

1958

*Present* : Basnayake, C.J., and Sansoni, J.

THE ATTORNEY-GENERAL, Appellant, and LEBBE THAMBY and others, Respondents

*S. C. 79—D. C. Colombo, 35484/M*

*Customs Ordinance—Seizure of prohibited goods—Section 144—“ Lawfully imported ”  
—Burden of proof—Exchange Control Act, No. 24 of 1953, s. 21 (1) (c).*

The question for decision was whether certain gold bars found on 24th February 1955 in the possession of an employee of the respondents were unlawfully imported and therefore liable to be seized as forfeited under the Customs Ordinance. The respondents conceded that after the Exchange Control Act came into operation on 15th August 1953 the importation of gold, except with the permission of the Central Bank of Ceylon, was prohibited. The Attorney-General (appellant) conceded that the burden of proving lawful importation would not lie on the respondents under section 144 of the Customs Ordinance unless the Crown proved that the gold bars were imported.

*Held*, that, as the onus of proving that the gold bars were imported was on the Crown, the Crown should have established that fact beyond reasonable doubt as in a criminal prosecution.

**A**PPEAL from a judgment of the District Court, Colombo.

*A. C. Alles*, Acting Solicitor-General, with *Mervyn Fernando*, Crown Counsel, for Defendant-Appellant.

*H. V. Perera, Q.C.*, with *S. J. V. Chelvanayakam, Q.C.* and *G. Barr Kumarakulasinghe*, for Plaintiffs-Respondents.

*Cur. adv. vult.*

August 6, 1958. BASNAYAKE, C.J.—

This is an appeal by the Attorney-General the 1st defendant in this action (hereinafter referred to as the appellant) which the plaintiffs nine in number (hereinafter referred to as the respondents) instituted against him and the Principal Collector of Customs in pursuance of section 146 of the Customs Ordinance for the recovery of four gold bars valued at Rs. 4,250 of which the respondents claim to be owners. The Principal Collector of Customs who was the 2nd defendant was discharged from the action by the trial Judge.

The only question that arises for decision is whether the Crown is entitled in law to seize the four gold bars as forfeited under the Customs Ordinance. The facts of the case which are few and simple are not disputed except in regard to the question of importation. They are as follows : The respondents are partners of a business carried on under the name and style of “ L. K. S. Lebbe Bros. ” at Pettah in Colombo. They were at the material date, 24th February 1955, carrying on business as jewellers at 137, 2nd Cross Street in Pettah in Colombo. They also had a place of business at Kannatody in Jaffna, where they manufactured jewellery for sale mainly in Colombo. They were also buyers of old

jewellery the gold of which they melted down both for the purpose of sale as gold and for the purpose of being utilised in the manufacture of jewellery. On the day in question S. A. Meera Saibo the 8th plaintiff prepared a parcel of jewellery and the four gold bars in question to be sent to Jaffna by insured post. It was sent to the General Post Office through an employee of the firm Carim by name. When he was at the parcels counter of that office he was arrested with the parcel by Inspector Grenier and taken to the office of the Criminal Investigation Department where he opened the parcel in the presence of Carim, the driver of his car, and another who had come with him. The parcel contained the 4 gold bars (one larger than the other three) and the following items of jewellery : 24 gold bangles, 11 gold rings, 1 gold bracelet, 7 pieces of gold chains, 4 pieces of gold necklaces, 2 gold amulets, 3 gold hooks, 4 gold chains, 1 gold pendant, and 8 miscellaneous pieces of gold. The jewellery was used jewellery and was returned to the owners after a few days. The larger of the gold bars weighed 16 tolas and the other three together 20.90 tolas. The plaintiffs value the jewellery at Rs. 5,192.50 and the gold bars at Rs. 4,250. The gold bars bear microscopic Chinese and English characters which with one exception can only be read with the aid of a magnifying glass. The larger of them bears the English words "Macao Bankers Association of Certification for standard gold bars. Hangtai Macao 5000." On its reverse are Chinese characters. The Chinese word for "standard" appears on both sides of it and in the centre there is a Chinese word which stands for "Macao". The Chinese equivalent of "Wong Kind Assayer" appear in the centre of the bar. The other bars also bear Chinese characters which give their weight and the English words "Fine gold corp". According to the Chinese engravings the larger bar should be 50 times the weight of each of the small bars while in fact it is not so.

It is in evidence that gold bars are available in the market and also that gold bars are sold by public auction by the Customs authorities. The eighth plaintiff claims that his firm has bought and sold gold in the market since 1935. The price of gold in the market is higher than the price at which gold is sold by the Central Bank. But gold cannot be purchased from the Central Bank without a permit.

The learned District Judge has given judgment for the respondents holding—

- (a) that they are the owners of the gold bars ;
- (b) that they are entitled to a declaration that the four gold bars belong to them and for an order that they be returned to them or that their value be paid to them, and
- (c) that the four gold bars were not lawfully seized as forfeited by the Principal Collector of Customs.

The respondents did not dispute the fact that since 15th August 1953 (hereinafter referred to as the relevant date) the date on which the Exchange Control Act No. 24 of 1953 (hereinafter referred to as the Exchange Control Act) came into operation the importation of gold except with the permission of the Central Bank of Ceylon is prohibited

[s. 21 (1) (c)]. Learned counsel for them also conceded both here and below that any gold imported after that date without the requisite permission was liable to seizure and forfeiture under the Customs Ordinance. I do not therefore propose to discuss the question whether gold falls within the ambit of the prohibition in section 10 (1) of the Customs Ordinance and whether the effect of section 23 of the Exchange Control Act is to add gold to the goods enumerated in Schedule B as those questions do not arise for decision in this case.

The argument in appeal centres round the question whether the four gold bars were imported after the relevant date. Learned counsel for the appellant relies on the inscriptions on the gold bars in support of his contention that they were imported and he submits that in view of that evidence the onus is on the respondents under section 144 of the Customs Ordinance to prove that they were lawfully imported. Section 144 reads—

“ If any goods shall be seized for non-payment of duties or any other cause of forfeiture, and any dispute shall arise whether the duties have been paid for the same, or whether the same have been lawfully imported, or lawfully laden or exported, the proof thereof shall lie on the owner or claimer of such goods, and not on the Attorney-General or the officer who shall seize or stop the same.”

Learned counsel for the appellant conceded that the burden of proving lawful importation would not lie on the respondents unless the Crown proves that the gold bars were imported. At the same time he submitted that the inscriptions on the gold bars were sufficient evidence of importation. I am unable to agree that the inscriptions prove that the gold bars were imported on or after the relevant date or at any time. As against that evidence there is evidence that gold bars are made locally and that words in English and Chinese can be impressed on them here. There is also evidence that the Customs department sells imported gold including gold bars. P18 which is the Gazette of 11th February 1955 shows that the Customs department sold by tender in the month of February 1955 alone 21 gold bars, 12 sheets of gold weighing  $1\frac{1}{2}$  lbs, 216 sovereigns, 5 ingots gold and 136 pieces gold bullion.

In the instant case in my opinion the Crown has failed to establish that the gold in question was imported on or after the relevant date or at any time. The Customs Ordinance is a penal enactment which imposes severe penalties on those who violate its provisions. The Crown must therefore establish any breach of those provisions beyond reasonable doubt as in a criminal prosecution. The onus of proving that the gold bars were imported being on the Crown it should have established that fact beyond reasonable doubt. It has failed to do so. The onus of proving lawful importation does not therefore lie on the respondents.

The learned District Judge has rightly given judgment for them. The appeal of the Attorney-General is dismissed with costs.

SANSONI, J.—I agree.

*Appeal dismissed.*