ASSTT. COLLECTOR OF CUSTOMS

v.

CHARAN DAS MALHOTRA

February 19, 1971

[J. M. SHELAT AND C. A. VAIDIALINGAM, JJ.]

Customs Act (52 *of* 1962), *s.* 110 (1) *and* (2) *and proviso—Power of extension of period, quasi judicial—'Sufficient cause being shown'—Scope of.*

Under s. 110(1) of the Customs Act, 1962 if a proper officer has 'reason to believe' that any goods are liable to confiscation under the Act, he may seize such goods. Section 124 provides that no order confiscating any goods shall be made unless the owner of the goods is given notice in writing informing him of the grounds on which it is proposed to confiscate the goods. Under s. 110(2) where any goods are seized under sub-s. (1) and no notice in respect thereof is given under s. 124 within six months of the seizure, the goods shall be returned to the person from whose possession they were seized; provided, the period of six months may 'on sufficient cause being shown' be extended by the Collector of Customs for a period not exceeding six months.

On March 19, 1963 goods were seized from the respondent and, on September 19, 1963 an extension for a period of four months was applied for by the customs authorities and was granted by the Collector on the ground that certain inquiries yet remained to be made by them. On February 20, 1964, that is, one month after the extended period had expired, the Collector passed an order granting further extension for two months. Both the extension orders were passed without giving any opportunity to the respondent. The respondent challenged the second extension and the High Court held that the orders of extension were bad as the Collector had to decide the application for extension judicially. In appeal to this Court,

HELD : The power of extension under the proviso was quasi-judicial, or at any rate, one requiring a judicial approach, and therefore, an opportunity of being heard ought to have been given to the respondent before ordering extension. [811 B-C]

(a) The policy of the Legislature is, that in view of the extraordinary power of seizure the inquiry should ordinarily be completed within six months, but in exceptional cases, the legislature entrusted to a superior officer the power of extension *on sufficient cause being shown.* The Collector is not expected to pass extension orders mechanically or as a matter of routine but only on being satisfied that there exist facts which indicate that investigation could not be completed for *bona fide* reasons within the time of 6 months laid down in s. 110(2). [808 C-E, F-G]

(b) Whereas s. 110(1) uses the expression *reason to believe* for enabling a customs officer to seize the goods, the proviso to sub-s. (2) uses the expression *sufficient cause being shown.* Sub-Section (1) does not contemplate an inquiry at the stage of seizure, the only requirement being the satisfaction of the concerned officer that there are relevant reasons to believe that the goods are liable to confiscation by reason of illegal im-

A portation. The words *sufficient cause being shown* mean that the Collector must determine on materials placed before him that they warrant extension of time. Further, the civil right to have the seized goods restored which accrues on the expiry of the initial six months is defeated on extension being granted. Therefore, when the statute requires the determination of a sufficient cause on facts produced before the Collector it should be held to be a quasi judicial function or at least a function requiring B judicial approach; and there is no distinction between extension orders passed before and those passed after the expiry of the initial or the extended period. [808 H; 809 A, C-D; 811 C-D]

(c) When an order is made in *bona fide* exercise of power and within the provisions of the Act which confer such power, the order is immune from interference by a court of law and therefore, the adequacy of the cause shown may not be a ground for interference, but the Collector has C to hold an inquiry on facts, that is, on material placed before him, and consider the *pros* and *cons* of the question. [809 D-E; 811 E]

(d) By holding such inquiry there is no danger of disclosure of facts which would be detrimental to the investigation. The only disclosure would be about the fact that investigation at some place or places and about certain matters was still incomplete and pending. As between the right of the person from whom the goods were seized and the supposed D danger to the investigation, the matter is not so weighted that it should be held that the Legislature could not possibly have contemplated a judicial approach by the Collector when he orders of extension of time. [813 G-H; 814 B-D]

Kraipak v. *Union of India*, [1970] 1 S.C.R. 457, followed.

Lakhanpal's case, A.I.R. 1967 S.C. 1507 and *De Verteuil* v. *Knaggs*, E [1918] A.C. 557, referred to

Sheikh Mohammed Sayeed v. *Asstt. Collector of Customs*, A.I.R. 1970 Cal. 134, *Ganeshmul Channilal Gandhi* v. *Collector of Central Excise*, A.I.R. 1968 Mys. 89 and *M/s. Prakash Cotton Mills Pvt. Ltd.* v. *Asstt. Collector of Central Excise, Bombay*, M.P. No. 127/1963 dt. 31-8-1970, overruled.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1056 of 1967.

Appeal from the judgment and decree dated May 12, 1967 of the Calcutta High Court in Appeal from Original Order No. 218 of 1966.

G *R. H. Dhebar* and *S. P. Nayar*, for the appellants.

S. T. Desai and *P. C. Bhartari*, for the respondent.

The Judgment of the Court was delivered by

Shelat, J. This appeal, under a certificate, raises two H questions. The first is as to the nature of the power of the Collector of Customs under the proviso to the second sub-section of s. 110 of the Customs Act, 52 of 1962, and the second is as to whether the Collector under that proviso can extend the period

for giving notice under s. 124(a) of the Act either after the initial period of six months or the extended period has already expired. A

In 1963, the respondent carried on business as a dealer in watches in the name and style of Wallton Watch Company in Calcutta. In 1955, he also used to have another business premises where he carried on the same business in the name of Walcon Watch Company. That business was wound up in that year and he had the stock-in-trade of that business transferred to his business carried on in the name of Wallton Watch Company. B

On March 19, 1963, the Rummaging staff under the appellant raided the respondent's business premises and seized 218 watches, all of foreign make, 87 of these watches, however, were released on the respondent then and there producing vouchers relating to them. Later on, 21 more watches were released on September 18, 1963 and February 27, 1964 on more vouchers having been produced. The case of the Customs authorities, however, was that he was not able to produce documentary evidence in respect of the rest of the watches, and therefore, their release was not possible. C D

On March 6, 1964, the appellant served on the respondent a notice under s. 124(a) to show cause why the rest of the said watches should not be confiscated and personal penalty should not be imposed upon him. Watches imported without licence or on which proper import duty has not been paid are undoubtedly liable to confiscation under s. 111(d). E

Sec. 110, which finds its place in Ch. XIII dealing with searches, seizure and arrest, provides for seizure, *inter alia,* of goods. Under sub-s. (1), if a proper officer has "reason to believe" that any goods are liable to confiscation under the Act, he may seize such goods. Sub-s. (2) reads as follows : F

> "(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :
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> Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months." G

Sec. 124 provides that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. The section does not lay down H

A any period within which the notice required by it has to be given. The period laid down in s. 110(2) affects only the seizure of the goods and not the validity of the notice.

Since the watches in question were seized on March 19, 1963, the initial period of six months provided under the second sub-
B section of s. 110 expired on September 19, 1963 and the respondent became entitled to the return of the said watches as no show cause notice had till then been issued to him. But the appellant's case was that an extension for a further period of four months was applied for and was granted by the Collector on September 19, 1963 under his power under the said proviso on the ground that
C certain inquiries at Bombay and Delhi yet remained to be made. The extended period of four months expired on January 19, 1964 and a further extension of two months was applied for on January 3, 1964. But the Collector passed his order granting further extension on February 20, 1964, that is to say, about a month after the first extended period had expired.

D Admittedly, both the extension orders were passed *ex parte* and without any opportunity of being heard having been given to the respondent. The respondent, therefore, got no chance to resist either of the two applications for extension and to show that no sufficient cause had been shown, and that therefore, no order of extension was justified or should be granted, and the
E watches should, as provided by s. 110(2), be restored to him. He also got no opportunity to plead before the Collector that the right to have the watches restored to him having already accrued to him on January 19, 1964, it could not be defeated by an order of extension passed after the first extended period had already lapsed.

F Aggrieved by the two orders of extension passed in the manner aforesaid, the respondent moved the High Court of Calcutta under Art. 226 of the Constitution, contending that the proviso to s. 110(2) envisaged only one extension, and that therefore, the second extension was invalid. The learned Single Judge, who heard the writ petition, rejected this contention holding that the
G proviso empowered the Collector to grant as many extensions as the completion of the inquiry and the issuance of the notice under s. 124(a) required but in no case exceeding six months at a time. The second contention urged by the respondent was that the period of the first extension having expired on January 19, 1964 and no further extension having been granted by that date, he
H became entitled to restoration of the said watches and the second order extending the period by two months more granted a month after the expiry of the first extended period would be of no avail to the Customs authorities. This contention too was rejected on

the ground that where there is a prescribed time for doing a thing but an express power is given to an authority to extend that time, such power can be exercised even after the prescribed time has expired unless there is an express provision prohibiting to do so. There was no such provision. The learned Single Judge also held that there was no need to give to the respondent any notice of the applications for extension, the only requirement being that a sufficient cause had to be shown to the satisfaction of the Collector. The learned Judge also rejected a third contention by the respondent that in the absence of any information with the Customs officers as regards the watches save that they were of foreign manufacture, they could not have entertained any reasonable belief that their importation was contrary to or in violation of any statutory provision. This contention was rejected on the strength of the supplemental affidavits of the Customs officers ordered by the learned Judge. The result was that the learned Judge dismissed the writ petition negativing, *inter alia*, the respondent's plea as to the restoration of the seized watches.

On an appeal by the respondent, a Division Bench of that High Court took a contrary view. It held that the watches having been seized on March 19, 1963, the period of six months expired on September 18, 1963, that if a notice under s. 124(a) was not given by that time, s. 110(2) imposed a statutory obligation on the customs to return the goods to the person from whom they were seized. The Division Bench observed that even assuming that the first extension which was granted *ex parte* and without any opportunity to the respondent of being heard were to be valid, the period of four months granted then having expired on January 19, 1964 and no order for further extension having admittedly been made, it was obligatory on the Customs to return the watches to the respondent. There being such a statutory obligation under s. 110(2), there was a corresponding statutory right in the respondent to have them restored to him. The Division Bench was of the view that such a right having accrued to the respondent, it could not be defeated by an order passed one month after the lapse of the first extended period. It also held that the words "sufficient cause being shown" used in the proviso meant that the Collector had to decide an application for extension judicially, the reason being that the Collector could not fairly and justly determine that a sufficient cause was shown without hearing the *pros* and *cons* of the question, and therefore, he had no jurisdiction to grant extension without giving to the respondent an opportunity of being heard. In this connection the Division Bench observed :

> "As long as the period of issuing notice has not expired, it might be one thing. But quite a different

A set of circumstances arise when the period has expired and the right to the return of the goods is vested in the person from whose possession the goods are seized. If you are to take away the right you can only do that for a sufficient cause. How can the officer concerned decide as to whether a sufficient cause has been shown, B so as, to divest a vested right, unless he hears the parties affected. Even after the supplementary affidavits were filed in this case, it is extremely doubtful whether a sufficient cause has been shown."

According to the Division Bench, even if the Collector's function C under the proviso were to be treated as an administrative function, his authority being to determine the question affecting the rights of the citizen, there was an implied duty to act judicially. On this reasoning, the Division Bench held that in any event the second order of extension was bad. It also found that the show cause notice issued under s. 124(a) was vague, gave no opportunity to the respondent to explain the allegations contained there- D in, and therefore, was bad, with the result that the appellant would be required to give a fresh notice. For the reasons above stated, the Division Bench reversed the judgment of the Single Judge and allowed the writ petition. The correctness of this judgment is the subject matter of this appeal.

E We may at this stage mention that counsel for appellant formulated the following two contentions only :

(1) that the liability to return the goods seized under s. 110(1) on the expiry of the time prescribed under sub-s. (2) is not absolute as it is subject to the period being extended for a period not exceeding six F months, that is to say, within the over all period of one year; that therefore, there is no question of any right being vested in the respondent on the expiry of the first six months or the extended period or such right being divested until one year from the date of seizure has expired: and

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(2) that, the proviso to s. 110(2) does not contemplate any notice to the respondent as the considerations which would weigh with the Collector or which would be relevant for granting extension would be of such a nature that they could not be disclosed. such disclosure being against public interest; that only two H requirements are envisaged for the extension of time and they are (i) that a sufficient cause is shown, and (ii) that the extension is within one year.

As already stated, sub-s. (1) of s. 110 authorises seizure, the only requirement being a reasonable belief on the part of the concerned officer at the time of seizure. The power of seizure founded on a mere reasonable belief being obviously an extraordinary power, the second sub-section envisages completion of the enquiry within a period of six months from the date of seizure. But it provides that if such an enquiry is not completed within that period and a notice under s. 124(a) is, therefore, not given, the person from whom the goods are seized becomes entitled to their restoration. However, on the supposition that in some cases such an investigation may not be completed owing to some difficulties, the legislature gave under the proviso power to the Collector, an officer superior in rank and also an appellate authority under s. 128, to extend the time on two conditions, namely, (1) it does not exceed one year, and (2) on sufficient cause being shown. The policy of the legislature, therefore, clearly was that in view of the extraordinary power of seizure, the enquiry should ordinarily be completed within six months but since it might not be possible to do so in some cases, it gave power of extension to the Collector. The legislature was thus careful to entrust the power of extension to a superior officer who also has the power to hear inquiries under the Act involving penal consequences and also appeals. Cases where extension would have to be asked for and granted are thus envisaged as exceptions to the general rule of six months laid down in sub-s. (2). The second limitation to the power is that such extension can be granted only on sufficient cause being shown, a phrase often used in provisions for condonation of delay, such as s. 5 of the Limitation Act, 1908.

There can be no doubt that the proviso to the second sub-section of s. 110 contemplates some sort of inquiry. The Collector, obviously, is expected not to pass extension orders mechanically or as a matter of routine, but only on being satisfied that there exist facts which indicate that the investigation could not be completed for *bona fide* reasons within the time laid down in s. 110(2), and that therefore, extension of that period has become necessary. He cannot, therefore, extend the time unless he is satisfied on facts placed before him that there is a sufficient cause necessitating extension. The burden of proof in such an inquiry is clearly on the Customs officer applying for extension and not on the person from whom the goods are seized.

The question, therefore, is as to the nature of such a function and power entrusted to and conferred on the Collector by the proviso. It will be noticed that whereas sub-s. (1) of s. 110 uses the expression "reason to believe" for enabling a Customs Officer to seize goods, the proviso to sub-section (2) uses the expres-

A sion 'sufficient cause being shown" It would seem that sub-s. (1) does not contemplate an inquiry at the stage of seizure, the only requirement being the satisfaction of the concerned officer that there are reasons to believe that the goods are liable to confiscation by reason of their illegal importation. Even so, such satisfaction, as laid down in *Narayanappa* v. *Commis-*
B *sioner of Income Tax, Bangalore*(1), is not absolutely subjective inasmuch as the reasons for his belief have to be relevant and not extraneous. It is clear that the legislature was not prepared to use the same language while giving power to the Collector to extend time and deliberately used the expression "sufficient cause being shown". The point is why should the legislature have used such a different expression while enacting the proviso if its
C intention was to confer power which would depend on a more subjective satisfaction as to the cause for extension. The words "sufficient cause being shown" must mean that the Collector must determine on materials placed before him that they warrant extension of time. Where an order is made in *bona fide* exercise of power and within the provisions of the Act which confers such
D power, the order undoubtedly is immune from interference by a court of law, and therefore, the adequacy of the cause shown may not be a ground for such interference. But there can be no doubt at the same time that the inquiry to be held by the Collector has to be on facts, *i.e.*, materials placed before him. There is therefore no question in such cases of the subjective satisfaction of the
E Collector, for, what he is asked to do by the proviso is to determine that the cause shown before him warrants an extension of time.

In *Lakhampal's* case(2), this Court noticed a similar difference of language used in rr. 30(1)(b) and 30-A(9) of the
F Defence of India Rules, 1962 which dealt with two different types of powers. Though it was a case dealing with preventive detention, what is important is that the decision primarily depended on the difference in language used in the two rules and the difference it made in the character of the two powers. A similar expression, though not exactly the same, also came to be construed by
G the House of Lords in *De Verteuil* v. *Knaggs & Anr.*(3), a case often referred to while determining the nature of power. The question which arose there was whether under s. 203 of the Trinidad Immigration Ordinance, No. 161, the government could pass an order transferring indentured labour from one employer to another without notice to the concerned employer against whom complaints as to treatment of the labourers were made. The
H section provided that if at any time "it appears to the governor on

(1) 63 I.T.R. 219. (2) A.I.R. 1967 S.C. 1507.

(3) [1918[A.C. 557.

sufficient ground shown to his satisfaction, that all or any of the immigrants indentured on any plantation should be removed therefrom, it shall be lawful for him to transfer the indentures of such immigrants to any other employer." Construing this provision, Lord Parmoor observed at p. 560 of the report :

> "The Ordinance does not prescribe any special form of procedure, but there is an obvious implication that some form of inquiry must be made, such as will enable the Governor fairly to determine whether a sufficient ground has been shown to his satisfaction for the removal of indentured immigrants. . . What is the procedure which in such a case the law will imply when the Legislature is silent ? The acting Governor was not called upon to give a decision on an appeal between parties, and it is not suggested that he holds the position of a judge or that the appellant is entitled to insist on the forms used in ordinary judicial procedure. . . . . On the other hand, the acting Governor could not properly carry through the duty entrusted to him without making some inquiry whether sufficient grounds had been shown to his satisfaction that immigrants indentured on the La Glaria estate of the appellant should be removed. Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice."

In *Kraipak* v. *Union of India*(1) the power of a selection board to prepare a selection list from amongst the public servants for appointment in the senior and junior scales was held to be *quasi*-judicial although the board had no power of appointment itself. In doing so, this Court observed that the dividing line between judicial and administrative functions was thin and gradually evaporating, and that the functions performed by those doing judicial function and administrative function, where the rights of citizens are affected to their prejudice, had the same object, namely, to do justice and deciding the question fairly and justly. In the former case, there would be express rules of procedure, but the object of those rules is only to enable or facilitate to decide fairly and justly. The Court also pointed out that in recent years the concept of *quasi*-judicial power has been undergoing a radical change and noted with approval the decision in *Regina* v. *Criminal Injuries Compensation Board Ex parta Lain*(2) where it was

(1) [1970] 1 S.C.R. 457. (2) [1967] 2 Q.B. 864.

A held that *certiorari* would be available not only where the impugned order infringes immediately enforceable rights but also where it is a step as a result of which legally enforceable rights may be affected. If the power of preparing a selection list without the power to appoint, as in *Kraipak's* case(1), and power to transfer indentured labour from one to another employer, as in *De Verteuil* B v. *Knaggs*(2), are held, in the context of their respective provisions, to be *quasi*-judicial powers, there is no reason why, when the statute requires the determination of a sufficient cause on facts produced before the Collector should be held not to be a *quasi* judicial function or at least a function requiring judicial approach.

C But it may be said that in both those cases there was a civil right involved and the power, therefore, had to be held to be *quasi*-judicial. But in the present case also, the right to restoration of the seized goods is a civil right which accrues on the expiry of the initial six months and which is defeated on an extension being granted, even though such extension is possible within a year from the date of the seizure. Since the Collector has on facts to D decide on the existence of a sufficient cause, although his decision as to sufficiency of materials before him may be within his exclusive jurisdiction, it is nonetheless difficult to comprehend how he can come to his determination unless, as the Division Bench of the High Court has said, he has before him the *pros* and *cons* of the question. An *ex parte* determination by the Collector would E expose his decision to be one-sided and perhaps one based on an incorrect statement of facts. How then can it be said that his determination that a sufficient cause exists is just and fair if he has before him a one-sided picture without any means to check it unless there is an opportunity to the other side to correct or controvert it. The difference in the language used in the first sub-F section and the proviso to sub-s. (2) lends support to the contention that the power in one case may be subjective, and therefore, not calling for an enquiry, and the power in the other is one, the exercise of which necessitates an enquiry into materials placed before the Collector for his determination. In our view, these considerations lead to the conclusion that the power under the pro-G viso is not to be exercised without an opportunity of being heard given to the person from whom the goods are seized.

In a recent decision in *Sheikh Mohammed Sayeed* v. *Assistant Collector of Customs*(3) a contrary view has, however, been taken by a single Judge of the High Court of Calcutta. The extension order there was passed before the expiry of the initial six months' H period. But the contention raised was that an opportunity to be heard should have been given to the petitioner. The learned

(1) [1970] 1 S.C.R 457. (2) [1918] A.C. 557.

(3) A.I.R. 1970 Cal. 134.

Judge distinguished the decision of the Division Bench under this appeal (reported in A.I.R. 1968 Cal. 28) on the ground that the question involved in that decision was whether an opportunity of being heard had to be given in respect only of an extension when the right to restoration of the goods in question has already accrued to the party from whom they were seized, and therefore, the decision did not apply to the case before him when such a right had not vested in the petitioner. With respect to the learned Judge, the distinction was not correct, firstly, because the first order of extension was only assumed to be correct as the Division Bench concentrated its attention on the second order of extension which also involved the question of the right to restoration of the goods having already vested; and secondly, because the Division Bench set aside the extension order on the ground that the power of extension was *quasi*-judicial or at any rate one which required a judicial approach. The latter ground applied to both the orders, and therefore, if the second order of extension was bad, the first was for the same reason necessarily bad. The order of extension in both the cases would deprive the person from whom the goods are seized of the right to have the goods restored to him on the expiry of six months from the date of seizure. As for his decision on the nature of the power, the learned Judge relied on decisions in *Collector of Customs* v. *N. Sampathu Chetty*(1), *Babulal Amthalal* v. *Collector of Customs*(2), *Pukhraj* v. *Kohli*(3) and *Nathmal Jalan* v. *Additional Collector of Customs*(4) which were all cases where the exercise of power depended on reasonable belief or reasons to believe. But he held that the power under the proviso to s. 110(2) should be construed on the same principles laid down in those decisions. This is made clear at page 141 of the report where he observed :—

> "In my view the same principles are attracted in construing the phrase 'on sufficient cause being shown' .....With regard to the nature and sufficiency of the cause, it is the satisfaction of the Collector of Customs that provides the ground and justification for an order extending the time to complete the inquiry.....If the order of extension is made before expiry of the initial period of six months, or before expiry of the extended period, it cannot in my view be challenged on the ground that notice to show cause, or opportunity of being heard was not given to the party."

In our view, equating the power, the exercise of which depends on a mere reasonable belief, with the power, the exercise of which depends on 'sufficient cause being shown' envisaging at

(1) A.I.R. 1962 S.C. 316.
(2) A.I.R. 1957 S.C. 877.
(3) A.I.R. 1962 S.C. 1559.
(4) 70 C.W.N. 349.

A least some sort of inquiry on facts placed before the authority and determination by him on those facts, is not warranted. Therefore, a conclusion based on such a premise creates difficulty in sustaining it. Further, the distinction between an order extending before and after the expiry of the initial or the extended period does not make any difference as was sought to be B made by the learned Judge when one inquires into the character of the power of extension. Both would raise precisely the same question, whether the power is purely administrative requiring no opportunity of being heard or judicial or *quasi*-judicial, as in both the cases the right to the goods being restored would be involved. We cannot also agree with the learned Judge that C there is no indication in the Act to suggest that the Collector is required to act judicially, firstly, because the proviso requires determination on facts and not on mere suspicion and a sufficient cause being made out by the applicant-officer, and secondly, because a civil right of a citizen to the restoration of the goods on expiry of the period, whether initial or extended, is affected.

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The other decision, which takes a contrary view, is of the High Court of Mysore in *Ganeshmul Channilal Gandhi* v. *Collector of Central Excise*(1). The grounds on which the learned Judges there took that view were (i) that the power was administrative, and (2) that if notice were to be necessary, the aut- E hority which applies for extension would have to make a disclosure about the investigation, which disclosure would be detrimental to the investigation itself. For the reasons already given we cannot agree with the first ground. As for the second ground, we do not see any reason for the apprehension. So far as the initial period of six months is concerned, there is no question of F disclosure of the investigation. The legislature itself contemplated that ordinarily such an investigation would be completed within that period. The question of disclosure would arise only in cases where for *bona fide* reasons something yet remains to be done. The only disclosure in such cases would be about the fact that investigation at some place or places, or about certain G matters is still incomplete and pending. No one suggests that the inquiry to be held by the Collector would be similar to the one held in a court of law or that the officer applying for extension would be compelled to disclose the names of his informants or such other matters which would be detrimental to the investigation. Even in more serious matters, such as applications for remand in criminal cases, opportunity to be heard has to be given H No one has yet suggested that such an opportunity is detrimental to the investigation. The unreported judgment of the High Court

(1) A.I.R. 1968 Mysore 89.

of Bombay in *M/s. Prakash Cotton Mills Pvt. Ltd.* v. *Assistant Collector of Central Excise, Bombay*(1) does not throw any further light as it is mostly based on the reasoning of the Mysore High Court. We are not satisfied that as between the right of the person from whom the goods are seized and the supposed danger to the investigation the matter is so weighted down that we would be compelled to hold that the legislature could not possibly have contemplated a judicial approach by the Collector when he orders extension of time, the effect of which would be the deprivation of, or in any event, postponement of the right to restoration. In our view, the first question must be answered in favour of the respondent, and therefore, the Division Bench was right in holding that the power under the proviso was *quasi*-judicial, or at any rate, one requiring a judicial approach. Consequently, an opportunity of being heard ought to have been given to the respondent before orders for extension were made. The High Court, consequently, was justified in ordering restoration of the watches in question to the respondent.

In this view it is not necessary for us to decide the second question raised by counsel for the respondent. We are also not dealing with the question as to whether the notice under s. 124(a) was vague, and therefore, void as decided by the Division Bench. That part of the decision of the High Court was not challenged before us, and therefore, we are not called upon to give our decision on that part of the case.

In the result, the judgment of the Division Bench has to be upheld. The appeal will stand dismissed with costs.

V.P.S. *Appeal dismissed.*

(1) M.P. No. 127 of 1963 dt. August 31, 1970