A **UNION OF INDIA & ORS.**

v.

M/S. RAI BAHADUR SHREE RAM DURGA PRASAD (P) LTD. & ORS.

November 19, 1968

B [S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Foreign Exchange Regulation Act (7 *of* 1947), *ss.* 12, 22, 23 *and* 23*A—Foreign Exchange Regulation Rules*, 1952 *r.* 5 *and Sea Customs Act* (8 *of* 1878), *s.* 167(8)—*Scope of—Form requiring declaration of correct invoice value before export—If restriction under s.* 12(1) *of the Foreign Exchange Regulation Act—Sea Customs Act, provisions of, when* C *can be invoked.*

By a notification dated August 4, 1947 issued under s. 12(1) of the Foreign Exchange Regulation Act, 1947 and the Foreign Exchange Regulation Rules, 1952, and amended thereunder, the Central Government prohibited the export to countries mentioned in its Schedule, of goods, except by post, unless a declaration supported by such evidence as may be prescribed is furnished by the exporter to the prescribed authority D that the amount representing the full export value of the goods has been paid or would be paid within the prescribed period. In 1957, the respondents shipped goods after furnishing to the prescribed authority, namely, the Collector of Customs a declaration in the statutory form prescribed under the Foreign Exchange Regulation Rules, and the Collector of Customs passed the goods for shipment. In 1965, the Dy. Collector of Customs issued a notice to the respondents calling upon them to show E cause why a penalty under s. 167(8) of the Sea Customs Act, 1878, should not be imposed, on the basis that the respondents under valued the goods deliberately, that they gave in the prescribed form false particulars supported by false evidence, that there was a failure to repatriate large amounts of foreign exchange contrary to the requirements of s. 12(2) and r. 5, that s. 12(1) of the Foreign Exchange Regulation Act and Rules required a declaration of the actual amount representing the full export value and a mere declaration of any value would not be F sufficient compliance with the provisions, that under the circumstances by virtue of s. 23 A of the Foreign Exchange Regulation Act, the exportation constituted an offence under s. 167(8) of the Sea Customs Act. The respondents thereupon, filed a writ petition contending that the declaration to the Collector of Customs was sufficient compliance with the statutory provisions and that the Collector having passed the consignments for shipment, had no further jurisdiction to take proceedings against them. A single Judge of the High Court dismissed the petitions, G but on appeal, the Divisional Bench allowed the petitions. In appeal to this Court.

HELD : *Per* Bachawat and Hegde, JJ., On the facts set out in the show cause notice the respondents could not be held to have contravened s. 12(1).

(1) The regulations contained in the Act are enacted in the economic H and financial interest of the country. Therefore, the rigour and sanctity of the regulations should be maintained but at the same time it should not be forgotten that s. 12(1) is a penal section, and in interpreting it, it is not competent to the Court to stretch its language in order to carry out the intention of the Legislature. [752 E]

Tolaram Relumal v. *State of Bombay* [1955] 1 S.C.R., 158, 164, followed; A

Re. H.P.C. Production Ltd. [1962] Ch. Dn. 466, 473, and *London & North Eastern Ry. Co.* v. *Beriman*, [1946] A.C. 286, 295, applied.

(2) Neither s. 12(1) nor any other provision of the Act empowers the rule-making authority to add to the restrictions imposed by the section, and, for finding out the restrictions imposed by the section one can only look at that section. The only restriction placed by s. 12(1) read with the notification dated August 4, 1947 is that no one should export any goods from this country without furnishing the declaration mentioned in s. 12(1). The items of information called for in the prescribed form cannot be considered as restrictions imposed by s. 12(1). They are merely information called for the proper exercise of the powers under the Act. In fact many of them do not relate to the restrictions imposed bf the section. [751 C—F] B C

(3) So far as goods sold to the foreign buyer are concerned it is possible for the exporter to know the exact export value, but that would not be the position when the goods are sent on consignment basis, and, in such a case the exporter can give only an estimated value. If every declaration which does not state accurately the full export value of the goods exported is held to be a contravention of s. 12(1) then all exports on consignment basis must be held to contravene the restriction imposed by s. 12(1), but, the Legislature could not have intended that minor mistakes in giving the full export value should be punished under s. 23A. Therefore, the declarations given in the present case do satisfy the requirements of s. 12(1) though they did not correctly furnish all the information asked for in the form, and hence, there was no contravention of the section. [751 H—752 D] D

(4) The main purpose of s. 12(1) is to get a declaration from the exporter that he has either brought or will bring back the amount representing the full export value of the goods. The scheme of the Act is that so far as customs authorities are concerned all that they have to see is that no goods are exported without furnishing the declaration prescribed under s. 12(1). Once that stage is passed the rest of the matter is left in the hands of the Reserve Bank and the Director of Enforcement under ss. 12(5) and (6). [752 B, 754 F] E F

(5) Before a case can be held to fall within the scope of ss. 23A and 167(8) of the Sea Customs Act, 1878, could be invoked, it must be shown that there has been a contravention of the restrictions imposed by s. 12(1); but the language of s. 12(1) does not permit the interpretation that the Legislature intended that the offences complained in these proceedings should be punishable under s. 23A. The contraventions complained of in this case are really contraventions of s. 12(2) and r. 5 and they are punishable, the former, under s. 23 and the latter, under ss. 22 and 23. [751 B—C, G] G

Per Sikri, J. dissenting. On the facts alleged by the Customs authorities no case for the issue of a writ to the authorities had been made out.

(1) The Act was enacted in the interests of national economy. Since a deliberate large scale contravention of its provisions would have serious effects, it should be construed so as to make it workable. No subject can insist on an interpretation which will have the effect of sabotaging the national economy. [739 H—740 A] H

A (2) As s. 12(1) itself does not impose any restrictions and contemplates rules being made on : (a) evidence which is to support declaration; (b) authority to which the declaration is to be furnished; and (c) the manner of payment; the restrictions imposed by rules which are referrable to the section must be treated as restrictions imposed by the section. [740 H]

B *Wellingdale* v. *Norris* [1909] 1 K.B. 57, 64, *Wicks* v. *Director of Public Prosecution*, [1947] 1 All E.R. 205, 206, R. v. *Wicks*, [1946] 2 All E.R. 529, 531 and *Rathbone* v. *Bundock*, [1962] 2 All E.R. 257, applied.

Dr. Indramani Payarelal Gupta v. *W. R. Nathu*, [1963] 1 S.C.R. 721, 737, distinguished.

U.S. v. *George R. Eaton*, 36 L.Ed. 591 and *Singer* v. *U.S.* 89 L.Ed. 258, 290, referred to.

C

(3) Even in a case where the amount has not been received, there must be declaration of some actual figure, which, according to the declaration represents the 'full export value' It may be an estimate if the goods have not been sold before the export, but a figure must be indicated. The requirement of supporting evidence and r. 5(2)(ii) requiring the statement of the invoice value in the declaration indicate that D an actual figure has to be mentioned. Section 12(1) and the notification impose a conditional prohibition an on exporter which he can lift by a unilateral declaration. When such a power is conferred on an exporter by a statute good faith on his part must be implied and is a condition pre-requisite. Section 22 provides that the declarant shall not give any information which he knows or has reasonable cause to believe to be false or not true Clerical mistakes and mistakes made *bona fide* even in respect of material particulars would not come within the mis- E chief of the section, but a deliberate falsehood and deliberate evasion of the provisions of the section would be a contravention of s. 12(1) for otherwise the ambit of the section read with s. 23A would be narrowed to the point of extinction. An exporter and persons concerned in the export, could with impunity give a deliberately false declaration but in apparent compliance with s. 12(1) and deprive this country of foreign exchange. There is no distinction, between an exporter and the F persons concerned in the export when no declaration under s. 12(1) is given at all and in a case where the exporter gives a deliberately false declaration, for the purpose of the applicability of s. 167(8) of the Sea Customs Act. [744 D—745 D]

(4) Since the same contravention may attract penalties under the Sea Customs Act as well as the Foreign Exchange Act it will be incongruous to hold that the restrictions imposed by s. 12(1) are different G for the two acts. [740 F—G]

The Mayor of Portsmouth v. *Charles Smith*, 10 A.C. 364, 371, applied.

(5) Section 23A of the Foreign Exchange Act deems the restrictions imposed under s. 12(1) to have been imposed under s. 19 of the Sea Customs Act, without prejudice to the provisions in s. 23 dealing with penalty and procedure for contravention of the provisions of s. 12 or H any rule or direction or order made thereunder of Foreign Exchange Act and therefore, offenders who violate those restrictions could be proceeded with both under the Foreign Exchange Regulation Act as well as the Sea Customs Act. It may be that action can be taken against an exporter under other sections of the Foreign Exchange Regulation Act

or the Sea Customs Act, but that does not prevent action under s. 23A read with s. 12(1) with the aid of customs authorities, both against exporters and persons concerned in the prohibited export. [745 E—H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 45 to 49 of 1968.

Appeals from the judgment and order dated September 20, 1967 of the Madras High Court in Writ Appeals Nos. 247 to 251 of 1966.

C. K. Daphtary, Attorney-General, Niren De, Solicitor-General, N. S. Bindra, Mohan Kumaramangalam, R. H. Dhebar, A. S. Nambiar and *S. P. Nayar,* for the appellants (in C.As. Nos. 45 and 47 to 49 of 1968).

Niren De, Solicitor-General, Mohan Kumaramangalam, N. S. Bindra, R. H. Dhebar, A. S. Nambiar and *S. P. Nayar,* for the appellants (in C.A. No. 46 of 1968).

A. K. Sen, Soli Sorabji, S. R. Vakil, B. D. Barucha, G. L. Sanghi, and *S. K. Dholakia,* for the respondents (in C.A. No. 45 of 1968).

N. A. Palkhivala, Soli Sorabji, D. N. Misra, S. R. Vakil and *B. D. Barucha,* for the respondent (in C.As. Nos. 46 and 49 of 1968).

G. L. Sanghi, S. R. Vakil and *B. D. Barucha,* for respondents (in C. A. No. 47 of 1968) and their respondent (in C.A. No. 48 of 1968).

N. A. Palkhivala, P. P. Ginewala, D. N. Mukherjee and *Ajit Chaudhury,* for interveners Nos. 1 to 4.

A. K. Sen, S. D. Khetri, Avadh Behari and *R. N. Bajoria,* for intervener No. 5.

N. A. Palkhivala and *D. N. Gupta,* for intervener No. 6.

M. C. Chagla and *D. N. Gupta,* for intervener No. 8.

N. A. Palkhivala, A. K. Basu, S. C. Mitter and *I. N. Shroff,* for intervener No. 7.

M. C. Setalvad and *M. K. Banerjee,* for intervener No. 9.

SIKRI, J. delivered a dissenting Opinion. The Judgment of BACHAWAT and HEGDE JJ. was delivered by HEGDE, J.

Sikri, J. These five appeals by certificate are directed against the judgment of the High Court of Madras whereby the High Court accepted the Writ Appeals against the judgment of Kailasam, J., in Writ Petitions Nos. 1592, 1593, 1594 and 1601 of 1966 and 3948 of 1965, and directed the issue of writs of prohi-

bition to the Union of India, the Collector of Customs, Madras, and the Deputy Collector of Customs, Visakhapatnam, appellants before us, prohibiting them from taking any action in pursuance of certain show-cause notices issued by the Deputy Collector Customs, Visakhapatnam. Common questions of law are involved in these appeals and it would suffice if I give facts in Writ Petition No. 1592 of 1966 out of which Civil Appeal No. 45 of 1968 arises.

The relevant facts in that writ petition, for appreciating the points raised before us, are as follows: On February 17, 1965, the Deputy Collector of Customs, Visakhapatnam, issued memorandum No. S/21/14/65 to M/s. Rai Bahadur Seth Shreeram Durgaprasad (Private) Ltd., Tumsar, and five others, hereinafter referred to as the Shippers. In this memorandum, in brief, it was stated that the Shippers had entered into a formal contract on October 13, 1965, with M/s. Intercontinental Ores Supply Corporation, New York, for the shipment of 20,000 tons of Indian Manganese Ore of the grade of 43% Mn., from the port of Visakhapatnam at a price of $0.67 per unit of Manganese per dry long ton, f.o.b. Visakhapatnam/Bombay. The Shippers exported from the port of Visakhapatnam 3,300 tons of Indian Manganese per s.s. 'ALPHEM' under the cover of Shipping Bill No. 187 dated March 20, 1957, declaring therein that the export was being made in pursuance of the aforesaid contract. A G.R.I. form was attached. It was stated that a certain note-book which had been seized earlier in August 1963 disclosed that a sum of $25298.24 was received on April 21, 1957, from INOSCO, *i.e.*, Intercontinental Ores Supply Corporation, New York, the consignee of the subject goods, the amount having been credited to an account in the name of Gangadhar Narsinghdas Agrawal with the Trust Co. of North America, 115, Broadway, New York. It was further alleged in the memorandum that the Shippers had derived financial benefits in respect of the subject export over and above those revealed to the Customs Authorities and/or other concerned authorities and the information about them was deliberately suppressed. It was further alleged that this constituted a contravention of s. 12(1) of the Foreign Exchange Regulation Act, 1947, read with Notification No. 12(17)-F.1/47 dated August 4, 1947, as amended, issued thereunder and the Foreign Exchange Regulation Rules, 1952.

I may mention that by this notification the Central Government had prohibited "the export otherwise than by post of any goods either directly or indirectly to any place outside India other than any of the countries or territories in the Schedule annexed to this order unless a declaration supported by such evidence as may be prescribed is furnished by the exporter to the prescribed

authority that the amount representing the full export value of the goods has been or will within the prescribed period be paid in the prescribed manner."

According to the Deputy Collector Customs, the goods have been thus exported in contravention of the restrictions and prohibitions imposed under s. 19 of the Sea Customs Act, 1878, read with s. 12(1) and the Notification No. 12(17)-F.1/47 dated August 4, 1947, issued thereunder, and s. 23A of the Foreign Exchange Regulation Act, 1947, which exportation constituted an offence liable to be punished under s. 167(8) of the Sea Customs Act, 1878. Accordingly, the parties concerned were called upon to explain the matter and show cause in writing to the Collector of Customs, Madras, why a penalty should not be imposed on them/him under s. 167(8) of the Sea Customs Act, 1878.

It appears that a number of such memoranda were issued in respect of diverse shipments. Thereupon five petitions were filed in the High Court of Madras. In Writ Petition No. 1592 of 1966 it was alleged that 125 show-cause notices had been issued to the petitioners on various dates and it was prayed that a writ of prohibition or other appropriate writ, order or direction under Art. 226 of the Constitution of India prohibiting the respondents from taking any action in pursuance of the said show-cause memos, may be issued.

Various allegations were made but I need only mention the following allegations. It was submitted that the petitioners had complied with the statutory provisions inasmuch as a declaration in statutory form had been furnished to the prescribed authority, to wit, the Collector of Customs, and the Collector of Customs, having passed the consignments for shipment, had no further right or jurisdiction to take proceedings relating to the consignments in question. It was contended that if a declaration is found to be false, it did not mean that there was a breach of the provisions of s. 12(1).

In reply it was contended that what was required under s. 12(1) of the Foreign Exchange Regulation Act and the Rules was not any value but the actual amount representing the full export value, and a mere declaration of any value would not be sufficient compliance with the provisions of s. 12(1) of the Foreign Exchange Act.

The learned Single Judge, Kailasam, J., dismissed the petitions. Various points were urged but on the point addressed to us he held that the declaration to be given by the exporters meant not only that the value of the goods will be paid in the prescribed manner but also that the full export value of the goods given is the correct value.

A I may mention that before the Division Bench the case of the Revenue was clarified in an affidavit and we may set out para 5 thereof :

> "Since the Court has now directed the respondents to file a supplemental affidavit clarifying the stand taken by the department I state respectfully that the stand
B taken by the department both in the show-cause memo and here is that the essence of the offence committed by the appellants is that in the declaration required under section 12(1) of the Foreign Exchange Regulation Act, they have deliberately given false particulars supported by false evidence. By giving this fraudulent declaration,
C they have secured the export of their goods. This fraud vitiates the declaration itself, thereby making the export one in violation of the prohibition contained in Section 12(1) of the Foreign Exchange Regulation Act."

It is not necessary to set out the *modus operandi* adopted by the petitioners but I may mention that it was contended that a
D scheme was entered into prior to the actual export and the goods were undervalued deliberately and the department was induced to accept their declarations by means of false evidence and fraudulent suppression of facts. It is suggested that by this method a sum of Rs. 3,20,00,000 had been suppressed and there has been a failure to repatriate a corresponding amount of foreign exchange
E which had been earned surreptitiously. It was further stated that this scheme was adopted for all the shipments covered by the show-cause notices, and also for many other shipments in respect of which show-cause notices yet remain to be issued.

The Division Bench on appeal came to the conclusion that as the declarations were made under s. 12(1) and as they were
F scrutinised by the authorities it is not possible to contend that these goods were either exported or attempted to be exported in violation of the prohibitions or restrictions imposed by law and are, therefore, liable to be confiscated under s. 167(8) of the Sea Customs Act. The Division Bench further held that the alleged fraud on the part of the petitioners did not make any
G difference. According to the Division Bench "if the petitioners had misled the authorities by false representations or failed thereby to repatriate foreign exchange, by virtue of his obligation under s. 12(2), these are different offences for which separate and specific penalties can be imposed."

The relevant statutory provisions at the time of exportation
H were as follows :

> "The Foreign Exchange Regulation Act, 1947 s. 12(1) The Central Government may, by notification in

the Official Gazette, prohibit the taking or sending out by land, sea or air (hereinafter in this section referred to as export) of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified unless a declaration supported by such evidence as may be prescribed or so specified, is furnished by the exporter to the prescribed authority that the amount representing the full export value of the goods has been, or will within the prescribed period be, paid in the prescribed manner.

(2) Where any export of goods has been made to which a notification under sub-section (1) applies, no person entitled to sell, or procure the sale of the said goods shall, except with the permission of the Reserve Bank, do or refrain from doing any act with intent to secure that

(a) the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade, or

(b) payment for the goods is made otherwise than in the prescribed manner or does not represent the full amount payable by the foreign buyer in respect of the goods, subject to such deductions, if any, as may be allowed by the Reserve Bank, or is delayed to such extent as aforesaid :

Provided that no proceedings in respect of any contravention of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full amount as aforesaid has not been made in the prescribed manner.

(3) Where in relation to any such goods the said period has expired and the goods have not been sold and payment therefor has not been made as aforesaid, the Reserve Bank may give to any person entitled to sell the goods or to procure the sale thereof, such directions as appear to it to be expedient for the purpose of securing the sale of the goods and payment therefor as aforesaid, and without prejudice to the generality of the foregoing provision, may direct that the goods shall be assigned to the Central Government or to a person specified in the directions.

(4) Where any goods are assigned in accordance with sub-section (3) the Central Government shall pay to the person assigning them such sum in consideration of the net sum recovered by or on behalf of the Central

A Government in respect of the goods as may be determined by the Central Government.

(5) Where in relation to any such goods the value as stated in the invoice is less than the amount which in the opinion of the Reserve Bank represents the full export value of those goods, the Reserve Bank may issue B an order requiring the person holding the shipping documents to retain possession thereof until such time as the exporter of the goods has made arrangements for the Reserve Bank or a person authorised by the Reserve Bank to receive on behalf of the exporter payment in the prescribed manner of an amount which re- C presents in the opinion of the Reserve Bank the full export value of the goods.

(6) For the purpose of ensuring compliance with the provisions of this section and any order or directions made thereunder, the Reserve Bank may require any person making any export of goods to which a notifi- D cation under sub-section (1) applies to exhibit contracts with his foreign buyer or other evidence to show that the full amount payable by the said buyer in respect of the goods has been, or will within the prescribed period be, paid in the prescribed manner.

E S. 22. No person shall, when complying with any order or direction under section 19 or with any requirement under section 19B or when making any application or declaration to any authority or person for any purpose under this Act, give any information or make any statement which he knows or has reasonable cause to believe to be false, or not true, in any material par- F ticulars.

S. 23. (1) If any person contravenes the provisions of section 4, section 5, section 9 or sub-section (2) of section 12 or of any rule, direction or order made thereunder, he shall—

G (a) be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place, or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement in the manner hereinafter provided, or

H (b) upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(1A) Whoever contravenes—

(a) any of the provisions of this Act or of any rule, direction or order made thereunder, other than those referred to in sub-section (1) of this section and section 19, shall, upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both;

(b) any direction or order made under section 19 shall, upon conviction by a Court, be punishable with fine which may extend to two thousand rupees.

(1B) Any Court trying a contravention under sub-section (1) or sub-section (1A) and the authority adjudging any contravention under clause (a) of sub-section (1) may, if it thinks fit, and in addition to any sentence or penalty which it may impose for such contravention, direct that any currency, security, gold or silver, or goods or any other money or property, in respect of which the contravention has taken place, shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, or the person committing the contravention or any part thereof shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation.—For the purposes of this sub-section, property in respect of which contravention has taken place shall include deposits in the bank, where the said property is converted into such deposits

(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the first class, specially empowered in this behalf by the State Government, and for any Presidency Magistrate to pass a sentence of fine exceeding two thousand rupees on any person convicted of an offence punishable under this section.

(3) No Court shall take cognizance—

(a) of any offence punishable under sub-section (1) except upon complaint in writing made by the Director of Enforcement, or

(b) of any offence punishable under sub-section (1A) of this section or under section 54 of the Indian Income-tax Act, 1922, as applied by section 19 of this Act, except upon complaint in writing made by the Director of Enforcement or any officer authorised in

this behalf by the Central Government or the Reserve Bank by a general or special order :

Provided that where any such offence is the contravention of any of the provisions of this Act or any rule, direction or order made thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission.

(4) Nothing in the first proviso to section 188 of the Code of Criminal Procedure, 1898, shall apply to any offence punishable under this section.

S. 23A. Without prejudice to any provisions of section 23 or to any other provision contained in this Act, the restrictions imposed by sub-sections (1) and (2) of section 8, sub-section (1) of section 12 and clause (a) of sub-section (1) of section 13 shall be deemed to have been imposed under section 19 of the Sea Customs Act, 1879, and all the provisions of that Act shall have effect accordingly, except that section 183 thereof shall have effect as if for the word "shall" therein the word "may" were substituted."

"The Sea Customs Act, 1878

167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:

Offences	Sections of this Act to which offence has reference	Penalties
8. If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction; or If any attempt be made so to import or export any such goods; or If any such goods be found in any package produced to any officer of Customs as containing no such goods; or	18 & 19	Such goods shall be liable to confiscation; and Any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

Offences	Penalties
If any such goods, or any dutiable goods, be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in India; or	
If any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction.	

"Foreign Exchange Regulation Rules, 1952.

3. Form of declaration.—(1) A declaration under section 12 of the Act shall be in one of the forms set out in the First Schedule as the Reserve Bank may by notification in the Gazette of India specify as appropriate to the requirements of a case.

(2) Declarations shall be executed in sets of such number as indicated on the forms.

4. Authority to whom declaration to be furnished.

(1) The original of the declaration shall be furnished to the Collector of Customs: provided that when export is by post, the original of the declaration shall be furnished to the postal authorities.

(2) Copies of the declaration shall be submitted to the authorities and in the manner specified on forms.

(3) The documents pertaining to every export passed by the Customs shall within 21 days from the date of the export, be submitted to the authorised dealer mentioned on the relevant declaration form, unless the Reserve Bank, in its discretion, authorises otherwise.

5. Evidence in support of declaration. (1) The Reserve Bank, or subject to such directions, if any, as may be given by the Reserve Bank, the Collector of Customs or the postal authorities, may, to satisfy themselves of due compliance with section 12 of the Act,

require such evidence in support of the declaration as may satisfy them that the exporter is a person resident in India, or has a place of business in India.

(2) The Reserve Bank, or subject to such directions, if any, as may be given by the Reserve Bank, the Collector of Customs, or the Postal authorities may require any exporter to produce in support of the declaration such evidence as may be in his possession or power to satisfy them.

(i) . . .

(ii) that the invoice value stated in the declaration is the full value of the goods; and (iii) that the amount representing the full export value of the goods has been or will be paid to the exporter.

Explanation.—. . ."

The points which have emerged from the discussion at the Bar and which require determination may be formulated thus:

(1) What is the meaning of the expression "restrictions imposed by sub-section (1) of section 12" occurring in s. 23-A of the Exchange Act? Can other sections of the Exchange Act be looked at for determining the ambit of the restrictions imposed by s. 12(1)? Do restrictions imposed under the Rules made under the Exchange Act and relating to s. 12(1) come within the meaning of this expression?

(2) What is the true meaning of the words "a declaration supported by such evidence as may be prescribed or so specified is furnished by the exporter to the prescribed authority that the amount representing the full export value of goods has been or will within the prescribed period be paid in the prescribed manner"? Is it necessary that the declaration shall be made honestly or in good faith? Should it disclose the true export value? Is it a breach of the sub-section if a declaration is made honestly but happens to show incorrect export value to a small but not material extent? Does not a deliberately false declaration contravene the provisions of s. 12(1)?

(3) If an action is a contravention of s. 12(1) and other provisions of the Exchange Act, *e.g.*, ss. 22, 23, 12(2), 12(3) and 12(5), was it the intention that it should be treated as a contravention of s. 12(1)?

Before dealing with point (1) mentioned above, a few preliminary observations may be made. I have to construe an Act which was enacted in the interest of the national economy. A deliberate large-scale contravention of its provisions would affect

the interests of every man, woman and child in the country. Such an Act, I apprehend, should be construed so as to make it workable; it should, however, receive a fair construction, doing no violence to the language employed by the Legislature. It was said that if two constructions are possible the one that is in favour of the subject should be accepted. It is not necessary to pronounce on this proposition for I have come to the conclusion that there is one true construction of s. 12(1). But I should not be taken to be assenting to this proposition in so far as it is applicable to an enactment like the Exchange Act, for no subject has a right to sabotage the national economy.

Coming to the first point, I find that the following words of Lord Blackburn express my views as to how the construction of s. 23A should be approached. He was dealing with a case where a single section of an Act of Parliament has been introduced into another Act. He said in *The Mayor of Portsmouth* v. *Charles Smith*(1) :

> "When a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense which it bore in the original Act from which it is taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act. I do not mean that if there was in the original Act a section not incorporated, which came by the way of a proviso or exception on that which is incorporated, that should be referred to. But all others, including the interpretation clause, if there be one, may be referred to."

It seems to me that this is the correct way of looking at s. 23A of the Exchange Act for another reason. The restrictions imposed by s. 12(1) cannot be different for the purpose of the Exchange Act from that for the purposes of s. 167(8) of the Sea Customs Act, for the breach of s. 12(1) may also be punishable under the Exchange Act. In other words, the same contravention may attract penalties under the Sea Customs Act as well as the Exchange Act, and it would be incongruous to hold that the restrictions imposed by a section are different for different Acts.

Then am I entitled to take into account the restrictions imposed by the Rules made under s. 27 of the Exchange Act ? It seems to me that rules not referrable to s. 12(1) cannot be taken into account, but any restrictions imposed by rules referrable to s. 12(1) must be treated as restrictions imposed by s. 12(1). Section 12(1) itself contemplates rules being made on three points,

(1) 10 A.C. 364, 371.

A *i.e.* (1) the evidence which is to support the declaration, (2) the authority to which the declaration is to be furnished; and (3) manner of payment. It was said that the words "by section 12(1)" exclude the restrictions made under the Rules. But though in some contexts and scheme of an Act this proposition may be true, the general rule is as stated by Lord Alverstone, C.J., in B *Wellingdale* v. *Norris*(1) as follows :

> "If it be said that a regulation is not a provision of an Act, I am of opinion that *Rex* v. *Walker*(2) is an authority against that proposition. I should certainly have been prepared to hold apart from authority that, where a statute enables an authority to make regulations C a regulation made under the Act becomes for the purpose of obedience or disobedience a provision of the Act. The regulation is only the machinery by which Parliament has determined whether certain things shall be or shall not be done."

D These observations were approved by the House of Lords in *Wicks* v. *Director of Public Prosecution*(3) thus :

> "There is, of course, no doubt that, when a statute like the Emergency Powers (Defence) Act, 1939, enables an authority to make regulations, a regulation which is validly made under the Act, *i.e.*, which is *intra vires* E of the regulation-making authority, should be regarded as though it were itself an enactment. As the Court of Criminal Appeal has pointed out in its judgment, that was decided by the Divisional Court in *Willingdale* v. *Norris*(1), and it appears to me that that decision is perfectly correct. Consequently, the charge against the F appellant here was, in effect, that he had committed crimes defined or contained in the Act of Parliament."

The Court of Criminal Appeals had stated in R. *v.* Wicks(4), as follows :

> "The first observation which the court would make G is that they are in complete agreement with the decision of the Divisional Court in *Willingdale* v. *Norris*(1) that where a statute enables an authority to make regulations, a regulation made under the Act becomes for the purpose of obedience or disobedience a provision of the Act. The regulation is only the machinery by which H Parliament has determined whether certain things shall or shall not be done. It is, therefore, clear that the

(1) [1909] 1 K.B. 57, 64.
(2) [1875] L.R. 10 Q.B. 355.
(3) [1947] 1 All E.R. 205, 206.
(4) [1946] 2 All E.R. 529, 531.

> regulations must be read as though they were contained in the Act itself. They derive their efficacy solely from the Act and accordingly expire with the Act, but it may be that the legislature has provided that some restrictions or consequences shall remain effective notwithstanding the expiration of the Act."

In a recent case, *Rathbone* v. *Bundock*(1), the Divisional Court following these cases held that regulation 89 of the Motor Vehicles (Construction and Use) Regulations, 1955, was for the purpose of obedience or disobedience a provision of the Road Traffic Act, 1930.

In Dr. Indramani Pyarelal Gupta v. *W. R. Nathu and Others*(2) this Court was concerned, *inter alia*, with the interpretation of s. 3(1) of the Forward Contract (Regulation) Act, 1952, which used the words "such duties as may be assigned by or under this Act". Ayyangar, J., speaking for the majority, observed :

> "Learned Counsel is undoubtedly right in his submission that a power conferred by a bye-law is not one conferred "by the Act" for in the context the expression "conferred by the Act" would mean "conferred expressly or by necessary implication by the Act itself. . . . The words, "*under the Act*" would, *in that context*, signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, by laws made by a subordinate law-making authority which is empowered to do so by the parent Act. This distinction is thus between what is directly done by the enactment and what is done indirectly by rule-making authorities which are vested with powers in that behalf by the Act. (*vide Hubli Electricity Bombay Ltd* v. *Province of Bombay*(3), and *Narayanaswami Naidu* v. *Krishna Murthi*(4)".

The observations of Subba Rao, J., as he then was, at p. 775, relied upon by the appellants are these :

> "I would, therefore, construe the words "by or under this Act, or as may be prescribed" as follows : "by this Act" applies to powers assigned *proprio vigore* by the provisions of the Act; "under this Act" applies to an assignment made in exercise of an express power conferred under the provisions of the Act; and "may be prescribed" takes in an assignment made in exercise of

(1) [1962] 2 All E.R. 257.
(2) [1963] 1 S.C.R. 721, 737.
(3) 67 I.A. 57. 66.
(4) I.L.R. (1958) Mad. 513. 547.

A a power conferred under a rule. This construction gives a natural meaning to the plain words used in the section and avoids stretching the language of a statutory provision to save an illegal bye-law."

In my opinion that case does not assist me because the Court B was construing the words "by or under the Act", and Ayyangar, J., specifically discussed the meaning of "by the Act" *in the context.*

Regarding the case of *United States* v. *George R. Eaton,*(1) relied on appellants' behalf, I find that the Supreme Court of the United States explained and distinguished that case in *Singer* C v. *United States*(2) as follows :

"*United States* v. *Eaton*(1) turned on its special facts, as *United States* v. *Grimaud*(3) emphasizes. It has not been construed to state a fixed principle that a regulation can never be a "law" for purposes of criminal prosecutions. It may or may not be, depending on D the structure of the particular statute. The Eaton case involved a statute which levied a tax on cleomargarine and regulated in detail cleomargarine manufacturers. Section 5 of the statute provided for the keeping of such books and records as the Secretary of the Treasury might require. But it provided no penalty for non-com- E pliance. Other sections, however, laid down other requirements for manufacturers and prescribed penalties for violations. Section 20 gave the Secretary the power to make "all needful regulations" for enforcing the Act. A regulation was promulgated under s. 20 requiring wholesalers to keep a prescribed record. The F prosecution was for non-compliance with that regulation. Section 18 imposed criminal penalties for failure to do any of the things "required by law." The Court held that the violation of the regulation promulgated under s. 20 was not an offence. It reasoned that since Congress had prescribed penalties for certain acts but G not for the failure to keep books the omission could not be supplied by regulation. And Congress had not added criminal sanctions to the rules promulgated under s. 20 of that Act."

I would in this connection prefer to apply the English decisions referred to above, as s. 12(1) itself does not impose any H restrictions and contemplates certain things to be prescribed.

(1) 36 L. Ed 591.

(2) 89 L. Ed 285, 290.

(3) 220 US 506, 518, 519: 55 L. Ed 563, 568: 31 S. Ct. 480.

Coming now to the construction of s. 12(1), it seems to me that what it requires is a declaration of some actual figure which according to the declarant represents 'the full export value'. Otherwise there is no point in requiring support of such evidence as may be prescribed. Further it is clear that some actual figure has to be mentioned when the exporter declares that he has received the amount representing the full export value. I apprehend that the same applies in the case where the amount has not yet been received. The rules make this clear. Rule 5(2)(ii) which requires the invoice value stated in the declaration to be the full export value of goods, is referrable to s. 12(1) of the Exchange Act and may be taken to indicate that an actual figure has to be mentioned. It may be an estimate if the goods have not been sold before the export, but a figure must be indicated.

Coming to the crux of the problem, does s. 12(1) by itself require absolutely correct particulars? It is said that s. 12(1) does not require it for s. 22 requires the exporter only to make a declaration "which he knows or has reasonable cause to be false or not true in any material particulars." How could it be that if s. 12(1) itself requires absolutely correct particulars, s. 22 limits the requirement? It seems to me that there is force in this contention but only to a limited extent. Section 12(1) and the notification dated August 4, 1947, made under it, impose a conditional prohibition. The section confers a power on an exporter to lift the bar by a unilateral declaration. When such a power is conferred on an exporter by a statute, good faith on his part must at least be implied and be a condition pre-requisite. This construction is necessary in order to prevent abuse of the power given by the Act. (See Maxwell on Interpretation of Statutes, 11th Edition, p. 116). If the exporter makes a deliberately false declaration he contravenes s. 12(1) because he has not made the statutory declaration in good faith. It is not necessary to say that the declaration becomes anullity because the breach of good faith, a condition prerequisite, is itself a contravention of the conditional prohibition or restriction, within s. 167(8) of the Sea Customs Act read with s. 23A and s. 12(1) of the Exchange Act. Clerical mistakes and mistakes made *bona fide* even in respect of material particulars are not within the mischief of s. 12(1), but a deliberate falsehood and a deliberate evasion of the provisions of s. 12(1) come within s. 12(1). Otherwise the ambit of s. 12(1), read with s. 23A, would be narrowed to the point of extinction. An exporter and persons concerned in the export could with impunity give a deliberately false declaration but in apparent compliance with s. 12(1), and deprive this country of foreign exchange. I cannot give an interpretation which will make

A a mockery of the section. But it is said that other sections of the Exchange Act will take care of such an exporter. He can be prosecuted under s. 23(1A) read with s. 22. He can be sentenced to imprisonment which may extend to two years. He can also be fined to an unlimited extent. The Foreign Exchange lost can be retrieved by a court acting 1 under s. 23(B). This may be true B that the exporter is liable as stated above. But what about persons concerned in the illegal export? It is the persons concerned in the export which in most cases enables the exporter to successfully evade the provisions of the Exchange Act. These persons are taken care of only under the Customs Act. If they are covered by s. 167(8), there is no reason to exclude the exporter himself. It is not unusual to make persons liable both to penalties C under the Sea Customs Act and the Exchange Act. It is indeed conceded that if no declaration is given under s. 12(1) and the goods are exported, the exporter and the persons concerned in the export would be liable to be proceeded both under s. 167(8) of the Sea Customs Act and the Exchange Control Act. I can draw no distinction between such an exporter and an exporter D who gives a deliberately false declaration for the purpose of the applicability of s. 167(8) of the Sea Customs Act.

I am not impressed by the argument that the Foreign Exchange Act deals with the basic policy regarding foreign exchange and it was not the intention to punish offenders who violate foreign E exchange restrictions under the Sea Customs Act. It is s. 23A of the Exchange Act which itself deems the restrictions imposed under s. 12(1) to have been imposed under s. 19 of the Sea Customs Act. Not only that. The opening sentence of s. 23A makes it clear that this is without prejudice to s. 23 and to any other provisions in the Exchange Act. In other words, the provisions F of s. 23 and other relevant sections are not affected or limited. They will have their full operation.

The fact that the exporter may be proceeded under s. 12(2) (I may assume that this is so for the purpose of this case) for non-payment of the full amount payable by the foreign buyer, or G that the Reserve Bank can in the eventualities mentioned in s. 12(5) require the holding up of shipping documents or that the Reserve Bank by exercising powers under s. 12(6) secure contracts and other evidence to discover the full amount payable do not throw any light on the construction of s. 23A and s. 12(1) except that the Legislature is anxious that the "full export value" shall be received in this country. Section 23A read with s. 12(1) H calls in the aid of Customs authorities to achieve the same object, but ropes in alongwith the exporter the persons concerned in the prohibited export.

I am not able to appreciate how the existence of s. 167(37), s. 167(72) and s. 167(81) is of any assistance for the purpose of interpreting s. 23A and s. 12(1) of the Exchange Act. It may be—I do not decide it—that an exporter, like the respondents, will also be liable to be proceeded against under these items of s. 167.

Taking the facts as alleged by the Customs authorities to be true, as they must be taken to be true for the purpose of this application under Art. 226, it seems to me that no case for the issue of a writ of prohibition has been made out. In the result the judgment of the Appeal Court is reversed and that of the learned Single Judge restored. The appellants will have costs incurred in this Court. One hearing fee.

Hegde, J. We had the advantage of studying the judgment just now delivered by our brother Sikri, J. but we regret that we are unable to agree with the conclusions reached by him. After carefully analysing the arguments advanced before us we have come to the conclusion that no grounds were made out to interfere with the order of the Appellate Bench of the Madras High Court. We shall now proceed to give our reasons in support of our conclusion.

The respondents in these appeals are exporters of manganese ore. It is said that they had exported large quantities of manganese ore after ostensibly complying with the formalities of law but in reality they had under-invoiced the various consignments sent by them and further that they had failed to repatriate foreign exchange of the value of about three crores of rupees obtained by them as the price of the manganese ore exported. It is said that by so doing they had contravened s. 12(1) of the Foreign Exchange Regulation Act, 1947 (to be hereinafter referred to as the Act) read with s. 23(A) of that Act and ss. 19 and 167(8) of the Sea Customs Act. The case for the appellants is that during the search of the houses of some of the respondents on suspicion that they had hoarded gold, certain documents from the house of some of the respondents were seized and those documents disclosed the facts set out above. On the basis of the said information the Deputy Collector of Customs, Visakhapatnam issued several notices to the respondents requiring them to show cause why no action should not be taken against them under the aforementioned provisions. On receipt of those notices the respondents moved the High Court of Madras under Art. 226 of the Constitution praying that that court may be pleased to quash the show cause notices in question and prohibit the appellants from taking any further action on the basis of those notices. Those petitions were dismissed by Kailasam, J. on September 1, 1966

A but his orders were reversed by the Appellate Bench of that Court by its Judgment dated September 12, 1967. The Appellate Bench granted the reliefs prayed for by the respondents. It is as against that decision these appeals have been brought after obtaining the necessary certificates from the High Court.

B The only question that arises for decision in these appeals is whether on the facts set out in the show cause notices, which facts have to be assumed to be correct for the purpose of these proceedings, the respondents can be held to have contravened s. 12(1) which reads :

> C "The Central Government may, by notification in the Official Gazette, prohibit the taking or sending out by land, sea or air (hereinafter in this section referred to as export) of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified unless a declaration supported by such evidence as may be prescribed or specified, is furnished by the exporter to the prescribed authority that the D amount representing the full export value of the goods has been, or will within the prescribed period be, paid in the prescribed manner."

On August 4, 1947, the Central Government issued a notification prohibiting the export of all goods to any place outside E India unless a declaration supported by such evidence as may be prescribed is furnished by the exporter to the prescribed authority that the amount representing the full export value of the goods has been or will within the prescribed period be, paid in the prescribed manner. Rule 3 of the Foreign Exchange Regulation Rules 1952 framed under s. 27 of the Act provides that a declaration under s. 12 of the Act shall be in one of the forms F set out in the First Schedule as the Reserve Bank may by notification in the Official Gazette specify as appropriate to the requirements of a case. The form that is relevant for our present purpose is G.R.1. Rule 5 empowers the Reserve Bank, the Collector of Customs or the postal authorities, to require the exporter to furnish such evidence in support of the declaration as may G satisfy them that the exporter is a person resident in India or has a place of business in India. These authorities may also require the exporter to produce in support of the declaration such evidence as may be in his possession or power to satisfy them (1) that the destination stated on the declaration is the final place of destination of the goods exported; (ii) that the invoice value H stated in the declaration is the full export value of the goods, and (iii) that the amount representing the full export value of the goods has been or will be paid to the exporter. Form G.R. 1 stipulates that the exporter should furnish the information called for therein.

Therein the exporter is also required to make the following declaration.

> "I hereby declare that I am the seller/consignor of the goods in respect of which this declaration is made and that the particulars given above are true and (a) that the invoice value declared is the full export value of the goods and is the same as that contracted with the buyer; (b) that this is a fair valuation of the goods which are unsold.
>
> I/My principals undertake that I/they will deliver to the bank mentioned below the foreign exchange/rupee proceeds resulting from the export of these goods or before....."

It is not denied that the respondents before exporting the goods in question had furnished declaration in the prescribed forms. Therein they had declared that the full export value of the goods has been or will within the prescribed period be paid in the prescribed manner. It is also not denied that they had furnished to the appropriate authorities the prescribed evidence. The case against them as mentioned earlier, is that they had under-invoiced the goods and failed to repatriate a portion of the foreign exchange earned by them. It is also alleged that they gave incorrect information in their declarations. If these allegations are correct which we have to assume to be correct for the purpose of this case, then it is obvious that the declarations given by the respondents do not comply with the requirements of rule 5.

Section 22 of the Act provides that no person when making an application or declaration to any authority or person for any purpose under the Act shall give any information or make any statement which he knows or has reasonable cause to believe to be false or not true, in any material particular. Section 23 prescribes that if any person contravenes the provisions of s. 12 or of any rule, direction or order made thereunder he shall (a) be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place, or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement in the manner provided in the Act or (b) upon conviction by a court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. In view of these provisions it was not disputed before us that if the information given by the respondents in the aforementioned declarations was false to the knowledge of those who made those declarations or if they had reasonable cause to believe that it was false or not true in any

material particular then they are liable to be dealt with under s. 23.

Sub-section (2) of s. 12 provides that:

> "where any export of goods has been made to which a notification under sub-s. (1) applies, no person entitled to sell, or procure the sale of the said goods shall, except with the permission of the Reserve Bank, do or refrain from doing anything or take or refrain from taking any action which has the effect of securing that:
>
> .....
>
> (b) payment for the goods is made otherwise than in the prescribed manner or does not represent the full amount payable by the foreign buyer in respect of the goods, subject to such deductions, if any, as may be allowed by the Reserve Bank, or is delayed to such extent as aforesaid....."

The contravention of the above provisions is punishable under s. 23. Hence the respondents' failure to repatriate any part of the foreign exchange earned by them by the sale of the manganese ore exported can be penalised by imposing on them a penalty not exceeding three times the value of the foreign exchange in respect of which the contravention had taken place or Rs. 5,000/- whichever is more as may be adjudged by the Director of Enforcement in the manner provided in the Act. Hence it is open to the Director of Enforcement to levy on such of the respondents as have contravened s. 12(2) panelty not exceeding three times the value of the foreign exchange not repatriated which in the present case can be about nine crores of rupees. They may also be punished under s. 23(1)(b). This position is conceded by the Counsel appearing for the appellants. But it is urged on behalf of the appellants that for the offences committed by the respondents they are not only liable to be punished under s. 23 but also under s. 23(A). The Appellate Bench of the Madras High Court negatived that contention. Section 23(A) as it stood at the relevant time provided that:

> "without prejudice to the provisions of s. 23 or any other provision contained in this Act, the restrictions imposed by ..... sub-s. (1) of s. 12 ..... shall be deemed to have been imposed under s. 19 of the Sea Customs Act 1878 and all provisions of that Act shall have effect accordingly, except that s. 183 thereof shall have effect as if for the word 'shall' therein the word 'may' were substituted."

If the allegations mentioned in the show cause notices come within the scope of s. 23(A) then it necessarily follows that they will

be governed by the provisions of s. 19 and s. 167(8) of the Sea Customs Act, 1878. Section 19 of the Sea Customs Act provides:

> "that 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 frontiers as defined by the Central Government."

This section is similar to s. 12(1) of the Act. Section 167(8) provides for punishments for offences under that Act. That section to the extent material for our present purpose reads:

> "The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively —

Offences	Sections of this Act to which offence has reference	Penalties
8. If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction; or if any attempt be made so to import or export any such goods; or if any such goods be found in any package produced to any officer of Customs as containing no such goods; or if any such goods, or any dutiable goods, be found either before or after land or shipment to have been concealed in any manner on board of any vessel within the limits of any port in India; or if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction.	18 and 19	Such goods shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

If an offence falls under s. 23A the fact that the said offence is also punishable under s. 23 is immaterial. The provisions of

A s. 23(A) are without prejudice to the provisions of s. 23. The mere fact that the offences alleged against the respondents are punishable under s. 23 would not exclude the application of s. 23(A). Therefore all that we have to see is whether those offences fall within the ambit of s. 23(A). If they do then the impugned show cause notices must be held to be valid. If they B do not, then no proceedings can be taken on the basis of those notices.

Before a case can be held to fall within the scope of s. 23(A) it must be shown that there has been a contravention of the restrictions imposed by s. 12(1). Therefore we have to find out what those restrictions are? The only restriction placed by s. 12(1) C read with the Central Government Notification dated August 4, 1947, is that no one should export any goods from this country without furnish the declaration mentioned in s. 12(1). Admittedly the stipulated declarations in the prescribed forms have been furnished. The evidence specified have also been given. Therefore *prima facie* there was no contravention of s. 12(1). D What is said against the respondents is that the invoice price mentioned by them in the declarations did not represent the full export value; hence the declarations given by them are invalid declarations which means that the concerned goods were exported without furnishing the declarations required by s. 12(1). It is not possible to accept this argument. The declarations given to E satisfy the requirements of s. 12(1) though they do not correctly furnish all the informations asked for in the form. Such declarations cannot be considered as *non-est*. The informations called for in the prescribed form cannot be considered as restrictions imposed by s. 12(1). They are merely informations called for the proper exercise of the powers under the Act. Many of them do not relate to the restrictions imposed by s. 12(1). Neither s. F 12(1) nor any other provision in the Act empower the rule making authority to add to the restrictions imposed by s. 12(1). For finding out the restrictions imposed by s. 12(1) we have only to look to that section. The requirement of that section is satisfied if the stipulated declaration supported by the evidence prescribed or specified is furnished. The contravention complained of in G this case is really the contravention of s. 12(2) and Rule 5. The former is punishable under s. 23 and the latter under s. 23 read with s. 22.

The declaration required by s. 12(1) is only to the effect that the amount representing the full export value of the goods has H been or will within the prescribed period be, paid in the prescribed manner. This is as it should be because this section governs both the goods sold to the foreign buyers as well as to those sent on consignment basis. So far as the goods sold to

the foreign buy are concerned it is generally possible for the exporter to know the exact export value but that would not be the position when the goods are sent on consignment basis. In the case of goods sent on consignment basis, the exporter can give only an estimated value. The main purpose of s. 12(1) is to get a declaration from the exporter that he has either brought or will bring back the amount representing the full export value of the goods exported. There are other provisions in the Act to deal with other situations. We shall presently refer to them.

If we are to hold that every declaration which does not state accurately the full export value of the goods exported is a contravention of the restrictions imposed by s. 12(1) then all exports on consignment basis must be held to contravene the restrictions imposed by s. 12(1). Admittedly s. 12(1) governs every type of export. Again it is hard to believe that the legislature intended that any minor mistake in giving the full export value should be penalised in the maner provided in s. 23(A). The wording of s. 12(1) does not support such a conclusion. Such a conclusion does not accord with the purpose of s. 12(1).

It is true that the regulations contained in the Act are enacted in the economic and financial interest of this country. The contravention of those regulations which we were told are widespread are affecting vital economic interest of this country. Therefore the rigour and sanctity of those regulations should be maintained but at the same time it should not be forgotten that s. 12(1) is a penal section. The true rule of construction of a section like s. 12(1) is, if we may say so with respect, as mentioned by Plowman J. in *Re H. P. C. Productions Ltd.*(1) Therein the learned Judge observed :

> "I approach the question of the construction of the Exchange Control Act in the light of the principles stated by Upjohn J. in *London and Country Commercial Properties Investment* v. *Attorney-General*(2) to which Mr. Bagnall referred. In that case the court was concerned with the construction of the Borrowing (Control and Guarantees) Act, 1946 and the Control of Borrowing Order 1947. Upjohn J. said : "The first question I have to consider is what are the principles of construction which I must adopt in construing this Act and this order .... I have to bear in mind that this is a penal statute. It indeed, I suppose, represents the high water mark of the Parliamentary invasion of the traditional rights of the subjects of this realm." Then he went on

(1) [1962] Ch. Dn. 466 at 473. (2) [1953] 1, All E.R. 436.

A to explain why that was so and continued: "In those circumstances what are the canons of construction to be adopted? I do not propose to refer to the authorities at length. I think that the proper approach to the construction of such a statute as this is that I must construe it as I would any other instrument, that is to say, B I must look at all the surrounding circumstances, I must look at the mischief intended to be remedied, I must above all give effect to the words that have been used in the section. That is plain from the decision in *Dyke* v. *Elliot*(1) see, in particular, the judgment of James L.J. but if on construing the relevant sections of the Act and the order there appears any reasonable doubt or C ambiguity, then being a penal statute I must apply the principles laid down succinctly by Lord Esher in *Tuck and sons* v. *Prester.*(2)

In *London and North Eastern Rly. Co.* v. *Berriman,*(3) Lord Macmillan observed:

D "Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language."

This Court in *Tolaram Relumal and anr.* v. *State of Bombay*(4) E speaking through Mahajan C.J. observed:

"It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature."

Hereinbefore we have examined the language of s. 12(1) and its purpose. We have also referred to the provisions which provide F for the punishment of the contraventions complained of in these cases. Those provisions are adequate to meet the situation. In our opinion the language of s. 12(1) does not permit the acceptance of the interpretation placed on it by the appellants nor are we able to come to the conclusion that the legislature intended that the offences complained of in these proceedings should be G made punishable under s. 23(A). If the interpretation sought to be placed by the appellants on s. 12(1) is accepted it may result in unnecessary hardship in numerous cases.

There are two facets in every export, one relating to the goods exported and the other relating to the foreign exchange earned as a result of the export. Broadly speaking the former aspect is H dealt with by the Customs authorities and the latter either by the

(1) [1872] LR. 4 P.C. 184, 191.
(2) [1887] 19 Q.B.D. 629.
(3) [1946] A.C. 286 at 295.
(4) [1955] 1 S.C.R. 158 at p. 164.

Reserve Bank or by the Director of Enforcement. The price of the goods exported has to be mentioned in the invoice. But the Reserve Bank has power to examine whether the price mentioned in the invoice is correct. Section 12(5) provides that where in relation to any goods exported the value as stated in the invoice is less than the amount which in the opinion of the Reserve Bank represents the full export value of those goods, the Reserve Bank may issue an order requiring the person holding the shipping documents to retain possession thereof until such time as the exporter of the goods has made arrangements for the Reserve Bank or a person authorised by the Reserve Bank to receive on behalf of the exporter payment in the prescribed manner of an amount which represents in the opinion of the Reserve Bank the full export value of the goods. Sub-Section (6) of s. 12 says that for the purpose of ensuring compliance with the provisions of that section and any orders or directions made thereunder, the Reserve Bank may require any person making any export of goods to which a notification under sub-s. (1) applies to exhibit contracts with his foreign buyer or other evidence to show that the full amount payable by the said buyer in respect of the goods has been or will within the prescribed period be paid in the prescribed manner. These povisions go to indicate that so far as the value of the goods exported is concerned the matter is left primarily in the hands of the Reserve Bank, and the Customs authorities are not burdened with that work. This aspect becomes relevant in ascertaining the true scope of s. 12(1). If we bear in mind the scheme of the Act, it is clear that so far as the Customs authorities are concerned all that they have to see is that no goods are exported without furnishing the declaration prescribed under s. 12(1). Once that stage is passed the rest of the matter is left in the hands of the Reserve Bank and the Director of Enforcement.

A B C D E F

In view of our above conclusion it is unnecessary for us to examine the other contention advanced on behalf of the parties. In the result these appeals fail and they are dismissed with costs. One hearing fee.

ORDER G

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

Y.P.