

"That the Long Title stand part of the Bill".

The motion was adopted

The Long Title was added to the Bill

SHRI A.K. PANJA : I beg to move :

"That the Bill, as amended, be passed"

MR. CHAIRMAN : Motion moved :

"That the Bill, as amended, be passed".

PROF. N.G. RANGA (Guntur) : Madam, I would like to congratulate the Finance Minister and his colleagues. because all these years, over decades, there was never a budget and never a Finance Bill which had come in for so little a criticism from those people who have to pay the taxes, and it has come to be accepted in this House by so much of minimum of criticism and least of noise and disturbance. Some of our taxpayers raised their objections. Those objections were met more than half way and they felt complete happy about it.

Sir, neither the poor people among the upper middle class nor the rich people at the very top, five star level, has made any serious complaint about this Budget or this Finance Bill. None of them has any complaint. The exemption limit for income tax has been raised, and the rich people have been taxed more than what they have been paying till now. And, what is more, the courts are not kept out, and, therefore, the Opposition has to go to the court from time to time.

MR. CHAIRMAN : The Finance Bill has already been passed for your information, Sir. Now, we are discussing a different Bill.

PROF. N.G. RANGA : We are discussing the Customs Bill now. That is why I asked you whether the Finance Bill is over; the Third reading has reached.

MR. CHAIRMAN : The third reading is about a different Bill.

PROF. N.G. RANGA : Anyhow, I am glad that you have given me an opportunity to speak. We are all pleased, from all sides of the House, that the Finance Bill has been passed with the least bit of dissatisfaction and criticism. Thank You, Madam.

MR. CHAIRMAN : The question is :

That the Bill, as amended, be passed.

The motion was adopted

15.27 hrs.

CUSTOMS (AMENDMENT) BILL

[English]

THE MINISTER OF STATE IN THE DEPARTMENT OF REVENUE IN THE MINISTRY OF FINANCE (SHRI A.K. PANJA) : I beg to move:*

"That the Bill further to amend the Customs Act, 1962 be taken into consideration."

The Bill seeks to suitably amend Section 14 of the Customs Act relating to valuation of goods for levy of customs duty in order to give effect to the 'Agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade' popularly known as the GATT Code of Valuation.

Section 14 of the Customs Act, 1962 lays down the basis for arriving at the assessable value of goods for levy of customs duty. Since duty on a large number of commodities imported is on an *ad valorem* basis, the method of valuation assumes importance.

Customs valuation is considered a non-tariff measure affecting international trade as the incidence of *ad valorem* duty on imported goods can be varied by varying the method of valuation of such goods. The provisions of Article VII of the General Agreement on Tariffs and Trade (G.A.T.T.) lays down certain broad principles and guidelines on customs valuation. These are that the valuation for customs purposes should be the price at which such or like

*Moved with the recommendation of the President.

[Shri A. K. Panja]

goods are sold or offered for sale in the ordinary course of international trade in fully competitive conditions and in comparable quantity.

The definition of "value of goods" for purposes of customs assessment in section 14 of the Customs Act, 1962 is in line with the provision of Article VII of the GATT.

During the Tokyo Round of Multilateral Trade Negotiations under the G.A.T.T. (1973-1979), one of the agreements on non-tariff measures which was negotiated and finalised related to customs valuation. This agreement on implementation of article VII of the GATT also known as the GATT Code of Valuation, lays down elaborate rules to provide for greater uniformity and certainty in the application of article VII of the GATT. This Agreement aims at ensuring a fair, uniform and neutral system for valuation of imported goods for customs purposes. It envisages "transaction value" to be the principal yardstick for determination of customs value and sets out a hierarchy of alternative methods which are to be followed in case the transaction value cannot be determined.

It was felt that the implementation of this Agreement would result generally in liberalisation of international trade resulting from elimination of divergent customs valuation practices. It was expected that the adoption of transaction value under the Agreement by our major trading partners would generally improve our exports. For these reasons India acceded to the Agreement in 1980 subject to certain reservations for its delayed application provided to developing countries.

Under the provisions of the Agreement the declared 'transaction value' has to be accepted unless fraud is established by the customs authorities. The implementation of the Agreement may, therefore, have some revenue implications. However, Article 17 of the Agreement recognised the right of customs administration to make necessary enquiries to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation.

The necessary administrative arrangement by way of strengthening of investigation machinery, building up of suitable data base, computerisation of assessment and allied data, etc., are being made in the Customs Houses to provide suitable safeguards from the revenue point of view. The situation will also be kept under watch and appropriate corrective measures also.

It is proposed to implement the Agreement in the form of rules to be applied for determination of the value of imported goods subject to the provisions of valuation under Section 14 of the Customs Act, which is already based on Article VII of the GATT. This requires an amendment to Section 14 of the Customs Act so as to enable the Central Government to frame rules on the basis of the GATT Code of Valuation. These rules will be notified under Section 156 of the Customs Act and will be laid on the Table of the House as per the procedure prescribed for the purpose.

The Bill Seeks to achieve the above object.

Madam, I move.

MR. CHAIRMAN : Motion moved :

"That the Bill further to amend the Customs Act, 1962, be taken into consideration."

SHRI B.B. RAMAIAH (Eluru) : Madam, Chairman, this Customs (Amendment) Bill, is based on GATT as the hon. Minister has just now mentioned. It was an agreement which was negotiated between 1970 to 1979. It is being implemented now. The required modifications are being carried on. I do not know the reason why it took so long for taking action. It should have been done long back.

Under Section 14 of Article 7 of GATT, we would like to make some modifications and variations but we do not have the real GATT conditions and rules to do the same. So how can we go about it? We have just to follow the value of the goods, which probably the hon. Minister had also stated. He stated international understanding also. I would quite appreciate that this has to be taken into consideration and at the same time we will have to take into

consideration the various aspects from the point of view our country, our assessment and our safety precautions. It is because we have to definitely follow the international rules as long as we have trade—international trade—whether it is import or export. The international trade is going up faster day by day. We can see how it is increasing year after year. We have also to take into consideration the other countries also. We have to amend the articles as per these rules.

In the Customs Act, it is mentioned that :

“For the purpose of the Customs Tariff Act, 1975, or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be—

(a) the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale”

This is one of the very important basis on which any international trade or some such thing should be done. We appreciate that point of view. But there are certain things which I want to mention at this juncture. We have just now discussed the Customs and Central Excises Laws (Amendment) Bill. So, this is the occasion when we should study these things, and so our friends have raised certain other issues. Whenever we discuss Customs, we have to take into consideration certain things affecting the interests of our country. While considering the export of our country's goods, when we find that the competition is going to be severe, this Government should be able to give proper subsidies and incentives. In respect of certain agricultural commodities, we may not be able sometimes to compete in the international market. Then we will need a proper amount of support for those items. This is what the

Customs has to do, mainly. The same trend has to be there in respect of import of goods. Take the case of engineering goods which we are exporting. Even though the prices of steel have been increased so high, administratively, unless Government comes to the rescue of these goods and gives them proper incentive, they will not be able to compete in the international market. When we discuss Customs these are the various aspects which we have to look into, which relate to industry and agriculture. We need protection for our country's export articles.

The same principle has to be applied in the case of import of goods. Take the case of electronic goods. Various articles are being dumped into this country. Unless Government takes proper precautions and gives protection, here also the same thing will happen and we will not be able to develop the production of these articles here. This is the reason why I said that this policy of the Finance Ministry should be a balanced one, both ways, and we should see that we are able to produce more and reduce the amount of smuggling into this country.

The other day we were talking about the smuggling of nearly Rs. 3,000 crores worth of goods, of textile goods themselves. The sarees that are produced in other countries are coming in bulk here, through different methods. If you are able to reduce their smuggling, with the help of the Customs authorities, and instead we produce them in our own country, we would be creating about 4 lakh to 6 lakh more jobs; and we would also be getting more funds by way of excise duties on these articles worth nearly Rs. 1500 crores. I mention these things at this juncture because these are the things which will have to be taken into account by the Finance Ministry.

As you have mentioned earlier, we are disposing of a number of things at various offices of the Customs Department. These articles go to different cooperative societies, bogus societies. I would like to repeat this point, because a significant number of Customs staff themselves are forming societies, and these articles are passed on to them, and they go in different directions. I would request the hon. Minister to look

[Shri B.B. Ramaiah]

into these things. This should be watched carefully by the Minister, and he should make appropriate observations.

Another thing : the goods that are sold or auctioned at Customs come back to the market. A person might have purchased only one article, but he brings up for sale hundreds of articles on the same pretext. Therefore, we should be able to sell articles — which are not to be re-sold. Otherwise somebody will purchase one article in the auction and will bring in hundreds of articles and say that they were purchased from the Customs. I want to bring this also to your notice, because this is causing a big damage to our economy, and this affects our excise revenue and production as well.

As our friends mentioned earlier, surprise checks are very important. The Minister himself can do it sometimes; then he will be able to bright to light many things. He has to remedy this situation, by whatever methods he may be able to adopt.

As I mentioned earlier, if we want to improve our international trade and trade relations, we have to fall in line with the provisions of international agreements and follow them. If you do this, we will always support your actions.

There is one more thing : the Minister should also check the Customs godowns sometimes because there also, a lot of smuggling is going on—not from outside, but within the Customs itself this smuggling is going on. That is why I am bringing this fact to your knowledge. This is what you should do.

Thank you very much.

SHRI HAROOBHAI MEHTA (Ahmedabad) : I rise to support the Bill brought in by the hon. Minister. The Bill, I suppose, has been brought in order to bring our provisions in fuller conformity with the international taxation in this regard and therefore it is quite understandable. However, I may point out certain aspects taking benefit of the presence of the hon. Minister for better enforcement of the Act.

Sometimes the Customs Officer concerned poses a lot of delay in the process of evaluation. It is time the Central Government should advise the Customs Officer concerned not to create delays and bottlenecks in the matter of evaluation so that goods which are supposed to be cleared need not be cornered there on account of delay in the assessment.

The enforcement of Customs Act for the purposes of curbing smuggling is very vital and necessary in the interest of the industry in India. I am told, at least, some industrialists put it at Rs. 3000 crores worth of cloth is being smuggled into India at the cost of the growth of the indigenous industry. The cloth produced in our industry is not sold, but the foreign cloth is sold on account of this smuggling; it has got some price advantage, etc. Now I do not accept the figure of Rs. 3000 crores. Last week, Dr. Datta Samant had put it at Rs. 150 to Rs. 200 crores. But there is some smuggling which has to be curbed so that it does not create a little difficulty in the matter of sale of our indigenous cloth.

I shall be grateful to the Government if the government takes vigorous steps to curb smuggling and thereby enforce the Customs Law to the fullest extent. The government should also bear in mind the necessity to make our textile industry competitive with foreign market, so far as export is concerned. I agree with one suggestion that we should not encourage the sale of even confiscated goods. The time has come to take steps to create a culture against the purchase of foreign goods and especially smuggled goods. Now if we confiscate smuggled goods and then sell them at our own depots in the country, that really creates a counter culture; it helps in creating a craze for foreign goods. If it is possible to follow Mahatma Gandhi's dictum that we should be able to burn out confiscated goods so that it should persuade people to believe that it is not in the interest of our nation to accept foreign goods by way of sale or otherwise, if you cannot agree to this suggestion, then at least they should be sold outside India; the same confiscated goods should be sold outside India, not in India. Otherwise, you would be encouraging foreign goods, electronics, etc. to be purchased by our people. I don't think Indian people need foreign

goods for protecting their standard of life. We should discourage the trade of foreign goods. This is one of the ways of curbing smuggling of goods into India.

Our magazines also should not publish advertisements for foreign goods. I was surprised to read them. Many of the hon. members have read them—the advertisements of foreign cloth, foreign liquor, electronic goods. There is a *Swagat* magazine published by Indian Airlines in which goods are not sold, but sometimes a line is added saying that particular foreign goods are sold in Dubai or sometimes it is stated that particular foreign goods are available at such and such place. These posters encourage the trade of foreign goods. Why should not the Finance Minister consider whether it would be good to persuade the Minister of Civil Aviation to discourage the publication of such advertisements? Ultimately, in India we should build a culture of India; and we will not succeed in this unless we take steps to remove the craze for foreign goods from the mind of the Indian people.

I am told that the government is considering to reduce import duty on Fluorspar. Now Fluorspar is a raw material which is mined by the Gujarat Mineral Development Corporation (GMDC), which is the only project in India, in the whole country, which produces Fluorspar in the raw form. It is a State undertaking of Gujarat that is Mineral Development Corporation. It has put up a Beneficiation Plant producing acid and metallurgical grade fluorspar. By selling acid grade fluorspar which otherwise is being imported at the cost of precious foreign exchange. We are saving Rs. 25 crores worth of foreign exchange on account of this. Now, I am told that the hon. Minister has proposed some reduction in the import duty.

But the Finance Ministry was gracious enough not to accept that proposal at this state. Now again there is a proposal being moved in the Finance Ministry or the Industry or other Ministries, to reduce the import duty from 110 per cent to 75 per cent. If that reduction is agreed, that will drastically affect the market of the Gujarat Mineral Development Corporation's product to a very great extent. I am sure that you will agree that the State enterprises and State

products should be encouraged and even the foreign markets have been affected on account of dumping operations of some other countries, China and Thailand particularly.

Recently the imported price of fluorspar has reached a rock bottom level of about U.S. \$ 100 per M.T., F.O.B. This is due to the dumping operations carried out by China and Thailand. This matter may be kindly looked into.

My basic submission is that import duty should not be reduced. Import of fluorspar will affect the market of the Gujarat Mineral Development Corporation's product. There is no dearth of fluorspar for use in India. There is actually a case for increase. After all customs tariff acts as a production tariff also. One of the basic purposes of the Customs Act and imposing customs duty is to protect indigenous goods against invasion by foreign goods. Therefore, the Finance Minister will do well, if he considers this suggestion that there should be no reduction of import duty.

The Finance Ministry has innovated a very good thing in the Bill which was earlier discussed. That is, the refund shall only be given to the manufacturer or the assessee concerned if the excise authority concerned or custom house concerned is satisfied that the burden of duty has not been passed on to anyone. That should be the basic principle underlying all refunds; and just not that a rich man takes benefit of it, or the manufacturers get it by a declaration. Certain excise and customs laws primarily provide that excise duty or customs duty are laws relating to indirect taxation. Indirect taxation is intended to be passed on to the consumers. Now it is passed on to the consumers. The manufacturer will go to the court. Then they will take advantage of Section 72 of the Contract Act. That They take advantage of the limitation, that the period of limitation will start from the day on which the mistake of law alleged was discovered. That means, even after one hundred years, a suit can be brought up saying that the mistake of law has come to notice only yesterday. Thereafter, excise duty or excise tariff is required to be refunded to them. The Supreme Court has said that

[Shri Haroobhai Mehta]

they would not intervene, that they were helpless even if it is an incorrect position. I have, separately, moved a bill for amending Section 72 of the Contract Act, on these lines. What I am saying is, that it has also been judicially supported. The Gujarat High Court has, in a case of blended yarn of Bharat Yarn Mills that the duty which was collected, though it was illegal, should not be refunded to the manufacturer, but that it should be retained by the Government in the interests of the common man and it should be utilised in the interest of the industry and of the country.

In another case, pertaining to production, about central excise duty on a camera produced by Agfa company, there also the Gujarat High Court had held that the central excise duty should not be refunded to the manufacturer, under Section 72. Section 72 is intended for restitution, restitution of a man's property to the real owner, the citizen, and the deduction as excise duty does not belong to the manufacturer, but it belongs to the consumer. Therefore, if there is any case for restitution, under Section 72, that can only be restored to the real consumer.

Therefore, it is time that the Government considers introducing a general provision in the Central Excise law and other legislations that whenever there is indirect taxation, if the duty paid to the Government is found to be illegal, then it shall not be refund to the manufacturer or the dealer, as the case may be, but it should be used, utilised in a way the consumer wants or it should be refunded to the consumer if that is reasonably possible to locate the ultimate consumer.

With these words I request the hon. Finance Minister that he may kindly bear in mind all these suggestions and a comprehensive review of the central excise and customs acts may be undertaken, though it may not exactly fall within the purview of the present Bill which is being discussed. It has only a connection with the customs duty, but I took the opportunity to mention this hoping that the hon. Minister will take into consideration this suggestion.

With these words I support the Bill.

[Translation]

DR. G.S. RAJHANS (Jhanjharpur) : Madam Chairman, there, is not much to be said about this Bill. India is a contracting member of the GATT. According to the provisions of GATT, valuation should be taken as the basis for imposing custom duty. Everybody will agree to it.

Actually this provision should have been passed by the Parliament much earlier. I want to say a few words about this Bill. As I said earlier I am very much perturbed on large scale smuggling into this country. It is difficult to say how much the country is losing on account of smuggling. What to say about the coastal cities like Bombay and Madras, even in Delhi the smuggling has assumed alarming proportions about which perhaps the Government is not aware. Government should find out through its intelligence agencies how people living in Delhi's posh areas have become millionaire overnight. Neither they own any factory nor they have any big trade. I know some people who have limited source of income like only a small press yet they are millionaire. It is all mysterious. If the Government wants it can solve this mystery. I have myself seen sudden raids being conducted by the police and custom officials on the house of such a neo-rich man. Eager neighbours turn up to the site to know what is going on and they come to know that heroin—a narcotic drug and not a feature film heroin—was seized from his house. What surprises more is that the house-owner slips away from his house even before the police and custom officials arrive there, as he had prior information of the raid. Though the police says loudly that they will apprehend the culprit soon, yet the matter is set at rest. After 6-8 months or so in the same house, Bhagwati Jagran (a religious function) is organised. When asked about this religious function, the people are told that it is being held by the house-owner to please Goddess Bhagwati whose blessings got him released when he was arrested for being involved in smuggling. Not only this, but he has presented an offering of 1.25 maunds of Laddu sweets to Lord Hanuman. Besides the officers of the Department were also pleased by making different kind of offerings. Now, his state is clear; there are no smuggling charges against him because

the record says that no heroin was seized from his house. This is not a stray case, but there are many other similar cases. On T.V. we see everyday seized narcotics. The Government announces with great pride the seizures of heroin, brown sugar or other narcotics. But the narcotics thousand times more than the reized quantity are at present lying in Delhi itself. I say this with emphasis. Narcotic tablets can be had from 90% of the 'betel leaf' shops in Delhi. It is not difficult to find out the place of origin of these tablets.

15.57 hrs.

[SHRI VAKKOM PURUSHOTHAMAN
in the Chair]

All foreign newspapers are openly writing that Delhi has become a transit point for narcotics. If this evil is not mercilessly curbed it will not only ruin the economy of the country but will ruin our younger generation also. This is not a matter to be laughed at. The smuggling of narcotics in Delhi is taking place on a very large scale. The Government should find out where these narcotics come from. My constituency is adjacent to Nepal. I have seen with own eyes that just after sun-set dozens of trucks full of Ganja come from Nepal and enter into our territory. The owners of these trucks have dreadful arms. Officials at every checkpoint are given agreed amount as bribe and they allow the trucks to proceed further. No one dares to interrupt them. Whoever tries to intervene, he is put to death. The smuggling which is going on in Punjab or around Delhi is a different problem altogether. But Government is unaware of the smuggling activities on Indo-Nepal border. This will become a very serious problem one day. We have submitted several times in this House that in all areas bordering Nepal whether they fall in Bihar or Uttar Pradesh, roads in sufficient number should be constructed so that the smugglers can be apprehended. Until such a network of roads is laid and smugglers are arrested, Government will not be able to save the economy from being destroyed.

Smuggling of textiles has also been referred to. Smuggling of textile also is taking place on a large scale, I have myself seen that attractive varieties of textiles made in Japan, Korea and Taiwan

are sold in border areas at half of the price of Indian varieties. If better quality of textiles of foreign make are available at lower prices, then why should anyone buy and wear Indian clothes. It is often found in the border areas that a person earning only Rs. 400 or Rs. 500 per month wears Japanese cloth of superior quality. He does so because he gets it at half the price of Indian cloth. Moreover, that cloth is more durable. Smuggled textiles are easily available in every metropolitan city, namely, Calcutta, Delhi, Bombay. If this problem is not checked, then a day will come when the saying of economics will come true :

16.00 hrs.

[English]

Bad currency ousts good currency. Similarly, the smuggled textiles will oust the textiles of Indian.

[Translation]

Then you will have to repent over such a development. Textile smuggling is taking place on a large scale which cannot be ignored. Government should study the problem seriously and take remedial measures.

It is often said that Five Star culture has invaded the country. Apart from that, imported culture has also affected the thinking of people in India. If you visit the house of any respectable person, you will find women asking each other whether the Sarees they are wearing or the cosmetics they have used are imported or not. The use of imported items is considered to be a status symbol. This is imported culture or culture of the imported items and it has to be seriously considered as to how to put an end to it. In fact, the smuggling of narcotics has assumed serious proportion. I read 'London Times', where it was reported that the economy of Pakistan has been shattered because narcotics smuggling has reached a horrifying stage there, though news about Pakistan seldom appear in foreign newspapers. Our economy will also collapse if we are not able to control this menace within one or two years.

[English]

SHRI AMAL DATTA (Diamond Harbour) : Sir, the problem of valuation

[Shri Amal Datta]

which is sought to be amended by this Bill, is one of the vexed problems which creates the largest amount of litigation and dispute in the implementation of Customs Act, and it will be a good thing, a welcome step if the proposed changes do reduce the area and the number of such disputes. I cannot, however, judge at the moment, not having had the benefit of seeing what is contained in Article VII of the General Agreement on Trade and Tariff, excepting a little that I heard from the Minister in his opening speech. Therefore, I cannot judge as to what will be the beneficial effect of these rules in reducing the area and the amount of disputes.

So far as the principle of transaction value at international trade price is concerned, that is already there in section 14, sub-section (1) (a) of the Act which is sought to be amended. It says—

“the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale.”

So, I do not understand. The other principle is now sought to be imported through the General Agreement of Trade and Tariff of Article-7. This I do not understand. But possibly where there is no established price, it is only there that these rules will apply and possibly as I find from what the Minister has said that unless fraud is established by the Customs Department when the declared price of international transaction is to be regarded as the price, now the onus will be on the Customs Department to establish the fraud. So far as the present working of the department goes, I do not think that it will be beneficial for the Revenue in the sense that the customs will never be able to establish fraud in the way the fraud has to be established in the court of law in accordance with the principle of natural law and justice. So, what will happen is that perhaps that is the reason why India has so long,

for the last 7 or 8 years, not adopted the clause to which it has been a party and perhaps it was good for the nation that it is not so. I do not know that the situation has so changed between 1980 and now that we are now in a position to be able to establish that the declared price is fraudulent, the Customs Department would be able to so establish and therefore when fraud is sought to be perpetrated because the Revenue will not be defrauded. I am quite sure the Minister may be able to explain it further as to what is the method of establishing that the fraud is sought to be committed and therefore the declared price is not to be accepted.

Now, this is a small Bill. Of course, the implication is very far-reaching and I should think that perhaps the incorporation in the bunch of papers which is given in the Bill of the Article 7 of the General Agreement of Trade and Tariff should have been in order so that we would have been able to understand the vital effect of this Act. However, now, it appears that nothing is there so far as the financial implication of this Bill is concerned. The hon. Minister has also said this. But as far as the Revenue implication of this Bill is concerned, after we accept that by amending this Bill and including this in the Act in this manner, whether not only the dispute or area of dispute will come down but also whether the revenue will go up or come down. What is the expectation of the Government in this regard?

The other thing is that the date on which the duty is to be changed and what so it of penalty that is to be imposed to dissuade the people from attempting to defraud money, these are not part of the Bill, but this is something which is certainly very vital for the purpose of this implementation of the Act. After all, we have to ultimately see that the Act is being properly implemented and the Department is in a position to implement that and unless for disdeclaration of valuation is high enough to dissuade the people from resorting to mis-declaration, they would go on doing so and the department in each and every case would imagine that there are so many cases of import and so many cases where valuation is not known—you don't get it from the printed booklet or pamphlet or something like that—and there is no guide-

line for a particular duty. In that case, the declared value has to be accepted unless fraud is established. No, even if the fraud is established, if the penalty is low then the people will try to defraud the revenue. And unless the penalty for such mis-declaration is also simultaneously increased, I am afraid the people of this country particularly the traders as we know them in this country, if they can take the slightest advantage of the loophole of the law to enrich themselves at the cost of revenue, they will do so. So, I think this particular Bill should have also contained a clause regarding the penalty to be imposed on such mis-declaration because the onus is now being shifted to the customs. Otherwise I am afraid that this is going to cause a lot of loss of customs revenue the way it is and perhaps in two months' time the hon. Minister will have to come forward with another Bill to amend the present one when the complaints will start coming in that people are making such declarations which we are not able to establish how they are committing frauds through such mis-declarations. So, Sir, I am afraid that—first of all the Bill as presented to us for passing has not given the full picture of what the Government thinks it is doing and what the Government seeks to do and what the Government thinks will be the revenue implications. The Government should have put the House in a better picture of what they are seeking to by this Amendment.

SHRI VIJAY N. PATIL (Erandol) : Mr. Chairman, Sir, with the dawn of the 20th century, the work of customs officers or the customs collectors has increased, it has multiplied manifold and with the starting of transport of good through aircraft it has increased further. We know that about 78 per cent of the revenue of the Central Government comes from customs and central excise. Sir, the duty of the customs officer whether at the airport or in other places is very important. Many passengers go only on the declaration made by them and they pay the duty according to the declaration. This percentage is about 70 to 80. But, for the remaining passengers the customs officers, if they find that it is a doubtful case, they check the baggage. So, the mental behaviour of the passenger after getting down from the ship or from the aircraft is observed. This is a very difficult

task and when the goods are confiscated or when the goods are checked and vouchers are asked and if the passenger is not able to produce the vouchers, then for the purpose of duty, the prevailing market rates for these commodities in our country as also in the international market are taken and this is a very cumbersome task and this Amendment seeks to make it easy and much quicker. But in this field I would like to suggest that considering the vast work of the customs officer, computerization should be adopted as early as possible. Sir, we confiscate the goods of a single passenger and sometimes the passengers complain that there is a lot of harassment, but there are passengers, many times industrialists, who evade the duty to the tune of many crores of rupees. For example, the Standard Automobile Industry is alleged to have evaded duty to the tune of Rs. 12 crores. The Reliance Industry by under-valuing the imported goods of polyester fibre plant at Papan Ganga is alleged to have evaded customs duty to the tune of Rs. 120 crores. Such people try to do these things, sometimes with the connivance of the bank also. In case of Tata Consultancy Services, a duty of Rs. 45 lakhs was evaded and it was found that the Grindlays Bank has also abetted in this offence. What we are going to do to plug such loopholes, when even the banks are abettor in such offences.

Mr. Chairman, Sir, for customs officers, there is a training programme and replacement training is also there. But considering the task before them and the revenue which they are expected to collect, we find that it become a very difficult task to work throughout 24 hours, including night and also to suspect the passengers, to note the passengers who have doubtful behaviour. For example, a study was made. 71 passengers boarded a flight to Singapore. Some 36 out of them returned in three days; 28 returned in 4 to 6 days, and the remaining persons returned after 10 days. So, 64 out of the 71 passengers become suspects because, they went to Singapore and came back within a short span of time. These passengers bring goods and they are very cunning. They try to produce some vouchers from there. Therefore, to value those goods here becomes a difficult task. For making their task easier, this amendment has been brought. But I would like to suggest one more thing. Whenever there

[Shri Vijay N. Patil]

is litigation, any dispute arising out of the valuation of goods, it should be settled as early as possible. We know of one case, where Canaddain citizen of Indian origin had gifted a dairy plant to customer Corporation here in India in 1976. But the dispute went on and the Delhi High Court judge has to pass strictures that it is pity that we were not able to use the gift which was given to this country during the last 11 years. So, the dispute should not be prolonged for so many years. There is also a case of ball bearing. The dispute started in 1982-83 and it was settled in 1987-88, after a lapse of about 5 years. What are the amounts involved? It was Rs. 50 crores. Although the customs officers were correct in their allegation that it was under-valued, but it was not proper to get such goods which were useful for the automobile industry in this country, goods worth of Rs. 50 crores confiscated for a period of over 5 years. This thing should be expedited.

Mr. Chairman, Sir, as far as customs duty is concerned, there is a demand from various sections of the people that there should be three-tier system. For example, the Confederation of Engineers have requested the Government of India that customs duty on raw materials imported should be the lowest and on the components imported can be highest. It can be highest for the import of finished goods. Such type of suggestions should be taken into consideration expeditiously and something should be done in this regard so that good suggestions can be absolved in proper functioning of the Department.

The passengers generally complain that the process of the Customs is always rubbish and combersome. It is not up to the mark and we are always behind the times and there is no proper coordination between assessment in Madras and the assessment made by the Customs Officers in Bombay and in Delhi. If computerisation is introduced, if there is a communication and proper coordination for a particular commodity at a particular point of time, immediately the cost can be given, the dispute can be resolved and duty can be collected.

This amendment is a welcome measure. Of course, with the increase of international traffic, international transport of goods, increase of exports from this country, the work of the officers of this Committee is going to increase manifold. It will require many more improvements in the Customs Act, 1962. This is one step in this direction. I welcome it and support it.

THE MINISTER OF STATE IN THE DEPARTMENT OF REVENUE IN THE MINISTRY OF FINANCE (SHRI A.K. PANJA) : This half day today has been very interesting. Many of the Members have pointed out various points of which I have taken note.

One hon. Member talked about delay in implementing this. We are fully aware of this. The reason has been explained by another Member.

In fact, the Government was studying from all aspects what would be the effect of carrying out this amendment. Then it transpired considering all pros and cons that although there may be loss of revenue so far as Customs is concerned—I have not yet studied this aspect—but taking the whole country's interest as a whole, taking all the trading activities and the export and import of the whole country, it appears that, as we have become conscious members of the GATT, naturally we are bound to our commitment to carry out these amendments so far as international trade is facilitated and that is the main reason for this delay.

Regarding forming some bogus society, then one article is being sold and ten are being made available in the market, I have taken note of surprise checks. That does not touch so much so far as this amendment is concerned.

One hon. Member raised one particular question about the Fluorspar. At present, I find that there is no proposal for reduction of import duty on Fluorspar. If such proposal is ever received, then Government will examine it.

SHRI HAROQBHAI MEHTA : (Ahmedabad) : On that depends the employment of about 70,000 tribals.

SHRI A.K. PANJA : At present there is no such thing pending with us. As soon

as it is received, we will certainly look into the things so that the tribal population-working class are not affected by it. I will also request the hon. Member to remain a little alert about it.

The hon. Member also raised the restitution and repayment both together. No amendment is necessary because the law of the land is settled that when restitution stops, repayment begins. When repayment begins, both simultaneously will not go up because that is against the law of the land. Therefore, no particular amendment is necessary for the purpose of stopping this illegal activity if it takes place.

SHRI HAROOBHAI MEHTA : The hon. Minister has not followed the point. I would like to say that by restitution you must mean restitution in favour of the ultimate person who has taken the money, that is the consumer.

SHRI A.K. PANJA : That is not restitution as such. Nobody should get unjust enrichment. That is laid down by the Supreme Court. But if somebody has already got that money from the customer and there is no machinery available and if other things like cash memos are not available for the refund to be made, then there could not be any restitution. But if it is possible to ascertain as to who are the customers from whom excess amount has been got...

SHRI HAROOBHAI MEHTA : That was later on done in the Nawabganj Sugar Mills case. But the contrary was stated by the Supreme Court in the D. Cavasji's case which is not yet over-ruled by them.

SHRI A.K. PANJA : That is true. But we have to go by the law of the land. The main point we are taking is that there is no unjust enrichment. But if it is found that it could be passed on to the customer whatever may be the amount, even though it is 50 paise but if they could be identified, then the judgement in Nawabganj Sugar Mill Case may be clear—that Government must refund it and the person who is asking for it, give it back to the customer concerned. But the general rule is that there is no restitution. Restitution stops if repayment is made. That is the general rule.

Dr. G.S. Rajhans said about the details of some people in Delhi and other places who are doing nothing but still building houses and purchasing cars. He might be having some special knowledge about that. If the hon. Member hands over those particulars to me confidentially, I can assure the House that action would be taken and there is no hesitation on our part from taking action.

An hon. Member also suggested that confiscated goods—as those foreign goods—should be burnt. But that will be too costly for a country like ours. On a valuation made, we have obtained now in 1984 Rs. 101 crores worth of goods which were confiscated. In 1985, it was to the tune of Rs. 195 crores. In 1986 it was Rs. 217 crores and in 1987, it was Rs. 251 crores. So, if all these are burnt on the principle as envisaged by Mahatma Gandhi about burning of foreign articles—the country has since passed long years after independence—then, it is not a question of having that philosophy with fullest regard but now the developing country needs money and burning of those goods from which this sum of Rs. 251 crores could be obtained minus narcotic sales which are to be burnt and we are burning...

SHRI B.B. RAMAIAH : At least you can make it non-saleable. When you auction it, it should be non-saleable. Otherwise, repeatedly they are sold.

SHRI A.K. PANJA : The difficulty is this. If you want to impose non-saleable condition, again it will be hit and be challenged in a Court of law. If it is like, suppose hundreds of soaps or if it is power generating machine or some ball-bearing item, it is very difficult in this vast country to have this condition imposed that you should not sell this. The tracking will take so much money and that it will not be worth of it.

SHRI B.B. RAMAIAH : You have to use some method.

MR. CHAIRMAN : This is not Question Hour.

SHRI B.B. RAMAIAH : These smuggled goods are really coming in a different shape.

SHRI A.K. PANJA : That is different. That is a different point. As it was mentioned, if one camera is being released then it is found that 100 cameras are there. We have to guard against that. I have no doubt about it. But once it is sold in open auction under the law, then you cannot sell it elsewhere and it is very difficult to sell. But sometimes checks are done so that these are not used for commercial purpose.

Shri Amal Datta made a point. He asked : "What is the purpose of bringing in this amendment and whether Government has studied the loss of revenue?" As I said, at the present juncture, it is not possible to immediately study but there is an apprehension that there would be some loss of revenue earning by Customs Department because we have to go by the transaction value. If a cash memo or any document is produced establishing the transaction value, then we have to take it as it is. There may be loss of revenue at that moment. Shri Amal Datta asked as to how this is done. It is done under the law of this land. Whoever alleges fraud, shall have to prove the fraud. We have to prove. Sir, as you know, the intrinsic fraud evidence never comes to light. It would be fraudulent. But the covert evidences are taken into consideration; the circumstances by which it came in, what was the value of those goods at that particular time, for all this we have a method of obtaining and we ascertain from which country it came, what is the value he is staking at that time. So, we have to keep our own monitoring system properly so that we can ascertain it. A fraud can only be proved by circumstantial or covert evidence, not by intrinsic evidence; then it would not be fraudulent at all. So, it is not that it is impossible to prove. Under the circumstance, if fraud could be established, then we need not go by the transaction value. But the main point is not that only the Customs Department is concerned with revenue, but as I said it is the business activity of the country. Our main trading partners, major trading partners, are the USA, the USSR and Japan and they are also members in this Agreement. Unless we agree to the commitment already made, there might be other fall-outs, other repercussions, which might affect our trade.

In the morning when the Finance Bill was passed, many Members rightly raised an apprehension about our balance of payments, It is expected that more exports will take place, there will be more activity and we will be able to control the balance of payments position as it is presently prevailing in the country. Under these circumstances, we have brought in this Amendment and I am sure that all the hon. Members will give their full support to this.

MR. CHAIRMAN : The question is :

"That the Bill further to amend the Customs Act, 1962, be taken into consideration."

The motion was adopted

MR. CHAIRMAN : The House will now take up clause-by-clause consideration of the Bill.

The question is :

"That Clauses 2 and 3 stand part of the Bill."

The motion was adopted

Clause 2 and 3 were added to the Bill

MR. CHAIRMAN : The question is :

"That Clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted

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

SHRI A.K. PANJA : Sir, I beg to move :

"That the Bill be passed."

MR. CHAIRMAN : The question is :

"That the Bill be passed."

The motion was adopted