M. G. Abrol vs M/S. Shantilal Chhotalal & Co on 27 July, 1965

Equivalent citations: 1965 AIR 197, 1966 SCR (1) 284, AIR 1966 SUPREME COURT 197, 1966 (1) SCJ 575, 1965 2 SCWR 1052, 1966 MADLJ(CRI) 355, 1966 (1) SCR 284

Bench: Raghubar Dayal, R.S. Bachawat

PETITIONER:
M. G. ABROL

Vs.

RESPONDENT:
M/S. SHANTILAL CHHOTALAL & CO.

DATE OF JUDGMENT:
27/07/1965

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
DAYAL, RAGHUBAR
BACHAWAT, R.S.

CITATION:
1965 AIR 197 1966 SCR (1) 284

ACT:
Imports and Exports (Control) Act, 1947 (13 of 1947), s. 3(1) and (2)-Exports (Control) Order, 1954-The Sea Customs Act, 1878 (Ss. 19, 167(8) and 178-Scrap of iron and steel-Prohibition on export without licence-Jurisdiction of Customs authorities to see whether goods in accordance with licence-Licence for 'steel skull scrap' whether description of particular variety relevant for exportability-Jurisdiction of courts to interfere with decision of customs authorities.

HEADNOTE:
In exercise of the power given in s. 3 of the Import and Export (Control) Act, 1947, the Central Government issued the Exports (Control) Order, 1954 providing that no person shall export any goods of the description specified in Schedule I annexed thereto except under and in accordance with a licence granted by the Central Government or by any

officer specified in Schedule 11 of the order. Under the provisions of the said order the respondents who were a firm carrying on import and export business, obtained from the Iron and Steel Controller a licence permitting them to export a certain quantity of 'steel skull scrap'. When the goods were at the port they were examined by an officer authorised by the Controller who certified the goods as 'steel skull scrap' fit for export under the said export licence. The Customs authorities however took the view that a part of the goods was not 'steel skull scrap'. S. 3 (2) of the Imports and Exports Act 1947, provides that goods whose export or import is prohibited restricted or otherwise controlled under s. 3(1) would be deemed to be goods whose export was restricted under s. 19 of the Sea Customs Act, 1878, and all the provisions of the said Act would apply accordingly. Under s. 178 of the Sea Customs Act the Customs authorities ordered the confiscation of the scrap sought to be exported by the respondents, but allowed it to be shipped on the respondents' giving a bank guarantee for payment of fine in lieu of confiscation. After giving a show cause notice the Additional Collector of Customs imposed a fine on the respondents in lieu of confiscation and also a personal penalty of Rs. 35,000. Instead of seeking remedy under the Sea Customs Act the respondents filed a writ petition in the High Court. It was heard and dismissed by a single Judge who however reduced the personal penalty to Rs. 1,000. Both sides appealed to the Division Bench. It was held by the Division Bench that since the satisfaction as to whether a particular consignment of scrap is capable of being used in India or not is to be, under the Statement of Export Policy, that of the Iron & Steel Controller the Customs authorities were not entitled to consider afresh whether that scrap was or was not usable in India. On this and other grounds the High Court allowed the appeal of the respondents and dismissed the appeal of the Customs Authorities in respect of the penalty. The Customs Authorities appealed to this Court by special leave.

It was contended on behalf of the appellants that (1) the Customs Authorities were entitled to see whether the goods sought to be exported were in accordance with the licence, and (2) the High Court should not have exercised its jurisdiction under Art. 226 when alternative remedies were provided in the Sea Act.

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HELD:(i) There is no conflict between the jurisdiction of the licensing authority under the Exports (Control) Order and that of the Customs Authority under the Sea Customs Act. While under the Exports (Control) Order certain articles can be exported only under a licence issued by the appropriate authority prescribed thereunder, the appropriate Customs authority can prevent the export of the articles if they are not covered by such licence. To take an extreme case, if the licence issued permitted export of iron and the licensee

seeks to export gold, the Customs authorities can certainly prevent the export of gold, for it is not covered by the license. [291 C-D]

(ii)However in the present case it could not be said that the goods were not covered by the licence.

Under the Exports (Control) Order iron and steel scrap is permitted to be exported on a licence granted by the Iron and Steel Controller. Under the Statement of Export Policy iron and steel scrap other than sheet cuttings can be exported if in the opinion of the Iron and Steel Controller the material is of no use in India. The Exports (Control) Order, the schedules annexed thereto and the Statement of Export Licensing Policy do not define skull scrap at all; 'skull scrap' is what the Officer thinks it is. The only restriction on the Controller giving a licence for export of scrap is that in his opinion it is not usable in India; his opinion is final. For the purpose of his opinion he may describe or categorize the scrap in the manner convenient to him; but that does not make it anytheless exportable scrap. The licence is meant only to cover scrap not usable in India. The description of the scrap has no relevance to its exportability. [292 B-F]

A comparative study of other items in Schedule 1 annexed to the Exports (Control) Order shows that they are different items. Obviously the licensee cannot export a different item. But scrap is only one item and, therefore, if the appropriate authority issues a licence for the export of one variety of the same, it cannot be held that The licensee by exporting a different variety is exporting some other item. [292 G]

In the present case the Iron and Steel Controller and his subordinates examined the goods at the time the licence was issued and at the time of loading the goods for export. The licence was therefore issued in respect of particular goods identified by the appropriate authorities. It was not possible therefore to say that goods other than those in respect whereof the licence was issued were sought to be exported. [293 A-B]

What is important is not the description but whether it is scrap of iron and steel in respect whereof the licence was issued. In this view, the Customs Authorities had no jurisdiction to confiscate the scrap on the ground that the same was a misdescription. The conclusion arrived at by the High Court was therefore correct. [293 C-E]

(iii)If the goods were not prohibited goods, the Customs Authorities had no jurisdiction to impose the penalty. [293 E-F]

(iv)The existence of an alternative remedy does not oust the jurisdiction of the High Court but it is only one of the circumstances that the High Court may take into consideration in exercising its discretionary jurisdiction under Art. 226 of the Constitution. In the present case the High Court thought fit to exercise its jurisdiction and

there were no exceptional circumstances that would justify interference with its discretion. [293 G-H]

Per Raghubar Dayal, J. :-(i) The decision of the Iron and Steel Controller contemplated by the conditions of the licence is not about the identity of the scrap material but is only with respect to the possibility of the use of any portion of the scrap within the country. There is nothing in the Imports and Exports Control Act or in the Exports Control Order up.

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which lays down among the duties of the Iron & Steel Controller the duty to check that the material collected at the docks for export tallied with the material for export of which the licence had been granted. [297 B-C]

(ii)The statement of export licencing policy in laying down that export of ferrous scrap other than sheet cuttings is allowed by the Iron and Steel Controller provided he is satisfied that the material is of no use in India does not mean that if the licence is for the export of any particular type of steel scrap it may still be considered to be a licence permitting export of steel scrap of any other kind except scrap from sheet cuttings. The Statement meant only that in respect of such scrap the authorities were free to exercise discretion to allow its export if it could not be utilised in India. [298 G-H]

(iii)The fact that in the Order iron and steel is mentioned as one item and its varieties are not mentioned does not mean that a licence for one kind of scrap could be utilised to export other kinds of scrap. Clause 5 of the Order empowers the licensing authority to impose while granting a licence such conditions as it considers necessary to impose and be not inconsistent with the Act or Order. The licensing authority could therefore provide in the licence that steel scrap of a particular variety would be exported. The exported goods will be in accordance with the licence only if they come within the specified variety. [300 D-E]

(iv)The note of the Iron and Steel Controller on the shipping bill after inspection of the goods at the dock does not amount to a licence. Moreover in the present case the goods were not inspected by the Iron and Steel Controller himself but by an officer who was not entitled to issue a licence under Schedule 11. The certification of the goods by such an officer did not make them exportable. [301 G]

(v)Section 3(2) of the Exports Control Act makes the provisions of the Sea Customs Act applicable in respect of goods whose export or import is prohibited, restricted or controlled by an order made under s. 3(1) . The Export Control Order was made under s. 3(1) and therefore the Customs Authorities could exercise their powers under the Sea Customs Act in respect of the goods sought to be exported by the respondents. They had power to check the

goods to see whether they were being exported under and in accordance with the licence. [294 F-G; 300 F]
(vi)Since the Additional Collector of Customs acted within his jurisdiction in checking and confiscating the goods in question on the ground that they were not 'steel skull scrap' which alone was allowed to be exported under the licence, the High Court or the Supreme Court did not have in exercising writ jurisdiction, power to question, when mala fides was not alleged, his opinion about the nature of the goods sought to be exported. The respondents should have pursued the remedies under the Act. [300 G-H]
(vii)The amount of penalty imposed by the Additional Collector was legal and its reduction to Rs. 1,000 by the single Judge was not correct. [303 D]
Ranchoddas Atmaram v. Union of India, [1961] 3 S.C.R. 718, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 276, 377, 584-625 and 669 of 1963.

Appeals by special leave from the judgment and order, dated September 12, 1960 of the Bombay High Court in Appeals Nos.

53. 56. 57 and 54, 51 and 58 of 1959 respectively.

Niren De, Addl. Solicitor-General, D. R. Prem and R. N. Sachthey, for the appellants (in C.As. Nos. 376 and 377 of 1963).

D.R. Prem, and R. N. Sachthey, for the appellants (in C.As. Nos. 584, 625 and 669 of 1963).

S.T. Desai, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondents (in C.As. Nos. 376 and 377 of 1963).

Poras A. Mehta, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondents (in C.As. Nos. 584 and 625 of 1963).

The Judgment of Subba Rao and Bachawat, JJ. was delivered by Subba Rao, J. Raghubar Dayal, J. delivered a dissenting Opinion.

Subba Rao, J. These five appeals by special leave were filed against the orders of a Division Bench of the High Court of Judicature at Bombay setting aside the order of a single Judge of that Court quashing the order of the Additional Collector of Customs, Bombay, levying fines on the respondents in lieu of confiscation of consignments of scrap iron exported to foreign countries. As the main point raised in all the appeals is the same, it would be enough if we state the relevant facts in one of the appeals, namely, Civil Appeal No. 376 of 1963, arising out, of Misc. Petition No. 86 of

1958.

Messrs. Shantilal Chhotalal & Co., hereinafter called the firm,, are a firm of Importers and Exporters of scrap iron. The said' firm obtained an export licence dated November 7, 1956, from the Iron and Steel Controller permitting them to export from the port of Bombay 900 long tons of steel skull scrap. The licence was to hold good up to March 31, 1957, and the goods had to be shipped to Japan by s.s.

> "KUIBISHEV". Between October 1956 and March 1957 the firm purchased scrap iron from various sources at rates varying from Rs. 95 to Rs. 207 per ton. After they brought the goods to the docks, the Officer authorized, by the Iron and Steel Controller and the representative of the Regional Joint Scrap Committee certified the goods as steel skull scrap fit for export under the said export licence and the necessary endorsements to that effect were made on the shipping bills in respect of the said goods. Thereafter, the goods were taken to the customs authorities for the purpose of exporting the same. The customs authorities took the view that a part of the goods was not steel skull scrap; and the matter was referred to the Iron and Steel Controller. By his order dated March 18, 1957, the said Controller informed the customs authorities that the rejected buffers, plungers and casings were furnace rejects and formed part of skull scrap etc. By order dated March 26, 1957, the customs authorities seized the entire goods on board the ship under s. 178 of the Sea Customs Act; but the said authorities allowed the goods to remain in the temporary custody of the shippers and permitted the ship to sail. They also retained the documents relating to the goods, but later on released them on April 25, 1957, on the firm furnishing a bank guarantee for a sum of Rs. 49,995.75 for payment of fine in lieu of confiscation if such confiscation was ultimately adjudged by them. On May 27, 1957, the customs authorities served a notice upon the firm to show cause why the said goods should not be confiscated and penal action taken against them under s. 167 (8) and (37) of the 'Sea Customs Act. By his order dated December 21, 1957, the Additional Collector of Customs held that of the total quantity shipped 320 tons were unauthorized and directed confiscation thereof; but he imposed a fine of Rs.

49,995.95 in lieu of confiscation and a personal penalty of Rs. 35,000. On March 4, 1958, the firm filed a writ petition under Art. 226 of the Constitution in the High Court of Bombay for quashing the said order. To that writ petition the Additional Collector of Customs, Bombay, and the Union of India were made parties. In the first instance, the said petition was heard by Shelat, J., of that Court, who held in effect that the firm was exporting something which was not permitted to be exported and that while the licence authorized them to export steel skull scrap they were exporting non-skull scrap and, therefore, the customs authorities had acted within their jurisdiction in confiscating the said goods and imposing a personal penalty on the firm. The learned Judge also expressed the view that the firm had suppressed certain relevant facts and thus disentitled themselves to have the discretionary remedy. However, the learned Judge gave a limited relief by reducing the penalty of Rs. 35,000 to Rs. 1,000 on the ground that under s. 167(8) of the Sea Customs Act the maximum penalty leviable could not exceed Rs. 1,000. The firm preferred Appeal No. 53 of 1959 against that

order to a Division Bench of the said Court; and the Additional Collector of Customs and the Union of India also preferred an appeal, being Appeal No. 56 of 1959, against the said order of the single Judge raising the question of penalty in so far as it went against them.

The appeals came up for hearing before a Division Bench of the High Court, consisting of Mudholkar, Acting Chief Justice,, and S. M. Shah, J. The learned Judges held in favour of the firm mainly on the following grounds : (1) "Since the satisfaction 289, as to whether a particular consignment of scrap is capable of being used in India or not is to be, under the Statement of export policy, that of the Iron and Steel Controller, the Customs Authorities were not entitled to consider afresh whether that scrap was or was not usable in India"; (2) "the licence in question not having been granted by the Customs Collector, but by the Iron and Steel Controller, it was not open to the customs authorities to rely upon the provisions of the Imports and Exports Control Act, 1947, or the Exports Control Order, 1954, for the purpose of making inspection of the consignment which the petitioners were exporting"; and (3) "if what was being exported was not Skull Scrap, but still was something the export of which was permitted by the Iron and Steel Controller on the ground that that scrap was not usable in India, there was nothing which the Customs Authorities were entitled to do". On those grounds the Division Bench allowed the appeal preferred by the firm, set aside the order of the learned single Judge and made the rule absolute. The learned Judges also dismissed the appeal filed by the customs authorities and the Union of India on the around that, as the firm only exported the goods covered by the licence, the customs authorities had no power to impose a personal penalty under s. 167(8) of the Sea Customs Act. Civil Appeal No. 376 of 1963 has been preferred against the former order and Civil Appeal No. 377 of 1963, against the latter order.

The argument of the learned Additional Solicitor-General may briefly be stated thus : There is no conflict of jurisdiction between the Iron and Steel Controller issuing, a licence for exporting steel skull scrap under the provisions of the Export Control Order, 1954, and the customs authorities prohibiting the export of the same on the ground that they are not the goods covered by the licence : they exercise different functions. In the present case, the Iron and Steel Controller granted an export licence dated November 7, 1956, permitting the respondents to export 900 tons of steel skull scrap subject to the conditions set out in the said export licence, but the customs authorities found, on the materials placed before them, that out of the total quantity shipped, 320 tons were non-skull scrap and on that finding they levied a fine in lieu of confiscation of the goods as they were already allowed to be exported. The said order was well within the jurisdiction of the customs authorities and, therefore, whether it was right or wrong, the High Court should not have interfered under Art. 226 of the Constitution. If his contention was correct, the argument proceeded, as the firm exported goods contrary to the terms of the licence, the customs authorities, in view of the recent -decision of this Court, had power to impose the penalty within the maximum limits prescribed in s. 167 (8) of the Sea Customs Act. As that order also was within the jurisdiction of the customs authorities, the High Court should have maintained it.

The argument of Mr. Desai, learned counsel for the respon- dents, may be put thus: Under the Export Control Order, 1954, the Iron and Steel Controller can issue a licence for exporting iron skull scrap if he is of the opinion that the said scrap is not usable in India. The Schedule annexed to the said Order treats scrap of iron and steel as one unit and it does not make a distinction between

non-skull scrap and skull scrap nor does that Order define what skull scrap is. In the circumstances when the Iron and Steel Controller described certain scrap as skull scrap and gave the licence for exporting the same, it is not open to the appropriate customs authority to hold that the said description is wrong and, therefore, the scrap sought to be exported is not covered by the licence.

To appreciate the rival contentions it is necessary at the outset to ascertain the scope of the respective jurisdictions of the Iron and Steel Controller under the Exports Control Order and the Customs Collector under the Sea Customs Act qua the goods covered by the licence issued by the former.

The Iron and Steel Control Order, 1956, was issued by the Central Government in exercise of the powers conferred on it by s. 3 of the Essential Commodities Act and in supersession of all previous orders on the subject. Under s. 3 of the Imports and Exports (Control) Act, 1947 (Act 18 of 1947) the Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restricting or otherwise controlling the export of the goods specified in the order. In exercise of the said power the Central Government issued the Exports (Control) Order, 1954, providing that no person shall export any goods of the description specified in Schedule I annexed thereto, except under and in accordance with a licence granted by the Central Government or by any officer specified in Schedule 11 to the said Order.

Under s. 19 of the Sea Customs Act, the Central Government may from time to time by notification in the Official Gazette prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of India across any customs frontier as defined by the Central Government. Under s. 167(8) thereof the appropriate authority can confiscate the pro-

hibited goods exported or imported and impose a penalty on the person concerned, who illegally exported or imported or attempted to export any goods, in the manner prescribed thereunder. It is, therefore, clear that the customs authorities had the jurisdiction to confiscate the prohibited goods if they were exported. Under s. 178 of the said Act, "Any thing liable to confiscation under this Act may be seized in any place in India either upon land or water, or within the Indian customs waters, by any officer of customs or other person duly employed for the prevention of smuggling".

Is there any conflict between the two jurisdictions, i.e., the jurisdiction of the licensing authority under the Exports (Control) Order and that of the Customs Authority under the Sea Customs Act ? While under the Exports (Control) Order certain articles can be exported only under a licence, issued by the appropriate authority prescribed thereunder, the appropriate Customs Authority can prevent the export of the articles if they are not covered by such licence. To take an extreme case, if the licence issued permitted the export of iron and the licensee seeks to export gold, the Customs Authorities can certainly prevent the export of gold, for it is not covered by the licence. In this view, there is no conflict between the jurisdictions of the two authorities; indeed, their functions are complementary to each other.

Can it be said, as it was contended by the learned Additional Solicitor General, that in the present case the respondents sought to export goods that were not covered by the licence ? We have noticed

earlier that under the Exports (Control) Order, 1954, no person shall export goods of the description specified in Schedule 1, except under and in accordance with a licence granted by the Central Government or by an officer specified in Schedule 11. Under the heading "Raw Materials and Articles Mainly Unmanufactured"

> in Part B of Schedule 1, item 3 is "scrap containing any of the metals or alloys specified in entry C-9 of this Schedule". C-9 of the Schedule enumerates the various metals; and C-9(a)(x) is "Iron and Steel". The sub-headings (1) to (27) thereof give different categories of that article. Officers competent to grant a licence are mentioned in Schedule 11 and they are (i) the Iron and Steel Controller; (ii) a Deputy Iron and Steel Controller; and
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> (iii) an Assistant Iron and Steel Controller. 'Me Statement of Export Licensing Policy issued by the Government of India as on October 31, 1956, throws some more light on this question. Item 3 mentioned therein is "Scrap containing, any of the metals or alloys specified in entry C-9 of this Schedule; in the column under the heading "Other details, if any", item (ii) is "Iron and steel scrap". Iron and steel scrap is divided into two categories, namely, (a) sheet cuttings, and (b) others. Against the entry "sheet cuttings" certain conditions for issuing the licence are mentioned; and against the entry "others", the following remarks are found:
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> "Export of any other ferrous scrap is allowed by the Iron and Steel Controller provided he is satisfied that the material is of no use in India." A combined reading of the relevant provisions of the Exports (Control) Order and the entries in the Statement of Export Licensing Policy leads to the following position : The Exports (Control) Order recognizes scrap of iron and steel as one entity; it does not recognize different categories of scrap, such as skull scrap or non-skull scrap; it permits export of such scrap under a licence issued by the Iron and Steel Controller, as he is the officer who regulates the trade in scrap under the Iron and Steel Control Order; but under the Policy Statement a distinction is made between sheet cuttings and other ferrous scrap; in the case of the export of the former more stringent conditions are imposed than in, the case of the latter; and in the case of the latter export is permitted if in the opinion of the Iron and Steel Controller the material is of no use in India. We are not concerned in this case with sheet cuttings, but only with other ferrous scrap. The Exports (Control) Order, the Schedules annexed thereto and the Statement of Export Licensing Policy do not define skull scrap at all; skull scrap is what the Officer thinks it is. The only restriction on the Controller giving a licence for export of scrap is that in his opinion it is not usable in India; his opinion is final. For the purpose of his opinion he may describe or categorize the scrap in the manner convenient to him; but that does not make it anytheless an exportable scrap. In the circumstances it must be held that the licence covers only the scrap not usable in India. The description of the scrap has no relevance to its exportability.

A comparative study of other items in Schedule 1 annexed to the Exports (Control) Order shows that they are different items and if licence is given for the export of a particular item, obviously the licensee cannot export a different item. But scrap is only one item and, therefore, if the appropriate authority issues a licence for the export of the same, it cannot be held that the licensee is exporting some other item.

A different approach leads to the same position. The record discloses, and it is not disputed, that the Iron and Steel Controller and his subordinates examined the goods at the time the licence was issued and at the time of loading of the goods in the ship for export. The licence was, therefore, issued in respect of particular goods identified by the appropriate authorities who were authorised to issue the licence and to inspect the goods. The name given by the authorities to the goods was, therefore, the name by which the appropriate authorities identified the goods. The licence was issued in respect of the specified goods identified by the appropriate authorities. It is not possible, therefore, to say that goods other than those in respect whereof the licence was issued were sought to be exported.

In this view, can it be said that the Customs Authorities had jurisdiction to confiscate the scrap of iron and steel certified to be not usable in India and covered by the licence granted by the Iron and Steel Controller on the ground that the scrap exported was, in their view, not of the description given in the licence ? The Customs Authorities would have such jurisdiction if under the Exports (Control) order scrap of iron and steel was dealt with under different heads. But, as we have pointed out, for the purpose of satisfaction of the Controller and for the purpose of issuing a licence for export, the said scrap was one unit and the description of it in the licence was only that given to it by the Iron and Steel Controller for identifying the goods. What is important is not the description but whether it is scrap of iron and steel in respect whereof the licence was issued. In this view, the Customs Authorities had no juridiction to confiscate the scrap on the ground that the same was a mis-description. The conclusion arrived at by the Court is, in our view, correct.

If the goods were not prohibited goods, the Customs Autho- rities had no jurisdiction to impose the penalty. Lastly, it was argued that the High Court should not have exercised its jurisdiction under Art. 226 of the Constitution, as the respondents had an effective remedy by way of appeal to Higher Customs Authorities. But the High Court rightly pointed out that the respondents had no effective remedy, for they could not file an appeal without depositing as a condition precedent the large amount of penalty imposed on them. That apart, the existence of an effective remedy does not oust the jurisdiction of' the High Court, but it is only one of the circumstances that the Court should take into consideration in exercising its discretionary jurisdiction under Art. 226 of the Constitution. In this case, the High Court thought fit to exercise its jurisdiction under Art. 226 of the Constitution and we do not see any exceptional circumstances to interfere with its discretion. In the result, Civil Appeals; Nos. 376 and 377 of 1963 are dismissed with costs.

2 94 Now coming to the other appeals, though there is some ,difference in the matter of details between the aforesaid appeals and the other appeals, the broad facts are similar. The view we have expressed in the aforesaid two appeals governs the other appeals also. The other appeals are also dismissed with costs. One hearing fee.

Ragbubar Dayal, J. I regret I have to come to a different conclusion.

I need not repeat the facts leading to these appeals as they have been stated in the judgment of brother Subba Rao, J. The main question for determination in these appeals is whether the Collector of Customs had power to check the scrap for the purposes of satisfying himself that the scrap to be exported answered the description of the material which was to be exported under the licence granted to the exporter. The appellant claims such a right. The respondent denies it and urges that the decision -of the Iron and Steel Controller contemplated by the conditions of the licence was final and the scrap in regard to which that

-decision is given could be exported without any further check by the Collector.

It is necessary, before determining this controversial point, to first refer to the various provisions relating to the powers and jurisdiction of the Collector of Customs with respect to the export of iron and steel for whose export there exists some prohibition or restriction. Section (3) 1 of the Imports & Exports (Control) Act, 1947 (Act. XVIII of 1947) empowered the Central Government to make provision for prohibiting restricting or otherwise controlling the import, export of goods of any specified description. Sub-s. (2) of s. 3 provides inter alia that all goods to which any order under sub-s. (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under s. 19 of the Sea Customs Act, 1878, hereinafter called the Act, and that all the provisions of that Act shall have effect accordingly. By virtue of the power conferred by sub-s. (1) of s. 3, the Central Government issued the Exports (Control) Order, 1954. Clause 3 of this Order provides that save as otherwise provided in the Order, no person shall export any goods of the description specified in Schedule 1, except under and in accordance with a licence granted by the Central Government or by any officer -specified in Schedule II. The officers specified in Schedule II include the Iron & Steel Controller, the Deputy Iron & Steel Controller and the Assistant Iron & Steel Controller. Clause 5(1) of the Exports Order provides that a licence granted under the Order may contain such conditions not inconsistent with the Act or the Order as the licensing authority may deem fit. Sub-cl. (3) of cl. 5 provides that the licensee shall comply with all the conditions imposed or deemed to be imposed under the clause.

Schedule 1 mentions the commodities subject to export con- trol. Group B-3 mentions scrap containing any of the metals or alloys specified in entry C-9 of that schedule. Entry C- 9 mentions many metals which include iron and steel. The export of iron and steel scrap is subject to control and, in view of cl. 3 of the Exports Order,

it cannot be exported except under and in accordance with the licence granted by the competent authority referred to in cl. 3. In view of sub-s. (2) of s. 3 of the Imports and Exports (Control) Act, iron and steel scrap would be deemed to be goods whose export has been prohibited or restricted under s. 19 of the Act and all the provisions of that Act would have effect accordingly.

Now, s. 19 of the Act empowers the Central Government to prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of India across any customs frontier as defined by the Central Government. Section 167(8) provides inter alia that if any goods exportation of which is for the time being prohibited or restricted by or under Chapter IV of the Act be exported dfrom India contrary to such prohibition or restriction or if any attempt be made so to export any such goods, those goods would be liable to confiscation and that any person concerned in any such offence would be liable to a penalty not exceeding three times the value of the goods or not exceeding Rs. 1,000. It follows that scrap of iron and steel is liable to confiscation if it is exported or any attempt is made to export it contrary to the prohibition or restriction imposed by the Central Government. Section 178 of the Act empowers any officer of Customs to seize in any place in India either upon land or water, or within the Indian Customs waters, anything liable to confiscation under the Act. It is clear therefore that the officers of Customs have power to seize steel scrap if it be liable to con- fiscation, that is, if it is being exported or any attempt is being made to export it contrary to the prohibition or restriction imposed. If steel scrap is not exported under and in accordance with the licence issued by the proper authority, it would be liable to confiscation. It becomes the duty of the Customs Authorities to check the steel scrap which is exported for satisfying themselves that it is being exported under and in accordance with the licence issued by the proper authority. Such a right of the Customs Authorities under the Act is not seriously disputed for the respondent.

What is really contended for the respondent and what has been held by the High Court is that the decision given by the Iron & Steel Controller in view of the conditions of the licence is final and that this finality of the decision impliedly takes away the power and jurisdiction of the Customs authorities, which they have under the provision of the Act to check whether the goods to be exported tally with those mentioned in the licence. The conditions of the license on which reliance is placed for the respondent are: "1. The materials specified overleaf will be inspected at the Docks by representatives of the Iron & Steel Controller and also by representatives of such parties as the Iron & Steel Controller may direct. To enable the Iron & Steel Controller to arrange for the inspection at least two clear days' notice is required. The Customs Authorities have been informed not to permit loading of scrap before such inspection is carried out and the material certified for shipment by an officer authorised by the Iron & Steel Controller.

2. If it is found as a result of this inspection that the scrap in question can be utilised in India the exporter will have to remove the materials from the docks at his own expense and sell it to consumers in India nominated by the Iron & Steel Controller at the price to be fixed by the latter. Exports will be permitted only if the materials cannot be used in India.

3. The Iron & Steel Controllers decisions in this respect shall be final. Government will not be responsible for any claim for loss due to demurrage, wharfage, frustration of contract or any other reasons whatsoever."

These conditions to which the licence is subject mean that despite the scrap answering the description of steel skull scrap whose export was allowed by the licenee, the Iron & Steel Controller could disallow the export of such scrap which upon inspection appears to be such which could be utilised in this country. Condition 3 gives finality to the decision of the Iron & Steel Con-

troller in this respect, i.e., in respect of the scrap determined to be such which could be utilised in India. The decision contemplated by these conditions is not about the identity of the scrap material with the scrap described and loaded under the licence for export, but is only with respect to the possibility of the use of any portion of the scrap within the country. This is the clear interpretation of the conditions, according to the language used. It is to be noted that there is nothing in the Imports & Exports Control Act or in the Exports Control Order which lays down among the duties of the Iron & Steel Controller the duty to check that the material collected at the docks for export tallied with the material for export of which the licence had been granted. Neither the Import and Export Control Act nor the Export Control Order contains any such express provision which debars or prohibits the Customs Authorities from exercising, their powers of checking the goods sought to be exported for satisfying themselves that they were being exported in accordance with the licence granted for the export of the material. On the other hand, sub-s. (2) of s. 3 makes all the provisions of the Act effective in regard to the goods whose export is prohibited or restricted under the Control Order as those are deemed to be goods whose export had been prohibited or restricted under s. 19 of the Act.

Further, the conditions are imposed by the licensing authority under cl. 5 of the Order. They have to be consistent with the Imports & Exports Control Act and the Order and cannot therefore take away directly or indirectly the powers of the Customs Authorities under the provisions of the Act to satisfy themselves that goods sought to be exported are in accordance with the licence. It is also urged that the grant of a licence lifts the prohibition or restriction imposed on the export of steel scrap with the result that the scrap for which the licence is granted becomes goods for the export of which no prohibition or restriction exists. I do not agree with this contention. The prohibition or restriction imposed over certain types of goods continues so long as that restriction is imposed under a valid notification of the Government of India. The effect of the granting of the licence is that the licencee is permitted to export those goods whose export is permitted under the licence. Those goods do not become goods which are not subject to the controls imposed by the Export Control Orders. The goods to be exported by virtue of that licence are subject to the condition that they answer fully the description of the goods for the export of which the licence is granted. The export is not to be only

under the licence, but to be in accordance with it also. That is what cl. 3 of the Exports Control Order requires. It is therefore not correct to say that the mere grant of the licence for the export of certain goods whose export is prohibited or restricted takes those goods out of the category of goods whose export is prohibited or restricted.

Much stress has been laid for the respondent on the export policy of the Government which, it is urged, supports the contention that steel scarp of any description can be exported except such scrap which can be utilised in the country. It is urged that the prohibition or restriction under cl. 3 of the Exports Control Order really applies to the steel scrap which cannot be used in India. The policy of the Government laid down for the guidance of the Central Government and the officers specified in Schedule 11 of the Export Control Order and to some extent for the guidance of the would be exporters in making requests for the grant of licences cannot have the effect of affecting the provisions of the Import & Export Control Act or the Control Order issued under it. Reference has been made to Part II of the Hand Book of Export Trade Control published by the Ministry of Commerce and Consumer Industries of the Government of India in October 1956. The statement of the export licensing policy as on October 31, 1956, states with reference to export of all iron and steel scrap except scrap, presumably from sheet cuttings :

> "Export of any other ferrous scrap is allowed by the Iron & Steel Controller provided he is satisfied that the material is of no use in India."

This may be the general policy for the granting or non- granting of a licence for the export of iron and steel scrap other than from iron sheet cuttings, but this does not mean that if the licence is for the export of any particular type of steel scrap, it may still be considered to be the licence permitting export of steel scrap of any other kind except scrap from sheet cuttings. If this policy statement meant that the licence granted would have just mentioned the quantity of iron and steel scrap other than scrap from sheet cuttings, instead of specifying the nature of the scrap for the export of which the licence is granted. The policy stated in this statement is really a restriction on the exercise of the discretion of the authorities empowered to grant the licence, the restriction being that no licence be granted for the export of iron and steel scrap other than scrap from sheet cuttings if it could be utilised in India. The authorities were free to exercise the discretion with respect to the export of scrap which could not be utilised in India. The mere fact that certain scrap could not be utilised in India does not mean that its export is freely allowed. What may not be usable in the country at a certain point of time may become usable after a lapse of time.

I am therefore of opinion that neither the policy statement nor the provisions about the granting of the licence justify the conclusion that scrap which could not be used in India could be exported irrespective of the terms of the licence or that the moment a licence is granted for the export of certain scrap that scrap gets the status of material for the "port of which there exists no prohibition or restriction with the result that it would not come within the goods which could be checked by the Customs authorities for the purpose of satisfying themselves whether those goods were being exported in accordance with the terms of the licence. Reference may also be made to Chapter VI, Part 1 of the aforesaid Handbook of Export Trade Control. This deals with customs and foreign exchange procedure. Paragraph 1 mentions the shipping bill and the export licence among the

documents to be submitted to the export department of the Custom House at the port of export. Para 2 provides for the scrutiny of these documents in the department inter alia for the purpose of verifying that the proposed "port is permissible and the consignment satisfies the requirements under the Export Control Order. It further provides :

> "If the Customs authorities are satisfied that the documents are in order, an endorsement is made on the shipping bill giving directions to the Preventive Officer, Examining Officer or the Appraiser at the docks or jetties as to the physical examination to be carried out in respect of the value, description etc., of the consignment and according sanction for its export."

This provision concerning the procedure to be followed by the Customs Authorities makes it clear that the Preventive Officer, the Examining Officer or the Appraiser of the Customs Department at the docks have to do the physical examination in respect of the description of the consignment to be exported and to sanction the export if satisfied that the consignment is in accordance with the terms of the licence. This is in accordance with the requirements of the provisions of the Act as stated above and goes against the contention for the respondent on the basis of the conditions in the licence about the finality of the decision of the Iron & Steel Controller about certain goods sought to be exported to be usable in the country. It is also urged that scrap of 'iron and steel' is one unit under .the Export Control Order, that the Order does not contemplate any different varieties of such scrap and that therefore the granting of the licence for exporting steel skull scrap amounts, in law, to the granting of the licence or exporting any steel scrap, even if that is not 'steel skull scrap' Which is not defined under the Export 'Control Act or the Order. I do not agree. It is not disputed that steel scrap can be of different varieties. The Order need not specify all the varieties. Special specification of a variety could be necessary if it was to be excepted from the scope of the Order. Clause 5 of the Order empowers the licensing authority to impose, when granting a licence, such conditions as it considers necessary to impose and be not inconsistent with the Act or Order. The licensing authority could therefore provide in the licencethat steel scrap of a particular variety would be exported. The exported goods will then be in accordance with the licence if they come within the specified variety. I am therefore of opinion that the licensing authority was competent to allow export of any particular variety and that the respondents could not under the licence export steel scrap of any variety other than that stated in the licence. I therefore hold that the officers of the Customs Department had power and jurisdiction to examine the steel scrap which the respondent was seeking to export to satisfy themselves that that scrap was really steel skull scrap whose export had been permitted under the licence.

The Additional Collector of Customs acted within his juris- diction in checking the scrap to be exported by the respondent. It was for him to decide whether the scrap to be exported was of the kind for which the licence was given. We, in the exercise of writ jurisdiction, cannot enter, unless mala fides are alleged, into the question whether his opinion about the nature of the goods to be exported was right or not. The Act contains provisions for the person aggrieved with the order of the Officer of Customs under s. 167(8) to appeal against that order. It is for the autho- rities provided by the Act for determining the correctness of the orders of the Customs Officers with respect to the confiscation of goods and penalty imposed to decide on being properly moved the orders of the

customs officers were correct or required some modification.

It is urged that there was no evidence before the Additional Collector to come to the conclusion that the scrap confiscated was not steel skull scrap. The contention is not sound. The Additional Collector took into consideration certain survey reports of competent surveyors about the description of the cargo exported by the respondent as steel skull scrap. Such survey reports were produced by the respondent. It is therefore not the case in which the Additional Collector proceeded on no evidence for holding that the quantity of scrap confiscated was not steel skull scrap.

It is not really disputed that the entire qantity of scrap exported by the respondent came within the definition of skull scrap as given in 'Metals Hand Book' by Taylor and Lyman (American Institute of Metals, 1948 Ed) which reads :

> "A film or dross remaining in a pouring vessel after the metal has been poured-A frozen shell of metal sometimes remaining in the bottom of the ladle."

The respondent however urges that a wider meaning is given to this expression in India. There is not sufficient material on record to substantiate this allegation. In matters of international trade, it appears a bit difficult to expect that the expression 'skull scrap' would have different meanings in different countries or that India alone would put a wider meaning on the expression with the result that there might be disputes between the exporters of this country and the importers of countries abroad. It has been urged that as the Iron & Steel Controller had power to grant the licence for the export of steel scrap, his order on the shipping bill after inspecting the scrap on the docks that it was passed for export, be treated as the requisite licence for the export of the actual scrap which had been inspected at the docks. Such a note on the shipping bill does not amount to licence granted under the relevant provisions of the Act and the Import & -Export (Control) Act. The Export Control Order could not have contemplated such a report of the Inspecting Officer to amount to the granting of a licence for the export. If it contemplated so, the entire procedure for the grant of a licence would have been different. Further, the person who inspected the scrap at the docks and passed it for export was not an officer mentioned in Schedule 11 of the Export Control Order. The materials taken to the dock by the exporter are not necessarily inspected by the specified officer but by any representative of the Sup.Cl/65-5 Iron & Steel Controller and the representative too has to inspect the material along with the representatives of such parties as the Iron & Steel Controller might direct. The various shipping bills for the materials taken to the docks show that the material was inspected ,on behalf of the Iron & Steel Controller by the Deputy Assistant Controller of Iron & Steel, an officer who is not included among the officers mentioned in Schedule II of the Exports Control Order.

Another contention raised for the respondent is that the Additional Collector could not confiscate the goods after they had left the country and that therefore his order of confiscation of the scrap which according to him was not steel skull scrap was bad in law. The affidavit filed by the Additional Collector, appellant No. 1, mentions the circumstances in which the scrap exported by respondent was allowed to leave the country. It was allowed to leave the country after the Collector had formally seized it and after the agents of the shipping company had undertaken not to release the documents

in respect of the cargo to its consignees. This undertaking meant that the cargo would remain under the control of the customs authorities as seized cargo till further orders from the Additional Collector releasing the cargo and making it available to the consignees by the delivery of the necessary documents to them. The documents were allowed to be delivered to them on the application of the respondents praying for the passing on of the necessary documents to the purchasers of the goods in Japan and on the respondents giving a bank guarantee that the full f.o.b. value to be released from the said parch would be paid to the customs authorities towards penalty or fine in lieu of confiscation that might be imposed upon the respondents by the adjudicating authority. The customs authorities had seized the goods when they were within their jurisdiction. It is immaterial where the seized goods be kept. In the circumstances of the case, the seized goods remained on the ship and were carried to Japan. The seizure was lifted by the Additional Collector only when the respondents requested and gave bank guarantee. 'Me effect of the guarantee was that in case the Additional Collector adjudicated that part of the goods exported was not in accordance with the licence and had to be confiscated, the respondents, would, in lieu of confiscation of the goods, pay the fine equivalent to the of the bank guarantee. Section 183 of the Act provides that whenever confiscation is authorised by the Act the Officer adjudging it would give the owner of the goods option to pay in lieu of confiscation such fine as the officer thinks fit. This option was extended to the respondent at the stage before the goods were released from seizure. The formal order of confiscation had to be passed after the necessary enquiry and therefore when passed in the present case after the goods had actually left this country cannot be said to be an order which could not be passed by the Customs Authorities.

I, therefore, do not agree with this contention. There now remains the question of the amount of penalty which can be imposed under s. 167(8) on the person concerned in the export of prohibited or restricted goods contrary to the prohibition or restriction. This Court has held in Ranchoddas Atmarwn v. Union of India(1) that it is open to the Customs Authorities to impose any of the alternative penalties under s. 167(8) even though the amount of it exceeds the amount of the maximum in the other alternative. The amount of penalty was therefore not limited to Rs. 1,000 only. The penalty imposed is not said to exceed three times the value of the goods exported unauthorizedly. It follows that the amount of penalty imposed by the Additional Collector of Customs was legal and that its reduction to Rs. 1,000 by the High Court was not correct.

1, therefore, hold that the impugned orders of the Additional Collector were correct and would accordingly allow the appeals, set aside the orders under appeal and restore the orders of the Additional Collector dated December 21, 1957, but, in the circumstances, order the parties to bear their own costs.

ORDER BY COURT In accordance with the opinion of the majority, the appeals are dismissed with costs. One hearing fee.

(1) 3 S.C.R. 718.