

PETITIONER:
HIND TRADING COMPANY

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT:
28/10/1968

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
SIKRI, S.M.
HEGDE, K.S.

CITATION:
1970 AIR 1858 1969 SCR (2) 533
CITATOR INFO :
D 1989 SC1654 (15)

ACT:
Lands Customs Act, 1924, ss. 5(3) and 7(1)--Sea Customs Act, 1878, s. 167(8)--Foreign Exchange Regulation Act, 1947, s. 23A--Import of Chinese Dollars from Tibet via Sikkim--Dollars in two lots covered by two licences from Reserve Bank of India--Licences shown and duty paid at Land Customs station--Applications made for permits to allow goods to cross frontier--Subsequently one lot found with wrong application--Effect--Whether any offence under above provisions committed--S. 5(3) of Land Customs Act whether requires permit to accompany goods to ultimate destination--Certiorari to Tribunal when lies.

HEADNOTE:

The appellant imported 1,65,000 pieces Chinese silver dollars from Tibet through Sikkim State under two Reserve Bank import licences. As there were two licences the dollars were divided into two lots. One lot bore the mark 'H.D.' and the other 'H.N.' The appellant made two applications hearing Nos. 32 and 34 to the Officer-in-charge, Land Customs Station, for the grant of permits for passing the goods across the frontier. Application No. 32 related to the lot marked 'H.N.' and the application No. 34 related to the lot marked 'H.D.' On May 16, 1957 the two consignments arrived at the land customs station, Kalimpong and were examined and appraised by the land customs officer-in-charge of the station. On the duty being paid, the officer endorsed the applications certifying that the duty was paid and permitting the import of the goods. The consignments there were then delivered at Siliguri to the carriers for carriage by air to Dum Dum. On May 17, 1957 one consignment together with application No. 34 was sent by plane from the Sonapur airstrip and on the same date reached Dum Dum and was delivered to the appellant at Calcutta. On May 18, 1957 the Range Officer, Matidhar seized the second consignment bearing the marks 'H.D.' together with application No. 32 when they were about to be despatched from the Sonapur airstrip. The seizure was made under s. 5(3) of the Land Customs Act on the ground that

the mark on the consignment was 'H.D.' whereas the accompanying import application No. 32 related to the consignment marked 'H.N.' The Collector of Land Customs, Calcutta after hearing the appellant held that offences under s. 5(3) and s. 7(1) of the Land Customs Act, 1924, and s. 167(8) read with of the Sea Customs Act, 1878 had been committed by the appellant.. He directed confiscation of the goods under those sections read with s. 23A of the Foreign Exchange Regulation Act, 1947. Departmental remedies having failed the appellant filed a writ petition in the High Court. Appeal in this Court was filed by the appellant with certificate. The questions that came up for consideration were inter alia: (i) whether the seizure and confiscation of the goods was authorised by s. 5(3) of the Land Customs Act, 1924, and (ii) whether the finding that the appellant had committed offences under that section and other provisions of law was perverse and liable to be quashed.

HELD: (i) Section 5(3) of the Land Customs Act. by itself does not require that all imported goods must always at all times, and at all places be accompanied by a permit. After the permit the goods become a part and parcel of the mass of other like goods in India. There is no duty

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to keep the permit with the consignment for all times and at all places. Nor is the importer under a duty to keep the consignment in his hands. He can sell portions of it to different buyers and obviously he could not give the permit to every consumer. [540 G--H]

Before March 29, 1968 when the Central Board of Revenue framed the Chinese Silver Dollars (Import) Rules, there was no provision in the Act or Rules in force which required the appellants to keep the permits at Sonapur airstrip with the dollars seized on that date. Section 5(3) was not infringed when the carriers did not produce the permit concerning the goods at the Sonapur airstrip on May 18, 1957, and the goods could not be confiscated under s. 5(3). [541 C]

(ii) Nor were the goods liable to confiscation under s. 7(1) of the Land Customs Act. There was no evidence to show that the seized dollars were not covered by licences. On the materials on record the conclusion was irresistible that due to the inadvertence of the carriers the permits were inter changed and that application No. 34 was sent with 'H.N.' consignment and application No. 32 was kept with 'H.D.' consignment. No inference of smuggling could be drawn from the fact that 'H.D.' consignment was found with application No. 32. In the circumstances the finding that the appellant had smuggled the goods and was guilty of an offence under s. 7(1) of the Land Customs Act must be characterised as perverse. [541 D--E; 542 B--C]

(iii) It was also not proved that the appellant committed any offence under ss. 8(1) and 23A of the Foreign Exchange Regulations Act read with ss. 19 and 167(8) of the Sea Customs Act. Although the offence under these sections may be proved by circumstantial evidence in the present case there was no evidence direct or circumstantial to prove the offence. [542 D]

Issardas Daulat Ram v. Union of India, [1962] Supp.1 S.C.R. 358, referred to.

(iv) Having regard to the facts on the record no tribunal could reasonably come to the conclusion that the dollars were liable to confiscation if they properly understood the relevant enactments. In the circumstances the order of the Collector confiscating the goods was liable to be quashed by a writ of certiorari. [542 F]

Regina v. Medical Appeal Tribunal, [1957] 1 Q.B. 574, 582, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1332 of 1966.

Appeal from the judgment and order dated August 25, 1964 of the Punjab High Court, Circuit Bench at Delhi in Letters Patent Appeal No. 37-D of 1964.

B. Sen, D.K. Kapur, B.P. Maheshwari and R.K. Maheshwari, for the appellant.

R.M. Mehta and S.P. Nayar, for the respondents.

The Judgment of the Court was delivered by

Bachawat, J. The appellant, M/s. Hind Trading Company, imported 1,65,000 pieces of Chinese Silver Dollars from Yatung in Tibet to Kalimpong, via Nathula pass and Rangpo through

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Sikkim State under two Reserve Bank import licences dated April 22, 1957. As there were two Reserve Bank licences, the dollars were divided into two lots at Yatung. Each lot consisted of 66 bags containing 82,500 dollars. One lot of bags bore the mark "H.D." and serial numbers 1 to 66, and the other lot bore the mark "H.N." and srl. nos. 1 to 66. On May 15, 1957 the appellant made two applications bearing Nos. 32 and 34 to the officer-in-charge, Land Customs Station, Kalimpong, for the grant of permits for passing the goods across the frontier. Application No. 32 related to the bags marked "H.N." Application No. 34 related to the bags marked "H.D." On May 16, the two consignments arrived at the land customs station, Kalimpong and were examined and appraised by the land customs officer-in-charge of the station. On the duty being paid, the officer endorsed the two applications, certifying that the duty was paid and permitting the import of the goods. The consignments loaded in trucks then passed out of the customs house and on the way to Siliguri were checked at the Teesta Bazar check post at 8.45 p.m. on May 16. On the night of May 16, they reached Siliguri and were delivered to M/s. Amalgamated Transport Co., for carriage by air to Dum Dum. On the morning of May 17, one consignment of 82,500 dollars packed in 66 bags together with the import application no. 34 was sent by plane from the Sonapur airstrip to Dum Dum airport and on the same date the consignment reached Dum Dum and was delivered to the appellant at Calcutta. On May 18, 1957, the Range Officer, Matidhar seized the second consignment of 82,500 dollars packed in 66 bags bearing the mark "H.D." together with the application No. 32, when they were about to be despatched by air from the sonapur airstrip. The seizure was made under s. 5 (3) of the Land Customs Act on the ground that the mark on the bags was "H.D." whereas the accompanying import application No. 32 related to "H.N." bags.

On July 7, 1957, the Collector of Land Customs, Calcutta, issued a notice to the appellant to show cause why the dollars seized on May 18, 1957 should not be confiscated and why a penalty should not be imposed upon the appellant under ss. 5(3) and 7(1) of the Land Customs Act, 1924, and section 167(8) read with s. 19 of the Sea Customs Act, 1878 as made applicable by s. 23A of the Foreign Exchange Regulation Act, 1947 as there was reason to believe that the goods had been imported by the appellant by land from Tibet into India on May 16, 1957 through Indo-Tibet border, (i) without a valid permit under s. 5 of the Land Customs Act,

and (ii) without valid permission granted by the Reserve Bank of India under notification No. F. 3(84) E.F. VII/56 dated May 4, 1956 issued under sec. 8(1) of the Foreign Exchange Regulation Act. That notification prohibited' the
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import into India of silver coins current in the Tibet region of China without the permission of the Reserve Bank of India. On July 30, 1957 the appellant showed cause against the proposed action by a letter stating that the first consignment of 82,500 dollars was packed in bags marked "H.N." that by inadvertence the carriers M/s. Amalgamated Transport Co., had sent import application no. 34 with the first consignment and had kept application no. 32 with the bags marked "H.D.", that the two consignments were covered by valid Reserve Bank licences and import passes, that the seizure of the dollars kept in "H.D." bags under s. 5 (3) of the Land Customs Act was not justified and that there was no ground for confiscating the goods or imposing any penalty. The appellant was heard by the Collector on August 26, and December 11, 1957. On January 10, 1958, the Collector passed an order adjudging that offences under ss. 5(3) and 7(1) of the Land Customs Act and S. 167(8) of the Sea Customs Act, 1878 had been committed and directing confiscation of the goods under those sections read with s. 23A of the Foreign Exchange Regulation Act. The Collector held that (i) the goods were liable to confiscation under s. 5 (3) of the Land Customs Act as they were not covered by the accompanying import application no. 32; (ii) the appellant failed to prove that the first consignment of 66 bags bore the mark "H.N." or that by inadvertence of the carriers, application no. 34 had been sent with it and (iii) had the first consignment of 66 bags borne the mark "H.N." the Range Officer. Matidhar and the officers at Dum Dum would have detected and noted this fact and the appellant could have produced before the customs officials at Calcutta bags with the mark "H.N." immediately after May 18, 1957. An appeal against this order was dismissed by the Member, Central Board of Revenue, on May 17, 1958. A revision petition against the last order was dismissed by the Secretary to the Government of India, Ministry of Finance, Department of Revenue on January 16, 1961.

On November 16, 1962, the appellant filed a writ petition in the Punjab High Court for quashing the aforesaid decisions and for setting aside the order of confiscation of the silver dollars. On May 14, 1964, Shamsher Bahadur, J. dismissed the petition. He held that there was no error of law apparent on the face of the record. The appellant filed a Letters Patent appeal against the order. On August 25, 1964 the Divisional Bench dismissed the appeal. It held that (1) s. 5 (3) of the Land Customs Act, 1924 applied to the case; (2) the fact that the 66 bags bore the mark "H.D." and the accompanying application no. 32 related to "H.N." bags. showed conclusively that the dollars contained in those bags were imported without proper licence and import permit and without payment of duty and (3) the finding of fact that there was no mistake on the part of the carriers with regard to the despatch
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of the consignments and accompanying documents could not be set aside in a writ application. If the present appeal has been filed by the appellant after obtaining a certificate from the High Court.

Mr. B. Sen for the appellant contended that the seizure

and confiscation of the goods was not authorized by s. 5 (3) of the Land Customs Act, 1924, (2) the finding that the appellant had committed offences under that section and other provisions of law was perverse and liable to be quashed; and (3) the impugned orders were passed in contravention of the principles of natural justice. These contentions were disputed by Mr. R.M. Mehta.

The Land Customs Act, 1924 provided for the levy of duties of customs on articles imported or exported by land from or to territory outside India. The Act extended to the whole of India, (s. 1). Section 2 was the definition section. Section 3 authorised the appointment of land customs collectors and officers. The Range Officer, Matidhar, was a land customs officer working under the Collector of Land Customs, Calcutta, having jurisdiction over Sonapur where the dollars were seized. Section 4 authorised the establishment of land customs stations and the determination of routes by which alone goods imported or exported by land could pass. The Central Board of Revenue established Kalimpong as the land customs station and prescribed the following routes by which alone dutiable goods could pass out of Tibet into India: (a) road leading from Yatung (in Tibet) to Kalimpong via Jelapala pass and pedong through Sikkim State, (b) road leading from Yatung (in Tibet) to Kalimpong via Nathula pass and Rangpo through the Sikkim State. Section 5 provided for permits. Goods passing across frontier. Section 6 dealt with personal baggage. Section 7 prescribed penalties. Section 8 prescribed certain dates and times when the goods were not to be passed. Section 9 made applicable for the purposes of levy of land customs under the Act certain provisions of the Sea Customs Act, 1878 including s. 167 (8) with necessary modifications and adaptations. Sections 18, 19 and 19A of the Sea Customs Act, 1878 and the whole of the Foreign Exchange Regulation Act though not expressly incorporated in the Land Customs Act applied their own force to goods imported or exported by land. Duty on imports and exports by land was imposed by s. 5 of the Indian Tariff Act, 1934. The Land Customs Act, 1924 had now been repealed by the Sea Customs Act, 1962.

It is necessary to read sections 4, 5 and 7(1) of the Land Customs Act, 1924 :--

"Section 4. Establishment of Land Customs Stations and determination of routes--The Chief Customs Authority may, by notification, in the Official Gazette,

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(a) establish land customs stations for the levy of land customs in any land customs area, and

(b) prescribe the routes by which alone goods, or any class of goods specified in the notification may pass by land out of or into any foreign territory, or to or from any land customs station from or to any foreign frontier.

Section 5. Permit for goods passing across frontier (1) Every person desiring to pass any goods, whether dutiable goods or not, by land out of or into any foreign territory shall apply in writing, in such form as the Chief Customs Authority may by notification in the Official Gazette prescribe, for a permit for the passage thereof, to the Land Customs Officer in-charge of a Land Customs Station

established in land customs area adjoining the foreign frontier across which the goods are to pass.

(2) When the duty on such goods has been paid or the goods have been found by the Land Customs Officer to be free of duty, the 'Land Customs Officer shall grant a permit certifying that duty has been paid on such goods or that the goods are free of duty, as the case may be:

(3) Any Land Customs Officer, duly empowered by the Chief Customs Authority in this behalf, may require any person in charge of any goods which such officer has reason to believe to have been imported or to be about to be imported, by land from, or to any foreign territory to produce the permit granted for such goods; and any such goods which are dutiable and which are unaccompanied by a permit or do not correspond with the specification contained in the permit produced, shall be detained and shall be liable to confiscation;

Provided that nothing in this sub-section shall apply to any imported goods passing from a foreign frontier to a Land Customs Station by a route prescribed in that behalf.

(4) The Chief Customs Authority may, by notification in the Official Gazette, direct that the provisions of this section, or any specified provisions thereof, shall not, in any land customs areas specified in the notification apply in respect of goods of any class or value or specified.

Section 7. Penalties--(1) Any person who--

(a) in any case in which the permit referred to in section 5 is required, passes or attempts to pass any

goods by land out of or into any foreign territory through any land customs station without such permit, or

(b) conveys or attempts to convey to or from any foreign territory or to or from any Land Customs Station any goods by a route other than the route, if any, prescribed for such passage under this Act, or

(c) aids in so passing or conveying any goods, or knowing that any goods have been so passed or conveyed, keeps or conceals such goods or permits or procures them to be kept or concealed shall be liable to penalty not exceeding, where the goods are not dutiable, fifty or, where the goods or any of them are dutiable, one thousand rupees, and any dutiable goods in respect of which the offence has been committed shall be liable to confiscation."

The scheme of ss. 4, 5 and 7 (1) of the Land Customs Act with regard to imports by land was as follows: Goods could pass by land out of foreign territory or from a foreign frontier to a land customs station by a prescribed route only, [s. 4(b)]. To import goods by an unauthorised route or an attempt to do so was an offence, [s. 7(1)(b)].

No permit could be obtained for importing goods by an unauthorised route. The goods could be brought by the prescribed route from the foreign frontier to the land customs station, without a permit [proviso to s. 5(3)]. Subject to exemptions, if any under s. 5(4), a permit was required for the passage of goods through the land customs station. Passing of goods through the land customs station without a permit or an attempt to so pass the goods was an offence, Is. 7 (1) (a)]. The importer was required to apply for the permit to the officer-in-charge of the land customs station, Is. 5(1)]. The goods were brought to the station for examination and appraisal of duty. On the duty being paid or on its being found that the goods were free of duty, the officer issued the permit allowing the passage of the goods and certifying that the duty had been paid or the goods were free of duty as the case might be, Is. 5 (1) and (2)]. Dutiable goods in respect of which an offence was committed was liable to confiscation. What is stated above applied mutatis mutandis to exports by land.

In this setting let us examine the provisions of s. 5(3). That sub-section required that all goods imported or about to be exported must be accompanied by a permit for the passage there, of issued by the officer in charge of a land customs station. It was an offence to take the goods through the land customs station 1. without a permit. A duly authorised land customs officer could enforce this requirement by asking any person in charge of the goods to produce the permit. Dutiable goods unaccompanied by

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a permit or not corresponding to the specifications contained in the permit produced had to be detained and was liable to confiscation. It is to be noticed that the sub-section referred to goods "unaccompanied by a permit" and to "any person in charge of any goods." It obviously contemplated cases where the goods should be accompanied by the permit and the person in charge of the goods was under a duty to produce the permit. In view of ss. 5 and 7 (1) it was necessary that the goods should be accompanied by a permit when they passed through the land customs station. Rules under the Act could also prescribe that the goods must be accompanied by a permit for some time even after such passage. In such cases s. 5 (3) was infringed if the goods were not accompanied by the permit.

The Central Board of Revenue framed the Chinese Silver Dollars (import) Rules on March 29, 1958 in exercise of the powers conferred by s. 9(1) of the Land Customs Act, 1924. Rule 6(2) provided that on its journey from the Kalimpong land customs station to its ultimate destination, any consignment of Chinese silver dollars imported from Tibet into India must be accompanied by a permit, i.e., the importer's copy of the relative import application bearing the endorsement of the officer in charge of the Kalimpong land customs station permitting the clearance of the consignment. The permit must be produced at the land customs check post at Teesta Bazar, along with the consignment if the destination was Teesta Bazar or beyond also be produced on demand by any land customs officer at any time during the journey of the consignment upto its ultimate destination. These Rules were framed on the assumption that independently of the Rules, the importer was not obliged to keep the permit with the dollars after they passed out of the Kalimpong land customs station. The Rules were not in force on May 18, 1957 when the dollars were seized by the Range Officer, Matidhar. There was no provision in the Act or the Rules in force on May 18, 1957

which required the appellant to keep the permit at Sonapur airstrip with the dollars seized on that date.

The contention of the Revenue is that s. 5 (3) required that all imported goods must always, at all times and at all places be accompanied by a permit. We are unable to accept this contention. After the import, the goods became a part and parcel of the mass of other like goods in India. There was no duty to keep the permit with the consignment of imported goods for all times and at all places. Nor was the importer under a duty to keep the consignment intact in his hands. He could sell portions of it to different buyers and obviously he could not give the permit to every consumer. He could import rubies from Burma by land and by sea. It was not necessary to keep any permit with the rubies imported by sea after their clearance from the customs

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Nor was the position different in case of rubies imported by land. A consumer wearing a necklace made of rubies was not expected to carry the permit for the rubies in her bag. Under the Land Customs Act a customs clearance permit was necessary for the passage of goods imported or about to be exported through the land customs station. For this reason s. 5(3) read with s. (1)(a) required that the goods so passing through the land customs station must be accompanied by the permit. The Rules could provide that the imported goods should be accompanied by the permit even after such passage. As already stated, the Rules required that imported Chinese silver dollars should be accompanied by the permit during the entire journey up to their ultimate destination. In such cases, s. 5(3) was infringed if the permit covering the goods was not produced on demand by any land customs officer. Except in such cases, s. 5(3) did not apply, and it was not necessary to keep the permit with the goods. We hold that s. 5(3) was not infringed when the carriers did not produce the permit covering the goods at the Sonapur airstrip on May 18, 1957 and the goods could not be confiscated under s. 5 (3).

Nor were the goods liable to confiscation under s. 7(1) of the Land Customs Act. The appellant imported 1,65,000 dollars from Tibet under two Reserve Bank licences and two import permits. There was no distinguishing mark on any dollar. The appellant was found in possession of 1,65,000 dollars only. No attempt was made to prove that the appellant was in possession of another consignment of 82,500 dollars. At the time of import the dollars were packed in 66 bags marked "H.N." and 66 bags marked "H.D." The Range Officer seized 82,500 dollars packed in 66 bags marked "H.D." There is no evidence to show that the seized dollars were not covered by the permits and licences held by the appellant. The onus was on the respondents to prove that the first consignment of 66 bags bore the mark "H.D." Application no. 34 accompanied the first consignment. There was no noting on application no. 34 by the customs officer at Sonapur or at Dum Dum indicating that they had examined the bags or that the bags were found to bear the mark "H.D." The summary of the diary of the Range Officer Matidhar set out in the order of confiscation does not show that the officer examined the bags. The note in the diary that the mark checked was "H.D." could have been made on the basis of the mark "H.D." shown in the accompanying application no. 34. Before the issue of the show cause notice on July 17, 1957 the appellant had no occasion to produce before the customs authorities any of the 66 bags marked "H.N." which had reached Calcutta. No inference has been drawn

against the appellant from their inability to produce any bags marked "H.N." after July 17, 1957. On the materials on the record it is impossible to hold that the dollars seized, on May 18.

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1957 were smuggled goods. There was no noting by the customs officers at Sonapur and Dum Dum on application no. 34. If the appellant desired to send smuggled "H.D." bags from Sonapur to Dum Dum, they could easily obtain application no. 34 from Calcutta and send it with the consignment seized at Sonapur. Moreover, the customs officers had not put any mark or initials on the bags, and there was nothing to prevent the appellant from putting the mark "H.N." on other bags and using them for the carriage of the dollars. The conclusion is irresistible that due to the inadvertence of the carriers the permits were inter-changed and that application no. 34 was sent with "H.N." bags and application no. 32 was kept with "H.D." bags. No inference of smuggling could be drawn from the fact that "H.D." bags were found with application no. 32. In the circumstances, the finding that the appellant had smuggled the goods and was guilty of an offence under s. 7 (1) of the Land Customs Act must be characterized as perverse.

Nor was it proved that the appellant committed any offence under ss. 8 (1) and s. 23A of the Foreign Exchange Regulations Act read with ss. 19 and 167(8) of the Sea Customs Act. An offence under those sections can be proved by circumstantial evidence, see *Issardas Daulat Ram v. Union of India*(1). In the present case there was no evidence either direct or circumstantial to prove the offence. The appellant had valid Reserve Bank licences for the import of 1,65,000 dollars. Those licences were not examined nor seized by the customs officials and no attempt was made to prove the licences did not relate to the dollars seized on May 18, 1957. It follows that the dollars were not liable to confiscation under any provision of law.

Having regard to the facts on the record no tribunal could reasonably come to the conclusion that the dollars were liable to confiscation if they properly understood the relevant enactments. In the circumstances the order of the Collector confiscating the goods is liable to be quashed by a writ of certiorari, see *Halsbury's Laws of England*, 3rd ed. vol.II, art. 19, pp. 62-63. In *Regina v. Medical Appeal Tribunal*(2) the Court held that an assessment of 20% disablement must, having regard to the facts appearing on the record, be held to be erroneous in point of law and based upon a misconstruction of Regulation 2(5) of the National Insurance (Industrial Injuries) (Benefits) Regulation 1948 and the award of the Medical Appeal Tribunal was therefore liable to be quashed by a writ of certiorari. Denning, L. J. observed :-

"No reasonable person, who had proper regard to regulation 2(5), could have come to such a conclusion.

[1962] supp. 1 S.C.R. 358. (2) [1957] I Q.B. 574, 582.

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It is now settled that when a tribunal come to a conclusion which could not reasonably be entertained by them if they properly understood the relevant enactment, then they fall into error in point of law: see *Edwards (Inspector of Taxes) v. Bairstow*, [1956] A.C. 14: When the primary facts appear on the

record, an error of this kind is sufficiently apparent for it to be regarded as an or on the face of the record such as to warrant the intervention of this Court by certiorari."

This conclusion is sufficient to dispose of the appeal. It is therefore unnecessary to examine the contention that the impugned orders were passed in contravention of the principles of natural justice.

In the result, the appeal is allowed with costs. The order passed by the High Court is set aside and the writ petition filed by the appellant is allowed. The order of confiscation of the Chinese silver dollars is quashed and the respondents are directed to return them to the appellant.

Appeal allowed.

G.C.
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