We have brought samples to show how these five types of gold are sold in the bazar. And if any Member can indicate any method by which there can be reason to believe that anything is wrong or is smuggled, we will welcome that suggestion. In our trade we have failed so far to find any method of doing so while purchasing these five types of gold.

Broadly, five types of gold are sold in India. If there is any indication by which any honest dealer can verify whether it is smuggled gold or not, if there is any such indication then certainly you can put the burden on us. I will show you how it is sold. (*Witness exhibited several bars of gold before the Committee*). The first usual method is the selling of ornaments.

**Chairman:** All these points have been urged. There is nothing new that you are saying.

**Shri Gagrat:** The difficulty is, how there can be any suspicion that it is smuggled, by merely looking at the gold.

**Chairman:** Once it goes into the crucible and is melted, it is mixed up.

**Shri Gagrat:** We are at the stage of purchasing. Can I have any idea that what I am purchasing is smuggled gold? If there is any suggestion given to us by which the trade can find this out while purchasing, we would welcome that suggestion.

The fourth admitted fact is that in our gold business, which has been going on for decades, we have been melting and refining the gold. It is an accepted fact and it is not a feature

of the restrictions imposed. Melting, assaying and refining of gold, these three things have been accepted facts before any restrictions were imposed.

The fifth admitted fact is that this gold which we purchase is deposited with the banks as security to raise money.

The sixth one is that we have to transport this gold to the refinery in packages. Either the storing or the transport has to be done in packages; we cannot make a package of each gold.

The last point is that in our trade there are commission agents whose business is to buy and sell gold on commission. They receive the gold against a price and are reimbursed afterwards; *vice-versa* they also sell gold. That is how the gold business is done.

I will now point out what are the difficulties with which we are confronted. Clause 123 merely uses the word "gold". It does not indicate what gold is to be covered by the section. Clause 123(2) says that this section shall apply to gold and manufactures of gold. This section would therefore apply to indigenous gold, to gold which is lawfully imported; it also applies to gold that is innocently purchased, innocent gold. As the Supreme Court judgment has observed, this section creates a hardship to the public. The Legislature has full power to remedy the evil.

Our suggestions in this respect are three-fold. The first suggestion is that under sub-clause (2) the Legislature should define the word "gold". And the definition should be to include in its scope only gold exceeding a fineness of 99.80 and gold bearing foreign marks.

**Shri S. S. More:** What about gold of the other variety? You are referring to gold of a certain fineness. What about the non-fine gold which is being smuggled?

**Shri Gagrat:** Nobody will smuggle gold below a fineness of 99.80, because it is indigenously available. Smuggling is always of the purest gold, gold of a fineness from 99.99 down to 99.82. There is no incentive so far as gold below that fineness is concerned. If you make this kind of definition, that would immediately put a distinction between foreign gold and the other gold.

**Shri B. R. Bhagat:** You have said that there are only two ways of verifying it, namely the marking and the degree of fineness. Is it not a fact that very easily both these can be tampered with? If we are liberal on these two points, I think there is no way of checking smuggling at all.

**Shri Gagrat:** With all respect to you, Sir, I do not think there can be any tampering.

**Shri B. R. Bhagat:** The markings can be erased very easily, as well as the fineness can be altered.

**Shri Gagrat:** Tampering would imply that certain foreign gold is illegally imported, or smuggled.

**Shri B. R. Bhagat:** That can be done.

**Shri Shankaraiya:** Sir, the witness has been asking us to define gold, so as to prevent smuggling, by defining it to be of a fineness of over 99.80 per cent and, further, foreign gold by putting the words "foreign gold" on it. There is already, as has been admitted by him, Rs. 350 crores worth of foreign gold, either smuggled or otherwise, in this country. There is smuggled gold also to a large extent. How are you going to distinguish that gold from the gold that is already imported and has a fineness of 99.80?

**Shri Gagrat:** You are perfectly right in what you are pointing out. But the difficulty that arises is this. The logical extent to which we should make our representation is that even foreign gold should be excluded from clause 123. But we do not want to go that length because a large amount of smuggling is going on. Therefore, to

that extent we are conceding our rights. Since this legislation is going to be there for years together, let there be a definition of gold defined by the fineness, whatever may have happened in the past. You are perfectly right that logically our contention should be that in view of the large volume of imported gold, foreign gold should be excluded from clause 123. But we do not want to go to that extent. As long as the trade is protected, and we know once and for all what the demarcating line is, we would be satisfied.

**Shri Shankaraiya:** How are you going to distinguish it?

**Shri Gagratt:** The distinction is made by a very simple process, with the touchstone you can find out the fineness. The fineness is ascertained easily by the gold dealer.

**Chairman:** Is it not easy to vary the fineness of the gold? That can be done.

**Shri Gagratt:** A bullion dealer cannot do it. It has got to be done at the refinery. There must be a regular refinery for that purpose.

**Chairman:** There can be a lot of refineries.

**Shri Gagratt:** Before gold of a higher fineness is converted to gold of a lower fineness, it has to go through a certain process, and that process cannot be done by a bullion dealer at his shop.

**Chairman:** It need not be at the shop; but there can be refineries always at the command of the smugglers.

**Shri Gagratt:** If the suggestion is that every citizen of India who deals in gold has got a private refinery, then we have nothing to say on that. But we submit that there must be some presumption in favour of citizens also.

**Chairman:** Any goldsmith can do it.

**Shri Gagratt:** A goldsmith cannot do it. It has got to be done in a fur-

nace. It must be done in a crucible by the process of refining.

**Shri B. R. Bhagat:** Is it difficult to have it?

**Shri Gagratt:** Why is there presumption that every honest citizen can keep an illicit refinery at the back of his shop?

**Shri B. R. Bhagat:** The smuggling of gold has reached such a very dangerous proportion that the harshest possible measures should be taken to deal with smuggling.

**Shri Gagratt:** That is why we are at pains to point out that you may demarcate the gold; you may demarcate between gold which is normally coming in the shape of foreign gold and gold locally available.

**Chairman:** An honest dealer need not have any fears at all. Clause 123 applies only to those cases where there is a reasonable belief that they are smuggled goods; and then the burden of proving that they are not smuggled goods is on the person from whom the goods were seized. It is only in those cases where the goods are seized in circumstances where there is a reasonable belief that they are smuggled, that this presumption arises and the onus is on the other party; it is only in those cases that this clause comes into operation. So, why should you have any fears? Suppose the gold is concealed in a bag or concealed in a country-barge where it is not expected to be. It is only in such cases that this clause will apply.

**Shri Gagratt:** The difficulty with the traders is this. What happens is that we buy gold. That gold must have been bought by six or seven persons prior to us also. If the Customs Department has information or has the reasonable belief that even the sixth or seventh predecessor of mine had smuggled that gold into India, then this clause provides that I must lose the gold. That is what we are objecting to. If I had purchased it with the knowledge that they were smuggled goods, then I had done something illegal and I should be punished . . .

**Chairman:** If there is a link of six or seven persons, and there is at least one man who is dishonest among them, naturally, the others will have to pay for it.

**Shri Shankaraiya:** When stolen property is in the hands of even the tenth man, that is liable to be confiscated. Why not have a similar provision in regard to foreign smuggled gold?

**Shri Gagrati:** But, in the case of stolen property, protection is given to bona fide purchasers for value without notice. Give me the same protection, and I shall not ask for anything more.

**Shri Abrol:** What is the protection which you want?

**Shri Gagrati:** If a person is a bona fide purchaser for value without notice of the alleged theft, then he is protected.

**Shri Abrol:** But what about the property? The stolen property is resorted.

**Shri Gopalekrishniah:** The property is identified by the accused and the complainant there. If the identification is changed, there is no chance of seizing it, and there is no authority to seize it.

**Shri Abrol:** Is not the property taken away? In the case of stolen do not take deterrent measures, and hands, if it is proved that the property is stolen property, then it is restored to the rightful owner.

**Shri Gopalekrishniah:** Only after identification of it. But here you do not have any identification. In the case of the stolen property, the prosecution has to prove that it was stolen and it was found from a particular place.

**Shri Abrol:** Here also, the goods will be seized only when there is reasonable belief that they are smuggled goods, and not otherwise.

**Shri Gopalekrishniah:** But, here, you put the onus on the other party on a reasonable belief, which is un-

fair. Simply because of your suspicion, you put the onus on the other party.

**Shri Narendra Singh Mahida:** Has any member of your association been caught for smuggling?

**Shri Gopalekrishniah:** No, not at all; such a thing has not happened.

**Shri Gagrati:** No, in not a single case.

**Shri Ramanathan Chettiar:** Smuggling has reached such dangerous proportions that Government cannot be blind to it. Smuggling of gold is going on every day. We would like to know whether you have any concrete suggestions to check this smuggling. You are saying that reasonable belief that they are smuggled goods etc. is not sufficient; but how are we to put down this evil? If we do not take deterrent measures, and if we do not give deterrent punishments, how can we put down this evil? Have you any concrete suggestions?

**Shri Gagrati:** I shall make the suggestions.

**Chairman:** I think that we have discussed them in detail already.

**Shri Gagrati:** It is not correct that we have no suggestions. I have got some suggestions.

**Chairman:** Then, please mention them for the benefit of the committee.

**Shri Gagrati:** My first suggestion is that the word 'gold' should be defined. My suggestion is that defining can be on the basis of the fineness of the gold which we treat as smuggled gold. I have suggested a fineness of 99.80 and above. It is for Government to fix whatever fineness they feel is necessary to differentiate genuine local gold from foreign smuggled gold.

**Shri Anand:** Is it your intention that there should be no prohibition on the import of gold whose fineness is less than what you have prescribed,



namely 99.80? If we define that as gold, then anything which has less fineness will not be 'gold' according to you, and there will be no prohibition.

**Shri Gagrati:** All that would happen is that in such cases clause 123 would not apply, and the presumption will not be shifted.

**Shri Anand:** It is not very difficult to change the fineness abroad and then start sending it here with a little less fineness.

**Shri Gagrati:** If the purpose of the Bill is to prevent smuggling at the port or at the customs barriers, then these clauses are not going to help in that matter. These would only affect the trade. I agree with you that smuggling should be checked at the customs barrier and at the ports. But does this clause provide any way of checking the activities of smugglers? It only affects the trade.

**Shri B. R. Bhagat:** What is your object in defining the term 'gold'? We know normally what gold is. If we define it, then anything with less fineness can be freely imported. I am surprised at the way you are making a suggestion like that with all your intelligence and cleverness.

**Shri Shankaraiya:** Is there any concrete suggestion to prevent smuggling?

**Shri Narendra Singh Mahida:** Will your association agree to have a system of licensing for all the refineries?

**Shri Gagrati:** Yes, certainly.

My second suggestion is that as far as this clause is concerned, bona fide purchasers for value without notice should be excluded from the purview of this clause, because this clause affects only the traders and not the smugglers.

My next point is about clause 118.

First of all, section 118 as drafted, renders the confiscation of innocent

goods. Secondly, it does not take into consideration the knowledge of a person who is the owner of innocent goods. Thirdly, there is no definition of what a 'package' will mean. These are, according to us, the shortcomings of the clause as drafted.

If the clause remains as it is in this form, it affects us adversely in so far as we have to store goods in a package. We cannot have a separate package for each piece. When we store goods for transportation, on the mere chance that one article therein is alleged to be smuggled, the whole package is rendered liable to confiscation. Therefore, it affects us so far as storage and transportation of gold is concerned.

If this is so, we make three suggestions. First, the term 'package' should be defined. Secondly, because admittedly innocent goods are confiscated merely on the ground that they have been found with other goods, the *bona fide* or *mala fide* of the owner of such innocent goods should be proved before it is confiscated. Without the *bona fides* being gone into, confiscation should not be there. Thirdly, if the department can prove that smuggled goods were taken knowingly along with innocent goods, then you may have confiscation.

#### Clause 120

This clause says that if gold has changed its form or if gold is mixed up, then the changed gold or mixed gold is liable to confiscation. We say that this section creates hardship for the trade. As far as we are concerned, we have to deposit gold with bankers and financiers to raise loans. It will be difficult to raise loans from any bank or financier in future—this section is a new one—if the section remains as it is. No bank will run the risk of advancing money because there is a risk that the gold that it is receiving in deposit may have a portion which is

smuggled, even if it is very small. Therefore, this directly affects our borrowing transactions with bankers and financiers.

Secondly, there are three processes: melting, reining and assaying, before gold is changed into jewellery. At all these stages, there is a constant risk that if by chance a portion—even one tola in 100 tolas—is found to be smuggled gold, the entire is liable to be confiscated. There is a proviso to this section which says that if the owner can prove that he had no knowledge that it included any smuggled goods, that portion of the gold may be returned.

The difficulty that arises, as the clause is drafted, is this. As has been made clear in a case in the Bombay High Court, the accepted fact is that gold cannot be identified. The proviso will not apply to transactions of gold, unless it is made clear that the pro-rata principle will be applied.

**Shri Dehejia:** Your point is that if 1/7th is smuggled gold, it can be taken the rest 6/7 being let off. I am not expressing any opinion, but I am saying that this is your point.

**Shri Gagrati:** Yes.

#### Clause 121

**Shri Gagrati:** This is a new clause. It gives power to confiscate the sale proceeds. The sale proceeds will be in Indian currency which has no ear-mark. Therefore, the apprehension is that this section gives powers to the customs officer to come and remove whatever cash is lying on the ground that he suspects that it represents sale proceeds of smuggled goods.

Therefore, our suggestion is 70-fold. As far as application of 21 is concerned, knowledge must be the test, and not reason to believe because you are appropriating Indian currency from a citizen and confiscating it. It is not an importable commodity. The term 'reason to

believe' will create doubt and dispute.

Secondly, the term 'sale proceeds thereof' should be clarified to indicate that the authority of the officer is limited only to taking away such currency which he must at the time of seizure indicate as representing the sale proceeds of a certain quantum of smuggled goods.

As the section is worded, it is apprehended that it gives very wide powers to cause harassment and paralysation of trade, which I think is not the object of the section. We want it to be made clear that there should be a condition precedent to the exercise of the power of seizure. The officer must indicate in writing what, according to him, represents the sale proceeds of smuggled goods and what according to him from my sale proceeds represents the price of such gold. Without these conditions, seizure should not be allowed.

**Shri Narendra Singh Mahida:** What is the percentage of gold produced in the country?

**Shri Gopalekrishnaiah:** From the Kolar gold fields nearly 50,000 tolas are produced per month on an average. This gold was being sold recently. Before the Central Government took it over, this gold used to be sold by tenders till one or two years before. The foreign companies were there. The gold was being tendered through the National Bank of India in Bombay.

**Shri Gagrati:** Before we go to the next point, I would like to make clear that the objections we are raising are not on the ground of being clever or intelligent, but they are based on substance and our experience in the past. I am going to give you 8 instances which were taken out which show the harm caused to the trade by such wide provisions. There have been cases where indigenous admittedly not of foreign origin has been seized and detained.

only after going to court have the parties got back the gold. What is the effect of the section? It is not a question of being clever or intelligent; it is a question of trying to seek relief from the Lok Sabha on the basis of the experience we have got since 1955. If you want, I shall furnish a tabular statement. We have selected 8 instances to show how this term 'gold' by itself without any definition can cause a lot of harassment. The first case is that of a leading firm in Bombay, Chandrakumar Amichand and Co. 1546 tolas were seized in 1959 and after protracted litigation going to High Court, remand to Collector and adjudication, in 1962—after four years—the gold was released. If the definition had said that only gold upto a fineness of 99.80 and above is liable to confiscation, this gold would not have been touched. Ultimately, the department was satisfied that the gold was indigenous.

**Shri Dehejia:** Is there any law in other countries saying that gold with fineness of less than 99.80 will not be produced?

**Shri Gagrati:** I am not in a position to say.

**Chairman:** You may give that list to us.

**Shri Gagrati:** I would like to read to you three or four cases. In the case of Shantilal K. Gosalia, relating to Rajkot Collectorate, the customs officers seized Indian currency of Rs. 1,53,900 as also the ornaments of the person's wife and daughter, weighing 343 tolas, in December, 1958. After protracted correspondence, and threatening of proceedings, in September, 1961 it has been released, after three years. No memorandum was issued, there was no adjudication.

In the case of Valimahomed G. Sonawala & Co., 452 tolas of gold were seized in September, 1957, and after protracted correspondence and litigation it was released after three years in 1960.

Next is the case of Gokuldas Mohanlal & Co., in which 92 tolas of gold were seized in September, 1957 and released after three years in 1960.

Then, in the case of Mohanlal Bhagwandas Choksi, 133 tolas of gold were seized in September, 1957 and were released after three years in 1960.

There are two cases pending adjudication in Madras—the cases of Sulaiman Sahib and Devichand Jeshtamal—in which gold bars with the markings of the Government of India Mint as also the Bombay Bullion Association were seized and have been lying there for two years.

So, what is the limit up to which the trade can bear this? There is also the case of Bherumal Shamandas relating to Bombay Collectorate, in which 225 tolas of gold of .92 fineness were seized in September, 1956, and were released in 1962, after six years.

We have not come to challenge the bona fides of the officers or to impute male fides, but to show that if you keep the term gold without a definition, without a criterion, executive officers can seize any gold, even from the residence of a citizen, and release it after three years. If that is the way of checking smuggling, we have nothing more to say, but we would strongly impress upon you to indicate to us what gold we should not deal in, so that we may not be put to all this harassment of seizures etc., and release after three years. We have come to represent our genuine hardships, and express our genuine apprehensions. Government is all-powerful. They can take effective preventive measures at the custom barriers.

Having disposed of the provisions specifically applicable to gold, I will now come to some general clauses and list our objections one by one.

Clauses 101 and 102 give power to search a person. If clause 101 is de-

fixed consistent with clause 123, we have no objection, because clause 101 is made applicable to smuggling etc., and it should not apply to the trade. If, however, these two clauses are to be kept in their blanket form to cover any gold of whatever fineness, we would suggest that it should be amended to make it mandatory for an officer to produce the person to be searched before a Customs Collector or a magistrate. The production must be at the earliest possible time. The reasons for the search should be recorded in writing, and the search must be during normal office hours, not any time in the night.

Clause 104 deals with powers to arrest a person. Here also we have the same objection, it must be after production before panchas.

Clause 105, search of premises. This power to search premises now incorporated in the new section provides for search being conducted at any time of any documents etc. It is not confined in scope to prohibited or dutiable goods. Therefore, the application should be narrowed, and the old section 172 should be retained in its original form.

Clauses 107 and 108 give power to record statements and compel a person to produce documents etc. We have no objection. This may be necessary to give effect to the Act, but our objection is to clause 139 by which a presumption is sought to be raised with regard to the truth of the documents, with regard to signature, with regard to authenticity etc. This is a complete violation of the provisions of the Evidence Act and the Criminal Procedure Code. Further, article 20 of the Constitution gives protection to every person in a prosecution not to be treated as a witness against himself. Clause 139 totally ignores this article. This should be deleted, and the machinery of the Evidence Act, the Criminal Procedure Code and the Constitution should prevail.

Then I take up clauses 111, 112 and 125. Clause 111 deals with power

to confiscate, clause 112 imposes a personal penalty and clause 125 deals with imposition of a fine. We have no quarrel with these clauses as such, but these penalties and provisions are quasi-criminal in nature. The Supreme Court has said they are quasi-criminal in nature and that the principles of Criminal jurisprudence must apply. That is what they have said in regard to the Customs Act. If the Customs Department proves mens rea, then certainly they can penalise the person. So, that must be put in.

Clause 147 also raises undue presumption. With regard to the owner of the goods, it says that if the agent of an owner does a certain act, the presumption is that the agent knew it and connived in the act. If it is limited to normal acts within his functions as an agent, it is perfectly valid. It should be made clear that it is limited to acts within the scope of the agent's authority. It cannot extend to any act done by the agent, and make the owner criminally liable.

Clauses 128 and 129 deal with appeals to the Central Board of Revenue. Our objection is that the Central Board hears appeals as an appellate body, and an appellate body normally is not given the power to enhance the penalty, to go into the matter de novo. It should not be like a fresh adjudication. Also, the condition precedent that one must deposit the penalty imposed before going in appeal is a thing to which we object. After all, this is going to be a self-contained Act. Supposing a Collector imposes a penalty of Rs. 2 lakh upon me. I cannot exercise my right of appeal unless I deposit it.

There is the proviso which says that if the appellate authority is satisfied, it may dispense with such deposit. In exceptional cases, the Central Board may waive the deposit of the penalty. But we know that in several cases they do not waive. We submit that at least in the gamut of the procedure, it must

be said that the right of going to the court of appeal, should not be conditioned with the deposit of the penalty. As a matter of fact, the right to go in appeal should be as a matter of course. The right should not be fettered by a condition or should not be subject to any exemption being granted.

**Chairman:** The appellate authority is given the power to waive.

**Shri Gagrati:** The Central Board is the appellate authority which decides the matter. I cannot move the Central Board unless I pay the penalty imposed on me. The appellate authority decides whether I am right, or whether the Collector is right. But, before I have got the right to go to the Central Board, in appeal against that order of the Collector, which is passed wrongly according to me, or where it is most excessive or arbitrary, I have to deposit the penalty that has been imposed. I have to pay the full amount. There are a large number of cases in which the penalties have been remitted in full. Supposing a penalty of a lakh of rupees has been imposed on me by the Collector, I have to pay it first before I go on appeal. I will become an insolvent. It is true that the Board can waive it in full or part; but it is in its discretion. This first right of appeal is confronted with the condition precedent that I must pay the amount of the penalty. There have been several cases in which, on appeal, we have seen that the appellate authority has cancelled the fine. In such cases, while the person ultimately gets back the amount, why should he be asked to deposit the penalty?

**Chairman:** The proviso is there. In cases of great hardship, the appellate authority can waive the deposit.

**Shri Gagrati:** I agree; but is it at all necessary that before the right of appeal is exercised, there should be this condition?

That is the only submission that remains.

**Shri Narendrasingh Mahida:** I understand there is a dharam kanta in the Bullion market whereby you satisfy yourself that the gold is 90 per cent or 92 cent and so on. Would you, in some such way, suggest any machinery either of the Association or of Government, whereby, when you purchase gold, you can say whether that is smuggled gold or genuine gold?

**Shri Gopalekrishniah:** Unless Government defines what is smuggled and what is genuine gold how can anybody know that?

**Chairman:** I think that has been sufficiently made clear in the Bill. Thank you, all.

**श्री वली मोहम्मद :** मेरी सोने की रिफाइनरी है, जिस का नाम वली मोहम्मद, गुलाम हुसेन सोनावाला है। मेरे पास बाजार का कच्चा सोना आता है और मैं उस को रिफाइन करता हूँ और रिफाइन कर के और बुलियन का ट्रेड मार्क लगा कर जांगड़ लोगों को देता हूँ। अगर उस में किसी का गोल्ड स्मगलड निकले और कस्टम्स का आफिसर आ कर मुझे पकड़ ले जाये तो मैं क्या करूँ? मेरा उस में कुसूर भी क्या है क्योंकि वह सोना तो कोई और मेरे पास लाया है साफ करने के लिये। इस सिलसिले में मैं श्री मोरारजी देसाई से भी मिला। उन्होंने मुझ से कहा कि तुम दिल्ली आओ। मैं ने कहा कि मैं दिल्ली तो नहीं आ सकता। तब उन्होंने कहा कि अच्छा वली मुहम्मद मैं खुद तुम से मिलने बम्बई आता हूँ। मैं ने उन से कहा कि यहां पर जो लोग टनों सोना अपने पास रखते हैं, उन को कुछ नहीं होता और मेरे ऐसे जो मजदूर लोग ह उनको पकड़ कर कस्टम्स वाले ले जाते हैं। मैं कहना चाहता हूँ कि मैं तो एक छोटा व्यापारी हूँ, जो लाखों रुपये का टैक्स देता है और इस तरह का काम करे उस को आप पकड़िये। जो लोग स्मगलिंग का काम करते हैं उनको आप बेशक पकड़ कर फांसी लगा दीजिये, लेकिन मेरे ऐसे ईमानदार आदमी को क्यों तंग किया जाता है? मैं विनती



करता हूं कि आजाद हिन्दुस्तान में जो इन्फोर्सेंट आदमी है उन को नहीं मारा जाना चाहिये । और उनकी बात को सरकार को सुनना चाहिये

**श्री नरेन्द्र सिंह महीडा :** मैं कमेटी के मेम्बरों की तरफ से यह आश्वासन दूंगा कि इन्फोर्सेंट आदमियों को नहीं मारा जायेगा । अगर कोई इन्फोर्सेंट आदमी तंग किया जाता है तो आप हमें बतलाइये । हम यहां आप की बात जरूर सुनेंगे और इन्फोर्सेंट आदमी को खतरे में नहीं पड़ने देंगे ।

**श्री दौलत राम :** हम लोग यह सोना आप के सामने इस लिये लाये हैं आप देख कर हमें बतलाइये कि हम इस में से कौन सा सोना लें और कौन सा सोना न लें । अगर यह सोना बाजार में बिकने आता है तो हम लोग उस को ले लेते हैं उस में से कुछ सोना गलाते हैं और कुछ सोना रिफाइन करते हैं । उस में से किसी सोने को पाटला बनाते हैं और किसी को इस तरह की लकड़ियों में बदल देते हैं हो सकता है कि उस में कोई सोना स्मगल्ड हो । आप के कस्टम्स का आफिसर आता है और कहता है कि तुम ने फ्लां पार्टी से जो सोना खरीदा है वह स्मगल्ड है, बतलाओ वह कहाँ गया हम लोग कहते हैं कि हम ने उस को असली सोने के साथ गला दिया । अगर वे उस सोने को ले जाते हैं और अपने पास चार या छः वर्ष रख कर वापस करते हैं तो क्या यह हमारे लिये हांड-शिप नहीं है, तकलीफ देह नहीं है ? अगर इस तरह से काम होगा तो हमारा बिजिनेस कैसे चलेगा ? आप हम को बतलाइये कि आखिर कौन सा सोना हम लें और कौन सा न लें । यह जो सोने के टुकड़े रखे हैं इन में से बतलाइये कि कौन सा सोना स्मगल्ड है और कौन सा नहीं ।

**Shri Ramanathan Chettiar:** The gentleman spoke in Hindi which I could not understand. But what I

wanted to convey is this. Would they help the Government to detect who is the smuggler? Will they at least give this assurance that they will remove the smugglers from the bullion market? Will they help us to this extent?

**Shri Gopalekrishniah:** While purchasing gold in the ordinary course of business we come across so many forms of gold. How is it possible for an innocent person or an ordinary trader to identify some foreign gold? Unless he identifies, he cannot be in a position to find out which is genuine and which is smuggled.

**Shri A. V. Raghavan:** In a single transaction how much of gold do you purchase? What is the maximum amount?

**Shri Gopalekrishniah:** It may extend from one tola or 12 grammes to 1,000 tolas or 12,000 grammes.

**Shri A. V. Raghavan:** You purchase from persons known to you?

**Shri Gopalekrishniah:** Traders from mofussil come to Bombay for selling. Mostly we buy from known persons. In small scale purchases, from the minimum 10 grammes to 100 grammes, people from all walks of life come to us for selling. It is not possible for a trader to challenge the genuineness of their possessions. It is not proper for us to ask them where from they got their gold.

**Shri A. V. Raghavan:** Smugglers usually sell in large quantities.

**Shri Gopalekrishniah:** Practically, the smugglers are a set of foreigners who form themselves into a gang. They bring gold into the country through interested persons who are helping; but not the regular traders. There may be some traders who may also be assisting them in this. We are not denying that. But, the provision which you are incorporating in this Bill does not help us in actually checking smuggling which is done by foreigners who take away big slices of the profits from the country.

**Chairman:** But, when the interested persons bring the gold into the market for sale, they must come to some of you. It is up to you to hand them over to the police.

**Shri Gopalekrishniah:** Indirectly it comes into the market.

**Chairman:** You will know who is the smuggler and who is not.

**Shri Gopalekrishniah:** Those who are involved in that may know, but not all people. In the country, in every city, you have got some 200 to 300 merchants and dealers. How can all of them know?

**Chairman:** We just now heard that their number is increasing; the number of shops is increasing.

**Shri Gopalekrishniah:** For livelihood everybody is trying to have some business; you cannot restrict it. Every person has to take to some kind of business for his livelihood. We are in this line for decades and for generations. This jewellery business has been going on for decades. When we are in that line, it is not possible to leave that trade suddenly when you have put restrictions. There are not only the traders; but there are other workers who are in allied traders, maintaining themselves through other lines like manufacturing jewels etc.

**Chairman:** Yes; we will consider all your evidence.

**Shri Hari Vishnu Kamath:** These are days when codes of conduct and discipline are very much in the air, and on terra firma as well. Have you ever given serious thought to the formulation of a very strict code of conduct for the trade and enforcing it also very strictly? Has your association ever considered this matter?

**Shri Gopalekrishniah:** So long as genuine traders are there, we assist them in every respect for honest trans-

saction. We are not there to sympathise with or help dishonest people. We are not concerned with the people who are dishonest. We shall help the Government if it takes stringent measures against dishonest people.

**Shri Ramanathan Chettiar:** What Shri Kamath asked was different. Have you considered the question of evolving a code of conduct for your association? What steps do you intend taking to enforce them among your Members?

**Shri Gopalekrishniah:** Generally, we do not have connections with them. If one of our traders is involved in smuggling, if he is caught doing such things, we generally do not co-operate with him.

**Shri R. V. Reddiar:** What will be the percentage of goods seized or detected to the total of smuggled gold?

**Shri Gopalekrishniah:** 5—10 per cent may be detected.

**Shri R. V. Reddiar:** A lot of smuggled gold, you grant, could not be detected under the provisions of the existing Act, even. But you want that these provisions should be liberalised?

**Shri Gopalekrishniah:** The authorities know there is large scale smuggling. But it is not that all traders are smuggling. There are honest traders in the country.

**Shri R. V. Reddiar:** Do you not agree that the provisions should be tightened to prevent smuggling?

**Shri Gopalekrishniah:** Yes. But my point is this. There are several instances of harassment of innocent traders.

**Chairman:** These provisions are never meant for honest traders and they need not fear. Thank you.

*(The witnesses then withdrew).*

*(The Committee then adjourned).*