

**Shri Morarka:** It may be kept pending for some time.

**Shri S. S. More:** It may be held over.

**Shri Sumat Prasad:** Let the Deputy Minister accept the principle of it. Then he can re-introduce the rule suitably worded.

**Mr. Deputy-Speaker:** We will vote on it later.

**Shri Ram Ratan Gupta:** Some time-limit should be fixed.

**Mr. Deputy-Speaker:** We will give him time till 5 P.M.

In the meanwhile we will take up the next item on the order paper.

15-06 hrs.

#### CUSTOMS BILL

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

"That the Bill to consolidate and amend the law relating to customs be referred to a Select Committee consisting of 30 Members, namely: Shri Ramchandra Vithal Bade; Shri G. Basu, Shri Tridib Kumar Chaudhuri, Shri R. Ramanathan Chettiar, Shri N. T. Das, Shri Morarji Desai, Shri B. D. Leshmukh, Shri Vishwanath Singh Gahmari, Shri J. N. Hazarika, Shri Prabhu Dayal Himatsingka, Shri Hari Vishnu Kamath, Shri Narendrasingh Ranjitsingh Mahida, Sardar Surjit Singh Majithia, Shri Krishnan Manoharan, Shri Bakar Ali Mirza, Shri Mahesh Dutta Misra, Shri R. R. Morarka, Shri Shankarrao Shantaram More, Shrimati Savitri Nigam, Shri Ghanshyamlal Oza, Shri Prabhat Kar, Shri A. V. Raghavan, Shri Shivram Rango Rane, Shri S. V. Krishnamoorthy Rao, Shri R. V. Reddiar, Shri K. V. Ramakrishna Reddy, Shri M. Shankaraiya, Dr. L.

M. Singhvi, Shri Sumat Prasad and the Mover with instructions to report by the last day of the first week of the next session."

**Dr. Melkote (Hyderabad):** On a point of order. The names read out contain names of Rajya Sabha Members also. Are we expected to approve of the names of Rajya Sabha Members?

**Mr. Deputy-Speaker:** They are all Members of the Lok Sabha.

**Shri B. R. Bhagat:** The Sea Customs Act of 1878 which lays down the basic law relating to customs was enacted more than 80 years ago. Though it has been amended from time to time to meet the changing needs on specific points, no general and comprehensive revision of the Act has been undertaken. The provisions that were considered adequate for the purpose in the latter part of the last century had with time grown obsolete and hardly suit the needs of modern times. The Government have tried to interpret as liberally as possible the provisions of the existing Act, but even then certain difficulties have remained. The trade has also been pressing for various changes and facilities.

Another important factor which we have to take note of now is the evil of smuggling as a consequence of a strictly controlled economy. While drafting this Bill, we have tried to achieve the twin objective of facilitating in every possible way the smooth flow of genuine trade while at the same time ensuring effective measures against smuggling and evasion of duty. While revising the Sea Customs Act, opportunity has also been taken to consolidate the provisions relating to sea customs, land customs and air customs into one comprehensive measure.

While almost all the provisions of the Sea Customs Act are applicable to imports by air, the position in regard to land customs has so far been diff-

erent. Goods imported or exported by land are at present not liable to the duty unless they are imported from or exported to a territory which is declared a foreign territory by a notification issued under section 5 of the Indian Tariff Act, 1934. Even then it becomes leviable in respect of only such commodities as are specified in the notification. Basically there is no difference between imports by land or by sea. Customs duties are imposed on goods coming from a foreign country, and the means by which the goods are imported is really not relevant. It has, therefore, been provided in the Customs Bill that imports and exports by land should also automatically attract customs duty as in the case of imports and exports by air or sea.

Again, the facility of bonding goods in a warehouse which enables an importer to postpone the payment of duty till the goods are actually cleared from the warehouse is at present not available in respect of goods imported by land, nor are imported goods which are re-exported by land entitled to any drawback of the import duty. With the incorporation of land customs into this comprehensive measure, these warehousing and drawback facilities will now be extended to goods imported or re-exported by land also. A few other changes will also automatically follow.

The new law has also been considerably simplified. All obsolete provisions in the existing Act have been omitted. Provisions which under the Constitution fall in the State field have also been omitted. Procedural provisions which lay down the details of day-to-day administrative procedure have also been deleted as they tend to make the administration rigid. It is essential that the day-to-day procedures should be flexible enough to suit changing circumstances, and if these details are written into the law itself the necessary degree of flexibility is lost.

Opportunity has also been taken to rearrange the various sections and

chapters to group akin provisions together. The legal provisions regarding baggage goods carried by post and stores have now been suitably defined and grouped together in a separate chapter titled, "Special provisions regarding baggage, goods imported or exported by post and stores".

Particular mention may also be made of the simplification of the penal provisions. Section 167 of the existing Act has as many as 87 penal clauses. In the revised provisions, this number has been drastically reduced and a rational regrouping evolved, comprising (a) confiscation of imported goods, (b) confiscation of export goods, (c) personal penalties, and (d) confiscation of vessels, aircraft and vehicles. There is also a residuary penal provision which specifies the penalty in respect of contravention for which the other clauses do not make any specific provision. Offences for which prosecution may be launched have been put together in a separate chapter. This regrouping and simplification should remove the confusion and multiplicity of existing penal clauses.

Another matter of interest is that certain provisions of the existing Act confer important and wide powers on customs authorities without laying down any guiding principle. Thus, for example, power has been given to impose restrictions on imports and exports. Again, there is the power to disallow export of warehoused goods or the export of goods under claim for drawback, or the coastwise carriage of goods: but in respect of none of these powers does the existing Act lay down any guiding principles. Similarly, no guiding principles have been laid down for fixation of tariff values. In keeping with the modern approach to legislation, it is now proposed to regulate these powers by laying down guiding principles, within the framework of which alone the executive authorities will have the power to frame rules or issue notifications. Further, under the existing Act it is not necessary to place the Rules or Notifications before Par-

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liament. It is now being provided that all Rules and important notifications, which have been specified in the new law, will be placed before both the Houses of Parliament, and I am sure that the House will welcome these changes.

Apart from the various general measures of improvement which I have just broadly mentioned, the Bill seeks to give a number of facilities to the trade, and embodies a number of anti-smuggling measures. It has been our particular endeavour to give appropriate facilities and concessions to the general trader and to make the task of the smuggler and tax-evader difficult. I shall touch briefly on some of the important changes which the Bill incorporates under these two broad categories.

The first major proposal of benefit to the importers concerns the valuation of goods. Section 30 of the existing Act defines the assessable or real value of the goods for customs purposes.

The trade has represented from time to time against the provisions of section 30(a) of the existing Act on the ground that it is not equitable to determine value for customs purposes by including duty and other post-importation charges in the price. The General Agreement on Tariff and Trade, popularly known as GATT, to which India is a signatory, provides that value for customs purposes should be based on the competitive import price. It is, therefore, proposed to do away with the determination of assessable value on the basis of wholesale market price in India. The assessable value will now be the "normal price" as defined in clause 14(a) of the Bill.

Considerable difficulty has been experienced in the valuation of goods imported by parties enjoying a special relationship with the exporter such as branches and subsidiaries of foreign firms and sole representatives because in such cases the invoice may not al-

ways reflect the real price of the goods for assessment purposes. GATT provides that value in such cases should be based on the nearest ascertainable equivalent of the normal price. This guiding principle is being incorporated in the proposed definition of "value" in clause 14(b) and power is being taken to make rules for the determination of the nearest ascertainable equivalent of normal price in such cases.

The second important proposal which gives a major concession to the importers concerns the assessment of composite goods. Section 21 of the existing Act specifies that when goods consist of more than one article liable to different rates of duty, the entire goods shall be assessed at the highest rate of duty applicable to any of these articles. This action has caused considerable hardship to the trade. To remove this kind of difficulty, it is proposed to provide that accessories, spare parts and maintenance and repairing implements accompanying an article and which satisfy prescribed conditions may be assessed at the same rate of duty as the main article.

Another type of case in which the existing section causes difficulty is importation of sets of articles where the articles comprising the set are liable to different rates of duty, e.g., a bottle of perfume in a toilet set. To remove the hardship caused in such cases it is proposed that if the importer declares the split-up values of the articles liable to different rates of duty, the articles may be assessed at the rates of duty appropriate to each.

Concessions are also proposed to be given when goods get damaged or deteriorate before they are cleared through customs. Under the existing provisions, abatement of duty is allowed in respect of goods liable to specific duty, only if they have been notified by the Central Government. It is now proposed to give the allowance in respect of all goods liable to specific duty. Further, under the existing provisions abatement of duty

is allowed in respect of damage or deterioration sustained before the delivery of the bill of entry. Under the revised provisions abatement will be allowed in respect of damage and deterioration right up to the stage of unloading of the goods. Thus, the careful importer who puts in his bill of entry before the unloading of the goods so that the processing of the documents may be complete even before the ship arrives, will not be at a disadvantage as at present, while at the same time, the importer who delays putting in a bill of entry till even after the goods have been unloaded will no longer get any unmerited relief.

Coming to remission of duty, the position under the existing Act is that remission is permissible in respect of warehoused goods only provided they are lost or destroyed by unavoidable accident or are abandoned by the owner. This concession is now being extended to goods which are cleared direct for home consumption. Since cases of total loss or destruction or complete deterioration cause considerable hardship, this relief should be particularly welcome to importers.

It is also proposed to extend the scope of the concession allowed in respect of deficiency in warehoused goods caused due to natural loss. Sections 115 and 116 of the existing Act permit an allowance to be granted in respect of natural loss that may occur only in the case of wine, spirit and beer in casks, and salt. There are a number of other substances also which are volatile and which evaporate during the course of storage in warehouses. It is proposed to extend the concession to all such volatile goods which are notified by the Central Government for the purpose, considering the volatility of the goods and the manner of their storage.

The difficulties that are caused to the importers when the clearance of their goods gets delayed are also sought to be reduced by specific pro-

visions in the Bill. The existing facility of allowing clearance after the importer has executed a bond with acceptable surety can be availed of only by some importers. It is, therefore, proposed that when goods cannot be cleared within a reasonable time the goods may be permitted to be kept in a warehouse, so that the importer does not have to pay demurrage charges, and does not run the risk of losing a part of the goods through pilferage etc. by long storage. This will be an important facility to the trade which they do not at present enjoy and will remove a source of constant irritation between importers and the port authorities.

The Bill includes an upward revision in the rate of drawback when goods are re-exported. Section 42 of the existing Act provides that where imported goods are re-exported to any place outside India, 7/8ths of the duty shall be repaid as drawback. The deduction of 1/8th duty appears to have been provided first, as a fee for administrative work involved and secondly to encourage exports from warehouses in preference to exports of duty paid goods which have to be properly identified at the time of export. In view of the need to conserve foreign exchange and to facilitate re-export it is considered that 1/20th rather than 1/8th of the import duty should be sufficient deduction. It is, therefore, proposed to raise the rate of drawback to 95 per cent of the import duties.

While on the subject of drawback, I would also like to mention as it has an export promotion angle too that under the existing law, a number of procedural conditions have to be observed before drawback is granted. For instance, it is necessary that claim for drawback be established at the time of export. Another condition requires that after the vessel has left the claim for drawback should again be made within a period of six months. Still another condition specifies that the export should make-

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and subscribe a declaration about the actual export of the goods within the aforesaid period. These conditions have been found to be irksome and are being done away with in the new provisions.

I would now refer to a major improvement that is being proposed in the procedure for clearance of coastal goods. The procedure at present in force for the carriage of coastal goods is that the consignor has to file a shipping bill. At the port of destination, the master of the vessel presents a list of the coastal goods and the consignee puts in a bill of entry for such goods which is passed by the customs officer if on check everything appears to be all right. The existing procedure is defective inasmuch as the consignee is required to fulfil certain cumbersome formalities. From the department's point of view also, the existing procedure is unsatisfactory. It is now proposed that the consignor of coastal goods will submit only a bill of coastal goods to the customs officer who, after passing it, will hand over the same to the master of the vessel and at the ports of destination on the basis of this very bill the customs officer will allow clearance of the goods thus cutting out a great deal of unnecessary paper work all round. This new procedure will be a big step forward in the expeditious clearance of coastal goods.

I shall now turn to the second category of proposals, namely those which will enable the department to check evasion and smuggling. The first major proposal in this connection is regarding the search of premises in which smuggled goods are suspected to be secreted. Section 172 of the existing Act provides that any Magistrate may, on an application by an Assistant Collector of Customs stating his belief that dutiable or prohibited goods or any documents relating to such goods are secreted in any place, issue a warrant for search. This dual responsibility is not conducive to a

happy state of affairs inasmuch as the belief has mainly to be of the Assistant Collector of Customs and the warrant has to be issued by the Magistrate. Difficulty is also experienced when warrants have to be obtained at odd hours of the night or on holidays. It is, therefore, proposed to empower the Assistant Collectors of Customs to authorise search of premises.

It may be mentioned that the revenue laws regarding income-tax, central excise, sales tax and State excise already confer on the executive officers of those departments the powers to search suspected premises. The proposal made here is, therefore, in conformity with other similar laws. In other countries also, such as U.K., Australia U.S.A. and Canada, the powers to search premises are vested in departmental officers.

The vesting of these powers in the Assistant Collector of Customs only would not meet the situation on such portions of the land frontiers or the coast of India which are particularly susceptible to smuggling and where it is not practicable to obtain an Assistant Collector's authorisation in proper time. To meet this difficulty, it is proposed to empower the Central Board of Revenue to specially select by name certain customs officers who will be properly deployed in such areas and who will have the power to search premises without any authorisation from the Assistant Collector. The proposal is on the lines of the system obtaining in U.K. and Australia, where certain selected customs officers are issued writs of assistance which empower the officers named therein to search any suspected premises.

The next major proposal is regarding the liability for confiscation of exempted goods in case of misuse. At present, subject to certain limitations and conditions baggage is exempt from payment of duty and

import trade control restrictions. Often, passengers coming to India are made use of by certain vested interests to bring goods for trading purposes. As the law stands at present, the customs department is not in a position to take any penal action against such goods when they pass into trade. What is true of baggage is also true of gifts received by post and of goods exempted from duty and the import trade control restrictions on the ground that they are for the use of a specified class of persons. To prevent misuse of goods which have been shown such concessional treatment at the time of their import into India, it is now proposed that goods for which the conditions on which exemption was initially granted are not observed, will become liable to confiscation.

Checking of smuggling on the export side has presented legal difficulties. At present officers of customs cannot seize goods brought near the land border or sea coast for being smuggled out, because unless the goods are about to be exported they do not come within the mischief of the law, as, in strict law, it cannot be said that an attempt to export them has been made. To get over this difficulty, it is proposed to provide that if any dutiable or prohibited goods are brought near the land frontier or the sea coast for the purpose of being exported from a place other than a duly appointed customs station, the goods shall be liable to confiscation. This provision should strengthen the hands of the department in checking smuggling on the export side.

The next important proposal is regarding the infliction of personal penalties on persons who abet in smuggling. Under section 167(8) of the existing Act, any person concerned in the offence of importing or exporting goods contrary to a prohibition or restriction, is liable to a personal penalty. As worded, this section does not apply to persons who

may have given financial or other assistance before the act of importation or who may have been helpful in the disposal of the smuggled goods after the act of importation. Often the carrier is merely an agent employed for the actual act of importation and the principal offender is the financier or the organiser of the smuggling gang. It is essential to bring such persons within the mischief of the penal clause in order to inflict personal penalties on such ring-leaders. It is proposed to amend the penal clause accordingly.

Another proposal concerns the amount of personal penalty that may be inflicted on a person who evades or abets in the evasion of customs duty. Under section 167 of the existing Act, the maximum penalty that can be imposed on a person who is only concerned in any contravention regarding evasion of duty is Rs. 1,000. Considering the increase in smuggling, the maximum of Rs. 1,000 is very inadequate. It is proposed that any person who is concerned in any contravention regarding evasion of duty or who abets in such contravention by rendering financial or other assistance or by concealing or selling the concerned goods, shall be liable to a personal penalty which may extend to three times the duty sought to be evaded or Rs. 1,000 whichever is greater.

Having dealt with the persons who help in smuggling, I would now deal with vessels, aircraft and vehicles which are used for smuggling. In 1957, the Sea Customs Act was amended to provide, on the lines of the United Kingdom Customs Act, that if a vessel constructed, adapted, altered or fitted for the purpose of concealing goods is within the Indian customs waters, such vessel shall be liable to confiscation. Since it is proposed to extend the Act to importation and exportation by air and land also, it is necessary to extend these provisions to aircraft and vehicles on the lines of similar provisions in the

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U.K. Act. They will apply to any aircraft which is or has been in India while constructed, adapted, altered or fitted for the purpose of concealing goods. As regards the vehicles, such of them will come within the ambit of the proposed provisions as have been within the limits of any docks, aerodrome or land customs station.

Another proposal in this connection concerns section 168 of the existing Act which provides that any conveyance used in the removal of any goods liable to confiscation shall also be liable to confiscation. As this section stands at present, conveyance in which any contraband is brought into India are not liable to confiscation, as they cannot be said to have been used in the removal of such contraband. This lacuna is proposed to be removed. It is proposed to provide that any conveyance which has been used in the smuggling of goods or in the carriage of smuggled goods shall be liable to confiscation, but certain safeguards are being provided. The first one is that if the owner of the conveyance had taken all such precautions as may be specified in the rules framed by the Central Government the conveyance shall not be liable to confiscation. The idea is that the customs authorities will take action against such conveyances only where the main persons concerned with those conveyances refuse to take the precautions necessary for combating smuggling. The second safeguard which is being provided is that the owner of a conveyance used for carriage of goods or passengers for hire shall be given an option to pay in lieu of confiscation of the conveyance a fine not exceeding the market price of the goods which have been smuggled in such conveyance.

The next important proposal in the category of anti-smuggling measures concerns the sale proceeds of smuggled goods. Under the existing Act if the smuggled goods have been sold by the smuggler or by his accomplice

who helps in the disposal of smuggled goods, the sale proceeds, even if found with such persons, cannot be seized and confiscated. There is, of course, the alternative of imposing a personal penalty on such a person but this cannot be done except after issuing a show-cause notice to him and after giving him a reasonable time to rebut the allegations and unless he has also been given an opportunity to be heard in person if necessary. The time taken by these formalities gives an opportunity to such a person to do away with his assets, with the result that the personal penalty, even if imposed, may remain unrealised. It is proposed to provide, therefore, that where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale proceeds thereof shall be liable to confiscation.

I will now refer to two major proposals that have been made regarding prosecutions. Under the existing Act, if any person makes or signs or uses any declaration or document in the transaction of any business relating to customs, knowing such declaration or document to be false in any particular, such person is on conviction before a magistrate, liable to a fine not exceeding Rs. 1,000. This provision is being amended in two respects. Firstly, a person who abets in such an offence is also being made liable to punishment. Secondly, it is proposed that the punishment may extend to six months imprisonment. Under other Acts, for example, the Income-tax Act, 1961, imprisonment has been provided for similar offences. Since fines do not have a deterrent effect and as the offence is of a serious nature, the offender has been made liable to imprisonment.

The other major proposal regarding prosecution is to tide over legal difficulties that have been encountered in using as evidence documents which may be seized during the course of

searches, etc. Since smuggling involves a deal between a person in India and a person abroad, documents written by the latter are often seized but in accordance with the ordinary procedure, it is well-nigh impossible to prove the contents of such documents or that the document has been written by the particular person abroad. To meet these difficulties it is proposed to provide that where any documents are seized from the control or custody of a person and such document is tendered by the prosecution in evidence against such person, the court shall, unless the contrary is proved, presume the truth of the contents of such document and that the document has been signed by the person by whom it is purported to be signed. This provision which is being inserted on the lines of a similar provision in the Foreign Exchange Regulations Act will be helpful in the prosecution of smugglers and their accomplices.

Sir, I have given only a broad review of the more important of the several provisions contained in this Bill. The Select Committee to which I propose that the Bill be referred by the leave of the House, will have ample opportunity for examining all the provisions in detail.

With these words, I move that the Bill be referred to a Select Committee.

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill to consolidate and amend the law relating to customs be referred to a Select Committee consisting of 30 members, namely Shri Ramchandra Vithal Bade, Shri G. Basu, Shri Tridib Kumar Chaudhuri, Shri R. Ramanathan Chettiar, Shri N. T. Das, Shri Morarji Desai, Shri B. D. Deshmukh, Shri Vishwanath Singh Gahmari, Shri J. N. Hazarika, Shri Prabhu Dayal Himatsingka, Shri Hari Vishnu Kamath, Shri Narendrasingh Ranjitsingh Mahida, Sardar Surjit Singh Majithia, Shri

Krishnan Manoharan, Shri Bakar Ali Mirza, Shri Mahesh Dutta Misra, Shri R. R. Morarka, Shri Shankarrao Shantaram More, Shrimati Savitri Nigam, Shri Ghanshyamlal Oza, Shri Prabhat Kar, Shri A. V. Raghavan, Shri Shivram Rango Rane, Shri S. V. Krishnamoorthy Rao, Shri R. V. Reddiar, Shri K. V. Ramakrishna Reddy, Shri M. Shankaraiya, Dr. L. M. Singhvi, Shri Sumat Prasad and Shri Bali Ram Bhagat with instructions to report by the last day of the first week of the next session."

Is there nobody to speak?—All right. I will put the Motion to the vote of the House. The question is:

"That the Bill to consolidate and amend the law relating to customs be referred to a Select Committee consisting of 30 Members, namely Shri Ramchandra Vithal Bade, Shri G. Basu, Shri Tridib Kumar Chaudhuri, Shri R. Ramanathan Chettiar, Shri N. T. Das, Shri Morarji Desai, Shri B. D. Deshmukh, Shri Vishwanath Singh Gahmari, Shri J. N. Hazarika, Shri Prabhu Dayal Himatsingka, Shri Hari Vishnu Kamath, Shri Narendrasingh Ranjitsingh Mahida, Sardar Surjit Singh Majithia, Shri Krishnan Manoharan, Shri Bakar Ali Mirza, Shri Mahesh Dutta Misra, Shri R. R. Morarka, Shri Shankarrao Shantaram More, Shrimati Savitri Nigam, Shri Ghanshyamlal Oza, Shri Prabhat Kar, Shri A. V. Raghavan, Shri Shivram Rango Rane, Shri S. V. Krishnamoorthy Rao, Shri R. V. Reddiar, Shri K. V. Ramakrishna Reddy, Shri M. Shankaraiya, Dr. L. M. Singhvi, Shri Sumat Prasad and Shri Bali Ram Bhagat with instructions to report by the last day of the first week of the next session.

*The motion was adopted.*

**Mr. Deputy-Speaker:** The House stands adjourned to meet again at 5 O'clock.